

**Decision of Adjudicator**  
**In the Matter of an Adjudication**  
**Pursuant to the Section 2-75 and 4-6 of**  
**The Saskatchewan Employment Act**

Wage Assessment # 1-005485

LRB File No.047-21



Complainant: Tracy Hughes, represented by Kelli Smith Employment Standards Officer

Respondent: AM to PM Hotshot Ltd. Represented by Haley Irwin, McKercher LLP.

Date of Hearing: June 15, 2021, at 9:30 a.m.

Place of Hearing: Virtual conference initiated by Adjudicator from his home in Regina SK.

I. Introduction

I was appointed adjudicator on May 5, 2021. On May 6, 2021, I received the relevant appeal documents and was able to confirm that Sections 2-75(1) and (2) of the Employment Act were complied with.

Given the current pandemic, the parties agreed to a virtual hearing to be held on June 15. Both parties provided their evidence documents and arguments by mail or courier prior to the hearing

Introductions were conducted after I opened the hearing, and the parties were advised of my role, expectations and time frame for a decision.

Ms. Smith's opening remarks included entering exhibits from her document labelled #1- Employee and Employer information, employment history and information regarding the complaint. # 18 – Saskatchewan Corporate records for AM to PM Hotshot Ltd. #19- Complaint filed by Tracy Hughes to the Ministry. #20- letter from Ms. Smith to Ms. Hughes confirming a wage assessment had been issued to AM to PM Hotshot in the amount of \$2049.29 (dated March 1, 2021). #21- letter from Ms. Smith to Ms. Jackson dated March 17, 2021, outlining the Ministry's reasons for the wage assessment. #22- document showing delivery of wage assessment to employer along with relevant sections of the Act. #23- letter from Ministry to AM to PM confirming receipt of appeal regarding the wage assessment.

Ms. Irwin's opening remarks suggested that the Ministry's position that Ms. Hughes was terminated for a single incident occurring on Nov 15, 2020, and that there is no evidence of progressive discipline is not correct.

Ms. Irwin went on to explain that the employer will show that the complainant was on probation at the time and that there were multiple instances of discipline leading to her

termination. Her opening remarks concluded with the assertion that the appeal should be allowed.

## II. Preliminary Objections

None.

## III. The Dispute

The parties agreed that the dispute is whether the complainant was terminated for cause or should the Respondent be required to pay the wage assessment in lieu of notice.

## IV. Facts

### 1. Evidence of the Employer

Ms. Irwin called Juanita Jackson as her first witness. Ms. Jackson was affirmed. The following represents a summary of Ms. Jackson's evidence:

- She has been the owner and President of AM to PM Hotshot Ltd for 8.5 years. She has known Tracy for about 3 years. Prior to November of 2020 they were close friends as well as employer-employee.
- Prior to March of 2020 Tracy provided a good work ethic. After that things began to change. Tracy began to slip in that her duties were not being completed properly, the office was not opened on time and she had to be contacted to get to work.
- She was not working on November 13, 2020, but Derek had called to let her know that Tracy had not come back to the yard after a job. Derek also told her, he has had to call Tracy several times on being insubordinate. She and Derek decided that Tracy had to be disciplined so they had Lucinda Milford (office manager) draft a letter that changed Tracy's wage from a monthly one to an hourly one. Derek is the head office manager. Derek told Tracy her wage change was because of her performance and was discipline
- Derek also told Tracy that her truck was not cleaned out and that was another performance issue.
- The letter changing Tracy's salary indicated the effective date would be Nov 16, 2020. The date of the letter was Nov 13, 2020. She told Tracy that the change would not take place for 30 days.
- On Nov 14, 2020, Tracy called her (Juanita was in Nova Scotia) and they chatted as friends. They exchanged text messages. Later she received a call from Derek and he told her Tracy had quit. Tracy called about the quit and she told Tracy to call Derek.
- On November 15 (Sunday) Tracy called to talk about her salary. She explained to Tracy the problems with her performance and that her personal problems were hers and not the company's. Tracy got angry and call her a f'n cunt and hung up.
- She tried to call Tracy back three times, but Tracy did not pick up.
- She called Derek and Cole to tell them about Tracy.

