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

Timothy Renauld

COMPLAINANT/EMPLOYEE

-AND-

Waultten Mechanical Ltd.

APPELLANT/EMPLOYER

DATE OF HEARING: December 9, 2022

PLACE OF HEARING: Regina, SK

LRB FILE: No. 161-22
WAGE ASSESSMENT: No. 1-000591

INTRODUCTION

This matter was heard on December 9, 2022, 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.

Allysia Finn and Jason McConnell, Employment Standards Officers represented the Department of Employment Standards.

Complainant/Employee, Timothy Renauld, attended and gave sworn evidence on his behalf.

Graham Lauten, Director of the Corporation gave sworn evidence on behalf of the Corporation, Waultten Mechanical Ltd. and both Directors. Mr. Lauten had asked to attend the hearing by way of telephone and I agreed.

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 $2,686.16.

I. PRELIMINARY MATTERS

There were no preliminary matters raised.

II. AGREED FACTS

The parties agreed that the complainant was an employee of the appellant company from November 23, 2020, to June 17, 2022.

III. DISPUTE

The parties agree that the main issue in the hearing is whether or not, the Complainant/Employee was dismissed for just cause.

IV. EVIDENCE OF THE EMPLOYER

Mr. Lauten was sworn and gave the following evidence:

The company is a plumbing, heating, refrigeration and sheet metal contractor doing both commercial and residential installation and service work.

Mr. Renauld was hired initially to work mainly on new commercial installations and services. He was later transitioned to do service and repair work.

As part of the hiring process Mr. Renauld advised the employer that he had previously owned a plumbing and heating business and had both commercial and residential experience.

At the beginning of his employment Mr. Renauld worked out well, had good attendance, and got along well with customers and coworkers.

Some four months into his employment with the company problems were encountered with Mr. Renauld.

Mr. Lauten gave the following as examples of the company's problems with Mr. Renauld:

- Mr. Renauld was in charge of the heating and air conditioning unit that was put in backwards at Tim Hortons on Lewvan. The employer encountered extra costs to correct the job.

  Mr. Lauten met with Mr. Renauld to discuss the problems with the job and the end result being, that Mr. Renauld, was told to follow plans for the respective jobs and was told how to do the particular job correctly.

- Around the same time the company was doing a renovation job in Weyburn at the Weyburn Wholesale Club. Waultten Mechanical Ltd. was a subcontractor on the job.

The contractor contacted Mr. Lauten and said that he did not like Mr. Renauld's attitude at work and that he was difficult to work with.

The employer said that there were five other projects where Mr. Renauld worked on and, he would confirm that the jobs were completed, but further investigation showed there were unfinished aspects to the jobs that had to be completed by the employer. This made the employer look bad in the customers' eyes and cost time and money to finish the work properly.

- Some six months after Mr. Renauld had started employment, he was sent to a job for Carson Industrial.

  When this job ended it was necessary for Mr. Lauten to go back and finish the work. The employer also received complaints from the owner that Mr. Renauld was not cooperative. Subsequently the contractor banned Mr. Renauld from the job site and the employer had to send someone else to complete the job.

  After this project Mr. Lauten met with Mr. Renauld to discuss Mr. Renauld's attitude and not working well with others. Mr. Leuten decided to transfer Mr. Renauld to the

service side of the company (as opposed to the contract side) and did so.

- Once on the service side of the company Mr. Renauld completed three refrigerant installations at the RCMP in Lumsden, A&W on Avonhurst and Carlson. Mr. Renauld was sent to do the jobs but the refrigerant was not put in properly and had to be redone. Mr. Lauten and the service manager, Darren Morgan, met with Mr. Renauld to discuss the problems.

- Sometime later another air conditioner problem arose in Moose Jaw where the air conditioner lines were not insulated nor tested for pressure and had to be redone by the employer.

- A major incident occurred when Mr. Renauld was working in a house where he was using a grinder on the job inside the house. Thereafter a meeting with Mr. Renauld was held and he was told not to use a grinder on indoor premises again. Mr. Renauld did not do it again.

- In the last few weeks of Mr. Renauld's employment, it came to Mr. Lauten's attention, that Mr. Renauld was

-

falsifying time and mileage cards. This was never discussed with Mr. Renauld.

- Mr. Lauten also became aware that Mr. Renauld was keeping used copper wire and coils from various job sites. When this was discussed with Mr. Renauld, Mr. Renauld denied he was doing so.

- June 10, 2022 was Mr. Renauld's final day with the employer. Mr. Renauld and others were scheduled to install a heater in a residential garage. Mr. Renauld wanted to install the heater one way and the workers with him wanted to install it a different way. An argument ensued with Mr. Renauld leaving the workplace at noon after turning his phone off. Also, on that day, Mr. Lauten had been contacted by the Carlson job owner who advised that he did not want Mr. Renauld to return to his work site in the future.

