

Decision of Adjudicator in the Matter of an Adjudication pursuant to
Sections 2-75 and 4-6 of *The Saskatchewan Employment Act*
LRB File No. 250-24 and 248-24
Wage Assessment No. 1-000908



APPEALLANT: Alpha Physical Therapy & Health Center P.C. Ltd.
Mohammed Nazari, Director

RESPONDENTS: Carey Dale and the Director of Employment Standards,
represented by Andrew Langgard

DATE OF HEARING: April 1, 2025

PLACE OF HEARING: 3rd Floor Boardroom
1870 Albert Street, Regina, SK

i. Introduction

Wage Assessment 1-000908 directed Alpha Physical Therapy & Health Center P.C. Ltd. ("Alpha") and Director Mohammed Nazari to pay \$5,204.36 in unpaid wages to Carey Dale.

Both Alpha and Dale appealed the Wage Assessment, and it was agreed by the Parties that a single hearing be scheduled to hear both appeals.

On April 1, 2025, at 1:30 p.m. I convened that hearing, and the following individuals attended:

- Mohammed Nazari, Director for Alpha
- Carey Dale, Complainant and former employee of Alpha
- Kyle Dale, support person and observer
- Andrew Langgard, Director of Employment Standards representative

ii. The Dispute

Alpha's appeal (LRB File 250-24) contends that there are no wages owing to Carey as she failed to meet the terms of her Employment Agreement.

Carey's appeal (LRB File 248-24) questions the Ministries calculation and is claiming the Wage Assessment should be \$9,990.86 rather than \$5,204.36.

Therefore, it is for me to determine:

1. Does Alpha owe Carey any unpaid wages and if so;
2. What is the total of unpaid wages owing.

iii. Facts

1. Evidence of the Employer

Mohammed Nazari was affirmed and provided the following evidence:

- He owns this business, and his biggest challenge is keeping good staff for his front desk. He employs two for the front, one to deal with clients and the other to keep the books for the business.
- He has noticed over the last few years how employee attitudes have changed in the direction of poor performance and lack of caring about their work.
- He determined that he needed to find a way to enhance retention of good employees. He had a good employee (Darcy) who was leaving so he offered \$4,000 for Darcy to stay until he found a replacement. Darcy agreed.
- Since that bonus worked with Darcy, he decided to try that idea with the next employee.
- March 9, 2023, he posted for a new hire and Carey Dale applied. He interviewed her on March 10 (Friday) and after interviewing her he offered her the Office Manager job instead of the posted Assistant Office Manager job.
- Besides an hourly wage he offered her a commission of 10% on the difference between income and expenses. Invoicing by former employees had been an issue and money from clients lost because they weren't invoiced. He told her he thought she could earn around \$800/month in commission if she did a good job with invoicing and bringing down expenses.
- On March 12, 2023, he emailed Carey at 7:56 p.m. offering her the job. The email laid out the salary of \$28.00/hr, plus a commission which he estimated would be at minimum, on average of \$800.00/mo. The commission could increase in two ways. By increasing the income by adding more professional staff and by increasing net profit by cutting expenses. (E-mail was marked exhibit EE1.)
- He also stated that the commission would be paid out on June 1 of the following year.
- He acknowledges that the offer was vague, but he filled in the gaps verbally with Carey as time went on. On Sunday March 12, 2023, at 8:47 p.m. Carey emailed Mohammed (also in exhibit EE1) accepting the offer. Also on March 12, 2023, at 9:41 p.m. Mohammed emailed Carey confirming her acceptance and agreeing to a start date of April 10 (email also part of EE1).
- The commission pay out on June 1 of the following year was clarified with Carey after she started work. His explanation was that to get the commission she had to stay employed. For him it ensured continued employment because employees leaving him would always be in a situation of leaving money behind. Carey received her 2023 commission on June 1, 2024, and as it turned out it was less than his projected \$800 per month. But he did pay her \$800 per month anyway.
- On August 2 (Friday), 2024 Carey told him she was leaving, and he was disappointed. She gave 4 week's notice, which is not enough time for him to fill and train for her job.
- He was stressed out over the quitting, and he asked her to meet with him on Tuesday August 6, 2024, to try and change her mind. He followed up the meeting with an email at 7:48 p.m. that evening (exhibit EE2). In the email he offers to pay the commission (estimated to be \$10,000) to her if she stays or if she decides she is leaving but stays until he finds a good candidate to replace her.
- He acknowledges making a mistake in (EE1), the letter of offer, when he did not clarify that the commission would be paid only if she was still employed or agreed to stay until replaced with a fully trained employee.

