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

APPELLANTS:	**GREEN DIAMOND LAWN CARE INC., and DANIELLE DENISE MYERS and MICHEAL FRANCOIS MYERS, as directors of GREEN DIAMOND LAWN CARE INC.**
RESPONDENTS:	**CHRISTOPHER ACHTYMICHUK and the DIRECTOR OF EMPLOYMENT STANDARDS**
DATE OF HEARING:	**April 5, 2023**
PLACE OF HEARING:	**3rd Floor Boardroom 1870 Albert Street Regina, Saskatchewan**

LRB File No. 134-23, Wage Assessment File No. 1-000696

I. INTRODUCTION

Wage Assessment No. 1-000696 directed Green Diamond Lawn Care Inc. (Green Diamond or the Company), Danielle Denise Myers and Micheal Francois Myers, directors of the Company, to pay $2,428.30 in unpaid wages to Christopher Achtymichuk or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act). Green Diamond and its directors appealed the Wage Assessment.

On April 5, 2023, the following individuals attended the hearing:

- Micheal Francois Myers (Mike), owner and director of the Company;
- Christopher Achtymichuk (Chris), former employee of the Company;
- Zaiden Kubiak (Zaiden), former employee of the Company and witness for the Respondents;
- Robert Hutchinson (Robert), former employee of the Company and witness for the Appellants; and
- Tanya Turgeon, Employment Standards Officer and representative for the Director of Employment Standards.

II. THE DISPUTE

In August of 2023, a Delegate on behalf of the Director of Employment Standards issued Wage Assessment No. 1-000696 against the Company and its directors representing

Chris' unpaid wages. On September 18, 2023, Labour Relations and Workplace Safety received a Notice of Appeal on behalf of the Company and its directors. In the Notice of Appeal, Mike summarized the grounds for appeal, including that Chris had not worked overtime hours based on a mutually agreed upon modified work arrangement and that Employment Standards had improperly credited Chris for unpaid lunch breaks that Chris had failed to record on his timesheets.

III. PRELIMINARY MATTERS/OBJECTIONS

At the beginning of the hearing, I explained the process to the parties. There were no objections to proceeding with the hearing.

IV. THE FACTS

Before tendering evidence, the parties agreed to the following facts:

- Chris was hired as a general labourer on October 26, 2020, initially earning $13.00 per hour.
- Chris was promoted to a supervisory position and by the time he left was earning $16.50 per hour.
- Chris' last day of work was September 9, 2022.

The parties tendered evidence by way of sworn or affirmed testimony and documents. I made an order for exclusion of witnesses before testimony began. Mike testified on behalf of the Appellants, followed by Chris who testified on behalf of the Respondents. Chris then called Zaiden as a witness. After Zaiden's testimony, Chris was uncertain whether he might have more questions for him, so out of an abundance of caution, Zaiden was again excluded from the hearing room. Ultimately, Zaiden was not recalled as a witness. Towards the end of the hearing, Mike called Robert as a witness, who testified and left promptly after providing his testimony.

The following exhibits were tendered and entered into evidence:

Employer/Appellants Exhibits

ER1 – Mike's bank statements showing e-transfers to Chris from November 1, 2020 to September 30, 2022;
ER2 – Documents supporting Mike's reconciled payments to Chris, including tally and text messages (25 pages);
ER3 – Chris' Time sheets (20 pages);
ER4 – Chris' Pay Stubs (49 pages); and
ER5 – Modified Work Arrangements (MWAs) documents (15 pages), including general information from the Government of Saskatchewan Ministry of Labour Relations & Workplace Safety, Averaging of Hours Permit application and email exchanges.

Employee/Respondents Exhibits

EE1 – Officer Audit Sheet (2 pages);
EE2 – Text messages exchanged between Mike and Chris on April 15 and 16 (1 page);
EE3 – Chris' Pay Stubs from September 2021 to September 2022 (25 pages);
EE4 – Chris' text messages and time sheets, September 2021 to September 2022 (26 pages);
EE5 – Saskatchewan Corporate Registry documents for Green Diamond Lawn Care Inc. (3 pages); and
EE6 – Documents showing service of cover letters and Wage Assessment on Danielle Meyers, Micheal Myers and Green Diamond Lawn Care Inc. via registered mail (18 pages).

V. ARGUMENT

After presenting their evidence, the parties agreed to file written arguments via email to me by 4:00 p.m. on April 12, 2023. Mike and the Director of Employment Standards filed written arguments by the deadline which I then shared with the parties.

