

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

Decision Appealed from: Occupational Health Officer Decision  
January 27, 2017



LRB File 038-17	
Appellant:	AAA Motel Ltd.
Respondents:	Sharilyn Smith  Director, Occupational Health and Safety, Ministry of Labour Relations and Workplace Safety

**Process Direction**

**Introduction and Background**

1. AAA Motel Ltd. ("AAA") seeks to appeal Occupational Health and Safety Decision dated January 27, 2017 (the "Decision") to an adjudicator pursuant to s. 3-53 and s. 3-54 of *The Saskatchewan Employment Act* (the "Act"). I have been appointed as Adjudicator to hear this case.
2. The Report deals with a complaint of discriminatory action by Sharilyn Smith ("Smith") against her former employer, AAA.
3. By letter of March 25, 2017, I notified the parties that I had set April 12, 2017 for a pre-hearing conference by telephone. In the letter, I said:

The matters to be discussed at the pre-hearing meeting will include:

  1. What efforts, if any, have been made to resolve the situation and what efforts might still be made for settlement? This is required by Subsection 4-5(2) of the *Saskatchewan Employment Act*.
  2. Confirmation of my jurisdiction as the appeal adjudicator in this case.
  3. In relation to the hearing:
    1. The process that will be used for the hearing. In particular, to what extent can the appeal be "on the record" of the OHS File?
    2. Can the issues can be refined/defined?
    3. Are there matters on which the parties agree?

4. How long will it take to conduct the hearing?
  5. The date(s) and location for the hearing.
  6. Any other preliminary matter that may usefully be discussed before the hearing.
4. Richie Gill on behalf of AAA and Sherilyn Smith participated in the pre-hearing conference on April 12, 2017.
5. With respect to efforts at settlement, the parties confirmed that to date no efforts have been made to resolve the situation. I canvassed with the parties the possibility of my assisting them with settlement discussions, but Mr. Gill declined that offer. He advised Ms. Smith that one of the principals of AAA would be contacting her directly in the near future to discuss possible settlement and that he didn't feel they needed assistance for those discussions. I told the parties that if they at any time agree that I might be of assistance with settlement discussions, they should contact me.
6. The parties confirmed their agreement that I have jurisdiction to hear this appeal.
7. I confirmed with the parties that:
  - a. Smith worked at AAA for a period of time and AAA terminated her employment in June of 2016.
  - b. On September 19, 2016, Smith filed a complaint of discriminatory action against AAA with the Occupational Health and Safety Office of the Ministry of Labour Relations and Workplace Safety ("OHS"). Smith claims that she was terminated when she reported harassing behaviour on the part of Richie Gill to the principals of AAA.
  - c. AAA claims Smith was terminated for poor performance and/or economic reasons.
  - d. Occupational Health and Safety Officers investigated the complaint and issued the Decision on January 27, 2017. The Occupational Health and Safety Officer concluded that AAA had taken discriminatory action against Smith contrary to s. 3-35 of the *Act* and ordered AAA to cease the discriminatory action, reinstate Smith to her former employment on the same terms and conditions under which she was formerly employed and remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to Smith.
  - e. AAA disagrees with this decision and has filed the appeal.
8. The issues in this case include:
  - a. Was Smith seeking enforcement of the Act or Regulations or participating in activities involving occupational health and safety as set out in s. 3-35 of the *Act*?
  - b. Did AAA take discriminatory action against Smith as defined in s. 3-1(1)(i) of the *Act*?

- c. If AAA did take discriminatory action against Smith, pursuant to s. 3-36(4) of the *Act*, did AAA have good and sufficient other reason for taking the discriminatory action against Smith?
9. AAA says Smith was not engaging in activities involving occupational health and safety at the time of her termination. Smith says she was. AAA also claims that, in any event, there was good and sufficient other reasons for termination of Smith's employment. AAA claims the Occupational Health and Safety Officer was wrong on both these points. The question is then how to proceed with the appeal on these issues. The OHS file provided to me contains information about the investigation and the information provided by each of the parties during the investigation. The parties agreed that each of them should be permitted to refer to any parts of the file they wish, but they each also wish to provide additional information on the issues. Therefore, the hearing will proceed on the record reflected in the OHS File with each party supplementing the record with any additional evidence they wish to call.
10. I recognize the onus is on Smith to establish she was engaged in activities described in s. 3-35 of the *Act* and that the onus is on AAA to establish good and sufficient other reason for the termination of Smith's employment. It is, however, necessary that in the hearing itself, someone must present their evidence first. The evidence the parties present should be with respect to the three issues identified above. The process for the hearing will be as follows:
  - a. The OHS file will be entered as part of the record for the appeal.
  - b. I will ask each party to make opening comments. AAA will go first, followed by Smith.
  - c. In the first instance, AAA will call any additional evidence they see fit to call to supplement the record. Witnesses will testify and bring all relevant documents AAA wishes to put in evidence. Witnesses will be sworn or affirmed and Smith will have the right to cross-examine them. If I have questions, I will also ask my questions. AAA will have the right to re-examine witnesses on new matters raised by Smith. If I have questions, I will also ask my questions.
  - d. Once AAA has called all its witnesses, then Smith will present her evidence through witnesses who will testify and bring all relevant documents Smith wishes to put in evidence. Witnesses will be sworn or affirmed and AAA will have the right to cross-examine them. Smith will have the right to re-examine witnesses on new matters raised by AAA. If I have questions, I will also ask my questions.
  - e. AAA will then have the right to call reply evidence, if any, to respond to any new evidence Smith raises in her case.
  - f. Once both parties have presented all their evidence, I will ask each party to make final arguments in support of their positions.
  - g. Following the close of the hearing, I will make and write a decision.

11. The parties agreed the appeal should take place in Saskatoon and have agreed to June 1 and 2, 2017 for the hearing. This is notice the hearing is now scheduled as follows:

**June 1 and 2, 2017  
Commencing June 1, 2017 at 9:30 a.m.  
Meeting Room #2  
Four Points by Sheraton Saskatoon  
503 Cope Way  
Saskatoon, SK**

12. I asked the parties if either of them intend to be represented by counsel. Smith confirmed she will be representing herself at the hearing. Gill said AAA may or may not have counsel for the hearing, but that AAA's lawyer has assured Gill that someone from their office will be available on any date selected for the appeal should AAA decide to retain counsel. I cautioned Gill to contact his lawyers right away and confirm availability of someone for June 1 and 2, 2017 if AAA does intend to have a lawyer represent them at the hearing.
13. The parties agreed to exchange with each other copies of all relevant documents on or before May 25, 2017. I therefore direct the parties to exchange with each other copies of all documents relevant to the case by May 25, 2017. If any issue arises with respect to disclosure of documents, either party may contact me to deal with the issue.
14. A party wishing to enter a document in evidence shall bring a copy of that document for the adjudicator and a copy for the other party.
15. If either party finds it necessary to compel a witness to attend the hearing to give evidence, on request of the party I will issue a subpoena to that witness. The party is then responsible to deliver the subpoena to the witness.

Issued on April 18, 2017.



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Anne M. Wallace, Q.C.  
Adjudicator