Z.M., Appellant v. London Drugs Limited & Government of Saskatchewan, Director, Occupational Health and Safety, Respondents

LRB File No. 085-15; October 23, 2015

Kenneth G. Love, Q.C., Chairperson (sitting alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*)

For the Appellant:	Self Represented
For the Respondent Employer:	Ms. Meghan McCreary
For the Director of Occupational Health and Safety	No one appearing

Section 4-8 of *The Saskatchewan Employment* Act - Appeal from decision of an Adjudicator – Practice and Procedure – Appeals involving allegations of bias and natural justice – affidavit evidence necessary in some cases – Board comments for benefit of future appellants.

Discrimination – Appellant alleges that he was discriminated against by Adjudicator due to a disability and his financial ability – Board finds no evidence of discrimination by Adjudicator.

Bias – Natural Justice – Appellant alleges that Adjudicator was biased in favour of Respondent – Board finds no evidence to support reasonable apprehension of bias.

Procedural Fairness – Appellant alleges that proceedings were not conducted fairly – Board finds no evidence to support allegations.

Procedural Fairness – Appellant alleges that the Adjudicator proceeded in an "out of order" fashion in the conduct of the hearing – No objection was taken by the Appellant at the hearing in regards to the procedures followed by Adjudicator – Allegations not supported by Board.

Procedural Fairness – Appellant alleged that Adjudicator had not allowed portions of the Appellants evidence – Adjudicator made it clear that some of the evidence presented by the Appellant was not relevant or had no probative value in the case – No procedural irregularity found.

Procedural Fairness – Appellant alleged that the Adjudicator did not assist him in the presentation of his case – Board confirms that Adjudicator must be neutral and cannot assist one party over the other.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Chairperson:** This is an appeal against a determination of an Adjudicator appointed to hear an appeal from a decision of an officer in the Occupational Health and Safety Division ("OH&S") of the Ministry of Labour Relations and Workplace Safety. The OH&S officer rejected the Appellant's claim that he had been terminated as a result of discriminatory action on the part of his Employer. The Adjudicator affirmed the findings of the OH&S officer. The Appellant appealed to this Board pursuant to Section 4-8 of *The Saskatchewan Employment Act* ("*SEA")*.

[2] The Applicant's Appeal is under Section 4-8 of the SEA which permits appeals, from decisions of adjudicators to this Board on questions of law. The Appellant's grounds of appeal can be summarized as follows:

1. *That the appellant had been discriminated against by the Adjudicator based upon his disability and his financial ability;*
2. *That the Adjudicator held a bias in favour of the Respondent;*
3. *That the proceedings before the Adjudicator were "out of order";*
4. *That the Adjudicator refused to hear evidence and statements made by the Appellant;*
5. *That the Adjudicator communicated only with the Respondent and made decisions which impacted him based upon that information; and*
6. *That the Adjudicator failed to assist him during the hearing.*

[3] All of the Appellant's grounds of appeal were related to the conduct of the hearing by the Adjudicator. In short, the Appellant alleged that he had not had a fair hearing before the Adjudicator.

Relevant statutory provision:

[4] Relevant statutory provisions are as follows:

> ***Right to appeal adjudicator's decision to board***
>
> ***4-8****(2)A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law*
>
> *.. . .*
>
> *(6) The board may:*
>
> *(a) affirm, amend or cancel the decision or order of the adjudicator; or*
>
> *(b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

Summary of Appellant's arguments:

[5] The Appellant argued that he suffered a disability, which he described as being a high functioning form of autism. He argued that this disability was not recognized by the Adjudicator and that this disability impacted upon his ability to prosecute his appeal before the adjudicator.

[6] The Appellant asserted that he did not receive a fair hearing before the adjudicator. He further attested that he felt pressured from the Adjudicator to go forward with his case and did not provide him with any assistance during the hearing. The Appellant attested that the Adjudicator told him that he was wasting her time.

[7] The Appellant also stated that he was surprised that the second day of a two (2) day scheduled hearing was cancelled and the parties were requested to provide written arguments to the Adjudicator. Additionally, he testified that he was not permitted to call additional witnesses or to submit further evidence after the close of the hearing.

[8] The Appellant further argued that the proceedings were adjourned to accommodate counsel for the Respondent, but that he was denied an adjournment and was not permitted to call evidence by telephone.

Summary of Respondent Employer's arguments:

[9] The Respondent Employer argued that there was no reasonable apprehension of bias on the part of the Adjudicator. The Respondent Employer also argued that there was no demonstrated bias on the part of the Adjudicator based on the facts alleged by the Appellant.

