



DECISION OF ADJUDICATOR

SAIR SUPPLY ET. AL AND JEFF OLEXYN

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LABOUR STANDARDS ACT, CHAPTER L-1, RSS, 1978 (AS AMENDED) (REPEALED)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 # 182 - 15; Adjudicator file # 2015-08; Complaint # 42629; Wage Assessment No. 7367;
Employer File # 2621**

PARTIES TO THE ADJUDICATION HEARING:

- a) **COMPLAINANTS / APPELLANTS:** SAIR SUPPLY LTD. O/A SHOW CABINETS; BLAIR WEINHEIMER, BEING A DIRECTOR OF SAIR SUPPLY LTD. O/A SHOW CABINETS; SANDRA WEINHEIMER, BEING A DIRECTOR OF SAIR SUPPLY LTD. O/A SHOW CABINETS
[APPELLANT REPRESENTATIVE]
- b) **RESPONDENT:** GOVERNMENT OF SASKATCHEWAN, DIRECTOR, EMPLOYMENT STANDARDS, REPRESENTED BY Mike Luciak (former Employment Standards Officer and Investigating Officer on this file and now currently employed with Occupational health and Safety) and Doug Long (Employment Standards Officer) advised that they represented the Executive Director in the application and enforcement of the *Labour Standards Act* and the *Saskatchewan Employment Act*; they confirmed that he did not represent the employee or employer
- c) **RESPONDENT:** Jeff Olexyn [EMPLOYEE], not present and not represented

ADJUDICATOR: MARIA LYNN FREELAND

PLACE OF HEARING: Saskatoon, SK

DATE OF HEARING: Friday October 23, 2015

DATE OF DECISION: December 20, 2015

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I. INTRODUCTION

This employment standards adjudication hearing was conducted on October 23, 2015 in the Sturdy Stone Centre Building in Saskatoon, SK pursuant to the provisions of the *Saskatchewan Employment Act*.

II. PRELIMINARY MATTERS AND PARTICIPANTS AT THE EMPLOYMENT HEARING:

- a) Mike Luciak (former Employment Standards Officer and Investigating Officer on this file and now currently employed with Occupational health and Safety) and Doug Long (Employment Standards Officer) advised that they represented the Executive Director in the application and enforcement of the *Labour Standards Act* and the *Saskatchewan Employment Act*; they confirmed that he did not represent the employee or employer.
- b) Blair Weinheimer advised that he was Owner and a director for SAIR SUPPLY LTD. O/A SHOW CABINETS; and was the representative for the purpose of the hearing.
- c) Jeffery Olexyn [EMPLOYEE], was not present and not represented
- d) There were no additional preliminary matters or objections.

III. THE DISPUTE

Subsequent to the conclusion of his employment with Sair Supply ltd, the Appellant/ Employer], Jeff Olexyn [the Respondent/Employee] completed a Complaint to the Ministry of Labour Relations and Workplace Safety. It was entitled "Formal Complaint Form". This document was signed by Mr. Olexyn by interview; signed by Employment Standards Division Representative and referred To Mike Luciak, Employment Standards office [as that was his position at the time]. I was appointed as an adjudicator by the Saskatchewan Labour Board pursuant to an order dated October 7, 2015 signed by Steven D. Schiefer, Vice-Chairperson [as that was his position at the time]. **[Document # 1]**.

The claim was for:

- a) Outstanding wages, overtime, Annual Vacation leave pay and public holiday pay; and
- b) Pay in lieu of notice.

Pursuant to section 2-74 of the *Saskatchewan Employment Act*, the Director of Employment Standards determined that wages were owing from the employer to the employee in the amount of \$132.43 **[DOCUMENT #3]**.

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 correspondence from the employer undated and stamped "RECEIVED" on July 30 2015 by the Ministry of Labour Relations and Workplace Safety. **[DOCUMENT #4]**

An adjudication hearing was conducted October 23, 2015.

IV. THE ISSUES

The issues to be determined are as follows:

- a) Is the Employee/ Respondent entitled to money owing for unpaid wages from the employer?
- b) Is the employee/respondent to pay in lieu of notice?

V. THE FACTS

a) EVIDENCE OF THE APPELLANT/EMPLOYER

The position of Mr. Weinheimer, [Owner and Director of the Appellants / Employer and representative of the both the Company and Directors at the hearing] was summarized by his 1 page letter received and stamped "RECEIVED" by Employment Standards July 30, 2015. **[DOCUMENT # 4]** In In this letter, Mr. Weinheimer states as follow:

“SHOW CABINETS

RE: JEFF OLEXYN

FILE NO: 42629

“To whom it may concern,

After review of the Outstanding Wage Complaints Officer Worksheet, we found a discrepancy. For the period August 1 – 15, 2014, there is no pay received by Jeff Olexyn. In fact, there was a payment in the amount of \$1, 5636.00 (cheque #512 withdrawn from my account 21 August, 2014 with reference # 006040070). Payment copies have been included.

In the assessment, it was found that we owe Mr. Olexyn \$132.43. With the corrected payment to Mr. Olexyn and new calculations, Mr. Olexyn now owes Show Cabinets \$1546.00 - \$132.43 = \$1413.57 as a result of this overpayment.

Sincerely,

Blair Weinheimer

Show Cabinets

PH: 306-270-3275”

b) EVIDENCE OF THE EMPLOYEE

The Employee, Jeff Olexyn did not attend the hearing and therefore did not provide any testimony or verification of his claim on his own behalf.

