

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

APPELLANTS: **THE ROTISSERIE ULTIMATE BUFFET
EXPERIENCE LTD. and JUSTIN LINDER, as
Director of THE ROTISSERIE ULTIMATE
BUFFET EXPERIENCE LTD.**

RESPONDENTS: **DAT TONG, KHOA DAO, THANH PHU PHAN
and the DIRECTOR OF EMPLOYMENT
STANDARDS**

DATE OF HEARING: **July 19, 2023**

PLACE OF HEARING: **3rd Floor Boardroom
1870 Albert Street
Regina, Saskatchewan**



LRB File No. 200-22, Wage Assessment File No. 1-000621

I. INTRODUCTION

Wage Assessment No. 1-000621 directed The Rotisserie Ultimate Buffet Experience Ltd. (the Company) and Justin Linder as director of the Company to pay unpaid wages in the sums of \$5,430.83 to Dat Tong, \$12,489.68 to Khoa Dao, and \$11,115.27 to Thanh Phu Phan or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Justin Linder appealed the Wage Assessment on behalf of the Appellants.

On July 19, 2023, the following individuals attended the hearing:

- Dat Tong, former employee of the Company;
- Khoa Dao, former employee of the Company;
- Andrew Langgard, Employment Standards Officer; and
- Matthew Brown, Employment Standards Officer (as observer).

II. THE DISPUTE

On November 15, 2022, a Delegate on behalf of the Director of Employment Standards issued Wage Assessment No. 1-000621 against the Company and Justin Linder, representing unpaid wages for Dat Tong, Khoa Dao, and Thanh Phu Phan. On December 1, 2022, Justin Linder filed a Notice of Appeal on behalf of himself and the Company, claiming the Wage Assessment was incorrect.

III. PRELIMINARY MATTERS

At the beginning of the hearing, I advised the former employees and Employment Standards Officers that Mr. Linder had emailed me late last night to say he was not attending the hearing. Due to late notice on Mr. Linder's part, I was unable to relay this information before two of the former employees went to the time and expense of flying to Regina for the hearing, and I apologized for that. I also advised the parties that due to cancelled and rescheduled flights, Thanh Phu Phan was on his way, but could not make it for 10:00 a.m. as originally planned. We decided to proceed with the hearing without Thanh Phu Phan given that his testimony would not be required due to the Appellants' choice not to participate.

IV. THE FACTS

For the record, I will lay out some of the circumstances leading up to the appeal hearing:

- On or about February 16, 2023, I emailed the parties asking for dates in March and April of this year on which they would be available to attend the appeal hearing.
- The former employees indicated they were available in March, but Mr. Linder said he was unavailable in March due to staff holidays. After many attempts to align schedules, it was agreed the appeal hearing would take place in Regina on July 19, 2023, commencing at 10:00 a.m. I sent out a hearing notice on April 20, 2023, advising the parties of the date, time, and location of the hearing. I also asked the parties to provide any documents they intended to rely on in advance of the hearing.
- I received documents from the former employees and Employment Standard Officer but did not receive any documents from the employer in advance of the hearing.
- On July 17th at 8:02 a.m., I sent out an email reminder for the hearing.
- When I checked my email three hours before the hearing, I found an email from Mr. Linder sent the previous night at 11:56 p.m. (the night before the hearing), stating: "I won't be attending the hearing. The Rotisserie is closed since June 26th."
- I immediately responded to Mr. Linder, copying the parties, as follows:

"Mr. Linder,

I am just seeing your message now. The fact that you would wait until late the night before the hearing to advise me of this information is an abuse of process. The former employees have spent time and money travelling (including flying from out of province) to attend the hearing.

The hearing will proceed as scheduled and if you do not appear, or have somebody appear on your behalf, there will be no evidence to support the appeal, meaning the Wage Assessment will be upheld. I remind you that the company and you personally, as the director of the company, are named in the Wage Assessment.”

- To which he responded: “Bankruptcy...all the best.”

We proceeded with the hearing in order to deal with some procedural/housekeeping matters, and also to give the former employees a chance to speak, if they so wished. Mr. Laggard began by requesting an amendment to the Wage Assessment as it relates to Dat Tong, due to one day of work that was inadvertently missed on the Audit Sheet. I granted the amendment which changed the total wages owed to Dat Tong from \$5,430.83 to \$5,635.49.

The following documents were entered into evidence:

- EE-1 Copy of revised Officer Audit Sheet for Dat Tong;
- EE-2 Copy of original Officer Audit Sheets for Dat Tong, Phu Phan, and Khoa Dao;
- EE-3 Copy of service documents for Wage Assessment and cover letter by registered mail on Justin Linder and The Rotisserie, along with copy of an email from Justin Linder expressing his intention to appeal;
- EE-4 Copy of Notice of Appeal and deposit received December 1, 2022, and Payment Log Sheet; and
- EE-5 Copy of ISC Saskatchewan Corporate Registry Profile Report for The Rotisserie Ultimate Buffet Experience Ltd.

V. ANALYSIS AND DECISION

At the hearing, Dat Tong expressed his frustration and disappointment in how he and his co-workers were treated by Mr. Linder. He feels the employer took advantage of the vulnerable position they were in as foreign workers. When Dat Tong realized he was not being properly paid for his hours, he decided to secretly keep track of his hours, so as not to jeopardize his job. He did not think this type of thing would happen in Canada.

Mr. Linder’s actions in filing an appeal and then refusing to file materials or show up at the hearing, or at least providing reasonable notice of his intentions not to participate, show his disregard for his former employees and for the system put in place to protect employees. There is no doubt that Mr. Linder abused the process, and I am sorry for the effect this had on Dat Tong, Khoa Dao, and Thanh Phu Phan. They have paid an emotional and monetary price. If I had the authority to make an order of costs against Mr. Linder, I would, but sadly I do not have that power.

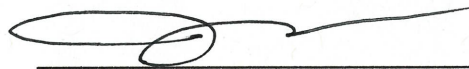
Although the Appellants filed a Notice of Appeal, Mr. Linder chose not to participate in the appeal hearing. The Appellants provided no evidence in support of the appeal. Section 2-75(9) of the Act states the copy of the wage assessment provided to the adjudicator “is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing, without proof of the signature or official position of the person appearing to have signed the wage assessment.”

In accordance with the Act, I find the amount stated in the Wage Assessment is due and owing. I also accept that one day’s pay for Dat Tong was missed from the Audit, and therefore find that he is entitled to an additional \$204.66.

VI. CONCLUSION

The appeal is dismissed. The Wage Assessment is varied to reflect an additional day’s wages for Dat Tong. Dat Tong is entitled to wages in the amount of \$5,635.49, instead of \$5,430.83, and the Wage Assessment is varied accordingly. The Appellants shall pay the sum of \$5,635.49 to Dat Tong, the sum of \$12,489.68 to Khoa Dao, and the sum of \$11,115.27 to Thanh Phu Phan, for a total of \$29,240.44.

DATED in Regina, Saskatchewan, this 19th day of July, 2023.



Jodi C. Vaughan
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 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.