LRB File No. 191-24

IN THE MATTER OF AN ADJUDICATION
PUSUANT TO SECTION 2-75 OF
THE SASKATCHEWAN EMPLOYMENT ACT

BETWEEN

P. R. Investments Inc.; Wade K. Probe, being a director of P. R. Investments Inc. and Tim R. Probe, being a director of P. R. Investments Inc.

(Appellants)

And

Director of Employment Standards and Bobbie-Jo Laurans

(Respondents)

Date of Hearing: January 8, 2025

Date of Decision: January 13, 2025

1. I was appointed to adjudicate LRB file number 191-24 by the Registrar of the Labour Relations Board on November 15, 2024.

2. LRB file number 191-24 relates to an appeal of Wage Assessment 1-000857 (the 'Wage Assessment') with 'Employer File' number 1-003476 dated September 16, 2024. The Wage Assessment is in the amount of $10,833.61. It orders P. R. Investments Inc.; Wade K. Probe, being a director of P. R. Investments Inc. and Tim R. Probe, being a director of P. R. Investments Inc. (collectively the 'appellants') to pay this amount to Bobbie-Jo Laurans.

3. After being selected as the adjudicator I communicated by email with the law firm which I believed represented the appellants, as well as with the respondents. After some delay, it became clear that the law firm did not represent the appellants in this matter.

4. Employment Standards Officer Allysia Finn ('Ms. Finn') was the Director's delegate and represented the Director. She did not represent the employee respondent Bobbie-Jo Laurans.

5. On January 6, 2025 I received an 18 page pdf document from Wade Probe ('Mr. Probe'). This document was marked as Exhibit ER-1 at the hearing.

6. On December 13, 2024 I received a 54 page pdf document from Ms. Finn. This document was marked as Exhibit EE-1 at the hearing.

7. The hearing was held on January 8, 2025 at 10:00 via Zoom.

8. Having reviewed the Wage Assessment dated Sept. 16, 2024, delivery documentation from Canada Post indicating delivery on Sept. 19, 2024, the appellants' Notice of Appeal and deposit cheque both dated Sept. 19, 2024, and the Ministry's receipt for same, also dated Sept. 19, 2024, I am satisfied that sub-sections 2-74(6), 2-75(2) and 2-75(3) of *The Saskatchewan Employment Act* (the 'Act') have been complied with.

9. At the beginning of the hearing Mr. Probe confirmed that he represented all the appellants in this matter. Ms. Finn confirmed that she represented the Director, but not Bobbie-Jo Laurans ('Ms. Laurans').

10. No party raised any preliminary objection as to my jurisdiction to hear this matter.

11. Mr. Probe confirmed that P.R. Investments Inc. is a current Saskatchewan corporation, and that he and Tim Probe are the only two directors.

12. The Agreed Statement of Facts contained in Exhibit EE-1 indicates that the parties agree that if the Wage Assessment is upheld, the amount of the Wage Assessment is correct. Mr. Probe confirmed that the appellants' position is that Ms. Laurans quit her employment and was not fired, and therefore is not owed any pay in lieu of notice. Mr. Probe further confirmed that the appellants are not challenging any other issue.

13. Ms. Laurans began working for P.R. Investments Inc. in July 2010. Mr. Probe was Ms. Laurans' boss, and the only person in the company with authority to fire her. Her employment ended June 5, 2024. For the sake of brevity, I shall simply refer to this as June 5. On June 5 she was earning wages of $5,030 per month (agreed statement of facts Exhibit EE-1 tab 1, as confirmed by appellants at the hearing). I am satisfied that if Ms. Laurans was fired, the amount of the Wage Assessment is correct.

14. Some evidence at the hearing related to Ms. Laurans' progression through different responsibilities in her employment. It is not necessary for me to summarize that evidence here, as it is not relevant to the issue of whether she quit or was fired on June 5.

