

**PRAIRIE MACHINE & PARTS MFG. (PARTNERSHIP), Appellant v LEROY WALL,
Respondent and THE DIRECTOR OF EMPLOYMENT STANDARDS, Respondent**

LRB File Nos. 190-22 and 071-23; November 21, 2023

Chairperson, Michael J. Morris, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

For the Appellant, Prairie Machine & Parts
Mfg. (Partnership):

Ashley Hamilton

The Respondent, Leroy Wall:

Self-Represented

Counsel for the Director of Employment Standards:

Alexa LaPlante

Appeal of adjudicator's decision – Section 4-8 of *The Saskatchewan Employment Act* – Wage assessment appeal – Appeal by employer.

Procedural fairness – Employer did not allege that cumulative misconduct amounted to just cause before adjudicator – Adjudicator did not err in law in not considering cumulative misconduct.

Just cause – Deceit – Board not satisfied adjudicator erred in his identification and application of the law or erred in principle with respect to his findings of fact – Appeal dismissed.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons with respect to an appeal of an adjudicator's decision pursuant to section 4-8 of *The Saskatchewan Employment Act*¹ [Act].

[2] The background to this appeal is as follows.

[3] Leroy Wall [Mr. Wall] began working for Prairie Machine & Parts Mfg. (Partnership) [Prairie] on March 2, 2018. Prairie terminated Mr. Wall's employment on March 14, 2022, alleging

¹ *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act].

just cause. Thereafter, a wage assessment was issued on behalf of the Director of Employment Standards [Director] to Prairie.²

[4] Prairie appealed the wage assessment to an adjudicator, pursuant to s. 2-75 of the Act. Doug Surtees [Adjudicator] was selected to hear the appeal, pursuant to s. 4-3 of the Act. The Adjudicator heard the appeal on April 24, 2023, and rendered his decision on April 26, 2023.

[5] The Adjudicator's decision may be summarized as follows:

- a. The appeal raised two issues. The first issue was whether Prairie had just cause to terminate Mr. Wall's employment. The second issue was whether a payroll deduction made from Mr. Wall's final pay was permitted by the Act.
- b. With respect to the first issue, the onus was on Prairie to establish on a balance of probabilities that it had just cause to dismiss Mr. Wall. Just cause would negate Prairie's obligation to provide Mr. Wall pay in lieu of notice pursuant to sections 2-60, 2-61 and 2-27 of the Act.
- c. Prairie relied solely on an incident that occurred on March 10, 2022 as just cause for Mr. Wall's dismissal. The parties submitted an agreed statement of facts establishing, amongst other things, that Mr. Wall fell at Prairie's premises on that date while on his way to a morning safety meeting.
- d. The Adjudicator found that Mr. Wall slipped and fell on snow or ice and sustained some injuries; more particularly, the fall caused him to bang his head and hurt his ribs and shoulder. The Adjudicator also found that: (1) Mr. Wall was directed to seek medical attention and file a worker's compensation claim [WCB claim] by Prairie's Health and Safety Manager, Mr. Wagar; and (2) that Mr. Wall saw a doctor and filed the WCB claim, as directed.
- e. The Adjudicator accepted that video footage from Prairie's on-site cameras did not corroborate Mr. Wall's report to it with respect to where he fell, being near a particular entranceway. The Adjudicator noted Mr. Wall's explanation that he may have mistakenly reported the wrong location due to having banged his head, but the Adjudicator also mused that it was possible that Mr. Wall misreported the location to pressure management into ensuring that the area near the entranceway was better maintained. The Adjudicator had evidence before him that employees regularly complained to management about the area near the entranceway.
- f. It was undisputed that Mr. Wall returned for his next scheduled shift, on March 14, 2022, and was dismissed that day.

² It should be noted that the wage assessment, dated October 19, 2022, was issued to Prairie's constituent corporate partners and their respective directors. The appeal to the Board is on behalf of all of them.

