

Decision of Adjudicator in the Matter of an Adjudication
pursuant to Sections 2-75 and 4-6 of *The Saskatchewan
Employment Act* (the "Act")

LRB File No. 077-21

Wage Assessment No. 1-005573



COMPLAINANT: Sarah Hanlon
Represented by Lorne Deeson and Randy Armthage
Employment Standards Officers

RESPONDENT: Avon Medical Clinic
Represented by Dr. Asish Mehta and Pamela Snider

DATE OF HEARING: December 8, 2021 and December 14, 2021

PLACE OF HEARING: Video Conference

i. Introduction

The video conference opened with Mr. Snider, Ms. Hanlon, Mr. Deeson, Mr. Armitage and myself present.

I advised the participants of my role, my expectations for conducting the hearing and time timeframe from the Act for my decision.

ii. Preliminary Matters

None.

iii. The Dispute

The Parties agreed that there are three issues for me to resolve:

- a. Was the deductions of \$2,147.55 made from Ms. Hanlon's final pay legal?
- b. Did the employer show just cause in Ms. Hanlon's termination?
- c. Is Ms. Hanlon owed wages for November 30 and December 1, 2020?

iv. Facts

a. Evidence of the Employer

Ms. Snider (Pamela) was affirmed and provided the following evidence:

1. She is Dr. Mehta's wife and attends to the Clinic as the Office Manager on a part-time basis.
2. Dr. Mehta will be available to testify at 12:00 noon today.
3. She understands that the termination of employment is viewed as "Capital Punishment".
4. Dr. Mehta used to be with the Northgate Medical Clinic, but then it was sold he started his own Clinic (Avon).

5. The new owner of Northgate was unable to hire qualified staff and Dr. Laurson recommended Sarah Hanlon to him.
6. When Dr. Mehta started Avon in 2019 Drs. Laurson and Cameron joined him. They hired Sarah on Dr. Laurson's recommendation.
7. First impression of Sarah was good although she argued the first day, over her starting wage. She was probably a good employee except as a former hotel cleaner she has no experience as a Medical Receptionist. Sarah was a "runner" at Northgate.
8. She can remember the day but in December of 2019 Sarah had been written up for insubordination. At that time, she explained to Sarah what insubordination was as an education to help in the future.
9. In January of 2020 the Clinic hired a new employee to compliment Sarah's incompetencies; Sarah's place at the front of the Clinic was used to train the new employee and Sarah did not like that.
10. When the doctors decided to relax the office dress code from scrubs to office attire, Sarah began to come to work in inappropriate, sexy dress. She didn't worry about it, but the doctors wanted to back to scrubs.
11. When COVID bit in March of 2020, the Clinic was closed for phone-in only. Sarah worked from 9 to 3 but was paid 40 hours a week. We found out later that Sarah was doing work for Dr. Laurson and Dr. Cameron on the side and putting the extra time on her time sheet. That over charging was part of the claw back on her last cheque.
12. We found many tasks undone after Sarah left, tasks that could have put the clinic in huge trouble with Sask Health. One example was MRI requisitions were not sent in. She is immune compromised, so she was not at the Clinic until the lock down ended. Then the clinic opened and back to regular business.
13. In July the clinic hired Jodi Creelman, who worked with Sarah. Judi left the job in the fall, and she heard, that Sarah had drove her out.
14. Dr. Laurson's wife Elizabeth, kept asking her to get rid of Sarah.
15. A nursing student (Paluk) was hired as a temporary. Paluk complained about Sarah.
16. Dr Laurson also told her Sarah was no good. He said Sarah would not wear scrubs and also Sarah was uncooperative.
17. All the doctors wanted Sarah gone, but she defended Sarah, that was stressful but she told the rest to give Sarah more time. This was in July.
18. Sarah did not follow the Public Health Orders for COVID.
19. After Jodi left Sarah had to do all the work. She decided to hire another employee and did. Jordan started and one Monday near the end of November, she and Jordan arrived at work before Sarah. They both were surprised that Sarah had not cleaned the office, there were no masks out, no sanitizer. Sarah was supposed to do that.
20. Sarah always comes in late, had coffee with people on telephone hold, her desk was a mess. When Jordan tried to help Sarah, Sarah harassed her. Sarah switched the computers around and it cost a lot of money to fix.
21. That week we had WCB wondering what was going on.
22. She gave Sarah a chance to smarten up but it didn't happen.

