



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

Eric Lalonde
represented by Jas McConnell, Labour Standards Officer
COMPLAINANT

-AND-

Dublin Glassworks Inc., Glen Raymond Fisher
RESPONDENTS

DATE OF HEARING: December 13th, 2016

PLACE OF HEARING: Regina, SK

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INTRODUCTION

This matter was heard before me on December 13th, 2016, in Regina, Saskatchewan. Mr. Jas McConnell, Labour Standards Officer represented the Complainant, Eric Lalonde.

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

Sworn testimony was heard on behalf of the Complainant, Eric Lalonde.

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

The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014c.s-15.1, herein after referred to as "The Act" is for \$3,112.38.

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I. PRELIMINARY MATTERS

There were no preliminary objections.

II. THE DISPUTE

1. Is the employee entitled to the amount as set out in the wage assessment?

Or
2. Has the employee been overpaid by the employer because the employee worked for other employers during the term of employment with Dublin Glassworks Inc. and, withheld this information from the employer, such that the employer paid for the employees services while working for another employer?
3. Did the employee Eric Lalonde know or ought to know that he was defrauding Dublin Glassworks Inc. by working for another employer while being paid by Dublin Glassworks Inc.

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. Mr. Eric Lalonde worked for Dublin Glassworks Inc. as an employee.
4. Mr. Lalonde was being paid \$28 per hour until June 13, 2015, then he was paid \$30 per hour until he end of his employment.
5. Mr. Lalonde was a glass installer.
6. Mr. Patrick Kenny was his District Manager who he reported to.
7. Mr. Patrick Kenny worked for Dublin Glassworks Inc.
8. Ms. Gwendolyn Kenny worked for Dublin Glassworks Inc.
9. The employer agrees that the amount of the wage assessment, if payable, is the correct amount.

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IV. EVIDENCE OF THE COMPLAINANT/EMPLOYEE

The employee Eric Lalonde gave sworn evidence that he worked for the employer from February 2, 2015 to September 19, 2015.

The employee was hired by Patrick Kenny, who he thought was part owner of Dublin Glassworks Inc.

Throughout his employment with Dublin Glassworks Inc. he reported to Patrick Kenny.

Mr. Lalonde would submit his time sheets by email or in person, to a supervisor or personally hand them in at the office.

Mr. Lalonde worked in at the Ag Place job site, Rochdale, Weyburn, Madge Lake and Oxbow.

Mr. Lalonde did not know that these were not all Dublin Glassworks Inc. projects.

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He was told by Patrick Kenney to complete all his time sheets on Dublin Glassworks Inc. timesheets.

Mr. Lalonde was sent to these other jobs at the direction of Patrick Kenny, and at all times thought that he was working for Dublin Glassworks Inc.

Mr. Kenny instructed Mr. Lalonde to submit time sheets which broke out his time at the various jobs and to submit them separately which Mr. Lalonde did as he thought all the jobs were related to Dublin Glassworks Inc.

Someone would put all the hours together onto a Dublin Glassworks Inc. timesheet.

On his last employment day he was told by Patrick Kenny that he was no longer working for Dublin Glassworks Inc. and was now working for a Corporation called Kenco which was Patrick Kenny's

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corporation. Kenco Corporation was apparently a corporation incorporated by Mr. Kenny or his wife.

Upon cross examination Mr. Lalonde was asked why he never questioned the time sheets that were accompanying this pay slip as the pay slips were all from Dublin Glassworks Inc. and did not show his time spent on various jobs.

Mr. Lalonde indicated that his main concern was if the hours and pay amounts were correct, and he was not concerned with the allocation of the hours to the various job sites.

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.

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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 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.

Eric Lalonde was hired as a glass installer on February 2, 2015.

Mr. Fisher left the day to day running of the corporation to an employee, Patrick Kenny. Mr. Kenny was to the "face" of the corporation.

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 in 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 then 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

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employee for the work done for Dublin Glassworks Inc. as well as for the other jobs that Mr. Fisher was not aware of.

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

Mr. Lalonde's last day of work for Dublin Glassworks Inc. was September 19, 2015.

Mr. Fisher nor the corporation had any complaints about the quality of Eric Lalonde's work as a glazer.

Sometime after the winding down of the corporation in November of 2015 Mr. Fisher became aware of the fraudulent conspiracy and began reviewing corporate emails and corporate financial documentation which led to the discovery of the fraudulent conspiracy taking place inside the corporation.

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The main thrust of the respondents' appeal is that, Eric Lalonde, was either part of this conspiracy, was aware of it or, should have been aware of the conspiracy and resultantly Mr. Lalonde has been overpaid by the corporation. This is concluded by Mr. Fisher because the employee time sheets, which were paid by Dublin Glassworks Inc., were only partially due and owing as some of the work was done of projects or jobs unrelated to Mr. Fisher or Dublin Glassworks Inc.

In particular, Eric Lalonde did some work on a job in Weyburn which was not a job related to Dublin Glassworks Inc. and Dublin Glass paid Eric Lalonde \$1,035.

Eric Lalonde also worked on a job in Madge Lake, SK, a job for Queen City Glass, a job in Oxbow, SK, as well as a job at Rochdale Shoppers Drugmart.

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The total amounts of overpayments by Dublin Glassworks Inc. to Eric Lalonde were calculated by Mr. Fisher to be \$4,762. This overpayment was due to time submitted on these other jobs and paid by Dublin Glassworks Inc.

Under cross examination, Mr. Fisher agreed that Patrick Kenny had the authority to assign employees to various jobs. Mr. Fisher asserts that Mr. Lalonde must have known that he when he was working on these other sites he was not working for Dublin Glassworks Inc. and that he was working for someone else because of the notations made on the time sheets submitted by him to Mr. Kenny. When he was paid his wages cheque the documentation given to him by Mr. Fisher and Dublin Glassworks Inc. only referred to the Ag Place job.

Mr. Fisher takes the position that any employee would review these documents and, if not part of the conspiracy, would either become aware of it or should have become aware of it. As a result Mr.

Lalonde has been over paid in excess of the wage assessment and the wage assessment should be set aside.

VI. ANALYSIS/DECISION

The Respondent says that the employee knew or ought to have known that he was involved in a fraud against Dublin Glassworks Inc. and, as a consequence, is not entitled to the wage assessment and/or if entitled to the wage assessment he has already been overpaid and no further monies would be owing.

The employee indicates that the supervisory structure was such that he was taking direction from Mr. Patrick Kenny regarding work locations and was breaking his hours out relating to job sites as directed by Mr. Kenny.

Mr. Lalonde states that he had no reason to think otherwise and believed he was only working for Dublin Glassworks Inc. and resultantly the wage assessment should be payable.

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The employee also argues that, in any event, the legislation does not allow for any offsets or deductions from wages except as statutorily stated in the Act and that reimbursement for theft or fraud is not one of the deductions available. As well, the presumption that the wage assessment is correct should prevail because evidence to the contrary on a balance of probabilities has not been shown.

I find that Mr. Fisher in giving evidence for himself and the corporation is a credible witness and that he honestly believes the statements and evidence given by him.

I also find that Mr. Lalonde is a credible witness and that he did not know, nor has it been adequately shown that he should have known that he was part of a conspiracy to defraud the employer and Mr. Fisher. He believed he was exclusively working on Dublin Glassworks Inc. jobs which he was billing time for.

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In any event, on the evidence before me, an offset and/or deduction from the wages is not permissible under the legislation and the wage assessment will stand.

VII. CONCLUSION

The appeal is dismissed and the wage assessment is upheld in the amount of \$3,112.38.

DATED at Moose Jaw, in the Province of Saskatchewan, this 5th of January, 2017.



Clifford B. Wheatley
Adjudicator