



**DECISION OF ADJUDICATOR**

**IN THE MATTER OF A HEARING PURSUANT TO PART IV of  
THE SASKATCHEWAN EMPLOYMENT ACT, CHAPTER S-15, SS, 2013**

**LRB FILE # 181-15; Adjudicator file # 2015-05; Wage Assessment # 7367; File # 42976**

**PARTIES TO THE ADJUDICATION HEARING:**

- a) **COMPLAINANTS / APPELLANTS:** SAIR SUPPLY LTD. O/A SHOW CABINETS; BLAIR WEINHEIMER, BEING A DIRECTOR OF SAIR SUPPLY LTD. O/A SHOW CABINETS; SANDRA WEINHEIMER, BEING A DIRECTOR OF SAIR SUPPLY LTD. O/A SHOW CABINETS [APPELLANT REPRESENTATIVE] and represented the Company and Directors at the hearing
- b) **RESPONDENT:** GOVERNMENT OF SASKATCHEWAN, DIRECTOR, EMPLOYMENT STANDARDS, REPRESENTED BY Mike Luciak (former Employment Standards Officer and Investigating Officer on this file and now currently employed with Occupational health and Safety) and Doug Long (Employment Standards Officer) representing the Executive Director
- c) **RESPONDENT:** ROBERT CAMPBELL [EMPLOYEE], self-represented

**ADJUDICATOR:** MARIA LYNN FREELAND  
**PLACE OF HEARING:** Saskatoon, SK  
**DATE OF HEARING:** Friday October 23, 2015  
**DATE OF DECISION:** December 20, 2015

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## **I. INTRODUCTION**

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

## **II. PRELIMINARY MATTERS AND PARTICIPANTS AT THE EMPLOYMENT HEARING:**

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

## **III. THE DISPUTE**

Subsequent to the conclusion of his employment with Sair Supply Ltd, the Appellant/ Employer], Robert Campbell [the Respondent/Employee] completed a Complaint to the Ministry of Labour Relations and Workplace Safety. [EXHIBIT - EE - # 2]. It was filed on line.

Pursuant to section 2-74 of the *Saskatchewan Employment Act*, the Director of Employment and Workplace Safety [Employment Standards Inspection Summary, Complaint # 41645; EXHIBIT EE - #3] assessed the following amounts owing to the employer:

- a) Unpaid wages 72 hours @ \$25.00 per hour = \$1800;

- b) Pay instead of notice \$600; and
  - c) Annual holiday pay \$138.46
- Total amount of claim:       \$2538.46.

As a result of this wage assessment, the employer appealed the decision pursuant to section 2-75 of the *Saskatchewan Employment Act*. In accordance with the appeal provisions of the legislation, the wage assessment was appealed by way of a 2 page letter from the employer stamped "RECEIVED" on July 30, 2015 by the Ministry of Labour Relations and Workplace Safety on May 29, 2015. [EXHIBIT ER- #1].

I was appointed adjudicator pursuant to section 4-3 of the legislation [Exhibit EE # 5].

An adjudication hearing was conducted on October 23, 2015.

**IV.     THE ISSUES**

The issues to be determined are as follows:

- a) Is the employee entitled to unpaid wages owing for regular hours, overtime hours and/or unpaid annual vacation leave; and
- b) Is the Employee/ Respondent entitled to money owing to him for pay in lieu of notice?

**V.     THE FACTS**

**a) EVIDENCE OF THE APPELLANT/EMPLOYER**

Mr. Weinheimer was affirmed prior to his testimony and cross-examined upon completion of his evidence.

The employee was hired December 23, 2014 in the position of "wood finisher" at the rate of \$25.00 per hour. He worked from January 20, 2015 until April 22, 2015.

The position of Mr. Weinheimer, [Owner and Director of the Appellants / Employer and representative of the both the Company and Directors at the hearing] was well summarized by his 2 page letter received by Employment Standards July 30, 2015. [EXHIBIT # ER -1] In this letter, Mr. Weinheimer states as follows:

**“SHOW CABINETS**

**Re: Robert Campbell; File # 42976**

**To Whom It May Concern,**

**Mr. Campbell had an interview with me in December of 2014. He was hired on December 23, 2014 and began work shortly thereafter in January 2015.**

