

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

Katheryn Ernst

COMPLAINANT/EMPLOYEE

-AND-

Common Café and Bakery Ltd.,
Michael Ellergodt, and Amber Ellergodt

APPELLANT/EMPLOYER

DATE OF HEARING: October 22, 2018

PLACE OF HEARING: Moose Jaw, SK

LRB FILE: No. 168-18

WAGE ASSESSMENT: No. 1-00055(b)

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INTRODUCTION

This matter was heard before me on October 22, 2018 in Moose Jaw, Saskatchewan.

Mr. Randy Armitage, Employment Standards Officer represented The Employment Standards Department.

The Complainant/Employee, Kathryn Ernst attended and represented herself.

The Appellant/Employer, Common Café and Bakery Ltd., Michael Ellergodt, Director and Amber Ellergodt, Director were unrepresented.

Prior to the hearing being set Mr. Ellergodt requested and was granted leave to represent himself, the company and Amber Ellergodt by telephone.

At the date of the hearing Mr. Ellergodt chose not be at the telephone number he gave to have the call placed to at the commencement at the appeal hearing.

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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 \$560.58.

I. PRELIMINARY MATTERS

Mr. Armitage on behalf of the Labour Standards Department advised that the Department was amending Ms. Ernst's wage assessment amount to \$568.58.

This was a decreased variation from the original wage assessment. Mr. Armitage explained that subsequent to the original wage assessment being issued by the department, that information that was supplied to the department from Mr. Ellergodt at the time Mr. Ellergodt filed the appeal on behalf of himself, his wife and the company gave rise to a review of the Employment Standards inspection report. Such review by Mr. Armitage resulted in the wage assessment being amended to \$560.58.

Mr. Armitage also raised a preliminary objection that the writer as the adjudicator did not have jurisdiction to hear the appeal.

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Section 2-75(4) of *The Saskatchewan Employment Act* (the 'Act') states, "if the appellant is an employer or corporate director, the employer or corporate director shall, as a condition of being eligible to appeal the Wage assessment, deposit with the director the employment standards the amount set out in the wage assessment or any other prescribed amount".

Section 2-75(5) of *The Saskatchewan Employment Act* (the 'Act') states, "the amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced".

The prescribed amount as set out in subsection (4) is \$500.00.

The Employer, after filing the appeal, issued a cheque in the amount of \$500.00 drawn on the Common Café and Bakery Ltd. business account at the Bank of Montreal in Moose Jaw.

This cheque was received within the appeal period as required by the legislation.

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Approximately a week later, on August 14, 2018, the department received advice from their bank that the Bank of Montreal cheque in the amount of \$500.00 had been returned as uncashable, in that, the Common Café and Bakery Ltd. bank account at the Bank of Montreal had been closed.

The above documentation and correspondence between the parties and the banks is set out in Exhibit "EE1". No further monies were received by the department of employment standards.

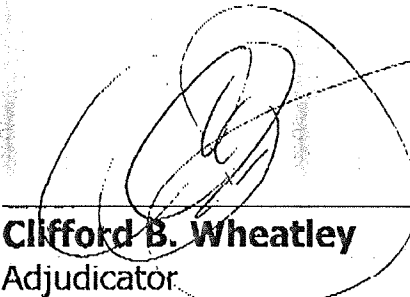
I am satisfied that the evidence shows that the director of employment standards did not receive the required deposit as set out in sections 2-75(4)(5).

Consequently on applying section 2-75(4)(5) to the evidence I conclude that I have no jurisdiction to hear the appeal as the legislation setting out the conditions for filing an appeal have not been complied with.

II. CONCLUSION

I conclude that I do not have jurisdiction to hear the appeal and therefore the appeal is dismissed and the wage assessment in the sum of \$560.58 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 12th of November, 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.