

Case No. 159/09/ESC
File No. 100801

REVISED

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

DUO ENTERPRISES LTD.,

Employer,

- and -

Colette Harper,

Employee.

BEFORE:

C. S. Robinson, Vice-Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On May 21, 2009, pursuant to Section 96(1) of *The Employment Standards Code*, the Director of the Employment Standards Division of the Department of Labour and Immigration, ordered that the amount of Two Hundred Seventeen Dollars and Seventy One Cents (\$217.71) being wages owing by the Employer to the Employee(s), be paid to the Director of the Employment Standards Division of the Department of Labour and Immigration by the Employer and further required the payment of the administrative fee in the amount of One Hundred Dollars (\$100.00) for a total owing of Three Hundred Seventeen Dollars and Seventy One Cents (\$317.71).
2. The Employer having disputed the payment of the above-mentioned amount, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On August 26, 2009, the Board conducted a hearing at which time both parties presented evidence and argument.

4. The Board, following consideration of material filed, evidence and argument presented, is satisfied that:
- a) the Employee did not quit but rather was terminated by the Employer without notice or wages in lieu thereof;
 - b) the Employer did not assert that it was exempted from providing notice to the Employee by application of subsection 62(1) of the *Code*;
 - c) the Employer's representative and the Employee each accepted that, in the event that the Employer was required to provide wages in lieu of notice to the Employee, the Statement of Adjustment prepared by the Employment Standards Officer accurately reflected the amount owing;
 - d) the Employee was employed for less than one year and was entitled to a notice period of One (1) week pursuant to Section 61 of the *Code* in the amount of Two Hundred and Seventeen Dollars and Seventy One Cents (\$217.71).

T H E R E F O R E

The Manitoba Labour Board **HEREBY ORDERS DUO ENTERPRISES LTD.** to pay to the Director of Employment Standards Division of the Department of Labour and Immigration, forthwith:

WAGES:

The amount of Two Hundred Seventeen Dollars and Seventy One Cents (\$217.71) less statutory deductions, being wages in lieu of notice owing the Employee, Colette Harper.

ADMINISTRATIVE FEE:

An Administrative Fee in the amount of One Hundred Dollars (\$100.00) pursuant to Section 96(1) of *The Employment Standards Code*.

TOTAL:

The total amount being Three Hundred Seventeen Dollars and Seventy One Cents (\$317.71).

DATED at **Winnipeg**, Manitoba, this 2nd day of September, 2009, and signed on behalf of the Manitoba Labour Board by:

“original signed by”

C. S. Robinson, Vice-Chairperson

CJ:tj

NOTES

1. **Appeal of board order re unpaid wages**
130(1) A person who is a party to a final order of the board made under this Code in respect of a matter referred to the board under section 110 may appeal the order to The Court of Appeal.
2. **Appeal of the Board Decision or Order to Court of Appeal**
 - a. Leave to appeal required
130(2) An appeal may be taken only on a question of law or jurisdiction and by leave of a judge of The Court of Appeal.
 - b. Time for application for leave to appeal
130(3) An application for leave to appeal shall be made within 30 days after the day the order is made or within such further time as a judge may allow.
3. **Board and director entitled to be heard**
131 The board and the director are each entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.
4. **Applicant to file proof of payment to the director**
130(4) If a person that files an application for leave is not an employee and is required, under the order that is the subject of the application, to pay money to the director, the person shall file with the application evidence that he or she has complied with subsection 125(4).

5. Evidence of compliance with an Order of an Acknowledgment of Receipt from the Employment Standards Division indicating that the amount stated in the Order has been deposited in the "*Province of Manitoba Wages Trust Account.*" *The Employment Standards Division will only accept certified cheques, money orders or cash. Personal cheques will not be accepted unless certified. Please make cheques, etc. payable to "**The Province of Manitoba Wages Trust Account.**"*

REASONS FOR DECISION

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.