

DECISION OF ADJUDICATOR  
IN THE MATTER OF AN APPEAL  
PURSUANT TO SECTION 2-75 WITH RESPECT TO A DECISION OF AN  
EMPLOYMENT STANDARDS OFFICER PURSUANT TO  
***THE SASKATCHEWAN EMPLOYMENT ACT,***  
***R. S. S. S-15.1 (as amended)***

APPELLANT: Matt's Furniture Ltd. & Metro Kutsak, Director

RESPONDENT: David Hoffert

and

Director of Labour Standards  
Ministry of Labour Relations and Workplace Safety



DATE OF HEARING: September 9, 2016

PLACE OF HEARING: Saskatoon, Saskatchewan

**I. INTRODUCTION**

This is an appeal by Matt's Furniture Ltd. with respect to a Wage Assessment issued by the Respondent, the Director, Employment Standards Branch, Ministry of Labour Relations and Workplace Safety, on September 21, 2015. The Wage Assessment required the Appellant to pay David Hoffert the sum of \$5,813.66, representing unpaid wages. The Wage Assessment was prepared pursuant to s. 2-74 of *The Saskatchewan Employment Act*, R.S.S. S-15.1 (as amended).

This matter was heard before me on September 9, 2016. The Appellant was represented by counsel, Mr. David McKay and present on behalf of the Appellant were the Director of Matt's Furniture Ltd., Metro Kutsak along with Travis Kutsak and Jason Tosh. Present for the Respondent at the Hearing were Dale Schmidt, Department of Employment Standards, David Hoffert, the employee and Cindy Hoffert, Mr. Hoffert's wife.

## **II. PRELIMINARY MATTERS**

There were no preliminary matters. All parties agreed on the issue to be determined and agreed that all parties, including those giving evidence, could remain present throughout the Hearing.

## **III. THE ISSUE**

The issue to be determined is straightforward: was David Hoffert terminated by Matt's Furniture Ltd. for cause, or not. The Employer agrees that if I find in favour of the employee, that is, that he was not terminated for cause, then the wage assessment stands.

## **IV. EVIDENCE**

### **i. EVIDENCE OF APPELLANT**

Evidence of Metro Kutsak

Metro Kutsak was the first and main witness for the Appellant. Matt's Furniture Ltd. was a family business of long standing with outlets in Fort Qu'Appelle, Kamsack, Melville and Foam Lake, Saskatchewan. Matt's Furniture Ltd. sells furniture and appliances. David Hoffert had been an employee of Matt's Furniture Ltd. at the Kamsack location for about ten years prior to his dismissal. His dismissal was not because of one act or error but because of a series of errors and omissions.

I should say at the outset that Metro Kutsak conveyed as an understanding and compassionate employer, who, at the end of the day, felt he had no alternative but to terminate Mr. Hoffert. Mr. Kutsak gave evidence in a calm, straightforward manner, giving Mr. Hoffert the benefit of the doubt wherever he could. I found Metro Kutsak's evidence to be credible and reliable.

Mr. Hoffert worked in all aspects of the business in delivery, shipping and sales, as well as warehouse organization. He was terminated on June 13, 2015 and the issues regarding his work had started about six months prior. Initially there was a mistake here and a mistake there, but in the end, Matt's Furniture Ltd. could no longer employ Mr. Hoffert because his employer did not know what he would do next to the detriment of the business. Mr. Kutsak felt he could no longer rely on Mr. Hoffert to perform even the simplest of tasks. To compound this, Mr. Hoffert appeared to be disinterested in his work and when confronted with an error, even a significant one, would merely shrug it off and say he would not do it again or say 'so fire me'. This happened repeatedly.

The first concern presented by Metro Kutsak was that entries made by Mr. Hoffert in the warehouse inventory book were often totally inaccurate such that it was impossible to know what was and what was not in stock. For example, Mr. Hoffert would indicate that there were ten fridges in stock when there were only four, or vice versa.

Most of the problems with Mr. Hoffert's execution of his duties were documented, which documents became Exhibits at this Appeal. Generally speaking, a mistake would be brought to Mr. Hoffert's attention. Mr. Hoffert would be shown the documents which reflected this mistake. It should be noted that on many of the exhibits, Metro Kutsak had made a notation of a correction or indicating the error. This added writing was not an issue at the Appeal and was adequately explained.