15. A significant amount of the appellants' evidence related to Mr. Probe's perception of Ms. Laurans' 'attitude' at work. Mr. Probe clearly valued Ms. Laurens' work performance, even calling her his 'right-hand' person, and saying that she was that she was his most knowledgeable staff member. At the same time, he criticized what he called her tardiness, her unwillingness to use the WhatsApp application on her company phone and her disinclination to take notes at meetings.

16. I told Mr. Probe that performance review issues are not relevant to the issue of whether she quit or was fired on June 5. Mr. Probe stated he felt this evidence as well as some evidence relating to challenges in Ms. Laurans' life were important as the evidence would help me understand Ms. Laurens' attitude and perception of what was happening in the workplace, so I allowed him to continue testifying in this regard. I accept that my having a deeper

understanding of the type of relationship Mr. Probe and Ms. Laurans had may help me to interpret the events of June 5.

17. None of the alleged personal issues Mr. Probe indicated were affecting Ms. Laurans were established on a balance of probabilities. Mr. Probe lists these issues in a letter to Ms. Finn dated August 7, 2024. Even if some or all of these issues had been established on a balance of probabilities, none of them would be relevant to the issue of whether Ms. Laurans quit or was fired on June 5.

18. I note that the appellants did not allege just cause for termination, and so I find the alleged performance related issues prior to June 5 irrelevant. I would also add for the sake of completeness, that such alleged performance related issues were not established by the appellants on a balance of probabilities. If they had been established on a balance of probabilities, I would have characterized several of them as trivial or not particularly important.

19. The issue to be resolved is whether Ms. Laurans quit or was fired by Mr. Probe. I recognize that employment is a matter of provincial jurisdiction, and that provincial laws including *The Saskatchewan Employment Act* ('SEA') trump the common law. However, statutes like the SEA do not address matters such as how to determine if an employee has quit. The legislator has chosen to leave to be determined by applying the common law to determine.

20. The textbook '*Employment Law in Canada* (4th edition) written by Geoffrey England, Peter Barnacle and Innis M. Christie is a highly respected authority explaining employment law in Canada. Part III deals with termination of employment. Chapter 13 within that part looks at quitting and constructive dismissal.

21. The first heading in chapter 13 is 'I. Voluntary Quit: Employee Initiated Termination of Employment'. The authors say:

> *§ 13.1*
>
> *"Quitting the job" is a useful everyday phrase to describe the termination of the employment relationship at the initiative of the employee. An employee can be considered to have quit when the employee has*

•terminated employment after giving due notice to the employer of his or her intention to do so;

•terminated employment after giving inadequate notice; or

•given no notice at all, but simply failed to come to work in circumstances such that the employer may reasonably treat the failure to come to work as a manifestation of an intention to no longer be bound by the contract of employment.

§ 13.2

In all of the above circumstances, there will be a "quit" only if the employee genuinely intends to sever the employment relationship and a reasonable person in the position of the employer would believe that such is the employee's intent.

Later in Chapter 13 the authors address how to distinguish quitting from dismissal (authorities omitted):

§ 13.12

It may sometimes be difficult to determine whether the employment relationship has been terminated by a quit on the employee's part or by a dismissal on the part of the employer. The courts and statutory adjudicators, echoing the approach of collective agreement arbitrators, have held that a valid resignation must have a subjective as well as an objective component. The former requires conduct on the employee's part that unequivocally manifests that he or she had the subjective intention of quitting. The latter requires conduct on the employee's part that would lead a reasonable person in the position of the employer to believe that the employee had carried out his or her subjective intention. Since, in a wrongful dismissal action, the burden of proving that he or she was dismissed is on the employee, the employee must prove that he or she has not resigned if the employer succeeds in raising a prima facie case of a quit.

22. The parties agree that Ms. Laurans' employment ended June 5. If the evidence establishes that Ms. Laurans quit her job, then she is not entitled to

any notice or termination pay. If the evidence does not establish that she quit, then the employer must have terminated her employment. In this case, the SEA section 2-60 provides that a minimum period of written notice must be given by the employer. Since Ms. Laurans has more than 10 years of employment with this employer, the proper notice period is eight week wages. As the parties have agreed, the Wage Assessment in in the amount of pay in lieu of that notice.

