



DECISION OF ADJUDICATOR  
IN THE MATTER OF AN APPEAL  
PURSUANT TO SECTION 2-75 WITH RESPECT TO A DECISION OF AN  
EMPLOYMENT STANDARDS OFFICER PURSUANT TO  
***THE SASKATCHEWAN EMPLOYMENT ACT,***  
***R. S. S. S-15.1 (as amended)***

APPLICANT: Classic Motor Products (2009) Ltd. o/a Yorkton Hyundai

RESPONDENT: Alen Selsek

and

Director of Labour Standards  
Ministry of Labour Relations and Workplace Safety

DATE OF HEARING: April 21, 2016 (concluded on May 4, 2016)

PLACE OF HEARING: Yorkton, Saskatchewan

**I. INTRODUCTION**

This is an appeal by Classic Motor Products (2009) Ltd. o/a Yorkton Hyundai (hereinafter referred to as Yorkton Hyundai) with respect to a Wage Assessment issued by the Respondent, the Director, Employment Standards Branch, Ministry of Labour Relations and Workplace Safety, on July 2, 2015. The Wage Assessment required the Applicant to pay Alen Selsek the sum of \$19,534.35, representing unpaid wages. The Wage Assessment was prepared pursuant to s. 2-74 of *The Saskatchewan Employment Act*, R.S.S. S-15.1 (as amended).

This matter was heard before me on April 21, 2016 and the parties subsequently provided written submissions, received May 4, 2016. The Applicant was represented by counsel, Randy Kachur, Q.C. and present on behalf of the Applicant were the owner, Ron Kaban and Larry Hardy, Service Manager. Present for the Respondent at the Hearing were Dale Schmidt, Department of Employment Standards and Alen Selsek, the employee. Meg Brooks provided evidence on behalf of the Respondent.

**II. PRELIMINARY MATTERS**

There were no preliminary matters. All parties agreed on the issue to be determined and agreed that all parties, including those giving evidence, could remain present throughout the Hearing.

### III. THE ISSUE

While the issue is not complex, it is difficult to articulate in one sentence. Mr. Selsek was initially hired by Yorkton Hyundai as a Journeyman Technician at a wage of \$25/hour. He was hired as a foreign worker; therefore, his job description and wage were stipulated in a Labour Market Opinion and Annex (hereinafter referred to as the LMO) prepared by Service Canada. Shortly after he commenced employment, Yorkton Hyundai determined that Mr. Selsek was not qualified to perform the Journeyman Technician's job. He was then offered and began to work in other employment at Yorkton Hyundai, in a less skilled position as a Lube Technician. The rate of pay for this position was \$15/hour. The question is: was Yorkton Hyundai required to continue to pay him \$25/hour for that lesser work solely because of the LMO? Employment Standards agrees that but for the LMO, there would be no issue with Mr. Selsek's wages. The Employer agrees that if I find in favour of the employee, the wage assessment is accurate.

### IV. EVIDENCE

#### i. EVIDENCE OF RESPONDENT

##### (a) Alen Selsek

Alen Selsek testified that he was from Slovenia and heard about the job with Yorkton Hyundai from a friend working in Saskatchewan. Initially, he did not recall seeing the newspaper ad (Exhibit ER1) but on cross-examination allowed that he might have seen it. He sent his resume (Exhibit EE3) and a cover letter applying for the Journeyman Technician job to Yorkton Hyundai via a friend. Eventually, Yorkton Hyundai was granted a LMO (Labour Market Opinion) permitting them to hire Mr. Selsek as a Journeyman Technician at a wage of \$25/hour. Exhibit EE2 contains this offer and Mr. Selsek accepted this offer. He got his work permit (Exhibit EE5) on his arrival at Toronto International Airport on February 7, 2013 and commenced work at Yorkton Hyundai on February 12, 2013.

Mr. Selsek testified that he had been working as a mechanic for many years and had his Journeyman Red Seal Certificate in Slovenia. He said he could fix just about anything. When he started with Yorkton Hyundai, Mr. Selsek was shown his bay and began to work. He was given a chance to familiarize himself with the tools and equipment. Mr. Selsek had some problems with the diagnostics equipment and needed to ask the other technicians for assistance. In particular, he testified that he was not familiar with the Hyundai diagnostics and that another technician had to show him what to do. Mr. Selsek's evidence about the nature of his employment with Yorkton Hyundai and the work he performed varied, as if he was making it up as he went along. He first said that when he started at Yorkton Hyundai he was given oil changes, and some automotive repair work such as drive shafts, warranty work and other work he could not recall. Then he said that in fact he was only doing oil changes from the first day. Then he said that it was after one or two weeks that he was given only oil changes and tire rotations. Larry Hardy was his supervisor and Mr. Selsek did not recall Mr. Hardy raising any issues with his work. Mr. Selsek testified that more or less out of the blue, his pay was changed from \$25/hour to \$15/hour and that after about three months he got a pay raise to \$18/hour. He remembers only being told that Yorkton Hyundai was unable to pay him \$25/hour. He was vague about the reason. Mr. Selsek stayed on at \$15/hour because he did

not want to argue about it and did not have enough money to return home. He subsequently left Yorkton Hyundai on June 5, 2014 after he found other, better paying, employment.

