

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



Chris Moore

COMPLAINANT/EMPLOYEE

-AND-

Mitchell Anderson o/o Anderson Auto Sales

APPELLANT/EMPLOYER

DATES OF HEARING: September 20, 2021

PLACE OF HEARING: Regina, SK

LRB FILE: No. 060-21

WAGE ASSESSMENT: No. 1-005392

INTRODUCTION

This matter was heard before me on September 20, 2021, at Regina, Saskatchewan.

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.

Andrew Langgard, Employment Standards Officer represented the Department of Employment Standards.

Complainant/Employee, Chris Moore, attended and gave sworn evidence on his behalf.

The Appellant/Employer, Mitchell Anderson, Director attended in person and gave sworn evidence on behalf of the company Anderson Auto Sales.

The Appellant/Employer called three witnesses in addition to Mitchell Anderson who all gave sworn evidence on behalf of the Appellant/Employer:

1. Mike Tannis
2. Jay Azamal
3. Rod Dorn

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 \$3,151.92.

I. PRELIMINARY MATTERS

There were no Preliminary Matters.

II. AGREED FACTS

The parties agreed as follows:

1. Chris Moore was an employee of Anderson Auto Sales from June 1, 2018, to October 7, 2020.
2. The rate of pay of the Employee was \$37.25/hour.

3. That the Wage Assessment amount of \$3,151.92 is the correct amount that would be owing to the Employee if it is found that the Employee did not voluntarily leave his employment with the Employer. The amount stated is for 2 weeks severance pay and vacation pay in lieu of notice.

III. DISPUTE

The issue to be decided in this matter is whether the Employee voluntarily left his employment with the Employer or was the Employee dismissed without cause, and therefore owed severance pay by the employer, in accordance with The Act.

IV. EVIDENCE OF THE EMPLOYER

Mitchell Anderson was sworn and gave the following evidence:

The Employer operates a business in the City of Regina which comprises of vehicle sales, autobody work and mechanical work for vehicles.

On October 7, 2020, Mr. Anderson was contacted by his son Cole by telephone, advising that there had been a verbal altercation between the Employee Chris Moore and another employee, Kevin Sirett, at the workplace that morning.

At approximately 10:15 A.M. the Employer arrived at his business, and proceeded into his office, at which time the Employee, Chris Moore, came into the office.

The Employee, Chris Moore, told him that he was not going to work any longer unless Kevin was fired.

Mr. Anderson said that Employee, Chris Moore, was very upset and excited. He advised the Employee to cool down and leave the premises. He asked the Employee, Chris Moore, to call him later in the afternoon or the next day. Mr. Anderson wanted to ascertain what had happened by interviewing the other employees before speaking with Chris Moore, regarding the incident. Mr. Moore left the premises.

Mr. Anderson then went on to business floor and spoke with Jay, Azamal, Clint Anderson, Cole Anderson, and Kevin Sirett.

He then returned to his office and waited for the Employee, Chris Moore, to contact him.

Mr. Anderson had learned from the other parties that there had been an incident between Mr. Moore and Mr. Sirett regarding the thermostat in the work area which resulted in an argument between the two. Subsequently, Chris Moore, walked away from the argument.

Mr. Anderson was waiting for Mr. Moore to contact him however, Mr. Moore did not contact Mr. Anderson. Mr. Kevin Sirett is no longer an employee with the business having left some 6 weeks prior to the hearing.

The following day Mr. Anderson received a text from his son, Cole, advising that Mr. Moore had not come to work that day.

Mr. Anderson entered an exhibit of text messages which took place between Chris Moore and his son, Cole Anderson, which was entered as Employer Exhibit 1.

Mr. Anderson discussed the matter with his son and had read the text messages between his son and Chris Moore. After reading Mr. Moore's, "sometimes it's best to walk away" text, he took that as an indication from Mr. Moore that he had quit his job.

Mr. Anderson then told his son to contact Mr. Moore to advise him to attend the premises to get his tools. Mr. Moore did attend to get his tools approximately a month after the text messages.

