

DECISION OF ADJUDICATOR

IN THE MATTER OF A HEARING – LRB File No. 138-14

PURSUANT TO Part IV of *The Saskatchewan Employment Act*

In respect of a matter advanced pursuant to Sections 62.1 and 62.2

*THE SASKATCHEWAN LABOUR STANDARDS ACT, RSS 1978 (Repealed)*

C L-1 (as amended)

**COMPLAINANT:** James Bueckert

**(Employee)** Represented by: Shelley Stretch

Labour Standards Officer

**RESPONDENTS:** Geransky Brothers Construction Ltd.

**(Employer)** and Dennis Geransky, Director

Represented by: Dennis Geransky, President

of Geransky Brothers Construction Ltd.

**ADJUDICATOR:** *Maria Lynn Freeland, BA, JD, Mediator, LLM (Candidate)*

**PLACE OF HEARING:** Saskatoon, SK.

**DATE OF HEARING:** September 10, 2014

**DATE OF DECISION:** October 6, 2014

## DECISION OF THE ADJUDICATOR

### 1. INTRODUCTION

This labour adjudication hearing was conducted on September 10, 2014 in Boardroom 10.1, Sturdy Stone Centre Building in Saskatoon, SK pursuant to

*The Saskatchewan Employment Act.*

The Respondent (Employer) Geransky Brothers Construction Ltd. (GBCL) owned and operated a construction business in Martensville, SK.

The complainant (Employee) James Bueckert was employed as a welder for G.B.C.L. commencing June 6, 2007 and concluding November 13, 2013. Mr. Bueckert also had a mobile welding business called "CRAZYJ'S". This business did mobile welding for G.B.C.L. on a contract bases. This was separate and apart from the shop welding Mr. Bueckert did as an employee for GBCL. The reason for this contractual arrangement was because GBCL did not have a mobile welder to go offsite welding and CRAZYJ'S did have a mobile welder.

The employee – employer relationship ended on November 13, 2013. The Vice President in Charge of Operations, Ryan Geransky had been "tipped off" 2 days earlier by a coworker of Mr. Bueckert that the coworker suspected that Mr. Bueckert was taking welding supplies from G.B.C.L. for CRAZYJ'S offsite welding operations.

GBCL had a video surveillance system that monitored activity of the shop from the front office. The company was "up front" with their employees of the existence of the video surveillance system. After receiving the information regarding possible theft of welding supplies, Ryan Geransky reviewed the video surveillance tapes. The tapes showed Mr. Bueckert taking 2 rolls of flux core welding wire, removing the packaging, disposing the packaging in the disposal area of the work bay, then loading the 2 rolls of meg wire onto Mr. Bueckert's personal welding truck.

James Bueckert testified that on the last day of employment, he was called into Ryan Geransky's office. Ryan Geransky said he saw James Bueckert taking company supplies and placing them on his personal truck. This activity was recorded by the video surveillance system in place at the company. James Bueckert asked if he was being accused of stealing. Ryan Geransky replied "Yes". James Bueckert testified that he then got mad, stormed out and returned with 2 rolls of wire. James Bueckert said he then "took off" and went home. He returned later that day to retrieve his tools. He did not work at GBCL again nor do any mobile contracting work for the company.

## 2. PRELIMINARY ISSUES

a) It was agreed between the parties that since this event occurred on November 13, 2013 the *Labour Standards Act* was the legislation applicable in this case notwithstanding that it has been replaced by the *Saskatchewan Employment Act*.

### b) PARTICIPANTS

The following parties participated in the adjudication:

#### a) For the Employee

James Bueckert, employee

Sharmon Trimble, wife of employee and “bookkeeper/Accountant” for CRAZYJ’S Custom Paint and Autobody

Shelley Stretch, Labour Standards Officer and representative for the employee.

#### b) For the Employer

Dennis Geransky, “President”, Geransky Brothers Construction Ltd., and representative for the employee

Ryan Gerasnky, Vice President for GBCL in charge of “operations” for the business.

Geoff Brand, employee of GBCL in charge of “Safety and Security”

#### c) Maria Lynn Freeland, Labour Adjudicator

## 3. THE DISPUTE

The issues to be determined are as follows:

a) Did the employee James Bueckert “quit” his job on November 13, 2013 by leaving the workplace returning later that day to pick up his personal tools and not returning to work thereafter?

b) Was James Bueckert “fired”?

c) If James Bueckert was fired on the basis of theft, is this a just cause for dismissal?

d) Was the employee “laid off” due to shortage of work?

#### 4. THE FACTS

a) Evidence of the Employee James Bueckert

James Bueckert testified that he was employed by GBCL for approximately 5 ½ years from November 30, 2007 to June 6, 2013. He started helping with the “crusher”. He later moved into the shop as a welder. He also assisted in the shop with mechanical jobs as well as “any other jobs that needed to be done including painting autobody.”

In addition to being an employee for GBCL, Mr. Bueckert contracted for offsite welding through his personal mobile welding company called “CRAZYJ’S”. He started welding deck piles and adjustable screw plates onto grade beam. This was offsite and completed by Mr. Bueckert in his capacity as owner of CRAZYJ’S, not in his position as an employee of GBCL. The reason for this arrangement was because GBCL did not have a mobile welder.

The mobile welding contract started in approximately November, 2012. There was no written agreement between the parties, but only a verbal agreement between James Bueckert and Ryan Geransky. According to James Bueckert the agreed upon price was \$110 per hour plus \$0.80 per kilometer. Sharmon Trimble, spouse of the employee testified that she produced a price list providing for 2 payment options (Exhibit E.1, Document #3).

James Bueckert testified that on the last day of employment, he was called into Ryan Geransky’s office. Ryan Geransky said he saw James Bueckert taking company supplies and placing them on his personal truck. This activity was recorded by the video surveillance system in place at the company. James Bueckert asked if he was being accused of stealing. Ryan Geransky replied “Yes”. James Bueckert testified that he then got mad, stormed out and returned with the 2 rolls of wire. James Bueckert said he then “took off” and went home. He returned later that day to retrieve his tools. He did not work at GBCL again nor do any mobile contracting work for the company.

b) Evidence of the Employer Geransky Brothers Construction Ltd.

Ryan Geransky was the witness for the employer. He has been with the company for 11 years. He is currently Vice President in charge of operations assisting to oversee all aspects of the company. The witness confirmed the evidence of the employee with respect to length of service duties as an employee and the existence of the offsite contractual arrangements for mobile welding. The witness, however did not agree to the terms of the contractual mobile welding agreements. Ryan Geransky testified that there was never an agreement for the company to provide welding rods or flux core welding wire to Mr. Bueckert for his mobile welding business. Ryan Geransky also disagreed with the 80 cents per km travel expense.

Two days prior to the office confrontation, Ryan Geransky was “tipped off” by a co-worker of Mr. Bueckert regarding stolen materials. The co-worker advised that “I wouldn’t doubt that you are supplying the welding gear for his (James Bueckert) mobile welder.”

As a result of this information Ryan Geransky reviewed the video surveillance tapes of the shop activity. The existence of this system was well known by the employees. The tapes showed James Bueckert move 2 boxes of flux core welding wire to the work bench. The witness testified there was a very good viewing point to monitor this activity on surveillance. Ryan Geransky testified that he viewed James Bueckert unpacking the flux core welding wire, dispose of the packaging in the work bay disposal then load the 2 rolls of wire onto James Bueckert’s personal welding truck.

Ryan Geransky testified that there never was any verbal conversation or written agreement between the parties that would allow James to remove this material for his personal subcontracting mobile welding business. The wire was owned by the company. At no time did James Bueckert come forward to request to purchase the materials. Ryan Geransky talked to both the shop foreman and parts person to ask if James Bueckert reported taking the welding materials. Both parties replied “NO”.