[10] The Respondent Employer stated that there was no procedural unfairness or breach of natural justice in the conduct of the hearing by the Adjudicator. The Respondent Employer claimed that the Adjudicator was granted discretion as to determine appropriate procedures for the conduct of the hearing.

[11] The Respondent Employer also argued that there was no factual bias or legal basis for the Appellant's allegations of discrimination based upon his disability. The Respondent Employer noted that there had been no request from the Appellant for any accommodation at the hearing before the Adjudicator.

[12] The Respondent Employer argued that the Adjudicator made no error in the conduct of the hearing and that they were not "out of order". The Respondent Employer stated that there was no factual basis for these allegations.

[13] The Respondent Employer contended that the adjudicator did not block evidence and statements from the Appellant, but was exercising her discretion in the conduct of the hearing. The Respondent Employer also argued that the preference of the Adjudicator for one set of facts over another is not a proper ground of appeal.

Procedural Issues

[14] The Respondent Employer attested that the adjudicator did not block evidence and statements from the Appellant, but was exercising her discretion in the conduct of the hearing. The Respondent Employer also advanced that the preference of the Adjudicator for one set of facts over another is not a proper ground of appeal.

[15] No issue was raised by the parties regarding this issue, but I think it important for future cases to make some comment concerning the proper way in which evidence regarding the conduct of the hearing, such as was alleged to be the case here, should be provided to the Board. When issues are raised, on appeal to the Board, regarding the conduct of the hearing

by the Adjudicator, the Board does not have the benefit of a transcript of the proceedings before the Adjudicator. Any evidence of what transpired at the hearing must, therefore, come from the parties to the appeal. Such evidence should be provided to the Board through Affidavit evidence to supplement the record provided to the Board by the Adjudicator.

[16] The hearing of appeals by the Board came into effect upon the proclamation of *The Saskatchewan Employment Act* on April 29, 2014. Until this appeal, the Board has not been called upon to deal with an appeal brought solely on the basis of the conduct of the hearing by an adjudicator.

[17] The Board recognizes the difficulties faced by persons who are not legally trained in the prosecution of appeals from Adjudicators. While the Board takes a less structured approach to its procedure, nevertheless, it must have some procedural rules so as to provide some level of predictability and stability to those persons who appear before it.

[18] In this case, evidence of what transpired at the hearing before the Adjudicator was presented by the Appellant in his application to the Board and in his oral submissions to the Board and rebutted by the Respondent Employer in its written submissions.

[19] The Board could have refused to hear that evidence in the manner it was presented. However, to do so when no procedural rules regarding the presentation of evidence regarding the conduct of a hearing were in place, would have caused some inconvenience to the parties. The nature of the evidence presented by either party was not factually controversial, only the interpretation of that evidence was at issue. For that reason, I felt it was more desirable to continue with the hearing, notwithstanding the form of the evidence, than to adjourn the hearing and require the parties to provide their evidence to the Board in Affidavit form.

[20] Nevertheless, I wanted to bring this issue to the attention of future parties who appear before the Board on appeals from Adjudicator's decisions. If their appeal involves issues concerning the conduct of the appeal, the Board may, in instances where there is a conflict in the evidence or the evidence is challenged by one party or the other, that that evidence may be required to be provided in Affidavit form. If necessary, the proceedings may be adjourned for that evidence to be provided and rebutted, if rebuttal evidence is required.

Standard of Review:

[21] The Board has outlined the standard of review for questions of law, questions of mixed law and facts, and factual questions which may be reviewable as errors of law in *Wieler v. Saskatoon Convalescent Home*[1]. That decision established the following standards of review:

1. *Errors of Law will be reviewed on the "correctness" standard.*
2. *Errors of Mixed Law and Fact will be reviewed on the "reasonableness" standard.*
3. *Errors of Fact which may be reviewable as questions of law will be reviewed on the "reasonableness" standard.*

Analysis:

Discrimination on the part of the Adjudicator

[22] The Appellant argued that the Adjudicator discriminated against him based upon his disability and his financial ability. Specifically, in summary, he alleges that:

1. *The adjudicator refused to address repeated attempts to discuss his disability and its impact on his abilities during the process and hearing;*
2. *He was advised to pay his witnesses out of his pocket;*
3. *His inability to have a lawyer represent him was a point of aggravation to the adjudicator;*
4. *His disability is referenced negatively in the Adjudicator's decision, both as to how I acted and as well as the quality and trustworthiness of his testimony;*
5. *The process of the hearing was contrary to how someone with his disability should have been treated as it was done hastily and with constant pressure to get it done.*
6. *There was a total lack of communication, promises of rendering decisions and missed deadlines;*
7. *The reason given for written arguments which he felt pressured to accept to justify ending the hearing in short order.*

[1] [2014] CanLII 76051 (SKLRB) LRB File No. 115-14

[23] The Respondent Employer contended that these concerns should be examined under the broader rubric of procedural fairness. Specifically, however, they argued that none of these concerns had any foundation in law or fact.