23. The amount of notice required by the SEA is a statutorily set minimum notice period. It may be that an employee who has been terminated is entitled to a longer notice period at common law. However, that would be a private matter between the parties to be resolved in a court, not in an adjudication under the SEA.

24. The appellant submitted a letter by Gayle Hodel. Ms. Hodel gave evidence confirming the contents of the letter. I found her to be a straight forward and trustworthy witness who testified impartially as to what she observed. I accept her evidence as factual. In her letter (ER-1 page 17) she wrote (referring to Ms. Laurans as 'she'):

> She seemed to me a bit off, and I asked her if she was ok, her response was, I'm tired of the head games. And into Wades office she went. Jon left the meeting approx. 10 mins after Bobbi-Jo entered Wade office. Bobbi jo remained. Approx 15 minutes after Jon left, I heard the office door open and Bobbi Jo say, Fire me then, well, fire me then. She walked over to her desk, grabbed her jacket off the back of her chair, well fire me then, grabbed her phone etc. of her desk. Wade came out of his office and put his hand out and said, "hand in your stuff" "Fine, I'll be talking to labour board because I'm not putting up with this bullshit anymore" Bobbi Jo replied. "That's fine, Bobbi Jo, you do what you have to, because I'm not putting up with your bullshit anymore either", was Wades response. And Bobbi Jo left the building

25. In her oral testimony, Ms. Hodel testified that the last time Ms. Laurans said, 'fire me then" to Mr. Probe on June 5, his reply was "leave your stuff". Ms. Laurans testified she retrieved her company keys from her car. She put the phone and the keys on Ms. Hodel's desk right beside Mr. Wade, he took possession of them, and she left. I accept this as a factual account.

26. Mr. Probe's letter to Ms. Finn dated August 7, 2024 (EE-1 page 28) also indicated Ms. Laurans said words to the effect of 'fire me then, three times

near the end of the exchange on June 5. Referring to the third time Ms. Laurans said, 'fire me then' Mr. Probe wrote "During the last conversation, while addressing her tardiness, instead of engaging constructively, Bobbi-Jo retorted with "Fire me then," 2 times with an elevated level of anger and began to walk out on me. Frustrated by her ongoing disregard for company policies and disruptive behavior, I asked her if she chose to leave, she could hand in her stuff and proceed as she wished, she then walked out while threatening to involve the labor board."[sic]

27. In his oral testimony of that exchange in response to questions Mr. Probe said, "my exact words were 'leave the phone', not hand in her stuff. 'Stuff' is a general word for 'phone'." He then explained that the company phones are critical tools for employees to do their jobs, such as showing apartments.

28. Mr. Probe said that he hoped I would not seize upon a single word, that is whether he said 'stuff' or 'phone' to determine if Ms. Laurans quit or was terminated. Clearly, in applying the common law test described above, I must base my decision on the evidence of the entire exchange, and not on simply whether Mr. Probe said 'stuff' or 'phone'.

29. Ms. Laurans' evidence regarding this exchange is that during their argument, which she described as heated, Mr. Probe threatened to fire her and she said, 'go ahead and fire me'. Regarding the final exchange, she remembers that when she said, 'fire me' the last time, Mr. Probe replied 'hand your stuff in'.

30. It really does not matter if Mr. Probe used the word 'stuff' or 'phone'. Both Ms. Hodel and Ms. Laurans characterized the event as a 'heated discussion' or 'argument', and I accept their evidence. Mr. Probe admitted to feeling frustrated and did not contradict this characterization in his oral testimony.

31. I do not have to deal with who carries the onus in this case, because in my opinion the evidence decides the issue on a balance of probabilities.