**Exhibit ER1** was prepared by Matt's Furniture Ltd. and showed mistakes made by Mr. Hoffert on March 21 and 27, 2015. Mr. Hoffert sent two carpets to the Fort Qu'Appelle location. Two carpets had been requested and neither of them was the right one. This resulted in confusion and extra work. An Ashley recliner had also been requested and while Mr. Hoffert said it was not in the warehouse, it was readily located when Travis Kutsak was there a few days later. On March 27, 2015, the Fort location requested one Dynamic headboard unit. Mr. Hoffert sent two, but checked off only one. These issues were discussed with Mr. Hoffert, he apologized and said it would not happen again.

**Exhibit ER2** was an invoice from a February 25, 2015 sale of a Monarch bunkbed. Mr. Hoffert entered the incorrect model number so that while a stainless-steel model was sold, the book reflected that it was a black bunkbed. This was brought to Mr. Hoffert's attention. He said it would not happen again. Mistakes like those shown in ER1 and ER2 had a ripple effect resulting in uncertainty in stock numbers throughout the business.

**Exhibit ER 3** was an invoice for the sale of a washer on April 7, 2015. Mr. Hoffert neglected to charge P.S.T. on the purchase. While P.S.T. is waived for Energy Star appliances, Mr. Hoffert did not indicate whether this was an Energy Star washer. This mistake would have repercussions to the business during an audit and was brought to Mr. Hoffert's attention. He replied that he had 'just screwed up'. Mr. Hoffert was warned that he needed to keep an eye on it and be more accurate.

**Exhibit ER 4** reflected the May 21, 2015 purchase of a dishwasher with a cheque. Mr. Hoffert did not write down the cheque number. It was company policy that the cheque number had to be noted on the sale invoice every time. More work was required as the cheque had to then be located so that the number could be written down after the fact. Again, this was brought to Mr. Hoffert's attention and he said that he had 'screwed up'.

**Exhibit ER5** was a February 27, 2015 sale invoice prepared by Mr. Hoffert reflecting the sale of two items. One was written correctly, indicating the type of appliance and make. The other was listed only with the make, with no description of the appliance sold. Mistakes like this made it more difficult to keep track of stock. When this was brought to his attention, Mr. Hoffert said it would not happen again.

**Exhibit ER 6** was an invoice for a May 6, 2015 purchase of an Amana washer. Mr. Hoffert wrote down the wrong model number and the price differential between the two models was \$400. If the consumer was delivered a higher end model than ordered, Matt's would suffer financially. If the consumer was delivered a lesser model, the consumer would be unhappy. Either way, this was not good for business. This mistake was discussed in detail with Mr. Hoffert. Metro Kutsak expressed his deep concern that Mr. Hoffert not make such errors. At this point, Mr. Hoffert was told that he had to improve or he could be dismissed. Mr. Hoffert acknowledged that he had 'screwed up' and it would not happen again.

**Exhibit ER 7** was the Account History Report for the warehouse alarm system. The alarm was to be checked every night to ensure the warehouse was locked and alarmed. One of Mr. Hoffert's duties was to check the warehouse at 5:30 PM each the day and ensure the alarm was on. Each employee had his/her 'punch code' so that there was a record of who armed the alarm and who turned it off. The time was also noted. Monthly, a report was generated detailing this information. ER7 demonstrated that a delivery person had opened the warehouse at 5:04 PM on May 14, 2015. Mr. Hoffert was to have alarmed the warehouse that day at 5:30 PM. He did not do so and thus, the warehouse was not armed for six days – until May 20, 2015. This was a very serious error as the warehouse contained a substantial amount of inventory. When Matt's Furniture Ltd. received the May report at the beginning of June, 2015, Mr. Hoffert was confronted and warned that he would be fired. Mr. Hoffert's response was 'go ahead and fire me because I'm not quitting'. By this time, Metro Kutsak was suspicious that the errors being made by Mr. Hoffert were deliberate. Every day he was concerned about what Mr. Hoffert would do next.

A June 2, 2015 incident was narrated by Metro Kutsak. When Mr. Kutsak arrived at the Kamsack store at 8:55 AM that day, the "OPEN" sign was blinking. Mr. Hoffert had not shut it off the night before. This would lead customers to think the store was open when in fact it was not. When Mr. Hoffert went out at 11:00 AM that date, he shut the sign off. In other words, customers would think the store was closed when it was open. When confronted, Mr. Hoffert said 'so fire me'. Mr. Kutsak told Mr. Hoffert that he would fire him if this continued.

**Exhibits ER 8 and ER9** were Delivery Tickets from Restwell Mattress Co. They demonstrate a big mistake made by Mr. Hoffert regarding a delivery from Restwell Mattress Co. Mr. Hoffert checked off that four mattresses were received from Restwell, when in fact these were four bases. Not only was there a price differential that would affect Matt's Furniture Ltd., but the inventory account would be skewed. This was not a new component of Mr. Hoffert's duties; he had been accepting deliveries and noting the contents for years. On June 4, 2015, Mr. Hoffert called Metro Kutsak to tell him of his mistake. Mr. Hoffert said 'go ahead and fire me – I know I screwed up but I am not quitting'. Mr. Kutsak gave Mr. Hoffert an ultimatum: that he had had it and that Mr. Hoffert was on track to be fired if this continued. Again, Mr. Kutsak thought that this could have been intentional on the part of Mr. Hoffert.

**Exhibit ER 10** was an invoice from June 4, 2015. This was the final straw. On June 4, 2015, Mr. Hoffert sold four appliances to Kamsack Housing Ltd. and neglected to invoice, or bill, Kamsack Housing Ltd. Had this mistake not been caught, Matt's Furniture Ltd. would have suffered a financial loss. Metro Kutsak noticed this error on June 10, 2015 and confronted Mr. Hoffert about it. The following day, he discussed this again with Mr. Hoffert, who replied 'so fire me'. Mr. Kutsak pondered this for a day or two and then on June 13, 2015, he drove to Kamsack and fired Mr. Hoffert. After the fact, when he examined his business's figures, Mr. Kutsak noted that towards the end of Mr. Hoffert's employment with Matt's Furniture Ltd., sales were dropping and that there was some recovery in the months after Mr. Hoffert was gone.

As previously indicated, I found Mr. Kutsak to be a kind, compassionate employer but he was at his wits end. Mr. Hoffert's mistakes were accumulating quickly. At the outset, Mr. Hoffert would apologize and say he would improve. Towards the end, when confronted, Mr. Hoffert would respond 'so fire me because I am not quitting'.

On cross-examination by Mr. Schmidt, Metro Kutsak's credibility was unchallenged. Mr. Schmidt questioned Mr. Kutsak regarding his discipline procedures. Mr. Kutsak advised that Matt's Furniture Ltd. was a small family business and that he kept hoping that Mr. Hoffert would turn it around. While there were no formal write-ups, Mr. Kutsak offered to give Mr. Hoffert copies of the documents indicating the mistakes. For example, Mr. Hoffert did not take a copy of the Alarm System Report when offered it. Mr. Kutsak told Mr. Hoffert several times that if another mistake happened, he could be fired. This evolved to a threat that a firing would be imminent.

#### **Evidence of Jason Tosh**

Jason Tosh was an employee of Matt's Furniture Ltd. and as another employee (Krista) was on vacation, in June, 2015 he went to the Kamsack store. Mr. Hoffert was responsible for the inventory book. Mr. Tosh noticed that the inventory book was inaccurate and could not be relied on. He would look in the warehouse for an item and while the book would say it was in stock, it was not. Mr. Tosh testified that this was happening about 50% of the time. In conversation with Mr. Tosh, Mr. Hoffert said that 'he would never quit, they would have to fire him'. Mr. Tosh also testified that Metro Kutsak was a fair employer and when an employee made a mistake, Mr. Kutsak would suggest a correction. The employee would follow the correction and that would be the end of it.

#### **Evidence of Travis Kutsak**

Travis Kutsak is a son of Metro Kutsak. He testified that Matt's Furniture Ltd. was a family business involving his three brothers, his sister, parents and other employees. In total, there were 17 employees working in the four stores. He had worked in the business since his teens. Travis Kutsak gave evidence regarding the weekly Transfer Sheet system used by the business. These sheets were used by one location to request items from another. These sheets were faxed from location to location and of course, had to be accurate to ensure the correct items were shipped. Travis Kutsak noticed that Mr. Hoffert's mistakes with these sheets commenced in February, 2015.

