

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. 117-23  
Wage Assessment No. 1-000685



APPELLANT: Blue Angel Donut Company  
Represented by Danielle Cox, Sole Proprietor; and  
Tim Hanson, Chow McLeod Legal Firm

RESPONDENT: Tyra Usher-Cox and  
Randy Armitage representing the Director of the Employment Standards

DATE OF HEARING: October 19, 2023 at 9:30 a.m.

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

i. Introduction

I was appointed to adjudicate this appeal on September 20, 2023. On September 26, 2023 I received from the Ministry, all relevant appeal documents and on September 28, 2023 I advised the parties that the requirements set out in Sections 2-74(6), 2-75(2) and 2-75(3) of the Act, had been met.

I then arranged with agreement from the parties to hold the hearing on Oct 19, 2023 in Moose Jaw.

Attending the hearing were Danielle Cox along with lawyer Tim Hanson. Tyra Usher-Cox along with support person, Denise Cox, as well as Employment Standards Officer Randy Armitage. Adam Cox attended a portion of the hearing by telephone as a witness.

ii. Dispute

Wage Assessment 1-000685 directed Blue Angel Donut Company ("Blue Angel") to pay \$2,217.87 in unpaid wages to Tyra Usher-Cox, This amount was amended by the Ministry at the outset of the hearing to \$2,161.14. This amendment was not disputed by the Appellant. The wage assessment was received by Blue Angel on July 24, 2023 and was subsequently appealed on August 1, 2023. Blue Angel believes the wage assessment should be reduced to \$617.48.

iii. Preliminary Matters

Mr. Armitage tabled a document from the Saskatchewan Corporate Registry dated March 7, 2023. The document shows that Danielle Cox is the sole proprietor of Blue Angel Donut Company and has been since August 15, 2021. The document was entered into evidence and marked EE2.

iv. Facts

a. Evidence of the Employer

Danielle Cox was affirmed and provided the following evidence:

Danielle tabled a document (marked ER1) that she had received from Mr. Armitage during the investigation. The document portrays Tyra's working hours, events worked, dates and wage calculations.

Adam Cox was her partner in the business, and he was in charge of operations of the donut trailer. The business travelled from event to event (i.e. town fairs, etc.) and sold mini donuts to fairgoers. Part of Adam's responsibilities was to hire staff, schedule their work, prepare timesheets and oversee day to day operations.

Danielle's role was to provide the administration function. Part of that function was to handle financial issues including payroll.

Referring to Tyra's document ER1, Danielle points to the event "Hang B MJ" and then to a text message sent from Adam to her on July 12, 2022 (marked ER3). The text shows that Adam paid Tyra the \$168.00 from cash taken in that day from sales. Therefore, the wage assessment should be reduced by that amount.

Danielle then referred to the event held on June 4 "SK S Car". Tyra claims 8 hours worked on line 3 of ER1. Danielle tabled an exhibit marked ER2, which is a bulletin advertising the event at Sukanen Museum for June 4, 2022. The bulletin states the event hours are from 10 a.m. to 4 p.m. which totals 6 hours not 8. Therefore, the wage assessment should be reduced by \$24.00 (Tyra's wage was \$12/hour).

Danielle then referred to a text message from Adam to herself dated July 14, 2022 (marked ER13). The message states that Tyra will be late starting work. This event is listed on line 7 of Tyra's documents ER1. Event is called "CDLL" and the claim is for 42 hours or \$504.00. Danielle states that the hours worked were actually 33 not 42 and the wage assessment should be reduced accordingly. Danielle tabled a document showing e-transfer history for wages paid to Tyra, Exhibit marked EE3. The document shows Tyra was paid \$427.83 for this event and therefore the wage assessment should be reduced by \$76.17.

Danielle then referred to a text message from Adam to herself dated July 21, 2022 marked ER5. The text indicated that Tyra was paid \$427.83. The e-transfer history (EE3) shows that Danielle paid Tyra that same amount. The implication here is that Tyra was paid twice for the same event. Therefore, the wage assessment should be reduced by that amount.

Danielle then referred to ER1 line 8 the "MH Fair", in a text from Adam to herself (text marked ER6) he tells Danielle that Tyra worked "lemonade" all weekend. "Lemonade" is another employer. Tyra's claim for 4 days and 56 hours is therefore not legitimate and should be removed from the wage assessment.

Next Danielle referred to line 9 of ER1, event "Sktn Fair", Tyra claims 3 days, 36 hours for \$432.00. EE3 shows an e-transfer was made for \$479.90 on August 30, 2022. Therefore, the wage assessment should be reduced by this amount. The fair is a 5-day event not 3.

