IN THE MATTER OF AN ADJUDICATION
PUSUANT TO SECTION 2-75 AND 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT

LRB FILE No. 026-19

Appellants:

Brent Suer, being a director of Suer Holdings Ltd. o/a Suer & Pollon Mechanical;
Cameron Dale Pollon, being a director of C.D. Pollon Holdings Ltd. o/a Suer & Pollon Mechanical;
Suer Holdings Ltd. o/a Suer & Pollon Mechanical;
C.D. Pollon Holdings Ltd. o/a Suer & Pollon Mechanical;
Brent Suer, being a director of 101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical;
Dale Pollon, being a director of 101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical;
and
101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical

Respondents:

Jareth Hall, and Director of Employment Standards

Date of Hearing: April 8, 2019

Location of Hearing: Hearing Room 9.3
Sturdy Stone Building;
122 Third Avenue North;
Saskatoon; Saskatchewan

Date of Decision: May 6, 2019

[1] Wage Assessment Number 1-000168 (hereinafter the 'Wage Assessment') was issued by the Director of Employment Standards' delegate on January 4, 2019. It directed Brent Suer, being a director of Suer Holdings Ltd. o/a Suer & Pollon Mechanical, Cameron Dale Pollon, being a director of C.D. Pollon Holdings Ltd. o/a Suer & Pollon Mechanical, Suer Holdings Ltd. o/a Suer & Pollon Mechanical, C.D. Pollon Holdings Ltd. o/a Suer & Pollon Mechanical, Brent Suer, being a director of 101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical, Dale Pollon, being a director of 101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical and 101252225 Saskatchewan Ltd. o/a Suer & Pollon Mechanical (hereinafter the 'appellants') to pay Jareth Hall the sum of $3,440.23.

[2] Brent Suer represented the appellants. The respondent Jareth Hall represented himself. Shelley Stretch was the Director's delegate in this matter. She did not represent Mr. Hall. Mr. Suer, Mr. Hall and Ms. Stretch were present in the hearing room. Two witnesses, Loreena Spilsted and Stan Pollon were not present in-person, but rather gave their evidence and were cross-examined by telephone. There were no objections to the hearing proceeding in this manner. In addition, there were no objections to my jurisdiction to hear this matter.

[3] Mr. Suer agreed that the corporate appellants were valid Saskatchewan corporations.

Issues

[4] At the start of the hearing the parties agreed there were three issues in dispute. The first issue is whether Mr. Hall was entitled to pay in lieu of notice. The second issue is whether Mr. Hall was paid the appropriate rate of pay. The third issue is whether Mr. Hall received a minimum payment of three hours for reporting for work on June 29.The amount of the Wage Assessment reflects the conclusion of the Director's delegate that Mr. Hall was entitled to payment for two weeks in lieu of notice, that he was entitled to be paid at a rate of 90% of a journeyperson's rate of pay and that he should have been paid 3 hours wages for June 29.

Decision

[5] The onus is on the appellant to adduce evidence that Mr. Hall was not entitled to payment for two weeks in lieu of notice, that he was not entitled to be paid at a rate of 90% of a journeyperson's rate of pay and that he was not entitled to 3 hours wages for coming to work on June 29. This is because *The Saskatchewan Employment Act* (hereinafter the '*Act*') at 2-75 (9) says:

> *The copy of the wage assessment provided to the adjudicator in accordance with subsection (8) is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing...*

[6] The appellants' Notice of Appeal refers to Mr. Hall being paid for one day he did not work. The substantive portion of that document simply says:

> *We are not in agreement and it is our position that he would actually owe us money for the day he was payed (sic) and did not work.*

Please find enclosed the required appeal deposit of $500.00 made payable to "Minister of Finance"

[7] Mr. Hall testified that he was scheduled to work Friday April 27, but did not as he had to return to his home to deal with a matter which had arisen in his apartment. This originally resulted in him being paid, in error, for April 27. An adjustment to correct this overpayment was later made. The overpayment therefore forms no part of the Wage Assessment, and is not relevant to my decision.

[8] There was no dispute that Mr. Hall's first day of work for Suer & Pollon was May 17, 2017. He was an apprentice plumber. He was given a layoff notice dated March 28, 2018. This notice said Mr. Hall's last day of work would be April 4, 2018. A copy of the notice was filed under Tab 7 of Exhibit EE-1. This notice in my view clearly meets the test as described by Peter Neumann and Jeffrey Sack, the authors of eText on Wrongful Dismissal and Employment Law (2012 CanLIIDocs 1):

> It is well established in Canadian jurisprudence that notice of termination of employment must be specific, unequivocal and clearly communicated to the employee: Yeager v. R.J. Hastings Agencies Ltd., 1984 CanLII 533 (BCSC); Kerfoot v. Weyerhaeuser Company Limited, 2013 BCCA 330 (CanLII).

[9] On April 6, 2018 Mr. Hall spoke with Stan Pollon. Mr. Hall testified that Mr. Pollon said the company would hire him back until Mr. Hall returned to school on April 30. Mr. Pollon also testified that the employer would keep Mr. Hall working until he went back to school. Although these facts are not in dispute, the characterization of what happened is. Mr. Pollon said that they did not rehire Mr. Hall, they merely kept him working for two more weeks. Mr. Suer suggested this extended the previously given notice that Mr. Hall's last day would be April 4, 2018. Mr. Pollon testified that he did not promise that the employer would rehire Mr. Hall after he was done at school.

