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

Cory Anderson

COMPLAINANT/EMPLOYEE

-AND-

C & N Oilfield Maintenance Ltd., and Wayne Carley, Director

APPELLANT/EMPLOYER

DATE OF HEARING:	March 20, 2025
PLACE OF HEARING:	Estevan, Saskatchewan
LRB FILE:	No. 192-24
WAGE ASSESSMENT:	No. 1-000861

INTRODUCTION

This matter was heard on March 20, 2025, in Estevan, 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.

Tanya Turgeon, Employment Standards Officer ('ESO') and Diana Brown, Employment Standards Officer ('ESO'), represented The Department of Employment Standards.

Kris Carley, Vice President of C & N Oilfield Maintenance Ltd., represented the Employer Corporation.

Wayne Carley, Director of C & N Oilfield Maintenance Ltd., represented himself and the Employer Corporation.

David Bonneteau, Employee of C & N Oilfield Maintenance Ltd., attended by telephone as a witness for the Employer.

Cory Anderson, Complaint/Employee, was present and gave sworn 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 $10,246.06.

I. PRELIMINARY MATTERS

No preliminary matters were raised by the parties.

II. AGREED FACTS

The parties agreed as follows:

1. Cory Anderson began employment with C & N Oilfield Maintenance Ltd., on March 12, 2009.
2. Cory Anderson's rate of pay was $32.00 per hour.
3. Cory Anderson held the position of laborer/circulator.
4. Cory Anderson was terminated immediately on April 30, 2024, without written notice or pay instead of notice.

5. Should the appeal be dismissed, the Wage Assessment amount is correct for pay in lieu of notice.

III. EVIDENCE OF THE EMPLOYER

Wayne Carley was sworn and gave evidence as follows:

The company does maintenance work on oil wells and the employee was hired for this purpose.

On April 16, 2023, Wayne noticed the Employee's Corporate Vehicle's GPS showed the employee was traveling to destinations not required by his job.

The employee was called in to discuss the discrepancies on his GPS. The employee stated that he was having mental health problems.

At that time, the employer put the employee, Cory, on short term disability in order for him to work out his problems. The employee returned to work on July 23, 2023.

All seemed well until April 24, 2024.

At this time the employer saw that the employee was at Moose Creek Campground at 2:15pm in the afternoon. This was not a location for company work.

The next day Wayne looked through the employee's recording records for April 24, 2024, and it stated that the employee was at work from 10:46am to 3:40pm.

The GPS showed the employee never went back to work after 2:15pm on April 14, 2024.

The employer then went through other employee records and saw further discrepancies. As a result, he decided he needed to discuss the same with the employee.

Cory Anderson and Wayne Carley met in Wayne's office in Estevan on April 30, 2024, for this discussion.

There was only Wayne and Cory present at the meeting which quickly escalated into an argument and then a shouting match.

The employer thought that the employee was getting aggressive. The employee asked twice to be fired, so the employer fired him.

After the second request by Cory, Wayne fired him saying that Cory was done and he should pick up his belongings and have David Bonneteau drive him home.

Cory then stormed out of the meeting.

Wayne said that both Kris Carley and David Bonneteau were standing outside his office door when Cory opened it to leave.

There was no further contact between Wayne and Cory until May 2, 2024, when Wayne texted Cory asking him to come in to discuss his severance.

Wayne reached out to Cory twice but did not receive a response from Cory.

Under Cross exam Wayne stated that Corporation vehicles are in possession of the employees 24/7. Employees take company vehicles home and may use them for personal use within reason. The employee needs to ask if they want to use the vehicles on weekends.

Kris Carley gave sworn evidence as follows:

After the April 29 incident Kris looked back on worksheets and saw what he thought were discrepancies regarding location and times.

Kris spoke to Wayne about this and they decided that Wayne should talk to Cory about the discrepancies and reprimand him. This was the original purpose of the April 30 meeting.

Kris was in his office next door to Wayne's office when heard shouting and Cory say, "Fire me right now other people want me".

Kris then went to Wayne's office door and stood outside the closed door.

David Bonneteau also came and stood outside Wayne's door.

Shortly after the shouting Cory came out of Wayne's office and asked David Bonneteau for a ride home.

On May 2, 2024, Kris and Wayne decided to contact Cory to invite him in to discuss his severance pay. As everyone had cooled off by then. An email was sent to Cory but no response was received until May 22, 2024, wherein Cory asked the employer not to contact him again.

David Bonneteau was sworn and gave evidence on behalf of the employer by telephone.

On April 30 he was in his office and heard shouting coming from Wayne's office. He went and stood outside Wayne's office door which was closed. There were loud voices and heard Cory say, "Why don't you fire me".

Cory came out of Wayne's office and asked him for a ride home.

