

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

Wage Assessment No. 8942A  
LRB File No. 001-18



COMPLAINANT: Lesya Pinyak  
Represented by Daniel Corbett  
Employment Standards Officer

RESPONDENT: Shivinderjt (Gary) Brar  
Director of 101227478 Saskatchewan Ltd.  
o/a Western Star All Suites Hotel

DATE OF HEARING: June 11, 2018

PLACE OF HEARING: 1870 Albert Street  
3rd Floor Board Room  
Regina, Saskatchewan

**1. INTRODUCTION**

Mr. Corbett requested that Ms Kelli Smith be allowed to observe the hearing as she is an Employment Standards Officer in training. Mr. Brar had no objection.

Mr. Corbett requested that the Complainant's family members be allowed to observe. Again Mr. Brar had no objection. All observers were advised that no intrusion into the hearing would be tolerated.

Lastly, Mr. Corbett introduced Ms Anastasiia Solovka. Ms Solovka would be interpreting for the Complainants, as their command of the English language is somewhat lacking. Their native language is Ukrainian.

**II. PRELIMINARY MATTERS**

I advised the parties as to my role and expectations for behaviour. I indicated that I have 60 days to render my written decision to the Saskatchewan Labour Relations Board.

### III. THE DISPUTE

Ms Pinyak (Lesya) is claiming that she was not paid regular wages, overtime, public holiday pay or annual vacation pay for the period of December 3, 2016 to April 1, 2017. She is claiming \$6,338.95 as the amount owed.

### IV. FACTS

#### i. EVIDENCE OF EMPLOYER

Mr. Brar was sworn and provided the following:

- This is the first time ever that he has been accused of not paying his employees.
- Being in the oil patch, business has been slow, but has never missed a pay period. His cheques have always been good and all employees have always been paid in full.
- These women say they were not paid, and never once did they come to him to ask why. He was at their hotel several times and he saw them but never once did they raise the concern of not being paid.
- He is convinced that based on the occupancy results there was no work at that time and that the women put in false time sheets. There is no manager signature on those time sheets and therefore they are false.
- He does not owe these women anything.

#### **Cross Examination**

In response to questions from Mr. Corbett, Mr. Brar provided the following:

- He paid overtime when 40 hours in a week were exceeded, or after 10 hours a day.
- He was unaware that daily overtime is payable after 8 hours.
- He may have missed paying overtime and holiday pay occasionally.

Note: Mr. Corbett tabled Lesya's time sheets and they were marked EE1

- In reference to EE1, on November 4, 2016, he agreed that Lesya worked 8.5 hours.

Note: Mr. Corbett tabled Lesya's paystubs and they were marked EE2.

- In reference to EE2, he agreed that the paystub containing the hours from November 4, 2016, showed no overtime for the one-half hour. Further, the paystub showed no statutory holiday pay for November 11.

Note: Mr. Corbett tabled the hotel's occupancy reports and they were marked EE3.

- The manager and other cleaners would do the work if there were only 4 or 5 rooms to be cleaned. There was no need to call Lesya or Gina.

- The industry standard for cleaning a checked-out room is 30 minutes and 15 minutes for a stay-over.
- He agreed that from EE3, March 15, 2017, the hotel had 9 stay-overs and 8 check outs. Using industry standards Lesya should have worked  $4 + 2.25 = 6.25$  hours, however was paid 3.5 hours.
- He also agreed that from EE3, June 2, 2017, the hotel had 7 stay-overs and 22 check outs yet Gina was paid 8 hours rather than 11 as dictated by industry standards.
- He did not agree that the occupancy report could not be used to match time sheets.
- He believes that for the 17 weeks that Lesya is claiming she wasn't paid, the work was done by the manager and her cousin. He does not understand why Lesya waited four months and then goes to the Ministry rather than him.
- He did not bring camera records to show Lesya did not work because Mr. Corbett didn't ask him to.

Note: Mr. Corbett tabled a copy of a text message dated July 12, 2017. It was marked EE4.

- He cannot make out the details of the cheque pictured in the text. He doesn't know who it is for. He has dropped off cheques to Kim from time to time.
- He does not have time sheets or names of other employees who did the work. He just knows it wasn't Lesya or Gina.

