



**DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION PURSUANT TO SECTION 2-75
AND 4-6 OF *THE SASKATCHEWAN EMPLOYMENT ACT***

APPELLANT: **SOLID FUTURES LEARNING CENTRE CO-
OPERATIVE LIMITED**

RESPONDENTS: **LINDSAY ANDERSON and DIRECTOR OF
EMPLOYMENT STANDARDS**

Andrew Langgard, Employment Standards Officer, and **Lee Anne Scheinbein**, Lawyer,
Appearing for the Director of Employment Standards

DATE OF HEARING: **March 1, 2017**

PLACE OF HEARING: **3rd Floor Boardroom
1870 Albert Street
Regina, Saskatchewan**

LRB File No. 279-16; Wage Assessment No. 8381

I. INTRODUCTION

This is an appeal of a Wage Assessment brought by Solid Futures Learning Centre Co-operative Limited (Solid Futures or the Centre). Wage Assessment No. 8381 directed Solid Futures to pay \$1,144.49 to Lindsay Anderson or appeal pursuant to section 2-75 of *The Saskatchewan Employment Act* (the Act).

On March 1, 2017, the following individuals attended the hearing:

- Jenifer Kostur (Jenifer), Executive Director of Solid Futures, witness for the Appellant;
- Carrie Birrell (Carrie), Supervisor for Solid Futures, witness for the Appellant;
- Josh Haugerud, Vice President of the Board of Directors for Solid Futures, witness for the Appellant;
- Lindsay Anderson (Lindsay), former employee and early childcare educator for Solid Futures, witness for the Director of Employment Standards (the Director);
- Andrew Langgard, Employment Standards Officer;
- Lee Anne Scheinbein, Lawyer for the Director; and
- Daniel Parrott, Director of Legal and Education Services, as observer.

II. PRELIMINARY MATTERS/OBJECTIONS

Representation of the Employee

At the outset of the hearing, Andrew Langgard advised that he was representing the Director and “only the Director” and that Lindsay was appearing as a witness for the Director. Section 2-87(1)(a) of the Act says the Director has standing to represent employees in wage assessment appeals but subsection (2) says the Director is not required to represent employees. Subsection (3) says the Director in exercising the power set out in subsection (1) must act in a reasonable manner.

I am not sure why the Employment Standards Officer was not representing the employee in this matter. There was no indication of a conflict of interest between the Director’s and Lindsay’s position. Lindsay took no position independent of the Director’s position. Unless I had been advised by Mr. Langgard that he was not representing the employee, I would have never known this to be the case. It seemed to me that he was representing her. If a case involving no apparent conflict of interest between the two positions does not warrant the Director’s representation of an employee, I am confused as to when, if ever, the Director would represent an employee in an appeal of a wage assessment.

In any event, Lindsay did not object to the Director’s position on this matter and she confirmed that she was advised by Mr. Langgard from the beginning that he did not represent her and that she was appearing as the Director’s witness only. Perhaps this satisfies subsection (3).

Exclusion of Witnesses

The parties agreed to an Order for exclusion of witnesses. Aside from Jenifer (the Appellant’s representative) and Lindsay (the Complainant), the witnesses entered the room when it was time for them to testify and were then free to stay.

Independence of Adjudicators

Prior to proceeding with the substantive portion of the appeal, Lee Anne Scheinbein, on behalf of the Director, raised a preliminary issue regarding the circumstances leading up to the appeal. Specifically, the Director is concerned that certain communications and/or directions from the Registrar of the Labour Relations Board (the Registrar) are an infringement upon my independence, both in determining issues relevant to the appeal as well as in determining the procedures by the which the appeal is to be conducted.

Ms. Scheinbein presented an oral argument as well as Written Submissions (EE1). The background of this issue is summarized as follows:

- Part II of the Act sets out the requirements for Employment Standards including wage assessments and the right to appeal to an adjudicator. Part IV addresses the appeals.

- The Act sets out the administrative process for the Labour Relations Board (the LRB) to select an adjudicator, set the time, day and place for the hearing in consultation with the adjudicator and the parties and give written notice of the time, date and place for the appeal to certain persons. It also provides for appeals from adjudicators' decisions to the LRB.
- Due to recent amendments to the Act, the Registrar, rather than the LRB is required to take on this administrative role.
- Although there were no substantive changes to the process of appeals to adjudicators, the Registrar communicated with adjudicators by email dated December 21, 2016 (EE1, Tab3) advising of a new appointment instrument that adjudicators would receive from the Registrar. The email goes on to provide specific direction regarding determining jurisdiction, determining parties and the role of the Director. The email includes quotes from LRB decisions.
- An Appointment dated December 21, 2016 was signed by the Registrar in this case and is attached at EE1, Tab2.

