

**DECISION OF ADJUDICATOR
IN THE MATTER OF A HEARING
PURSUANT TO SECTIONS 2-75 AND 4-6 OF
*THE SASKATCHEWAN EMPLOYMENT ACT***

LRB File No. 103-20 Wage Assessment No. 1-004061

COMPLAINANT: Brent Quinton
Represented by Jas McConnell
Employment Standards Officer



RESPONDENT: VIP Pet Care (101130777) Saskatchewan Ltd.)
Represented by Mike Rayner (Director) and Laura Rosnes (Officer)

DATE OF HEARING: October 29, 2020 at 10:00 a.m.

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

I. INTRODUCTION

I was appointed to adjudicate this appeal on August 11, 2020. On Thursday August 20, 2020 I advised the parties that documentation, provided by the Ministry, satisfied me that section 2-75(2) of the Saskatchewan Employment Act had been met. Therefore, a hearing could be held. Due to health reasons, I was unable to conduct a hearing until October 29, 2020.

II. PRELIMINARY MATTERS

Attending the hearing in person were myself, Mike Raynor, Laura Rosnes, and Jas McConnell. Brent Quinton joined via teleconference.

I advised the parties of my role, expectations of conduct, and how the hearing would unfold. I further advised that my responsibility is to provide a written decision to the Saskatchewan Labour Relations Board within 60 days of the hearing.

The parties advised that an "Agreed" statement of facts was one of the documents provided to me, by e-mail prior to the hearing. That statement is as follows:

Brent was employed from August 26, 2019 to December 16, 2019, by VIP Pet Care

Brent's wage was \$11.50 per hour

Brent worked varied hours (was scheduled full time but was leaving early or did not attend due to sickness)

Brent averaged 22.36 hours per week for his last 13 weeks of employment

Notwithstanding the basis of the decision, the amount assessed is correct

III. THE DISPUTE

The Complainant is challenging the Respondents claim that his termination was for just cause. The Ministry is seeking \$271.98 as pay in lieu of notice.

IV. FACTS

Prior to the hearing the parties e-mailed me several documents to be considered as evidence. The documents provided by the Respondent are:

1. Undated statement from Laura Rosnes. Attached to her statement is:
 - a. VIP job description signed by Brent Quinton on August 27, 2019
 - b. document titled: Brent Quinton File No. 1-00406. This document was sent to Employment Standards June 17, 2020 and is VIP's grounds for appeal and was authored by Mike Rayner.
2. VIP Policies -three pages, each of which were signed by Brent Quinton on August 27, 2019.
3. Nine co-worker statement drafted in support of managements decision to terminate Brent. All nine were collected by Laura and sent to Mr. McConnell on February 5, 2020.
4. Document sent to Mr. McConnell by e-mail on March 2, 2020 entitled "VIP Confirm Multiple Complaints".
5. Document sent to Mr. McConnell on March 4, 2020 entitled "VIP Verbal Warnings". Content of e-mail cites several instances where management reviewed performance/behavior deficiencies with Brent.
6. Document entitled "VIP Response to Initial Decision" sent to Mr. McConnell on March 9, 2020. The document also contains an e-mail from Mr. McConnell to VIP, the content of which outlines the Ministry's decision to seek a wage assessment.
7. Document entitled "VIP Respond, Varied Hours Page 1 of 2". Several e-mails to and from the parties discussing Brent's hours in order to determine wage assessment amount.
8. Document entitled "VIP Submit EE hours Page 1 and 2". In an e-mail to Mr. McConnell, VIP sets out Brent's shift details, wage and hours worked for employment period.

The documents provided by the Ministry are:

1. Agreed statement of facts.
2. Ministry's initial decision dated March 9, 2020 set to VIP.
3. Employment Officer Robin Tuer's report regarding her interviews of other VIP staff. This is an e-mail sent to Mr. McConnell on May 7, 2020. Ms. Tuer's conclusion resulting from the interviews was that the exchange between Brent and Laura on December 16, 2019 did not "warrant a summary dismissal".
4. Document entitled "Revised Total page 1 and 2". E-mail to VIP from Mr. McConnell advising the revised wage assessment to be \$271.98.

i. EVIDENCE OF THE EMPLOYER

Mike and Laura were sworn and provided the following evidence:

- Laura advised that she stands by her statement sent to the Ministry on June 17, 2020.

She went on to express concerns about Brent's continuous negligence regarding the animals and other staff. He did not follow proper protocol regarding timelines for animals being outside, he often put dogs into the wrong group. This error could and did cause fights between dogs and endangered staff who had to break up those fights

On December 16, 2019, Brent committed both of those errors (dogs in wrong group and neglecting outside time).

When Laura got to work on December 16, Brent was sitting on the floor. She went to speak to him but it was in the back and with dogs barking, too noisy to converse.

She asked Brent to come up front. When they arrived at the front, Brent was very aggressive towards her. He was screaming and waving his arms. She felt unsafe, so she sent him home for this behavior. He thought he was being sent home for being sick.

Laura conferred with other employees and they expressed concern about Brent's performance and behaviour.

As far as progressive discipline is concerned there were isolated events where Brent was spoken to about performance. He was sick a lot and was written up regarding attendance on December 13, 2019.

Laura and Mike both agree that the December 13, 2019 write up was not used as part of their decision to terminate Brent. They both feel Brent's performance and behavior on December 16, 2019 constituted just cause. Laura concluded her testimony by stating that they appealed the wage assessment so that they could get a better understanding regarding progressive discipline and just cause.

