

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



Stephen Toohy  
represented by Jas McConnell, Labour Standards Officer  
COMPLAINANT

-AND-

Dublin Glassworks Inc., Glen Raymond Fisher  
RESPONDENTS

DATE OF HEARING: December 14<sup>th</sup>, 2016

PLACE OF HEARING: Regina, SK

**INTRODUCTION**

This matter was heard before me on December 14<sup>th</sup>, 2016, in Regina, Saskatchewan. Mr. Jas McConnell, Labour Standards Officer represented the Complainant, Stephen Toohy.

Mr. Glen Fisher represented himself and the Corporation Dublin Glassworks Inc., as Director of the Corporation.

Sworn testimony was heard on behalf of the Respondent, Mr. Stephen Toohy.

Sworn testimony was heard on behalf of Dublin Glassworks Inc., and Glen Fisher from Mr. Glen Fisher.

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 \$1,729.33. The assessment was issued pursuant to section 2-60 of the Saskatchewan Employment Act for failure of the Respondent to provide severance pay to the employee in lieu of Notice of Termination of the Employee.

## **I. PRELIMINARY MATTERS**

There were no preliminary objections.

## **II. THE DISPUTE**

The issue between the parties is: was Mr. Stephen Toohy dismissed for just cause as contemplated by section 2-60(1) of the Saskatchewan Employment Act being chapter s-15.1 of the Statues of Saskatchewan herein after referred to as "the Act".

## **III. FACTS**

The parties agreed as follows:

1. Dublin Glassworks Inc. is a registered company in Saskatchewan.
2. Mr. Glen Fisher is the Sole Director of Dublin Glassworks Inc.
3. Stephen Toohy worked for Dublin Glassworks Inc. as an employee.
4. Mr. Stephen Toohy was being paid \$85,000 per annum which works out to \$1635.33 per week.
5. Mr. Patrick Kenny was his direct Manager who he reported to.
6. Mr. Patrick Kenny worked for Dublin Glassworks Inc.
7. Ms. Gwendolyn Kenny worked for Dublin Glassworks Inc.

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8. Dublin Glassworks Inc. have no issues with the amount assessed for the Pay Instead of Notice.

9. If Mr. Stephen Toohy is entitled to severance pay pursuant to section 2-60 of the act that the amount of the Wage Assessment is correct.

#### **IV. EVIDENCE OF THE COMPLAINANT/EMPLOYEE**

Mr. Toohy was appearing via telephone at the hearing from Ontario and was sworn in over the telephone for the purpose of giving evidence at the hearing.

Mr. Toohy advised that he was hired by Patrick Kenny to work for Dublin Glassworks Inc. and was hired for the purpose of handling bids and doing estimates and quotes for the same.

Mr. Toohy was laid off by Mr. Fisher and was given a Record of Employment indicating that he was laid off due to shortage of work.

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Mr. Toohy indicated that he thought that Mr. Kenny was the owner of the corporation and Mr. Fisher was merely there as a convenience and was handling payroll and payables.

Mr. Toohy was unable to explain why he signed two contracts of employment with two separate corporations on the same day, one with Dublin Glassworks Inc. and another with Dublin Architectural Aluminum Inc. both submitted by Mr. Kenny.

Mr. Toohy was unable to satisfactorily explain why he prepared one bid for Dublin Glassworks Inc. and one for Dublin Architectural Aluminum Inc. for the same job in Edmonton.

Mr. Toohy was unable to explain why he lied to Mr. Fisher when he was asked about the status of the Edmonton bid by Mr. Fisher.

Mr. Toohy was unable to satisfactorily explain why he wrote the email to Mr. Kenny apologizing for sending Mr. Fisher the wrong bid for the

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Edmonton project. (i.e. He sent Mr. Fisher the Dublin Architectural Aluminum bid, instead of the Dublin Glassworks bid)

Mr. Toohy was unable to explain why he prepared the templates for Kenco Inc.

Mr. Toohy's explanation for the above was that he thought that Mr. Kenny was the owner and principal of the corporation and was merely following direction from Mr. Kenny regarding the same.

#### **V. EVIDENCE OF THE RESPONDENT/EMPLOYER**

Sworn oral testimony was given by Glen Fisher on behalf of the Respondents. It was established that he was the sole shareholder and director of Dublin Glassworks Inc.

The corporation provided glasswork services in the Regina area.

The corporation was incorporated in 2014 for the purposes of completing a large contract at an Agricultural Place in Regina. With the exception of one

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or two smaller jobs, Dublin Glassworks Inc. only provided services and worked at the agricultural location. This contract was completed in October of 2015 and the company was wound down in November of 2015.

Mr. Toohy was hired for the purpose of being an office and field administrator which included project management, record keeping and pursuing possible new projects and providing estimates and proposals relating to the same.

Mr. Patrick Kenny was hired by the corporation to be the "the face" of the corporation and to be the office manager and oversee all the employees and the projects.

Mr. Fisher remained in charge of the financial aspect of the corporation including payroll. The corporation had between 15-20 employees during the Ag Place contract.

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Mr. Fisher would receive the time sheets that were submitted by the employees and would arrange for the pay cheques to be given to the employees, sometimes doing this is person.

At some point during the life of the corporation some of the employees commenced perpetrating a fraud against Dublin Glassworks Inc. and Mr. Fisher, in that, the employees set up different corporations without the knowledge of Mr. Fisher or Dublin Glassworks Inc.

These new corporations would then bid on other work and contracts. Some of these bids were successful and the work was completed by Dublin Glassworks Inc. employees.

The Dublin Glassworks employees would submit time sheets for the work done on each job; however, when the time sheets reached Mr. Fisher the time had been amalgamated and Mr. Fisher paid the employee for the work done for Dublin Glassworks Inc. as well as for the other jobs that Mr. Fisher was not aware of.



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Dublin Glassworks Inc. did not bill any of these jobs nor did they receive any funds relating to these work contracts.

Mr. Kenny had discussions and related correspondence to have Mr. Toohy to commence employment with Dublin Glassworks Inc. Corporation over a period from appx mid-May to mid-June 2015.

On June 1<sup>st</sup>, 2015 Mr. Toohy signed an employment agreement between himself and Dublin Glassworks Inc. as well on that date he signed an employment agreement between himself and a corporation known as Dublin Architectural Aluminum.

Mr. Kenny handled the negotiations for both agreements on behalf of Dublin Glassworks Inc. and Dublin Architectural Aluminum Inc.

Mr. Fisher and Dublin Glassworks Inc. were unaware of Dublin Architectural Aluminum Inc. until the winding down of the company and its Main project at Ag Place in Regina in November of 2015.

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Mr. Fisher thought that Mr. Toohy was working for Dublin Glassworks Inc. only and on a full time basis and was paid the sum of \$85,000 per annum plus benefits.

Mr. Toohy was laid off by way of email on November 5<sup>th</sup>, 2015.

Throughout the employment of Mr. Toohy and Mr. Kenny, Mr. Fisher believes and the documents support, that several of the Dublin Glassworks Inc. employees had incorporated Dublin Architectural Aluminum Inc. and Kenco Inc. as well as a numbered company for the purposes of bidding on contracts.

Some of these bids were successful and work was done and services provided although none of the payments for the said contracts found their way to Mr. Fisher or Dublin Glassworks Inc. although all the employees, including Mr. Toohy, were paid from Dublin Glassworks Inc. for work done for the other corporations.

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Dublin Glassworks Inc. and Mr. Fisher did not become aware of these other corporations and other projects that were being completed by Dublin Glassworks Inc. employees and paid by Dublin Glassworks Inc. until the company wound down in November of 2015.

As part of Mr. Toohy's employment in addition to Ag Place contract in Regina. Mr. Toohy was pursuing on behalf of Dublin Glassworks Inc. with an Edmonton area development for perspective work in the City of Edmonton, Alberta.

Mr. Toohy prepared a bid on behalf of Dublin Glassworks Inc. and also prepared an identical bid for Dublin Architectural Aluminum Inc. These bids were made in the month of July 2015.

On August 13<sup>th</sup>, 2015 the Edmonton area development principals advised both Mr. Toohy and Mr. Kenny that the project had been awarded to someone else.

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Mr. Fisher was not advised as to the rejection of their bid, even though he had requested this information from Mr. Toohy.

On August 31<sup>st</sup>, 2015 Mr. Fisher sent an email to Mr. Toohy requesting an update of the Edmonton project as well as a copy of the Edmonton quote.

On September 1<sup>st</sup>, 2015 Mr. Toohy responded by email sending Mr. Fisher, apparently by mistake sending the Dublin Architectural Aluminum Inc. bid instead.

Half an Hour later Mr. Toohy sent an email to Mr. Kenny advising him that he had sent the wrong bid documents to Mr. Fisher and was apologetic to Mr. Kenny for sending the wrong quote.

Mr. Fisher was later advised that a copy of the Edmonton quote was available to him for picking up at the office. This quote was on Dublin Glassworks Inc. letterhead not Dublin Architectural Aluminum Inc.

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At no time did Mr. Toohy advise Mr. Fisher or Dublin Glassworks Inc. despite the request to do so, that the bid had been awarded to someone else. Mr. Toohy lied to his employer in this regard.

Other documents submitted by the Respondent showed the Mr. Toohy was knowingly participating in quotes and giving office support to other projects that were not part of Dublin Glassworks Inc. and was spending his time and effort working on other projects while being employed and paid by Dublin Glassworks Inc.

Mr. Toohy spent Dublin Glassworks Inc. time on a Fairfield Inn project, a Rochdale Drugstore project and Parkstreet project for Queen City Glass as well as preparing bids for Dublin Architectural Aluminum Inc. All of which was paid for Dublin Glassworks Inc. without Mr. Fisher's knowledge.

Mr. Toohy also prepared timesheets for Kenco Inc. and another corporation while in the employ of and on the time for Dublin Glassworks Inc.

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Also an email, dated September 23<sup>rd</sup>, 2015, from Mr. Toohy indicated that he was involved with projects on Rochdale Plaza, Sheraton Hotel, Oxbow, Lululemon, Brown's Restaurant. None of which were known to Mr. Fisher and Dublin Glassworks Inc.

Mr. Fisher advised that when the company was wound down in November of 2015 Mr. Toohy was no longer required by the corporation and was terminated.

Once Mr. Fisher discovered the fraud taking place in his corporation he concluded that Mr. Toohy was part of it and did not pay his any severance in lieu of notice to Mr. Toohy.

## **VI. ANALYSIS/DECISION**

During the course of hearing the evidence of the parties I find that Mr. Fisher was a creditable witness on his behalf and that of the corporation of Dublin Glassworks Inc.

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I do not find Mr. Toohy to be a creditable witness and I do not believe his evidence.

I find the evidence presents itself that Mr. Toohy, in collusion with other employees at Dublin Glassworks Inc., participated in a fraudulent scheme for which the purpose was to defraud Dublin Glassworks Inc. and Mr. Fisher of monies for labour and other expenses related to his employment. He and other employees as the conspirators ran a separate corporation or corporations inside Dublin Glassworks Inc. all while being paid by Dublin Glassworks Inc. as full time employees and doing other work and jobs that were not billed back to Dublin Glassworks Inc.

Also I find that Mr. Toohy lied to his employer Dublin Glassworks Inc. and Mr. Fisher in failing to advise as to the bid status and who had placed the bid on the Edmonton project.

As a consequence I find that Mr. Toohy was dismissed for cause within the prevue of section 2-60(1) and is not entitled to pay in lieu of notice.

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## VII. CONCLUSION

The appeal is granted and the wage assessment is dismissed.

Dated at Moose Jaw, in the Province of Saskatchewan, this 5<sup>th</sup> of  
January, 2017.



Clifford B. Wheatley  
Adjudicator



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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.