The Appellants' argument for reducing, if not entirely dismissing, the Wage Assessment is summarized as follows:

- Even before having his employees sign a Modified Work Arrangement (MWA) on August 14, 2022, Mike had a verbal averaging of hours agreement with his employees. Neither Chris nor any other employee raised a concern with how hours were worked and recorded.
- What Green Diamond is guilty of is trying to protect its employees in a weather dependent environment where working hours can be sporadic.
- Once Chris was promoted, he was guaranteed 80 hours pay period. This meant he was paid for 160 hours even during slow months when he worked less than that. Green Diamond set up a system that benefited its employees. It gave them a reliable income.
- Chris wanted the promotion because he wanted the stability and wanted to save money. The Company benefited too, both gained security. Under this arrangement, Chris also enjoyed more days off.
- Green Diamond's employees were offered a choice. With weather dependent hours including hours limited by rain, lack of snow, soggy conditions, late fall, early snow, late thaw, or even unsafe working days like extreme hot or cold, the Company gave its employees the option to increase their hours when they had the work. This benefited both parties. Employment Standards is taking this benefit away from the very employees it is trying to protect. The Company viewed this arrangement as beneficial to its employees. As soon as Green Diamond was made aware of the MWA, it had its employees sign to comply.

- Green Diamond is asking for credit where credit is due. Acceptance through equally beneficial practices should be binding. Green Diamond is offered no credit for helping Chris avoid missed car payments and being unreasonably broke in March and April. Punishing or preventing an employer from this type of arrangement, punishes employees.
- Chris testified that he didn't think he had to turn in a timesheet if it was under hours. He said he had overheard a conversation between Mike and Joe to this effect. Mike's text messages asking for his timesheets proves this wasn't true. There are also examples of Chris turning in timesheets/texts where he worked less than full hours, so his own actions also show he knew he was supposed to turn in timesheets. Even when he didn't turn in timesheets or submit his hours by text, Green Diamond paid him his 80 hours.
- Cross-examination highlighted additional credibility concerns with Chris' testimony. Chris tried to limit or nullify the Company's good gesture in paying the deductible on an accident he caused while driving the Company truck. Regarding Chris' ability to work longer days during the summer and get 3-day weekends, he said he only did this once. The records show he did this nearly every weekend during the summer. This was common practice in the summer, allowing employees flexibility to enjoy their summer.
- Flexible schedules also benefitted the employees by allowing them to work less hours on hot days and work more hours on mild or overcast days. Even though this arrangement benefitted the employees, Employment Standards added overtime pay for the days on which extra hours were worked even though less hours had been worked on other days. Employment Standards refused to recognize the benefits Green Diamond was offering its employees and ignored that the employees chose to work these hours.
- Chris was motivated to make this claim by Green Diamond's "losses" to Joe and Jeff even though this wasn't true.
- Like other areas of his testimony, Chris' testimony regarding his lack of lunch breaks was less than forthcoming. He said he wouldn't take breaks so that he could save up time to eat. His admission of taking a break at a house while another staff member cut it and then switching on the next job, shows that at least on those days, he ought to have recorded a lunch break.
- Zaiden admitted some breaks were longer than others and that they did go through drive-thrus but they tried to be prompt. He added that most of the excessive breaks were weather related. Breaks were not being marked down and he confirmed that Mike did not get mad about excessive breaks or too many weather-related breaks. Zaiden explained he would bring snacks and trail mix to eat while driving which explains why he hadn't marked down lunches for himself. When talking about he MWA, Zaiden left out the crucial portion of the conversation: they were given the choice to work the extra hours and in essence start banking hours for another day or go home at 12 hours.

- Robert testified he kept track of his breaks throughout the day. He mentioned that when he was working with Chris, they sometimes went through the Tim Hortons drive-thru 2-3 times for Chris' chicken bacon wrap and iced cap. Some breaks were 20-25 minutes. He said he would remove time from his timecard or let Mike know when they took a break. This contradicts Chris' testimony of 5 to 7-minute quick drive-thru stops.
- Chris had the choice to work longer hours for his own benefit. He had the choice to move hours around for his own benefit. Chris chose to not properly document his hours and to not honour the deal they made. Green Diamond was not credited for months of overpayment to Chris or for benefiting its employees by allowing modified hours of work. They had a deal made and it was in practice for months.

