

At Mr. Karwarndy's request, we held a case management meeting on August 9, 2017. Mr. Karwandy, Mr. McConnell, Mr. and Mrs. Mitchelson, and I attended the meeting in person. Mr. Abajian attended by telephone. Among other things, hearing dates were thoroughly discussed. Mr. Abajian said he preferred to attend the hearing in person but due to a busy travel schedule and the fact that he lives in New Jersey, U.S., the first week of October of 2017 was the earliest he could attend. We discussed document production, exchanged witness lists, and agreed the hearing would be scheduled for three days during the first week of October, beginning either on the 3rd or 4th of October. Following the meeting, after consulting again with Mr. Karwarndy, I scheduled the hearing for October 3 to 5, 2017 and advised the parties by email of the date, time and location of the hearing.

On October 3, 2017, the following individuals attended the hearing:

- Sally Mitchelson, former OMNI employee and Respondent;
- Robert Mitchelson, former OMNI director and witness for the Respondents;
- Jas McConnell, Employment Standards Officer; and
- Brent Young, Manager of Investigations South, Employment Standards (observer).

Mr. Abajian did not attend the hearing in person or by telephone. After waiting a few minutes past 9:00 a.m., I asked Mr. McConnell to attempt to contact Mr. Abajian. He tried three different phone numbers for Mr. Abajian, including his cellular, home, and an additional number. Mr. McConnell left a message on his cellular and home phones, advising that we were waiting for him at the hearing and asking him to call in immediately. The third phone number just rang until it eventually rang busy so he was unable to leave a message. Together, we then called OMNI's office in Regina where we spoke to the General Manager, Trina Switzer. She did not know about the hearing and, as far as she knew, Mr. Abajian was not in Regina.

I advised the individuals at the hearing that I would give Mr. Abajian until 10:00 a.m. to show up or contact us. I emailed Mr. Abajian and told him I would have no choice but to dismiss his appeal and confirm the Wage Assessment unless he contacted me before 10:00 a.m. Regina time. I did not hear from Mr. Abajian and he did not contact Mr. McConnell or reception at Employment Standards.

II. ANALYSIS AND DECISION

Mr. Abajian did not attend the appeal hearing. As the Appellant, and because he lives in New Jersey, I gave him the benefit of choosing hearing dates that worked with his schedule. The Mitchelsons would have preferred a much earlier hearing date and, during and after the case management meeting, expressed their concern that Mr. Abajian was stalling. Mr. Abajian appeared at the case management meeting by telephone and arrangements could have been made for him to appear at the appeal

hearing by telephone, but he made no such request. At no time did he ask for an adjournment.

I am confident that Mr. Abajian had notice of the hearing and chose not to attend, based on the following reasons:


- 1) During the case management meeting on August 9, 2017, Mr. Abajian said he would make himself available for the hearing if we scheduled it between the dates of October 3-6, 2017. These were the dates he chose.
- 2) Following the case management meeting, and after conferring with Mr. Abajian's lawyer, Mr. Karwandy, I confirmed the hearing dates with Mr. Karwandy on September 8, 2017.
- 3) On September 12, 2017, Mr. Karwandy advised that his retainer had been terminated and that he would not be representing Mr. Abajian at the hearing on October 3-5. So, out of an abundance of caution, I emailed Mr. Abajian that same day and confirmed the time, date and location of the hearing.

Based on section 2-75(9) of the Act, a copy of a Wage Assessment provided to me is proof, in the absence of evidence to the contrary, that the amount stated in the Wage Assessment is due and owing. Because the Appellants presented no evidence to the contrary, I am dismissing the appeal and upholding the Wage Assessment.

III. CONCLUSION

The appeal is dismissed. The Wage Assessment is upheld.

DATED in Regina, Saskatchewan, this 4 day of October, 2017.



 Jodi C. Vaughan
 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.