

DART SERVICES LTD., DAVIN EMMEL AND MARTY HANSON, Appellants v TYLER WAISMAN, Respondent and DIRECTOR OF EMPLOYMENT STANDARDS, Respondent

LRB File Nos. 110-25 and 013-25; July 24, 2025

Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *Dart Services v Waisman*, 2025 SKLRB 33

Counsel for the Appellants, Dart Services Ltd., Davin Emmel
and Marty Hanson:

Moira Keijzer-Koops

Counsel for the Respondent, Tyler Waisman:

Lindsay Hjorth

Counsel for the Respondent, The Director of Employment Standards:

Alexa Laplante

**Appeal of a Wage Assessment – Request for Stay of Proceedings Pending
Appeal – Request Dismissed as no evidence of irreparable harm**

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Dart Services Ltd., Davin Emmel and Marty Hanson (“the Appellants”) seek a stay of an Adjudicator’s decision pending the determination of their appeal under to s. 4-8 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the “Act”). Tyler Waisman opposes the stay, and the Director of Employment Standards (“the Director”) takes no position.

[2] The Director issued the wage assessment in favour of Mr. Waisman on January 6, 2025. The Appellants appealed the wage assessment to an Adjudicator under Part IV.

[3] The Registrar selected an adjudicator on March 18, 2025.

[4] The Adjudicator rendered a decision on June 3, 2025 upholding the wage assessment in the amount of \$41,454.25.

[5] The Appellants appealed the Adjudicator’s decision on June 12, 2025, and has sought a stay of the Adjudicator’s decision pending the determination of the appeal.

Analysis and Decision:

[6] The Board has the authority to stay the effect of Adjudicator's orders pending appeal pursuant to s. 4-8(5) which reads:

4-8 ...

(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.

[7] The Board set out its approach to an application for a stay during an appeal pursuant to Part IV of the Act in *Olympic Motors (SK) I Corporation v Fowler*, 2024 CanLII 5486 (SK LRB). In that decision, Chair Morris (as he then was) stated the following:

[12] Former Chief Justice Richards articulated the framework the Court of Appeal applies when deciding whether to grant a stay pending an appeal in J.L.[9] More recently, Chief Justice Leurer addressed this framework in Nilson (emphasis added):

[9] Until Rule 15 was amended effective January 1, 2023, in most circumstances the filing of a notice of appeal against a judgment resulted in an automatic stay of its execution, unless that stay was set aside. Now the situation is reversed. A party who appeals against a judgment must apply to have its execution stayed. ...

[10] Although the starting point under Rule 15 has in most cases changed, the overall purpose of the Rule remains the same. Lawson v Rees, 2016 SKCA 37, 396 DLR (4th) 472 [Lawson], dealt with an appeal against an order for spousal support, which was a situation where, under the previous iteration of Rule 15, the filing of a notice of appeal did not give rise to an automatic stay of execution. Instead, a party who thought that a spousal support order should not be enforced while it was under appeal was required to apply for a stay of its execution – just as is now the case under Rule 15. In Lawson, Ryan-Froslic J.A. referred to what she described as the “well-settled” principles for when to lift a stay and then added that “the same objectives apply when imposing a stay, namely, to prevent injustice, to ensure the result is as fair and equitable as possible for all sides, to minimize prejudice and to balance the competing interests” (at para 8, emphasis in original). There are many other cases that have applied similar principles to a determination of whether to impose a stay of execution or to lift one. See, for example, Abrametz v The Law Society of Saskatchewan, 2019 SKCA 21 at para 12, Goodman v Saskatchewan (Community Operations), 2020 SKCA 51 at paras 41–44, and Turtle v Valvoline Canadian Franchising Corp., 2021 SKCA 46 at paras 23–26 [Turtle].

[11] Both parties appropriately refer to J.L. v T.T., 2023 SKCA 43, 91 RFL (8th) 305 [J.L.], as establishing the framework that I should apply in my consideration of the Nilsons' request for a stay of execution. In that case, Richards C.J.S. directed that, generally speaking, the same principles that guide the grant of an interlocutory injunction or a stay of proceedings – as summarized by this Court in Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc., 2011 SKCA 120, 341 DLR (4th) 407 – should apply when there is a request for a stay of execution. In this regard, he wrote as follows:

[16] The summary in Mosaic does not translate perfectly into the context of an application to stay a lower court decision pending the resolution of an appeal. However, as modified to fit the Rule 15 context, it suggests that a decision about whether to grant a stay should be made by proceeding as follows:

(a) The first step will normally be an assessment of the strength of the appeal. The general rule should be that, unless the appellant has raised a serious question as to the validity of the judgment under appeal, a stay is not appropriate. In other words, an appeal that is frivolous or vexatious cannot ground a stay. If the case is determined to involve a serious ground of appeal, the judge should turn to a consideration of irreparable harm and balance of convenience.

(b) Irreparable harm is best seen as an aspect of the balance of convenience. The usual approach here is that the appellant must establish at least a meaningful doubt as to whether the loss they might suffer if the judgment is enforced during the time it takes for the appeal to be heard and decided will be something that is adequately compensable in damages that they would be able to recover. Put another way, the appellant must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.

(c) The assessment of the balance of convenience will usually be the core of the analysis. In this regard, the relative strength of the appellant's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the appellant is likely to suffer before the appeal is decided if the stay is not granted, and they ultimately succeed on appeal, against the risk of the irreparable harm the respondent is likely to suffer if the stay is granted and they prevail on appeal. Nonetheless, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.

