

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

Wage Assessment No. 1-000193  
LRB File No. 069-19



COMPLAINANT: Michael Siebert  
Represented by Andrew Langgard  
Employment Standards Officer

RESPONDENT: Ardel Steel Inc.  
Represented by  
Kendra Thompson  
Human Resources Manager and  
Chad Fenrick  
Branch Manager, Regina

DATE OF HEARING: April 24, 2019

PLACE OF HEARING: 3rd Floor Board Room  
1870 Albert Street  
Regina, Saskatchewan

**1. INTRODUCTION**

This is an appeal by Ardel Steel Inc. with respect to a Wage Assessment issued by the Director, Employment Standards Branch, Ministry of Labour Relations and Workplace Safety, on March 4, 2019. The Wage Assessment required the Respondent to pay Michael Siebert the sum of \$9,335.63 representing pay in lieu of notice. The Wage Assessment was prepared pursuant to Section 2-74 of the Saskatchewan Employment Act.

The appeal was perfected as the Wage Assessment was served on the Respondent on March 4, 2019 and the Notice of Appeal was received, along with the prescribed fee, on March 20, 2019.

## II. PRELIMINARY MATTERS

1. Ms Thompson asked that I prevent Mr. Langgard from calling former Ardel Steel employee Brandon O'Reilly, as a witness. Her argument was that Mr. O'Reilly's employment ended before many of Mr. Siebert's attendance issues occurred.

I rejected Ms Thompson's request indicating that I would hear the evidence and make my own determination as to relevance.

2. Ms Thompson requested an order to exclude witnesses; and I so ordered.

Therefore Leah Belles, sole witness for the Respondent and Brandon O'Reilly, sole witness for the Complainant, were excused from the Hearing Room.

## III. THE DISPUTE

Ardel Steel contends that Mr. Siebert was terminated for "Just Cause" and therefore the Wage Assessment for "pay in lieu of notice" does not apply.

## IV. FACTS

### i. EVIDENCE OF EMPLOYER

Ms Thompson advised that she would provide evidence first, then Mr. Fenrick, and lastly she would call Leah Belles.

Ms Thompson was sworn and provided the following evidence:

- She is the Human Resources Manager for the Regina location of Ardel Steel. She reports to Branch Manager, Chad Fenrick.
- She agrees that Mr. Siebert was a 10 year employee of Ardel Steel. Mr. Siebert was terminated on December 6, 2018 for "Cause". The "Cause" being unacceptable attendance to the workplace.
- She tabled a number of documents which are marked and described as follows:

ER1 - Ardel Steel Progressive Discipline Policy. This three page document sets out a step by step guide for managers to move from coaching to termination if employee behaviour is in need of modification.

ER2 - Record of a written warning give to Mr. Siebert on October 13, 2016 for an absence on October 12, 2016 for which he did not call in or report. Mr. Siebert signed this record.

ER3 - Letter from Ms Thompson to Mr. Siebert as a follow-up to earlier verbal discussions. The letter lists 8 dates from January 23 to May 17 of 2017, that he was absent.

The letter goes onto describe the effect of his absences on the Company and other employees and sets out 3 commitments:

1. Further absences must be substantiated by a doctor's note.
2. Reporting of absence must occur prior to start of his shift.
3. If attendance does not improve immediately more severe discipline will be scheduled.

Mr. Siebert signed this document signifying he received a copy.

ER4 - Record of suspension for unapproved absence on July 10, 2017. Record shows Mr. Siebert did not call in until 2 hours after his shift started. This is his third warning and is suspended without pay for three days.

There are no signatures on this form.

ER5 - Record of suspension for unapproved absence for the days October 9, 10, 11 and 12, 2018. Mr. Siebert is also advised that he has missed 14 other days in the last 12 months. Suspension is for three days October 15, 16 and 17, 2018.

Additional comments are:

- expectations of regular attendance
- if absent for any reason not acceptable to Ardel Steel termination will be immediate. The only acceptable absence will be accompanied by a doctor's report (Ardel Steel form).
- this is the "last chance".
- this will remain in force for 12 months.

Mr. Siebert signed this document on October 15, 2018.

ER6 - Letter dated December 6, 2018 terminating Mr. Siebert's employment immediately. The letter cites an absence on November 27, 2018 for which he called in after the start of his shift. Further, he did not provide the Ardel Steel form from a doctor. The letter goes on to say he was terminated for Just Cause and will not receive any form of termination pay.

