

DECISION OF ADJUDICATOR

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



COMPLAINANT:

Robert Dewey:

Represented by Ron Byers, Employment Standards Officer, 350 Cheadle Street west, Swift
Current, SK S9H 4G3

RESPONDENTS:

Fancy's Field Service (2007) Ltd., Box 58 Coleville, SK S0L 0K0; Douglas James Long, Box 58
Coleville, SK S0L 0K0, being a director of Fancy's Field Service (2007) Ltd., and Sharon Elaine
Long, Box 58 Coleville, SK S0L 0K0, being a director of Fancy's Field Service (2007) Ltd.

Represented by Douglas James Long

Date of Hearing: December 10, 2014

Introduction:

The respondents had been represented by Saskatchewan lawyer Monte Sheppard, but Mr. Sheppard withdrew prior to the hearing. This is why Mr. Sheppard's name appears on the appeal documents. At the hearing Mr. Long, who is a director of the employer corporation represented the respondents.

The employee was represented by Ron Byers of the Ministry of Labour Relations and Workplace Safety. Mr. Byers is based out of the Ministry's Swift Current office.

Facts and Decision:

At the beginning of the hearing the parties agreed that employer, Fancy's Field Service (2007) Ltd., was an existing Saskatchewan corporation and that at the relevant times Douglas James Long and Sharon Elaine Long were directors of Fancy's Field Service (2007) Ltd.

Mr. Long was the only witness for the employer and Mr. Dewey was the only witness for the employee.

In his opening remarks, Mr. Long indicated that the employer's appeal was still based on, and only on, the three grounds alleged in its Written Notice of Appeal, dated October 24, 2014. The first ground is that the employer alleges the hours of work claimed by Mr. Dewey are 'inflated and excessive' and do not correspond with the hours submitted by Mr. Dewey. The second ground of appeal is that the employer alleges 'In lieu of wages the employee received a motorcycle'. The employer alleges the agreed upon value of the motorcycle was \$2,000 whereas a value of \$1,800 was used in the assessment. The third ground of appeal is that the employer alleges Mr. Dewey fraudulently charged \$8,068.11 worth of gasoline to the employer corporation.

Exhibit EE-1 is a copy of the Inspection Summary. At the hearing Mr. Byers indicated that the item labeled 'PAY IN LIEU' on the Inspection Summary (in the amount of \$7,689.07) should actually have been called 'Annual Holiday Pay'. The amount shown is correct; it was simply mistitled. Mr. Byers created a spreadsheet of hours worked by Mr. Dewey for which he was not paid. This spreadsheet was entered as Exhibit EE-2. A copy of part of Mr. Dewey's scribbler on which he recorded his hours was entered as Exhibit EE-3. Mr. Long created his own spreadsheet of hours he says Mr. Dewey worked. It was entered as Exhibit ER-1.

Mr. Long testified that Mr. Dewey was instructed to keep track of his hours in a notebook he described as a scribbler. At the end of a pay period, Mr. Dewey would show the record

of hours in the scribbler to Mr. Long. Mr. Long says he would then enter that information into a spreadsheet, and Mr. Dewey would be paid accordingly.

Mr. Long testified that the spreadsheet he created (ER-1), was based on the hours recorded in the scribbler created by Mr. Dewey. ER-1 indicates a total of 60 fewer hours than the spreadsheet prepared by Mr. Byers. These 60 hours would represent \$1,200 at Mr. Dewey's wage of \$20 per hour (assuming they don't relate to overtime). During the hearing I asked Mr. Long to show me where the spreadsheet created by Mr. Byers (EE-2) and the copy of Mr. Dewey's scribbler that recorded his hours (EE-3) did not match. Mr. Long tried to point to a couple of examples, but each time he pointed out what he thought was a discrepancy, Mr. Byers was able to show that the spreadsheet he created (EE-2) corresponded exactly to Mr. Dewey's notes (EE-3). I directly asked Mr. Long to point out inconsistencies between Mr. Dewey's notes (EE-3) and the spreadsheet created by Mr. Byers (EE-2) and he was unable to do so. Since Mr. Long was not able to point to any errors in EE-2, I therefore find that the spreadsheet created by Mr. Byers (EE-2), which is reflected in the Wage Assessment, is correct.

The second ground of appeal relates to the value of a motorcycle transferred from Mr. Long to Mr. Dewey as partial payment of wages. Mr. Long indicates that he and Mr. Dewey agreed that the value of the motorcycle would be \$2,000. He testified that he entered \$2,000 on the bill of sale, and alleges that Mr. Dewey now wrongfully contends the actual agreed value was \$1,800. The evidence on this matter seems fairly clear to me. Mr. Dewey in his testimony readily admitted that the bill of sale said \$2,000. He says Mr. Long put that figure on the bill of sale because it would help Mr. Dewey establish a higher figure for insurance purposes if need be. Having observed both Mr. Long and Mr. Dewey testify, wherever their testimony differs, I accept Mr. Dewey's evidence as true. I found Mr. Long to be an aggressive and self-serving witness. Mr. Dewey on the other hand answered questions directly, and in my view honestly. I note that, as Mr. Byers pointed out, the motorcycle was transferred from Mr. Long directly (a fact Mr. Long admitted). It was not the corporation's property. Mr. Dewey could have taken the position that therefore the transfer of the motorcycle was not a payment of wages. The result of this would almost certainly have been that the Wage Assessment would be increased by \$1,800 and Mr. Long would have a personal claim against Mr. Dewey for \$1,800. Mr. Dewey however pursued the honourable position of accepting the transfer of the motorcycle as a partial payment of wages, because he had agreed to this. Mr. Dewey testified that the parties agreed the motorcycle would be valued at \$1,800, and I accept his evidence. After all the testimony was over, Mr. Long agreed that I should value the motorcycle at \$1,800, as was done in calculating the Wage Assessment. I find that the parties did in fact value the motorcycle at \$1,800, and that Mr. Dewey agreed to accept this as a partial payment of wages.