The Respondents' argument for upholding the Wage Assessment is summarized as follows:

- The wage assessment was prepared pursuant to section 2-74 of the Act and relates to unpaid overtime wages owed to Chris by Green Diamond.
- Pursuant to section 2-18, Green Diamond failed to pay overtime wages worked after 8 hours per day and 40 hours per week during the entire course of Chris' employment.
- The employer did not have a Modified Work Arrangement (MWA) or Averaging of Hours Permit (AHP) in place.
- A MWA is used for bi-weekly pay periods (14-day or 28-day). Employers who pay semi-monthly require an AHP which covers pay periods greater than 14 or 28-day pay periods.
- On August 14, 2022, the employer attempted to obtain an AHP. The form was filled out and signed but did not have a schedule of hours to show a consistent pattern of extended hours and time off. There is no evidence it was submitted to the Director of Employment Standards for approval. Therefore, the employer did not have a valid AHP in place. If it were in place, it would not have applied to the overtime from September 2021 to August 14, 2022.
- The employer testified that upon having his employees sign the AHP, he instructed them to put a maximum of 12 hours on their timesheets and the hours above 12 were to be recorded on the next day's timesheet. This shows the employer wasn't willing to pay overtime in compliance with the Act.
- Pursuant to Regulation 12 of *The Employment Standards Regulations*, the employer did not have a written agreement with the employee to bank hours.
- To retain the employee in a seasonal business, the employer chose to pay the employee the full 40 hours/week during slow periods. For example, March 15 to 31, 2022, the timesheet shows 47.75 hours worked and the employer paid 80 hours. From April 1-15, 2022, the text message shows 63.75 hours worked and

the employer paid 80 hours. From April 16-30, 2022, there was no timesheet submitted (actual hours are unknown), but the employer paid 80 hours.

- The employer is now wanting the differences to be applied to the overtime amounts owed. There is no contractual agreement stating the additional wages during slow periods were meant to be overtime pay for the busy season or that these hours were being banked for future use. The employee benefited from the requirement to work fewer hours for the same pay in the slow periods, but this does not excuse the employer from its obligations under the Act.
- Section 2-6 says: "No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part." A benefit provided by an employer to an employee can't be traded off against actual rights of the employee under the Act. Section 2-7 of the Act states that more favourable conditions prevail so the additional pay from March 15 to April 30, 2022, is allowed under the Act but the employer can't then offset this benefit against overtime hours the Act requires it to pay. Section 2-7(3) states that paying public holiday pay and overtime pay at less than 1.5 times the employee's hourly wage can't considered more favourable to an employee.
- Regarding hours of work (section 2-11), meal breaks (section 2-14) and the employer's obligation for record-keeping (section 2-38), the testimony of the employee and the witnesses was that there were no set meal break times and their breaks consisted mainly of going through drive-thrus and eating while traveling between job sites. The testimony was that breaks varied from day to day, from once to three times per day, and that there were no excessive breaks taken. The employer argues that the employee took meal breaks and did not note them on his timesheets and therefore wants ½ hour per day deducted from the Audit Sheet. Both the employer and employee testified about verbal discussions regarding meal breaks and paid breaks. When the employee submitted his hours by text, the employer didn't message him back requesting a record of meal breaks taken. The employer paid the hours submitted by the employee. The employer did not enforce completion of proper timesheets for each pay period and did not deduct for meal breaks. The employer failed to provide evidence of specific dates, times, duration of meal breaks taken. Paid meal breaks were condoned and cannot now be considered an overpayment of wages.
- Section 2-11(c) requires an employer to give work schedules with the meal break times identified. The onus is on the employer to keep records of wages and hours worked. Section 2-38(1)(c)(v) requires the employer to keep records of when the employee's work begins and ends each day and the time when any meal breaks begin and end.
- In *101123639 Saskatchewan Lt. o/a Cravings All Day Grill* v. *Heather Sauder*, the adjudicator refused to allow a deduction for meal breaks where the employer failed to keep adequate records during the employment period.
- The Audit accounted for all recorded meal breaks on the employee's timesheets.

- In summary, the employer did not pay overtime hours correctly and did not keep adequate records. Wages in the amount of $2,428.30 are due and owing. The Wage Assessment should be upheld and the appeal should be dismissed.