  Mr. Lauten indicated that he had also heard rumors of Mr. Renauld complaining about the working conditions at the company to other employees and customers.

At this point, Mr. Lauten decided to fire Mr. Renauld.

When Mr. Renauld came to work on the next Monday (next working day), Mr. Lauten met with him and told him that he was fired.

Mr. Renauld inquired as to why he was being fired and was advised of all of the above.

Apparently, Mr. Renauld did not understand what he had done wrong. Mr. Renauld then left the employer's premises.

Cross Examination of the Employer

In cross exam Mr. Lauten summarized the issues/problems with Mr. Renauld as follows:

1. He did not take constructive criticism well;
2. Exhibited a bad attitude at work;
3. Low standard of work;
4. Falsifying time, mileage cards, and keeping company property (copper);
5. Holding out that he had experience as a worker and supervisor;
6. Complaints from customers.

The employer stated that Mr. Renauld had received several verbal warnings about his work but never more than once for the same issue/problem.

All of the employers' warnings were oral except for one written warning that was given to Mr. Renauld in his pay envelope.

Mr. Renauld was never told about the consequences as a result of his warnings except for the use of the grinder inside a residence.

The employer could not confirm that the written warning was actually received by the employee. Mr. Lauten confirmed there never was a clear and unequivocable warning given to Mr. Renauld.

No severance pay was given by the company to Mr. Renauld.

V. EVIDENCE OF THE EMPLOYEE

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

Mr. Renauld commenced employment with the employer as a construction installer and foreman.

After several months he was asked to go over to the company's service side and was offered a raise to do so, so he took the opportunity.

On his last work date of July 10, 2022, he was sent with other employees to install a heating unit in a garage, when installing, the other employee with him, discussed changing the installation method. Mr. Renauld agreed to the change and the heater was then installed. This discussion was not an argument or heated.

When the heater installation was finished, he drove the coworker to the shop and then went home. The heater job was the only job that had been scheduled for him that day. He tried to contact his supervisor but he was unable to reach him about what he should be doing.

The following Monday he went to work and met with Mr. Lauten. He was told the company thought, that he, Mr. Renauld, did not want to be with the company anymore. Mr. Renauld inquired about receiving two weeks' severance but did not receive any severance pay.

Mr. Renauld said that there had only been group discussions when he was employed and the discussions were directed at all employees at the meeting. He had never received any verbal warnings from the employer.

He had not received a written warning in any of his pay envelopes.

He had never been talked to about the grinder incident.

He had never received any coaching or job training about any alleged improper work. He was never told that his job was ever in jeopardy because of his conduct.

Cross Examination of the Employee:

Mr. Renauld agreed that when applying for the job he had held out that he was a business owner, had been a lead installer and had service experience.

VI. ANALYSIS/DECISION

The employer alleges that the just cause for dismissal of the employee is based on a one-time event as well as progressive discipline.

With respect to just cause, the employer says that after some six months of the employee being with the company the employer was constantly verbally reprimanding the employee for his conduct at work, including work product, attitude, getting along with other employees and customers, as well as complaints from the customers.

The employee denied that he ever received any communication in this regard from his employer and at no time did he receive any warnings or disciple regarding his conduct written or oral.

The facts of this case do not support a one-time event. The onus of proof on the balance of probabilities is on the employer to show a one-time event that would support a dismissal for just cause.

The burden falls on the employer to establish on the balance of probabilities that just cause existed at the time the employment was terminated. See *McKinley* v. *B.C. Tel* (201) 2scr 161 S.C.C.

There is no evidence that any of the work experience held out by the employee was not true.

There was no evidence that the mileage or timecards were improperly completed, nor any proof of taking copper from the employer. The employer had received information to this effect, however, did not have any personal confirmation regarding the same, and the employee denied any of this had occurred.

In applying the McKinley decision coupled with *Balzer* v. *Federated Coop*, 2014 SKQB32, I find that the employer did not meet the onus of

showing on a balance of probabilities that Mr. Renaud was fired with cause based on cumulative events.

The evidence establishes that Mr. Renaud was not warned that his job was in jeopardy should he continue with his ongoing conduct. Nor was he warned about possible consequences as a result of future misconduct.

The alleged rules were never known by the employee nor were they enforced by the employer. The employee was never warned that he would be terminated because of his behavior. Discipline was never discussed regarding the same.

An employee is entitled to know the reasonable objective standards of performance, how he is failing to meet those standards, and that his job is in jeopardy should he continue to fail to meet those standards.

The employer has not met the onus of showing on a balance of probability that Mr. Renaud was fired with cause based on cumulative events. (see the seven factors a company must establish to constitute cause for discharge as complied by Howard Levitt in the text, The Law Of Dismissal In Canada, at page 103.)

VII. CONCLUSION,

The Appeal is dismissed, and the Wage Assessment stands in the amount of $2,686.16.

Dated at Moose Jaw, in the Province of Saskatchewan, this 2ND, of January 2023.

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.