23. Tuesday Sarah came in, angry and demands her place at the front or she'll walk out. When Sarah was told that a new employee (Somali) needed the place up front for training, Sarah then walked out.
24. After Sarah walked out, we had to call Access to help them figure out how to operate on-call.
25. Dr. Laurson told me he was glad Sarah was gone and to not bring her back. All three doctors agreed Sarah should not come back.
26. After Sarah left, Rupi from their accounting firm of Baker Watson called her to complain that Sarah was harassing her. Rupi told her Sarah wanted the \$2,000.00 taken from the last pay.
27. That \$2,000.00 was taken off because Sarah had padded her time sheet. She did an audit of Sarah's time sheets and found overpayments totaling over \$2,000.00.
28. The Tuesday Sarah walked out she (Pamela) came in early and went through Sarah's desk. There was a pile of paper that was from July and August and it was undone work.
29. When Sarah came in and was confronted about the undone work, she (Sarah) got angry and walked out.
30. The undone work could have put the doctors in jeopardy if found out.
31. It took three staff from December to February to clean up Sarah's mess. Now the office runs smoothly.
32. The problem was Sarah not Jodi.
33. She talked to the Labour Standards Board and a lawyer about just cause and overpayment. The context of the overpayment is a theft of hours, and Sarah was dishonest in claiming she was owed vacation pay. Theft is enough for a just cause termination; she has been spoken to many times by the doctors. The front staff position is one of trust and is without supervision. Sarah took advantage.
34. Sometime during January of 2020, Sarah made another employee, Patel, uncomfortable. Sarah would hug him and rub her body on him. Sarah was admonished for that.

NOTE: Pamela's testimony was interrupted to allow Dr. Mehta to fit the hearing into his schedule. He was affirmed and provided the following:

35. He was concerned about how Lorne handled their file. The amount owed went from \$5,000.00 down to what is it now. Vacation pay was the difference.
36. He believes they have shown just cause. It was a difficult time for all with COVID especially medical clinics. If they didn't follow health guidelines, they would have been liable for all sorts of penalties. Cleaning was the big thing. If not clean and someone got sick they would be closed down for 15 days. Sarah did not do the cleaning properly and that could have caused the Clinic a huge financial hit.
37. He was distressed that Sarah wrote a letter to him, after she left, accusing Pamela of harassment.
38. They found all sorts of uncompleted tasks after Sarah left. Sarah was constantly resenting the dress code. Sarah was insubordinate.
39. Sarah lied on the time cards and received overpayments. One or two parents told him that they gave Sarah cash for payment and that cash has not been forwarded.
40. Sarah claimed the time she was on smoke breaks and she took money.
41. Sarah was the senior employee and should have been a leader.

b. Cross Examination

Dr. Mehta provided the following in response to Mr. Deeson's questions:

NOTE: Mr. Deeson filed pages 20, 21 and 22 from the Ministries binder and it was marked EE2. Pages 21 and 22 are Mr. Deeson's co-workers notes of a meeting held with Pamela and Dr. Mehta. The reason for the meeting was to help Avon Clinic understand just cause and illegal deductions.

1. He acknowledges the notes.
2. He did not write the termination letter. (Pages 23 to 29 in Ministry's binder and marked EE3) but he has read it and signed it.
3. He agrees Avon has no paper trail concerning the 36 items in the letter of termination although Pamela says she has.
4. He signed all of Sarah's time cards, he has trusted her and never checked them. She snuck them through.
5. He feels there is collusion going on against Avon.
6. Sarah as a Medical Receptionist did work for all three doctors but he as the owner was the boss.
7. All 36 items in the termination letter were discovered after Sarah left. The fake time cards amount to theft and that is the big thing for just cause.