NOTE: Ms. Irwin entered into evidence a document and it was marked ER.EX. #2 from her document binder.

- Ms. Jackson identified ER.EX. #2 as the company's "Statement of Responsibilities" given to each employee on their initial hire. She specifically referenced Section L. which sets out disciplinary measures for harassment.

NOTE: Ms. Irwin entered ER.EX. #1 from the Employer document binder.

- Ms. Jackson identified the document as the company's "New employee Orientation Checklist". This document lists all the Company's paperwork, policies, government requirements, etc. This document was signed by Tracy on Nov 27, 2018, signifying that she had been orientated.

NOTE: Ms. Irwin entered ER. EX. #20 from the Employer document book.

- Ms. Jackson Identified the document as a letter dated Jan 29/21 from a customer of AM to PM that set out problems with Tracy's service on multiple occasions.
- Tracy was well aware that she was to deal with Managers Derek, Cole and Lucinda and not herself (Juanita).
- Tracy's actions from November 13 through 15 of 2020 affected all employees. Managers suffered through her insubordination and one employee refused to come back to work because of her behaviour. Tracy's behaviour also affected relationships with customers.

#### Cross Examination

Ms. Jackson's evidence provided in response to Ms. Smith's questions is summarized as follows:

- She met Tracy at Montana's when they were both looking for work, they have been close friends prior to the work relationship.
- Tracy was employed from December 6, 2018, to November 15, 2020.
- All new hires get the employer handbook containing all policies etc. and after orientation they sign the checklist (ER. EX. #1).
- Derek Hope is her spouse as well as the manager of the Kindersley operation. She has no issues with the arrangement.

NOTE: Ms. Smith entered EE.EX. #3 from her document binder.

Ms. Jackson identified the exhibit as the letter of offer provided to Tracy on January 15, 2020. The letter was signed by herself and Tracy.

- As a salaried employee Tracy had access to all facets of the Company. During Tracy's training expectations for performance were provided.
- Managers (including Tracy) worked office hours of 8 hours a day and were on call 24/7.
- She was told that on November 13, 2020, Tracy left early at 4:00p.m.

NOTE: Ms. Smith entered as evidence exhibit marked ER. EX. # 31 from Ms. Irwin's document binder.

- Ms. Jackson identified this exhibit as a number of text messages between the company dispatcher and Tracy. On November 13, the messages show Tracy was working at 7:24 am, and away from work between 3:25 p.m. and 3:58 p.m. The text message received by Tracy from dispatch at 6:46 p.m. and responded to by Tracy at 6:47 doesn't mean she was at work. Tracy left work early that day.

NOTE: Ms. Smith entered exhibit EE. EX. #5 from her document binder.

- Ms. Jackson identified the exhibit as the letter dated Nov 13/20 from Lucinda to Tracy. The letter changes Tracy's salary from monthly to hourly effective Nov. 16, 2020. She was in Nova Scotia at the time so Derek and Lucinda handled it.
- She agrees the letter does not mention the move was disciplinary, it should have. She told Tracy that it was discipline but that it would not take effect for 30 days. She also agreed that letter does not mention progressive discipline.
- She believes there was a text message sent to Tracy, that recorded the decision to take dispatch from her. Tracy was told several times that dispatch was removed from her as a disciplinary action.

NOTE: Ms. Smith entered as evidence ER. EX #30 from Ms. Irwin's document binder.

- Ms. Jackson identified this exhibit as a number of texts between herself and Tracy during the days of November 13 to 16, 2020.
- She was communicating with Tracy as a friend, not the employer. She does not know if Tracy was having a bad day. Tracy told her she had no issues.
- Swearing is not part of the workplace culture. Personal language may contain some, but name calling is not.
- On Nov 15 she and Tracy talked about Tracy's salary, not about her (Juanita's) daughter. Tempers flared when she told Tracy she took off early on the 13<sup>th</sup>. Tracy told her she had to pick up her daughter. She told Tracy that was her problem, not the company's and that she should have called Derek, so he knew what she was doing. That's when Tracy called her the crude name and hung up. She tried to call Tracy three times, but Tracy never picked up.
- Tracy called the next day expressing remorse.
- Tracy had her work problems explained to her numerous times and progressive discipline was administered. No documentation because Tracy's file was emptied somehow.
- She agrees that there was no harassment complaint filed on Tracy.
- Tracy quit on Friday Nov 13 in front of other employees, and she told her to talk to Derek.

