

LRB FILE No. 252-16

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



Debra Hunt

COMPLAINANT

-AND-

Gena Meacher

RESPONDENT

DATE OF HEARING: January 25<sup>th</sup>, 2017

PLACE OF HEARING: Moose Jaw, SK

**INTRODUCTION**

This matter was heard before me on January 25<sup>th</sup>, 2017 in Moose Jaw, Saskatchewan. Mr. Randy Armitage, Employment Standards Officer represented the Employment Standards Department.

Gena Meacher represented the Employer, Gee Gee's Ice Cream Parlour.

Debra Hunt requested that she be able to appear at the hearing by way of telephone. This request was granted. When Ms. Hunt was contacted by telephone at 10:00am on January 25<sup>th</sup>, 2017 she stated that she did not wish to attend at the hearing either in person nor take part in the hearing by telephone, although she did not wish to withdrawal her complaint.

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 \$395.60. The Assessment was issued pursuant to section 2-74 of the Saskatchewan Employment Act for failure to pay wages to Ms. Hunt.

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## **I. PRELIMINARY MATTERS**

There were no preliminary objections.

## **II. THE DISPUTE**

The issue between the parties is: Is Ms. Debra Hunt entitled to the amount set forward in the Wage Assessment or not.

## **III. FACTS**

The parties agreed as follows:

1. Debra Hunt was employed as a waitress/cook by Ms. Meacher carrying on business in Assiniboia, SK at Gee Gee's Ice Cream Parlour from April 1, 2016 to May 2, 2016.
2. That holiday pay was not paid to Ms. Hunt and the holiday pay is outstanding in the amount of \$109.20.
3. The amount of wages at issue is the difference between the holiday pay that is acknowledged to be unpaid and the amount of the Wage Assessment.

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

Ms. Hunt was contacted by telephone at 10:00am on January 25<sup>th</sup>, 2017 at the agreed upon telephone number for the purpose of giving evidence at the hearing.

Ms. Hunt advised that she did not wish to take part in the hearing, however, did not wish to withdrawal her complaint from the Employment Standards Department.

Resultantly, as the Employment Standards Act section 2-75(9) creates a presumption that the Wage Assessment is correct unless there is evidence to the contrary, the Hearing continued without Ms. Hunt's attendance.

The Employment Standards officer indicated that he wished to call witnesses, cross exam the employer, file documentation and give evidence on how the Wage Assessment was arrived at by him.

I took the view that Section 4-10 of The Act, which permits the Director of Employment Standards to appear and make representations on any

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hearing held by an Adjudicator (such as this hearing) could, at the conclusion of the hearing, make a summary and an argument based on the evidence.

I also interpreted the section to restrict the participation of the Employment Standards Officer to explain how he came to the amount set out in the Wage Assessment including an explanation of his investigation and filing of any documentation relating to the Wage Assessment.

I took the position that calling witnesses and cross examining the Employer was a not a right that was granted to the Director pursuant to Section 4-10(a)(i).

**V. EXPLANATION OF WAGE ASSESSMENT by EMPLOYMENT STANDARDS OFFICER**

Mr. Randy Armitage, Employment Standards Officer, who investigated the complaint, stated that the Wage Assessment was calculated on the basis of the employee working 9:00am-6:00pm, Monday to Friday at minimum wage (\$10.50/hour).

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The Employment Standards Officer's calculations are set out on Exhibit "E.E.4." The Wage Assessment indicated a shortfall of \$395.60.

The holiday pay that was agreed upon between the parties, as not having been paid, of \$109.20 was included in the Wage Assessment amount.

Mr. Armitage indicated that he obtained the hours of work from a statement from the employer during his investigation that these were the scheduled hours of the employee.

The rate of pay at \$10.50/hour is minimum wage and also was confirmed by the employers pay slip which was given to the employee at the time of payment her wages.

The parties agreed that the Employment Standards Inspection Report should read April 1<sup>st</sup>, 2016 rather than March 23<sup>rd</sup>, 2016 as the start date for the employee.

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Mr. Armitage indicated that he had requested employment records from the employer regarding the employee, however, had to date received nothing. This was confirmed by the employer that no records were given and that no records were available.

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

The employer, Gena Meacher, was sworn and gave evidence that Ms. Hunt was an employee from April 1<sup>st</sup>, 2016 to May 2<sup>nd</sup>, 2016.

When Ms. Hunt was employed she was scheduled to work Monday to Friday (5 days a week), 9:00am to 6:00pm. However the business that Ms. Meacher was operating, Gee Gee's Ice Cream Parlour, did not require Ms. Hunt to be present for those hours and she was often sent home early.

On May 2<sup>nd</sup>, 2016 Ms. Hunt attended in the morning, stayed a short period of time and once she received her cheque she left the work place and did not return.

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Ms. Meacher stated that the work agreement was that Ms. Hunt would be paid \$1,500/month irrespective to how many hours she worked.

Ms. Meacher indicated that Ms. Hunt was scheduled to work from 9:00am to 6:00pm, however, because of the slow periods in business that she did not work a full 40 hour week at any time.

Unfortunately, Ms. Meacher as the employer, did not have time sheets relating to Ms. Hunt. So, in addition to being in violation of Section 2-38 of The Act, Ms. Meacher was also unable to verify her position with respect to the hours worked by Ms. Hunt.

Ms. Meacher agreed that the pay slip documents attached to "Exhibit EE2" was a fax that she had sent to Mr. Armitage along with her Notice of Appeal.

Ms. Meacher was unable to explain the rate of pay on the pay slip document as being \$10.50/hour as this was inconsistent with her original



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statement that the rate of pay was to be \$1,500/month despite the hours worked.

In addition, Ms. Meacher was unable to explain as to why her position at the Hearing that the wage was at \$1500/month was not consistent with the pay slip which, when adding up hours work, vacation pay and withholding pay would net in excess of \$1900/month.

Also, Ms. Meacher was unable to explain that, if the arrangement was indeed \$1500/month why she signed the cheque paying Ms. Hunt \$1568.66 net after deductions and without vacation pay being added in.

Also the date of April 1<sup>st</sup>, 2016 which was Ms. Hunt's start date on the cheque was unexplained.

Ms. Hunt's letter to Mr. Armitage in EE2 was that the rate of pay of \$1500/month for 40 hours/week which is inconsistent with the pay slip given to Ms. Hunt, the employee.

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In addition Ms. Hunt could not explain why this differentiated from her Notice of Appeal wherein it is stated that the arrangement with the employee was \$1500/month for a 37 hour work week.

Ms. Meacher agreed that Ms. Hunt was not a supervisor but was an employee within the meaning of the legislation, but that Ms. Meacher did not consider an hourly rate or any overtime, only that it was a fixed wage of \$1500/month.

Ms. Meacher also stated that she was entitled to a deduction of \$297, from the Wage Assessment, because in April of 2016 Ms. Hunt had asked Ms. Meacher, while on a trip to Moose Jaw, to purchase some movies for her. Ms. Meacher agreed to purchase the movies for her and did so. The cost of the movies was a total of \$297.

Ms. Meacher indicated that Ms. Hunt had asked her to pick up the movies and to deduct the amount from her pay cheque.

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Ms. Meacher stated in a later discussion with Ms. Hunt, that Ms. Hunt was taking the position the movies were a "gift" from Ms. Meacher to Ms. Hunt and no money was owed to Ms. Meacher.

Ms. Meacher would like to have this amount deducted from any amounts that may be found owing to Ms. Hunt.

In summary, the employer took the position that all wages that were owing to Ms. Hunt were paid, with the exception of the holiday pay agreed upon, and Ms. Meacher is owed \$297 for reimbursement of the movies purchased for Ms. Hunt.

## **VII. ANALYSIS/DECISION**

### Deductions for Movies:

Section 2-36 sets out the deductions that are permitted from Wages by Employers.

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The Employer's evidence was that she was to be reimbursed by the employee for the purchase of the movies, although Ms. Hunt made the statement that these were a "gift" to her.

In any event, the deduction of the purchase price of the movies is not permitted from the employees' wages pursuant to the legislation.

The monies may be owed to Ms. Meacher from Ms. Hunt but are not deductible under the legislation.

The employer is open to pursue this claim by way of other civil remedies.

Correctness of Wage Assessment"

Section 2-75 of The Act states that the Wage Assessment is presumed to be correct unless there is evidence to the contrary that would be sufficient to override the presumption.

The evidence of the employer is such that she had three versions of the wage agreement between herself and the employee.

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In Exhibit "EE2" a document prepared by Ms. Meacher and forwarded to Mr. Armitage sets out that the wage agreement was for \$1500/month for a 40 hour work week.

This agreement is not reflected in the pay slip that was given to Ms. Hunt by Ms. Meacher and was attached to "Exhibit EE2."

The Notice of Appeal from Ms. Meacher, the employer, states the wage arrangement was \$1500/month for a 37 hour work week.

The pay slip on its own sets out another wage agreement by virtue of the calculations therein.

Unfortunately the employer did not have any time sheets or documentation relating to the employment of Ms. Hunt and was unable to satisfactorily explain the three different wage agreements.

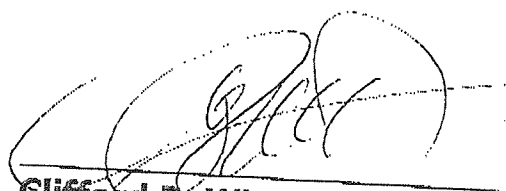
Consequently, I am unable to ascertain which is the correct wage agreement with the employee from the evidence given or documentation filed;

therefore the employer's evidence is not sufficient to constitute evidence to the contrary to rebut the presumption of the Wage Assessment.

**VIII. CONCLUSION**

The appeal is dismissed and the Wage Assessment stands in the amount of \$395.60.

Dated at Moose Jaw, in the Province of Saskatchewan, this 8<sup>th</sup> of February, 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.