**Exhibit ER11** was a Transfer Sheet for February 27, 2015. Travis Kutsak had ordered 1 Amana washer, model number 7500. Mr. Hoffert had written over that model number and changed it to model number 7300. The price difference between the two models was \$400 and had the mistake not been caught and the wrong model shipped to the customer, Matt's Furniture Ltd. would have lost that \$400. Mr. Hoffert acknowledged his mistake and said it would not happen again.

**Exhibit ER12** was a Transfer Sheet for March 21, 2015. This was previously referred to in Metro Kutsak's evidence. Mr. Hoffert had crossed out a recliner indicating that Kamsack did not have it. Travis Kutsak travelled to Kamsack to look for it and found the recliner was on the show room floor. Travis Kutsak questioned Mr. Hoffert regarding this mistake. As Mr. Hoffert would have had to unload this specific recliner to put it on the floor, Travis Kutsak was mystified. Mr. Hoffert apologized and said it would not happen again.

**Exhibit ER13** was a Transfer Sheet for March 27, 2015. A four-piece bed had been requested. Mr. Hoffert sent one set and part of another set.

**Exhibit ER14** was a Transfer Sheet for April 20 – 24, 2015. Mr. Hoffert added a fridge that had not been requested. Travis Kutsak confronted Mr. Hoffert and asked why he was continually making errors. He warned Mr. Kutsak that he might be fired if it continued. Mr. Hoffert replied 'do what you have to do'.

**Exhibit ER15** was a May 15, 2015 Transfer Sheet. Three recliners had been requested. Mr. Hoffert shipped two recliners and part of a loveseat. Travis Kutsak confronted Mr. Hoffert who said that he had misread the tag on the item and thought it was a recliner. Travis Kutsak told Mr. Hoffert that 'this needed to stop'. Mr. Hoffert's response was 'so fire me'. Mr. Kutsak also asked Mr. Hoffert what was going on; how could he continue to make these errors. There was no response. From that point on, Travis Kutsak could not rely on the numbers provided by Mr. Hoffert and as a result he had to make frequent trips from Fort Qu'Appelle to Kamsack to check. Travis Kutsak began to think that the Mr. Hoffert just did not care anymore.

**Exhibit ER16** was a Transfer Sheet for May 29, 2015. Mr. Hoffert had written on the sheet that he did not have three of the requested items. When Travis Kutsak went to Kamsack to check a few days later, all three items were there. Travis Kutsak became angry with Mr. Hoffert indicating that he had had enough. He asked why this was happening. Mr. Hoffert provided no explanation and said 'go ahead – do what you have to do'.

Travis Kutsak described other incidents in a general way. Mr. Hoffert oversaw the stock inventory book at Kamsack and he discovered that the numbers were often incorrect. Mr. Hoffert would change around the displays of furniture. This was against company policy – all the Matt's Furniture Ltd. stores were to have the furniture configurations organized in the same way. This made it easier to locate specific items of furniture and maintained consistency for the benefit of customers. Travis Kutsak had to ask Mr. Hoffert to put things back numerous times.

Travis Kutsak gave evidence about the error on June 4, 2015 described by Metro Kutsak and reflected in Exhibit ER8. Travis Kutsak viewed this as a costly mistake and told Mr. Hoffert that enough was enough and that he could expect to be fired. The family discussed this and the following week, Metro Kutsak fired Mr. Hoffert.

On cross-examination, Travis Kutsak agreed that he had never 'written up' Mr. Hoffert. As it was a smaller family business, all discussions and warnings were verbal. When asked, Travis Kutsak said that the business had lost money because of Mr. Hoffert's errors. Initially, when Mr. Hoffert acknowledged his mistakes, he was contrite and said he would try harder next time. The owners hoped Mr. Hoffert would be more diligent, but the mistakes were mounting up such that termination was the only recourse. When Mr. Hoffert's responses were consistently 'so fire me', it was Travis Kutsak's belief that Mr. Hoffert just did not care.

