

**IN THE MATTER OF A HEARING PURSUANT TO SS.
62.1 AND 66.2 OF THE LABOUR STANDARDS ACT, R.S.S.
1978, c. L-1 (AS AMENDED)**



BETWEEN:

101191387 SASKATCHEWAN LTD. %_a North
West Ventures and CLAUDE HANSEN,

APPELLANTS,

AND:

LONNIE HANSON,

RESPONDENT
(COMPLAINANT)

ADJUDICATOR'S DECISION
October 23, 2014

T. F. (TED) KOSKIE, B.Sc., J.D.

Date of Hearing: August 25, 2014

Place of Hearing: Best Western Marquis Inn & Suites
602 - 36th Street East
Prince Albert, Saskatchewan

Representatives: Marcel Simonot, Q.C., for the Appellants, 101191387 Saskatchewan Ltd.
%_a North West Ventures and Claude Hansen

Dale Schmidt, Employment Standards Officer, for the Respondent
(Complainant), Lonnie Hanson

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I. INTRODUCTION

[1] On September 18, 2012, the Director of Labour Standards (the “Director”) issued—pursuant to section 60 of *The Labour Standards Act*¹ (as amended) (the “*LSA*”)—Wage Assessment No. 5200² (the “Assessment”).

[2] The Assessment directed 101191387 Saskatchewan Ltd. ⁹/₁₀ North West Ventures (“NW Ventures”) and Claude Hansen (“Hansen”) to pay six thousand nine hundred and eighty-one dollars and eighty-six cents (\$6,981.86) to Lonnie Hanson (“LH”).

[3] On November 8, 2012, the Director filed a Certificate with the Registrar of the Court of Queen’s Bench at the Judicial Centre of Battleford, in effect making the six thousand nine hundred and eighty-one dollars and eighty-six cent (\$6,981.86) sum owing as if it were the result of a judgment obtained in that Court.

[4] Effective April 29, 2014, *The Saskatchewan Employment Act*³ (as amended) (the “*SEA*”) repealed the *LSA*⁴ and effectively replaced section 60 of the *LSA* with section 2-74 of the *SEA*.

[5] NW Ventures and Hansen brought an application to the Court of Queen’s Bench seeking to set aside the Certificate. On May 8, 2014, the Court ordered⁵ that:

- a) the Certificate and resulting judgment be set aside; and
- b) NW Ventures and Hansen may, within twenty-one (21) days of the decision, appeal the

¹ R.S.S. 1978, c. L-1

² Exhibit G-1, Wage Assessment No. 5200

³ S.S. 2013, c. S-15.1

⁴ *Ibid.*, s. 10-8

⁵ *101191387 Saskatchewan Ltd. & Claude Hansen v Ministry of Labour Relations & Workplace Safety & Lonnie Hanson*, 2014 SKQB 138 (Scherman, J.)

wage assessment.

[6] On May 16, 2014, NW Ventures and Hansen appealed⁶ (the “Appeal”) the Assessment.

[7] The Saskatchewan Labour Relations Board selected me to hear and determine the Appeal.

II. PRELIMINARY MATTERS

[8] I convened this hearing at 10:00 a.m., the appointed time.

[9] Hansen was present in his personal capacity and as a representative of NW Ventures. Marcel Simonot, Q.C., appeared as counsel for both Hansen and North West Ventures and Hansen.

[10] Dale Schmidt, Employment Standards Officer, was present. He advised he represented LH. However, LH was not present.

[11] Mr. Schmidt searched the premises at which the hearing was taking place. He could not locate LH. Mr. Schmidt advised that:

- a) the Labour Standards Branch had advised LH of the place and date of this hearing;
- b) he expected LH to attend the hearing;
- c) LH did not advise he would not be attending the hearing; and
- d) he had no explanation for LH’s failure to attend this hearing.

⁶ Exhibit G-2, Notice of Appeal

[12] Mr. Simonot took the position that the hearing should proceed. He argued that it would be unfair to put his client to any additional cost that would result from adjourning and rescheduling the hearing.

[13] Mr. Schmidt did not did not ask for an adjournment and did not object to the hearing proceeding.

[14] I decided to proceed with the hearing in the absence of LH.

[15] There were no preliminary objections on constitutional or jurisdictional grounds.

III. FACTS

[16] On or about December 2011, NW Ventures entered into a contract (the “Contract”) with Kitsaki Management Limited Partnership (“KMLP”) to clear-cutting trees and shrubs—fourteen kilometres (14 km) of right-of-way to a width of eighty metres (80 m) for a new power line approximately twelve kilometres (12 km) East of Key Lake, Saskatchewan. The Lac La Ronge Indian Band owns KMLP.

[17] The contract required NW Ventures to:

- a) hire between twenty (20) and thirty (30) people; and
- b) build a camp (the “Camp”) with living accommodations, offices and a kitchen.

[18] NW Ventures hired LH as one of the employees to work on the Contract. LH, along with a number of other men, moved into the Camp on or about January 9, 2012.

