

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



Muhammad Usman Afzal

COMPLAINANT/EMPLOYEE

-AND-

Paktech Electronics Inc.,
and Kauser Perveen, Director

APPELLANT/EMPLOYER

DATE OF HEARING: February 27, 2025

PLACE OF HEARING: Regina, Saskatchewan

LRB FILE: No. 240-24

WAGE ASSESSMENT: No. 1-000892

INTRODUCTION

This matter was heard on February 27, 2025, in Regina, 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.

Allysia Finn, Employment Standards Officer represented The Department of Employment Standards.

Deana Brown, Employment Standards Officer, Estevan and Joe Lozinski, Department of Immigration attended as observers.

Mr. Liaquat Ali represented the Corporation and Director, Kauser Perveen.

Muhammad Usman Afzal, Complaint/Employee was present and represented himself.

Uzmam Masroor, was present as a translator.

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 \$2,697.14.

I. PRELIMINARY MATTERS

No preliminary matters were raised by the parties.

II. EVIDENCE OF THE EMPLOYER

Mr. Ali represented the Appellant Employer and the Director of the company, and gave oral evidence.

The employers' position regarding this matter was that the complainant, Muhammad Usman Afzal, was never an employee, and if he was an employee, he never came work.

Mr. Ali stated that the complainant was a cousin of his and that they had lived in the same village in Pakistan for a number of years. They were related through the employee's mother.

They had been friends in Pakistan. Mr. Ali entered as Exhibit "1" a number of photographs showing the employee and himself as being friends and acquaintances in Pakistan.

Mr. Ali stated that there had been discussions between him and Mr. Afzal regarding the employee coming to Canada from Saudi Arabia (where the employee was currently working). With the intention of the Mr. Afzal becoming an employee of the Company, Paktech Electronics Inc.

On September 21, 2023, the employee arrived in Toronto and Mr. Ali met him at the airport.

The parties subsequently came to Regina where the employer picked the employee up from the airport and assisted him in finding a hotel for the first few days and subsequently assisted in finding the employee rental premises in Regina.

The employer also filed a number of documents entered as Exhibit "3" wherein there was an executed document dated April 16, 2022, showing an offer of full-time employment from Paktech Electronics Inc. to Mr. Muhammad Usman Afzal.

Also enclosed in Exhibit "3" is a letter from the Employer Services Branch, Saskatchewan, Immigration Nominee Program Job Approval Confirmation. This letter was addressed to Paktech Electronics Inc. and confirmed a job approval for the company to hire Mr. Muhammad Usman Afzal.

A further document dated September 25, 2023, shows that the company hired Mr. Muhammad Usman Afzal, as an electronic service technician commencing October 1, 2023.

This document was signed by the employee and the employer on September 25, 2023.

A further document in Exhibit "3" dated October 18, 2023, is a letter of reprimand from the Appellant/Employer discussing the employees "uneven attendance". This letter indicated that the employee would commence employment on November 1, 2023. The employer also filed text messages between him and the employee, commencing September 24, 2023, and ending on December 19, 2023.

The employer says that these text messages are regarding the employer picking up the employee, as the employee did not have a vehicle or any other means of transportation to the workplace. These text messages were also filed by the Employment Standards Officer under tab 5 of her Exhibit.

Despite these Exhibits, the employer took the position that Mr. Muhammad Usman Afzal, never came to work during the period of time covered in the text messages. He said any contact that there was between him and the employee, as set out in the text messages, was a social event not an employee, employer event.

The employer says that on November 29, 2023, he met with the employee at his house indicating that he would like Mr. Muhammad Usman Afzal, to be an employee and asked when he was coming to work. The employer received no reply from Mr. Muhammad Usman Afzal, and had no further contact with him after December 19, 2023.

Under cross examination, Mr. Ali stated that he was an employee of Paktech and that his wife was the owner of the Corporation. The hours of operation of the company was from 10am to 6pm daily. The employer had applied to Immigration Services to obtain an employee for an electronic service position and received permission from Immigration for this. The employer hired Afzal to fill this position.

On April 16, 2022, he forwarded an offer letter of employment to the employee and the employee accepted the same and acceptance was subsequently confirmed by Immigration.

The employee came to Canada and the parties signed the September 25, 2023 "Joining Letter" which was confirmation of Mr. Muhammad Usman Afzal's employment and the hours he was to work were 10am – 6pm. The employer was aware that the employee did not have a vehicle.

Mr. Ali confirmed that he had contact with the employee almost every day in September 2023.

III. EVIDENCE OF EMPLOYEE

The employee stated that he came to Canada on September 21, 2023, first to Toronto then to Regina. The employee came to Canada as he had the job offer from the employer.

The employee's job had been arranged through Saskatchewan Immigration nominee program with the employer.

The employee said that he went to work every day Monday to Friday until November 29, 2023. On November 29, 2023, the employer told the employee he was no longer going to pick him up to come to work,

saying the business was slow and may be closed. The employee subsequently obtained a part time job elsewhere.

The employee states that the text messages entered as an exhibit indicate that the employer was either contacting him to pick him up from home to take him to the workplace or, in the alternative, from the workplace to his home.

The employee was never allowed to be on the employer's premises unless the employer or the employer's son were present.

If Mr. Ali left the store Mr. Muhammad Usman Afzal, would be locked out of the premises and have to go elsewhere during Mr. Ali's absence.

Mr. Muhammad Usman Afzal, stated that the document under Tab 6 of the ESO Exhibits was completed by Mr. Ali to assist Mr. Afzal, in obtaining rental premises. This document confirms that Mr. Muhammad Usman Afzal, was employed by Paktech Electronics Inc.

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 by basing the wage calculations on the text messages between the employee and the employer. Where the message indicated that the employer had called the employee out, outside of normal working hours, she used the employee's rate of pay of \$25/hour to calculate the Wage Assessment amount.

V. ANALYSIS

The documentary evidence clearly shows that Mr. Afzal was an employee of the company.

Section 2-75(9) of the Saskatchewan Employment Act states that the Wage Assessment is proof, in absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing.

In order for the employer to be successful they need to rebut this presumption based on the balance of probabilities.

Mr. Muhammad Usman Afzal testified in a clear and direct manner.

His evidence was consistent, reasonable and rational.

Mr. Muhammad Usman Afzal remembered with clarity and gave inherently, plausible testimony which, matched the facts, that the witness and documents showed.

He gave his evidence in a forthright manner. It was obviously not false or exaggerated.

On the other hand, Mr. Ali was elusive, tangential, and vague. He did not explain the inconsistencies of his testimony when presented with evidence or documents to the contrary.

Resultantly where the evidence is in conflict, I accept the evidence of Mr. Muhammad Usman Afzal.

Based on the balance of probabilities, I find that the employer did not rebut the presumption set out in Section 75(9) of The Act.

VI. CONCLUSION

The Appeal is denied and the Wage Assessment stands in the amount of \$2,697.14.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 12th, of March 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.