

IN THE MATTER OF:

An Appeal of Wage Assessment Number 8402 pursuant to section 2-75 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, as amended, (the "SEA");

A hearing pursuant to section 4-2 of the SEA



BETWEEN:

Marinel Manzuc % Dymar Construction;

APPELLANT,

- and -

Dmitriy Dmitriyev,

RESPONDENT (COMPLAINANT),

- and -

Director of Employment Standards, Ministry of Labour Relations and Workplace Safety,

RESPONDENT.

ADJUDICATOR'S DECISION
August 24, 2017

T. F. (TED) KOSKIE, B.Sc., J.D.

REPRESENTATIVES:

Appellant, Marinel Manzuc, Self Represented

Irina Dmitriyev for the Complainant (Respondent), Dmitriy Dmitriyev

Dale Schmidt & Adam Farion, Employment Standards Officers, for the Respondent, Director of Employment Standards

[1] Marinel Manzuc^{o/a}, Dymar Construction ("Dymar") appealed (the "Appeal") Wage Assessment No. 8402 (the "Assessment") issued pursuant to section 2-74 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (as amended) (the "SEA") by the Director of Employment Standards (the "Director") on January 16, 2017.

[2] The Assessment directed Dymar to pay \$4,403.36 to Dmitriy Dmitriyev ("DD").

[3] By Order dated March 9, 2017, the Labour Relations Board ("LRB") selected me to hear and determine the Appeal.

[4] The relevant provisions of the SEA are as follows:

Wage assessments

2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

(2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

- (a) the employer;
- (b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2768.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

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- (b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 268.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

(6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage assessment to be served on:

- (a) the employer or corporate director named in the wage assessment; and
- (b) each employee who is affected by the wage assessment.

(7) A wage assessment must:

- (a) indicate the amount claimed against the employer or corporate director;
- (b) direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:
 - (i) pay the amount claimed; or
 - (ii) commence an appeal pursuant to section 2-75; and
- (c) in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.

(8) The director of employment standards may, at any time, amend or revoke a wage assessment.

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Adjudicator – duties

4-2 An adjudicator shall:

- (a) hear and decide appeals pursuant to Part II and conduct hearings pursuant to Division 5 of Part II;
- (b) hear and decide appeals pursuant to Division 8 of Part III; and
- (c) carry out any other prescribed duties.

Selection of adjudicator

4-3(1) The director of employment standards and the director of occupational health and safety shall inform the board of an appeal or hearing to be heard by an adjudicator.

(2) On being informed of an appeal or hearing pursuant to subsection (1), the board shall select an adjudicator.

Procedures on appeals

4-4(1) After selecting an adjudicator pursuant to section 4-3, the board shall:

- (a) in consultation with the adjudicator and the parties, set a time, day and place for the hearing of the appeal or the hearing; and
- (b) give written notice of the time, day and place for the appeal or the hearing to:
 - (i) in the case of an appeal or hearing pursuant to Part II:
 - (A) the director of employment standards;
 - (B) the employer;
 - (C) each employee listed in the wage assessment or hearing notice; and
 - (D) if a claim is made against any corporate directors, those corporate directors; and
 - (ii) in the case of an appeal or hearing pursuant to Part III:
 - (A) the director of occupational health and safety; and
 - (B) all persons who are directly affected by the decision being appealed.

(2) An adjudicator may determine the procedures by which the appeal or hearing is to be conducted.

(3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.

(4) An adjudicator may determine any question of fact that is necessary to the adjudicator's jurisdiction.

(5) A technical irregularity does not invalidate a proceeding before or by an adjudicator.

(6) Notwithstanding that a person who is directly affected by an appeal or a hearing is neither present nor represented, if notice of the appeal or hearing has been given to the person pursuant to subsection (1), the adjudicator may proceed with the appeal or the hearing and make any decision as if that person were present.

(7) *The Arbitration Act, 1992* does not apply to adjudications conducted pursuant to this Part.

Powers of adjudicator

4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:

- (a) to require any party to provide particulars before or during an appeal or a hearing;
 - (b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;
 - (c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:
 - (i) to summon and enforce the attendance of witnesses;
 - (ii) to compel witnesses to give evidence on oath or otherwise;
 - (iii) to compel witnesses to produce documents or things;
 - (d) to administer oaths and affirmations;
 - (e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not;
 - (f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;
 - (g) to adjourn or postpone the appeal or hearing.
- (2) With respect to an appeal pursuant to section 3-54 respecting a matter involving harassment or a discriminatory action, the adjudicator:
- (a) shall make every effort that the adjudicator considers reasonable to meet with the parties affected by the decision of the occupational health officer that is being appealed with a view to encouraging a settlement of the matter that is the subject of the occupational health officer's decision; and
 - (b) with the agreement of the parties, may use mediation or other procedures to encourage a settlement of the matter mentioned in clause (a) at any time before or during a hearing pursuant to this section.

Decision of adjudicator

4-6(1) Subject to subsections (2) to (5), the adjudicator shall:

- (a) do one of the following:
 - (i) dismiss the appeal;
 - (ii) allow the appeal;
 - (iii) vary the decision being appealed; and
 - (b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety, as the case may be, and any other party to the appeal.
- (2) If, after conducting a hearing, the adjudicator concludes that an employer or corporate director is liable to an employee or worker for wages or pay instead of notice, the amount of any award to the employee or worker is to be reduced by an amount that

the adjudicator is satisfied that the employee earned or should have earned:

- (a) during the period when the employer or corporate director was required to pay the employee the wages; or
- (b) for the period with respect to which the employer or corporate director is required to make a payment instead of notice.
- (3) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (2).
- (4) If, after conducting a hearing concerned with section 2-21, the adjudicator concludes that the employer has breached section 2-21, the adjudicator may exercise the powers given to the Court of Queen's Bench pursuant to sections 31.2 to 31.5 of The Saskatchewan Human Rights Code and those sections apply, with any necessary modification, to the adjudicator and the hearing.
- (5) If, after conducting a hearing concerned with section 2-42, the adjudicator concludes that the employer has breached section 2-42, the adjudicator may issue an order requiring the employer to do any or all of the following:
 - (a) to comply with section 2-42;
 - (b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;
 - (c) to restore the employee to his or her former position;
 - (d) to post the order in the workplace;
 - (e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.

[5] After commencement of the hearing of the Appeal, the parties expressed a desire to try to negotiate a settlement of this appeal. I adjourned the matter to allow them an opportunity to do so.

[6] I reconvened the hearing. The parties reported they had negotiated a settlement of the appeal. The terms of same are that Dymar will pay \$3,328.96 to DD. They consented to and asked for an Order that reflected same. I am satisfied this is an appropriate case to do so.

[7] Because of the above, I:

- a) vary the Assessment as it pertains to DD to direct Dymar pay \$3,328.96 to DD;

and

- b) order that Dymar pay \$3,328.96 to DD.

Dated at Saskatoon, Saskatchewan, on August 24, 2017.



T. F. (TED) KOSKIE, B.Sc., LL.B.,
ADJUDICATOR