DECISION OF ADJUDICATOR

IN THE MATTER OF A HEARING

PURSUANT TO s.s. 62.1 and 62.2 OF

THE LABOUR STANDARDS ACT

DOUGLAS LEROY NELSON

APPELLANT

-AND-

DIRECTOR OF LABOUR STANDARDS representing, RODERICK AHENAKEW, ALEXANDER LITTLEBEAR, ALLAN ROWAN, SHAWN AHENAKEW, GEORGE PRITCHARD, STEVE PRITCHARD, PAUL TOBACCOJUICE, TAMMY PRITCHARD, WILLIAM PRITCHARD

RESPONDENTS

DATE OF HEARING: June 18, 2014

PLACE OF HEARING: CONFERENCE ROOM #9.2,
9TH FLOOR
122 – 3RD AVENUE NORTH
SASKATOON, SASKATCHEWAN

DECISION

[1] This is an appeal by Douglas Leroy Nelson (the "Appellant") with respect to a Wage Assessment issued by the Respondent, the Director of Labour Standards on April 9, 2014. The Wage Assessment required the Appellant to pay Roderick Ahenakew, Alexander Littlebear, Allan Rowan, Shawn Ahenakew, George Pritchard, Steve Pritchard, Paul Tobaccojuice, Tammy Pritchard and William Pritchard (the "Employees") the aggregate sum of $20,571.63 representing unpaid wages. The Wage Assessment was prepared pursuant to s. 60 of *The Labour Standards Act*, R.S.S. 1978, Chapter L-1 (as amended) (the "*Act*").

ISSUE

[2] The issue at appeal was whether the aggregate amount of wages of $20,571.63 not paid to the Employees was in violation of section 6(2) of the *Act*, specifically the rate of overtime pay.

FACTS

[3] There was no dispute the Employees were all employed by the Appellant. The Appellant contracted with the provincial government to provide grass cutting and maintenance of the ditches along provincial roadways. The Appellant hired the Employees to assist him with fulfilling these contractual obligations.

[4] There are no written employment contracts between the Appellant and the nine Employees. Although the Appellant hired all nine of the Employees, he states that they all came to him through each other. He states George Pritchard had worked for him for a minimum of five years, possibly 6 or 7. He says Shawn and Rod Ahenakew came and worked briefly for him in 2013. Alexander Littlebear knew Rod Ahenakew and George Pritchard. Tammy Pritchard referred Paul Tobaccojuice to the Appellant. Allan Rowan was brought to the Appellant by George Pritchard.

[5] All of the Employees, except George Pritchard, worked for the Appellant as seasonal workers during one or all of the summers of 2011, 2012 and 2013. George Pritchard was employed with the Appellant for more than five summers. As their

employment was seasonal, the hours worked varied daily, often working more than 8 hours a day. The term of employment (which I refer to as "summer") for each Employee is as follows:

a) George Pritchard – every summer since approximately 2007 or 2008

b) Tammy Pritchard – summers of 2011 through 2013

c) Steve Pritchard – summer 2010 through 2013

d) William Pritchard – summers of 2012 and 2013

e) Paul Tobaccojuice – summer 2012 and 2013

f) Allan Rowan – summer 2012

g) Shawn Ahenakew – summer 2013

h) Rod Ahenakew – summer 2013

i) Alexander Littlebear – summer 2013

[6] The period of assessment for unpaid wages includes two partial seasons for some of the employees: Summer 2012 and Summer 2013.

[7] The parties both agreed that although the rate of pay of the employees is in dispute, the hours used to calculate the pay was provided by the Appellant and both agree these hours are correct and can be relied upon. The parties further agree the paystubs provided as evidence were those paystubs given to the employees.