Under cross examination, Mr. Anderson stated that after receiving the text messages in ER 1 and LSO Exhibit 3, that he never asked Mr. Moore to confirm that he had left his employment. He presumed, that the text stating, "sometimes it's best to walk away," confirmed that Mr. Moore was quitting

his employment. He also assumed Mr. Moore had left his tools at the workplace until he cooled off before taking them away.

Mr. Anderson was aware of the contents of LSO Exhibit 3, including a text from Mr. Moore on October 8 advising the Employer that he would not coming in on October 8 as he was sick.

Mr. Anderson is of the view that it was not the Employer's responsibility to follow up on the Employee as to whether he had quit or whether he was sick on October 8. The Employer had no contact with Mr. Moore until the text of November 2, 2020, advising Mr. Moore to come get his tools.

Jay Asamal was sworn and gave the following evidence on behalf of the employer:

Mr. Asamal was at work at the time of the incident and was in another room when he heard the yelling between Mr. Moore and Mr. Sirett. He moved to a doorway where he observed the two parties arguing.

Mr. Asamal was aware that Mr. Moore and Mr. Sirett did not get along and knew that there had been an ongoing argument over the thermostat between the two of them.

Rod Dorn was called by the Employer as a witness, was sworn and gave the following evidence:

He was the Sales Manager for the Employer. He was in the office on October 7th at approximately 10:00, when Mr. Anderson came into the office with Chris Moore coming into the office immediately afterwards.

Chris Moore was very upset and was yelling in the office regarding Mr. Sirett and the thermostat. Mr. Moore told Mr. Anderson that he would have to fire Mr. Sirett or he, Mr. Moore, would not be coming back.

Mr. Anderson told Mr. Moore to go home and call him later that day or the next day and that he was not firing anyone.

Mr. Dorn had left the office and came back in during the conversation with Mr. Moore and Mr. Anderson and, consequently, did not hear the total conversation between the parties.

Mr. Dorn did not say anything during the meeting between Mr. Anderson and Mr. Moore.

Under cross examination Mr. Dorn advised that Mr. Moore had never officially said he was quitting, and had only made the conditional remarks regarding quitting if Mr. Sirett was not fired.

Mr. Mike Tannis was called as a witness by the Employer, was sworn and gave the following evidence:

He is the Office Manager for Anderson Auto Sales and was in the office on the morning of October 7, 2020 when Mr. Anderson came into the office sometime after 10:00am.

Mr. Moore came into the office immediately following the arrival of Mr. Anderson.

Mr. Moore was upset and angry.

Mr. Anderson asked about the incident and Mr. Moore responded that it was regarding the thermostat and Mr. Sirett.

Mr. Moore had advised Mr. Anderson that he had left the business earlier as he was extremely upset and angry over the incident.

Mr. Moore told Mr. Anderson that he wanted Kevin Sirett fired, or he would quit.

Mr. Anderson responded that he did not know what happened yet and was not going to fire anyone. He told Mr. Moore to go home, settle down and call Mr. Anderson later in the afternoon or the following morning.

Mr. Moore then left the premises.

Under cross examination Mr. Tannis described Mr. Moore as being upset, angry and frustrated.

V. EVIDENCE OF THE EMPLOYEE

The Employee, Mr. Moore, was sworn and gave the following evidence:

He is an autobody technician and was employed by Anderson Auto Sales.

His supervisor was Cole Anderson, The Employer's son.

On October 7, 2020, he attended the place of work prior to 7:00 A.M., which was his start time.

He noticed the premises were quite warm and went to the thermostat, which had been turned up. He turned the thermostat down in order work and mix paint.

Approximately 20 minutes later Kevin Seritt came into work and went over to Mr. Moore in a rage regarding the thermostat being turned down.

Mr. Seritt threatened to kill Mr. Moore because of him turning the thermostat down.

Mr. Moore attempted to walk away to distance himself from Mr. Seritt, however Mr. Seritt continued to follow and berate him regarding the thermostat.

Mr. Moore felt physical threatened and terrified. He was extremely shook up over the incident.

There had always been bad blood between Mr. Seritt and Mr. Moore. Mr. Moore regarded Mr. Seritt as a hot head.

