



**DECISION OF ADJUDICATOR**

**IN THE MATTER OF AN ADJUDICATION PURSUANT TO SECTION 2-75**

**AND 4-6 OF *THE SASKATCHEWAN EMPLOYMENT ACT***

**APPELLANTS:** **DEVIN SCHULTZ and LINDSAY SCHULTZ, operating as SCHULTZ'S RANCH COUNTRY MEATS**

**RESPONDENTS:** **TANYA FRIESEN and the DIRECTOR OF EMPLOYMENT STANDARDS**

**DATE OF HEARING:** **September 30, 2020**

**PLACE OF HEARING:** **Conference Room #2  
110 Ominica Street West  
Moose Jaw, Saskatchewan**

**LRB File No. 031-20, Wage Assessment No. 1-000368**

**I. INTRODUCTION**

On February 6, 2020, a Director's Delegate for the Director of Employment Standards issued Wage Assessment No. 1-000368, directing the Appellants to pay \$592.30 to Tanya Friesen or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Devin Schultz appealed the Wage Assessment on behalf of the Appellants.

On September 30, 2020, I attended the hearing in Moose Jaw, along with Randy Armitage, Employment Standards Officer, and Tanya Friesen, former employee of Schultz's Ranch Country Meats (the Company). Prior to the hearing, I gave Ms. Friesen permission to appear at the hearing by telephone and that is how she appeared. Mr. Schultz did not attend the hearing.

## **II. THE DISPUTE**

Mr. Schultz commenced his appeal of the Wage Assessment by way of a letter dated February 12, 2020 (the Notice of Appeal), received by Employment Standards on February 14, 2020. The amount claimed in the Wage Assessment represents pay instead of notice and annual vacation pay owed to Ms. Friesen. In the Notice of Appeal, Mr. Schultz stated Ms. Friesen, “walked out on her duties...and failed to provide reasonable grounds for doing so.” He accused her of insubordination and asked that Ms. Friesen pay a penalty payment to them.

## **III. DECISION**

The Appellants, and specifically Mr. Schultz, had notice of the hearing. I sent multiple hearing notices to his email address, all of which were acknowledged by reply emails from him. The Labour Relations Board also sent formal hearing notices by email.

Mr. Schultz did not attend the hearing. The Appellants did not send anyone to represent them. Section 2-75(9) of the Act states that a copy of the wage assessment provided to the adjudicator is, “proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing, without proof of the signature or official position of the person appearing to have signed the wage assessment.”

With no evidence to the contrary, I find that the amount of the Wage Assessment is due and owing. I have no evidentiary basis to grant the appeal.

## **IV. PRELIMINARY OBJECTIONS FOR THE RECORD**

Mr. Schultz raised several objections during the scheduling phase of the process. He wanted the hearing to be held as soon as possible until I granted Ms. Friesen permission to attend the hearing by telephone, due to her concerns relating to Covid-19. Mr. Schultz objected to this decision and wanted to delay the hearing until such time as Ms. Friesen would appear in person. Although I granted him permission to appear by telephone as well, Mr. Schultz refused to consent to the scheduling of the hearing without his “accuser” physically present.

Several weeks after granting a last-minute adjournment relating to the original hearing date scheduled for August 25<sup>th</sup>, Mr. Schultz advised that he was unable to consent to his appeal hearing being held before 2021. He said that due to a busy work season, he was totally unavailable, even by telephone, until the new year. When I indicated the hearing would proceed as (re)scheduled, Mr. Schultz said that I was biased and demanded that I be replaced as adjudicator. I assured Mr. Schultz that I was not biased and that I wanted to hear his evidence. I told him that I would address his concerns in my written decision so that his objections were on the record. I advised him on his right to appeal my decision should he ultimately disagree with it.

Mr. Shultz failed to appear and indicated he intends to appeal my decision. I will provide a summary below detailing the timeline of events and his objections, in order to create a record of his objections.

On March 5, 2020, I was selected as the Adjudicator for this matter. On March 9<sup>th</sup>, I contacted the parties asking for dates on which they would be available to attend the appeal hearing. I also asked the parties whether they would prefer the hearing to be held in Regina or Moose Jaw. Before settling on a date, the Province of Saskatchewan declared a state of emergency relating to Covid-19. On March 19<sup>th</sup>, I advised the parties that I would contact them again when it was safe to proceed.

