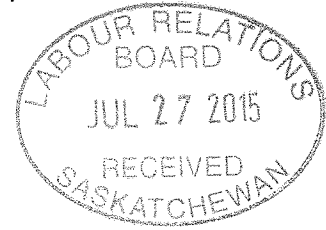


IN THE MATTER OF A HEARING PURSUANT TO SS.
62(1) & 62.1 OF *THE LABOUR STANDARDS ACT*, R.S.S.
1978, c. L-1 (AS AMENDED) & SS. 2-75 & 4-2 OF *THE*
SASKATCHEWAN EMPLOYMENT ACT, S.S. 2013, c. S-
15.1 (AS AMENDED)

BETWEEN:

ANWAR GROUP INTERNATIONAL LTD.
and NAVEED ANWAR,



APPELLANTS,

AND:

JEANNINE POULIN,

RESPONDENT
(COMPLAINANT).

ADJUDICATOR'S DECISION
July 27, 2015

T. F. (TED) KOSKIE, B.Sc., J.D.

Representatives: Ammad Anwar, for the Appellants, Anwar Group International Ltd.
& Naveed Anwar

Jeannine Poulin, for herself

Maureen Ooms, Sr. Employment Standards Officer, for the
Director of Employment Standards

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I. INTRODUCTION

[1] This is an appeal¹ (the "Appeal") by Naveed Anwar ("Anwar") and Anwar Group International Ltd. ("AGI") of Wage Assessment No. 6916² (the "Assessment") issued pursuant to section 2-74 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (as amended) (the "SEA") by the Director of Employment Standards (the "Director").

[2] The Assessment directed Anwar and AGI to pay one thousand one hundred and sixty-one dollars and sixty-eight cents (\$1,161.68) to Jeannine Poulin ("Poulin").

[3] The Labour Relations Board selected me to hear and determine the Appeal.

II. FACTS

[4] AGI is a Dominion corporation, registered extra-provincially in Saskatchewan. It carries on the business of taxation, travel and tour consulting. Anwar is the sole shareholder, director and officer of AGI.³

[5] From the evidence, it would appear Ammad Anwar ("Ammad") and Anwar were, at the outset, the sole employees of AGI.

[6] Anwar decided he needed clerical assistance and decided to hire a "Bookkeeper/Office Assistant." AGI placed an advertisement for the position on "saskjobs.ca."⁴

[7] Poulin applied for the job. Poulin testified that, during her interview, Anwar described:

- a) AGI's business as attending to clients' bookkeeping, income tax, immigration and tourism needs; and
- b) her duties as:
 - i) bookkeeping—for approximately two hundred and sixteen (216) clients;
 - ii) entering AR, AP, GST and PST within AGI's computerized accounting system; and
 - iii) answering the telephone.

¹ Exhibit G-2, Notice of Appeal

² Exhibit G-1, Wage Assessment No. 6916

³ Exhibit E-1, Saskatchewan Corporate Registry Profile Report

⁴ Exhibit E-2, Job Posting

Anwar really does not take issue with this listing of duties. He does, however, add filing and faxing to the list.

[8] Poulin testified she agreed with Anwar to work, Monday, Tuesday, Wednesday, Friday and Saturday of each week and that her normal work day would commence at 10:00 a.m. and conclude at 6:00 p.m. It does not appear they discussed her wage. I note, however, the ad said "\$12.00 per hour depending on qualifications." I read from Poulin's testimony that she expected that salary rate. On the other hand, Anwar testified that Poulin was not familiar with the software—Simply Accounting—AGI used for bookkeeping. Until she was familiar with not only the software, but their office, it was Anwar's view AGI should pay her the lower rate of ten dollars and fifty cents (\$10.50) per hour. Anwar says he proposed this to Poulin and she agreed.

[9] Poulin commenced work on January 16, 2013. She testified it was on that day that Anwar told her that:

- a) she was "slow" with her work; and
- b) he would pay her ten dollars and fifty cents (\$10.50) per hour until she "sped up."

[10] Regardless of which version of the initial salary matter that I accept, it would appear that they had agreed on the ten dollar and fifty cents (\$10.50) per hour number.

[11] Poulin worked the agreed upon days until April 12, 2013. On that day, Anwar went on holidays. Poulin testified that she then began to work seven (7) days per week—eight hours per day, with no meal break (she ate her meals at her desk). This continued until May 18, 2013. After that she did not work Sundays. That continued until the end of October 2013. After that, she did not work Saturdays.

[12] Sometime in July 2013, AGI increased Poulin's salary to eleven dollars (\$11.00) per hour. AGI reflected this on her cheque dated July 19, 2013.

[13] Poulin testified that AGI never paid her for more than five (5) days per week. She said Anwar had suggested that he give her days off—he called them "EDOs"—rather than extra pay. Poulin says neither happened.

[14] Poulin testified Anwar paid her five hundred dollars (\$500.00) in cash—one hundred dollars (\$100.00) in each of June, July, August, September and October 2013. Poulin testified Anwar told her AGI made these payments because it could not afford to give her a raise. In addition, Anwar gave Poulin eight hundred dollars (\$800.00). Poulin testified that she needed furnace oil and asked Anwar for money to buy same.

[15] Ammad testified that he commonly delivered Poulin's pay cheque to her. He said he would give her not only the cheque, but an additional one hundred dollars (\$100.00) in cash. Both Anwar and Ammad said AGI paid a total of fifteen hundred dollars (\$1,500.00) in cash to Poulin. Anwar testified AGI intended these cash payments not only as an expression of appreciation, but also to cover holiday pay and

pay for statutory holidays. AGI did not report these cash payments on the T4 that AGI prepared. As well, AGI provided no breakdown on the pay stubs giving detail of regular pay, holiday pay, etc. Anwar says it was a mistake not to have done so.

[16] Anwar speaks of the eight hundred dollar (\$800.00) payment as a loan. He did deduct that amount for the final pay AGI tendered to Poulin.

[17] On December 4, 2013, Anwar told Poulin she was laid off. He told her he would pay her to December 6, 2013. Poulin did not work December 5 and 6, 2013, but AGI paid her for those days.

[18] Poulin testified that she asked Anwar as many as nine (9) times about being paid for the additional time she worked. Despite such requests, she says AGI made no such additional payment.

