



DECISION OF ADJUDICATOR

IN THE MATTER OF A HEARING PURSUANT TO PART IV of

THE SASKATCHEWAN EMPLOYMENT ACT, CHAPTER S-15, SS, 2013

IN RESPECT OF A MATTER ADVANCED PURSUANT TO SECTIONS 62.1 & 62.2 OF THE

LABOUR STANDARDS ACT, CHAPTER L-1, RSS, 1978 (AS AMENDED) (REPEALED)

LRB FILE NO: 069-15

Adjudicator file # 2015-02

Wage Assessment # 6871

PARTIES TO THE ADJUDICATION HEARING:

a) **COMPLAINANTS / APPELLANTS:** KINDERSELY MAIN LINE MOTORS LTD. AND GERALD MERRIFIELD, DIRECTOR AND CURTIS MERRIFIELD, DIRECTOR [EMPLOYERS] , represented BY JEFF GRUBB, QC AND CARLY ROMANOW [MILLER THOMSON LLP];

b) **RESPONDENT:** GOVERNMENT OF SASKATCHEWAN, DIRECTOR, EMPLOYMENT STANDARDS, REPRESENTED BY RON BYERS, EMPLOYMENT STANDARDS OFFICER; AND

c) **RESPONDENT:** DONNA GEREIN, [EMPLOYEE].

ADJUDICATOR: Maria Lynn Freeland

PLACE OF HEARING: Saskatoon, SK

DATE OF HEARING: SEPTEMBER 25, 2015

DATE OF DECISION: NOVEMBER 15, 2015

I. INTRODUCTION

This employment standards adjudication hearing was conducted on Friday September 25, 2015 in the Sturdy Stone Centre Building in Saskatoon, SK pursuant to the provisions of the *Saskatchewan Employment Act*.

II. PRELIMINARY MATTERS

- a) Ronald Byers (Employment Standards Officer) advised that he represented the Director in the application and enforcement of the *Saskatchewan Employment Act*; Mr. Byers confirmed that he did not represent the employee.
- b) Jeffery Grubb, QC advised that he and Carly Romanow of Miller Thompson LLP represented Kindersley Main Line Motors Ltd.; and Gerald Merrifield, Director; and Curtis Merrifield, Director.
- c) The Employee Donna Gerein acknowledged at the commencement of the adjudication that she was no longer pursuing her claim for pay in lieu of notice of termination.

III. THE DISPUTE

Subsequent to the conclusion of her employment as a Sales Associate with Kindersley Main Line Motors Ltd., [the Appellant/ Employer], the employee Donna Gerein completed a Complaint to the Ministry of Labour Relations and Workplace Safety.

The claim was for:

- a) Final Pay in lieu of Notice ; and
- b) Annual Holiday Pay.

Pursuant to section 2-74 of the *Saskatchewan Employment Act*, the Director of Employment Standards determined that the employer failed to pay wages in lieu of notice of termination in the amount of \$9230.80 [representing 8 weeks salary] and annual holiday pay to the employee in the amount of \$7955.47 [Wage Assessment No. 6871].

As a result of this wage assessment, the employer appealed the decision pursuant to section 2-75 of the *Saskatchewan Employment Act*. In accordance with the appeal provisions of the legislation, the wage assessment was appealed by way of “**NOTICE OF APPEAL**” from the employer’s lawyers dated March 30, 2015 and stamped “**RECEIVED**” on March 30, 2015 by the Ministry of Labour Relations and Workplace Safety. On April 15, 2015, I was appointed adjudicator pursuant to section 4-3(1) of the legislation. An adjudication hearing was conducted on September 25, 2015.

IV. THE ISSUE

The issue to be determined is as follows:

- a) Is the employee owed any money for annual holiday pay?

V. LEGISLATION

The following provisions of the *Labour Standards Act* are applicable to this hearing and decision:

- 2 (a) “annual holiday pay” means an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35;
- 2 (d) “employee” means a person of any age who is in receipt of or entitled to any remuneration for labour or services performed for an employer;
- 2 (e) “employer” means any person that employs one or more employees and includes every agent, manager, representative, contractor, subcontractor or principal and every other person who either:
 - (i) has control or direction of one or more employees; or

(ii) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees;

2(l) "pay" means remuneration in any form;

2(m) "rate of wages" means the basis of calculation of wages;

2(q) "total wage", in respect of any period of employment of an employee, means all remuneration that an employee is paid or entitled to be paid by his employer, whether or not payment is actually made during that period of employment, in respect of the labour or services that he performs for his employer during that period of employment, and includes:

- (i) sums deducted from such remuneration for any purpose whatsoever;
- (ii) remuneration in respect of overtime work that he performs for his employer during that period of employment;
- (iii) remuneration of any annual or special holiday that his employer permits him to take during that period of employment;
- (iv) the cash value of any board or lodging received by the employee as part payment of wages during that period of employment;

2(q.1) "wage assessment" means a wage assessment issued by the director pursuant to section 60;

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

31(1) Where an employee is entitled to an annual holiday under section 30:

- (a) the employer shall permit the employer to take the entire annual holiday to which he is entitled within 12 months after the date on which he becomes entitled to it;

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;

33(1.1) With respect to an employee who is entitled to an annual holiday pursuant to section 30 but 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;

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

35(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

35(3) Subsection (2) applies whether or not an employee has completed a year of employment.

Section 10 of the *Interpretation Act*, Chapter I-1.2, SS, 1995 provides:

10. Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects.

VI. DECISION

As the Employment Adjudication Hearing progressed and witnesses testified, the parties privately discussed various possible settlement alternatives [in the absence of the adjudicator]. As a result, prior to the completion of the Employment Adjudication hearing held September 25, 2015, the parties reached an agreement for resolution of the outstanding issue to their mutual satisfaction. Details remained confidential between the parties and particulars were not disclosed to the Adjudicator. The parties further advised that any written documentation with respect to finalization of the settlement reached would be completed directly between the parties.

Dated this 15th day of November, 2015.

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