IV. EVIDENCE OF EMPLOYEE

Cory Anderson was sworn and gave the following evidence:

Cory had never been given clear instructions regarding the use of company vehicles from the employer.

On April 30 he was called in to the office to see Wayne and did so. Prior to this meeting Cory had never received any verbal or written warnings about his conduct or how he was carrying out his job.

Cory said that he got upset when he was at the meeting as did Wayne.

The meeting lasted about 20 minutes then he was told to collect his personal belongings and have David Bonneteau drive him home.

Firing was talked about and he was upset and left the meeting after he was told he was fired. Cory states that when he left Wayne's office no one was standing outside the door.

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 events that took place on April 30, 3024 and in the alternative there was cause to fire Cory Anderson because of cumulative discipline from events on April 24, 2024 and the discrepancies uncovered Cory Andersons time/work sheets reviewed by Wayne which gave cause for Wayne to call a meeting with Cory Anderson of April 30.

Dismissal for "just cause" can be cumulative or it can be a one-time event (serious isolated incident). 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, as well as, show evidence of cumulative events that there is just cause for dismissal of the employee, within a cumulative time frame. Again on the balance of probabilities.

It is well established in Canadian jurisprudence that a notice of termination of employment must be specific, unequivocal and clearly communicated to the employee. Whether a purported notice is specific and unequivocal is a question of fact to be determined on an objective basis in all the circumstances of each case. SEE Kerfoot v. Weyerhaeuser Company Ltd., 2013 BCCA 330.

In order for C & N Oilfield Maintenance Ltd. to fire Mr. Anderson 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.

The evidence shows that the employer did not discuss the employee's conduct up until April 24, 2024, with the exception of one occasion on April 16, 2023, when there was a discussion between the employer and the employee, and it was agreed by the parties that the employee would go on short term disability to work on the employee's mental health. The employee returned some three months later in July of 2023 and there were no other discussions with the employee up to meeting on April 30, 2024.

There is no evidence of any warnings being given to Mr. Anderson nor was he warned, about any necessary improvements and/or, consequences of not making them, or that his job was in jeopardy should he continue to fail to meet those standards.

The employer did not meet the onus of showing on the balance of probabilities that Mr. Anderson was fired for cause based on cumulative events. The question then becomes was the employee's behaviour on April 30, 2024, so egregious that it warranted immediate dismissal for cause based on this isolated event.

On that day Mr. Anderson was called in to a meeting with Wayne Carley in Mr. Carley office to discuss apparent irregularities in his time sheets.

This meeting lasted only minutes before both parties became angry and it quickly escalated from an argument to a shouting match by both parties to the extent that other employees in the building were concerned.

During the course of this meeting the employee challenged the employer, both of whom were angry and shouting, to fire him which the Wayne Carley did.

A resignation must be clear and unequivocal. To the clear and unequivocal the resignation must objectively reflect an intention to resign or conduct evidencing such an intention. Skidd v. Canada Post (1997) O.J.712 (C.A.).

Just cause for firing for a one-time event was discussed in Balzer v. Federated Cooperatives Ltd., 2018 SKCA 93. In this case, assessing whether a single breach of policy and regulation justified termination the Court accepted 7 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 employee's 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

SEE McKinley v. BC Tel (2001) 2SCR 261. The McKinley case sets out a determining factor for dismissal for a single incident is whether the nature of the misconduct causes irreparable damage to the employment relationship. In this case there was a single short meeting where both parties became upset and engaged in a shouting match resulting in the employee leaving the premises. The employer

two days later sent a text to the employee requesting the employee contact him in order to discuss termination and severance.

Clearly there was still a chance of a workable relationship between the employee and the employer (as the employer offered an olive branch to the employee).

According to the Court in McKinley, when an employer asserts dismissal for just cause the employer bares the burden of proving on the balance of probabilities that there are reasonable grounds to justify the dismissal. To satisfy this 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 employee's misconduct and the sanction with regard to the all the surrounding circumstances. In this case both parties became agitated and seemed to lose their tempers with the employee inviting the employer to fire him and the employer acted on that request resulting in the employee leaving the meeting. A short time later the employer sends an email requesting the employee to return and have a discussion with the employer.

It was clear that there was still a chance of a workable relationship between the employer and employee.

Clearly the employer did not establish on the balance of probabilities that just cause existed at the time the employment was terminated.

In applying the McKinley decision coupled with Balzer v. Federated Coop I find that the employer did not meet the onus of showing on the balance of probabilities that Mr. Anderson was fired with cause.

VI. CONCLUSION

The Appeal is dismissed and the Wage Assessment stands in the amount of $10,246.06.

Dated at Moose Jaw, in the Province of Saskatchewan,
this 30th, of March, 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.