LRB File No. 212-24

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

BETWEEN

Warman Medical Imaging Inc. and Terra Libke, being a director of

Warman Medical Imaging Inc. (Appellants)

And

Director of Employment Standards and Kaitlin Beznoska

(Respondents)

Date of Hearing: February 21, 2025

Date of Decision: March 3, 2025

1. I was appointed to adjudicate LRB file number 212-24 by the Registrar of the Labour Relations Board on January 31, 2025.

2. LRB file number 212-24 relates to an appeal of Wage Assessment 1-000872 (the 'Wage Assessment') with 'Employer File' number 1-010819 dated October 10, 2024. The Wage Assessment is in the amount of $1,692.32. It orders Warman Medical Imaging Inc. and Terra Libke, being a director of Warman Medical Imaging Inc. (collectively the 'appellants') to pay this amount to Kaitlin Beznoska.

3. Employment Standards Officer Kim King ('Ms. King') was the Director's delegate and represented the Director. She did not represent the employee respondent Kaitlin Beznoska. On February 7, 2025 Ms. King provided me with two email addresses which she had been using to contact the appellants.

4. One of the email addresses provided to me by Ms. King used the corporation's name (the 'corporate' email) and the other used Ms. Libke's name (the 'personal' email). In addition, beginning February 13, I added a second corporate email which indicated it was a 'reception' email for the corporation (the 'reception' email).

5. In selecting a hearing date for this matter, I sent email correspondence to the appellants' corporate and personal email on February 10, February 11 and February 12, 2025. These emails listed available dates for the hearing and asked the appellants if they were available any of those days. The appellants did not respond.

6. I sent further email correspondence to the appellants' corporate and personal email addresses and also to the reception address on February 13, advising the appellants that since I had not heard from them, I selected February 24, 2025 at 10 AM as the hearing date and time. I advised that the hearing would be held via Zoom. I followed up that email with a copy of the Zoom invitation on February 13 and again on February 19, 2025.

7. On February 19, 2025 at 3:18 PM, Ms. Libke replied to my messages for the first time. She replied from the corporate email address. She said she would be unable to attend the hearing due to a 'serious health issue'. She also asked me to communicate with her using the corporate email address only. Ms. Libke attached a note from a primary care provider saying for medical reasons she would be unable to attend a meeting on February 21, 2025. Ms. Libke requested that I adjourn the hearing. I declined that request, for reasons which I will return to.

8. The appellants' letter of appeal states that Ms. Beznoska "was provided with due notice of termination, both via email and official termination letter, well in advance of their anticipated return to work date".

9. The appellants' letter of appeal also discloses that Warman Medical Imaging Inc. is in serious financial trouble. In the letter, Ms. Libke says that Warman Medical Imaging Inc. is "temporarily closed", is not "offering medical imaging services", has "ceased generating revenue" and is "in a difficult financial position". In the letter Ms. Libke states "We would appreciate any accommodations or alternative arrangements that Labour Standards can offer in light of the company's temporary closure and financial hardship."

10. These financial hardships are understandably of the utmost importance to the appellants. However, they are not matters that are relevant to the appeal of the Wage Assessment. Adjudicators are not given any sort of discretion under *The Saskatchewan Employment Act* (the 'SEA') to vary a Wage Assessment based on the appellant's financial situation. The SEA requires adjudicators to apply the law to the facts. In this case the only relevant issue is whether or not the appellant provided Ms. Beznoska with the period of notice, or pay in lieu of notice, required under the SEA.

11. A copy of the appeal letter dated October 22, 2024, a copy of a letter acknowledging receipt of the appeal letter by the Ministry of Labour Relations and Workplace Safety dated November 5, 2024, a copy of the appellants' deposit cheque dated October 25, 2024 and a copy of a receipt

from Employment Standards for the deposit dated October 25, 2024 are all contained at Tab 4 of EE 1. I am satisfied that sub-sections 2-74(6), 2-75(2) and 2-75(3) of the SEA have been complied with, and that the appellants' appeal complies with the requirements for an appeal in the SEA.

