

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

LRB File Nos. 110-25 & 013-25; March 4, 2026

Vice-Chairperson, Linda Zarzeczny, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *Dart Services v Waisman*, 2026 SKLRB 16

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, Government of Saskatchewan:

Alexa LaPlante

**Appeal of a Wage Assessment – Section 4-8 of *The Saskatchewan Employment Act* – Complaint of Error in Law – No Material Error – Appeal Dismissed – Adjudicator’s decision affirmed**

**REASONS FOR DECISION**

[1] **Linda Zarzeczny, K.C., Vice-Chairperson:** Tyler Waisman is a former employee of Dart Services Ltd. (“Dart”). In 2023, Mr. Waisman filed a complaint with the Labour Standards Division (“Director”) that he had not been paid overtime in accordance *The Saskatchewan Employment Act*, S.S. 2013, c. S-15 (“Act”). On January 3, 2025, the Director issued a wage assessment pursuant to s. 2-74 of the Act in favour of Mr. Waisman against Dart and its Directors, Davin Emmel and Marty Hanson (together, the “Appellants”), in the amount of \$41,454.25 (“Wage Assessment”).

[2] The Appellants appealed the Wage Assessment to an adjudicator pursuant to s. 2-75 of the Act and, in a decision dated June 3, 2025, the adjudicator (“Adjudicator”) upheld the Wage Assessment (“Decision”). The Appellants then filed this appeal of the Decision with the Board pursuant to s. 4-8 of the Act. They allege that the Adjudicator erred in law in assessing the evidence, by failing to determine credibility, and in identifying the law.

[3] Although the Board agrees that the Adjudicator’s reasoning may reflect error, it was not material and he nonetheless reached the correct conclusion for proper reasons. The appeal must accordingly be denied.

**Background:**

[4] Mr. Waisman was employed by Dart from October, 2019 to April, 2023. He was paid \$45.00 per hour for trucking services and \$35.00 per hour for shop services, plus a bonus (described in the Decision as a “Pyle bonus”) that was payable when pipe was being sold. Mr. Waisman knew his wages were calculated in this way and that he was not being paid overtime calculated on the basis of the number of overtime hours he had worked.

[5] On May 18, 2023, a Labour Standards Officer (“Officer”) advised Dart of Mr. Waisman’s wage complaint. The Officer sought and received evidence and submissions from Dart and Mr. Waisman and, on October 9, 2024, completed an Inspection Report for the period from April 11, 2022 to April 5, 2023. The Report concluded that Mr. Waisman should have received an additional \$41,454.25 in overtime pay during that period, based on the statutory minimum rate of 1.5 times his hourly wage. After considering further submissions from the parties in response to the Report, the Officer, acting in their capacity as a delegate of the Director, issued the Wage Assessment in that amount.

[6] The Appellants appealed the Wage Assessment on January 23, 2025. At the hearing of the appeal, Dart led evidence from four witnesses - Mr. Emmel, Mr. Hanson, Ms. Grobnick, who was Dart’s accountant, and Mr. Johnstone, who drove truck for Dart. Mr. Waisman testified on his own behalf.

[7] In the Decision, the Adjudicator briefly summarized certain evidence given by each of the witnesses. He then made findings of fact and law in a section titled “Analysis/Decision”, concluding as follows:

*Applying the provisions of the legislation, particularly Section 2-6, the agreement between the parties is unenforceable and Section 2-7(3), the agreement between the parties is void.*

[8] The Adjudicator dismissed the appeal and upheld the Wage Assessment in the amount of \$41,454.25. On July 26, 2025, the Board ordered that Mr. Waisman only enforce the Decision on the condition that any amounts he collected were held in trust with his counsel or by the Director.

**Standard of Review:**

[9] Section 4-8 of the Act provides for an appeal from a decision by an adjudicator to the Board on a question of law. Section 4-9(1) of the Act provides that the Board’s decision may be appealed to the Court of Appeal on a question of law, with leave from a judge. The standard of review that applies to the appeal of a wage assessment to the Board in these circumstances is

correctness: *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 at para 11(1)(c); *I.G. v International Women of Saskatoon Inc and Executive Director, Occupational Health and Safety*, 2021 CanLII 24719 (Sask LRB) [*I.G. LRB*] at para 40; *S.P. v McEown Avenue Dental Clinic*, 2025 SKLRB 53 (“McEown”) at para 20.

