

Decision of Adjudicator in the Matter of an Adjudication pursuant to  
Sections 2-75 and 4-6 of *The Saskatchewan Employment Act*  
LRB File No. 089-24  
Wage Assessment No. 1-000791



COMPLAINANT: Kimberley Case  
Represented by Christine Rusnak, Employment Standards Officer

RESPONDENTS: Riley Panteluk, Director  
Kelly Panteluk Construction Ltd.  
Represented by Kamara Willett, Kanuka Thuringer LLP

DATE OF HEARING: January 7, 2025

PLACE OF HEARING: Third Floor Board Room  
1870 Albert Street, Regina, SK

i. Introduction

Riley Panteluk ("Riley"), Kamara Willett ("Kamara") and Christine Rusnak ("Christine") were present at the hearing. Kimberly Case ("Kim") was connected via telephone.

The Ministry requested the attendance of Doug Long, Northern Employment Standards Manager, be allowed to observe the hearing.

Request was granted.

After my opening remarks which included timeframe for a written decision. I asked if there were any preliminary matters or opening remarks. There were none.

ii. The Dispute

Kim's employment period was from June 8, 2023, to February 2, 2024. The issue for me to determine is whether resignation or termination with or without cause was the reason for the employment ending.

iii. The Facts

1. Evidence of the Employer

Kamara tabled a binder of documents as the Appellant Case. The binder was marked ER1. Her opening remarks were that the documents show that a reasonable person would conclude that Kim quit. The evidence that she no longer wanted to work for Kelly Panteluk Construction Ltd. ("KCPL"). Moving to ER1, TAB 7 contains a sworn affidavit of Riley Panteluk. Even though the affidavit has been sworn by Riley, I asked him to affirm his testimony today. He was sworn.

I provide a summary of the affidavit at ER1, TAB 7:

On June 8, 2023 Kim signed an employment agreement with KPCL. The seasonal employment was to commence on June 8 and conclude on November 15, 2023. Shortly after Kim commenced employment, she suffered an injury that limited her work as a heavy-duty equipment operator. As a result in or around July 2023, KPCL put Kim on light duty. She was to work from home completing online training courses.

One December 14, 2023, Kim's supervisor Barry Lischka, sent her an email containing a written warning for lack of production, failure to follow instruction and absenteeism.

Her seasonal employment contract was extended beyond November 15, since she could not return to regular duties. Online courses were to be continued until injuries were resolved.

Beginning in January of 2024, Kim began inquiring as to why she had not been laid off. KPCL advised Kim that she was to continue with online training. On January 10 Kim queried why she was taking courses she would never use and noticed everyone else had been laid off.

On January 12, Mr. Lischka emailed Kim providing her with their rationale for requiring her to complete online training, noting it is a positive experience which would aid her going forward as a heavy duty operator. Ms. Case replied on January 15, requesting again where her lay-off was and stating she did not agree with her hours being cut.

On January 18, 2024, Kim emailed Mr. Lischka and told him:  
"I have a CSC (broker) course beginning in Feb. It's been scheduled for a year... took that long to get a spot... prepaid and non-refundable (4K) ... I cannot do both at the same time... need my lay-off... I didn't plan on doing winter safety courses."

On January 30, 2024, Kim emailed Mr. Lischka "and I start a new job on the 5<sup>th</sup>". In response Mr. Lischka emailed Kim confirming that she had resigned from her employment as of February 2, 2024. Further he told her she would be paid until that date.

Kim replied by email that same day stating that she did not resign. A later email from Kim that day states she did not quit. In both emails she requested a lay-off.

Riley and Mr. Lischka conferred regarding the contents of KPCL's communication with Kim and determined that she no longer wished to work for the company. The company counsel was instructed to formally advise Kim that her resignation had been accepted. On January 31, 2024, that advisement was sent. See Exhibit "L" in affidavit.

On January 31, 2024, Kim emailed the office of Kanuka Thuringer stating "nothing says I can't work both (this new one is a Uni/training course). I did not quit."

#### Cross-examination

In response to questions, Riley provided the following evidence.

He was not Kim's supervisor, Barry Lischka was. Barry reported to him and the rest of the management team.

There were no performance reviews done on Kim. Only one written warning is on her file. The company has a policy regarding cautions and discipline, but Kim only received the one warning.

Kim's employment ended with her advising KPCL she was starting a new job on February 5. The first person to know was Barry and he told me. We decided to confirm her resignation. Kim did not tender a formal written resignation.

He confirmed that only an employer can initiate a lay-off. He and Barry discussed her lay-off requests but never told her she wouldn't be laid off.

He is not sure if Kim was ever told her options regarding her employment. He confirmed that Kim questioned KPCL's conclusion that she had resigned. He is aware of her email stating she did not quit. KPCL's response was to have their legal counsel formalize the acceptance of her resignation.

