

**LEPAGE CONTRACTING LTD., Appellant v LANCE MCCUTCHEON, Respondent and THE DIRECTOR OF EMPLOYMENT STANDARDS, Respondent**

LRB File Nos. 156-24 and 052-19; September 26, 2025

Vice-Chairperson, Carol L. Kraft (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *Lepage v McCutcheon*, 2025 SKLRB 46

The Appellant, Lynden Lepage: Self-Represented

The Respondent, Lance McCutcheon: Self-Represented

Counsel for the Respondent, Director of Employment Standards: Alexa LaPlante

**Appeal from Wage Assessment Adjudicator's decision – Board applies correctness standard under section 4-8(1) of *The Saskatchewan Employment Act* – Adjudicator's findings on rent deductions and unpaid hours set aside due to unresolved credibility concerns and procedural unfairness.**

**Board finds legal error in treatment of evolving testimony and failure to address credibility – Procedural unfairness found in late disclosure of timesheets and lack of opportunity to respond to amended wage assessment – Matter remitted with directions.**

**Findings on vacation pay and \$500 cigarette set-off affirmed – Other voluntary purchase set-offs not challenged and not reviewed.**

## **REASONS FOR DECISION**

### **Background:**

**[1] Carol L. Kraft, Vice-Chairperson:** These are the Board's reasons with respect to an appeal of an adjudicator's decision pursuant to [Section 4-8](#) of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act").

**[2]** The background to this appeal is as follows.

**[3]** Mr. Lynden Lepage ("Lynden") and Lepage Contracting Ltd. (together the "Employer") appeal a decision dated July 24, 2024, by an adjudicator dismissing their appeal of a wage assessment issued by the Director of Employment Standards (the "Director" or its representative "Doug Long") in favour of Mr. Lance McCutcheon (the "Employee" or "Lance").

[4] The wage assessment has a lengthy procedural history.

[5] The initial Wage Assessment No. 1-000177, issued on January 17, 2019, directed the Employer to pay \$13,921.81 in unpaid wages to Lance McCutcheon. It includes no explanation regarding how this amount was calculated and provided as follows:

*TAKE NOTICE that, pursuant to [section 2-74](#) of The [Saskatchewan Employment Act](#), the Director of Employment Standards has determined that you have failed (or are likely to fail) to pay wages to the employee(s) listed below in the following amounts:*

<b>File No.</b>	<b>Employee Name</b>	<b>Amount Owing</b>
1-001914	Lance McCutcheon	\$13,921.81

[6] The Employer disputed the Director's Wage Assessment, asserting that the amounts in question had been paid under an oral agreement whereby vacation pay was included in each wage payment. The matter was appealed to an adjudicator.

[7] At the First Adjudication Hearing, the Employer presented no documentary evidence of the agreement or of statements of earnings showing a breakdown of wages and vacation pay, as required by section 2-37(2) of the Act.

[8] Mr. Lepage testified that such an agreement existed, and two former employees corroborated the Employer's wage practices. However, the Adjudicator made no findings on credibility or whether vacation pay had in fact been paid.

[9] Instead, the Adjudicator relied on section 2-37(3), which deems wages unpaid unless the contrary is established. He did not assess whether the Employer's evidence rebutted this presumption. The appeal was dismissed, and the wage assessment was varied to \$15,903.73.

[10] The Adjudicator stated that the parties agreed to amend the assessment to \$16,403.73, and credited the Employer \$500 for cigarettes, resulting in a final assessment of \$15,930.73.

[11] The Employer appealed to the Board, which found the Adjudicator's reasons deficient but upheld the decision. The Board held that the presumption under section 2-37(3) could not be rebutted solely by evidence of an oral agreement, absent a statement of earnings.

[12] The Employer then appealed to the Court of Appeal, arguing that neither the Adjudicator nor the Board had made a finding that vacation pay had not, in fact, been paid.

**[13]** The Court of Appeal reviewed the evidentiary summaries from the First Adjudicator's Decision. Mr. Lepage testified that the employee was offered \$28/hour plus vacation pay or \$30/hour inclusive of vacation pay. Two former employees confirmed similar arrangements. The employee denied any such agreement and stated he was paid \$30/hour without vacation pay. No timesheets were submitted by either party.

**[14]** In his submissions to both the Board and the Court of Appeal, the Employer reframed the issue, stating: "The question is not whether vacation pay can be included in an hourly wage. It is whether vacation pay, stat holiday pay, and overtime were paid to the employee."

