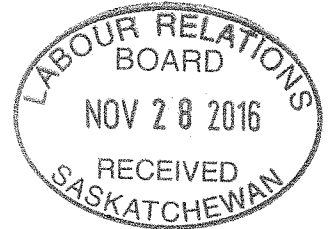


DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTIONS 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT



COMPLAINANT: Rae-Anne Hoflin
Represented by Doug Long
Employment Standards Officer

RESPONDENT: Burton Aggregates Ltd.
Represented by Waylyn Burton and Jennifer Burton

DATE OF HEARING: November 15, 2016

PLACE OF HEARING: Conference Room,
Kramer Building
North Battleford, Saskatchewan

I. INTRODUCTION

This is an appeal by the Employer, Burton Aggregates Ltd., from a Wage Assessment in the amount of \$3,243.43 in favour of the Employee, Rae-Anne Hoflin, dated September 12, 2016.

Rae's claim was for unpaid wages from January and February of 2016.

The Employer's position is that the Employee did not perform work that it requested or authorized her to do, and disputes the hours she claims to have worked.

At the Hearing, the Employment Standards Officer presented an amended Wage Assessment, calculated as follows (Employee Exhibit #4):

January 25 – February 5 (NSF cheque)	\$1,413.94
February 8 – 18	\$1,670.29
(includes annual holiday pay)	
TOTAL CLAIM	\$3,084.23

I note that in most of the documents produced, including emails to and from him, Mr. Burton's name is spelled "Waylyn", although it is "Waylon" on the Wage Assessment and the official corporation documents. I have used the spelling Waylyn throughout.

II. EVIDENCE

Waylyn Burton and Jennifer Burton testified for the Employer. Rae-Anne Hoflin testified on her own behalf, and also called co-worker Shauna Kadler.

Waylyn and Jennifer Burton are officers of Burton Aggregates Ltd. which they operate out of their home in Krydor, Saskatchewan. The company started in about 2007 and deals with all aspects of the installation and sale of concrete. The Burtons are also involved in several other businesses, including Bros Eavestroughing, property management, and farming. Over the years the companies have grown to include up to fifteen employees, many seasonal. The Burtons are very busy people.

Sometime prior to when Rae began working for Burton Aggregates, Waylyn recruited Shauna Kadler from where he banked. She started off helping with property management, added some duties in the eavestroughing business, and then took on more roles in the concrete end of things. In 2015 she was dealing with the bankers for the Burtons' companies, and helping Waylyn work on a potential merger with a local First Nation's company. She was also responsible for the payroll for all the businesses. She worked out of her home in North Battleford, although offices for the company were being renovated in late 2015 and early 2016.

A. Rae's Evidence

Rae knew Shauna as she was dating Shauna's brother (now her fiancé) and testified that on November 3, 2015 she approached Shauna and asked about a job in an entry level position, such as receptionist or accounting clerk. Rae had recently started her first year studying Commerce, and hoped to work for a company that she could grow with as she pursued her degree.

Rae said Shauna told her she would talk to Waylyn about hiring Rae. She reported back that it was a go, and asked Rae to sign a "Letter of Employment Offer Contract", dated November 10, 2015, between Burton Aggregates Ltd. and Rae Hoflin (Employee Exhibit #2). The agreement provided, among other things, that Rae was to start work on December 1, 2015, she was guaranteed 40 hours work a week, and her pay was \$21.50 for a three month probation period, after which she would meet with "CEO Waylyn Burton and Executive Director Shauna Kadler to review salaried contract and employment description."

The document does not mention a job title or job duties.

Rae stated she made a copy of the agreement for herself, and gave a signed copy to Shauna. She never received a copy signed by the Employer.

In her testimony, Rae said she started work on December 1, 2015, but as she was writing exams and it was the holiday season, she did not immediately work full time.

No documents were produced during the Hearing concerning the hours worked by Rae or the type of work she performed in December 2015. Rae indicated that Shauna gave her a list of things to do, which Rae accomplished either working at home, at her boyfriend's shop, at the library, or anywhere else she could find Wi-Fi. She said her duties were to help get the physical office up and running and to assist Shauna with work that needed to be done for the proposed merger. Rae admitted that she never really understood the "big picture" while she was working.

Rae testified that she was paid a total of \$1,200 in December via two email transfers, each for \$600. The transfers were from Shauna's personal bank account. When asked if she thought this was unusual, Rae said that Shauna told her there was a problem with too many e-transfers from the company bank account, so Shauna would just pay Rae directly and be reimbursed by Waylyn. She also testified that Shauna called the payments "advances" but Rae did not know what she meant by that. Rae assumed she would be paid full-time hours after the holidays. She never received pay stubs or a T4 for the hours worked in December 2015.

In early January 2016, Rae met Waylyn for the first time. She and Shauna travelled to Waylyn's home office near Krydor— about an hour's drive from the Battlefords. Rae had borrowed a camera to take with her as she understood the reason for the trip was to photograph equipment and inventory for the merger. She stated she and Shauna met with Waylyn in his little "boot room" office, and Shauna and Waylyn mostly talked about the inventory. According to Rae, there were no discussions about her being hired, wages, hours or job duties.

Throughout January, Rae continue to work at Shauna's direction, including making an inventory spreadsheet for the proposed merger, researching tax advantages for new apprentices and working on an employee handbook. She also created templates for Excel spreadsheets she assumed would get used when she started doing some basic accounting duties; Rae said she frequently asked Shauna when she would start work on the books and Shauna kept telling her they would get to it, but there were lots of other things to do first. Rae noted that given her limited education and experience in accounting, she only expected to do some basic organizing of the financial information to give to the certified accountants.

The new office still was not completed, and Rae reported that the contractor had not finished the flooring or dry-wall. Shauna and Rae discussed the situation and Shauna told Rae to go ahead and finish the work, since Rae had some experience doing it.

In January 2016, Rae was paid twice by email transfer from Waylyn Burton: \$1,413.94 on Saturday January 16 and \$1,272.53 on Saturday January 30. She believes that the first pay cheque was for the period December 28 to January 8, while the second pay cheque was for January 11-22. She said Shauna told her the pay cheques were a week behind to allow Shauna time to calculate the hours and input them into the computer.

On February 15, Rae received a cheque from Burton Aggregates for \$1,413.94 (Employee Exhibit #3). It was returned to her bank marked "insufficient funds". This cheque covered the period Jan 25 – February 5, according to Rae.

Rae was terminated by Burton's on Friday February 19. She went with Shauna to Shauna's house where she picked up a truckload of banker's boxes full of papers (between 5 and 10 boxes) and took them to the office, where she left them along with her keys. Rae testified she had never seen these boxes before.

After she was fired, Rae helped Shauna prepare a "To-do list" (Employer Exhibit #1) which purported to record the work Rae did January 26 to February 18. Rae admitted she did not keep track of her hours, Shauna did, but the list was accurate to the best of her knowledge and all tasks were authorized by Shauna. The information recorded included the following tasks:

- Working on an "Apprenticeship Binder"
- Helping Shauna at the library researching grants
- Installing flooring in the office, painting window trim, installing and painting door jams and other construction work
- Received resumes, checked references and conducted interviews
- Worked on Employee Handbook
- Researched apprenticeships and qualifications for Employer Tax Cuts
- Creating Data sheets
- Did errands for the office

On cross-examination, Rae acknowledged that Shauna was out of the office at a conference in Las Vegas part of the week of February 1, but said Shauna phoned her to give her instructions to complete the construction work, and to drive by two of the Burtons' rental properties.

Subsequent to the sending of the To-do list to Waylyn, Waylyn and Rae exchanged emails concerning her work, some of which were produced during the Hearing.

In an email dated February 29, 2016 (Employer Exhibit #6), Rae appears to be responding to a question about work done on Thursday January 28, when according to the list she "helped Shauna at library with more grants, today together went out 6 for March review." In the email, she admits "though I did not send out Grants with her, I was with her when working on my spreadsheet at the Library that day but that was her project. She possibly just tried to fill time for me. But I did keep myself busy with what I knew I could do."

