

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



Kristin Hodel

COMPLAINANT/EMPLOYEE

-AND-

LP3 Transportation Solutions Ltd.

APPELLANT/EMPLOYER

DATE OF HEARING: October 30, 2018
 November 21, 2018
 November 30, 2018 - Arguments

PLACE OF HEARING: Regina, SK

LRB FILE: No. 180-18
WAGE ASSESSMENT: No. 1-000095

INTRODUCTION

This matter was heard before me on October 30 and November 21, 2018 in Regina, Saskatchewan and Arguments on November 30, 2018.

I am satisfied there has been compliance with subsections 2-74(6), 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). Therefore I have determined that I do have jurisdiction to hear this matter.

Mr. Jas McConnell, Employment Standards Officer represented The Employment Standards Department.

The Complainant/Employee, Kristin Hodel attended and gave evidence on her behalf.

The Appellant/Employer, LP3 Transportation Solutions Ltd., and Ward Hepting, Director were represented by Calen Nixon, Barrister and Solicitor. Various witnesses gave evidence on behalf of the company.

The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014 c.s-15.1, herein after referred to as "The Act" is for \$11,350.85

I. PRELIMINARY MATTERS

As there were a number of witnesses attending to give evidence an order of exclusion of witnesses for all parties was given.

The parties consented to a statement of documents by the employer and these were entered.

The Labour Standards Officer indicated that he was not acting for the employee but representing the department regarding the wage assessment.

The employee was acting for herself.

II. AGREED STATEMENT OF FACTS

The parties agreed that the complainant was an employee of the appellant between July 18, 2016 up to and including April 11, 2017.

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The position of the employee was that of a dispatcher and her rate of pay was \$23.44/hour until February 4, 2017 when it increased to \$24.38 up to and including April 11, 2017.

The parties agreed that Ms. Hodel banked 80 hours of overtime early in her employment and was paid for these said hours.

III. THE DISPUTE

The parties agreed that the main issues in the hearing were to be that of whether or not Ms. Hodel was dismissed for just cause.

Whether or not the overtime hours, which give rise to the wage assessment, are accurate and whether or not a notice period of one week, included in the wage assessment, is due to the employee.

IV. EVIDENCE OF THE EMPLOYER

The first witness called by the employer was Mr. David White, the Chief Operating Officer of the corporation who resides in Saskatoon but attends

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to the office in Regina from time to time to oversee the LP3 Transportation Solutions Ltd. operation in Regina.

Mr. David White:

Mr. David White was sworn and gave evidence on behalf of the corporation as follows:

- Mr. White is the Chief Operating Officer of the corporation
- LP3 Transportation Solutions Ltd. is a student transport corporation for school and charters for schools.
- The corporation is owned by the Legacy Group which is also known as Bluebird Bus Sales.
- The corporation has approximately 100 employees and was incorporated in the spring of 2016 to complete a contract signed with the separate schools in Regina for student transportation.

The corporation has a corrective discipline policy known as "CPR" wherein the corporation will identify the breach of the corporate policies or rules, explain this problem to the employee and ask if that employee is willing to comply the corrective methods to solve the breach.

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If the employee is willing to comply, the employee goes back to work and if the employee still does not comply it becomes a broken promise wherein the corporation discusses the relationship with the employee and determines if it can be resolved, if the employee is not willing the corporation dismisses the employee.

The corporation started out in Regina in September 2016. Due to the amount of work and early organization issues of the corporation the corporation granted each employee 80 hours of overtime during this period, whether or not the overtime had actually been worked by the employee. This amount was granted to the employee, Ms.Hodel and paid out.

Ms. Hodel was hired by the corporation to be a dispatcher. Ms. Jenn Mitchell was the supervisor of the employee and the employee was to work 7:00am to 4:00pm.

Mr. White attended in the Regina office during the start up a couple of days a week and was familiar with the employee.

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The employer was satisfied with Ms. Hodel's work and she was classified as a good dispatcher.