[19] Some of the men were cutters; others were pickers behind. There were fourteen (14) to fifteen (15) saws at the Camp with one (1) or two (2) spares (the “Saws”). LH’s job was to maintain the Saws. That would mostly entail cleaning the chainsaws and changing their chains.

[20] Actual clearing work did not commence until on or about January 26, 2012. The daily work regimen was largely governed by the weather and times of daylight. The men would wake up at 7:30 a.m., have breakfast and then, between 8:30 a.m. and 9:00 a.m., be transported by snowmobiles to their actual work site. Their work day would end between 4:30 p.m. and 5:00 p.m.

[21] If it was too cold or windy, the men did not work that day. During the time LH was in the employ of NW Ventures, he missed seven (7) days of work because of bad weather.

[22] When working, the men took dinner breaks of one (1) to one and one-half (1½) hours. NW Ventures delivered their lunches to the actual work site.

[23] During the time LH was in the employ of NW Ventures, he took five (5) days off.

[24] LH remained in NW Ventures' employ until February 22, 2012. At that time, NW Ventures says it fired LH for cause. On termination, LH filed a complaint with the Labour Standards Branch in which he claimed that between January 9 and February 22, 2012, he had worked the following hours:⁷

Date	Hours
Jan. 9/12	11:00 a.m. - 2:00 p.m.
Jan. 10/12	8:00 a.m. - 12:00 p.m.
Jan. 11/12	7:00 a.m. - 1:00 a.m.
Jan. 12/12	8:00 a.m. - 12:00 p.m.
Jan. 13/12	8:00 a.m. - 12:00 p.m.
Jan. 14/12	8:00 a.m. - 12:00 p.m.
Jan. 15/12	8:00 a.m. - 12:00 p.m.
Jan. 16/12	8:00 a.m. - 12:00 p.m.

⁷ Exhibit L-1

Jan. 17/12	8:00 a.m. - 12:00 p.m.
Jan. 18/12	8:00 a.m. - 12:00 p.m.
Jan. 19/12	8:00 a.m. - 12:00 p.m.
Jan. 20/12	8:00 a.m. - 12:00 p.m.
Jan. 21/12	8:00 a.m. - 12:00 p.m.
Jan. 22/12	8:00 a.m. - 10:00 p.m.
Jan. 23/12	8:00 a.m. - 10:00 p.m.
Jan. 24/12	8:00 a.m. - 10:00 p.m.
Jan. 25/12	8:00 a.m. - 10:00 p.m.
Jan. 26/12	8:00 a.m. - 10:00 p.m.
Jan. 27/12	8:00 a.m. - 2:00 a.m.
Jan. 28/12	8:00 a.m. - 1:00 a.m.
Jan. 29/12	8:00 a.m. - 1:00 a.m.
Jan. 30/12	8:00 a.m. - 7:00 p.m.
Jan. 31/12	8:00 a.m. - 7:00 p.m.
Feb. 1/12	
Feb. 2/12	
Feb. 3/12	
Feb. 4/12	7:30 a.m. - 6:30 p.m.
Feb. 5/12	7:30 a.m. - 6:30 p.m.
Feb. 6/12	7:30 a.m. - 6:30 p.m.
Feb. 7/12	7:30 a.m. - 6:30 p.m.
Feb. 8/12	7:30 a.m. - 6:30 p.m.
Feb. 9/12	7:30 a.m. - 6:30 p.m.
Feb. 10/12	7:30 a.m. - 6:30 p.m.
Feb. 11/12	7:30 a.m. - 6:30 p.m.
Feb. 12/12	7:30 a.m. - 10:00 p.m.
Feb. 13/12	7:30 a.m. - 6:30 p.m.

Feb. 14/12	7:30 a.m. - 6:30 p.m.
Feb. 15/12	7:30 a.m. - 6:30 p.m.
Feb. 16/12	7:30 a.m. - 6:30 p.m.
Feb. 17/12	7:30 a.m. - 6:30 p.m.
Feb. 18/12	7:30 a.m. - 6:30 p.m.
Feb. 19/12	7:30 a.m. - 2:00 a.m.
Feb. 20/12	7:30 a.m. - 6:30 p.m.
Feb. 21/12	7:30 a.m. - 9:00 p.m.
Feb. 22/12	7:30 a.m. - 2:30 a.m.

[25] No evidence was presented that explained what these hours translated to. However, the Fiat of Mr. Justice Scherman summarized it as follows:⁸

A Labour Standards officer's worksheet (prepared from the employee's records) showed Hansen to have worked every day between January 9 and Feb 22, 2012, with the exception of February 1, 2 and 3, and claimed a total of 264 regular hours and 305.5 overtime hours worked. Based on this 6-week 4-day employment period, this equated to a claim of some 46.15 overtime hours per week.

[26] No evidence was presented that explained how the Assessment was calculated.

