SEIU-WEST, Applicant v SASKATOON TWIN CHARITIES INC. O/A CITY CENTRE BINGO, Respondent

LRB File No. 142-24; July 25, 2025
Chairperson, Kyle McCreary; Board Members: Phil Polsom and Grant Douziech
Citation: *SEIU-West v City Centre Bingo,* 2025 SKLRB 34

Counsel for the Applicant, SEIU-West: Shannon Whyley

Counsel for the Respondent, Saskatoon Twin Charities Inc. o/a City Centre Bingo: John Gormley, K.C., Gillian Fortlage

Unfair Labour Practice – Allegation that employee was terminated for membership on union bargaining committee – Application granted

Remedy – Board has discretion as to appropriate remedy – Reinstatement ordered without backpay on the facts of the case

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** This matter relates to the disputed severance of Mr. Gerald Stadnyk's employment from Saskatoon Twin Charities Inc. O/A City Centre Bingo ("the Employer"). SEIU-West ("the Union") filed an unfair labour practice before this Board alleging that Mr. Stadynk was engaged in protected activity and terminated from his employment with the Employer on May 9, 2024 for engaging in said activity. The Union seeks reinstatement, monetary loss, and moral damages. The Employer defends on the basis that Mr. Stadnyk was not terminated and that he resigned his position on May 9, 2024.

[2] The Board finds that Mr. Stadnyk did not resign on May 9, 2024. The Employer gave notice that Mr. Stadnyk's employment ended on May 9, 2024, and maintained that position despite the Union maintaining that Mr. Stadnyk did not resign.

[3] Mr. Stadnyk was engaged in protected activity in being a member of the bargaining committee. However, most of the conflict with the Employer, and in fact the precipitating conflict, was caused by Mr. Stadnyk asserting seniority rights that did not exist. Asserting contract rights that have yet to be incorporated into a collective bargaining agreement is not protected activity.

[4] Despite the majority of conflict being caused by Mr. Stadnyk's improper assertion of rights, the Board finds that the Employer has not established that Mr. Stadnyk's membership on the bargaining committee played no part in the termination. The Employer departed from normal practice in how it processed a resignation, in part because of Mr. Stadnyk's bargaining committee membership. The Employer needed to prove the bargaining committee membership played no role in its decision, and the Board finds the Employer did not meet this onus.

[5] As Mr. Stadnyk was terminated in a manner contrary to *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act"), the Board finds that Mr. Stadnyk should be reinstated. An award of damages usually accompanies reinstatement; however, damages are discretionary. The Board declines to award damages as Mr. Stadnyk's and the Union's actions caused most, if not all, of the monetary loss Mr. Stadnyk suffered. But for Mr. Stadnyk creating a conflict over seniority rights he did not have and the Union delaying in seeking reinstatement, Mr. Stadnyk would not have suffered losses.

[6] For the reasons that follow, the Board orders that Mr. Stadnyk should be reinstated but without an award of damages.

Evidence:

[7] The Union called two witnesses, Mr. Stadnyk, a caller and supervisor with the Employer, and Mr. Cameron McConnell, a Negotiations Officer with the Union. The Employer called Gordon Ouellette, the Gaming Operations Manager of the Employer, and Mr. Wes Noon, a Director of the Employer.

[8] In reviewing the evidence presented to the Board, the Board is mindful of its comments in *J.C. v Regina Police Association Inc.*, 2023 CanLII 99838 (SK LRB):

> *[116] In considering the evidence, the Board is mindful of the British Columbia Court of Appeal's oft-cited reasons in Faryna v Chorny (emphasis added):*
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> > *If a trial judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. Raymond v. Bosanquet (1919), 1919 CanLII 11 (SCC), 50 D.L.R. 560, at p. 566; 59 S.C.R. 452, at p. 460; 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial judge, and yet the surrounding*

> *circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*
>
> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say 'I believe him because I judge him to be telling the truth', is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.[42]*

[117] As noted above, the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Further, a witness may sincerely believe he is telling the truth, but be mistaken. This has been explained by the Ontario Court of Appeal in H.C. as follows:

> *[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately*
>
> *i. observe;*
> *ii. recall; and*
> *iii. recount*
>
> *events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: R. v. Morrissey (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514, at 526 (C.A.).[43]*

[9] The Board found all the witnesses to be credible. The Board has some concerns with the reliability of Mr. Ouellette and Mr. Stadnyk as to the events at the workplace on May 9, 2024. Both individuals minimized their own actions on May 9, 2024. The Board does not find they were intending to mislead but were engaged in an emotionally charged encounter and remember the incident in a manner that differs in minor respects from each other and Mr. Noon who was less invested in the incident. To the extent of discrepancy, the Board has a preference for the testimony of Mr. Noon as he was detailed and forthright in his answers. However, the general interaction is not in dispute, it is more which party was using profanity and escalated, and the Board finds both Mr. Stadnyk and Mr. Ouellette were using profanity and escalated in their interactions on the date in question.