NOTE: Mr. Deeson tendered the following documents for exhibit from the Ministry's binder:

- Request for records and early email pages 14-19 marked EE4
 - Email to staff regarding 10% subsidy from government. Staff will get paid for 40 hours even if it not worked.
 - Texts between Sarah and Dr. Mehta pages 61-77 shows good relationship between the two. Marked EE6
 - Email from Dr. Mehta to Sarah dated Dec 2, 2020 banning her from the clinic. Page 32-33, Marked EE7
 - Time cards and pay stubs Page 36-60. Marked EE8
8. Sarah had made a past staff member feel sexually harassed (EE3).
 9. Pam was the Office Manager but she was not at the Clinic all the time. She worked from home after COVID started in March.

NOTE: Mr. Deeson introduced from the Ministry's binder the Clinic's Corporate Registry marked EE9 on Pages 5-6. The Inspection Report, on Pages 7 and 8, Marked EE10. The wage assessment documents Pages 9-13, marked EE11.

c. Re-direct
None

Note: At this point Pamela Snider resumed her testimony

42. Sarah walked out and later Rupi (accountant) called and told her Sarah was bothering her (Rupi). With the computer damage, prior discipline, taking advantage of position of trust; all brought them to the conclusion of just cause.
43. A patient told Dr. Mehta that a payment of \$40 was made in cash to Sarah. The patient has the receipt but the cash had not been sent in, the receipt book number 6 is missing.

NOTE: Dr. Mehta comes home from work and joins with Pamela on video.

44. He agrees there is no paper trial.
45. He can't get Pamela back to the hearing for cross-examination by Randy Armitage.

I adjourned the hearing until 4:15 p.m.

At 4:15 Dr. Laurson is called by Avon Clinic, he is affirmed and in answer to Dr. Mehta's questions he provided the following testimony:

1. He agrees that there were two meetings held by the three doctors. The meetings were regular meetings and many topics were discussed. Cleaning was one issue since it was critical for not only safety but also for the Clinic's liability. If they were closed down it would be a disaster. Sarah was not the only one involved in the cleaning.
2. They decided that a discussion was needed with Sarah, but before that could happen Pamela and Sarah had the blow up and Sarah walked out.
3. He felt that Sarah may have needed some discipline but not be terminated.
4. He is satisfied that Pamela is and was the problem in the Clinic. She has treated him poorly well as Sarah.
5. He believes that he and Dr. Mehta could have made a positive difference with Sarah had Pamela kept out of it.
6. Pamela has spread a lot of inaccurate information around the Clinic. He feels after a cooling off period the Clinic and Sarah could have worked thing outs, but Pamela made that impossible.

d. Cross Examination

In response to questions from Mr. Deeson, Dr. Laurson provider the following evidence:

1. The doctors' meetings were to discuss any Clinic related issues; they reviewed staff as a whole, the whole COVID issue etc.
2. He has not read the termination letter, but he doesn't believe there was cause.
3. He is comfortable with the concept of progressive discipline and knows that it did not happen in this case.
4. He knows of the claw back but has no details of it.
5. He is not aware of Sarah acting any different than other staff.
6. Sarah worked for him before Avon, his patients have been asking about her since she left.

e. Redirect

Dr. Mehta asked Mr. Deeson some questions about process for information only and the hearing was adjourned until 2:00 p.m. December 14, 2021.

At 2:00 p.m. on December 14, 2021 I reopened the hearing via video conference. Present were Dr. Mehta, Lorne Deeson, Randy Armitage, Sarah Hanlon and myself as adjudicator.

f. Evidence of the Employee

Mr. Deeson called Sarah Hanlon and she was affirmed. In response to his questions, she provided the following testimony:

1. She started in the medical field as a runner at Northgate Clinic with Dr. Izeke and Dr. Laurson. She was there less than a year when Dr. Laurson told her about Avon Clinic opening. Dr. Laurson moved to Avon and took her with him to work for Dr. Mehta.
2. She loved working at Avon, her relationship with Dr. Mehta was great. The texts (EE6) from Pages 61-77 demonstrate that good relationship.
3. She did not experience any troubles at work and never was disciplined. The insubordination referenced by Pamela on December of 2019 never happened. She had just barely started at that time.
4. The text on Page 81 (EE5) dated March 25, 2020 was sent during the start of COVID. The text is from Pamela to her and confirms the Clinic will pay for 40 hours a week even if the hours were not completely worked. She was never told this arrangement was over.
5. She took her time cards into Dr. Mehta at the end of the day every second Friday. He signed them all and she never felt he was stressed when he signed them.
6. She was never under the impression that Dr. Mehta had health, financial or stress issues.
7. From her start in December of 2019 to mid-November 2020, she loved to come to work, loved her patients. She had come to work at Avon even though she had two other job offers at the time.
8. Pam was there part-time until COVID hit and then she (Pam) was in the Clinic on rare occasions until COVID relaxed in the fall of 2020.
9. She came to work every day a half hour before the Clinic opened at 8:30. She got everything ready for opening and she stayed until the last doctor left, usually between 5-6 p.m. There is no way Pam could have known her hours since Pam wasn't there.
10. The text on Page 79 (EE6) from Pamela to her (July 25, 2020) came when two of them were still friends. Paluk left, not because it was not a "good fit" but because Pam didn't like Paluk and Dr. Mehta's relationship. Pam thought there was something going on and she (Pam) fired Paluk.
11. Pamela also intimidated Brittney to the point that Brittney left.
12. She believes Pamela was out to get her too. The text on Page 78 from Pamela to her accused her of getting "quite cozy" with Dr. Mehta.
13. She tried to talk to Pamela about the "cozy" text but Pam would not return her texts, nor pick up the phone. She wanted to assure Pam that there was nothing going on in between her and the doctor. She was fired two weeks after that text.

14. She believes Pam mistook her Irish culture of treating people intimately as being sexual instead of friendly.
15. She never received any documents regarding discipline.
16. Her letter to Dr. Mehta (EE7) Page 34, sets out why she left the Clinic on December 1, 2020. She told Dr. Mehta that Pam had been harassing and bullying her for a few weeks and especially in the last few days. She asked Dr. Mehta to resolve the work place issues or she would go to OHS.
17. On December 2, later in the day she receives a response from Dr. Mehta by email. He tells her he has found "appalling" evidence of putting patients at risk, staff feeling unsafe around her etc. She is told to stay away from the Clinic.
18. On the morning of December 1, Pam confronts her about talking to the doctors about her (Pam). She told Pam that they should speak about this elsewhere rather in the Clinic. Pam shouted at her that this was the place and back and forth it went until she felt something bad would happen if she didn't leave. So, she left.
19. On Christmas Eve she received, in the mail, the termination letter (EE3) Pages 23-29. The letter, dated December 18, 2020, lays out 36 separate allegations uncovered in the time since she left the Clinic on December 1. The allegations range from insubordination, timecard theft, sabotage, sexual harassment, false accusations of harassment, privacy paper not shredded, unprofessionalism with patients, racism, lack of cleaning etc. All the allegations are false, never happened. She believes the letter was written by Pamela.
20. This whole episode has cost her a year of hell. She worked hard and does not deserve this abuse.

g. Cross Examination

In response to questions from Dr. Mehta, Sarah provided following testimony:

1. She did not mean it was Dr. Mehta that harassed her in her letter to him. It was Pamela doing the harassing.
2. She agreed there was a dispute regarding dress code and when she was asked to return to wearing scrubs she did.
3. There was a discussion with Elizabeth Laurson regarding the organizing of documents to be scanned but there was no dispute.
4. She is unaware of any problem with the Larson's.

h. Redirect
None.

v. Final Argument

a. Employer

Dr. Mehta argues that the evidence found after Sarah left, including time card theft, keeping money paid by patients and mixing up patient forms more than constituted just cause. His lawyer confirmed that a claw back of overcharged time is legal. He went on to argue that Sarah's lack of cleaning put the Clinic into jeopardy by being closed down or fined by the SHA. Lastly Sarah threatened the doctors with a walk out if she didn't get her seat.

b. Employee

Mr. Deeson argues that the employer has not provided any written or oral evidence to substantiate any of the allegations. Dr. Mehta has testified that Avon has no paper trail. The Supreme Court in a 2001 case ruled that in the absence of one serious instance of misconduct, a clear progressive discipline process must be provided. In this case there is evidence that Sarah's performance was good.

Mr. Deeson went on to argue that from December 2019 until November of 2020 the work place functioned properly. Somehow things changed resulting in the December 1 encounter between Pamela and Sarah and then the 36 allegations termination letter.