ER7 - Two-page document titled Attendance Policy - Production Staff. This document sets out the purpose, policy and reporting procedure for production staff.

ER8 - Minutes of a tool box safety meeting held on September 27, 2017.

ER9 - Performance Evaluation form for Mr. Siebert for year February 2013 to April 2014. Point #5 highlighted states "always on time, phones in sick more than I like". Evaluation was completed by Production Manager, Leah Belles.

ER10 - Performance Evaluation form for Mr. Siebert for April 2016 to October 2016. Highlighted supervisor comment "you have improved on this topic (attendance). Keep it up!!"

ER11 - Performance Evaluation form for Mr. Siebert for November 2016 to October 2017. Note date on form is incorrect. Reads November 2017 to October 2017. Highlighted comment from supervisor "roughly 16 days missed! That's \$3,467.52 you could have earned instead.."

ER12 - Ardel Steel's Sick Leave Form. This is the form Mr. Siebert failed to provide as mentioned in ER6 (Termination letter).

- She indicates that the documents show progressive discipline was followed and that Mr. Siebert understood the consequences of continued absenteeism.

- Mr. Siebert was the only employee in 2017 who did not receive his annual increment. It was withheld because of his poor attendance record.

- Ardel did everything possible to get him to improve his attendance. She called The Labour Standards Division and was told based on their efforts that Mr. Siebert could be dismissed for cause. When he refused to have his doctor provide the sick leave form he was terminated. The form was necessary for the Company to determine any possible accommodations.
- Mr. Siebert was asked three times to get the form completed. He brought in a hand-written note on November 29, 2018 and lied about the doctor's office printer being down so couldn't get the form filled out. She phoned the doctor's office and was told there was no system outage that day. Trust with Mr. Siebert was lost at that point.
- The employer has acted in good faith with follow-up after the termination.
- She is satisfied the process followed by the Company meets the necessary standard for just cause.

### **Cross Examination**

Ms Thompson provided the following evidence in response to questions put by Mr. Langgard:

- She agreed that the document provided by Mr. Langgard from Information Services Corporation correctly portrays Ardel Steel's Corporate registry. It was marked EE1.
- She agreed that Siebert's performance was good except for his attendance.
- Ardel has a harassment policy in place, it was revised in 2017 and is followed for all formal complaints. All employees are advised of the policy in their orientation and all employees were given training in 2017. All managers and supervisors are trained.
- Brad Rowe is an employee of Ardel. He started less than 10 years ago. He currently is the Production Department Foreman. He has, depending on the season, 8 to 20 subordinates.
- Rowe was disciplined for harassment by written reprimand in the spring of 2018. He was told another occurrence would result in termination.
- Another employee (Perry) complained about Rowe's treatment. Also, another employee (Brandon) complained about a physical altercation. In the end both were found to be at fault.
- Mr. Siebert made side comments here and there about Rowe but made no formal complaint.
- She did talk to some employees about Rowe but did not get anything negative. There have been no more formal complaints (written) about Rowe.
- Both Mr. Fenrick and Ms Belles were aware of the complaints and felt Rowe has corrected his behaviour.
- The meaning of the second paragraph in ER1 is that if an employee who has been disciplined goes 12 months between occurrences, progressive discipline starts over. She admits that Mr. Siebert had no discipline between July 10, 2017 (ER4) and October 9, 2018 (ER5) which is fifteen months. The reason progressive discipline did not start over is that there were unapproved absences by Mr. Siebert that were excused.
- Mr. Siebert was not terminated for his November 27, 2018 absence because he was a long-term employee that they hoped could be saved.