Danielle then referred to a text message marked ER7, from herself to Adam. She tells him she just dropped off Tyra at 4:15 p.m. Therefore, for line 9 of ER1, the most Tyra would have worked on August 10, 2022 was 8 hours. Therefore, her claim of 36 hours should be reduced by 4 hours and the wage assessment accordingly. This would make the claim for Sktn Fair to be 5 days, 32 hours instead of 3 days, 36 hours.

Danielle states that only overtime earned by Tyra would be July 3 and July 27-29 (ER4). Also the Saskatoon event was 5 days not 3 days, so overtime should not be paid at all for this event.

Danielle then introduced a text marked ER8 from Adam to herself. The text indicated that Tyra left work at 10 p.m. Therefore the claim for Saskatoon should be reduced by another 4 hours making the claim 28 hours. Tyra received by e-transfer \$470.90 on August 30, 2022.

From ER1 Danielle referred to lined 10 and 11, the events "CTMJ" and "SST/BEE". These events were scheduled and controlled by Adam. Adam commandeered the truck, trailer and kept all the proceeds from these two events. She believes that Adam is responsible for Tyra's wages and that the wage assessment should be reduced accordingly (\$204 and \$192).

Danielle concluded her evidence in chief by suggesting the wage assessment should be amended for \$2161.14 to \$617.48.

Cross Examination:

In response to questions from Mr. Armitage, Danielle provided the following:

The business consists of a trailer set up at various venues out of which mini donuts are sold to the public. She did not always attend the events, Adam was responsible for the operation and he worked with employees. Her role was an administrative function.

Note: Mr. Armitage tendered an email from Danielle to the Ministry and it was marked EE4.

Danielle agreed that Adam was the Manager and that he hired Tyra, but the hire was never formalized. Adam would only provide her with an amount to be paid to the employees. He never provided actual hours, time sheets or pay stubs. She would calculate hours worked by using event times and schedule. She attended seven events in 2022 but did not attend set-ups or takedowns.

The events held in September were not authorized nor scheduled by her. Adam should be responsible for employee wages for those events. She has no idea if Tyra worked these events or not.

Redirect – None

b. Evidence of the Employee

Prior to calling his witnesses, Mr. Armitage explained how the wage assessment was calculated. Referring to ER1, EE1 and EE3 he explained that for each day Tyra worked the first 8 hours were paid at \$12/hour. Any hours above 8 were paid at 1.5 times or \$18/hour. Public holiday pay at 4% was added to the total wage and then 3/52 for annual vacation added to that.

Tyra Usher-Cox was called and was sworn.

She started working for Blue Angel in August or September of 2021. She was hired by Danielle and Adam. Her duties included taking orders, handling payments, making change if necessary. She often made the batter and deep fried the donuts. When both Adam and Danielle were away she would manage the trailer.

Her working schedule was set up by the hours of the event. Often hours worked included travel time between events, set-up and takedown of the trailer. She travelled with her dad.

At most events the trailer was operated on a 12 hour day, plus set-up and takedown on first and last days. Setup takes up to 2 hours. Her boyfriend at the time worked with her, and there were four other parttime employees throughout the summer.

Most events she worked from start to finish. The season ran from March to September. Events average 3 to 4 days. Regina and Saskatoon last 5 days.

She didn't keep track of her hours, her dad might have, she wasn't sure. She was paid by e-transfer to her phone.

She never received pay stubs, not sure if she was paid overtime nor if there were deductions made to her pay.

Danielle attended maybe two events that summer.

The two shows in September (CTMJ and SST/BEE) she worked both. She thought she was working for her dad. She has not been paid for those shows.

She did receive \$25.00 as a Christmas bonus.

Cross-Examination:

In response to question from Danielle, Tyra provided the following:

She corrected her testimony about Regina being a 5 day event. There was no Regina show.

She has never once seen a pay stub. Her dad, Adam and grandma recreated her work schedule and hours of work to produce ER1. She gave them the e-transfer records to help.

Redirect – None

Mr. Armitage called Adam Cox as his next witness. Mr. Cox was reached by speaker phone and was affirmed.

Responding to questions from Mr. Armitage Adam provided the following evidence:

Around August of 2021 he and Danielle set up the company. He was the owner and managed the day-to-day activities of the business. For 10% of the business Danielle handled administration.

As Owner and Manager, he arranged for the schedule of events by contracts with towns and other organizations. He moved the trailer from event to event. Managed the set-ups and takedowns. Hired and fired staff. Scheduled staff and kept records for the hours. He provided those records to Danielle so she could keep the books and process payroll.

ER1 was prepared by himself with Tyra's grandmother's help. They used records Danielle provided to BTN, as well as Tyra's e-transfer records. He also relied on his memory of the events, as he had attended them all.

ER1 is accurate to the best of his knowledge using the information he had available.