On July 28<sup>th</sup>, I contacted the parties to determine whether they were comfortable proceeding with the hearing, employing necessary safety precautions, or whether they would prefer to postpone scheduling of the hearing. Mr. Schultz advised that he wanted to be “exonerated as quickly as possible” and that he was comfortable attending the hearing in person. Ms. Friesen also indicated her preference to proceed. Although she was not comfortable attending the hearing in-person for health and safety reasons, she was willing to attend by telephone.

After consultation with the parties, I sent a hearing notice on August 14<sup>th</sup> that read as follows:

I have scheduled the appeal hearing for the above-referenced matter for 10:00 a.m. on Tuesday, August 25, 2020. The hearing will be held in Moose Jaw in conference room 2, located in the basement of 110 Ominica St. West.

I have given Ms. Friesen permission to appear at the hearing by telephone due to concerns relating to Covid-19. I would ask Mr. Armitage to ensure that we have a telephone in the hearing room and that he have the requisite contact information for Ms. Friesen.

Mr. Schultz, Mr. Armitage and I plan to attend the hearing in person. We will take necessary precautions including wearing masks, distancing as much as physically possible and using sanitizer. I expect the hearing will take 1-2 hours.

I would ask that all parties exchange copies of any documents they plan to rely on as part of their case by email, well in advance of the hearing. Preferably, all documents should be exchanged by Tuesday, August 18.

If you have any questions or concerns in advance of the hearing, please do not hesitate to contact me. I look forward to meeting with you on August 25<sup>th</sup>.

On August 15<sup>th</sup>, Mr. Schultz emailed me to say, "I'm sorry but I won't consent to a meeting where my accuser is not present. I will be there in person and I will expect [t]he same decency and respect in return."

On August 15<sup>th</sup>, I responded to Mr. Schultz:

I am the Adjudicator and I've decided that it is reasonable under the circumstances to allow Ms. Friesen to appear and give evidence by telephone. I have the authority to make this decision. You will have the opportunity to cross examine Ms. Friesen and to present your evidence. The appeal will proceed as scheduled.

If you choose not to give your evidence, I will have no choice but to dismiss your appeal. It is your choice but as the Appellant, it is important that I hear your evidence. Otherwise, the Wage Assessment will stand.

I look forward to hearing your evidence on August 25, 2020.

Mr. Schultz emailed me again on August 16, stating he felt "unfairly targeted" and that his "accuser doesn't have the confidence to show up in person." I tried to reassure him by replying:

Again, the appeal hearing on August 25 is your opportunity to present your case. If you've felt unfairly targeted, that is your opportunity to explain how and why. I want to hear what you have to say. I assure you that you'll have the opportunity to ask Ms. Friesen any relevant questions that you have for her.

Please forward copies of any documents you want me to consider as well.

I look forward to seeing you at the appeal hearing.

On August 17<sup>th</sup>, Mr. Schultz sent two more emails saying that he would not consent to a hearing until Ms. Friesen agreed to appear in person. I again responded, explaining that I had scheduled the hearing after consultation with both sides and that I was unwilling to change the date over his objection to Ms. Friesen appearing by telephone. I advised him that I would record his objection in my written decision in case he decided to appeal. I reiterated that it was his appeal and his choice whether to provide evidence. I concluded by stating, "We do not need to discuss this particular issue any further."

On August 20<sup>th</sup>, I reminded Mr. Schultz to share any documents he intended to rely upon in advance of the hearing and reiterated that I would ensure, "there is a full and fair hearing of the issues and that you have the opportunity to fully cross-examine Ms. Friesen on her evidence."

At 2:40 p.m. on August 24<sup>th</sup>, Mr. Schultz sent an email to the parties indicating that his wife was due with their second child that they had been informed that the due date had moved up from September 5<sup>th</sup> to “any day now.” He indicated that he was not comfortable being apart from his wife. Due to this new information, I granted Mr. Shultz’s request for an adjournment. Given that Mr. Armitage had previously advised that he would be away from August 31 to September 25, I asked the parties to advise of their availability and/or preference of hearing date during the week of September 25<sup>th</sup>.

Mr. Armitage was the only person to respond to my request for dates and he advised that he was available on September 29<sup>th</sup> and 30<sup>th</sup>. On September 14<sup>th</sup>, I sent a hearing notice to the parties indicating that the new hearing date would be September 30<sup>th</sup>, at the same time and location. On September 15<sup>th</sup>, Mr. Schultz responded as follows:

Hello,

To answer your questions, yes my wife gave birth to a baby boy at 1:43 am on Sept. 9<sup>th</sup>. He is healthy and strong so we don’t have those worries over our heads at this point. I am not available on the dates that have been suggested, hunting season has begun and in my industry that keeps us busy from now until Christmas. There is no wiggle room in my schedule since, as the business owner, I am needed on site at the cutting table due to the shortage of qualified employees in my rural area.

To further address my issues of my accuser not being present at this trial, I must inform you that the bulk of my objection is on religious grounds. The usual response to my religious objections is one of mockery and dismissal, but I am quite serious. I observe the heathen traditions, of which you may find a cursory overview at The Longship: <https://www.thelongship.net/>. Its most widespread expression is known as Asatru which is a recognized organization in Canada. Central to my beliefs is the concept of honour. A person’s honour is most harmed most detrimentally by insult, which is what a trial of an accused in the absence of an accuser amounts to. To insult a person’s honour this way in my beliefs is one of the greatest misdeeds a person could undertake.

The sagas speak to this point. When the althing was convened, which was traditionally the assembly governing religious and civil law, a man’s accuser would need to be in attendance to bring their accusations forward. It was also dishonourable for the accused to not be in attendance. Other sagas say that when a man was challenged on the law, and his accuser failed to materialize at the agreed upon day, that man’s case was null and the accuser was then regarded as a shameful person for attempting to damage another man’s honour.

The bottom line is that to have my accuser not be present but have my honour be challenged anyway is of the highest insult to me and my religious views. In my

religious views, assemblies of law are also sacred spaces. Nobody is in any mortal danger by being in the same room as me and I am duty bound to defend my honour in person, as is my accuser. On these grounds, this issue is akin to having a muslim woman remove her head scarf or a jewish man remove his kippah. Just because my honour is invisible does not mean that it is allowed to be stripped away.

I insist on religious grounds that this matter be postponed until Ms. Friesen's concerns over the coronavirus are mitigated enough that she will attend such a trial in person. As my schedule is now entirely consumed until the new year I trust there will be enough time to accommodate this.

On September 18<sup>th</sup>, I responded to Mr. Schultz's email by detailing my attempts at accommodating the schedules and concerns of the parties. I concluded by stating,

While I appreciate Mr. Schultz's objections, the hearing will proceed on September 30, 2020. Given that this is a busy season for him, a fact that he would have known when he sought the original adjournment, I am happy to allow him to appear by telephone so as to minimize his time away from the cutting table. He need only provide the phone number at which he can be reached at 10:00 a.m. on September 30<sup>th</sup>. Any other objections may be presented to me again at the outset of the hearing and I will rule on them and include them in my written decision so that he may appeal my decision, including any preliminary or procedural issues, should he disagree with it.

It is time for this appeal to proceed. It will take place on September 30<sup>th</sup>.

Mr. Schultz sent emails on September 19, 21, 24, alleging bias on my part. I sent one last response on September 29<sup>th</sup>, stating:

My decision to allow Ms. Friesen to appear at the hearing by telephone during a pandemic is a reasonable one. You believe it means I am biased. I assure you I am not. I want to hear your evidence. I've already granted you an adjournment and it is important at this time for your appeal to proceed. I will reiterate that you may provide a telephone number at which you can be reached for the hearing if that makes it easier for you.

I look forward to hearing your appeal tomorrow at 10:00 a.m.

On September 29<sup>th</sup>, Mr. Schultz responded with another email reiterating his objections. On September 30<sup>th</sup>, he did not attend the hearing.



## V. CONCLUSION

The appeal is dismissed and the Wage Assessment is upheld. The Appellants are ordered to pay the sum of \$592.30 to Tanya Friesen.

DATED in Regina, Saskatchewan, this 5 day of October, 2020.



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](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.