

January 28, 2019

110904-020/LTKS

Saskatchewan Labour Relations Board
1600 – 1920 Broad Street
Regina, SK S4P 3V2

Attention: Fred Bayer, Board Registrar

Via Email and Purolator

Dear Sir:

**Re: LRB File No. 151-18: Wunderbar Tack Shop Inc. o/a Critters Pet Health Store v. Michelle Kauth
WA #1-000070 \$1,407.48.**

Further to the above captioned matter, please find enclosed the following documents with respect to LRB Number 102-17:

- 1) Decision dated January 28, 2019;
- 2) Exhibits; and
- 3) Statement of Account dated January 28, 2019.

Please note that the cheque should be made payable to Cuelenaere LLP; not Leslie Sullivan. We would also appreciate it if you could put our Invoice number on the cheque.

Yours truly,

CUELENAERE LLP

Per: 

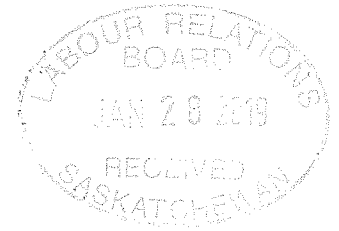
Leslie T. K. Sullivan, Q.C.

/vh

Direct Line: (306) 477-7261

Email: lsullivan@cuelenaere.com

Enclosures.



DECISION OF ADJUDICATOR
IN THE MATTER OF AN APPEAL
PURSUANT TO SECTION 2-75 WITH RESPECT TO A DECISION OF
AN EMPLOYMENT STANDARDS OFFICER PURSUANT TO
THE SASKATCHEWAN EMPLOYMENT ACT,
R. S. S. S-15.1 (as amended)

APPELLANT: Wunderbar Tack Shop Inc. o/a
Critters Pet Health Store

RESPONDENT: Michelle Kauth

and

Director of Employment Standards
Ministry of Labour Relations and Workplace Safety

DATE OF HEARING: November 6, 2018

PLACE OF HEARING: Saskatoon, Saskatchewan

I. INTRODUCTION

This is an appeal by Wunderbar Tack Shop Inc. o/a Critters Pet Health Store (hereinafter referred to as Critters) with respect to a Wage Assessment issued by the Respondent, the Director, Employment Standards Branch, Ministry of Labour Relations and Workplace Safety, on June 29, 2018. The Wage Assessment required the Appellant to pay Michelle Kauth the sum of 1,407.48 representing unpaid wages. The Wage Assessment was prepared pursuant to s. 2-74 of *The Saskatchewan Employment Act*, RSS S-15.1 (as amended).

This matter was heard before me on November 6, 2018. The Appellant was represented by Edward Friesen, Director and Owner of Critters. Present for the Respondent at the Hearing was Dale Schmidt, Department of Employment Standards as well as the employee, Michelle Kauth and her husband Kris Kauth.

The Appeal was perfected as the Wage Assessment was issued on June 29, 2018 and the Notice of Appeal was received, along with the prescribed fee, on July 12, 2018.

II. PRELIMINARY MATTERS

All parties remained present throughout the hearing and there were no other preliminary matters.

III. THE ISSUE

The issue was whether the employee was required or expected to be on the business premises of Critters throughout the day, during times she did not have grooming appointments. If so, she would be entitled to pay for those hours.

This appeal is therefore with respect to the application of *The Saskatchewan Employment Act* RSS S-2-16(1), which states:

Section 2-16(1) 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.

IV. EVIDENCE

Edward Friesen gave evidence on behalf of Critters. Critters is a pet supply store that also provides grooming services to its customers. There are three stores in Saskatoon. Michelle Kauth had been hired approximately five years prior as one of the groomers. Mr. Friesen's position was that the only pay Ms. Kauth was to receive was a commission of 50% of her grooming fees. She would have scheduled grooming appointments and otherwise, she was free to come and go as she pleased. She could choose to stay at the store to see if there was any walk-in business or leave. While she was there, she could

answer the phone, but she was never told she had to do that or assist with other customers. Mr. Friesen said that an employment contract had been signed, but he did not bring a copy. While Critters may have kept a record of her hours, it was unclear as to whether that documentation existed, or he just did not bring it with him. He was unaware of whether Ms. Kauth kept track of her own hours. Mr. Friesen referred to other witnesses who would back up his evidence, but these individuals did not attend the hearing. I did not accept his hearsay evidence on this crucial information. Ms. Kauth arranged the days she would work and that was fine with them. That, to him, proved that she could determine her own hours.

Mr. Friesen acknowledged that he was not always at the Critters location where Ms. Kauth worked. He was often at one of the other stores and at the end of the they moved inventory from store to store as needed, so he was busy with that. His version of events was remarkably different than that of Michelle Kauth. Mr. Friesen was adamant that Ms. Kauth was not required to work any hours over and above her grooming times and said she was lying when she provided details of her hours at the hearing. Mr. Friesen was unable to produce any documentation regarding the terms of Ms. Kauth's employment, how her pay was to be determined or what her hours were. He claimed there were other witnesses, but none attended to testify. Given the lack of corroborating evidence that should have been readily available, it was difficult to accept Mr. Friesen's evidence.

Michelle Kauth testified. She usually dealt with Jeff, one of the Critters managers and seldom communicated with Mr. Friesen. When she returned from a maternity leave, there was a verbal discussion about the days she would work and the hours. Her understanding was that her hours were from 10:00 AM (when the store opened) until 5:00 PM. Due to child care issues, she worked three days per week: Monday, Thursday and Friday. She went to work at 10 AM whether or not she had a grooming appointment.

Ms. Kauth was kept busy on her working days. There would be prescheduled groomings, walk-in appointments, nail trimmings and random express services. In addition, there would be phone calls for Critters or just about grooming.

She filed her complaint with Employment Standards on March 5, 2017. Therefore, her claim for wages is for the one year from March 5, 2017 to March 5, 2018.

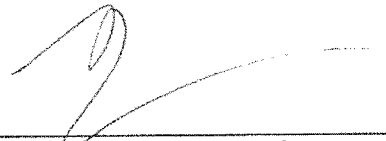
Ms. Kauth provided substantial corroboration regarding her hours. She provided as Exhibit EE1 a detailed spreadsheet with seven columns. The first column showed the grooming fees she collected, with the second column showing her 50% commission. The third column was the date and the fourth showed the total number of hours worked that date. The sixth column showed what her wages should be for that date if she earned minimum wage per hour (\$75.04 for up to 7 hours). The final column showed the top up necessary after grooming income so her total wages for the day would be in line with the minimum wage. It was this column that demonstrated her claim for unpaid wages. The total in this final column was her unpaid wages, which added up to the amount of the wage assessment. I found this to be a detailed document and Ms. Kauth's explanation of it was clear and credible. Ms. Kauth also filed Exhibit EE2, which had examples of her emails with her employer discussing her days and hours. An email exchange on page two of EE2 showed that on February 2, 2018, Ms. Kauth asked her employer if she could leave early, at 3 PM. The reply email grants permission. There would be no need to ask her employer if she could leave early if she could come and go as she pleased when there were no grooming appointments. In addition, Ms. Kauth supplied examples of the Critters appointment book in Exhibit EE3. Ms. Kauth took photos of the pages in order to help her keep track of her hours for entry into the abovementioned spread sheet. EE 3 is self-

explanatory. I believe that on the three days a week Ms. Kauth was at Critters, her attendance at the store was required regardless of her grooming appointments.

V. CONCLUSION

As I find that on the three days a week Ms. Kauth was at Critters, her attendance at the store was required regardless of her grooming appointments, she is entitled to be paid for up to seven hours for each day she worked. The appeal is dismissed, and the Wage Assessment is hereby upheld.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 28th day of January 2019.



Leslie T.K. Sullivan, Q.C.
Adjudicator

Exhibit List

EE 1	Hours Worked and Pay Spreadsheet
EE 2	Emails
EE 3	Photos of Appointment Book dates

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.