Rae sent an email to Waylyn dated March 2, 2016 (Employer Exhibit #3), further outlining the work she had done on the Apprenticeship Binder and other work she had completed, including the preliminary spreadsheets she had designed to track loans, financials, payroll, expenses, liabilities and assets of the company. She stated she had put all this information on a USB drive, which she left "at the shop when you come pick up your Bobcat window". She went on to say:

I did spend a lot of time reading up on Human Resources information which in the end was my never intended field of expertise. Again, I should have never been asked to do this type of work, but I have nothing else to do but I had to utilize my paid time to the benefit of your company.

During questioning at the Hearing, Rae acknowledged there was an inconsistency between the list, which stated on February 1 she met with ten people for interviews, and her March 2 email, wherein she admitted that she was only with Shauna for one interview. However, with regard to this issue and the questions posed by Waylyn concerning the work on grants, she is firm that while the details may not be completely accurate, she was definitely working on Burton company tasks during these hours.

B. Burton Aggregates' Evidence

The majority of the evidence for the Employer was provided by Waylyn Burton, who controls the operations of the company. His wife, Jennifer, added some information.

Waylyn testified that he knew that his concrete company needed a bookkeeper. Shauna recommended Rae. From his conversations with Shauna, Waylyn believed Rae had completed a degree or course, and also had the experience to complete his books to the extent that everything would be ready to hand over to the accountant who did the companies' taxes, and all the accountant would do was "sign off". He stated that Rae and Shauna came out to his farm in early January 2016 where he interviewed Rae. He did not ask for or receive a resume. He agreed to hire Rae and they discussed a wage of \$18/hour.

At the Hearing, when shown the agreement Rae was given in November 2015 (Employee Exhibit #2), Waylyn stated he had never seen the document. With regard to the contract, Waylyn testified that:

- None of his other employees has a written contract.
- The telephone number referred to under the name of Burton Aggregates Ltd. in the heading of the document was in fact a number for Bros Eavestroughing that Shauna used, and was not connected to him, Jennifer, or the company Burton Aggregates.
- He did not agree that Rae started work on December 1, 2015; he had never even met Rae at that time, and although sometimes Shauna referred to Rae in conversations with him, it was not in the context of doing work for Burton's. He vaguely knew Rae was dating Shauna's brother.
- He would not have guaranteed any employee 40 hours a week. Concrete is a seasonal industry, and no other employees are guaranteed these hours, including Shauna.
- He would not have started a new employee at a wage of \$21.50 an hour. He noted that all his employees make flat dollar amounts, not in \$.50 increments, and that \$21.50 was too high for a probationary employee.

During January 2016, Waylyn became concerned when Rae did not contact him with questions about his financial records. Waylyn admitted that his records were disorganized; he usually threw everything into a drawer, then gave it to the accountant. He had delivered several boxes of these documents to Shauna, and expected Rae would be working on them. Given the

state of disorder, he anticipated that Rae would have lots of questions. In his daily telephone conversations with Shauna he asked what Rae was doing. Shauna told Waylyn that Rae was working on things and should be finished soon. Waylyn said this sent up a red flag; he felt the accounting work was far too complicated to be dealt with so quickly. When he did not get answers from Shauna, he tried phoning the telephone number Shauna gave him for Rae, but it was a wrong number.

Waylyn acknowledged Burton Aggregates paid Rae twice in January, on the 15th and the 30st. He testified that he asked Shauna to explain why Rae's hours were not being reported to him the same way as his other employees. The normal procedure was for employees to text him a timesheet on a daily basis. Waylyn would then tell Shauna what the employees' gross pay was to be, Shauna was to enter the amounts in the Quick Books accounting software, take off the statutory deductions, then advise Waylyn what the pay cheque should be. Waylyn would then pay his employees, usually by e-transfer. However, Rae's hours were not being reported to Waylyn.