**[15]** In essence, the Employer argued that the Board need not assess the validity of the alleged wage agreement; the sole issue was whether payment had in fact been made.

**[16]** The Court of Appeal agreed. It clarified that under section 2-37(3) of the Act, an employer may rebut the presumption of unpaid wages by proving payment, even without a statement of earnings.

**[17]** The Court held that the Act does not prohibit all-inclusive wage arrangements, nor does it deem amounts paid under such agreements as unpaid. The key question is whether wages were actually paid. As stated at paragraph 10: "The employer is entitled to know whether its evidence, regarding the existence of an agreement and that vacation pay has, in fact, been paid, is believed."

**[18]** The Court allowed the appeal, set aside the Board's decision, and directed that the First Adjudicator's Decision be cancelled. It ordered that the wage assessment and appeal be reheard under Part IV of the Act.

**[19]** Before leaving the decision from the Court of Appeal, the Board notes that included in one of Mr. Lepage's grounds of appeal to the Court of Appeal is the following:

*3. At the end of page two (of the First Adjudicator's Decision) the adjudicator brings forward the wage assessment as \$13,921.81, but where is this wage assessment, how did they come to this number? Page three says that the parties agreed that the wage assessment was incorrect and was amended to \$16,403.73 by agreement. At no point did I ever agree with anything, and once again there is no fact to support these numbers, where did they come from. I know they altered the evidence that I provided to them to then come up with this new number.*

**[20]** A new adjudicator was appointed, the matter was reheard, and a decision was issued on July 24, 2024 (the "Second Adjudicator Decision" or the "Second Adjudication").

**[21]** At the Second Adjudication, the Director applied to amend the Wage Assessment to \$15,927.42. The request from the Director is contained in the record and states at the outset:

*It is the position of the Director of Employment Standards that the WA be amended to \$15927.42 as this amount is calculated using hours of work including the 8 hours every 2 weeks that were applied to rent and not paid out as wages and also includes applicable overtime, public holiday pay and annual vacation pay that was payable in the last year of employment. This audit considers the voluntary purchase of \$500 in cigarettes as well as \$500 per month for rent.*

**[22]** The Adjudicator granted the amendment, conditional on supporting evidence.

**[23]** At the Second Adjudication, the Employer and Employee/Director presented conflicting testimonies respecting the following: (i) whether the Employee was paid for the last two weeks of his employment; (ii) whether the Employee deducted hours from every paycheck to account for rent payments; (iii) whether the Employee was paid overtime and public holiday pay; and (v) the value of voluntary purchases by the Employee that should be set-off from the wages owing.

**[24]** After a detailed review of the evidence, the Adjudicator made the following findings of fact:

- a) First, she found that the Employer had proven that the annual vacation pay assessed as owing to the employee was in fact paid in full. She found that the annual vacation pay owed to Mr. McCutcheon was paid in full by the employer by way of the \$2.00 top up to his hourly wage throughout the course of his employment. As she found annual vacation pay was not owing to the Employee, the Adjudicator deducted \$10,485.62 from the amended Wage Assessment.
- b) With respect to overtime and public holiday pay, she found that the Employer had failed to demonstrate that the Employee had been paid overtime pay and public holiday pay. She accepted Mr. McCutcheon's evidence that he tallied his hours without calculating overtime pay and public holiday pay. She found he was paid for the hours he reported but not for overtime or public holiday pay. She accepted Employment Standard's calculations for unpaid overtime pay and holiday pay as set out in EE2.
- c) With respect to regular unpaid wages, she found that it was more likely than not that Mr. Lepage withheld Mr. McCutcheon's last paycheck. As such, she confirmed the Employee is owed \$2,085.00 for 69.5 hours of unpaid regular pay for the hours worked during Mr. McCutcheon's last two weeks of work.

- d) With respect to rent reductions, the Adjudicator accepted Mr. McCutcheon's testimony that 8 hours were deducted from each paycheck for rent. Further, she confirmed that Employment Standards correctly added 8 hours per pay period back for the purposes of assessing unpaid regular and overtime pay, as well as public holiday and annual vacation pay, and then credited the employer \$6,000 for rent after the necessary calculations were made.
- e) Lastly, the Adjudicator found no set-offs should be made for voluntary purchases other than the \$500.00 for cigarette purchases that was agreed as owing by both parties. Although the Employer claimed the Employee received extra benefits in the amount of \$85,151.50, the Adjudicator found these claims for expenses were unsubstantiated. She found that she did not have the evidence before her that would allow her to conclude that any of the items or expenses listed by the Employer constituted a voluntary purchase by the Employee.