**[10]** Dart’s grounds of appeal include allegations that the Adjudicator erred in finding the facts. Although Dart has no right to appeal on a question of fact or mixed fact and law, an error of law arises “where a finding of fact is grounded in an error of law, which includes a finding of fact “(i) based on no evidence, (ii) made on the basis of irrelevant evidence, in disregard of relevant evidence, or upon a mischaracterization of relevant evidence, or (iii) based on an unfounded or irrational inference of fact””: *616471 Saskatchewan Ltd. (Aalbers Agro) v Aalbers*, 2024 SKCA 60, citing *Lonsdale v Evans*, [2020 SKCA 30](#) at para [31](#) and *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission)*, [2007 SKCA 149](#) at para [68](#), [2008] 5 WWR 440, leave to appeal to SCC refused, [2008 CanLII 32715](#).

### **Grounds of Appeal:**

**[11]** The Appellants have identified four issues at the hearing of this appeal and in their written submissions (“Brief”). The Board would restate the issues as follows, to more clearly separate and identify the alleged errors of law, as follows:

1. Did the Adjudicator err in law by disregarding or mischaracterizing relevant evidence?
2. Did the Adjudicator err in his interpretation of ss. 2 (1)(o), 2(1)(t), 2-6 or 2-7 of the Act?
3. Did the Adjudicator err in law by failing to decide the issue of Mr. Waisman’s credibility?

### **The Saskatchewan Employment Act:**

**[12]** The provisions of the Act relevant to this appeal are as follows:

#### **2-1 In this part and in Part IV:**

...

(j) “hourly wage” means an amount an employee earns or is deemed to earn in an hour as determined in the prescribed manner;

...

(o) “overtime” and “overtime pay” mean:

(i) pay at a rate of 1.5 times an employee’s hourly wage;...

...

(v) "wages" means salary, commission and any other monetary compensation for work or services or for being at the disposal of an employer, and includes overtime, public holiday pay, vacation pay and pay instead of notice;

...

**2-6** No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part.

**2-7(1)** In this section, "more favourable" means more favourable than provided by this Part, any regulations made pursuant to this Part or any authorization issued pursuant to this Part.

(2) Nothing in this Part, in a regulation made pursuant to this Part or in any authorization issued pursuant to this Part affects any provision in any other Act, regulation, agreement, collective agreement or contract of services or any custom insofar as that Act, regulation, agreement, collective agreement, contract of services or custom gives any employee:

- (a) more favourable rates of pay or conditions of work;
- (b) more favourable hours of work;
- (c) more favourable total wages; or
- (d) more favourable periods of notice of layoff or termination.

(3) Without restricting the generality of subsection (2), if an employer is obligated to pay an employee for time worked on a public holiday or pay an employee overtime, no provision of any Act, regulation, agreement, collective agreement or contract of service and no custom that provides for the payment of wages for work on a public holiday or for overtime at less than 1.5 times the employee's hourly wage shall be considered more favourable to an employee.

**2-17(1)** An employer shall pay an employee overtime pay for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer's disposal that exceeds the hours determined in accordance with sections 2-18, 2-19 and 2-20.

**2-18(1)** Unless an employee is working in accordance with a modified work arrangement or in accordance with an averaging authorization that satisfies the requirements of section 2-20, an employer shall pay the employee overtime for each hour or part of an hour in which the employer requires or permits the employee to work or to be at the employer's disposal for more than:

- (a) 40 hours in a week; or
- (b) either of:
  - (i) eight hours in a day if the employer schedules the employee's work in accordance with clause (2)(a); or
  - (ii) 10 hours in a day if the employer schedules the employee's work in accordance with clause (2)(b).

(2) For the purposes of determining the 40 hour per week maximum pursuant to subsection (1), the employer may require or permit the employee to work or be at the employer's disposal for either:

- (a) eight hours in a day for no more than five days in a week; or
- (b) 10 hours in a day for no more than four days in a week.

[13] Mr. Waisman was not working in accordance with a modified work arrangement, and his work was scheduled in accordance with clause 2(a). The amount that an employee would normally be paid in those circumstances for each hour worked would be their hourly rate, plus overtime at a rate of 1.5 times that hourly rate for time in excess of 40 hours in a week or 8 hours in a day. The Inspection Report reflects what Mr. Waisman would have earned during the period covered by the Wage Assessment if he had been paid overtime calculated on this basis.

**Analysis:**

**1. Did the Adjudicator err in law by disregarding or mischaracterizing relevant evidence?**

[14] The Appellants' Brief identifies several alleged errors of this kind. They are as follows.

**a. Did the Adjudicator misapprehend the compensation agreement (Agreement) between Dart and Mr. Waisman?**

[15] The Brief states that the Adjudicator misapprehended the Agreement, and that the Agreement "was never alleged to be \$35/hour with the pile bonus". In support of this assertion, the Appellants state that Ms. Grobnick and Mr. Emmel gave evidence that the parties agreed Mr. Waisman would be paid "\$45/hour plus the pile bonus for everything other than shop time". The Board understands this as an allegation that the Adjudicator disregarded or mischaracterized relevant evidence.