There had been several previous incidents between Mr. Moore and Mr. Seritt. Mr. Moore had talked to Clint, another son of Mr.

Anderson, to deal with Mr. Seritt. Mr. Moore also spoke with Cole about previous incidents. Cole responded that Mr. Seritt will calm down after a while and not to worry about it.

After discussing the matter with Clint, Clint advised that Cole and Mr. Moore should deal with it.

Mr. Moore locked his toolbox and went home. He was feeling very sick and nauseous from the incident.

A short time later he received the first text message from Cole Anderson, set out on Employer Exhibit 1.

The texting went back and forth when Mr. Moore responded, "sometimes it's best to walk away." Mr. Moore indicated that he did not intend to resign when making that comment but was merely advising Cole that he was getting away from the altercation, not getting away from his employment.

When Mr. Moore received the subsequent text from Cole, that being to come and get his tools, Mr. Moore thought he was fired by his Employer.

As a result, he went back to work at approximately 10:00 A.M. to discuss the matter with Mr. Anderson.

The Employee met with the Employer, and he discussed with him as to what happened and was told by Mr. Anderson he would find out what happened from the other employees.

Mr. Moore was quite shocked that no one on the premises were concerned about what had transpired, and no one, including Cole, Clint or Mr. Anderson seemed to take any steps regarding the same.

When Mr. Moore left the premises, he had a conversation with Cole outside by his truck and told Cole that he was not quitting

as the pandemic was in place and jobs were hard to find. Mr. Moore was concerned about his job due to the incident.

Nothing was resolved between Mr. Moore and Cole regarding the job and Mr. Moore then went home.

The next day Mr. Moore was still feeling poorly regarding the incident and was still upset. He subsequently sent the text that he was not coming in on October 8th, 2020 as he was ill.

Between October 8th and November 7th no one from the Employer contacted him regarding his employment.

The only contact he had was the last text from Cole on November 7th, 2020, telling him that Mr. Anderson had told Cole to contact Mr. Moore to come get his tools.

Mr. Moore obtained other employment shortly after November 2, 2020 and returned to Anderson Auto Sales and picked up his tools. Leaving his key with the employer in the process.

From October 8, 2020, to November 2nd, 2020 he had no contact with the Employer and consequently thought he had been fired.

Under cross examination, Mr. Moore advised that he and Mr. Anderson had known each other for 30 years and sometime prior had been partners in a body shop.

Mr. Moore had ongoing problems with Kevin Seritt and several altercations with him during his employment with Anderson Auto Sales.

Mr. Moore stated that he had never said that he was quitting and had only left the premises to de-escalate the incident between him and Mr. Seritt. Mr. Moore made his comments regarding walking away only in the context that he was walking

away to give space to the incident and de-escalate the incident, not quitting. He never told the Employer he was quitting.

Mr. Moore never contacted the Employer after October 8th, 2020, as he thought that he had been fired. He was of a view that no one seemed to care about the incident between him and Mr. Seritt. He was also angry that no one was concerned that the incidents between him and Mr. Seritt would escalate into a physical violence.

VI. ANALYSIS/DECISION

The Employer takes the position that the Employee quit his job resultantly section 2-60 of the Employment Standards Act does not apply, and the Wage Assessment should be set aside.

The Employer arrives at this conclusion because of:

1. When meeting with the employee in his office after the incident the employee said that if Mr. Seritt was fired that the employee would be quitting. Mr. Seritt was not fired.
2. The text message from the employee to Cole stating that, "sometimes it's best to walk away".
3. The Employee did not contact the Employer later in the afternoon or the next day, as directed by Mr. Anderson at the meeting in the office immediately following the incident. The Employer had told the Employee to go home and cool down and call him later that day or the next. Employer heard nothing more from the Employee, so it was assumed that he was correct in his analysis that the Employee had quit.

The Employer thought that it was incumbent upon the Employee to do more to confirm that he was still wanting to stay employed with the Employer.

Resultantly, the Employer concludes that he does not owe severance pay as set out in The Act at Section 2-60.

The Employee states that he did not quit his position.

