



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

"Supplemental Reasons to June 22, 2022 Decision"

Bryce Schlamp

COMPLAINANT/EMPLOYEE

-AND-

Riverside Electric Ltd.

APPELLANT/EMPLOYER

DATES OF HEARING: June 7 and 8, 2002

PLACE OF HEARING: Swift Current, SK

LRB FILE: No. 047-22
WAGE ASSESSMENT: No. 1-000543

VI. SUPPLEMENTAL ANALYSIS And DECISION

Having found that the employee did not resign, one must determine whether the employer terminated the employee and, if so, on what date.

In order to do so, it must be determined when and by what act the employee was dismissed.

Applying the Beggs case which referred to Wrongful Dismissal by David Harris, he notes as follows:

VII. 3.0 Dismissal

Summary

Dismissal is a matter of substance not form, it is effective when it leaves no reasonable doubt in the mind of the employee that his or her employment has already come to an end or will end on a set date.

This test is to be determined on an objective basis.

A review of the evidence shows that the employer transmitted a letter (Tab 6a, Employer's Exhibit 1), to its employees, including Mr. Schlamp, sometime before March 23, 2020.

In this letter the employer discussed Covid, and invited, it's employees to exercise an option to remain home if they wanted to.

On March 23, 2020 Mr. Schlamp, by way of text to the employer, advised that they would take the "stay at home" option offered by the employer.

Mr. Schlamp had previously contracted mononucleosis and pneumonia and was concerned about the effects Covid could have on him due to those underlying issues.

The employee subsequently contacted the employer on May 11, 2020 to ask about going back to work. He was told by the employer that there was insufficient work to bring him back at that time.

On May 29, 2020 the employee texted again inquiring about returning to work. He was again told that there was insufficient work to bring him back.

On June 8, 2020 the employee met with Mr. Cassidy and asked about going back to work. He received a similar response.

June 8, 2020, was the last attempt by Mr. Schlamp to request a return to work.

He started looking for new employment which he obtained in July of 2020.

From Mr. Schlamp's conduct it is clear that he thought he had been terminated on June 8, 2020. Mr. Schlamp no longer contacted the employer requesting to return to work, and started to seek new employment with a new employer. Nor did the employer have contact with Mr. Schlamp after that date.

In my view the above actions by the employer, objectively viewed, amounted to the employee's termination.

From March 23, 2020 to June 8, 2020, the employee was on employment leave which was granted by the employer. As indicated above, the employer invited the employee to take the option to stay home due to Covid, which he did, until such time when he made several attempts to return to work with the employer.

VIII. QUANTUM AMOUNT OF WAGE ASSESSMENT

Mr. Schlamp commenced work with the employer on June 29, 2015 and was continuously employed up to and including June 8, 2020. This period of employment was just under 5 years. Section 2-60 sets out the amount of pay in lieu of notice as a 4 week period.

This amount is calculated as follows:

$$\text{\$1,301.46/week} \times 4 \text{ weeks} = \text{\$5,205.84}$$

Plus vacation pay:

$$3/52 \times \text{\$5,205.84} = \quad \text{\$ } \underline{300.33}$$

TOTAL

\$5,506.17

IX. CONCLUSION

The Wage Assessment is amended to \$5,506.17.

Dated at Moose Jaw, in the Province of Saskatchewan, this 26th of January, 2023.


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.