

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



Rene Kohl

COMPLAINANT/EMPLOYEE

-AND-

Rising Trade Corp. and Moklesur Rahman

APPELLANT/EMPLOYER

DATE OF HEARING: November 30, 2022

PLACE OF HEARING: Swift Current, SK

LRB FILE: No. 134-22  
WAGE ASSESSMENT: No. 1-000565

## **INTRODUCTION**

This matter was heard on November 30, 2022, at Swift Current, Saskatchewan.

Ms. Kelli Smith, Employment Standards Officer represented the Department of Employment Standards.

The Complainant/Employee, Rene Kohl, was present.

The Appellant/Employer, Rising Trade Corp. was represented by Moklesur Rahman who also represented himself as Named Director 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 \$15,046.42.

## **I. PRELIMINARY MATTERS**

Ms. Smith, on behalf of the Department of Employment Standards, raised a preliminary objection that the writer, as adjudicator, did not have jurisdiction to hear the appeal. Section 2-75(2) *The Employment Standards Act* states, "that an appeal pursuant to this section must be commenced by filing a written notice of appeal with the Director of Employment Standards within 15 business after the date of service of The Wage Assessment."

It is clear from the wording of the above Section that, before an Adjudicator has jurisdiction to hear and appeal, Section 2-75(2) must be complied with. The Department argues that the Wage Assessment was served on the Corporation and Mr. Rahman on June 2. The Employer acknowledged receipt of the same on July 13, 2022 by way of an email to the Employment Standards Officer, dated July 20, 2022.

The appeal document shows a date stamp from the Labour Relations and Workplace Safety Department of August 9, 2022. All the parties

agreed that the August 9, 2022 date for filing of the Appeal was correct. The Appeal was to have been filed within 15 business days from July 13, 2022, therefore, would had to have been received by the Department of Labour by August 4, 2022. The final filing date also accounted for the Statutory holiday of August 1, 2022, which would not be counted as 1 of the 15 business day time frame.

Mr. Rahman agreed with above dates. However, Mr. Rahman states that he contacted Jason McConnell (who is Ms. Smith's supervisor) by telephone on July 13, 2022. The Employer says that he raised the issue of needing more than 15 days to file his Appeal. Mr. Rahman says Mr. McConnell advised him to contact Ms. Smith as she was in charge of the file. Subsequently, on that date, Mr. Rahman did contact Ms., Smith by telephone. Ms. Smith and Mr. Rahman had a discussion about the appeal. When Mr. Rahman asked for an extension of the 15 days to file the appeal, he says that Ms. Smith agreed to extend the time to file the Appeal. The length of time of the extension was apparently not discussed.

Mr. Rahman then filed his appeal with the Department of Employment Standards office on August 10, 2022. This was outside of the 15 business day time frame set by the legislation.

Ms. Smith's recollection of the telephone conversation with Mr. Rahman on July 13, 2022, is that, he did ask for more time to file the Appeal. Ms. Smith advised him, he could file the Appeal but, if the Labour Relations Board accepted the late filling of the Appeal, the Department would be objecting to the late filing by, bringing an Application, to have the Appeal summarily dismissed, which they have done.

## **II. ANALYSIS**

Section 2-75(2) of The Saskatchewan Employment Act, states that, an Appeal to a Wage Assessment must be commenced by filing a written Notice of Appeal with the Director of Employment Standards within 15 business days after the date of service of a Wage Assessment. This Section has been reviewed in *Pruden v. Olysky Ltd. (2018)*, SKCA 75.

The authorities are clear that a person's right to Appeal expires if not brought within the statutory time limitation and, in the absence of a statutory provision providing authority to extend the time for an appeal, there is no authority to extend the time period.

See:

*Jordan v. Saskatchewan Securities Commission* (1968), 64 WWR 121

(Sask CA);

*Houston v. Saskatchewan Teachers Federation*, 2009 SKCA 70;

*Brady v. Jacobs Industrial Services Ltd*, 2016 CanLII 49900 (Sask LRB);

*Egware v. Regina (City)*, 2016 SKQB 388 (CanLII);

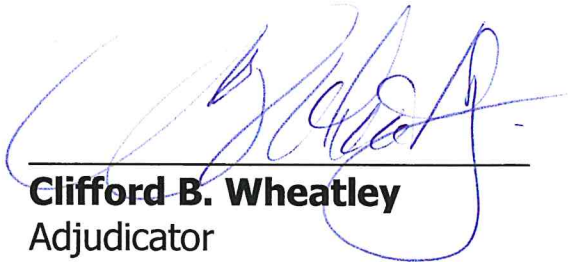
*Pruden v. Olysky Ltd*, 2018 SKCA 75.

### **III. CONCLUSION**

As the caselaw states the Appeal must be filed within the required time frame and, that time frame cannot be extended, I conclude that I do not have Jurisdiction to hear this Appeal.

The Appeal is dismissed and the Wage Assessment in the amount of \$15,046.42 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 12<sup>th</sup>, of December, 2022.



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**Clifford B. Wheatley**  
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 <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.