- g. Prairie argued that Mr. Wall intentionally provided an incorrect location for where he fell, and that this dishonesty was sufficient to justify his dismissal. The Adjudicator disagreed, without making a finding regarding whether Mr. Wall intentionally misled Prairie about the location of his fall.
- h. The Adjudicator concluded that even if Mr. Wall was dishonest, in applying the test from *McKinley*³ such dishonesty was not of such a nature and degree to justify Mr. Wall's dismissal. The Adjudicator noted that there was no evidence that misidentifying the location of the fall would result in any personal gain for Mr. Wall. Mr. Wall sought medical attention and made the WCB claim at Prairie's request, and he attended work for his next scheduled shift on March 14th.
- i. With respect to the payroll deduction made from Mr. Wall's final pay, the Adjudicator acknowledged Prairie's evidence that it had entered into an agreement with Mr. Wall whereby Mr. Wall was required to pay for equipment he had damaged by one or more payroll deductions.⁴ However, the Adjudicator determined that the payroll deduction was not permitted by s. 2-36(2) of the Act and was therefore prohibited by s. 2-36(1) of the Act.⁵
- j. The result of the Adjudicator's decision was that the wage assessment was affirmed in its entirety.

[6] Prairie filed a notice of appeal with the Board on May 15, 2023. The crux of Prairie's appeal is stated as follows: "the company continues to believe that Leroy Wall was terminated with just cause."⁶ Prairie has not appealed the Adjudicator's decision with respect to the legality of the payroll deduction.

[7] The Board heard Prairie's appeal on November 9, 2023. Prairie and the Director filed written arguments and made oral submissions. Mr. Wall made brief oral submissions.

Argument on behalf of Prairie:

[8] Prairie makes two primary arguments.

[9] Prairie's first argument is that Mr. Wall's dismissal was justified due to his cumulative misconduct, being his dishonesty with respect to his fall and his having damaged equipment on

³ *McKinley v BC Tel*, 2001 SCC 38, [2001] 2 SCR 161 [*McKinley*], at para 49.

⁴ The equipment was damaged on February 28, 2022. Mr. Wall received a three-day suspension for damaging it. The agreement with respect to payroll deductions was signed on March 7, 2022.

⁵ The Adjudicator noted that "If the employer believes it has a legal claim against Mr. Wall, they are free to pursue that claim in the courts."

⁶ Notice of Appeal, para 6.

February 28, 2022, for which he received a three-day suspension. Prairie acknowledges not expressly raising this argument before the Adjudicator, but notes that the Adjudicator had evidence before him with respect to the suspension and the circumstances surrounding same in the context of the payroll deduction issue. Prairie submits that the Adjudicator should have considered this evidence in his analysis of whether Prairie had just cause to dismiss Mr. Wall on March 14th, since it was relevant to whether the employer/employee relationship had suffered irreparable damage as of that date.

[10] Prairie's second argument is that the Adjudicator erred in not concluding that Mr. Wall deceived it on March 10th for his personal gain. Prairie contends that Mr. Wall made the WCB claim in order to have access to benefits as a source of income, knowing that he could thereby avoid payroll deductions for the repairs to the damaged equipment.⁷ Prairie submits that the denial of the WCB claim and Mr. Wall's failure to appeal same demonstrate his fraudulent intent.

[11] In support of its primary arguments, Prairie submits that Mr. Wall falsified the severity of his injuries on March 10th in addition to misreporting the location of his fall. In its view, the medical evidence before the Adjudicator did not substantiate a head injury which could have caused Mr. Wall confusion after his fall.

Argument on behalf of the Director:

[12] The Director notes that appeals to the Board are limited to questions of law, and submits that Prairie has not established an error of law in the Adjudicator's reasoning.