[27] NW Ventures called two witnesses—Hansen and Kenneth Brian Bouchard ("Bouchard").

[28] Hansen says

- a) NW Ventures and Hansen never authorized LH to do any overtime work;
- b) LH at no time did any overtime work;
- c) LH at no time was at the service of NW Ventures after his regular work hours at NW

⁸ *Supra*, footnote 5, at para. 10

Venture's request;

- d) because of the type of work done by LH and the rise and setting of the sun during the time period that he worked, it was impossible or at least most difficult for him to be in NW Ventures' employ for an average of approximately 17 hours a day; and
- e) no other NW Ventures' employees—working during the same time period and on the same project—worked overtime or made any claim to NW Ventures or the Labour Standards Branch for overtime payment.

[29] Bouchard worked for NW Ventures at the Camp during the same time as LH. He corroborates that:

- a) because of the type of work done by LH and the rise and setting of the sun during the time period that he worked, it was impossible or at least most difficult for him to be in NW Ventures' employ for an average of approximately 17 hours a day;
- b) LH at no time did any overtime work; and
- c) no other NW Ventures' employees—working during the same time period and on the same project—worked overtime.

[30] Bouchard also testified that it was not possible for LH to work after the men came back to camp. All chainsaws were stored in the power plant. This was because the plant was not only warm, but it shielded the smell from the chainsaws permeating the worker's living quarters. There was no place to work on the chainsaws in the power plant. It would have been too smelly, noisy and disruptive to be working at other places in the camp.

[31] Hansen testified that NW Ventures paid LH one hundred and fifty dollars (\$150.00) per

day. In Cross Examination, Hansen was presented with employee pay stubs⁹ (the “Stubs”) that showed LH to be paid at various hourly rates. Hansen explained:

- a) he kept track of the days LH worked;
- b) he provided that information to his wife, who in turn, provided it to their accountants, United Tax Service Ltd. in Meadow Lake, Saskatchewan;
- c) it was the accountants that prepared the Stubs; and
- d) he is not privy to the reason for the conversion.

[32] Hanson says LH worked thirty-one (31) days. If one multiplies this number of days by eight (8), this gives two hundred and forty-eight (248) hours, which coincides with the hours reflected in the Stubs.

IV. DISPUTE

[33] It is important to note LH did not lodge any complaint with respect to his dismissal.

[34] The issue here is the amount LH is entitled to for regular wages, overtime and holiday pay.

V. DECISION

[35] I find that LH worked thirty-one (31) days. Consequently, I rule that he was entitled to be paid:

- a) four thousand six hundred and fifty dollars (\$4,650.00) for regular wages;

⁹ Exhibit L-2

- b) two hundred and sixty-eight dollars and twenty-seven cents (\$268.27) for holiday pay; and
- c) two hundred and twenty-five dollars (\$225.00) for working Family Day (February 20, 2012);

for a total of five thousand one hundred and forty-three dollars and twenty-seven cents (\$5,143.27).

[36] NW Ventures paid LH four thousand five hundred and ninety-four dollars and twenty-one cents (\$4,594.21). I further rule NW Ventures and Hansen must pay five hundred and forty-nine dollars and six cents (\$549.06) to LH.

[37] The appeal is partially allowed. I vary the Assessment to reflect that the amount of five hundred and forty-nine dollars and six cents (\$549.06) is owing to LH.

[38] In light of not only the substantial amount of time that has passed, but also the significant variation of the Assessment, I decline to order the payment of any interest on the sum owing.

VI. REASONS

A. ACT & REGULATIONS

[39] The relevant provisions of the *LSA*, with the corresponding provisions of the *SEA* are as follows:

<i>LSA</i>	<i>SEA</i>
Interpretation 2 In this Act:	Interpretation of Part 2-1 In this Part and in Part IV:
	...
	(o) “overtime” and “overtime pay” mean:

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

...

(l.2) "public holiday pay" means an amount of money to which an employee is entitled pursuant to section 39;

(r) "public holiday pay" means an amount of money that is payable to an employee pursuant to section 2-32;

...

(a) "annual holiday pay" means an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35;

(u) "vacation pay" means an amount of money that is payable to an employee pursuant to section 2-27;

(r) "wages" means all wages, salaries, pay, commission and any compensation for labour or personal services, whether measured by time, piece or otherwise, to which an employee is entitled;

(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;

(s) "week" means the period between midnight on a Saturday and midnight on the Saturday immediately following.

(w) "week" means:

(i) for the purposes of sections 2-11, 2-12 and 2-17 to 2-20:

(A) the period between midnight on a Saturday and midnight on the following Saturday; or

(B) any other period of seven consecutive days that the employer has consistently used when determining the schedule of an employee; and

(ii) for all other purposes, a period of seven consecutive calendar days.

...

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.

Overtime hours not to be required

2-12(1) Subject to subsections (2) and (3), without the consent of an employee, no employer shall require the employee to work or to be at the employer's disposal for more than:

- (a) 44 hours in a week; or

(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.