[8] Even though the parties have agreed the hours to be correct, **it is important to note on the Audit Sheet provided by Labour Standards, the hours worked state that on August 31, 2012, Tammy Pritchard worked 31 hours. This is most certainly an error and has a significant effect on the wage assessment completed for her unpaid wages. In light of that alone, the Wage Assessment for Tammy Pritchard is incorrect. There are no other records available for me to determine the correct number of hours for this day. This will need to be reviewed with the Employers records and adjusted accordingly.**

[9] Four of the Employees did not attend the hearing: William Pritchard, George Pritchard, Allan Rowan and Alexander Littlebear. Unpaid wage claims were submitted for all four of them by the Labour Standards Officer.

George Pritchard

[10] George Pritchard worked for the Appellant every summer for a minimum of five years. He was employed as a grass cutter for the Appellant during the period of June 19, 2012 to September 1, 2013. The period of assessment for his unpaid wage claim is September 1, 2012 to September 1, 2013. The Appellant worked 608 hours between September 1, 2012 and November 5, 2012. He returned in 2013 and worked 335 hours from May 6, 2013 to June 17, 2013 and 177 hours in August 2013. His unpaid wages have been assessed at $3,779.68. According to his 2012 and 2013 paystubs, the total hours were multiplied by $17.00/hour.

[11] George Pritchard did not attend the hearing to give evidence.

Tammy Pritchard

[12] Employee Tammy Pritchard attended the hearing and provided testimony. She testified she worked as a tractor operator/labourer mowing grass along the highway for the Appellant in the summers 2011 through 2013. The period of assessment for her unpaid wage claim is August 21, 2012 to August 22, 2013. The Appellant worked 160 hours between August 21, 2012 and September 3, 2012. She worked 184 hours between August 1, 2013 and August 21, 2013. Her unpaid wages have been assessed at a total amount of $1,321.86. According to her paystubs, the total hours in 2012 were multiplied by $16.50/hour and by $17.00/hour in 2013.

[13] She testified that the Appellant told her she would be getting paid $16.50/hour in 2012. She stated that she became concerned when $12 for regular rate of pay kept showing up on her pay stub. She recalls being paid once per month with advances being provided mid-month.

[14] Ms. Pritchard states she questioned the Appellant several times about the $12 per hour for wages and he told her "it all works out to $16.50 per hour". In further testimony she stated "they said they need to arrange it that way but it worked out to $16.50/hour". She further testified she said she would stay in 2013, if the Appellant paid her $17.00/hour. Ms. Pritchard testified that she would never have went away from home to work for $12.00/hour. Ms. Pritchard was asked after working for the Appellant for three years and seeing the $12.00/hour on her paystub how she could not know she was getting $12.00/hour. She still argued she didn't know she was getting $12.00/hour plus a living allowance. She further stated she never knew anything about a living allowance but thought they were just getting a straight wage.

Steven Pritchard

[15] Employee Steven Pritchard attended the hearing and provided oral testimony. He stated that he worked four seasons for the Appellant in June and July providing highway maintenance. The period of assessment for his unpaid wage claim is September 1, 2012 to August 31, 2013. The Appellant worked 625 hours between September 1, 2012 and November 5, 2012. He returned in 2013 and worked 177 hours from August 15, 2013 to August 31, 2013. His unpaid wages have been assessed at $3,188.23. According to his 2012 paystubs, the total hours were multiplied by $16.00/hour and in 2013 the total hours were multiplied by $17.00/hour.

[16] His main duties were to provide the weed whipping. He would follow the rest of the crew along the highways. He stated they basically worked the same hours everyday but it was usually more than 8 hours per day. He stated in his 3rd year he should have been making $24.00/hour and 26.00/hour in his 4th year.

[17] Steven Pritchard then testified that he had viewed the government contract between the Appellant and the government and he believed he should be making $20.00/hour as the starting wage in his first year. Steven Pritchard's testimony was confusing as following those statements he admitted that he saw the $12/hour on his paystubs, he assumed the second year it would be $12 or $14 and was told in his 3rd year it would be $15 and in his fourth season he believed and was told he would be making

$16.00/hour. He further stated he would never have taken a job for $12.00/hour. When cross-examined he stated the Appellant told him "works out to $16.00/hour". He denies ever receiving any bonuses even though he admitted they were shown on his paystub. He says all he ever received was advances.