[16] The record on this appeal does not include a transcript of the hearing before the Adjudicator. The Appellants did not suggest that one was required to enable the Board to properly consider their appeal. The record consists of the Decision and the Exhibits filed by the parties. The Appellants did not point to anything in the record that would support the conclusion that Ms. Grobnick or Mr. Emmel said that Mr. Waisman would be paid "\$45/hour plus the pile bonus for everything other than shop time". Similarly, Mr. Waisman did not claim and the Decision does not refer to any evidence that he or anyone said that the Agreement was for \$35 an hour with the pile bonus.

[17] Further, the Decision and the record do not support the assertion that the Adjudicator disregarded or mischaracterized the evidence of Ms. Grobnick and Mr. Emmel. The Decision refers to Ms. Grobnick's evidence that Mr. Waisman was paid "\$45.00/hour straight time, \$35.00/hour shop time and a bonus when he was eligible for one" (at p. 5). It says that Mr. Emmel

testified that Mr. Waisman had agreed to “\$45/hour straight time i.e.: no overtime, \$35.00 for shop time and a Pyle bonus when payable” (at p. 6).

**[18]** The Decision also says that Mr. Waisman’s evidence was that he “wanted more than was offered, however, he finally agreed upon the pay structure of \$45.00 straight time, no overtime, and \$35.00/hour shop time and the Pyle bonus whenever payable” (at p. 8). The Adjudicator also wrote that Mr. Waisman claimed that the Pyle bonus “would only be paid when he was on the job site not when he was trucking for them” (at p. 9).

**[19]** Having summarized this evidence, the Adjudicator found as follows in the “Analysis/Decision” section of the Decision (at pp. 9-10):

*The effect of the agreement was that [Mr. Waisman] would be paid \$45.00/hour straight time for driving and no overtime after 8 hours per day or 40 hours per week.*

*In lieu of some overtime, he was to be paid a pyle bonus although his bonus was irregular in the amount and pay periods. In the last several months of Mr. Waisman’s employment with the employer, he received almost nothing by way of bonus.*

**[20]** These conclusions as to the terms of the agreement and how Mr. Waisman was paid are consistent with the evidence of Ms. Grobnick, Mr. Emmel, Mr. Hanson and Mr. Waisman that is referred to in the Decision. They also accord with the Exhibits, which include the following emails:

1. January 25, 2020 email from Mr. Hanson to Ms. Grobnick, in response to a January 25, 2020 email from Ms. Grobnick enquiring as to whether Mr. Waisman was to be paid a “pile bonus”:

*Sorry forgot to tell u my bad we came up with an agreement of 45 straight time plus .30 cents per foot pipe for pipe bonus and his shop time is 35 per hour*

2. June 1, 2023 email from Mr. Emmel to the Officer, referring to Mr. Waisman’s compensation:

*His wage of 45 an hour we feel is 15 dollars higher than it should be but we agreed to pay him 45 while in the truck on account of no OT...*

3. October 18, 2024 email from Mr. Emmel to the Officer, referring to the scenarios prepared by Ms. Grobnick in August 2020 at the request of Mr. Emmel that are discussed further below:

*Hey Tanya also wanted to mention the 35 plus ot wage offer was because he was a truck driver our other highest paid truck driver is scott at 33 an hour plus ot. That’s why Tyler was offered 2 scenarios of 35 plus ot or the 45 straight time pile bonus. We both agreed the 45 all inclusive was the best to put the most money in his pockets as you can see by the scenarios ran below.*

4. November 25, 2024 email from Mr. Waisman to the Officer:

*My understanding of the \$45/hr was that the pile bonus would make up my overtime is how it was explained to me by Marty and David....The piling bonus was .60/foot and was to be paid for every foot of pile that went in the ground for every job site.*

5. September 25, 2025 letter from Marty Hanson, attached to a September 25, 2023 email from Mr. Emmel to the Officer:

*After discussions both parties agreed upon \$45.00 an hour flat rate no OT and \$35.00 an hour while working in the shop. Later on during the employment Dart than [sic] agreed to pay the pipe bonus while doing jobs that there was pipe being sold as well in lieu of OT.*

**[21]** In light of all of this, there is no basis to conclude that the Adjudicator erred in law by disregarding or mischaracterizing Mr. Emmel's and Ms. Grobnick's evidence as alleged by the Appellants or that, he "misapprehended" the terms of the Agreement. He expressly referred to the viva voce evidence identified by the Appellants. His findings of fact as to the terms of the Agreement were consistent with the viva voce evidence of the witnesses and with the record.