[10] The Union was certified to represent employees of the Employer on December 12, 2019. As of the date of this hearing, the parties have yet to reach a first collective agreement.

[11] The Board dismissed a decertification application in relation to the workplace in *Mary-Anne Beardy v SEIU-West and Saskatoon Twin Charities Inc.,* 2023 CanLII 118987 (SK LRB).

[12] The employee members of the Union Bargaining Committee in 2024 were Mary-Anne Beardy, Mr. Stadnyk, and Ashley Williams. Ms. Beardy was terminated for cause on March 27, 2024, and the Union has not challenged that termination. Ms. Williams was on a leave in 2024. Mr. Stadnyk was the lone active employee of the Union Bargaining Committee in the spring of 2024.

[13] Mr. Stadnyk had long held disagreements with the Employer in relation to scheduling, particularly as it relates to the issue of recognition of his seniority. The Employer had agreed to recognizing seniority in scheduling in the draft First Collective Agreement, but as noted, an agreement on a First Collective Agreement has never been reached or ratified.

[14] Mr. Stadnyk was a bingo caller and a supervisor with the Employer. Mr. Stadnyk preferred to receive specific supervisor shifts. The Employer thought Mr. Stadnyk was their best bingo caller and preferred to schedule him as a caller during the Employer's busiest shifts.

[15] Mr. Stadnyk went on medical leave in February 2024 and returned from leave on March 28, 2024.

[16] On return, Mr. Stadnyk continued to dispute the Employer's approach to scheduling.

[17] Mr. Ouellette had a medical procedure in the spring of 2024. This lead to Mr. Stadnyk and another employee being more involved in some scheduling issues.

[18] The central events of this case occurred on May 9, 2024. On that date, Mr. Stadnyk attended the workplace and saw his schedule for the upcoming period for the first time. The Employer disputes that Mr. Stadnyk had not previously been provided with the schedule, however, the Board accepts that Mr. Stadnyk had not seen it prior to this time. On seeing the schedule, Mr. Stadnyk became upset and had a stress reaction as he did not feel it recognized his seniority and gave preference to other employees.

[19] Mr. Stadnyk then phoned Mr. Ouellette and informed him that he would be unable to work the second shift that evening. It was a short phone call. Mr. Ouellette then contacted an employee to come replace Mr. Stadnyk and Mr. Noon to attend with Mr. Ouellette as Mr. Ouellette believed Mr. Stadnyk had just resigned and Mr. Ouellette was concerned about addressing the situation as he was still recovering from a medical procedure. The Board finds based on weighing the testimony of the two individuals that Mr. Stadnyk did not say he resigned on the phone call only that he was unable to work the second shift.

[20] Shortly after, Mr. Ouellette and Mr. Noon attended the workplace. Along with a security personnel, they went to the office where Mr. Stadnyk was. An argument about scheduling ensued. The Board finds that both Mr. Stadnyk and Mr. Ouellette escalated and used profanity.

[21] In the argument, Mr. Stadnyk raised his objections to scheduling and Mr. Ouellette refused to change it. Mr. Ouellette asked for Mr. Stadnyk's SLGA identification and keys; Mr. Stadnyk refused to provide his SLGA identification and provided the keys. Mr. Ouellette then proceeded to have Mr. Stadnyk walked out by himself, Mr. Noon, and the security personnel.

[22] In this exchange, the Employer did not advise Mr. Stadnyk that he was terminated, and Mr. Stadnyk did not say he quit or resigned.

[23] In walking out, Mr. Stadnyk said versions of "You got what you wanted" and "I'm done" and used profanity towards the Employer.

[24] In reaching the parking lot, Mr. Stadnyk tossed his coffee on the ground. The Board does not accept Mr. Stadnyk's account of why he did this but also does not find this to be of significance to the overall events. The Board finds Mr. Stadnyk threw the coffee on the ground due to his frustration with the Employer. The coffee was thrown on the ground and did not contact any Employer representative.

