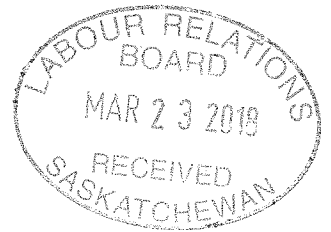


DECISION OF ADJUDICATOR  
IN THE MATTER OF AN APPEAL  
PURSUANT TO SECTION 2-75 WITH RESPECT TO A DECISION OF  
AN EMPLOYMENT STANDARDS OFFICER PURSUANT TO  
***THE SASKATCHEWAN EMPLOYMENT ACT,***  
***R. S. S. S-15.1 (as amended)***



**APPELLANT:** Mad Hatter Catering Inc.  
o/a The Cupcake Conspiracy

**RESPONDENT:** Sandra Harper

and

Director of Employment Standards  
Ministry of Labour Relations and Workplace Safety

**DATE OF HEARING:** November 22, 2017

**PLACE OF HEARING:** Saskatoon, Saskatchewan

**I. INTRODUCTION**

This is an appeal by Mad Hatter Catering Inc. (hereinafter referred to as Mad Hatter) with respect to a Wage Assessment issued by the Respondent, the Director, Employment Standards Branch, Ministry of Labour Relations and Workplace Safety, on May 4, 2017. The Wage Assessment required the Appellant to pay Sandra Harper the sum of \$1,245.46 representing unpaid public holiday pay. The Wage Assessment was prepared pursuant to s. 2-74 of *The Saskatchewan Employment Act*, RSS S-15.1 (as amended).

The Appellant was represented by its owner, Lucille McInnes. Present for the Respondent at the Hearing was Shelley Stretch, Department of Employment Standards. Ms. Stretch also appeared on behalf of the employee, Sandra Harper. Ms. Harper was not present.

Ms. Stretch, on behalf of the Director and the employee, and Ms. McInnes both indicated that they wished to provide a written summary of their submissions. The submission of Ms. Stretch is attached and marked as Exhibit EE 3. Despite several email requests for her written submission as of January 9, 2018, Ms. McInnes had not provided one. Therefore, I proceeded with this decision based on oral submission at the hearing.

## II. PRELIMINARY MATTERS

The Wage Assessment was served on the Appellant on May 8, 2017. The Notice of Appeal was received by the Director on May 28, 2017, and the appeal fee was deposited on May 30, 2017. Therefore, there are no jurisdictional issues.

## III. THE ISSUE

The issue at this Appeal Hearing was whether the employee was entitled to be paid public holiday pay. Ms. McInnes, on behalf of the Appellant, maintained that any public holiday pay to which the employee was entitled had been paid and that it was up to the employee and the Director to demonstrate that it had not been paid. A secondary issue, pertinent to the above, was the manner of record keeping required of an employer.

Therefore, this appeal is with respect to the application of *The Saskatchewan Employment Act* RSS S-2-60.

The payment of public holiday pay is addressed in Section 2-32 as follows:

- (1) An employer shall pay an employee for every public holiday an amount equal to:
  - (a) 5% of the employee's wages, not including overtime pay earned in the four weeks preceding the public holiday; or
  - (b) an amount calculated in the prescribed manner for a prescribed category of employees.

Employers must provide employees with a statement of earnings when wage payments are made. That statement of earnings must include specific information as per Section 2-37:

- (2) A statement of earnings required pursuant to subsection (1) must:
  - (a) clearly set out:
    - (i) the name of the employee;

- (ii) the beginning and ending dates of the period for which, the payment of wages is being made;
- (iii) the number of hours of work for which payment is being made for each of wages, overtime, and hours worked on a public holiday;
- (iv) the rate or rates of wages;
- (v) the amounts paid for each of wages, overtime and public holiday pay and work on a public holiday vacation pay and pay instead of notice;
- (vi) the employment or category of employment for which payment of wages is being made;
- (vii) the amount of total wages;
- (viii) an itemized statement of any deductions from wages being made; and
- (ix) the actual amount of the payment being made.

If the employer fails to enter the specified details in the statement of earnings, then it is deemed that those amounts have not been paid as per Section 2-37:

- (3) Unless the contrary is established, wages and other amounts that are not included in a statement pursuant to subsection (2) are deemed not to have been paid.

#### **IV. EVIDENCE**

There is no need to review the evidence in any detail. Ms. McInnes gave evidence and presented her position on behalf of Mad Hatter. Ms. McInnes acknowledged that the documentation she gave to Ms. Stretch was all that she had in her possession and ultimately, she agreed that these documents did not show the payment of any public holiday pay.

Exhibit ER 1 shows the paystubs (labelled as Payroll Deductions Online Calculator) for Sandra Harper from May 1, 2015 to July 1, 2016. These paystubs did not have any notation or reference to public holiday pay. Ms. McInnes testified that she created these paystubs using the Canada Revenue Agency Payroll Deduction Online Calculator. That computer program does not calculate and enter public holiday pay; it only shows

necessary deductions (CPP, EI, taxes). Ms. McInnes testified that she had calculated the public holiday for Sandra Harper on a scratch pad and then added the sum to the pay cheque. She no longer had these scratch pads in her possession. She discarded them.

Exhibit ER 2 was a list of Timesheet records for Sandra Harper the period from March 1, 2016 to June 13, 2016. Ms. McInnes put these records together from emails and the online check-in system. These records were not particularly helpful.

Initially, Ms. McInnes argued that there should be some onus on the employee to provide documentation. However, once the requirements of *the Act* as indicated above were set out and explained to Ms. McInnes, she conceded the point.


**V. DECISION**

The employer failed to comply with *The Saskatchewan Employment Act*, RSS S-15.1 (as amended), in particular with Section 2-37(2). The paystubs provided in Exhibit ER 1 were inadequate. The employer has not established that any public holiday pay was paid to Sandra Harper. Therefore, applying Section 2-37(3), it is deemed that public holiday was not paid.

**VI. CONCLUSION**

Pursuant to s.4-6(1)(a)(ii) of *The Saskatchewan Employment Act* RSS, the appeal is dismissed and the Wage Assessment is hereby upheld.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 19<sup>th</sup> day of March 2018

  
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Leslie K. Sullivan, Q.C.  
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;
  - (b) to appeal any decision of an adjudicator or the board.