William Pritchard

[18] William Pritchard worked as a grass cutter for the Appellant during the period of July 1, 2012 and September 1, 2013. The period of assessment for his unpaid wage claim is September 1, 2012 to June 18, 2013. The Appellant worked 452 hours between September 1, 2012 and October 26, 2012. He returned in 2013 and worked 122 hours from June 7 to June 18, 2013. His unpaid wages have been assessed at $1,944.16. According to his paystubs, the total hours in 2012 were multiplied by $16.50/hour and by $17.00/hour in 2013.

[19] William Pritchard did not attend the hearing to give evidence.

Paul Tobaccojuice

[20] Paul Tobaccojuice testified at the hearing. He testified he was employed by the Appellant as a grass cutter for a total of five months in 2013. The period of assessment for his unpaid wage claim is September 13, 2012 to August 21, 2013. The Appellant worked 511 hours between September 13, 2012 and November 5, 2012. He returned in 2013 and worked 184 hours from August 1, 2013 to August 21, 2013. His unpaid wages have been assessed at $1,273.05. According to his paystubs, the total hours in 2012 were multiplied by $16.00/ hour and $16.50/hour and $17.00/hour in 2013.

[21] He further testified it was a seasonal position and the hours varied. They were usually out the door by 6:30am and returned to the hotel between 8:00-9:00pm in the evening. He stated they often worked 14-15 hour days. He further testified the Appellant said he would be earning $16.00/hour in 2012 and $17.00/hour in 2013. He acknowledged he received his paystubs at the end of the month but he never noticed the $12.00/hour on the paystub. He further stated in 2013, he would never have taken the job because he was already making $13.00/hour. He stated he left his employment with the Appellant in 2013 because he broke his foot.

[22] On cross-examination, Paul Tobaccojuice stated he never looked at his paystubs, he never saw any bonuses, he was never told he would get a living allowance or that his motels would be paid for by the Appellant. He also admitted he never paid for any motels while he worked for the Appellant but couldn't answer as to who he thought would be paying for those expenses. He acknowledged that he would have to pay his own living expenses if he stayed back at home.

Allan Rowan

[23] Allan Rowan worked as a tractor operator for the Appellant during the period of July 6, 2012 and September 28, 2012. The period of assessment for his unpaid wage claim is July 6, 2012 to September 28, 2012. The Appellant worked 720 hours between July 6, 2012 and September 28, 2012. His unpaid wages have been assessed at $4,990.30. This included a deduction for a fire department charge of $2,625.00. According to his paystubs, the total hours in 2012 were multiplied by $16.00/hour.

[24] Allan Rowan did not attend the hearing to give evidence.

Shawn Ahenakew

[25] Employee Shawn Ahenakew also attended the hearing and gave oral testimony. He testified he worked for the Appellant in July 2013 for two weeks. The period of assessment for his unpaid wage claim is August 14, 2013 to August 31, 2013. The Appellant worked 175 hours between August 14, 2013 and August 31, 2013. His unpaid wages have been assessed at $585.01. According to his paystubs, the total hours in 2013 were multiplied by $17.00/hour.

[26] Shawn Ahenakew drove tractor with the lawn mower cutting the grass along the roadways. He indicated that his hours of work were usually out the door by 6:30am and finished work around 6:00pm but then had to drive back to their hotel. Shawn Ahenakew believed he was being paid $16.00/hour in his first year and then $17.00/hour in his second year. He affirmed the Employees were provided a paystub once per month and advances during the month as needed.

[27] Shawn Ahenakew further admitted that he still owed the Appellant $358.00 as per his paystub but did not know anything about bonuses or advances. He also admitted that all of the hotel rooms and breakfasts were paid for and provided by the Appellant without any cost to him.