The problem that arose with Ms. Hodel was that she had difficulty with office relationships with other employees as she seemed to be unable to trust her fellow employees.

This lack of trust led to many conflicts with the employees.

After the original set up of the corporation the employee was to only work regular hours, 7:00am to 4:00pm and was not expected to work any over time unless it was authorized.

Ms. Hodel's termination came about as a result of her volatile relationships with other employees. This relationship led to a meeting with the employee and Mr. White where the lack of trust between her and the other employees was discussed, as well as breach of confidentiality.

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Ms. Hodel indicated to the employer that she was not willing to work with the other employees and was then offered a severance package with a view to her leaving the corporation.

Ms. Hodel asked Mr. White for overnight to decide as to whether or not she would accept the severance offer and leave the corporation.

Shortly thereafter the corporations contact person with the Separate School Board contacted them and made inquiries regarding the firing of Ms. Hodel.

Ms. Hodel had been warned before about her relationships with the employees and lack of trust. This last breach of corporate trust led to her dismissal.

Employee Exhibit (EE3) is a dismissal letter written to Ms. Hodel by Mr. White.

The particulars relating to the writing of the letter came about as a result of the call of Alana Chase who contacted Jenn Mitchell regarding the

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discussions that Ms. Hodel had with Mr. White. In the corporation's view, this was a breach of confidentiality.

The meeting with the employee happened towards the end of the day around 3-4pm at the Regina office. The employer was contacted shortly thereafter.

The corporation was of a view that Ms. Hodel contacted the separate school board regarding her firing immediately after leaving the meeting with her employer.

The breach of confidentiality had been a problem with Ms. Hodel in the past. It was discussed at the meeting with Mr. White where the options were put to Ms. Hodel to either sever the relationship with the corporation or comply with keeping confidentiality and reconcile her differences with the other employees.

There had previously been an attempt by the corporation to "reconcile relationships", between Ms. Hodel and other employees, in particular Dion,

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Tanya and Jamie. These three employees agreed to enter into reconciliation with Ms. Hodel but Ms. Hodel did not attempt to reconcile her relationship with those 3 employees.

After Ms. Hodel was dismissed the culture and climate improved.

At no point during Ms. Hodel's relationship with the corporation did she ask for overtime pay.

Mr. White was cross examined by Mr. McConnell. Mr. McConnell inquired as to whether or not the employee would have known she could have been terminated as a result of her breaches of confidentiality and failure to get along with fellow employees. Mr. White was of the opinion that she did know that she could be terminated and, the last meeting was a discipline session, she was fired after the meeting because of the breach of confidentiality of phoning the Separate School Board when she had been given the overnight to consider whether or not to accept the severance or reconcile with the other employees.

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The corporation was concerned that Ms. Alana Chase, who was a friend of the employee, was also the primary contact of the corporation's most important client in Regina. The corporation was concerned that this may affect the client relationship.

The employer referred to Exhibit ER1, which was the letter of employment to Ms. Hodel which discussed her offer of employment and employee confidentiality.

Mr. White indicated that he never saw the employee stay past 4:00pm while at work. Also the employee was a meeting that discussed overtime and had been advised that no overtime would be permitted unless authorized by the corporation.

Ms. Hodel cross examined Mr. White.

Mr. White confirmed that the corporation had given her a pay increase after her request for the same.

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Mr. White again confirmed that he did not see her work past 4:00pm at any time and stated that she was often the first person out of the office whenever he was at the Regina location.

Ms. Jenn Mitchell:

Ms. Jenn Mitchell, Regional supervisor for LP3 was sworn and gave evidence.

Ms. Mitchell confirmed her work and cell phone numbers, that of Alana Chase and that of Ms. Hodel.

Ms. Mitchell explained that her position was to oversee the Regina operations and supervise the approximate 100 employees employed by the corporation in Regina and was in charge of the scheduling of the busses with the Regina Catholic School Division with Alana Chase as her contact.