Burton Aggregates paid Rae one more time: the cheque dated February 15, 2016 for \$1,413.94 (Employee Exhibit #3) which was returned NSF. Waylyn testified that Shauna had messed up his bank deposits, which resulted in a number of NSF cheques. Angry at not getting the answers he felt he needed, Waylyn terminated both Rae and Shauna on Friday February 19. Waylyn referred to an email sent to him by Shauna after her termination (Employer Exhibit #9) wherein she admitted the bank mix-up was her fault. He and Jennifer both claimed that Shauna was lying to their bank manager (saying their child was ill) and to them (saying the bank manager had a heart attack). She was also lying about working on the merger; when he contacted the other party he was informed that Shauna had not spoken with them in over six weeks.

During his testimony, Waylyn was not certain about what period Rae's pay cheques covered, as Shauna provided no pay stubs, and the records have not been located since she was terminated. When questioned by the Employment Standards Officer, Waylyn did not seem to know that he had a statutory duty as an employer to ensure all employees were provided with pay stubs, or "statement of earnings" as it is referred to in the legislation, and a duty to keep records of the wages and hours of all employees. He seemed to feel that by delegating that responsibility to Shauna he had complied with his statutory obligations.

After the terminations, Waylyn received the "To-do list" (Employer Exhibit #1). He stated there was absolutely nothing on the list that related to the book-keeping duties he had hired Rae to do. The format of the list was not one he was familiar with, and was not used by any other employees. He noted:

- He never requested any research on apprentices, and the only binder he has seen only includes photocopies of information available on the internet.
- He never authorized work on an employee handbook, and he has never seen any completed work, despite the thirty hours Rae claims to have worked on it.
- He would never delegate interviewing or hiring to a brand-new employee.
- There were no "office errands" to do as there was no physical office until the beginning of February.

- He had already hired a contractor to do the work on the office, and had many other employees who were more qualified to do the work than Rae. He would never have authorized a bookkeeper to do it.
- He, Jennifer and Shauna were at a convention the week of February 2, so Shauna could not have been working alongside Rae during that time.

He and Jennifer also testified that the addresses of the rental properties which Shauna directed Rae to drive by when they were away were not owned by the Burton Group of companies.

Waylyn indicated that after he terminated the two employees, he received back the boxes of financial information he had provided to Shauna in the same state he had given it to her (a disorganized mess, see 4 photographs marked as Exhibit Employer #2). In other words, the work had not been touched.

As evidence that the To-do list was fabricated, or at least padded, by Shauna and Rae, Waylyn pointed to: (a) the discrepancy admitted by Rae in her February 29 email (Employer Exhibit #6) about sending out grants; and, (b) her March 2 email where she acknowledged she was only present for one interview, not ten.

Concerning Rae's March 2, 2016 email (Employer Exhibit #3), Waylyn reiterated that it described work he had not authorized and had no use for, and, moreover, that he had never received the USB drive which was supposed to contain all Rae's work. It appears that the drive was later retrieved by Rae from where she had left it for Waylyn and given to the Employment Standards Officer, who at the Hearing agreed to mail it to the Employer.

In summary, Waylyn stated he was not denying that some money was owed to Rae by Burton Aggregates, but the Employer should not have to pay for work Rae did unrelated to what she was hired to do, and, he argues, the evidence does not support the hours she is claiming to have worked.

C. Shauna's Evidence

Shauna worked for Burton Aggregates, as well as the other businesses owned and operated by Waylyn and Jennifer Burton. Her work did not come with a job title or list of duties. The Burtons both seemed at a loss how to describe her position, using labels including secretary, office administrator, assistant manager and property administrator. Waylyn acknowledged that he hoped one day she would be his overall assistant.

Shauna also called herself by different labels, including manager, estimator, administrator and Executive Director. When the offices were completed, she had the words "Chief Executive Officer" etched on her office, but Waylyn had it removed.

Shauna was paid \$23/hour. Other employees' wages ranged from \$18 to \$25/hour.

