



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

Curtis Sylvestre

COMPLAINANT/EMPLOYEE

-AND-

Ray Bauer o/a Dun Rite on Site RV Repair

APPELLANT/EMPLOYER

DATE OF HEARING: March 6, 2025

PLACE OF HEARING: Regina, Saskatchewan

LRB FILE: No. 247-24

WAGE ASSESSMENT: No. 1-000902

INTRODUCTION

This matter was heard on March 6, 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.

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

Curtis Sylvestre, Complaint/Employee, was present and gave sworn evidence on his behalf.

Homer Prive attended as a witness for the Employee and gave sworn evidence.

Ray Bauer, the Appellant/Employer operating as Dun Rite on Site RV Repair was present and gave sworn evidence on his behalf.

Brenda Hedley, Accountant for Dun Rite on Site RV Repair attended to assist the Appellant/Employer in the Hearing.

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 \$15,346.02.

I. PRELIMINARY MATTERS

No preliminary matters were raised by the parties.

II. AGREED FACTS

The parties agreed as follows:

Curtis Sylvestre was an employee of Dun Rite on Site RV Repair from April 1, 2023, to November 1, 2024. Mr. Curtis Sylvestre was employed as a recreational vehicle technician and his employment involved the repairing of recreational vehicles.

III. EVIDENCE OF THE EMPLOYER

The employer was sworn and gave evidence as follows:

The employee was offered a position with the employer and the employee accepted the same on April 1, 2023, by signing a letter of offer from the employer.

The employee was given a key to the employer's shop as he was to work 7am - 4pm on weekdays.

The employer took issue with the time records prepared by the Employment Standards Officer entered as Exhibit "A".

In particular, the employer took issue with the hours worked as prepared by the employee, as set out in Employment Standards Officer Exhibit "1", Tab "5".

However, the employer stated that he did not keep employee records of any kind during the time that Mr. Curtis Sylvestre was employed by him.

Mr. Bauer, the employer, also took issue with the overtime hours claimed, stating that he only authorized overtime on one occasion, which was October 7, 2023, for 5 hours. All other overtime hours claimed by the employee were not authorized.

Mr. Bauer stated that annual holidays were taken by the employee and statutory holidays were included in Mr. Curtis Sylvestre's pay.

Mr. Curtis Sylvestre was paid \$4,333.38/month inclusive of any extras including statutory holidays.

Sick leave was not a benefit from the company to the employee and was deducted in the audit of the ESO Exhibit "1", Tab "4".

Mr. Bauer stated that Mr. Curtis Sylvestre did not come early in the mornings nor did he stay late to work. So any claims as set out in Mr. Curtis Sylvestre's time sheets are incorrect.

However, Mr. Bauer did not have any time sheets or records to show any discrepancies in the employees' time sheets.

IV. EVIDENCE OF EMPLOYEE

Mr. Sylvestre gave sworn evidence that he started keeping time records of his own after receiving a few pay stubs from the employer. He was not satisfied that there was enough information on the pay stub regarding the time worked, in particular, the employer pay stubs did not set out dates of work, vacation pay, statutory pay and hours worked per day. Resultantly he started tracking his hours and they are shown on ESO Exhibit "1", Tab "5".

The employee stated that he put in a lot of overtime as a result of coming in early to work and staying late or working through lunch hour. Those overtime hours are reflected on his time sheets.

Mr. Sylvestre stated that he was never told by the employer not to work overtime.

The overtime work continued up to March 25, 2024, when he started coming in at 7:30am and no longer stayed late.

V. EVIDENCE OF EMPLOYEE WITNESS

Mr. Prive, the witness from the employee, was sworn and gave the following evidence:

Mr. Prive worked for Mr. Bauer from March of 2024 for approximately 3 months and worked at the same shop as Mr. Sylvestre during this time frame from 7:00am-4:00pm.

Mr. Prive often saw Mr. Sylvestre already at work when he arrived for work at 7:00am and when he left work at 4:00pm Mr. Sylvestre was often still working.

Mr. Prive stated that he knew on occasion that Mr. Sylvestre was asked by Mr. Bauer to stay late and work overtime.

VI. EVIDENCE OF EMPLOYMENT STANDARDS OFFICER

The Employment Standards Officer confirmed that the audit was based on the Employee Records as the employer did not keep records.

VII. ANALYSIS/DECISION

The employer states that the Wage Assessment is incorrect as the employee did not work overtime and, if he did, it was not authorized.

Section 2-2 of the Act sets out the definition "permit to work". The employer is deemed to have permitted an employee to work if he knew or ought to know have reasonably known that the employee was working and does not cause the employee to stop working.

As the majority of the overtime work was done in the employer's shop, he should have known that the employee was working overtime, and he did not stop nor tell the employee not to work. I cannot see how the employer was unaware of the employee working overtime.

Section 2-38 requires the employer to keep records pertaining to the employee as set out therein.

In particular, hours worked daily as an employee are to be kept and provided to the Employment Standards Officer when requested. This

was not done. The employee records were incomplete, wrong or never created in compliance with the Act.

Also, the employer was not in compliance with Section 2-37 of the Act regarding Statements of Earnings to be given to the employee every pay day. This noncompliance led to the employee having to keep his own daily hours worked and other records. He is satisfied that the Wage Assessment is correct as it stands.

The consequences for an employer to fail to keep records was discussed in the Carpet Wearhouse Case (1978) unreported Saskatchewan Case where it held "an employer who has failed in the statutory duty to keep records is not in a position to dispute the records submitted by the employee". That position, as well as the presumption of correctness of the Wage Assessment sent out in Section 2-75(9) of the Act, which states that, the Wage Assessment is presumed to be correct unless there is evidence to the contrary.

I do not find that there has been any reliable evidence to the contrary presented at the hearing and as such the amount stated in the Wage Assessment is due and owing to the employee.

VIII. CONCLUSION

The Wage Assessment is upheld in the amount of \$15,346.02.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 14th, 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.