

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



Kaysa Hartman

COMPLAINANT/EMPLOYEE

-AND-

Pierre Hanna o/a Ledgers (Halifax)

APPELLANT/EMPLOYER

DATE OF HEARING: April 23, 2024

LRB FILE: No. 015-24

WAGE ASSESSMENT: No. 1-000736

INTRODUCTION

Both the Appellant and Employment Standards Officer raised issues regarding Jurisdiction.

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 \$1,946.15.

I. PRELIMINARY MATTERS

Mr. Pierre Hanna, Appellant/Employer in his appeal documents raised the issue that the Province of Nova Scotia was the proper Jurisdiction for this matter to be heard instead of the Province of Saskatchewan.

Mr. Randy Armitage, Employment Standards Officer raised the issue of Jurisdiction stating that Section 2-75 of The Act had not been complied with by the Appellant, in that the deposit, required by Section 2-75 (\$500.00), had not been paid before the expiry of the appeal period.

Facts Issue 1

Does Saskatchewan have Jurisdiction over this Appeal?

Mr. Hanna points out that he resides in Nova Scotia and the Business (Accounting) is located in Nova Scotia and is not registered in Saskatchewan.

Mr. Armitage points to Section 2-3(1), which states that part two of The Act applies to all employees and employers in Saskatchewan (subject to the exceptions in the section). Ms. Hartman resides in the City of Moose Jaw, Saskatchewan and did the work, which is the subject matter of the Wage Assessment, in Saskatchewan

Facts Issue 2

The Employment Standards Officer filed documentation showing that the Appellant filed his Notice of Appeal within the required time pursuant to Section 2(75), along with the required deposit of \$500.00 (which was sent by cheque) with the appeal documents.

The Director served the Wage Assessment on Employer by Registered mail on January 2, 2024. The Appeal and the cheque

were received on January 22, 2024. The Appeal period expired on January 23, 2024. The Department received advice from the Royal Bank of Canada, on January 23, 2024, that the cheque had been returned NSF.

Mr. Hanna advised that the NSF cheque was not replaced and consequently the deposit has therefore not been made at any point in time for this appeal.

Mr. Hanna says that once he learned his cheque had been returned NSF he realized that he could not replace it in time in order to be within the appeal period so he did nothing to replace the required deposit.

II. ANALYSIS/DECISION

ISSUE 1 Mr. Hanna relies on Section 1-4 of The Act, which he says sets out the intent of the Employment Standards Act, and interprets that section to say that the Act only deals with matters that take place with the parties wholly in the

Province of Saskatchewan.

Mr. Armitage points to Section 2-3(1) of The Act, which relates to the application of part II to all employees in Saskatchewan with some exceptions. Ms. Hartman does not fall in to any of the exceptions.

Section 1-4 raised by Mr. Hanna only sets out some of the duties of the Minister as they pertain to The Act. It does not deal with Jurisdiction.

There is a presumption of Provincial Jurisdiction in Labour Relations. SEE: NIL/TU, O Child and Family Services v. B.C. Government and Service Employees Union (2010) 2 SCR 696.

The Employer has not rebutted the presumption and I find that the Saskatchewan Employment Standards Act has Jurisdiction over this matter.

ISSUE 2 Section 2-75(4)(5) states that:

(4) if the appellant is an employer or a corporation director, the employer or corporate director shall, as a condition of being eligible to appeal the wage assessment, deposit with the director of employment standards the amount set out in the wage assessment or any other prescribed amount.

(5) The amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced.

It is clear and unambiguous from the wording of section 2-75(2) and subsection (5) must be complied with.

Section 2-75(2) of The Saskatchewan Employment Act, states that, an Appeal to a Wage Assessment must be commenced by filing a written Notice of Appeal with the Director of Employment Standards within 15 business days after the date of service of a Wage Assessment. This Section has been reviewed in *Pruden v. Olysky Ltd. (2018)*, SKCA 75.

The authorities are clear that a person's right to Appeal expires if not brought within the statutory time limitation and that in the absence of a statutory provision providing authority to extend the time for an appeal there is no authority to extend the time period.

See:

Jordan v. Saskatchewan Securities Commission (1968), 64 WWR 121 (Sask CA);

Houston v. Saskatchewan Teachers Federation, 2009 SKCA 70;

Brady v. Jacobs Industrial Services Ltd, 2016 CanLII 49900 (Sask LRB);

Egware v. Regina (City), 2016 SKQB 388 (CanLII); *Pruden v. Olysky Ltd*, 2018 SKCA 75.

Mr. Hanna filed the appeal within the time frame set out in section 2-75(2). However, section 2-75(4) states that as a condition of being eligible to appeal the wage assessment a deposit must be made to the Director of Employment Standards in the amount set out in the wage assessment or any other prescribed amount. The prescribed amount in this case is \$500.00. This amount must be deposited before the expiry of the period during which an appeal may be commenced.

The object of the statute of the statute is to ensure that the wages owing to employees are paid. The deposit is intended to discourage appeals that have little or no merit that are brought as a means of delaying recovery of an amount owing. The consequences of a finding of nullity is monetary; the prejudice caused by the delay is also monetary. It is now abundantly clear that section 2-75 sets out a mandatory requirement to deposit the required amount prior to the expiry of the appeal period. The effect of a failure to strictly comply with this requirement is a nullity of the appeal.

Finally, the authorities are clear, that a person's right to appear expires if not brought within the statutory time limitation and that, in the absence of a statutory provision providing authority to expend the time for an appeal, there is no authority to extend the time period.

SEE previously cited cases.

The effect of the failure to strictly comply with the requirements to deposit the amount before the expiry of the appeal period results in a nullity of the appeal.

III. CONCLUSION

As the case law states the deposit must be filed within the required time frame and the time frame cannot be extended. I conclude that I do not have jurisdiction to hear this Appeal.

The Appeal is dismissed and the Wage Assessment in the amount of \$1,946.15 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 29th, of April 2024.



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.