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

Kent Fisk

COMPLAINANT/EMPLOYEE

-AND-

630115 Saskatchewan Ltd. o/a Oxford Learning Centres, and
Arash Ahadi, Director and Aria Rahimbakhsh, Director

APPELLANT/EMPLOYER

DATE OF HEARING:	April 17, 2025
PLACE OF HEARING:	Regina, Saskatchewan
LRB FILE:	No. 047-25
WAGE ASSESSMENT:	No. 1-000928

INTRODUCTION

This matter was heard on April 17, 2025, in 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 ('ESO') and Shannon Klemmez, Employment Standards Officer ('ESO'), represented The Department of Employment Standards.

Aria Rahimbakhsh, Director, represented himself as Director, the Corporation and Arash Ahadi, Director.

Kent Fisk, Employee of Oxford Learning Centres, attended and gave evidence on his behalf.

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 $3,895.58.

I. PRELIMINARY MATTERS

No preliminary matters were raised by the parties.

II. AGREED FACTS

The parties agreed as follows:

1. Kent Fisk was an employee of the company Oxford Learning Centres.
2. Mr. Fisk received a rate of pay of $23.50/hour.
3. Mr. Fisk was employed with the Corporation from September 1, 2011, to August 9, 2024.
4. Mr. Aria Rahimbakhsh purchased the company on May 1, 2024, and took over management of the company at that time.
5. Mr. Aria Rahimbakhsh agrees on behalf of himself and the company that should the appeal be dismissed, the Wage Assessment amount is correct for pay in lieu of notice.

III. EVIDENCE OF THE EMPLOYER

Aria Rahimbakhsh gave evidence as follows:

The company employed Kent Fisk to run a program called Little Readers Program, for the company. The program required the employee to work 3.5hrs on weekdays and that period could be extended to 4.5hrs during report cards or occasionally when there was extra work to do.

Mr. Aria Rahimbakhsh had worked one year as an employee of the corporation before purchasing the company.

The employer stated that there had been a timecard problem between the previous owner and Mr. Fisk and that issue was never resolved between the parties.

When Mr. Aria Rahimbakhsh took over the company he noted that Mr. Fisk was coming in consistently late in the morning, 5-10 minutes and often stayed late to do preparation work for the next day. Mr. Fisk was not doing any prep work and was usually on the internet, although he claimed that time as working time.

Aria Rahimbakhsh said that he gave Mr. Fisk two warnings in writing regarding his staying late and billing the late time on his time sheet. He gave Mr. Fisk two written warnings by way of notations on the teacher communication notes which had been entered under Tab 10 in Employment Standards Officer Exhibit "1". The purpose of these notes was communication between the teacher and the owner, which comprised of notations by one party for review by the other party, as well as Mr. Fisk noting his time worked for the various days he worked.

In these daily comments, on two occasions, the employer advised that Mr. Fisk needed to keep his hours to 3.5 hours per day. This was done on May 15 and again on June 3.

On August 9, 2024, Mr. Aria Rahimbakhsh handed Mr. Fisk the letter, set out under Tab 12, stating that Mr. Fisk was terminated immediately. This letter was handed to Mr. Fisk by Mr. Aria Rahimbakhsh.

Under Cross Examination Mr. Aria Rahimbakhsh stated that the corporate documents under Tab 5 were correct.

Mr. Aria Rahimbakhsh stated that he commenced employment with the company in 2018 as a teacher and in 2024 purchased the company.

The employee, Mr. Fisk, was a teacher and had been promoted to coordinator, and the employer kept Mr. Fisk on as an employee.

The employee was paid for all the hours that he submitted and was paid in bi-weekly pay periods.

When asked why the employer paid for all the hours if he was of a view that the employee was "padding" his hours, the employer stated that he wanted to give the employee a chance to change.

The employer stated that Mr. Fisk's employment was satisfactory with the exception of the hours. Mr. Fisk was an experienced

teacher, the children he taught liked him and the employer was of the view that Mr. Fisk was a good teacher.

The employer had not prepared any documents for the employees' discipline. At no time did he advise Mr. Fisk that his job was in jeopardy, nor had he given Mr. Fisk oral notice that his job was in jeopardy.

Before terminating Mr. Fisk, the employer did consider other forms of discipline, but in the end, only chose to make the notations to Mr. Fisk about the hours of work. Even though the employer had observed that, on his lunch break, Mr. Fisk would still be at work outside the hours the employer had designated. He had noticed this before he took over ownership of the company and never said anything to Mr. Fisk. He also observed it when he took over the company and also never said anything to Mr. Fisk.

The notations in the communication notes of May 15 and June 3 regarded hours, however, the employer never spoke directly to

Mr. Fisk in this regard and he continued to pay Mr. Fisk for all hours claimed.