[19] Poulin testified that AGI did not require employees to keep time records. However, she did keep track of her time on her own.⁵ I am satisfied from Anwar's testimony that he was aware Poulin was keeping her own time records. There is inconsistency, however, about where these records were stored. Poulin testified that she prepared the records every month and placed them in a file in Anwar's office. Anwar admits seeing the records for January, February and March, 2013, but says he has not seen records for the remaining months until they were produced for this hearing. Anwar goes further and says that he believes Poulin removed the records for January, February and March, 2013, and altered them. What appears to be clear, however, is that:

- a) Anwar did not himself create and maintain time records for Poulin; and
- b) AGI did not pay Poulin a salary based on time records created by Poulin or anyone for that matter.

[20] Anwar testified that he had agreed with Poulin that:

- a) AGI would pay Poulin bi-weekly;
- b) AGI would pay Poulin for forty (40) hours of work per week, regardless of whether she worked less than that number of hours; and
- c) the salary payment plan would balance out for the weeks where Poulin worked more than forty (40) hours.

[21] Poulin tendered an audit sheet showing the pay that, based on her time records, she believes is due and owing.⁶ According to that document, five thousand and

⁵ Exhibit E-3, Time Records - January to December, 2013

⁶ Exhibit E-4, Audit Sheet

seventy-five dollars and eighty-eight cents (\$5,075.88) remains due and owing from AGI to Poulin. This sum reflects the eight hundred dollar (\$800.00) payment hereinbefore referred to, but does not account for the five (5), one hundred dollar payments (\$100.00), totaling five hundred dollars (\$500.00) previously referenced. The T4 statement⁷ prepared by AGI reflects the amount showing to be paid in the audit sheet, minus the eight hundred dollar (\$800.00) and five hundred dollar (\$500.00) payments just referenced.

[22] Both Anwar and Ammad take issue with Poulin's testimony concerning how much time she worked. First, they challenge the veracity of Poulin's records. For example, they say her records show individual(s) working on April 14, 18 and 28, and October 14, 2013, when those were days the office was closed. Second, they point to the two (2) week periods ending November 8, 2013—fifty-six (56) hours worked, November 22, 2013—seventy-two (72) hours worked and December 6, 2013—fifty-six (56) hours worked, and say AGI paid eighty (80) hours' salary for each of those pay periods. Third, they point to Poulin's testimony that no EDOs were earned for January, February and March, 2013. The further say a variety of other months—November 2013, for example—were simply not busy. Fourth, they point out that Poulin only raised the issue of additional pay in October 2013. Apparently that was when Anwar advised Poulin that he was negotiating the sale of his business and expected same to close December 1, 2013. If a business sale was imminent, Poulin might well expect she would not be able to recoup EDOs. So, it would be logical that she would look for payment instead.

[23] Anwar had prepared his own record of Poulin's time.⁸ This record was prepared in response to a request—following the complaint (the "Complaint") lodged by Poulin.⁹—for payroll records from the Ministry of Labour Relations and Workplace Safety (the "Ministry").¹⁰ Anwar testified that this record was prepared and based upon Poulin's pay stubs and not time records. AGI did not tender the pay stubs. Anwar testified that they were no longer available as AGI maintained the stubs electronically and, after two (2) years the computer software deletes them. AGI gave no explanation why it did not make copies of the stubs. Poulin takes issue with the accuracy of the employers payroll record.

[24] Poulin tendered her last pay stub.¹¹ Same:

a) reflects Poulin's pay to be eleven dollars (\$11.00) per hour;

⁷ Exhibit E-11, T4 Statement of Remuneration Paid

⁸ Exhibit E-9, AGI Records

⁹ Exhibit E-7, Complaint dated January 29, 2014

¹⁰ Exhibit E-8, Letter dated February 5, 2014, from Ministry to AGI

¹¹ Exhibit E-6, Pay Stub dated December 6, 2013

- b) makes no reference to any holiday pay;
- c) refers to payment of an eight hundred dollar (\$800.00) loan.

[25] Poulin testified that she did not borrow money and did not sign any loan agreement.

III. DISPUTE

[26] The issue herein is whether money is owing to Poulin for overtime, public holiday and annual holiday pay.

IV. DECISION

[27] I find as a fact that Poulin earned eighteen thousand seven hundred and four dollars (\$18,704.00) in wages.

[28] I rule that AGI and Anwar additionally owe Poulin seven thousand and ninety-nine dollars and eighty-eight cents (\$7,099.88), comprising the following:

- a) four thousand five hundred and six dollars (\$4,506.00) for overtime pay;
- b) one thousand one hundred and eighty-six dollars and forty cents (\$1,186.40) for public holiday pay; and
- c) one thousand four hundred and seven dollars and forty-eight cents (\$1,407.48) for annual holiday pay.

[29] I find as a fact that AGI paid nineteen thousand nine hundred and eighteen dollars (\$19,918.00) to Poulin.

[30] I find as a fact that AGI paid Poulin five hundred dollars (\$500.00) in cash, not one thousand five hundred dollars (\$1,500.00). I find this sum is not deductible from the amount owing from AGI and Anwar to Poulin.

[31] I further rule that the eight hundred dollar (\$800.00) payment is not a lawful deduction under *The Labour Standards Act*, R.S.S. 1978, c. 15.1 (the "LSA"). I find this sum is deductible from the amount owing from AGI and Anwar to Poulin.

[32] The appeal is dismissed.

[33] I vary the Assessment to reflect that the amount of five thousand and eighty-five dollars and eighty-eight cents (\$5,085.88) is owing to Poulin.

[34] AGI and Anwar shall pay interest on the sums owing from December 6, 2013, at the rates prescribed by Section 40 of *The Employment Standards Regulations*, c. S-15.1, Reg 5, being the rates calculated pursuant to section 113 of *The Enforcement of*

Money Judgments Act and section 10 of *The Enforcement of Money Judgments Regulations*.

V. REASONS

A. ACTS & REGULATIONS

[35] The relevant provisions of the *LSA*, with the corresponding provisions of the *SEA* are as follows:

<i>LSA</i>	<i>SEA</i>
Interpretation	Interpretation of Part
2 In this Act:	2-1 In this Part and in Part IV:
	...
	(o) "overtime" and "overtime pay" mean:
	(i) pay at a rate of 1.5 times an employee's hourly wage;
	...
(1.2) "public holiday pay" means an amount of money to which an employee is entitled pursuant to section 39;	(r) "public holiday pay" means an amount of money that is payable to an employee pursuant to section 2-32;
	...
(a) "annual holiday pay" means an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35;	(u) "vacation pay" means an amount of money that is payable to an employee pursuant to section 2-27;
(r) "wages" means all wages, salaries, pay, commission and any compensation for labour or personal services, whether measured by time, piece or otherwise, to which an employee is entitled;	(v) "wages" means salary, commission and any other monetary compensation for work or services or for being at the disposal of an employer, and includes overtime, public holiday pay, vacation pay and pay instead of notice;
(s) "week" means the period between midnight on a Saturday and midnight on the Saturday immediately following.	(w) "week" means:
	(i) for the purposes of sections 2-11, 2-12 and 2-17 to 2-20:
	(A) the period between midnight on a Saturday and midnight on the following Saturday; or
	(B) any other period of seven consecutive days that the employer

has consistently used when determining the schedule of an employee; and

- (ii) for all other purposes, a period of seven consecutive calendar days.