(3) In applying subsection (2), where the total of the daily excesses differs from the weekly excess, the employer shall make payment in respect of the greater excess.

(4) The hours during which an employee is required or permitted to work or to be at the disposal of his or her employer are deemed not to include any meal break allowed to employees if notice of the meal break is given in accordance with subsection 13.1(1) and if the employee is not in fact at the disposal of his or her employer during the meal break.

(5) For the purpose of calculating the wages of an employee on an hourly basis in order that the employee may receive the wages to which he is entitled pursuant to this Act, the following rules apply:

- 1 Where the employee is paid his wages on a daily basis, the hourly wage of the employee shall be the regular wages of the employee for one day divided by the number of hours of the day during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed eight;
- 2 Where the employee is paid his wages on a weekly basis, the hourly wage of the employee shall be the regular wages of the employee for one week divided by the number of hours of the week during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed 40;
- 3 Where the employee is paid his wages on a monthly basis, the hourly wage of the employee shall be the regular wages of the employee for one month multiplied by 12 and divided by the figure received when 52 is multiplied by the number of hours of the week during which the employee is required or permitted to work or to be at the disposal

(b) in a week that contains a public holiday, 44 hours reduced by eight hours for each public holiday in that week.

(2) Subject to subsection (3), if 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, the employer shall not require the employee to work or be at the employer's disposal for more than:

(a) 44 hours in a week;

(b) in a week that contains a public holiday, 44 hours reduced by eight hours for each public holiday in that week; or

(c) the hours in a week as set out in the modified work arrangement or averaging authorization.

(3) Subsections (1) and (2) do not apply if unexpected, unusual or emergency circumstances arise.

of his employer, and in no case shall the number of hours exceed 40;

- 4 Where the employee is paid his wages on a basis other than an hourly, daily, weekly or monthly basis, the hourly wage of the employee shall be determined in accordance with the regulations.

...

Meaning of "permit any employee to work"

8 Where an employer has knowledge that an employee is working and he does not cause him to stop working, he shall be deemed to have permitted such an employee to work within the meaning of the expression "permit any employee to work" as used in sections 6 and 7.

...

Observance of public holiday

10(1) Where in any week there is a public holiday mentioned in Part VI:

(a) subsections 6(1) and (2), and section 7, shall be read with the substitution of the word "32" for the word "40" wherever it occurs in those provisions; and

(b) in calculating the time worked by an employee in any such week, no account shall be taken of any time worked by him on the public holiday or of any time during which he was at the disposal of his employer during the public holiday.

(2) Where section 9 applies and where in any week during the period of weeks prescribed by the director under section 9 there is a public holiday mentioned in Part VI, the total number of hours that the employee is required by his employer to work or to be at his disposal over the period of weeks, without being paid wages at the rate of time and one-half, shall be reduced by eight hours and the employer shall pay to the employee wages at the rate of time and one-half for each hour and part of an hour that the employee works, or that he is at the disposal of the employer, in excess of the working hours as reduced by this subsection and for the purpose of this subsection, in calculating the total number of hours worked by an employee over any such period of weeks, no account shall be taken of any time worked by him on the public holiday or of any time during which he was at the disposal of his employer during the public holiday.

Employer not to require employee to work overtime

12(1) Notwithstanding any other provision in this Act, no employer shall, without the consent of the employee, require an employee to work or to be at his disposal for more than 44 hours in any week or, in the circumstances referred to in clause 10(1)(a), 36 hours in any week, except in the case of emergency circumstances.

(2) Where an employee refuses to work or to be at the disposal of an employer contrary to the employer's requirement made under subsection (1) and where no emergency circumstances exist, no disciplinary action shall be taken against the employee by the employer.

(3) In any prosecution alleging a violation of this section, the onus shall be upon the employer to prove that an emergency existed or that the employee was discriminated against for good and sufficient other reason.

(4) For the purposes of subsections (1) and (2), "emergency circumstances" means any sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer.

Period of rest

13(1) An employer shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of one day in every seven days.

(2) Notwithstanding subsection (1), where there are more than 10 employees in any establishment, the employer shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of two consecutive days in every seven days, and one of those days is to be a Sunday wherever possible.

(3) Notwithstanding subsections (1) and (2), an establishment or class of establishments may be exempted from any of the provisions of this section by the regulations.

(4) Where the director is satisfied that subsections (1) and (2) would work a hardship on an employer or any class of employers or any of his employees, the director may grant a permit exempting the employer or class of employers from the provisions of subsection (1) or (2), upon any terms and conditions that he considers advisable.

(5) The director may at any time cancel any exemption made pursuant to subsection (4).

Required period of rest

2-13(1) Subject to subsection (2), no employer shall require or permit an employee to work or to be at the employer's disposal for periods that are scheduled so that the employee does not have a period of eight consecutive hours of rest in any day.

(2) Subsection (1) does not apply in emergency circumstances.