Ms. Mitchell works from appx 5:30am to 3:30-4:00pm on a daily basis.

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Ms. Chase is in charge of the dispatchers which included Ms. Hodel when she was employed.

Ms. Hodel worked between 7:00am – 4:00pm during the time of her employment.

After the dispatchers leave at 4:00pm another employee, Tanya, covers as a dispatcher.

There is no expectation that the employee needs to answer any calls for the corporation after their employment hours.

Ms. Mitchell worked in close proximity with Ms. Hodel during her employment with the corporation.

Ms. Mitchell hired Ms. Hodel and supervised Ms. Hodel during her employment with the corporation.

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Ms. Mitchell was of a view that Ms. Hodel was a good worker, however, had considerable issues and a very poor relationship with her team of other employees.

Ms. Hodel worked from 7:00am to 4:00pm and during the setup of the corporation in September of 2016 worked extra overtime hours for which she was paid. This was in accordance with an agreement with the corporation and the employees that they would be paid 80 hours overtime during the startup, whether or not such hours were worked.

In September a meeting was held with the employees where the employer indicated that any overtime work required approval from the employer. Ms. Hodel was present at this meeting and Ms. Mitchell and Ms. Hodel discussed the overtime issue several times. Specifically that after September of 2016, the corporation did not approve overtime in anyway, outside of the 80 hours that was given to each employee during startup.

In October or November Ms. Mitchell observed Ms. Hodel come to work early and spoke to her on more than one occasion about not coming in

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early as she would not be paid any overtime. Thereafter, Ms. Hodel came in approximately at 6:45am for her 7:00am shift.

The employee never asked the employer for overtime pay or to bank any overtime hours.

Ms. Hodel was also told not to stay past her 4:00pm employment time in the October/ November meeting as she would not be paid overtime.

Ms. Hodel was permitted to commence work early or stay late if she had medical or other appointments or family issues, which occurred from time to time during her employment.

A dispatcher was not needed before 7:00am as the office was not open until that time. If a dispatcher was needed before 7:00am Ms. Mitchell did the necessary work relating to the same.

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Ms. Mitchell indicated that Ms. Hodel never attended the office before 6:30am, however, was always there by 6:45am. The employee could not have done any work before 6:30am unless she was in the corporate office.

Ms. Mitchell kept a running journal, wherein, she made notations relating to what was going on at her work place. There was an entry on October 18 where she spoke to Ms. Hodel about gossip and relationships with employees. Ms. Hodel was advised to improve her relationships with her fellow employees.

On October 26 Ms. Mitchell spoke to Ms. Hodel about getting along with other employees.

A large number of phone records were gone through with Ms. Mitchell showing that the employee was not at work for the hours claimed on the employee's calendar.

On February 14 Ms. Mitchell received a telephone call from the school board concerning internal matters of the corporation. This disclosure had

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been made by Ms. Hodel. Ms. Hodel was reminded and warned about confidentiality and contacting customers pertaining to internal matters relating to the corporation.

Ms. Hodel's claim of hours worked on a number of days was reviewed by Ms. Mitchell and she disputed any claim that the employee was there from 6am onwards.

On April 10, 2017, Ms. Chase from the Separate School Board called Ms. Mitchell relating to the Ms. Hodel's dismissal. This call was received in the late afternoon at approximately 5:00pm.

Cross Examination of Ms. Mitchell:

Under cross examination Ms. Mitchell confirmed that Ms. Hodel's hours were from weekdays, 7:00am to 4:00pm with a one hour break for lunch.

Ms. Mitchell confirmed that Ms. Hodel never asked to work overtime nor was she ever asked by the corporation to work overtime. With the

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exception of the 80 hours of overtime that was given to all employees at the startup of the corporation.

An extensive review of the incidents relating to the lack of interpersonal relationships of Ms. Hodel and lack of trust of Ms. Hodel in the other employees was discussed.