[25] In the parking lot, the Employer advised Mr. Stadnyk not to return to the workplace and that it would be considered trespassing if he did return.

[26] Mr. Stadnyk also interacted with Bob Dybvig in the parking lot. Mr. Dybvig was the President of the Employer. The Board does not accept Mr. Stadnyk's testimony of what occurred with Mr. Dybvig. The Board prefers the testimony of the other witnesses on this point as being more probable. Other witnesses testified that Mr. Dybvig stayed in his vehicle while Mr. Stadnyk was leaving and there was only a brief exchange between the two individuals.

[27] The Board also does not accept that Mr. Dybvig was there to give an award to Mr. Stadnyk. The Board accepts that is what he told Mr. Ouellette and Mr. Noon, but Mr. Dybvig was not called as a witness, and the Board finds it is improbable that if he was there to give an award to Mr. Stadnyk that this was not previously coordinated with Mr. Ouellette or Mr. Noon.

[28] After leaving the workplace, Mr. Stadnyk texted Mr. McConnell his version of events of the evening.

[29] On May 10, 2024, Mr. Ouellette emailed Mr. McConnell the following:

> *At approximately 5:40 pm May 9, 2024, Gerald Stadnyk called me and gave his verbal resignation effective 9:30 pm that evening (May 9, 2024).*
>
> *At approximately 6:15-6:20 pm I attended to the Bingo Hall to advise Mr. Stadnyk that as he had given his resignation as of 9:30pm that evening, I was going to have him return his building keys and SLGA tag and that he could leave. He put his keys down on the desk but refused to hand over his SLGA tag claiming that he paid for it and I could "FUCK OFF". I advised that actually I issued payment for the tag and that the tag was and remains the property of SLGA and must be returned. He did not return the tag.*
>
> *Board member Wes Noon, security officer Rosemary Bovill and myself escorted Mr. Stadnyk out of the hall through the front doors. Once outside, he through his coffee on the sidewalk and I asked him if he really had to do that. He told me to fuck off.*
>
> *Effective 9:30pm May 9, 2024, Gerald Stadnyk is no longer an employee of City Centre Bingo and not eligible for any employee benefits.*

[30] Also on May 10, 2024, Mr. McConnell responded to Mr. Ouellette's email as follows:

> *Hi Gordy,*
>
> *I have consulted with Gerald Stadnyk and the Union does not agree with the Employer's characterization of these events. Mr. Stadnyk has not resigned his employment. If the Employer asserts that he is no longer employed at City Centre Bingo by Saskatoon Twin Charities it is because his employment has been terminated by the Employer. The Union believes this termination to be without cause and unjustified and will take appropriate steps to seek redress on behalf of Mr. Stadnyk. We will be in contact in due course. Please advise me of any information you wish to provide the Union.*

[31] The Employer posted Mr. Stadnyk's position on or about May 10, 2024. The Employer sought to fill the vacancy as soon as possible.

[32] On May 15, 2024, Counsel for the Employer responded to Mr. McConnell's email as follows:

> *Cam,*

> *I have had a chance to review this matter with City Centre ingo. Mr. Stadnyk resigned on May 9, 2024, by advising Mr. Ouellette that he was resigning effective 9:30PM on May 9, 2024. He then proceeded to verbally accost Mr. Ouellette, in the presence of others, including telling Mr. Ouellette, and others, to "fuck off", and aggressively throwing his coffee on the sidewalk.*
>
> *City Centre Bingo has taken steps to remove Mr. Stadnyk's access to the property, due to his resignation, and has already relied on the resignation, in working to fill the Caller position, including conducting interviews.*
>
> We will be relying on the resignation, if you seek to take any action on behalf of Mr. Stadnyk.

[33] On May 15, 2024, Mr. McConnell responded to the Employer's counsel by email:

> *Thank you for your email. As previously noted to the Employer the Union disputes that Mr. Stadnyk resigned and maintains that his employment was terminated without cause. Further details of the Union's position will be provided in due course.*

[34] On May 21, 2024, Mr. Stadnyk was taken off work until September by his doctor.

[35] In May 2024, the Employer provided Mr. Stadnyk with a Record of Employment. The Record of Employment indicated that Mr. Stadnyk quit his employment. Mr. Stadnyk testified to looking for work since leaving the Employer but not finding any. No examples of jobs applied for that Mr. Stadnyk was unsuccessful in obtaining were provided. The one specific example reference was in cross examination Mr. Stadnyk admitted to seeking a meeting with the Employer earlier in 2025 to discuss a possible return.

[36] On June 13, 2024, Mr. McConnell on behalf of the Union sent a letter to Mr. Dybvig and Mr. Ouelette. The body of the letter reads in part:

> *As discussed in previous communication the Union does not agree that Gerald Stadnyk resigned his employment from City Centre Bingo. The Employer is wrong to construe his communication with you or your representatives in that manner and also to rely on any communication from him for the purpose of severing the employment relationship and abandoning any obligation to him arising from that relationship. The Union has reviewed the matter and believes that Mr. Stadnyk's employment was terminated by the Employer for reasons that violate provisions of the Saskatchewan Employment Act (the Act) and in a manner which violates provisions of the Act. The termination was unfair, unjustified and illegal.*
>
> *The Union therefore requests that Mr. Stadnyk be reinstated to his former employment with terms of employment that include, but are not limited to, hours of work and work assignment consistent with the most favorable terms he was previously provided and that he be made whole in every respect including, but not limited to, payment for all wages that he could have earned under those terms of employment during the period following the Employer's*

decision to terminate his employment and the immediate reinstatement of any benefits going forward and for the period subsequent to the termination to the present.

[37] Counsel for the Employer responded to Mr. McConnell by email on June 19, 2024, and stated in party:

Our previous correspondence makes City Centre Bingo's (CCB) position on this matter very clear. Mr. Stadnyk resigned, and made a scene, in front of a number of witnesses at CCB. Mr. Stadnyk has not worked, or sought to work or communicated with CCB, since his resignation. CCB has taken steps to fill the vacated position, relying on Mr. Stadnyk's resignation.

Your request for Mr. Stadnyk to be reinstated is denied, given that he chose to resign from CCB, and the employer has relied on the resignation.

[38] On July 19, 2024, the Union filed the Unfair Labour Practice Application in this proceeding.

Relevant Statutory Provisions:

[39] Section 6-48 of the Act, which provides:

6-48*(1) Whether there is just cause for the termination or suspension of an employee may be determined by arbitration if:*

- *(a) No collective agreement is in force;*
- *(b) The board has issued a certification order;*
- *(c) The employee is terminated or suspended for a cause other than shortage of work; and*
- *(d) The termination or suspension is not, and has not been, the subject of an application to the board respecting a matter mentioned in clause 6-62(1)(g).*

(2) If an arbitration is conducted pursuant to subsection (1), it is to be conducted in accordance with section 6-46.

(3) The arbitrator shall determine any dispute respecting the application of this section.

[40] The relevant provisions of section 6-62 of the Act are as follows:

Unfair labour practices – employers
6-62*(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*

- *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*

. . .

- *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or*

> *activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;*
>
> *. . .*
>
> *(2) Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.*
>
> *…*
>
> *(4) For the purposes of clause (1)(g), there is a presumption in favour of an employee that the employee was terminated or suspended contrary to this Part if:*
>
> *(a) an employer or person acting on behalf of the employer terminates or suspends an employee from employment; and*
>
> *(b) it is shown to the satisfaction of the board or the court that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right pursuant to this Part.*
>
> *(5) For the purposes of subsection (4), the burden of proof that the employee was terminated or suspended for good and sufficient reason is on the employer.*

[41] The Board's remedial powers under s. 6-104(2) are engaged by this application, which reads in part:

> ***6-104****(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
>
> *…*
>
> *(b) determining whether an unfair labour practice or a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board is being or has been engaged in;*
>
> *(c) requiring any person to do any of the following:*
>
> *(i) to refrain from contravening this Part, the regulations made pursuant to this Part or an order or decision of the board or from engaging in any unfair labour practice;*
>
> *(ii) to do any thing for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board;*
>
> *(d) requiring an employer to reinstate any employee terminated under circumstances determined by the board to constitute an unfair labour practice, or otherwise in contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board;*
>
> *(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;*

Analysis and Decision:

Jurisdiction

[42] The Board's jurisdiction to hear this application is pursuant to s. 6-48. Clause 6-48(1)(d) grants the Board jurisdiction to determine a matter under s. 6-62(1)(g) in the case of a termination when a first collective agreement has not been reached. This is a clear statutory exception to the exclusion jurisdiction of arbitrators as set out in ss. 6-45 to 6-49 and discussed by the Supreme Court of Canada in *Northern Regional Health Authority v. Horrocks,* 2021 SCC 42 (CanLII), [2021] 3 SCR 107.

Did the Employer violate 6-62(1)(g)?

