

DECISION OF ADJUDICATOR

IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTION 2-75 AND 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT



COMPLAINANTS:

Volodymyr Pastukh, 91-1302 Windsor Street, Saskatoon, SK S7K 0Z2;
Sergii Martynovskyi, 303C – 3110 – 33rd Street, Saskatoon, SK S7L 6K4;
Mohamed Omer, 204 – 403 Avenue P South, Saskatoon, SK S7M 2W5; and
Oleksandr Dzhura, 2418 Kelvin Avenue, Saskatoon, SK S7J 0T5

Represented by Dale Schmidt, Employment Standards Officer, 72 Smith Street East,
Yorkton, SK S3N 2Y4.

RESPONDENTS:

Al-Ro Acrylic Stucco Ltd., 502 C 47th Street East, Saskatoon, SK, S7K 4L3; and
Robert Mellau Being a Director of Al-Ro Acrylic Stucco Ltd., 1419 Shepherd Lane,
Saskatoon, SK, S7W 0B3

Represented by Dean Mattison, 489-2nd Avenue North, Saskatoon, SK S7K 2C1.

Date of Hearing: Sept. 30, Oct.1, 2014

Place of Hearing: 8th Floor Boardroom
Sturdy Stone Building
122 Third Avenue North
Saskatoon, Saskatchewan

Introduction:

The respondents were represented by Dean Mattison. I shall refer to Al-Ro Acrylic Stucco Ltd., as 'Al-Ro'. The complainants were represented by Dale Schmidt.

Wage Assessment # 6720 in the total amount of \$20,025.20 was issued July 23, 2014 It directs the employer to pay wages to the following employees, in the following amounts:
Volodymyr Pastukh - \$4,617.04;
Sergii Martynovskyi - \$3,144.85;
Mohamed Omer - \$4,128.49; and
Oleksandr Dzhura - \$8,134.82.

The employer appeals. At the beginning of the hearing, Mr. Mattison admitted that Al-Ro Acrylic Stucco Ltd. is an existing Saskatchewan corporation and that Robert Mellau is and at all relevant times was the sole director of that corporation.

Mr. Mattison also indicated the employer had no preliminary objections as to jurisdiction other than as indicated in his letter of appeal, dated August 5, 2014. This letter of appeal indicates six grounds of appeal. They are:

1. The Notice of Assessment is not in a proper form and is not signed by the director of employment standards;
2. The names of the employees set out in the Notice of Assessment are incorrect;
3. The appeal process is flawed since the party to which the notice of appeal is being sent is the same party who has issued the Notice of Assessment;
4. The amounts set out in the Notice of Assessment, as being owed to the employees, are incorrect;
5. Certain of the named employees were not entitled to overtime pay in the amounts claimed or at all;
6. With respect to the claim of Mohammed Omer, the employer is entitled to deduct the amount of the goods purchased by Mr. Omer from the employer pursuant to Section 2-36(2)(f) of *The Saskatchewan Employment Act*.

At the conclusion of the hearing, Mr. Mattison indicated that in light of the evidence presented, the employer was abandoning ground #2, so I shall not refer to this ground in my reasons.

Facts and Decision:

There are four employees involved in this matter. Three of the employees were present and testified. These were: Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura. In addition, Robert Mellau and Mario Stanculescu testified. Robert Mellau is the president

and sole director of the employer corporation. Mr. Stanculescu is, and at the relevant times was, employed as the operations manager of Al-Ro. The issues raised with respect to three of the employees, Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura are reasonably similar, and will also address issues involving Mr. Omer, except for issues related to the employer making deductions from Mr. Omer's wages related to the purchase of a vehicle. This relates to Mr. Mattison's 6th ground of appeal. I shall deal with this issue first.

Mohamed Omer

Mr. Omer was not present at the hearing, and so did not give evidence. Both Mr. Mellau and Mr. Stanculescu testified with respect to Mr. Omer. In addition there are two issues involving Mr. Omer. One is the matter of whether deductions totaling \$2,500 representing partial payment for a truck purchased from Al-Ro by Mr. Omer were authorized. There is no doubt that had the deduction been authorized in writing by Mr. Omer, the deductions would be permissible.

