

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LABOUR STANDARDS ACT, CHAPTER L-1, RSS, 1978 (AS AMENDED) (REPEALED)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: 233-14



PARTIES TO THE ADJUDICATION HEARING:

- a) **COMPLAINANTS:** (Employer) – Centurion Townhomes Inc. and Dave Taylor being a Corporate Director of Centurion Townhomes Ind. as represented by Brendan Tumback (Lawyer, Scharfstein Gibbings Walen Fisher LLP).
- b) **RESPONDENT:** (Employee) – Michael Richards
- c) **SHELLEY STRETCH:** (Employment Standards Officer) representing the Executive Director of Employment Standards

ADJUDICATOR: Maria Lynn Freeland

PLACE OF HEARING: Saskatoon, SK

DATE OF HEARING: February 23, 2015

DATE OF DECISION: March 13, 2015

1. INTRODUCTION

This employment standards adjudication hearing was conducted on February 23, 2015 in Boardroom 9.3, Sturdy Stone Centre Building in Saskatoon, SK pursuant to the provisions of the *Saskatchewan Employment Act*.

Subsequent to his resignation from the company, Mr. Richards completed a "Formal Complaint Form" [Exhibit E-2] dated March 11, 2014 to the Ministry of Labour Relations and Workplace Safety.

The claim was in the amount of \$5312.60 for:

- a) Final Pay; 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 and annual holiday pay to the employee in the amount of \$5312.60 [Wage Assessment No. 6780; Exhibit E-16; dated September 5, 2014].

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 letter from the employer dated September 26, 2014 and stamped "RECEIVED" on October 6, 2014 by Labour Relations and Workplace Safety. On January 14, 2005, I was appointed adjudicator pursuant to section 4-3(1) of the legislation. An adjudication hearing was conducted on February 23, 2015. It was initially scheduled at an earlier date but was adjourned due to a potential conflict of the initial assigned adjudicator created when the employer sought to secure legal counsel.

2. PRELIMINARY MATTERS

- a) Shelley Stretch (Employment Standards Officer) advised that she represented the Director in the application and enforcement of the *Saskatchewan Employment Act*; she did not represent the employee. (Exhibit E-1).
- b) Brendan Tumback, Lawyer Scharfstein Gibbings Walen Fissher LLP advised that he represented Centurion Townhomes Inc. and Corporate Director, Dave Taylor. There was no additional representative of the Centurion Townhomes Inc. present at the adjudication.

3. THE ISSUES

The issues to be determined [as outlined in Exhibit E-1] are as follows:

- a) Is the employee owed any money for unpaid final wages?
- b) Is the employee owed any money for annual holiday pay?

4. 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.

5. DECISION

At the hearing held February 23, 2015 the parties reached an agreement for resolution of the outstanding issues. Details are as follows:

- a) The employer agrees to pay to the employee the amount of \$5312.60 representing unpaid final wages and outstanding annual holiday pay.
- b) This amount will be forwarded by way of Solicitor trust cheque from Mr. Tumback's Law Firm to Ms. Stretch, Employment Standards Officer.
- c) The employee agrees to remove the two liens he has place on two properties described by the civic addresses of:
 - i) 158 - Sinclair Crescent, Saskatoon, SK: and
 - ii) Unit 3 – 111 – Rosewood Gate North, Saskatoon, SK.
- d) The employee will bear the responsibility and costs of removal of these two liens.
- e) No legal costs will be payable by either party to the other.

APPENDICES

1. LIST OF EXHIBITS

1.1 Exhibits filed on behalf of the employee (E-1 to E-21)

2. 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*.

Dated this 13th day of March, 2015.

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

APPENDICES

1.0 LIST OF EXHIBITS

1.1 Exhibits Filed On Behalf of the Employee

- E-1 Introduction and Issues
- E-2 Copy of Formal Complaint Form
- E-3 December 16/13 email from Chris Reiter to Mike Richards
- E-4 December 19/13 email from Michael Richards to Accounting
- E-5 February 22/14 email from Michael Richards to Accounting
- E-8 Copy of Employment Standards Assessment & Inspection Summary
- E-6 Michael's Final invoice dated February 22/14
- E-7 Receipts sent by Michael with Feb.22/14 invoice
- E-8 Receipts supplied by Centurion Homes Inc.
- E-9 Michael Richard's job offer
- E-10 Previous invoices submitted by Michael Richards
- E-11 Statements for invoices submitted for Michael Richards
- E-12 June 12, 2014 registered letter sent by Shelley Stretch to Dave Taylor
- E-13 Canada Post signature proof of receipt of June 12/14 registered letter
- E-14 June 4/14 email from Dave Taylor to Kim Schram
- E-15 Copy of Reconciliation of amount owed to Michael Richards
- E-16 Copy of Wage Assessment
- E-17 Employment Standards Inspection Summary
- E-18 Corporation Documents

E-19 Copy of the *Assignment of Wages Act*

E-20 Sections of the *Labour Standards Act*

E-21 Adjudication *Sommerville v. Venture Well Servicing Ltd.*

2.0 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.