Redirect          Summary of evidence provided by Ms. Jackson on redirect:

- Management hierarchy is herself with Derek, Cole and Lucinda reporting to her. Tracy when assigned to dispatch was a manager but on a level below the other three. Derek is the boss when she isn't there.

Ms. Irwin called Derek Hope as her next witness, and he was affirmed. Summary of his examination in Chief is as follows:

- He has worked at AM to PM for 8 years, the last 3.5 as the manager of the Kindersley office. He has known Tracy only for the 3 years she has worked there.
- Their relationship was all work orientated, she reported to him, Cole, or Lucinda.
- Prior to November of 2020 Tracy's work ethic was good, but around March of 2020 it went down hill. She started to be late for work, forget duties and supplies. She did not manage other employees properly, forgot to check in regularly.
- Tracy worked on November 13, 2020, and got all her jobs done, but didn't call in. The Company rule is everyone calls in. She did not text or return to work after 4 p.m.
- He called Juanita and they discussed what to do about Tracy's behaviour. They decided to change her salary and remove dispatch from her responsibilities.
- He had discussed with Tracy her performance and shirking her duties. On Nov 14 he spoke with her about not cleaning her truck out at the end of the day and she smart alexed him back.
- At the end of day, on Nov 14 he left the salary change letter on her desk (EE. EX. #5)
- At 6:30 pm on November 14, Tracy called him to get her job back. She had quit that afternoon in front of another employee at the office. Tracy had left that day before he could talk to her. Apparently, Tracy had read the letter, had a vent during which she said she quit.
- During the 6:30 p.m. telephone conversation she told him, Juanita had told her to call him about her job. He told her that in order to come back, her performance needed to improve, and he raised the areas to be improved and told her the consequences if she didn't improve. He also told her, her return would be on probation.
- He has never raised his voice and has never belittled her.
- On Nov 15 they were both scheduled to work, and both showed up, but on Nov 16, after her episode with Juanita, Tracy did not show.
- Tracy's employment was put on hold.
- He has disciplined Tracy on several occasions verbally, her dispatcher responsibility was removed, and her salary was changed.

#### Cross Examination

In response to Ms. Smith's questions Mr. Hope provided the following evidence:

- He was Tracy's direct supervisor. They had a good relationship. He never raised his voice inappropriately, may have raised it to make a point. It was his job to administer discipline.
- While she was assigned dispatch, Tracy oversaw the office and other employees. She was in charge of the dispatch book, where everything is recorded. When he is in charge of the dispatch book, he writes down everything he does.
- There are no documents recording Tracy's discipline. Everything was verbal.
- The removal of the dispatch responsibility was discipline, but there is no documented record.
- Tracy was treated like family both at work and away.
- Tracy had told him that she was having issues with her landlord, her kids, and men but she never asked for time off. He often consoled her.
- The salary change was progressive discipline. Since she did not come back to the office that afternoon, he was unable to talk to her about the salary change.
- He knew she had quit because he could see her remove personal items from her truck.

#### Re-direct

Mr. Hope testified that the dispatch responsibility was assigned only to worthy employees.

Ms. Irwin called Lucinda Milford and she was affirmed. The summary of her evidence follows:

- Ms. Milford's position is that of Head Office Manager and Safety Manager. She works out of the Estevan office, but her responsibilities are province wide.
- Her employment began in 2008 and she became Office Manager in March 2019.
- She knows of Tracy, but they have never met face to face.
- On November 13 she was scheduled to work and that afternoon she was asked by Derek to draft the salary change letter (EE. EX. #5). She did that and e-mailed it to Derek.
- On Monday Nov 16, Juanita called her and told her what had happened between her and Tracy on the weekend.
- She called Employment Standards for advice on handling the Tracy situation and spoke to Ms. Smith. She asked Ms. Smith if there was "just cause" for termination and Ms. Smith thought there was. She built the termination letter on Ms. Smith's advice.

NOTE: Ms. Irwin tabled the "Dismissal Letter" from her document binder, and it was marked ER. EX. #9.