The Director takes the position that an adjudicator's jurisdiction and powers come exclusively from the Act (as set out in Parts II and IV and notably ss. 4-4(2) and (4) and 4-5(1) (a) and (b)). An adjudicator is empowered to determine the procedures for the appeal subject only to common-law principles of administrative law, including procedural fairness. The Director argues this includes identifying issues, such as jurisdiction, and deciding how and when they are considered. The Director argues any directions given to adjudicators outside of the legislation is an infringement upon the adjudicator's jurisdiction and creates an appearance that the adjudicator's independence is compromised. The Director says this is of particular concern when appeals from the adjudicator are heard by the LRB. Ultimately, the Director is concerned that communications and directions from the Registrar may fetter or purport to fetter my statutory powers and independence in determining issues and procedures relating to the appeal.

In both written and oral argument, the Director takes issue with instructions having been communicated to me prior to the hearing even though recent legislative changes made no substantive changes to the process. While the most recent changes involved a minor shift of the role of appointing adjudicators and scheduling appeals from the LRB to the Registrar, more major changes in the administration of these appeals took place not so long ago when *The Labour Standards Act* was replaced by this Act in 2014. Under the previous legislation, the LRB and its Registrar had nothing to do with wage assessment appeals. Under the new Act, the LRB and its Registrar took on an entirely new role and became responsible for the administration of wage assessment appeals. This is not a small task. I presume they are still perfecting the administrative process so that it can run in the most efficient manner possible.

The Director argues it is the adjudicator's role, not the Registrar's, to identify issues, such as jurisdiction, and to decide how and when they are considered (see point #2 of

Appointment). The Director further argues the adjudicator “may, for example, decline to consider jurisdiction unless it is raised by one of the parties.” While I agree it is the adjudicator’s role to identify issues and decide how they are considered, I respectfully disagree that I should decline to consider jurisdiction unless it is raised by one of the parties. As an adjudicator who gains my powers and jurisdiction solely through statute, I believe it is my role to ensure I have jurisdiction to act before I hear and decide the merits of a matter regardless of whether a party has raised it as an issue.

There is no doubt that my jurisdiction and powers come solely from the Act. There is also no doubt that members of an adjudicative tribunal must be able to adjudicate each case free from interference from those who appoint them. This is a fundamental principle of administrative law. Perception is also important. The process not only needs to be fair, but also needs to look fair. The Director raises some valid concerns with respect to the email to adjudicators and the Appointment, both dated December 21, 2016. Some of the language in the documents appears to direct me to take certain actions and to advise me in what order I ought to take them. The email and Appointment address some of the more technical or procedural aspects of these appeals in an attempt, I presume, to achieve a higher degree of consistency and efficiency in the process. I believe the communications were meant to be informative rather than directive despite some of the word choices. I can only speak for myself but I did not take anything in these communications to mean that I did not have the authority to conduct the appeal as I saw fit. The communications did not in fact affect my independence. In my view, the Registrar did not attempt to infringe upon my independence; however, perception is important and vigilance is in order.

Since the Director raised concerns about the December 21, 2016 email, I would like to briefly address one other aspect of it. In the third paragraph of the email, the Registrar refers to the fact that the Director maintains there is no need to provide the Wage Assessment to the Registrar or the Board. I do not understand this approach. Why would we not want full disclosure of relevant materials for these appeals from beginning to end? It seems to me that it is in the best interests of everyone involved to share relevant information. As part of the adjudicator selection process, the Registrar must check with a potential adjudicator to determine if there are any conflicts in taking on the appeal. I see no reason why the Registrar should not have a copy of the Wage Assessment before he contacts an adjudicator since it is the Wage Assessment that identifies the potential parties in the first place.

The Director took no issue with my impartiality as between the parties or with my jurisdiction to hear this appeal so I will move on to consider the merits of the appeal.

