

**IN THE MATTER OF A HEARING PURSUANT TO SS.
62.1 AND 66.2 OF *THE LABOUR STANDARDS ACT*,
R.S.S. 1978, c. L-1 (AS AMENDED)**

BETWEEN:

101071883 SASKATCHEWAN LTD. o/a
TIFFANY'S FAMILY RESTAURANT and
SHAWN JACOB EVANS,

APPELLANTS,

AND:

STEPHANIE MEGAN MARIE LUMBIS and
WANDA LOVINA ANNE SAGRIFF,

RESPONDENTS
(COMPLAINANTS)

ADJUDICATOR'S DECISION
March 12, 2014

T. F. (TED) KOSKIE, B.Sc., J.D.

Date of Hearing: February 12, 2014

Place of Hearing: Adjudication Chambers
Suite 3, 501 Gray Avenue
Saskatoon, Saskatchewan

Representatives: Shawn Jacob Evans, for himself and the Appellant, 101071883
Saskatchewan Ltd. o/a Tiffany's Family Restaurant

Lana Gross, Labour Standards Officer, for the Respondents
(Complainants), Stephanie Megan Marie Lumbis and Wanda Lovina
Anne Sagriff

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTS	1
III. DISPUTE	5
IV. DECISION	5
V. REASONS	6
A. <i>Act & Regulations</i>	6
B. ANALYSIS	10

I. INTRODUCTION

[1] This is an appeal¹ (the “Appeal”) by Shawn Jacob Evans (“Evans”) and 101071883 Saskatchewan Ltd. o/a Tiffany’s Family Restaurant (“Tiffany’s”) of Wage Assessment No. 6255² (the “Assessment”) issued pursuant to section 60 of *The Labour Standards Act*, R.S.S. 1978, c. L-1 (as amended) (the “Act”) by the Director of Labour Standards (the “Director”) on November 18, 2013.

[2] The Assessment directed Evans and Tiffany’s to pay:

- a) \$956.45 to Stephanie Megan Marie Lumbis (“Lumbis”); and
- b) \$2,881.21 to Wanda Lovina Anne Sagriff (“Sagriff”).

[3] The Registrar of Appeals selected me to hear and determine the Appeal.

II. FACTS

[4] The parties submitted the following agreed statements of fact:

- a) Tiffany’s—and Evans, being its sole director—employed:
 - i) Lumbis from June 2, 2011, to January 29, 2013; and
 - ii) Sagriff from August 14, 2007, to January 29, 2013;
- b) Tiffany and Evans failed to pay:
 - i) Lumbis—and she is entitled to—\$553.95 in wages; and
 - ii) Sagriff—and she is entitled to—\$120.58, being \$84.00 for regular wages for January 29, 2013 (seven hours), \$30.00 for minimum call out pay for a staff meeting on January 29, 2013, and \$6.58 for annual holiday pay on the previously stated two amounts; and
- c) if entitled to pay in lieu of notice, the correct amount for:
 - i) Lumbis is \$402.50; and
 - ii) Sagriff is \$2,304.00.

¹ Exhibit L-2, Notice of Appeal

² Exhibit L-1, Wage Assessment No. 6255

[5] Tiffany's operated its business (the "Business") from two levels—a restaurant on the upper level (the "Restaurant") and a bar/lounge on the lower level (the "Lounge").

[6] Lumbis was employed as a waitress in the Restaurant. She testified she never worked in the Lounge. She said she refused to do so. She said the jobs were similar between the Restaurant and Lounge, just the money handling was different.

[7] Sagriff was employed as a head waitress in the Restaurant. She testified that, in addition to serving as a waitress, she also performed a role of managing the duties of other waitresses while she was on shift. She said that, in past, she "covered" the Lounge. However, she said that when Evans "took over," she did not go into the Lounge.

[8] At some point the Business began to lose money. It appears that the Lounge still made money. However, the Restaurant did not. Evans testified that he was contributing as much as \$10,000.00 a month from his own pocket to keep the business running.