#### **Re-direct**

- He doesn't understand why anyone would keep working if they are not getting paid.

## **ii. EVIDENCE OF EMPLOYEE**

Mr. Corbett called Ms Lesya Pinyak and she was sworn. In response to his questions she gave the following testimony:

- She started working at the Western Star All Suites Hotel around February 20, 2014.
- She did cleaning and related duties as per the manager's instructions.
- She had been told she would work full time but that never happened.
- She tracked her hours in a personal diary and filed time sheets with the hotel.
- She identified a document (marked EE5) as a copy of her time sheets. She identified the signature on each as hers. The time sheets in EE5 represent the 17 weeks she worked with no pay.
- She confirmed a document (marked EE6) as a photocopy of her personal diary. The diary is a record of all the hours she worked from August 22, 2016 to August 12, 2017.

- She was scheduled to work by her managers. First Jennifer and then Kim Tucker. When Kim left the new manager was Gill.

- Jennifer laid her off but when Kim started she was hired back.

- Her pay issues started on December 3, 2016 when Kim called her back.

- From December 3, 2016 to March 18, 2017, she worked but was not paid.

- She kept working because every time she complained she was given another excuse. The excuses varied from:

- there are new employees in payroll and they need time to learn the process
- money is accruing in the account and pay will come soon
- Carla is bringing money but hit a deer so couldn't make it.

- When she finally told them, she would no longer work she was paid in cash. She did not report the hours on her time sheet when she was paid in cash.

- Kim the manager, told her she was not being paid either as Gary Brar had said there is no money.

- She never saw Gary at the hotel during the period she was not paid. That's why she never told him.

Note: Mr. Corbett tabled a document containing photograph copies of several text messages. The document was marked EE7.

- She verified the text messages as communications between herself and Manager, Kim Tucker from March 8, 2017 to August 11, 2017.

- The text taking place on March 8 has Manager Kim asking her to work on March 10, which she did but was not paid.

- The following texts between herself and Kim show that from May 5 to July 5 many promises were made that her pay was coming but it never happened.

- She never saw Kim do any cleaning at the hotel.

- The text in EE7 dated July 12 shows a picture of a cheque (also tabled EE4) made out to her for \$4,500.00. Kim, who was leaving for a funeral and would be gone for two weeks, said she would leave the cheque with Gill. When she went to Gill to get it, he didn't know anything about it. She never did get that cheque.

- Her subsequent texts to Kim and Shir (Gary's brother and co-owner) were not replied to.

- She received cash payments on three occasions and she recorded those in her diary.

- She recorded 8 hours on her time sheet on some days when the occupancy report showed only a few check outs, maybe 2 or 3. The rest of the 8 hours would be spent doing laundry or vacuuming rooms where long-term occupants were staying. Those took more than the 15-minute industry standard.

- Prior to Gina's hiring, she was the only hotel employee that cleaned rooms.

- When she was the only cleaner she would, after a day or days off, clean rooms that were checked out of during her days off. Kim never cleaned rooms.

### **Cross Examination**

Mr. Brar asked why the time sheets in exhibit EE1 were not signed by the manager? Lesya's response was that prior to December 3, 2016, she had been paid from time sheets that had been signed by the manager and from time sheets that hadn't. Mr. Brar admitted that not all time sheets had been signed by the manager.

Mr. Brar then referred Lesya to exhibit EE5 and the occupancy report for March 5-18, 2017. He asked what the notes on each side of the sheet meant. Lesya replied that it was a reminder that she was owed \$295.00 from February after receiving two payments in cash of \$190 and \$140. She never received the \$295.00

### **Re-direct**

Mr. Corbett asked Lesya what she did with completed time sheets? Lesya replied that the time sheets were left on the manager's desk and she did not know what happened to them after that. She always made a copy for herself.

Mr. Corbett called Ms Grabchylova (Gina) as a witness and she was sworn.

In response to Mr. Corbett's questions she provided the following evidence:

- She came to know Lesya from an English class and later as an employee at the hotel.
- She became aware of Lesya's pay problems after she experienced the same problem.
- She did not receive pay for her first pay period and she complained to the manager. She then found out Lesya was having the same problem.