#### **IV. Evidence of the Respondent**

##### **Evidence of Dave Hoffert**

One witness was called on behalf of the Employee – David Hoffert. He filed a written statement, marked as Exhibit EE2 and gave *viva voce* evidence. Mr. Hoffert provided some explanations or comments in response to the evidence of the Kutsaks. With respect to entering the wrong model number for the bunkbed as reflected in Exhibit ER2, Mr. Hoffert agreed that he had made that mistake and must have been confused about the numbers. With respect to Exhibit ER3, the failure to apply the P.S.T, Mr. Hoffert stated that it was an honest mistake and he must have been confused and told the Kutsaks he would double check in the future.

Regarding the failure to set the alarm system as per Exhibit ER7, Mr. Hoffert's evidence was confusing. He initially attempted to deflect responsibility onto another employee, the delivery man Michael, but then stated that it was his responsibility to set the alarm on May 14, 2015 and that he should have checked between May 15 and 20, 2015. He provided no explanation for this omission. During his evidence, it took him a while to admit that this was in fact an error that could have had serious consequences.

Regarding Exhibit ER8, Mr. Hoffert agreed that he should have checked off 'bases' and not mattresses. He testified that he checked the wrong column accidentally. He realized this was a 'big, big mistake', which is why he called Metro Kutsak who was in Toronto at the time. Mr. Hoffert had no recollection of his conversation with Mr. Kutsak and so did not recall if he was told he could be fired.



About his failure to invoice Kamsack Housing, as shown in Exhibit ER10, Mr. Hoffert could only say that this was not wilful, but was another honest mistake. There was no further explanation. Mr. Hoffert did explain why he said there was no recliner at the warehouse, which Travis Kutsak referred to in Exhibit ER12. He said the warehouse was disorganized, although he did allow that Travis Kutsak had no trouble finding it. With respect to the error shown in Exhibit ER13, Mr. Hoffert said that he put one set on the truck and that another employee put on the second set. The inference was that this was the fault of the other employee, although Mr. Hoffert agreed he should have been keeping track.

Mr. Hoffert agreed that on Exhibit ER14 he added the fridge and this was an error. Mr. Hoffert had no recollection of the May 15, 2015 issue about shipping two recliners and part of a loveseat, instead of three recliners.

Regarding the issue with the 'Open' sign on June 2, 2015, Mr. Hoffert acknowledged that he may have turned it off when the store was open for business. His explanation was that it was just a mistake.

Despite very unequivocal evidence from the Kutzaks, Mr. Hoffert repeatedly denied telling both Metro and Travis to 'fire him'. He testified he said it only once, when a fridge fell off the truck. This incident of a fridge falling off a truck was not mentioned at all in the evidence of the Appellant's witnesses.

Mr. Hoffert gave evidence regarding the inventory book. He was aware that it was not accurate all the time, but stated that others made incorrect entries as well. He viewed the book as a guide to what was in stock, not a definitive list of what was in stock, but did not explain further as to what benefit the inventory book would be if it was not completely accurate.

Mr. Hoffert testified that Travis Kutsak told him he could reorganize the Kamsack store any way he wanted, so he rearranged everything to what he thought was best. Given the business' policy of maintaining the same furniture configurations or organization in each store, this statement of Mr. Hoffert's is just not credible.

Mr. Hoffert's version is that on June 13, 2015, he was fired out of the blue. He was moving some furniture to a rental property when Metro Kutsak came and told him he was making too many mistakes and he had to let him go.

It should be noted that while I have referred to Mr. Hoffert's lack of explanations for some of his mistakes, at all times the onus is on the Appellant to demonstrate that Mr. Hoffert was terminated for cause, on a balance of probabilities. However, the lack of any sort of explanation, to his employers at the time or at the hearing, I find enhances the employer's argument that it was left with no choice but to terminate Mr. Hoffert.

Mr. Hoffert agreed that Metro Kutsak asked him if wanted copies of the document reflecting the alarm system mistake and he declined.

## **V. Analysis and Decision**

The onus is on the employer to demonstrate that on a balance of probabilities, or, that it was more likely than not, that it had just cause to terminate the employment of Mr. Hoffert.