Ms. Mitchell related that the problems with Ms. Hodel were, she had no trust in her team, she was controlling with people and she had personality conflicts with multiple other employees that were not resolved.

Ms. Mitchell kept track of all her discussions with Ms. Hodel in her personal journal.

No written warnings were given to Ms. Hodel with the exception of the final letter dated, April 11, 2017 which was given to Ms. Hodel by Mr. White.

Employee Witness, Tanyi Kutsak:

Ms. Kutsak was sworn and was called as a witness for the employer.

Ms. Kutsak started as a charter dispatcher in August 2016 to September 2017.

Ms. Kutsak worked from 8:00am to 5:00pm with a one hour lunch break. Ms. Kutsak worked alongside Ms. Hodel.

When Ms. Hodel left at 4:00pm Ms. Kutsak took over Ms. Hodel's position as dispatcher until the close of the day.

Ms. Kutsak, while in her position, was able to observe Ms. Hodel leave on most working days and gave evidence that Ms. Hodel would be gone at 4:00pm or shortly thereafter every day.

Ms. Kutsak attended the team meetings which included Ms. Hodel and Ms. Mitchell. Ms. Kutsak said that Ms. Hodel would have worked overtime hours during the start up on the corporation, in August/September 2016 where each employee was given 80 hours overtime; however, after that period, Ms. Hodel did not work any overtime.

V. EVIDENCE OF THE EMPLOYEE

Ms. Hodel was sworn and gave evidence on her behalf.

Ms. Hodel described her average day at work which for her description was very busy and demanding.

Ms. Hodel indicated that she had never been told, nor was she at any meeting, where overtime was discussed and had never been told that she needed prior approval to working overtime.

At no time was Ms. Hodel authorized to work overtime. At no time did she request to be paid for overtime. It was never requested of her to work over time.

Ms. Hodel filed a calendar prepared by her setting out her hours of work from August 2016 up to and including April 11, 2017 which was her last day of work.

Ms. Hodel said that she entered her hours of work into her cell phone and when she had time at home she would then put her time on this calendar which was entered as "Employee Exhibit 8".

Ms. Hodel indicated that Ms. Mitchell would have known as to Ms. Hodel's hours as when Ms. Hodel arrived at work Ms. Mitchell was always already there.

Ms. Hodel filed a summary of her hours exhibit "EE7", which were drawn from her calendar exhibit "EE8".

The overtime hours set out in the wage audit prepared by the department were drawn from exhibit "EE7".

The hours between "EE7" and "EE8" do not correspond. Ms. Hodel was unable to explain the differences.

Ms. Hodel gave evidence regarding behavior and trust issues that she was only given the one warning which was the letter dated April 11, 2017 from Mr. White.

Ms. Hodel stated that most of the other meetings as set out in Ms. Mitchell's journal did not take place, or the contents of the notes relating to Ms. Hodel being the party discussed at the meeting did not happen.

Under cross examination, Ms. Hodel stated that most of the meetings did not occur.

When asked about the meetings under cross examination the employee was very hesitant in responding to the questions about the meetings, however, was adamant that at no time during any of the meetings or discussions with Ms. Mitchell, was she advised that she could be fired if she didn't make changes in her conduct.

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Under cross exam Ms. Hodel confirmed that on November 20, 2016 she asked the corporation for a raise, which she received, but did not ask for overtime then or at any other time.

Michelle Fourege:

The employee called Michelle Fougere as a sworn witness.

Ms. Fourege and Ms. Hodel became friends and continued their friendship up to and including the date of the hearing.

Ms. Fourege worked for the corporation from August 2016 to April 6, 2017 as a driver.

Ms. Fourege was fired by the corporation. After she was fired she commenced a lawsuit against the corporation which was settled between the parties in the form of a confidentiality agreement.

Under cross examination it became clear that Ms. Fourege was very angry with the corporation. As well as being a hostile witness, she gave every

indication that she was out to get the corporation and would say anything to support her friend in this application.