[24] The Respondent Employer argued that what was at issue was not the Adjudicator's discrimination, but rather discriminatory action by the Employer under the *SEA*. As a result, any evidence of discrimination due to any disability on the part of the Appellant was irrelevant. They argued that any complaint regarding his treatment in relation to his disability as an employee would be the subject of a human rights complaint, which they noted the Appellant has made.

[25] The Respondent Employer noted that the Appellant had not requested any accommodation at the hearing and as a result, the hearing proceeded in a normal fashion. The hearing was rescheduled only once at the Respondent's request for a one week period.

[26] The Respondent Employer also argued that the Adjudicator did not use the Appellant's disability to detrimentally impact his credibility during the oral hearing, or otherwise.

[27] Finally, the Respondent Employer countered that there was no discrimination against the Appellant based upon his financial ability. The Respondent Employer noted that payment of witness fees is expected and required. In support they relied upon this Board's regulations regarding payment of witness fees on subpoena.

[28] There is nothing in the decision to support any of the allegations made by the Appellant. Perhaps as a self-represented appellant and as someone who has high functioning autism, he expected different treatment by the Adjudicator. I do not know if he identified his disability to the Adjudicator or not, and even if he had, if the Adjudicator was made aware of his limitations.

[29] An OH&S adjudicator would have had more than a passing familiarity with dealing with self-represented individuals since rarely are all parties to an OH&S dispute represented by lawyers. At paragraph [19] of her decision, the Adjudicator makes note of common elements associated with cross-examination by self-represented parties. She was certainly alive to the fact that the self-represented party may stray outside the normal lines in cross-examination, and she permitted the Appellant to do so.

[30] At paragraph [29], the Adjudicator also acknowledged that some oral testimony from the Appellant was unhelpful, being reiterative and focused on irrelevant matters having no probative value to the issues at hand. In that paragraph, she also notes that in fairness to the Appellant, "the interests of the Appellant in arguing his case would be best served by providing him a reasonable time to prepare and submit written argument in response" to the written submissions of the Respondent Employer.

[31] This clearly shows that the Adjudicator was alive to the fact that the Appellant was both self-represented and that the process would be better served for him to be allowed to provide written submissions.

[32] I find no merit to the Appellant's arguments. The Adjudicator proceeded reasonably in establishing the procedures that she did. Obviously she found some of the Appellant's evidence to be unhelpful, but rather than try to hide that fact, she disclosed it in her decision. There was no obvious discrimination against the Appellant by the Adjudicator.

Bias of the Adjudicator

[33] The issues in this appeal are related to the body of law known as *Natural Justice*, which is a body of law wherein the Courts (or Administrative Tribunals such as this Board) supervise the actions of bodies, subject to their supervision, to insure that a person obtains a fair hearing by that supervised body. In this instance, the Board supervises the actions of the Adjudicators in providing a fair hearing. In turn, the Court of Appeal supervises this Board.

[34] Whether or not natural justice has been accorded by the Adjudicator is a question of law, to which the standard of review is correctness. Allegations of bias and procedural unfairness fall under the rubric of natural justice.

[35] The issue of bias of an adjudicator under the occupational health and safety provisions of *The Saskatchewan Employment Act* has been dealt with previously by the Board in its decision in *Monique Koskie v. Child Find Sask. Inc*..[2] In that decision, the Board recognized the requirements for a finding of bias. At paragraph [40] – [45], the Board said:

[2] LRB File No. 119-15, Decision dated October 6, 2015

[40] The Appellant argues that there was a reasonable apprehension of bias on the part of the Adjudicator resultant from the fact that the Appellant made an application to the Court of Queen's Bench to compel the Adjudicator to issue her decision. The Appellant cited Justice De Grandpre's dissent in Committee for Justice and Liberty v. Canada (National Energy Board)[3], where he said:

> *… the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.'*
>
> *[Emphasis added]*

[41] The Appellant suggests that the Appellant had a reasonable apprehension of bias because of the timing of the adjudicator's decision, that is, shortly after being served with an application to the Court of Queen's Bench to compel her to provide her decision. With respect, I cannot agree that the Court application and the summary issuance of the decision prior to the return date of the motion would lead any informed person, viewing the matter realistically and practically—and having thought the matter through would conclude that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[42] In Agrium Vanscoy Potash Operations v. United Steel Workers Local 7552 and Francine Chad Smith[4], the Court of Appeal, after confirming that the test for bias was as set out above by Mr. Justice de Grandpre, the Court went on to consider three other points which emerge from the case law. At paragraph [42], the Court said:

> *[42] In making that assessment, it is necessary to bear in mind three other points which emerge from the case law. The first point is that, as is typical in the administrative law field, the question of bias is contextual and will depend, among other things, on the nature of the decision-maker. See: Committee for Justice and Liberty v. National Energy Board, supra at p. 395; Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623 at pp. 638-639. Second, a mere suspicion of bias, or a mere concern about bias, is not enough to satisfy the test. Bias must be "more likely than not" (Committee for Justice and Liberty v. National Energy Board, supra at p. 394). There must be "a real likelihood or probability of bias" (R. v. S. (R.D.), supra at para. 112). Third, the "reasonable person" contemplated by the test is an*

[3] [1978] SCR 369 at 394, 1976, [1976] CanLII 2 (SCC)
[4] [2014] SKCA 79 (CanLII)

> *informed person, with knowledge of all of the relevant circumstances, including relevant traditions of integrity and impartiality. See: R. v. S. (R.D.), supra at paras. 48 and 111.*

[43] In Elaine Germain v. Saskatchewan Government Insurance[5], our Court of Appeal dealt with a similar application by Ms. Germain who argued that as a result of an application made by her to the Court of Queen's Bench for an injunction and declaratory relief to prevent publication of a decision by the Automobile Accident Insurance Commission. This application, she argued was grounds for a reasonable apprehension of bias against her. The Court of Appeal disagreed. In that decision at paragraph 11. The Court said:

> *Finally, there must be serious grounds upon which to base a conclusion of bias, given that there is a strong presumption of judicial impartiality: S. (R.D.) supra; Arsenault-Cameron v. Prince Edward Island, 1999 CanLII 641 (SCC),[1999] 3 S.C.R. 851, Terceira v. Labourers International Union of North America, (2014), 122 O.R. (3d) 521 (C.A.).*

[44] There is no other support offered for the alleged apprehension of bias other than the fact that the decision was issued prior to the return of the motion to compel the Adjudicator to provide her decision and that that decision went against the Appellant.

[45] More than a mere suspicion of bias is required. There must be some evidence which would lead "an informed person, viewing the matter realistically and practically—and having thought the matter through" to conclude that the decision maker was biased. None of the indicia to support such a conclusion is present here. There are no serious grounds on which to base such a conclusion. The Adjudicator, as an administrative officer is performing a quasi-judicial function and therefore deserves a strong presumption of impartiality. There is no real likelihood or probability of bias which arises from the fact that the Appellant made an application to compel the Adjudicator to render her decision.

[36] In this case, an allegation of bias was also made with respect to the OH&S officer[6] who conducted the initial investigation of the complaint of discriminatory conduct. The Adjudicator did not deal directly with that allegation in her decision and no complaint respecting her decision has been made on that ground.

[37] In the present case, the Appellant raised four (4) matters in relation to the issue of bias on the part of the Adjudicator. These were all issues of procedural fairness, including rescheduling of hearings on short notice, not being permitted to reschedule to accommodate

[5] [2015] SKCA 84 (CanLII)

the Appellant's witnesses, showing favour to the Respondent Employer's requests over the Appellants, and removal of evidence to favour the Respondent Employer.

[38] In their reply, the Respondent Employer provides a different view of the Appellant's complaints. They note that the hearing was not rescheduled numerous times, but that the parties had tentatively set two (2) sets of dates for the hearing, being November 4-6 or December 2-4, 2014. Only one set of dates was to be used. It was later agreed that the December dates would be used. On November 4, 2014, the Respondent Employer advised the Adjudicator and the Appellant that the representative from the Respondent Employer who was to attend the hearing, had an unforeseen and unavoidable conflict on those scheduled dates. In consultation with the Appellant, the hearing dates were moved to December 10-11, 2014.