- b. Did the Adjudicator err by disregarding Ms. Grobnick's evidence that \$45 an hour straight time and the pile bonus resulted in Mr. Waisman receiving more compensation than if he had been paid \$35 an hour and overtime at the statutory rate?**

**[22]** The Appellants' Brief asserts that the Adjudicator "made no reference to the calculation done by Ms. Grobnick showing her Wage Recalculation that supported the conclusion that \$35 per hour with overtime was less compensation for Mr. Waisman than \$45 per hour straight time and the pile bonus". The Board understands this as an allegation that the Adjudicator erred by disregarding relevant evidence.

**[23]** The Brief identifies the evidence at issue as DSEB Tab 7. This refers to Tab 7 in Dart's Exhibit Book, which is an email from Mr. Emmel to the Officer forwarding a chain of emails between Mr. Emmel and Ms. Grobnick. The first email in that chain is an August 26, 2020 email from Mr. Emmel which made this request to Ms. Grobnick:

*Hey are you able to run payroll scenarios for me on tyler.*

*Curious how it would look if we were to drop his wage to 35 an hour and pay overtime verse (sic) paying him straight time?*

...

*He feels he is underpaid at the 45 an hour and no of but we cant afford to pay him anymore so we want to come up with a reasonable compromise...*

**[24]** In response, Ms. Grobnick ran these scenarios for Mr. Waisman's August 15 and August 31 pay cheques, reporting to Mr. Emmel in an August 26, 2020 email that his net pay would have been \$202.65 less on August 15 and \$88.15 less on August 31 if he had been paid \$35 per hour plus overtime. Mr. Emmel then asked Ms. Grobnick to run another scenario at \$45 an hour plus overtime. Ms. Grobnick did so and on August 27, 2020, advised him that if Mr. Waisman had been paid on that basis, he would have received \$450.18 more in net pay on August 15 and \$1,035.91 on August 31.

**[25]** As the Appellants note, the Adjudicator did not expressly refer to DSEB Tab 7 in the Decision. However, it is clear he was aware that this question of comparative benefit and knew of Ms. Grobnick's role, writing as follows (at page 5):

*On August 27, 2024, [Ms. Grobnick] was asked by Davin Emmel to calculate what the employee's pay would have been if he had been paid \$35.00/hour plus overtime (SEE Tab 6 white binder) and a bonus.*

*Her findings are set out under Tab 8 of the white binder.*

...

**[26]** He also made this observation, which confirmed that he understood Ms. Grobnick's conclusions on this point (at page 13):

*Even though the appellants evidence shows that the existing pay structure could be more beneficial to the employee with payment of the bonus, rather than receiving overtime, the bonus is not consistent, and is often not paid in a pay period. Consequently, if overtime was paid to the employee without the bonus, it would be more beneficial to the employee. (emphasis added)*

**[27]** In light of these statements, the Board is not convinced that the Adjudicator erred as alleged by the Appellants. That is so for two reasons. First, the Adjudicator was not required to expressly refer to every piece of evidence that he relied on, and the Board is not satisfied that his failure to expressly refer to DSEB 7 means that he did not take it into account. That is sufficient to dispose of this ground of appeal.

**[28]** In any event, nothing turns on whether he did or did not advert to DSEB 7. The documents he refers to disclose the result of calculations by Ms. Grobnick as to the relative benefit to Mr. Waisman of having been paid in accordance with the pay agreement during the period at issue in

the Wage Assessment. That calculation concludes and the Adjudicator observed that Mr. Waisman's pay arrangement could provide more compensation than if he had been paid \$35 an hour plus overtime. DSEB 7 would have confirmed nothing other than that this is what occurred in the month of August 2020. Proof of that additional fact would have been of no benefit to the Appellants.

**[29]** For these reasons, the Board finds that this ground of appeal is without merit.

**[30]** The Decision also demonstrates that the Adjudicator understood why Dart emphasized this evidence of the comparative benefit of Mr. Waisman's pay arrangement. Dart's brief refers to the evidence that Mr. Waisman had been given a choice to be paid \$35 an hour plus overtime, like other Dart employees. It notes that he was paid \$10 an hour more for "non shop-related work" and that "to help increase this to match what [Mr. Waisman] might have received with overtime, [Dart] also included the pile bonus". Dart contends that this means that the pay arrangement was an all-inclusive agreement that was more favourable to Mr. Waisman within the meaning s. 2-7 of the Act and, as such, complied with the Act.

**[31]** As noted below, the Adjudicator concluded that Dart paid Mr. Waisman overtime in the form of the pile and that this did not meet the requirements of the Act. This evidence does not bear on that question.