Her last day was February 2, 2024. KPCL never considered termination for cause.

Redirect

None.

2. Evidence of the Employee

Christine tabled a binder containing all the documents pertaining to Kim's case. I marked the binder EE1.

Kim was affirmed and provided the following evidence on direct examination:

She filed the employment standards complaint right away after her departure from KPCL.

She started June 5, 2023, at \$20/hr.

Kim referred to TAB 5 of EE1. This is her last pay stub. It shows she was paid to February 2, 2024.

She started as an equipment operator and then suffered an injury of severe whiplash.

Her supervisor was Barry Lischka. He performed no evaluations of her work and provided no verbal feedback on her performance. She dealt with his secretary most of the time. Their communication was always by email. He could never be reached by telephone. She never received written discipline from Barry, all he did was send her more courses. She failed one course several times, but she never received any mention of consequences.

She asked to be laid off on numerous occasions but never was and Barry never told her why KPCL wouldn't lay her off.

She never considered resigning, and KPCL never explained any employment options to her.

KPCL never asked her for confirmation that she resigned, they just confirmed that she did.

She told KPCL that she never quit and never resigned. She feels she was fired on January 30, 2024.

She was never told she was fired for just cause.

Cross-examination

Answering questions from Kamara provided the following evidence:

She has seen Riley's affidavit but does not have it in front of her.

Yes, she had asked to be laid off on January 15, because all her co-workers had been.

Yes, she had requested lay-off on several occasions.

Her claim she paid \$4,000 for the CSC broker course was not correct, the company paid for the course.

She is currently working for her new employer but will not disclose who it is. It is a job share and involves bookkeeping and accounting.

She did ask to be laid off because she couldn't do both, but KPCL never asked her to clarify.

Her WCB claim was not stopped before KPCL told them she had quit. She does not have an open WCB claim now.

She is aware that her hours were changed when the construction season ended. That's when she began to ask to be laid off. Barry's email of January 9, 2024, confirmed this.

Redirect

Christine confirmed that Kim's hours went from 11 daily to 8 daily on January 9, 2024.

iv. Final Argument

Employer

Kamara confirmed that the employment contract Kim signed sets out the hours of work in Section 10 (ER1, TAB 7, Exhibit "A"). Hours are variable and depend on the weather and the site.

The test for whether an employee has resigned if a reasonable person would conclude that the action happened.

Kim has shown to be dishonest in her testimony, regarding the CSC course and knowledge acquired by the employer after her resignation could be used to support termination for cause.

Exhibit ER1 provides all the evidence necessary to support our position and look forward to the decision.

Kamara then requested some time to provide a more detailed final argument, and I agreed to the request. I asked for that argument to be to me by 5:00 pm January 10.

#### Employee

Christine pointed the hearing to EE1 TAB 8 for the *Saskatchewan Employment Act's* pertinent sections and TAB 9 for supporting documentation and cases. Her written final argument is in TAB 10 of EE1 and is summarized as follows:

The Director takes the position that Kim Case was terminated, and did not resign in a clear and unequivocal manner. Therefore, she is entitled to pay in lieu of notice as per Section 2-60 and 61 of the *Saskatchewan Employment Act*. In Kim's case that is one week's pay plus annual holiday pay.

On January 30, 2024, KPCL considered an email from Kim asking to be laid off because she intended to start another course on February 5, 2024, as her resignation.

Kim's response to KPCL was that she did not quit.

Case law states that a resignation must be clear and unequivocal. With Kim's denouncing KPCL's assertion the company should have explored what Kim was really saying.

There is no evidence of discipline or warning of termination for cause or otherwise.

Therefore, the ending of Kim's employment on January 30, 2024, effective February 2, 2024, was termination without cause and pay in lieu of notice is owed.

The hearing closed.

#### Employer Final Argument:

On January 10th I received, by courier, KPCL's brief and summarize as follows:

KPCL's final argument is that Kim either resigned from her employment or after-acquired information provides reason to terminate her for cause.

Regarding the argument that Kim resigned, KPCL lists the following cases which provide guidance for testing where a resignation is valid:

The test for a valid resignation is comprised of 2 parts. The first part of the test is a subjective determination of the employee's intention to resign or to end the employment relationship. This step of the test is outlined in *Scull v Ensemble Travel Ltd.*, 2023 ONSC 590 [Scull] at paragraph 118

Resignation must be clear and unequivocal, and must objectively reflect an intention to resign, or conduct evincing such an intention. Whether words or actions equate to resignation must be viewed contextually. The totality of the surrounding circumstances is relevant to determine whether a reasonable person, viewing the matter objectively, would have understood the employee to have resigned: see Gebreselassie, at para 43.

