Saskatchewan
Labour Relations Board

SPERLING SILVER DISTILLERIES LTD., and ADAM SPERLING, Appellants v DONALD MEEK, Respondent, and DIRECTOR OF EMPLOYMENT STANDARDS, Respondent

LRB File Nos. 169-25 & 004-26; Date: May 14, 2026
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Sperling v Director of Employment Standards*, 2026 SKLRB 26

For Appellants, Sperling Silver Distilleries Ltd. and Adam Sperling:	Samuel Schonhoffer
For the Respondent, Donald Meek:	No-one appearing
For the Respondent, Director of Employment Standards:	Alexa LaPlante

Appeal of Wage Assessment – Constructive Dismissal – Error in Principle – Correct Test Not Identified – Correct Test Does Not Support Finding of Constructive Dismissal – Appeal Allowed.

Appeal of Wage Assessment – Substitute Decision – Facts found do not support alternative potential outcomes – Board substituting its decision based on law and facts found.

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Sperling Silver Distilleries Ltd. ("Sperling") and Adam Sperling (collectively the "Appellants") appeal pursuant to s. 4-8 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act"), a decision of an adjudicator ("the Adjudicator") dated December 29, 2025 ("The Adjudicator's Decision"). The Adjudicator dismissed the Appellants' appeal against the wage assessment issued by the Director of Employment Standards ("the Director") in favour of Donald Meek in the amount of $473.17.

[2] The hearing before the Adjudicator included evidence from Mr. Sperling and Mr. Meek and various documents.

[3] The Adjudicator found the following timeline:

a. Mr. Meek started employment with Sperling in September 2022.
b. On June 14, 2025, Mr. Meek works his last shift with Sperling.
c. On June 16, 2025, Brandt takes over.

d. On June 19, 2025, Mr. Meek gets an employment offer from Brandt.
e. On June 20, 2025, Mr. Sperling and Mr. Meek exchanged texts about not accepting Brandt's offer, not working June 21, and Mr. Meek not giving proper notice.
f. Also on June 20, 2025, Mr. Meek texted another employee of Sperling that he was not quitting, was not accepting Brandt's offer, and not working on June 21, 2025. The other employee advised Mr. Meek he was scheduled for June 21, 2025.
g. On June 21, 2025, Mr. Meek did not report for his shift.

[4] The Adjudicator then made the following findings:

a. Mr. Meek was offered a position with Brandt three days after Brandt took over Sperling. The new business is named Queen City Distillery.
b. The job offer Mr. Meek received had different conditions than his employment with Sperling.
c. Mr. Meek knew he had a shift with Sperling on June 21, 2025, and he consciously did not work it. Sperling never advised Mr. Meek he could continue to work for Sperling and Mr. Meek never asked Sperling if he could stay on.
d. Other than Mr. Sperling and his secretary, the last Sperling employee left the company in late June, or early July.

[5] The Adjudicator found that Mr. Meek resigned from his employment on June 21, 2025, when he missed his shift which Sperling treated as his resignation, but due to the offer of employment from Brandt he was constructively dismissed on June 19, 2025. The identified differences in contractual terms triggering the constructive dismissal are a difference in benefits provider and a move in pay frequency from semi-monthly to bi-weekly.

[6] This matter was scheduled to be heard by the Board on May 6, 2026, with the parties given deadlines to file written submissions. The Appellants and the Director filed written submissions. Mr. Meek did not file submissions or attend oral argument.

Argument on behalf of the Appellant:

[7] In the Appeal before this Board, the Appellants argue the Adjudicator erred in law in finding that Mr. Meek was constructively dismissed and/or terminated from his employment with Sperling.

Argument on behalf of the Director:

[8] The Director argues that the applicable standard of review is correctness on questions of law and that the Board does not have jurisdiction on questions of fact, or mixed fact and law, unless there is an identifiable error in law. The Director argues that the Adjudicator did not make an error of law. If the Adjudicator did make an error, the matter should be remitted with instructions.