I found David Hoffert to be less than straightforward in his evidence, with a selective memory. While he admitted to some errors and omissions, he would try to deflect responsibility for them as being 'honest mistakes' or the fault of some other person. Other mistakes he denied or simply just did not recall. It was obvious that in May, 2015 he knew his job was on the line. That Mr. Hoffert continually challenged his employer to 'fire me' is indicative that he knew his mistakes were serious and that he anticipated that his employer would tolerate this no longer. It is not for me to determine why Mr. Hoffert was making these mistakes after many years on the job performing the same duties. The only explanation he provided, when pressed, was that the stress of making mistakes was stressing him out. It was clear from his demeanour when giving evidence that at some point, Mr. Hoffert had become apathetic in his job and was no longer diligent in his work.

Where his evidence differs from that of Metro Kutsak and Travis Kutsak, I accept the evidence of the Kutsak's and accordingly discount the evidence of Dave Hoffert.

Written argument was provided by both parties and these are marked as ER17 (Appellant) and EE3 (Respondent). The Respondent argued that there was a failure on the part of the employer to apply the concept of progressive discipline, and therefore the employer could not rely on its position of just cause for termination. While it has been recommended that in some employment situations progressive discipline be practiced by employers, there is no legal requirement for it. Essentially, the Respondent argued that it was incumbent on the employer to provide Mr. Hoffert with written warnings, with escalating consequences for his actions, until he was formally warned that the next mistake would result in termination.

However, the errors of Mr. Hoffert and the responses by his employer must be viewed in context. This was a small family business with only a handful of employees who were not family members. Up until the infractions commenced, Mr. Hoffert had had no employment issues. While Mr. Hoffert was not necessarily 'written up', there is written proof of his errors and the anecdotal evidence of Metro Kutsak regarding verbal warnings. The Respondent argued that a failure to write up Mr. Hoffert and apply progressive discipline amounts to a condonation or an excusing of the behaviour such that the employer cannot rely on it for termination. Warnings are an important part of any discipline process and the employer should be able to rely on them.

The law in the area of dismissal for cause has been canvassed in three recent Saskatchewan decisions. In the most recent decision, *Parkinson v Kemh Holdings Limited*, 2013 SKQB 172 (CanLII) para 15 Justice Danyliuk states:

[15] "Just cause" can include serious employee misconduct such as theft, habitual neglect or incompetence, wilful disobedience or insubordination, or acts prejudicial to the employer's business. In some such circumstances, immediate summary dismissal is warranted. In others, warnings are required. But in virtually every case, the inquiry of the court is whether the employee has engaged in some misconduct or neglect that is not compatible with the basic and fundamental terms of the employer/employee relationship."

With respect to warnings, Justice Danyliuk at para [29] further reiterates:

"As stated in *Duffett v. Squibb Canada Inc.* (1992), 1991 CanLII 7038 (NL SCTD), 95 Nfld. & P.E.I.R. 61, 39 C.C.E.L. 37 (Nfld. S.C.), at para. 25:

"Warnings are sufficient where they refer to the areas of employer concern, and where, objectively, it could be implied that the employee's job is in jeopardy unless the employer's concerns are satisfied. There is no requirement that the warnings be in writing however it must be given in clear terms and the employee must understand and appreciate the significance of the warning."

As well, with respect to warnings, in *Radio CJVR Ltd. v. Schutte*, 2009 SKCA 92 (CanLII) at para [20] the Honourable Madam Justice Smith referenced the decision of Klebuc J. (as he then was) in *Graf v. Saskatoon Soccer Centre Inc.* 2004 SKQB 282 (CanLII), [2005] 4 W.W.R. 522 at para. 28:

“It is also well established that where an employer relies on a series of inadequacies or inappropriate conduct short of dishonesty as grounds for summarily dismissing the employee, the employer must have previously informed the employee of his or her inappropriate conduct or inadequate performance and have warned the employee that she or he must correct the noted problems within a reasonable specified time or face dismissal. The essential elements of the requisite warning are set out in *Wrongful Dismissal Practice Manual*....They essentially provide for the following:

- (a) the employer must provide reasonable objective standards of performance for the employee in a clear and understandable manner;
- (b) the employee must have failed to meet the employer’s reasonable standard of performance;
- (c) the employer must give the employee a clear and unequivocal warning that she or he has failed to meet the requisite standard, including particulars of the specific deficiency relied on by the employer;
- (d) the warning must clearly indicate that the employee will be dismissed if he or she fails to meet the requisite standard within a reasonable time.”

I find that all four elements have been proven by the Appellant.

