

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

APPELLANT: JODIE UPSHALL, operating as L'IL ANGELS
FUN & PLAY YORKTON DAYHOME

RESPONDENTS: PRABHJOT KAUR, SANDRA PELESHYTYK,
JOAN SOBKOW, and the DIRECTOR OF
EMPLOYMENT STANDARDS

DATE OF HEARING: October 17, 2018

PLACE OF HEARING: Main Floor Boardroom
72 Smith Street East
Yorkton, Saskatchewan



LRB File No. 130-18, Wage Assessment No. 1-000034

I. INTRODUCTION

Wage Assessment No. 1-000034 directed Jodie Upshall, operating as L'il Angels Fun & Play Yorkton Dayhome, to pay \$8,862.94 to Sandra Peleshytyk, \$9,966.72 to Joan Sobkow, and \$1,200.00 to Prabhjot Kaur, or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Jodie Upshall appealed the Wage Assessment.

On October 17, 2018, the following individuals attended the hearing:

- Jodie Upshall, owner and operator of L'il Angels Fun & Play Yorkton Dayhome (the Dayhome);
- Bernard Stephaniuk, Lawyer for Jodie Upshall;
- Sandra Peleshytyk, former employee of the Dayhome;
- Joan Sobkow, former employee of the Dayhome; and
- Dale Schmidt, Employment Standards Officer.

II. THE DISPUTE

On May 7, 2018, a Delegate on behalf of the Director of Employment Standards issued Wage Assessment 1-000034 against Jodie Upshall. She appealed pursuant to section 2-75 of the Act.

Jodi Upshall commenced her appeal of the Wage Assessment by way of a letter dated May 25, 2018 (the Notice of Appeal) from her lawyer, Mr. Bernard Stephaniuk, to the Director of Labour Standards. Employment Standards received the Notice of appeal and attachments on May 29, 2018. In the Notice of Appeal, the Appellant claimed the wages owed to Prabhjot Kaur and Joan Sobkow were something less than the amounts assessed in the Wage Assessment and that there were no wages owed to Sandra Peleshytyk.

Due to settlement agreements reached prior to the hearing with respect to Prabhjot Kaur and Joan Sobkow, the main issue at the hearing was the amount of unpaid wages, if any, owed to Sandra Peleshytyk.

III. PRELIMINARY MATTERS/OBJECTIONS

In advance of the hearing, I granted Prabhjot Kaur's request to appear at the hearing by telephone. We attempted to contact her at the beginning of the hearing but were unsuccessful. The hearing proceeded without her.

I explained the process to the parties and there were no objections.

IV. THE FACTS

The parties tendered evidence by way of sworn testimony and documents. Jodie Upshall was the only witness to testify because the parties reached a settlement on the final outstanding wage claim shortly after her cross-examination began.

The following exhibits were entered into evidence:

Employer Exhibits (Appellants)

ER1 – Settlement Agreement between Prabhjot Kaur and Jodie Upshall, signed by Jodie Upshall on October 16, 2018 (1 page);

ER2 – Settlement Agreement between Joan Sobkow and Jodie Upshall, signed by Jodie Upshall on October 16, 2018 and by Joan Sobkow on October 17, 2018 (1 page);

ER3 – Copy of Sandra Peleshytyk's Employment Contract dated August 23, 2016 (3 pages);

ER4 – Copy of letter dated July 17, 2017 from Jodie Upshall to Sandra Peleshytyk (1 page);

ER5 – Copy of Record of Employment for Sandra Peleshytyk (1 page);

ER6 – Copy of Sandra Peleshytyk's T4 for 2017 (1 page);

ER7 – Copy of summary of Jodie Upshall's relationship with Sandra Peleshytyk prepared by Jodie Upshall, dated October 9, 2018; (2 pages); and

ER8 – Copy of Settlement Agreement between Sandra Peleshytyk and Jodie Upshall, signed by Jodie Upshall on October 17, 2018 and by Sandra Peleshytyk on October 25, 2018 (1 page).

Employee Exhibits (Respondents)

EE1 – Copy of Officer Worksheet #1 relating to Sandra Peleshytyk (2 pages);

EE2 – Copy of Officer Worksheet #2 relating to Sandra Peleshytyk (2 pages);

EE3 – Copy of Sandra Peleshytyk's list of her hours of work (2 pages); and

EE4 – Copy of Officer Worksheet #3 relating to Sandra Peleshytyk (2 pages).

The parties settled all outstanding issues before the conclusion of the hearing. I agreed to reflect the terms of the Settlement Agreements in my written decision.