[13] The Director submits that the Adjudicator did not err in considering the grounds for dismissal alleged by Prairie, being the events of March 10th, and in not considering whether dismissal was otherwise justified based on the events of both February 28th and March 10th. The Director submits that the Adjudicator would have erred in law had he done so, citing the Board's decision in *Veldman*:

[48] It was an error of law for the Adjudicator to purport to rule on an issue that was not before her. The Employer's appeal did not raise this issue. ...⁸

⁷ As of March 10, 2022, of course, the legality of the payroll deductions had not been ruled upon by the Adjudicator.

⁸ *Veldman v Rural Municipality of Buchanan No. 304*, 2023 CanLII 183 (SK LRB) [*Veldman*], at para 48.

[14] The Director highlights that Prairie's notice of appeal before the Adjudicator alleged that Mr. Wall's dismissal was justified solely based on the events of March 10th,⁹ and that the Director's submissions before the Adjudicator were made on this basis.¹⁰

[15] The Director submits that the Adjudicator correctly identified the law, as stated by the Supreme Court in *McKinley*, and that Prairie has not identified an extricable error of law in the Adjudicator's reasons, including respecting his findings of fact. The Adjudicator's findings of fact were not based on no evidence, irrelevant evidence, disregard of relevant evidence or a mischaracterization of relevant evidence. As such, the Adjudicator did not err in principle with respect to his findings of fact, meaning he did not commit an error of law.¹¹ Based on the evidence before him, the Adjudicator was entitled to find that Prairie had not established dishonesty of a nature and degree which could justify Mr. Wall's dismissal.

Argument on behalf of Mr. Wall:

[16] Mr. Wall emphasizes that he showed up for his next scheduled shift after March 10th, on March 14th, ready to work. This suggests that he was not interested in malingering for his own benefit.

Relevant Statutory Provisions:

[17] The following provisions of the Act are the most relevant:

2-60(1) Except for just cause, no employer shall lay off or terminate the employment of an employee who has been in the employer's service for more than 13 consecutive weeks without giving that employee written notice for a period that is not less than the period set out in the following Table:

...

<i>more than 13 consecutive weeks but one year or less</i>	<i>one week</i>
<i>more than one year but three years or less</i>	<i>two weeks</i>
<i>more than three years but five years or less</i>	<i>four weeks</i>
<i>more than five years but 10 years or less</i>	<i>six weeks</i>
<i>more than 10 years</i>	<i>eight weeks</i>

...

⁹ This document is dated October 28, 2022.

¹⁰ A three-page written argument that was filed by the Director with the Adjudicator forms part of the record of appeal before the Board.

¹¹ *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission)*, 2007 SKCA 149, at paras 68-69.

(4) After giving notice of layoff or termination to an employee of the length required pursuant to subsection (1), the employer shall not require an employee to take vacation leave as part of the notice period required pursuant to subsection (1).

...

2-61(1) *If an employer lays off or terminates the employment of an employee, the employer shall pay to the employee, with respect to the period of the notice required pursuant to section 2-60:*

(a) if the employer is not bound by a collective agreement that applies to the employee, the greater of:

(i) the sum earned by the employee during that period of notice; and

(ii) a sum equivalent to the employee's normal wages for that period; ...

...

2-27(1) *An employee is to be paid vacation pay in the following amounts:*

(a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty-seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;

(b) if the employee is entitled to an annual vacation pursuant to clause 2-24(1)(b), four fifty-seconds of the employee's wages for the year of employment preceding the entitlement to the vacation.

...

4-8(1) *An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II 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.

Analysis and Decision:

[18] Appeals pursuant to s. 4-8 must be based on a question of law.

[19] An error of law can occur in different ways. The brief discussion in the next three paragraphs is not meant to be exhaustive. Rather, it identifies errors of law that are commonly alleged in appeals to the Board.

[20] Most obviously, a decision-maker errs in law when they misidentify the law.

