DECISION OF ADJUDICATOR
IN THE MATTER OF A HEARING
PURSUANT TO s.s. 62.1 and 62.2 OF
THE LABOUR STANDARDS ACT, R.S.S. 1978, c. L-1 (as amended)

COMPLAINANT:	Amanda Hay *et. al.* Represented by Loretta Jennings, Labour Standards Officer and Shelley Burwood, solicitor
RESPONDENT:	626385 Saskatchewan Ltd. o/a Poverino's Pasta Grill Peter Tudda, Director
DATE OF HEARING:	March 26, 2007 and May 22, 2007
PLACE OF HEARING:	3rd Floor Boardroom 1870 Albert Street Regina, Saskatchewan

I. INTRODUCTION

On March 26, 2007, the hearing was convened at Regina, Saskatchewan to determine some procedural matters and to set a date for the hearing to be conducted. The employees, Ms. Amanda Hay *et. al.* (herein referred to as "the employees") were represented by Ms. Loretta Jennings, Labour Standards Officer. Mr. Curtis Onishenko appeared as solicitor for the Respondent, 626385 Saskatchewan Ltd. o/a Poverino's Pasta Grill and the Respondent, Peter Tudda (collectively also referred to as "the employer") by telephone. The parties agreed that the hearing be held on May 22, 23 and 24, 2007 in Regina, Saskatchewan concurrently with *Hubich v. 626385 Saskatchewan Ltd. o/a Poverino's Pasta Grill and Peter Tudda* and that, as there were in excess of 100 employees covered by the wage assessment, a representative sample of the employees, consisting of 10 kitchen staff and 10 front staff employees, be called as witnesses at the hearing. The employer was directed to file an amended Notice of Appeal setting out the specific grounds of appeal. The employer filed an amended Notice of Appeal on April 3, 2007.

On May 15, 2007, Mr. Onishenko sent a letter to the Registrar of Appeals to my attention advising that his firm was withdrawing from representation of Mr. Peter Tudda.

On May 22, 2007 this matter was reconvened in Regina, Saskatchewan. Ms. Loretta Jennings appeared on behalf of the employees together with Shelley Burwood, solicitor. The employer did not appear at the hearing and did not send a representative. Being satisfied that the employer had notice of the hearing, the hearing was conducted in the employer's absence.

Two wage assessments were issued by the Director. The first wage assessment, issued on January 4, 2007, was replaced by a second wage assessment, issued on February 16, 2007. It is the second wage assessment that is before me. The wage assessment, prepared pursuant to s. 60 of *The Labour Standards Act* R.S.S. 1978, c. L-1 (as amended) (herein "the *Act*"), is for a total of $62,205.80 including the wage assessment for Ms. Erin J. Hubich which was dealt with in a

separate appeal, *Hubich* v. *626385 Saskatchewan Ltd. o/a Poverino's Pasta Grill and Peter Tudda.*

II. THE DISPUTE

Was the minimum call pay included in the wage assessment properly calculated?

III. FACTS

The wage assessment is based on the employer's payroll records and the evidence provided to Ms. Jennings by the various employees. At the hearing, Ms. Jennings provided a sampling of the calculations used to determine the wage assessment and a copy of the employer's payroll records. These documents were introduced as Exhibits R-1 to R-15 inclusive. Employees were paid incorrectly for a variety of reasons such as:

1. improper payment for over time, annual holiday pay and statutory holiday pay;
2. failure to pay in lieu of notice;
3. failure to pay minimum call out as required by s. 2(4)and (5) of *The Minimum Wage Regulations* RSS c. L-1 Reg 8;
4. failure to pay for time spent waiting when employees reported to work on time and were given a delayed start time;
5. pay cheques returned NSF.

Ms. Jennings asked the employees if they were students. When she was advised by an employee of student status she did not include the minimum call out pursuant to s. 2(4)and (5) of *The Minimum Wage Regulations* in the wage assessment for that employee. After the second wage assessment was prepared, Ms. Jennings was advised that twelve employees included in that assessment were students. The wage assessment calculations for these twelve employees included payment of the minimum call out in accordance with s. 2(4)and (5) of *The Minimum Wage Regulations.* She sought to vary the wage assessment for these twelve employees to remove payment for the minimum call out. If payment of the minimum call out payment is

removed from the assessment for these employees, their individual wage assessments would read as follows:

Andrea Shkowsky	$205.81
Lindsay Piller	$145.53
Nick Cumbers	$190.96
Tiffany Kleppe	$202.10
Andrew Zylak	$196.66
Bonnie Day	$227.31
Brock Harris	$ 48.02
Caralee Nel	$252.09
Christina Biller	$48.02
Justin Chomyn	$352.42
Melissa Mebs	$ 11.98
Almeda Booodhoo	$122.37

Almeda Boodhoo, Christina Biller, Justin Chomyn, and Brock Harris are identified in Exhibit R-7 as attending high school. Andrew Zylak is identified as a student. The remainder are identified as attending university.