Relevant Statutory Provisions:

[9] The jurisdiction of the Board to hear this appeal is pursuant to s. 4-8:

> ***Right to appeal adjudicator's decision to board***
> ***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.*
>
> *(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.*
>
> *(3) A person who intends to appeal pursuant to this section shall:*
>
> > *(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*
> >
> > *(b) serve the notice of appeal on all parties to the appeal.*
>
> *(4) The record of an appeal is to consist of the following:*
>
> > *(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;*
> >
> > *(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;*
> >
> > *(b.1) in the case of an appeal pursuant to Part V, any written decision of a radiation health officer or the director of occupational health and safety, respecting the matter that is the subject of the appeal;*
> >
> > *(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III or Part V, as the case may be;*
> >
> > *(d) any exhibits filed before the adjudicator;*
> >
> > *(e) the written decision of the adjudicator;*
> >
> > *(f) the notice of appeal to the board;*
> >
> > *(g) any other material that the board may require to properly consider the appeal.*

(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.

(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.

[10] Wage Assessments are issued pursuant to s. 2-74:

Wage assessments
2-74*(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(3).*

(2) If the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

(a) the employer;

(b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2-68.

(4) Repealed. 2020, c 12, s.5.

(5) Repealed. 2020, c 12, s.5.

(6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage assessment to be served on:

(a) the employer or corporate director named in the wage assessment; and

(b) each employee who is affected by the wage assessment.

(7) A wage assessment must:

(a) indicate the amount claimed against the employer or corporate director;

(b) direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:

(i) pay the amount claimed; or

(ii) commence an appeal pursuant to section 2-75; and

(c) in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.

(8) The director of employment standards may, at any time, amend or revoke a wage assessment.

[11] The liability in this matter is based on a finding of termination and failure to pay notice pursuant to s. 2-60 and s. 2-61:

Subdivision 12
Layoff and Termination

Notice required
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:*

Table

Employee's Period of Employment	***Minimum Period of Written Notice***
more than 13 consecutive weeks but one year or less	*one week*
more than one year but three years or less	*two weeks*
more than three years but five years or less	*four weeks*
more than five years but 10 years or less	*six weeks*
more than 10 years	*eight weeks*

*(2) In subsection (1), "**period of employment**" means any period of employment that is not interrupted by more than 14 consecutive days.*

(3) For the purposes of subsection (2), being on vacation, an employment leave or a leave granted by an employer is not considered an interruption in employment.

(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).

Payments in case of layoffs or terminations
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; or*
>
> *(b) if the employer is bound by a collective agreement that applies to the employee, the entitlements provided for in the collective agreement.*

(2) For the purposes of subsection (1), if the wages of an employee, not including overtime pay, vary from week to week, the employee's normal wages for one week are deemed to be the equivalent of the employee's average weekly wage, not including overtime pay, for the 13 weeks the employee worked preceding:

(a) the date on which the notice of layoff or termination was given; or

(b) if no notice of the layoff or termination was given:

(i) the date on which the employee was laid off or terminated; or
(ii) a date determined in the prescribed manner.

(3) If an employer lays off or terminates the employment of an employee at a remote site, the employer shall provide transportation without cost for the employee to the nearest point where regularly scheduled transportation services are available.

Analysis and Decision:

Standard of Review

[12] Pursuant to s. 4-8(1) of the Act, the Board's jurisdiction is appellate in nature and limited to questions of law. The standard of review on identifiable and extricable questions of law is correctness: *Tysdal v Cameron*, 2025 SKLRB 1 (CanLII); and *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII)("*Veldman*"). That is, where an error of law is raised, the Board determines whether the adjudicator was correct.