Hours of work and overtime pay

6(1) Subject to sections 7, 9 and 12, no employer shall, unless he complies with subsection (2), require or permit any employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week.

(2) Subject to sections 7 and 9, an employer who requires or permits an employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week shall pay to that employee wages at the rate of time and one-half for each hour or part of an hour in excess of eight hours in any day, or 40 hours in any week, during which he requires or permits the employee to work or to be at his disposal.

(3) In applying subsection (2), where the total of the daily excesses differs from the weekly excess, the employer shall make payment in respect of the greater excess.

(4) The hours during which an employee is required or permitted to work or to be at the disposal of his or her employer are deemed not to include any meal break allowed to employees if notice of the meal break is given in accordance with subsection 13.1(1) and if the employee is not in fact at the disposal of his or her employer during the meal break.

(5) For the purpose of calculating the wages of an employee on an hourly basis in order that the employee may receive the wages to which he is entitled pursuant to this Act, the following rules apply:

- 1 Where the employee is paid his wages on a daily basis, the hourly wage of the employee shall be the regular wages of the employee for one day divided by the number of hours of the day during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed eight;

Overtime hours not to be required

2-12(1) Subject to subsections (2) and (3), without the consent of an employee, no employer shall require the employee to work or to be at the employer's disposal for more than:

- (a) 44 hours in a week; or
- (b) in a week that contains a public holiday, 44 hours reduced by eight hours for each public holiday in that week.

(2) Subject to subsection (3), if an employee is working in accordance with a modified work arrangement or in accordance with an averaging authorization that satisfies the requirements of section 2-20, the employer shall not require the employee to work or be at the employer's disposal for more than:

- (a) 44 hours in a week;
- (b) in a week that contains a public holiday, 44 hours reduced by eight hours for each public holiday in that week; or
- (c) the hours in a week as set out in the modified work arrangement or averaging authorization.

(3) Subsections (1) and (2) do not apply if unexpected, unusual or emergency circumstances arise.

- 2 Where the employee is paid his wages on a weekly basis, the hourly wage of the employee shall be the regular wages of the employee for one week divided by the number of hours of the week during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed 40;
- 3 Where the employee is paid his wages on a monthly basis, the hourly wage of the employee shall be the regular wages of the employee for one month multiplied by 12 and divided by the figure received when 52 is multiplied by the number of hours of the week during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed 40;
- 4 Where the employee is paid his wages on a basis other than an hourly, daily, weekly or monthly basis, the hourly wage of the employee shall be determined in accordance with the regulations.

...

Meaning of "permit any employee to work"

8 Where an employer has knowledge that an employee is working and he does not cause him to stop working, he shall be deemed to have permitted such an employee to work within the meaning of the expression "permit any employee to work" as used in sections 6 and 7.

...

Observance of public holiday

10(1) Where in any week there is a public holiday mentioned in Part VI:

- (a) subsections 6(1) and (2), and section 7, shall be read with the substitution of the word "32" for the word "40" wherever it occurs in those provisions; and
- (b) in calculating the time worked by an employee in any such week, no account shall be taken of any time worked by him on the public holiday or of any time during which he was at the disposal of his employer during the public holiday.

(2) Where section 9 applies and where in any week during the period of weeks prescribed by the director under section 9 there is a public holiday mentioned in Part VI, the total number of hours that the employee is required by his employer to work or to be at his disposal over the period of weeks, without being paid wages at the rate of time and one-half, shall be reduced by eight hours and the employer shall pay to the employee wages at the rate of time and one-half for each hour and part of an hour that the employee works, or that he is at the disposal of the employer, in excess of the working hours as reduced by this subsection and for the purpose of this subsection, in calculating the total number of hours worked by an employee over any such period of weeks, no account shall be taken of any time worked by him on the public holiday or of any time during which he was at the disposal of his employer during the public holiday.

Employer not to require employee to work overtime

12(1) Notwithstanding any other provision in this Act, no employer shall, without the consent of the employee, require an employee to work or to be at his disposal for more than 44 hours in any week or, in the circumstances referred to in clause 10(1)(a), 36 hours in any week, except in the case of emergency circumstances.

(2) Where an employee refuses to work or to be at the disposal of an employer contrary to the employer's requirement made under subsection (1) and where no emergency circumstances exist, no disciplinary action shall be taken against the employee by the employer.

(3) In any prosecution alleging a violation of this section, the onus shall be upon the employer to prove that an emergency existed or that the employee was discriminated against for good and sufficient other reason.

(4) For the purposes of subsections (1) and (2), "emergency circumstances" means any sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer.

Period of rest

13(1) An employer shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of one day in every seven days.

(2) Notwithstanding subsection (1), where

Required period of rest

2-13(1) Subject to subsection (2), no employer shall require or permit an employee to work or to be at the employer's disposal for periods that are scheduled so that the employee does not have a period of eight consecutive hours of rest in any day.

there are more than 10 employees in any establishment, the employer shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of two consecutive days in every seven days, and one of those days is to be a Sunday wherever possible.

(3) Notwithstanding subsections (1) and (2), an establishment or class of establishments may be exempted from any of the provisions of this section by the regulations.

(4) Where the director is satisfied that subsections (1) and (2) would work a hardship on an employer or any class of employers or any of his employees, the director may grant a permit exempting the employer or class of employers from the provisions of subsection (1) or (2), upon any terms and conditions that he considers advisable.

(5) The director may at any time cancel any exemption made pursuant to subsection (4).

Meal breaks

13.3(1) An employer shall grant to each employee who works six hours or more an unpaid meal break of at least 30 minutes within every five consecutive hours of work except:

(a) where an accident occurs, urgent work is necessary or other unforeseeable or unpreventable circumstances occur;

(b) where the director is satisfied that the employer and a majority of employees agree that the employees may:

(i) take their meal break at another time; or

(ii) forego their meal break;

(c) where the employer seeks and obtains the written consent of the trade union representing the employees;

(2) Subsection (1) does not apply in emergency circumstances.