[21] A decision-maker can also err in law by misapplying the law to the facts. The Supreme Court has described this as follows, in *Housen v Nikolaisen* (emphasis added):

27 Once it has been determined that a matter being reviewed involves the application of a legal standard to a set of facts, and is thus a question of mixed fact and law, then the appropriate standard of review must be determined and applied. Given the different standards of review applicable to questions of law and questions of fact, it is often difficult to determine what the applicable standard of review is. In Southam, supra, at para. 39, this Court illustrated how an error on a question of mixed fact and law can amount to a pure error of law subject to the correctness standard:

... if a decision-maker says that the correct test requires him or her to consider A, B, C, and D, but in fact the decision-maker considers only A, B, and C, then the outcome is as if he or she had applied a law that required consideration of only A, B, and C. If the correct test requires him or her to consider D as well, then the decision-maker has in effect applied the wrong law, and so has made an error of law.

Therefore, what appears to be a question of mixed fact and law, upon further reflection, can actually be an error of pure law.¹²

[22] With respect to facts, a decision-maker can commit an error in law if they err in principle in the fact-finding process. The Court of Appeal recently described this in *Kolodziejski*:

*[36] ... An error of law can occur in the fact-finding process when a judge (a) finds that something is a fact without any evidence to support the finding, (b) makes a finding of fact in disregard of or by mischaracterising relevant evidence, or (c) makes a finding of fact based on irrelevant evidence or on an unfounded or irrational inference (see *R v Schuldt*, 1985 CanLII 20 (SCC), [1985] 2 SCR 592 at 604; and *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission)*, 2007 SKCA 149 at para 68, [2008] 5 WWR 440, leave to appeal refused, [2008] 2 SCR xi).¹³*

[23] In terms of the substantive law that applies to this specific appeal, *McKinley* is authoritative with respect to when an employee's deceit can justify their dismissal. Not every instance of deceit will justify dismissal. Rather, a decision-maker must consider the nature and extent of the deceit as well as the circumstances surrounding it. For dismissal to be justified, the deceit must have serious consequences:

[48] ...the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.¹⁴

¹² *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 [*Housen v Nikolaisen*], at para 27.

¹³ *Kolodziejski v Maximuk*, 2023 SKCA 103 [*Kolodziejski*], at para 36.

¹⁴ *McKinley*, at para 48.

[24] Assessing the seriousness of the misconduct requires the facts as found to be carefully considered and balanced.¹⁵

[25] In *Thomas*, the Court of Appeal explained that determining whether employee misconduct amounts to just cause for dismissal involves a contextual analysis with an eye to proportionality.¹⁶ The Court quoted the following passage from *Dowling*, a case from the Ontario Court of Appeal, with approval:

[49] Following McKinley, it can be seen that the core question for determination is whether an employee has engaged in misconduct that is incompatible with the fundamental terms of the employment relationship. The rationale for the standard is that the sanction imposed for misconduct is to be proportional -- dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship. This is a factual inquiry to be determined by a contextual examination of the nature and circumstances of the misconduct.

[50] Application of the standard consists of:

- 1. determining the nature and extent of the misconduct;*
- 2. considering the surrounding circumstances; and,*
- 3. deciding whether dismissal is warranted (i.e. whether dismissal is a proportional response).¹⁷*

[26] Here, Prairie does not take issue with the Adjudicator's identification of the law. Rather, Prairie takes issue with the Adjudicator's failure to consider the events of February 28th in determining whether it had just cause to dismiss Mr. Wall on March 14th. This can be characterized as an alleged error in the Adjudicator's application of the law. Further, Prairie takes issue with the Adjudicator's bottom-line conclusion that Mr. Wall's alleged deceit could not justify his dismissal. This is an attack on a factual finding.

[27] With the foregoing established, the Board has determined that the following issues are relevant to its analysis:

- A. Did the Adjudicator err in law in only considering Mr. Wall's alleged deceit with respect to his fall as grounds for his dismissal?