[13] On questions of fact and questions of mixed fact and law, the Board only has jurisdiction where there is an extricable question of law, or where the Adjudicator errs in principle in findings of fact. The Saskatchewan Court of Appeal discussed errors in law in findings of fact in *P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission)*, 2007 SKCA 149 (CanLII):

[68] It follows that a tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence.1 To do so is to err in principle or, in other words, to commit an error of law. (In addition to the cases referred to above, see Toneguzzo-Norvell v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 S.C.R.114 at 121; Wade & Forsyth, Administrative Law (7th ed.) (Oxford: Clarendon Press, 1994) at pp. 316—20; Jones & de Villars, Principles of Administrative Law (4th ed.) (Toronto: Thomson Carswell, 2004) at pp. 244—43 and 431—36; and Hartwig v. Wright (Commissioner of Inquiry), 2007 SKCA 74). Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact.

[14] If the factual analysis does not fall within the jurisdiction discussed above, the Board has no jurisdiction to revisit the findings of fact and is bound by the facts as found by the Adjudicator, see: *Veldman* at para 69.

[15] Where there is an error of law, the Board has discretion pursuant to s. 4-8(6) to either substitute its decision based on the correct law and the facts found by the Adjudicator or remit the matter to the Adjudicator.

Did the Adjudicator err in finding constructive dismissal

[16] The Adjudicator's upholding of the wage assessment was based on a finding of constructive dismissal as stated at pages 4 - 5 of the Adjudicator's Decision:

> *Constructive dismissal occurs when an employer makes significant unilateral change(s) to an employee's contract without the employees' consent, which forces the employee to resign.*
>
> *In this case, employee Don Meek was advised on June 19, 2025, that Queen City Distillery had taken over Sperling Silver Distillery effective June 16, 2025. On that date (June 19) he was presented with a job offer by Queen City that altered several working conditions he had under Silver. Specifically, his pay frequency changed to bi-weekly, and his benefit plan would be moved to as a new carrier.*
>
> *There was no attempt by Silver or Queen City to seek agreement with Meek to facilitate the transfer, so Meek had to either accept the offer or quit.*
>
> *His decision to not work his June 21 shift at Silver effectively was his resignation and Silver treated that missed shift as resignation.*
>
> *It is my decision that Don Meek was constructively dismissed when his employment contract was unilaterally changed with the June 19, 2025, Queen City offer.*

[17] The Board finds this analysis to contain an error of law in its failure to articulate the test for constructive dismissal, and in factors considered are not equivalent to the factors applicable to constructive dismissal.

[18] Constructive dismissal is a two-step test. The first step is it must be determined whether the employer's actions constitute a breach of the contract. The second step is consideration of whether a reasonable person in the employee's position would consider the breach to be the breach of an essential term, breaches of non-essential terms do not justify a finding of constructive dismissal. As stated by the Supreme Court of Canada stated in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 (CanLII), [2015] 1 SCR 500, at paras 34-40:

> *[34] The first branch of the test for constructive dismissal, the one that requires a review of specific terms of the contract, has two steps: first, the employer's unilateral change must be found to constitute a breach of the employment contract and, second, if it does constitute such a breach, it must be found to substantially alter an essential term of the contract (see Sproat, at p. 5-5). Often, the first step of the test will require little analysis, as the breach will be obvious. Where the breach is less obvious, however, as is often the case with suspensions, a more careful analysis may be required.*

[35] In Farber, Gonthier J. identified such a change as a "fundamental breach". The term "fundamental breach" has taken on a specific meaning in the context of exclusionary or exculpatory clauses: see, e.g., Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4, [2010] 1 S.C.R. 69, at paras. 104-23. To avoid confusion, I will therefore use the term "substantial breach" to refer to breaches of this nature. The standard nevertheless remains unchanged — a finding of constructive dismissal requires that the employer's acts and conduct "evince an intention no longer to be bound by the contract": Rubel Bronze, at p. 322, citing General Billposting Co. v. Atkinson, [1909] A.C. 118 (H.L.), at p. 122, per Lord Collins, quoting Freeth v. Burr (1874), L.R. 9 C.P. 208, at p. 213.