**Mr. Campbell said he was very short of money and didn't have enough for food or gas. He also stated that he didn't have enough money for his vehicle repairs so he could drive. In kind gesture, I gave him a cheque in the amount of \$192 on December 31, 2014 as an advance that he could work off at a later date. That never occurred and repayment never happened. The cheque was marked as "Stat Holiday Pay" for December 25, 2014 even though he was not entitled to it. I continued driving Mr. Campbell to work for an extended period of time until he had enough money to repair his vehicle.**

**Mr. Campbell was initially hired as a contract spray finisher. He received payment from me on January 14, 2015 with "contract services" printed on the cheque in the amount of \$1810.00.**

**As time progressed, I found out that he did not have WCB or insurance to work as a contractor sprayer so on January 3, February 4 and February 6, 2015 he received payment as an employee and deductions were made as he could not provide the proper documentation.**

**On March 24, 2015 I made a payment to Besco Storage and Warehouse on his behalf for his storage unit in the amount of \$225.00 (bank reference # 1078001) because he was about to lose his contents as he was several months behind on his payments to them. He wanted that as an advance and I have seen nothing in repayment.**

**As an employee and on April 16<sup>th</sup>, he received a cheque for \$1000 (\$844.44 with deductions) for 40 hours of work for the period March 26 to April 10. His actual hours of work was 24 hours as indicated and 16 hours were given in advance as he was again short on cash as was to work this off."**

(The letter goes on to detail the dates and hours Mr. Campbell provided to Mike Luciak the Employment Standards Officer; these details are not included in this adjudication decision [for ease of clarity] but are attached in the employer's letter of appeal identified as Exhibit ER - #1).

On page 2 of Mr. Weinheimer's letter of appeal, he goes to conclude:

**"According to his records [Mr. Campbell], there are 32 hours of work that have not been paid out. My records indicate 21 hours. But for ease of argument, his 32 hours X \$24.00 per hour = \$768. In return, the total he owes me based on the amounts paid to / for him on December of \$192. and his storage of \$225.00 would leave a remainder of \$351.00.**

**In light of the difference of hours above, Mr. Campbell was in desperate need of money and has asked me, my employees, and even a customer of mine if he could borrow money. There is little doubt that his numbers are different.**

**I found out Mr. Campbell was on social assistance /welfare and unemployment insurance during his time with me. I believe that is why he wanted to work under a contract basis, perhaps so he didn't have to pay or claim his earnings.**

**In a text message dated April 30<sup>th</sup>, he states "I just need to know when it [cheque] will be mailed so I can tell my creditors when they can expect payment." He later states that "I'm amiable to trading my cheque for keys tomorrow and I'll pick up my gun ... the other papers I can wait for."**

**He has never come by with my keys to pick up his cheque and spray gun.”**

Mr. Weinheimer confirmed and elaborated on his objections to the claim by the employee in Mr. Weiheimer’s affirmed testimony. Mr. Weinheimer testified that Mr. Campbell requested that he be paid in cash [or “under the table” in common parlance]. The employer said no and that he did not “do business that way”. The employer provided details with respect to the employee’s requests for advances and other accommodation such as the employer driving the employee to work for an extended period of time at the commencement of the employment until Mr. Campbell could afford to have his vehicle repaired. In addition to the advances outlined in the above letter the employer also indicated giving the employer another advance of \$75.00 on March 24, 2015 as the employee advised that he needed gas to get to work.

Overall, the testimony of the employer was candid and forthright. The employer was exceptionally generous and accommodating to the employee with respect to the employee’s requests for cash advances, tolerating Mr. Campbell’s requests to not only the employer but also to other employees and even a customer for cash, and other needs [such as paying overdue fees due for a storage unit so Mr. Campbell would not lose his belongings] in an effort to help Mr. Campbell with his personal financial difficulties, debt problems and transportation complications. The testimony of both parties was consistent with respect to these advances on future wages in order to help the employer deal with his financial pressures.

Although there was no supporting documentation to substantiate the allegation, the employee in his above quoted letter [Exhibit ER- # 1], the employer claims that “...I found out that Mr. Campbell was on social assistance / welfare and unemployment insurance during his time with

me. I believe that is why he wanted to work under a contract basis, perhaps so he didn't have to pay on his earnings" [Exhibit ER - #1, page 2].

