

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. 8901
LRB File No. 239-17



COMPLAINANT: Patrick Becotte
Represented by Doug Long
Employment Standards Officer

RESPONDENT: Kramer Ltd.
Represented by Heather McCaslin and Robert Perry

DATE OF HEARING: January 11, 2018

PLACE OF HEARING: Small Meeting Room
Sixth Floor
1870 Albert Street
Regina, Saskatchewan

1. INTRODUCTION

All parties were introduced and I provided information on my expectations regarding procedure and behaviour. I advised that I have sixty days to provide a written decision to the Labour Relations Board.

II. PRELIMINARY OBJECTIONS

After receiving my appointment, I requested and received documents from the Ministry that demonstrated the necessary time frames and deposit were proper. Therefore, I'm satisfied that the hearing can proceed.

Mr. Long advised that Mr. Becotte had filed an appeal as well as Kramer (attached) and that he (Becotte) would speak to it during the hearing.

Mr. Long also advised that he was representing the Director and not Mr. Becotte.

I then advised Mr. Becotte that he has the right to representation and that he can participate in the hearing when he believes he has information not being shared.

III. THE DISPUTE

There are two disputes:

- The Ministry is alleging that Kramer Ltd. did not, for the period of July 1, 2014 to June 30, 2015, pay Mr. Becotte public holiday pay and vacation pay on that public holiday pay for commissions earned by Mr. Becotte.
- The Complainant is alleging that vacation pay was not paid on his earned commissions.

IV. FACTS

i. EVIDENCE OF EMPLOYER

Both Mr. Perry and Ms. McCaslin were sworn and together they provided the following testimony:

- On July 1, 2015, Kramer Ltd. sold its equipment component to Finning Canada. The Asset Purchase Agreement signed by the parties has, as part, agreement that Finning assumes responsibility for any liabilities that occurred prior to July 1, 2015. See ER1.
- Therefore, if there is any public holiday and vacation pay owed to Mr. Becotte it is Finning's responsibility.
- Kramer Ltd. did not pay public holiday pay or vacation pay on public holiday pay to Mr. Becotte on his earned commissions.

Cross Examination

None

ii. EVIDENCE OF EMPLOYEE

Mr. Becotte was sworn and provided the following:

- He began working for Kramer Ltd. on December 18, 2006 and his last day was June 30, 2015.
- He was a general line sales representative for Kramer heavy equipment for N.W. Saskatchewan.
- His duties were to provide the best representation he could for Kramer while selling as much as he could.

- He had no employment contract.

- He filed a claim with the Ministry because he felt he hadn't received his proper pay as per The Employment Act.

- He was paid a flat annual salary and on top of that a commission on what he sold.

Note: At this point Mr. Long filed exhibits showing Commission (EE2), a sample pay stub (EE3), The Ministry Audit Sheet (EE4) and a summary of commissions (EE5).

Mr. Long and Ms McCaslin exchanged comments regarding EE5. During this exchange, Mr. Long realized that The Ministry Wage Assessment was based on 50% of Mr. Becotte's commissions and therefore what was owed was really \$6,237.32 as opposed to \$3331.89.

Ms McCaslin agreed that if owed the correct amount is \$6,237.32. Further she stated that if owed, Finning Canada was liable.

Mr. Long pointed out that Section 2.68(1) of The Act holds Corporate Directors responsible for all wages due and accruing due to employees, but not paid while they are corporate directors. The maximum liable is six months wages of the employee.

Cross Examination

None

Final Argument

Kramer Ltd. representatives argued that nothing is owed, however, if there is then Finning Canada is responsible.

Mr. Long provided the Director's position as follows:

- Section 2-1(v) of The Employment Act clearly cites that commissions are part of wages and therefore must be included in the public holiday calculation. That calculation is performed by taking 4% of the total commission for the relevant period and 3/52 of that product for vacation pay.

Mr. Becotte earned \$147,427.39 in commissions from July 1, 2014 to June 30, 2015. 4% is \$5,897.10. $3/52$ of \$5,897.10 = \$340.22. Total \$6,237.32. He concluded by requesting that the Wage Assessment as amended be upheld. Mr. Becotte concluded that he wanted to be treated as he should have been as per The Saskatchewan Employment Act.

I thanked both parties and closed the hearing.