- Ms. Milford remembers doing up a “write up” on Tracy in 2019 but can’t remember what it was for.
- “Write-ups” are placed in a company file, but in this case the file did not have the “write-up’s, they were gone.
- Any safety concerns are to come to her, she does not deal with truck concerns.

NOTE: Ms. Irwin tabled a document from her binder headed “Get a Grip Tire and Performance”. It was marked ER. EX. #6.

- Ms. Milford said this document is an invoice for one of the AM to PM trucks. After repairs, the truck was road worthy.
- She has never received a harassment complaint regarding Tracy. Tracy knew she was the Safety Manager.

#### Cross-Examination

The following is a summary of the evidence provided on cross by Ms. Smith.

- Ms. Milford and Juanita has been close friends for 20 years. She does not feel work responsibilities are compromised by that friendship.
- She and Tracy did computer work, hers from Estevan and Tracy from Kindersley.
- During covid, Tracy was the Manger in Kindersley. She (Ms. Milford) spent a lot of the time working at home.
- There was no training for Tracy, as she knew how to do things.
- She does not know if the truck fixed (ER.EX. #6) had a safety inspection after the repairs.
- She is not sure if any disciplinary documents she drafted included the words “progressive discipline”.
- Juanita told her to put the effective date of Nov. 16, 2020, in the letter (EE. EX. #5). Juanita later changed it to 30 days.
- The letter has no mention of discipline in it. She takes responsibility for that. The letter represented both discipline and an economic downturn due to covid.
- She does not keep copies of disciplinary documents; those are kept in a file in Head Office. She has no copies of discipline relating to Tracy.

#### Re-direct

None

## 2. Evidence of Employee

Ms. Smith called Tracy Hughes as a witness, and she was affirmed. The summary of her evidence is as follows:

- Ms. Hughes was employed by Am to Pm Hotshot from December 6, 2018, to November 15, 2020.

NOTE: Ms. Smith entered documents from her binder, and they were marked EE. EX.#13, 14, and 15.

EE.EX. 13 is Section 2-60 from the Act that sets out notice required for lay-off or termination.

EE. EX. #14 is Section 2-27 from the Act that sets out requirements for vacation pay and entitlement for leave.

EE.EX. #15 is Section 2-1(v) of the act which defines "wages".

- Ms. Hughes recalls receiving some of the employer documents on November 27, 2018 and signing the check list on that date (ER.EX. # 1 and 2). She did not receive them all and she did not read them. She was rushed by the employer to get on the job because they were short staffed.
- Her relationship with Juanita was as best friends, they met at Montana's and Derek Hope was Juanita's boyfriend at that time.
- She could not talk to Juanita about her concerns about Derek, that was a touchy subject, and she likely would be fired if she raised concerns with Juanita.
- Derek was hard to deal with as a manager. He was scary and made her cry many times because of the way he treated her. She could not talk to him and held things back because of her friendship with Juanita.
- On January 15, 2020, Juanita made her a salaried employee (EE. EX. #3). With this change she had the responsibility of dispatch added to her responsibilities. She no longer had to fill out time records as she was now paid by the month.
- On March 20, 2020, Derek and Juanita left for Nova Scotia and became Covid bound. She was left in charge without any training, and she had to wing it. Except for one week in June when Derek returned, she had the dispatcher phone from January to September of 2020. In September Raylynn and Derek took over the dispatch supposedly to give her a break. She was never told the action of taking her dispatch responsibility away was disciplinary.
- On November 13 she was at the yard by 5:30 am. There was a severe snowstorm that day and she got stuck in the snow. Derek helped get her out, but he was angry about it. She got her jobs done and came back to the yard. Raylynn (Juanita's daughter) needed a ride, so she gave her one and the two of them ended up commiserating for about an hour and a half. Derek texts her about her whereabouts. She didn't answer because she got a call to pick up her daughter. Her daughter had been sexually assaulted. When she got back to the yard Derek texted her about not cleaning out her truck.
- That same day she was told to switch her truck to the one that had just come out of the shop.
- She told Derek the repaired truck had sounds coming out of the rear end and that she didn't want to drive it. He told her to f..off already about the truck, he wasn't going to spend any more money on it.
- She has never been spoken to about performance issues, was never provided coaching or clear directions.



