



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

Appellants:

Triple One Properties (Sask.) Ltd., 500-128 4th Ave. S., Saskatoon, SK S7K 1M8

Ronak Mawji, being a Director of Triple One Properties (Sask.) Ltd., 911 Shawnee Dr. S.W., Calgary, AB, T2Y 2G8

Sameer Mawji, being a Director of Triple One Properties (Sask.) Ltd., 2420 – 37th Avenue N.E., Calgary, AB, T2E 8S6

Alim Mawji, being a Director of Triple One Properties (Sask.) Ltd., 2420 – 37th Avenue N.E., Calgary, AB, T2E 8S6

Represented by Alim Mawji

Respondents:

Salil Kulkarni, 311 Arscott Cres., Saskatoon, SK S7W 0R9, present in person

Director of Employment Standards, Represented by Adam Farion,
Employment Standards Officer.

Date of Hearing: March 28, 2017

Location of Hearing: Boardroom 2.1
Sturdy Stone Building
122- 3rd Avenue North; Saskatoon, Saskatchewan

Preliminary Matters:

The Director of Employment Standards issued Wage Assessment # 8516. It was signed February 9, 2017 by the 'Director's Delegate' at Saskatoon, Saskatchewan. It directed Triple One Properties (Sask) Ltd., 500-128 4th Ave. S., Saskatoon, SK S7K 1M8; Ronak Mawji, being a Director of Triple One Properties (Sask.) Ltd., 911 Shawnee Dr. S.W., Calgary, AB, T2Y 2G8 ; Sameer Mawji, being a Director of Triple One Properties (Sask.) Ltd., 2420 – 37th Avenue N.E., Calgary, AB, T2E 8S6; and Alim Mawji, being a Director of Triple One Properties (Sask.) Ltd., 2420 – 37th Avenue N.E., Calgary, AB, T2E 8S6 ('the appellants) to pay \$7,177.76 in wages to Salil Kulkarni.

The appellants filed a 'Written Notice of Appeal' dated February 17, 2017. This hearing (LRB File No. 044-17) was set in relation to the appeal.

Prior to this hearing, as directed by the Order of the Saskatchewan Labour Relations Board appointing me to hear this matter, I advised the Director of my appointment, and determined that subsections 2-74(6), 2-75(2), 2-75(3), 2-75(4) and 2-75 of the Saskatchewan Employment Act were complied with, and therefore confirmed that I do have jurisdiction to hear this matter. In addition, no objection was made by either party regarding my jurisdiction at the hearing. However, Mr. Farion did object that the Written Notice of Appeal disclosed no grounds for appeal and made no request for relief. In response to this objection, I determined that in my opinion it is implicit in the Written Notice of Appeal that the appellants challenge the correctness of the Wage Assessment and allege that they had just cause to dismiss Mr. Kulkarni. Further, it is implicit that the relief they were requesting was that the Adjudicator overturn the Wage Assessment.

Issue:

Having determined that it is appropriate for me to hear this matter, the issue becomes whether the employer had just cause to terminate Mr. Kulkarni's employment, and whether the amounts said to be due remain owing.

Facts and Decision:

Mr. Alim Mawji admitted the existence of the corporation as an existing Saskatchewan corporation, and that the named directors were all directors at all relevant times. This is alternatively established by a copy of the Corporate Registry profile Report filed as a tab within Exhibit EE-1.

There was no real dispute with respect to any relevant facts. Although Mr. Kulkarni takes issue with some of Mr. Alim Mawji's allegations, I need not address those differences in making my decision.

The parties agreed to and filed the following 'Agreed Statement of Facts' (capitalization in original):

- Triple One Properties (Sask) Ltd. is a registered corporation in Saskatchewan.
- All parties for Triple One Properties (Sask) Ltd. have been deemed served and are aware of today's proceeding.
- Salil Kulkarni was an employee of Triple One Properties (Sask) Ltd. from August 2014 until his termination on January 25, 2016.
- Salil Kulkarni had an annual salary of \$120,000.
- Salil Kulkarni earned a gross value of \$190,545.96 in wages while employed by Triple One Properties (Sask) Ltd., and would therefore be entitled to \$10,992.98 worth of Vacation Pay less vacation days used (based on the minimum Vacation pay calculation of $3/52 \times \text{Gross Income}$).
- Salil Kulkarni has been paid \$12,000 in Bonus for 2015.
- The wage Assessment issued by The Director of Employment Standards was for \$1,177.76 outstanding Vacation Pay and \$6,000 outstanding Bonus.

At the hearing, Mr. Mawji agreed that the \$1,177.76 outstanding Vacation Pay was owing. Therefore I shall not address this amount in any more detail. The only amount remaining in dispute is the \$6,000 in outstanding Bonus.

When Salil Kulkarni was hired, Alim Mawji provided him with a document called a 'Letter of Acceptance' (Exhibit EE-1; 'LOA and Term' tab). It was dated July 28, 2014 and contained at least some of the details of Mr. Kulkarni's employment. Remuneration was stated to be \$120,000 per year with an \$18,000 bonus to be paid to Mr. Kulkarni on December 31, 2015. This bonus was not said to be subject to satisfactory performance or otherwise limited. It may have been implicit that Mr. Kulkarni would have to still be employed on December 31 in order to receive the bonus, however I do not have to decide this as he was in fact still employed on that date.

Mr. Mawji testified that he was very dissatisfied with Mr. Kulkarni's work performance. The A document called 'Termination of Employment' dated January 25, 2016 details some of these complaints.

Mr. Mawji also testified that the decision to terminate Mr. Kulkarni's employment as a result of what was seen as unacceptably poor work performance had been made by the third week of November, around American Thanksgiving. However Mr. Mawji's father passed away and the termination did not occur until January.

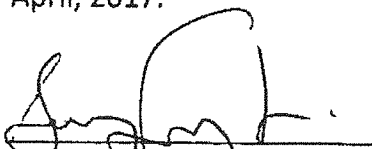
Mr. Mawji submits that Mr. Mawji's \$18,000 bonus was "implicitly tied" to his work performance. With respect, I cannot accept this limitation on the bonus entitlement. The 'Letter of Acceptance' document provided to Mr. Kulkarni does not contain any such limitation, and no evidence of any such limitation was presented at the hearing.

When Mr. Mawji terminated Mr. Kulkarni's employment, he made an error. Despite his view that he had sufficient evidence to establish just cause, Mr. Mawji paid Mr. Kulkarni two weeks severance pay upon termination, while leaving the \$6,000 outstanding Bonus unpaid. Mr. Kulkarni's daily wage was \$461.54. Two weeks (that is 10 days) of this wage would be \$4,615.40. These funds could have been used to reduce the amount of bonus which remained unpaid. However, that is not what happened. In fact, Mr. Mawji made a voluntary payment of two weeks pay. If the employer had just cause to terminate Mr. Kulkarni's employment, no severance pay was required. Amounts already due however remain owing. Therefore despite the voluntary payment of severance pay, the appellant must still pay the unpaid portion of the bonus. This amount is \$6,000. Together with the unpaid vacation pay, the total owing is \$7,177.76.

Conclusion:

The appellants' appeal is dismissed. Wage Assessment # 8516 in the amount of \$7,177.76 is affirmed.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 12th day of April, 2017.



Doug Surtees
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.