Mr. Mellau testified that Mr. Omer worked for Al-Ro twice. The first pay period of his initial employment was June 25 to July 7, 2012. Mr. Omer was then incarcerated for a period, and returned to work for Al-Ro early in 2013. Mr. Mellau couldn't remember if it was January, February or March. In any event, the Wage Assessment relates only to this second period of employment. Mr. Mellau testified that Mr. Omer had some difficulty getting to work on a regular basis, and Al-Ro agreed to sell Mr. Omer a company truck for \$3,000. The company signed a bill of sale (Exhibit ER-10), but held on to it. Mr. Mellau testified that the company had sold vehicles to employees before, and didn't always get paid the entire purchase price. As a result they determined that they would hold on to the bill of sale until the vehicle was fully paid for by the employee. This is what was happening in Mr. Omer's situation. Prior to paying the full purchase price, Mr. Omer was apparently pulled over in North Battleford, and as a result the vehicle was impounded. As far as Mr. Mellau is aware the vehicle remains impounded in North Battleford. I form no conclusion as to whether or not property in the truck transferred to Mr. Omer, as it is not relevant for the purpose of this hearing.

Mr. Stanculescu testified that he was the person actually dealing with Mr. Omer in the truck sale. He testified that Mr. Omer verbally promised to pay \$500.00 payments out of every pay cheque. Mr. Omer's employment ended before the vehicle was fully paid for. The deductions made related to the vehicle totaled \$2,500 and the vehicle's purchase price was \$3,000. At the conclusion of the hearing, Mr. Schmidt agreed to reduce the Wage Assessment as it relates to Mr. Omer, by \$2,500 as a result of these funds being deducted for the purchase of a company vehicle, with Mr. Omer's consent. Therefore the total remaining amount of the Wage Assessment in favour of Mr. Omer is \$1,628.49. This disposes of Mr. Mattison's 6th ground of appeal.

The remaining issues related to Mr. Omer relate to the accuracy of his time sheets. Mr. Stanculescu testified that Mr. Omer's time sheets looked like 'a used napkin'. These time

sheets are Exhibit ER-11. It is true that the time sheets are messy. Rather than being signed in a signature box provided for each entry, a signature was often written vertically purportedly to indicate all entries on the page were being signed for with a single signature. Some of the time sheets were clearly missing supervisor or employee signatures. However, the fact remains that these time sheets were filled out – albeit poorly. They appear to have been accepted by Mr. Omer’s supervisor, who usually (but not always) also signed them. They were turned in to Al-Ro’s accounting/payroll personnel who accepted every one of them, apparently without question. Robert Mellau and Mario Stanculescu both testified that they did not personally examine the time sheets before they were acted on by issuing the employee’s pay cheque based on the time sheets. I have no doubt that if either Robert Mellau or Mario Stanculescu had seen the sorry nature of these time sheets, they would have corrected the situation. That being said, neither Robert Mellau nor Mario Stanculescu could testify to any specific inaccuracies in the timesheets. There is no doubt that they both believe the timesheets contain inaccuracies. Their beliefs however appear to be based on their view of Mr. Omer as an unreliable employee, and the very messy and incomplete way the timesheets were filled in. The employer however created the time sheets and the approval mechanism for them. The employer determined that wages should be paid based on how the timesheets, which are Exhibit ER-11, were completed. In the absence of any evidence pointing to specific inaccuracies in the time sheets, I am not able to overturn the Wage Assessment. There is no such evidence in this instance.

This brings me to the last issue with respect to Mr. Omer, and that is overtime. Robert Mellau was candid in his admission that Al-Ro did not pay overtime. He testified that he has never heard of any company in his industry paying overtime, and that the only difference between his company and the others is that he was the one who got caught. Regardless of what other companies do or do not pay, the legislation requires overtime be paid at time and a half. There was no serious argument put forward by the employer for its failure to do so. Neither Mr. Mellau nor Mr. Stanculescu considered Mr. Omer to be a manager. Happily Mr. Mellau indicated that the employer now has an equalization of hours permit in place, and this permit seems to be working well for both the employer and the employees.

In the result, I uphold the Wage Assessment in favour of Mr. Omer in the amount of \$1,628.49.

Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura

Robert Mellau and Mario Stanculescu testified in English. Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura testified and answered questions in Ukrainian. Their words were translated by Serhij Koroliuk, a translator arranged for by the Labour Relations Board. While Robert Mellau and Mario Stanculescu were testifying, Mr. Koroliuk would explain the questions and answers to Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura. Mr. Schmidt called Oleksandr Dzhura as his first witness. Mr. Dzhura

began explaining his job duties and how the time cards were filled out, when Mr. Mattison objected to the interpreter. Mr. Mattison objected saying he did not believe the interpreter was unbiased, and that the answers repeated by the interpreter did not match the dialogue between the interpreter and the witness. As a result Mr. Mattison requested an adjournment until a different interpreter could be located. I refused to adjourn, and indicated that I would take Mr. Mattison's objection under advisement. My conclusion related to this objection is that it is without any basis in fact. I observed no indication of bias, nor did I observe that the answers repeated by the interpreter did not match the dialogue between the interpreter and the witness. Of course I do not understand Ukrainian, but my observation is simply that it was not evident that the translator was doing anything untoward. Mr. Mattison made only the bare allegation, without pointing to any evidence the interpreter did or said anything improper. In my view Mr. Koroliuk conducted himself very professionally throughout the hearing. I conclude that there is no basis for Mr. Mattison's objection to the interpreter. However, in case I am wrong, I shall indicate when I rely on evidence provided by Volodymyr Pastukh, Sergii Martynovskyi, or Oleksandr Dzhura, through the interpreter. In my view, I am able to reach the same conclusions relying only on the evidence of Robert Mellau and Mario Stanculescu and the exhibits filed.

Mr. Mattison, on behalf of the employer, alleges that there was a conspiracy involving employees including Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura, together with a former manager (foreman and supervisor) and current competitor named Roman Babi. The allegation is that these employees were effectively encouraged to make this claim in order to hurt the employer, and presumably aid Mr. Babi. I mention this allegation only because it was made by Mr. Mattison, and appears to have been very important to the employer. Both Robert Mellau and Mario Stanculescu made it clear in their testimony that they believed these three former employees had been encouraged by Mr. Babi to make this claim. The also made it clear they believed all three former employees left Al-Ro to go and work with Mr. Babi. In his translated testimony, Oleksandr Dzhura indicated that he did indeed join Mr. Babi approximately five days after leaving Al-Ro. In their translated testimony, both Volodymyr Pastukh and Sergii Martynovskyi indicated that they did not work with Mr. Babi after leaving Al-Ro. In my view, the employer's allegation, even if true, is irrelevant in these proceedings. These employees, like others, are free to work for whomever they please, and are free to pursue their claims for wages they are entitled to be paid under *The Saskatchewan Employment Act*. In this matter any such conspiracy is certainly unproven as neither Robert Mellau nor Mario Stanculescu was able to provide any evidence whatsoever of a conspiracy, and each of the employees who testified denied any such conspiracy. The real issues in this matter, in addition to procedural matters raised by Mr. Mattison, are whether the time sheets are accurate, and whether overtime was paid when required by the legislation.

Robert Mellau testified as to how Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura came to Canada from the Ukraine. The employer hires many workers from

overseas through the Saskatchewan Immigrant Nominee Program. Mr. Mellau travelled to Kiev to try and recruit 28 workers. It was not the first time he had travelled abroad to recruit employees. An organization called the International Labour Centre prepared two page English language summaries of each perspective employee. Mr. Mellau refers to these summaries as the employees' resumes. They were filed as Exhibits ER-1 (Pastukh), ER-4 (Dzhura) and ER-7 (Martynovskyi).

Mr. Mellau expressed great frustration in the tendency for workers to leave their employment with Al-Ro, once the employee received permanent residence status in Canada. Mr. Mellau testified that he believed the resumes of Volodymyr Pastukh and Sergii Martynovskyi claimed greater skills than the employees had. No elements of this claim were made out. Mr. Mellau said that Mr. Pastukh's resume 'had all the bells and whistles'. He also said that once Mr. Pastukh arrived at Al-Ro, 'it was evident that he (Pastukh) did not have all the experience or skills he claimed' (regarding plaster and stucco). Like many of the employer's allegations, these somewhat vague allegations of 'resume padding' are simply irrelevant. I note that the employees in their translated testimony deny that they padded their resumes. They say that the resumes were prepared by the International Labour Centre in English based on accurate information the employees provided in Ukrainian. I make no finding on the accuracy of the resumes, other than to conclude that the employer did not adduce evidence of any specific inaccuracy in any of the resumes, and to conclude that the resumes are not relevant to the issues before me, which are the accuracy of the times sheets and the payment of overtime.

I feel it necessary to comment on a purported contract term, which also appeared to be important to the employer. Each of Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura signed a contract with Al-Ro. These contracts were entered as Exhibits ER-2 (Pastukh), ER-5 (Dzhura) and ER-8 (Martynovskyi). Although the copies of the contracts entered as exhibits were not signed by the employees, the employees, in their translated testimony, did not dispute agreeing to the terms. A provision in each contract [clause IV d) in Exhibit ER-2, and clause IV c) in Exhibits ER-5 and ER-8] reads as follows: 'Al-Ro prefers that should you decide to resign as an employee that you give at least 30 days prior written notice.' This provision clearly imposes no obligation whatsoever on any of the employees. It is nothing more than a statement of the employer's preference. And, like many of matters raised by the employer, the issue is simply not relevant to the appeal from Wage Assessment #6720.

Mr. Mellau testified that the normal procedure for filling out time sheets was for the employee to fill out and sign the time sheet daily, and for the supervisor to also sign each time sheet daily. Copies of the time sheets were filed as Exhibits ER-3 (Pastukh), ER-6 (Dzhura) and ER-9 (Martynovskyi). It is clear from viewing copies of the time sheets that the heading 'work description' was not filled out. Both Mr. Mellau and Mr. Stanculescu provided examples of why it would be better for the employer to have this work description completed. Mr. Stanculescu testified that he uses this sort of information to get a complete picture of the where the company makes a profit and where it incurs

losses. Such information would allow for better tracking and allocation of costs and allow Mr. Stanculescu to be more precise in determining future bids. Once again, this is irrelevant to the issues before me. Neither Mr. Mellau nor Mr. Stanculescu provided any evidence that employees were instructed that they were actually required to complete this section of the time. In his translated testimony, Mr. Dzhura swore that he and the other employees present were instructed not to fill in the 'Job Description' aspect of the time sheet, because their English was not strong enough to provide such a description. I accept this as accurate, but of course the employees remain entitled to be paid for the hours worked even if they failed to fully complete their time sheets. I have no doubt whatsoever that Mr. Stanculescu is entitled to insist on employees providing all sorts of information about the jobs they work on. Mr. Stanculescu is clearly an expert Operations Manager, and no doubt such information is valuable in his hands. Had the employer had a proper system in place to ensure it received the information it now deems necessary, employees who did not comply could no doubt be disciplined. The fact remains however that both Mr. Stanculescu and Mr. Mellau testified that they did not review the time sheets before they went to the bookkeeper. As long as a foreman signed the time sheets, the bookkeeper used the hours recorded to determine the employees' wages. The purpose of the time sheets for this hearing is simply to determine the number of hours each employee worked. The time sheets as filled out are sufficient for this purpose.

The employer abandoned its claim that Volodymyr Pastukh and Sergii Martynovskyi were not entitled to overtime pay because they were managers. They maintained this claim insofar as Oleksandr Dzhura was concerned. Mr. Dzhura was clearly an excellent employee. Mr. Mellau testified that Mr. Dzhura's resume was not inflated. Mr. Mellau was clearly impressed with the quality of Mr. Dzhura's work. Mr. Mellau says as a result of his high quality of work, Mr. Dzhura was made a manager. There is no evidence that Mr. Dzhura was actually a manager. There is no new contract to replace Exhibit ER-5. There is no internal document outlining any change in responsibilities. There is simply the employer's evidence (which I accept as accurate) that Mr. Dzhura was a trusted and responsible individual who possesses a high level of skills and a good work ethic. As a result Mr. Dzhura was given some additional responsibilities such as signing other employee's time sheets at one job site (identified as the Degeer site) and being in charge of Quality Assurance on another large job (identified as the Marriott project). In cross-examination, Mr. Mellau confirmed that Mr. Dzhura did not hire other employees, could not fire other employees, and did not make more money than the other employees doing the same type of work. The only managerial type duty the employer entered into evidence was that Mr. Dzhura scheduled some of the work and employees on the job site, and to use Mr. Mellau's phrase, would act as the supervisor, Mr. Babi's 'right hand man' at the job site. These duties do not make him a manager, and no evidence of other duties was produced. I conclude that Mr. Dzhura was not a manager and therefore was entitled to be paid overtime rates for overtime work.