NOTE: Ms. Smith entered a document from her binder, and it was marked EE.EX. #4. This exhibit is an e-mail from Derek Hope to Ms. Smith. Ms. Smith also referred me to another document in her binder tab #24. This document is part of her argument and is a Queen's Bench decision so it wasn't entered.

- Regarding the text message (ER.EX. # 30) from November 13, Ms. Hughes was sorry she had made Derek angry because he becomes unbearable. He took over the unit after it was unstuck.
- On November 14 she found the letter changing her salary (EE. EX. #5). She felt both sad and upset. With the loss of money, she couldn't pay her rent, feed her kids. No one told her it was disciplinary. She doesn't know why she wasn't given it personally.
- She never went to Derek about it because he is tough to talk to. She did have an emotional outbreak in the office when she read it. She remembers saying that she "should just quit". Instead, she went into the yard and moved her stuff from one truck to the other one as Derek had ordered.
- She never resigned, never told Derek that she quit. She was never told she was back on probation, she never asked Derek for her job back because she never quit.
- She was never disciplined for not cleaning her truck out, she was never disciplined for leaving early.
- She was never disciplined ever.
- During their communication on November 14 Juanita never told her the salary change was discipline.
- The November 15 telephone conversation with Juanita ended up being an argument. Suddenly all the things going on in her life made her so upset she needed to end the conversation. Yes, she called Juanita an awful name and she regretted it. Her mother having lung cancer, her salary change, her daughter all contributed to her outburst.
- Yes, Juanita had tried to call her back, but she didn't have any energy left to pick up. She apologized the next morning.
- She was not progressively disciplined. At Am to PM if you get written-up you are given the write-up and you have to sign it and you get a copy. She never had one of those.
- Losing her job has traumatized her. She has been evicted from her house because she couldn't pay the rent, she has had to use the food bank in order to feed her kids. She is unstable, sad, injured and seeing a counsellor weekly. She has lost her best friend and her job.

#### Cross-examination

Responding to Ms. Irwin's questions, Ms. Hughes provided the following evidence:

- Ms. Hughes did sign the "check list" (ER. EX. #1) and even though she never read all the referenced documents she knows that she had agreed to them.
- Even though she felt Derek was a hot head she never put in a complaint about him. She did complain in personal conversations with Juanita.

NOTE: At this time Ms. Irwin produced three documents that are new and were not contained in her document binder. The documents are screen shots of text message sent by Ms. Hughes. The three have no date on them and appear to be sent to Juanita. The three are marked as one exhibit ER. EX. #32.

- Ms. Hughes doesn't remember when she sent these three texts, but she did so to keep Juanita and Derek happy. She did not lie about her feelings about Derek.
- She trained in dispatch until December of 2019. Never once did she have a performance review.
- Derek's concern over the truck box not being emptied out on Saturday November 14 was the only time he told her about a performance issue.
- On November 13 Derek took her truck after getting her out of the snowbank and sent her back to the office.
- On Saturday November 14 after she announced in the office that she should just quit, she left in her personal vehicle. The rule was not to take company vehicles home.
- Regarding the text on Saturday November 14 at 1:24 p.m. (ER. EX. #31), the incident was at the office when she found the letter changing her salary. She never talked to Derek about it. She called Juanita after reading the letter (1:23 p.m.) and was told the company was in trouble. Juanita never told her the effective date would be changed to 30 days.
- Regarding the text message in ER. EX. #30 where she says she has no issues, she meant she had no issues with Juanita.
- The files in Kindersley contain only documents pertaining to driving tickets and certificates. She has never been written up for anything.
- She never talked to Lucinda about the truck, she has never talked to Lucinda about anything. She was told to talk to Dereck about the vehicles.

#### Re-direct

- Regarding the new texts submitted by Ms. Irwin, Ms. Hughes does not remember the time frame. She could have sent them at times when Derek was treating her properly.
- She doesn't know if the text she sent saying she had no personal issues was before or after the assault on her daughter.