III. THE DISPUTE

On November 22, 2016, the Director’s Delegate issued Wage Assessment No. 8381 against Solid Futures. By way of a letter to the Director dated December 15, 2016 (the

Notice of Appeal), Solid Futures appealed pursuant to section 2-75 of the Act. The Notice of Appeal alleges Employment Standards failed to consider the vulnerable nature of its clientele in coming to its decision to issue the Wage Assessment. According to Solid Futures, Lindsay's actions warranted immediate dismissal because they were in direct conflict of the policies and procedures in place to protect its vulnerable clientele.

The issue is whether Solid Futures had just cause to dismiss Lindsay.

IV. THE FACTS

At the beginning of the hearing, the parties agreed to the following basic set of facts:

- Solid Futures Learning Centre Co-operative Limited is a registered business in Saskatchewan.
- Lindsay was employed as an early child care educator from January 20, 2014 to September 14, 2016.
- Lindsay earned \$14 per hour.
- If just cause is not found, the amount of the Wage Assessment is correct.

The parties tendered evidence by way of sworn and affirmed testimony and documents. Three witnesses testified for the Appellant - Carrie Birrell, Josh Haugerud, and Jenifer Kostur. One witness testified for the Respondents - Lindsay Anderson.

The following exhibits were entered into evidence:

Employer Exhibits (Appellant)

- ER1 – Copy of a statement prepared and signed by Carrie Birrell on October 4, 2016 (2 pages)
- ER2 – Copy of notes from Lindsay's employment file (6 pages)
- ER3 – Copy of excerpt from *The Child Care Regulations, 2015* (1 page)
- ER4 – Copy of excerpts from Staff Handbook and Personnel Policies (5 pages)
- ER5 – Copy of excerpts from staff information binder including Professionalism, Values, and Code of Ethics (8 pages)

Employee Exhibitss (Respondents)

- EE1 – Copy of 6-page Written Submissions regarding preliminary issue prepared by Lee Ann Scheinbein with 6 tabs attached
- EE2 – Copy of 3-page Written Submissions regarding procedural matters prepared by Andrew Langgard with 6 pages of attachments
- EE3 – Copy of Saskatchewan Corporate Registry documentation for Solid Futures (6 pages)
- EE4 – Copy of Lindsay's phone log for September 13, 2016 (2 pages)
- EE5 – Copy of handwritten statement prepared by Lindsay on September 13, 2016 (4 pages)

V. ARGUMENT

The Appellant's argument is summarized as follows:

- Solid Futures is a government licenced child care centre responsible for providing a safe and secure environment for children. Solid Futures is required to have certain policies and procedures in place to protect its vulnerable clientele.
- Staff is expected to follow the Centre's policies and procedures.
- The Code of Conduct clearly lays out what is required of its employees.
- Whether Lindsay's actions on September 13th were a momentary lapse in judgment or not, she is responsible for her actions. She was abusive to a child and parent and Solid Futures had just cause to terminate her.
- This incident alone shows she was no longer trustworthy but there is also proof of inappropriate previous behaviour.
- The child's behaviour is irrelevant.
- Lindsay's use of foul language in the Centre was in direct violation of policies and procedures and constituted grounds for immediate dismissal.

The Respondents' argument is summarized as follows:

- Sections 2-60 and -61 of the Act outline notice and pay in lieu requirements. Because Lindsay worked for Solid Futures for more than 1 year but less than 3, she is entitled to 2 weeks' pay in lieu of notice.
- The only way for an employer to avoid paying severance is to show just cause. The onus is on the employer. They have not met this burden.
- The framework for just cause was set out by the Supreme Court of Canada in *McKinley v. B.C. Tel*, [2001] 2 SCR 161; 2001 SCC 38 (CanLII). The Court discussed the principle of proportionality, the importance of work to an individual's identity, the power imbalance inherent in the employee-employer relationship, and just cause as it relates to a serious single incident or numerous less serious incidents.
- In this case, the employer cannot rely on a series of less serious incidents because there was no disciplinary action taken by the employer. There were no formal warnings.
- While the Director and Lindsay do not dispute that disciplinary action was warranted, immediate dismissal was not proportional to the behaviour. The employer could have moved Lindsay or suspended her. They could have written her up and given her a clear and unequivocal warning. Any of these actions would have been more appropriate and more consistent with the need for proportionality as outlined by the Supreme Court of Canada.
- According to the Handbook, the use of profanity warrants immediate dismissal but situations outlined in the Handbook do not necessarily warrant just cause.
- Much of the employer's evidence in this case was based on hearsay. Lindsay was the only person who testified who was present during the entire relevant time period.

