

IN THE MATTER OF AN ADJUDICATION
PUSUANT TO SECTION 2-75 AND 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT



COMPLAINANT:

Devin Herriot;

Represented by Daniel Corbett, Employment Standards Officer.

RESPONDENTS:

IEI Industrial Electric & Instrumentation Ltd., 1120 East Avenue, Weyburn, SK
S4H 3E4;

Aaron Grohn, being a Director of IEI Industrial Electric & Instrumentation Ltd.,
26 Creekside Terrace, Weyburn, Saskatchewan S4H 3B9; and

Kevin Allen, being a Director of IEI Industrial Electric & Instrumentation Ltd.,
Box 540, Cremona, Alberta, TOM 0R0;

Represented by Richard Henning and Aaron Grohn.

Date of Hearing: Sept. 13, 2016

Location of Hearing: Third Floor Boardroom
Employment Standards
Ministry of Labour Relations and Workplace Safety
Third Floor, 1870 Albert Street
Regina, SK S4P 4W1

Preliminary Matters:

The Director of Employment Standards issued Wage Assessment # 8020. It was signed May 24, 2016 by the 'Director's Delegate' at Estevan, Saskatchewan. It directed IEI Industrial Electric & Instrumentation Ltd., 1120 East Avenue, Weyburn, SK S4H 3E4; Aaron Grohn, being a Director of IEI Industrial Electric & Instrumentation Ltd., 26 Creekside Terrace, Weyburn, Saskatchewan S4H 3B9; and Kevin Allen, being a Director of IEI Industrial Electric & Instrumentation Ltd., Box 540, Cremona, Alberta, TOM ORO ('the respondents') to pay wages to the following employees, in the following amounts:

Devin Herriot - \$4,492.44; and
Douglas Reddaway - \$5,200.38.

The respondents 'Written Notice of Appeal' is dated June 17, 2016. This hearing (LRB File No. 163-16) was set in relation to Devin Herriot.

No objection was made by either party regarding my jurisdiction to hear this matter. I specifically asked Mr. Corbett if he would like to raise any issues with respect to whether the appeal had been properly served in the prescribed manner, upon the Director of Employment Standards. I also specifically asked Mr. Corbett if he would like to address any issues regarding the time limit for serving notice of appeal under *The Saskatchewan Employment Act*. In both cases Mr. Corbett indicated he did not. Not surprisingly, Mr. Henning also indicated he had no concerns regarding these issues.

Issue:

Apprenticeship contracts developed by the Saskatchewan Apprenticeship and Trade Certification Commission require that employers permit apprentices to attend technical training (i.e. 'attend school') from time to time. Apprentices do not work for the employer during the period when they attend school. The issue in this matter is whether or not the period of time

the apprentice attends school constitutes a break in employment for the purposes of *The Saskatchewan Employment Act*.

Facts and Decision:

IEI Industrial Electric & Instrumentation Ltd. ('the employer') is an active Saskatchewan corporation. Exhibit EE-1 is a Corporate Registry Profile Report from Information Services Corporation dated April 19, 2016. It discloses that Aaron Grohn and Kevin Allen are directors, and that Richard Henning is an officer of IEI Industrial Electric & Instrumentation Ltd.

There was no real dispute with respect to any significant facts. The employer does oilfield service and maintenance work. Mr. Herriot's first day of work for the employer was June 18, 2012. His last day of work before a temporary layoff was March 8, 2014. His date of recall was May 5, 2014. Exhibit ER-1 is a 'Payroll Change Notice' completed by Dustin Murray for the employer. This Payroll Change Notice states that the reason for this layoff was "Devin will be attending school from March 9th 2015 to May 11th 2015." The word 'school' is a reference to Mr. Herriot's apprentice training. The layoff was so that Mr. Herriot could attend school pursuant to the Apprenticeship Contract) between him and the employer. This contract is identified as a 'Form A Contract between Apprentice and Employer' and bears the name of the Saskatchewan Apprenticeship and Trade Certification Commission. It was put into evidence and identifies as Exhibit EE-1.

Prior to attending school for apprentice training (March to May, 2014), Mr. Herriot was a second year apprentice. Once he successfully completed the training and returned to work for the employer on May 19, 2014, he was a third year apprentice. Mr. Herriot was again temporarily laid off so that he could return to the school portion of his apprentice training. The last paid day this time was March 6, 2016. He was recalled to work May 11, 2015. As with the March to May, 2014 layoff, a Payroll Change Notice was completed by Dustin Murray for the employer (ER-2). This Payroll Change Notice indicates the 'Reason for Change' as "Devin has returned from 3rd year training and is now a level 4 apprentice. I will be sending in another one of these when i [sic] can confirm that he has passed for his raise to reflect his level of training."

Each time Mr. Herriot was temporarily laid off, he received a Record of Employment with a date of recall. The first page of EE-3 relates to the March 8, 2014 layoff. In 'Box 16 Reason for Issuing the ROE', it indicates "Apprentice Training" as the reason. The second page of EE-3 relates to the March 2015 layoff. In 'Box 16 Reason for Issuing the ROE', it indicates "Return to school" as the reason.

Mr. Herriot testified that while he was laid off and attending school, he retained keys to the employer's premises, and was not required to clean out his locker at the employer's premises. These two factors are consistent with the employer expecting Mr. Herriot to return to work once his time at school was over. In my view however, such an expectation does not, by itself, establish that the layoff is not a break in employment. Mr. Herriot also testified that he received occasional calls about work from other employees during his time at school. I put no weight at all on these calls. These were not calls from the employer, which may have been relevant depending upon the context and content of the calls. These were simply calls from what Mr. Herriot described as 'co-workers'.