The final argument for appeal put forward by Mr. Long is that he claims a set off for the value of fuel, which he alleges that Mr. Dewey wrongfully charged to the company. Mr. Long testified that Mr. Dewey started working for the employer in October, 2009. At that

time the company issued Mr. Dewey a fuel card, which enabled him to purchase fuel at the Co-op and have it charged to the company. Mr. Long testified that in approximately 2010 he noticed that Mr. Dewey had charged some regular gas on the Co-op card. Mr. Long asked Mr. Dewey about this, and Mr. Long testified that Mr. Dewey got defensive and told Mr. Long that if he (Long) didn't think that he (Dewey) was entitled to the fuel purchases, then he (Long) should deduct the amount from his (Dewey's) pay cheque.

One would normally conclude that an employee who charges gas to his employer is acting wrongfully. Although it is unnecessary for me to decide if this is the case here, I feel I must emphasize that I do not conclude that Mr. Dewey did anything wrong in the circumstances which occurred. This employment relationship was strange to say the least. Mr. Dewey testified that during his employment he loaned Mr. Long tools including a welder and welding rods, which were used by the company for a period of weeks. Mr. Dewey was never paid for this. Mr. Dewey testified he was given a Suzuki Tracker with a damaged engine. He arranged for this to be stored at a friend's place so he could work on the engine. Mr. Long decided he wanted the Tracker, so he took it, and Mr. Dewey was paid nothing. He also testified that he (Dewey) would often be called out in the middle of the night because a tractor got stuck or some other work related issue arose. Mr. Dewey would go and do the required work without being paid. I completely accept Mr. Dewey's evidence as true.

In this context, it is entirely plausible that the employee was permitted to charge some personal gas expenses to the company. I emphasize that Mr. Dewey did not reply to Mr. Long's allegations of theft or fraud at the hearing because I indicated that in my view the legislation would require that I find the deductions related to fuel to be unauthorized, even if I thought fraud or theft were present. Those types of allegations are to be heard in a court before a judge – not a hearing before an adjudicator. I make these comments merely to make it absolutely clear that my decision should not in any way be taken to support Mr. Long's accusations regarding theft or fraud. Mr. Long demonstrated that he is overbearing to point of being a bully, whereas Mr. Dewey presented himself as a fairly quiet and soft-spoken individual. Mr. Dewey was clearly taken advantage of by Mr. Long during the employment (for example the taking of the Suzuki Tracker and the unpaid call-outs) and it would not be surprising for Mr. Dewey to capitulate on paying for the fuel, even if an agreement to the contrary existed.

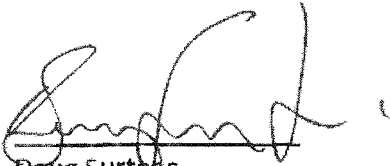
This arrangement, of Mr. Dewey charging fuel and Mr. Long deducting some or all of the purchase price from Mr. Dewey's pay cheque) continued on until at least 2013 when Mr. Long began closing down the business. At this time, by Mr. Long's own admission, he owed Mr. Dewey a considerable amount of wages. It was in this context that Mr. Long began to frame Mr. Dewey's use of the Co-op charge card as 'theft' and 'fraud'. In his own testimony, Mr. Long said that he and Mr. Dewey had come to an agreement that Mr. Dewey could charge fuel to the company, and that Mr. Long would deduct the amount from Mr. Dewey's pay cheque. Mr. Long admitted that this was an oral agreement and was never written down.

In my opinion, such an oral agreement does not authorize a payroll deduction, under s. 2-36 or elsewhere. If Mr. Dewey owes the company money for fuel (a point on which I express no opinion) then the employer's remedy is to sue Mr. Dewey in Small Claims Court. Mr. Long suggested that an employer could make such a deduction where the employee made a voluntary purchase. *The Saskatchewan Employment Act* 2-36 (2) (f) allows deductions to be made for "(f) voluntary employee purchases from the employer of any goods, services or merchandise". The short answer to Mr. Long's suggestion is that Mr. Dewey made no purchase from the employer. It is my opinion that 2-36 (2) (f) does not apply where, as here, it is alleged that an employee charged a purchase from a third party (in this case the Co-op) to the employer. Therefore I find that no deduction should be made to the Wage Assessment on the basis of Mr. Long's allegation regarding fuel purchases.

Conclusion:

Wage Assessment # 6857 is confirmed in the amount of \$5,832.75.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 12th day of December, 2014.



Doug Surtees
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.