- She along with Mr. Fenrick met with Mr. Siebert on November 29, 2018 (see exhibit EE2 tabled by Mr. Langgard at this point. EE2 are her notes of the meeting).
- During the November 29th meeting his mental health issues both at work and away were discussed. Mr. Siebert was visibly nervous, agitated and he cried. He was given information about counseling and she arranged a meeting for him with a counselor. It was agreed to leave further decisions until December 3.
- On December 3 she met with Mr. Siebert in her office. He tells her he is ready to come back to work, but she tells him Ardel is not ready to make that decision as yet. They talked about EI and Short-Term Disability for wage replacement. STD was approved and paid through December 31, 2018 even though he was terminated on December 6.
- Ardel's assessment was that Mr. Siebert had mental issues and that's why he was advised of counseling, and My Wellness site. He never raised the question of his needing help.
- Mr. Siebert brought in a doctor's note on November 29 (EE3) indicating he would be off work until December 10. He was told on December 3 to get the Company form completed by his doctor.
- She suggested counseling and while she felt he would go, she didn't find out he had until after termination.
- On December 6, she, Mr. Fenrick and Ms Belles met. They had received no further information from his doctor. Ms Belles did not want him back so the decision was taken to terminate. We phoned Mr. Siebert and told him he was done for cause and that a letter would be coming. They did not wait to see if counseling helped because it was his attendance not counseling his employment hinged on.
- He was terminated while on doctor's leave because he never gave the employer anything beyond "stress at work". If he had provided what he was asked for he would still be employed. Ardel needed more information so an accommodation could be worked out.

**Re-Direct**

None

Leah Belles was called, and she was sworn. In response to Ms Thompson's questions she provided the following evidence:

- As Production Manager she runs the shop, monitors work progress, coordinates trucking, handles discipline, performance reviews.
- She was Mr. Siebert's Manager. He was head shearer and worked the 5 a.m. to 1:30 p.m. shift.
- His absences caused production problems, stress on other employees, etc.
- She reports for work at 7:00 a.m. and when Mr. Siebert does not call in she has already lost two hours of production. He was to text or phone her prior to his shift but many times he didn't call at all and many times he was late in calling. He had 16 no show no calls in the last few years. His attendance record was the worst of all employees.
- She offered him accommodations like a later shift, but he never took her up on it.

- He did ask her for a reference for another job which she assumed paid more money.
- He never told her he had workplace stress or workplace problems.
- She believes he understood he was going to be terminated when he signed the October 15 suspension document (ER5).

### **Cross Examination**

In response to Mr. Langgard's questions Ms Belles provided the following testimony:

- She started with Ardel in 2007 and became Production Manager in 2013. She has been Mr. Siebert's Manager since 2013.
- She knows Brad Rowe had a problem with Perry. Mr. Siebert never raised problems about Rowe, but she knows about one instance where Rowe and Siebert had a yelling match and after that Rowe was afraid to talk to anyone after it.
- Rowe was given a written warning for his yelling with Mr. Siebert. Also, he was required to take relationship training.
- She has never witnessed any inappropriate behaviour by Rowe.
- Rowe was hired before 2013.
- Mr. Siebert's performance is awesome when he is at work.
- She was involved in discussions regarding Siebert's termination. She knew he would violate the last chance October 15 (ER5) discipline document. She didn't want him in her department anymore.
- She doesn't know why discipline was not started before October of 2016.

### **Re-Direct**

- Siebert never spoke to her about problems with Rowe, in fact one day she told Rowe and Siebert they were doing an awesome job and Siebert says we are a "dream team".

Chad Fenrick was called and sworn.

In response to questions from Ms Thompson he provided the following evidence:

- He has been the Regina Branch Manager since 2016. As Manager he is responsible for the day to day operation.
- He has been aware of Mr. Siebert's attendance issues since 2016 forward and was aware that it wasn't improving. He was part of the October 15 discussion trying to make Mr. Siebert aware that Ardel was making this his last chance.
- He and Mr. Siebert talked often. One time Mr. Siebert told him he had issues and he told Mr. Siebert that good attendance was necessary despite his issues.
- Mr. Siebert never raised workplace stress as an issue.

## **Cross Examination**

In response to questions from Mr. Langgard, Mr. Fenrick provided the following:

- He knew Rowe had issues with Perry and Brandon.
- He believes Perry was taking Rowe the wrong way. He coached Rowe informally about how to be a better foreman and how to treat employees as individuals.
- He investigated Brandon's concern and found both were at fault. Since Brandon didn't file a formal complaint he didn't treat it as harassment. He can't remember what he told Brandon after his investigation and he can't remember when it happened.
- Mr. Siebert did talk to him about Rowe. There was no mention of harassment, they didn't see eye to eye. It was not serious enough to follow-up so there was no investigation. He did make sure Ms Belles knew about his discussion with Mr. Siebert.
- OH&S Division of the Ministry did an investigation on Brandon's complaint and found no violation.
- On December 6 he made the decision that Mr. Siebert would be terminated for failing to provide the medical form. He felt bad even though he knew Mr. Siebert was given many chances. He believes Ardel has met the threshold meaning for "Just Cause".

