

DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTIONS 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT



APPELLANTS:
(Employer) Black Pearl Trucking Inc.
(Directors) Brian Vanderhook and Tracy Vanderhook

RESPONDENT:
(Employee) Roch Paquet

Paul DeBruin, Employment Standards Officer, appearing for Government of Saskatchewan,
Ministry of Labour Relations and Workplace Safety, Employment Standards Division

DATE OF HEARING: November 17, 2017, 1:00 p.m.

PLACE OF HEARING: Conference Room
Kramer Building
1146-102nd Street, North Battleford

I. INTRODUCTION

This is an appeal by the Employer, Black Pearl Trucking Inc., from a Wage Assessment in the amount of \$1,658.46 in favour of the Employee, Roch Paquet, dated August 28, 2017.

The amount of the Wage Assessment is not in dispute; the only issue is whether Roch Paquet was fired, and entitled to pay in lieu of notice pursuant to s. 2(60) of *The Saskatchewan Employment Act*, or, if he quit his employment and is not entitled to notice.

The Ministry provided information in advance of the Hearing confirming the Employer's appeal and appeal deposit were received within the time requirements in s. 4-4(4) and s. 4-5(1)(b) of *The Saskatchewan Employment Act*.

II. EVIDENCE

Black Pearl Trucking is owned and operated by Brian and Tracy Vanderhook and has been in business for eleven years. It owns a fleet of five to six trucks which haul oil and water for Husky Energy in the Lloydminster, Saskatchewan area.

Roch Paquet was employed as a truck driver by Black Pearl from October 2014 to November 27, 2016. He was paid \$26/hour, after agreeing to a pay reduction earlier in 2016. Each morning he received a list from dispatch of the different wells where he was to pick up oil or water then transport to an appropriate battery or disposal unit. As a professional truck driver he was to do so in a timely and efficient manner. He was also to maintain and clean his truck and ensure it was in good working condition.

Each of Black Pearl's fleet trucks was fitted with a GPS which ran on a program called 'Fleetmatics' - commonly used in the industry. Fleetmatics allowed Brian to follow every truck in his fleet in real time, including location, speed and conditions. He could track the driver's hours and also locate the vehicle in case of emergency.

Brian emphasized that in the oil path hauling business, time is money, and the large trucks are expensive to operate. Drivers are expected to use the shortest and most efficient routes. They are professionals and should not need a GPS to tell them where they are on routes they have driven dozens of times. The GSP is helpful to locate new wells or new pick-up locations.

Prior to November 27, Tracy testified, an issue came up with several of the drivers. The drivers' time sheets (from which they were paid) and the time records on the computer program did not match; it appeared the drivers were padding their time. She verified with Fleetmatics that the program was working correctly, then asked each of the drivers, including Roch, to bring their log books in to review against the reports.

She and Brian met with several drivers with their log books and all agreed that instead of rounding times to the nearest half-hour (which the drivers almost always did in their own favour), time records would be kept to the exact minute. Roch told Tracy several times in the three to four weeks prior to his departure from the company that he would bring in his books for a meeting, but failed to do so.

Tracy speculated the time issue led to some "bad feelings" between the Employer and Roch. Although the dispute was resolved with the other drivers, the meeting with Roch had not occurred and some tension may have lingered. Tracy also mentioned she and Brian were "quite fond" of Roch while he worked for them.

Brian testified that he had decided to lease one of his trucks to a former driver. While preparing for this he switched the GPS in the truck Roch usually used with the GSP in the truck that would be leased. Roch's truck's GPS was more reliable, and had recently been updated.

When Roch was checking over his truck on the morning of November 27 he noticed the GPS had been changed. Later that morning he texted another driver, Kevin, to ask why. Kevin explained by text that the switch was to allow him to locate some 'different wells'.

