

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



APPELLANTS:  
(Employer) Advantage Roofing Ltd.  
(Director) Tim Hopkins

RESPONDENT:  
(Employee) Wesley Landry

Dale Schmidt, Employment Standards Officer, appearing for Government of Saskatchewan,  
Ministry of Labour Relations and Workplace Safety, Employment Standards Division

DATE OF HEARING: March 19, 2019, 10:00 a.m.

PLACE OF HEARING: Conference Room #4  
Kramer Building  
1146-102<sup>nd</sup> Street, North Battleford

**I. INTRODUCTION**

This is an appeal by the Employer, Advantage Roofing Ltd., from a Wage Assessment in the amount of \$2,679.96 in favour of the Employee, Wesley Landry, dated January 14, 2019.

Wesley Landry claims he is owed money for hours worked during the period June 18 – July 31, 2018.

The Employer's position is that the Employee was paid according to the computer time records generated at the time, and no further amount is owing.

The Ministry provided information confirming the Employer's appeal and appeal deposit were received within the time requirements in s. 4-4(4) and s. 4-5(1)(b) of *The Saskatchewan Employment Act*.

## II. EVIDENCE

Tim Hopkins testified on behalf of the Employer. The Employee Wesley Landry testified and also called (by telephone) Dale Helm as a witness.

Advantage Roofing Ltd. is a construction and design company based in Saskatoon, Saskatchewan. Its primary client is the federal government and it provides services in Saskatchewan and outside the province. In the spring and summer of 2018 the company was building a duplex at Sandy Bay in northern Saskatchewan. Wes Landry was hired by Advantage to assist in the construction and to manage some temporary local employees. Dale Helm was a sub-contractor also hired by Advantage and worked at the construction site. He supervised Wesley's work and saw him on a daily basis.

Tim Hopkins is the President and Director of Advantage Roofing. He testified he has worked in the construction industry for over fifteen years. At times, he noted, it can be a rough industry, with high staff turnover and frequent minor disputes, sometimes over hours worked.

In the spring of 2018 Advantage Roofing was using an electronic time-keeping system called "Minute Works" for its employees to keep track of their work time. The software program works off a tablet similar to an I-pad. The employee punches in a code on the tablet when they start and stop work. The tablet transmits this information to Advantage's head office so records of who is working are available on a real-time basis. Tim Hopkins noted he chose this system because it is "geo-located", meaning you can tell where the tablet, and the employee, is at all times. For example, if an employee took the tablet home instead of remaining on the job site, the software would record that information.

The Minute Works tablet on-site in Sandy Bay automatically used cellular data to communicate with the home office computer in Saskatoon; an earlier version of the program used on a different work-site relied on Wi-Fi. Wi-Fi requires the device to be in range of a router and connect to a network in order to access the Internet. The upgraded data-based version is more reliable. Advantage currently uses five tablets in the province, including one at its head office. Only one was on site at the Sandy Bay construction project.

According to Tim Hopkins, Minute Works is the most up-to-date, efficient and reliable method of time keeping for workers in the construction and similar-type industries. It is more accurate than old-fashioned time clock punches, or written records, and allows for the monitoring of work flow and quick preparation of pay cheques for employees.

Tim acknowledged that at earlier work sites, there had been some issues with the software, usually when the tablet was taken out of the range of Wi-Fi, but these problems had been addressed by the time the updated tablet was used in Sandy Bay. If there were any glitches, they were quickly identified and cleared up through the internet by Advantage's IT personnel.

The system, Tim stated, is flawless, as long as human beings choose to use it.

Given the importance of accurate time records on job sites spread across Canada, the company has worked hard to compel its employees to use Minute Works. As part of their training manual, which all employees must sign, Advantage Roofing has a written policy explaining the mandatory electronic time-keeping system. Employees are given the opportunity to train on its use, and supervisors on site are supposed to ensure employees punch in and out. One of Wesley's duties at Sandy Bay was to make sure the temporary labour did so.

As Tim admitted ruefully during his testimony some people (usually over the age of thirty!) have difficulty adjusting to new technology. Wesley confessed he was one of those people, and was not very "computer-savvy".

Tim and Wesley have known each other for over twenty years, and worked together on many projects. The Sandy Bay construction was not the first one where Wesley used the electronic time-keeping system. He worked with Advantage in Ontario earlier in 2018 when Minute Works was first introduced. Wesley said they had some problems with the tablet at that time; it would not send out the hours, despite having Wi-Fi available. He acknowledged when they kept the tablet within range it "worked pretty good" and the tablet never seemed to lose power.

