

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. 8942B  
LRB File No. 002-18



COMPLAINANT: Ievgeniia Grabchylova  
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 Grabchylova (Gina) is claiming that she was not paid regular wages, overtime, public holiday pay or annual vacation pay for the period of May 20, 2017 to June 24, 2017. She is claiming \$1,324.74 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 there 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 was 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 period that Gina is claiming she wasn't paid, the work was done by the manager and her cousin. He does not understand why Gina didn't come to him.
- He did not bring camera records to show Gina did not work because Mr. Corbett didn't ask him to.
- 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 Grabchylova (Gina) and she was sworn. Her evidence given as response to Mr. Corbett's questions follows:

- She started her employment with Western Star All Suites Hotel on May 10, 2017. Her duties consisted of cleaning rooms and other tasks given to her by Kim.
- Her hours were part-time and usually were from 9:00 a.m. to 3:00 p.m. Some days she worked 8 or 9 hours.
- Her days were scheduled by Kim or by Lesya on instruction from Kim.
- Kim never did cleaning or breakfast.
- She was not paid for hours worked from May 14-27, 2017 nor June 11-24, 2017.
- She submitted time sheets for these two periods.
- She put the completed time sheets on the Manager's desk, but did not know what the Manager did with them.
- She confirmed the documents provided by Mr. Corbett were copies of her time sheets (marked EE8). Pages 1 and 2 of EE8 are the time sheets for the periods for which she was not paid.
- After she complained to Kim about not being paid, she was told that the owner had some problems with the account but would be paid next week, on Tuesday.

- Pay did not happen that Tuesday and the owner told Kim it would come in the next pay period.
- For the period May 14- 27 Lesya did not get paid either. Gary says Kim's cousin did the work. She saw Kim's cousin twice but never saw her doing cleaning.
- Her time sheet can show 8 hours when the Occupancy Report shows only three check outs because there may be several rooms vacated on previous days that were not cleaned. For example, it took her two days to clean 30 rooms that were checked out of the day or two before.
- Even though both Kim and Gill told her they would fix it she never got paid for those two pay periods.
- Mr. Brar says he has never had employee pay issues before Lesya and her, but this article by CBC says otherwise. She tabled the article and it was marked EE9.
- She never saw Mr. Brar during the periods for which she was not paid.

### **Cross Examination**

None

Mr. Corbett re-called Ms Pinyak (Lesya) and she was reminded she was still under oath.

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

- She met Gina at the English class they both attended. They had no relationship until working together, although mostly different days.
- At some point they found out they both had a pay issue.
- They both talked to Kim. Kim told them not to worry.
- Referring to EE7 and the text message dated June 14, 2017 she confirms that the reference to "Gina" is about the money owed for the two pay periods in May.
- Regarding the same day text message referenced to Kim's request to ask Gina, and Gina did work on June 15.
- Regarding text messages from EE7 on July 12, she was asking about "Jina" because Kim was leaving for two weeks and she wanted to make sure Kim was looking after Gina's back pay.

### **Cross Examination**

Mr. Brar asked Lesya why she did not fill out her last three months of time sheets fully? Lesya replied that happened because Kim told her she didn't need that kind of detail.

### **Re-direct**

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' evidences are corroborated by each other and are 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.

Finally, there is the document produced by CBC News. This document was produced in response to complaints by former employees of Mr. Brar. Their complaints were about mistreatment which included non-payment of overtime, working split shifts and other transgressions unrelated to this situation.


## VI. DECISION

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

Ms Grabchylova's evidence is credible and overwhelming. The text messages (EE7) substantiates her claim that she worked and EE8 is unchallenged evidence of her time sheets for that period. Therefore, the appeal is rejected.

The Wage Assessment #8942B (LRB File #002-18) is upheld and \$1,324.74 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.