The employer testified that Mr. Campbell's employment terminated on April 26, 2015. There was a shortage of work available so the employment ended. At this time, Mr. Campbell was a "part-time casual" employee who was "called in" to when work was available.

b) **EVIDENCE OF THE EMPLOYEE**

The Employee, Robert Campbell testified on his own behalf. He was affirmed prior to his testimony. He was also cross-examined at the conclusion of his submissions by Mr. Weinheimer.

Mr. Campbell testified that he responded to a Kojiji ad. He was hired on a temporary basis over the Christmas season. He testified that he was paid cash for these hours worked. He indicated that the pay for the "Christmas Day Stat" was paid to him to "help him out" as he was dealing with financial problems [notwithstanding he openly acknowledged he did not work this stat holiday] and that he was also paid \$400.00 as an advance. The employee testified that work was both "busy and slow".

Depending on the work available, he worked, submitted his time sheets every two weeks that included name, grid for hours, days and job name. The employee did not take issue with the employer's evidence regarding advances nor details regarding termination. The employee openly acknowledged that he was "playing with his hours a little bit". The employee was initially hired as a "Wood Finisher" at the pay rate of \$25.00 per hour. [NOTE: the employer's letter of appeal (Exhibit ER - #1) refers to a wage of \$24.00 per hour rather than the rate of \$25.00 per hour referred to in other documents and exhibits].

Subsequent to termination of employment, Mr. Campbell filed an on line complaint with the Saskatchewan Employment Standards Division for an employment claim. [EXHIBIT EE - #2].



**VI. ANALYSIS AND DECISION**

**A) UNPAID WAGES**

**Issue (a): Is the employee entitled to wages owing for regular hours, overtime hours and/or unpaid annual vacation leave?**

The evidence of both parties was consistent with respect to the generosity and financial advances provided by the employer since the employee was undergoing financial difficulties. The employer gave the employee numerous payment for hours not yet worked, drove the employee to work until the employee could afford to have his vehicle repaired, provided advances when the employee indicated he needed funds to buy gas, groceries and pay off creditors and the employer also paid for money owing on a storage unit so the employee would not lose his contents as Mr. Campbell was a number of months behind in rent on the storage unit. The employer also tolerated the employee regularly requesting the employee asking for advances, the employee requesting money from other employees and also asking one customer for money. Mr. Campbell did not dispute this evidence. In any areas of contradiction, I accept the forthright testimony of the employer. Mr. Campbell appeared to be a “high maintenance” employee who openly testified the he “played with his hours a little bit”. As evidence by both parties, there were numerous requests by the employee with respect to requests for financial assistance and transportation needs such as the employer driving the employee to work and numerous requests for “advances”. It was apparent that Mr. Campbell was going through considerable financial difficulties.

I conclude that the employed received “advances” in the form of money and assistance in the following amounts [These amounts were not disputed by either party]:

a) **\$192.00:**

Mr. Campbell received a cheque in the amount of \$192.00 on December 31, 2014 as an advance that he would work off at a later date. This amount was not repaid nor deducted from future cheques as an advance owing. The cheque was marked as “Stat Holiday Pay” for December 25, 2014 notwithstanding both parties agree that Mr. Campbell did not work this statutory holiday.

b) **\$225.00:**

On March 24, 2015 the employer made a payment to Besco Storage and Warehouse on behalf of the employee for his storage unit in the amount of \$225.00 (bank reference # 1078001). The employee requested this as another advance. He never repaid it nor was it deducted from future pay cheques. The employer provided a payment receipt from Bosco Storage as well an interact receipt.

c) **\$400.00 (before deductions):**

At the employee’s request he received 16 hours advance on a cheque on April 16, 2015. As a result of this request on April 16<sup>th</sup>, the employee received a cheque for \$1000 (\$844.44 after deductions) for 40 hours of work for the period March 26 to April 10. His actual hours of work were 24 hours and 16 hours were given as an advance that the employee indicated he would work off.

d) **\$400.00:**

Advance of future earning paid by the employer on March 24, 2015 at the request of the employee who indicated he need money for gas to get to work.

e) **\$75.00:**

Advance for gas money to the employee.

According to Mr. Campbell, he claims that there are 32 hours of work that have not been paid out. According to The employer there are 21 hours that have not been paid.

After assessing the documentation and the verbal testimony of both parties, I accept

the Employer's assessment. Thus, there are unpaid wages for 21 hours at the rate of \$25.00 per hour; this amounts to \$504.00 (before deductions).