[28] He further testified that he had to quit because the work he was doing was too dangerous. He discussed an incident where a tire came off one of the tractors and one of the employees was hurt. He stated he had gone home for a visit and when he returned everyone was gone so he left too. He admitted that the Appellant gave him $100.00 when he returned and he used that money for a cab and a greyhound bus home.

[29] In fact the time sheets provided and the paystub show Mr. Shawn Ahenakew worked for 2 weeks in August 2013 not July 2013. He worked a total of 175 hours. There was no record provided showing that Shawn Ahenakew worked for the Appellant in 2012, and the Appellant stated that he only worked for him in 2013.

Rod Ahenakew

[30] Rod Ahenakew attended the appeal hearing and gave oral evidence. He worked for the Appellant in August 2013. The period of assessment for his unpaid wage claim is July 29, 2013 to August 29, 2013. The Appellant worked 260 hours between July 29, 2013 and August 29, 2013. His unpaid wages have been assessed at $935.00. According to his paystubs, the total hours in 2013 were multiplied by $17.00/hour.

[31] Rod Ahenakew drove tractor and mowed lawns. He stated he often worked more than 8 hours per day. He testified that he believed he was making $16.00/hour. He was never told anything about getting $12.00/hour. He stated he had been working at Canadian Tire for $12.00/hour for the past three years. When he asked the Appellant why he was getting paid $12.00/hour he stated he was told "with the overtime and bonus, it's like $16.00/hour". He also testified he did not know anything about receiving a living allowance or bonuses. He also testified that Alex (being Alexander Littlebear) told him they would be getting paid $16.00/hour.

[32] Rod Ahenakew said he got into an argument with the Appellant about getting his paystub. He said he got tired of bumming money off of the Appellant and just wanted to be paid. He admitted the Appellant did bring him $1700.00 in cash to the motel and then gave him his paystub later that day. He further testified the Appellant tried to get him to stay for $17.00/hour. He stated after he received his money he left a few days later.

Alexander Littlebear

[33] Alexander Littlebear worked as a grass cutter for the Appellant during the period of May 7, 2013 and August 30, 2013. The period of assessment for his unpaid wage claim is May 6, 2013 to August 30, 2013. The Appellant worked 692 hours between May 7, 2013 and August 30, 2013. His unpaid wages have been assessed at $2,554.34. According to his paystubs, the total hours in 2013 were multiplied by $16.00/hour.

[34] Alexander Littlebear did not attend the appeal hearing to give evidence.

Evidence of the Appellant

[35] The Appellant testified at the appeal hearing. He stated the Employees all knew they were getting $12.00/hour. He states they were told from there they would receive a bonus and/or living allowance bringing it to the $16.00-17.00/hour range.

[36] He provided an explanation for how the paystubs were completed. At the top of the stub the total hours worked by the employee was multiplied by the hourly wage used by the Appellant when he was bidding work. He submitted that notation at the top of the payroll records was intended to provide a cost per hour for estimating future jobs.

[37] So for example, the paystub for Tammy Pritchard for August 2012 shows 322 total hours x $16.50 per hour. From that 160 hours are backed out at regular pay of $12.00/hour and 151 hours are paid at overtime rate of $18.00 per hour and 11 hours are paid for working statutory holidays at a rate of $24.00/hour. The Appellant then says the employee is given a bonus/living assistance to make up for the difference. After that, holiday pay is calculated to arrive at the gross amount of pay. Taxable deductions are made to arrive at the net amount. Cash advances made by the Appellant to that employee are then deducted to arrive at a net amount owing to the employee.

[38] The Appellant says the Employees all got their paystubs every month and says he can't believe they never looked at their paystubs. Some of the employees worked for him for more than one year so it just doesn't make sense to him how they could say they didn't know they were being paid $12.00/hour. He further testified an additional benefit of employment was that all their motels were paid for and their breakfasts.