**[25]** The result of the Adjudicator's decision was that the appeal was allowed in part and the Wage Assessment varied to reflect that the Employer owes Mr. McCutcheon on wages in the amount of \$5,441.80, consisting of unpaid regular pay (\$2,085.00), overtime pay (\$7,560.00) and public holiday pay (\$2,296.80), less sets offs for rent (\$6,000.00) and cigarettes (\$500.00).

**Issues:**

**[26]** The Employer challenges the Adjudicator's findings on several grounds, including alleged procedural unfairness, improper treatment of evidence, and errors in the calculation of unpaid wages. Mr. Lepage contends that the rehearing was conducted contrary to the direction of the Court of Appeal, that key evidence was mishandled or withheld, and that the Adjudicator failed to properly reconcile payroll records with timesheets, or address the issues surrounding changes in testimony between hearings.

**[27]** In considering the appeal, the Board must determine:

1. What is the applicable standard of review for findings of fact and credibility determinations made by an Adjudicator under the Act?
2. Did the Adjudicator err in law in her assessment of the evidence?

3. Did the Adjudicator breach the duty of procedural fairness by:

- i. denying the Employer a reasonable opportunity to call or summon witnesses under section 4-5(1) of *The Saskatchewan Employment Act*;
- ii. failing to ensure the Employer was afforded a fair opportunity to respond to relevant documents, including timesheets, disclosed late in the process;
- iii. allowing amended wage assessments without prior notice or opportunity to respond?

**Argument on behalf of the Employer:**

**[28]** Mr. Lepage, representing the Employer, advanced several concerns in both his written submissions and oral presentation before the Board. His central contention was that the Second Adjudication was procedurally unfair. He asserted that the adjudicator failed to familiarize herself with the prior proceedings and did not consider the original evidence.

**[29]** Mr. Lepage alleged that he was denied the opportunity to call witnesses and that the adjudicator failed to exercise her discretion under section 4-5(1) of the Act to summon witnesses or request particulars or compel production of documents.

**[30]** He claimed that he had no new evidence to present, as his position and documentation had not changed. He expressed frustration that key documents, particularly timesheets, were initially withheld and later introduced inconsistently. He further alleged that the adjudicator declined to reconcile those timesheets with payroll records, which he believed would have disproved the claim for unpaid vacation and holiday pay. He maintained that he had discharged the onus under section 2-37(3) of the Act through prior witness testimony.

**[31]** Mr. Lepage further claimed that both Mr. McCutcheon and Mr. Long had admitted to providing false information about the wage arrangement and the existence of timesheets. He questioned the consistency and reliability of the Adjudicator's accepted evidence, citing:

- conflicting testimony between the two hearings about Mr. McCutcheon's hourly rate and vacation pay;
- discrepancies in Mr. McCutcheon's statements regarding an alleged 8-hour rent deduction.

### **Argument on behalf of the Director:**

[32] The Director argues that the employer's right of appeal is, pursuant to section 4-8(1) of the Act, limited to questions of law, and that the adjudicator made no error of law. In particular, the Director argues the hearing was procedurally fair and that there is no basis to infer the adjudicator made factual findings based on no evidence, irrelevant evidence, or in disregard or relevant evidence.

### **Argument on behalf of the Employee:**

[33] Mr. McCutcheon did not attend the appeal hearing, nor did he file any written submissions.

### **Relevant Statutory Provisions:**

[34] The following provisions of the Act are applicable:

*2-37(1) An employer shall provide a statement of earnings to an employee:*

*(a) on every payday; and*

*(b) when making payments of wage adjustments.*

*(2) A statement of earnings required pursuant to subsection (1) must:*

*(a) clearly set out:*

*(i) the name of the employee;*

*(ii) the beginning and ending dates of the period for which the payment of wages is being made;*

*(iii) the number of hours of work for which payment is being made for each of wages, overtime and hours worked on a public holiday;*

*(iv) the rate or rates of wages;*

*(v) the amount paid for each of wages, overtime and public holiday pay and work on a public holiday, vacation pay and pay instead of notice;*

*(vi) the employment or category of employment for which payment of wages is being made;*

*(vii) the amount of total wages;*

*(viii) an itemized statement of any deductions from wages being made; and*

*(ix) the actual amount of the payment being made; and*

*(b) be in a form that:*

(i) *is separate from, or readily detachable from, any form of cheque or other type of voucher issued in the payment of wages; or*

(ii) *if an employee is provided with an electronic statement, permits the employee to print off a copy of the statement of earnings.*

(3) *Unless the contrary is established, wages and other amounts that are not included in a statement pursuant to subsection (2) are deemed not to have been paid.*

...