Consequently, the amounts to reconcile money owing is calculated as follows:

a) \$504.00 unpaid wages less advances of \$1276.00 calculated as follows:

- i. \$192.00
- ii. \$225.00
- iii. \$400.00
- iv. \$400.00
- v. \$75.00

**TOTAL OF ADVANCES: \$ 1292.00**

This leaves a balance owing to the employer from the employee for unpaid advances in the amount of \$ 788.00.

After a careful review of all documents, testimony and submissions, I find that there is no merit to the Employee's claim for unpaid wages. In fact, after taking into account the advances of \$1292.00 that were not repaid or deducted from the employee's cheques, the employee was overpaid in the amount of \$ 788.00. [This does not take into account any provisions for a reconciliation of "deductions"]. After careful consideration of all exhibits and the affirmed evidence of both parties, I conclude that the money paid to or on behalf of the employee were advances not gifts; they were generous gestures made by the employer with the joint expectation that they would be repaid or deducted from future income.

Unfortunately, the employer took no steps to address repayment for these advances by way of a reasonable consistent amount of deductions from future income on a regular

consistent basis to address the debt and overpayment nor did the employee voluntarily pay any contribution from paychecks for advances received.

The employer's appeal with respect to unpaid wages is allowed since when unpaid advances are taken into account, the employee was actually overpaid with respect to wages. I do not assess any "set-off" of overpayment of wages as:

- a) There is no provision for set-off in the *Saskatchewan Employment Act*; and
- b) There was no evidence that the employer took any steps to set up a reasonable repayment schedule such as a modest set amount every pay period deducted to address the overpayment and money owed by the employee to the employer. The employer was indeed generous but did not take any steps to address the overpayments other than let them accumulate higher rather than establish a reasonable repayment schedule.

**B. TERMINATION PAY**

**Issue (b): Is the Employee/ Respondent entitled to money owing to him for pay in lieu of notice?**

The employer's position terminated as a result due to lack of available work. The employer advised that Mr. Campbell could pick up his spray gun at the shop and that they would "square up" on any money owing. The employee never did attend to attend the office to deal with these two matters. After careful review of all the documentation, testimony and evidence as well as written and oral submissions, it is my conclusion the Employee was "laid off" his position with the company due to a shortage of available work.

Sections 2-60 and 2-61 of the *Saskatchewan Employment Act* provide, in part, as follows:

**“...Notice required**

**2-60 (1)** Except for just cause, no employee shall lay off or terminate the employment of an employee who has been in the employee’s service for more than

13 consecutive weeks without giving that employee written notice for a period of not less than the period set out in the following Table:

**TABLE**

**Employee’s period of employment  
Minimum period or required notice**

More than 13 consecutive weeks but one year or less  
one week...”

Section 2-61 provides particulars with respect to “payment in case of layoffs or termination”.

Mr. Campbell worked from January 20, 2015 to April 12, 2015. Thus, he worked for a period in excess of 13 weeks as provided for in s. 2-60 of *The Saskatchewan Employment Act*. Accordingly he is entitled to one week of termination pay in accordance with subsection 2-60 (1) of the legislation calculated in accordance with the provisions of subsection 2-61 of the *Act*, an average of his last four weeks of pay, exclusive of overtime for the four weeks preceding termination of employment. Thus, the employer’s appeal with respect to the requirement to pay termination pay is dismissed; the employer is entitled to one week’s pay in lieu of notice.

The Employment Standard Officer calculated termination pay due in the amount of \$600.00. In the absence of any documentation enabling me to calculate the last 4 weeks of pay prior to termination [and an average thereof], I accept the Employment Officer’s assessment of \$600. The employee is also

allowed annual vacation leave on this amount of 3/52 for an additional \$34.61. for a total amount of termination pay of \$634.61 less applicable deductions required by law.

## **VII. CONCLUSION**

### **A) Is the employee entitled to unpaid wages owing for regular hours, overtime hours and/or unpaid annual vacation leave?**

With respect to the claim for unpaid wages, I find that that there are unpaid wages of \$504.00. I also find, however, that the employee received advances from the employer which were not repaid in the amount of \$1292.00 resulting in an overpayment of wages in favour of the employee in the amount of \$788.00. Accordingly the Appellant / Employer's appeal with respect to unpaid wages is allowed. There will not be an order for "set-off" with respect to the balance owing of unpaid advances.

