

Manitoba Labour Board

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Case No. 714/06/ESC

File No. 90482

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

**MANDIX CORPORATION LTD.
t/a McDOUGALL AUTO SUPERSTORE,**

Employer,

- and -

T.H.,

Employee.

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

WHEREAS:

1. On August 23, 2006, 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 Four Thousand Six Hundred Fourteen Dollars and Ninety Nine Cents (\$4,614.99) 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 Four Hundred Sixty One Dollars and Forty Nine Cents (\$461.49) for a total owing of Five Thousand Seventy Six Dollars and Forty Eight Cents (\$5,076.48).
2. The Employer having disputed the above-mentioned amount, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. This matter was originally scheduled to proceed to hearing on Thursday, February 15, 2007 at 1:30 p.m. On February 15, 2007, the parties attended before the Board and at the commencement of the hearing, the Employee indicated that he may require an adjournment as he only became aware of new evidence that morning. The Employer consented to the adjournment request, and requested an exchange of documents between the parties; further Counsel for the Employer also requested an adjournment to facilitate scheduling the matter for a full day of hearing. The Board granted the adjournment request to allow parties an opportunity to provide each other with relevant documents that they intend to rely upon at the hearing, on the understanding that such documents will be shared with the other party at least

two weeks prior to the new hearing date. This matter was scheduled to proceed on Thursday, March 15, 2007.

4. On March 15, 2007, the Board conducted a hearing at which time both parties appeared before the Board, the Employer being represented by Counsel, and presented evidence and argument.
5. The Board, following consideration of material filed, evidence and argument presented, made the following determinations:
 - a) The Employer asserted that it was entitled to terminate the employment of the Employee without notice because the Employee had not fulfilled all of his responsibilities, and had been inattentive to important details, and had otherwise failed to fulfill some of the reasonable rules and procedures of the Employer relating to at least one, and potentially more, transactions;

In order to be successful with respect to its appeal of the Order of the Employment Standards Division with respect to the wages owing to the Employee, the Employer must establish that the circumstances of this case are within one of the exceptions to s.61 of *The Employment Standards Code* (the "Code"). Section 61 of the *Code* stipulates that an Employer shall not terminate the employment of an Employee without giving notice of not less than one pay period. Certain exceptions to that general principle are outlined in s.62 of the *Code*.

The Employer argued that this case does fit within the exception outlined in s.62 (h) of the *Code*. The Employer specifically alleged that the Employee had acted in a manner which constituted "willful misconduct, or disobedience, or willful neglect of duty" that was not condoned by the Employer.

The Employer, pursuant to s.61 of the *Code*, failed to establish willful misconduct, disobedience or willful neglect of duty. Moreover, the circumstances at the material time were not so extreme as to justify an immediate dismissal without notice. The Employer was entitled to make the business decision to terminate the Employee's employment. However, as with many business decisions, there is a cost associated with that decision, namely the cost of providing notice of not less than one pay period, or payment in lieu thereof, to the Employee;

In the result, the Employee is entitled to receive wages in lieu of notice from the Employer in the amount of Four Thousand Three Hundred Seventy Three Dollars and Fifteen Cents (\$4,373.15), as reflected in the Statement of Adjustment prepared by the Employment Standards Division;

- b) With respect to the unauthorized deduction from the Employee's wages in the amount of Two Hundred Forty One Dollars and Eighty Four Cents (\$241.84), that portion of the Employer's appeal is allowed.

The amount of Two Hundred Forty One Dollars and Eighty Four Cents (\$241.84) relates to an invoice for labour and parts charged by the Employer for work done on a used vehicle that had been purchased by the Employee from the Employer. There is no work order signed by the Employee authorizing the work to be done. However, it was clear from the evidence that the Employee had asked that a few things be done to the vehicle, and there is no dispute that the labour and parts referred to on the invoice were supplied by the Employer. The amount in question is a sum certain, the Employee has received the benefit of the work performed, and it is appropriate that the Employee pay for that work.

In the result, the Employee's claim for reimbursement for an unauthorized deduction is dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY ORDERS MANDIX CORPORATION LTD. t/a McDOUGALL AUTO SUPERSTORE**, to pay to the Director of the Employment Standards Division of the Department of Labour and Immigration, forthwith:

WAGES:

The amount of Four Thousand Three Hundred Seventy Three Dollars and Fifteen Cents (\$4,373.15) less statutory deductions, being wages in lieu of notice owing the Employee, T.H.

ADMINISTRATIVE FEE:

An Administrative Fee in the amount of Four Hundred Thirty Seven Dollars and Thirty Two Cents (\$437.32), pursuant to Section 96(1) of *The Employment Standards Code* is owing by the Employer.

TOTAL:

The total amount being Four Thousand Eight Hundred Ten Dollars and Forty Seven Cents (\$4,810.47).

DATED at WINNIPEG, Manitoba, this 13th day of April, 2007.

"Original signed by"

REGISTRAR