### **Wage assessments**

...

**2-74(7)** *A wage assessment must:*

(a) *indicate the amount claimed against the employer or corporate director;*

(b) *direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:*

(i) *pay the amount claimed; or*

(ii) *commence an appeal pursuant to section 2-75; and*

(c) *in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.*

(8) *The director of employment standards may, at any time, amend or revoke a wage assessment.*

...

### **Powers of Adjudicator**

**4-5(1)** *In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:*

(a) *to require any party to provide particulars before or during an appeal or hearing;*

(b) *to require any party to produce documents of things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;*

(c) *To do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions;*

i. *To summon and enforce the attendance of witnesses;*

ii. *To compel witnesses to give evidence on oath or otherwise;*

iii. *To compel witnesses to produce documents or things*

...

### **Right to appeal adjudicator's decision to board**

**4-8(1)** *An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*

(2) *A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.*

...



(6) *The board may:*

(a) *affirm, amend or cancel the decision or order of the adjudicator; or*

(b) *remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

## **Analysis:**

### *Jurisdiction and Standard of Review*

**[35]** The Board's jurisdiction on appeals under section 4-8 of the Act, is limited to questions of law. The applicable standard of review for such questions is correctness: *Wright v Government of Saskatchewan (OH&S)*, 2025 SKLRB 12; *Carrier v SIGA*, 2025 SKLRB 7; and *Tysdal v Cameron*, 2025 SKLRB 1.

### *Factual Findings and Credibility Assessments*

**[36]** With respect to factual findings, the Board's jurisdiction is narrow. As noted in *Simonson v Finning Canada and the Cat Rental Store*, 2020 CanLII 103929, and *Wieler v Saskatoon Convalescent Home*, 2014 CanLII 76051 (SK LRB), factual findings may be reviewed only where they amount to an error of law, as for example, where they are based on no evidence, made in disregard of relevant evidence, rely on irrelevant evidence, or reflect irrational inferences.

**[37]** The Board has consistently treated credibility assessments and the weighing of evidence as factual determinations that are generally owed deference. As noted in *Olympic Motors (SK) I Corporation v Fowler*, 2023 CanLII 92979 at para 89, and *Missick v Regina's Pet Depot*, 2020 CanLII 90748 (SK LRB) at para 35, adjudicators are best placed to draw inferences from the evidence, having heard the testimony firsthand. This proximity to the evidence entitles their findings to deference, absent a legal error. As emphasized by the Supreme Court of Canada in *Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at para 102, appellate review is not a "line-by-line treasure hunt" for errors. The reviewing body must conduct a holistic assessment of whether the decision is reasonable in light of the record and applicable legal standards.

### *Procedural Fairness*

**[38]** Procedural fairness, though context-dependent, is always reviewable as a question of law. As confirmed by *Riverside Electric Ltd. v Schlamp*, 2022 CanLII 113733 (SK LRB) and *Knapp v ICR Commercial Real Estate*, 2019 SKQB 59 (CanLII), the duty of fairness is a legal standard for courts to assess.

**[39]** The Court of Appeal has confirmed that the inquiry is whether the procedure was fair in the circumstances, having regard to factors such as the nature of the decision, the statutory framework, the significance of the decision to the parties, and any legitimate expectations. See *Malik v Saskatchewan (Victim Services)*, 2024 SKCA 96 at para 31; *Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 42; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; and *Toutsaint, Chenjelani, and Kupsar*.

**[40]** Where concerns of procedural fairness arise, the Board may intervene. These issues raise questions of law and are not shielded by deference. As the Federal Court of Appeal noted in *Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69, procedural fairness is “the cornerstone of modern Canadian administrative law,” and whether it has been fulfilled is a legal question for the reviewing body to determine.

**[41]** These principles guide the Board’s assessment of whether the Employer was afforded a fair opportunity to respond to the case against him, particularly in light of the evolving nature of the evidence and the procedural choices made during the rehearing.