(3) Subject to subsections (4) to (6), an employer shall grant one day off every week to an employee who usually works or is at the disposal of the employer for 20 hours or more in a week.

(4) Subsection (3) does not apply to any prescribed workplace or prescribed category of employers or employees.

(5) In prescribed workplaces with more than 10 employees, or for prescribed categories of employees, an employer shall grant to employees in the workplace or to the category of employees two consecutive days off every week.

(6) On receipt of a written application from an employer and the employees or a representative of the employees, the director of employment standards

may:

(a) issue a written authorization exempting the employer from subsection (3); and

(b) impose any conditions that the director considers appropriate on the written authorization issued pursuant to clause (a).

Meal breaks

13.3(1) An employer shall grant to each employee who works six hours or more an unpaid meal break of at least 30 minutes within every five consecutive hours of work except:

(a) where an accident occurs, urgent work is necessary or other unforeseeable or unpreventable circumstances occur;

(b) where the director is satisfied that the employer and a majority of employees agree that the employees may:

(i) take their meal break at another time; or

(ii) forego their meal break;

(c) where the employer seeks and obtains the written consent of the trade union representing the employees;

(d) where it is not reasonable for an employee to take a meal break; or

(e) in any other case prescribed in regulations made pursuant to section 84.

(2) Where it is necessary for medical reasons, an individual employee is entitled to take a meal break at a time or times other than the time specified in subsection (1).

(3) Where an employee has worked five hours and the employer is not required to grant a meal break to an employee, the employer shall permit the employee to eat while working.

Meal breaks

2-14(1) Subject to subsections (2) and (4), an employer shall provide to an employee an unpaid meal break that is of at least 30 minutes' duration within every five consecutive hours of work.

(2) An employer is not required to grant a meal break pursuant to subsection (1):

(a) in unexpected, unusual or emergency circumstances; or

(b) if it is not reasonable for an employee to take a meal break.

(3) If the employer does not grant the meal break mentioned in subsection (1) and the employee works five or more consecutive hours, the employer shall permit an employee to eat while working.

(4) An employer shall provide to an employee an unpaid meal break at a time or times necessary for medical reasons.

...

Overtime pay

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) When calculating overtime pay, an employer:

(a) is not required to include any meal break allowed to an employee if:

(i) notice of the meal break is given in accordance with section 2-11; and

(ii) the employee is not at the disposal of the employer during the meal break;

(b) shall not take into account any time the employee works or is at the employer's disposal on a public holiday;

(c) shall reduce the time when overtime is payable by eight hours for each public holiday occurring in a week; and

(d) shall pay to the employee the greater of:

(i) the total of overtime pay required pursuant to this Subdivision that is calculated on a daily basis; and

(ii) the total of overtime pay required pursuant to this Subdivision that is calculated on a weekly basis.

Overtime pay after eight hours and 40 hours

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.

(3) Notwithstanding section 2-7 or subsections (1) and (2), in the prescribed circumstances and subject to the prescribed conditions, an employer and an employee may agree that the employee may bank overtime hours.

(4) Notwithstanding section 2-17, subsection (1) of this section and section 2-19, but subject to subsection (5), an employer shall pay an employee overtime if:

(a) the employee works, on average, fewer than 30 hours per week; and

(b) the employer requires or permits the employee to work or to be at the employer's disposal for more than eight hours in a day.

(5) If employees have a union as their bargaining agent and the employer and the union have agreed respecting the number of hours in a day or week that are to be worked before overtime is paid:

(a) subsection (4) does not apply to those employees; and

(b) the employer shall pay those employees overtime in accordance with the agreement.

Modified work arrangement

2-19(1) Subject to subsection (2), an employer shall pay an employee overtime for each hour or part of an hour in which the employer requires or permits an employee to work or to be at the employer's disposal that exceeds:

(a) the prescribed hours of work; or

(b) with respect to employees who have a union as their bargaining agent, the hours as agreed to by the employer and the union.

(2) Subsection (1) applies if the employer requires the employee to be at the employer's disposal for more than 40 hours in week.

(3) The agreement mentioned in clause (1)(b) must require the payment of overtime if the hours an employee is required or permitted to work or to be at the employer's disposal exceed on average 40 hours per week.

(4) If the agreement mentioned in clause (1)(b) does not satisfy the requirements of subsection (3), the employer shall pay overtime in accordance with section 2-18.

...

Annual holiday to which employee is entitled

30(1) Every employee to whom this Act applies is entitled:

(a) subject to clause (b), to an annual holiday of three weeks after each year of employment with any one employer;

(b) to an annual holiday of four weeks after the completion of ten years of employment with one employer and after the completion of each subsequent year of employment with that employer.

Annual vacation periods and common date

2-24(1) Every employee is entitled:

(a) subject to clause (b), to an annual vacation of three weeks after the completion of each year of employment with an employer; and

(b) to an annual vacation of four weeks after the completion of 10 years of employment with an employer and after the completion of each subsequent year of employment with that employer.