[36] The two-step approach to the first branch of the test for constructive dismissal is not a departure from the approach adopted in Farber. Rather, the situation in Farber was one in which the identification of a breach required only a cursory analysis. The emphasis in Farber was on the second step of this branch, as the evidentiary foundation for the perceived magnitude of the breach was the key issue in that case. However, the identification of a unilateral act that amounted to a breach of the contract was implicit in the Court's reasoning. In many cases, this will be sufficient. The case at bar, however, is one in which the claim can be properly resolved only after both steps of the analysis have been completed.

[37] At the first step of the analysis, the court must determine objectively whether a breach has occurred. To do so, it must ascertain whether the employer has unilaterally changed the contract. If an express or an implied term gives the employer the authority to make the change, or if the employee consents to or acquiesces in it, the change is not a unilateral act and therefore will not constitute a breach. If so, it does not amount to constructive dismissal. Moreover, to qualify as a breach, the change must be detrimental to the employee.

[38] This first step of the analysis involves a distinct inquiry from the one that must be carried out to determine whether the breach is substantial, although the two have often been conflated by courts in the constructive dismissal context. Gonthier J. conducted this inquiry in Farber, in which an employee had been offered a new position that was found to constitute a demotion. He stated that "the issue of whether there has been a demotion must be determined objectively by comparing the positions in question and their attributes": Farber, at para. 46.

[39] Once it has been objectively established that a breach has occurred, the court must turn to the second step of the analysis and ask whether, "at the time the [breach occurred], a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed" (Farber, at para. 26). A breach that is minor in that it could not be perceived as having substantially changed an essential term of the contract does not amount to constructive dismissal.

[40] The kinds of changes that meet these criteria will depend on the facts of the case being considered, so "one cannot generalize": Sproat, at p. 5-6.5. In each case, determining whether an employee has been constructively dismissed is a "highly fact-driven exercise" in which the court must determine whether the changes are reasonable and whether they are within the scope of the employee's job description or employment contract: R. S. Echlin and J. M. Fantini, Quitting for Good Reason: The Law of Constructive Dismissal in Canada (2001), at pp. 4-5. Although the test for constructive dismissal does not vary depending on the nature of the alleged breach, how it is applied will nevertheless reflect the distinct factual circumstances of each claim.

[19] The Adjudicator's Decision does not identify this test, nor does it apply analysis that is akin to it. It may be possible to assume the finding of significant changes is effectively a finding of a breach, however, there is no analysis of the question of whether the changes are objectively essential to the contract or minor breaches.

[20] The Adjudicator's Decision identifies two changes as the basis for the finding of constructive dismissal: the change of benefits to a new carrier, and the change in pay frequency. The application of the correct legal principle to the factual findings of the Adjudicator does not support the finding of constructive dismissal.

[21] In terms of changes to the benefits available to Mr. Meek, the only change identifiable from the decision as it relates to the benefits is the identity of the benefits provider. There is no evidence that the benefits Mr. Meek would be entitled to were different between providers. The evidence summary in the decision contains statements that there was no change of benefits entitlements. Even assuming that changing the identity of a benefits provider is a breach, without a change in the benefits received, the breach is not objectively essential, it is a minor breach.

[22] On the change from semi-monthly to bi-weekly pay frequency, the Adjudicator's decision does not explain how this change constitutes a breach of an essential term, nor how it is objectively reasonable to view this change as an essential term. The change is from 24 pay periods a year to 26 pay periods a year. There was no evidence before the Adjudicator of a change in overall compensation. Viewed objectively this also appears to be a minor change that is not an essential breach justifying repudiation of the contract by Mr. Meek.

[23] The Board finds that the Adjudicator's Decision erred in law in the finding of constructive dismissal.

Remedy:

[24] Having found that it was an error in law to find constructive dismissal on the contractual changes identified in the Adjudicator's Decision, the next issue for the Board is one of appropriate remedy. Should the Board refer the matter back to the Adjudicator or do the findings of fact permit the Board to determine the appeal.

[25] The Director primarily argued for remittance back to the Adjudicator but also argued in support of the finding of constructive dismissal on the basis of the transfer of the employment

from Sperling to Brandt. The Board would agree that if the Adjudicator found there was a transfer, that finding would be sufficient to support a finding of termination or constructive dismissal.