Mr. Herriot and the employer signed a document identified as a 'Saskatchewan Apprenticeship and Trade Certification Commission Form A Contract Between Apprentice and Employer' ('the contract'). This is Exhibit EE-2. In this contract, at clause 5. (b), Mr. Herriot agrees "to attend technical training and write examinations as prescribed...". The employer at 4. (b) agrees "to permit the Apprentice to attend technical training and to write examinations as prescribed...".

An employment relationship was clearly established between the employee/apprentice and the employer. Both parties acknowledge this employment relationship at clause 8. of the contract, which reads "The parties acknowledge that an employer/employee relationship exists between them apart from this contract and that they are bound by the terms of *The Labour Standards Act* or the *Canada Labour Code*, as amended from time to time, as the case may require."

The Labour Standards Act has of course been replaced by *The Saskatchewan Employment Act*.

The issue in this case is whether the temporary lay-offs, which were not only anticipated by the apprenticeship contract, but actually required by it, constituted a break in service. If they did, Mr. Herriot is considered to have begun work for the employer on the date of his last recall, which is May 11, 2015. If they did not, Mr. Herriot is considered to have begun work for the employer on his original hire date, which is June 18, 2012.

The Saskatchewan Employment Act provides for a number of circumstances where an employer must grant an employee employment leave. Section 2-43 provides "An employee who has been in an employer's service for more than 13 consecutive weeks is entitled to an employment leave in accordance with this Subdivision and Subdivision 11." Section 2-44 requires employers to provide unpaid employment leave whenever required by Subdivision 10 or Subdivision 11 of *The Saskatchewan Employment Act*. Subsection 2-48 (4) requires the employer, once the employment leave is over, to reinstate the employee without any loss of accrued seniority or benefits. If these provisions apply to the layoffs that were issued so that Mr. Herriot could attend school, his employment should be treated as continuous.

The employer however argues that each layoff was simply a temporary layoff under *The Saskatchewan Employment Act*. The employer said there was no guarantee that any employee attending school for apprentice training would actually return to the employer, and therefore each layoff constituted a break in service, and each recall date was actually a new hire date.

I accept the employer's argument that there was no guarantee that any particular employee attending apprentice training would actually return to the employer following the school portions of the apprentice training. With respect however, I do not consider this relevant to the resolution of this matter. It is simply a statement of the fact that any employee may quit employment at any time.

Subdivision 10 and Subdivision 11 of *The Saskatchewan Employment Act* lay out a number of situations where the legislation requires employers to grant

employment leave. Leaves which must be provided include maternity leave, adoption leave, parental leave, organ donation leave, reserve force service leave and others. Apprentice leave is not one of the types of leaves which the legislation requires employers to provide. However, the legislation does not purport to prevent employers from granting other sorts of employment leave. In this case, the employment leave to allow Mr. Herriot to attend apprentice training was not required by *The Saskatchewan Employment Act* but rather was required because the employer voluntarily contracted with the employee to provide it. As a matter of contract law, the employer and Mr. Herriot agreed that the employer would provide Mr. Herriot with the required employment leave so that Mr. Herriot could “attend technical training and to write examinations as prescribed...” This was agreed to in writing in the Saskatchewan Apprenticeship and Trade Certification Commission Form A Contract Between Apprentice and Employer at 5. (b) [Exhibit EE-2].

Therefore I conclude that the employer voluntarily agreed to grant Mr. Herriot the employment leave which allowed him to live up to his obligation to attend school as part of the apprentice agreement. As I previously indicated, at the end of the employment leave, subsection 2-48 (4) requires the employer to reinstate the employee without any loss of accrued seniority or benefits. Therefore Mr. Herriot’s employment should be treated as being continuous from his start date of June 18, 2012.

Subsection 2-60 (1) provides the minimum notice periods which must be given for employees whose employment is terminated (except for just cause, which is not alleged here). Subsection 2-60 (3) provides that “being on vacation, an employment leave or a leave granted by an employer is not considered an interruption in employment”

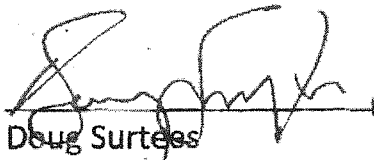
For the reasons given, I find that the leave granted to Mr. Herriot for the purpose of attending school pursuant to the apprentice contract is ‘employment leave’ and therefore is not an interruption in his employment. If I am wrong, and leave granted to Mr. Herriot for the purpose of attending school pursuant to the apprentice contract is not ‘employment leave’, then I find that that such leave is still “leave granted by an employer” and I reach the same conclusion.

Mr. Herriot's employment ended when he was laid off due to a shortage of work, effective February 4, 2016. As a result, he worked for the employer for more than three years but fewer than five years, and is entitled to four weeks wages pursuant to subsection 2-60 (1).

Conclusion:

The notice period used to calculate the amount owing to Devin Herriot in Wage Assessment # 8020 is correct. The respondent/employer's appeal is dismissed, and Wage Assessment # 8020 in the amount of \$4,492.44 with respect to Devin Herriot is hereby confirmed.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 4th day of November, 2016.



Doug Surtess
Adjudicator