- Lindsay testified in an honest and straight forward way and her testimony warrants more weight.
- Lindsay's use of profanity was a momentary lapse in judgment. She felt threatened by a parent and by a contentious argument taking place between that same parent and another parent. She was emotional and regrets her word choices. She was honest about it and provided a detailed statement to her employer. She wanted to improve herself.
- Lindsay was terminated without notice. The employer failed to meet its onus. She is owed 2 weeks' pay in lieu of notice. The appeal ought to be dismissed and the Wage Assessment upheld.

VI. ANALYSIS AND DECISION

Solid Futures takes no issue with the way in which the Wage Assessment was calculated. If Lindsay's employment was terminated without just cause, she is owed \$1,144.49, the amount claimed in the Wage Assessment.

Based on uncontroverted evidence, I make the following findings of fact:

- Lindsay worked for Solid Futures for more than 2 but less than 3 years and was earning \$14 per hour at the time of her dismissal.
- Lindsay was a valued employee because she was a good teacher. She was good with the kids and most parents liked her. She excelled on the creative and programming side of her job. She was acting supervisor when Jenifer and Carrie were both away from the Centre.
- Lindsay was a blunt person and had difficulty controlling her emotions. At times, she became overwhelmed and would cry or lash out in anger. Her anger was typically directed at other staff.
- Lindsay was given a Handbook when she started that included the Centre's policies and procedures and Code of Ethics.
- Performance reviews were not completed as a matter of course. Jenifer intended to complete them but due to time constraints, they did not take place when they should have.
- Jenifer talked to Lindsay several times about her anger and interpersonal skills but Lindsay was never warned or disciplined for her behaviour (ER2).
- Towards the end of the day on September 13, 2016, both Jenifer and Carrie were away from the Centre. Because one of Lindsay's students had had a particularly challenging day, she decided to speak with his mother about it when she arrived to pick up her children. The child had behavioural issues (hitting, punching, foul mouth, difficult to handle) and the mother was known to be dismissive of the idea of her children doing anything wrong. Other staff members preferred to leave interactions with this parent up to Jenifer.

- The situation got out of control very quickly. Lindsay became upset and called Carrie who came back to the Centre to assist. Lindsay lost control of her emotions and ended up using profanity before leaving the Centre.
- Carrie witnessed some of what happened on September 13. There were several other witnesses to the events but they were not called to testify. The only witness to testify who was present throughout the entire course of events was Lindsay.
- Lindsay was called into the Centre the next morning and she was terminated on an immediate basis for using profanity. On the evening of September 13, Lindsay prepared a written statement describing what happened (EE5). She planned to give it to her employer the next day. She did give it to Jenifer on September 14 but the decision to terminate her had already been made.

Based on the evidence, I believe that Lindsay felt threatened by the parent in question and that she felt her employer was not backing her up. She clearly lost control of her emotions. Carrie was dealing with both an emotional employee and parent, and had the added pressure of trying to resolve the situation quickly to minimize the risk of other children and parents seeing or overhearing the emotionally-charged situation. No doubt, Carrie was in a difficult situation. The parent was threatening to pull her children from the Centre unless Lindsay was fired.

I found the testimony of the witnesses to be credible, for the most part. It is not uncommon for individuals to recollect the same conversations or events differently, especially given the passage of time and given the emotionally charged nature of the events of September 13, 2016. The biggest inconsistency between Lindsay and Carrie's testimony is that Lindsay says she swore twice about the situation in general whereas Carrie says Lindsay swore directly at the parent at least twice.

Lindsay says she first swore after trying to leave the office where she was attempting to discuss the child's behaviour with the parent. It had been the parent's idea to go into the office and close the door. The child was with them in the office. Lindsay says she felt herself losing control of the situation and tried to leave the office but the parent blocked her from leaving. She began to feel very threatened at which point another parent intervened. As the other parent was helping her leave the office, Lindsay says she said to that parent, "This is a f*d up situation." Lindsay says the child's parent overheard her but misunderstood her and said, "My kid's f#d up. Really? I'm reporting you." The two parents then started arguing with each other. Lindsay ended up going into another room to try to calm down. She called Carrie for help from the other room. Before Carrie arrived, Lindsay says she came out of the bathroom and the child's grandmother confronted her. She again felt threatened and returned to the bathroom where she remained until Carrie arrived. Lindsay says that once Carrie arrived, Carrie began speaking with the parent. According to Lindsay the parent was twisting her words. Lindsay became very upset again and ended up saying, "F# this. I don't deserve this sh#t." Lindsay then left the daycare.