¹⁵ *McKinley*, at para 49. In *McKinley*, the Court held that this was a factual inquiry for the jury to undertake.

¹⁶ *Thomas v Saskatchewan Indian Gaming Authority Inc.*, 2021 SKCA 164 [*Thomas*], at para 21.

¹⁷ *Thomas* at para 21, citing *Dowling v Ontario (Workplace Safety and Insurance Board)*, 2004 CanLII 43692 (ON CA) [*Dowling*] at paras 49-50.

- B. Did the Adjudicator err in law in concluding that Mr. Wall's alleged deceit could not justify his dismissal?

[28] These issues will be examined in turn.

A. Did the Adjudicator err in law in only considering Mr. Wall's alleged deceit with respect to his fall as grounds for his dismissal?

[29] The Adjudicator's decision states "The employer solely relies on the incidents occurring on March [10], 2023 as constituting just cause."¹⁸

[30] To put this statement in context, Prairie's notice of appeal that was before the Adjudicator stated (emphasis added):

...

Prairie Machine & Parts Mfg. wishes to appeal the claim for outstanding wages, as Leroy Wall was terminated with cause and no illegal deductions (sic) were made subsequent to his termination.

On February 28, 2022, Leroy Wall physically struck a piece of electronic equipment, causing significant damage. The total cost of the damage was \$2,824.46 and at the time Leroy signed a contract that placed him on a payment plan to recover those costs. He was scheduled to make 18 payments of \$156.91 to make a full repayment for the damages he intentionally caused. Furthermore, the contract stated "the employee agrees that if he leaves the employment of Prairie Machine prior to the full repayment of the monies owed to Prairie Machine, any outstanding balance will be deducted at source from the employee's final pay". Leroy signed the contract dated March 7, 2022 and was later terminated on March 14, 2022.

As per section 2-36(1) Except as permitted or required pursuant to this Act, any other Act or any Act of the Parliament of Canada, an employer shall not, directly or indirectly: (a) make any deductions from the wages that would be otherwise payable to the employee. However, in this case Leroy gave permission to Prairie Machine to make deductions for the remaining cost of the damaged equipment. For this reason, we do not agree that any illegal deductions were made.

On March 11 (sic), 2022, Leroy claimed to sustain an injury while on company property. An investigation took place, and it was determined that Leroy had made a false claim regarding that injury, as surveillance footage confirmed the incident neither took place at the time or location he reported. Leroy was terminated for falsifying an incident report, causing a breach of trust. At that time, it was considered that the employee/employer relationship suffered irreparable damages and Prairie Machine terminated his employment with cause.

The employment officer notified Prairie Machine that the courts have ruled that only "gross misconduct" by an employee will lawfully permit the employer to dismiss the employee with

¹⁸ Adjudicator's decision, para 11. The Adjudicator's decision references the date as "March 1, 2023", at paragraph 11, but in the next paragraph correctly states the date as March 10, 2023. In providing the record of appeal to the Board the Adjudicator noted the error in paragraph 11 as a typo. None of the parties suggested that anything of significance occurred on March 1, 2023.

(sic) any advanced notice or warning. "Gross misconduct" includes theft, assault, fraud, gross insubordination/insolence, conflict of interest and other very serious, wilful misconducts. In this case, Leroy made a fraudulent claim by falsifying an incident report and for this reason we feel as though he was terminated with cause.

*Please consider this a notice that we wish to appeal to an independent adjudicator. ...*¹⁹

[31] The Director filed a three-page written argument with the Adjudicator stating, amongst other things, that "The appellant is relying on a single incident to justify their decision to dismiss the employee without any notice of termination or pay instead of notice."²⁰

[32] Prairie did not file a written argument with the Adjudicator, to the Board's knowledge.²¹

[33] Based on the record before the it, the Board is not satisfied that the Adjudicator misapprehended the grounds for dismissal that were advanced by Prairie. Further, Prairie acknowledged in its oral submissions to the Board that it did not expressly raise the cumulative events of February 28th and March 10th as justifying Mr. Wall's dismissal. Rather, its position is that the Adjudicator should have considered the events of February 28th when determining whether Prairie had just cause to dismiss Mr. Wall because he had evidence with respect to those events before him.