VI. ANALYSIS AND DECISION

The Wage Assessment claims that Green Diamond owes wages to Chris in the amount of $2,428.30 and the basis for the wages claimed is found in the Saskatchewan Employment Standards Officer Audit Sheet (EE-1). At first glance, the issue is: Did Chris work overtime hours, as identified in the Audit Sheet, for which he was not paid? But the Appellants argue there is more to it than that. They take the position that if Employment Standards is going to assess for unpaid overtime, then the assessment ought also to include credit to the employer for benefits it provided to Chris, including pay for hours not worked during slow months and half hour lunch breaks not recorded on his timesheets and not deducted from his pay. They argue that Employment Standards' approach completely ignores the fact that its arrangement with its employees was mutually beneficial to the Company and its employees. It is therefore unfair to allow Chris to keep the benefits he gained from the arrangement and then claim the employer owes overtime without factoring in those benefits.

Before analysing the evidence in relation to the grounds for appeal, I would like to thank the witnesses for the straight-forward and respectful manner in which they testified. I found all four witnesses to be credible. Their evidence was mostly consistent with one another, and I did not find that they tailored their evidence to support one side or the other. This is commendable. Mike raised concerns about Chris' credibility, but I do not share his concerns. It is not uncommon for people to remember and view things differently from one another, especially when we factor in the passage of time. I found most discrepancies to be minor in nature. One occasion where I did prefer Mike's testimony to Chris' was with respect to whether or not Chris knew he was required to turn in a timesheet (or send a text) when his hours were low. The evidence establishes that Chris knew timesheets or texts were required, even during slow periods, and chose not to comply on one occasion. This was not a lapse large enough to colour the way I saw Chris' testimony on other matters.

Overtime

Section 2-18 of the Act requires an employer to pay overtime pay after eight hours in a day and 40 hours in a week. According to the evidence, Chris worked overtime hours during his employment with Green Diamond and more specifically, during the audit period, September 2021 to September 2022, for which he was not paid. Both Chris and Mike testified that the work was weather dependent. Some days Green Diamond's employees worked less than 8 hours and some days they worked more than 12 hours. This evidence is supported by the documentary evidence, including Chris' timesheets and text messages to Mike (EE-4, ER-2, ER-3) and by his pay stubs (EE-3 and ER-4).

Chris testified that on days where they worked more than 12 hours, they recorded any hours over 12 on the next day's timesheet. Mike acknowledged that he did not pay overtime to his employees. Mike said he believed the MWA he had his employees sign in August of 2022, simply reflected the arrangement he already had with his employees. Mike said his employees could choose to leave after 12 hours, but Chris did not remember it this way. On long, busy, good weather days, Chris felt he and his co-workers had to keep working and attribute any hours over 12 to the next day. Chris does not believe he had a choice in the matter, and he knew Mike would not be paying him overtime regardless of the number of hours he worked.

According to Chris' testimony, he believed he had a verbal agreement with Mike where he was "in effect a salaried employee" during slow periods. Even if he did not work 80 hours in a two-week period, he was paid for the 80 hours. Chris said he was "paid for his actual hours" during busier months. This is where things get a big confusing; Chris was not technically being "paid for his actual hours" during busier periods given that he was told to record any hours over 12 on the next day's timesheet and was not paid overtime wages. Mike's explanation was that he was "in essence" having his employees bank their overtime hours for another day.

Mike and the Company did not follow the prescribed process for banking of hours. According to subsection 2-18(3) the Act, employees are permitted to bank overtime hours "in the prescribed circumstances and subject to the prescribed conditions." Section 12 of *The Employment Standards Regulations* requires a time bank agreement to be in writing, to be agreed to by the employer and employee, and to be signed by the employer and employee. None of these requirements were met. If Chris were banking his overtime hours, there is no evidence to suggest he knew he was doing so. Moreover, there is no evidence that anyone was keeping track of the crediting or debiting of banked time. Simply put, there is no evidence of a meeting of the minds regarding a banked time arrangement. This is unfortunate since banking of employee's overtime hours might have been the best solution for everyone involved in this case. Mike did not want to pay overtime wages because it was not economically feasible for his business, but he was willing to let his employees make the most of their summer months by allowing them to take extended weekends. In any event, Mike did not follow the prescribed process which would have allowed a banking of overtime hours arrangement.

Likewise, Mike and the Company did not follow the prescribed process for a modified work arrangement and averaging of work hours. I feel badly for Mike on this point because he was given confusing and conflicting advice from Employment Standards about whether he could have his employees agree to and sign a MWA (without requiring the Director's permission) or whether he required an Averaging of Hours Permit (AHP) to be granted by the Director. In any event, the evidence establishes that neither was legitimately in place.