[43] In a termination case, the focus of s. 6-62(1)(g) analysis is often on whether the reverse onus of s. 6-62(4) has been triggered. In order to trigger the reverse onus, a union must establish that Mr. Stadnyk was engaged or had engaged in protected activity and that Mr. Stadnyk was suspended or terminated.

Was Mr. Stadnyk Engaged in Protected Activity?

[44] The language of protected activity is very broad and includes when an employer exercises, had exercised or attempted to exercise a right under the Act.

[45] Mr. Stadnyk was a member of the Union Bargaining Committee. The Union and the Employer had been negotiating a first collective agreement for years. Mr. Stadnyk was engaged in bargaining activity under the Act. The negotiations were ongoing even if little progress was being made at the time of the events.

[46] For clarity, the Board does not find the scheduling demands to be protected activity. As no collective bargaining agreement had been entered, the Employer retained full management and control of scheduling and arguing against the Employer's exercise of its management rights is not a protected activity.

Was Mr. Stadnyk terminated or suspended?

[47] The primary issue in this case is whether Mr. Stadnyk resigned or was terminated. The Union alleges Mr. Stadnyk was terminated. The Employer alleges Mr. Stadnyk resigned. The Board finds that Mr. Stadnyk did not resign. The Board finds Mr. Stadnyk was terminated on May 10, 2024.

[48] Both resignation and termination require clear and unequivocal acts to establish. Resignation requires subjective intent and an objectively clear and unequivocal act. Termination requires an objectively clear and unequivocal act. This was discussed by The British Columbia Court of Appeal in *Beggs v. Westport Foods Ltd.*, 2011 BCCA 76 (CanLII):

> *[36] It is common ground that both a dismissal by an employer and a voluntary resignation by an employee require a clear and unequivocal act by the party seeking to end the employment relationship. There is a distinction, however, in the tests to be met in order to establish each of these methods for ending the employment relationship. A finding of dismissal must be based on an objective test: whether the acts of the employer, objectively viewed, amount to a dismissal. A finding of resignation requires the application of both a subjective and objective test: whether the employee intended to resign and whether the employee's words and acts, objectively viewed, support a finding that she resigned.*

[49] The test for resignation was discussed in *Nutrien Ltd. v United Steelworkers, Local 7689 (Dale Hansen),* 2021 CanLII 54674 (SK LA). Arbitrator Ish, Q.C., summarized instances where resignations have been ineffective as follows:

> *[67] The situations in which arbitrators have held resignations not to be effective usually have one or more of the following characteristics:*
>
> > *(1) The resignation was impulsive often done in frustration or anger.*
> >
> > *(2) The revocation or request to withdraw a notice to resign or retire was done within a short time, usually no longer than a few days.*
> >
> > *(3) The employee did not have access to union advice.*
> >
> > *(4) There was duress or emotional upset causing an impairment of judgment. The upset may be caused by workplace factors or emotional upset caused by away-from-work factors, including health problems or family discord.*
> >
> > *In short, a resignation, quit or retirement must be voluntary and fully intended. Employees must subjectively desire to resign and through their objective conduct demonstrate a continuing intention beyond a mere spur of the moment reaction. Once accepted by an employer, the resignation is complete and the employee, barring the collective agreement saying otherwise, does not have a right to rescind or revoke a resignation.*

[50] The Board agrees with this analysis that these would all be categories where there may be issues of a lack of subjective intent.

[51] In considering Mr. Stadnyk's conduct, when viewed objectively, refusing to attend a shift due to a dispute about scheduling and then repeatedly stating one is done would constitute clear and unequivocal acts.

[52] However, the Board finds that Mr. Stadnyk did not intend to resign. The Board finds the subjective element is not met. The statements were made in an emotional exchange with management about scheduling and none of the statements Mr. Standyk made were unequivocal expressions of resignation. In a heated exchange about an issue Mr. Stadnyk felt passionate about, telling the Employer he wouldn't finish his shift does not exhibit an intention to resign. Yelling or loudly stating various versions of "I'm out of here" and/or "done" when the Employer is walking an employee out also does not constitute subjective intent in these circumstances. The lack of intent is also evident in Mr. Stadnyk's text communications with Mr. McConnell that day. Further, the next day, the Union contested the resignation in written communications.

[53] The exchanges on May 9 were emotionally elevated and done in frustration and anger over the Employer's approach to scheduling. The resignation was never reduced to writing and all subsequent written communication by the Union took the position Mr. Stadnyk did not resign.