[34] In its appeal to the Adjudicator, the onus was on Prairie to establish just cause for Mr. Wall's dismissal. Although a notice of appeal to an adjudicator may be a less formal document than the pleadings in a civil action or in an application before the Board, it serves similar purposes. These include defining the issues in controversy and giving adequate notice to the opposing party of the case to be met.²²

[35] Prairie's notice of appeal did not raise the cumulative events of February 28th and March 10th as justifying Mr. Wall's dismissal. Admittedly, an appeal to an adjudicator may be a less formal proceeding than a civil action or an application before the Board, and the failure to raise the argument in Prairie's notice of appeal might have been able to be remedied in the proceeding before the Adjudicator. Remedying it, however, would have required Prairie to expressly identify the grounds it relied upon for just cause to give Mr. Wall and the Director adequate notice of same, so that they could reasonably respond.

¹⁹ Notice of appeal to Adjudicator, dated October 28, 2022.

²⁰ Director's written argument to the Adjudicator, on page 2 of 3.

²¹ Ms. Hamilton advised the Board that she could not recall filing one.

²² *Ducharme and Holben v Davies and Rogoschewsky*, 1983 CanLII 2310 (SK CA), at para 64.

[36] Based on the Director's written submissions to the Adjudicator, quoted at paragraph 31, above, it appears that the Director did not have notice that Prairie was relying upon cumulative misconduct to justify Mr. Wall's dismissal. In the Director's written submissions to the Board, the Director states "[t]his argument appears to be raised by the Employer for the first time before the Board" and "[i]t was not before the Adjudicator". Based on the record of appeal before it, the Board accepts the Director's representations in this regard.

[37] The Adjudicator was entitled to rely upon the grounds for dismissal expressly advanced by Prairie. As aforementioned, Prairie bore the onus to establish that it had just cause to dismiss Mr. Wall. It was up to it to effectively state its case.

[38] Had the Adjudicator relied upon grounds other than those advanced by Prairie, he may have breached procedural fairness to Mr. Wall and the Director. In *Technical Workforce*, a judicial review of one of the Board's decisions, Madam Justice Dawson stated:

[50] The fundamental principle of procedural fairness is that parties who attend before the Board are entitled to know what are the issues that will be decided. Those parties are entitled to call evidence, make argument and legal submissions on the issues identified. ...

...

[51] This principle of procedural fairness is known as the audi alteram partem rule. The rule states that a decision-maker must give each affected party an opportunity to present evidence and make arguments in their favour and to respond to any arguments, evidence or information that is contrary to their view.

...

[56] The legitimate expectations of the parties here would be that the Board would confine its decision to the assessment of the evidence and the arguments made before it. ...²³

[39] In sum, the Board is not satisfied that the Adjudicator erred in law by only considering Mr. Wall's alleged deceit with respect to his fall as grounds for his dismissal. He considered what was pled and argued by Prairie, which bore the onus on the issue. He was not obliged to go further afield.

[40] If the Adjudicator had considered additional arguments on his own initiative - especially without receiving submissions with respect to them - this would have raised concerns with respect to procedural fairness. In such circumstances, the Board might very well have been hearing an

²³ *Construction Workers Union, Local 151 v Saskatchewan Labour Relations Board and Technical Workforce Inc.*, 2017 SKQB 197 [*Technical Workforce*], at paras 50, 51 and 56.

appeal by either Mr. Wall or the Director based on an alleged breach of procedural fairness, such a matter being appealable to the Board as a question of law.²⁴

B. Did the Adjudicator err in law in concluding that Mr. Wall’s alleged deceit couldn’t justify his dismissal?

[41] The Adjudicator correctly identified *McKinley* as the leading authority for the purposes of his analysis, stating:

22. At paragraph 449 (sic) of McKinley, the SCC set out the test for determining whether a single act of dishonesty by an employee established just cause. It is:

(1) whether the evidence established the employee’s deceitful conduct on a balance of probabilities; and

*(2) if so, whether the nature and degree of the dishonesty warranted dismissal.*²⁵

[42] Notably, the Adjudicator did not make a finding of fact to satisfy the first part of the above-stated test. More particularly, he did not make a finding of fact that Mr. Wall had been deceitful. While it would have been preferable for the Adjudicator to have squarely addressed whether Prairie had established deceitful conduct on Mr. Wall’s part, the Board is not satisfied that this was strictly necessary, given the Adjudicator’s other findings of fact. Those findings of fact limited the nature and degree of deceit that the Adjudicator could have found, if any.

[43] The Adjudicator made several findings of fact that provided context *if* Mr. Wall had been deceitful with respect to his fall. These included the following:

- a. *Mr. Wall fell on Prairie’s premises on March 10, 2022.* This formed part of the Agreed Statement of Facts between the parties.
- b. *Mr. Wall slipped and fell on snow or ice, banged his head and sustained some injuries which were treated with painkillers.* Mr. Wall testified to this effect. His former girlfriend testified that she was on the phone with him when he fell. A physician’s report from March 10th included a diagnosis of “right shoulder injury” and noted “Patient in some visible discomfort” and “reduced range of motion”, amongst other things. A radiology report from the same date indicated subtle buckling of a right rib that “may represent a non-displaced fracture”.

²⁴ See *Knapp v ICR Commercial Real Estate*, 2019 SKQB 59, at para 20: “It is now well settled that issues related to the impartiality of the decision maker in question, or an alleged breach of the principles of natural justice and procedural fairness committed by that decision maker, raise questions of law.” See also *Riverside Electric Ltd. v Schlamp*, 2022 CanLII 113733 (SK LRB), at para 41.

²⁵ Adjudicator’s decision, para 22.

- c. *Mr. Wall was directed by Prairie's Health and Safety Manager to see a doctor and to file a WCB claim, which he did. Mr. Wall testified to this effect.*²⁶
- d. *Mr. Wall gave an incorrect location for where he fell, but attended for his next scheduled shift on March 14th, indicating that he did not intend on missing any work. It was undisputed that Mr. Wall attended work on March 14th, which is the day he was dismissed.*

[44] These findings of fact were based on the record before the Adjudicator, and the Board is not satisfied that the Adjudicator erred in principle in finding them. More particularly, the Board is not satisfied that these findings of fact were based on no evidence, in disregard of or by mischaracterizing relevant evidence, or based on irrelevant evidence or an unfounded or irrational inference.²⁷

[45] With the abovementioned findings of fact established, the Adjudicator assumed, without deciding, that Mr. Wall had been deceitful with respect to the location of his fall. In terms of a potential motive for doing so, the Adjudicator noted that "it was possible" that Mr. Wall wanted to pressure management into doing a better job of clearing near an entranceway.²⁸ The Adjudicator had evidence before him that employees regularly complained to management about conditions near this entranceway.²⁹

[46] Ultimately, the Adjudicator's decision rested on him not being satisfied that the nature and degree of this deceit (if accepted) justified Mr. Wall's dismissal. The crux of the Adjudicator's reasoning is found at paragraph 23 of the decision:

*23. Mr. Wall was employed as an industrial painter by the employer from March 1, 2018 until he was terminated on March 14, 2022. The misconduct was not related to his work duties per se. If he intentionally misled the employer with respect to the location where he slipped and fell, it is unclear why he did so as there was no evidence presented which indicated the deception would result in any sort of personal gain for Mr. Wall. Therefore, even assuming Mr. Wall intentionally misled the employer as to the location of the slip and fall, the employer has not established just cause. To put it in the terms used in McKinley the evidence put forth at the hearing does not establish that the nature and degree of the dishonesty warranted dismissal.*³⁰

²⁶ The Board notes that employers are required to report a work-related injury to the Workers' Compensation Board, as well.