### **B) Is the Employee/ Respondent entitled to money owing to him for pay in lieu of notice?**

As a result of my conclusion that the employee was terminated or laid off due to a shortage of work, he is entitled to one week's "pay in lieu of notice" pursuant to the above cited legislation.

I calculate this in accordance with the Employment Standards Officer assessment of \$600.00 plus annual vacation leave on this amount of \$34.61 [in compliance with s. 2-27 and 2-29 of the *Saskatchewan Employment Act*] for a total claim of \$632.61 [prior to deductions required by law]. Thus, the Appellant / Employer's appeal is denied to the extent of compliance with the above conclusions and calculations.

There will be no award for interest or for costs to either party.

Dated this 20 th day of December, 2015.

Original Signed by \_\_\_\_\_

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

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

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

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

**4-8** (1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.

(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.

(3) A person who intends to appeal pursuant to this section shall:

(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and

(b) serve the notice of appeal on all persons mentioned in clause 4-4(1) (b) who received the notice setting the appeal or hearing.

(4) The record of an appeal is to consist of the following:

(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;

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

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

(d) any exhibits filed before the adjudicator;

(e) the written decision of the adjudicator;

(f) the notice of appeal to the board;



- (g) any other material that the board may require to properly consider the appeal.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.
- (6) The Board may:
  - (a) affirm, amend or cancel the decision or order of the adjudicator; or
  - (b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.

**4-9(1)** With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.

(2) A person, including the director of employment standards or the director of occupational health and safety, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.

(3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

**4-10** The director of employment standards and the director of occupational health and safety have the right:

- (a) To appear and make representations on:
  - (i) Any appeal or hearing heard by an adjudicator; and
  - (ii) Any appeal of an adjudicator's decision before the board or the Court of Appeal; and
- (b) To appeal the decision of an adjudicator or the board.

## **APPENDICES AND EXHIBITS**

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

#### **2. Exhibits Filed On Behalf of the Employer**

ER- #1 2 page letter undated from Blair Weinheimer directed "TO WHOM IT MAY CONCERN" outlining details of employment circumstances and money paid to the Employer; the document is "STAMPED" as received by Employments Standards dated July 30, 2015.

ER - #2 Copy of cheque from Sair Cabinets to Robert Campbell dated 16-04-2015 in the amount of \$844.44 with the MEMO pay period 26-03-2015 to 10-04-2015.

ER - #3 Details regarding Robert Campbell for contract services December 29, 2014 to January 14, 2015 dated 15-10-2015 in the amount of \$1810.00.

ER - #4 "Payroll details report" for period January 1 to December 31, 2014 for "Statutory Holiday Pay" in the amount of \$192.00 to Robert Campbell [2 pages; page 2 blank].

ER - #5 Four reports of employee pay information:

5.1 cheque to Robert Campbell dated 30-01-2015 for \$816.86

5.2 cheque to Robert Campbell dated 04-02-2015 for \$816.86

5.3 cheque to Robert Campbell dated 06-02-2015 for \$454.44

5.4 "payroll details report" for pay period January 1 – September 31, 2015 indicating final total of \$228.92 (2 page document; second page blank)

ER - #6 Payment receipt of \$225.00 to Besco Storage and Warehousing (1999) with attached Interact receipt dated 2015/03/24 [Bank Reference # 1078001].

### **3. Exhibits Filed On Behalf of the Employee**

EE - #1 Corporate Registry Report from Information Services of Saskatchewan as of 5-Sept, 2014 for entity name: Sair Supply Ltd. # 1021242105

EE- #2 "Formal Complaint Form" filed on line by Mr. Jackson dated May 12, 2015.

EE- #3 Copy of Claim assessment completed by an Employee Standards Officer.

EE - #4 "Wage Assessment" (No. 7367) dated July 6, 2015 signed by "Director's Designate", Ministry of Labour Relations and Workplace Safety advising that the Director of Employment Safety determined that the amount owing to Robert Campbell as of July 2, 1015 in the amount of \$2538.46

EE - # 5 Order of appointment of Maria Lynn Freeland as Adjudicator dated October 7, 2015, LRB file # 182 – 15, signed by Steven Schiefer, Vic-Chairperson, Labour Relations Board.

EE - #6 Letter from Greg Tuer, Executive Director, Minister of Labour Relations and Workplace Safety dated August 25, 2015 directed to Board Registrar advising of a "Wage Assessment Appeal" received and requesting an ad adjudicator be appointed.