A few hours later Roch was driving his truck with a load on Highway #16 on route to a battery located off the Waseca grid road. The morning had started off somewhat foggy, and it was extremely foggy in the area where Roch was to make the left-hand turn. Roch saw a familiar road sign and calculated the approach was coming up in about two miles. He moved into the left-hand lane of the twinned highway in order to take the left turn, but he could not see the approach and he did not have a properly working GPS to tell him precisely where he was. He usually navigates by a landmark on the right-hand side of the highway just before the turn, but Roch said he did not see it, likely because a semi passed him on the right as he neared the approach area. As he did not know where he was, he moved back into the right-hand lane to wait until it was safe to make a turn. He drove approximately 15 kilometres until he saw what he thought was the next access.

Brian phoned Roch. The two parties have different recollections of what was discussed.

Brian testified that he asked Roch why he was so far away from the battery, and Roch "just lost it" and became extremely abusive. Roch swore and yelled at Brian for taking the GPS out of the truck, saying that was why he had failed to make the turn. Brian replied that Roch was a professional driver on a familiar route and he should not need the GPS to find his way; if the driving conditions were that bad he should return or park.

Roch testified during the phone call Brian asked him "what the f--- are you doing?" When Roch told him it was foggy and he had missed the turn, Brian then told him to "get a f---ing brain" and said you should be able to drive the route with your eyes closed. Roch interpreted this as saying he was fired. Roch said he would park at the drop-off point and wait for the fog to dissipate. He said he never yelled at Brian or called him any names.

Brian noted in his evidence at the Hearing there were actually three potential turn-offs to the battery; the closest was the Waseca grid road, then there was a road adjacent to the campground, and further down the highway a third access on Highway #21 north, about 24 kilometres from the first turn. Roch missed the first two and eventually turned on the third. Roch said he was completely unaware of the second access.

Justin Arishenkoff gave evidence on behalf of the Employer that he was also working as a truck driver for Black Pearl Trucking on November 27, 2016. He acknowledged it was a foggy day; not unusual for the area. During the morning he received a telephone call from Roch. Using colourful language, Roch told Justin the weather sucked, he "had enough of Brian's b---s---", and he was done – he quit. Roch went on to say he was waiting at the disposal unit until the fog lifted, then returning to the shop. Justin said he would take care of Roch's two remaining loads.

Justin texted one of the other drivers, Kevin Gibson, saying Roch had quit. Justin then phoned Brian on his cell phone, told him what Roch had said, and indicated he was coming in to take over Roch's loads. He and Brian arranged who would drive which load and Brian said he would come into the depot to take one of them.

Roch testified he never made a phone call to Justin. He said he exchanged texts with the driver Kevin, which he produced at the Hearing as photocopies of a series of screen shots from his cell phone (Employee Exhibit #4). Kevin apparently started the conversation at 14:28 with “Wtf... you quit??” Roch replied with a long explanation of what had happened, similar to his testimony at the Hearing. He includes a separate text from himself at 18:02, stating “Got fired!”

Kevin did not testify at the Hearing, the actual phone was not produced, and it is impossible to tell if the conversation is replicated in whole on the screen shots produced, so I gave this information little or no weight.

Roch also produced other texts, some undated, and some from April of 2016 which are not relevant to the matter at hand.

Roch and Brian agree they saw each other when Roch returned the truck to the shop. Brian testified Roch appeared mad, did not say anything, but simply packed up his personal items from the truck cab, including his gloves and hard hat. Brian jumped in the truck to take care of a remaining load run.

In his evidence Roch said he texted Brian a couple of days later, asking Brian why he was telling people Roch quit. I never quit, Roch claimed he said in his text, it was clear that day I was being fired. Roch did not have the text available, explaining it was on an old, damaged phone which would cost \$300 to fix. It was not clear whether this was the same phone from which he had pulled the other texts offered in evidence at the Hearing.

Brian denied he ever received this text and stated he never spoke to Roch after November 27. Roch had two more days remaining on his seven day shift, but did not come into work on either of those two days. Brian explained that in the oil servicing industries it is not uncommon for workers to suddenly come and go – it is the nature of the industry.