[54] The Board finds, based on his testimony and the equivocal nature of the statements in a heated exchange, and the written communications between Mr. McConnell and Mr. Stadnyk, and Mr. McConnell and the Employer, that Mr. Stadnyk did not subjectively intend to sever the employment relationship.

[55] As it relates to termination, Mr. Stadnyk was also not terminated on May 9, 2024. Viewed objectively within the context of the exchange, it was not an unequivocal act. The Employer was responding to an employee disputing shifts. Walking an employee out and demanding the SLGA ID are indicative of a termination, it is equivocal given Mr. Stadnyk's conduct supports it being possible as an Employer response to a perceived resignation and not an intention on behalf of the Employer to sever the relationship.

[56] The Employer's position the following day was not equivocal. The email notifying of resignation was clear that the Employer viewed the relationship as ended as of May 9, 2024. The Employer maintained this position even after being notified that the Union disputed that Mr. Stadnyk resigned. The Employer's intention to end the relationship was unequivocal, and did not alter on being advised Mr. Stadnyk did not resign.

[57] The Employer was aware that Mr. Stadnyk was emotional on May 9, 2024 and that Mr. Stadnyk was recently returned from medical leave. Maintaining the reliance on the resignation after it was disputed was unreasonable on the facts and exhibits an intention to terminate.

[58] This establishes the first part of the inquiry under s. 6-62(4), Mr. Stadnyk was terminated and had engaged in union activity. The Employer must meet the reverse onus.

Did Union Activity Form Any Part of the Employer's Reason for Termination?

[59] The Board discussed the reverse onus on an employer under s. 6-62(4) in *Canadian Union of Public Employees v Warman (City)*, 2017 CanLII 30130 (SK LRB):

> *[52] Determinations under section 6-62(1)(g) and 6-62(4) are factually driven. Once the onus is shifted to the employer, as is the case here, the onus falls upon the employer to show a credible or coherent reason for dismissing an employee other than his or her union activity. This onus, as noted by the Board in SGEU v. Saskatoon Food Bank[8] at paragraph 52a, "while extremely heavy – the Employer must satisfy the Board that trade union activity played no part in the decision to discharge the employee – is not impossible to satisfy." As noted by the Board in both Sakundiak[9] and SEIU v. Chinook School Division No. 211[10], such explanation must be credible and coherent.*

[60] The Board similarly takes an approach to the reverse onus on occupational health and safety activity relation terminations under s. 3-35. An employer must disprove that there was a causal connection between the protected activity and the termination, as stated in *Lund v West Yellowhead Waste Resource Authority Inc.*, 2017 CanLII 30151 (SK LRB):

> *[40] The Adjudicator found that even though the Appellant was a probationary employee, his termination by the Employer fell within the definition of "discriminatory action" set out in subsection 3-1(i) of the SEA. On this appeal, the parties accepted the Adjudicator's finding on this point. As a consequence, the central issue on the appeal becomes: did the Appellant's termination violate the statutory protection against "discriminatory action" found in section 3-35 of the SEA. Essentially, it requires a consideration of whether or not there was a causal connection between the Appellant voicing concerns about workplace safety, and his subsequent termination a few weeks later. The Board turns to consider this question now.*

[61] In *Saskatchewan Polytechnic Students' Association Inc. v Ryan Benard*, 2021 CanLII 31416 (SK LRB), the Board stated the test as follows:

> *[37] The threshold for good and sufficient other reason is whether there was a causal connection between the protected conduct and the discriminatory action.[14] Since the decision to terminate Benard was directly connected to his having exercised a protected activity under the Act, SPSA has not discharged its onus in this regard. The Adjudicator reasonably found that Benard's actions did not amount to insubordination.*

[62] The Employer has shown a credible reason for initially accepting Mr. Standyk's resignation. Mr. Standyk created a conflict in relation to a seniority scheduling right he did not have and arguably sought to enforce that right through the withdrawal of work. It is understandable why the Employer took the actions it did on May 9th in this context.

[63] The actions of May 10th in confirming the resignation to the Union in writing were a departure from practice. Based on the testimony of Mr. Ouellette, the departure from practice was related to Mr. Stadnyk's union activity. The Employer normally would not have confirmed a resignation in writing, and would not include the union. It did in this case because Mr. Stadnyk was on the bargaining committee. This creates a causal connection.

[64] This email is important as it provided notice of the time and date ending the employment. The Employer never reconsidered this notice in subsequent communications. The notice was related in part to union activity, and thus the subsequent reliance on that notice is also related to union activity at least in part. The Board is not satisfied that union activity played no part in the Employer severing the employment relationship.

