

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



Shpresa Gashi

COMPLAINANT

-AND-

Hatguill Holdings Limited,
Cynthia Brabant and Brent Boechler

RESPONDENT

DATE OF HEARING: March 15th, 2017

PLACE OF HEARING: Moose Jaw, SK

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INTRODUCTION

This matter was heard before me on March 15th, 2017 in Moose Jaw, Saskatchewan. Mr. Randy Armitage, Employment Standards Officer represented the Employment Standards Department.

Shpresa Gashi on her own behalf.

Hatguill Holdings Limited was represented by Michael Kotschorek and Cynthia Brabant.

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 \$767.61. The Assessment was issued pursuant to section 2-60 of the Saskatchewan Employment Act for failure to provide notice to the employee for termination and/or layoff.

I. PRELIMINARY MATTERS

There were no preliminary objections.

II. THE DISPUTE

The issue between the parties is: Whether the layoff or termination of the employee, Shpresa Gashi, for just cause.

III. FACTS

The parties agreed as follows:

1. Hatguill Holdings Limited is a Corporation registered in Saskatchewan operating as Capilano Court in Moose Jaw.
2. The Directors of the Corporation are Brent Boechler and Cynthia Brabant.
3. Hatguill Holdings Limited took over as owner and operator of Capilano Court on August 19th, 2016.
4. Shpresa Gashi was an employee on August 19th, 2016 and had been a part-time employee since August 27th, 2015.
5. The employee, Shpresa Gashi took vacation time on or about August 19th, 2016 and was due to return to work on August 28th, 2016.
6. All parties agree that if the termination and/or layoff of Shpresa Gashi were not for cause the Wage Assessment is correct in the amount of \$767.61.

IV. EVIDENCE OF THE COMPLAINANT/EMPLOYEE

Cynthia Brabant and Michael Kotschorek gave sworn evidence on behalf of the employer. Michael Kotschorek is an offsite employee and part owner who manages the payroll and other business aspects of Capilano Court.

Cynthia Brabant is the on site manager for Capilano Court.

The new owners, Hatguill Holdings Ltd. took over Capilano Court on August 19th, 2016. The corporate records were poor and/or nonexistent.

The new owners never met the employee, Shpresa Gashi.

On August 19th, 2016 the new owners went by the work schedule that was prepared and posted by the previous owners.

The schedule showed that Ms. Gashi was to be at work on August 28th, 2016 at 7:00a.m. and work until 3:00p.m.

Ms. Gashi did not show up for this scheduled work day.

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The new owners did not have the phone number or address of Ms. Gashi.

The employer did not have any contact from Ms. Gashi until approximately 1.5 weeks after August 28th, 2016. At that time the Ms. Brabant received a telephone call from Ms. Gashi. Ms. Brabant did not know how the employee obtained her telephone number as Ms. Brabant had never met or spoken to Ms. Gashi until that time.

Ms. Gashi contacted Ms. Brabant inquiring about her work schedule and was advised by Ms. Brabant that, as Ms. Gashi had not shown up for work, and not contacted Ms. Brabant that the employer had considered her to be terminated.

The employer, Ms. Gashi, subsequently received contact from the Employment Standards Office eventually receiving the Wage Assessment dated November 25th, 2016 and subsequently filing the Notice of Appeal to that Wage Assessment.

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Under cross examination Ms. Brabant stated that she had expected Ms. Gashi to return to work on August 28th, 2016 @ 7:00 a.m., however, she did not see or hear from Ms. Gashi.

Ms. Brabant was not contacted by any other employees regarding Ms. Gashi including an employee by the name of Brenda and an employee named, Jeannie.

Ms. Brabant assumed that Ms. Gashi had terminated her employment because of her of her not showing up for work and noncontact with the employer.

Ms. Brabant did not have any direct contact with the employee saying that she had quit or otherwise until receiving the telephone call from Ms. Gashi on August 28th, 2016.

Ms. Brabant and Mr. Kotschorek stated that when Hatguill Holdings Ltd. took over Capilano Court there was poor communication between the staff and the new owners and little of any communication between the previous

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owners and the new owners. In addition several employees were not showing up for work and subsequently left their employment.

The employer did not have any communication from Ms. Gashi until the telephone call on August 28th, either directly or indirectly through the employees Brenda or Jeannie.

The transfer of Capilano Court to the new owners was hectic due to the lack of records, lack of cooperation from the previous owners and including the fact that the previous manager, "June", quit on the same day that the new owners took over.

Resultantly the employer assumed Ms. Gashi no longer wished to be employed at Capilano Court under the new ownership.

V. EVIDENCE OF THE RESPONDENT/EMPLOYER

The employee had worked at Capilano Court from August 27th, 2015 to August 28th, 2016.

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Ms. Gashi worked Tuesdays, Wednesday, Sundays and Saturdays from 7:00 a.m. to 3:00 p.m. on a regular basis.

On August 13th or 14th Ms. Gashi went on holidays and intended to return to her employment on August 28th, 2016.

Ms. Gashi returned to Moose Jaw from her holidays in the early morning of August 28th, 2016. At approximately 7:00 a.m. Ms. Gashi received a telephone call from Brenda which she missed and subsequently called Brenda back and let her know that she would be coming into work.

Ms. Gashi was advised by Brenda that the shift had been covered by someone else and that she should not come into work.

After August 28th Ms. Gashi telephoned every day to Capilano Court as well as attended at Capilano Court every day for some 4-5 days.

When she telephoned Capilano Court she either spoke with Brenda or Jeannie, neither of whom were supervisors.

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Each time she spoke with Brenda or Jeannie on the telephone she was advised not to come into work and was also advised that a message would be given to the new manager, Ms. Brabant regarding her phone call and to give her Ms. Gashi's telephone number.

When Ms. Gashi attended at Capilano Court she was not permitted to go past the reception area by Brenda and/or Jeannie and was advised by both of them to not come in and that she was not scheduled for work.

Subsequently Ms. Gashi was able to contact another employee, a nurse who worked at Capilano Court and was able to obtain Ms. Brabant's cell phone number from this party.

Ms. Gashi phoned Ms. Brabant inquiring about her employment and what shifts she was scheduled for.

Ms. Gashi was advised by Ms. Brabant that as she, Ms. Gashi, did not return to work on August 28th and did not contact her, Ms. Brabant

assumed that Ms. Gashi had left her employment and her shifts had been covered by other people and Ms. Gashi was no longer required as an employee.

Ms. Gashi and Jeannie had a strained relationship and Ms. Gashi found Jeannie to be, "bossy", and was told on several occasions to go home by Jeannie in addition, Jeannie would not permit Ms. Gashi to enter the premises to see the shift schedule after August 28th.

VI. ANALYSIS/DECISION

It is clear from the evidence that the transfer of ownership of Capilano Court was at best hectic with poor communication between the employees and the new owners. The previous owners left no documentation or employee records available to the new owners and the previous manager, June, leaving the employment on the first day of the transfer of ownership made the transition very difficult.

It is also clear that there was a breakdown between the management, the employees and Ms. Gashi.

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There would also appear to have been a problem between Ms. Gashi and the employee's Jeannie and Brenda, in that her telephone requests to contact the new manager, Ms. Brabant, and/or be told what days she was scheduled to work was thwarted by Jeannie and Brenda.

The issue as to whether or not Ms. Gashi was terminated for cause is one of reasonableness on behalf of the employee in assuming that Ms. Gashi had quit.

The test is an objective one, in whether or not a reasonable person would have understood, by the Complainant's statements and actions, that she had resigned.

To be effective, the resignation needs to be clear and unequivocal in that, there was a statement of intention to resign and/or conduct from which an intention would clearly appear.

From the description of what was taking place on August 28th and thereafter between Hatguill Holdings Ltd., the previous owners and the

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employees is one such that the assumption of Ms. Brabant that Ms. Gashi had left her employment might have been subjectively reasonable to Ms. Brabant, considering the circumstances and the leaving of employment suddenly by other employees in a like fashion.

However, from an objective standpoint, a reasonable person would not have assumed that Ms. Gashi had left employment with first having some contact with the employee either orally or in writing.

The situation is further complicated in what would appear to be a deliberate act on behalf of Jeannie and possibly Brenda with their actions of stonewalling Ms. Gashi's attempts to contact the new owners.

In the situation that was prevailing at the time around the transfer of Capilano Court I find the employer should have taken further steps to ascertain whether or not Ms. Gashi was terminating her employment with the employer or not.

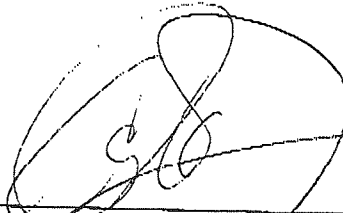
The breakdown in communication at the work place was not the fault of the employee.

It was incumbent upon the employer to take more positive steps to confirm the status of the employee at the time of the takeover of the business.

VII. CONCLUSION

The appeal is dismissed and the Wage Assessment stands in the amount of \$767.61.

Dated at Moose Jaw, in the Province of Saskatchewan, this 22ND of March, 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.