VI. ARGUMENTS

Ms. Burwood argues that the main issue to be determined is whether the words "school student" used in s. 2(7)(a) of *The Minimum Wage Regulations* includes a university student. The words "school student" and "regular attendance" are not defined in the Regulation. The definition of "school" in the Merriam-Webster dictionary includes university, she states. She also argues that the plain meaning of the word "school" includes university. Section 23(2) of *The Labour Standards Regulations, 1995* SS c. L-1 Reg 5, defines "full-time student" as a person who is registered for at least 60% of a full course load as a pupil within the meaning of *The Education Act* or as a student at a university, regional college, private vocational school or the Saskatchewan Institute of Applied Science and Technology. Given all of this, Ms. Burwood argues that the words "regular attendance" in s. (2)(7)(a) of *The Minimum Wage Regulations*,

mean that the student is taking at least 60% of a school load and the words "school student" include university students.

VII. ANALYSIS

Ms. Jennings requests that the wage assessment for twelve of the employees be reduced as the wage assessment calculation erroneously included payment for minimum call as specified in s. 2 of *The Minimum Wage Regulations.* To determine whether the wage assessment should be so amended, I must first determine the meaning of s. 2(7) (a) of *The Minimum Wage Regulations.* The relevant portions of s. 2 read as follows:

> (4) Subject to subsection (7), for the period commencing on September 1, 2005 and ending on February 28, 2006, every employee who is required to report for duty, other than for overtime, shall be paid a minimum sum of $21.15, whether or not the employee is required to be on duty for three hours on that occasion.
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> (5) Subject to subsection (7), for the period commencing on March 1, 2006 and ending on February 28, 2007, every employee who is required to report for duty, other than for overtime, shall be paid a minimum sum of $22.65, whether or not the employee is required to be on duty for three hours on that occasion.
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> (7) Subsections (4) to (6) do not apply to an employee who is:
> (a) a school student in regular attendance during the school term;
> (b) a janitor;
> (c) a caretaker;
> (d) a building cleaner;
> (e) a noon-hour supervisor employed by a board of education as defined in *The Education Act, 1995* or by a conseil scolaire as defined in that Act; or
> (f) a person employed to operate a vehicle that is:
> (i) registered pursuant to *The Vehicle Administration Act;* and
> (ii) used as a school bus for the transportation of students to and from a school as defined in *The Education Act, 1995.*

No definition of the phrase "school student" or "regular attendance" is set out in the Regulation. The rules of statute interpretation provide that the words should be given their plain meaning within the context of the statute. In this instance, s. 2(7)(a) is part of a list that includes two other classes of employees that would only be employed by a school as defined in *The Education Act, 1995.*

Ms. Burwood asks me to consider the definition of full time student contained in s. 23(2) of *The Labour Standards Regulations, 1995.* Section 23 specifically referenced s.45.1 of the Act and s. 24 to 26 of that Regulation. The definition is restricted by its wording to specific sections and no intent is shown in this *Regulation* or *The Minimum Wage Regulations* that the definition apply to s. 2 (7)(a) of *The Minimum Wage Regulations.* If the Legislature intended the definition used in *The Labour Standards Regulations, 1995*, to be incorporated into *The Minimum Wage Regulations*, the Legislature would have so specified. The meaning of s. 2 (7)(a) of *The Minimum Wage Regulations* must therefore be determined by application of the principles of statutory interpretation.

Section 10 of *The Interpretation Act, 1995* S.S. c. I-11.2 provides that:

> Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects.

The Supreme Court of Canada considered the approach that should be taken to interpreting labour standard legislation in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, 1992 CanLII 102 (S.C.C.), a case that involved interpreting the Ontario labour standards legislation. Section 10 of the Ontario *Interpretations Act* R.S.O. 1980, c. 219 is worded similarly to s. 10 of the Saskatchewan Interpretations Act. The Court found that:

> Section 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit." The objective of the Act is to protect the interests of employees by requiring employers to comply with certain minimum standards, including minimum periods of notice of termination. . . .
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> . . . Accordingly, an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not.