#### Final Argument

##### Employer:

- Ms. Irwin referred to her written submission provided to me on June 14, 2020. She argues that Tracy was terminated for just cause following a phone conversation between Tracy and Juanita Jackson on November 15, 2020. During that conversation Tracy called Juanita a very vulgar name, and at the time she was terminated, Tracy was on probation.

- Ms. Irwin further argues that the threshold for cause is lower for an employee on probation.
- Ms. Irwin submitted that Tracy's conduct between November 13 and 16, 2020 demonstrated her inability to work in harmony with the employees of AM to PM, including her direct manager, Derek, and the owner, Juanita. Furthermore, her unreliability to finish her work when she was scheduled to do so did not instill confidence in AM to PM that it could rely on her in the future.
- In the alternative, if it is found that Tracy was not on probation when she was terminated AM to PM submits that Tracy was terminated for cause as a result of several episodes of inappropriate behaviour between November 13 to 15, 2020 including:
  - On Friday, November 13, 2020 Tracy left work hours before her shift was scheduled to end without providing notice. She also did not clean her truck or hand in her ticket so that the job she had worked could be invoiced.
  - On Saturday, November 14, 2020, Tracy returned to work, cussed and screamed that she quit in front of a truck driver and left work before her shift was scheduled to end.
  - On Sunday, November 15, 2020, Tracy phoned Juanita, yelled and called her a very vulgar name, hung up and did not answer Juanita's attempts to call her back. Ms. Irwin also puts forward that Tracy's actions damaged the company's reputation. Ms. Irwin argues that AM to PM engaged in progressive discipline of Tracy by:
    - Taking away Tracy's authority and responsibilities to operate the dispatch phone,
    - Tracy's form of pay was changed to an hourly wage, and
    - Tracy's employment was terminated.
- Lastly, Ms. Irwin submitted that the salary change imposed on Tracy by letter on November 13, 2020, states the change was effective on November 16, 2020, was clarified by Juanita during a telephone conversation the effect would be changed to 30 days. Ms. Irwin argues that the change in the effective date removes any argument that Tracy was constructively dismissed. Ms. Irwin concluded by submitting the cumulative affect of all the above points show Tracy's termination for just cause should be upheld and the appeal allowed.

Employee:

- Ms. Smith claims that there was no progressive discipline submitted into evidence and that the employer terminated Tracy for just cause for inappropriate language.
- Ms. Smith contends that the events leading up to the November 14, 2020, phone call contributed to the emotional conclusion and the vulgar name calling.
- The events being:
  - Being told to change trucks to one she felt was unsafe
  - Being belittled by Derek

- Having her salary reduced.
- Ms. Smith also argues that the whole issue around Tracy's quitting needs to be treated as a "heat of the moment" resignation and as such is not sufficient to end an employment relationship.
- Ms. Smith contends that the name calling of Juanita was not made in the presence of other employees, patrons or clients. Since Tracy had no prior discipline on her file, this incident, on its own, could have been discipline worthy but not termination. Tracy repeatedly showed remorse with texts to Juanita.
- Lastly, Ms. Smith argues that not only has the Employer not provided any proof of prior discipline but has not shown that Tracy had ever been provided with reasonable objectives, clear and unequivocal warning, she was not clearly informed that failing to meet the objectives standards would result in termination. She provided *Graf v. Saskatoon Soccer Centre Inc.* as a case to support this last argument.
- Ms. Smith concluded that for all the above arguments, the wage assessment should be upheld and AM to PM's appeal dismissed.

I thanked the parties for their respectful and detailed presentations and ended the hearing.

#### v. Decision

Both Juanita and Derek testified that Tracy's performance began to slide about March 2020. Both agreed that while there was no written documentation, Tracy had been verbally admonished on multiple occasions.

Both also testified that removing the dispatch responsibilities and the salary change of November 14, were disciplinary and that Tracy was advised of both. Further they testified that, Juanita had told Tracy the salary change would not be in effect for 30 days beyond November 16.

Derek testified that Tracy had quit and later called him for her job back and he told her she could come back but that she would be on probation.