- c. Did the Adjudicator err in law by disregarding evidence that the Officer would have dismissed Mr. Waisman's claim if the agreement was for \$35 an hour for shop time, \$45 an hour straight time for everything else, no overtime, and a pile bonus?**

**[32]** The matter at issue on the appeal to the Adjudicator was the Wage Assessment. The appeal to the adjudicator was not on the record: the Adjudicator's Decision was the product of a *de novo* hearing, as the Adjudicator considered the matter "from scratch", based on the evidence led and the submissions made by the parties. It was for the Adjudicator to find the facts and to identify and apply the law. Evidence that the Officer may have rejected Mr. Waisman's overtime claim if she had made different findings of fact or had a different view of the law was not relevant in relation to the matter at issue.

**[33]** The Adjudicator accordingly did not err by failing to take account of the Officer's perspective.

**d. Did the Adjudicator err by finding that Lane Johnstone was an employee of Dart who was paid \$45 an hour for driving, rather than an independent contractor?**

[34] The Board understands this as an allegation that the Adjudicator disregarded or mischaracterized Mr. Johnstone’s testimony as to his relationship with Dart or that he made an unfounded inference as to his status. There is nothing in the record relating to his testimony other than the Decision, which in relevant part described his evidence as follows:

*He is the owner of a trucking company that does work for Dart Services Ltd.*

*When he is employed by Dart Services and uses their trucks or equipment he is paid \$45/hour. If he uses his own equipment he is paid more.*

[35] The Board is not satisfied that the use of the word “employed” by the Adjudicator means that he concluded that Mr. Johnstone was an employee, rather than an independent contractor. Read in the context of the statement that Mr. Johnstone’s trucking company does work for Dart, the Board understands the word “employed” as meaning “engaged” or “utilized” by Dart. For that reason alone, the Board does not agree that the Adjudicator erred as alleged by the Appellants.

[36] In any event, there is nothing in the Decision to suggest that the question of whether Mr. Johnstone was an employee or, for that matter, whether Mr. Waisman’s compensation was unique, played any part in the Adjudicator’s reasoning.

**2. Did the Adjudicator err in his interpretation of ss. 2 (1)(o), 2(1)(t), 2-6 or 2-7 of the Act?**

[37] The Appellants submit that the Adjudicator erred in several ways in interpreting and applying the Act. First, they take issue with the following reasoning in the Decision (at pp. 11-12):

*A contract for employment that proports [sic] to fix a rate of pay for an indeterminate amount of hours, including overtime, is clearly less beneficial to employees than the minimum standards in the Act, that limit the number of hours that an employee can be required to work, and require a payment at the rate of 1.5x of regular pay of the employees’ wage for overtime.*

[38] The Appellants contend that this statement is wrong in law. They argue that *DJB Transportation Services Inc. v Bolen*, 2010 SKCA 50 (“DJB”) and *Lepage Contracting Ltd. v McCutcheon*, 2023 SKCA 83 (“Lepage”) confirm that a contract of employment that provides for a fixed rate of pay that includes overtime – which they describe as an all-inclusive contract – is not contrary to the Act.

[39] The Board has a different view of the effect of these cases. *DJB* was decided under *The Labour Standards Act*, R.S.S. 1978, c. L-1 (“LSA”), which contained the predecessor provisions to the overtime provisions at issue here. Although the predecessor provisions were significantly changed when the LSA was replaced in 1994, they were very similar in effect. Sections 6(1) and (2) of the LSA created the same obligation to pay employees who were required or permitted to work or to be at the employer’s disposal for more than eight hours in any day or 40 hours in any week overtime at a rate of 1.5 times the employees’ hourly wage. Section 75 of the LSA was to the same effect as s. 2-6(1) of the Act, providing as follows:

*75(1) No agreement, whether heretofore or hereafter entered into, has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this [Act](#).*

[40] Section 72 of the LSA, like s. 2-7 of the Act, saved arrangements that were more favourable to the employee, providing as follows:

*72(1) Nothing in this Act or in any order or regulation made under this Act affects any provision in any Act, agreement or contract of service or any custom insofar as it ensures to any employee more favourable conditions, more favourable hours of work or a more favourable rate of wages than the conditions, the hours of work or the rate of wages provided for by this Act or by any such order or regulation.*

*(2) Where any provision in this Act or in any order or regulation made under this Act requires the payment of wages at the rate of time and one-half, no provision in any Act, agreement or contract of service, and no custom, shall be deemed to be more favourable than the provision in this Act or in the order or regulation if it provides for the payment of wages at a rate less than the rate of time and one-half.*

[41] As the Appellants note, *DJB* does not stand for the proposition that all-inclusive contracts are not of themselves contrary to the Act. The Court found that the *DJB* contract could, depending on the number of hours worked, result in the employees being paid less than the overtime rate. It was on that basis that it concluded that the agreement did not comply with the LSA. Justice Lane explained this as follows:

*[42] ...[T]he effect of the contracts means the employees receive a continually reduced overtime rate. The overtime rate could conceivably fall down to the rate of the minimum wage. His determination is therefore contrary to s. 72(2) which provides that no provision in an agreement shall be deemed to be more favourable if it provides for the payment of wages at a rate less than the rate of time and one half. Because the agreement provided for wages on a reducing basis the more overtime hours worked, and the contracts were not minimum wage contracts, the employees could conceivably be paid an overtime rate, and an hourly rate, which would be less than a rate calculated according to s. 6(5)(3).*

[42] As to all-inclusive contracts in general, Lane J.A. held as follows:

*[43] ...The decision below does not preclude all-inclusive contracts. As the appellant argued (supra), the jurisprudence has recognized such contracts. The respondent concedes such contracts are not of themselves contrary to the [Act](#). I simply point out the protections provided by the Act must still be adhered to. The decision below does not result in a denial of the right to freely enter into contractual relations. As long as the statutorily required protections are preserved the parties can freely enter into such contracts....*

**[43]** DJB was accordingly decided by applying this principle - that the protections provided by the LSA had to be “adhered to” regardless of the form of the contract - to the facts.

**[44]** *Lepage* did not relate to overtime pay, but to an agreement that the employee would be paid a \$30 hourly wage sum that included vacation pay. The employer had given the employee the option of being paid in that way or being paid a lower hourly rate of \$28 plus vacation pay. The director argued it was no longer settled law that all-inclusive contracts of this kind were not permitted by the Act, as DJB was decided before the 1994 amendments to the LSA. In the course of addressing that argument, Jackson J.A. noted as follows:

*[68] The director acknowledges that there is a line of Saskatchewan authorities holding that all-inclusive contracts are recognized: most recently by this Court in DJB Transportation Services Inc. v Bolen, [2010 SKCA 50](#), 318 DLR (4th) 174 [Bolen]. In that decision, the Court reviewed an all-inclusive employment agreement, which included overtime, statutory holiday pay and vacation pay in a monthly rate of pay. At paragraph 43, Lane J.A. observed that the director had conceded that all-inclusive contracts are not contrary to The [Labour Standards Act](#), RSS 1978, c L-1, as repealed by The [Saskatchewan Employment Act](#), SS 2013, c S-15.1 [previous Act].*

**[45]** The Appellants argue that this statement confirms that all-inclusive contracts are permitted by the Act. However, Jackson J.A. did not decide *Lepage* on that basis. She did not find that the *Lepage* agreement did not comply with the Act because it was all-inclusive, but because “it deprived the employee of paid vacation leave and easily accessible information” (at para 72). She also wrote as follows:

*[86] The baseline conclusion is that the [Act](#) does not expressly prohibit all-inclusive employment agreements on wages and vacation pay or declare them invalid. Such agreements are contrary to the Act in that they do not allow an employee to take paid vacation...(emphasis added)*

**[46]** This reasoning, based as it is on the impact of the employment agreement on the statutory requirement for paid vacations, does not resolve the question of whether all-inclusive agreements

are permitted. Nor does it decide that including overtime in a straight-time hourly wage is permitted by the Act.

**[47]** For these reasons, the Board does not agree that *DJB* and *Lepage* have decided that all-inclusive contracts of the kind at issue here are permitted by the Act. Both of those decisions were based on the conclusion that the agreements at issue did not provide the employee with the benefit of the applicable legislation.

**[48]** The same is true of the Decision. The Adjudicator did not decide the Agreement was unenforceable because it was all-inclusive or because all-inclusive contracts are “clearly less beneficial to employees”. He found that *this* Agreement denied Mr. Waisman the benefit of overtime pay in the amount specified in the Act. Like *DJB* and *Lepage*, this decision was the result of the application to the facts of the legal principle that the Act requires that the protections provided by the LSA have to be “adhered to”.

**[49]** The Board reaches these conclusions for the following reasons. To begin, although the Adjudicator said that the agreement provided for “no overtime”, he also found as follows:

*In lieu of some overtime, [Mr. Waisman] was to be paid a pyle bonus although this bonus was irregular in the amount and pay periods. In the last several months of Mr. Waisman's employment with the employer, he received almost nothing by way of a bonus.*

*The end result of the pay structure was that Mr. Waisman was receiving little overtime/bonus pay and certainly not the required amount of 1.5x of regular pay for overtime worked. (emphasis added)*

