

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

APPELLANTS: **RELIABLE FENCING LTD. and KEVIN
VERVALCKE, as director of Reliable
Fencing Ltd.**

RESPONDENTS: **TRAYTON HALYK and the DIRECTOR
OF EMPLOYMENT STANDARDS**

DATE OF HEARING: **January 16, 2020**

PLACE OF HEARING: **Conference Room #1
110 Ominica Street West
Moose Jaw, Saskatchewan**

LRB File No. 262-19, Wage Assessment No. 1-000313

I. INTRODUCTION

On October 28, 2019, a Delegate of the Director of Employment Standards issued Wage Assessment No. 1-000313, directing the Appellants to pay \$7,054.66 to Trayton Halyk or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Kevin Vervalcke appealed the Wage Assessment on behalf of the Appellants.

On January 16, 2020, the following individuals attended the hearing:

- Kevin Vervalcke (Kevin), owner and director of Reliable Fencing Ltd. (the Company);
- Trayton Halyk (Tray), former employee of the Company; and
- Randy Armitage, Employment Standards Officer.

II. THE DISPUTE

Kevin Vervalcke commenced his appeal of the Wage Assessment by way of a letter dated November 21, 2019 (the Notice of Appeal). Employment Standards received the Notice of appeal on November 21, 2019. In the Notice of Appeal, the Appellants stated the wages claimed in the Wage Assessment were incorrect.

III. PRELIMINARY MATTERS/OBJECTIONS

At the beginning of the hearing, Randy Armitage, on behalf of the Director of Employment Standards, applied to vary the Wage Assessment from \$7,054.66 to \$4,479.35, due to information received after issuing the Wage Assessment. The Appellants did not object to the amendment.

IV. THE FACTS

The parties tendered evidence by way of sworn testimony and documents. The following exhibits were entered into evidence:

Employer Exhibits (Appellants)

ER1 – Package from Employer including screen shots of text messages, payroll cheques, time sheets, and bank statements (11 pages); and
ER2 – Package of paystubs from the Company’s accountant (7 pages).

Employee Exhibits (Respondents)

EE1 – Revised Employment Standards Inspection Report (1 page);
EE2 – Original Employment Standards Inspection Report (2 pages);
EE3 – Saskatchewan Corporate Registry Profile Report for the Company (3 pages);
EE4 – Proof of Service of Wage Assessment (1 page);
EE5 – Proof of Receipt of Notice of Appeal with deposit (3 pages);
EE6 – Pages from Trayton Halyk’s Journal/Day Planner (29 pages);
EE7 – Time sheets and screenshots of texts regarding hours (5 pages); and
EE8 – Trayton Halyk’s Banking Records (7 pages).

V. ANALYSIS AND DECISION

Kevin and Tray provided sworn testimony. Both witnesses presented their evidence in a straight-forward and credible manner. As the parties provided their evidence, it became clear that the witnesses agreed on almost everything. They agreed about rate of pay and the total number of hours worked. Kevin admitted the Company had not yet paid Tray’s public holiday pay or annual vacation pay. The main area of discrepancy was the amount of wages paid to Tray. It became evident that additional payroll information from the accountant would be helpful. Kevin agreed to attend at his accountant’s office to gather the necessary payroll information. I briefly adjourned the hearing for this purpose.

When Kevin returned to the hearing with the applicable payroll information (ER2), the parties reviewed the information and came up with a settlement agreement. Kevin offered to pay Tray the sum of \$1,650.04, less the \$500.00 appeal deposit, or \$1,150.04, in full and final satisfaction of this matter. Kevin offered to backdate the payment to

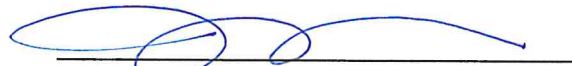
December 2019 and to provide a pay stub. Tray accepted Kevin's offer. Randy Armitage acknowledged that the \$500.00 appeal deposit provided by Kevin would be paid to Tray.

As a result, the Wage Assessment is varied accordingly, from \$4,479.35 (originally \$7,054.66) to \$1,650.04.

VI. CONCLUSION

The appeal is allowed and the Wage Assessment is varied. The Appellants are ordered to pay the sum of \$1,650.04 to Trayton Halyk.

DATED in Regina, Saskatchewan, this 22 day of January, 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.

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.