#### *Credibility and Evidentiary Concerns*

**[42]** Mr. Lepage challenges the reliability of the evidence presented at the Second Adjudication. He alleges that Mr. McCutcheon and Mr. Long intentionally withheld timesheets until the Second Adjudication Hearing, and he accuses Mr. Long of misleading the process by failing to disclose them earlier.

**[43]** He further asserts that Mr. McCutcheon misrepresented his wage rate at the first hearing and introduced a new claim at the second hearing, namely, that he worked an additional eight hours per pay period. Mr. Lepage expresses skepticism about the sudden appearance of the timesheets and criticizes Mr. Long’s refusal to reconcile them with the payments made.

**[44]** Based on these assertions, Mr. Lepage argues that both individuals provided false or misleading testimony, and that the Adjudicator erred in accepting Mr. McCutcheon’s version of events despite acknowledged inconsistencies. He contends that the timesheets and pay stubs should have been reconciled to reflect actual hours worked and expresses frustration that the Second Adjudication Decision implies he failed to call evidence or maintain proper records, an implication he views as unfair.

*Evolving Testimony*

**[45]** Mr. Lepage argues that the Adjudicator failed to address material changes in Mr. McCutcheon's testimony between the first and second hearings. He contends that these inconsistencies, particularly regarding wage rate and rent deductions, were not adequately scrutinized and raise concerns about credibility.

**[46]** A review of the record confirms that Mr. McCutcheon's account of his wage arrangement evolved over time. In the initial complaint and first hearing, he stated he was paid \$30 per hour and denied any agreement regarding vacation pay. At the second hearing, however, he testified that he believed he was earning \$28 per hour, and the Adjudicator accepted that his memory was "fuzzy" due to the passage of time.

**[47]** The Adjudicator ultimately preferred Mr. Lepage's evidence on the wage arrangement and found that the \$2 top-up for vacation pay had been paid.

**[48]** On the rent reduction issue, the Adjudicator accepted the evidence of Mr. McCutcheon over that of Mr. Lepage.

**[49]** The testimony regarding rent reduction also appears different from the first to the second hearing. In the first hearing, Mr. McCutcheon stated only that he was "aware" of deductions for rent. In the second hearing, he described in some detail a consistent practice of deducting eight hours from each pay period and reporting adjusted totals to the Employer. He claimed to have testified to this previously, though the record does not support that assertion.

**[50]** The Adjudicator accepted Mr. McCutcheon's account of rent deductions, finding it plausible that he would recall an eight-hour deduction from each pay period, given the financial significance and the surrounding circumstances, including his housing situation and the Employer's efforts to retain him.

**[51]** However, she did not address whether what appeared to be a revised account constituted new evidence as stated by Mr. Lepage, or whether Mr. Lepage had a fair opportunity to respond. Nor did she explain how a witness with acknowledged memory limitations could recall specific practices and amounts not previously mentioned.

**[52]** The Adjudicator inferred that the rent deduction aligned with Mr. Lepage's desire to keep Mr. McCutcheon housed and employed. However, this same inference could equally support Mr. Lepage's testimony, that he paid the rent directly for that very reason.

**[53]** This concern is compounded by the fact that the Adjudicator had earlier preferred Mr. Lepage's evidence regarding the wage arrangement, yet later accepted Mr. McCutcheon's evidence on the rent deduction without explaining why his testimony was preferred on that point. She did not reconcile this acceptance with her earlier finding that Mr. McCutcheon's recollection of the wage arrangement was unreliable. The lack of explanation for this shift in credibility findings further undermines the transparency and consistency of her reasoning.

**[54]** Additionally, the Board notes that Mr. Lepage included rent in his list of expenses he claims were owed to him by Mr. McCutcheon, implying that the Employer paid rent on the Employee's behalf. The Adjudicator did not directly address this implication. She stated only: "I already made findings about the rent for 2018, including that it was deducted from Lance's pay. Employment Standards added the hours back in and then deducted \$6,000 for rent from the audit and I found this to be correct based on the evidence."

**[55]** This reasoning treats the rent issue as resolved through the audit adjustment but does not engage with the Employer's assertion that additional rent payments were made outside of wage deductions. The Adjudicator's conclusion that the matter was addressed by Employment Standards does not fully consider Mr. Lepage's position, namely, that he continued to pay rent even when it was no longer being deducted from wages, and that these payments formed part of his claim for reimbursement. This gap in the analysis raises further questions about the completeness of the findings and the treatment of the Employer's expense claim.