Roch also claimed Brian came to Roch’s apartment to drop off his final pay cheque, and told him ‘you quit and are not entitled to notice’.

Tracy testified that she, not Brian, brought Roch his final pay cheque, after she talked to him on the telephone. Brian and he never had any interactions after the 27th.

III. ANALYSIS

The issue is whether Roch Paquet quit his employment with Black Pearl Trucking or was fired by Brian Vanderhook.

In support of Mr. Paquet’s claim, the Employment Standards Officer referred to my recent decision in *119076 Alberta Inc. o/a/ The Lone Star Hotel v. Thomas Schwab* and the cases cited in that decision.

The courts have held an employee must clearly and unambiguously show an intention to resign. The test to determine if an employee has quit or been terminated from their employment is whether a reasonable person in the circumstances would have understood the employee to have unequivocally terminated the employment relationship (i.e. 'quit').

Skidd v. Canada Post Corporation, [1997] O.J. No 712 (QL) (Ont. C.A.)

Kieran v. Ingram Micro Inc., 2004 CanLII 4852 (ON CA), 33 C.C.E.L. (3d) 157 (Ont. C.A.)

I find the evidence supports the Employer's contention that Roch quit.

I have no doubt both parties were rude, abusive and irate during the November 27 cell phone conversation. I accept Brian Vanderhook's evidence that Roch told him he was quitting. If this was the only evidence, however, it would not be sufficient to establish Roch's intention to resign. Words said in anger or the heat of the moment can be recanted; they must be evaluated in the context of Roch's other words and actions.

Kerr v. Valley Volkswagen, 2014 NSSC 27 (CanLII), affirmed 2015 NSCA 7 (CanLII)

The Employee's subsequent deeds provide more objective evidence.

Justin Arishenkoff gave evidence that Roch phoned Justin to tell him he quit. Roch denied making this phone call. There is no reason why Justin would lie about the call. Furthermore, if he had not heard from Roch, why would Justin phone Brian and make arrangements for them to handle Roch's remaining loads? If Justin had not phoned Brian to confirm Roch was quitting, there was no reason for Brian to come to the shop to take over one of the loads.

I find Roch's claim that he did not communicate with Justin to be self-serving and I believe Justin Arinshenkoff's evidence.

When he returned to the shop, Roch removed his personal items from the truck in Brian's presence. Items such as his gloves and hard hat would normally remain with the truck until his seven-day rotation was complete. Brian viewed this as further evidence that Roch was quitting.

Roch furthermore did not come into work for the next two days when he was scheduled to work. He never again contacted his employer. The Employer concluded Roch had walked away from the job.

Roch incorrectly claimed Brian came to his apartment with his final pay cheque and they had a further conversation. In fact it was Tracy who delivered the cheque. Where Roch's evidence varies from that of Brian and Tracy Vanderhook, I prefer the evidence of the Vanderhooks; where the facts were not in his favour, Roch's recollection of events became vague or erroneous.

I find that given the events of November 27th and the following days a reasonable person would conclude Roch quit his employment with Black Pearl Trucking.

IV. CONCLUSION

The Employer's appeal is allowed and the Wage Assessment is overturned.

Dated at North Battleford, Saskatchewan: November 28, 2017.

Original signed by

Karen C. Ulmer
Adjudicator

EXHIBITS – Employer

1. Handwritten statement of Justin Arishenkoff, February 7, 2017
2. Handwritten statement of Kevin Gibson, undated

EXHIBITS – employee

1. Letter from Black Pearl Trucking Inc. to Paul De Bruin, Employment Standards Officer, January 23, 2017
2. Corporate Registration search results for Black Pearl Trucking Inc.
3. Record of Employment for Roch Paquet, dated December 6, 2016
4. 8 pages of screen shots of text from Roch Paquet's phone, some undated, some dated April 19, 2016 and some dated November 27, 2016
5. Email containing statement of Roch Paquet, December 21, 2016

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.

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.