[39] When asked about Allan Rowan, the Appellant states that the deduction made from his wages in the amount of $2,625.00 related to a bill the Appellant received for fire department charges after Allan Rowan got into trouble with one of the Appellant's vehicles and the fire department had to attend the scene of the accident. This was not during the course of employment duties and Allan Rowan's position was terminated as a result. There is a further notation that the Allan Rowan was reimbursed a further $1250.00 (Cheque #741 written October 25, 2012) because the fire department agreed to reduce the bill. This amount was applied as wages paid in the assessment.

[40] Under cross-examination the Appellant stated that he did tell the employees that after "everything was factored in if would be $16.00 or $17.00/hour". He also agreed that the Employees would have received $16.00/hour for every hour worked. He stated the bonus/living allowance was used to top up the wages from $12/hour to $16/hour for all hours worked.

[41] He stated even after they all walked out on him, he paid them the bonuses. He testified that he tried to get in touch with the Employees after they left but no one would return his calls. He recalls employees leaving in the past to go and work on the oilrigs for $25.00/hour and he gave them his blessing. He admitted he could not compete with those wages.

[42] The Appellant's wife, Marilynn Nelson, also testified. She stated the paystubs were completed this way under guidance provided by Labour Standards to them a few years ago. She stated the Appellant would keep track of hours and then call her with the total hours and she would prepare the paystubs monthly.

[43] She also testified that the Employees all left without any word to her or the Appellant. The first they learned that they felt they were underpaid was through Labour Standards. She stated even George Pritchard who had worked for them for so many years, left without a word.

[44] Ms. Nelson testified as to how she used to previously calculate the wages. In 2010, she used to just pay the hourly rate at straight rate of $16.00/hour plus holiday pay and nothing extra for overtime. She says she was advised by Labour Standards a couple of years ago to do it the way she is now doing it. She states the bonus is a way of arriving at living expenses but the amount of the bonus varies from month to month. To her knowledge, she says that none of the Employees ever questioned the $12.00/hour.

[45] There was some testimony around a cheque written to Allan Rowan for $311.07. The cheque was cashed in Calgary and came out of the Appellant's bank account. Labour Standards has no record of receiving this money and/or giving it to Allan Rowan. The Appellant argues these wages were paid to Allan Rowan and they should not be accountable for these funds.

LAW AND ANALYSIS

[46] Section 6 of the *Act*, dealing with overtime and hours of work, reads as follows:

> **Hours of work and overtime pay**
> 6(1) Subject to sections 7, 9 and 12, no employer shall, unless he complies with subsection (2), require or permit any employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week.
>
> (2) Subject to sections 7 and 9, an employer who requires or permits an employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week shall pay to that employee wages at the rate of time and one-half for each hour or part of an hour in excess of eight hours in any day, or 40 hours in any week, during which he requires or permits the employee to work or to be at his disposal.

[47] Section 72 addresses contracts whereby the employees receive more favorable or less favorable conditions than provided for in the *Act*:

> **Effect of Act on other Acts, agreements, contracts and customs**
> 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 provisions 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 favorable 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.

[48] Section 75 prohibits employment contracts which would result in employees waiving their rights under the *Act:*

Agreements not to deprive employees of benefits of Act
75(1) No agreement, whether heretofore or hereafter entered into, has any force or effect if it deprives any employee of any right, power, privilege or other benefit provided by this Act.

[49] As noted in *DJB Transportation Services Inc. v. The Director of Labour Standards* (2010) SKCA 50: "the accepted effect of the provisions at issue is that if the employment arrangement in question is in violation of s. 6 of the *Act*, it will be valid only if it provides the employee with "more favorable conditions" than the employee would be entitled to under the *Act*".

