

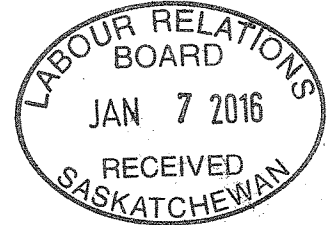
DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTION 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT

Wage Assessment #7268

Labour Relations Board File Nos. 251-15, 252-15, 253-15, 254-15, 255-15

COMPLAINANT:

Corey Castel (251-15)
Merle Morin (252-15)
Ricky Kenny (253-15)
Aaron Netmaker (254-15)
Vance Mirasty (255-15)
Represented by Doug Long
Employment Standards Officer



RESPONDENT:

Equaplan Enterprises Ltd
Represented by Director, Denzil Dixon
and Brett McRuvie, Lawyer

DATE OF HEARING:

December 17, 2015

PLACE OF HEARING:

Board Room #3.2
L.F. McIntosh Building
800 Central Avenue
Prince Albert, Saskatchewan

1. INTRODUCTION

I opened the hearing with a brief description of my role, my process for the hearing, my expectations of conduct and the time frame for my decision. Since three of the five Complainants have arrived on time, I updated the last two on their arrival later in the hearing.

II. PRELIMINARY OBJECTIONS

Mr. Long tendered for exhibit the Saskatchewan Corporate Registration for Equaplan Enterprises and it was marked EE2.

III. THE DISPUTE

Four of the Complainants (Morin, Kenny, Netmaker and Mirasty) are claiming unpaid wages for hours worked beyond October 31, 2014. Mr. Castel's claim is that Equaplan made an unlawful deduction from his wages.

IV. FACTS

The "Facts" will be provided in the format of five separate sections beginning with Complainant Ricky Kenny .

Facts for Complainant Ricky Kenny

i. EVIDENCE OF EMPLOYER

Mr. McRuvie called Denzil Dixon and he was sworn.

Mr. Dixon is President and Owner of Equaplan Enterprises. He knows Mr. Kenny as a former employee hired to do renovations at a site on 28th Street in Prince Albert. Mr. Kenny was laid off effective the end of October of 2014 and he was paid in full.

Note: Mr. McRuvie tabled documents marked ER1 and ER2 showing time worked and pay records for Mr. Kenny for the period October 27-31 of 2014.

Cross Examination

Mr. Long concedes that Mr. Kenny was paid properly for work performed in October of 2014.

In response to questions from Mr. Long, Mr. Dixon provided the following evidence:

- Mr. Kenny's wage was \$18/hour not \$15/hour.
- Mr. Kenny was laid off verbally on October 31, 2014.
- Sometime in November Mr. Kenny asked him about pay for hours worked in November. Those hours were assigned by Mr. Netmaker and therefore were unauthorized.
- Mr. Netmaker was hired because he had a vehicle and could collect and deliver time sheets, supplies, etc. He was not a manager nor a supervisor.

Re-direct

- Mr. Netmaker was hired in October of 2014. He had a vehicle so was assigned errands.

ii. EVIDENCE OF EMPLOYEE

Mr. Long called Ricky Kenny and he was sworn. His testimony was:

- He was hired by Mr. Dixon to do mainly dry walling. He was told he would be a full time employee. He filled out documents for direct deposit.
- Mr. Dixon had talked about lay-offs but not for him. A painter was still working and since he was a drywaller, the painter would follow his work. There were 10 units to be done in November and Mr. Dixon hired another drywaller named Darwin.

- His period of employment was October 27 to November 24, 2014.

Note: Mr. Long tabled a photocopy of the month of November 2014 as Mr. Kenny's record of hours worked. The document was marked EE1.

- His rate of pay was \$20/hour and Mr. Dixon told him there would be a bonus if work was done faster. He brought his own lunch so the break was one half an hour.

- He filed this claim because Mr. Dixon never paid even though his hours were requested.

- He did speak to Mr. Dixon after filing the claim and was told he would not be paid because he filed the claim.

- During November he worked mainly by himself although Mr. Netmaker would come around and supervise. Mr. Dixon had told them all that Mr. Netmaker was their supervisor.

- He quit because he wasn't being paid.

- He was not told by Mr. Dixon he was laid off on October 31.

- Mr. Dixon knew he was working in November because he asked for the hours. He was told by Mr. Dixon, his pay would be deposited in his account.

Cross Examination

In response to questions from Mr. McRuvie, Mr. Kenny provided the following evidence:

- Lay-offs did happen, but Darwin was hired by Mr. Netmaker.

- Mr. Netmaker was hired before him. Mr. Netmaker filled out his October timesheet but asked him to keep his own time for November. He does not know why there is no Equaplan timesheet for him for November.

- He has nothing written from Mr. Dixon acknowledging work done in November.

Re-direct

- He was told by Mr. Netmaker that his hours were given to Mr. Dixon.

Note: Mr. Long tabled a document which contains the Wage Assessment Calculations for Mr. Kenny's claim. It was marked EE3. It shows 106 hours worked at regular pay, 29.5 at overtime, total claim is \$2,312.98.

Facts for Complainant Merle Morin

i. EVIDENCE OF EMPLOYER

Mr. Dixon was reminded that he was still under oath and he provided the following evidence:

- He knows Mr. Morin as a former employee of his, who worked at the 28th Street site in Prince Albert.

- His start time would have been as for Mr. Kenny.

Note: Mr. McRuvie tabled documents marked ER3, 4 and 5 that shows time worked and pay for Mr. Morin in October of 2014. Mr. Long conceded that Mr. Morin was paid properly for his work performed in October of 2014.

- He was aware that Mr. Morin worked in November 2014 and Mr. Morin was paid for that work.

Note: Mr. McRuvie tabled two documents, marked ER6 and ER7; ER7 a timesheet for Mr. Morin showing hours worked from November 1-14, 2014. ER6, the Equaplan pay stub showing Mr. Morin to be paid 68.3 regular hours and 20.15 overtime hours for a total of \$1701.93 net pay.

Mr. McRuvie then tabled an Equaplan payroll document, marked ER8, which shows Mr. Morin being on staff and having worked November 1-14, 2014.

- He has paid Mr. Morin in full.

Cross Examination

In response to Mr. Long, Mr. Dixon provided the following testimony:

- He is unable to prove Mr. Morin received the pay set out in ER6.
- Mr. Morin's lay-off was possibly after November 14.

Re-direct

- Mr. Morin received two separate payments during his employment.

ii. EVIDENCE OF EMPLOYEE

Mr. Long called Mr. Merle Morin, he was sworn and provided the following evidence:

- He was hired by Mr. Dixon as a labour/carpenter. He believes he was hired full time to work at the apartment building and Mr. Netmaker was left in charge of the crew. Mr. Netmaker looked after the timesheets, supplies, tools, etc. from Saskatoon.
- He only received one payment for his work, that being for October. Never received pay for November work.
- He went to Saskatoon and gave Mr. Dixon his timesheet. Mr. Dixon told him the new supervisor (Dave) would bring him his cheque.
- The pay set out in ER6 was never received. His claim is for all the work he performed in November of 2014.
- He thought Mr. Netmaker put his November timesheet in to Mr. Dixon, that's why he never spoke to Mr. Dixon prior to putting his claim in.
- Even though his ROE showed the pay from ER6, he never got it and never saw ER6 until the Ministry got it.

Cross Examination

Mr. McRuvie's questions provided the following evidence from Mr. Morin:

- He was hired as a carpenter and Mr. Netmaker filled out the October timesheet. He received pay for October but not for November even though Mr. Netmaker had his timesheet.

Re-direct

- His employment ended when Mr. Dixon laid him off in December of 2014. He was told he was being put on hold, but he never heard back from Mr. Dixon.

Note: Mr. Long tabled the Wage Assessment Calculations sheet for Mr. Morin's claim and it was marked EE4. It shows a claim for 172.5 regular hours and 64 overtime hours for a total of \$5,952.69 owing by Equaplan. This Assessment shows the period covered by ER6 as not paid.

At this point I asked the parties to undertake a search to determine if proof could be established that ER6 was in fact paid. If a cheque was issued as Equaplan testified then a record of cashing or otherwise could be established. I give the parties a week to report back to me as to the progress of this search.

Re-direct

None

Facts of Complainant Vance Mirasty

i. EVIDENCE OF EMPLOYER

Mr. Dixon was reminded that he was still under oath. He provided the following evidence:

- He knows Mr. Mirasty as a former employee hired in October of 2014. He had given Mr. Mirasty a \$440.00 advance.

Note: Mr. McRuvie tabled a copy of Mr. Mirasty's October timesheet (marked ER9) and a copy of Equaplan's pay stub for the same period (marked ER10).

- Mr. Mirasty worked 44.30 regular hours and 6.0 overtime hours from October 27-31. With the advance of \$440.00 deducted, net pay was \$621.85.

Note: Mr. McRuvie tabled the CRA T4 for 2014 for Mr. Mirasty (ER11) and two Western Union receipts (ER12 and ER13) showing \$440.00 total sent to Mr. Mirasty on October 31 and November 7, 2014.

- He sent the advance to Mr. Mirasty by Western Union (ER12 and ER13) and then deducted the amount from Mr. Mirasty's October pay.

- Mr. Mirasty quit after receiving a \$1,200.00 cheque. There was no more contact from him until his claim to Labour in November.

Cross Examination from Mr. Long

- He paid Mr. Mirasty \$20.00/hour.

- He never saw a claim for hours worked in November until the Labour Claim.
- He agrees he paid Mr. Mirasty a \$1,200.00 cheque, \$140.00 cash and \$340.00 by Western Union.

Re-direct

None

ii. EVIDENCE OF EMPLOYEE

Mr. Long called Mr. Mirasty and he was sworn and provided the following testimony:

- He was hired by Mr. Dixon for a month or two and he worked from October 27 to November 14 or 15 of 2014.
- He filed his claim because Mr. Dixon owed him \$1,600.00 - \$1,700.00. He called Mr. Dixon and was told his timesheets were lost. He made a new one on his own document (EE5) for November.
- He was paid \$140.00 cash for the first day he worked on October 24.
- As a carpenter he was paid \$20.00/hour.
- Regarding ER10 which shows pay of \$1,061.85, he got a cheque for \$1,200.00 and an advance for \$440.00.
- He worked with Mr. Netmaker, Mr. Kenny and Mr. Morin in November.
- He did not work for anyone else in November.
- He quit November 17 because he was not getting paid. When he phoned Mr. Dixon, he was told he owed Equaplan money, so then he went to Labour.
- His November timesheet documents the time owed.

Cross Examination by Mr. McRuvie

- He was hired by Mr. Dixon in October of 2014 for \$20.00/hour. He was paid for work done in October.
- Mr. Netmaker collected the timesheets after he filled them out.
- He quit on November 17.

Re-direct by Mr. Long

- The \$621.85 on ER10 was never received. Instead he got a cheque for \$1,200.00.

Note: Mr. Long tabled the Wage Assessment Calculations sheet for Mr. Mirasty after he amended it. The amendment reduced the Assessment from \$1,946.95 to \$1,546.95. This reduction was due to Mr. Mirasty testifying he received a \$440.00 advance. This document was marked EE6.

Note: With all due respect to Mr. Long, $\$1,946.95 - \$440.00 = \$1,506.95$ not $\$1,546.95$. I made a note on EE6 to this effect.

Mr. Dixon conceded Equaplan paid Mr. Mirasty only one cheque. That for $\$1,200.00$. There was not cheque in the amount of $\$621.85$.

Facts for Complainant Cory Castel

i. EVIDENCE OF EMPLOYER

Mr. Dixon was reminded he was still under oath and he provided the following evidence:

- He knew Mr. Castel as an employee on the 28th Street project. Mr. Castel was hired as a labourer after meeting him in Saskatoon.

- He let Mr. Castel live on site, bought him food and gave him cash. Mr. Castel was hired in October of 2014.

- He gave Mr. Castel a $\$700.00$ advance which was deducted over two pay cheques because Mr. Castel had not worked enough to cover the advance in the first pay period.

Note: Mr. McRuvie tabled two Equaplan pay stubs for Mr. Castel (marked ER14 and 16).

- ER16 shows for the period October 16-31 Mr. Castel was deducted $\$569.66$ and for the period November 1-15 (ER14) deducted $\$130.34$. The two together total the amount of the $\$700.00$ advance.

Note: Mr. Long advised that Mr. Castel's issue was the $\$700.00$ deduction being made unlawfully.

Cross Examination by Mr. Long

- The $\$700.00$ advance was made against future work to be performed by Mr. Castel.

Re-direct by Mr. McRuvie

- The $\$700.00$ was received by Mr. Castel. Mr. Castel worked to the end of November.

ii. EVIDENCE OF EMPLOYEE

Mr. Castel was called by Mr. Long and he was sworn. In response to questions from Mr. Long, Mr. Castel provided the following evidence:

- Mr. Dixon hired him for demolition work. Mr. Dixon told him he was hired for a period of time. Wayne was a co-worker.