[26] The Appellants argued for the Board to substitute its decision and cancel the Adjudicator's decision. The Appellants argued that the findings of fact are sufficient to determine the matter and support a finding that Mr. Meek was not terminated by Sperling.

[27] The Board is bound by the facts found by the Adjudicator unless the Adjudicator erred in principle. Neither party argued that the findings of fact should be overturned. The Board must consider in determining whether to remit whether the case can be fairly determined by applying the appropriate legal tests to the facts found, or whether the decision requires remittance with instructions for a fair determination to be made.

[28] The factual findings are summarized previously in this decision, the Adjudicator found that Mr. Meek received an offer from Brandt and resigned rather than take the offer. Mr. Meek still had a shift scheduled with Sperling and chose not to work it and did not inquire whether he could continue working for Sperling if he did not accept Brandt's offer. The Adjudicator did not make a finding that Mr. Meek's employment was transferred from Sperling to Brandt.

[29] The question the Board must consider is whether the facts support a finding that Mr. Meek was terminated or constructively dismissed, or whether Mr. Meek resigned. The Board in *SEIU-West v City Centre Bingo,* 2025 SKLRB 34 (CanLII), discussed both the test for termination and resignation. Termination requires a clear unequivocal act by the employer demonstrating that the employment relationship has ended. A resignation also requires a clear unequivocal act by an employee demonstrating a resignation, and a resignation requires an additional element of a subjective intent to resign

[30] The actions of Sperling were to advise Mr. Meek of a shift on June 21. The other actions found were done by Brandt and Mr. Meek. Advising a party of a future shift after receiving the offer from Brandt is not the unequivocal act required for a finding of termination. Further, constructive dismissal requires actions by an employer sufficient to justify repudiation of the contract by the employee. There were no actions of Sperling that would permit repudiation of the contract.

[31] There is, however, a clear and unequivocal act to support the finding of resignation, that is, Mr. Meek was advised of a scheduled shift and he did not attend work for that shift. The Adjudicator found this was an intentional choice.

[32] It could be argued that the intention was to reject the contract from Brandt, not to resign from his position. However, it is not the Board's role to re-weigh the evidence found by the Adjudicator. The Adjudicator based the finding of resignation on an overt act and a conclusion on intent; there is no extricable error in law in this analysis.

[33] Sperling and Mr. Meek should have communicated better so it was clear that Mr. Meek did not have to accept Brandt's offer and could continue working for Sperling. Sperling did advise Mr. Meek of a shift after the date of offer. Mr. Sperling testified to a phone call conveying the ability to continue working for Sperling; this evidence appears to have been rejected by the Adjudicator without explanation. Regardless, to be liable for constructive dismissal there must be a finding of essential changes to the employment contract. The changes identified by the Adjudicator were not essential, and arguably, were not part of the employment contract being an offer from a third party. There was no finding of transfer or other overt act by Sperling to end the employment relationship. There was a finding of a resignation by Mr. Meek, a finding that does not contain an error in law.

[34] As s. 2-60 requires a finding of termination or layoff as a basis for employer liability and that finding is not supported by the facts found by the Adjudicator, the Board finds that the wage assessment cannot be supported and the Board should substitute its decision. The Board declines to remit the matter to the Adjudicator as the matter can be determined based on the Adjudicator's findings.

Conclusion:

[35] The Appellants have established an error of law. The appeal is therefore allowed. As the findings of fact do not support the finding of constructive dismissal or termination but do support the finding of resignation, the Board declines to remit the matter back.

[36] As a result, with these Reasons, an Order will issue that the Appeal in LRB File No. 004-26 is allowed and the decision of the Adjudicator in in LRB File No. 169-25 is cancelled.

[37] 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.

DATED at Regina, Saskatchewan, this **14th** day of **May, 2026.**

LABOUR RELATIONS BOARD

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Kyle McCreary
Chairperson