Shauna's duties included hiring and firing employees for Bros Eavestroughing but according to Waylyn she did not have the same responsibilities for the concrete company. Waylyn testified that Shauna could not commit the company financially and she did not have access to the bank accounts (although she did deposit cheques) or have signing authority on the chequing account. Shauna did not dispute this.

Included in Shauna's responsibilities were preparing quotes for the eavestroughing company, following up on unpaid invoices, dealing with the bankers, and working on the proposed merger. She also testified a large part of her day was fielding telephone calls from Waylyn (up to 20 a day) and dealing with employee or customer concerns. She worked from home, as the Burton companies had no physical location in North Battleford.

Shauna's evidence provided a third version of how Rae came to be hired. She testified that she "floated" the idea to Waylyn in late 2015 as she felt she needed help in the office. She says she told Waylyn that Rae could eventually take care of the books, not that Rae could immediately do all the accounting work. After discussions with Waylyn, she claims they decided to hire Rae beginning December 1, although Shauna did the actual hiring.

Shauna admitted that she drafted and gave Rae the "Letter of Employment Offer Contract" entered as Employee Exhibit #2, but alleged that Waylyn had reviewed it. When asked why the phone number on the Contract was one used by Shauna for Bros Eavestroughing, Shauna explained because that was what Rae was being hired for. Neither Rae nor Waylyn's testimony supported this. Waylyn also asked how Rae ended up getting paid \$21.50/hour when she was inexperienced and he typically did not pay people in half-dollar increments. Shauna said that she felt Rae deserved that wage.

Throughout December, Rae helped Shauna with Shauna's work, which Shauna testified Waylyn knew about; he would call to ask her what she was doing and she would tell him what tasks she and Rae were accomplishing.

Shauna admitted that she gave Rae a total of \$1,200 for her work in December, paid from Shauna's personal bank account. When asked why she would pay an employee of Burton's from her own account, Shauna said it was because Waylyn was leery of hiring Rae, Shauna felt she needed the help, and she thought Rae would be a long-term asset to the company. She never submitted an invoice to Burton Aggregates or to Waylyn for the hours she paid Rae in December.

Ensuring the employees were paid was one of Shauna's primary duties. She said that the procedure was that employees would send their hours to Shauna, she would email or text her calculations to Waylyn, and he would accept, correct or question the amount. Payment was usually by e-transfer. In her evidence, Shauna clarified the issue of when pay cheques were issued: because she had difficulty calculating the amounts owed to the employees, the pay cheques were not given out until after a week the pay period ended. For example, Rae's pay cheque dated January 15 was for the period December 28 - January 8, while her January 30 pay cheque was for January 11 - January 22. The NSF cheque covered January 25 - February 5, while Rae did not receive a cheque for February 8 - 18.

Concerning the NSF cheques, Shauna was evasive, but acknowledged that there were several NSF cheques, and that Waylyn chastised her for not having money in the relevant bank account.

Shauna admitted that Rae never received any pay stubs either from Shauna or the company. In fact, Shauna had stopped issuing pay stubs entirely; she claimed there were accounting errors in the Quick Books program she was using and she did not know how to fix it, so she just stopped giving the reconciliations to the employees.

Throughout January and February, everything Rae did was authorized by Shauna. In fact, Rae was with Shauna 90% of the time. Shauna said everything Rae did was discussed beforehand with Waylyn, and was primarily to help the outcome of the merger, including researching the apprentice grants. She stated she would give Waylyn updates during their daily telephone conversations. Concerning the construction work, Shauna said she heard that the contractor had dropped off the keys without completing the work, so Shauna asked Waylyn if Rae and her boyfriend could finish the work and Waylyn agreed.

Subsequent to their termination, Shauna said she prepared Rae's "To-do list", which listed the activities she had authorized Rae to perform, and emailed the list to Waylyn.

III. ANALYSIS

The two sides in this case disagree about virtually everything, including the period of employment, job title, job duties, wages, hours worked and work done. How two parties could be in an employer/employee relationship with so little understanding between them is incomprehensible.