In interpreting s.2(7)(a) I must favour the meaning that extends the protection of the legislation to as many employees as possible.

As previously stated, words used in a statute are to be given their plain and ordinary meaning. Where there is more than one plain and ordinary meaning of a word, the meaning to be used to interpret the statute must be determined from the meaning of the statute as a whole. Section 7 confers a right on employees that entitles them to be paid a minimum amount of wages when they are called to work. The list of exceptions enumerated in s. 2(7), other than s. 2(7) (a), reference specific jobs that by their nature may not require an employee to be on the job for three hours. For example, by its nature, the job of noon-hour supervisor employed by a board of education, would only last for one hour at a time. To require an employer to pay a minimum sum for a call out to this position would be unfair to the employer. Why the Legislature has determined that students should also be exempt from the minimum call out payment is less clear. Presumable, the Legislature wants to permit students to be able to work after school without the employer being required to pay for hours of work that the student may not have been available to work because he or she is attending school.

Section 7(2)(a) makes reference to "school students" and not just "students". The plain meaning of the word student is broad enough to include students in high school or attending a post-secondary institute such as university. However, the section refers to "school students", which has a more restricted meaning. The word "school" is being used as an adjective to modify the word "student". Although the word "school" can be taken to be broad enough to include university or other post-secondary institutions, "school" is generally used to refer to a primary or secondary school. This is reflected in other Saskatchewan legislation. *The Education Act,* which governs primary and secondary education, refers to schools. Institutes of higher learning are generally referred to as colleges or universities or technical schools. This distinction is made in

s. 23(2) of *The Labour Standards Regulations, 1995*. Ordinarily, the words "school student" would not be used to describe someone who attends a post-secondary student. Rather such a student would be described in reference to the learning institute that student attends. For example, someone attending university would be called a university student. The Supreme Court of Canada has directed me to use the interpretation that extends the protection of the *Act* to as many employees as possible. I find that the phrase "school student" means a student who attends primary or secondary school.

Having determined the meaning of "school student", I must now determine the meaning of the words "regular attendance". The section does not require that the "school student" be a full time student or attend a certain portion of the school year. Rather, the "school student" must be in "regular attendance". Attendance means the act of attending. Regular means usual, normal or customary. In other words the "school student" must normally or usually attend school during the school term. I find therefore that the words "regular attendance" mean that the "school student" normally attends school.

Almeda Boodhoo, Christina Biller, Justin Chomyn, and Brock Harris have identified themselves as attending high school. From this I infer that they normally attend high school. Section 2(7)(a) of *The Minimum Wage Regulations* applies to them. Accordingly, I find that the wage assessment for each of them shall be adjusted to read as follows:

Almeda Booodhoo	$122.37
Christina Biller	$48.02
Justin Chomyn	$352.42
Brock Harris	$ 48.02

Andrew Zylak is identified only as a student and it is not possible for me to determine whether the minimum call out provision applies to him. There is a presumption in favour of the assessment notice being correct and I therefore find that in regards to Mr. Zylak the wage

assessment is correct. The remaining employees, are university students and as such s.2(7)(a) of *The Minimum Wage Regulations* does not apply to them.

Ms. Jennings asked me to order that interest be payable on the wage assessment. I do not find that the circumstances in this case warrant the awarding of interest and I decline to make such an order.

VIII. CONCLUSION

The appeal is allowed in part. The Wage Assessment shall be amended to provide that the wages owing to Almeda Booodhoo is $122.37, to Christina Biller $48.02 , to Justin Chomyn is $352.42, and to Brock Harris is $ 48.02.

Dated at the City of Regina, in the Province of Saskatchewan, this 22nd of June, 2007.

"M. S. Dumonceaux"

Maureen S. Dumonceaux

ADDENDUM

Upon review of Exhibit R-7, it was determined that the wage assessment for Ashley Rankin, Nick Cumbers, and Charlene Gaskin, all of whom are university students, did not include pay for minimum call. Accordingly, in addition to the changes to the Wage Assessment already ordered above, the Wage Assessment shall be amended to provide that the wages owing to Ashley Rankin is $518.46, to Nick Cumbers is $234.94 and to Charlene Gaskin is $486.65.

Dated at the City of Regina, in the Province of Saskatchewan, this 26th of June, 2007.

Maureen S. Dumonceaux

The Parties are hereby notified of their right to appeal this decision pursuant to section 62.3(l) of The Labour Standards Act.

s. 62.3 (1) An employer, a corporate director, an employee named in a wage assessment 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 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;
(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. 1994, c.39, s.33.