According to Carrie, Lindsay first swore at the child's parent in the office before Carrie arrived. The parent told her that Lindsay said her kid was "f#d up." This is hearsay and I do not give it much, if any, weight. Solid Futures could have called the parent to testify but they chose not to. Carrie says she personally witnessed Lindsay swearing at the parent. Carrie had gone back to the front entrance to speak with the parent and when Lindsay overheard how the parent was characterizing the events, she called the parent a liar and said, "I don't get paid enough for this sh#t." The three of them then went into the office to discuss the situation in private. After Lindsay and the parent argued more about what was said and done, Carrie says Lindsay yelled, "Your son is f#d up and you can f# off!" Carrie's statement which formed the basis of part of her testimony was prepared 3 weeks after the incident occurred (ER1).

There is no reliable evidence to suggest that Lindsay swore about the child in front of the child. The only evidence suggesting this may have occurred is hearsay evidence – what the parent told Carrie and Jenifer happened when she and her child were in the office with Lindsay. With respect to what Carrie actually witnessed, it is difficult to know for sure whether Lindsay swore at the parent or more generally about the situation. In stressful and emotional situations, people can remember the same set of events very differently. Either way, Lindsay's behaviour was not appropriate workplace behaviour and was certainly not appropriate behaviour for a daycare. The evidence suggests the children remaining in the daycare were shielded from the arguments but voices were raised and it is entirely possible that children and parents overheard at least some of what was happening.

Another area of discrepancy between Lindsay and Carrie's testimony was on the issue of whether staff used profanity when speaking in private. I do not find Carrie's assertion that she could not recall if staff used profanities when speaking in private to be credible. She was testifying in front of her boss and I believe she was hesitant to admit that staff members, including herself, swore when speaking privately. Lindsay gave specific examples of the language used by staff, including Carrie, and I prefer Lindsay's testimony on this point.

One final area of discrepancy among the witnesses is whether Lindsay's profanity was disparaging to the child and/or witnessed by the child. Lindsay said she called the situation f#d up and that she did not swear directly at or about the child. Carrie said Lindsay did swear about the child, calling him f#d up, but that her comments were directed to the parent. Neither Carrie's statement nor her testimony referenced the child having witnessed these statements. Jenifer said Lindsay told the parent her child was f#d up in front of the child and that this constituted abuse. Jenifer was not there and her conclusion is based on hearsay evidence. If Lindsay in fact called the child f#d up, there is no convincing evidence that she did so in front of the child.

The employer has the onus of proving just cause on a balance of probabilities. The employer must show the dismissal was warranted based on cumulative acts or a serious

isolated incident. Whether misconduct is serious enough to justify dismissal is a question of fact to be assessed individually in each case.

With respect to whether Solid Futures fired Lindsay for cause based on cumulative acts, the employer would have to establish it took progressive disciplinary measures, including warnings as to the possible consequences of future misconduct. Although Lindsay had a history of losing control of her emotions at work, the evidence establishes that neither Jenifer nor Carrie warned Lindsay that her job was in jeopardy should she continue to act out in anger and/or use profanity at work. An employee is entitled to know the reasonable objective standards of performance, how she is failing to meet those standards, and that her job is in jeopardy should she continue to fail to meet those standards.

While the evidence establishes Jenifer took issue with Lindsay's behaviour on several occasions (Jenifer put several notes describing Lindsay's anger and emotional reactions in Lindsay's employee file (ER2)), there is no evidence of any warnings given to Lindsay. Jenifer said she preferred to mediate problems, when necessary, rather than take disciplinary action and admitted she did not provide verbal or written warnings to Lindsay. For the most part, Jenifer preferred to allow the staff to work out their own problems. At most, Lindsay had one performance review. She was not warned about any necessary improvements and/or the consequences of not making them. If anything, Jenifer and Carrie seemed to accept Lindsay's propensity to lose control of her emotions and vent on occasion (usually at or about other staff members) because she was so good with the children. She was even appointed as acting supervisor when Jenifer and Carrie were away from the Centre, showing a certain level of trust in her character and abilities.