[9] Evans decided he needed to sell the Business. He decided to shut down the Restaurant in the meantime and just continue to operate the Lounge. He prepared letters terminating the employment of the Restaurant employees and called a meeting (the "Meeting") of employees for 9:00 p.m. on January 28, 2013.

[10] Eight to ten employees—two or three of whom were kitchen staff—attended the Meeting. Lumbis and Sagriff were among them. At that time, Evans advised those assembled that he had decided to close the Restaurant. He gave all the employees letters of termination.³ In essence, same terminated each employment effective January 28, 2013.⁴ Lumbis and Sagriff did not expect the terminations.

[11] Lumbis could not recount a great deal of what happened at the Meeting. She says:

- a) she remembers getting her termination letter and crying;
- b) she remembers Sagriff say she "deserved a job";
- c) Evans, at the time of giving her the letter, said he would schedule her in the Lounge if she wanted to work there;
- d) says she was not interested in working in the Lounge; and

³ Exhibit L-6, Letter dated January 28, 2013, from Tiffany's to Lumbis; Exhibit L-7, Letter dated January 28, 2013, from Tiffany's to Sagriff

⁴ It bears noting that while the evidence suggests Tiffany's and Evans terminated Lumis' and Sagriff's employment on January 28, 2013, the agreed statements of fact state same to be January 29, 2013. Indeed, the parties' agreed calculations are all based on January 29, 2013. The difference in dates does not create much of a difference. In light of the agreement on facts, I am prepared to consider the date of termination to be January 29, 2013.

d) says she did not discuss the offer with Evans and just left.

[12] Sagriff said:

- a) she was “choked” when Evans gave her a termination letter;
- b) she told him she deserved a job;
- c) Evans responded by saying he would give her hours in the Lounge if she was interested;
- d) she replied by asking if he was going to fire someone in the Lounge so she could get full time hours;
- e) Evans replied they would need to “talk about it”; and
- f) she said “this is bullshit” and walked out.

[13] Evans says he was concerned with losing money. His intent was to lessen his losses by closing the Restaurant and his mind put him on a path of thinking employee terminations was one of the steps required. He says that when Sagriff cried and said she deserved a job, he began to think of the matter more broadly and reconsidered how he was approaching the matter. He says:

- a) he agreed the employees deserved jobs;
- b) it was his view there were staff shortages in the Lounge that could be filled by Restaurant employees;
- c) he is not sure why he had not thought of offering Lounge positions to Restaurant employees, but thought that was a good idea;
- d) he offered Lounge employment to Sagriff;
- e) he asked if any other employees wanted to work in the Lounge;
- f) Lumbis and another said yes;
- g) he told Sagriff, Lumbis and the other employee that reworked schedules would be available the next day;
- h) he told Sagriff, Lumbis and the other employee to tear up their termination letters; and
- i) he expected Sagriff and Lumbis to come back the next day, but they did not.

[14] Evans testified that it was his view he could have scheduled Sagriff and Lumbis to work in the Lounge with no difference in hours and pay. However, he did say Sagriff would not have

managerial responsibilities in the Lounge.

[15] Lumbis testified that, approximately two weeks after the Meeting, Evans called her to see if she wanted to work in the Restaurant. Lumbis agreed and returned to work her first shift on Valentine's day. Lumbis says she quit at the beginning of her second shift.

[16] Evans says he reopened the Restaurant for a short period of time. He was trying to sublet the Restaurant and hoped that would help in his efforts.

[17] Sagriff testified that, subsequent to the Meeting, she received a call from Lumbis' mother. Sagriff says Lumbis' mother told her Tiffany's had a two hour shift in the Lounge. She said she was told she would be cleaning toilets and would not be working in a job equivalent to that which she had in the Restaurant. Sagriff did not accept the offer.