(2) An employer may use a common date for calculating vacation entitlement of all employees but only if the common date does not result in a reduction of any employee's rights pursuant to this Subdivision.

...

Remuneration payable to employee in respect of annual holiday

33(1) An employee is entitled to receive annual holiday pay in the following amounts:

(a) if the employee is entitled to an annual holiday pursuant to clause 30(1)(a), three fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday;

(b) if the employee is entitled to an

Vacation pay

2-27(1) An employee is to be paid vacation pay in the following amounts:

(a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;

(b) if the employee is entitled to an annual vacation pursuant to clause 2-

annual holiday pursuant to clause 30(1)(b), four fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday.

(1.1) With respect to an employee who is entitled to an annual holiday pursuant to section 30 but who does not take that annual holiday, the employer shall pay to the employee the employee's annual holiday pay not later than 11 months after the day on which the employee becomes entitled to the annual holiday.

(2) Where an employee takes his holiday in one continuous period, the annual holiday pay payable to the employee shall be paid to the employee by his employer during the period of fourteen days immediately preceding the commencement of the holiday period.

(3) Where an employee has given his employer notice under clause (c) of subsection (1) of section 31 that he desires to take his annual holiday in a manner other than in one continuous period, the annual holiday pay payable to the employee in respect of each of the several portions in which the employee desires to take his holidays shall be paid to the employee by his employer during the period of fourteen days immediately preceding the commencement of each portion of the holiday respectively.

(4) Where an employee has scheduled a period as an annual holiday at a time agreed to by the employer and the employer does not permit the employee to take the annual holiday as scheduled, the employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the annual holiday.

Procedure when public holiday occurs during annual holiday
34 Where one or more public holidays as defined in Part VI of this Act occur during the period of any annual holiday that an employee has been permitted by his employer to take under this Act:

- (a) the period of that annual holiday shall be increased by one working day in respect of each such public holiday; and
- (b) the employer shall pay to the employee, in addition to the annual holiday pay that the employee is entitled to receive, the wages that he is entitled to be paid for each such public holiday.

24(1)(b), four fifty seconds of the employee's wages for the year of employment preceding the entitlement to the vacation.

(2) With respect to an employee who is entitled to a vacation pursuant to section 2-24 but who does not take that vacation, the employer shall pay the employee's vacation pay not later than 11 months after the day on which the employee becomes entitled to the vacation.

(3) The employer shall pay vacation pay to the employee in an amount calculated according to the length of vacation leave taken:

- (a) at the employee's request, before the employee takes the vacation; or
- (b) on the employee's normal payday.

(4) An employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the vacation if:

- (a) the employee has scheduled a period of vacation at a time agreed to by the employer; and
- (b) the employer does not permit the employee to take the vacation as scheduled.

(5) A monetary loss mentioned in subsection (4) is deemed to be wages owing and this Part applies to the recovery of that monetary loss.

When public holiday occurs during a vacation

2-28 If one or more public holidays set out in section 2-30 occur during the period of any vacation that an employee has been permitted by the employer to take pursuant to this Part:

- (a) the period of that vacation must be increased by one working day with respect to each public holiday; and
- (b) the employer shall pay to the employee, in addition to the vacation pay that the employee is entitled to receive, the wages that the employee is entitled to be paid for each public holiday.

Termination of employment

35(1) If the employment of an employee terminates, the employer of the employee shall, within fourteen days after the effective date of termination, pay to the employee the annual holiday pay to which he or she is entitled pursuant to this Act.

(2) If the employment of an employee terminates, the employee is entitled to annual holiday pay calculated in accordance with section 33 with respect to all total wages earned by the employee with respect to which the employee has not previously been paid annual holiday pay.

(3) Subsection (2) applies whether or not an employee has completed a year of employment.

Interpretation

38 In this Part “public holiday” means New Year’s Day, Family Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving Day, Remembrance Day or Christmas Day.

Payment of vacation pay on ending of employment

2-29(1) If the employment of an employee ends, the employer shall pay to the employee the vacation pay to which the employee is entitled pursuant to this Part within 14 days after the day on which the employment ends.

(2) If the employment of an employee ends, the employee is entitled to vacation pay calculated in accordance with section 2-27 on the wages earned by the employee with respect to which the employee has not previously been paid vacation pay.

(3) Subsection (2) applies whether or not an employee has completed a year of employment.

Public holidays

2-30(1) In this section:

(a) “Family Day” means the third Monday in February;

(b) “Saskatchewan Day” means the first Monday in August.

(2) For the purposes of this Part, the following are public holidays in Saskatchewan:

(a) New Year’s Day;

(b) Family Day;

(c) Good Friday;

(d) Victoria Day;

(e) Canada Day;

(f) Saskatchewan Day;

(g) Labour Day;

(h) Thanksgiving Day;

(i) Remembrance Day;

(j) Christmas Day.