The employer did not meet the onus of showing on a balance of probabilities that Lindsay was fired for cause based on cumulative events. The question then becomes, was Lindsay's behaviour on September 13th so egregious that it warranted immediate dismissal for cause based on this isolated incident?

Solid Futures takes the position that Lindsay's use of profanities in the Centre amounted to abuse of both the child and parent. The Employee Handbook says that the use of profanity is grounds for immediate dismissal. Because the Centre must provide a safe and secure environment for children, Lindsay's use of profanity was severe enough to warrant her dismissal. In their view, the working relationship had been damaged beyond repair. The Director and Lindsay take the position that the punishment was disproportionate to the crime. Lindsay was passionate about her job and was shocked when she was fired without even having the chance to explain what had happened and to take responsibility for her poor choice of words. She wanted the opportunity to rectify the situation and to improve her behaviour going forward. While Lindsay ought to have been disciplined for her use of profanity, they believe firing her without notice or pay in lieu of notice was unlawful.

The principles outlined in *McKinley v. B.C. Tel* by the Supreme Court of Canada are helpful for this analysis. In determining whether Lindsay's use of profanity warranted dismissal, the circumstances surrounding the conduct as well as its nature and degree must be considered. Was dismissal without notice the proper sanction to be imposed given the severity of her misconduct?

The fact that the Handbook listed the use of profanity as grounds for immediate dismissal does not equate to just cause. Lindsay had used profanity at work before and was not fired or disciplined in any way. To put the events of September 13 in context: Lindsay had had a difficult day with a student prone to behavioural issues; both of her supervisors were away from the Centre; Lindsay's conversation with the child's parent (known to be difficult to deal with) went from bad to worse very quickly; Lindsay felt threatened by the parent and subsequently by a grandparent; in the midst of all this, an argument broke out between the parent in question and another parent; Lindsay had a history of losing control of her emotions in stressful situations (including crying, swearing and yelling) but had never been disciplined for her outbursts; and once Carrie showed up, Lindsay felt powerless because in her view the parent was lying to her supervisor about what happened and Carrie was not listening to her side of the story.

In many cases, a daycare worker swearing at or in front of a parent, especially about a child, would warrant immediate dismissal for cause. Based on the circumstances of this case, however, I am not convinced that the severity of Lindsay's misconduct is in balance with the sanction imposed. The Courts recognize that work is one of the most fundamental aspects in a person's life. After using profanities and leaving work, Lindsay went home and immediately prepared a written statement for her employer (EE5). Her job was very important to her and she desperately wanted the opportunity to explain what happened. This parent was known to be defensive when it came to hearing anything negative or troubling about her child's behaviour. Other staff members were hesitant to even approach this parent. I do not believe that Lindsay was the only one to lose her temper. Things became very heated but this was not just Lindsay's fault. I believe both Lindsay and the parent handled the situation poorly. I believe her employer accepted the parent's version of events without hearing Lindsay's side of the story. When Lindsay was asked to come in the next morning, she was not given an opportunity to address what had happened or to discuss how they might move forward. The decision to fire her had already been made.

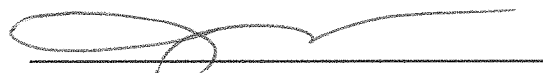
While Lindsay's use of profanity in the Centre warranted disciplinary action, I do not believe the employment relationship was damaged beyond repair. Lindsay should not have used profanities at all, let alone in front of and/or directed at a parent. However, given the context and circumstances outlined above, at the very least Lindsay ought to have been afforded the opportunity to present her side of the story, to accept responsibility for her actions, and to propose a solution that might work for all affected parties. If at the end of the day Solid Futures still felt that it was not comfortable having Lindsay return to work and/or that all other forms of discipline would be too disruptive

to its operations (such as suspension, requiring Lindsay to enroll in anger management classes or counseling, warning Lindsay that any similar outburst would lead to her immediate dismissal, having her switch classrooms or moving the child to the other classroom, etc.) then under the circumstances it had every right to dismiss her with notice or pay in lieu of notice.

VII. CONCLUSION

The appeal is dismissed and the Wage Assessment is upheld. The Appellant is ordered to pay \$1,144.49 to Lindsay Anderson.

DATED in Regina, Saskatchewan, this 12th day of April, 2017.


Jodi C. Vaughan
Adjudicator

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.