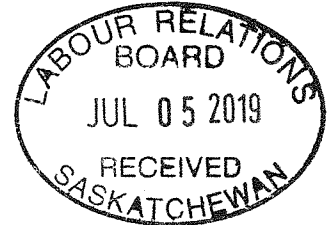


DECISION OF ADJUDICATOR  
IN THE MATTER OF AN ADJUDICATION  
PURSUANT TO SECTIONS 2-75 and 4-6 OF  
*THE SASKATCHEWAN EMPLOYMENT ACT*



APPELLANTS:  
(Employer) LPL Management Ltd.  
(Directors) Jason Bradley Lake  
Linda Peggy Ehman

RESPONDENT:  
(Employee) Aaron McKeown

Bonnie Cherewyk (lawyer) appearing for the Appellants

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

DATE OF HEARING: June 26, 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, LPL Management Ltd., from an amended Wage Assessment in the amount of \$3,733.26 in favour of the Employee, Aaron McKeown, dated April 30, 2019, amended June 18, 2019.

The Ministry and the Employee argue Aaron McKeown was laid off by the Employer and entitled to two weeks' notice pursuant to sections 2-60 and 2-1(1) of *The Saskatchewan Employment Act*.

The Employer argues two grounds of appeal. Firstly, that Mr. McKeown resigned from his employment and provided fourteen days' notice. Because of scheduled days off, wet weather conditions and outstanding permits, he was not required to work following the resignation. He therefore is not entitled to payment of wages following his resignation.

Secondly, according to common practice in the industry, and as specified in Mr. McKeown's employment contract, hours of work could vary dependent on weather conditions. The Employer stated in its written Appeal that "there is no obligation at law that requires an employer to provide work to an employee or provide pay in lieu of work, after the employee renders his or her resignation".

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

Jason Lake gave evidence on behalf of the Employer. Aaron McKeown testified by telephone on his own behalf. No other witnesses were called. The facts were essentially not in dispute.

LPL Management is a construction company which specializes in building, maintaining and repairing structures for grain-handling businesses throughout Saskatchewan. Its main office is in Lloydminster, Saskatchewan but the company's workers come from all over the province. Jason Lake is one of the owners of the business and its Field Operations Manager. Aaron McKeown began work as a Field Foreman with LPL Management on April 2, 2017. Immediately prior to that, he signed an Employment Agreement (Employer Exhibit #1) which, among other things, included the following paragraphs:

4.1 LPL Management works 10 on and 4 off. Your onsite hours will be 12 hours a day.

4.2 From time-to-time, you may be asked to alter these hours to accommodate work requirements.

The Agreement did not guarantee hours.

No evidence was presented as to whether the Employer had a modified work agreement, but it was not an issue brought up in the appeal or the Hearing.

Jason expanded on the provisions of the Employment Agreement during his testimony; employees regularly work twelve hour shifts for ten days, then have four days off. Workers are usually allocated the first day as a travel day, followed by eight days of work then one day of travel again, if required, depending on the location of the worksite. Events occasionally conspire to prevent a regular schedule. Inclement weather, a delay in equipment delivery (which frequently comes from overseas), or a hold-up of other materials can all result in an interruption of work.

Workers were paid an on-site subsistence allowance if they were away from home, even if there was a delay. If they did not work, however, they were not paid.

Delays were not unusual, and Aaron experienced them January 29-30, June 19-24, July 8, August 11-12, August 17 and August 27, 2018. None extended beyond six days.

During his employment, Aaron worked on a number of different job sites. As Foreman he was responsible for managing a crew ranging from one to seven workers and also over-seeing any sub-trades on site. In September 2018 Aaron was at work on a project located at a Hutterite Colony near Borden, Saskatchewan. He lived in Saskatoon and commuted.

On September 18, 2018 Aaron telephoned Jason and gave two weeks' notice of his intention to leave LPL Management and start work with another company – PCL Construction. He followed-up the phone-call with a formal email to the office later that day. His anticipated last day of work was October 1, 2018.

Aaron worked on the Borden job on September 18<sup>th</sup> and 19<sup>th</sup>. He then took his planned four days off and was scheduled to return to work on Monday, September 24 to oversee the completion of a concrete pour. However, it rained excessively in the area and the Rural Municipality refused to grant permits to the heavy cement trucks to travel on the rural roads; a road ban was in effect. The work could not continue as scheduled.

Aaron and Jason spoke during the week of September 24 about the status of the work. Jason was anxious for Aaron to finish the project as cement was an area of expertise for Aaron, and Jason wanted him to ensure the sub-trades did the job properly. However, the road ban remained.

Aaron was concerned about the lack of work and testified that he phoned the “labour board” on Friday of the week to inquire what his options were. He asked if he should go to work for his new employer, but said he was told that if he gave notice, he had to be available to work for his existing employer. He did not call Jason to ask him the same question.

Jason testified that no LPL Management employees were able to work on the project for fourteen days while waiting for the road permits to be granted. The company had only one other job at the time – in Gull Lake, Saskatchewan, about 450 km. from Saskatoon – but that project had its full complement of workers. A few employees were also working at the company's shop in Unity, Saskatchewan. However, there was no work for Aaron to do for the company during the rain delay.

Aaron was paid for his work of September 18 and 19 by pay cheque issued Sept 28, 2018.

### **III. ANALYSIS**

The Ministry argues Aaron was laid-off without notice and entitled to two weeks' pay in lieu of notice.

*The Saskatchewan Employment Act* defines “layoff” as follows:

2 -1(l) “**layoff**” means the temporary interruption by an employer of the services of an employee for a period exceeding six consecutive work days;

The *Act* also states

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:

<b>Employee’s Period of Employment</b>	<b>Minimum Period of Written Notice</b>
..... more than one year but three years or less	two weeks

Obviously LPL Management could not, and did not, provide written notice of the ‘layoff’, given that no one knew that the rain would result in a cessation of work on the Borden project. The Employee relies on the statutory definition; Aaron experienced a temporary interruption in work for 6 work days (September 24, 25, 26, 27, 28, 29) which means he falls within the *Act*’s definition of “layoff”, and is therefore entitled to two weeks’ pay in lieu of notice.

The Employer argues against this position on two grounds. First of all, the Employment Agreement entered into by the parties did not guarantee the Employee a certain number of hours. Indeed, over the period of Aaron’s employment, there were several days where he did not work as a result of factors beyond the control of the parties, be it weather, or materials or equipment which had not arrived. Jason Lake testified on behalf of the Employer that these were foreseeable contingencies in the industry, which was why it was addressed in the Employment Agreement. Since no work was available, no money is owed to Aaron.

The second ground was simply that the Aaron had already quit his job, by properly giving two weeks’ notice to the Employer on September 18<sup>th</sup>, 2018. Counsel for the Employer argued no law requires to the employer to provide work after an employee gives notice.

I note there was no issue of whether LPL was ‘punishing’ Aaron for quitting; there simply was no work at the job site. No one from the company was able to work there until the road ban was lifted, which took 14 days.

To address these arguments, I refer to section 2-6 of *The Saskatchewan Employment Act*:

2-6 No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part.

No matter what the Employment Agreement contains, the Employee is still entitled to the minimum standards set out in the *Act*. The notice provisions for layoff in the *Act* are intended to provide protection to employees from periods of uncertainty in their employment. They are

directed, at least in part, at ensuring employees receive termination pay at a certain point after being laid off.

However, a “layoff” is a temporary suspension of the employer/employee relationship. In the present case that relationship was not going to continue past October 1, 2018 because Mr. McKeown had already tendered written notice that would be his last day of work (2 weeks from September 18). It would be unfair and unreasonable to require an employer to pay notice to an employee beyond the period the employee intended to work for the company.

I note that Aaron could have mitigated this loss by going to work for his new employer, PCL Construction, and would have done so but for the ‘advice’ he testified he received from the ‘labour board’.

Based on the facts of this case, I therefore find that Mr. McKeown is entitled only to notice for the two days he would have worked after the six days interruption in work deemed him to be laid-off, or for September 30 and October 1, 2018.

#### **IV. DAMAGES**

Based on the Employment Standards Officer’s calculations (Employee Exhibit #1), Aaron McKeown’s pay for the 13 weeks prior to his last day of work totaled \$22,060, which works out to \$339.38 per day. Two days’ notice totals \$678.76.

#### **V. CONCLUSION**

I allow the Employer’s appeal in part, overturn the Wage Assessment, and award the Employee \$678.76.

Dated at North Battleford, Saskatchewan: July 4, 2019.

Original signed by \_\_\_\_\_  
Karen C. Ulmer  
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](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.