Mr. Mellau and Mr. Stanculescu both testified as to what appears to be the major cause of their belief that time sheets at many of Al-Ro's jobs were inflated. Mr. Mellau explained

that the basic formula the company looks for in its jobs is that of the total contact price the company expects that about 1/3 will go to labour, about 1/3 will go to materials and about 1/3 will be a surplus used to fund other expenses, and of course earn some profit. Mr. Stanculescu explained that the industry standard is that on average every 100 hours of worker time should produce 1,200 square feet of stucco coverage. Of course this is an average, and expectations would have to be adjusted for specific jobs. Mr. Stanculescu, as Al-Ro's Operations Manager studies the actual costs on Al-Ro's jobs. Exhibits ER-13 and ER-14 show two jobs where the labour portion of expense was 40% and 47% respectively. He contrasted this with ER-15 which he said was a more typical job, and where labour was 23%. He testified that Volodymyr Pastukh, Sergii Martynovskyi, and Oleksandr Dzhura all worked on the jobs represented in ER-13 and ER-14, and that none of them worked on the job represented by ER-15. While this type of analysis may serve the company very well as a way to discover inefficiencies, it does not point to a single inaccuracy in any of the time sheets.

The employer alleged that the regular start and end times recorded on the time sheets indicate that the employees were falsifying the times they started and stopped work. In addition, the employer alleged that at times some employees would not take their two authorized 15 minute coffee breaks, and would instead leave 30 minutes early. In his translated testimony, Mr. Dzhura testified that crews would always take a half hour unpaid lunch break. In addition, for most of the relevant period they would take two 15 minute coffee breaks. Mr. Mellau testified that these were permitted most of the time. At one point he removed the 15 minute breaks for all employees, but later reinstated them. Mr. Dzhura testified that the crews he was with adhered to these break times within a five minute margin – the expression the translator used was 'plus or minus five minutes'. Mr. Dzhura testified that crews would have an agreed start and stop time – for example an 8:00 am start and a 6:00 pm stop time. Individuals on the crew may arrange a different time, for example if one of the crew had an English lesson at 5:00, they would end earlier. Mr. Dzhura testified that he personally would be at the work site about 15 minutes before the others. He had a key to open doors, so if the crew was to start at 7:00 am, Mr. Dzhura would arrive by 6:45. He also said he was in the habit of being the last one at the job site, and so typically left 10-15 minutes after the others. So Mr. Dzhura's evidence, which I whole heartedly accept, was that rather than over-reporting his work hours, he consistently slightly under-reported his work hours.

Mr. Pastukh testified in this respect that he rounded the time he arrived at the job site forward, so that if he was to start at 8:00, and arrived at 7:45, he would record 8:00 am as his start time. If he was ready to start work at 8:20, he would record 8:30 and so on. Mr. Pastukh testified that he has 25 years experience in construction. He maintained his own daily record of the times he worked and then transposed the hours onto the time sheets. He testified that he did not come to work late, and had no complaints from his foreman regarding his hours. Mr. Pastukh quite candidly testified that on occasion the crew would not take the two authorized 15 minute coffee breaks. The foreman would then instruct the employees to add the two 15 minute coffee breaks to the time sheet. In other words,

as Mr. Stanculescu alleged, at times employees did add the break times to their time sheets. It is worth noting that the only actual evidence of this comes from the employees themselves. They indicate this practice was authorized by the employer's foreman, and I accept that as fact.

Mr. Martynovsky also testified that he kept his own personal daily record of the hours he worked. He candidly testified that he transposed this information to the company time sheets once every two weeks. When asked by Mr. Mattison if this was a common practice amongst the crew, Mr. Martynovsky testified that he know that some others transposed the hours every two weeks, and others did it more frequently.

I found all five witnesses to be truthful in this matter. The three employees impressed me with their evidence given through the translator. I accept their evidence as truthful throughout. However, as Mr. Mattison objected to the work of the translator, an objection I find to be completely without merit, I want to be absolutely clear that I reach the same conclusions based solely on the evidence of Mr. Mellau and Mr. Stanculescu. For the sake of clarity, I want to state that I also found Mr. Mellau and Mr. Stanculescu to be truthful, candid witnesses. It may seem strange to say that all the witnesses in a dispute impressed me as honest and candid, but that is the case. I believe this dispute is caused by the employer's lack of understanding that in order to vary the Wage Assessment, it is necessary for some evidence to be entered which would call into question the facts upon which the Wage Assessment was based, or for some legal argument to be made which would show an error in the Wage Assessment or the process by which it was arrived at.

Conclusion:

I have indicated my conclusion that Mr. Mattison's objection to the translator was without merit. In addition, I have attempted to clearly spell out how I reached the same conclusions without relying on evidence given by the three employees.