Mr. Selsek acknowledged that the job he applied for at Yorkton Hyundai entailed the use of complex computerized diagnostic equipment. His resume stated that he had comprehensive knowledge of diagnosing performance problems and he was computer literate. He was aware that the job would require an ability to diagnose automotive problems via computerized equipment, including but not limited to, Hyundai diagnostic equipment.

Mr. Selsek agreed that he did not advise the Canadian Government of his reduced job description and pay as he feared deportation.

**(b) Meg Brooks**

Meg Brooks, called by the Respondent, provided detailed evidence on the process by which a non-Canadian can become employed in Canada. Ms. Brooks had significant experience in this area through her work both with Service Canada and, more pertinent to this case, her work with the Program Integrity Unit of the Saskatchewan Immigrant Nominee Program (SINP). I have attempted to simplify her evidence to the nuts and bolts.

Where an employer needs to hire a skilled worker from outside of Canada, the employer must first apply to the Canadian Government (Service Canada) for a Labour Market Opinion (LMO). This commences the process, for which the employer pays a fee. Among other things, the LMO is an opinion provided by Service Canada that assesses the likely impact that hiring the foreign worker may have on the Canadian labour market. Service Canada reviews the application and considers a number of aspects:

- 1) Has the employer attempted to hire a Canadian
- 2) Has the employer advertised extensively in Canada
- 3) Will the hiring of a foreign worker displace a Canadian worker
- 4) Would the wages and working conditions being offered attract Canadian workers
- 5) Is the wage rate being offered within the prevailing range of pay for Canadians for this work

Once this study has been completed, Service Canada either approves the LMO or it doesn't. The LMO will contain an attachment, called an Annex, which sets out the conditions of employment of the foreign worker. When the employer receives a positive LMO, the foreign worker to be hired completes the work permit application, from outside of Canada, which is sent to Citizenship and Immigration Canada (CIC). Once that is approved, then the employee enters Canada and obtains his or her work permit at the port of entry. The worker can then commence working. Mr. Selsek entered Canada at Toronto and obtained his work permit there.

Notable about the work permit is that it has definite parameters; it refers to a specific time frame and employer, with a specific job description. This is evidenced in Exhibit EE5. Mr. Selsek was permitted to enter Canada to work for Classic Motor Products LTD in Yorkton, SK. He could work only as a motor vehicle mechanic and the permit was valid from February 7, 2013 to May 6, 2015. The permit also notes that Mr. Selsek brought with him his school-age son. Ms. Brooks advised that if the worker takes any other job, he is in the country illegally and the new employer is breaking the law. The LMO and Annex cannot be modified by the current employer. For example, if the work is not there or the job is no longer available, then the Employer must apply for a new LMO. If the employee remains in Canada pending approval of the new LMO, he is in the country illegally.

If the employee turns out to not meet the qualifications required for the job he was hired for, the only recourse for the employer is to terminate the employee. Failure to do so could result in prosecution of the employer and ultimately, a fine. Once terminated, the employee must then leave Canada and if a new LMO is approved, he can apply for a new work permit. It is possible for the employee to move to other employment if he maintains his job with his current employer and the new employer applies for and is granted a positive LMO and the employee then applies for a new work permit

It was the opinion of Ms. Brooks that if Yorkton Hyundai assessed that Mr. Selsek was not qualified for the position on the work permit and described more fully in the LMO, it was required to terminate Mr. Selsek. Then Mr. Selsek (and his son) would have to leave the country, return to Slovenia and start the process over.

## **ii. EVIDENCE OF EMPLOYER**

### **(a) Larry Hardy**

Larry Hardy testified on behalf of the Employer. Mr. Hardy has worked for Yorkton Hyundai since 2009 and became Service Manager in 2012. Among other things, the Service Manager schedules staff hours, books service appointments and is responsible for all service issues at Yorkton Hyundai. He also supervises the work done by automotive and lube bay technicians. Mr. Hardy identified Exhibit ER 1 as the ad initially posted by Yorkton Hyundai. There are two ads on the page, but it is the Journeyman Technician position for which Mr. Selsek was hired. According to Mr. Hardy, a Journeyman Technician should be capable of diagnosing all problems in all makes of vehicles as well as performing any necessary repairs. These days, diagnoses are carried out using computerized diagnostic tools. Hyundai has its own diagnostic tool particular to Hyundai vehicles; Yorkton Hyundai also has a generic scan it uses for other makes of vehicles. The Hyundai diagnostic tool goes into more detail than the generic scan. This is understandable, as it is a Hyundai dealership and it does warranty work for the vehicles it sells.

