

DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTION 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT
LRB File No. 106-15



COMPLAINANT: Cory Cronan
Represented by Randy Armitage
Labour Standards Officer

RESPONDENT: Neville Skagen
Director, Sharp Shooters Corral Cleaning Ltd.

DATE OF HEARING: November 13, 2015
9:30 a.m.

PLACE OF HEARING: Basement Conference Room
110 Ominica Street W
Moose Jaw, Saskatchewan

1. INTRODUCTION

After my opening remarks, the parties advised that the Complainant and Respondent would be the only witnesses to be called. Mr. Skagen agreed that Sharp Shooters Corral Cleaning Ltd. is a registered company in Saskatchewan and that he is a Director. Mr. Skagen also agreed that the wage assessment of \$2,078.56 is correct and was owed to the Complainant, but was withheld.

II. PRELIMINARY OBJECTIONS

None

III. THE DISPUTE

Sharp Shooters Corral Cleaning Ltd. withheld the Complainant's wages in the amount of \$2,078.56. The dispute is whether that withholding of wages was lawful according to the Act.

IV. FACTS

i. EVIDENCE OF EMPLOYER

Mr. Skagen was sworn and provided the following evidence:

- prior to rehiring Mr. Cronan in July of 2014, he had Mr. Cronan sign an agreement to assign wages to "loss of property and misuse of company vehicle" during a previous period of employment.

Note: Mr. Skagen filed a document headed "Assignment of Wages". It was marked ER1.

- he told Mr. Cronan that if he worked the entire season the \$2,500.00 would be forgiven. However, Mr. Cronan quit during the season, therefore the last wages owing were withheld.

Cross Examination

In response to questions from Mr. Armitage, Mr. Skagen confirmed that Mr. Cronan had been an employee in 2012. It was during that period of employment that the damages had occurred.

ER1 was signed prior (April 2014) to re-hiring Mr. Cronan. It was not done under duress, in fact, Mr. Cronan's best friend witnessed the document.

Mr. Skagen advised that the end of a season varies according to the weather.

Last season ended in January of 2015.

Mr. Skagen confirmed he has a small claims case against Mr. Cronan that he will withdraw if his appeal is successful.

Re-direct

None

ii. EVIDENCE OF EMPLOYEE

Mr. Armitage called Mr. Cronan and he was sworn.

In response to questions from Mr. Armitage, Mr. Cronan provided the following evidence:

- his second period of employment with Sharp Shooters Corral Cleaning Ltd. was from July to the end of October 2014.

- he operated equipment and trucks.
- prior to coming back he signed ER1 which pertained to his first period of employment.
- he believes he was paid \$23.00/hour.
- he did receive cash advances that were subsequently taken of the following pay cheque.
- he ended up quitting in October of 2014 because Mr. Skagen had hired a woman who was driving big trucks she had no license for.
- Mr. Skagen kept saying he would get rid of her but never did. Finally the whole crew left including himself.
- Mr. Skagen tried to get him back and he was going to but then Mr. Skagen told him he couldn't come back.
- he never received his last two pay cheques. He asked Mr. Skagen why but can't remember what Mr. Skagen said.
- the total of the last two cheques is the amount of the wage assessment.

Cross Examination

None

Re-direct

None

iii. FINAL ARGUMENT

Mr. Skagen argues that ER1 was not signed under duress and therefore is a lawful document. Had Mr. Cronan worked the entire season the amount would have been forgiven.

Mr. Armitage filed two excerpts from the Saskatchewan Employment Act. Those excerpts were 2-6 and 2-36.

He argues that 2-6 which states, "No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this part", makes ER1 null and void.

Further Section 2-36 sets out what deductions an employer can make from an employee's wages.

It is clear that the deduction made by Mr. Skagen does not meet the provisions of Section 2-36. Therefore, the deduction was not lawful and the document ER1 has no effect. If Mr. Cronan owed Sharp Shooters Corral Cleaning money for damages other action would be taken to recover. Mr. Skagen argued that since it was cash that Mr. Cronan received it was lawful.

I thanked the parties for their presentations and closed the hearing.

V. ANALYSIS

ER1 specifies deduction from wages for "loss of property and misuse of company vehicle". Section 2-36 of the Act in (2) (c), (d) and (e) refer to voluntary deductions. In other words an employee can designate in writing, direction to his/her employer to withhold from their pay for certain specified reasons.

Whether under duress or not, the specified reasons for withholding wages stated in ER1 are not contemplated under the Act whether in cash or otherwise.


VI. DECISION

Therefore the appeal is denied and the Wage Assessment is owed.

I. WAGES

Wage Assessment No: 7246 in the amount of \$2,078.56 is owed to Mr. Cronan by Sharp Shooters Corral Cleaning Ltd.

Dated at Regina, in the Province of Saskatchewan, this 17th of November, 2015.



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.