12. In exhibit ER 1 Ms. Libke states "On October 25, 2024 I issued a cheque for $500 to Ms. King, which I believed would resolve the matter. However, despite this the case is still being pursued." The October 25 cheque which accompanied the letter of appeal was of course a deposit required by the SEA in order for the appellants' appeal to proceed. Ms. Libke's suggestion that she thought the deposit cheque was the end of the matter is inconsistent with her own letter of appeal.

13. I contacted Ms. Libke by email on February 19 and February 20, 2025 and advised her that the hearing would proceed as scheduled. I also advised her that another person could appear instead of her, or that she could send information by email, and that I would consider that information at the hearing. Ms. Libke did provide written material to me in advance of the hearing. I have marked that document as exhibit ER 1.

14. I decided not to grant an adjournment of the hearing for the following reasons. The financial difficulties and lack of revenue of Warman Medical Imaging Inc. described almost four months ago in the letter of appeal, weigh in favour of a timely hearing. Ms. Beznoska's employment ended approximately six months ago, and almost four months have passed since the Wage Assessment was issued. Given the challenges of setting the hearing date, if an adjournment was granted it is probable that at least a couple more months would pass before a hearing could be held. In addition, Ms. Libke's initial choice not to respond to requests to set a hearing date, coupled with her request for an adjournment two days before the hearing, raises the serious possibility that the appellant is stalling.

15. In this case the letter of appeal raises a single relevant issue to challenge the Wage Assessment. The appellants say the employee "was

provided with due notice of termination, both via email and official termination letter".

16. At the start of the hearing, I advised Ms. King and Ms. Beznoska that there were three possible results. I could allow the appeal, I could deny the appeal, or if there were any facts alleged which could reasonably be challenged by the appellant, I would adjourn the hearing to allow the appellants to provide further information or attend.

17. Prior to the hearing, on February 20, 2025 at 10:56 AM, Ms. King provided a comprehensive package of documents, which I marked as exhibit EE 1 at the hearing. EE 1 disclosed every aspect of the Director's case. The appellants submitted a document, which I marked as exhibit ER 1, the same day at 2:44 PM.

18. For the purpose of the hearing, I accept every relevant fact stated by the appellant in ER 1 as true. By 'relevant fact' I mean those statements which are relevant to whether or not Ms. Beznoska was entitled to or received notice or pay in lieu of notice as required by the SEA. Unfortunately, Ms. Libke additionally makes some unfounded accusations regarding the Ministry and Ms. King in ER 1. These accusations are not relevant to the issue before me, but I will address some of them so that I do not give the impression that they are either substantiated or true.

19. In ER 1, Ms. Libke states that she "reached out to Labour Standards and spoke with Ms. King to seek guidance on the proper procedure for providing notice to an employee returning from maternity leave". Ms. Libke then states that "Subsequently, I learned that Ms. King is now acting on behalf of Ms. Beznoska in this matter. I believe this presents a **clear conflict of interest**, as I assumed that Ms. King was advising me as a representative of Labour Standards, not acting in opposition to my position. It appears that Ms. Beznoska contacted Ms. King after I informed her of my intent to seek guidance, which raises concerns about fairness in this process". [emphasis in original]

20. The Ministry of Labour Relations and Workplace Safety, through its Employment Standards Branch does provide information on employment standards to employers and employees. Its Annual Report says so. However, it is the employer's responsibility to know and apply employment standards provided for in the SEA. Ms. Libke says, in ER 1, "When I continued seeking clarity on Labour Standards bylaw [sic], Ms. King instructed me to contact an employment lawyer rather than answering my questions directly". In fact, Ms. King is not in a conflict of interest. She represented the Director in this matter, and not Ms. Beznoska. Ms. Beznoska represented herself.