[39] In their Reply, the Respondent Employer notes that the Appellant did inquire about rescheduling the hearing to accommodate the schedules of his voluntary witnesses and a "support person" he wished to have in attendance at the hearing. He was advised that he could reschedule but the delay would be considered in the decision of the Adjudicator.

[40] In the Respondent Employer's Reply, they deny that the Appellant's requests were met less favourably than the Respondent Employer's requests. The Respondent Employer argued that the Adjudicator agreed to allow the Appellant to voluntarily reschedule the hearing to accommodate his witnesses and support person, but properly advised the Appellant that any delay would be considered with respect to any potential award of damages which would otherwise be determined or calculated based upon the hearing date.

[41] In the end, it appears that the Appellant agreed to proceed on the dates set rather than have the hearing delayed. The Respondent Employer argued that this was not evidence of bias on the part of the Adjudicator. I agree.

[42] The alternate dates for the hearing had been set for a considerable time. The Appellant had sufficient time to organize his witnesses and support person for those alternate dates. He did, however, agree to the alternate dates.

[43] The Adjudicator is permitted to set the procedure for the hearings[7]. This includes the ability of the Adjudicator to summon and enforce the attendance of witnesses and to compel

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[6] See page 2 of the Appellant's notice of Appeal dated June 9, 2014 and paragraph[1] of the Adjudicator's decision
[7] See Section 4-5 of the *SEA*

them to testify.[8] The Appellant could have requested that the Adjudicator provide subpoena for the witnesses which he wished to have testify, to compel their attendance if there was an issue. It appears that he did not make such a request.

[44] The Respondent Employer also responded with respect to the Appellant's argument that the Adjudicator did not favour their position over that of the Appellant. They argued that it was a simple matter of their being more successful in their requests of the adjudicator than the Appellant. This, they submitted, was more likely the result of the Respondent Employer being represented by senior counsel who was more familiar with the process and procedure than the Appellant.

[45] There was no evidence to support the Appellant's claims in this regard. I agree with the Respondent's position. I appreciate that a self-represented individual is at a disadvantage when opposed to senior counsel, knowledgeable in the area. It would not be unusual that requests or objections made by such counsel may be granted more often than requests from someone who is self-represented and less knowledgeable than senior counsel. As a result, I am not persuaded that the Adjudicator could reasonably be seen as having been biased in favour of the Respondent Employer.

[46] The Appellant also argued that the Adjudicator removed evidence and testimony given by both sides to favour the Respondent Employer. The Respondent Employer denies that this occurred. The Respondent Employer notes paragraph 30 of the Adjudicator's decision wherein the Adjudicator notes that while she did not reproduce all of the evidence in detail, she acknowledges that she reviewed and considered each parties' written submissions in their entirety.

[47] There was no specific element of evidence which the Appellant alleges was overlooked or removed. Often, in decisions, only the material facts are presented and most immaterial or unrelated facts are not presented.

[48] At paragraph [16] of *Newfoundland and Labrador Nurses' Union v Newfoundland*[9], the Supreme Court said:

> *[16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that*

[8] *Supra* at Section 4-5(c)
[9] [2011] 3 S.C.R. 708, [2011] SCC 62 (CanLII)

> *does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn., 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met.*

[49] It is not expected, nor would it be desirable, for decisions of Adjudicators to include a verbatim account of the testimony of witnesses. Adjudicators are appointed for their skill and knowledge in the area of their appointment. They can be expected to separate the "wheat from the chaff" and insure that relevant testimony and findings of fact are set out in their decisions.

[50] In its decision in *P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission),*[10]the Court of Appeal stated that "findings of fact may be reviewable as questions of law where the findings are unreasonable in the sense that they ignore relevant evidence, take into account irrelevant evidence, mischaracterize relevant evidence, or make irrational inferences on the facts."

[51] In this case, the Appellant makes a general accusation, but does not provide any details of relevant evidence that was removed or modified. Absent this support and some basis for the allegation, the decision appears to be in accordance with the principles espoused in *Newfoundland Nurses*, and must therefore be supported.