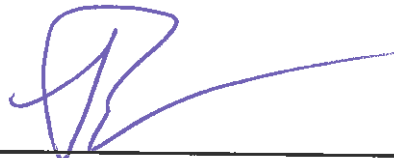
While Matt’s Furniture Ltd. did not put any of the warnings in writing, the number of acts giving rise to their position that Mr. Hoffert had to be terminated were sufficiently documented and I find that each of the transgressions occurred. Moreover, Mr. Hoffert was verbally warned at the relevant times. Metro Kutsak testified that with respect to one major incident – that of the failure to alarm the warehouse, he asked Mr. Hoffert if he wanted a copy of the sheet demonstrating their concern and Mr. Hoffert said no. To that extent, documentation was offered to Mr. Hoffert and declined. Keeping in mind that this was a small business and on each occasion Mr. Hoffert was confronted with his error, which was documented in black and white as indicated in the various exhibits, I find that the employer’s failure to specifically write out the details of each transgression and have Mr. Hoffert acknowledge them is not fatal to its claim that Mr. Hoffert was terminated for cause.

The level of difficulty of the tasks or jobs required of Mr. Hoffert was not high. These were all tasks that he had performed in the past and was fully capable of performing. Whether his incapability or disinclination to perform these tasks was deliberate, the result of negligence or due to lack of diligence – these errors did affect his employer's business. Mr. Hoffert was fired because the mistakes he had made, and was continuing to make, had escalated to the point that Mr. Hoffert could no longer be trusted to perform even the simplest of jobs. As Metro Kutsak testified: it got to the point where every day they wondered what Mr. Hoffert was going to do next. As such his continued employment became untenable. In other words, there was a permanent breakdown of the employer-employee relationship that put the business of Matt's Furniture Ltd. at risk.

## **VI. CONCLUSION**

The appeal is allowed. Pursuant to s.4-6(1)(a) of *The Saskatchewan Employment Act*, the wage assessment and the decision of the Director are revoked.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 9<sup>th</sup> day of January, 2017



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Leslie T.K. Sullivan, Q.C.  
Adjudicator

### Exhibit List

| Employer Exhibit | Item  | Employee Exhibit | Item               |
|------------------|---|------------------|--------------------|
| ER 1             | Error's Made by Dave                          | EE 1             | Wage Assessment    |
| ER 2             | Feb. 25, 2015 Invoice 12260                   | EE2              | Statement          |
| ER3              | April 7, 2015 Invoice 12334                   | EE3              | Written Submission |
| ER4              | May 21, 2015 Invoice 12404                    |                  |                    |
| ER5              | Feb. 27, 2015 Invoice 12266                   |                  |                    |
| ER6              | May 6, 2015 Invoice 12383                     |                  |                    |
| ER7              | Account History Report May 1- June 1, 2015    |                  |                    |
| ER8              | Receiving Report June 4, 2015                 |                  |                    |
| ER9              | Restwell Mattress Co. Delivery Tickets (2 pp) |                  |                    |
| ER10             | June 4, 2015 Invoices 122418 – 122421 (4 pp)  |                  |                    |
| ER11             | Feb. 27, 2015 Feb. 27, 2015 Transfer Sheet    |                  |                    |
| ER12             | March 21, 2015 Transfer Sheet                 |                  |                    |
| ER13             | March 27, 2015 Transfer Sheet                 |                  |                    |
| ER14             | April 24 Transfer Sheet                       |                  |                    |
| ER15             | May 15 Transfer Sheet                         |                  |                    |
| ER16             | May 29/15 Transfer Sheet                      |                  |                    |
| ER17             | Written Submission                            |                  |                    |

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at [www.saskatchewan.ca](http://www.saskatchewan.ca).

#### **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.

(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 persons mentioned in clause 4-4(1)(b) who received the notice setting the appeal or hearing.

(4) The record of an appeal is to consist of the following:

- (a) in the case of an appeal pursuant to Part II, the wage assessment or the notice of hearing;
- (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
- (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

#### **Appeal to Court of Appeal**

**4-9(1)** With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.

(2) A person, including the director of employment standards, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.

(3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

#### **Right of director to appeal**

**4-10** The director of employment standards has the right:

- (a) to appear and make representations on:
  - (i) any appeal or hearing heard by an adjudicator; and
  - (ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and
- (b) to appeal any decision of an adjudicator or the board.