Cross-examination

In response to questions from Mr. McConnell, Mike and Laura provided the following:

-regarding the VIP policy exhibit part 6A: this policy points out that supervision by staff of the animals is the prime task. Other tasks like cleaning food bowls or cleaning up excrement etc. are secondary. Every morning as dogs arrive it is not known before hand what kind or how many will be dropped off. White boards are filled out for staff to follow. The white boards lay out where dogs are to be placed etc. Typically, staff report to one another about performance to their supervisor. There is no form for this. On Page 3 of the policy exhibit the "form" in paragraph three is for staff to record inquires, sick animals, etc. The term "due diligence" is not defined.

Laura and Mike agreed that Superiors and Managers cannot discipline staff but can send staff home if receive permission from them through a phone call.

Both Mike and Laura were very impressed with first few weeks of Brent's employment. He was energetic, eager to learn and asked for things to do when not busy. However, things quickly deteriorated. Brent was scheduled for 78 shifts during his employment, of those 78 he was sick for 8, and he went home sick early on 24 other shifts. While at work he progressively got less energetic, did not help other staff, was sloppy in completing tasks and generally was uncooperative.

He was not terminated during his 13-week probation because they felt he would work out.

Brent was given a raise after 13 weeks because that is company policy. Laura reiterated that Brent was terminated solely for his performance and behavior on December 16, 2019. He endangered animals and scared her.

Despite other employees reporting that Brent did not look well the morning of December 16, he did not claim being sick to Laura. The company protocol when sick at work is for the employee to put all his/her dogs away inside and notify their supervisor that he/she is going home. Brent did not do that.

Re-direct

None except both Mike and Laura expressed that they were happy to have the chance to explain their position.

ii. EVIDENCE OF THE EMPLOYEE

Mr. McConnell called Brent as a witness, he was affirmed and provided the following evidence: His first few weeks of employment concentrated on the supervision of the dogs. He was advised that if supervision was not 100% he was to check the dogs every 5 to 10 minutes when they were outside.

He was never disciplined prior to December 13, 2019. That was when he received a written warning about his attendance.

Regarding problems away from work, his wife has a chronic illness.

He was sick the weekend of December 14 ,15, and was sick when he reported for work on the 16th. The only reason he came in was because Laura had told him on the 13th that he was in trouble attendance-wise.

His recollection of the 16th is that he woke up, showered, walked to work. Upon arriving at work, he told everyone he saw that he was not well. He completed his morning tasks, got group one dogs out, then put group two dogs out. He was resting on his haunches (not sitting down) when Laura told him to come up front with her. She told him to go home. He told her he was sick and has rights. He also told her he did nothing wrong that morning.

During the conversation at the front, he may have swore once, but never threatened her or raised his hands. He told her she couldn't fire him for being sick. There a was a locked barricade between them.

Cross-examination

Laura told Brent that his size and demeanor made her feel unsafe. Further he screamed at her the whole time. Brent responded that the cameras set up for security would verify their conversations.

Final Argument

Employer

Both Mike and Laura are satisfied that their presentation shows Brent's performance and behavior on December 16 2019 warrant termination for just cause.

Employee

Mr. McConnell argued that no progressive discipline had been applied in this case and that the employer is relying on a one-day incident for termination.

The behavior exhibited by Brent on December 16, 2019 could be described as harassing and endangering animals but does not meet the standard necessary for "just cause".

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

V. ANALYSIS

Brent Quinton's brief employment with VIP Pet Care was by all, but his own testimony, an unfortunate experience for those concerned.

Of his 78 scheduled shifts, he missed 8 due to illness. Further, he asked to go home early, for illness, on 24 other occasions.

Nine co-workers cite performance issues, attitude issues, sleeping on the job, leaving his section without notice, using unsafe work procedures and a general negative attitude.

Mike and Laura testified that Brent was spoken to on numerous occasions about his performance and was given a written warning on December 13, 2019 regarding his attendance.

Despite all of the above, Brent's employment continued until December 16, 2019. On that day his behavior and performance resulted in his termination.

That termination (no termination letter has been provided) was done by a telephone call from Laura to Brent later December 16, 2019 and was labeled "for gross negligence". Pay-in lieu of notice was not provided, therefore "just cause" is claimed.

VI. DECISION

Mr. McConnell, in his e-mail on March 9, 2020 to VIP states "I do believe on a balance of probability that Mr. Quinton was not performing his duties correctly..."

It is therefore, obvious to me, that Mr. Quinton and VIP Pet Care were not a good fit. The question is do the events of the morning of December 16, 2019 constitute "just cause".

Co-worker Tori Nicolai described the conversation between Laura and Brent as "quickly escalated in a threatening uncomfortable situation".

Co-worker Kyndra described Brent to be "extremely rude with a very loud tone" during the conversation with Laura on December 16, 2019.

Morning Supervisor Jenaya Lukey writes in her report that she "could hear the negative tone in his (Brent's) raised voice".

Employment Standards Office Robin Tuer interviewed all VIP staff present on the morning of December 16. Robin's conclusion after the interviews was that the staff present did not express concern for Laura's safety.

On the balance of probabilities had VIP management documented their performance and behavioral concerns and shared those with Mr. Quinton, the events of December 16, 2019 would have provided a valid culminating incident for establishing just cause. However, simply relying on the events of December 16 does not reach the necessary threshold.

Therefore, the appeal is denied and the wage assessment of \$271.98 for pay-in lieu of notice is owed.

Dated at Regina, in the Province of Saskatchewan, this 10th day of November 2020.



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.

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.