[18] Evans denies offering Sagriff a two hour shift. He says he believes it is his legal obligation to offer a minimum three hour shift. Evans also denies the characterization of the job offered to Sagriff. He says it was not to just clean toilets. He says all employees that come on to the first shift have a responsibility to ensure the toilets are clean. However, that is simply one of the duties that always existed, even in the Restaurant.

[19] During the course of her employment, Sagriff from time to time consumed alcoholic beverages in the Lounge. At times, instead of paying for same, she would have them charged to a tab (the "Tab"). According to Evans, the Tab grew to approximately \$700.00. Sagriff says it was \$461.00.

[20] Both Sagriff and Evans say that an agreement was reached that Sagriff would retire the Tab by taking deductions of \$100.00 off each monthly pay cheque.

[21] Sagriff says \$100.00 was deducted from each of three cheques and that she paid a further \$130.00 in cash—meaning she paid a total of \$430.00. She says that means \$31.00 remained owing on the Tab.

[22] Since Evans was unaware of any cash payment, he could neither confirm, nor dispute same. However, he was adamant that \$100.00 was deducted from only one cheque, not three. He produced pay cheque stubs to support his position.⁵ From Evans' perspective, at least \$600.00 was owing on the Tab. He deducted \$489.88 from Sagriff's final pay cheque.⁶ He said his computer system would not let him reflect a higher amount owing. It will not allow a negative number. Sagriff did not dispute she received the cheques referred to by the evidence tendered by Evans.⁷ She simply said she did not get two cheques for the amounts reflected—that is, they were each \$100.00 less. Unfortunately, further documentary evidence was simply not available.

⁵ Exhibit E-1, Pay Cheque Stubs

⁶ Exhibit L-8, Final Sagriff Cheque and Pay Stub

⁷ *Supra*, footnote 5

Evans says he was locked out of the premises occupied by Tiffany's. Furthermore, Tiffany's landlord seized the computer that housed their records.

III. DISPUTE

[23] The issue with respect to Lumbis is whether she was discharged.

[24] The issues with respect to Sagriff are whether:

- a) she was discharged; and
- b) Tiffany's can deduct the Tab from Sagriff's wages and, if so, the amount that can be deducted.

IV. DECISION

[25] I find that Tiffany's discharged Lumbis and Sagriff. Consequently, I rule that Tiffany's and Evans must pay:

- a) \$402.50 to Lumbis; and
- b) \$2,304.00 to Sagriff.

[26] I further rule Tiffany's and Evans must pay:

- a) \$553.95 in wages to Lumbis; and
- b) \$120.58 to Sagriff, being \$84.00 for regular wages for January 29, 2013 (seven hours), \$30.00 for minimum call out pay for a staff meeting on January 29, 2013, and \$6.58 for annual holiday pay on the previously stated two amounts.

[27] Finally, I rule the Tab is a lawful deduction under the *Act*. I find as a fact that:

- a) the Tab was \$700.00;
- b) Tiffany's deducted one payment of \$100.00 from one of Sagriff's cheques;
- c) Sagriff paid \$130.00 in cash toward the Tab; and
- d) Sagriff owed Tiffany's \$470.00 for the Tab.

[28] As Tiffany's deducted \$489.88 from Sagriff's cheque, Tiffany's and Evans must pay the excess deduction of \$19.88 to Sagriff.

[29] With respect to Lumbis, the appeal is dismissed and I confirm the Assessment with respect to her.

[30] With respect to Sagriff, the appeal is partially allowed. I vary the Assessment to reflect that the amount of \$2,444.46 is owing to Sagriff.

[31] Tiffany's and Evans shall pay interest on the sums owing from January 29, 2013, at the rates prescribed by Section 31 of *The Labour Standards Regulations, 1995*, c. L-1, Reg 5, being the rates published pursuant to section 4 of *The Pre-judgment Interest Act*.

V. REASONS

A. *Act & Regulations*

[32] The relevant provisions of the *Act* are as follows:

2 In this Act:

(a) "annual holiday pay" means an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35;

...

(h) "lay-off" means the temporary termination by an employer of the services of an employee for a period exceeding six consecutive days;

...

(l) "pay" means remuneration in any form;

(l.1) "pay in lieu of notice" means an amount of money that is payable to an employee pursuant to section 44;

(l.2) "public holiday pay" means an amount of money to which an employee is entitled pursuant to section 39;

...

(q) "total wage", in respect of any period of employment of an employee, means all remuneration that the employee is paid or is entitled to be paid by his employer, whether or not payment is actually made during that period of employment, in respect of the labour or services that he performs for his employer during that period of employment, and includes:

(i) sums deducted from such remuneration for any purpose whatever;

(ii) remuneration in respect of overtime work that he performs for his employer during that period of employment;

(iii) remuneration in respect of any annual or special holiday that his employer permits him to take during that period of employment;

(iv) the cash value of any board or lodging received by the employee as part payment of wages during that period of employment;

...

(r) “wages” means all wages, salaries, pay, commission and any compensation for labour or personal services, whether measured by time, piece or otherwise, to which an employee is entitled;

...

4(1) Subject to subsections (1.1), (2), (3) and (4) and to the regulations, the provisions of this Act apply to . . . every employee employed in the Province of Saskatchewan and to the employer of every such employee.

...

29.4 In this Part, “year of employment” means a period of 52 consecutive weeks in which an employee’s employment is not broken by a period greater than 26 consecutive weeks.

30(1) Every employee to whom this Act applies is entitled:

(a) subject to clause (b), to an annual holiday of three weeks after each year of employment with any one employer;

(b) to an annual holiday of four weeks after the completion of ten years of employment with one employer and after the completion of each subsequent year of employment with that employer.

...

33(1) An employee is entitled to receive annual holiday pay in the following amounts:

(a) if the employee is entitled to an annual holiday pursuant to clause 30(1)(a), three fifty-seconds of the employee’s total wages for the year of employment immediately preceding the entitlement to the annual holiday;

(b) if the employee is entitled to an annual holiday pursuant to clause 30(1)(b), four fifty-seconds of the employee’s total wages for the year of employment immediately preceding the entitlement to the annual holiday.

(1.1) With respect to an employee who is entitled to an annual holiday pursuant to section 30 but who does not take that annual holiday, the employer shall pay to the employee the employee’s annual holiday pay not later than 11 months after the day on which the employee becomes entitled to the annual holiday.

...

35(1) If the employment of an employee terminates, the employer of the employee shall, within fourteen days after the effective date of termination, pay to the employee the annual holiday pay to which he or she is entitled pursuant to this Act.

(2) If the employment of an employee terminates, the employee is entitled to annual holiday pay calculated in accordance with section 33 with respect to all total wages earned by the employee with respect to which the employee has not previously been paid annual holiday pay.

(3) Subsection (2) applies whether or not an employee has completed a year of employment.

...

43 Except for just cause other than shortage of work, no employer shall discharge or lay off an employee who has been in his service for at least three continuous months without giving that employee at least:

- (a) one week's written notice, if his period of employment is less than one year;
- (b) two weeks' written notice, if his period of employment is one year or more but less than three years;
- (c) four weeks' written notice, if his period of employment is three years or more but less than five years;
- (d) six weeks' written notice, if his period of employment is five years or more but less than 10 years;
- (e) eight weeks' written notice, if his period of employment is 10 years or more.

44(1) Where an employer discharges or lays off an employee in accordance with section 43, he shall pay to the employee, in respect of the period of the notice given under that section, the sum earned by the employee during that period or a sum equivalent to the employee's normal wages for the period of the notice exclusive of overtime, whichever is the greater.

(2) Where an employer, contrary to section 43, discharges or lays off an employee without having given the notice required by that section, he shall pay to the employee, in respect of the minimum period of notice required by section 43, a sum equivalent to the employee's normal wages for that period, exclusive of overtime.

(3) Where the wages of an employee, exclusive of overtime, vary from week to week, his normal wages for one week shall, for the purposes of subsection (1) or (2), be deemed to be the equivalent of his average weekly wage, exclusive of overtime, for the four weeks he worked immediately preceding the date on which notice of termination of employment or lay-off was given or, where such notice was not given, the date on which he was discharged or laid off.

...

58(1) Notwithstanding any other provision of this Act, where an employee voluntarily purchases from his employer any goods, wares or merchandise, the employer may deduct from the wages of the employee any amounts from time to time payable by the employee to the employer in respect of goods, wares or merchandise so purchased, and no action, suit or other proceeding shall be brought or maintained by the employee against his employer in respect of any deduction so made.

(2) Notwithstanding any other provision of this Act, in any action, suit or other proceeding brought by an employee against his employer for the recovery of money due for labour or services, the employer may set off against, or claim in reduction of, the employee's demand any amount payable by the employee to the employer in respect of goods, wares or merchandise so purchased.

(3) Notwithstanding any other provision of this Act, an employer is entitled to recover by action any amount payable to him in respect of goods, wares or merchandise purchased by an employee in accordance with subsection (1).

59 Nothing in this Act prohibits an employer from making deductions from the wages of an employee that may lawfully be deducted.

60(1) Without limiting the generality of section 82, in this section and in sections 61 to 62.4,

“wages” includes overtime, annual holiday pay, public holiday pay, pay in lieu of notice, monetary losses described in subsection 33(4) and transportation costs described in subsection 44(2.5).

(2) The director may issue a wage assessment:

- (a) against an employer where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act; or
- (b) against a corporate director where the director has knowledge or has reason to believe or suspects that the corporate director is liable for wages in accordance with section 63.

(3) The director shall issue a wage assessment against an employer where:

- (a) the director has served a third party demand;
- (b) the third party has paid money to the director in response to the third party demand;
- (c) the director has not already issued a wage assessment against the employer in accordance with subsection (2); and
- (d) there is no agreement pursuant to clause 55(2)(a).

(4) Where the director has issued a wage assessment pursuant to subsection (2) or (3), the director shall cause the wage assessment to be served on the employer or corporate director named in the wage assessment and on each employee who is affected by the wage assessment.

...

61(1) The Lieutenant Governor in Council, on the recommendation of the minister after consultation with labour organizations and employer associations, shall establish a list of adjudicators who are designated to hear appeals from wage assessments or from a decision of the director made pursuant to subsection 62.4(2.1).

...

62(1) Any of the following may serve a notice of appeal on the registrar of appeals within 21 days after the date of service of a wage assessment or a decision of the director pursuant to subsection 62.4(2.1), as the case may be:

- (a) an employer or corporate director who disputes liability for the amount set out in a wage assessment;
- (b) an employee who disputes the amount set out in a wage assessment;
- (c) an employer or employee who disputes a decision of the director pursuant to subsection 62.4(2.1).

...

62.2(1) Within 30 days after a hearing, the adjudicator shall:

- (a) either:

- (i) dismiss the appeal and confirm the amount claimed in the wage assessment or confirm the decision of the director pursuant to subsection 62.4(2.1); or
- (ii) allow the appeal and:
 - (A) vary the amount claimed in the wage assessment;
 - (B) revoke the wage assessment; or
 - (C) revoke the decision of the director; and
- (b) provide written reasons for the decision to the registrar of appeals.
- (2) The adjudicator:
 - (a) may award interest at a rate prescribed in the regulations; and
 - (b) shall not award costs against any of the parties.

...

63(1) Notwithstanding any other provision in this Act or any provision in any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for all debts due for services performed for the corporation, not exceeding six months' wages, while they are the directors.