- He took the advance because Mr. Dixon said he'd get it back on income tax.

- He received two cheques, one for $\$700.00$ and one for $\$461.11$. $\$1,161.11$ in total.

- He did not keep his own hours, he trusted others to do that.

- He believes the \$700.00 was deducted illegally.

Cross Examination

None

Facts for Complainant Aaron Netmaker

i. EVIDENCE OF EMPLOYER

Mr. Dixon was advised he was still under oath and he provided the following evidence:

- He knows Mr. Netmaker as a former employee he hired in October of 2014 to collect timesheets from other employees, transport supplies to worksites and run other errands.

- Mr. Netmaker's October timesheet (ER18) shows an advance of \$950.00 written on the bottom.

- Equaplan's pay stubs for October 1-31 (ER19) shows a \$950.00 deduction for that advance leaving net pay of \$758.73.

- Mr. Netmaker's 2014 T4 shows pay from Equaplan to be \$2,036.05 (ER20).

- He advanced Mr. Netmaker via Western Union \$100.00 on October 6 and \$650.00 on October 31 (ER21). He also gave Mr. Netmaker \$200.00 cash the first week of work.

- Mr. Netmaker became unavailable beginning the first week of November. Various excuses were given, mainly they were about his girl friend being pregnant and needing him.

- Mr. Netmaker did not work in November, did not have a timesheet and received no pay.

Cross Examination by Mr. Long

- Mr. Netmaker did not work in November and basically terminated himself being unavailable.

- He was in Prince Albert the last three days in November to clean up the worksite and Mr. Netmaker did some work but was not paid.

- Mr. Netmaker was paid \$20.00/hour.

- He doesn't remember terminating Mr. Netmaker, he took his phone back and he remembers being very upset with Mr. Netmaker.

- Mr. Netmaker called him a couple of times in November.

Re-direct by Mr. McRuvie

- He never received a timesheet from Mr. Netmaker for November.

- He was on site for three days in November and Mr. Netmaker did not work in November.

ii. EVIDENCE OF EMPLOYEE

Mr. Long called Aaron Netmaker, he was sworn and provided the following evidence:

- Mr. Dixon hired him the last week of October and he worked through three weeks of November.
- There were 8 units to do and he had completed 3.
- His job was to make sure everyone was at work, deliver materials, remove garbage. He started as a labourer, but was promoted to supervisor the second day of work. As a labourer he was to be paid \$15.00/hour. As Supervisor he made \$20.00/hour.
- He filled out other employees' timesheets every day, signed off on them and gave them to Mr. Dixon.
- He went to Labour because he was not being paid for his November work. His October pay cheque was late, he never got it until November 15.
- He was paid in total \$2,000.00 plus \$2,036.05. He agrees he received the advances.
- In November he worked with Mr. Dixon, Mr. Mirasty, Mr. Kenny, Mr. Morin and Mr. Castel. There were others as well.
- He kept track of his own hours for November.

Note: Mr. Long tendered a two page document (marked EE7). The first page is a copy of an Equaplan timesheet for Mr. Netmaker's hours for November 1-14. The second page is a document made up to show time worked for Mr. Netmaker from November 17-27.

- He gave his hours for November 1-14 to Mr. Dixon on November 14. That is when he got his October pay. The second page is, in his best memory, of time worked from November 17-27.
- He never worked for anyone else in November. November 27 was his last day at Equaplan.
- His employment ended on November 27 because Mr. Dixon laid him off. When he asked Mr. Dixon about his pay he was told the accountant messed up.
- He called Mr. Dixon several times about his pay but got nowhere so he went to Labour and filed his claim.
- Mr. Dixon kept blaming the accountant, so he called the accountant and Mr. Dixon answered the phone.
- The \$200.00 he received was part of the \$2,036.05 he was paid.

Note: At this point Mr. Long tendered the Wage Assessment Calculation for Mr. Netmaker with an amendment. The amendment was an additional \$200.00 that Mr. Netmaker had received as an advance but was reflected as part of his T4 remunerations. The document was marked EE8. It shows an amount of \$5,243.74 plus \$200.00 = \$5,443.74.