V. ANALYSIS AND DECISION

Prabhjot Kaur

Prior to the hearing, Jodie Upshall agreed to pay Prabhjot Kaur the sum of \$1,200.00 (the full amount assessed in the Wage Assessment) by way of monthly payments in the amount of \$100.00, beginning September 1, 2018 and ending August 1, 2019, in full and final satisfaction of her claim for wages. The relevant portion of the Settlement Agreement (ER1) says:

IT IS HEREBY AGREED AS FOLLOWS:

- 1) Jodie Upshall agrees to the Assessment in the amount of \$1,200.00 payable to Prabhjot Kaur;
- 2) Prabhjot Kaur agrees to payments of \$100.00 each commencing September 1, 2018 and payable monthly up to and including August 1, 2019;
- 3) It is further agreed by Prabhjot Kaur that payments can be made to her by e-transfer;
- 4) Prabhjot Kaur acknowledges having received as of the date of the hearing two payments of \$100.00 each (the September 1, 2018 and October 1, 2018 payments);
- 5) It is agreed this Agreement can form part of the record of the Adjudicator's written decision.

Prabhjot Kaur received notice of the hearing and indicated via email that she would appear by telephone. She did not, in fact, appear at the hearing by telephone. Regardless, I am confident she agreed to the terms of the Settlement Agreement prior to the hearing, as evidenced by her acceptance of two settlement installments by e-transfer in September and October of 2018.

Joan Sobkow

Prior to the hearing, Jodie Upshall agreed to pay Joan Sobkow the sum of \$1,300.00 (less than the full amount assessed in the Wage Assessment) by way of monthly payments in the amount of \$100.00, beginning September 1, 2018 and ending September 1, 2019, in full and final satisfaction of her claim for wages. The relevant portion of the Settlement Agreement (ER2) says:

IT IS HEREBY AGREED AS FOLLOWS:

- 1) Jodie Upshall agrees to the Assessment in the amount of \$1,300.00 payable to Joan Sobkow;
- 2) Joan Sobkow agrees to payments of \$100.00 each commencing September 1, 2018 and payable monthly up to and including September 1, 2019;
- 3) It is further agreed by Joan Sobkow that payments can be made to her by e-transfer;
- 4) Joan Sobkow acknowledges having received as of the date of the hearing two payments of \$100.00 each (the September 1, 2018 and October 1, 2018 payments);
- 5) It is agreed this Agreement can form part of the record of the Adjudicator's written decision.

Joan Sobkow attended the hearing and acknowledged her acceptance of the terms of the Settlement Agreement. She signed the Settlement Agreement at the hearing.

Sandra Peleshytyk

Prior to the hearing, the parties were unable to reach an agreement in relation to unpaid wages owed to Sandra Peleshytyk. Jodie Upshall testified about her personal and professional relationship with Sandra Peleshytyk. Shortly after her cross-examination began, the parties agreed to review the numbers again and to attempt to settle the matter. After negotiations, Sandra Peleshytyk agreed to accept the sum of \$3,650.00 (less than the full amount assessed in the Wage Assessment) by way of monthly payments in the amount of \$200.00, beginning February 15, 2019, with the last payment to be \$250.00 on July 15, 2020, in full and satisfaction of her claim for wages. The relevant portion of the Settlement Agreement (ER8) says:

IT IS HEREBY AGREED AS FOLLOWS:

- 1) Sandra Peleshytyk agrees that the Assessment be amended to \$3,650.00 which amount she accepts as the wage amount including holiday pay owing to her. This calculation is for the dates starting and including December 14, 2017 up to and including February 2, 2018 for a total of 292 hours times \$12.50 per hour for a total of \$3,650.00. This is divided

- into 9 days for 2017 or 82.125 hours (\$1,026.56) and 23 days for 2018 or 209.875 hours (\$2,623.44);
- 2) Jodie Upshall agrees to the Amended Assessment in the amount of \$3,650.00 payable to Sandra Peleshytyk;
 - 3) Sandra Peleshytyk agrees to payments of \$200.00 each commencing February 15, 2019 and payable monthly up to and including July 15, 2020 with the last payment to be \$250.00;
 - 4) It is further agreed by Sandra Peleshytyk that payments can be made to her by e-transfer;
 - 5) It is agreed this Agreement can form part of the record of the Adjudicator's written decision.

The parties agreed to execute a formal Settlement Agreement following the hearing and to forward it to me shortly thereafter so that I could include it as an exhibit. I received a copy of the signed Settlement Agreement (ER8) on November 19, 2018.

I accept that Jodie Upshall, Prabhjot Kaur, Joan Sobkow, and Sandra Peleshytyk entered into the Settlement Agreements freely. Consequently, as it relates to Prabhjot Kaur, the Wage Assessment is confirmed, and as it relates to Joan Sobkow and Sandra Peleshytyk, the Wage Assessment is varied.

VI. CONCLUSION

The appeal is allowed, in part, and the Wage Assessment is varied accordingly. The Appellant is ordered to pay the sum of \$1,200.00 to Prabhjot Kaur, the sum of \$1,300.00 to Joan Sobkow, and the sum of \$3,650.00 to Sandra Peleshytyk, as outlined in the terms of the Settlement Agreements referenced above.

DATED in Regina, Saskatchewan, this 30th day of November, 2018.



 Jodi C. Vaughan
 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.

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.