

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



Tyler Waisman

COMPLAINANT/EMPLOYEE

-AND-

Dart Services Ltd. and Davin Emmel, Director and Marty Hanson, Director

APPELLANT/EMPLOYER

DATE OF HEARING: May 20, 2025

PLACE OF HEARING: Estevan, Saskatchewan

LRB FILE: No. 013-25

WAGE ASSESSMENT: No. 1-000903

INTRODUCTION

This matter was heard on May 20, 2025, in Estevan, 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.

Tanya Turgeon, Employment Standards Officer ('ESO'), represented The Department of Employment Standards.

Davin Emmel, Director, and Marty Hanson, Director, represented the Corporation and themselves as Directors.

Maira Keijzer-Koop, Barrister & Solicitor represented the Employer Corporation and the Directors.

Lane Johnstone, employee of Dart Services Ltd., gave sworn evidence on behalf of the employer.

Jessica Grobnick, Accountant for Dart Services Ltd. attended and gave sworn evidence on behalf of Dart Services Ltd.

Tyler Waisman, employee, attended and gave sworn evidence on his behalf.

Lindsay Hjorth, Barrister and Solicitor represented the employee, Tyler Waisman.

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 \$41,454.25.

I. PRELIMINARY MATTERS

There were no preliminary matters raised by the Parties.

II. AGREED FACTS

There were no agreed facts between the Parties.

III. EVIDENCE OF THE EMPLOYER

Lane Johnstone was sworn and gave the following evidence:

He is the owner of a trucking company that does work for Dart Services Ltd.

When he is employed by Dart Services and uses their trucks or equipment, he is paid \$45/hour. If he uses his own equipment he is paid more.

Mr. Johnstone knows Mr. Waisman the employee and had a text conversation with him about what Dart Services were paying on April 1, 2025. SEE Employer Exhibit "1".

Jessica Grobnick was called on behalf of the employer who gave the following evidence:

She is the Accountant for Dart Services Inc. and had been so since 2019 and, does the payroll for the company.

She is familiar with the employee, Tyler Waisman and has had several communications with him regarding his pay.

From when Mr. Waisman started in 2019 until he left the company he was paid \$45.00/hour straight time, \$35.00/hour shop time and a bonus when he was eligible for one. The pay is calculated from the information the employee gives to her.

On August 27, 2024, she was asked by Davin Emmel to calculate what the employee's pay would be if he had been paid \$35.00/hour plus overtime (SEE Tab 6 white binder) and a bonus.

Her findings are set out under Tab 8 of the white binder.

Under cross examination she advised that Mr. Waisman is the only employee paid this way, all the other employees are paid \$35.00/ hour plus overtime.

Davin Emmel gave sworn evidence on behalf of the company as follows:

He is an owner/operator of the company which was started in 2004.

The company hired Mr. Waisman in late 2019.

The pay structure that was agreed upon was \$45.00/hour straight time for truck driving, \$35.00/hour shop rate and a bonus for Pyle work.

When discussing the employees' pay structure with him, he advised Mr. Waisman that the company would not pay the \$45.00/hour plus overtime but would pay \$35.00/hour plus overtime if that is what the employee wanted.

The employee subsequently agreed to the \$45.00/hour straight time i.e. no overtime, \$35.00/hour for shop time and a Pyle bonus when payable.

Mr. Emmel never had any subsequent discussions about the pay structure with the employee.

The purpose of the Pyle bonus was to cover overtime when during straight time for driving.

Under cross examination, Mr. Emmel agreed that payment of any Pyle bonus was irregular and inconsistent and that no bonus was payable in many pay periods.

Marty Hanson was sworn and gave the following evidence:

He is an owner/operator of Dart Services Ltd.

When Mr. Waisman came to work for the company there was limited discussion about the rate of pay.

Mr. Waisman approached the company about the job, he was told the pay structure and he agreed to it. He had no further discussions with Mr. Waisman about the rate of pay and/or the pay structure.

Mr. Waisman agreed to the pay structure as set out by Mr. Emmel.

IV. EVIDENCE OF EMPLOYEE

The employee, Tyler Waisman, was sworn and gave evidence on his behalf.

In October 2019, he was approached by the company to work for them.

He had discussions with Mr. Emmel and Mr. Hanson about the job and the pay structure.

Mr. Waisman wanted more than was offered, however, he finally agreed upon the pay structure of \$45.00/hour straight time, no overtime, and \$35.00/hour shop time and the Pyle bonus whenever payable.

There was never any agreement in writing regarding this pay structure between them.

The Pyle bonus would only be paid when he was on the job site not when he was trucking for them.

Every year around tax time Mr. Waisman discovered that the Pyle bonus did not keep up with what overtime would have paid.

The Pyle bonus was never consistent nor a sure thing.

By his calculations under the pay structure of no overtime he lost in:

2020 - \$10,000

2021 - \$15,000

2022 - \$40,000

Mr. Waisman estimated that he drove the truck the majority of the time as follows:

2022 – 80-90% of his employment time

2021 – 50/50 of his employment time

2022 – 60/40

There was no agreement in writing about the pay structure.

V. ANALYSIS/DECISION

The employer says that the employee is better off on the pay arrangement in place so Section 2-7 of The Act applies.

The employee says that he is not better off on the pay arrangement and, so Section 2-6 of The Act applies, nullifying the employment contract between the parties.

The effect of the agreement between the parties was that the employee would be paid \$45.00/hour straight time for driving and no overtime after 8 hours per day or 40 hours per week.

In lieu of some overtime, he was to be paid a pyle bonus although this bonus was irregular in the amount and pay periods, In the last several months of Mr. Waisman's employment with the employer, he received almost nothing by way of bonus.

The end result of the pay structure was that Mr. Waisman was receiving little overtime/bonus pay and certainly not the required amount of 1.5x of regular pay for overtime worked.

A contract for employment that purports to fix a rate of pay for an indeterminate amount of hours, including overtime, is clearly less beneficial to employees than the minimum standards in The Act, that limit the number of hours that an employee can be required to work, and require a payment at the rate of 1.5x of regular pay of the employees' wage for overtime.

See: Nygard International v. Michalowski 2007 1 W.W.R. 218 (MAN. C.A.)

And: Saskatchewan v. DJB Transportation Services Inc. 2010 SKCA 50, 318 D.L.R. (4th) 174.

As in the DJB Transportation Inc. case, the employee, Mr. Waisman was paid a fixed hourly rate of \$45.00/hour driving inclusive of overtime. Which means, no overtime to be paid, as required to be paid

as set out in Section 2-18 of The Act (after 8 hours per day or 40 hours per week).

In the DJB Transportation Services Inc. v. Director of Labour Standards 2010 SKCA 50, the Saskatchewan Court of Appeal held Section 75(1), now Section 2-6 of The Act, prohibits employment contracts which would result in the employee waiving their rights under The Act. The effect of the provisions at issue is, that if the employment agreement falls under Section 2-6 of The Act, it will be valid only if it provides the employee with more favorable conditions than the employee would be entitled to under The Act. Here, in this case, the more overtime the employee worked, although he still received base pay of \$45.00/hour, the more overtime pay he would be entitled to under The Act, but not receive because of the contract.

The effect of the pay arrangement was that the employee would receive less pay for the overtime hours he worked. Applying the provisions of the legislation, in particular Section 2-6, the agreement between the parties is unenforceable and Section 2-7(3), the agreement between the parties is void.

Even though the appellants evidence shows that the existing pay structure could be more beneficial to the employee with payment of the bonus, rather than receiving overtime, the bonus is not consistent and is often not paid in a pay period. Consequently, if overtime was paid to the employee without the bonus, it would be more beneficial to the employee.

As now structured, the employee is not certain of any overtime in any pay period. As it stands, the more overtime he works, the less he is paid. This is similar fact situation that occurred in DJB Transportation Services Inc., where the Court found that it was not more beneficial and struck the pay agreement down.

VI. CONCLUSION

The appeal is dismissed the Wage Assessment is upheld in the amount of \$41,454.25.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 30th, of June 2025.



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.