



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

Justin Krietemeyer

COMPLAINANT/EMPLOYEE

-AND-

Open Road Recreation Inc.

APPELLANT/EMPLOYER

DATE OF HEARING: June 12, 2018

PLACE OF HEARING: Regina, SK

INTRODUCTION

This matter was heard before me on June 12, 2018 in Regina, Saskatchewan.

Mr. Andrew Langgard and Tracy McMillian, represented The Employment Standards Department.

The Claimant/Employee, Justin Krietemeyer, represented himself.

The Appellant/Employer, Open Road Recreation Inc., was represented by Kevin Mellor, lawyer; Tracey Fraser, Administrative Assistant; and Darcy Kunz, Manager for the company.

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 \$5,827.93.

I. PRELIMINARY MATTERS

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The Employment Standard Officer, Andrew Langgard, raised a Jurisdictional issue.

The Director's position was that the Appellant failed, when filing their appeal, to meet the requirements of section 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). As a consequence, the appeal document is invalid, thereby invalidating the appeal.

II. EVIDENCE OF THE EMPLOYER AND EMPLOYEE

Both parties filed documents in support of their arguments regarding the preliminary issue of jurisdiction.

III. ANALYSIS/DECISION

The Department received Employee Exhibit "4" from the Employer enclosing the deposit of \$500.00 as required by the Department. This document, in the body, refers to itself as a "Notice to Appeal". This document was dated April 12, 2018 and was received by the Department on April 13, 2018.

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The Department did not receive any other appeal document from the Employer.

The Employer says, that in addition to sending the April 12, 2018 letter to the Department, it also prepared Employer Exhibit "1" on April 13, 2018 and forwarded this document to the Department by Facsimile on April 13, 2018.

Unfortunately the Employer does not have any facsimile confirmation or any other way of confirming that this document was sent to or received by the Department.

Unfortunately for the Appellant/Employer, without acknowledgement of receipt by the Department, or confirmation of service by the Employer on the Department of the Notice to Appeal, I am unable to accept the April 13, 2018 document, as a Notice to Appeal, was served by the Employer on the Department within the time required by The Act.

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Consequently I am left with the April 12, 2018 letter as comprising the only appeal document of the employer.

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When looking at *The Employment Standards Act* (the 'Act'), section 2-75(2) and 2-75(3), it states that an Appeal must be filed in writing on the Director within 15 business days after the date of service of the Wage Assessment (March 28th, 2018) and "must" set out the grounds of appeal and "must" set out the relief requested.

Compliance with both subsections is mandatory as the word "must" is used.

Looking at the *Interpretation Act of Saskatchewan*, c.I-11.2, section 27(3)(a.1), states that "must" shall be interpreted as imperative.

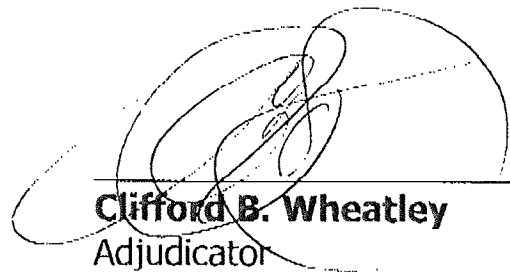
In a decision of Justice Walker, in the *Bernauer v. Royal Bank of Canada*, 1994 calLII 4742 (SK QB), when discussing interpretation of the wording of a statute says, "an imperative enactment must be obeyed or fulfilled exactly. A directive enactment must be obeyed or fulfilled substantially. Should the requirements of an imperative enactment not be met exactly any action purportedly done pursuant to the enactment is null and void."

When applying the above law to the April 12, 2018 Notice of Appeal, it is clear that the statutory legislation regarding filing of the appeal has not been met as required and, resultantly, I have no jurisdiction to hear the appeal.

IV. CONCLUSION

The Appeal is dismissed, and the wage assessment stands in the amount of \$5,827.93.

Dated at Moose Jaw, in the Province of Saskatchewan, this 24th of June, 2018.



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.