I now refer back to Mr. Mattison's original six grounds of appeal, and address each one in turn. The original grounds of appeal are:

1. The Notice of Assessment is not in a proper form and is not signed by the director of employment standards;

I was referred to no case law or other authority to indicate what Mr. Mattison believed the 'proper form' of a Wage Assessment is, and how this Wage Assessment varies from that form. Mr. Mattison did refer me to section 2-74 of *The Employment Standards Act*, which provides authority for the Director of Employment Standards to issue a Wage Assessment. Mr. Mattison indicated that he did not believe the signature on Wage Assessment # 6720 to be that of the Director of Employment Standards. I take him at his word that it is not. I am unaware of any provision however which requires the Director of

Employment Standards to personally sign the Wage Assessment, and so I decline to find any fault in the Wage Assessment based on the signature.

In addition, Mr. Mattison argued that *The Employment Standards Act* section 2-74 (2) authorizes the Director of Employment Standards to issue a Wage Assessment where he or she “has knowledge or has reasonable grounds to believe or suspects” that an employer has not or will not pay wages. Section 2-74 (3) uses similar language with respect to directors’ liability. Mr. Mattison’s objection in this respect is that the Wage Assessment says ‘TAKE NOTICE that, pursuant to Section 2-74 of *The Employment Standards Act*, the Director of Labour Standards has determined that you have failed (or are likely to fail) to pay wages...’. When Mr. Mattison made this argument I indicated to him that I thought the language in the Wage Assessment was stronger than the language in *The Employment Standards Act*. In other words *The Employment Standards Act* requires that the Director has reasonable grounds to believe, or suspects the wages have not or will not be paid. In the Wage Assessment, the Director refers to a determination having been made, which in my view clearly includes the Director having reasonable grounds to believe, or suspecting that wages have not or will not be paid. I conclude this ground of appeal is without merit.

2. The names of the employees set out in the Notice of Assessment are incorrect;

Mr. Mattison abandoned this ground of appeal at the hearing.

3. The appeal process is flawed since the party to which the notice of appeal is being sent is the same party who has issued the Notice of Assessment;

Mr. Mattison did not point me to any authority which would indicate that I have the jurisdiction to overturn a Wage Assessment simply because the Wage Assessment is signed by the Director of Labour Standards (or more correctly in this case, apparently by someone on that official’s behalf) and the appeal from the Wage Assessment is directed to the Director of Employment Standards. The appeal itself conducted under an adjudicator appointed pursuant to *The Saskatchewan Employment Act*, with a further appeal to the Labour Relations Board. I do not find the process flawed.

4. The amounts set out in the Notice of Assessment, as being owed to the employees, are incorrect;

As explained in my reasons, there was no evidence of any errors in the calculations leading to the Wage Assessment in favour of Volodymyr Pastukh, Sergii Martynovskyi, or Oleksandr Dzhura. In the case of Mohamed Omer, as explained in my reasons, I do find that the Wage Assessment should be decreased by \$2,500.00 to a figure of \$1,628.49.

5. Certain of the named employees were not entitled to overtime pay in the amounts claimed or at all;

As explained in my reasons, Mr. Mattison abandoned this ground of appeal insofar as Volodymyr Pastukh, Sergii Martynovskyi, and Mohamed Omer were concerned. As explained in my reasons, I find that there is no evidence that Mr. Dzhura was actually a manager and in fact that the evidence establishes that he was an employee entitled to overtime pay for overtime work.

6. With respect to the claim of Mohammed Omer, the employer is entitled to deduct the amount of the goods purchased by Mr. Omer from the employer pursuant to Section 2-36(2)(f) of *The Saskatchewan Employment Act*.

As indicated under #4, and explained in my reasons in the case of Mohamed Omer, I find that the Wage Assessment should be decreased by \$2,500.00 to a figure of \$1,628.49.

Conclusion:

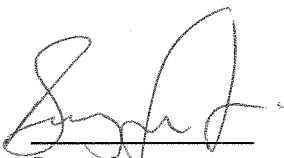
Wage Assessment # 6720 as it related to Mohamed Omer is hereby lowered from \$4,128.49 to \$1,628.49;

Wage Assessment # 6720 as it related to Volodymyr Pastukh is confirmed in the original amount of \$4,617.04;

Wage Assessment # 6720 as it related to Sergii Martynovskyi is confirmed in the original amount of \$3,144.85; and

Wage Assessment # 6720 as it related to Oleksandr Dzhura is confirmed in the original amount of \$8,134.82.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 21st day of October, 2014.



Doug Surtees
Adjudicator