The only incident that both Derek and Tracy agree happened is Derek telling her that her truck must be cleaned out at the end of every workday. This conversation occurred in the late afternoon of November 14; it was the previous afternoon that Lucinda testified she had told by Derek to draft the salary change letter. Derek has testified that he did not have a chance to talk to Tracy prior to the salary change. Yet, they were together on the afternoon of November 14. He chose instead to talk about a clean truck, when he could have met with Tracy to tell her what was coming and why. The letter says the Company was in trouble and changes needed to be made. Yet no attempt was made to discuss this with Tracy and perhaps work out a plan together.

Instead, at the end of the day on November 14, he left the letter on her desk. Her response, after finding and reading it, was not surprising and all the subsequent events that followed were the result of that reaction. The letter dated November 13, 2020, is addressed to Tracy Hughes and states: "This is a letter

to let you know that Effective Nov. 16/2020, Management salary will be changing and going back to hourly wage. With the change in the economy, we are forced to make changes. This is not an easy decision for the company to make in these times, we are now forced to make them at this time.” The letter is signed but Lucinda Milford.

Although “constructive dismissal” was referenced during the hearing, neither party submitted a definition. I provide the following quote from an article by Taylor Janis Law Firm:

“Constructive dismissal generally occurs when an employer substantially changes the terms of an employee’s employment contract without first obtaining the agreement of the employee. This often takes the form of a sudden material change to the contract without warning. So rather than firing or “terminating” an employee, the employer effectively “forces” the employee out.”

Ms. Irwin suggests that constructive dismissal cannot be found in this case as Juanita, shortly after Tracy found the letter on her desk, extended the effective date of the salary change for 30 days.

Tracy’s testimony includes:

- She has never been disciplined during her employment up to November 13.
- She was never told that the removal of dispatch duties or the salary change were disciplinary.
- She has never been coached, given direction, nor had a performance evaluation.
- Juanita never told her the salary change would be extended by 30 days.
- She never quit her job and never talked to Derek about getting her job back, nor did he tell her she could come back but on probation.

Of the two renditions of what happened between March and November 16, 2020, on the balance of probabilities my inclination is that Tracy’s is the closest to what took place.

The decision to change her salary was not only a breach of the contract made on January 16, 2020 but was also was a significant change. Tracy testified she was afraid she would be unable to meet her rent and feed her kids on the reduced salary.

My decision is that Tracy Hughes was constructively dismissed on November 14, 2020, and the subsequent events are immaterial.

Despite my determination that Tracy was constructively dismissed, I want to spend a bit of time reviewing the Company’s termination of Tracy for just cause. The Dismissal Letter is dated Nov. 16/2020 and is addressed to Tracy Hughes. The contents of the letter follow:

“Your employment with AM to PM Hotshot Ltd. And our partnership with J&J Energy Solutions Ltd. Will be terminated effective immediately with just cause and undue hardship.

Your employment with AM to PM Hotshot Ltd. Is being terminated for the following reasons. There has confirmation that you have broken the employment contract with AM to PM Hotshot Ltd., continuous insubordination and challenging of authority has occurred multiple times and insolence to Management and Owner of company. Also, there has been improper conduct while working for the company. AM to PM Hotshot Ltd. has given warnings about behavior and work-related issues.

There is a zero tolerance for misconduct or insolent behavior within our company.”

The letter is jointly signed by Juanita Jackson and Derek Hope.

The truck box cleaning issue and the vulgar name calling are the only two possible reasons for discipline. The letter changing Tracy’s salary, despite company allegations otherwise, cannot be accepted as disciplinary. There is no credibility to the company’s allegation that the removal of dispatch responsibilities was disciplinary. There is no evidence of when it occurred and no documentary evidence.

Regarding the vulgar name Tracy called Juanita, there is no evidence Juanita took exception to it, however there is evidence Tracy felt remorse and apologized.

Testimony from both Juanita and Derek allege multiple occasions of verbal discipline being administered on Tracy, yet not one date or reason for the disciplines have been provided and both have agreed that discipline documentation does not exist. Even if I considered the vulgar name calling as discipline worthy, any action would be well short of termination. Therefore, the company’s case for dismissal for just cause falls woefully short

Therefore, the appeal is dismissed and the wage assessment of \$ 2049.29 is upheld.

Dated at Regina in the province of Saskatchewan, this 12<sup>th</sup> day of July 2021.



Ralph Ermel

Adjudicator