

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



Gagandeep Kaur

COMPLAINANT/EMPLOYEE

-AND-

Tamarind Restaurant Inc. and Aji Vilavinal, Girisankar Vadakkedath Raju and
Vinu Pally, Directors

APPELLANT/EMPLOYER

DATE OF HEARING: October 1, 2024

PLACE OF HEARING: Saskatoon, Saskatchewan

LRB FILE: No. 098-24

WAGE ASSESSMENT: No. 1-000805

INTRODUCTION

This matter was heard on October 1, 2024 in Saskatoon, Saskatchewan.

I am satisfied there has been compliance with subsections 2-74(6), 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). Therefore, I have determined that I do have jurisdiction to hear this matter.

Violet Harris-Tomlin, Employment Standards Officer represented The Department of Employment Standards.

Gagandeep Kaer the Complainant, Employee was present and represented herself.

Tamarind Restaurant Inc. was represented by Aji Vilavinal, Director, and he appeared by telephone.

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 \$3,146.95.

I. PRELIMINARY MATTERS

At the commencement of hearing Aji Vilavinal advised that the Employer no longer took issue with the amount of the Wage Assessment and payment had been arranged.

Payment had been mailed by cheque in the amount of the Wage Assessment on the previous Friday (September 27, 2024). This cheque had not yet been received by the Employment Standards Officer as at the date of the Hearing (October 1, 2024).

Mr. Aji Vilavinal also said that he was raising a new issue, that the company, named in the Wage Assessment was not the Employer. He stated that the Employer was a numbered company, 102109811 Saskatchewan Ltd. (to be referred herein as "the numbered company"). This issue had not been addressed in the Notice of Appeal when filed in this matter.

No one from the numbered company had contacted the Adjudicator or Employment Standards Officer, and no one appeared on their behalf at the Hearing.

II. EVIDENCE OF THE EMPLOYER

Mr. Aji Vilavinal gave oral evidence that he was the owner of Tamarind Restaurant Inc. but the company had no employees. He said he was a franchise restaurant and the numbered company was the franchise owner.

The franchise owner employed all the employees that worked for the franchises and consequently should be named in the Wage Assessment, not Tamarind Restaurant Inc.

Mr. Aji Vilavinal did not call any witnesses, nor did he file any documents in support of his position.

III. EVIDENCE OF EMPLOYEE

Ms. Gagandeep Kaur was employed by Tamarind Restaurant Inc. and she left the company voluntarily on June 23, 2023.

Ms. Gagandeep Kaur stated that she:

- Had been hired by Mr. Aji Vilavinal and he held himself out at the owner
- She only ever deal with Mr. Aji Vilavinal and Tamarind Restaurant Inc. during her employment and never with the numbered company
- Mr. Aji Vilavinal gave her instructions and paid her

Ms. Gagandeep Kaur stated that she had worked the hours claimed in the Wage Assessment amount and had not been paid for them.

IV. EVIDENCE OF EMPLOYMENT STANDARDS

The Employment Standards Officer filed a document package entered as ESO Exhibit #1.

The Employment Standards Officer explained how the Wage Assessment amount was arrived at.

The Employment Standards Officer also went through the corporate documents in ESO Exhibit #1, emphasizing that all the documents relating to the employee and her employment were all on Tamarind Restaurant Inc. letterhead and signed by Mr. Aji Vilavinal.

Including:

- Mr. Aji Vilavinal signed the employment contract
- Mr. Aji Vilavinal paid the employee wages
- Mr. Aji Vilavinal participated in the Wage Assessment investigation
- Mr. Aji Vilavinal signed the Employment verification letter of the employee.
- Mr. Aji Vilavinal filed the Notice of Appeal in this matter
- Mr. Aji Vilavinal had possession of the employee records
- Mr. Aji Vilavinal had text messages between himself and the employee, dealing with the employment termination of the employee
- Mr. Aji Vilavinal issued the statement of employee earnings

V. ANALYSIS

The employer has arranged for the payment of the Wage Assessment amount in full.

The employee says that the time covered by the Wage Assessment was worked by her and the salary owed to her.

Mr. Aji Vilavinal states that the Wage Assessment has been paid by way of cheque, by being mailed to the Employment Standards Office in Saskatoon.

From these facts I can only draw the conclusion that the Wage Assessment amount is correct and, as it is not disputed, the presumption in section 2-75(9) applies. And, as there was no evidence to the contrary introduced, I find that the wage assessment amount is correct.

Mr. Aji Vilavinal raised a new issue at the hearing that being, that the employer named in the Wage Assessment (Tamarind Restaurant Inc.), was not the employer of Ms. Gagandeep Kaur. But the numbered company was the actual employer and Tamarind Restaurant Inc. was

merely a franchisee with the numbered company being the franchisor and the employer of all Tamarind employees.

Mr. Aji Vilavinal entered no evidence to support his claim.

A corporate record search shows different people own the numbered company and Mr. Aji Vilavinal is not a shareholder or director of the numbered company. No one from the numbered company attended the hearing nor requested to be heard.

However, the evidence does show:

1. The numbered company did not file an appeal
2. The appeal document filed on behalf of Tamarind Restaurant Inc. was signed by Mr. Aji Vilavinal.
3. The employee thought that she was employed by Tamarind Restaurant Inc.
4. Mr. Aji Vilavinal was a Director of the Company when the Wage Assessment was issued and when the Appeal was filed.

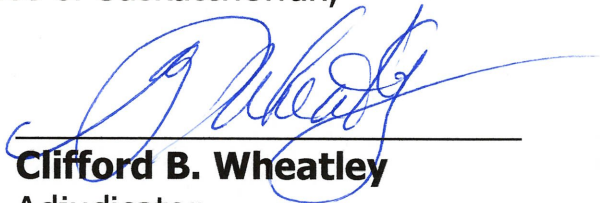
5. Mr. Aji Vilavinal signed the Appeal documents and filed them on behalf of Tamarind Restaurant Inc. and this issue was not raised in the Appeal documents.
6. The Employment contract was signed with Tamarind Restaurant Inc. and signed by Mr. Aji Vilavinal.
7. The Employment verification letter was signed by Mr. Aji Vilavinal on behalf of Tamarind Restaurant Inc.
8. Pay stubs were issued by Tamarind Restaurant Inc.
9. No evidence of a franchise agreement between the corporate parties was entered.
10. No other documents between the employee and/or the numbered company were entered as exhibits or referred to.
11. The employee was unaware of the numbered company and was of the view that she was working for Tamarind Restaurant Inc.
12. There was no evidence produced authorizing Mr. Aji Vilavinal the authority to appear or act on the behalf of the alleged franchisor (the numbered company).

In my view the evidence clearly shows that the parties named in the Wage Assessment are correct and should not be amended.

VI. CONCLUSION

The Appeal is dismissed and the Wage Assessment stands at \$3,146.95 against Tamarind Restaurant Inc. and the Directors named therein.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 8th, of October 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.