



In the Matter of an Appeal to the Special Adjudicator Pursuant to Section 3-53 of
The Saskatchewan Employment Act, SS. 2013, Chapter S-15.1
LRB File 017-15

Decision Appealed from: Occupational Health Officer Report Decision Letter
December 5, 2014

Appellant:	Michelle Calow
Respondent:	Cypress Health Region
Representing the Appellant:	Elke Churchman
Representing the Respondent:	Reginald A. Watson, QC
Decision Date:	November 16, 2015

Appeal Decision

- Michelle Calow (“Callow”) has appealed Occupational Health and Safety Officer Ron Duckworth’s decision letter dated December, 2014 (the “Decision Letter”) to an adjudicator pursuant to s. 3-53 and s. 3-54 of *The Saskatchewan Employment Act* (the “Act”). I am the adjudicator assigned to the appeal.
- Calow is an employee of the Cypress Health Region (“Cypress”). On June 10, 2014, Calow made two complaints of harassment against other employees of Cypress. She delivered those complaints to Cypress. Cypress completed its investigation on July 31, 2014 and advised Calow of the results of the investigation on September 5, 2014. Calow was not satisfied with the investigation process.
- On October 29, 2014, Calow complained to the Occupational Health and Safety Division and asked them to review Cypress’s investigation. On December 5, 2014 an Occupational Health Officer (the “Officer”) issued the Decision Letter to Calow. It reads:

I reviewed the information obtained both from you and from a meeting with Anita Sagadah, Director Acute Care at LTC Swift Current and Jeff Schwan, Director of Occupational Health and Safety, Cypress Health Region.

In my opinion the original investigation of your complaint has been done in accordance with the Cypress Health Region’s Harassment Policy with some omissions.

As per that policy, the complainant and the accused should have been informed by either Jeff Schwan or by Anita Sagadah that harassment had not taken place, and that the matter had then been turned over to the Director, Anita Sagadah, for follow up. This could have clarified the purpose of the letter of expectations, given to all three of the persons involved in the complaint, as a direction to staff and part of the director’s responsibility.

You should also have been informed of your right to seek other recourse through an Occupational Health Officer or through Saskatchewan Human Rights.

The Cypress Health Region Harassment Policy must be updated in several areas to reflect *The Saskatchewan Employment Act* which replaced *The Occupational Health and Safety Act 1993* earlier this year.

4. Calow received the Decision Letter on December 15, 2014. By letter of January 2, 2015, Calow submitted an appeal (the "Notice of Appeal") of the Decision Letter.
5. When I was assigned the appeal, after allowing Ms. Calow a period of time to obtain and instruct legal counsel, I arranged a per-hearing meeting by telephone with the parties and their counsel. At that meeting, on October 15, 2015, the parties agreed counsel would review the contents of the Occupational Health and Safety file with their clients and the parties would discuss whether there might be a possible solution to this matter short of pursuing the appeal hearing.
6. Counsel have now advised me that, upon review of the case and further consideration, the parties agree this matter should be referred back to the Occupational Health Officer to consider Calow's complaint *de novo* and make a decision after a new investigation and after considering the omissions referred to in the Decision Letter. Counsel, on behalf of their clients, have signed their consent to this process.
7. Upon reviewing the material before me, I am satisfied the parties' request is a reasonable one and that it would be appropriate for an Occupational Health and Safety Officer to conduct a new investigation into this complaint. It appears there may have been omissions in the Cypress investigation and that the original officer may not have conducted a thorough investigation in to the complaint. The appropriate remedy in these circumstances is a new investigation.
8. In the result, therefore, I order as follows:
 - a. The Occupational Health Officer's Decision Letter of December 5, 2014, is hereby set aside;
 - b. Ms. Calow's case is remitted to the Division for investigation and decision. When investigating the case, the officer assigned to investigate is directed as part of that investigation, inter alia, to investigate and consider the "omissions" referred to in the December 5, 2014 Report.



Anne M. Wallace, Q.C.
Special Adjudicator
November 16, 2015