Cross Examination by Mr. McRuvie

- He handed in his timesheet for November 1-14 to Mr. Dixon. The timesheet for November 15-27 was on his phone but he lost that page off the phone so had to reconstruct it.
- He had no hiring authority as a Supervisor.

Re-direct

None

iii. FINAL ARGUMENT

Employer

Mr. McRuvie argues that the evidence tendered shows that all timesheets that were provided by the employees were processed and pay issued. Therefore there is nothing owing.

All five employees began employment in October of 2014 and were either laid off or quit.

There is no proof that there was work done in November.

Employees'

Mr. Long argued that the employees did work in November and all except Mr. Castel, got their timesheets to Mr. Dixon.

Mr. Long concedes that Mr. Castel was paid properly and that the recovery of \$700.00 advance was proper.

I thanked the parties for their respectful presentations and closed the hearing.

Following the hearing on December 23, 2015, I contacted Mr. Long and Mr. McRuvie, reminding them of the dispute over a payment to Complainant Merle Morin for work performed from November 1-15, 2014. I was assured by Mr. Long on December 23 that Mr. Dixon had access to his bank accounts for the purpose of gathering information.

As of January 4, 2016 having received no contact from the employer, I telephoned Mr. McRuvie and indicated that Mr. Dixon has until 5:00 pm on January 6, 2016 to provide information to me. Further I indicated I will be finalizing my decision on January 7, 2016. I followed up that telephone conversation with an e-mail to both Mr. Long and Mr. McRuvie.

On Wednesday January 6, 2016 I received an e-mail message from Mr. McRuvie with attachments. One attachment is a copy of an Equaplan cheque made out to Mr. Morin as payment for work performed in October of 2014. The second is a receipt, supposedly from Equaplan, purporting to be for cash to Denzil Dixon, part of which was alleged given to Mr. Morin for his work performed November 1-15 of 2014. The date on this receipt is December 31, 2014.

V. ANALYSIS

Given Mr. Long's concession that Mr. Castel's claim was without substance, my task is to decide, on the balance of probabilities, if the claims for the other four employees are legitimate or bogus.

I gave the Employer some time to attempt to verify the claim that the payment for work performed by Mr. Morin November 1-15 was received by Mr. Morin. Employer exhibit ER6 is a pay stub showing an amount of \$1701.93 paid to Mr. Morin for the November 1-15 period. Mr. Morin denied

receipt hence my allowance of time for Mr. Dixon to produce proof of a cashed cheque. He has not be able to do that.

Except for Mr. Morin, Mr. Dixon asserts that there was no work performed in November. In response to Mr. Long, Mr. Dixon did allow that Mr. Netmaker, might have worked a bit in November.

My review of the exhibits shows three that point to activity in November. ER8 shows Mr. Morin to be on Equaplan's payroll for the period November 1 to 14. ER11 shows Mr. Mirasty was sent \$50.00 via Western Union on November 7 by Mr. Dixon. ER14 shows Cory Castel received pay for work performed in November.

The information provided on January 6, 2016 from Mr. McRuvie suggests Mr. Dixon paid Mr. Morin for work performed November 1-15 in cash sometime after December 31, 2014. Not only was there no testimony from either Mr. Dixon or Mr. Morin regarding that transaction, there is evidence tabled by the employer (ER6), that claims Mr. Morin was paid by cheque dated December 2, 2014.

Mr. Mirasty testified that he worked with Mr. Netmaker, Mr. Morin and Mr. Kenny in November. Mr. Netmaker testified that he worked with Mr. Dixon as well as with Mr. Morin, Mr. Kenny and Mr. Mirasty in November.

It is, my conclusion, that on the balance of probabilities the employees Morin, Mirasty, Kenny and Netmaker worked for Equaplan during November of 2014 and were not paid. I'm satisfied that Mr. Morin was paid only for his work performed in October of 2014.

VI. AWARD

I. WAGES

Given my conclusion above, and the fact that Equaplan raised no objection to the calculations, the Wage Assessments for:

Aaron Netmaker in the sum of \$5,443.74 (as amended)
Vance Mirasty in the sum of \$1,506.95 (as amended)
Merle Morin in the sum of \$5,952.69
Ricky Kenny in the sum of \$2,312.98

are valid and are owed to these employees by Equaplan Enterprises Ltd.

The claim made by Mr. Castel was withdrawn by Mr. Long.

Dated at Regina, in the Province of Saskatchewan, this 7th of January, 2016.



Ralph Ermel
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.