

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



Kaitlyn Gorsalitz

COMPLAINANT/EMPLOYEE

-AND-

Push Software Interactions Inc. and Chad Jones

APPELLANT/EMPLOYER

DATES OF HEARING: November 21, 2019

PLACE OF HEARING: Saskatoon, SK

LRB FILE: No. 206-2019

WAGE ASSESSMENT: No. 1-000271

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INTRODUCTION

This matter was heard before me on November 21, 2019 in Saskatoon, 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.

Stephen Moorgen and Kelly Harris, Employment Standards Officers represented the Department of Employment Standards.

Complainant/Employee, Kaitlyn Gorsalitz attended and gave sworn evidence on her behalf.

The Complainant/Employee was represented by Mr. Monfette, Barrister and Solicitor. Mr. Monfette attended the hearing by way of telephone.

The Appellant/Employer, Push Software Interactions Inc., was represented by Chad Jones and he gave sworn evidence on behalf of the Corporation.

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The Director, Chad Jones, represented himself and gave sworn evidence on his behalf.

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 \$17,642.87.

I. PRELIMINARY MATTERS

The Employment Standards Officer indicated that a recalculation of the Wage Assessment owing was such that it was reduced by \$1.42. The Wage Assessment therefore being \$17,641.45.

The Employer took no issue with this amendment.

II. AGREED FACTS

The parties agreed as follows:

1. That Ms. Gorsalitz was an employee from May 23, 2018 up to and including March 11, 2019.
2. That Ms. Gorsalitz was paid at the rate of \$55,000/year.

III. DISPUTE

The Employer takes the position that the Corporation only owes the employee \$11,467.85 rather than the amount set out in the Wage Assessment of \$17,141.45.

IV. EVIDENCE OF THE EMPLOYER

Chad Jones was sworn and gave evidence as follows:

The employer had calculated the amount owing to the employee by the Corporation and set such amount out with his calculations on Employer Exhibit 1.

The employer's calculations deducted benefits paid on behalf of the employee in the amount of \$79.56 monthly commencing April 1, 2019 up to and including October 2019.

The employer also took the position that the employee had taken 10.5 days of vacation during her period of employment and was therefore only owed 1.75 vacation days.

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The employer also deducted amounts for Employment Insurance, Canadian Pension Plan and Income Tax.

The employer took the position that these deductions were not payable to the employee even though the deductions had not been remitted to the respective Government Agencies.

The employer's calculations left an amount owing to the employee of \$11,467.85.

Under cross examination Mr. Jones confirmed that he was the sole director of the corporation.

Mr. Jones stated that corporation had generated the pay slips for the employee that are listed under tab 7 of the Employment Standards Officer Exhibit 1.

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The employer admitted that the company was behind on payments to the employee and stated that it was as a result of bookkeeping issues in the corporation.

The employer confirmed that the corporation did not list any vacation pay or benefit deductions on the any of the pay slips.

The employer also confirmed that payments for the employee benefits all occurred outside of the wage assessment time frame as the wage assessment was up to March 11, 2019 and the benefits did not commence until April and thereafter.

V. EVIDENCE OF THE EMPLOYEE

Ms. Gorsalitz was sworn and gave the following evidence:

That she commenced employment with the employer and signed the employment agreement set out under Tab 8 of ESO 1.

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That she was paid by direct deposit on a monthly basis; however was not paid for November and December of 2018, February and March of 2019.

Ms. Gorsalitz confirmed that she took 4 days' vacation but did not take the other days alleged by the employer.

Ms. Gorsalitz confirmed, when asked by Mr. Monfette, that the employment agreement (in schedule A) set out that the employee was to have a benefits package. She had not been advised that the employee would have to make any payments whatsoever regarding this benefit package, and, any such package would have been part of the employment agreement.

VI. ANALYSIS/DECISION

Section 75(9) provides the wage assessment to be proof the amount stated is owing, unless there is evidence to the contrary. The employer takes no issue that the wages are owed to the employee, only that the wage assessment should be \$11,467.85.

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This sum is arrived at by the employer deducting monies from the wage assessment for vacation, benefits and source deductions for EI, CPP and Income Tax.

I will deal with each deduction independently. It should be noted at the outset that the employer presented no evidence to the contrary on any of the issues raised.

The employer only filed a spreadsheet he created recently in support of his position.

The employer's record keeping does not meet the legislative standards set out by the legislation.

Vacation Pay

The employer has deducted 10.5 days for vacation pay taken by the employee.

The employee says that she only took 4 days' vacation.

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The pay statements prepared by the employer do not show any vacation time taken by the employee. Section 2-38 of the act states that the employer is obligated to keep records regarding the employee. No such records were produced.

Section 2-37 says that vacation pay must be shown on the employees pay statement, if it is not, then the act deems that the vacation pay not to have been paid.

The Employee and Employment Standards Officer agrees that 4 days' vacation were taken by the Employee would constitute a deduction from the wage assessment of \$846.08 (8 hours x 4 days x \$26.44/hour).

The employer presented no documentation or evidence to the contrary regarding the vacation taken.

I accept the employee's evidence that she only took 4 days holidays and the wage assessment will be reduced by \$846.08.

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Benefits

The employer has claimed a deduction for benefits that the corporation apparently paid for the employee. Again, no records were produced by the employer.

The payments were made to a third party and such payments only commenced after the time frame of the wage assessment.

In addition, according to the employment agreement, such benefits were to be paid for by the employer.

Therefore, the employers claim for this being a deduction from the wage assessment is denied.

Statutory Deductions

Deductions for statutory deductions such as EI, CPP and income tax are also disallowed.

These source deductions represent employee money that is withheld by the employer in accordance with Federal Statutes. These monies

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are to be remitted by the employer to the respective agencies on behalf of the employee.

These deductions are therefore not deductible from the wage assessment.

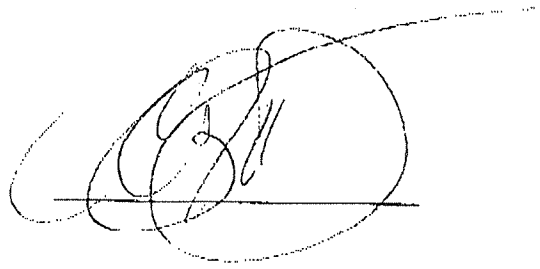
VI. CONCLUSION

The wage assessment is varied to the amount of \$16,795.37

Original wage assessment	\$17,642.87
Less calculating error	(\$ <u>1.42</u>)
Wage Assessment	\$17,641.45
Wage Assessment	\$17,641.45
Less 4 Days' Vacation	(\$ <u>846.08</u>)
	\$16,795.37

Dated at Moose Jaw, in the Province of Saskatchewan, this 19th of December, 2019.

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A handwritten signature in black ink, appearing to be 'CBW', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

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.