**[50]** He then made the “less beneficial” statement quoted above, before continuing as follows:

*As in the *DJB* Transportation case, the employee, Mr. Waisman, was paid a fixed hourly rate of \$45.00/hour driving inclusive of overtime. Which means, no overtime to be paid, as required to be paid set out (sic) in Section 2-18 of The Act (after 8 hours per day or 40 hours per week). (emphasis added)*

**[51]** This reasoning, and in particular the portions that are emphasized, demonstrate that the Adjudicator found that while the agreement did not provide for the payment of overtime *calculated in accordance with the Act*, it did provide for payment for overtime in the form of the pile bonus. This characterization of the Adjudicator's is also reflected in the final paragraph in his analysis:

*As now structured, the employee is not certain of any overtime in any pay period. As it stands, the more overtime he works, the less he is paid. This is a similar fact situation that occurred in *DJB*..., where the Court found that it was not more beneficial and struck the pay agreement down.*

**[52]** Further, the Adjudicator found that the amount and timing of the bonus payments were uncertain, that it was uncertain if the bonus would be paid in any pay period, and that the bonus payments amounted to far less than if Mr. Waisman had been paid the statutory amount. None of these findings were grounded in errors of law.

**[53]** Having interpreted the Agreement in this way and having found these facts, the Adjudicator concluded that the Agreement was unenforceable and void. In doing so, he referred to s. 2-6, which provides that “[n]o provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part”. He also relied on s. 2-7(3), which as noted above, provides that “if an employer is obligated to pay an employee ...overtime, no provision of any...contract of service...that provides for the payment of wages...for overtime at less than 1.5 times the employee’s hourly wage shall be considered more favourable to an employee”.

**[54]** The Board understands the reference to s. 2-7(3) as relating not only to the finding that the bonus payment does not increase based on the number of overtime hours worked, but also to the fact that it might not be paid in *any* period. The Board notes that the evidence confirmed that there were many pay periods when the pile bonus was not payable.

**[55]** The Board agrees that the Adjudicators “clearly less beneficial” statement may reflect an error of law. All-inclusive contracts may be permissible and there are circumstances in which the evidence might demonstrate that such an agreement is more beneficial to the employee. However, as has been explained, the Adjudicator did not rely on this broad statement of principle in making his decision. For that reason, even if the Adjudicator did err in this way, the error was not material and cannot be the basis for intervention by the Board on this appeal. The Board explained this principle in McEown:

**[45]** *...[An] error of law does not necessarily mean that the Appellant is entitled to a remedy... An error must be material to permit appellate intervention: Van de Perre v Edwards, 2001 SCC 60 at para 13. As the Court said in E.Z. Automotive Ltd. v Regina (City), 2021 SKCA 109 (CanLII), “[t]he word “material” relates to the impact of the error of fact or law on the decision, rather than whether the finding of fact is supported by the evidence or the finding of mixed fact and law is consistent with the legislation and the facts”. In Van de Perre, Bastarache J. explained this in relation to an error of law in dealing with the evidence....:*

*...[O]missions in the reasons will not necessarily mean that the appellate court has jurisdiction to review the evidence heard at trial. As stated in Van Mol (Guardian ad Litem of) v. Ashmore (1999) 1999 BCCA 6 (CanLII), 168 D.L.R. (4th) 637 (B.C.C.A.), leave to appeal refused [2000] 1 S.C.R. vi, an omission is only a*

*material error if it gives rise to the reasoned belief that the trial judge must have forgotten, ignored or misconceived the evidence in a way that affected his conclusion.*

**[56]** The Appellants also take issue with Adjudicator’s statement that “the more overtime Mr. Waisman works, the less he is paid...[t]his is a similar fact situation to DJB” (at p. 13). They note that the circumstances in DJB were different, as Mr. Waisman was paid for each additional hour worked. He also received what they refer to as “more than the industry standard for his “non-shop-related work” – despite the lack of evidence in the record of industry standard – plus the pile bonus.

**[57]** The Board understands that this is an allegation that the Adjudicator erred in interpreting and applying DJB. With respect, the Board sees no such error. The Adjudicator concluded that the pile bonus was an overtime provision. It was not based on the number of hours worked, and for that reason, did not increase if Mr. Waisman worked more overtime hours. That meant the amount he was paid for overtime would decrease on an hourly basis unless he happened to do work that resulted in a pile bonus – an event which, as noted in the Decision, may not occur in *any* period. The Adjudicator’s statement that this is “a similar fact situation to DJB” refers to this similarity and does not reflect error.

**[58]** Additionally, the Appellants claim that the Adjudicator erred in interpreting the meaning of “total wages” in s. 2-7(2(c)) of the Act. For ease of reference, s. 2-7 in relevant part is as follows:

*2-7(1) In this section, “more favourable” means more favourable than provided by this Part, any regulations made pursuant to this Part or any authorization issued pursuant to this Part.*

*(2) Nothing in this Part...affects any provision in any...contract of services...insofar as that ... contract of services...gives any employee:*

...  
*(c) more favourable total wages;*

...