Despite all the confusion between the parties, the only issue is did Rae perform work for Burton Aggregates for which she has not been compensated, and how much should that compensation be.

Waylyn Burton was the main person responsible for running the company, and the related eavestroughing, property management and farming businesses. Waylyn admitted he was not a bookkeeper or an office administrator (the boxes of disorganized financial records were proof of that) so he needed to hire someone to do those jobs for him. Waylyn relied heavily on Shauna Kadler for assistance, especially during the time Rae worked for Burton's. Shauna lived and worked a one-hour drive away from Waylyn's home office near Krydor, and the majority of their communication was via phone, texts and email.

During the testimony at the Hearing, it was evident that Waylyn was not aware of what Shauna did day to day; he gave her tasks to do, but did not necessarily inspect the effort or the results. As an example, Waylyn assumed Shauna was providing pay stubs (statement of earnings) to his employees, but was unaware that she had abandoned doing so out of frustration with the accounting software she was using. He also seemed unaware that as the employer, he

was required by law to maintain records of employment for every employee, including statements of earnings for each pay period (*The Employment Standards Act*, s. 2-37). Arguing that he told an employee to do this and the employee failed to do so is not a valid excuse.

Shauna had some ability to bind the Burton group of companies by hiring or firing certain employees, but she would not have done so without consulting Waylyn. The circumstances of Rae's hiring by Shauna were unusual. I accept the evidence that Rae approached Shauna about a job with the company, and that Shauna hired her, but I find that Waylyn was not involved in the hiring of Rae in November 2015. I found Shauna's evidence on this issue, as well as others, to be evasive, self-serving and illogical.

When she hired her friend (and future sister-in-law) in November 2015, perhaps Shauna believed her motives were for the best of the company, or maybe she just needed help, but she did it without Waylyn's knowledge or permission. The oddly worded agreement that Shauna drafted for Rae was not used for other employees, it did not have an accurate telephone number for the company, it did not outline job duties and expectations, and the hours and high rate of pay were not something Waylyn would have approved. The fact Shauna paid Rae from her personal bank account in December supports the contention that Rae was hired without the Employer's knowledge or permission.

However, the initial circumstances of Rae's hiring are irrelevant; at some time in late December or early January, Waylyn accepted Rae as an employee. Perhaps Shauna misled him about Rae's qualifications as a bookkeeper, or perhaps he simply heard what he wanted to hear, but Waylyn believed Rae was going to undertake the accounting work for Burton Aggregates.

Waylyn and Rae differ in their testimony concerning the meeting in early January. Waylyn recalled it as an interview, with wages and job duties being discussed. Rae's recollection was of only a 'meet-and-greet', while she was at the farm to take photographs for the inventory list. She did not recall wages or hours being discussed. She had no reason to expect this kind of conversation, since she thought she was already working for the company with an agreed hourly pay rate.

Waylyn obviously knew Rae was working for him by January as he authorized two pay cheques for her, on January 15 and January 30, and transferred the funds to her by e-transfer. If he looked closely at the amounts, he would have seen he was paying more than \$18 an hour.

Waylyn testified that he asked Shauna about what Rae was doing in January, as he believed Rae would have questions about the company's financial records, or lack of them. He stated that he attempted to contact Rae directly, but the phone number provided by Shauna was incorrect. I accept Waylyn's testimony that Shauna misled him about what Rae was accomplishing. I do not believe Shauna when she says she received Waylyn's authorization for every task Rae did.

Despite his confusion and rising annoyance, Waylyn continued to pay Rae with the cheque that came back NSF on February 12.

Much of the confusion suffered by Waylyn could have been avoided in a multitude of different ways. He could have met with Rae in person to review the work she was doing, or provided a list of job duties, or demanded written reports from Rae. He is the owner and manager of the company; ultimately it is his responsibility to ensure that the employees are doing the work he requires them to do.

