



**DECISION OF ADJUDICATOR  
FOLLOWING A HEARING PURSUANT TO SECTION 2-75 OF  
THE SASKATCHEWAN EMPLOYMENT ACT**

APPELLANT: Jefferson Freeman carrying on business as the Lancer Hotel

RESPONDENTS: Doris Munch

DATES OF HEARING: November 26, 2021, and March 1, 2022  
Final submissions closed March 16, 2022

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF DECISION: June 29, 2022

LRB FILE No. 062-21, Wage Assessment No. 1-000482, dated April 27, 2021

**I. HEARING PROCESS**

1. Wage Assessment No. 1-000482 directed Jefferson Freeman o/a Lancer Hotel (hereinafter referred as "Freeman" or "the Hotel") to pay \$9,818.94 to Doris Munch (hereinafter referred to as "Munch" or "the Respondent") or appeal the assessment pursuant to section 2-75 of *The Saskatchewan Employment Act*. Freeman appealed, and I was appointed to adjudicate the matter.
2. At all material times during the wage assessment process and this appeal, Freeman was essentially a self-represented litigant. However, he enlisted the assistance of a friend, Lionel Matthews, who functioned as his representative during the hearing and presented closing arguments. That said, Mr. Matthews did not hold himself out as counsel in this matter nor is he a member of the Law Society of Saskatchewan. Kelli Smith (hereinafter "Smith") participated as the Director of Employment Standards delegate. Smith plays a dual role in this process. First, she acted as investigator for the Employment Standards Division after Munch filed her claim. Second, she participated in the hearing as the Director's delegate; responsible to present the file material she reviewed during the investigation which resulted in the wage assessment under appeal. Smith participated in the hearing in her own right, and not as counsel for Munch, although the Director's and Munch's positions naturally align since the assessment supports Munch's claim.
3. Many conference calls and emails were necessary to discuss the hearing process and ensure all parties were ready to proceed using a virtual hearing platform. Freeman initially stated he was unwilling and unable to participate in a virtual hearing and the proceedings were originally scheduled to occur in person in Swift Current. Later however, public health

considerations arising from the worldwide Covid-19 pandemic made Freeman's preference unworkable. Consequently, while it took considerable time to organize, this video conference hearing proceeded on December 22, 2021 and was not concluded in one day. On March 1, 2022, the hearing resumed and concluded. The parties filed written closing submissions on March 6 and March 16, respectively.

4. The following witnesses testified in support of Freeman's appeal:
  - a. Jefferson Freeman
  - b. Kevin Berryman
  - c. Marcello Reyes

The following witnesses testified in support of the Respondent:

- a. Doris Munch
- b. Glen Reynolds
- c. Karen Hartman

The Director and Munch presented evidence first, and then the Appellant presented his evidence to support his claim that the wage assessment should be overturned.

5. Prior to the hearing, Smith prepared, circulated and filed a large volume of documents which, collectively, were marked as D-1 (Tabs 1-38). Some documents were cases or other materials that would not ordinarily be considered exhibits, however, the parties agreed it would be appropriate to rely on the numeration already contained in the exhibit book. Similarly, Freeman filed documents in advance of the hearing, collectively referred to as Exhibit A-1 (Tabs 1-16). While there was controversy regarding the legibility, reliability and probative value of some of the documents, I ruled that they were all admissible in the proceeding.
6. I have carefully reviewed all the documents, but only those I find necessary to explain my reasons will be referred to below. I have also considered the oral testimony of all witnesses and the parties closing submissions.

## **II. BACKGROUND**

7. From June 24, 2019 until July 30, 2020, Munch worked and lived at the Hotel owned by Freeman. All witnesses with knowledge of Munch's verbal agreement with Freeman testified that she agreed to work for \$800 cash (per month) plus "room and board" in the Hotel.

8. While this agreement was deemed acceptable by both Munch and Freeman, it contravenes section 2-6 of *The Saskatchewan Employment Act* (hereinafter referred to as “the *SEA*”) because it effectively deprives Munch of minimum wage, among other things.
9. Based on the evidence she gathered during her investigation, Smith concluded that Munch was Freeman’s employee within the meaning of the *SEA*. She came to this conclusion after considering Freeman’s assertion that Munch was self-employed and, as a result, not entitled to the benefits of the *SEA*. During the course of her investigation, Smith advised Freeman about her preliminary findings (Exhibit A-1, Tab 15). She considered his responses and all other information provided by Freeman to her to that date, and ultimately calculated Munch’s unpaid wage assessment as \$9,818.94. Smith derived this amount by utilizing the minimum wage rate and adding accrued vacation pay and public holiday pay, but not including overtime pay. Further, Smith accounted for Munch’s room and board expense by applying section 22 of *The Employment Standards Regulations*.
10. In this appeal, Freeman disputes Smith’s calculation of the wage assessment together with Munch’s entitlement to any benefit pursuant to the *SEA*. Additionally, it appears Freeman has initiated a civil action returnable in the Provincial Court for Saskatchewan against Munch for damages arising from her “unlawful occupation” of his property in excess of \$30,000 (Exhibit A-1, Tab 13 – Provincial Court of Saskatchewan Summons dated December 7, 2021 with first return March 17, 2022). It is unknown whether Munch or Freeman have appeared in the Provincial Court regarding this claim or whether it is still active.

### III. ISSUES

11. Freeman exercised his right to appeal the wage assessment pursuant to section 2-75(1)(a) of the *SEA*. His notice of appeal disputes both liability to Munch due to the role she played at the Hotel and the amount of the wage assessment. Therefore, the issues I must determine are as follows:
  - a. Regarding Liability – Was Munch Freeman’s employee or self-employed at the Hotel during the relevant period?
    - Upon what terms did Munch agree to work at the Hotel?
    - Does the evidence establish indicia of employment as contemplated by the *SEA*, on a balance of probabilities?
  - b. Regarding amount of wage assessment if liability is established - What is Munch’s lawful entitlement to minimum wage, vacation and holiday pay, taking into account room and board, during the relevant period?

#### IV. EVIDENCE AND ANALYSIS

*a. Regarding Liability – Was Munch Freeman’s employee or self-employed at the Hotel during the relevant period?*

- *Upon what terms did Munch agree to work at the Hotel?*

12. The evidence establishes that Munch resided and performed a variety of roles while she worked at the Hotel from June 24, 2019 until July 30, 2020. There was no written or formal agreement, but both Munch and Freeman testified that Munch was verbally guaranteed \$800 cash per month plus room and board (lodging and meals within the Hotel). Witnesses Kevin Berryman (“Berryman”) and Marcelo Reyes (“Reyes”) also confirmed this arrangement.
13. Munch does not dispute that she agreed to this arrangement. After the last day she worked on the premises, Munch simply requested that she be paid \$4,000 (5 x \$800) for the previous five months, being March through July, 2020. When she was not paid on a timely basis after her repeated requests, Munch filed her \$4,000 claim with Employment Standards. Munch advised the investigator she would have been satisfied to receive this amount. However, as Munch explained her duties, hours of work, and other working conditions to Smith, it became apparent further investigation into Munch’s claim was warranted.
14. Munch advised Smith, and also testified during this hearing, that she worked many different positions within the Hotel including, but not limited to, bartender, waitress, cook, housekeeper, janitor, and maintenance worker. While performing these duties, she effectively managed the premises which contains a 1,500 square foot bar, dining room, restaurant, and ten rental suites. During the first five- or six-months Munch worked at the Hotel, another person, Jesse Lalonde, was also working there. Periodically, Munch or Lalonde also hired casual staff on an hourly basis when necessary.
15. When the Covid-19 worldwide pandemic reached Lancer, Saskatchewan, the Hotel’s business suffered. The Hotel’s doors were closed to the public, but Munch continued to make meals available to customers on a take-out basis. Town administrator Karen Hartman testified that Munch’s efforts kept the business afloat during this extremely difficult time by working very long hours and demonstrating her commitment to the local community.
16. Freeman’s complaint, during this time and throughout Munch’s tenure, was that she failed to account for profits the Hotel was earning. He stated in various ways during his testimony, and in his written material, that he believed Munch was stealing money from the Hotel by keeping profits for herself above and beyond the earnings she might have been entitled to pursuant to their agreement.
17. When Smith invited Freeman to reply to Munch’s claim, he did so with a lengthy letter punctuated with unsubstantiated, inflammatory, and accusatory comments apparently designed to discredit Munch. Much of Freeman’s letter dated November 9, 2020 (Exhibit A-1, Tab 4) is irrelevant to the issue before me, except one part which figures prominently in my deliberations.