While on site in Ontario, Dale Helm suggested Wesley keep track of his hours, as the computer did not always have good Wi-Fi reception. Wesley stated he trusted Tim not to cheat him, but when he went to work on the Sandy Bay project he started to keep track of his time in a notebook. The notebook was not produced at the Hearing. Wesley provided a two-page handwritten document which summarized his hours worked and showed the difference between those hours and what Minute Works reflected. This is the document he provided to the Employment Standards Officer in support of his claim (Employee Exhibit #1). In the notebook, Wesley said, he also wrote down what he had done that day; this information was not included on the summary.

While he was in Sandy Bay, Wesley testified, the Minute Works system did not work very well – he had trouble logging on and the tablet went dead in a few days. Dale Helm agreed that when they first arrived in Sandy Bay the new tablet had problems; he talked to Tim about them and they were fixed. As a subcontractor, Dale was not required to use Minute Works, but he assisted Wesley in using it. Dale also admitted to being "technology-impaired".

Tim agreed there were some minor initial problems with the tablet in Sandy Bay. The code sometimes had to be entered very slowly, or the user would have to lick his or her finger before tapping. As the new computer 'learned' the process these problems disappeared. Wesley's failure to use Minute Works, however, did not.

Wesley admitted he did not remember how often he used Minute Works – sometimes he punched on, more often he did not. Instead, he would phone his hours into the Advantage home office, and speak to Jenifer Kiskotagan. She would enter them for him.

Tim was busy managing three or four contracts, but his office told him that instead of using Minute Works Wesley was calling in his hours or recording them on scraps of paper that he sent to the office. Tim dealt with this issue personally. He communicated repeatedly with Wes about the use of the time-clock, both in telephone conversations and through 'Hangouts' – a Google

computer app used by the company that allows for text messages, emails and conversations. Tim messaged Wesley individually on his phone through the app. He also said they had some heated conversations about the need for Wesley to use Minute Works on a daily basis. When Wesley initially complained that his finger would not work on the clock, Tim explained how to take time punching in, and perhaps lick your finger before pressing on the pad. Tim offered Wesley additional training on Minute Works, but said Wesley turned him down.

The computer record produced by the Employer (Employer Exhibit #7) shows Wesley's hours were being input by the office on an almost daily basis, usually by Jenifer Kiskotagan. Wesley said Jenifer contacted him and told him Tim was changing Wesley's hours on Minute Works. Wesley asked Jennifer to compare his hours against those recorded at the office.

The computer record confirms some instances where Wesley's times were entered or changed by Tim Hopkins.

Wesley stated Minute Works was not a flawless system; it could work if you are stationary and always go to the same site. He acknowledged that it "worked OK" in Ontario when they were doing just that. Although Wesley lived on site in Sandy Bay, he did not always work there. At times he left to pick up supplies, sometimes driving all the way to Saskatoon, several hours away. He would then have to phone or send in his hours.

Wesley said he was not into "nickel-and-diming" the company but if he worked the time he expected to get paid for it.

Dale testified he knew Wesley was keeping track of his hours in Sandy Bay, and has no reason to dispute Wesley's personal records. Some days, he noted, they worked in excess of eight hours, such as when they were doing a cement pour. They did not work side by side every day.

Tim acknowledged he made adjustments on Minute Works to Wesley's time. He inferred that Jenifer Kiskotagan was not performing her job adequately; her duties were changed to remove Minute Works from her area of responsibility, and she quit her job at Advantage. Jennifer did not testify at the Hearing, and apparently did not leave the company amicably.

As Tim noted, when Wesley finally started using Minute Works, it worked perfectly. The period for which Wesley is claiming lost wages concerns the time when he was using Minute Works only intermittently, if at all.

Wesley's work at the Sandy Bay project ended in August 2018.

### **III. ANALYSIS**

The dispute centers on the difference between the hours Wesley was paid and the hours he claims he is owed.

The Employer argues the Employee was provided with clear instructions on the reporting and submission of hours that are a prerequisite for the receipt of payment. When Wesley Landry failed to follow the required procedure – using Minute Works – the Employer made every effort to keep Wesley’s hours current while repeatedly reminding him of the requirement of timely reporting.

The company has a written policy on using the tablets, which is reinforced in person, they train their employees, remind them to use the system, and help them to use it when there are problems. What more should an employer have to do, this Employer asks? Mr. Hopkins argued there is a reasonable onus on an employee to use such software for the purposes of being paid. It is part of their job. Using Minute Works is as essential a skill as reading and writing, and far less difficult. When employees use it, it works perfectly, he emphasized.

In this case, Mr. Hopkins further notes the Employee accepted the pay cheques based on the Minute Works hours and made no complaint until several weeks later.

The Employee argues he submitted his personally recorded hours, which were accepted by his Employer. He did not notice the discrepancy between his own records and those of the Employer until it was brought to his attention by an office employee of Advantage.