The second stage of the test for a valid resignation requires that a step be taken that objectively demonstrates an intention to bring the severance of the employment relationship into effect.

The act of quitting a job has in it a subjective as well as an objective element. An employee who wishes to leave the employment of the company must first resolve to do so and he must then do something to carry his resolution into effect. That something may consist of notice, ... or it may consist of conduct, such as taking another job inconsistent with his remaining in the employment of the company.

The entire test is concisely summarized in the *Creative Spirit Communications Inc. (Re)*, 200 CanLII 49995 stating:

The tribunal accepts that there are two parts to quitting, a subjective and an objective element. It must be shown that the employee formed the intention to quit (the subjective part of resigning) and that he or she then acted or conducted him or herself in a way which is inconsistent with continuing the employment (the objective element of quitting).

Through her communication to KPCL, Kim clearly evidenced a subjective intention to part ways:

- Repeated requests to be laid off;
- January 18<sup>th</sup> email to the effect that she was not able to do both her course/new job and work for KPCL; and
- Her announcement on January 30<sup>th</sup> that she was starting a new job on February 5<sup>th</sup>.

Regarding the second element of the test, KPCL claims Kim's repeated expression of her desire for the employment relationship to end and her communication about starting new employment was evidence of this situation.

As for the Ministries argument that KPCL had an obligation to follow up with Kim, to ensure that her clearly conveyed desire to stop working for KPCL was genuine. KPCL submits that the circumstances of Kim's resignation are not ones where any follow up would be required.

Moving to the second argument that termination for cause from after-acquired reasons, I provide the following directly from KPCL's brief:

Termination for cause can occur as a result of two different types of conduct. The first is egregious conduct that requires immediate termination. The second type of conduct is that which is inconsistent with the employee's role, and may necessitate discipline, but does not rise to the severity needed for immediate termination. Canadian case law surrounding termination for dishonesty falls squarely into the first category, and uses egregiousness as a factor. This test was articulated by the Supreme Court of Canada in *McKinley v BC Tel* 2001 SCC 38 at para 48.

In light of the foregoing analysis, I am of the view that whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. **More specifically, the test is whether the employee's dishonesty gave rise to a breakdown of the employment relationship.** This test can be expressed in different ways. One could say, for example, **that just cause for dismissal exists where the dishonesty violates an essential condition**

**of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.**

Ms. Case was dishonest with KPCL in an effort to force the company to terminate the employment relationship. Ms. Case was at various points claimed

- That she would be starting a course in February that would conflict with her ability to do her job.
- That she had prepaid \$4000 to participate in the course.
- that she would be starting a new, better paying job in early February.
- That there was no new job, but a course that she could do on evenings and weekends.
- That her spot in the course had been given away to someone else.

Consider also the evidence she gave at the January 7th 2025 hearing. We consider much of the evidence she gave to lack credibility, particularly the following points:

- (i) Ms. Case alleged she tried to explain her position to Mr. Lischka via telephone, but that she could never get a hold of him. These allegations do not seem credible, in light of the fact that there was an ongoing e-mail conversation between Ms. Case and Mr. Lischka. One questions why she never advised Mr. Lischka via e-mail that she had questions or needed to discuss certain matters with him. The e-mail evidence suggests that Mr. Lischka was responsive to all of Ms. Case's email correspondence; and
- (ii) Ms. Case reversed her position on the point that the course she paid for was "prepaid and non-refundable". At the hearing she alleged at various points that she paid for part of it, that it was refunded, and that her new employer had paid for it. Put another way, Ms. Case was not able to provide a coherent response to the simple question of the cost of the course in issue.

While it remains unclear if there was a course and if it could have been completed on the evenings and weekends, the contradictions within the statements are evidence of the blatant dishonesty. The dishonesty and conflicting information regarding Ms. Case's ability to perform the obligations of her employment is fundamentally inconsistent with essential conditions of the employment contract.

While such dishonesty would have caused a loss of trust regardless of exacerbating factors, the fact that Ms. Case has a high level of autonomy in her position means she is held to a higher standard of trust (*Godden v CAE Electronics Ltd.*, 2002 BCSC 1332). She worked from home using KPCL equipment and was allowed significant flexibility with her hours to contend with her injury and required treatments.

Ms. Case's willingness to be dishonest to obtain a layoff suggests that KPCL would be entitled to terminate her employment, in the event she was found not to have resigned. The loss of trust was significant enough that the employer had a reasonable basis to believe she would not perform her job duties.

If Ms. Case did not resign from her employment, then her dishonesty in the interest of being laid off is significant enough to undermine the employment relationship and provide KPCL with cause.

KPCL closes their argument with requests for relief for my determination that Kim resigned of her own volition or rule that after-acquired knowledge of dishonest conduct amount to termination for cause.

