



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

Robert Steman

COMPLAINANT/EMPLOYEE

-AND-

Stimco Services Inc., Riley Brown

APPELLANT/EMPLOYER

DATES OF HEARING: October 28, 2020

PLACE OF HEARING: Estevan, SK

LRB FILE: No. 109-20
WAGE ASSESSMENT: No. 1-000418

INTRODUCTION

This matter was heard before me on October 28, 2020 at Estevan, 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 and Dan Corbett, Employment Standards Officers represented the Department of Employment Standards.

Complainant/Employee, Robert Steman attended and gave sworn evidence on his behalf.

The Appellant/Employer, Stimco Services Inc. was represented by Brad Dul, Supervisor, Candace Boulet, Bookkeeper.

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 \$5,076.27.

I. PRELIMINARY MATTERS

Randy Armitage, Labour Standards Officer addressed the Corporate Registration as set out in LSO-1.

Mr. Armitage also reviewed the service of the Appeal Documents and dates thereof which are set out in LSO-2 and LSO-3.

II. AGREED FACTS

The parties agreed as follows:

1. That Mr. Steman was an employee of the corporation for the period of time covered in the wage assessment and had been an employee from May 18, 2017 up to and including March 13, 2020.
2. The employees' last day of work was March 13, 2020.

3. The employees' rate of pay over the time frame of the wage assessment was \$30.00/hour

III. EVIDENCE

Mr. Armitage reviewed the wage assessment, inspection report and the spreadsheet apprising his calculations setting out how he had calculated the wage assessment amount. This is set out in LSO-4.

Mr. Armitage advised that the bulk of the wage assessment was attributed to appellant incorrectly paying overtime to the employee as well as the holiday pay and vacation pay thereon. These calculations came from the hours worked and wages paid as set out in the employer records.

IV. EVIDENCE OF THE EMPLOYER

Brad Dul and Candace Boulet were sworn and gave the following evidence:

The employer felt that no money was owed to the employee and that whatever monies he had been owed by the employer had been paid.

Another employee spoke to Brad Dul indicating that Mr. Steman was padding his time sheets by claiming time that he did not work.

Mr. Dul then compared Mr. Steman's time sheets to other employees and discovered that he was charging for lunch breaks during the days he worked in the shop and had been claiming extra time when in the field on other occasions.

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The employer referred to the chart that was attached to the appeal comparing Mr. Steman's time sheet to Mr. Haygarth's and Brad Mayer. Such comparison showed that Mr. Steman was claiming more hours than the other two individuals who the employer states were working with him on the days that Mr. Steman over stated his hours.

Mr. Dul spoke to Mr. Steman on several occasions about hours being billed, however, in the end paid Mr. Steman paid the hours he was claiming on his time sheets.

The employee time sheets were completed by the employee on Tuesdays and submitted to Mr. Dul. Once signed by the employee and Mr. Dul, they would be submitted by fax to the employers Bookkeeper, Candace Boulet for payment. Mr. Dul indicated that Mr. Steman did not always work with someone else in the field although that was company policy.

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The employer submitted numerous time sheets as set out in Exhibit ER-1. Many of them being signed by both Mr. Steman and Mr. Dul. Such time sheets were submitted to the Bookkeeper and paid accordingly.

Under cross examination, the employer confirmed that when the Employment Standards Officer requested records from him that he forwarded the time sheets and pay slips of Mr. Steman for the period of the wage assessment claim. The time sheets were filed as Exhibit ESO-5 and the pay slips were filed as Exhibit ESO-6.

The employer confirmed that they were aware that they were paying Mr. Steman what the employer considered to be extra hours, however, the paid extra hours only have become an issue since the complaint by the employee to the Employment Standards Office.

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Mr. Dul and Ms. Boulet confirmed that they were paying overtime incorrectly as they were basing overtime, to be paid by them to the employee, after 80 hours rather than after 8 hours per day and/or 40 hours per week. The employer was also incorrectly calculating statutory hours.

The employer confirmed that they did not have a permit or modified agreement from the Minister so would be required to be paying in accordance with the Legislation.

The employer confirmed that they were not intending to call Brody Haygarth and Brad Mayer as witnesses.

Mr. Dul stated that the corporation did not have any policies in writing. He indicated that the proper overtime calculations were unknown to the employer, and as such, they were not paying overtime in accordance with the Legislation.

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The employer felt that the extra hours paid to Mr. Steman from his padding, balances out with the corrected overtime hours and, as a result, Mr. Steman is not owed any money by the employer.

The employers' position on the time sheets was that, as the time sheets had been signed by both the employee and employer, they became a legal document and, as such, both parties were bound by the calculations and hours stated therein.

V. EVIDENCE OF THE EMPLOYEE

The employee, Robert Steman was sworn and gave the following evidence.

