



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

*LRB File No. 05317*

Qian Sheng

COMPLAINANT/EMPLOYEE

-AND-

Cre-8-tive Minds Early Learning Child Care Inc.

RESPONDENT/EMPLOYER

DATE OF HEARING: May 12<sup>th</sup>, 2017

PLACE OF HEARING: Swift Current, SK

Page 2 of 7

## **INTRODUCTION**

This matter was heard before me on May 12<sup>th</sup>, 2017 in Swift Current, Saskatchewan.

Mr. Ron Byers, Employment Standards Officer represented the Employment Standards Department.

The Claimant/Employee, Qian Sheng was present and represented herself.

Cre-8-tive Minds Early Learning Child Care Inc. was represented by Candace White, Executive Director of the Corporation and Cheryl Wilhelm, Assistant Director

The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014 c.s-15.1, herein after referred to as "The Act" is for \$1,548.46.

Page 3 of 7

## **I. PRELIMINARY MATTERS**

Mr. Byers on behalf of the Employment Standards Department raised a preliminary objection that the writer, as Adjudicator, did not have jurisdiction to hear the Appeal.

Section 2-75(2) of the Saskatchewan Employment Act states, "An appeal pursuant to this section must be commenced by filing a written Notice of Appeal with the director of employment standards within 15 business days after the date of service of a wage assessment."

It is clear from the wording of the above section that before an Adjudicator has jurisdiction to hear an appeal Section 2-75(2) must be complied with.

The Department filed exhibit "EE1" which showed a detailed Canada Post tracking print out showing that the wage assessment was received by Creative Minds Early Learning Child Care Inc. in the morning on February 9<sup>th</sup>, 2017. The document was signed for by Candace White.

Page 4 of 7

The Department also filed exhibit "EE2" showing a tracking result detail, again from Canada Post. This document shows that Canada Post delivered a document with tracking #PG404907465CA on March 10<sup>th</sup>, 2017.

Employer exhibit "ER1" shows the same tracking number on the receipt given to the Respondent/Employer by Canada Post showing the document to be going to the Director of Employment Standards in Regina. This document was mailed on March 1<sup>st</sup>, 2017 as set out on the back of the customer receipt.

The Employer confirmed that the "ER1" document was the Notice of Appeal and filing fee that was forwarded to the Director.

The exhibits show that the Wage Assessment was received by the Employer on February 9<sup>th</sup> and in accordance with the legislation the appeal of the wage assessment was to be served on the Director of Employment Standards within 15 business days of February 9<sup>th</sup>.

Page 5 of 7

This means that the appeal had to have been served on the Director of Employment Standards by the end of business of March 3<sup>rd</sup>, 2017.

(February 20<sup>th</sup> was a statutory holiday and is not counted).

The documents show that the appeal was delivered to the director in Regina by Canada Post on March 10<sup>th</sup> after having been mailed in Swift Current on March 1<sup>st</sup>

I am satisfied that that evidence shows that the Director of Employment Standards did not receive the Notice of Appeal until March 10<sup>th</sup>, 2017.

Consequently, upon applying section 2-75(2) to the evidence I conclude that I have no jurisdiction to hear the Appeal, as the legislation setting out the conditions for filing an Appeal have not been complied with.

I have been asked by the Appellant to expand the time for filing the Appeal. I do not see that I have any legal authority that permits me to enlarge the appeal period.

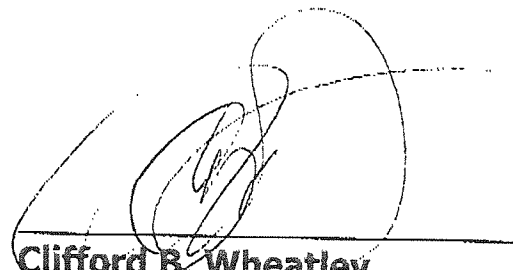
Page 6 of 7

I conclude that section 2-75(2) is mandatory and the service of the Notice of Appeal within 15 business days from the date of service of the wage assessment must be complied with. It was not done so by the Appellant.

## II. CONCLUSION

I conclude that I do not have jurisdiction to hear the Appeal and therefore the Appeal is dismissed and the wage assessment in the sum of \$1,548.46 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 21<sup>st</sup> of  
May, 2017.



Clifford B. Wheatley  
Adjudicator

## Page 7 of 7

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 <http://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.