**[56]** In light of the unresolved discrepancies in testimony, the lack of a clear credibility assessment, and the incomplete treatment of the Employer's expense claim, the Board finds that the Adjudicator's conclusions regarding rent deductions and unpaid hours are not sufficiently supported by the evidence. These concerns are compounded by the evolving nature of the Director's audit and wage assessment, which introduced new factual allegations and revised calculations during the second hearing.

**[57]** These deficiencies are not merely matters of evidentiary weight or interpretation. As the Saskatchewan Court of Appeal emphasized in *R v C.L.*, 2024 SKCA 25 at para 41:

*While it is important for appellate courts to approach credibility assessments with a measure of deference, that does not insulate those findings from appellate review. Whether a witness is credible is a factual finding. However, where a trial judge's assessment of credibility rests on irrelevant or inappropriate considerations or is based on a wrong legal principle, that constitutes an error of law and opens the door to appellate intervention.*

**[58]** This principle applies squarely to the Adjudicator's treatment of evolving testimony and conflicting accounts in this matter. The failure to reconcile inconsistencies, provide transparent reasoning for shifting credibility preferences, and engage with the Employer's expense claim reflects a departure from the legal standards governing credibility assessments.

**[59]** In the Board's view, these deficiencies amount to errors of law. As established in *Simonson, Wieler, and P.S.S. Professional Salon Services*, factual findings may be reviewed where they are based on no evidence, made in disregard of relevant evidence, rely on irrelevant evidence, or reflect irrational inferences. The Adjudicator's failure to reconcile conflicting testimony, address credibility concerns, and engage with the Employer's expense claim falls within this category. Accordingly, the Board is satisfied that the findings in question are legally flawed and warrant the Board's intervention.

#### *Assessment of Procedural Fairness - Witness Participation*

**[60]** The first question is whether Mr. Lepage was denied a reasonable opportunity to call witnesses, and whether the Adjudicator failed to exercise her discretion under section 4-5(1) of the Act to summon witnesses, request particulars, or compel the production of documents.

**[61]** At the outset of the hearing, the Adjudicator advised Mr. Lepage that the First Adjudicator's Decision had been cancelled and that the matter was "starting over." She invited him to bring any witnesses or documents he wished to rely on. In her decision, she noted: "I asked Lynden to attend the hearing with any witnesses and documents he wanted me to consider as part of his appeal."

**[62]** Mr. Lepage did not bring any witnesses, though the Adjudicator agreed to adopt prior testimony from two former employees as a fair compromise. While he referred to documents such as bank records and paystubs, he did not produce them. The Adjudicator concluded: "My fact-finding is limited to the evidence the parties present to me."

**[63]** In his Notice of Appeal, Mr. Lepage refers to the Adjudicator's powers under section 4-5(1) of the Act to compel the attendance of witnesses and production of documents. He states

that he “once again had asked this adjudicator about summoning the witnesses and was not given this opportunity.”

**[64]** While Mr. Lepage asserts that he asked the Adjudicator to summon witnesses and was denied the opportunity, the record does not indicate that he made a specific or formal request for the exercise of those powers under section 4-5(1) of the Act. Adjudicators are not required to initiate inquiries or compel evidence absent such a request, nor does the Act impose a duty to do so. In the circumstances, the Adjudicator’s invitation to bring witnesses and documents was sufficient to discharge her procedural obligations.

**[65]** It was Mr. Lepage’s responsibility to identify and present witnesses in support of his case. His failure to do so does not constitute a procedural defect. The Board cannot find unfairness in the absence of witnesses he did not seek to call.

**[66]** This principle was affirmed in *Paktech Electronics v Director of Employment Standards*, 2025 SKLRB 26, where the Board found no breach of fairness where the employer failed to request additional witnesses and later claimed unfairness.

**[67]** Each party is responsible for deciding whether to call witnesses. The Adjudicator acted appropriately in relying on the evidence presented. Mr. Lepage did not identify any witnesses or suggest that additional testimony was necessary, nor were there exceptional circumstances requiring the Adjudicator to intervene.

#### *Timesheets*

**[68]** The Adjudicator acknowledged the Employer’s concern regarding the timing of the timesheet disclosure and recognized his frustration. She noted that the Employee’s personal records were difficult to interpret and that Employment Standards had attempted to reconcile the available documentation. However, she emphasized that the Employer’s failure to maintain accurate records, as required under sections 2-37(2)(iii) and 2-38(c)(vi) of the Act, significantly limited her ability to conduct a full reconciliation.