1. He says that he left work that morning to de-escalate the argument with Mr. Seritt.
2. That at the meeting with his Employer, immediately following the incident, in the office, Mr. Moore says that he never said he was going to quit if Mr. Seritt wasn't fired.
3. The text message to Cole saying, "sometimes it's best to walk away", was referring to his leaving work after the incident to de-escalate the altercation and give space.
4. When the Employee received the text from Cole, on October 7th, telling him to come get his tools, he assumed he was fired.
5. The Employee was not contacted by the Employer again until November 2nd when he was told to drop of his key and pick up his tools.

The Employee concluded from these events that he was fired and says he is entitled to payment under Section 2-60 of The Act.

The law relating to such events is addressed in *Beggs v. Wesport Foods Ltd.*, 2011 BCCA 76. Where the British Columbia Court of Appeal reviewed the law relating to dismissal verses voluntary resignation and applied both a subjective and objective test to determine whether the Employee intended to resign and whether the Employees words and acts objectively viewed support a finding that she resigned.

The Court looked to Wrongful Dismissal by David Harris and, accepted the following:

3.0 Dismissal

Summary: Dismissal is a matter of substance, not form. It is effective when it leaves no reasonable doubt in the mind of the employee that his or her employment has already come to an end or will end on a set date.

...

The crucial factor in assessing the effectiveness of a dismissal is the clarity with which it was communicated to the employee. Mr. Justice Macfarlane of British Columbia Court of Appeal stated that law is this regard as follows in *Kalaman v. Singer Value Co.* (1997), 31 C.C.E.L

(2d) 1, 93 B.C.A. 93, 151 W.A.C. 93, 38 B.C.L.R (3d) 331, [1998] 2
W.W.R. 112, 97 C.L.L.C. 210-017, 1997 Carswell BC 1459, [1997]
B.C.J. No. 1393:

A notice must be specific and unequivocal such that a reasonable person will be led to the clear understanding that *his or her employment is at an end at some date certain in the future*. Whether a purported notice is specific and unequivocal is a matter to be determined on an objective basis in all the circumstances of each case. (p. 11[C.C.E.L.]; emphasis added)

...

3.0A Dismissal verses Voluntary Resignation

Summary: The test for voluntary resignation (as opposed to dismissal) is objective, focusing on the perceptions of a "reasonable employer" of the intentions of the employee based on what the employee actually says or does or, in some cases, on what he or she fails to say or do. Among the relevant circumstances are the employee's state of mind, any ambiguities in relation to the conduct which is alleged to constitute "resignation" and, to a certain degree,

the employee's timely retraction, or attempt retraction, of his or her "resignation."

The employer drew his conclusion that the Employee had quit from a conversation, at a time, where everyone who had contact with Mr. Moore, said he was very upset.

The employer later confirmed his conclusion by interpreting a text message stating "sometimes it's better to walk away" that the employee was quitting.

This message was ambiguous at best.

However, the employer took it as a resignation by Mr. Moore and instructed his son to tell the Employee to come and pick up his tools.

Considering the emotional state of Mr. Moore, and the vagueness of the text, the Employer should have done more to confirm the employee had quit his employment.

A simple phone call or text could have confirmed the resignation one way or the other. The employer chose to do nothing.

The employee was angry as well as upset, and became more so when the employer appeared not to be concerned about how the employee was reacting to the incident. The employee was upset to the degree that he was feeling physically ill, so he went home. The following day (October 8) he still felt poorly and texted in sick.

In response to this, he was told to come in and pick up his tools. The employee then heard nothing until November 2, when he was told to drop off his key and take his tools.

I do not see how the Employee, Mr. Moore, could have interpreted the text messages and facts, as he knew them, in any other way other than to conclude that he had been terminated. He saw no reason to contact the Employer after reaching such conclusion.

As a result, I find that the Employee, Mr. Moore was terminated by the Employee, Anderson Auto Sales and applying Section 2-60 of The Act he is entitled to severance as set out therein.

VI. CONCLUSION

The Appeal is dismissed The Wage Assessment stands in the amount of \$3,151.92.

Dated at Moose Jaw, in the Province of Saskatchewan, this 27th, of October 2021.



Clifford B. Wheatley
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 <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.