32. Applying the test from § 13.2 of *Employment Law in Canada*, in this case "there will be a "quit" only if the employee genuinely intends to sever the employment relationship and a reasonable person in the position of the employer would believe that such is the employee's intent.'

33. *Lelievre v. Commerce and Industry Insurance Canada* 2007 BCSC 253 ('Lelievre') at paragraph 51 holds:

> A resignation must be clear and unequivocal to be effective. The test for determining whether an employee has resigned their position is an objective one, meaning the court must be satisfied given all the surrounding circumstances, that a reasonable person would understand by the plaintiff's actions, that they had resigned." [citing *Assouline v Ogivar*, [1991] B.C.J. No. 3419; *Cox v Victoria Plywood Cooperative Assoc.* [1993] B.C.J No. 2788.]

34. The first question in my view is this: 'would a reasonable, objective bystander, understanding the employment relationship of these two individuals, and considering the entirety of their words and actions, conclude that Ms. Laurans resigned?'

35. Mr. Probe's characterization of the final exchange in the August 7 letter was "I asked her if she chose to leave, she could hand in her stuff and proceed as she wished". In my view this statement is an attempt by Mr. Probe to cast himself in the best light and I reject any implication that he said or did anything to provide Ms. Laurans with a choice at the time he required her to return her work property.

36. This is what I find happened, based on the evidence before me. Mr. Probe and Ms. Laurans had some irritants in their working relationship prior to June 5. Mr. Probe was unhappy with, among other things, the way Ms. Laurans performed some work, with her punctuality, with her disinclination to use a particular phone app and with her desire to do additional jobs, particularly those occurring outside the office. Ms. Laurans was unhappy with what she described as her 'rocky relationship' with Mr. Probe with what she characterized as 'head games' being played by Mr. Probe, and with criticisms he made of her. On June 5 Mr. Probe called Ms. Laurans into his office and a heated exchange or argument followed. Ms. Laurans' perception was that Mr. Probe threatened to fire her. I found Ms. Laurans to be a reliable witness in that she did not try to groom her testimony to make herself appear in the best light, and so I conclude that it is more likely than not that Mr. Probe made

some reference to potentially firing Ms. Laurans, but he did not actually fire her at that time. Mr. Probe was clearly expressing his unhappiness with her work. Ms. Laurans said words to the effect of 'go ahead and fire me' or 'fire me then'. The exact words are not important. The most critical aspect of this is that an employee who tells their boss to go ahead and fire them, clearly has not resigned.

37. Ms. Laurans and Mr. Probe left Mr. Probe's office, and in front of a staff member, Ms. Laurans again said words to the effect of 'fire me then'. Mr. Probe responded to this by telling Ms. Laurans to leave the company property. Ms. Laurans got the company keys (for apartments etc.) from her car and put them and her company phone on a staff member's desk beside Mr. Probe. Mr. Probe took possession of the phone and the keys.

38. I conclude that a reasonable person would interpret the words 'fire me then', in the context in which they were spoken to mean that Ms. Laurans was not resigning. If she was resigning, it would be nonsense for her to invite her now former employer to fire her. To put this in the words of Employment Law in Canada, a reasonable person in these circumstances would not conclude that Ms. Laurans genuinely intended to sever the employment relationship by saying words to the effect of 'fire me then'. No reasonable person in the position of the employer would believe that the employee's intent was to voluntarily quit by those words and actions.

39. To put this in the words of Lelievre, Ms. Laurans' words and actions were not a clear and unequivocal resignation. Given all the surrounding circumstances, no reasonable person would interpret Ms. Laurans' words and actions as a resignation.

40. The evidence before me does not establish a *prima facie* case that Ms. Laurans resigned. To the contrary, in my opinion the only conclusion regarding resignation that a reasonable person who observed the events between Mr. Probe and Ms. Laurans could come to, is that Mr. Laurans simply had not resigned her position when Mr. Probe demanded she return the company property in her possession.