## **Re-Direct**

None

## **ii. EVIDENCE OF EMPLOYEE**

Mr. Langgard called Brandon O'Reilly, he was sworn and provided the following testimony:

- He worked for Ardel Steel from September 2015 to March 2017 as a full time small and large shear operator. He was a co-worker of Mike Siebert and reported to Brad Rowe as foreman.
- Rowe appeared to like him early in his employment but as time went on that changed. Rowe was usually good in the mornings but as the day wore on he would be verbally abused by Rowe.
- He told Ms. Belles about Rowe and she asked him not to tell Siebert about it. She was afraid Siebert would take it to another level. He knew Siebert was having a meeting with Belles with Marlon and Micha about Rowe.
- He told Siebert that he was going to quit over Rowe's treatment, but Siebert convinced him to stay on because management said they were going to deal with Rowe, but they never did.
- One day in February of 2017 he came to work sick and after getting the rush work done he asked Belles if he could go home. As he was changing in the staff room Rowe came in and started swearing at him. He finally told Rowe to F.O. and then Rowe made like he was going to get physical. Rowe tried to block him from leaving the staff room and then followed him down the corridor swearing at him all the way. Belles and Fenrick came out and told him to go home.

- The next day Belles tells him she and Fenrick talked to Rowe and that they were believing Rowe.
- Two days later he was laid off for lack of work.
- He knew there was no shortage of work, so he was laid off because Rowe didn't want him there.
- He went and filed an OH&S complaint, but the investigation concluded nothing had been done wrong.
- He feels if Ardel had handled it properly they wouldn't be losing employees all the time.

### **Cross Examination**

None

Mr. Langgard called Michael Siebert, he was sworn and provided the following:

- He started with Ardel Steel on March 17, 2008 as a shear operator. Early on he loved working there, but that all changed when Brad Rowe started. Rowe's behaviour was discriminating and he was always swearing at people, telling them they were F stupid.
- He had three run ins with Rowe. He had told the owner about Rowe and Rowe was demoted. Rowe apologized to him after their third encounter and left him alone after that. Rowe still went after other employees. He was a leader in the shop. There was no doubt about that as other employees came to him after Rowe was made foreman. He arranged a meeting with Belles and employees Micha and Marlon, and Rowe's behaviour was discussed. Belles told them to monitor Rowe, but nothing was done. When he turned down an offer to be foreman, Rowe was given the job.
- He repeatedly raised Rowe's behaviour with management. Many employees left because of Rowe and yet management did nothing. Rowe's behaviour was making him sick so he couldn't come to work. When Rowe was off work for a while the place was way better.
- Belles would tell Rowe whenever an employee complained, and Rowe would go after them.
- At least five employees quit because of Rowe and others were not called back because Rowe would tell Belles not to bring them back.
- He agrees that the discipline administered in ER2, ER3 and ER4 were because of not calling in or not coming to work.
- The suspension in ER5 was not just, as his son had the flu and then he got it. He provided a doctor's note, but it was ignored, and he was suspended with a "last chance" stipulation.
- His reason for not calling in before his shift or not showing up were that he was either too sick or didn't get up in time.
- Rowe's bad-mouthed management behind their back as well, saying things like "they are stupid".



- After he called in after the start of his shift on November 27, Ms Thompson sent the medical form for the doctor to fill out and talked to him about counseling. Since the doctor's computer system was down he brought in the hand written one instead (EE3).
- On November 29th he met with Ms Thompson and Mr. Fenrick. He was upset and Ms Thompson called a counselor who later contacted him. At this meeting he told Ms Thompson and Mr. Fenrick that his stress was from work and that the work environment was bad.
- He met the Counselor later on the 29th and told her about the work atmosphere and Mr. Rowe.
- On December 3 he met with Ms Thompson in her office. He told her he was ready to come back to work. She gave him Short Term Disability forms and told him to return on December 10 as per his doctor's note. He was not told he needed to get the Medical Form filled out (ER12). He thought he was coming back to work on December 10.
- He then tabled a document from his doctor that verified the system was down on November 29 (EE8).
- He would have provided more information had he been asked.
- On December 6 he received a call from Mr. Fenrick. Mr. Fenrick told him it was a difficult decision, but Ardel Steel was terminating him and a letter would follow. He thanked Mr. Fenrick and felt relieved that he did not have to go back. He feels he would still be working there if it hadn't been for Mr. Rowe.
- In hind sight he should have kept his nose out of other people's business and just did his own job.