**[69]** Section 2-37(3) of the Act provides that wages and other amounts not included in a compliant statement are deemed unpaid unless the contrary is established. This includes hours worked and payments for wages, overtime, public holidays, and vacation. Accordingly, the burden rests with the Employer to prove, on a balance of probabilities, that all required payments were

made. Oral testimony alone may be insufficient, particularly in the absence of supporting documentation.

**[70]** The Adjudicator stated that the timesheets were not used to calculate unpaid wages because they were indecipherable. Instead, she relied on Mr. Long's testimony, which explained that he used payroll transaction details (EE1) provided by the Employer in 2019 to estimate hours worked. He applied a straightforward method: dividing gross pay by the agreed hourly rate of \$30, assuming all hours were paid at the regular rate and excluding overtime. The Adjudicator found this approach consistent and reasonable in light of the available evidence.

**[71]** The Employer claimed the timesheets were withheld and introduced inconsistently. While the Adjudicator found no evidence of deliberate misconduct, she acknowledged that Mr. McCutcheon's personal timesheets, which were in the possession of Employment Standards, ought to have been disclosed to the Employer, particularly if he requested them.

**[72]** The Adjudicator did not address whether the late disclosure itself raised procedural fairness concerns. She appeared to conclude that because the timesheets were not relied upon, no issue arose. In the Board's view, this conclusion does not adequately address the fairness implications of the late disclosure.

**[73]** Regardless of whether the Adjudicator relied upon the timesheets, they should have been disclosed in advance to allow Mr. Lepage to assess their relevance and respond. The fact that the Adjudicator and Director found them indecipherable does not preclude the possibility that Mr. Lepage might have interpreted them differently or used them to challenge the Director's calculations.

**[74]** Although Mr. Lepage did not request an adjournment, it is unclear whether one was offered. A party must be given a reasonable opportunity to review documents introduced at a hearing. When disclosure is late, procedural fairness may require remedies such as adjournment or exclusion of the documents. No explanation was provided for the late disclosure, and Mr. Lepage was not given an opportunity to review the timesheets. This constituted a breach of procedural fairness.

**[75]** While the Adjudicator's findings were based on payroll records and statutory wage calculation rules, and her analysis was otherwise reasoned, her decision not to rely on the timesheets does not cure the procedural unfairness arising from their late disclosure.

**[76]** Mr. Lepage was entitled to review the timesheets in advance to determine whether they supported his position or could be used to challenge the Director's calculations or Mr. McCutcheon's testimony. He should have had the opportunity to assess and attempt to reconcile them with the payroll records. Denying him that opportunity undermined the fairness of the process. Procedural fairness requires that each party be given a meaningful chance to respond to the case against them.

#### *Amended Wage Assessments*

**[77]** Mr. Lepage did not challenge the Adjudicator's findings disallowing the other claimed set-offs for voluntary purchases. Accordingly, those findings were not reviewed on appeal. The only set-off relevant to this appeal is the rent deduction.

**[78]** The Board now turns to consider whether the process surrounding the amendments to the Wage Assessment met the requirements of procedural fairness.

**[79]** The Director's wage assessment process in this matter raises significant concerns about procedural fairness. The initial wage assessment issued under section 2-74 of the Act was sparse, stating only that Mr. Lepage owed Mr. McCutcheon \$13,921.81, with no breakdown or explanation of how this amount was calculated.

**[80]** At the First Adjudication Hearing, the Director applied to amend the wage assessment to \$16,403.73. In the First Adjudication Decision, the Adjudicator stated that "the parties agreed" to the amendment, but Mr. Lepage denies any such agreement. This discrepancy was not addressed in the Second Adjudicator's reasoning.

**[81]** At the Second Adjudication hearing, the Director again applied to amend the wage assessment, this time to \$15,927.42, based on what Mr. Lepage called new factual allegations, including that eight hours per pay period were applied to rent and not paid as wages. There is no evidence that Mr. Lepage received prior notice or disclosure of these new allegations or the revised audit calculations.

**[82]** While section 2-74(8) of the Act permits the Director to amend a wage assessment at any time, this authority does not override the requirement to ensure procedural fairness, particularly where the employer has appealed to an adjudicator. The practice of amending assessments without notice or explanation, especially in a case with a lengthy procedural history involving



appeals to the Board and the Court of Appeal, is troubling. It undermines the employer's ability to understand the case against him and to prepare a meaningful response.