*(3) Without restricting the generality of subsection (2), if an employer is obligated to ... pay an employee overtime, no provision of any...contract of service and no custom that provides for the payment of wages for...overtime at less than 1.5 times the employee’s hourly wage shall be considered more favourable to an employee.*

**[59]** The Appellants base this argument on the following portion of the Decision (at page. 13):

*Even though the appellants evidence shows that the existing pay structure could be more beneficial to the employee with payment of the bonus, rather than receiving overtime, the bonus is not consistent and is often not paid in a pay period. Consequently, if overtime was paid to the employee without the bonus, it would be more beneficial to the employee.*

*As it is now structured, the employee is not certain of any overtime in any pay period. As it stands, the more overtime he works, the less he is paid...*

[60] The Appellants argue that this reasoning demonstrates that the Adjudicator has erred by interpreting “more favourable total wages” to mean total wages in a pay period, as opposed to more favourable “in its totality”.

[61] The Board has a different view. The Adjudicator concluded that the bonus is often not paid in a pay period and may not be paid in *any* period. That was the effect of the Agreement regardless of whether Mr. Waisman had worked overtime or how much overtime he had worked. We do not read this portion of the Decision to mean that the Agreement was void because s. 2-7(2)(c) requires that the payment of more favourable total wages in *every* pay period. Rather, and for the reasons explained above, the Adjudicator decided that it was not saved by s. 2-7 because the Agreement itself did not provide for the payment of more favourable total wages as a result of the treatment of overtime.

[62] For these reasons, the Board concludes that the Adjudicator did not make a material error of law as alleged by the Appellants.

**3. Did the Adjudicator err in law by failing to decide the issue of Mr. Waisman’s credibility?**

[63] A failure to assess credibility where credibility is a live issue is an error of law. The Appellants submit that credibility was at issue in this case and that the Adjudicator failed to decide if Mr. Waisman was credible. Specifically, they assert that the lack of a credibility assessment “directly impacts the assessment of the evidence in finding if the total wages are, in fact, better for the Respondent than overtime”. They suggest that if Mr. Waisman was found not to be credible, his evidence referred to at pages 9-10 of the Decision would not be accepted and the evidence of Ms. Grobnick and Mr. Emmel would be.

[64] As explained above, the evidence of these three witnesses described in the Decision as to the terms of the Agreement did not conflict. Similarly, there was no conflict as to whether the pile bonus was paid regularly and consistently; the Exhibits confirmed that it was not. Further, the Decision does not suggest that Mr. Waisman gave evidence that conflicted with Ms. Grobnick’s evidence that he was paid more in August 2020 and in the period from April 2022 to April 2023 than if he had been paid \$35 an hour plus overtime.

[65] The evidence relating to these three issues was the evidence that was relevant in relation to the facts on which the Adjudicator based his decision. The record does not disclose any issue of credibility in relation to any of them. Further, the Adjudicator accepted Mr. Emmel's and Ms. Grobnick's evidence as to the comparative benefit to Mr. Waisman of his unique pay structure. That confirms that he accepted the evidence of Mr. Emmel and Ms. Grobnick that Mr. Waisman was paid more as a result of having chosen to be paid in accordance with the Agreement. He would have earned less if he had been paid \$35 an hour plus overtime, being the alternative rate he was offered and could have earned. Simply put, the Adjudicator did not dismiss the appeal because he preferred the evidence of Mr. Waisman, but as a result of applying the law as he understood it to facts that were not in dispute.

[66] As a result, the Board concludes that the Adjudicator did not commit a material error by failing to address the issue of Mr. Waisman's credibility.

**Conclusion:**

[67] For these reasons, the Board concludes that the Adjudicator did not err as alleged by the Appellants and denies this appeal.

[68] Mr. Waisman has asked that the Board award costs in his favour. As Chairman McCreary commented in *Mustafa v SEIU-WEST v Saskatchewan Health Authority*, 2024 CanLII 75092 (SKLRB) at para 20, "...the Board's caselaw has been consistent that costs are exceptional and rely on the power of compensation for loss rather than a general costs power". The Board does not consider this case to be an appropriate case to exercise that authority.

[69] As a result, with these Reasons, an Order will issue that the Appeal by Dart Services Ltd. and its Directors is dismissed and the adjudicator's decision is affirmed.

**DATED** at Regina, Saskatchewan, this **4th** day of **March, 2026**.

**LABOUR RELATIONS BOARD**

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Linda Zarzeczny, K.C.  
Vice-Chairperson