[10] Mr. Hall testified that he believed he had been 'hired back'. In fact he worked for the employer at a site in Swift Current from April 9 until April 25. Mr. Hall was scheduled to work until April 26, but as I stated he did not work on April 26 because he went home to deal with a situation in his apartment. I accept Mr. Hall's testimony as accurate.

[11] The undisputed result of the discussion between Mr. Hall and Mr. Pollon was that Mr. Hall's last day of work was not April 4, 2018. I conclude that the effect of Mr. Pollon continuing Mr. Hall's employment was to rescind the previously provided layoff notice. The employer could have, but did not issue a new layoff notice to Mr. Hall. Therefore I find that Mr. Hall did not receive written notice as defined in s. 2-60 of the *Act*.

[12] Section 2-60 of the *Act* says:

Notice required

2-60(1) Except for just cause, no employer shall lay off or terminate the employment of an employee who has been in the employer's service for more than 13 consecutive weeks without giving that employee written notice for a period that is not less than the period set out in the following Table:

Table

Employee's Period of Employment	**Minimum Period of Written Notice**
more than 13 consecutive weeks but one year or less	one week
more than one year but three years or less	two weeks
more than three years but five years or less	four weeks
more than five years but 10 years or less	six weeks
more than 10 years	eight weeks

(2) In subsection (1), **"period of employment"** means any period of employment that is not interrupted by more than 14 consecutive days.

(3) For the purposes of subsection (2), being on vacation, an employment leave or a leave granted by an employer is not considered an interruption in employment.

(4) After giving notice of layoff or termination to an employee of the length required pursuant to subsection (1), the employer shall not require an employee to take vacation leave as part of the notice period required pursuant to subsection (1).

2013, c.S-15.1, s.2-60.

[13] Mr. Hall's employment was from May 17, 2017 to April 25, 2018, and so was more than one year, but less than two. Given that I have concluded that Mr. Hall did not receive proper written notice of a layoff, the table contained in s. 2-60 makes it clear that he is entitled to two weeks pay in lieu of notice unless this period of employment was interrupted by more than 14 consecutive days.

[14] Mr. Hall and the employer signed a document called a 'Form A Contract Between Apprentice and Employer'. A copy of this contract was filed as Tab 8 of exhibit EE-1. Among other provisions in this contract, the employer agrees "to permit the Apprentice to attend technical training and to write examinations as prescribed by the Commission". Therefore Mr. Hall's absence from work for this purpose does not count as an interruption of the period of employment pursuant to s. 2-60. No evidence of any other interruption of work was presented at the hearing. Therefore I conclude that Mr. Hall is entitled, under s. 2-60, to two weeks pay in lieu of notice.

[15] This brings me to the second issue, which is whether Mr. Hall was paid the appropriate rate of pay.

Regulation 3 of *The Apprenticeship and Trade Certification Regulations, 2003* at ss. 32(4) says:

(4) Unless otherwise prescribed by Table 5, an apprentice's employer shall:

(a) subject to clause (b), increase the wages paid to the apprentice in approximately equal increments at the completion of:
(i) the first half of each apprenticeship year; and
(ii) each apprenticeship year; and

(b) during the last half of the final apprenticeship year, pay the apprentice not less than 90% of the hourly rate of a newly qualified journeyperson in the employer's establishment.

[16] Loreen Spilsted, the CEO of the Apprenticeship and Trades Certification Commission, testified that Mr. Hall was a year 4 card with 7,006 hours registered with the Apprenticeship and Trades Certification Commission. He was therefore in 'the last half of the final apprenticeship year' and ought to earn '90% of the hourly rate of a newly qualified journeyperson in the employer's establishment' [32(4)(b) above].

[17] In the 'Form A Contract Between Apprentice and Employer' [Tab 8 of exhibit EE-1] the employer expressly agrees 'that the hourly rate of a newly qualified journeyperson in his/her establishment at the commencement of this contract is 35.01'. The numerals were written in, and the other words were part of the pre-printed form.

[18] Mr. Hall was earning $28/hour. Given that the employer agreed that a newly qualified journeyperson in its employ would earn $35.01, and given that the regulations require Mr. Hall to be paid at 90% of this rate, he ought to have been paid $31.509/hour.

[19] This brings me to the third and final issue. Mr. Hall's uncontracted testimony was that he reported to work on June 29, and that he was paid ½ hour for that day. Subsection 2-16(1) of the *Act* provides that:

An employer shall pay an employee:
(a) at least the prescribed minimum wage for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer's disposal; and
(b) at least the prescribed minimum sum when the employee reports for duty.

The Minimum Wage Regulations, 2014 are Regulation 3 under the *Act*. Subsection 3(8) of those regulation states:

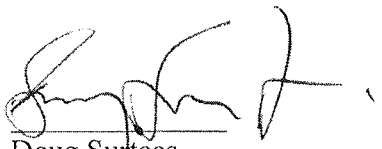
(8) Subject to subsection (9), every employee who is required to report for duty, other than for overtime, shall be paid a minimum sum equal to three times the employee's hourly wage, whether or not the employee is required to be on duty for three hours on that occasion.

Subsection (9) is not relevant to the current matter. Therefore Mr. Hall was entitled to be paid for 3 hours at his usual wage, for reporting for work on June 29.

Conclusion:

[20] The Appeal is dismissed. The Wage Assessment in the amount of $3,440.23 is confirmed.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 6th day of May, 2019.



Doug Surtees
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 or hearing pursuant to Part II, the wage assessment or the notice of hearing;
(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;
(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;
(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 considers appropriate.

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.