

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



**Appellants:**

**Quad-Father Renovations and Ben Iverson o/a Quad-Father Renovations**

**Respondents:**

**Director of Employment Standards;**

**Date of Hearing: June 6, 2017**

**Place of Hearing: Second Floor Boardroom  
Sturdy Stone Building  
122-124 Third Ave North  
Saskatoon, Saskatchewan**

## **Introduction**

The Director of Employment Standards (the 'Director') issued Wage Assessment No. 8577, in the amount of \$1,838.83 against Quad-Father Renovations and Ben Iverson operating as Quad-Father Renovations (the 'employer') in favour of Carson Hinthier.

Prior to this hearing, as directed by my Appointment Order signed by the Registrar of the Labour Relations Board on April 27, 2017, I contacted the Director and confirmed compliance with subsections 2-74(6), 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). Therefore I have determined that I do have jurisdiction to hear this matter.

Ben Iverson represented the Employer. He and Jackie Iverson testified for the Employer. Employment Standards Officer Ron Byers represented the Director. He called Carson Hinthier ('Carson') and his brother Taylor Hinthier ('Taylor') as witnesses.

## **Decision**

The employer appeals that Wage Assessment 8577 on four grounds. I quote the grounds directly from the Employer's "Notice of Appeal" document:

1. There was no overtime. The Employee may have worked some days over 8 hours but did not work more than 40 hours in a week. The Employer paid the Employee (.5 hour during lunch time) on days the Employer worked more than 4.5 hours even though the Employee did not work during the lunch break. The paystubs are attached that show that the payments made for the periods that show that not more than 40 hours per week worked by the Employer." (sic)
2. Holiday pay was paid by the Employer to the Employee. The paystubs are attached that show the holiday calculations and payments each pay period.
3. There was no statutory holiday worked. The Employee did not work on any statutory holidays.
4. Calculation of Wages is not founded on any facts. Other employees and calendar records support the Employer. No facts have been provided to the Employer to support the Wage Assessment No. 8577.

The Employer asks for Wage Assessment No. 8577 to be set aside.

Subsection 2-37 (1) of the Act requires employers to provide employees with a statement of earnings on each payday. Carson Hinthier testified he did not want his statement of earnings. This does not affect the requirement that the Employer prepare such a statement.

Paragraph 2-37(2)(a) of the Act says that the statement of earnings required pursuant to subsection (1) must clearly set out, among other things:

(iii) the number of hours of work for which payment is being made for each of wages, overtime and hours worked on a public holiday;

...

(v) the amount paid for each of wages, overtime and public holiday pay and work on a public holiday, vacation pay and pay instead of notice;

Statements of Earnings related to Carson's employment with the Employer were entered as Exhibit EE-2. On their face these Statements of Earnings purport to include Carson's hourly wage and 'Holiday Pay'. However, Carson testified that his actual wage, that is the wage he and the Employer agreed to, was higher. He says that the agreed upon wage was reduced so that once Holiday Pay was added to it, the wage would be what was agreed to. In other words Holiday Pay was not being added to the agreed upon hourly wage, but rather was purportedly included in the agreed upon hourly wage.

Taylor testified that he previously had worked for the Employer. He testified that the Employer had also reduced his hourly wage on his Statements of Earnings, so that after holiday pay was added, the hourly rate would be what was agreed upon. Taylor also testified that when he started working for the employer, Ben Iverson told him he would not be paid overtime. Carson could not remember if at the time he started working for the Employer he had likewise been told that overtime rates would not be paid. This point was not really in dispute however, as Mr. Iverson also testified that he told his employees that he did not pay overtime. He said the employees agreed to this.

Mr. Byers tendered a package of documents, as Exhibit EE-4. These documents purport to be a transcript of a conversation Taylor recorded. In that conversation Taylor, Carson and their father accused Ben Iverson of lowering employees' wages by the amount necessary so that in effect no holiday pay was being paid. Exhibit EE-4 also contains some pages which appear to be screen shots of texts, and some apparently unrelated pages. No testimony was given to explain these pages. I make my conclusions based on the evidence given by the witnesses at the hearing, and I place no weight on the transcripts or screen shots that make up Exhibit EE-4.

Ben Iverson testified that he kept a calendar in a vehicle. Employees would simply write in their initial and the number of hours worked on a particular day. For example, on March 14 the calendar indicates "C-7", which indicates that Carson worked 7 hours on March 14. While such an informal record may serve some purposes for the employer, it certainly does not fulfil the record keeping obligations placed on employers by the Act. One purpose of requiring employers to keep such records is so that when a dispute over wages arises, Employment Standards Officers have sufficient information to conduct a thorough investigation to determine if a Wage Assessment ought to be issued, and if so, in what amount.

This calendar falls far below what is required of an employer. Paragraph 2-38 (1)(c) of the Act requires employers to keep certain records, including:

*(v) the time when the employee's work begins and ends each day and the time when any meal breaks allowed to the employee each day begin and end;*

*(vi) the total number of hours worked by the employee each day and each week as well as the total number of hours each day and each week that the employee is required to be at the disposal of the employer;*

...

*(xiii) the amount paid to the employee with respect to each public holiday and the date of payment;*

In this case, Mr. Byers prepared a document called "Employment Standards Inspection Summary" which was filed as Exhibit EE-1. That document (which is what Wage Assessment 8577 is based upon) indicates Mr. Byers' conclusion that the Employer owes Carson 24 hours of overtime which totals \$261.60. It also indicates Public Holiday-Holiday Pay calculated as .04 multiplied by Carson's earnings during the inspection period of \$32,563.20 for a total of \$1,302.53 is owing. It further indicates Public Holiday – Work Pay owing for 8 hours of work for a total of \$174.40 in wages. Finally, it indicates Annual Holiday Pay of .057692 owing (on the above amounts) in the amount of \$100.30. This Employment Standards Inspection Summary was prepared using records provided by the Employer to Mr. Byers. The total amount assessed was \$1,838.83. Since this amount was not paid, Wage Assessment 8577 was issued in the same amount.

I shall analyze each of the grounds for appeal put forth by the Employer.

The first ground for appeal stated no overtime was worked. This is simply false. I believe Mr. Iverson was being truthful in his testimony, but clearly did not understand the requirement to pay overtime, or in fact what constitutes overtime pursuant to the Act. Overtime is regulated by sections 2-17 through 2-20 of the Act. Overtime pay, which is 1.5 times the employee's regular pay, must be paid after the employee works 8 hours in a day or 40 hours in a week. Some limited exceptions such as a modified work arrangement and averaging authorization, exist in the Act, but are not relevant to the facts of this case. Further, the fact that employees such as Carson allegedly agreed to work overtime without being paid at overtime rates is not relevant. Employees are simply prohibited from contracting out of the overtime provisions. Section 2-6 states:

*No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part.*

Therefore I conclude that the Inspection Summary correctly indicates that the Employer owes \$261.60 in unpaid overtime.

The Employer's second ground of appeal claims that the Employer did pay the required holiday pay. Section 25 of *The Employment Standards Regulations 25 (2)* says:

*(a) if the employee does not work on a public holiday, 4% of the wages, exclusive of overtime and vacation pay, earned by the employee in each calendar year;*

This forms the second heading of the Inspection Summary. There is no record in the Employer's records that this amount was paid to Carson Hinthier. 4% of \$32,563.20 (Carson Hinthier's annual wage exclusive of overtime and vacation pay) is \$1,302.53. Therefore I conclude that the Inspection Summary correctly indicates that the Employer owes \$1,302.53 in unpaid Public Holiday Pay pursuant to *The Employment Standards Regulations 25 (2)*.

The Employer's third ground of appeal was that Carson Hinthier did not work any statutory holiday. The calendar, a photocopy of which is Exhibit EE-3 indicates that Carson Hinthier worked 8 hours on a public holiday. Since there were no other records available to me, I find that he did work these hours. Therefore I conclude that the Inspection Summary correctly indicates that the Employer owes \$174.40 in unpaid wages for 8 hours work on a public holiday.

The final item in the Inspection Summary is annual holiday pay (.057692) on the amounts awarded to the employee. Since I have upheld the amounts said to be owing, this is clearly required by the Act, and is correctly included in the Wage Assessment..

The Employer's final ground of appeal says that the "Calculation of Wages is not founded on any facts. Other employees and calendar records support the Employer. No facts have been provided to the Employer to support the Wage Assessment No. 8577". I have explained the facts that went into the calculation of the amount in the Wage Assessment. I would note that the Employer did not call any other employees to give evidence. I conclude that Wage Assessment No. 8577 was correctly calculated.

**Conclusion:**

The appeal is dismissed. Wage Assessment No. 8577 in the amount of \$1,838.83 is hereby confirmed.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 13<sup>th</sup> day of June, 2017.



Doug Surtees  
Adjudicator

The Parties are 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 viewed at [www.saskatchewan.ca](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.
- (2) A person who is directly affected by a decision of an Adjudicator on an appeal pursuant to Part III 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 or hearing pursuant to Part II, the wage assessment or the notice of hearing;
  - (b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;
  - (c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;
  - (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 or the adjudicator's decision or order with any directions that the board considers appropriate.

#### **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 or the director of occupational health and safety, 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 and the director of occupational health and safety have 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.