

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. 014-24
Wage Assessment No. 1-00741



COMPLAINANT: Philippe Beaulieu
Represented by Kelli Smith, Employment Standards Officer

RESPONDENTS: White Fox Group Ltd. o/a Southwest Tire Inc.
Represented by Stewart Bullin, Director and
Dana Flemmer, Office Manager

DATE OF HEARING: May 24, 2024 at 10:00 a.m.

PLACE OF HEARING: Second Floor Board Room
E.I. Wilson Building
Provincial Building
350 Cheadle Street, Swift Current, SK

i. Introduction

White Fox Group Ltd. ("White Fox") head office is located in Redcliff, Alberta. Southwest Tire Inc. ("Southwest Tire") is owned by White Fox and is located in Shaunavon, Saskatchewan.

Southwest Tire was managed by Roy Baird during the relevant time frame and was Mr. Beaulieu's supervisor. Neither he nor the Complainant attended the hearing. Neither responded to the communications made by myself and Employment Standards Officer, Kelli Smith.

Both Mr. Bullin and Ms. Flemmer appeared through Zoom.

ii. Preliminary Matters

I advised the parties of Section 4-4(6) of *The Employment Act*, which deals with the absence of persons directly affected by an appeal or a hearing and that I had determined to proceed with the hearing as if they were present.

iii. The Dispute

Ms. Smith advised that the Ministries investigation into Mr. Beaulieu's complaint showed he was owed \$1,202.43 in unpaid wages. The unpaid wages included public holiday, vacation pay and one weeks pay in lieu of notice. A cheque in the amount of \$256.71 was paid by White Fox, leaving a wage assessment of \$945.72 owing.

iv. Evidence of the Employer

Mr. Bullin and Ms. Flemmer were affirmed and provided the following information:

Phillippe Beaulieu had worked for them a couple of times, the relevant employment period was from July 28, 2022 to October 28, 2022.

Phillippe ordered four tires on October 3, 2022 and on October 28 the tires arrived and he had them installed on his vehicle.

Phillippe never came back to work after that and he never paid for the tires. Phillippe also took a gas card when he left and in February 2023 charged up over \$1,200 of gas before White Fox found out and cancelled the card. The RCMP were involved by Southwest Tire Manager, Roy Baird.

It is not known if Phillippe had been charged regarding the tires and gas stolen from Southwest Tire. The RCMP told them that Phillippe was wanted for other reasons as well.

Cross Examination:

Questions from Ms. Smith produce the following information:

Mr. Bullin has met Phillippe and he is satisfied that either Phillippe or one of his relatives used the gas card for their vehicle.

Note: A document tabled by White Fox (ER4) from Roy Baird to Kelli Smith dated December 19, 2023, is objected to by Ms. Smith, as Baird is not available to put it in as an exhibit.

Mr. Bullin was told by Roy Baird that Phillippe stole the tires.

Re-direct:

Mr. Bullin knows he won't get any money back for the fuel but would like Phillippe to pay for the tires.

v. Evidence of the Employee

Ms. Smith tabled a binder containing the documents accumulated as she investigated Mr. Beaulieu's complaint. Her investigation was handled through e-mail as she never met Mr. Beaulieu in person.

Her investigation concluded that the Complainant was owed for unpaid public holiday pay and vacation pay. Further the Ministry determined that the employer had no grounds to terminate for cause and therefore pay in lieu of notice was also owed.

Note: Mr. Bullin interjected at this point to advise that he had Mr. Beaulieu's pay stubs in front of him and that the stubs showed public holiday and vacation pay being paid. Ms. Smith replied that she had never received pay stubs from the employer.

The pay stubs (7 pages) were sent by email by Ms. Flemmer and were received by Ms. Smith, printed out and were marked collectively ER1.

I agreed to give the Ministry until 5:00 p.m., Wednesday May 29th, to reassess the wage assessment and communicate the findings to both White Fox and myself.

Ms. Smith then turned her attention to Mr. Beaulieu's employment and how it ended. While it is evident that Beaulieu did purchase tires, there is no evidence that he stole them.

Ms. Smith also contends that there is no evidence that either Mr. Beaulieu quit or that the employer tried to find him.

Cross Examination:

Mr. Bullin indicated that he believes vacation was paid on every cheque. He also believes that Philippe just left and never came back. The Southwest Tire Manager, Mr. Baird told him that he (Baird) had tried to contact Philippe and was told Philippe was hiding from the RCMP and couldn't come back to work.

vi. Final Argument

Mr. Bullin believes the company paid all the wages required and that Philippe left the job. "Dismissal or suspension" was put on the ROA because they didn't know what else to put on it. Philippe did steal tires and gas.

Ms. Smith contends that the wage assessment should be upheld. There was no evidence that Philippe received vacation and holiday pay.

Pay in lieu of notice should also be paid as there is no evidence to uphold termination for cause.

This concluded the hearing.

vii. Decision

The wage assessment issues to be determined fall into two categories:

1. Annual Vacation and Public Holiday pay; and
2. Pay in Lieu of Notice.

On Monday and Tuesday, May 27 and 28 communications with Ms. Smith and Ms. Flemmer and myself, lead to agreement regarding vacation and holiday pay.

1. The parties agreed that based on the pay statements provided by the employer during the hearing, Public Holiday Pay had been received by Philippe.

The parties also agreed that neither vacation pay nor vacation pay on vacation pay has been paid.

There was also an agreement that a partial payment in the amount of \$256.71 was received by the Ministry from White Fox.

So Vacation pay owed in the amount of \$486.87 plus \$39.04 for vacation pay on vacation pay totals \$525.94. Subtracting the partial payment of \$256.71 leaves \$269.20 owing.

2. Pay in Lieu of Notice

Given the absence of both the Complainant and his workplace manager my decision on this portion of the wage assessment falls under the principle of "on the balance of probabilities", since there has been no sworn evidence put before me.

During the process I followed to set up the hearing, many emails were sent to White Fox, Ms. Smith and Mr. Beaulieu. I did not have coordinates for the Southwest Tire Manager Mr. Baird. I never received a response from Mr. Beaulieu although none of the emails came back. The telephone number I had for Mr. Beaulieu was disconnected.

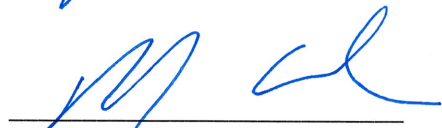
A registered letter, notifying Mr. Beaulieu of the hearing date was returned to me undelivered.

Mr. Bullin, using hearsay information, advised that Mr. Baird did try to get Mr. Beaulieu back to work but was told that Mr. Beaulieu couldn't come back because he was hiding from the RCMP.

On the balance of probabilities, my decision is that attempts were made by White Fox, to contact Mr. Beaulieu and either Mr. Beaulieu ignored those attempts or was unreachable. My conclusion is that Mr. Beaulieu abandoned his job at Southwest Tire and therefore does not qualify for pay in lieu of notice.

White Fox Group Ltd., o/a Southwest Tire Inc. is directed to pay a wage assessment in the amount of \$269.20.

Dated at Regina in the Province of Saskatchewan, this 3 day of June, 2024.



Ralph Ermel
Adjudicator