18. Neither Freeman's letter (Exhibit A-1, tab 4) nor any other information he provided to Smith during her investigation mention that Freeman had actually leased the Hotel to Munch's former spouse, Berryman. Instead, Freeman provided a lease he entered into with Jesse Lalonde which was scheduled to expire in December 2020, if not sooner. Freeman advised during the investigation that Berryman's involvement with the Hotel was limited to installing a countertop and flooring prior to Munch's arrival and recommending that Freeman hire Munch to work at the Hotel.
19. During the hearing, Freeman pivoted and provided an entirely new description of his business relationship with Munch and Berryman. Supported by documents filed shortly before the hearing, but which were not provided to Smith during the investigation, Freeman testified that Berryman was the lessee of the Hotel. Freeman filed a commercial lease agreement dated June 28, 2019 and praised Berryman for being an excellent lessee for the few months when he "ran" the Hotel before Munch chased him away. While Berryman acknowledged his signature on the documents (Exhibit A-1, Tab 3) he was not familiar with the contract's terms. Cross examination of both Freeman and Berryman demonstrated not only the frailty of their memories but also the unlikelihood that the document represented an authentic arrangement. I need not find that Freeman and Berryman deliberately lied while testifying or knowingly manufactured a fictitious lease agreement presented as evidence in this proceeding. It is sufficient for me to find that, considering the totality of the evidence, assertions about a previously this undeclared lease arrangement (whether documented or not) are self-serving, contrary to the preponderance of other evidence, and fundamentally unreliable.
20. Berryman did not present as a witness doing his best to recall information accurately. Instead, he appeared to be searching for answers to questions which might best align with Freeman's objectives in this appeal. In cross-examination, when asked to explain inconsistencies in his direct testimony, Berryman could not. For example, Berryman testified that he was the one who hired Munch to work at the Hotel in late June 2019 and that Freeman did not know or have contact with her. Then, he could not explain the existence of text messages between Munch and Freeman around that same time that demonstrate the two were in direct contact. Berryman also testified that Munch and Lalonde were his employees, but moments later said Lalonde was a lessee and he (Berryman) was just "counting the money".
21. Berryman sometimes changed his answers to questions two or three times and then ultimately shrugged and said "I see the nitpicking." Berryman also stated that he was the one to leave the Hotel on his own terms (contrary to Freeman's written assertions) and that there were no consequences to him breaking his lease. He described a "cash grab" in September 2019 when he, Munch, and Lalonde "totally took money in September" and then he disappeared.
22. Finally, Berryman signed a declaration dated October 27, 2021 (Exhibit A-1 tab 5) which describes his involvement with the Hotel in words reminiscent of Freeman's written correspondence and bearing little resemblance to how Berryman expressed himself while testifying. The document includes a description of Munch's personal circumstances and recent release from the hospital (while Freeman refers to her being in prison) and other unsubstantiated, inflammatory, and irrelevant information allegedly about her. The

document also describes lease negotiations but does not state a written lease was signed, which is inconsistent with the lease itself filed in this proceeding.

23. Witness Reyes testified in a more straightforward and objective manner than either Freeman or Berryman. He confirmed he and his wife attend the same church as Freeman. He is not Freeman's brother-in-law as Freeman indicated to Smith, but acknowledged Freeman could consider him a "brother in Christ". Reyes' testimony will be referred to in greater detail below.
24. Considering the evidence presented by Freeman himself, I find his testimony and the documents he filed to shore it up warrant little weight. This is especially so because Freeman and Berryman's versions of events are contradicted by other objectively reliable and trustworthy information. Internal and external inconsistencies corrode Freeman's testimony and credibility. Most significantly, comparing the contents of Freeman's lengthy letter (D-1 tab 4) to his hearing testimony reveals numerous and irreconcilable contradictions and gaps. While the letter may well contain errors or inaccuracies, Freeman presented it to Smith as his response to Munch's claim and it is reasonable to infer Freeman wanted Smith to rely upon its contents.
25. When this letter was put to Freeman during cross-examination, he struggled to explain the obvious inconsistencies between it and his oral testimony in direct examination. Freeman provided several long, animated, responses to Smith's and my questions which were rambling and unintelligible. Ultimately, he blamed "inaccuracies" on his neighbor who typed the letter for him in a hurry, that he was "in a rush" to have it done, and that he was a poor proofreader. Freeman provided no credible explanation for how or when Berryman's role at the Hotel changed from a person who installed countertop and flooring to him being a lessee responsible for hiring and managing Munch. Freeman simply insisted that his testimony and documents filed prior to the hearing were true.
26. Freeman's efforts to discredit Munch, and his lack of candor and credibility in this proceeding, lead inevitably to my conclusion that where his (or his witness') version of events conflicts with Munch's version, I prefer the latter and give it substantially more weight. The documents provided by Smith, together with testimony by Munch, Hartman and Reynolds, establish, on a balance of probabilities, that Munch worked and lived at the Hotel for nearly 13 months pursuant to a verbal agreement with Freeman.
  - *Does the evidence establish indicia of employment as contemplated by the SEA, on a balance of probabilities?*
27. Before a person can be described as an employee for the purposes of the SEA, an employer/employee relationship must exist. This determination is fact-specific, and the jurisprudence is well settled. Factual considerations include who controls the business, who owns the tools, who stands to obtain the business' profit and who bears the risk in the event of a loss. This is the "fourfold test" referred to by Smith in the Director's brief.



28. The totality of the evidence establishes that Freeman controls the Hotel. It is his business, and he owns the building and its contents. Freeman is ultimately responsible for ensuring the Hotel's expenses are met, although it appears he has delegated this responsibility to various lessees, managers, or employees over the years. It is Freeman who stands to make a profit if the Hotel makes money, and Freeman who risks losing money if the Hotel is not profitable.
29. Freeman's emails and text messages which he submitted to Smith during her investigation illustrate his control over the operation and over Munch. Further, Freeman testified that he provided direction to Munch, which was corroborated by Reyes who stepped in to assist Freeman by "training" and directing Munch during the part of her tenure.
30. Freeman testified that he expected to receive profits coming from the operation of the Hotel, and at one point, he sent Reyes to check on the Hotel. In addition to potentially obtaining profits, Freeman ran the risk of financial loss in the operation of the Hotel. Aside from not being remunerated for her labor, Munch did not carry any risk or responsibility for financial/operational shortfalls.
31. Applying these considerations of the "fourfold test", Smith reasonably concluded that Freeman was Munch's employer. I agree with her assessment.
32. Further, as informed by Saskatchewan jurisprudence, Smith considered the "organizational test" to discern whether Munch should be considered a self-employed person. Smith concluded she was not. Smith reasonably found that Munch's work supported Freeman's organization. The evidence in this hearing also supports the conclusion that Munch did not make independent decisions about where and how to allocate incoming funds, although it appears she exercised some discretion in deciding how to apportion part payments for outstanding bills when insufficient funds existed to pay them entirely.
33. Berryman acknowledged Munch's skill and experience which qualified her to run the Hotel, and that "as soon as the paint was dry on sprucing the place up" business under her supervision picked up. Reyes went to the Hotel in what appeared to be an earnest effort to assist his friend, Freeman. Reyes said his wife assessed Munch as more trustworthy than Lalonde, so he gave Munch some guidance on the Hotel bookkeeping. Reyes paid for Munch to receive her "Serve it Right" food safety ticket, and asked Munch to send him daily "Z-readings" from the till between December 2019 and February 2020, which she did. At the end of his involvement, Reyes and his wife were travelling to the area to attend a local festival and he stopped to visit the Hotel. He testified that he "took all the money, did all the books on it, and brought most of the money back" to Freeman. Reyes left enough money behind for the Hotel to "be successful" for two weeks and it appears he had no further involvement thereafter. He ruefully referred to getting involved with Freeman's Hotel operation as "opening a can of worms" which he appeared to regret, in hindsight.

34. Reyes' evidence corroborates Munch's assertion that she was not making independent decisions for the Hotel, and that she ultimately answered to Freeman and his designates.
35. During the hearing and in his written submission, Freeman made much of Munch's acknowledgement that she may have described herself as "self-employed" in her personal income tax return for 2019 and/or 2020. This, Freeman submits, is either evidence of Munch's penchant for fraud or a barrier to her claiming she is anything other than self-employed status within this proceeding. In some respects, Freeman's confusion or concern is understandable, but it is misguided.
36. Given their verbal agreement that Munch's remuneration would be "cash" and room and board, and that payroll deductions were never remitted for Munch for such things as CPP and EI premiums, Munch declaration of self-employment or contract status for tax or income support (such as potential CERB benefits) might be predictable and appropriate. Further, and more importantly, characterization of employment, residency, nationality or numerous other characteristics can change for the same individual depending on which statutory lens is being used to assess the characteristic. For example, a person may reside in Canada much of the year, but can be considered a non-resident for tax purposes. Similarly, even self-employed contractors can be considered employees for some liability and insurance purposes. Whether or not Munch claimed income replacement benefits from the Canadian government during the first few months of the pandemic does not galvanize her employment status or provide Freeman with an entitlement to set off any amounts he might owe to her against such government benefits. Whether Munch may have received income support from another source is not relevant to an assessment of the nature of Munch and Freeman's employee/employer relationship.
37. As a result, I find the preponderance of evidence leads my conclusion, on a balance of probabilities, that Munch was Freeman's employee, working at the Hotel. I agree with the conclusion reached by Smith when she finished her investigation and issued the wage assessment. For the purposes of applying the provisions of the *SEA*, Munch was not self-employed nor was she a lessee of the premises in her own right.
  - b. *Regarding amount of wage assessment if liability is established - What is Munch's lawful entitlement to minimum wage, vacation and holiday pay, taking into account room and board, during the relevant period?*
38. In his written brief, Freeman submits that "whether or not Munch was an employee, a self-employed businessperson or a tenant at will, a critical evaluation of the quantum of the claim reveals there is no sum owing in any event." First, to support this statement, Freeman notes that Munch actually worked for Berryman under the "Berryman lease" rather than for him. I have already dealt with the issue of the Berryman lease above and find, it is more probable than not, that no such lease existed – nor did Munch work for Berryman.