V. ANALYSIS

Section 2-1(v) of The Act deems commissions to be part of wages. As such, commissions must be included in the public holiday pay calculation.

Kramer Ltd. acknowledged that the Complainant was not paid public holiday pay on his earned commissions.

Section 2.68(1) holds Kramer Ltd. Corporate Directors responsible for liabilities occurring from July 1, 2014 to June 30, 2015. Finning Canada took over July 1, 2015.

Saskatchewan Corporate Registry dated October 30, 2017, shows Directors Donald E. Kramer, Timothy R. Kramer and Claire Kramer were directors of Kramer Ltd. from September 10, 1999 to at least October 30, 2017.

VI. AWARD

While Section 2-6 of The Saskatchewan Employment Act may not be spot on regarding The Asset Purchase Agreement (EE1), I don't believe that one employer can transfer its obligations, under The Act, to another employer through a Purchase Agreement.

Section 2-68(1) of The Act is clear, in that Corporate Directors are responsible for liabilities occurring during their tenure.

Therefore, I am upholding the amended Wage Assessment of \$6,237.32 and determine it is owed by Kramer Ltd. to Patrick Becotte.

Regarding Mr. Becotte's appeal that holiday pay was not processed on his commission earnings, Mr. Long's letter(ER2) to Ms. McCaslin acknowledges the Employer had in fact paid it.

Despite his appeal having no substance, the process for it to get to the hearing was flawed. First of all it was not sent to the Director as per Section 2-75(2) or did it set out the dispute as per Section 2-75(1), nor did it set out the relief requested as per Section 2-75(3). Lastly the Director did not provide Mr. Becotte's appeal document to me as part of the relevant documents.

For all the above reasons, it is rejected.

Dated at Regina, in the Province of Saskatchewan, this 15th of January, 2018.



Ralph Ermel
Adjudicator

Attachments: Becotte appeal document and e-mail from ESO Long.

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.

FAX



To: Doug Long	From: Patrick becotte
Fax: 1-1-306-953-2673	Fax: 306.445.6388 Battleford
Date: 2017-11-29	Pages:
Re: kramer ltd file	

Urgent

I would like to appeal the decision of Kramer ltd. Would also like all my annual Holiday Pay that is owed to me as per the labor laws of Saskatchewan. Hope all is satisfactory I can be contacted as per information on my file

Regards,


 Patrick Becotte

EMPLOYMENT STANDARDS
 SASKATCHEWAN
 PRINCE ALBERT
 NOV 29 2017
 Received From _____
 Time _____
 Received By _____

ralphermel

From: Long, Doug LRWS <Doug.Long@gov.sk.ca>
Sent: Thursday, December 21, 2017 10:11 AM
To: 'ralphermel'
Cc: 'rip@kramer.ca'; 'patrick.becotte@finning.com'
Subject: RE: LRB File No. 239-17 Kramer v. Director of ES, & P. Becotte, WA#8901
Attachments: DOC122117-12212017090614.pdf

Hi Ralph, I am available January 9 – 12, or January 17 or 19 and I am available to travel to any location that is chosen for the hearing.

I bring to your attention that Mr. Becotte has also appealed the Wage Assessment and I have attached his appeal to this email.

From: ralphermel [mailto:ralphermel@ralphermel.com]
Sent: Thursday, December 21, 2017 7:29 AM
To: rip@kramer.ca; Patrick.becotte@finning.com; Long, Doug LRWS
Cc: Bayer, Fred LRB
Subject: LRB File No. 239-17 Kramer v. Director of ES, & P. Becotte, WA#8901

Hello all. I have been appointed to adjudicate the Kramer appeal in the above Wage assessment. I don't have an e-mail address for Donald Kramer, who is listed as the Appellant. I trust Mr. Perry can make that contact for me. Given the time of year and my itinerary, which includes being unavailable from January 22 to mid-April, it is my hope we can find a date in January 2018. I am available all days from January 3 to 19, except for January 9 and 18. Location is also an issue to be determined given Patrick is located in North Battleford, Doug in Prince Albert and the rest of us in Regina. I prefer to hold the hearing in Regina, however, I can travel if that is what we decide. Please provide me with your thoughts as soon as possible. Thanks.

Ralph Ermel
Adjudicator