In answer to my question Mr. Siebert advised that all his absences except the October 9-12 days were because of the work environment.

### **Cross Examination**

In response to questions from Ms Thompson, Mr. Siebert provided the following:

- Between March and October of 2018, he told Belles about the stress and she told him if he doesn't like it he could get a different job.
- On November 28 he was told he had things that needed to be fixed.
- He told management about Rowe, but nothing was done.
- The Company has all sorts of policies but doesn't follow them. All he ever got back was because he never provided anything formal there was no investigation.
- He was aware after the October three day suspension that he was close to termination.
- He has no written records or diaries of his claims of attending meetings and raising concerns about Mr. Rowe. He never filed a formal complaint.
- His claim for EI was denied because he was fired for cause.

## **Re-Direct**

None

## **Final Argument**

### **Employer**

Ms Thompson reiterated that the evidence provided by Mr. O'Reilly should not be considered.

Mr. Siebert never filed a formal complaint nor did he ever advise that his poor attendance was work related.

None of the notes taken by management in our meetings with Mr. Siebert reflect the issue of stress.

It has been demonstrated by the Employer's evidence that Mr. Siebert's absences were not properly reported, the principles of progressive discipline were properly followed and he was treated fairly throughout.

Therefore the appeal should be allowed and the Wage Assessment denied.

### **Employee**

Mr. Langgard argues that Mr. Siebert was an employee for longer than 10 years and was terminated without cause and without notice.

Mr. Siebert's testimony clearly shows Mr. Rowe directed inappropriate behaviour towards subordinates, management did not take complaints seriously and allowed the workplace to be toxic.

Section 3-8 d) of the Act, clearly directs that Employers ensure, as is reasonably practicable, a harassment free workplace.

The Employer provided Mr. Siebert with STD, counseling and a reference to My Health Site and then claims no knowledge of a workplace problem.

Mr. Siebert's testimony is also clear around the failure to provide the "form" requested on November 29, 2018. His testimony is that he fully believed the doctor note provided (EE3) on November 29 was accepted and that he was to return to work on December 10, 2018.

Therefore, the Director's position is that cause has not been shown and the Wage Assessment in the amount of \$9,335.63 be upheld.

I thanked the parties for their presentations and closed the hearing.

## **V. ANALYSIS AND DECISION**

Mr. Siebert's formal discipline for unapproved absences began on October 13, 2016. The discipline process continued until his termination on December 6, 2018.

Throughout this time period there is no written mention that his absences were caused by stress at work. In fact, the only written mention comes in the doctor's note he provided on November 29, 2018.

Testimony provided by Ardel Steel Managers Thompson and Fenrick indicate Mr. Siebert raised, informally, concerns about Production Foreman Rowe's behaviour towards other employees, but never about himself.

In fact, Mr. Siebert's own testimony points out the opposite. He characterized himself as, without a doubt, a leader in the workplace. One to whom other employees came to with their problems. Further he had had three rows with Rowe, who after the third, apologized to Siebert and never bothered him from that point on.

Former employee O'Reilly testified that even Production Manager Belles worried that Siebert might take things to a higher level if he knew O'Reilly had problems with Rowe.

Therefore, it is my decision, that based on the balance of probabilities, Mr. Siebert's unapproved absences were not caused by workplace stress.

Further, I am satisfied that the process used by Ardel Steel in reaching their decision on December 6, 2018 followed the principles of progressive discipline.

The performance standards were reasonable and clearly communicated. Mr. Siebert was notified of the inappropriate conduct in a timely manner with an adequate paper trail showing discussions and steps take to try and rectify his attendance.

It was clearly communicated to Mr. Siebert reasonable time frames to improve and the possibility of termination could result unless no further incident occurred.


Mr. Siebert was offered several forms of assistance, which were refused or ignored until after the culminating incident.

## VI. CONCLUSION

Given the above, just cause has been proven and the appeal is upheld.

Therefore, the Wage Assessment of \$9,335.63 is denied.

Dated at Regina, in the Province of Saskatchewan, this 30<sup>th</sup> of April, 2019.

  
\_\_\_\_\_  
Ralph Ermel  
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](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.