IV. EVIDENCE OF EMPLOYEE

Kent Fisk gave the following evidence:

Kent stated that he had started his position as teacher of the Little Reader Program and subsequently became both the coordinator of the program and the teacher of the program in September of 2022.

The Little Reader Program Coordinator had been in a full-time position until it was given to Mr. Fisk wherein it became a part-time position along with his other part-time position as teacher.

Mr. Fisk said that taking on both roles required more time than just the teaching position which he had been doing in the 3.5 hours per working day.

Mr. Fisk stated that the previous employer had concerns about the amount of time claimed by Mr. Fisk, although she then

stated that Mr. Fisk should take all the time required to do a good job although it should not be a full-time position time wise.

Under Tab 11, an employee review of Mr. Fisk was in February of 2024 wherein there were no complaints mentioned. At the meeting between himself, Janet, the previous owner, and Aria Rahimbakhsh, Mr. Fisk left the meeting thinking that all was well and that the parties were pleased with his work.

Mr. Fisk continued to work more than the 3.5hrs after the meeting as he required the time to do his two-position job properly.

The written notes of May 15 and June 3 in the communication notes were read by him, however he did not consider those to be a discipline notice, as he had never received any formal complaints about his time spent at work. Nor did he ever have any other discussions with Aria Rahimbakhsh, employer, about hours.

He was never told at any time that his job was in jeopardy regarding his conduct or hours worked.

His employment ended on August 9, 2024, when Aria Rahimbakhsh came to him and handed him the termination letter as set out in Tab 12.

Mr. Fisk received his regular pay as claimed on his time sheets and did not receive any notice or pay in lieu of notice.

Under Cross Examination by the Employer, Mr. Fisk advised that any time issues had been resolved with Janet and his time overage had never again been mentioned by her.

V. ANALYSIS/DECISION

The employer takes the position that the employee was dismissed with Just Cause within the meaning of The Act, based on the employee claiming hours beyond his permitted designated hourly time frame.

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. BC Tel (2001) 2 SCR 161 S.C.C.*

In order for the Oxford Learning Centres Ltd. to fire Mr. Fisk for cause, based on cumulative (progressive) acts, the employer would have to establish that it took progressive disciplinary measures, including warnings, as to the possible consequences of future conduct.

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.

Just cause for firing was discussed in *Balzer v. Federated Cooperatives Ltd. 2018 SKCA 93*. In this case, in assessing whether a breach in policy in regulation justified termination, the Court accepted seven factors a company must establish to constitute a cause for dismissal as follows:

1. The rules must be distributed
2. The rules must be known to the employees

3. The rules must be consistently enforced by the company
4. The employees must be warned they will be terminated if a rule is breached
5. The rules must be reasonable
6. The implications of breaking the rules in question are sufficiently serious to justify termination.
7. Whether a reasonable excuse exists

According to the Court in McKinley, when an employer asserts dismissal for just cause the employer carries the burden of proving, on the balance of probabilities, that there are reasonable grounds to justify the dismissal. To satisfy the burden, the employer must demonstrate that the dismissal was a proportionate response to the alleged misconduct in question, striking an effective balance between the severity of the employees' misconduct and the sanction with regard to all the surrounding circumstances.

The evidence establishes that Mr. Fisk was not warned that his job was in jeopardy should he continue to be late or work extra time, except in circumstances in which it appeared the employee, in his own

discretion, could work. Nor was he warned of possible consequences as a result of future misconduct.

The alleged rules were never known to the employee nor were they enforced by the employer. The employee was never warned that he would be terminated if he continued with his behavior and 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 evidence shows that the employer did not discuss the employee's misconduct verbally with him at any time, and that, it was only on two occasions in writing in the community binder, which instructions were vague and inconsistent with the oral instructions that, the employee could work extra time when the situation required it. The notes were not disciplinary in nature.

The employee did not receive any clear warning, there was never any evidence that his job was in jeopardy, and he was paid all the hours on the time sheet and the employer signed off on them.

The employee was never clearly told to stop working extra hours and the employer condoned the employees conduct by continuing to pay the hours claimed without any comment or instructions to the employee.

Section 2-2 of The Act states that an employer is deemed to have permitted an employee to work if the employer knows or ought to reasonably know that the employee is working and does not cause the employee to stop working.

In this case the employer knew that the employee was working and said nothing to him other than vague references on two occasions May 15 and June 3 in the community binder.

The employer has not met the onus showing on the balance of probabilities that Mr. Fisk was fired for cause based on cumulative events.

VI. CONCLUSION

The Appeal is dismissed and the Wage Assessment stands in the amount of $3,895.58.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 25th of April 2025.

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.