Mike said it was through a situation with Joe that he learned about MWA's. Once he learned about it, he wanted to make things legal by having his employees sign a MWA. His employees signed it on August 14, 2022 (ER-5), but in his view, it reflected the arrangement that was already in place, and this is what he told his employees before he had them sign. When Chris' complaint was brought to his attention, he provided the signed MWA to Employment Standards. In December of 2022, he was advised by Employment Standards that the MWA did not apply to his situation due to a varied work schedule and that what he would need going forward was an AHP, requiring permission from the Director. Mike decided not to submit an AHP application to the Director for approval. By this time, he had concluded it was too much work to navigate this process and that it made more sense to scale back his employees' hours instead.

Regarding the MWA, Chris said his signature does not reflect his agreement to the arrangement. He felt his job was at risk if he didn't sign. He felt Mike was asking them to lie on paper, so he didn't have to pay overtime. On the day they signed the MWA, he was on site with Josh and Zaiden. Mike called them over to the truck one by one to sign and in Mike's words he told them they were just making "their arrangement legal." According to Chris, Mike told them not to write down more than 12 hours in a day and Mike acknowledged this. He believes he gave his employees the choice to go home once they reached 12 hours if they didn't want to carry the hours to another day, although it is not clear to me that his employees knew this was an option. In any event, everybody knew that Mike was not paying overtime wages—on this, there was no discrepancy in the evidence.

Under the circumstances, I agree with the Director's position that the AHP was the option available to Mike and the Company, and as already stated, there was no AHP in place. Even if the MWA could have applied in these circumstances (which I do not think it could), I would not have allowed it to stand for two reasons. Firstly, it is not clear the employees had a choice in agreeing to it in the first place. Secondly, these types of agreements cannot require employees to work in excess of 12 hours in a day without overtime pay. An employer cannot get around this rule by directing its employees to record any hours over 12 on the next day's timesheet, which is exactly what Mike/the Company did. The Act and its Regulations do not allow hours to be manipulated or redistributed to avoid overtime pay.

Time-recording and Lunch Breaks

Mike argued the Company ought to be credited for ½ hour unpaid lunch breaks taken by Chris. In other words, even though lunch breaks were rarely recorded on his timesheets and texts, and no deduction from pay was taken to account for lunch breaks unless the employee had recorded it, because Employment Standards is assessing for unpaid overtime wages, it ought also subtract a ½ hour in unpaid break time before assessing overtime hours.

The relevant evidence about time-recording as it relates to lunch breaks was:

- Mike testified that Chris didn't always turn in his timecards even after being asked. Mike paid Chris his full 80-hours anyway because it would mess up his payroll/accounting system if he didn't. Mike reviewed Chris' timesheets and texts which show that Chris only recorded 19 lunch breaks in almost two years. This is unbelievable. Mike trusted his employees and didn't ask them to record short breaks but if they left site to go for lunch, this ought to have been marked. Mike showed up on sites sometimes and Chris was gone for lunch. One time, he remembers Chris had gone to Subway for lunch. Mike doesn't know how many lunch breaks Chris took or how long they were but when Chris did record lunch breaks, they were always exactly 30 minutes. Everybody knew Chris' typical lunch was a chicken bacon wrap and iced cap from Tim Hortons. Mike said Chris had issues with time recording and that he verbally reminded him numerous times to record his lunch breaks, including beginning and end time. He also thinks that crediting him for Chris' unrecorded lunch breaks alone would account for more than the wage assessment. When asked why he didn't deduct lunch breaks from Chris' hours if he was so sure he was taking them, Mike said that didn't seem fair because he didn't know how long the lunch breaks were. In retrospect, he should've made lunch breaks mandatory but he didn't want to do that.

- Chris testified that he didn't normally take ½ hour lunch breaks. He typically went through drive-thrus on his way to the next site and ate and drank on the go. He'd only stop at a drive-thru when line-ups were relatively short, like if it would only take 3 or 4 minutes. He would hustle, especially during mornings, to avoid using up his two 15-minute paid breaks, so he felt he had time for drive-thru waits. He says he did not go out of his way to hit specific places and drive-thrus were either on the way or involved a very minor detour. 90% of the time he didn't feel he had time to take a proper lunch break so he used his two 15-minute breaks instead. On occasions where he did record a lunch break, it was because he had actually taken a full 30-minute break. Most of the time, he sacrificed his regular paid breaks so he wouldn't have to use an unpaid lunch break. He remembers talking to Mike about why he wasn't recording lunch breaks—because he wasn't taking actual lunch breaks.