**[83]** In the Board's view, the cumulative effect of these procedural deficiencies, particularly the lack of notice, absence of disclosure, and failure to address disputed facts, amounts to a breach of procedural fairness. Procedural fairness requires that a party be given a meaningful opportunity to know and respond to the case against them. By allowing significant amendments to the wage assessment without ensuring that Mr. Lepage had notice and an opportunity to respond, the process failed to meet this standard. This failure constitutes an error of law, as it undermines the integrity of the adjudicative process and the reliability of the resulting decision.

### **Conclusion:**

**[84]** Pursuant to section 4-8(6) of *The Saskatchewan Employment Act*, the Board may:

*(a) affirm, amend or cancel the decision or order of the adjudicator; or*

*(b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

**[85]** In light of the unresolved credibility concerns and the procedural fairness issues identified above, including the late disclosure of documents, evolving testimony, and lack of opportunity to respond to new allegations, the Board finds that the matter must be remitted to the Adjudicator. The following directions are provided to ensure a fair and transparent reconsideration:

1. **Assessment of New or Revised Facts:**

The Adjudicator must determine whether the factual allegations introduced at the second hearing were raised previously or constitute new evidence. She must explain whether and why she accepts these facts, and how they affect the wage assessment.

2. **Credibility Findings:**

The Adjudicator must reconsider and address the credibility issues identified by the Board, including any inconsistencies or gaps in the evidence that may affect the reliability of witness testimony or documentary evidence.

3. **Disclosure and Examination of Timesheets:**

Mr. Lepage must be provided with a reasonable opportunity to review the timesheets that were previously withheld. This includes time to assess their contents and determine

whether they support his position or raise concerns about the Director's calculations or Mr. McCutcheon's testimony.

4. Cross-Examination Rights:

Mr. Lepage must be permitted to cross-examine Mr. McCutcheon and Mr. Long specifically on the contents and implications of the timesheets.

5. Right to Call Additional Witnesses:

Mr. Lepage must be given the opportunity to call any witnesses he considers necessary to respond to issues arising from the timesheets or to support his position in light of their disclosure.

6. Notice and Evidentiary Basis:

The Adjudicator must determine whether the Employer was given adequate notice and opportunity to respond to the amended wage assessments, and must clarify the evidentiary basis for accepting the amendments.

7. Overall Transparency:

The Adjudicator must ensure that the decision reflects a fair and transparent assessment of the evidence, including a reasoned explanation for accepting or rejecting contested facts.

**[86]** The Board affirms the Adjudicator's finding that annual vacation pay was paid in full through a \$2.00 hourly wage top-up. The Board also affirms the Adjudicator's finding that a \$500 set-off for cigarette purchases was agreed to by both parties.

**[87]** The Board also notes that Mr. Lepage did not challenge the Adjudicator's findings disallowing other claimed set-offs for voluntary purchases. Accordingly, those findings were not reviewed on appeal and remain undisturbed.

**[88]** However, the Board sets aside the remaining findings at paragraph 24(b) through (d), and in part, paragraph 24(e). The findings relating to overtime and public holiday pay, regular unpaid wages, rent deductions, and the process surrounding the amended wage assessment are affected by unresolved credibility concerns, late disclosure of relevant documents, and insufficient analysis of evolving testimony. The Board affirms the Adjudicator's finding in paragraph 24(e) that a \$500 set-off for cigarette purchases was agreed to by both parties and properly applied. The

remaining findings in paragraph 24(e), which disallowed other claimed set-offs for voluntary purchases, were not challenged and are not reviewed on appeal.

**[89]** Accordingly, the matter is remitted to the Adjudicator for reconsideration in accordance with the directions set out above. The Board finds that reconsideration is necessary to ensure procedural fairness and a reasoned assessment of the evidence. For clarity, the Board affirms the Adjudicator's finding that annual vacation pay was paid in full and notes that the findings disallowing other claimed set-offs for voluntary purchases were not challenged and remain undisturbed. The Board's directions are intended to address only those findings affected by unresolved credibility concerns, late disclosure, and insufficient analysis. An appropriate order will be issued with these Reasons.

**[90]** 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 **26th** day of **September, 2025**.

**LABOUR RELATIONS BOARD**

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Carol L. Kraft  
Vice-Chairperson