(3) In this Part, a reference to a public holiday is a reference to one of the days mentioned in subsection (2) or to a day substituted for that day in accordance with section 2-31.

...

Public holiday pay

39(1) The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an employer to any employee who does not work on that day:

(a) where the employer pays to the employee the employee's regular wages for the period that includes that day, is equal to those wages;

(b) in any other case, is the amount A calculated in accordance with the following formula:

$$A = \frac{W}{20}$$

where W is the total of the wages earned by the employee during the four weeks immediately preceding the public holiday, exclusive of overtime.

(2) The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an employer to any employee who works on that day is the total of:

(a) the amount to which the employee would be entitled pursuant to subsection (1) if the employee did not work on that day; and

(b) the amount of wages, calculated at a rate that is 1.5 times the employee's regular rate of wages, for the time worked.

(3) For the purposes of this section, where an employee takes an annual holiday during the four weeks immediately preceding a public holiday, "wages" includes the amount of annual holiday pay that is payable with respect to any annual holidays actually taken during that period.

Directors of corporation liable for wages

63(1) Notwithstanding any other provision in this Act or any provision in any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for all debts due for services performed for the corporation, not exceeding six months' wages, while they are the directors.

(1.1) For the purposes of this section, "debts due for services performed for the corporation" means all

Public holiday pay

2-32(1) An employer shall pay an employee for every public holiday an amount equal to:

(a) 5% of the employee's wages, not including overtime pay, earned in the four weeks preceding the public holiday; or

(b) an amount calculated in the prescribed manner for a prescribed category of employees.

(2) For the purposes of subsection (1), an employer shall include in the calculation of an employee's wages:

(a) vacation pay with respect to vacation the employee actually takes in the four weeks preceding the public holiday; and

(b) public holiday pay in an amount required pursuant to subsection (1) if another public holiday occurs in the four week period mentioned in clause (1)(a).

(3) If an employee works on a public holiday, an employer shall pay the employee the total of:

(a) the amount calculated in accordance with subsection (1); and

(b) 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:

(i) an amount calculated at a rate of 1.5 times the employee's hourly wage; or

(ii) an amount calculated in the prescribed manner for a prescribed category of employees.

...

Corporate directors liable for wages

2-68(1) Subject to subsection (2), notwithstanding any other provision of this Act or any other Act, the corporate directors of an employer are jointly and severally liable to an employee for all wages due and accruing due to the employee but not paid while they are corporate directors.

(2) The maximum amount of a corporate director's liability pursuant to subsection (1) to an

remuneration payable by an employer to an employee pursuant to this Act and, without limiting the generality of the foregoing, includes wages, annual holiday pay, public holiday pay and pay in lieu of notice.

employee is six months' wages of the employee.

(3) Subject to subsections (4) and (5), a corporate director's liability pursuant to this section is payable in priority to any other unsecured claim or right in the corporate director's property or assets, including any claim or right of the Crown.

(4) The payment priority set out in subsection (3) is subject to section 15.1 of *The Enforcement of Maintenance Orders Act, 1997*.

(5) A corporate director who is an employee of the corporation is not entitled to the benefit provided to employees by subsection (3).

...

Wage assessment

60(1) Without limiting the generality of section 82, in this section and in sections 61 to 62.4, "wages" includes overtime, annual holiday pay, public holiday pay, pay in lieu of notice, monetary losses described in subsection 33(4) and transportation costs described in subsection 44(2.5).

(2) The director may issue a wage assessment:

(a) against an employer where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act; or

(b) against a corporate director where the director has knowledge or has reason to believe or suspects that the corporate director is liable for wages in accordance with section 63.

(3) The director shall issue a wage assessment against an employer where:

(a) the director has served a third party demand;

(b) the third party has paid money to the director in response to the third party demand;

(c) the director has not already issued a wage assessment against the employer in accordance with subsection (2); and

(d) there is no agreement pursuant to clause 55(2)(a).

Wage assessments

2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

(2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

(a) the employer;

(b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2 68.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

(6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage

(4) Where the director has issued a wage assessment pursuant to subsection (2) or (3), the director shall cause the wage assessment to be served on the employer or corporate director named in the wage assessment and on each employee who is affected by the wage assessment.

(5) A wage assessment must:

- (a) indicate the amount claimed against the employer or corporate director;
- (b) direct the employer or corporate director to:
 - (i) pay the amount claimed within 21 days after the date of service of the wage assessment; or
 - (ii) commence an appeal pursuant to section 62; and
- (c) in the case of a wage assessment issued pursuant to subsection (3), set out the amount paid to the director by the third party.

(6) The director may, at any time, amend or revoke a wage assessment.

Decision of adjudicator

62.2(1) ... [T]he adjudicator shall:

- (a) either:
 - (i) dismiss the appeal and confirm the amount claimed in the wage assessment or confirm the decision of the director pursuant to subsection 62.4(2.1); or
 - (ii) allow the appeal and:
 - (A) vary the amount claimed in the wage assessment;
 - (B) revoke the wage assessment; or
 - (C) revoke the

assessment to be served on:

- (a) the employer or corporate director named in the wage assessment; and
- (b) each employee who is affected by the wage assessment.

