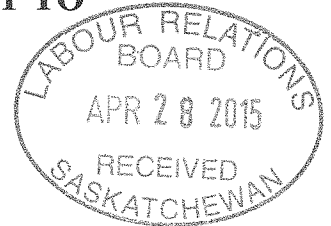


**DECISION OF ADJUDICATOR  
IN THE MATTER OF AN ADJUDICATION PURSUANT TO  
SECTION 2-75 AND 4-6 OF  
THE SASKATCHEWAN EMPLOYMENT ACT**



**COMPLAINANT:** YU MEI CUI

**Randy Armitage, Employment Standards  
Officer**

**RESPONDENTS:** CAPTIWAY ENTERTAINMENT LTD.,  
operating as Bethune Bar & Grill, and  
ANNIE LIAN and SHAOQUIN XIE,  
directors of Captiway Entertainment  
Ltd.

**DATE OF HEARING:** April 8, 2015

**PLACE OF HEARING:** 3<sup>rd</sup> Floor Boardroom  
1870 Albert Street  
Regina, Saskatchewan

**I. INTRODUCTION**

This is an appeal by the Respondents, Captiway Entertainment Ltd. (the business), operating as Bethune Bar & Grill (the Grill) and Annie Lian and Shaoquin Xie, as directors of the Company, of a Wage Assessment issued by the Director of Labour Standards Branch on April 4, 2014 directing the Respondents to pay the sum of \$1,781.73 to the Complainant, Yu Mei Cui.

On April 8, 2015 the following individuals were present at the hearing:

Yu Mei Cui (Yu Mei), former employee of the Grill;  
Xu Jiabao, former employee of the Grill and  
Randy Armitage (Randy), Employment Standards Officer.

**II. THE DISPUTE**

On April 4, 2014 the Director of Labour Standards Branch issued a Wage Assessment against the Respondents in the amount of \$1,781.73 with respect to Yu Mei Cui. The Wage Assessment directed the Respondents to pay this sum to the Complainant or

commence an appeal pursuant to section 62 of *The Labour Standards Act* within 21 days of the date of service of the Wage Assessment.

Shaoquin Xie (June), on behalf of the Respondents, appealed the Wage Assessment by letter dated April 28, 2014 (the Notice of Appeal). Labour Standards received the notice of appeal and deposit on May 9, 2014. It contains no grounds or reasons for the appeal but requests a hearing.

The sum of \$1,781.73 claimed in the Wage Assessment represents unpaid wages.

## II. PRELIMINARY MATTERS/OBJECTIONS

There are two preliminary issues. Firstly, should the hearing be adjourned or postponed to allow June and any witnesses to attend the hearing? Alternatively, should June and any witnesses be permitted to attend the hearing by telephone conference? Secondly, is the appeal even valid given the notice of appeal was received by Employment Standards after the appeal period had arguably expired?

**ISSUE 1 – Should the hearing be adjourned or postponed to allow June and any witnesses to attend the hearing? Alternatively, should June and any witnesses be permitted to attend the hearing by telephone conference?**

The hearing was scheduled to begin at 10:00 a.m. on April 8, 2015. June did not show up. At 10:30 a.m., we contacted the Labour Relations Board who in turn contacted June by phone at the Grill. June said she had no notice of the hearing.

### **Background**

On March 3, 2015, with the help of the motions process of the Labour Relations Board (the Board), the appeal hearing was set for 10:00 a.m. on Wednesday, April 8, 2015. Randy and I both appeared by telephone before the Board. Despite both parties having notice of the motions process, neither the employer nor the employee appeared before the Board (in person or by telephone) to set the appeal date. Prior to March 5<sup>th</sup>, however, both parties told Randy they would make themselves available anytime for the hearing. On this basis, the hearing date was set without further input from the parties.

At 9:11 a.m. on March 5, 2015, I emailed June, Yu Mei and Randy as follows:

**“Subject:** Re: LRB File No. 102-14, Wage Assessment Appeal #6515  
Hi,

With the help of the Labour Relations Board, the appeal hearing has been scheduled for 10:00 a.m. on Wednesday, April 8<sup>th</sup>. The hearing will take place in a boardroom on the 3<sup>rd</sup> floor of the Regina offices of Employment Standards

located at 1870 Albert Street.

I look forward to seeing everyone on April 8<sup>th</sup>.

Thank you,

Jodi Vaughan”

In addition to emailing the parties, on March 5<sup>th</sup>, I sent a copy of the email by regular mail to both Yu Mei and June. I sent the notices to the addresses on file. June’s address, 606 Railway Avenue, Bethune, SK, S0G 0H0, is the address listed for June on the Corporate Registry Profile Report for Captiway Entertainment Ltd. She is listed as a Director and Power of Attorney for the business. Information regarding the date, time and location for the hearing was also posted on the Board’s website under its calendar for April 2015.

#### **The Hearing**

After waiting a half hour for June to show up at the hearing, the Board Registrar tracked June down and we were eventually able to reach her at work by speakerphone. She said she wanted to participate in the hearing to explain why she did not owe any wages to Yu Mei. She said she had other employees who would testify on her behalf.

I advised June that because she had not shown up at the hearing, I would first have to determine whether or not to allow her to participate. I explained that I had emailed her the information regarding the hearing (the hearing notice). She confirmed that her email address was in fact Junethankyou@gmail.com. She said that she did not receive an email from me regarding the hearing but that she did receive other emails that day.

