



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

Donald Anderson

COMPLAINANT/EMPLOYEE

-AND-

Sonshine Gas & Wash

APPELLANT/EMPLOYER

DATES OF HEARING: September 9, 2020

PLACE OF HEARING: Regina, SK

LRB FILE: No. 087-20
WAGE ASSESSMENT: No. 1-000391

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INTRODUCTION

This matter was heard before me on September 9, 2020 at Regina, 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.

Lorne Deason, Employment Standards Officer represented the Department of Employment Standards.

Complainant/Employee, Donald Anderson attended and gave sworn evidence on his behalf.

The Appellant/Employer, Sonshine Gas & Wash and Director, Dion McArthur and Director, Caronlina McArthur were represented by Dion McArthur who gave sworn evidence on their behalf and that 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 \$1,100.00.

I. PRELIMINARY MATTERS

The Employment Standards officer advised that the Wage Assessment had been calculated by using the employees wage of \$13.00 per hour for 80 hours (2 weeks) came to \$1,040.00 and vacation pay on that amount of \$60.00 for a total of \$1,100.00.

II. AGREED FACTS

The parties agreed that the Wage Assessment amount of \$1,100.00 was the correct amount and that it had not been paid to the employee by the employer.

III. EVIDENCE OF THE EMPLOYER

Mr. Dion McArthur was sworn and gave evidence as follows:

The company and directors operate a gas station/car wash and convenience store in the city of Regina, SK.

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The employee was hired by the employer to be a cashier on those premises.

At some point during the employee's employment the employer became concerned about the revenue flow and reviewed video tapes of the premises when the employee was working.

Mr. McArthur was of a view that the employee was stealing various items from the employer. Those items are set out in the Notice of Appeal. Subsequent to completing the appeal, Mr. McArthur discovered other missing items and added them to his list. The total amount of the items the employer alleges that the employee stole amounts to \$615.00.

The employer confirmed that these items were not voluntary purchases by the employee.

The employer had contacted the police in this regard and that matter is pending before the criminal courts.

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Under cross examination the employer stated that the \$1,100.00 in the wage assessment was for the pay withheld from the employee's last two weeks of work with the employer.

The employer feels that he should be successful at this hearing on the basis of fairness, in that, he feels that the items were stolen and he should be repaid and be able to recoup his \$500.00 deposit relating to this appeal.

IV. EVIDENCE OF THE EMPLOYEE

Donald Anderson the employee was sworn and gave evidence as follows:

He agreed that the outstanding amount of wages due to him were 80 hours of work at \$13/hour plus vacation pay.

There was no cross examination of the employee.

V. ANALYSIS/DECISION

The employer agrees that the wage assessment in the amount of \$1,100.00 is correct.

The employer alleges that the employee stole goods and items from the employer's business during his hours working in his employ in the amount of \$615.00.

The employer wishes to deduct or offset this amount from the wages owing to the employee.

Section 2-36 of The Act describes the only deductions that may be made by an employer from an employee's wages.

This section has been interpreted by Mr. Justice Wimmer in Holtet's Service Ltd. v. Huard, 1978, S.J. 234 to mean that the only permitted deductions to wages by the employer are those specifically authorized by statute.

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Also, the Court of Queen's Bench in Jerry Witherspoon v. Ungar Construction Co. Ltd., which referred to Meyers v. Walter Cycle Co. Ltd., (1990) 5WWR 455 (Sask. C.A.) stated that the purpose of The Act is not a vehicle for employers and employees to settle accounts, except to the limited situations and purposes allowed by the wording of Section 2-36.

The deductions requested here by the employer are not permitted or authorized by the Act.

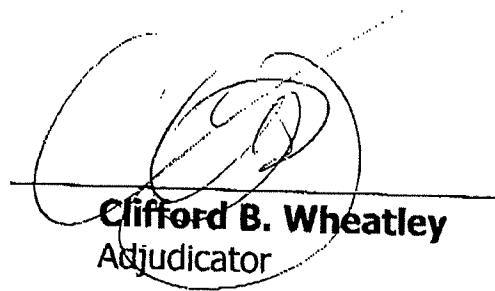
It is open to the employer to pursue his claim by way of other civil remedies.

Because of my finding that the amount claimed by the employer is not deductible from the Wage Assessment I need not determine if the employee stole the items claimed nor the value thereof.

VI. CONCLUSION

The Appeal is denied, and the Wage Assessment is upheld in the amount of \$1,100.00.

Dated at Moose Jaw, in the Province of Saskatchewan, this 14th, day of September, 2020.



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.