(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.

...

Decision of adjudicator

4-6(1) Subject to subsections (2) to (5), the adjudicator shall:

- (a) do one of the following:
 - (i) dismiss the appeal;
 - (ii) allow the appeal;
 - (iii) vary the decision being appealed; and
 - (b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety, as the case may be, and any other party to the appeal.
- (2) If, after conducting a hearing, the adjudicator concludes that an employer or corporate

decision of the director;
and

(b) provide written reasons for the decision to the registrar of appeals.

(2) The adjudicator:

(a) may award interest at a rate prescribed in the regulations; and

(b) shall not award costs against any of the parties.

(3) On receipt of the decision from the adjudicator, the registrar of appeals shall promptly serve a copy of the decision on the director, the appellant and:

(a) on each employee who is directly affected by the decision; or

(b) where the appellant is an employee, on the employer or corporate director

director is liable to an employee or worker for wages or pay instead of notice, the amount of any award to the employee or worker is to be reduced by an amount that the adjudicator is satisfied that the employee earned or should have earned:

(a) during the period when the employer or corporate director was required to pay the employee the wages; or

(b) for the period with respect to which the employer or corporate director is required to make a payment instead of notice.

(3) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (2).

(4) If, after conducting a hearing concerned with section 2-21, the adjudicator concludes that the employer has breached section 2-21, the adjudicator may exercise the powers given to the Court of Queen's Bench pursuant to sections 31.2 to 31.5 of The Saskatchewan Human Rights Code and those sections apply, with any necessary modification, to the adjudicator and the hearing.

(5) If, after conducting a hearing concerned with section 2-42, the adjudicator concludes that the employer has breached section 2-42, the adjudicator may issue an order requiring the employer to do any or all of the following:

(a) to comply with section 2-42;

(b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;

(c) to restore the employee to his or her former position;

(d) to post the order in the workplace;

(e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.

B. ANALYSIS

[40] I have set out the various provisions of the *LSA* and *SEA* that relate to the matters at issue herein. I am satisfied that both my analysis and conclusions in this matter would be the same, regardless of which legislation applies.

[41] I start by addressing the question of the number of hours LH worked. In so doing, it bears note that LH did not appear at the hearing. His presence and testimony would have helped explain the information the Labour Standards Branch had to deal with. I draw an adverse inference from his absence.

[42] The evidence of Hansen and Bouchard was clear and consistent. Matters such as daylight, weather and camp setup make it impossible or at least most difficult for LH to be in NW Ventures' employ for more than an average of eight (8) hours a day. This alone makes LH's reported working time suspect. In summation and argument, Mr. Schmidt agreed. I do not believe the numbers. I find as a fact that LH worked no more than eight (8) hours in any given day.

[43] LH's notes suggest he worked forty-two (42) of forty-five (45) days at camp. The evidence of Hanson was that LH worked thirty-one (31) days and never more than forty (40) hours in any given week. I find that evidence to be credible. I find as a fact LH worked thirty-one (31) days and never more than forty (40) hours in any given week.

[44] The evidence of Hanson was that LH's wage was one hundred and fifty dollars (\$150.00) per day. I find that evidence to be credible. I find as a fact LH earned a total of four thousand six hundred and fifty dollars (\$4,650.00). That would entitle him to an additional two hundred and sixty-eight dollars and twenty-seven cents (\$268.27) for holiday pay.

[45] It appeared from the evidence that one of the days LH worked was a public holiday—Family Day, February 20, 2012. LH is therefore entitled to an additional two hundred and twenty-five dollars (\$225.00).

[46] In total, then, LH was entitled to be paid five thousand one hundred and forty-three dollars and twenty-seven cents (\$5,143.27). The evidence indicated NW Ventures paid LH four thousand five hundred and ninety-four dollars and twenty-one cents (\$4,594.21). I therefore find NW Ventures and Hansen must pay five hundred and forty-nine dollars and six cents (\$549.06) to LH.

Dated at Saskatoon, Saskatchewan, on October 23, 2014.



T. F. (TED) KOSKIE, B.Sc., J.D.,
ADJUDICATOR

VII. NOTICE

The parties are hereby notified of their right to appeal this decision pursuant to section 4-8 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (as amended), which reads as follows:

- 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.
- (3) A person who intends to appeal pursuant to this section shall:
- (a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and
 - (b) serve the notice of appeal on all persons mentioned in clause 4 4(1)(b) who received the notice setting the appeal or hearing.
- (4) The record of an appeal is to consist of the following:
- (a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;
 - (b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;
 - (c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;
 - (d) any exhibits filed before the adjudicator;
 - (e) the written decision of the adjudicator;
 - (f) the notice of appeal to the board;
 - (g) any other material that the board may require to properly consider the appeal.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.
- (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.