(1.1) For the purposes of this section, "debts due for services performed for the corporation" means all remuneration payable by an employer to an employee pursuant to this Act and, without limiting the generality of the foregoing, includes wages, annual holiday pay, public holiday pay and pay in lieu of notice.

[33] The relevant provisions of *The Minimum Wage Regulations*⁸ as amended (the "*MW Regulations*") are as follows:

2(1) Commencing on December 1, 2012, every employee shall be paid at a rate of wages that is not less than \$10.00 per hour.

(2) Subject to subsection (3), commencing on December 1, 2012, every employee who is required to report for duty, other than for overtime, shall be paid a minimum sum of \$30.00, whether or not the employee is required to be on duty for three hours on that occasion.

B. ANALYSIS

[34] I have set out the various provisions of the *Act* and *MW Regulations* that relate to payment of wages, holiday pay and minimum call out pay. The parties are *ad idem* concerning their applicability to the facts at hand. They agree Tiffany's failed to pay:

- a) \$553.95 in wages to Lumbis; and

⁸ c. L-1, Reg 8

- b) \$120.58 to Sagriff, being \$84.00 for regular wages for January 29, 2013 (seven hours), \$30.00 for minimum call out pay for a staff meeting on January 29, 2013, and \$6.58 for annual holiday pay on the previously stated two amounts.

[35] I have set out the provisions of the *Act* that relate to pay in lieu of notice. The parties are at odds concerning their applicability to the facts at hand.

[36] Lumbis and Sagriff maintain:

- a) section 43 of the *Act* places a positive obligation on an employer to provide written notice to them prior to a lay off or discharge;
- b) when an employer fails to provide notice in accordance with section 43 of the *Act*, and in absence of just cause, section 44(2) of the *Act* places an obligation on an employer to provide the equivalent pay in lieu of notice;
- c) “lay-off” is defined in section 2 of the *Act* as a temporary termination of an employee’s services by an employer for a period of not more than six consecutive days; and
- d) the testimony and documentary evidence tendered by Lumbis and Sagriff establish that their employment was terminated on January 29, 2013, without notice or pay in lieu of notice contrary to the *Act*;
- e) Lumbis is entitled to \$402.50 for pay in lieu of notice; and
- b) Sagriff is entitled to \$2,304.00 for pay in lieu of notice.

[37] On the other hand, Tiffany’s and Evans maintain:

- a) at the request of Lumbis and Sagriff, Evans reconsidered the need to terminate their employment;
- b) agreement was reached with Lumbis and Sagriff to work in the Lounge;
- c) as a result of the agreement, Evans told Lumbis and Sagriff to tear up their termination letters, thus effectively rescinding same;
- d) Evans created a schedule for Lumbis and Sagriff to work in the Lounge an amount equivalent to what they worked in the Restaurant;
- e) Lumbis and Sagriff would have been paid the same wage;
- f) Lumbis and Sagriff were aware of the scheduling, but chose to not come in to work;
- g) Lumbis and Sagriff kept their positions, albeit in the Lounge, not the Restaurant;

- h) the evidence establishes that Tiffany's did not terminate Lumbis' and Sagriff's employment; and
- e) there is no notice for which Lumbis and Sagriff are entitled to pay in lieu of.

[38] There is no doubt a letter of termination was delivered to Lumbis and Sagriff. I must determine whether same was rescinded—either unilaterally or by agreement—and, if so, the effect of same.

[39] I do accept that Evans asked Lumbis and Sagriff to tear up their termination letters. However, I am not satisfied that Lumbis and Sagriff understood that they continued to have their jobs. Indeed, I cannot see how such a view would be reasonable under the circumstances. Clearly the Restaurant was closing. Although Evans was expressing an intention to schedule Lumbis and Sagriff for work in the Lounge, no detail was then available. Even if they had the same hours and wages, their jobs would be different. By Evans own testimony, the schedules would not be ready until the next day. Evans testified that he believed Lumbis and Sagriff had agreed to stay in the employ of Tiffany's. Even if that appeared to Evans to be the case during the meeting, it is probable that conflicting messages were communicated. By the testimony of all, emotions were high, people were mad and crying. Under the circumstances, I find that Tiffany's had not rescinded the termination of Lumbis' and Sagriff's employment. I further find it reasonable to infer that both Lumbis and Sagriff not only understood their employment to be terminated, but they had not agreed to continue in Tiffany's employ.

[40] I therefore find Tiffany's terminated Lumbis' and Sagriff's employment without notice or pay in lieu of notice contrary to the *Act*. I therefore find:

- a) Lumbis is entitled to \$402.50 for pay in lieu of notice; and
- b) Sagriff is entitled to \$2,304.00 for pay in lieu of notice.

[41] Sagriff concedes her Tab constitutes “goods, wares or merchandise” of Tiffany's and therefore qualifies to be a lawful deduction under the *Act*. However, she maintains:

- a) the lawfulness of the deduction relates to the “voluntary” nature of such a purchase;
- b) “voluntary” implies agreement;
- c) where the amount of the Tab is in dispute, it is not then voluntary—in the sense that the amount is not agreed to—and therefore cannot constitute a lawful deduction;
- d) the parameters as to what can and cannot be deducted from an employee's wages are legislated so as to protect wages and, as such, the circumstances when deductions can be permitted must be narrowly construed; and
- e) there must be agreement as to the amount of the purchase, such as through signed receipts by the employee, or the protection provided wages becomes diminished.

[42] Sagriff referred me to:

- a) *R. v. Carpet Warehouse (Saskatoon) Ltd.*,⁹ where (1978) unreported (Sask. Mag. Ct.) Magistrate Taylor found that:

[The employee] agrees that she owes a bill of \$879.31 to the Carpet Warehouse Limited for carpet which she purchased, and that this should be deducted from the monies owing to her.; and

- b) *Aerial Adventures (1997) Ltd.*, where:

- i) the dispute centred over whether or not an airline ticket was voluntarily purchased by the employee from the employer;
- ii) the employer testified that there was a voluntary agreement, while the employee denied that he consented to the deduction;
- iii) the adjudicator's decision suggested that the burden of proof lies on the employer;
- iv) the adjudicator's decision noted that:

Given the seriousness of making deductions from wages, employers would generally expect that a written agreement would be used for this purpose. Here there was no such written agreement allowing the deduction. Therefore, having regard to all of the evidence, it cannot fairly be concluded, on the balance of probabilities that Petty voluntarily agreed to his employer deducting the cost of his return flight from his wages.

[43] Sagriff submitted the deduction for the Tab was unlawful and therefore should be refunded.

[44] Tiffany's and Evans maintain:

- a) Sagriff voluntarily purchased alcohol from Tiffany's;
- b) the purchases were recorded in writing, but due to circumstances beyond their control, that record is not available;
- c) the alcohol constitutes goods, wares or merchandise as contemplated by section 58(1) of the *Act*;
- d) Sagriff agreed to repay the Tab;

⁹ (1978) Unreported (SK Mag. Ct.)

- e) Tiffany's should be able to lawfully deduct the amount of the Tab from Sagriff's wages; and
- f) the fact that the parties disagree on the amount should not negate the deductibility of whatever amount I determine to be owing.

[45] Tiffany's and Evans submit that I should accept their view of the amount of the Tab and decline to order reimbursement of the amount deducted.

[46] I am prepared to accept Sagriff's propositions that:

- a) "the parameters as to what can and cannot be deducted from an employee's wages are legislated so as to protect wages and, as such, the circumstances when deductions can be permitted must be narrowly construed"; and
- b) the burden of proof lies on the employer to establish the deduction should be permitted.

[47] I can also accept Sagriff submission that:

- a) the lawfulness of the deduction relates to the "voluntary" nature of such a purchase; and
- b) "voluntary" implies agreement.

In this context, it makes sense that there must be a voluntary agreement on the part of the employee as to what is being purchased and the price of same. However, I cannot accept the proposition that when there is a disagreement as to how much product was purchased or how much remains owing for same that somehow the purchase was no longer voluntary and therefore cannot constitute a lawful deduction.

[48] I am satisfied on the evidence that Sagriff understood and agreed on the individual prices of the items that comprised the Tab. There was no evidence to suggest there was disagreement on the prices of individual purchases. The evidence simply showed there was disagreement on what those purchases totaled and what remained owing. This is something I can resolve by this ruling.

[49] I am satisfied on the evidence that:

- a) Sagriff voluntarily purchased alcohol from Tiffany's;
- b) the purchases were recorded in writing, but due to circumstances beyond Tiffany's control, that record is not available;
- c) the alcohol constitutes goods, wares or merchandise as contemplated by section 58(1) of the *Act*;

- d) Sagriff agreed to repay the Tab;
- e) Tiffany's should be able to lawfully deduct the amount of the Tab from Sagriff's wages.

[50] Sagriff testified Tiffany's deducted \$100.00 from each of three of her pay cheques. However, Evans produced records to show that only one deduction of \$100.00 was made from one of Sagriff's cheques. Evans testified the Tab was \$700.00. Sagriff says it was \$461.00. I carefully observed the demeanor of both witnesses on the stand. Considering that, the documentation and the testimony as a whole, I find Evans testimony to be more credible—and therefore prefer and accept same—on these points.

[51] I am satisfied Tiffany's and Evans have met their onus and find the Tab is a lawful deduction under the *Act*. I find as a fact that:

- a) the Tab was \$700.00;
- b) Tiffany's deducted one payment of \$100.00 from one of Sagriff's cheques;
- c) Sagriff paid \$130.00 in cash toward the Tab; and
- d) Sagriff owed Tiffany's \$470.00 for the Tab.

[52] As Tiffany's deducted \$489.88 from Sagriff's cheque, Tiffany's and Evans must pay the excess deduction of \$19.88 to Sagriff.

Dated at Saskatoon, Saskatchewan, on March 12, 2014.



T. F. (TED)KOSKIE, B.Sc., LL.B.,
ADJUDICATOR

NOTICE

The parties are hereby notified of their right to appeal this decision pursuant to section 62.3 of *The Labour Standards Act*, R.S.S. 1978, c. L-1 (as amended), which reads as follows:

- (1) An employer, a corporate director, an employee named in a wage assessment or a decision of the director pursuant to subsection 62.4(2.1) or the director on behalf of employees may, by notice of motion, appeal a decision of the adjudicator on a question of law or of jurisdiction to a judge of the Court of Queen's Bench within 21 days after the date of the decision.
- (2) An employer, a corporate director, an employee named in a wage assessment or a decision of the director pursuant to subsection 62.4(2.1) or the director on behalf of employees may, with leave of a judge of the Court of Appeal, appeal the decision of a judge of the Court of Queen's Bench on a question of law or of jurisdiction to the Court of Appeal within 30 days after the date of the decision.
- (3) Unless otherwise ordered by a judge of the Court of Queen's Bench, or in the case of an appeal taken pursuant to subsection (2), a judge of the Court of Appeal, enforcement of the decision of the adjudicator or the decision of the judge of the Court of Queen's Bench is not stayed by the appeal.
- (4) The record of an appeal consists of:
 - (a) the wage assessment or a decision of the director pursuant to subsection 62.4(2.1);
 - (b) the notice of appeal served on the registrar of appeals;
 - (c) the written decision of the adjudicator;
 - (d) the notice of motion commencing the appeal to the Court of Queen's Bench;
and
 - (e) in an appeal to the Court of Appeal, the decision of the Court of Queen's Bench and the notice of appeal to the Court of Appeal.