- On Wednesday morning, August 7, 2024, he talked to Carey and asked if she had changed her mind. She told him that \$10,000 is good money but she is leaving without it and her last day was August 30, 2024.
- On August 15, 2024, he received an email from Carey at 6:24 a.m. (marked EE3). Carey states in the email that since the new hire (Preet) will be trained by the time she (Carey) leaves on August 30, that the commission will be paid at the end of the month with her cheque.
- He responded to Carey at 7:34 a.m. on August 15 telling her that the commission will not be paid as she will be leaving before her replacement will be trained. He never paid Carey any commission for 2024.

Cross Examination

Andrew tables a document from Saskatchewan Corporate Registry (marked EE4) that shows that Alpha is a registered company in the province with Mohammed the sole Director. Mohammed agreed that the document was accurate.

In response to questions from Andrew, Mohammed provided the following responses:

- Regarding EE1 in his March 12, 2023, letter of offer, he agreed he had not put in writing that Carey had to be employed to get her commission on June 1 of the following year. Andrew tabled an 8 page document containing Alpha's monthly monetary details from January to August of 2024. The document was marked EE5.
- The document contains income from professionals who rent space from him, payroll for employees, incomes from clients and expenses payments. The total income has the total deduction subtracted leaving net profit. For example, in January of 2024 the total bank deposit was \$86,873.90, leaving \$2882.21 net profit. According to his formula for commission, Carey earned 10% or \$288.27 commission that month.

Andrew then tabled a document marked EE6 that shows the net profit for each month, January to August, 2024. 10% of the 8 months is \$5,204.36.

- He has no issues with the numbers in EE6.

Andrew tabled a document which sets out Carey's 2023 payroll information (Marked EE7).

- EE7 shows Carey was paid a bonus of \$7,200 in 2023. He told Carey in March of 2023 that she had to be employed to receive the bonus for 2024. He later told her that she had to stay until her replacement was trained. Neither of those changes were put into writing.
- Carey's replacement (Preet) was hired in August, so Carey needed to stay longer to get her commission. He never told Carey that he would pay her commission without her living up to his restrictions.

Re-Direct

Mohammed found Carey to be very meticulous and when she never asked him why the commission would not be paid out until June 1 of the following year, he took that to mean she understood she had to be employed to get it.

2. Evidence of the Employee

Carey was sworn and provided the following evidence:

- After 16 years working as an Office Manager in a large office, she decided it was time for a change. She thought Alpha's smaller size would be a good fit. His offer was \$28/hr with a commission of 10% for managing good books with proper billing procedures. The prospect of hiring more professionals would enhance that commission in the future. There was no mention regarding non-payment of the commission if she left the employment.
- She thought Mohammed's offer of March 12 (EE1) which stated "the commission for each year will be paid out on June 1st of the following year" was the companies year end. That's why she never questioned it.
- Mohammed did tell her one day when he was between patients, that her commission would not be paid if she quit. He never gave that condition of employment in writing to her.
- She gave Mohammed verbal notice she would be leaving and then on August 6, she told him he was hard to work for.
- On August 15, 2024, at 6:24 a.m. she emailed Mohammed seeking confirmation that she will be receiving her commission with the August 30th cheque since she had trained her replacement (EE3). Mohammed replied at 7:34 a.m. refusing to pay the commission as she had not stayed long enough to train and that he would decide when that would be. She replied on August 16, 2024, at 8:40 p.m. (EE3) stating that she expected her commission paid as of August 30 as per the original employment offer.
- She received an email from Mohammed on August 16, 2024, at 7:48 p.m.(EE2). In the email he promises several changes in her working conditions and notes that her commission from January to June was \$7,790.86 with a projection to be almost \$10,000 by the end of August. He goes on to state in the email that if she stays long enough for him to hire and train a replacement for her, he will pay her the \$10,000 commission.
- Regarding the Wage Assessment, her appeal against the Ministries calculation of \$5,204.36 came about because of Mohammed's email (EE2) stating that she had earned \$7,790.86 in commission by the end of June and estimated her earning another \$2200 for July and August. Therefore, she believes that Wage Assessment should be \$9,990.86
- On August 16, 2024, she had a discussion with Mohammed during which he told her he would calculate her commission once he got the bank statement. She took this to mean he would then pay her the commission. She recorded that conversation on her phone without Mohammed's permission, and she had a flash drive with the recording on it and offered it as evidence.
- She left on August 30, 2024, under seemingly good terms and never heard from Mohammed until September 4, 2024, when she received an email at 12:37 p.m. (EE8). In the third paragraph Mohammed states that "in the employment offer of March 12, 2023, commission for each year working would be paid by June 1st of the year after, only if you are working at the time".
- He went on to state that he later changed that condition to the qualification if she stayed until he could hire and train a replacement.

- She testifies that neither of those conditions were provided to her at the time of hiring and certainly were not in the written offer in the email of March 12, 2023, at 7:56 a.m. (EE1)
- On September 4, 2024, at 6:22 p.m. she emailed Mohammed rebutting his interpretation of the offer of employment and telling him she will go to the labour board if he doesn't come through with her pay.
- On September 17, 2024, at 1:34p.m. she received an email from Mohammed (EE9). He admits he messed up putting everything in the offer of employment, however, he maintains that his verbal expressions afterwards made it clear what the working conditions were. He offered her \$1000 as a thank you, only if she signs a "Release Form".
- On Sunday September 8, 2024, at 7:46 p.m. she emailed Mohammed (EE9) and among other topics gives him a deadline to pay her or she will file a complaint with the Ministry of Employment Standards.

At the point Carey indicated she had completed her presentation.

Cross Examination

Mohammed reiterated his earlier concern that at no time did Carey question the payment of commission until June 1st of the next year.

Andrew Langgard asked Mohammed about the conditions for paying out commissions and he agreed that there was no revised employment contract provided to Carey but he had verbally advised her on several occasions.

iv. Final Argument

1. Employer

Mohammed has had difficulty maintaining a stable front office staff compliment. To enhance his retention of good staff he implemented a commission policy. For employees to receive their commission they had to either remain employed or stay until he could hire and fully train a replacement. He did not see why he should pay a commission when an employee leaves, and he made sure Carey knew her commission came with conditions.

2. Employee

Carey argues that she never agreed to those conditions. She thought the commission was for increasing the bottom line, period.

3. The Director of Employment Standards

Andrew on behalf of the Director argues that the Act deems commissions as wages and therefore must be paid with any other remuneration at the end of each pay period.

Further they agreed that the March 12, 2023 offer of the employment was accepted by Carey and there were no other written changes to that offer.

He tabled two cases as support for his contentions:

- The first case sets out the principle that the drafter of an employment offer does not get to interpret it if there is a dispute.
- The second sets out the principle that after an offer of employment is accepted the employer cannot change it after employment has commenced.

The Director's representative next addressed the employee's appeal of the Wage Assessment amount. He argues that there is no reliable documentation to produce a Wage Assessment of nearly \$10,000. The employee is relying on assumptions made by Mohammed in his email of August 6, 2024, at 7:48 p.m. (EE2).

Exhibit EE5 is the companies monthly record to which Mohammed has agreed. The Wage Assessment served on Alpha is the total amount from the figures found on the lower right hand corner of each of the eight pages.

Therefore, the Directors position is that since there is no actual documentation showing otherwise, the calculations shown in EE6 totalling \$5,204.36 is the correct Wage Assessment. The Directors requests that both appeals be dismissed.

Carey closed her Argument with a referral to EE2, where Mohammed states, "please note your commissions for the months of January to June of this year adds up to be \$7,790.86". This is not an assumption but a statement of fact.

I adjourned the hearing after thanking the parties for their respectful presentations.

v. Decision

Mohammed's evidence regarding his commissions retention policy starts off as a 10% of monthly net profit to be paid on June 1 of the following year, then becomes that it will be paid only if still employed, then to be paid only if he has had time to recruit and train a replacement in the event the current employee leaves. His first rendition was in writing, the second and third were verbal and appear in e-mails only after Carey gave her notice.

Carey received her 2023 commission but never received her January-August 2024 commission. Her testimony that she thought the June 1st pay-out, was the company's year end policy is credible. Mohammad's ever changing commission pay-out policy lacks credibility, therefore Carey's expectation to be paid her commission was a legitimate expectation.

Section 2-15 of the Employment Act states, "Subject to this part, an employer shall pay an employee his or her total wages payable in accordance with the terms and conditions of: a) The employee's employment contract."

Section 2-33(1) of the Act states "an employer shall: a) pay to an employee the total wage to which the employee is entitled up to a day not more than six days before the employees pay day; and b) pay the employee at least (i) monthly (ii) semi-monthly; or (iii) every 14 days."

Since the Act is clear that an employer must pay an employee her total wages earned every pay period, Mohammed's scheme to delay payment of commission is in violation of the Act. It is also clear that commissions are part of total wages.

So, it is my decision that Alpha owes Carey all commissions earned during the months January 1 to August 30, 2024.

The question next to be answered is the amount owed.

Two dollar figures have been put into evidence for Carey's commission earnings for the period of January to August 30, 2024. Both were constructed by Mohammed. The calculations provided in his evidence and marked as Exhibit EE6 are by the month and proportionate to be Alpha's income, payroll and all other expenses, with the net profit written in the bottom right-hand corner of each of the eight pages.

I'm surprised the Ministry accepted this document without insisting that Alpha provide an organized statement, that could be followed logically. Instead, eight pages of haphazard figures, some crossed out, some circled, some with arrows between, notes inserted in places, all of which are impossible to follow, were accepted by the Ministry and used to calculate the commission Carey supposedly earned. The total includes one month where the net profit was a negative figure, and her commission reduced accordingly. Obviously, the Ministry accepted the calculations on faith since Mohammed had not provided any formal document like payroll records, bank statements, expense invoices, etc.

Carey tabled an email she received from Mohammed on August 6, 2024, at 7:48 p.m. (EE2). The pertinent portion of the email states "please note your commission for the months of January to June of this year adds up to be \$7,790.86. Way more than last year. Average of \$1,298.47 per month not \$800. And for the month of July and August I am assuming another \$2,200. Total almost to \$10,000. If it goes that way that is going over one year your commission can be around \$15,000 (more than \$7.20 per hour, above your normal wage."

My question becomes how can Carey's commission on August 4, 2024, go from \$7,790.87 to the end of June to \$4674.50 when calculated for the Ministry for the same period? I note that the calculation of \$7790.87 was put forward to entice Carey to stay and the calculation of \$5204.36 was made after Carey confirmed she was leaving his employ.

Obviously, both cannot be correct, perhaps neither are correct. In 2023, Carey's commission was according to her job offer, to be at least \$800.00 per month. It ended up being less than \$800.00 although Mohammad did top it off to \$800.00. On August 6, 2024, in EE6, he advised Carey she earned \$7790.87 in the first 6 months and was on pace to earn another \$2200.00 by the end of August. This calculation and projection ended up in EE6 as \$5204.36.

It is clear that Alpha owes Carey Dale money for commissions earned in 2024, and I don't have much confidence in Mohammad's calculations. However, on the balances of probabilities, I believe Carey's commission for 2024 would be closer to \$10,000 than \$5,000. Therefore, my decision is that the Employers appeal is dismissed. I am allowing the Complainants appeal to the extent that the figure from August 4, 2024, e-mail from Mohammad that indicated Carey had earned \$7790.86 from January 1 to June 30, 2024, is correct. For the months of July and August I will accept the figures Mohammad puts forward in EE5, since his figures from the August 4 e-mail are assumptions and I have no other sources to draw from. Those being \$374.38 for July and \$155.48 for August.

Therefore, the Ministry's wage assessment of \$5204.36 is amended to $\$7790.86 + \$374.38 + \$155.48 = \8320.72 .

Alpha Physical Therapy & Health Center P.C. Ltd is hereby ordered to pay Carey Dale the sum of \$8320.72 for unpaid commissions earned in 2024.

Dated at Regina in the Province of Saskatchewan, this 21st day of April, 2025.



Ralph Ermel
Adjudicator