Ms. Fourege's evidence was, whatever overtime Ms. Hodel claimed on whatever day, was in fact owing to her.

The witness was very evasive and extremely hostile when answering questions, consequently I disregard her evidence in its entirety.

VI. ANALYSIS/DECISION

Overtime

The evidence showed that one or both Ms. Mitchell and Ms. Kutsak were at the work place during the time frame of when overtime is being claimed by Ms. Hodel. Both Ms. Mitchell and Ms. Kutsak said that Ms. Hodel did not work the overtime.

Ms. Hodel did not ask to be paid for overtime at any point during her employment and only asked for overtime after she was terminated.

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Ms. Hodel's calendar could have been prepared at any time and the hours set out therein do not correspond to the hours put into "Employee Exhibit 7" which was used by the Labour Standards Officer to calculate the overtime for the wage assessment.

Therefore, at best, the wage assessment is incorrect as to the hours and therefore the amount set out therein is not correct.

I am not satisfied on the whole of the evidence that any overtime was worked by the employee and if any overtime was worked it was not authorized by the employer. The employee was or should have been aware that any overtime had to be authorized.

The employee evidence about the working of the overtime is unreliable and I prefer the evidence of the employer in this regard.

Resultantly, with respect to the claim of as to overtime, I find that there is not sufficient evidence to support Ms. Hodel's claim and I will not be awarding any monies to Ms. Hodel for that claim.

Just Cause

It is well established in Canadian jurisprudence that notice of termination of employment must be specific, unequivocal, and clearly communicated to the employee. Whether a purported notice is specific and unequivocal is a question of fact to be determined on an objective basis in all the circumstances of each case.

Dismissal for "just cause" can be cumulative or it can be a onetime event (serious isolated incidents).

The facts of this case do not support a onetime event. The onus of proof on the balance of probabilities is on the employer to show a onetime event that would support a dismissal for just cause.

The employer also claims cumulative progressive discipline as just cause for dismissal of Ms. Hodel.

The employer showed that there were numerous conversations with Ms. Hodel by Ms. Mitchell as set out in Ms. Mitchell's journal.

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In her evidence Ms. Hodel states that most of the meetings did not take place or did not have the discussion as set out in Ms. Mitchell's journal.

The journal was hand written by Ms. Mitchell and details many other matters and employees other than Ms. Hodel.

If the meetings did not take place as Ms. Mitchell had stated, Ms. Mitchell had to have made up the whole journal including other issues and meetings for the purposes of this hearing.

I find that Ms. Mitchell did meet with Ms. Hodel on the occasions as set out in the journal and discussed the items as detailed in the entries. But Ms. Hodel did not receive any written warnings about her conduct, except for the final warning of April 11, 2017 from Mr. White, wherein she was dismissed a few hours afterward.

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The contents of the journal and the evidence of Ms. Mitchell and Ms. Hodel indicate that if there was no indication to Ms. Hodel that if Ms. Hodel did not change her ways she would be dismissed.

On the contrary, management seemed to persist in doing nothing, except have meetings without consequences. No oral or written warnings were given to Ms. Hodel.

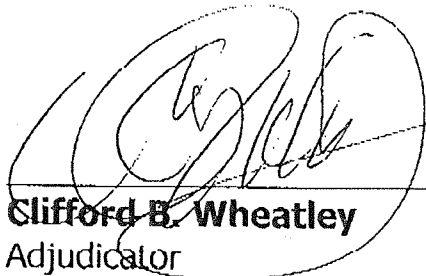
As the consequences of the continued behavior of Ms. Hodel were not communicated to her, I find that she was dismissed without cause. She is entitled to one week of pay in lieu of notice. The parties agreed that one week of pay for Ms. Hodel was \$975.20.

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VI. CONCLUSION

The appeal is granted in part and the wage assessment is amended to the amount of \$975.20.

Dated at Moose Jaw, in the Province of Saskatchewan, this 3RD of
December, 2018.



Clifford B. Wheatley
Adjudicator

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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 <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.