²⁷ *Kolodziejewski*, at para 36.

²⁸ Adjudicator's decision, para 20.

²⁹ Adjudicator's decision, para 20.

³⁰ Adjudicator's decision, para 23.

[47] Based on his findings of fact described at paragraph 43, above, it was open to the Adjudicator to reject Prairie's characterization of Mr. Wall's alleged dishonesty and the motive for same (i.e., to fraudulently obtain benefits to avoid work and his agreed-to payroll deductions). Indeed, in the Board's view, doing otherwise may have required an irrational inference at odds with the facts as found. It must be recalled that the Adjudicator found that Prairie directed Mr. Wall to seek medical attention and to make a WCB claim. He also found that Mr. Wall reported for work for his next scheduled shift, indicating that he did not intend to miss any work. Contrary to Prairie's submission, the fact that Mr. Wall did not appeal the denial of the WCB claim does not necessarily suggest that Mr. Wall was determined to avoid work and receive benefits. Rather, it can be taken as suggesting the opposite.

[48] Apart from rejecting Prairie's contention with respect to Mr. Wall's motive(s) for misreporting the location of his fall, the Adjudicator also noted that "the misconduct was not related to [Mr. Wall's] work duties per se."³¹

[49] While the significance of this statement was not elaborated upon by the Adjudicator, it clearly distinguishes between deceit directly related to one's job duties and deceit outside the context of same. The latter will generally be less likely to be "incompatible with the fundamental terms of the employment relationship", to use the language from *Dowling*,³² depending on circumstances such as the role and responsibilities of the employee, and the degree of trust reposed in them.³³

[50] A leading secondary source states "where the conduct does not interfere with the employee's daily work, there may be no cause for dismissal, even though the conduct is reprehensible."³⁴ *Murphy v Clarica Life Insurance Company*³⁵ is cited in support of this statement. In that case, the plaintiff's dishonesty with his employer about his attempts to recruit co-workers into a scheme, which he later learned was an illegal pyramid scheme, did not suffice as just cause for his dismissal.³⁶

³¹ Adjudicator's decision, para 23.

³² *Dowling*, at para 49, quoted in *Thomas*, at para 21.

³³ *Dowling*, at para 52.

³⁴ Ellen E. Mole and Marion J. Stendon, *Wrongful Dismissal Practice Manual*, loose-leaf (Rel 68-4/2022), 2nd ed, Vol 2 (Toronto: LexisNexis, 2022), at para 4.3.

³⁵ *Murphy v Clarica Life Insurance Company*, 2003 NBQB 381 [*Murphy v Clarica Life Insurance Company*].

³⁶ *Murphy v Clarica Life Insurance Company*, at paras 23-33.

[51] Here, it was open to the Adjudicator to conclude that Mr. Wall's deceit with respect to the location of his fall, if assumed, did not "strike at the heart of the employment relationship".³⁷ To put it another way, in conducting a proportionality analysis, it was open to the Adjudicator to find that the summary dismissal of Mr. Wall was disproportionate to the misconduct in issue.

[52] In sum, while Prairie clearly disagrees with the Adjudicator's decision, it has not satisfied the Board that the Adjudicator erred in law. Accordingly, its appeal must be dismissed. The decision of the Adjudicator is affirmed pursuant to s. 4-8(6)(a) of the Act.

[53] An appropriate order will accompany these reasons.

DATED at Regina, Saskatchewan, this **21st** day of **November, 2023**.

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson

³⁷ *Dowling*, at para 49.