Note: At this point Mr. Corbett, using Gina's phone, showed Mr. Brar a zoomed in picture of the cheque from Exhibit EE4. Mr. Brar now agreed that the cheque was from his company, made out to Lesya. However, he claims the cheque was for \$1,500.00 and that someone changed the one to a four.

### **Cross Examination**

None

### **Final Argument**

Mr. Brar expressed disappointment that this hearing was being held. His relationship with Mr. Corbett, in the past, has been such that they have been able to come to a settlement. He can't believe the Ministry would serve him with a Wage Assessment when it was clear the Complainants filed false time sheets. His company has never treated their employees in the fashion accused of in this case. Therefore, the appeal should stand.

Mr. Corbett suggested that the evidence is clear that the employees worked for the periods in question. Text message dated March 8, 2017, from Kim asks Lesya to work March 10. Lesya's testimony is that she worked that day. Text message dated June 14, 2017, from Kim to Lesya requesting she text Gina to work June 15. Gina's testimony is that she worked June 15.

Mr. Brar has produced no evidence to contradict these two or any other of the days claimed.

There is no evidence that either Kim or her cousin cleaned the rooms.

Neither Lesya nor Gina were paid for the period May 24 to May 27 and since there is no evidence that someone else did the cleaning, how did the work get done?

Evidence from Mr. Brar himself and both the Complainants show clearly that the Occupancy Report cannot be used to dictate actual hours worked.

Mr. Corbett also argued that the Act is clear that in the absence of records from the Employer, the accounts presented by the employees are to be accepted.

Mr. Corbett then filed audit sheets for both employees. Ms Pinyak's audit was marked EE10 and Ms Grabchylova's EE11.

In closing, Mr. Corbett argued that for the appeal to be successful, I'd have to accept that the cheque was doctored, the texts manufactured and the time sheets falsified.

Mr. Brar had nothing further so I thanked the parties and declared the hearing was concluded.

## V. ANALYSIS

During the course of the hearing, Mr. Brar's evidence consisted of:

- His Company has never ever been accused of not paying their employees.
- His Company's employees have always been paid in full and on time.
- The Complainants never once advised him that they were not being paid, in fact, he saw them at the Carnduff Hotel on several occasions and they never took the opportunity to raise their concerns.
- The Occupancy Reports show there was no work for the periods claimed and if there was work, someone else did that work.
- The Complainants filed false time sheets claiming wages for no work.
- His Company may have failed to pay overtime and statutory holiday pay on occasion.
- Work was performed by the Manager Kim and or Kim's cousin.
- Acknowledgement that the Occupancy Report and time sheets were different many times but reiterated that he could use the Occupancy Report to dictate employee hours.
- His evidence changed regarding the \$4,500.00 cheque, however, it became an altered \$1,500.00 cheque even though the written "Four" does not appear to be altered.
- Even though he claims to have been in Carnduff on several occasions and observed the Complainants at work, he wonders why anyone would continue working when not being paid and then claims they did not work during the periods in question.

- His evidence did not refute the text messages, nor the Wage Assessment Audits except for the assertion that the work was not performed.

The Claimants' evidence is corroborated by each other and is un-refuted by the Respondent. The text messages do not lie, instead they show excuse after excuse regarding the money owed, but it never showed up.

Their evidence also shows clearly that the occupancy report cannot be used to track employee work time. There are more variables at play than simply counting check-outs and stay-overs.


## VI. DECISION

Outside of his testimony, Mr. Brar provided no documentation nor witness corroboration for his ascertain that Ms Pinyak did not work during the period claimed in her complaint. In fact, his testimony contradicts itself when he claims to have seen them working at the hotel during his visits.

Ms Pinyak's evidence is credible and substantial. Her time sheets and entries in her diary match for the Wage Assessment period (EE5 and EE6). The text messages (EE7) document her attempts to get paid along with the litany of excuses put up by the Employer.

Therefore, the appeal is rejected and Wage Assessment #8942A (LRB File #001-18) is upheld and the amount of \$6,338.95 is owed by 101227478 Saskatchewan Ltd.

Dated at Regina, in the Province of Saskatchewan, this 18th of June, 2018.



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Ralph Ermel  
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](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.