Danielle, he believes, attended only two events. Saskatoon for 1 day and one other for maybe 4 hours. Danielle has a fulltime job so has no time to attend shows.

Employees work hours including travel time between shows (employees travelled with him in the vehicle that towed the trailer), contracted hours of the show, set-up and takedown.

The two shows in September were both worked by Tyra. These shows were set up by him and feels Tyra should be paid for them. He does not think Tyra has been paid overtime, public holiday pay or annual vacation pay.

Note: At this point Mr. Armitage entered a document titled "Statement from Adam J. Cox". The document was marked EE5. There was no oral evidence provided by Adam regarding the exhibit.

Cross Examination:

Danielle asked Adam why he never provided pay stubs to her when she requested them.

Adam responded that he gave them to his lawyers in March of 2023.

Redirect – None

c. Final Argument

Danielle argued that had Adam fulfilled his responsibilities regarding employees' timesheets and pay stubs, she could have managed her bookkeeping role and employees would have been paid properly.

Mr. Armitage tabled a written final argument. In the document he sets out the pertinent parts of the Act, including the definition of employee, obligations of an employer and the liability of corporate directors.

Mr. Armitage also argued that Adam was in the best position to determine what hours Tyra worked since he was on site all the time.

I thanked the parties for their presentations and closed the hearing.

v. Analysis

Adam Cox's evidence is that he provided all necessary employee information to Danielle so that she could fulfill her obligations as an employer.

Yet other than that testimony, the only evidence before me shows the only information he provided was a dollar figure of what Blue Angel owed to employees.

Tyra's testimony is that she never filled out a timesheet and she wasn't sure if Adam kept track of her hours. Tyra also testified that she never received any pay stubs from Adam.

Exhibit ER3 is a text from Adam to Danielle listing amounts owed to employees as of July 12, 2022. Tyra is owed \$331.34 + 40 tips. There is no mention of hours worked, days worked, or overtime worked. Exhibit ER5 shows amounts employees are owed, again with no breakdown.

As a result of the Ministries investigation of Tyra's complaint a spreadsheet was constructed of Tyra's hours worked during the 2022 season. This spreadsheet marked ER1, was composed by Adam, Tyra and Tyra's grandma, Denise.

The spreadsheet lists eleven events, abbreviated titles of the events, dates of the events, days Tyra worked total hours worked, pay rate and gross pay for each event.

V1. Decision

From all the evidence presented, I am, on the balance of probabilities accepting, to a large extent Danielle's rendition. Adam's assertions that Danielle was provided with the necessary data to process proper payroll is not borne out in the evidence. Text messages from Adam containing references to pay only show amounts owed and not hours worked.

The document produced by Adam, Denise, and Tyra (ER1) listed 11 events worked by Tyra during the 2022 season. Of the 11 Danielle took issue with 7. Of the 7, I find 5 to be valid. The 5 are HangB

MJ, SkS Car, Cd LL, MH Fair, and Sktn Fair. The other 6 are accepted as accurate and proper liabilities of Blue angel.

I have amended the table provided to the Ministry by Tyra, marked ER1, as follows:

Event	Days worked	Hours worked	Straight time	Over time	Total Wage
HangB MJ	Paid cash by Adam, see text ER3				\$0
CatVil R	1	14	8 X \$12=\$96	6 X \$18=\$108	\$204
Sks Car	1	6	6 X \$12=\$72		\$72
MJ Fair	4	24	24 X \$12=\$288		\$288
F/D SC	4	56	32 X \$12=\$384	24 X \$18=\$432	\$816
S/D MJ	3	16.5	16.5 X \$12=\$198		\$198
CD LL	4	33	33 X \$12=\$396		\$396
MH Fair	Worked for another employer, see text marked ER6				\$0
Sktn Fair	5(claimed 3)	28	28 X 12=\$336		\$336
CT MJ	3	17	17 X \$12=\$204		\$204
SST/Bee	2	16	16 X \$12=\$192		\$192
			Total=\$2166	Total=\$540	

Public holiday pay on regular wages-  $\$2166 \times 4\% = \$86.64$

Total regular wages  $\$2166 + \$86.64 = \$2252.64$

Total wages  $\$2252.64 + \text{OT } \$540 = \$2792.64$

Annual vacation-  $\$2792.64 \times 3/52 = \$161.11$

Total wages earned-  $\$2953.75$

Less wages already paid of  $\$2274.06$

$\$679.69$

Therefore, it is my decision that the re-vised wages assessment owed by Blue Angel Donut company to Tyra Usher-Cox is  $\$679.69$

Dated at Regina in the Province of Saskatchewan, this 30<sup>th</sup> day of October, 2023.



Ralph Ermel  
 Adjudicator