I advised June that I also mailed a copy of the hearing notice to the address listed for her on the Information Services Corporation of Saskatchewan (ISC) Corporate Registry, that being 606 Railway Avenue, Bethune, SK, S0G 0H0. June confirmed that this was and is the correct address for the Bethune Bar & Grill but said she did not receive the letter.

After confirming the mailing and street address of the business with June and double-checking the address listed on the ISC documents, I was satisfied that the hearing notice had been mailed to the correct address.

Under the circumstances, I found it unbelievable that June did not have notice of the hearing. I advised June that I did not think it was fair to Yu Mei to force her to wait any longer. Yu Mei and a former co-worker showed up at the hearing and June did not. She was not in the city and it would take time for her to make the necessary arrangements to leave work and attend the hearing in Regina.

I also told June that it would be unfair to Yu Mei if I allowed June and any potential witnesses to testify over the phone, especially since Yu Mei is not fluent in English. Given the language barrier and the procedural issues at play complicating matters (whether the appeal is properly before me due to late filing of the notice of appeal), I explained that it would be prejudicial to Yu Mei if I allowed June to participate in the hearing by telephone.

I concluded the hearing by advising the parties that I would not hear June on this matter. I explained that the Wage Assessment would stand and that my written decision would follow. I also explained that the parties would have the opportunity to appeal my decision to the Board.

**ISSUE 2 – Is the appeal even valid given the notice of appeal was received by Employment Standards after the appeal period had arguably expired?**

The Wage Assessment was successfully served by registered mail on the business and on Annie Lian, one of its Directors, on April 14, 2014. Service of the Wage Assessment by registered mail on June was unsuccessful. Despite not personally accepting service of the Wage Assessment, June filed a notice of appeal on behalf of herself and Annie Lian. The notice of appeal is dated April 28, 2014 and was received by Labour Standards on May 9, 2014.

The Wage Assessment served on the business and on Annie Lian on April 14, 2014 contained the following statement: “You are hereby directed to pay the total amount claimed within 21 days after the date of service of this Wage Assessment or commence an appeal pursuant to section 62 of The Labour Standards Act.” The new Act, *The Saskatchewan Employment Act*, was proclaimed on April 29, 2014 and it provides that an appellant must file a written notice of appeal with 15 business days after the date of service of a wage assessment (ss. 2-75(2)).

Under the old Act, service of a document by registered mail was deemed to have been received on the third day following the day of its mailing unless the person to whom it was mailed established that through no fault of her own, she did not receive the document (ss. 83.1(3)). The new Act says service of a document by registered mail is deemed to be received on the fifth business day following the day of its mailing. Like the old Act, it creates an exception to this rule: If the person to whom it was mailed can establish she did not receive it through no fault of her own or received it at a later date (ss. 9-9(4)).

It would appear that under either Act, the appeal was filed late. This issue is complicated, however, by the fact that the Wage Assessment was personally served on June on May 15, 2014, *after* she filed the notice of appeal. Randy explained that it is Employment Standards’ policy to serve all directors. It is his understanding that the Court of Queen’s Bench requires proof of service on each director before it will issue a

Certificate/Judgement. Therefore, for enforcement purposes, Employment Standards takes the position that each director must be formally served even if they already have notice of the Wage Assessment.

In any event, because June did not participate in the hearing, I will make no findings regarding the validity of the appeal.

### III. ANALYSIS AND DECISION

To reiterate, I believe June had notice of the hearing. The hearing notice was sent to the email address she provided to Employment Standards and the Board. June confirmed that we had her correct email address. The hearing notice was also mailed to the mailing and street address of the business, that being 606 Railway Avenue in Bethune. June is listed as the Power of Attorney for the business on the ISC documents where her address is listed as: 606 Railway Ave., Bethune, SK, Canada, S0G 0H0. I have no doubt the hearing notice was mailed to the correct address.

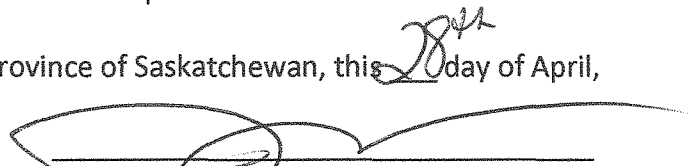
Under the circumstances, I found it was unfair to adjourn the hearing or to allow June to participate by phone. Despite having notice of the hearing, June did not attend the hearing at the scheduled time or seek an adjournment in advance of the hearing if the date and time did not work for her. I found it was unfair to force Yu Mei to wait for June to make arrangements to leave work and drive to Regina for the hearing. Further, it would be prejudicial to Yu Mei if June and her witnesses appeared at the hearing by telephone given her limited ability to speak and understand English, especially in light of the somewhat complex procedural issues at play.

Under both Acts, the copy of the Wage Assessment "is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing, without proof of the signature or official position of the person appearing to have signed the wage assessment." See ss. 2-75(9) of the new Act and ss. 62(7) of the old Act. With no evidence to the contrary, the Wage Assessment stands.

### IV. CONCLUSION

The appeal is denied and the Wage Assessment is upheld.

DATED at the City of Regina, in the Province of Saskatchewan, this 20<sup>th</sup> day of April, 2015.

  
Jodi C. Vaughan  
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](http://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.