41. The company phone and the keys were critical tools to allow company employees to do their jobs, including showing apartments. The only reason

Mr. Probe would demand the company property be returned at that moment was that he knew Ms. Laurans was not returning to work. Since Ms. Laurans had not quit, and since there is no suggestion that she was going to take a leave of absence, the only reasonable conclusion is that when Mr. Probe responded to Ms. Laurans statement which was to the effect of 'well fire me then' by demanding her company property be returned, he was terminating her employment.

42. Mr. Probe testified that he only required Ms. Laurans to return the company phone. I do not believe him. It is inconceivable that an employer would demand that upon termination an employee return her company phone so that others could take over her work showing apartments and so forth, but not require the employee to return her company keys to the various units the company rented out.

43 It is clear to me that a reasonable objective observer would conclude, as Ms. Laurans rightfully concluded, that in the context of their words and actions on June 5, and given the history of their employment relationship, Mr. Probe's demand to turn in her work property was a termination. As Mr. Probe testified, the company phone was a critical tool for employees in Ms. Laurans' position to do her work. The same can be said about the keys to the units. By responding to Ms. Laurans' repeated statement of 'fire me then' with a demand that Ms. Laurans return property essential to doing her job, Mr. Probe fired Ms. Laurans.

44. Approximately seven minutes after this termination occurred, Mr. Probe texted Ms. Laurans saying "If you have quit then I need a resignation" and "If want to keep job I will need an apology if not I understand and will move forward with termination" (Exhibit EE-1 page 30). She replied, "u fired me". Mr. Probe replied, "If that is approach you want to take I can do that too!" He goes on to purport to give Ms. Laurans until 1:30 to make a decision as to whether or not she will return to work. Ms. Laurans again referred to being fired, specifically referring to him telling her to hand in her stuff in response to her saying 'fire me'. Mr. Probe's response is "Stop and make a decision on my last statement".

45. Mr. Probe indicated in the emails, his letter to the Ministry and in oral evidence at the hearing that for a time he would have welcomed Ms. Laurans back. I believe that to be true. However, that does not change the fact of the termination. I conclude that the texts which followed Ms. Laurans' termination simply reflected Mr. Probe's hope that Ms. Laurans would 'overlook' or 'forgive' the termination and come back to work pretending she had not been fired. She did not agree to do so. In the context of their discussion, the moment Mr. Probe demanded Ms. Laurans return the company property in her possession, he terminated her employment. He may have wished she would return to work, but that does not change the fact that her employment was terminated. Had Mr. Probe not intended to fire Ms. Laurans, a reasonable person would expect that he would at the very least have replied to at least one of Ms. Laurans' texts which said he had fired her, with a denial. He did not do so.

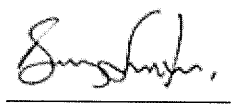
46. Mr. Probe gave evidence of financial loss and inconvenience the company incurred because of Ms. Laurans' termination. He referred to missed Office of Residential Tenancies hearings which cost the company money, important user names and passwords that only Ms. Laurans knew and similar matters. I refer to these post termination challenges only to say two things. First, they are not at all relevant to the issue of whether Ms. Laurans quit or was terminated. Second, these consequences flow entirely from Mr. Probe's actions in terminating Ms. Laurans. She bears no responsibility whatsoever for these difficulties.

47. I conclude that Ms. Laurans' employment was terminated without cause.

Decision

48. Wage Assessment Wage Assessment 1-000857 dated September 16, 2024 is confirmed in the full amount of $10,833.61

Dated at the City of Saskatoon, in the Province of Saskatchewan this 13th day of January, 2025.



Doug Surtees
Adjudicator

The Parties are 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 viewed at 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.

(2) A person who is directly affected by a decision of an Adjudicator on an appeal pursuant to Part III 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 or hearing pursuant to Part II, the wage assessment or the notice of hearing;

(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;

(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;

(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 of the adjudicator's

decision or order with any directions that the board considers appropriate.

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 or the director of occupational health and safety, 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 and the director of occupational health and safety have 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.