- Zaiden testified that he worked with Chris sometimes and that he didn't really take lunch breaks. He sometimes brought his own lunch and would eat in the truck on the way to the next person's house. He did not witness Chris taking any excessive breaks. He thought breaks might be anywhere from 5 to 15 minutes long. He doesn't recall recording lunch breaks when they went through a drive-thru because they were quick breaks. Zaiden said if he took a ½ hour break, he would record it.

- Robert testified that he sometimes worked with Chris and couldn't say he remembers Chris leaving a job site to get lunch. He does remember him stopping

for wraps and ice caps from drive-thrus. Depending on how long the day was, Chris might hit the Tim Hortons drive-thru one to three times.

The evidence does not support Mike's argument for reducing Chris' hours due to unclaimed lunch breaks. Mike admitted that he doesn't know for sure if Chris was taking lunch breaks, and if Chris was, how long they were, or on which days they were taken. Mike wanted me to force Chris to produce his bank records so that he could show how many times Chris went to Tim Hortons. I refused to require Chris to produce his bank records because not only would they contain private information having nothing to do with this case, but also they would not prove how much time Chris was spending at Tim Hortons on any given visit. The consensus from witness testimony was that drive-thru visits were quick, and breaks were not excessive. Even if three visits occurred on a day, one can reasonably conclude this would more likely have occurred on a 14-hour day than on a 5-hour day. Mike admitted he allowed paid coffee breaks. Although Mike questioned Chris about recording his breaks, he never required him to change anything, and he paid Chris according to what he recorded on his timesheets and texts. There is no evidence of set meal breaks. Moreover, Mike paid him even when Chris failed to turn in a timesheet, without deducting time for a meal break. At the end of the day, Mike condoned Chris' imperfect time-recording and his use of paid coffee breaks for meal breaks. Mike did not require Chris to take a daily unpaid ½ hour lunch break and we cannot now deduct unrecorded and unsubstantiated lunch breaks from Chris' hours.

Credit for Benefits Provided to Employees

Another argument raised by the Appellants is that Green Diamond is being penalized for protecting the interests of its employees in a weather dependent environment where working hours can be sporadic. When Mike promoted Chris, he guaranteed him 80 hours per pay period. There were pay periods where Chris was paid for hours not worked; there is no doubt that Chris appreciated the promotion and benefited from this arrangement. Green Diamond argues that it ought to be credited for the benefits it provided to its employees. Chris was given security by way of a guaranteed wage and was afforded more days off than most jobs would have allowed. Green Diamond helped its employees by lessening the financial stress of a weather dependent job and offering flexibility with hours and days off. The Appellants argue these mutually beneficial practices ought to be binding on Chris who chose to honour the deal until he left his job.

The short answer to this argument is that the Act does not permit an employer to receive credit for benefits it chooses to provide to its employees. Section 2-6 specifically states that an agreement cannot deprive an employee of any right, privilege or other benefit provided by the Act. An employer can't trade paying an employee for unworked hours during slow periods with overtime hours worked. The Act mandates overtime pay in certain circumstances (section 2-18) and prohibits an employee from contracting out of certain benefits, even if the employee agrees to it (section 2-6). The Act allows an employer to provide more favourable rates of pay, hours of work, total wages and

periods of notice of layoff or terminations, but it does not allow an employer to contract out of basic benefits provided by the Act, such as overtime pay (section 2-7).

The evidence establishes the Company did not pay overtime wages to Chris when he worked overtime hours. Mike told his employees to record no more than 12 hours on any given day and to carry forward any additional hours to the next day's timesheet. There is no provision of the Act that allows this. They could have entered into a time bank agreement, but they did not do so. Another option would have been an Averaging of Hours Permit, but Mike did not pursue this avenue either. After leaving his job with Green Diamond, Chris made a claim to Employment Standards. He made his claim within the allotted time but was limited to recovering wages that became payable within the last 12 months of his employment (section 2-89 of the Act). When he filed his claim, he was exercising his rights under the Act, and should not be faulted for doing so.

The evidence supports a finding that Chris worked the hours set out in the Audit Sheet (EE-1) and he is therefore entitled to his unpaid wages. My decision does not mean I doubted Mike's good intentions. I believed him when he said he cared about his employees and that he tried to provide them with security in a weather dependent job with sporadic hours. I accept he was trying to find solutions that would work for the Company and its employees, but unfortunately, some of these solutions ran afoul to the rights protected by the Act.

In summary, the Appellants have not established the Wage Assessment is incorrect.

VII. CONCLUSION

The appeal is dismissed and the Wage Assessment is upheld.

DATED in Regina, Saskatchewan, this 11 day of June, 2024.

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.