[65] The Employer moved with haste to rely on the resignation for operational reasons, posting the position the following day and filling it in due course. While this does explain why the Employer relied on the resignation, it does not explain why the Employer was unwilling to revisit it. The Employer has not provided a sufficient explanation for its refusal to reconsider the resignation to allow the Board to set aside the initial connection to protected activity.

[66] The Board finds that the Employer has breached s. 6-62(1)(g). Mr. Stadnyk did not resign. Mr. Standyk was terminated by the Employer giving notice of the end of his employment on May 10, 2024. The Employer has not established that Mr. Stadnyk's union activity played no part in his termination.

[67] The Board does not find that the Union has established on a balance of probabilities that s. 6-62(1)(a) has been breached. The reverse onus does not apply to this clause and the Employer's decision to rely on the resignation in the context of this case, which had the effect of terminating Mr. Stadnyk, does not constitute a breach of the s. 6-62(1)(a).

Remedy:

[68] The question now turns to remedy. The Union seeks standard declarations and posting orders, along with reinstatement, monetary damages and moral damages. The Board finds that on the facts of this case, a declaration, posting order, and reinstatement are the appropriate remedy.

[69] The Board has broad remedial discretion pursuant to the Act. The Board must fashion a remedy that is rationally connected to a breach and promotes the policy objectives of the Act. This was discussed by the majority of the Supreme Court of Canada in relation to the Canada Industrial Relations Board in *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, 1996 CanLII 220 (SCC), [1996] 1 SCR 369

> *The requirement that the Board's order must remedy or counteract any consequence of a contravention or failure to comply with the Code imposes the condition that the Board's remedy must be rationally connected or related to the breach and its consequences. This requirement is also consistent with the test established in National Bank of Canada v. Retail Clerks' International Union, 1984 CanLII 2 (SCC), [1984] 1 S.C.R. 269, which required that there be a relation between the breach, its consequences and the remedy. Section 99 also provides that the Board may remedy breaches which are adverse to the fulfilment of the objectives of the Code. This empowers the Board to fashion remedies which are consistent with the Code's policy considerations. Therefore, if the Board imposes a remedy which is not rationally connected to the breach and its consequences or is inconsistent with the policy objectives of the statute then it will be exceeding its jurisdiction. Its decision will in those circumstances be patently unreasonable.*

[70] The Board frequently awards declaration and cessation of a breach and the posting an order. Posting allows the other members of the workplace to know what the Board has determined and promotes the purposes of the Act by keeping all parties informed of whether the Act has been complied with. Declarations makes legal rights clear and a cessation order is intended to prevent the continuation of impermissible conduct. The Board views orders declaring the breach, order a cessation, and a posting order as appropriate in this case.

[71] The Board is empowered to reinstate pursuant to s. 6-104. As the Employer has not established that its decision to terminate and/or maintain the resignation was unconnected to Union activity, the decision must be reversed and Mr. Stadnyk should be reinstated as of the date of this decision.

[72] While the Board is empowered to award compensation for monetary loss, damages are a discretionary remedy, as discussed by the Board in *Moose Jaw Firefighters' Association No. 553 v City of Moose Jaw,* 2019 CanLII 98484 (SK LRB):

> *[135] An award of damages is discretionary. As with all remedies, the purpose is to place the wronged party in the position that party would have been in, but for the breach. There must also be a rational connection between the breach, its consequences and the remedy ordered. And, the remedy should seek to ensure collective bargaining and promote a healthy relationship between the parties. It should not be punitive.*

[73] The primary reason the Board declines to award damages for the breach in this case is that Mr. Stadnyk and the Union created the situation that lead to the conflict on May 9th. Mr.

Stadnyk for months had asserted he had a right to preferential scheduling due to his seniority. No employment contract was exhibited to demonstrate this right. In testimony, it was stated that the Employer and Union had agreed to seniority rights in the still under negotiation First Collective Agreement. Until the Agreement is ratified, this is not an enforceable right, and while Mr. Standyk was entitled to ask the Employer to consider his service in assigning work, he did not have the right to demand rights based on his seniority. This misapprension of rights was the precipitating event of May 9th. Mr. Stadnyk viewed his schedule and became upset for the non-recognition of his perceived rights. Mr. Stadnyk then called Mr. Ouellette and advised he would not be completing his shift. But for Mr. Stadnyk's forceful demands of his purported seniority rights, the conflict of May 9th does not arise and nor does any consequential loss. A core policy goal of the Act is the promotion of industrial relations stability. It does not promote stability for bargaining committee members to assert inchoate rights to the point of workplace conflict, thus the Board should consider the impact of such behaviour when determining whether to award damages.