On the basis of the information in Mr. Selsek's resume (Exhibit EE3), Mr. Hardy believed that Mr. Selsek would be able to fulfill the position of Journeyman Technician as described above. The LMO process was carried out, Mr. Selsek entered Canada with his work permit and he commenced working at Yorkton Hyundai on February 12, 2013.

On his first day of work, Mr. Selsek was shown around, introduced, given his own service bay and assigned some work. Mr. Hardy observed that Mr. Selsek was struggling with the scan tools, frequently asking for assistance from the other technicians. Mr. Selsek told Mr. Hardy it was just because he was nervous and after speaking with the owner, Ron Kaban, Mr. Hardy lightened Mr. Selsek's duties during the first week. By the second week, things had not changed and Mr. Selsek's frequent questions to the other technicians were interfering with their ability to work. At this juncture, Mr. Hardy moved Mr. Selsek to lesser duties such as brake jobs, oil changes, tire rotations and limited work with the scan tools. The starting rate of pay for a technician who performed only these duties was \$15/hour. Thereafter, Mr. Selsek did no major work on engines, transmissions and such, which was the work of a Journeyman Technician, paying \$25/hour.

Mr. Selsek did not have his Journeyman 's papers. Mr. Hardy testified that while they had discussions about Mr. Selsek's wish to obtain same, they were not necessary to his employment provided he could perform the work. Mr. Selsek was, however, encouraged to study for and write the exam so that he would improve and was also told that if he achieved his Journeyman certificate, he would be paid accordingly.

Mr. Hardy testified that he knew what the implications to Mr. Selsek would be if they terminated him and that he did not terminate him out of compassion. Mr. Selsek had moved here with his son to start a new life.

**(b) Ron Kaban**

Ron Kaban is the Director of the Applicant, which operates the Yorkton Hyundai business. His duties include overseeing all departments: sales, parts, service, etc. In 2012 the business was in need of another Journeyman Technician and the Advertisement (Exhibit ER2) was place in the local paper. Steps were taken to apply for the LMO and ultimately the LMO and Annex (Exhibit EE1) were granted from Service Canada. Communication with Mr. Selsek was made and he was offered the position as per the employment letter (Exhibit EE2). Mr. Selsek commenced work as a Journeyman Technician on February 12, 2013. Mr. Kaban disagrees with the evidence of Mr. Selsek that as soon as Mr. Selsek started work they told him he would be paid only \$15/hour. The business needed a Journeyman Technician, hired Mr. Selsek for that purpose in full anticipation of paying him \$25/hour. Within a week, Mr. Kaban was advised by his Service Manager, Larry Hardy, that Mr. Selsek was having trouble with the diagnostic equipment. Mr. Hardy continued to observe Mr. Selsek and advised him further that Mr. Selsek was still having difficulty with some of the work such that Mr. Hardy was reluctant to give Mr. Selsek the bigger jobs that would be assigned to a Journeyman Technician. After the second week, it was obvious that Mr. Selsek would be unable to perform the required Journeyman Technician's work. Yorkton Hyundai gave Mr. Selsek two options: he could be terminated or he could continue on, performing lesser duties such as the lube bay, but he would have to be paid accordingly. Mr. Selsek decided to stay. Neither party advised Service Canada of the change. Mr. Selsek was also advised that if he studied for and passed his Journeyman's exam, he would be paid \$25/hour. Yorkton Hyundai did not want to leave Mr. Selsek without an income, nor cause his deportation. Mr. Selsek did not pass his first attempt at the Journeyman's exam and remained in the lube bay position throughout his employment with Yorkton Hyundai. Along the way, Mr. Selsek's pay was increased to \$18/hour purely on compassionate grounds; he was having trouble making ends meet at \$15/hour.

Ultimately, Mr. Selsek gave his letter of resignation to Mr. Kaban and his last day of work was June 6, 2013. Mr. Selsek had been able to find better paying work in the Yorkton area and that employer had applied for and been granted a LMO for Mr. Selsek to be employed by them.

**V. DECISION**

Mr. Selsek's evidence was at times vague and self-serving. While he acknowledged that he was not able to perform the computerized diagnostics that were part of the Journeyman Technician's job description, he felt that Yorkton Hyundai should still have to pay him a Journeyman Technicians wage. He did not seem to appreciate that Yorkton Hyundai was misled by his resume and his assurances that he could do the job. He wishes to be paid for work he did not do and was incapable of doing.