Prior to the incident regarding the removal of wire, GBCL had intended to lay off Mr. Bueckert due to a shortage of work. (Exhibit R-1). This letter, however, was never provided to Mr. Bueckert due to the intervening events regarding removal of the wire and the subsequent office confrontation and actions of the parties.

## **5. CONCLUSION**

Based on the evidence given at the adjudication hearing, it is my conclusion that Mr. Bueckert quit his job after being accused of theft.

I find that once James Bueckert received allegation of theft he “quit” prior to a likely “dismissal” or layoff.

The employer had a video surveillance tape showing the employee taking 2 rolls wire, unwrapping them, disposing of the packaging in the bay and putting the 2 rolls on his truck. He was not authorized to do so. He had not made any arrangements to purchase these items. Upon being confronted with the allegation of theft by Ryan Garansky, Vice President in charge of operations, Mr. Bueckert acknowledged taking the 2 rolls of wire, went to his truck and returned the material. He left the premises, returned later that day to retrieve his tools, subsequently returned a pair of vice grips belonging to the company and never reported to work thereafter as an employee nor have any dealings with the company as a contractor.

This conclusion that the employee “quit” his employment is based on the evidence that after being accused of stealing 2 rolls of flux core welding wire (approximate total value of \$280.00), the employee returned the 2 rolls of wire to the employer, left his place of employment, returned later to retrieve his personal tools and never reported to work again. Events occurred quickly. The employee testified that he was “hot” and “stormed out”.

The evidence of both parties was consistent regarding these events.

Given the conclusion that Mr. Bueckert quit his employment, it is not necessary to make a determination on issues #2, 3 and 4.

The parties have the right to appeal the decision of the adjudicator to the LABOUR RELATIONS BOARD pursuant to ***THE SASKATCHEWAN EMPLOYMENT ACT***.

Dated at the City of Saskatoon, this 6<sup>th</sup> day of October, 2014.

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ADJUDICATOR – Maria Lynn Freeland, BA, JD, LLM (Candidate), Mediator

## **LIST OF EXHIBITS**

Exhibit E-1: Duotang consisting of 6 tabbed documents:

- 1) Formal Complaint Form
- 2) Record of Employment
- 3) Pricelist done by Sharmon Trimble
- 4) *Havens V. Joha Watson Ltd*, 1999 CanLII5965(65 (BC SC))
- 5) Gasless wire welding is a breeze
- 6) Section 43 and 44(1) of the *Labour Standards Act*

E-2: 2 pages of copies of Invoices from CRAZY'J'S to GBCL consisting of 4 invoices per page for a total of 8 invoices

E-3: Document titled "Employment Standards Inspection Summary" (2 pages)

E-4: Block 16, Reasoning for issuing this ROE indicating code "M" represents dismissal

R-1: Letter dated November 27, 2013 to James Beuckert from Crystal Regnier, Office Manager at GBCL  
(not mailed or delivered to James Beuckert) regarding layoff of James Beuckert

R-2: Letter from Crystal Regnier to Danielle(Blue Cross) indicating cause of termination as "quits"

R-3: ROE Code

## **LIST OF WRITTEN SUBMISSIONS**

E-5: Written Argument on behalf of James Bueckert

R-4: Written Submission on behalf of GBCL dated September 22, 2013 by Geoffrey L. Brand, Safety  
Manager

E-6: Rebuttal to Summation of GBCS on behalf of J. B by Shelly Stretch, Labour Standards Office dated  
September 26, 2014 by Geoffrey L. Brand, Safety Manager

R-5: Reply of GBCL to written submissions on behalf of James Bueckert dated September 26, 2014 by  
Geoffrey L. Brand, Safety Manager

The parties are hereby notified of their right to appeal this decision pursuant to section 4.8 of *The Saskatchewan Employment Act*.

**Right to Appeal Adjudicator's Decision to the Board**

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

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

(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 director of occupational health and safety respecting the matter that is the subject of 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.