[50] The Appellant submits the Employees all knew they were getting paid $12.00/hour. He further argues they received their paystubs showing the deductions, the bonuses and the deductions for advances. He argues that some of the employees worked for him over two or three years and returned each year; so he argues it is impossible for them to not know they were receiving $12.00/hour as their regular wages.

[51] The Labour Standards Officer argues that the Employees were never paid overtime wages and this was a violation of section 6(2) of the *Act*. He relies upon section 6, 72 and 75 of the Act. He argues the result from the paystubs is that the Employees were paid a flat hourly rate for each hour worked, either $16.50 or $17.00 per hour and were not paid any overtime. He further argued the figures on the paystubs are manipulated so the Employees are receiving the same wage rate for all hours worked and this is a violation of section 6(2) of the *Act*. It is further submitted by the Labour Standards Officer the actual hourly rate should be set at $17.00/hour and all wage calculations should be calculated accordingly.

[52] The real question to be determined is what was the agreed rate of pay between the Appellant and the Employees. Based upon all of the evidence heard, I do not believe the Appellant ever specifically told the Employees they would be making $12.00 per hour, even though it is clearly set out in all of their paystubs. In my opinion, they were told what several of them testified to "it will work out to approximately $16.00/hour with overtime, bonuses and/or living allowance" or "it works out to $16.00/hour". It was acknowledged by several employees that the Employees did not pay for their motel rooms or their breakfasts while employed with Mr. Nelson. Mr. Nelson paid these expenses.

[53] In *R.B. Trucking Ltd. vs. The Director of Labour Standards* (September 24, 2012) an employment contract for "straight time" was reviewed. The adjudicator stated:

> In paragraph 41 the Court decides the case on the basis of section 72(2) which provides that no provision in the agreement shall be deemed more favorable than the provision in The Act requiring the payment of wages at the rate of time of 1.5 if it provides for the wages at the rate of less than the rate of time and one half.
>
> The facts in the DJB Transportation Services Inc. case were similar in outcome to the facts in this case. In DJB the contract between the employer and employee provided overtime pay at a rate which decreased the more overtime the employees worked.
>
> The Court found that the effect of such contract meant that the employees received a continually reduced overtime rate. The overtime rate could conceivably fall down to the rate of the minimum wage.
>
> The Court held that a contract or scheme that has an effect such that it reduced the employees hourly overtime pay the more hours they worked was completely contrary to the intent of the legislation, resultantly, Section 72 did not apply to override Section 6 of the Act.
>
> Such reasoning applies here.

[54] I find the facts in this case to be very similar to *R.B. Trucking*. However, in this case, the Appellant always paid the base wage at $12.00/hour and overtime at $18.00/hour. However, it is conceivable that if enough overtime hours were worked, the employee could actually receive an overtime wage that was equal to less than time and one half. This makes it a contravention of Section 6 of the *Act* that cannot be overridden by Section 72.

[55] The Employees often worked more than 8 hours a day and they often worked many days without a day off. In my opinion the Appellant intended for the Employees to

receive overall wages including overtime and bonuses to average to approximately $16.00/hour, a guaranteed income. Even though the Appellant always paid the Employees their overtime hours and bonuses, essentially the contact was one of straight time and it is not permitted under section 6(2) of the Act.

[56] I find it particularly confusing why several of the Employees returned over the course of 2 or more years and are now stating they did not understand they were receiving $12.00/hour. However, employees cannot voluntarily waiver their right to entitlement under the *Act*, so an argument of estoppel is not applicable in this case. I find ultimately this was a contract of employment for straight pay per hour. The reason I come to this conclusion is that the Employer's wife testified that he used to pay wages at $16/hour straight time and then reverted to backing out the hours or regular time and adding the overtime and bonuses in order to bring it within the provisions of the *Act* based on advice she states she received from Labour Standards. That still makes it a contract for straight time.