21. Ms. Beznoska's employment start date is not in dispute. A copy of the Record of Employment signed by Ms. Libke when Ms. Beznoska went on maternity leave is contained at Tab 7 of EE 1. It indicates Ms. Beznoska's first day of work was April 24, 2023. It also indicates Ms. Beznoska's last day of work before the maternity leave was August 29, 2023.

22. In ER 2, Ms. Libke says "Ms. Beznoska initially started working with WMI approximately two weeks after beginning her training on April 24, 2023". The parties therefore agree on Ms. Beznoska's start date. It is also common ground that Ms. Beznoska began her maternity leave in August 2023.

23. The SEA at subsection 2-60 (2) sets out the minimum required length of written notice depending upon how long the employee's period of service was. An employee with a period of employment of more than one year but three years or less is entitled to a minimum period of written notice of two weeks. Subsection 2-60 (3) says that for the purposes of calculating the appropriate length of employment under subsection 2, "an employment leave or leave granted by an employer is not considered an interruption in employment".

24. The parties also agree that Ms. Beznoska's maternity leave was to end in September, 2024. In ER 1, Ms. Libke states that Ms. Beznoska's return date "was originally set for September 3 but was later changed to

September 6" If required, I would hold based on the communication screen shots in EE 1Tab 8 that the return date was actually changed to September 3, not September 6. However, whether the modified return date was September 3 or 6 is not material.

25. In ER 1, Ms. Libke also states "In August 2024, I reached out to Labour Standards and spoke with Ms. King to seek guidance on the proper procedure for providing notice to an employee returning from maternity leave."

26. Tab 8 of EE 1 contains screen shots of five communications. Three were from Ms. Beznoska to Ms. Libke, and two were from Ms. Libke to Ms. Beznoska. The first two are an email and a text each from Ms. Beznoska to Ms. Libke dated July 26, 2024. In each of them, Ms. Beznoska says her maternity leave is set to end August 31, and she indicates that she would like to start back September 3, 2024. I note that August 31, 2024 was a Saturday and that September 3, 2024 was the Tuesday immediately following Labour Day. The third is another email from Ms. Beznoska to Ms. Libke stating she had not received a reply to her previous email and again asked if her return date could be changed to September 3.

27. The fourth communication is from Ms. Libke to Ms. Beznoska. It is an email sent from the appellants' corporate email to Ms. Beznoska at 11:01 AM on August 1, 2024. It is headed "Re: Return to work". The body of the email reads:

> "Hi Kaitlin,
> Unfortunately, we are unable to offer employment to you at this time.
> Kind regards,
> Terra"

28. The fifth communication is a longer version of the fourth communication and says 'official notice' is attached.

29. The appellants' letter of appeal states "The claimant was provided with due notice of termination, both via email and official termination letter, well in advance of their anticipated return to work date". In ER 2, Ms. Libke again says she "provided Ms. Beznoska with both an email notification and a formal letter outlining the termination"

30. The context of Ms. Libke's August 1, 2024 email to Ms. Beznoska is: an employee reaching the end of her maternity leave reached out to her employer to request her back to work date be moved a few days later than previously arranged. The employer does not respond. The employee reaches out with the same request two more times. The employer then responds by saying "we are unable to offer employment to you at this time".

31. Ms. Libke's August 1 email to Ms. Beznoska was not notice of a future termination of employment. It was a clear and unequivocal termination of employment. In the context in which it was delivered, the only reasonable meaning of the words is that Ms. Beznoska's employment was terminated at that time. That is what the email said.

32. I conclude that Ms. Beznoska's employment was terminated without the required written notice of two weeks. As a result, she is entitled to pay in lieu of notice of two weeks.

Decision

33. Wage Assessment 1-000872 dated October 10, 2024, in the amount of $1,692.32 is upheld, and the appeal is dismissed.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 3rd day of March, 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.