[12] Chief Justice Richards added that "there may be some limited circumstances where the line of approach just set out will not be directly applicable or where the subject matter of the case demands a special approach to the assessment of the equities of the situation" (J.L. at para 18). However, in this case, both parties argued on the basis that the J.L. framework is appropriately utilized to determine the outcome of the Nilsons' application.[10]

[13] Generally, the purpose of a stay is to prevent prejudice (harm) to an appellant that may arise if a decision is enforced while an appeal from it is pending. However, imposing a stay can result in prejudice to a respondent, since they are prevented from enforcing the decision while the stay is in effect. When faced with an application for stay, the Board balances the parties' competing interests by applying similar principles to those described in the J.L./Nilson framework, as explained below.

[14] First, the Board must consider the strength of the appeal. Simply put, the Board will not stay a decision's effect if the appeal from it is frivolous or vexatious.

An appellant requesting a stay must satisfy the Board that their appeal raises an arguable ground that could potentially affect the result under appeal. The Board does not consider the merits of the appeal beyond this relatively low threshold at this stage of the analysis.

*[15] Next, the Board must consider whether the appellant has established a meaningful risk of irreparable harm if a decision is enforced while their appeal from it is pending. In basic terms, irreparable harm is generally understood as harm that will not be able to be remedied, or adequately remedied, through the recovery of compensation. A meaningful risk of irreparable harm can include being required to compensate a respondent in accordance with a decision if there is a meaningful risk of being unable to recover funds in the event of a successful appeal. This tends to be the most common type of irreparable harm alleged in the context of employers' appeals concerning wage assessments. In other appeals, such as those where an employee is required to be (or not required to be) reinstated as a consequence of an adjudicator's decision, different concerns may arise. In such circumstances, reasonably detailed affidavit evidence may be required to establish the meaningful risk of irreparable harm. This is not to say that affidavit evidence is not appropriate in other circumstances, including where the potential irreparable harm is the inability to recover money already paid in spite of a successful appeal. **Whether affidavit evidence is strictly necessary, in addition to the factual assertions an appellant makes in Form 1 (or a respondent makes in Form 21), will depend on the circumstances of any given case.***

[16] Provided an appeal is not frivolous or vexatious and the appellant has established a meaningful risk of irreparable harm, the Board will assess the balance of convenience. Fundamentally, the Board must weigh the risk of the irreparable harm the appellant may suffer if the stay is not granted and they ultimately succeed on appeal, against the risk of any irreparable harm the respondent may suffer if the stay is granted and they prevail on appeal. In conducting this exercise, non-exhaustive factors the Board may consider include the relative strength of the appellant's case, the relative likelihood of any irreparable harm as between the appellant and the respondent, and the likely amount and nature of such harm. In considering these factors, of course, the Board must be mindful that it is not deciding the merits of the appeal at this stage of the proceedings. That is for another day, after hearing full argument on the merits from the parties.

*[17] Finally, a stay is not an all or nothing proposition. **The Board may stay the effect of an adjudicator's decision either in whole or in part, based on its assessment of the balance of convenience.***
[emphasis added]

[8] The Board adopts this approach and will consider whether there is a serious issue to be tried, a risk of irreparable harm, and whether the balance of convenience favours the ordering of a stay.

Serious Issue to be Tried

[9] A serious issue to be tried is a low threshold. The Board does not assess the merits beyond whether the arguments are frivolous or vexatious. The Board does not find the Appellants' appeal to be frivolous or vexatious, in that it is not manifestly without any merit or brought for an

improper purpose. For the balance of convenience purposes, the Board also does consider some of Mr. Waisman's arguments on strength to have merit and the strength of the appeal is not such to be determinative of the request for a stay.

Will the Stay Result in Irreparable Harm?

[10] The Appellants have filed no affidavit evidence in support of its claim for irreparable harm. The only facts sworn in Form 1 by the Appellants are that it will be difficult to receive the money back and that there is no prejudice to Mr. Waisman. There are no specific facts sworn to support these propositions. The Board accepts the general proposition that there is a risk of irreparable harm in the recovery of damages considering the quantum in this case. However, the Board does not find that the Appellants have established a risk of irreparable harm in requiring the Appellants to pay the order, in whole or in part, pending appeal as long as the recovery concerns are addressed.

[11] The Board finds that there is also a risk of irreparable harm in Mr. Waisman being deprived of his wages that the Adjudicator has found to be owing. Mr. Waisman in his Form 25 Reply swears that he has been waiting for his unpaid wages since 2022 and suffers harm from further delay. No specific facts are sworn as to the harm suffered from not receiving the funds, but it is accepted that delay in the receipt of amounts that have been determined to be legally owing constitutes risk of irreparable harm.

Balance of Convenience

[12] The Board finds that the balance of convenience favours permitting enforcement pending appeal as long as any amounts recovered are either held in trust by Counsel for Mr. Waisman or held by the Director pending the result of the appeal. Both sides have established a risk of irreparable harm, but neither side has specified that harm in any detail. The strength of the appeal is neutral in this weighting as the Board does have some concerns with the issues raised given the Board's jurisdiction under s. 4-8, but those concerns are best addressed at a hearing on the merits. In balancing the generic risk of being unable to recover against the delay of legal rights being enforced, the balance favours a partial enforcement of rights in a manner that protects the Appellants' ability to recover. As noted in *Fowler*, evidence is of assistance to the Board in analyzing irreparable harm in specific cases rather than relying on general propositions.

Conclusion:

[13] The Appellants' request for a stay pursuant to s. 4-8(5) is granted with conditions. The Respondents are permitted to seek enforcement of the Adjudicator's order provided that any amounts collected are either held in trust by Counsel for Mr. Waisman or held by the Director pending the Board's final determination of the appeal. The Respondents are otherwise stayed from seeking enforcement of the Adjudicator's order.

[14] As a result, with these Reasons, an appropriate Order will issue to the above effect.

[15] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **24th** day of **July, 2025**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson