

Decision of Adjudicator in the Matter of an Adjudication pursuant to
Sections 2-75 and 4-6 of *The Saskatchewan Employment Act*
LRB File No. 086-23
Wage Assessment No. 1-00667



APPELLANT: Numbered Company 13885402 Canada Inc., o/a In & Out Liquidation Centre
Director Karl Koschorke

RESPONDENTS: Megan Chessall and the Director of Employment Standards
Represented by Employment Standards Officer Stefanie Gerein

DATE OF HEARING: September 6, 2023 at 1:00 p.m.

PLACE OF HEARING: Conference Room #1
W.G. Davies Building
110 Ominica Street, Moose Jaw, SK

i. Introduction

Wage Assessment No. 1-000667 directed In & Out Liquidation Centre (directors Karl Koschorke and Barry Chessall) to pay \$579.08 in unpaid wages to Megan Chessall or appeal pursuant to Section 2-75 of *The Saskatchewan Employment Act* (the "Act"). Karl Koschorke ("Karl") appealed the wage assessment.

Attending the hearing on September 6, 2023 were:

- a. Karl Koschorke, Director of In & Out Liquidation Centre;
- b. Sandra Hicks, Administrative employee for Karl;
- c. Adeola Afolayan, legal counsel for In & Out Liquidation Centre;
- d. Stefanie Gerein, Employment Standards Officer;
- e. Megan Chessall, by telephone; and
- f. Violet Harris-Tomlin, Employment Standards Officer (observer)

Note: Barry Chessall refused to attend the hearing.

ii. Preliminary Matters

- a. Employment Standards Officer, Stefanie Gerein tabled a binder containing a number of documents. She asked that the corporation documents in tab 2 be registered as an exhibit. The documents show that Karl and Barry Chessall ("Barry") were directors from March 22, 2022 to November 29, 2022. Effective November 29, 2022 Barry was removed as director. The documents were marked EE1.
- b. Gerein requested that Wage Assessment amount of \$579.08, be reduced to \$376.58, due to a partial payment from Barry, in the amount of \$202.50 made on June 16, 2023.

That amendment was accepted.

iii. The Dispute

Karl, in his letter of appeal dated May 31, 2023, claims that Megan Chessall (“Megan”) was never employed by his organization, never given a letter of offer for either part or full time employment.

Therefore, it is left to me to determine whether or not, the definition of “employee” in Section 2-1(f) of the Act applies.

iv. Evidence of the Appellant

Karl and Sandra Hicks (“Sandra”) were sworn in.

Karl indicated that he has known Barry for over 35 years and that he considers Barry a friend. Earlier in 2022 at Barry’s suggestion, the two entered into an equal partnership and the business was incorporated on March 22, 2022.

The agreement was that each would put in \$50,000.00 and a liquidation business would be set up in Nipawin.

Barry had difficulty raising his share so Karl put in the whole \$100,000.00.

Barry was to coordinate the set up and it wasn’t long before Karl had issues with Barry’s lack of communication. Karl had issues with Barry’s lack of following up on finances and felt Barry was funnelling In & Out money into his other businesses run out of the same building.

Barry repeatedly asked Karl for agreement to hire Megan and Karl rejected each request, telling Barry there was not enough work for another employee. Karl did see Megan in the store and asked Barry what she was doing. Barry told him Megan was volunteering to help set up the new store.

As far as Karl was aware there was only one employee working for them in Nipawin (Karson Evanovich).

Sandra indicated that Barry told her that the only two people on the payroll in Nipawin were himself and Karson. Barry had his two daughters volunteering to help get the store set up.

In an email from Barry to Sandra he indicates Megan’s time spent working at the store assisting with set up is outside of the money that he is charging for his staff working for Liquidation World.

Note: Email from Barry to Sandra dated January 5, 2023 is marked ER1.

Sandra referred to TAB 7 - email dated December 11, 2022 from Barry to Karl. Marked ER2 and headed “Our Partnership”. The last sentence on the first page states “in part” you (Karl) have rejected my daughters working at the store because...”, as evidence Barry never hired Megan.

Cross Examination:

In response to questions from Stefanie Gerein, Karl and Sandra provided the following evidence:

- a. Sandra's role is to help Karl anyway she can. She does work in the store, financial and admin things.
- b. Karl and Barry were equal partners.
- c. They both had seen Megan in the store pricing shoes etc. They were told Megan was on mat leave from her dental job in Saskatoon and was helping her dad out.
- d. Karl found out Barry was running money from In & Out through his own bank rather than their bank. Barry shorted Karl \$13,000.00 on the initial investment.
- e. Neither Karl nor Sandra had given Megan directions, equipment was there. Under impression she was there volunteering.

At this point Megan indicated that she has never been told by Karl that she couldn't work there and was never asked by either Karl or Sandra if she was a volunteer or employee.

v. Evidence of the Employee

Stefanie called Megan Chessall as a witness and she was affirmed. Megan participated via cell phone.

Megan filed her complaint with Employment Standards because she was under the impression she was hired full time and did not get paid. Her father, Barry Chessall, had discussed with her about being employed and a wage. She started the job on November 23, 2022 and worked at \$15.00/hour until December 7, 2022. Barry directed her work and scheduled her hours. She did not work past December 7, 2022 because her dad was no longer a partner in the business.

She reported her hours worked to Barry after each shift. After the partnership ended she sent her hours to Karl and Sandra on January 18, 2023.

