

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

APPELLANTS: MTD DOORS INC. and KEVIN ROBERT PIPKO, JOE ALAN MYERS, and DOUG ALAN MYERS as directors of MTD Doors Inc., and PRAIRIE BOY WINDOWS (2014) INC. and JOSEPH MYERS as director of Prairie Boy Windows (2014) Inc.

RESPONDENTS: JOSHUA LANG and the DIRECTOR OF EMPLOYMENT STANDARDS

DATE OF HEARING: April 4, 2019

PLACE OF HEARING: 3rd Floor Boardroom
1870 Albert Street
Regina, Saskatchewan



LRB File No. 027-19, Wage Assessment No. 1-000351

I. INTRODUCTION

Wage Assessment No. 1-000351 directed the Appellants to pay \$5,849.42 to Joshua Lang or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Joe Myers appealed the Wage Assessment on behalf of the Appellants.

On April 4, 2019, the following individuals attended the hearing:

- Joe Myers, director of MTD Doors Inc. and Prairie Boy Windows (2014) Inc. (MTD Doors and Prairie Boy Windows);
- Doug Myers, director of MTD Doors;
- Joshua Lang, former employee of MTD Doors and Prairie Boy Windows;
- Linda Hale, Joshua Lang's mother; and
- Jas McConnell, Employment Standards Officer.

II. THE DISPUTE

On January 7, 2019, a Delegate on behalf of the Director of Employment Standards issued Wage Assessment 1-000351 against the Appellants. Joe Myers appealed on behalf of the Appellants pursuant to section 2-75 of the Act.

Joe Myers commenced his appeal of the Wage Assessment by way of a letter dated February 1, 2019 to the Director of Employment Standards (the Notice of Appeal). Employment Standards received the Notice of appeal on February 1, 2019. In the Notice of Appeal, the Appellants stated the wages claimed in the Wage Assessment were incorrect due to days that were not worked by Joshua, vacation days that were taken by Joshua, and the use of the “common employer” approach to calculate pay instead of notice.

III. PRELIMINARY MATTERS/OBJECTIONS

In advance of the hearing, I was notified by Mr. McConnell that the parties had reached a settlement agreement. During settlement negotiations, the Appellants were represented by Denis Benoit, Provincial Employment Standards Consulting Inc. Mr. Benoit did not attend the hearing.

At the outset of the hearing, I asked the parties if they had indeed reached a settlement agreement. Doug Myers expressed his frustration with the entire employment standards process. He felt that the employers would have to pay no matter what and that it did not matter whether the employee was telling the truth. He said there was no integrity in the process. He felt the employers were penalized for not having evidence or records to back up their claims and that for this reason the employee “wins.” I explained that while employers are required to keep certain records under the Act, that I could also hear oral testimony about which days were or were not worked by Josh, for example. Doug Myers was not interested in proceeding with an appeal hearing and left the room after expressing his concerns and frustrations about the process in general.

After Doug Myers left the room, I again explained to Joe Myers that if he was unhappy with the settlement arrangement, he could proceed with his appeal on behalf of the Appellants. I explained that I could swear him in and that he could give oral testimony regarding wages owed (or not owed) to Joshua Lang, even if he did not have employment records or other written documentation to rely upon. Joe Myers indicated that he wanted the matter to be over and that he did not wish to testify or provide evidence for my consideration. He said they learned a lot of lessons during this process, including that they could not just be nice guys. He disagreed that Joshua is owed holiday pay given that Joshua took holidays, arrived to work late, left early, and did personal jobs for friends on company time. However, without a paper trail or way to prove it, he saw no benefit in proceeding with the hearing. In his view, they had already wasted enough time and money on this matter.

IV. THE FACTS

The parties chose not to tender evidence by way of sworn testimony and documents, except for three documents which were entered into evidence on behalf of the

employee.

The following exhibits were entered into evidence:

Employee Exhibits (Respondents)

EE1 – Copy of Employment Standards Inspection Report (1 page);

EE2 – Copy of emails outlining settlement negotiations (7 pages); and

EE3 – Copy of Employment Standards Wage Agreement Form (1 page).

V. ANALYSIS AND DECISION

While the Appellants were not happy with the settlement arrangement, both Doug and Joe Myers refused to present any evidence to establish that the amount of \$5,849.42 claimed in the Wage Assessment, which was subsequently lowered to \$5,316.34 by agreement, was incorrect. Section 2-75(9) of the Act says that a copy of the wage assessment is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing. The only evidence to suggest the amount claimed in the wage assessment is incorrect is the agreement (EE2 and EE3) reached between the parties to lower the amount owing by approximately \$500.00 (representing 3 days' pay for days not actually worked). I accept that Joshua Lang voluntarily agreed to accept the revised amount.

The Wage Assessment is varied accordingly, from \$5,849.42 to \$5,316.34.

VI. CONCLUSION

The appeal is allowed, in part, and the Wage Assessment is varied. The Appellants are ordered to pay the sum of \$5,316.34 to Joshua Lang.

DATED in Regina, Saskatchewan, this 5th day of April, 2019.



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.