In his Formal complaint form, the employer indicated he was hired at the rate of \$26.00 per hour in the position of “wood worker”. He indicated that he worked from April 1, 2014 to March 8, 2015. He claimed money owing for regular wages, overtime, Annual Vacation pay, Public Holiday pay and one

week pay in lieu of notice. As indicated above the assessment by the Employment Standards Officer was that \$132.43 was owing to the employee. The employee did not attend the hearing nor testify with respect to his claim nor provide any evidence to support his claim for unpaid wages as well as his claim for pay in lieu of notice.

VI. ANALYSIS

As indicated above the assessment by the Employment Standards Officer was that \$132.43 was owing to the employee.

After review and consideration of all the documented evidence including the written submission by the employee and including the absence of Mr. Olexyn at the hearing and the absence of any additional documentation or affirmed testimony from him and after consideration of the Legislative provisions of both the *Labour Standards Act* and the *Saskatchewan Employment Act*, and applicable case law, I accept the evidence and documentation of the employer and therefore conclude that I find that there are no outstanding wages owing to Mr. Olexyn.

Although it was not raised by any party in the Notice of Appeal letter or at the hearing, given the absence of Mr. Olexyn at the employment adjudication hearing and his failure to provide any written or testimonial evidence at the hearing with respect to his claim, I have reviewed the case and dismiss any potential claim by either party that there is any procedural reason to dismiss, modify, further review or reevaluate the claim. After consideration of all matters, it is my view in this case, the "Principles of Natural Justice" and fairness in quasi-judicial tribunals have been in compliance with the law of Administrative Justice.

``Natural Justice`` is described in the ``*Adjudicator Manual for Labour Standards Wage Assessment Appeal Hearings*`` at page 3 as follows:

“Beyond the requirements of the legislation, the courts expect you to follow many unwritten principles of administrative law, often called *natural justice or procedural fairness*. Failure to do so can cause your decision to be set aside by the courts.

Natural Justice means that the law requires you to give all parties a fair hearing. A fair hearing takes place when:

- **the parties to the hearing are given proper notice of the hearing**
- **all parties to the hearing are given a fair chance to present their case and arguments**
- **the adjudicator is not biased and seems free from bias**
- **the adjudicator who hears the case decides the case**

Overall, you must conduct (and appear to conduct) the hearing fairly.”

It is my view that these principles can also be applied to the process of the events, actions, correspondence and documentation precluding and throughout the hearing process. As stated earlier in this decision, it is very important to recognize that the Employment Standards Officer represents the Executive Director of the Ministry of Labour Relations and Workplace Safety; the Officer’s responsibility is to ensure compliance with the *Labour Standards Act* and *The Saskatchewan Employment Act*. The Officer does not represent either the employee or employer.

It was the employee’s option and decision to not attend the hearing. He made no request for an adjournment of the hearing date to further prepare his case or to advise that the scheduled hearing date was not convenient to him. In my opinion, there was no miscarriage of justice in the proceedings before and during the hearing or any actions that prevented the employee to substantiate his claim and to reply to the submissions and representations of the employer.

VII. DECISION

- a. The employer's appeal of the claim by the employee for unpaid wages in the amount of \$132.43 is allowed. The employee's claim is dismissed. There is, therefore, no money payable by the employer for the employee's claim for unpaid wages or pay in lieu of notice. There will be no award for interest or costs to either party.

Dated this 20th day of December, 2015.

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

SECTIONS 4-8, 4-9 & 4-10 OF THE SASKATCHEWAN EMPLOYMENT ACT REGARDING THE PARTIES' RIGHT TO APPEAL

The parties have the right to appeal the decision of the adjudicator to the LABOUR RELATIONS BOARD pursuant to the *SASKATCHEWAN EMPLOYMENT ACT*.

SECTIONS 4-8, 4-9 & 4-10 OF THE SASKATCHEWAN EMPLOYMENT ACT REGARDING THE PARTIES' RIGHT TO APPEAL

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.

(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III 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 or hearing pursuant to Part II, the wage assessment or the notice of hearing;

(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;

(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;

(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 considers appropriate.

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 or the director of occupational health and safety, 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.

4-10 The director of employment standards and the director of occupational health and safety have 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 the decision of an adjudicator or the board.

VIII. DOCUMENT LIST

DOCUMENT #1: ORDER OF APPOINTMENT OF MARIA LYNN FREELAND AS ADJUDICATOR DATED OCTOBER 7, 2015, LRB FILE # 182-15, SIGNED BY STEVEN SCHIEFER, VICE-CHAIRPERSON, LABOUR RELATIONS BOARD

DOCUMENT #2 Corporate Registry Report from Information Services of Saskatchewan as of 5-Sept, 2014 for entity name: Sair Supply Ltd. # 1021242105

DOCUMENT #3: "Wage Assessment" letter from "Director's Delegate" registered to Sair Supply *et. al.* dated July 6, 2015 advising the amount of \$132.43 (File # 7367 & # 42629) was determined to be owing to employee Jeff Olexyn

DOCUMENT # 4: Correspondence from Blair Weinheimer, Show Cabinets outlining discrepancies in wage calculations, stamped as received by Employment Standards, July 30, 2015

DOCUMENT # 5: 6 pay stubs and copies of cheques provided by employer

DOCUMENT # 6: SECTIONS 4-8, 4-9 & 4-10 OF THE SASKATCHEWAN EMPLOYMENT ACT REGARDING THE PARTIES' RIGHT TO APPEAL