Procedural Fairness

[52] Issues of procedural fairness and natural justice were recently dealt with by the Board in *Christine Racic v. Moose Jaw Family Services Inc.*[11] In that decision, the Board noted that the onus fell upon the person who was alleging a breach of natural justice or procedural fairness to show that "the Adjudicator was incorrect or had failed to provide procedural fairness in the conduct of the hearing".[12]

[53] The Appellant's concerns under this head fell under four (4) headings. These were:

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[10] [2007] SKCA 149 (CanLII
[11] LRB File No. 141-15, Decision dated September 21, 2015
[12] Supra at paragraph [28]

1. *Out of order proceedings by the Adjudicator;*
2. *Blocking of his evidence and statements;*
3. *Communicating and making decisions solely with the Respondent; and*
4. *Failure to assist the applicant during the hearing and, instead, openly assisting the Respondent.*

The Respondent Employer denies that the facts in this case support the allegations made by the Appellant.

Out of Order Proceedings

[54] There is nothing in the record to support the allegation that the proceedings were out of order. In particular, the Appellant alleges that the hearing dates were altered without his knowledge. The Respondent Employer denies that this occurred and that the change of dates was discussed by all three parties. It does not appear that any objection was made at the hearing to this change of dates. The Federal Court of Canada in *Benitez v. Canada (Minister of Citizenship and Immigration*[13] held that an applicant must raise an allegation of bias or other violation of natural justice at the earliest practical opportunity (para. 213), which is when the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection (para. 220). If it is not raised, there is an implied waiver of rights.

[55] I do not have a transcript of the proceedings before the Adjudicator, however, the Adjudicator in this case is a long serving Adjudicator who is knowledgeable in the area. Furthermore, the presence of defects in an Adjudicator's decision is not necessarily fatal, so long as the reasons as a whole read together with the outcome demonstrate the result is reasonable[14]

[56] The Appellant also argues that the Adjudicator agreed with the Respondent Employer to do a written argument, without his knowledge. This allegation is also denied by the Respondent Employer and is contrary to what the Adjudicator said in her decision at paragraph

[13] 2006 FC 461 (CanLII), [2007] 1 F.C.R. 107
[14] See *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador* [2011] SCC 62 (CanLII), 3 S.C.R. 708

[29]. The decision suggests that the Adjudicator was hoping to assist the Appellant in making provision for written argument.

[57] The Appellant has failed to satisfy the onus on him to demonstrate that "the Adjudicator was incorrect or had failed to provide procedural fairness in the conduct of the hearing".[15]

Blocking Evidence and Statements

[58] I have dealt with this matter above in paragraph [30]. The Adjudicator made it clear in her decision that some parts of the Appellant's oral testimony was unhelpful, being reiterative and focused on irrelevant matters having no probative value. As noted above, the Appellant did not provide any examples of relevant evidence which he gave which was ignored or misinterpreted by the Adjudicator. I see no error by the Adjudicator in this regard.

Communicating only with the Respondent

[59] The Respondent Employer denies that there were any communications and the Adjudicator without the knowledge of and the participation by the Appellant. The Appellant's examples of the types of communication under this head repeat earlier arguments regarding changes to the proceedings (the movement of the hearing to other dates) without his knowledge. It also includes general statements with regard to communications between himself and the Adjudicator wherein he seems to believe that he should have been guided by the Adjudicator with respect to the presentation of his case.

[60] None of these alleged defects would be critical to the proceedings, and reflect, at least in part, the Appellant's lack of familiarity with the procedures before an Adjudicator. There is no evidence to suggest that there were improper communications between the Adjudicator and the Respondent Employer. These issues have also been dealt with above under the heading of "Bias". I see no error by the Adjudicator in this regard.

Failure to Assist the Appellant

[15] Supra at paragraph [28]

[61] Whenever an Adjudicator, this Board, or the Courts is faced with a self-represented individual, there is a fine line which must be observed between fairness to both parties and providing an atmosphere where the self-represented party is comfortable in the presentation of his case. Regrettably, in some instances, self-represented parties feel that the Adjudicator has a duty to actively assist them in the presentation of their case. That is not the case.

[62] Adjudicators are chosen for their skills and knowledge in the area of the law in which they adjudicate. They cannot, however, advocate or actively assist one party to an appeal over another. They must be fair and balanced in their conduct of the hearing.

[63] The Adjudicator demonstrated that she was trying to be fair to the Appellant in her discussion in paragraph [19] of her decision. She allowed the Appellant some leeway in his cross-examination, notwithstanding that this would not usually be permitted.

[64] I see no error committed by the Adjudicator in this respect.

Decision:

[65] For the above reasons, the decision of the Adjudicator is affirmed. An appropriate order will accompany these reasons.

DATED at Regina, Saskatchewan, this **23rd** day of **October, 2015.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson