

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



Scott McGillis

COMPLAINANT/EMPLOYEE

-AND-

South Central Cattle Co. Ltd.

APPELLANT/EMPLOYER

DATES OF HEARING: August 13, 2019  
 September 24, 2019

PLACE OF HEARING: Moose Jaw, SK

LRB FILE: No. 175-2019  
 WAGE ASSESSMENT: No. 1-000257

**INTRODUCTION**

This matter was heard before me on August 13, 2019 and September 24, 2019 in Moose Jaw, Saskatchewan.

I am satisfied there has been compliance with subsections 2-74(6), 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). Therefore I have determined that I do have jurisdiction to hear this matter.

Randy Armitage, Employment Standards Officer represented the Department of Employment Standards.

Complainant/Employee, Scott McGillis attended and gave sworn evidence on his behalf.

The Appellant/Employer, South Central Cattle Co. Ltd, was represented by Louise Beauchesne and she gave sworn evidence on behalf of the Corporation.

The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014 c.s-15.1, herein after referred to as "The Act" is for \$3,131.66.

**I. PRELIMINARY MATTERS**

There were no preliminary matters raised by the parties.

**II. AGREED FACTS**

The parties agreed as follows:

1. That Mr. McGillis was an employee of the Corporation and that he was employed from January 28, 2019 up to and including April 1, 2019.
2. The hours contained in the Wage Assessment correctly reflect the hours worked by the employee at 492.53 hours.
3. They agree that the Wage Assessment of \$3,131.66 is correct and is owed to the employee by the Corporation unless the Corporation is exempted by Section 2-3 of The Act.
4. The Corporation is a registered Corporation under Saskatchewan Legislation.
5. The Corporation is a farm under the definition of Section 2-3 of The Act.

6. The employee and employment standards officer accept that the deductions claimed by the employer in the amount of \$1,984.82 are owed by the employee to the employer.

### **III. DISPUTE**

The employer states that only \$1,573.76 is owed by the corporation to the employee, not the amount set out in the Wage Assessment of \$3,131.66.

The other issue to be determined is whether the employee's duties were primarily consistent of activities engaging in farming or ranching as set out in Section 2-3 of The Act.

### **IV. EVIDENCE OF THE EMPLOYER**

Ms. Louise Beauchesne was sworn and gave evidence as follows:

The employer agreed that the defendant had worked 492.53 hours at the rate of \$20.00/hour for a total wage earning of \$9,850.60.

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The employee has been paid \$6,860.40 and consequently is owed \$2,990.20 plus holiday pay of \$568.30, for a total owing of \$3,558.50.

The employer states that from this total amount owing there should be the following deductions:

- February 2019 Rent \$ 750.00
- March 2019 Rent \$ 750.00
- Clean up of the rented house \$ 200.00
- Cash borrowed from Ryan Gibson \$ 200.00
- Group Insurance Premium \$ 84.82

The above amounts are owed to them by the employee and should be deducted from any monies owing to the employee.

The employer's calculations of the amount owed is as follows:

- Wages owed \$2,990.20
- Holiday pay \$ 568.38
- LESS deductions (\$1,984.82)

Total owing to employee before statutory deductions is \$1,573.76.

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Under Cross examination the employment standards officer entered Exhibit ESO5, a letter from the witness to Scott McGillis.

The witness confirmed that that position requirements set out in the letter and the duties set out in the letter were correct and applied to the employee, Scott McGillis, in particular that the employees duties included repairing equipment and operating equipment at the cattle operation.

The witness agreed that the employer paid the employee straight time for hours worked whether or not they exceeded 8 hours in a day or 40 hours in a week.

**V. EVIDENCE OF THE EMPLOYEE**

Mr. McGillis was sworn and gave the following evidence:

The employee agreed to the dates that the corporation said that he was employed.

The employee was referred to the company by a friend of the employer when he first obtained his employment.

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The employee agrees with the position requirements and duties set out in the letter identified as ESO5, however, his actual job required him to repair trucks and equipment approximately 95% of his time and worked with the cattle and related ranching work approximately 5% of the time.

Towards the end of his employment, as another employee had left, he was required to work more with the cattle.

The employee stated that on some days he worked more than 8 hours a day and some weeks he worked more than 40 hours a week, however was paid straight time for all the hours of work.

The employee was paid on a timely basis except when he terminated his employment and said that the amount in the wage assessment is outstanding and owed to him by the employer.

with the exception of the rent wherein he states that he agreed to paid rent at the rate of \$400.00/month not \$750.00/month.

The employee agrees that he received a \$200.00 advance and should pay the group insurance of \$84.82 and agrees with the cleanup charge of the house of \$200.00.

After the employees cross examination the parties requested an adjournment in order discuss settlement terms. The adjournment was granted and when the parties returned from the adjournment they had agreed upon terms. However, later that day the agreement broke down and the parties requested that the hearing continue at a future date.

The adjourned date for the hearing was September 24, 2019 in Board Room 1 at the Provincial Building in the City of Moose Jaw, SK.

The same parties at the original hearing were present at the adjourned date except for Mr. McGillis who chose not to attend.



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The employee agrees with the deductions claimed by the employer

## **VI. ANALYSIS/DECISION**

The employer has 2 arguments with regard to the act not applying to the employee.

1. The employee knew the terms of employment at the time he agreed to commence work for the employer and was fully aware that he would not be receiving overtime pay or other benefits.

Section 2-6 of The Act sets out that an employee and employer may not contract out of the legislation and any such agreement that purports to do so is unenforceable.

Therefore the employer's argument fails in this regard.

2. The employer's second argument is that the employer operates a farming operation and as such its employee's including Mr. McGillis are exempt from The Act.

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The Saskatchewan Employment Act permits an exemption from the act for employees whose primary duties consist of actively engaging in farming activities.

All parties agree that the employer was a farming activity within the meaning of s2(3) of The Act.

The legislation exemption for farms was recently discussed in *Rocking Hills Cattle Co. Ltd., v. Director of Labour Standards*, 2011 SKQB 453, wherein Madam Justice Gunn adopted Mr. Justice Scheibel's four part test for the analysis of s4(3) exemption.

The test to be applied was summarized as follows:

- i. Employee performs farm/ranch type activities;
- ii. Employee employed by a farming operation;
- iii. Work done exclusively for the farm or farming operation;
- iv. Workers not engaged in processing of the product.

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The evidence from both the employer and employee is that his duties fall under the description of mechanical maintenance and mechanical repair rather than traditional farm type activities.

The type of work being performed by Mr. McGillis was not primarily farm work as the same type of work is being performed in agricultural equipment dealerships and repair shops across the province daily.

I find that the work primarily done by the employee does not fall within the meaning of farm work, in other words, the employee was not primarily employed in farming.

The deductions and offsets claimed by the employer in their appeal were previously agreed to by the employee and Employment Standards Officer and were deducted from the amount owed by the employer to the employee to arrive at the wage assessment. Resultantly the employer has received credit for the offsets claimed in their appeal in the wage assessment amount of \$3,131.66.

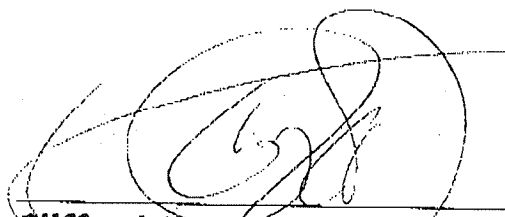
**VI. CONCLUSION**

The wage assessment is upheld in the amount of \$3,131.66.

The employer and employee and Employment Standards Officer agree that the sum of \$2,273.71 was paid by the employer to the employee since the first hearing date was held.

Therefore the amount owing to the employee from the employer is \$857.95 (\$3,131.66-\$2,273.71).

Dated at Moose Jaw, in the Province of Saskatchewan, this 16<sup>th</sup> of October, 2019.

  
**Clifford B. Wheatley**  
Adjudicator

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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 <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.