[57] The rate of pay used at the top of the paystubs was used by the Appellant to guarantee a rate of pay to the Employees. I do accept that he represented to them that the pay would "work out to $16.00/hour or $17.00/hour with all the overtime and bonuses/living allowances", however, this is just another way of paying straight time for every hour worked and it violates the provisions of the *Act*.

[58] The Labour Standards Officer argues the wages for all Employees should be set at $17.00/hour. I disagree. Evidence varied between the Employees as to what they were told they would be receiving and what was shown on the timecards. Some employees did not show up to testify so we are left with only the timecards. Where the personal testimony of the Appellants varied from the timecards, I have relied on their evidence in that regard in arriving at the hourly rates for each employee. Based on all of the evidence heard, I have determined that the straight rate of pay for an Employee in his first year was $16.00/hour.

[59] Accordingly, I make the following findings of fact with respect to the hourly rate promised to each Employee:

a) In 2012, the hourly rates are as follows:

(i) $16.00 – Steven Pritchard, Paul Tobaccojuice and Allan Rowan
(ii) $16.50 – Tammy Pritchard and William Pritchard
(iii) $17.00/hour – George Pritchard

b) In 2013, the hourly rate for George Pritchard, Tammy Pritchard, William Pritchard and Paul Tobaccojuice is set at $17.00/hour as per the evidence provided.

c) Steven Pritchard stated in 2013 he was told he would be receiving $16.00/hour and I have accepted his evidence in that regard and set it at $16.00/hour even though he is a returning employee.

d) The hourly rate in 2013 for Shawn Ahenakew, Rod Ahenakew and Alexander Littlebear is set at $16.00/hour. They were all first year employees. Rod Ahenakew testified he was told he would be receiving $16.00/hour even though his paystub appears to show his total hours worked multiplied by $17.00/hour. Rod Ahenakew also testified that "Alex" told him he was getting paid $16.00/hour. Alexander Littlebear did not attend the hearing even though he has filed a claim for unpaid wages. Rod Ahenakew said the Appellant offered him $17.00/hour to stay but he did not stay so therefore he is not entitled to those wages.

e) The hourly rate for Allan Rowan in 2012 is set at $16.00/hour based upon my review of his time cards. Allan Rowan is entitled to the $2625.00 for the fire department charge that was deducted from his August 2012 paystub. That deduction violates section 59 of the *Act*[1].

---

[1] **Deductions from wages**
59 Nothing in this Act prohibits an employer from making deductions from the wages of an employee that may lawfully be deducted.

[60] The question of the pay to Allan Rowan in the amount of $311.07 is difficult. The Appellant states he paid Allan Rowan but also admitted it appeared to be a fraudulent transaction. I am not satisfied Allan Rowan received these wages and accordingly is entitled to receive them. Hopefully, the Appellant can recover these funds through other recourse.

CONCLUSION

[61] I find the contract of employment between the Appellant and the Employees to be one of pay for straight time worked. This is a violation of section 6 of the *Act*. However, based upon the evidence provided at the hearing, the Wage Assessment is altered as follows:

a) Tammy Pritchard's wage claim must be reduced to match the number of hours actually worked on August 31, 2012 as determined by the Employer's records, because I do not accept she worked 31 hours that date.

b) The wages for George Pritchard are set at $17.00/hour in 2012 and 2013.

c) In 2012, wages for Tammy Pritchard and William Pritchard are set at $16.50/hour, and $16.00 for Stephen Pritchard, Paul Tobaccojuice and Allan Rowan.

d) In 2013, the wages for Tammy Pritchard, William Pritchard and Paul Tobaccojuice are set at $17.00/hour. The wages for Steven Pritchard, Shawn Ahenakew, Rod Ahenakew and Alexander LittleBear are set at $16.00/hour.

e) Allan Rowan is entitled to the deduction of $2625.00 taken from his pay and the $311.07 that I am unable to conclude he actually received from the Appellant.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 5th day of September, 2014.

ON BEHALF OF

JOY DOBKO

Adjudicator