(3) Subject to subsections (4) to (6), an employer shall grant one day off every week to an employee who usually works or is at the disposal of the employer for 20 hours or more in a week.

(4) Subsection (3) does not apply to any prescribed workplace or prescribed category of employers or employees.

(5) In prescribed workplaces with more than 10 employees, or for prescribed categories of employees, an employer shall grant to employees in the workplace or to the category of employees two consecutive days off every week.

(6) On receipt of a written application from an employer and the employees or a representative of the employees, the director of employment standards may:

(a) issue a written authorization exempting the employer from subsection (3); and

(b) impose any conditions that the director considers appropriate on the written authorization issued pursuant to clause (a).

Meal breaks

2-14(1) Subject to subsections (2) and (4), an employer shall provide to an employee an unpaid meal break that is of at least 30 minutes' duration within every five consecutive hours of work.

(2) An employer is not required to grant a meal break pursuant to subsection (1):

(a) in unexpected, unusual or emergency circumstances; or

(b) if it is not reasonable for an employee to take a meal break.

(3) If the employer does not grant the meal break mentioned in subsection (1) and the employee works five or more consecutive hours, the employer shall permit an employee to eat while working.

(4) An employer shall provide to an employee an unpaid meal break at a time or times necessary for medical reasons.

(d) where it is not reasonable for an employee to take a meal break; or

(e) in any other case prescribed in regulations made pursuant to section 84.

(2) Where it is necessary for medical reasons, an individual employee is entitled to take a meal break at a time or times other than the time specified in subsection (1).

(3) Where an employee has worked five hours and the employer is not required to grant a meal break to an employee, the employer shall permit the employee to eat while working.

...

Overtime pay

2-17(1) An employer shall pay an employee overtime pay for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer's disposal that exceeds the hours determined in accordance with sections 2-18, 2-19 and 2-20.

(2) When calculating overtime pay, an employer:

(a) is not required to include any meal break allowed to an employee if:

(i) notice of the meal break is given in accordance with section 2-11; and

(ii) the employee is not at the disposal of the employer during the meal break;

(b) shall not take into account any time the employee works or is at the employer's disposal on a public holiday;

(c) shall reduce the time when overtime is payable by eight hours for each public holiday occurring in a week; and

(d) shall pay to the employee the greater of:

(i) the total of overtime pay required pursuant to this Subdivision that is calculated on a daily basis; and

- (ii) the total of overtime pay required pursuant to this Subdivision that is calculated on a weekly basis.

Overtime pay after eight hours and 40 hours

2-18(1) Unless an employee is working in accordance with a modified work arrangement or in accordance with an averaging authorization that satisfies the requirements of section 2-20, an employer shall pay the employee overtime for each hour or part of an hour in which the employer requires or permits the employee to work or to be at the employer's disposal for more than:

- (a) 40 hours in a week; or
- (b) either of:
 - (i) eight hours in a day if the employer schedules the employee's work in accordance with clause (2)(a); or
 - (ii) 10 hours in a day if the employer schedules the employee's work in accordance with clause (2)(b).

(2) For the purposes of determining the 40 hour per week maximum pursuant to subsection (1), the employer may require or permit the employee to work or be at the employer's disposal for either:

- (a) eight hours in a day for no more than five days in a week; or
- (b) 10 hours in a day for no more than four days in a week.

(3) Notwithstanding section 2-7 or subsections (1) and (2), in the prescribed circumstances and subject to the prescribed conditions, an employer and an employee may agree that the employee may bank overtime hours.

(4) Notwithstanding section 2-17, subsection (1) of this section and section 2-19, but subject to subsection (5), an employer shall pay an employee overtime if:

- (a) the employee works, on average, fewer than 30 hours per week; and

(b) the employer requires or permits the employee to work or to be at the employer's disposal for more than eight hours in a day.

(5) If employees have a union as their bargaining agent and the employer and the union have agreed respecting the number of hours in a day or week that are to be worked before overtime is paid:

(a) subsection (4) does not apply to those employees; and

(b) the employer shall pay those employees overtime in accordance with the agreement.

Modified work arrangement

2-19(1) Subject to subsection (2), an employer shall pay an employee overtime for each hour or part of an hour in which the employer requires or permits an employee to work or to be at the employer's disposal that exceeds:

(a) the prescribed hours of work; or

(b) with respect to employees who have a union as their bargaining agent, the hours as agreed to by the employer and the union.

(2) Subsection (1) applies if the employer requires the employee to be at the employer's disposal for more than 40 hours in week.

(3) The agreement mentioned in clause (1)(b) must require the payment of overtime if the hours an employee is required or permitted to work or to be at the employer's disposal exceed on average 40 hours per week.

(4) If the agreement mentioned in clause (1)(b) does not satisfy the requirements of subsection (3), the employer shall pay overtime in accordance with section 2-18.

...

Annual holiday to which 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;

Annual vacation periods and common date

2-24(1) Every employee is entitled:

(a) subject to clause (b), to an annual vacation of three weeks after the completion of each year of employment with an employer; and

(b) to an annual vacation of four

(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.

weeks after the completion of 10 years of employment with an employer and after the completion of each subsequent year of employment with that employer.

(2) An employer may use a common date for calculating vacation entitlement of all employees but only if the common date does not result in a reduction of any employee's rights pursuant to this Subdivision.

Remuneration payable to employee in respect of annual holiday

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;

(b) if the employee is entitled to an annual holiday pursuant to clause 30(1)(b), four fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday.

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

(2) Where an employee takes his holiday in one continuous period, the annual holiday pay payable to the employee shall be paid to the employee by his employer during the period of fourteen days immediately preceding the commencement of the holiday period.

(3) Where an employee has given his employer notice under clause (c) of subsection (1) of section 31 that he desires to take his annual holiday in a manner other than in one continuous period, the annual holiday pay payable to the employee in respect of each of the several portions in which the employee desires to take his holidays shall be paid to the employee by his employer during the period of fourteen days immediately preceding the commencement of each portion of the holiday

Vacation pay

2-27(1) An employee is to be paid vacation pay in the following amounts:

(a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;

(b) if the employee is entitled to an annual vacation pursuant to clause 2-24(1)(b), four fifty seconds of the employee's wages for the year of employment preceding the entitlement to the vacation.

(2) With respect to an employee who is entitled to a vacation pursuant to section 2-24 but who does not take that vacation, the employer shall pay the employee's vacation pay not later than 11 months after the day on which the employee becomes entitled to the vacation.

(3) The employer shall pay vacation pay to the employee in an amount calculated according to the length of vacation leave taken:

(a) at the employee's request, before the employee takes the vacation; or

(b) on the employee's normal payday.

(4) An employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the vacation if:

(a) the employee has scheduled a period of vacation at a time agreed to by the employer; and

respectively.

(4) Where an employee has scheduled a period as an annual holiday at a time agreed to by the employer and the employer does not permit the employee to take the annual holiday as scheduled, the employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the annual holiday.

Procedure when public holiday occurs during annual holiday

34 Where one or more public holidays as defined in Part VI of this Act occur during the period of any annual holiday that an employee has been permitted by his employer to take under this Act:

- (a) the period of that annual holiday shall be increased by one working day in respect of each such public holiday; and
- (b) the employer shall pay to the employee, in addition to the annual holiday pay that the employee is entitled to receive, the wages that he is entitled to be paid for each such public holiday.

Termination of employment

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

(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.

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

Interpretation

38 In this Part "public holiday" means New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving Day, Remembrance Day or Christmas Day.

(b) the employer does not permit the employee to take the vacation as scheduled.

(5) A monetary loss mentioned in subsection (4) is deemed to be wages owing and this Part applies to the recovery of that monetary loss.

When public holiday occurs during a vacation

2-28 If one or more public holidays set out in section 2-30 occur during the period of any vacation that an employee has been permitted by the employer to take pursuant to this Part:

- (a) the period of that vacation must be increased by one working day with respect to each public holiday; and
- (b) the employer shall pay to the employee, in addition to the vacation pay that the employee is entitled to receive, the wages that the employee is entitled to be paid for each public holiday.

Payment of vacation pay on ending of employment

2-29(1) If the employment of an employee ends, the employer shall pay to the employee the vacation pay to which the employee is entitled pursuant to this Part within 14 days after the day on which the employment ends.

(2) If the employment of an employee ends, the employee is entitled to vacation pay calculated in accordance with section 2-27 on the wages earned by the employee with respect to which the employee has not previously been paid vacation pay.

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

Public holidays

2-30(1) In this section:

- (a) "Family Day" means the third Monday in February;
- (b) "Saskatchewan Day" means the first Monday in August.

(2) For the purposes of this Part, the following are public holidays in Saskatchewan:

- (a) New Year's Day;
- (b) Family Day;
- (c) Good Friday;
- (d) Victoria Day;
- (e) Canada Day;
- (f) Saskatchewan Day;
- (g) Labour Day;
- (h) Thanksgiving Day;
- (i) Remembrance Day;
- (j) Christmas Day.

(3) In this Part, a reference to a public holiday is a reference to one of the days mentioned in subsection (2) or to a day substituted for that day in accordance with section 2-31.

...

Public holiday pay

39(1) The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an employer to any employee who does not work on that day:

- (a) where the employer pays to the employee the employee's regular wages for the period that includes that day, is equal to those wages;
- (b) in any other case, is the amount A calculated in accordance with the following formula:

$$A = \frac{W}{20}$$

where W is the total of the wages earned by the employee during the four weeks immediately preceding the public holiday, exclusive of overtime.

(2) The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an

Public holiday pay

2-32(1) An employer shall pay an employee for every public holiday an amount equal to:

- (a) 5% of the employee's wages, not including overtime pay, earned in the four weeks preceding the public holiday; or
- (b) an amount calculated in the prescribed manner for a prescribed category of employees.

(2) For the purposes of subsection (1), an employer shall include in the calculation of an employee's wages:

- (a) vacation pay with respect to vacation the employee actually takes in the four weeks preceding the public holiday; and
- (b) public holiday pay in an amount required pursuant to subsection (1) if another public holiday occurs in the four week period mentioned in clause (1)(a).

employer to any employee who works on that day is the total of:

- (a) the amount to which the employee would be entitled pursuant to subsection (1) if the employee did not work on that day; and
- (b) the amount of wages, calculated at a rate that is 1.5 times the employee's regular rate of wages, for the time worked.

(3) For the purposes of this section, where an employee takes an annual holiday during the four weeks immediately preceding a public holiday, "wages" includes the amount of annual holiday pay that is payable with respect to any annual holidays actually taken during that period.

Voluntary purchases by employee

58(1) Notwithstanding any other provision of this Act, where an employee voluntarily purchases from his employer any goods, wares or merchandise, the employer may deduct from the wages of the employee any amounts from time to time payable by the employee to the employer in respect of goods, wares or merchandise so purchased, and no action, suit or other proceeding shall be brought or maintained by the employee against his employer in respect of any deduction so made.

(2) Notwithstanding any other provision of this Act, in any action, suit or other proceeding brought by an employee against his employer for the recovery of money due for labour or services, the employer may set off against, or claim in reduction of, the employee's demand any amount payable by the employee to the employer in respect of goods, wares or merchandise so purchased.

(3) Notwithstanding any other provision of this Act, an employer is entitled to recover by action any amount payable to him in respect of goods, wares or merchandise purchased by an employee in accordance with subsection (1).

(3) If an employee works on a public holiday, an employer shall pay the employee the total of:

- (a) the amount calculated in accordance with subsection (1); and
- (b) for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer's disposal:
 - (i) an amount calculated at a rate of 1.5 times the employee's hourly wage; or
 - (ii) an amount calculated in the prescribed manner for a prescribed category of employees.

Deductions and special clothing

2-36(1) Except as permitted or required pursuant to this Act, any other Act or any Act of the Parliament of Canada, an employer shall not, directly or indirectly:

- (a) make any deductions from the wages that would be otherwise payable to the employee;
- (b) require that any portion of the wages be spent in a particular manner; or
- (c) require an employee to return to the employer the whole or any part of any wages paid.

(2) In addition to deductions permitted or required pursuant to law, an employer may deduct from an employee's wages:

- (a) employee contributions to pension plans or registered retirement savings plans;
- (b) employee contributions to other benefit plans;
- (c) charitable donations voluntarily made by the employee;
- (d) voluntary contributions by the employee to savings plans or the purchase of bonds;
- (e) initiation fees, dues and assessments to

a union that is the bargaining agent for the employee;

- (f) voluntary employee purchases from the employer of any goods, services or merchandise; and
- (g) deductions for purposes or categories of purposes that are specified pursuant to subsection (3).

(3) For the purposes of clause (2)(g), the Lieutenant Governor in Council may specify purposes and categories of purposes by regulation or by special order in a particular case.

(4) No employer shall require an employee to purchase special clothing that identifies the employer's establishment.

(5) An employer who requires an employee to wear a special article of clothing that identifies the employer's establishment shall provide that special article of clothing free of cost to the employee.

Deductions from wages

59 Nothing in this Act prohibits an employer from making deductions from the wages of an employee that may lawfully be deducted.

Directors of corporation liable for wages

63(1) Notwithstanding any other provision in this Act or any provision in any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for all debts due for services performed for the corporation, not exceeding six months' wages, while they are the directors.

(1.1) For the purposes of this section, "debts due for services performed for the corporation" means all remuneration payable by an employer to an employee pursuant to this Act and, without limiting the generality of the foregoing, includes wages, annual holiday pay, public holiday pay and pay in lieu of notice.

Corporate directors liable for wages

2-68(1) Subject to subsection (2), notwithstanding any other provision of this Act or any other Act, the corporate directors of an employer are jointly and severally liable to an employee for all wages due and accruing due to the employee but not paid while they are corporate directors.

(2) The maximum amount of a corporate director's liability pursuant to subsection (1) to an employee is six months' wages of the employee.

(3) Subject to subsections (4) and (5), a corporate director's liability pursuant to this section is payable in priority to any other unsecured claim or right in the corporate director's property or assets, including any claim or right of the Crown.

(4) The payment priority set out in subsection (3) is subject to section 15.1 of *The Enforcement of Maintenance Orders Act, 1997*.

- (5) A corporate director who is an employee of the corporation is not entitled to the benefit provided to employees by subsection (3).

Wage assessment

60(1) Without limiting the generality of section 82, in this section and in sections 61 to 62.4, "wages" includes overtime, annual holiday pay, public holiday pay, pay in lieu of notice, monetary losses described in subsection 33(4) and transportation costs described in subsection 44(2.5).

- (2) The director may issue a wage assessment:

(a) against an employer where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act; or

(b) against a corporate director where the director has knowledge or has reason to believe or suspects that the corporate director is liable for wages in accordance with section 63.

- (3) The director shall issue a wage assessment against an employer where:

(a) the director has served a third party demand;

(b) the third party has paid money to the director in response to the third party demand;

(c) the director has not already issued a wage assessment against the employer in accordance with subsection (2); and

(d) there is no agreement pursuant to clause 55(2)(a).

- (4) Where the director has issued a wage assessment pursuant to subsection (2) or (3), the director shall cause the wage assessment to be served on the employer or corporate director named in the wage assessment and on each employee who is affected by the wage assessment.

- (5) A wage assessment must:

Wage assessments

2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

- (2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

(a) the employer;

(b) subject to subsection (3), a corporate director.

- (3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2 68.

- (4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

- (5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

- (6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage assessment to be served on:

(a) the employer or corporate director named in the wage assessment; and

(b) each employee who is affected by the wage assessment.

- (7) A wage assessment must:

- (a) indicate the amount claimed against the employer or corporate director;
 - (b) direct the employer or corporate director to:
 - (i) pay the amount claimed within 21 days after the date of service of the wage assessment; or
 - (ii) commence an appeal pursuant to section 62; and
 - (c) in the case of a wage assessment issued pursuant to subsection (3), set out the amount paid to the director by the third party.
- (6) The director may, at any time, amend or revoke a wage assessment.

Decision of adjudicator

62.2(1) . . . [T]he adjudicator shall:

- (a) either:
 - (i) dismiss the appeal and confirm the amount claimed in the wage assessment or confirm the decision of the director pursuant to subsection 62.4(2.1); or
 - (ii) allow the appeal and:
 - (A) vary the amount claimed in the wage assessment;
 - (B) revoke the wage assessment; or
 - (C) revoke the decision of the director; and
- (b) provide written reasons for the decision to the registrar of appeals.

- (a) indicate the amount claimed against the employer or corporate director;
- (b) direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:
 - (i) pay the amount claimed; or
 - (ii) commence an appeal pursuant to section 2-75; and
- (c) in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.

- (8) The director of employment standards may, at any time, amend or revoke a wage assessment.

Decision of adjudicator

4-6(1) Subject to subsections (2) to (5), the adjudicator shall:

- (a) do one of the following:
 - (i) dismiss the appeal;
 - (ii) allow the appeal;
 - (iii) vary the decision being appealed; and
 - (b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety, as the case may be, and any other party to the appeal.
- (2) If, after conducting a hearing, the adjudicator concludes that an employer or corporate director is liable to an employee or worker for wages or pay instead of notice, the amount of any award to the employee or worker is to be reduced by an amount that the adjudicator is satisfied that the employee earned or should have earned:

(2) The adjudicator:

(a) may award interest at a rate prescribed in the regulations; and

(b) shall not award costs against any of the parties.

(3) On receipt of the decision from the adjudicator, the registrar of appeals shall promptly serve a copy of the decision on the director, the appellant and:

(a) on each employee who is directly affected by the decision; or

(b) where the appellant is an employee, on the employer or corporate director

(a) during the period when the employer or corporate director was required to pay the employee the wages; or

(b) for the period with respect to which the employer or corporate director is required to make a payment instead of notice.

(3) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (2).

(4) If, after conducting a hearing concerned with section 2-21, the adjudicator concludes that the employer has breached section 2-21, the adjudicator may exercise the powers given to the Court of Queen's Bench pursuant to sections 31.2 to 31.5 of The Saskatchewan Human Rights Code and those sections apply, with any necessary modification, to the adjudicator and the hearing.

(5) If, after conducting a hearing concerned with section 2-42, the adjudicator concludes that the employer has breached section 2-42, the adjudicator may issue an order requiring the employer to do any or all of the following:

(a) to comply with section 2-42;

(b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;

(c) to restore the employee to his or her former position;

(d) to post the order in the workplace;

(e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.

...

Employer to keep record of wages, hours worked, etc.

70(1) Every employer shall at all times keep readily available for inspection by the minister or his duly authorized representative, in each place of business operated by him in the province or in connection with which any employee is employed or in such other place or places as are

Employer to keep record of wages, hours worked, etc.

2-38(1) No employer shall fail to keep:

(a) records showing the particulars of every unwritten contract dealing with wages or other monetary benefits to which any employee is entitled;

approved by the minister, true and correct records showing particulars of every unwritten contract and a copy of every written contract or other document dealing with wages or other monetary benefits to which any employee is entitled and, in respect of each of his employees or the employment of each of his employees:

- (a) the full name, sex, date of birth and residential address of the employee;
- (b) the name or a brief description of the job or position of the employee;
- (c) the rate of wages expressed in terms of wages per hour, week or month of the employee for the time that the employee may be required or permitted to work or to be at the disposal of the employer without the employer being required to pay the employee additional wages under Part 1;
- (d) the total wages paid to the employee for each week or other pay period;
- (e) the time when the employee's work begins and ends each day and the time when any interval for meals allowed to the employee each day begins and ends;
- (f) the total number of hours worked by the employee each day and each week as well as the total number of hours each day and each week that the employee is required to be at the disposal of the employer;
- (g) every deduction made from the wages of the employee for any purpose whatever and the purpose for which each deduction was made;
- (h) the date of each payment of wages to the employee;
- (i) the date of commencement of the employee's employment, and the date of termination where applicable;
- (j) the date upon which the employee becomes entitled to each annual holiday;
- (k) the dates on which each annual holiday is taken by the employee;

(b) a copy of every written contract or other document dealing with wages or other monetary benefits to which any employee is entitled; and

(c) records showing the following with respect to each employee:

- (i) the full name, sex, date of birth and residential address of the employee;
- (ii) the name or a brief description of the job or position of the employee;
- (iii) the rate of wages of the employee expressed in terms of wages per hour, day, week, month or other period;
- (iv) the total wages paid to the employee for each week or other pay period;
- (v) the time when the employee's work begins and ends each day and the time when any meal breaks allowed to the employee each day begin and end;
- (vi) the total number of hours worked by the employee each day and each week as well as the total number of hours each day and each week that the employee is required to be at the disposal of the employer;
- (vii) every deduction made from the wages of the employee for any purpose whatever and the purpose for which each deduction was made;
- (viii) the date of each payment of wages to the employee;
- (ix) the date of commencement of the employee's employment and, if applicable, the date the employment ends;
- (x) the date on which the employee becomes entitled to each vacation;
- (xi) the dates on which each

- (l) the amount paid to the employee in respect of each annual holiday to which the employee is entitled and the date of payment;
- (m) the amount paid to the employee upon the termination of the employment of the employee and the date of payment; and
- (n) such other particulars as the minister may prescribe.

(1.1) Without limiting the generality of subsection (1), an employer shall keep a register of every employee whose work is ordinarily performed at home, setting out the address where that work is performed and the portion of the labour or services performed by the employee that was performed at home.

(2) The record of each employee that is required by this section shall be retained by the employer for a period of five years following the termination of the employment of the employee.

(3) The employment of an employee by an employer shall be deemed not to have been terminated for the purposes of subsection (2) where the employee is employed again by the employer within six months of the date on which the employment of the employee was terminated.

(4) The records required by this section may be incorporated in any wage record that the employer is required to keep under any other Act.

(5) The minister may prescribe the form in which the records required by this section shall be kept.

vacation period is taken by the employee;

(xii) the amount paid to the employee with respect to each vacation to which the employee is entitled and the date of payment;

(xiii) the amount paid to the employee with respect to each public holiday and the date of payment;

(xiv) if applicable, the amount paid to the employee on the ending of the employment and the date of payment;

(xv) any other prescribed matters or matters that the minister may require.

(2) Every employer shall provide the records mentioned in subsection (1) to an employment standards officer when requested by the officer.

(3) Every employer shall keep a register of every employee whose work is ordinarily performed at home setting out:

(a) the address where that work is performed; and

(b) the portion of the work performed by the employee that was performed at home.

(4) The records that an employer is required to keep pursuant to this section respecting an employee must cover the most recent five years of the employee's employment.

(5) If an employee's employment ends, the employer shall retain the records mentioned in subsection (4) for a period of two years after the date on which the employee's employment ended.

(6) An employee's employment is deemed not to have ended for the purposes of subsection (5) if the employee is employed again by the employer within six months after the date on which the employment of the employee ended.

(7) The records required by this section may be incorporated in any wage record that the

employer is required to keep pursuant to any other Act.

B. ANALYSIS

[36] I have set out the various provisions of the *LSA* and *SEA* that relate to the matters at issue herein. The *LSA* was repealed effective April 29, 2014, and replaced with the *SEA*. The *LSA* was the governing legislation in effect while AGI employed Poulin. However, I am satisfied that both my analysis and conclusions in this matter would be the same, regardless of which legislation applies.

1. PAYROLL RECORDS

[37] Section 70(1) of the *LSA* mandates employers to keep true and correct records readily available for inspection by the Minister or his duly authorized representative. I agree.

[38] I am satisfied on the evidence that AGI and Anwar did not comply with that section. I come to this conclusion for the following reasons:

- a) by his own admission, Anwar only created Poulin's payroll records after receiving a request from the Ministry;
- b) Anwar's testimony is that these records were drawn from information on Poulin's pay stubs and prepared following the termination;
- c) AGI's records, and the testimony of Anwar and Ammad in support thereof, conflict with Poulin's records and her testimony;
- d) AGI's records do not reflect:
 - i) hours on days Poulin testified she worked—in particular various, Thursdays during the months of April to November 2013, inclusive;
 - ii) hours worked on public holidays Poulin testified she worked; and
 - iii) the one hundred dollar (\$100.00) cash payments made.

[39] I appreciate that the evidence of both Anwar and Ammad conflict with that of Poulin. Wherever such conflict exists, I prefer and accept the evidence of Poulin. AGI did not tender Poulin's pay stubs. Anwar testified that they were no longer available as AGI maintained the stubs electronically and, after two (2) years the computer software deletes them. I find this an incredulous explanation. The hearing took place within less than two (2) years from the date of Poulin's termination. In any event, AGI gave no explanation why it did not make copies of the stubs. I not only draw an inference adverse to AGI, but I simply find Poulin's evidence more credible.

[40] Ms. Ooms referred me to the decision of Taylor, P.C.J., in the unreported

decision of *R. v The Carpet Warehouse (Saskatoon) Ltd.* (1978). Therein, Judge Taylor said "an employer who has failed in his statutory duty to keep records is not in a position to dispute the records submitted by the employee." Ms. Ooms argues this stands for the proposition that section 70 of the *LSA* requires the employer to maintain the required records for each employee. If the employer does not do so, then without any evidence to the contrary, any records that an employee submits should be presumed to be accurate. I agree. This principle should apply to the case at bar.

2. PUBLIC HOLIDAY PAY

[41] Section 39(1) of the *LSA* provides that an employee who does not work on a public holiday should receive a regular day's pay or $\frac{1}{20}$ th of the previous four (4) weeks' earnings. Section 39(2) provides that if an employee works on a public holiday, she should receive, in addition to a regular day's pay, time and $\frac{1}{2}$ for the time worked.