Mr. Deeson argued that many of the allegations occurred during Sarah's employment and since she was not confronted with them, the allegations were either condoned or did not happen.

Mr. Deeson pointed out that Section 2-36 of the Act prohibits deductions from employee wages except for certain reasons. Clawing back wages is prohibited. Mr. Deeson continued to state that Dr. Mehta's testimony was that he as the owner of the business signed all Sarah's time cards, therefore validating the time claimed.

Mr. Deeson argued that since Pamela refused to be cross-examined by Mr. Armitage her examination in chief should be ignored.

Lastly Mr. Deeson put forward that the wage assessment should be allowed as set out in EE10 and that interest should be accessed.

I thanked the parties for their presentation and declared the hearing completed.

vi. Decision

The Director, on behalf of the Employee, has served Avon Clinic, with a wage assessment that alleges the Clinic owes:

1. Two weeks' pay in lieu of notice for terminating Sarah Hanlon without cause. The amount owed is \$1,440.00 plus \$92.79 vacation pay.
2. Wages deducted from Mr. Hanlon's last pay for allegedly over charging time over several months in the amount of \$2,145.55
3. Wages for November 30 and December 1, 2020, in the amount of \$168.30

The total allegedly owed is \$3,848.64.

The Clinic claims that discoveries of performance and behaviour issues after Sarah left on December 1, 2020, provides just cause for termination. The letter dated December 18, 2020 (EE3) from Dr. Mehta to Sarah details these issues.

The law regarding use of information learned after an employee's departure can be used to establish a just cause claim. However, an employer, in order to invoke grounds for dismissal it becomes aware of after the employee leaves must demonstrate they did not have knowledge of

the misconduct at the time the employee left and that they did not expressly or implicitly condone it by omitting to take timely action.

Reviewing the 36 items of the December 18, 2020, termination letter most if not all were known to the Employer when and if they occurred. Yet outside of a vague reference to insubordination in late 2019 and a patient complaint regarding a cash payment, the Employer has provided no evidence to support just cause. The issue of cleaning was raised repeatedly by Pamela and Dr. Mehta, and Dr. Laursen referred to it in his testimony as well. It is understood that cleaning in a Medical Clinic must be a priority during normal times let alone during a pandemic. Yet there is not one instance of evidence that Sarah had shortcomings brought to her attention. Not one date of a verbal admonishment, not one letter on her file. Just Cause may have been shown for this issue alone had the Clinic shown clear progressive discipline with no improvement shown by Sarah. The same holds true for the other alleged transgressions set out in the termination letter.

The only conclusion I can come to is that either the issues did not happen, or they were condoned. Either way the Employer cannot claim discovery after the employment ended, and therefore just cause has not been shown.

Therefore with Ms. Hanlon's employment period being November 19, 2019, to December 1, 2020, she is owed pay in lieu of notice of two weeks.

I now turn to the deduction of \$2,147.55 made by Avon from Ms. Hanlon's last pay. The Clinic alleges that Sarah padded her hours and then slipped the timecards past Dr. Mehta when he was distracted. There is no dispute that he signed them all prior to them going to payroll. Even though Pamela's attendance to the Clinic was sporadic, she claims to be able to review these timecards after Sarah had left the employ, and somehow determine the hours Sarah had allegedly falsified. Further there is no evidence provided from other witnesses or witness statements to validate her allegations of timecard falsification. Section 2-36(i) of the Act states:

"an employer shall not, directly or indirectly

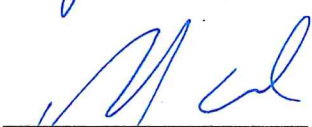
(c) require an employee to return to the employer the whole or any part of any wages paid."

Therefore, that illegally made deduction is to be returned.

Lastly the Clinic has not disputed the Directors claim of unpaid wages for November 30 and December 1, 2020, therefore that part of the wage assessment is also owed.

The wage assessment of \$3,484.64 is upheld and I direct Avon Clinic to pay that amount to Sarah Hanlon.

Dated at Regina in the Province of Saskatchewan, this 4th day of January, 2022.


Ralph Ermel
Adjudicator