Mr. Landry claims he made his own time-keeping records at the time he worked. I find it rather disingenuous that he could remember to write down his hours on a daily basis and phone them in yet could not remember to use the time clock. But whether he was being purposefully uncooperative or merely forgetful, I believe Mr. Landry when he says he kept track of his hours. His evidence was supported by Mr. Helm, who testified he recommended Wesley keep his own records, and also testified that he believed his time records were accurate. I am not convinced, however, of the 100% accuracy of the times provided by Mr. Landry to the Employment Standards Officer and to the Hearing. He also testified he provided his hours to Jenifer Kiskotagan in the Saskatoon office to enter in Minute Works. If this was done contemporaneously, should not the hours recorded by Jenifer in Minute Works be the same as Wesley’s records?

Mr. Hopkins’ frustration was clear. The situation in dispute is exactly what the electronic record-keeping system was intended to avoid; an employee, working away from the office, claims hours worked in a way that can be verified by no one except himself.

The circumstances are even more confused because there is an additional layer between the time-keeping and the payment. Wesley sends or calls in his hours to the office, an employee enters it, and then her supervisor reviews it, and, perhaps, changes it. The Employer is exasperated because he thinks the Employee is just confused, while the Employee is hurt because he thinks the Employer was ‘nickel-and-diming’ him.

Clearly the use of the tablet was a conflict that had to be worked through. A not unusual employer/employee situation. An employer uses what tools it has, including training, cajoling, re-training, supervision, reminders, and, if necessary, dismissal. The Employer in this case chose not to use that final alternative.

What the Employer did do, no doubt in the interests of preserving the relationship with the Employee, was repeatedly allow the Employee to call in his hours instead of using the system. Whether this was a result of improper office practice or not, it is still the Employer's responsibility to supervise the Employee. By inference, Advantage accepted Wesley's method of record-keeping, at least to the extent that it accepted the hours he communicated to the office.

I find that the Employee was not compensated by the Employer for all the hours he worked.

#### IV. DAMAGES

Upon a review of the evidence, the amount of the claim is not clear. Neither the Employer, the Employee nor the Employment Standards Officer provided a simple, mathematically accurate summary.

##### A. Wage Assessment

The Wage Assessment states the amount of the claim is \$2,679.96.

The Employment Standards Inspection Report's calculations are simply as follows (Employer Exhibit #1):

Reg Wages	41 hr. @ \$28	\$ 1,148
Overtime	33 hr. @ \$42	\$ 1,386
Annual Vac Pay 3 wks. % .0576		\$ 145.96
<b>TOTAL</b>	<b>74 hr.</b>	<b>\$ 2,679.96</b>

##### B. Employer's Calculations

The Employer testified Wesley Landry was paid according to the Minute Works records, which were accurate, and no further pay is owed. However, the number of hours shown worked by Mr. Landry on the Minute Works records produced, and the hours shown on his pay cheques are not the same.

The Minute Works record of hours for June 18 – June 28 is 83 hours and 191 minutes = 86.2 hours (Employer Exhibit #7), but the pay cheque record for the same time frame is for 80 hours (Employer Exhibit #2) and so is the pay stub (Employee Exhibit #2, p. 9). A total of 6.2 overtime hours would appear to be owing to the Employee according to the Employer's records.

The Minute Works record of Wesley's hours for June 29 to July 13 is 100 hours and 268 minutes = 104.5 hours (Employer Exhibit #7), but the pay cheque record for the same time frame is for 80 regular hours and 7.89 overtime hours, for a total of 87.89 hours (Employer Exhibit #3). So is the pay stub (Employee Exhibit #2, p. 11). An additional 16.6 overtime hours appears to be owing.

For the period July 15 – July 31<sup>st</sup>, the Minute Works records provided by the Employer only go to July 26<sup>th</sup> (it appears the third page of the record was left off in error). It shows a total

of 45 hours worked to July 26. The pay cheque record is for 77.5 hours (Employer Exhibit #4) as is the pay stub (Employee Exhibit #2, p. 12)

So, by its own records, the Employer would appear to owe the Employee a minimum of 6.2 hrs. + 16.6 hrs. in overtime pay = 22.8 hours.

#### C. Employee's Calculations

The hand-written list provided by the Employee does not add up to the figures used by the Employment Standards Officer in his Assessment. I totaled the figures recorded on Mr. Landry's list and arrived at 66.89 hours LESS 6.15 hours (where the Employee's recorded time was GREATER than the actual hours he worked) for a total claim of 60.84 hours – not 74 hours.

