

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



Justin Barber

COMPLAINANT/EMPLOYEE

-AND-

Regina Rock & Sand Inc. and Ron Peter Shatkowski

APPELLANT/EMPLOYER

DATE OF HEARING: July 17, 2023

PLACE OF HEARING: Regina, SK

LRB FILE: No. 080-23  
WAGE ASSESSMENT: No. 1-008390

## **INTRODUCTION**

This matter was heard before me on July 17, 2023, at Regina, Saskatchewan, commencing at 10:20 am. The employer arrived late.

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.

Tanya Turgeon, Employment Standards Officer represented the Department of Employment Standards.

The Appellant/Employer, Ron Peter Shatkowski, Director of the Corporation attended in person. Mr. Shatkowski gave sworn evidence on behalf of the Corporation and the Directors.

Complainant/Employee, Justin Barber, chose not to attend but advised the Employment Standards Officer that he wished the proceeding to proceed in his absence.

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 \$2,049.81.

**I. AGREED FACTS**

The parties agreed that Justin Barber had been an employee of the company.

Mr. Barber was hired to be an equipment operator, truck driver and complete vehicle repairs.

The rate of pay for Mr. Barber was \$19.00/hour.

**II. DISPUTE**

The sole issue to be decided in this matter is whether the wage assessment amount is correct.

### **III. EVIDENCE OF THE EMPLOYER**

Ron Peter Shatkowski was sworn and gave the following evidence:

That Mr. Shatkowski and his company operated a sand and gravel business in the Regina area. He had hired Jason Barber, who was the brother of the complainant, Justin Barber. Through Jason, Mr. Shatkowski became aware that Justin Barber was also looking for work and hired Justin to work with the company.

Both of the brothers wanted payment by way of gravel from the Corporation; however, to date neither brother has attended to take delivery of the gravel.

Mr. Shatkowski later was contacted by Justin advising that he wanted to be paid rather than to take the equivalent amount in gravel.

The Corporation and Mr. Shatkowski never maintained any records of employment or hours worked by either Jason or Justin Barber.

Mr. Shatkowski determined that Jason had worked 77 hours by way of video camera footage at the business premises.

Mr. Shatkowski says that the appeal document he filed contained some errors:

- The 77 hours referred to in paragraph 2 was a reference to Jason not Justin. Mr. Shatkowski said that Justin did not work 77 hours.
- The reference to Jason receiving a cash payment was only for Jason and not for Justin. Justin did not receive any cash payments.
- Mr. Shatkowski amended paragraph 6 of his appeal guesstimating that Justin could well have worked as much as 60 hours, but he did not know for certain, as the corporation did not keep any time sheets or employment records for Justin or Jason.

#### **IV. EXPLANATION OF WAGE ASSESSMENT BY EMPLOYMENT**

##### **STANDARDS OFFICER**

The Employment Standards Officer explained how the wage assessment was calculated by her.

The Employment Standards Officer went through a number of emails which were exhibited showing her attempts to obtain documentation from the Corporation relating to the employee in order to calculate the wage assessment.

As no documents were forthcoming, the officer reached out to the employee, Jason Barber, and obtained records from Mr. Barber for hours of work performed for the employer.

Those numbers were used as a calculation for the wage assessment and are set out in the audit sheet exhibited in the file.

The employment standards officers audit sheet sets out the calculations made in order to arrive at the wage assessment amount.

**V. ANALYSIS/DECISION**

Section 2-38 of the Act requires the employer to keep records of each employee and provide such records to the employment standards officer when requested.

Such records were not kept by the employer, and resultantly, are not available to the parties for this hearing.

The Carpet Warehouse (Saskatoon) Ltd. case by Judge Tilley Taylor, Judgement April 6, 1978, dealt with such an issue.

The Honorable Judge concluded that, "an employer who has failed in his statutory duty to keep records is not in a position to dispute the records submitted by the employee.

The Employment Standards Officer, not being provided with any employer records, went to the employee for his records relating to his employment. I accept the figures of the Employee and the calculations of the Employment Standards Officer.

## **VI. ANALYSIS/DECISION**

Section 2-75(9) states that, the Wage Assessment provided to the Adjudicator is proof, in absence of evidence to the contrary (that the amounts stated in the wage assessment are due and owing). As I do not accept the evidence of the employer relating to his guess work analysis in arriving at his calculation for the number of hours worked by the employee, I can not accept the employer's evidence as evidence to the contrary.

Therefore, the employer's evidence is not sufficient to constitute evidence to the contrary to rebut the presumption of the Wage Assessement.

## **VII. CONCLUSION**

The Appeal is denied and the Wage Assessment is upheld in the amount of \$2,049.81.

Dated at Moose Jaw, in the Province of Saskatchewan, this 23<sup>rd</sup>, of July 2023.

  
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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.