

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



COMPLAINANT: Patricia Cibart
Represented by Denis Benoit
Labour Standards Officer

RESPONDENT: L. P. Flower Power Inc
o/a Grower Direct Fresh Cut Flowers (L. P.)
Represented by Paulette Boulanger
Director and Owner

DATE OF HEARING: October 29, 2014 at 9:30 a.m.

PLACE OF HEARING: 3rd Floor Board Room
1870 Albert Street
Regina, Saskatchewan

1. INTRODUCTION

Officer Benoit and I were unable to contact the Complainant and as a result she was not present at the hearing.

Her land phone number had been disconnected and a registered letter to her stated address was unclaimed.

Mr. Benoit also attempted to contact her via face book, with no response.

I advised Mr. Benoit and Ms Boulanger that I would conduct the hearing in the absence of the Complainant and make my decision on the evidence received.

II. PRELIMINARY OBJECTIONS

None

III. THE DISPUTE

The wage assessment of \$84.61 was derived from Ms Cibart's claim that she worked 8 hours on May 9, 2014 and 2 hours on May 10. The Employer paid Ms Cibart for 2 hours on May 9. The Wage Assessment calculation is 8 hours x \$10.00 = \$80.00 + \$4.61 annual holiday pay.

IV. FACTS

i. EVIDENCE OF EMPLOYER

Ms Boulanger was affirmed and provided the following evidence:

- Ms Cibart was employed from April 30 to May 9, 2014. She was paid minimum wage of \$10.00 per hour.
- For her employment Ms Cibart was scheduled from 9:00 a.m. - 6:00 p.m. with one hour for lunch.
- On her first day Ms Cibart arrived 40 minutes late. In fact she was late almost every day.
- On May 9, 2014 the business was very busy and Ms. Cibart was not present in the shop. When I searched for her, I found her smoking out back. I fired her on the spot and paid her for 2 hours (9:00 a.m. - 11:00 a.m.).
- Ms Cibart did not work on May 10, 2014.

Cross Examination

None

Ms Boulanger then introduced current employee Olivia James as a witness.

Ms James was sworn and provided the following evidence:

- She remembers Ms Cibart, in fact, she is the only employee left who was working during Ms Cibart's employment.
- She remembers the day Ms Cibart was fired. It was May 9, 2014, a Friday. She remembers Ms Cibart was complaining about being hot and that the room was stuffy. Ms Cibart then went outside at about 11:00 a.m.
- She remembers Ms Boulanger looking for Ms Cibart and finding her outside.
- She has no reason to lie for Ms Boulanger.

Cross Examination

None

ii. EVIDENCE OF EMPLOYEE

Mr. Benoit asked Ms Boulanger if her company was registered in Saskatchewan and if she was the sole director. Ms Boulanger replied in the affirmative.

Mr. Benoit then advised that he had documents that belong to the Complainant that imply she worked on May 10, 2014 but since she was not present cannot file them as evidence.

V. DECISION

I have never had the situation where one party to an appeal has not been present at the hearing.

The evidence before me from the Employer and Co-worker is clear and unchallenged. Therefore the evidence that Ms Cibart's employment ended at 11:00 a.m. on May 9, 2014 is accepted.

VI. AWARD

Based on the evidence I conclude that the Complainant has been paid properly and therefore the wage assessment is revoked.

Dated at Regina, in the Province of Saskatchewan, this 3rd of November, 2014.

__ORIGINAL SIGNED_
Ralph Ermel
Adjudicator

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at www.saskatchewan.ca.

Right to appeal adjudicator's decision to 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.
- (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 pursuant to Part II, the wage assessment or the notice of hearing;
 - (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
 - (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

Appeal to Court of Appeal

- 4-9**(1) With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.
- (2) A person, including the director of employment standards, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.
- (3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

Right of director to appeal

- 4-10** The director of employment standards has the right:
- (a) to appear and make representations on:
 - (i) any appeal or hearing heard by an adjudicator; and
 - (ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and
 - (b) to appeal any decision of an adjudicator or the board.