Meanwhile, under Shauna's direction, Rae believed she was performing the duties she had been hired to do.

I accept that the "To-do list" prepared by Shauna and Rae and emailed to Waylyn after they were terminated is an accurate record of the hours worked by Rae. Perhaps there may be some discrepancies in the exact tasks she was performing on certain days, but overall, there is nothing to contradict this evidence.

Waylyn was not present when Rae was working with Shauna, so he has little or no basis to question the hours she worked. Rae testified that she kept busy with what she could do, including researching grants and finishing the office renovations. Rae copied the written work she had accomplished on a USB drive for Waylyn to pick-up (referred to in the email of March 2, 2016, Employer Exhibit #3), although he did not bother to do so. It may not have been the work Waylyn hoped she would do, but she did complete it. I find that the hours recorded by Rae and used by the Employment Standards Officer in calculating her claim are accurate.

Rae received her daily work instructions from Shauna. Shauna was in a position of trust with the Burton group of companies and worked with significant autonomy and decision-making authority.

The Saskatchewan Employment Act defines "employer" as follows:

2-1 (g) "**employer**" means any person who employs one or more employees and includes every agent, manager, representative, contractor, subcontractor or principal and every other person who, in the opinion of the director of employment standards, either:

- (i) has control or direction of one or more employees; or
- (ii) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees;

Shauna had control and direction of Rae as contemplated by the legislation. Rae believed her work instructions came from Shauna and that Shauna was her manager. Waylyn spoke to Shauna about what Rae was doing, not to Rae directly, which reinforced Rae's understanding that Shauna was her manager and Waylyn's spokesperson.

Waylyn gave significant responsibility to Shauna. Rae looked to Shauna to direct her work for the company. Shauna lied to Waylyn about what Rae was doing, and to Rae about the type of work Waylyn wanted Rae to do. Shauna appears to have had a great deal on her plate that she was not equipped to deal with, but instead of asking for help, she resorted to deception. Rae was caught between Waylyn and Shauna; the failure of communication was not her fault or her responsibility. She was doing the work her manager requested her to do, and which she believed to be for the benefit of the company. She deserves to be compensated for that work.

IV. CONCLUSION

I hold that the Employee is entitled to be paid at the rate of \$21.50/hour for the work she performed for the Employer, as substantiated by the To-do list and the NSF cheque issued by the Employer.

I dismiss the Employer's appeal, uphold the revised Wage Assessment as presented at the Hearing, and order the Employer to pay to the Employee the sum of \$3,084.23.

A copy of the List of Exhibits is attached.

Dated at North Battleford, Saskatchewan: November 25, 2016.

Original signed by

Karen C. Ulmer

Adjudicator

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.

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.

MATTER: Burton Aggregates Ltd. v. Rae-Anne Hoflin

LRB File No. 228-16

EXHIBITS – Employer

- #1 To-do list January 26 – February 18, 2016
- #2 Four photographs of boxed financial records
- #3 Email from Rae Hoflin to Waylyn Burton March 2, 2016
- #4 Interac e-Transfer confirmation for payment from Waylyn Burton to Rae Hoflin, January 16, 2016
- #5 Interac e-Transfer confirmation for payment from Waylyn Burton to Rae Hoflin, January 30, 2016
- #6 Email from Rae Hoflin to Waylyn Burton, February 29, 2016
- #7 Letter from Doug Long, Employment Standards Office, to Waylyn Burton, September 12, 2016
- #8 Corporate Registry Profile Report for Burton Aggregates Ltd., September 12, 2016
- #9 Email from Shauna Kadler to Waylyn Burton, February 20, 2016

EXHIBITS – Employee

- #1 Letter from RBC to Rae Hoflin, October 14, 2016 with copied NSF cheque dated February 15, 2016 attached
- #2 Letter of Employment Offer Contract between Burton Aggregates Ltd. and Rae Hoflin, November 10, 2015
- #3 Copy of NSF cheque February 15, 2016 with “Payroll” circled
- #4 Employment Standards Officer Worksheet with revised total