[42] Ms. Ooms submits:

The employer's payroll records do not show that public holiday pay was paid to Ms. Poulin at all. On the occasions that Ms. Poulin did not work the holiday, but worked four days in the week, and was paid her regular wages for five days in that week, it could be considered proper payment of public holiday pay. However, for the weeks that Ms. Poulin was working six days including the public holiday, she has not been paid public holiday pay at all.

Starting in April, 2013, when she was working 6 days a week including most public holidays it is clear that she was not paid either premium public holiday pay at time and $\frac{1}{2}$ or her regular public holiday pay of $\frac{1}{20}$ th of the previous four weeks' earnings. She should have received both, but she only received 80 hours regular pay in the two-week period.

I agree.

[43] I have reviewed the audit sheet¹² tendered by Poulin. I find it fairly and accurately calculates the public holiday pay due and owing from AGI to Poulin. I find as a fact that amount to be one thousand one hundred and eighty-six dollars and forty cents (\$1,186.40).

3. ANNUAL HOLIDAY PAY

[44] Section 2(a) of the *LSA* defines "annual holiday pay" as an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35. Section 33(1) provides that the calculation for an employee's annual holiday pay entitlement is $\frac{3}{52}$ ^{nds} of the employee's total gross earnings. Section 70(1) provides that any payment of annual holiday pay should clearly be noted as such on the payroll records.

[45] Ms. Ooms submits AGI's records do not show Poulin to have been paid annual holiday pay. Short of Anwar's testimony that the cash payments AGI made were

¹² *Supra*, footnote 6

intended to cover such pay, it is clear the pay she received did not include any payment of annual holiday pay over and above regular wages. Indeed, the amount of wages that appear on the T4 is the same amount shown on the payroll records. It is clear that AGI has not paid annual holiday pay.

[46] I have reviewed the audit sheet¹³ tendered by Poulin. I find it fairly and accurately calculates the annual holiday pay due and owing from AGI to Poulin. I find as a fact that amount to be one thousand four hundred and seven dollars and forty-eight cents (\$1,407.48).

4. OVERTIME PAY

[47] Section 6 of the *LSA* provides that an employer must pay overtime at the rate of time and ½ to an employee who works more than eight (8) hours per day, or more than forty (40) hours per week. Section 8 provides that if an employer knows an employee is working and does not tell them to stop, then they have permitted them to work. They must be paid. Section 10(1) of the *LSA* provides that during the weeks where a public holiday occurs, overtime is payable after eight (8) hours per day, or thirty-two (32) hours per week.

[48] The evidence shows:

- a) Poulin worked more than forty (40) hours a week for many weeks—she worked on Thursdays and sometimes seven (7) days per week, including Sundays;
- b) Poulin mostly worked eight (8) hours per day and did not take meal breaks;
- c) Poulin's records showed when she worked more than forty (40) hours per week;
- d) when Poulin worked more than forty (40) hours per week, the excess hours were not paid for;
- e) Poulin thought she would be either paid or given days off in the future in return for working excess hours, but AGI terminated her employment before this happened.

[49] I have reviewed the audit sheet¹⁴ tendered by Poulin. I find it fairly and accurately calculates the overtime pay due and owing from AGI to Poulin. I find as a fact that amount to be four thousand five hundred and six dollars (\$4,506.00).

5. DEDUCTIONS

[50] Section 58 of the *LSA* provides that an employer may deduct from an

¹³ *Supra*, footnote 6

¹⁴ *Supra*, footnote 6

employee's wages any amounts payable in respect of goods, wares or merchandise purchased from the employer. Section 59 provides an employer may make deductions from employees that are lawful.

[51] We therefore see the parameters as to what can and cannot be deducted from an employee's wages are legislated. This is designed to protect wages. As such, the circumstances when deductions can be permitted must be narrowly construed. The burden of proof lies on the employer to establish the deduction should be permitted.

[52] I will deal first with the cash payments. Poulin says they totaled five hundred dollars (\$500.00). AGI says they totaled one thousand five hundred dollars (\$1,500.00). The evidence establishes:

- a) AGI did not record the cash payments on Poulin's payroll records or T4;
- b) Anwar testified AGI intended them not only as an expression of appreciation, but also to cover holiday pay and pay for statutory holidays;
- c) Anwar gave no breakdown as to what portion of the cash payment applied for appreciation, holiday pay or statutory holiday pay; and
- d) Poulin testified Anwar told her AGI made the cash payments because it could not afford to give her a raise.

[53] I find Poulin's testimony to be more credible than that of Anwar. I find as a fact that:

- a) AGI paid Poulin five hundred dollars (\$500.00), not one thousand five hundred dollars (\$1,500.00); and
- b) AGI made the cash payments in lieu of a raise.

[54] I find that AGI has not met its burden. The cash payments should not be deducted from any sum found owing by AGI to Poulin.

[55] I will now deal with the eight hundred dollar (\$800.00) payment. The evidence establishes that the money was intended to assist Poulin purchasing furnace oil. AGI says it was a loan. Poulin says it was to be treated an advance against overtime and not worked, but not paid.

[56] Clearly, the furnace oil does not constitute "goods, wares or merchandise" of AGI. It therefore does not constitute a lawful deduction under the section 58 of *Act*. However, I accept Poulin's testimony that the eight hundred dollar (\$800.00) payment was to be treated an advance against overtime and not worked, but not paid. I also note that both Poulin and Ms. Ooms both agreed the sum should be deducted from any sum found owing by AGI to Poulin.

[57] Albeit through the evidence and admissions of Poulin, I find that AGI has met its burden. The eight hundred dollar (\$800.00) payment should, pursuant to section 59 of the *LSA*, be deducted from any sum found owing by AGI to Poulin.

[58] Both the *LSA* and *SEA* provide that I may dismiss an appeal, allow the appeal, and/or vary the decision being appealed. I:

- a) dismiss the appeal;
- b) vary the Assessment to reflect that five thousand and eighty-five dollars and eighty-eight cents (\$5,085.88) is owing to Poulin; and
- c) order AGI and Anwar to pay interest on the sums owing from December 6, 2013, at the rates prescribed by Section 40 of *The Employment Standards Regulations*, c. S-15.1, Reg 5, being the rates calculated pursuant to section 113 of *The Enforcement of Money Judgments Act* and section 10 of *The Enforcement of Money Judgments Regulations*.

Dated at Saskatoon, Saskatchewan, on July 27, 2015.



T. F. (TED)KOSKIE, B.Sc., LL.B.,
ADJUDICATOR

VI. NOTICE

The parties are hereby notified of their right to appeal this decision pursuant to section 4-8 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (as amended), which reads as follows:

- 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.