[74] As it relates to the Union's conduct, the Union initially disputed that Mr. Stadnyk resigned on May 10th. However, the Union did not rescind any purported resignation on Mr. Stadnyk's behalf at that time, nor advise Mr. Stadnyk to do the same. The Union did also not demand reinstatement until June, after the Employer had already filled the position. The Union's actions and inactions contributed to the Employer inappropriately relying on the resignation and contributed to the monetary loss.

[75] The Board also has concerns about Mr. Stadnyk's efforts to mitigate and whether the duty to mitigate was fulfilled. It is accepted that Mr. Stadnyk was medically unable to work for a period of time. The evidence of efforts to obtain work outside of this period were vague. The only evidence of a specific job pursued was a request to meet with the Employer early in 2025. Without specific jobs applications and timelines for the job search, the Board cannot find that Mr. Stadnyk's efforts to mitigate were reasonable.

[76] In addition to request for lost wages, the Union seeks an award of moral damages, relying on the Board's decision in *Lapchuk v Saskatchewan Government and General Employees' Union*, 2023 CanLII 10988 (SK LRB), as authority for the availability of moral damages. That decision was found to be unreasonable by the Court of King's Bench in *Saskatchewan Government and General Employees' Union v Lapchuk*, 2025 SKKB 53 (CanLII), although the issue of moral damages was not discussed by the Court. The Board's decision in *Lapchuk* relied on *Capital*

Pontiac Buick Cadillac GMC Ltd v Coppola, 2013 SKCA 80 (CanLII)("*Coppola*"), in determining that moral damages were available and should be awarded. The Board did not address its jurisdiction for awarding moral damages.

[77] *Coppola* is a Court of Appeal decision reviewing a Court of King's Bench Trial Decision. The Court of Appeal noted that moral damages are a form of aggravated damages in the dismissal context:

> *[25] I start by settling on a label for these types of damages. The appropriate label is "moral damages" as this is the label implicitly adopted by the Supreme Court of Canada in Keays (at para. 59): [3]*
>
> > *… [T]here is no reason to retain the distinction between "true aggravated damages" resulting from a separate cause of action and moral damages resulting from conduct in the manner of termination. Damages attributable to conduct in the manner of dismissal are always to be awarded under the Hadley principle. Moreover, in cases where damages are awarded, no extension of the notice period is to be used to determine the proper amount to be paid. The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages.*
>
> *[26] Moral damages are generally aggravating in nature and, therefore, appear to take the place of or, more properly, are the same as aggravated damages in the context of wrongful dismissal cases. In Keays, Bastarache J. noted (at paras. 54-60) that what constitutes moral damages is informed by the Supreme Court of Canada's previous decision in Wallace [Wallace v. United Grain Growers Ltd., 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701] and that moral damages flow from the principle first articulated in Hadley v. Baxendale (1854), 156 E.R. 145, 9 Ex. 341 (being that damages for breach of contract are compensable when such damages are in the reasonable contemplation of the parties at the time the contract was entered into, thus making them reasonably foreseeable in the event of a breach). Damages for hurt feelings or for the normal feelings that accompany a dismissal are not compensable (Keays at para. 59).*

[78] Aggravated damages are generally a form of non-pecuniary loss. The Board's authority to award damages pursuant to s. 6-104(2)(e) is explicitly limited to determinations of monetary loss. The Board does not find moral damages to be appropriate in this case as while the resignation has been found to be invalid, the Board has found there was an objective basis for the Employer accepting the resignation. Even if the Board had found moral damages to be appropriate, the Board has concerns about the jurisdiction the Board has to award the same. The question of whether moral damages fall within the Board's broad general remedial authority is a question left for another case.

Conclusion:

[79] As a result, with these Reasons, an Order will issue that:

a. the Application for an Unfair Labour Practice in LRB File No. 142-24 is granted;

b. the Board declares that the Employer breached s. 6-62(1)(g);

c. the Employer shall cease and refrain from contravening s. 6-62(1)(g);

d. the Employer shall post this decision and order for a period of 60 days in a place where it may be reviewed freely by employees;

e. Mr. Stadnyk is reinstated effective as of the date of the order;

[80] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

[81] This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **25th** day of **July, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson