LRB File No. 206-16

IN THE MATTER OF:

An assessment of amount owing pursuant to the decision of March 30, 2017 regarding the appeal of the decision of Occupational Health and Safety Officers dated August 12, 2016

BETWEEN:

OIL CITY ENERGY SERVICES LTD.

Appellant
(Employer)

-and-

ZEYAD FADHEL AND TREVOR McGOWAN

Respondents

Director of Occupational Health and Safety
Ministry of Labour Relations and Workplace Safety
Respondent

For the Appellant, Employer: Self-Represented, Dylan Cousineau appearing

For the Respondent, Zeyad Fadhel: Self-Represented

For the Respondent, Trevor McGowan: Self-Represented

DECISION

I. Introduction

1. The Appellant, Oil City Energy Services Ltd. ("Oil City"), appealed the decision of the Occupational Health and Safety Officers ("OH&S") dated August 12, 2016, which found that the termination of employment of both the Respondents, Zeyad Fadhel and Trevor McGowan, on May 15, 2016 was an unlawful discriminatory action contrary to section 3-53 of *The Saskatchewan Employment Act.* A hearing was conducted on January 30, 2017,

following which a decision was rendered March 30, 2017, denying the appeal. That decision was not appealed further.

2. Although section 3-57(1) of *The Saskatchewan Employment Act* provides that the commencement of an appeal of a decision of the OH&S Officers does not stay the effect of a decision, toward the close of the January 30, 2017 hearing it was acknowledged on behalf of Oil City that it had not paid any back wages, nor taken any other steps in compliance with the order. As such, the Appellant remained, and still remains, in breach of the order of August 12, 2016.

3. The Respondents, Zeyad Fadhel and Trevor McGowan, have sought the enforcement provisions pursuant to the legislation in relation to the order of August 12, 2016. However, the quantum of the payment due to each of them requires assessment. By paragraph 76 of the decision of March 30, 2017, I remain seized of the matter to hear submissions regarding such matters. By email correspondence dated June 20, 2017, the Registrar advised the parties that I was being requested to address the quantum of the monies owed and the process for submissions by the parties.

4. On June 22, 2017 a case management conference call was held, in which the Appellant and the Respondents, Zeyad Fadhel and Trevor McGowan, participated. Thereafter a Notice of Hearing dated July 5, 2017 was provided to the parties, confirming July 19, 2017 as the hearing date. A Process Direction dated July 10, 2017 was also provided. The Process Direction is attached as Appendix "A" to this Decision.

II. Preliminary Matter

5. At the outset of the hearing on July 19, 2017, I reviewed with the parties the discussion and email correspondence that I had had the previous afternoon, July 18, 2017, with Mr. Ian Wachowicz of the Edmonton office of Dentons Canada LLP, whom I had understood would be appearing on behalf of the Appellant, Oil City.

6. Mr. Wachowicz, who had previously been served with both the Notice of Hearing and Process Direction, contacted me on the afternoon of July 18, 2017, indicating that he presumed he and his client could attend via teleconference. I indicated that I could not accede to such a view, particularly as there had been no advance application, enabling the other parties to present their views. I further confirmed this in an email to Mr. Wachowicz at 4:17 p.m. that afternoon, stating:

> Further to your email, below, and your telephone call to me of approximately 1:20 this afternoon, I confirm that consideration of a request for you and Mr. Cousineau to appear at tomorrow's hearing by telephone would have required an advance application on your part. In that way, notice could have been provided to the other three parties, and their positions ascertained regarding your request. As I mentioned, I was heading into meetings following our call and there was not opportunity this afternoon to provide

notice to the parties and arrange a conference call to hear such an application. They, like I, may well not have been available. As we discussed, while the position of the parties on this issue is not known, it is conceivable that there would be opposition to attending by telephone due to the challenges that poses in cross-examination. In light of such potential concerns, an application with notice would have been the appropriate route.

You then indicated that Mr. Cousineau would attend in Saskatoon, but suggested that perhaps you could attend by teleconference. As I noted, there are logistical challenges with that, particularly at this late juncture. Accordingly, I did not, and cannot, agree to that request.

As you know, this is not merely a situation where argument/summations are being presented. Thus, it is not akin to appearing on a brief Queen's Bench Chambers matter by telephone. While limited to the issue of the assessment of the quantum owing, there are four parties presenting evidence at the hearing. Both documents and testimony will be considered.

Finally, as mentioned in our conversation today, my understanding when we spoke by telephone on June 22, 2017, to confirm the date for the hearing in Saskatoon, was that you would be sending someone from your office. A review of my notes of that conversation confirms that indication.

In the circumstances, as noted, I am unable to grant your request. I look forward to meeting you, or another lawyer from your office, tomorrow morning.

7. In response, Mr. Wachowicz remitted an email to me at 4:33 p.m. on July 18, 2017, which stated:

Thank you for your email. Mr. Cosineau [*sic*]will attend tomorrow in Saskatoon and will represent himself and Oil City as at the first hearing. He has provided me right now with direct instructions not to travel to Saskatoon to attend on his behalf. If you have any concerns please let me know, but those are my instructions.

8. Following the report of this preliminary matter, the parties confirmed that they had no objections to my jurisdiction to hear the matters pertaining to the assessment of the amount owing pursuant to the decision of March 30, 2017, albeit Mr. Cousineau said that he "has a problem with [me] personally" and had only provided Mr. Wachowicz with instructions not to come because of my decision the day before. I sought further clarification from Mr. Cousineau regarding his concerns to ascertain whether he was prepared to proceed with the hearing. His concerns appear to be in relation to the decision of March 30, 2017, which Oil City did not appeal. Only when Mr. Cousineau indicated that he was prepared to proceed with the hearing did we commence with receiving evidence. The parties had no other preliminary issues to be addressed.

9. In the course of the hearing, I heard testimony from four witnesses:

i) Dylan Cousineau, owner/director of Oil City;
ii) Michael Darren Luciak, Occupational Health Officer
iii) Zeyad Fadhel; and
iv) Trevor McGowan.

10. In addition, the following exhibits were filed:

ADJ-1:	Notice of Hearing
ADJ-2:	Process Direction
A-1:	Payroll Summary Report dated October 27, 2016
A-2:	33 pages of Payroll Summary Reports
A-3:	OCS Group New Hire Tax Info consisting of 7 pages, and one page TD Canada Trust Info Sheet for Direct Deposit
RM-1:	12 pages of Employee Paystubs for Mitchell Isley
RM-2:	Two-page printout from SCSA
RM-3:	One-page printout from Alberta Government

11. Some reference was also made to several of the documents previously filed as Exhibits in the January 30, 2017 hearing. As well, in response to questioning by Mr. Luciak, each of the Respondents undertook to provide to me records of any income, whether from alternate employment or Employment Insurance benefits, received in the period since termination of their employment with Oil City on May 15, 2016. These will be discussed further below.

III. Position of the Parties

12. The issue to be determined is the amount owing from the employer, Oil City, to each of Zeyad Fadhel and Trevor McGowan. In determining this issue, consideration must be given to the hourly wage rate, the hours of work, and the duration of employment.

13. The Respondents have consistently presented the view that their respective hourly rates ought to be as discussed in the initial hiring interviews with Mr. Brent Nagy. For Mr. Fadhel this was $23.00 per hour and for Mr. McGowan this was $25.00. Based on a work schedule of 21 days on, 7 days off, the hours total 2,877, calculated to July 19, 2017, the hearing date. Given that the Saskatoon project was anticipated to be more than one season in length and another employee, Mr. Mitch Isley, who testified at the January 30, 2017 hearing, had ongoing employment with Oil City, the Respondents submit that their employment likewise would be ongoing.

14. Oil City's position has been that the Respondents were only entitled to $20.00 per hour. Then, during the case management conference call of Thursday, June 22, 2017, Mr. Cousineau, on behalf of Oil City, provided the first indication of a further objection to the Respondents' position. He stated that Mr. Fadhel and Mr. McGowan, as employees of Oil City, would have been terminated within two days after May 15, 2016 in any event as

Oil City's project in Saskatchewan was concluded. He further indicated that no reliance could be placed on Mr. Isley's period of employment as he was not employed with Oil City, but was an employee of OCS Group Inc., which Mr. Cousineau suggests is an entirely unrelated corporate entity. Therefore, Oil City's position is that the Respondents are each only entitled to two days of pay at the rate of $20.00 per hour.

IV. Analysis and Findings

15. Oil City, as the Appellant, has the onus in this case. As Mr. Luciak explained in his testimony, this is reflected in the legislation. In the decision of March 30, 2017, this was discussed in the context of subsection 3-36(4) of *The Saskatchewan Employment Act*, pertaining to whether there was good and sufficient reason for the discriminatory action. In addressing the assessment of the amount owing, subsections 3-36(5) and (6) again reflect the onus:

> (5) The amount of money that an occupational health officer may require to be paid pursuant to clause (2)(c) is to be reduced by an amount that the officer is satisfied that the worker earned or should have earned during the period when the employer was required to pay the worker the wages.
>
> (6) The employer has the onus of establishing the amount of the reduction mentioned in subsection (5).

16. Clause (2)(c) of subsection 3-36 references the notice of contravention provided by the OH&S officer to the employer requiring it to ". . . pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against." This notice was provided to Oil City in the letter of August 12, 2016 (marked as Exhibit BH-1 in the January 30, 2017 hearing).

What is the applicable hourly wage rate?

17. Turning firstly to the question of what was the applicable hourly wage rate, both during the hearing of January 30, 2017 and again on July 19, 2017, the Respondents each described their initial hiring meeting with Mr. Brent Nagy. Mr. Fadhel noted that he had asked for $23.00 per hour and that Mr. Nagy, on behalf of Oil City, had "accepted what I asked for" at their meeting of April 17, 2016. Mr. McGowan testified that in his interview with Mr. Nagy, in mid-April 2016, he had asked to be paid at the rate of $25.00 per hour. In a later conversation between the two of them, when tax forms were being completed, Mr. Nagy indicated to Mr. McGowan "whatever you told me in the interview, I passed on to Alyssa." Mr. McGowan understood this to be a reference to Alyssa Bohning, who works in payroll for Oil City.

18. Although Oil City could have called Brent Nagy as a witness at the July 19, 2017 hearing, to potentially counter the testimony of the Respondents, it did not. Only Mr. Cousineau interjected during Mr. Fadhel's testimony that no labourers with Oil City were paid more than $20.00 per hour.

19. In addition to testimony concerning the arrangements at the time of hiring, Mr. McGowan filed, as Exhibit RM-1, pay stubs obtained from Mr. Mitch Isley, who worked alongside the Respondents, indicating that Mr. Isley was paid $23.00 per hour. There is, of course, some question as to whether Mr. Isley was employed with Oil City or with OCS Group Inc., as will be discussed further herein.

20. Oil City did not provide any documentation concerning the hourly wage rate it paid to labourers, although such would undoubtedly have been in its possession. Presumably Oil City was placing reliance on Exhibits A-17 and A-18 which it had filed in the January 30, 2017 hearing. These were paystubs and Records of Employment ("ROE") for each of the Respondents, indicating an hourly rate of $20.00.

21. However, both at the January 30, 2017 hearing and again on July 19, 2017, the Respondents each indicated that they had not received any ROE or pay stubs from Oil City prior to the required disclosure of documents in December of 2016, in preparation for that first hearing. Indeed, in examining each ROE, it appears that the earliest each would have been issued is July 5, 2016, well after the OH&S investigation had been launched and long after the required issuance date.

22. Further, as noted in my decision of March 30, 2017, at paragraph 72 for example, there is some question regarding the reliability of Oil City records.

23. Nonetheless, each ROE indicates $20.00 as the hourly rate. As well, Mr. Fadhel, in a conciliatory fashion, indicated that since he did not have documentation of the $23.00 per hour, he was prepared to accept the hourly rate of $20.00 in my calculation. While Mr. McGowan testified that it "seemed undisputed" that he would be paid $25.00 per hour, he is "unsure" of the basis on which he was paid $20.00 per hour.

24. While, arguably, Oil City has not met the onus of establishing the hourly rate at $20.00 for each of the Respondents, both Mr. Fadhel and Mr. McGowan appear to be willing to resolve matters on the basis of this lower hourly wage rate. Accordingly, in my assessment of the amounts owing to each of them, I will use an hourly rate of $20.00.

What are the hours of work?

25. On the issue of the anticipated hours of work, both Respondents testified that they understood they would be working on a cycle of 21 days on and 7 days off, while being paid every two weeks. This was unchallenged by Oil City.

26. Regrettably, none of the parties provided a clear indication of the number of hours to be worked in a day. The Appellant, Oil City, did not submit any work schedule or Modified Work Arrangement filed with the Director of Employment. Nor did the Respondents file any materials indicating how the number of 2,877 hours, calculated to July 19, 2017, was determined. In the hearing of January 30, 2017, and in the testimony of Mr. McGowan at this hearing, mention was made of 10-hour days. This is somewhat consistent with an examination of Exhibit RM-1, the pay stubs for Mitchell Isley. From these, assuming the 21 days on, 7 days off cycle, it appears that he was working anywhere between approximately 8 and 12 hours per day, exclusive of overtime.

27. Regarding Mr. Isley's overtime, this averaged 2.875 hours in each of the twelve two-week pay periods for which documentation was provided. On only two occasions in that period did he work a statutory holiday.

28. As the overtime earned by Mr. Isley was, in my view, not significant, I will not include it in my calculation of hours. As well, being somewhat conservative in considering the hours per day worked by Mr. Isley as indicated on Exhibit A-2, and noting the 8.87 hours per day indicated for Trevor McGowan on Exhibit A-17 filed in the January 30, 2017 hearing, I find that the Respondents would have been working 9 hours per day.

What is the duration of employment?

29. In calculating the amount owing to the Respondents from the Appellant, consideration must also be given to the anticipated duration of employment. The Respondents submit that the work was anticipated to be long-term. In contrast, Mr. Cousineau, in the weeks leading up to the July 19, 2017 hearing, suggested that their employment could only have lasted two days beyond the termination date of May 15, 2016.

30. To assess Mr. Cousineau's assertions on behalf of Oil City regarding duration of employment, one must also consider what, if any, evidence was presented on three sub-issues:

i) Was there further work anticipated and available to do?

ii) Is there a direct relationship between Oil City and OCS Group Inc.?

iii) What is the impact of Oil City's failure to reinstate the employees despite the directive of the OH&S officers?

31. Looking firstly to the unseemly delay in making the position of Oil City known on the issue of the term of employment, Mr. Luciak, in questioning Mr. Cousineau, referenced the request of the OH&S officers dated June 7, 2016 (Exhibit A-10 in the January 30, 2017 hearing). Mr. Luciak asked why the response by Ron Cousineau of July 4, 2016 (Exhibit RF-1 in the January 30, 2017 hearing) made no mention of the term of

employment. Dylan Cousineau's answer was that the July 4, 2016 letter was "just responsive."

32. Mr. McGowan, in follow-up questioning, noted that page 2 of the June 7, 2016 letter states that "the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient reasons." Dylan Cousineau merely commented: "We just sent a letter."

33. It is apparent that Oil City has not been forthcoming in its dealings with OH&S and this adjudication process. The request letter of June 7, 2016 was sent over three weeks after the Respondents were terminated. The reply, dated July 4, 2016, was nearly a month later. If it was indeed accurate that Oil City had concluded any contract work on the Saskatoon project by May 17, 2016, it would have been both easy and prudent for the Appellant to mention that.

34. Thereafter Oil City had several opportunities to raise this matter. Notably, upon receipt of the letter of August 12, 2016 (Exhibit BH-1 in the January 30, 2017 hearing), which required Oil City, among other things, "to comply with section 3-36(2) of the Act and pay Mr. Fadhel and Mr. McGowan any wages that they would have earned if they had not been wrongfully discriminated against," a prompt remittance and explanation of the calculation would have been in order.

35. Instead, Oil City ignored the requirements of the legislation regarding compliance while it launched its appeal. As part of the case management teleconference on November 4, 2016, in preparation for the January 30, 2017 hearing, the question of any settlement negotiations was raised in keeping with my responsibilities as an adjudicator pursuant to section 4-5(2). That, too, was a prime opportunity to raise the term of employment, but Oil City did not do so.

36. Nor did Oil City raise the matter when the decision of March 30, 2017 was issued, denying the appeal. That decision expressly noted that Oil City remains in breach of the order made by the OHS Officers August 12, 2016.

37. Such delay calls into question the veracity of the assertion made. Further, given Mr. Cousineau's business acumen, it is incomprehensible that he would elect to incur the cost of bringing witnesses to Saskatoon for the January 30, 2017 hearing if the only amounts in issue were two days of wages. Accordingly, in light of these factors, I do not accept that the Respondents would only have had two more days of employment.

i) Was there further work anticipated and available to do?

38. Regarding the question of whether there was further work anticipated to be done, it must again be noted that the onus is on the Appellant, Oil City. Although Mr. Cousineau testified that Oil City's "scope of work was done within two days" from the time the

Respondents were terminated, no documentation or other supporting evidence was proffered. Indeed, he suggested that there had been nothing written regarding the request by OCS Group for Oil City's scope of work on the project with SaskTel.

39. Further, Mr. Cousineau, under cross-examination by Mr. Fadhel, acknowledged that Oil City "did work in Saskatoon" beyond May 17, 2016, albeit there had only been two days remaining on the particular project in which the Respondents had been involved. Thus, if Oil City was still working in Saskatoon, it must have needed employees, particularly as Mr. Cousineau had earlier testified that "Oil City had no employees after that."

40. The Respondents, on the other hand, testified as to their understanding of the term of employment. Under cross-examination by Mr. Luciak, Mr. Fadhel indicated that he understood it was "a big project, with long hours." In his discussions with Brent Nagy, Mr. Fadhel was told it was a "busy year." As noted previously, the arrangement was that Mr. Fadhel would have a work cycle of 21 days on and 7 days off.

41. Mr. Fadhel further testified that he had secured funding from government for schooling, so he was particularly interested in knowing whether this was longer-term employment. Given the indication from Brent Nagy that it was, Mr. Fadhel turned down the education opportunity, which would have started at the beginning of May. He had been told by Mr. Nagy that Oil City need workers to start right away in April.

42. Although Mr. Cousineau tried to suggest that employees knew it was short term, I do not accept his evidence on that point. It is inconceivable that Mr. Fadhel would turn down funded schooling for a one-month job. And, as noted previously, Mr. Nagy was not called as a witness.

43. Mr. McGowan had a similar expectation regarding the long-term nature of the work. He testified that to his understanding, the "project was going to continue for multiple years." He also contrasted this project with his previous experience with AFL, noting that "in winter Oil City has the drills, so can do winter environment work. So, we should have been employed." Mr. McGowan also noted that Oil City's social media presence indicates that the company does winter work.

44. In light of all of the evidence, I find that Oil City has failed to meet the onus of establishing that only short-term employment was contemplated. The Respondents had a reasonable anticipation of longer term work.

ii) Is there a direct relationship between Oil City and OCS Group Inc.?

45. As part of the assertion that the Respondents could not look to the longer period of employment experienced by Mitch Isley to support their claim, Mr. Cousineau indicated that he, along with others, was not part of the same company. Mr. Isley was employed by

OCS Group Inc. and, according to Mr. Cousineau, there is "no relationship" between OCS Group Inc. and Oil City.

46. Under cross-examination by Mr. Fadhel, Mr. Cousineau again asserted that there is "no relation" between Oil City and the OCS Group. He said, "OCS hired me to do some work for them." He then was vehement in stating, "You guys worked for Oil City Energy Services Ltd."

47. In filing Exhibits A-1, A-2 and A-3 in this hearing, Mr. Cousineau's testimony as to their genesis was somewhat inconsistent. He indicated that "OCS sent me this stuff" but also acknowledged that he had "done the homework on it."

48. Regarding Mr. Isley, these exhibits suggest that he was on the payroll of OCS Group Inc. Mr. Cousineau was highly critical of Mr. Isley, saying that he was not calling him at this hearing to verify the documents as he had "perjured himself at the last hearing." Presumably this relates to Mr. Isley's testimony that he, like the Respondents, believed he worked for Oil City.

49. However, Mr. Cousineau had previously supported this view of the employment relationship as well, as noted at paragraph 67 of the March 30, 2017 decision:

> Mr. Isley presented his evidence in a very forthright manner and was not shaken under cross examination. Significantly, Dylan Cousineau, while cross-examining Mr. Isley, noted that he had offered Mitchell Isley a job for the next season, thereby indirectly supporting the validity of his testimony.

50. Under questioning by Mr. Fadhel concerning this indication that Mr. Cousineau, on behalf of Oil City, had been the one to hire and/or lay-off Mr. Isley, Mr. Cousineau answered, "I don't recall."

51. More significantly, Mr. McGowan asked Mr. Cousineau why he was just now bringing up that Mitch Isley was not an employee of Oil City, rather than raising it at or prior to the January 30, 2017 hearing. Mr. Cousineau responded with "Strategic." This implies that his actions were intentionally misleading.

52. This, in turn, raises questions regarding Mr. Cousineau's avowal that Oil City and OCS Group Inc. are entirely unrelated entities.

53. The documents suggest a close relationship. For example, Exhibit BH-2 in the January 30, 2017 hearing, is a letter on Oil City letterhead, indicating "Division of OCS Group Inc." The Saskatchewan Construction Safety Association ("SCSA") ad the Government of Alberta materials reference the OCS Group Inc., but also note Oil City Energy as being connected in some way, sometimes indicated as the display or trade name [see Exhibits A-1 and A-2 in the January 30, 2017 hearing and Exhibits RM-2 and RM-3 in

this hearing]. Numerous of the other documents filed by Oil City in the January 30, 2017 hearing also reference OCS Group Inc. Yet Mr. Cousineau asserts that it is "just a letterhead" and "I can't say what OCS stands for, I don't know the acronym."

54. Although Dylan Cousineau emphasized that Ron Cousineau is "part of Oil City Energy Services Ltd.," it was OCS Group Inc. letterhead, not Oil City letterhead, on which Ron Cousineau responded to OH&S on July 4, 2016 [Exhibit RF-1 in January 30, 2017 hearing].

54. The use of the "Division of OCS Group" according to Mr. Cousineau is "just to get more work." OCS "slap my logo on" and "I have no objection to them putting my name on there." Mr. Cousineau also stated, "Everybody likes to think we're the same."

55. As part of the presentation of the case on behalf of Oil City, Mr. Cousineau called Mr. Luciak as a witness. Later, when Mr. Luciak was testifying as to OH&S procedures and methods by which wages may be calculated, Mr. Cousineau cross-examined him on whether or not there was direct or indirect involvement between OCS Group and Oil City. Mr. Luciak said it was "safe to say there would be direct."

56. Mr. Luciak also noted that, based on the documentation he had seen, there was a clear relationship between the two companies, with "perhaps" OCS Group being the parent company.

57. That there is clear cross-over, agency, or other similar inter-relationship between the two companies is also evident in the Payroll Summary Reports filed by Oil City [Exhibits A-1 and A-2]. While Mitch Isley, who believed he was employed by Oil City is listed as an employee of OCS Group, so also is another witness previously called by Oil City, Joshua Johnson, who likewise had testified of being employed with Oil City. As well, Alyssa Bohning, the bookkeeper for Oil City, is listed as an OCS Group employee.

58. Again, the onus is on the Appellant, Oil City. Yet nothing was filed in evidence to support Mr. Cousineau's allegation that there is "no relationship" between the two corporate entities. I therefore find that they are, indeed, closely related.

59. As noted above, Mr. Cousineau was adamant in this hearing that the Respondents worked for Oil City. He has never suggested otherwise, particularly as Brent Nagy, a co-director of Oil City conducted the hiring interview and Dylan Cousineau did the firing. These factors all further support the view that the two entities are virtually one, as does a closer examination of Exhibits A-17 and A-18, filed by Oil City in the January 30, 2017 hearing, which indicates that the Respondents were paid by OCS Group Inc.

60. If the two corporate entities were not closely related, the only other conclusion in light of the evidence is that Exhibits A-17 and A-18, which include each late-issue ROE, were

prepared with a "strategic" intent to defeat the OH&S and adjudication processes. It is to be hoped that such is not the case. However, the reliability of these documents, like many of the documents in this case, is called into question.

61. Finally, if the Respondents were not Oil City employees, Mr. Cousineau would have indicated so right at the outset of the OH&S investigation. That would have been an efficient answer to the OH&S inquiries.

62. Given the finding regarding the close relationship between the two corporate entities, the expectation on the part of the Respondents that there would be ongoing work in Saskatchewan is bolstered. By Mr. Cousineau's own testimony, OCS Group work here continued well after May 17, 2016, and Oil City continued to work on other projects.

iii) What is the impact of Oil City's failure to reinstate the employees despite the directive of the OH&S officers?

63. Oil City, despite both the August 12, 2016 directive of the OH&S officers and the decision of March 30, 2017 in this appeal, has not reinstated the Respondents. The Respondents therefore submit that they are entitled to payment of the wages for this entire period in which they have been declined reinstatement. While, as noted above, the anticipation of longer-term employment was reasonable in the circumstances, the refusal by Oil City to comply with the directive of the OH&S officers may have prolonged matters. Although Oil City apparently has more equipment, including drills, thus enabling winter work, depending on the weather conditions, there may have been some reduction in work. However, given that no steps have been taken by Oil City to either comply with the OH&S directive or seek a stay thereof, one is hard-pressed to take into account any such potential reduction in work. Further, no evidence was proffered on behalf of Oil City in relation to any such reduction.

64. Mr. Cousineau, on behalf of Oil City, states that he had no order to reinstate the employees. Therefore, he argues that there was no obligation to pay the Respondents. However, by his own testimony, he is a shrewd businessman, who has "a multitude of companies" and "knows the corporate documents by heart." Thus, he would have been well aware that the August 12, 2016 letter mandated Oil City's compliance with the legislation.

65. Oil City would also have been aware of the appeal period regarding the decision of March 30, 2017 and could readily have gleaned information regarding the application for a stay. Yet no steps were taken to ensure the company's compliance with the directive.

66. In such circumstances, the assessment, although calculated to September 15, 2017, the date of this decision, may also be considered to be ongoing, utilizing the 21 day on, 7 day

off, work cycle, the hourly rate of $20.00, and the 9 hour work day, should such be necessary.

V. Calculation

67. Based on the findings set out above, a calculation of the days, utilizing the 21 days on – 7 days off pattern, exclusive of statutory holidays, and recognizing that at the date of their termination, May 15, 2016, the Respondents each had one day left in their 21 days work cycles, yields 316 as the total number of days calculated to July 19, 2017 as follows:

1 day	May 16, 2016
21 days	May 24 – June 13, 2016
21 days	June 21 – July 13, 2016 (assuming no work on July 1)
21 days	July 21 – August 11, 2016 (assuming no work on August 1)
21 days	August 19 – September 9, 2016 (assuming no work on Sept 5)
21 days	September 17 – October 7, 2016
21 days	October 15 – November 4, 2016
21 days	November 12 – December 2, 2016
21 days	December 10 – December 31 (assuming no work on Dec 25)
21 days	January 8 – January 28, 2017
21 days	February 5 – February 26, 2017 (assuming no work on Feb 20)
21 days	March 6 – March 26, 2017
21 days	April 3 – April 24, 2017 (assuming no work April 14)
21 days	May 2 – May 23, 2017 (assuming no work May 22)
21 days	May 31 – June 20, 2017
21 days	June 28 – July 19, 2017 (assuming no work July 1)
316 days	

68. The total number of days calculated to September 15, 2017 is 358, based upon adding the following to the above calculation:

21 days	July 27 – August 17, 2017 (assuming no work Aug 7)
21 days	August 25 – September 15, 2017 (assuming no work Sept 4)
42 days	

69. As noted above, I am using an hourly rate of $20.00 in assessing the amount due, and assuming a 9-hour work day. Therefore, as at September 15, 2017, the amount owing to each of Zeyad Fadhel and Trevor McGowan is $64,440.00, plus accrued vacation pay.

70. Utilizing the Vacation Pay Calculator available on the Government of Saskatchewan website[1], for the period April 26, 2016 through April 25, 2017, based on the days of work and hourly rate calculated above, the vacation pay owed to each of the Respondents is $2,627.31. For the period April 26, 2017 through September 15, 2017, the vacation pay owed to each of them is $1,090.38.

[1] http://www.saskatchewan.ca/business/entrepreneurs-start-or-exit-a-business/vacation-pay-calculator#

71. Regarding employee benefits, no evidence was provided by the parties. So, I am unable to include a precise amount in the calculation.

72. Thus, before any consideration of deductions for earnings, as contemplated by sub-section 3-36(5) of *The Saskatchewan Employment Act*, each of the Respondents would be entitled to $68,157.69 in back wages and accrued vacation pay [$64,440.00 + $2,627.31 + $1,090.38].

73. In response to questions by Mr. Luciak, each of the Respondents undertook to provide me with an outline of their earnings since May 15, 2016 as they did not have all of the documentation with them at the time of the hearing.

74. Mr. McGowan worked from May 30, 2016 through August 26, 2016 for K-Line Maintenance & Construction Ltd. His total insurable hours were 662, with total insurable earnings of $16,695.03. He also worked for Dumont technical Institute Inc. from May 1, 2017 through July 15, 2017, for 371.25 insurable hours and total insurable earnings of $6,092.29.

75. Deducting these amounts from the $68,157.69, Oil City owes the Respondent, Trevor McGowan, $45,370.37, calculated to September 15, 2017.

76. Mr. Fadhel was employed with Shercom Industries Inc. for two days, June 20 and 21, 2016, for which he had 24 insurable hours and total insurable earnings of $456.00. In addition, following termination of his employment with Oil City on May 15, 2016, on issue dates July 20, 2016 and August 14, 2016, Mr. Fadhel received $916.00 and 458.00, respectively, in Employment Insurance ("EI") benefits.

76. Regrettably, on January 14, 2017 Mr. Fadhel was in a car accident and suffered whiplash. At the time of the hearing on July 19, 2017, he had one week of physiotherapy remaining, but testified "If you want me back to work, I'm ready to work." Mr. Cousineau specifically requested that this be taken into account when calculating the reduction of the amount owing to Mr. Fadhel. As it appears Mr. Fadhel in the period from the accident date to July 19, 2017 was unable to work, I accept this request by Oil City as reasonable.

77. Using the 21-day on, 7-day off cycle noted above, this would result in a reduction of 133 days. At 9 hours per day and an hourly wage of $20.00, this yields a reduction of $23,940.00.

78. Deducting all of these amounts from the $68,157.69, Oil City owes the Respondent, Zeyad Fadhel, $42,387.69.

VI. Conclusion and Order

79. For all of the reasons set out above, I hereby order the Appellant, Oil City Energy Services Ltd., to:

a) Immediately comply with the order of the OH&S officers dated August 12, 2016;
b) Pay to the Respondent, Zeyad Fadhel, the sum of $42,387.69, as wages he would have earned had he not been wrongfully discriminated against, calculated to September 15, 2017; and
c) Pay to the Respondent, Trevor McGowan, the sum of $45,370.37, as wages he would have earned had he not been wrongfully discriminated against, calculated to September 15, 2017.

Dated at Saskatoon, Saskatchewan this 15th day of September, 2017.

Brenda Hildebrandt, Q.C., Adjudicator

Right to appeal adjudicator's decision to board

s. 4-8

(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.

(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.

Appendix "A"

LRB File No. 206-16

IN THE MATTER OF:

An assessment of amount owing pursuant to the decision of March 30, 2017

BETWEEN:

Oil City Energy Services Ltd. (Appellant)

-and-

Zeyad Fadhel and Trevor McGowan (Respondents)

-and-

Director of Occupational Health and Safety
Ministry of Labour Relations and Workplace Safety (Respondent)

PROCESS DIRECTION

Introduction and Background

1. The Appellant, Oil City Energy Services Ltd., appealed the decision of the Occupational Health and Safety Officers dated August 12, 2016, which found that the termination of employment of both the Respondents, Zeyad Fadhel and Trevor McGowan, on May 15, 2016 was an unlawful discriminatory action contrary to section 3-53 of *The Saskatchewan Employment Act.*

2. Following the conduct of a hearing on January 30, 2017, a decision was rendered March 30, 2017, denying the appeal. That decision of the Adjudicator was not appealed further.

3. Although section 3-57(1) of *The Saskatchewan Employment Act* provides that the commencement of an appeal of a decision of the Occupational Health and Safety Officers does not stay the effect of a decision, toward the close of the January 30, 2017 hearing it was acknowledged on behalf of Oil City Energy Services Ltd. that it had not paid any back wages, nor taken any other steps in compliance with the order. As such, the Appellant remains in breach of the order of August 12, 2016.

4. The Respondents, Zeyad Fadhel and Trevor McGowan, have sought the enforcement provisions pursuant to the legislation in relation to the order of August 12, 2016. However, the quantum of the payment due to each of them requires assessment. By paragraph 76 of the

decision of March 30, 2017, I remain seized of the matter to hear submissions in order to finalize this matter.

5. By email correspondence dated June 20, 2017, the Registrar advised the parties as follows:

> . . . Adjudicator Hildebrandt shall consider the issue in respect of the quantum and by copy of this response, be asked to address the quantum of the monies owed and the process for submissions by the parties and to make any Order she believes appropriate. Adjudicator Hildebrandt will then provide her determination in the normal course.

Hearing on Assessment of Amount Owing

6. Thereafter, a case management conference call was set for Thursday, June 22, 2017. The Appellant and the Respondents, Zeyad Fadhel and Trevor McGowan, participated. The parties indicated that there was no agreement amongst them regarding the quantum of the monies owed. They did, however, confirm that they could exchange documents for review and preparation by July 10, 2017.

7. This date for document exchange was confirmed in an email of June 23, 2017, as follows:

> As discussed in our teleconference yesterday, **July 10, 2017** is set as the date by which documents are to be exchanged, to enable all parties a reasonable time for review and preparation. I do note that the documents utilized in the previous hearing which are pertinent to the issue of the assessment of the quantum of payment have, of course, been disclosed and are available for use.

If any issue arises with respect to disclosure of documents, any of the parties may contact me by email, with a copy to all other parties, to address the issue.

8. During the conference call of June 22, 2017, possible dates during the week of July 17, 2017 were also discussed for a hearing on this issue. Following contact with counsel for Oil City Energy Services Ltd., Mr. Ian Wachowicz, Wednesday, July 19, 2017 was confirmed as the date for the hearing. The parties were informed of this in the email of June 23, 2017, with the notation that the venue and precise start time would be provided once those had been determined. A Notice of Hearing dated July 5, 2017 was provided to the parties on the morning of July 6, 2017. It indicated that the hearing would be held at the Hampton Inn (Saskatoon South), 105 Stonebridge Blvd., Saskatoon, Saskatchewan, commencing at 9:00 a.m.

9. The issue to be considered at this hearing pertains only to the assessment of the amounts owing to each of the Respondents, Zeyad Fadhel and Trevor McGowan.

10. Should they elect to, each of the parties, or counsel on their behalf, may make an opening statement. Any witnesses other than the parties themselves (Mr. Dylan Cousineau on behalf of Oil City Energy Services Ltd., Zeyad Fadhel, Trevor McGowan, and a representative on behalf

of the Respondent, Occupational Health and Safety) will be excluded from the hearing prior to providing testimony.

11. The Appellant, Oil City Energy Services Ltd., will present its evidence first. Any witnesses called on behalf of Oil City Energy Services Ltd., may be cross-examined by the other three parties.

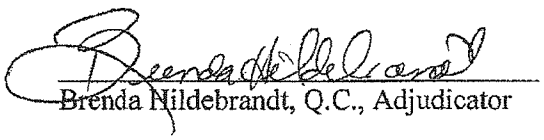
12. The Respondent, Zeyad Fadhel, will present evidence next. Any witnesses called on behalf of him may be cross-examined by the other three parties.

13. The Respondent, Trevor McGowan, will present evidence next. Any witnesses called on behalf of him may be cross-examined by the other three parties.

14. The representative of Occupational Health and Safety will then present evidence. Any witnesses called on behalf of Occupational Health and Safety may be cross-examined by the other three parties.

15. As noted in the email of July 6, 2017, any party wishing to enter a document in evidence shall bring a copy of that document for the Adjudicator and a copy for each of the parties (the Appellant and the three Respondents).

Dated at Saskatoon, Saskatchewan this 10th day of July, 2017.



Brenda Nildebrandt, Q.C., Adjudicator