Employment Standards argues that so long as Mr. Selsek was employed by Yorkton Hyundai, the Applicant was required to pay him \$25/hour because of the LMO. If it turned out that Mr. Selsek was not of Journeyman Technician caliber and was incapable of performing the more complex mechanical required of a Journeyman Technician, the Applicant had two options: continue to pay Mr. Selsek \$25/hour for whatever work he did or terminate his employment with Yorkton Hyundai completely and turn him in to Service Canada.

I cannot lose sight of the fact that Yorkton Hyundai went through the process of applying for a LMO because it needed a Journeyman Technician capable of performing the Hyundai diagnostic scans and the more complex mechanical work. Yorkton Hyundai did not need another lube mechanic. When Mr. Selsek was hired as a Journeyman Technician at the rate of \$25/hour, it was expected he would perform that work. Mr. Selsek had represented that he was qualified for this work. He was not and that left Yorkton Hyundai in a bit of a bind. Mr. Selsek was moved to less demanding work and his pay was adjusted accordingly. Yorkton Hyundai could not pay him the \$25/hour as he was not doing the work of a \$25/hour technician. Yorkton Hyundai paid him the appropriate wage for the work he was capable of doing.

I find that once Yorkton Hyundai determined that Mr. Selsek was not capable of performing the more advanced mechanical work he was hired to perform at a rate of \$25/hour, he was in essence terminated from that position. This termination was within a matter of a week or two of his hiring and within the law in Saskatchewan. However, rather than advise the authorities that Mr. Selsek was no longer employed in the job description stated in the LMO, which would have resulted in the deportation or removal of Mr. Selsek and his son, Yorkton Hyundai offered him work he was capable of performing, at the prevailing wage for that work: \$15/hour. Mr. Selsek, by his actions, accepted that employment.

The LMO did not dictate that Yorkton Hyundai had to pay Mr. Selsek \$25/hour no matter what. Rather, it stipulated the job description and pay scale for Mr. Selsek to be legally employed in Canada. When that job or pay scale ceased to exist for Mr. Selsek, the parties were to advise Service Canada and a failure to do so was contrary to the LMO. Neither the Applicant nor Mr. Selsek notified Service Canada as to the state of affairs. Mr. Selsek wanted to remain in Canada and Yorkton Hyundai did not want to jeopardize that aspiration. Both parties here chose to continue with a different, albeit verbal, contract which was carried out. I reject the argument that Yorkton Hyundai took advantage of Mr. Selsek and that the arrangement to keep him on was inequitable. Yorkton Hyundai did not need another lube mechanic, it needed a fully qualified journeyman mechanic, but it kept Mr. Selsek on in the lesser position to ensure he was not deported.

While the Applicant did not advise Service Canada that Mr. Selsek was no longer performing the work as described in the LMO annex and was therefore being paid less, this is an issue between the Applicant and the Government of Canada. Mr. Selsek was properly paid for the work he did perform and he is not entitled to anything more.

**VI. CONCLUSION**

The appeal is allowed. Pursuant to s.4-6(1)(a) of *The Saskatchewan Employment Act*, the wage assessment and the decision of the Director are revoked.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 3<sup>rd</sup> day of August, 2016



Leslie T.K. Sullivan, Q.C.  
Adjudicator

**Exhibit List**

Employer Exhibit	Item	Employee Exhibit	Item
ER 1	Yorkton Hyundai Ad	EE 1	Labour Market Opinion and Annex
ER 2	Selsek letter of resignation	EE2	Offer of Employment
ER3	Customer Survey	EE3	Resume of Alen Selsek
		EE4	Letter Re: Journeyperson's exam
		EE5	Selsek Work Permit

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at [www.saskatchewan.ca](http://www.saskatchewan.ca).

#### **Right to appeal adjudicator's decision to board**

- 4-8(1)** An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.
- (3) A person who intends to appeal pursuant to this section shall:
- (a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and
  - (b) serve the notice of appeal on all persons mentioned in clause 4-4(1)(b) who received the notice setting the appeal or hearing.
- (4) The record of an appeal is to consist of the following:
- (a) in the case of an appeal pursuant to Part II, the wage assessment or the notice of hearing;
  - (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
  - (d) any exhibits filed before the adjudicator;
  - (e) the written decision of the adjudicator;
  - (f) the notice of appeal to the board;
  - (g) any other material that the board may require to properly consider the appeal.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.
- (6) The board may:
- (a) affirm, amend or cancel the decision or order of the adjudicator; or
  - (b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board

#### **Appeal to Court of Appeal**

- 4-9(1)** With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.
- (2) A person, including the director of employment standards, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.
- (3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

#### **Right of director to appeal**

- 4-10** The director of employment standards has the right:
- (a) to appear and make representations on:
    - (i) any appeal or hearing heard by an adjudicator; and
    - (ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and
  - (b) to appeal any decision of an adjudicator or the board.