That he was a driver and pump operator for the corporation which did oil field work.

Mr. Steman's last day of work was March 13, 2020.

Mr. Steman was paid every 2 weeks at the rate of \$30/hour and was entitled to \$150 job bonuses from time to time.

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The employee kept track of his hours and handed them in a time sheet every second Tuesday, which covered the two weeks prior to the end of Tuesday. Such time sheets were given to Mr. Dul. Mr. Dul would sign the time sheet and submit it to the Bookkeeper, Candace Boulet to issue payment.

The employee stated his normal hours from were Monday to Friday 8:00am to 4:00pm, however he did work lots of overtime. The employee said that he put actual hours worked on the time sheets and none were padded.

With respect to lunch hours on the shop days the employee said that it was corporate policy to pay the employee for lunch and, had never been told on any occasion, not to claim the hour for lunch.

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The employee said that, as he brought in his own tools from the commencement of his employment, the employer agreed to let him charge 8 hours a day in the shop, as the employee was using his own tools to the benefit of the employer.

The employee stated that he was to be paid the 8 hours/day whether he worked it or not.

The employee stated that he had never put in 7 hours for a shop day and had never been told to not put in for 8 hours. Also he had never been warned about padding overtime on time sheets.

On many occasions he was paid straight time for overtime until the 80 hours in the two week period had been completed and, the employer never compensated him for working statutory holidays or weekends after 8 hours.

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The employee also never received annual vacation pay on overtime and had been under paid with respect to bonuses during the audit period.

VI. ANALYSIS/DECISION

The employer says that the employee was paid based on the time sheets that both the employee and the employer signed before they were submitted to the Bookkeeper to be paid.

The employer says that as a result of both parties signing these time sheets that the contents therein are binding on both the employer and the employee.

However, Section 2-6 of the Act prohibits any agreements between the parties if the agreement deprives the employee of any benefit provided by the Act. So, the employer's argument in this regard fails.

The employer kept records (time sheets), paying the employee a minimum of 8 hours per day worked in the shop. Mr. Dul signed the

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time sheets setting out the 8 hours therein after they were prepared and submitted for payment by the employee. The employer accepted the time sheets on the date that they were signed and then submitted for payment.

Now the employer states that the time sheets are inaccurate for the hours shown worked by the employee for the days he worked in the shop. And that some of the overtime claimed by the employee, when working in the shop or in the field, was not actually worked by the employee.

The employer did not provide any independent evidence in this regard. The employee says that payment of the 8 hours per shop day was the company policy because he was using his own tools for the benefit of the company.

The employer could easily have called one or more of the employees that worked with Mr. Steman in the field (Brody Haygarth and Brad Mayer), to confirm the discrepancy of hours as set out in the

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documents attached to the appeal, however, the employer choose not to call them as witnesses.

Section 2-38 of the Act says that the employer shall keep proper records regarding the time worked by the employee.

The employer kept time sheet records. Such records were in fact signed by both the employee and employer, however, now the employer says that the time sheets were incorrect or incomplete, but offers no independent evidence in this regard.

The evidence of the employee is that, the time sheets were correct regarding hours worked, and reflect the policy of the company regarding time in the field and shop time. Where in conflict, I prefer the evidence of the employee over the employer. I accept that the employee was to be paid the minimum of 8 hours per day in the shop, whether he worked it or not, and that the overtime claimed in the time sheets was actually worked by the employee, and not padded.

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Mr. Armitage advised that most of the amount set out in the wage assessment was due to overtime being calculated and paid incorrectly by the employer. The employer used 80 hours by-weekly as their criteria for overtime, instead of 8 hours per day and/or 40 hours per week as set out by the Legislation. Also, statutory holidays were incorrectly applied when overtime was being calculated by the employer.

The employer and their Bookkeeper, Candace Boulet, both agreed that the overtime was incorrectly calculated.

Mr. Armitage pointed out that the wage assessment was based of the employer's documents as submitted to him by the employer when requested.

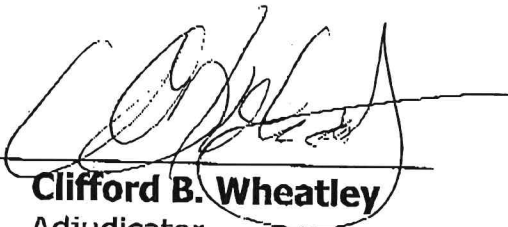
I find that the employer has not submitted sufficient evidence to establish evidence to the contrary that the wage assessment is incorrect as required by Section 2-75(9) of the Act.

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VI. CONCLUSION

The Appeal is dismissed, and the Wage Assessment is upheld in the amount of \$5,076.27.

Dated at Moose Jaw, in the Province of Saskatchewan, this 5th, of November 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.