#### Analysis

Kim Case signed an employment contract as a seasonal equipment operator on June 8, 2023. The contract had an end date of November 15, 2023, unless extended in writing by the employer.

On June 15<sup>th</sup> Kim suffered an injury and was placed on Worker's Compensation. Her claim was accepted and KPCL notified on July 6<sup>th</sup>.

Kim was assigned light duties in the form of online training courses while recovering. She worked on the courses at home. KPCL claims that she repeatedly failed to complete her courses on time although there is only one documented instance of that assertion. On December 14, 2023, her supervisor Barry Lischka emailed her (ER1 TAB7, Exhibit "C") with an attachment.

The e-mail stated that she was being warned, in writing, that over the last month (back to November 16) She had been assigned 3 courses and none had been completed. It goes on to advise her that she has a duty to participate in her return to work program in a meaningful way. Moving forward we expect communication to improve. The attachment is a KPCL form entitled "Employee Warning Notice".

On January 9, 2024, Barry emailed Kim advising construction employees have been laid off and hours of work reduced to 8 hours a day. Beginning January 10<sup>th</sup> 2024 Kim began to frequently request to be laid off. She also expressed, on several occasions that the courses were inapplicable, or she didn't want to do them or she hadn't planned on doing them for the winter. None of her lay-off requests were addressed directly. KPCL never told her why they wouldn't lay her off nor did the company advise her what the long-range plan was for her.

On January 18, 2024, Kim emailed Barry advising that she has enrolled in a CSC broker course beginning in February. She indicated that she can't do both so she needs to be laid off.

On January 30, 2024, Kim emailed Barry advising she would be starting a new job on February 5<sup>th</sup>.

At no time up to and including the January 30, 2024, e-mail in which Kim advises she is starting a new job on February 5, 2024, has she indicated she wants out of her job in a fashion, other than by layoff.

By return e-mail on January 30<sup>th</sup> Barry informed Kim that KPCL has taken her message as a resignation and that it has been accepted.

Further messages from Kim to KPCL refuted the resignation claim and emphasized that she has not quit and could do both jobs.



vii. Decision

Regarding the termination for cause using after acquired knowledge of dishonest conduct after employment ceased, I agree that there is established case law to support the notion.

KPCL has been in possession of most the information they alleged supports termination for the cause for dishonesty for some time. Plenty of time to have amended their position from resignation to termination for cause and advising Kim of that decision in writing.

Had KPCL done that, the ministry would have been able to review the amendment during the investigation and had the appeal hearing still be conducted, evidence could have been heard on that topic.

Had that in fact occurred, I would have been able to rule on the issue. As it is that topic is not before me and I will not make a further comment on it.

Moving to the question of whether Kim resigned or was terminated without cause I review the parties arguments:

The ministry argues that case law holds that a resignation must be clear and unequivocal.

The employer argues that resignation has two parts, the first part is a subjective determination of the employee's intention to resign or end the employment relationship. The second stage is the determination on intention to bring the severance of the employment relationship into effect.

On January 18, 2024 at 11:49 AM, Kim emailed Barry and advised she had a CSC (broker) course beginning in February. I cannot do both, I need my layoff.

On January 30, 2024, at 9:46 AM Kim emailed Barry and advised she is starting a new job on the Feb. 5th. These two emails, instead of triggering a series of questions from the employer seeking clarification, instead it triggered Kim's employment end in the form of an accepted resignation. KPCL did not question Kim about whether it was a course or a job? Kim was not asked if she could handle whatever it was along with her KPCL training assignments. Kim was never told what part KPCL had for her in the longer-term future. KPCL never addressed the issue of lay-off directly with Kim

It is evident that Kim was not excited about her online training assignment. Her repeated requests to be laid off were evidence of that, however she never once indicated that she wanted her employment severed. There is no evidence before me that she ever uttered or wrote the words resigned or quit.

KPCL In their brief of law under para 18, states that the company had no obligation to follow up with Ms. Case to ensure that she clearly desired to stop working for KPCL. Surely Kim's e-mails of January 18 and 30 needed clarification since one referred to "a course" and the other two a "job".

We also have emails from Kim that state she did not resign or quit.

My conclusion is that Kim did not resign since the action claimed by KPCL was neither clear, unequivocal, subjective intention or a movement toward bringing the employment to an end.

Kim wanted to be laid off, not unemployed. KPCL's acceptance of her January 30, 2024, e-mail as a resignation was in reality a termination without cause.

Therefore, since no notice was given as per Section 2-60(1) of *The Saskatchewan Employment Act*, the wage assessment is upheld and the appeal dismissed.

Dated at Regina in the Province of Saskatchewan, this 20<sup>th</sup> day of January, 2025.



Ralph Ermel  
Adjudicator