Note: Stefanie asked that the chart of hours worked in TAB 6 be made an exhibit. It was marked EE2. The accompanying email was also marked EE2.

Megan received direction from Barry and Karl. Her duties included cleaning, maintenance, unpacking, pricing, display set up, sales to customers, running cash register. All the equipment needed was provided by the store.

On June 20, 2023 Barry paid her part of wages owed, \$202.50.

Note: Receipt of payment in TAB 6 and marked EE3.

Karson was the only other employee at that workplace. Besides Karson, her dad and Karl witnessed her working, along with many customers.

She provided Stefanie with three witness statements.

Note: The three are in TAB 8 and are marked EE4.

Megan understands there are disagreements between Barry and Karl, but that should not prevent her from being paid.

Cross Examination:

Responding to questions from Adeola, Karl and Sandra, Megan provided the following evidence:

- a. Barry was given her time sheets after every shift. She never came back to work after Barry left the partnership because she was not given a schedule. She never contacted Karl after the split.
- b. She did work at the same time volunteers were there.
- c. Barry told her to send her hours to Karl. On January 18, 2023 she sent her hours to Sandra (EE2).
- d. She did not do any work for Barry's other businesses.

Redirect – none

At this point Stefanie advised that she would like to telephone the three people who provided witness statements (EE4). I agreed for contact to be made to only In & Out employee Karson Evanovich and former partner Barry Chessall.

Karson's call went to message manager and Barry's phone was turned off. Therefore no testimony was obtained.

Final Argument:

At this point the parties requested some time to finalize their presentations and arguments.

I agreed to this request and set a deadline of 5:00 p.m. Friday September 8, 2023 for receipt.

I then thanked the parties and closed the hearing.

vi. Final Arguments

I received, by email, final argument documents from Stefanie and Adeola.

The Appellant's arguments are summarized as follows:

- a. Megan, according to Barry, was one of many volunteers. Karl did not add any of the volunteers to payroll, issued offer letters or agree to employ them.
- b. Barry never presented Megan's timesheets to the admin assistant in charge of payroll.
- c. By email Barry agrees that Karl never agreed to hiring Megan.
- d. Megan's not showing up for work after Barry's partnership ended raises question of whether there was a job in the first place.
- e. The argument concludes with request that I find Megan was a volunteer and to dismiss the wage assessment.

The Respondent's arguments put forward by Stefanie are summarized as follows:

- a. Section 2-1(f) & (g) of the Act states:
(f) "employee" includes:

- (i) a person receiving or entitled to wages;
 - (ii) a person whom an employer permits, directly or indirectly, to perform work or services normally performed by an employee;
 - (iii) a person being trained by an employer for the employer's business;
 - (iv) a person on an employment leave from employment with an employer; and
 - (v) a deceased person who, at the relevant time, was a person described in any of subclauses (i) to (iv);
- but does not include a person engaged in a prescribed activity;

(g) "employer" means any person who employs one or more employees and includes every agent, manager, representative, contractor, subcontractor or principal and every other person who, in the opinion of the director of employment standards, either:

- (i) has control or direction of one or more employees; or
- (ii) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees;

Stefanie goes on to suggest that an employer-employee relationship can exist without a written agreement as long as the conditions in Section 2-1(f) exist.

- b. Megan's presence at In & Out does not fit the definition of "volunteer" as the Liquidation Centre existed for profit.
- c. Karl knows Megan was at the store working and personally witnessed it.
- d. In the email Barry sent Sandra on January 5, 2023 (TAB 7) he indicates two of his staff (Steven and Karson) were paid, but Megan wasn't.
- e. Megan testified she has only received \$202.50 of the wages owed to her.

Stefanie concludes her arguments requesting that the wage assessment be confirmed.

vii. Analysis

During the time period that In & Out Liquidation Centre was starting up, Barry Chessall was 50% owner and a Director of that company. In that capacity he met the definition of "employer" set out in the Act Section 2-1(g).

As an employer, Barry had the power to hire. In her testimony, Megan stated that Barry hired her and she started on November 23, 2022 with a salary of \$15.00 per hour.

Megan further testified that Barry never paid her.

I accept Megan's testimony as credible and accept it, and I'm satisfied that Karl was unaware of both the hiring action and the failure to pay.

Karl and Sandra both testified that Megan was a volunteer and not an employee. I accept this testimony as well. It is clear that Barry concealed the hire by telling Karl and Sandra that Megan was volunteering. Evidence shows that Megan's hire was not known to Karl until the January email from Barry to Sandra.

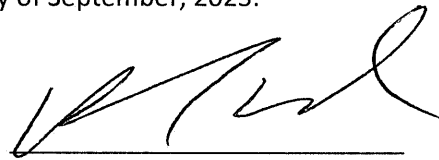
Barry's actions produced a liability for both directors for Megan's unpaid wages.

viii. Decision

With my acceptance of Megan's testimony as being the facts, it is my decision that the amended wage assessment is upheld and the appeal is denied.

Therefore, since Barry's partnership ended on November 29, 2022, his liability is limited to \$225.86 of the \$376.58 owed. Karl's liability would be partially and severally liable for the full \$376.58 since Megan worked 9.5 hours after November 29, 2022.

Dated at Regina in the Province of Saskatchewan, this 19 day of September, 2023.

A handwritten signature in black ink, appearing to read 'R. Ermel', written over a horizontal line.

Ralph Ermel
Adjudicator