39. Second, and related, calculations based on money which ought to have been paid to Berryman, rather than Munch, during the period of Berryman's alleged lease, are not legitimate deductions from monies owed to Munch for wages.
40. Third, Freeman takes issue with the Director's valuation of room and board for Munch at \$250, rather than \$800 monthly. This objection is based entirely on Freeman's estimation that an "ordinary outlay" for living expenses far exceeds \$250, but Freeman provides no authority for his alternative suggestion that the sum should be \$800.
41. The Director acknowledges that the *SEA* has only one section which deals with quantifying room and board for employees. Section 22 of the *SEA Regulations* indicates that the charge for boarding and lodging provided to live-in caregivers or domestic workers cannot exceed \$250 monthly. Using this section as a guide, the Director's delegate deemed the value or "cost" of Munch's room and board to be capped at \$250 monthly.
42. The *SEA* includes no other mechanism by which Munch's room and board should be calculated and the parties' verbal agreement which may have included an \$800 valuation for room and board is unenforceable. These circumstances created a challenge for the Smith as she was investigating the complaint and endeavoring to quantify Munch's potential claim. Before finalizing the wage assessment, Smith sent Freeman preliminary assessments in letters to which she sought his comments and reply. Ultimately, Smith settled on applying *Regulation* section 22 to quantify Munch's room and board which effectively reduces the "set-off" amount Freeman claims against her outstanding wages.
43. There is no evidence upon which I could find that the Director's valuation of Munch's room and board at \$250 monthly is inappropriate.
44. Fourth, the parties each produced copies of the daily ledgers and financial records for the Hotel during Munch's tenure. The ledgers note all financial transactions, including when Munch or Lalonde would "pay themselves" for wages. The ledgers do not, however, include a notation of hours worked. After Lalonde's departure from the Hotel in approximately November 2019, Munch was the only full-time employee until she was terminated or "asked to leave" in July 2020. Given the numerous roles and responsibilities Munch undertook and performed, it is entirely reasonable to infer she provided the business with at least 40 hours of labour per week, and likely much more. This is the number used by Smith in the wage assessment and it is supported by the evidence. Freeman, on the other hand, speculates that the ledger reveals a "profit" of approximately \$8,500 earned between October 2019 and July 2020 and that Munch owes Freeman money, and not the other way around. These calculations are based upon records prepared for an entirely different purpose and for which no evidentiary foundation was laid.

45. Smith makes the point in the Director's Reply Brief that the calculations contained in Freeman's brief were never introduced into evidence, nor was Munch asked any questions in cross-examination about any of the scenarios or speculation set out in the Brief. I agree the calculations are not evidence and I shall not treat them as such. I regard Freeman's Brief as an expression his position in this appeal and have considered his arguments in the context of evidence which is properly before me.

#### IV. CONCLUSION

46. Section 2-75(9) of the *SEA* reads as follows:

The copy of the wage assessment provided to the adjudicator in accordance with subsection (8) 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.

The Director submits that one legal effect of this subsection is that the wage assessment is considered, *prima facie*, correct and reliable. Regardless of how broadly this section is interpreted and applied, there is no doubt the onus is on the Appellant to provide evidence demonstrating the wage assessment is incorrect in order to succeed in his appeal.

47. In this case, the totality of the evidence considered on a balance of probabilities, does not support the Appellant's position. The evidence the Appellant presented is not sufficient to discharge his burden of proof. As a result, the wage assessment stands.

#### V. DECISION

48. The Appeal is dismissed and the Wage Assessment in the amount of \$9,818.94 is upheld.



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LESLIE BELLOC-PINDER, Q.C.  
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 [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 considers appropriate.

**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.