Mr. Landry testified he phoned in or otherwise communicated his hours to Jenifer Kiskotagan in the Office. On at least two occasions on Wes's claim, his time records conflict significantly with the time inputted by Jenifer Kiskotagan: June 27 and July 13. If he was calling in his hours to Jenifer, why are they different from his records and why is he now seeking to challenge those reported times? In his evidence, he said he was only concerned with the times Tim Hopkins had changed in the computer, to which Jenifer had alerted him.

#### D. Minute Works Entries Made by Tim Hopkins

The Minute Works records show who inputted the information. A regular record would read "Punch In" or "Punch Out" from "Sandy Bay". If the office entered a punch in or out, the record states "Added by Kiskotagan, Jenifer" or "Added by Hopkins, Tim". Similarly, if a record is changed, it reads "Changed by Hopkins, Tim" or "Changed by Kiskotagan, Jenifer".

The times where Wes Landry's handwritten record differs from an entry made by Tim Hopkins (either "added" or "changed") are as follows:

June 19	-3 hrs. 37 min
June 20	-53 min
July 3	-6 hrs.
July 5	-3 hrs. 40 min
July 8	-6 hrs. 30 min
July 9	-5 hrs.
July 11	+5 hrs. 3 min
July 19	-22 min
July 30	unknown (no Minute Works records provided)

**Total** = 23 hrs. 182 min = 26 hours.

Even if we add in The Employee's claim for an additional 5.2 hrs. for July 30 (no Minute Works records), that brings the total claim for errors relating to Tim Hopkins' entries to 31.2 hrs.

The Employer's contention is that an Employee's hand-written records cannot be relied on as the basis for payment. Personal records are not always kept concurrently with the work, but are sometimes an estimate of start and stop times. On the other hand, as can be seen from the Minute Works print-out, computer records can be altered, and may sometimes need to be, as when an

employee is travelling away from the job site. They are not ‘fool-proof’ either, and this may lead an employee to become suspicious as to whether or not they are being properly compensated.

Several other factors further complicate the calculations.

First of all, during his testimony, Mr. Landry said sometimes his Employer would hold back a portion of his wages for him, then pay them out to him later in the year when he was not working – so he could have an income into the winter months.

Secondly, both parties referred to an “averaging-hours permit”, but this was not factored in while calculating the claimed overtime hours.

Thirdly, Wesley claims some time worked on days when no hours are recorded on Minute Works at all. Did he forget to alert Jenifer Kiskotagan in the Office, or was it a day off? The Minute Works records show that Wesley was contacted through the “Hangout” app when he failed to punch on or off, but there is no record of that on these days.

There is confusion about when Wesley worked – admittedly, because he did not use Minute Works – and I have struggled to find a fair and reasonable means, based on the evidence, to calculate what he is owed.

Based on the Employer’s electronic records, I find that the Employee was not compensated for 22.8 overtime hours for the pay periods June 18 – June 28 and June 29 – July 13.

I accept the Employee’s claim for the hours changed or entered by Tim Hopkins (26 hrs.) and his claim for extra hours worked on July 30 (for which no Minute Works records were produced) of 5.2 hrs. for a total of 31.2 hrs. As there is an overlap between the two calculations, I have arrived at the following:

22.8 hrs. OT @ \$42	\$ 957.60
31.2 hrs. - 22.8 hrs. = 8.4 hrs. @ \$28	\$ 235.20
Vac Pay \$1,192.80 x 3/52	\$ 68.82
<b>TOTAL</b>	<b>\$1,261.62</b>

## V. CONCLUSION

The Employer’s Appeal is denied, but I vary the Wage Assessment and award the Employee a total of \$1,217.19 in wages.

Dated at North Battleford, Saskatchewan: April 16, 2019.

Original signed by  
Karen C. Ulmer  
Adjudicator



**MATTER: Advantage Roofing Ltd. v. Landry**

**LRB File 021-19**

EXHIBITS – Employer

1. Employment Standards Inspection Report
2. Advantage Roofing Ltd. electronic record of pay cheque #853 for Wesley Landry, for period June 14 – June 28, 2018
3. Advantage Roofing Ltd. electronic record of pay cheque #30 for Wesley Landry, for period June 28 – July 13, 2018
4. Advantage Roofing Ltd. electronic record of pay cheque #DD80 for Wesley Landry, for period July 15 - July 31, 2018
5. Cashed pay cheque #853
6. Scotiabank printout showing cheque #30 and cheque #3 (\$500 advance) cashed
7. List of time clock punches for Wesley Landry from June 1<sup>st</sup> to July 26th

EXHIBITS – Employee

1. Wesley Landry handwritten time records June 18 – August 26, 2018.
2. Pay sheets for Wesley Landry January 31, 2018 to October 31, 2018 (provided by Employer)

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; and

(b) to appeal any decision of an adjudicator or the board.