

LRB File No. 051-19



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.

BETWEEN:

Hallbook Enterprises Ltd.

APPELLANT

AND:

Larry Mullins

RESPONDENT

Adjudicator: Perry Erhardt
Counsel for the Appellant: Maurice Dransfeld
Counsel for the Respondent: Greg Fingas

DECISION

Introduction:

[1] Hallbook Enterprises Ltd. ("Hallbook") has appealed the decision of Occupational Health Officers, Shawn Tallmadge and Jon Paradowski, dated January 28, 2019 (the "Decision") regarding a complaint of discriminatory action made by Larry Mullins ("Mullins"), a former employee of Hallbook, pursuant to sections 3-35 and 3-36 of *The Saskatchewan Employment Act* (the "Act").

[2] In the Decision, the officers concluded that Mullins had been removed from his employment for raising health and safety concerns contrary to section 3-35(f) of the Act and ordered, among other things, that Hallbook reinstate him to his former position and pay him wages he would have earned had he not been wrongfully discriminated against.

[3] Hallbook filed a Notice of Appeal of the Decision pursuant to sections 3-53 and 3-54 of the Act with the Executive Director of the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety, which was received on February 14, 2019 and the matter has come before me as an adjudicator to hear the matter. The Notice of Appeal sets out the grounds of appeal as "Mr. Mullins was laid off because of a shortage of work" and requests that "the decision be suspended in its entirety."

[4] With the agreement of the parties, this matter was heard concurrently with an appeal of a decision made by Occupational Health Officers, Shawn Tallmadge and Jon Paradowski, dated May 15, 2019, regarding a complaint made by Richard Skinner, another former employee against Hallbook, LRB File No. 148-19. It was confirmed that the evidence called on the hearing would be applied to both matters, and separate decisions written for each.

[5] Following prehearing calls with legal counsel for the parties to address representation, document disclosure, and hearing processes and dates, this appeal proceeded to a hearing before me on October 21, 22, and 23, 2019 and resumed on June 4, 2020. Final arguments from counsel were heard on June 12, 2020.

Preliminary Issue:

[6] As a preliminary matter, the Respondent contended that the hearing should proceed as an "appeal on the record" while the Appellant maintained that the process required a hearing *de novo*.

The competing positions can be addressed by answering the following question:

In proceedings pursuant to sections 3-53 and 3-54 of the Act, is the adjudicator confined to considering the "record" assembled and prepared by the Occupational Health Officers who rendered a decision, or is an adjudicator to conduct a hearing *de novo*?

[7] Between the commencement of the hearing and resumption a number of months later, the Supreme Court of Canada (SCC) released its decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 on December 19, 2019. The *Vavilov* case is part of a trilogy of administrative law cases released concurrently by the SCC and clarified, in part, issues that the Court considered unsettled since its seminal decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[8] While most of the court's pronouncements in *Vavilov* do not directly affect this decision, the parties advanced differing propositions on the effect of *Vavilov* on the scope of an adjudicator's authority in proceedings under the Act. For this reason, the following analysis is important.

[9] The power of an adjudicator appointed to consider an appeal under section 3-35 of the Act is set out in Part IV of the Act, and more particularly, section 4-5, which reads as follows:

4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:

- (a) to require any party to provide particulars before or during an appeal or a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;
- (c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:**
 - (i) to summon and enforce the attendance of witnesses;**
 - (ii) to compel witnesses to give evidence on oath or otherwise;**
 - (iii) to compel witnesses to produce documents or things;**
- (d) to administer oaths and affirmations;**
- (e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not;**
- (f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;
- (g) to adjourn or postpone the appeal or hearing. **[emphasis added]**

[10] Without embarking on an in depth analysis of subsection 4-5(1), it is plain and obvious that the authority conferred upon an adjudicator by the legislature is very broad and extends, in some respects, beyond the powers of a judge of the Court of Queen's Bench hearing a matter.

[11] The authority given to the adjudicator should be considered against the authority of the Occupational Health Officer who investigates a complaint and makes a decision under the Act. sections 3-32 and 3-33 of the Act state the following:

Investigation by occupational health officer

3-32 If there is no occupational health committee at a place of employment or if the worker or the employer is not satisfied with the decision of the occupational health committee pursuant to clause 3-31(b):

- (a) the worker or the employer may request an occupational health officer to investigate the matter; and
- (b) the worker is entitled to refuse to perform the act or series of acts pursuant to section 3-31 until the occupational health officer has investigated the matter and advised the worker otherwise pursuant to subsection 3-33(2).

Decision of occupational health officer

3-33(1) If an occupational health officer decides that the act or series of acts that a worker has refused to perform pursuant to section 3-31 is unusually dangerous to the health or safety of the worker or any other person at the place of employment, the occupational health officer may issue a notice of contravention in writing to the employer requiring the appropriate remedial action.

(2) If an occupational health officer decides that the act or series of acts that a worker has refused to perform pursuant to section 3-31 is not unusually dangerous to the health or safety of the worker or any other person at the place of employment, the occupational health officer shall, in writing:

- (a) advise the employer and the worker of that decision; and
- (b) advise the worker that he or she is no longer entitled to refuse to perform the act or series of acts pursuant to section 3-31.

[12] Notably, sections 3-32 and 3-33 establish the first point of contact or entry for a complaint to be made by a worker under provisions in Part 3 of the Act. In short, an occupational health officer is requested to investigate a complaint and, if an investigation is undertaken, may make a decision and either issue a notice of contravention to an employer or not. If either the worker or employer disagree with the officer's decision, they may appeal the decision to an adjudicator and enter into a process akin to a trial. In effect, the party adversely affected by the officer's decision may disagree, respond with an appeal, which expresses disagreement with the decision (and tantamount to a "not guilty" plea), and have an adjudication follow. In the current context, if it is the employer appealing, it has the onus of establishing good and sufficient other reasons for the discriminatory action found by the officer as set out in clause 3-36(4)(b) of the Act. An appellant often wants the adjudicator to look beyond the information that may have been considered by an investigation officer. A hearing *de novo* provides an opportunity to advance additional evidence.

[13] Appellant's counsel has cited the Saskatchewan Labour Relations Board (SLRB) case of *Nicholson v. Domsask Holdings Ltd.*, 2015 CanLII 43771, as authority for the proposition that an appeal of an officer's decision to an adjudicator should be considered as a *de novo* hearing. The last sentence of paragraph 25 in *Nicholson* is clear:

Accordingly, an adjudicator under the OH & S Act should also conduct her review of the decision made by the Occupational Health and Safety Officer as a *de novo* hearing.

[14] The SLRB also affirmed this position in *Racic v. Moose Jaw Family Services*, 2015 CanLII 60882, at paragraph 21:

The Adjudicator is required to conduct a de novo hearing. A de novo hearing, as the name suggests, requires that the person hearing the matter must hear it afresh and consider only evidence presented to her at the hearing. In *Saskatoon Regional Health Authority and Johnson*, the Court of Queen's Bench determined on the basis of the new record put before the party hearing the matter, which in this case is the Adjudicator.

[15] As further authority for the proposition that a de novo hearing is required, Jackson, J., sitting in Chambers for the Court of Appeal, in *Chinichian v. Mamawetan Churchill River (Health Region)* 2016 SKCA 89, wrote at paragraph 52, "I have also considered that the structure of *The Saskatchewan Employment Act* permits one review by the occupational health and safety officer and a *de novo* hearing before an adjudicator and an appeal from that decision on a question of law to the Board."

[16] Although *Vavilov* is instructive, it is not determinative on the preliminary issue that was raised. The following excerpt from the Supreme Court's Case Brief published about *Vavilov* describes key elements in lay terms:

Decisions made by governments, or those acting on their behalf, are called "administrative decisions." They are part of "administrative law." Most legal decisions that affect people are administrative decisions, not court ones.

An administrative decision can be anything from a letter from a benefits agency, to a town by-law, to a decision by a tribunal. Administrative decision-makers often aren't judges or lawyers. Their decisions usually don't look like court decisions. But judges and courts have a role. Under the Constitution, courts can make sure administrative decision-makers follow the rules. They do this through a process called "judicial review."

When a court looks at an administrative decision, it applies a certain "standard of review." The standard of review is the legal approach to analyzing the decision. Which standard applies depends on what kind of decision it is. But there was a lot of debate about which standard of review applied in which situation. There was also debate about how each standard should be applied.

[17] The decision of an Occupational Health Officer is not subject to judicial review as the Act sets out a prescribed statutory review process, which includes the referral to an adjudicator. The decision of the Occupational Health Officer is an administrative decision, but only the first step in a process that could subsequently give rise to a judicial review application. The outcome of the adjudication marks the first decision that would be subject to judicial review. Only then does the analysis in *Vavilov* begin to apply for assessing an administrative law decision. Thus the pronouncements in *Nicholson*, *Racic*, and *Mamawetasin*, respectively, confirming that a hearing *de novo* is to be conducted by an adjudicator, are unaffected by *Vavilov*. Accordingly, this matter proceeded by hearing *de novo*.

The Hearing

[18] Counsel for both parties gave opening statements. The Appellant elected to call three witnesses and the Respondent called two witnesses. A lengthy summary of the testimony from each witness follows.

Evidence of Barry Pearson

[19] The first witness for the appellant was Barry Pearson. He was helpful in describing SaskPower's Chinook power station ("Chinook") near Swift Current, Saskatchewan, which is where most of the relevant events occurred. Hallbook is an insulating company that was hired to install insulation on the heat recovery steam generator (HRSG) at Chinook. Hallbook was subcontracted by PCL Construction who in turn had been contracted by Burns McDonnell for the project.

[20] Barry Pearson is a project manager for Hallbook and has been an industrial insulator since 1981. He has worked at Hallbook's head office since 2004. His role included preparing estimates for jobs that Hallbook was considering and reviewing contracts. Importantly, he was responsible for determining workforce or manpower requirements for work sites through the duration of a project. As project manager, he also worked with the general foreman designated at a work site to determine the number of workers required on an ongoing basis. He indicated that he had the final say on hiring, layoff, and termination decisions. Mr. Pearson worked from Hallbook's head office while general foremen worked on job sites.

[21] With a steam generator turbine, Mr. Pearson indicated there was much insulation required and, referencing Exhibit A-1, which contained an overview and 3D images of Chinook, he described Hallbook's work that followed PCL's installation, build, test, and painting of lines and components then requiring insulation. He indicated that release forms were given by PCL to Hallbook as work was considered ready for insulating. He said Hallbook's "tracking guy" works from a test pack showing different looks at the pipe to confirm whether it's ready for insulation. Isometric drawings of the completed area would then be marked up and given to the general foreman to further confirm readiness and arrange scaffolding to create access to all areas. He testified that the tracking coordinator at Chinook was Trevor Shackleton. Mr. Shackleton would also check for readiness in areas, look at sections of the pipe and any blocking around pipes. He noted the importance of having the right type of insulation ready and available on site because, if a release was given, an area was not ready if there was no insulation on site.

[22] Mr. Pearson testified that Larry Mullins was hired by Hallbook as a journeyman insulator for work at Chinook and began an orientation on October 16, 2018. Mr. Pearson had previously worked with Mr. Mullins on another project in 2013 so they were known to each other.

[23] Mr. Pearson identified Exhibit A-2, a Record of Employment prepared by Hallbook for Mr. Mullins and confirmed that his own name appeared on it because he was the person responsible for layoffs. In this case, the reason given for the layoff was "shortage of work/end of contract or season." He described, in detail, the process for determining the manpower requirements that fluctuated with the number and pace of releases forthcoming from PCL. Various factors, including availability of insulation and readiness of scaffolding, were considered in determining manpower. He said that you do not want more people than you need and calculated the number of shifts and hours for each release to determine the appropriate number of workers required at any given time. He noted that scaffolding was a PCL responsibility, but would be requested by Hallbook's tracking coordinator and general foreman. Every scaffold was different as some may take three hours to build and some would take a week. All of this affected Hallbook's timing.

[24] Mr. Pearson described a shift for the Hallbook workers as starting at 7:00 a.m. and concluding at 5:30 p.m. every day. The shifts began with a toolbox talk of usually 10 to 15 minutes duration where the crew of Hallbook workers raised issues for sharing with other trades and each worker signed on before dispersing to work. The work rotation was 10 days on followed by 4 days off.

[25] He indicated that factors in determining workforce requirements were the releases identifying the maximum number of hours required going forward and the number of person hours in each 10 day shift. In his 30 years of construction industry experience, Mr. Pearson observed ongoing swings in the size of insulation workforces as it changed daily and could be volatile. He gave a previous example of working with Suncor where there was lots of work one morning and, by noon, much of it was cancelled.

[26] Mr. Pearson described Hallbook's approach to determine manpower requirements and layoffs. He and the on-site supervisor would consider and discuss who to layoff and when. Sometimes the decisions would be spur of the moment. To determine who goes, they would consider steady, long-term guys and usually retain them. Short-term employees would be considered first given the work ahead of them. Another factor was whether they showed up for work regularly. No-shows typically may not be kept.

[27] He and the on-site supervisor would look at the work that was ready to do and the manpower required for it. He would first give the opportunity for a person to be laid off rather than terminated. If there was no agreement on this, he would make the decision as to termination or layoff.

[28] In early October 2018, PCL had indicated that there were releases of new work forthcoming and Hallbook hired many employees in mid-October anticipating the releases. These did not transpire although Hallbook had hired 8 to 10 employees. He indicated that PCL changed the releases of size and duration because some welding procedures did not pass inspection and test packs anticipated were not released. This had an impact on manpower given the lack of work that was physically ready to insulate, and he did not see sufficient work to sustain the full 10-day shift. Email correspondence with PCL representatives was produced to demonstrate the change in manpower requirements and included spreadsheets. Mr. Pearson also described his correspondence with Mr. Shackleton and the on-site Foreman, which included concerns about areas being released for insulation purposes but not necessarily ready for insulation either because scaffolding was not ready or other reasons.

[29] Mr. Pearson described another situation in an email exchange from Exhibit A-5 where three pieces of equipment had been insulated based on releases received, but as they were being finished, SaskPower wanted to see vessel shells for inspection. In this case, Burns McDonnell requested Hallbook to remove insulation and reinstall it after the inspection. Four additional employees were brought in for the task. All of this required a change order as it was not part of the original contract. The additional work required removal, inspection and reinstallation of insulation without disruption to the contract work. Four employees were transferred from Edmonton as they were working on other Hallbook sites. Mr. Pearson indicated that PCL and Burns McDonnell didn't want other people on-site transferred to do this work, which is why four employees were brought in during mid-November.

[30] Mr. Pearson also confirmed email correspondence with PCL regarding releases and was told that PCL was doing all they could to get work to Hallbook. He indicated that PCL was releasing some work, but it was not ready. People were on-site, but the work wasn't there for

them and matters got worse into December. Mr. Pearson testified that he believed Hallbook had too many people and may need to lay people off at this point. Exhibit A-7 provided an example of a laid-off employee resulting from the work shortage who was chosen because of work performance issues. This layoff occurred on October 25, 2018. Mr. Pearson also confirmed Exhibit A-8 which was a manpower report generated by Burns McDonnell.

[31] Mr. Pearson testified that Mr. Mullins was laid off because he failed to show up at work one day and no shows were a factor in determining layoffs. He discussed the matter with Brian Polny and no other people were involved in the layoff decision. He confirmed that Brian Polny had sent him an email in the morning and that Mr. Mullins had altered his Field Level Hazard Assessment form (FLHA). He made the decision then to lay off Mr. Mullins. Mr. Pearson had looked at the man-hours released to them and who was on site. As Larry Mullins had not shown up that day, he decided to lay him off. Mr. Polny also advised him that the FLHA had been tampered with. In his opinion, his decision was based on too many people and not enough work at the time. Although the FLHA had been tampered with, this did not factor in his decision. He indicated that it was solely based on the work available although he also believed no safety infraction had occurred.

[32] Mr. Pearson was questioned about the FLHA and about alleged tampering of it. He reviewed Exhibit A-9 and noted that the answer to the question as to whether the worker was working alone had been changed from "no" to "yes". He believed there was no safety related issue going on because this Mr. Mullins wasn't working alone. In his opinion, working alone means physically working alone from everyone and everything that was going on at a site, and this was not the case with Mr. Mullins.

[33] He further testified about Hallbook's "working alone" procedure, which was in effect at the time of the work. Exhibit A-10 was tendered as an exhibit and contained the Hallbook Working Alone procedure. Mr. Pearson gave examples of workers who were working alone. Where a worker was away from all people and maintained only cell phone contact, they would be working alone. The procedure included check in requirements before a worker started work alone. 7 steps were also required to do various assessments and ensure contacts for emergency and safety purposes. If workers were within eyesight and talking distance, there was a different process.

[34] Mr. Pearson testified that Hallbook brought the procedure to the attention of employees as part of their hire-on package through an orientation manual. Exhibit A-11 is Hallbook's Orientation Handbook and Exhibit A-12 was Mr. Mullins' orientation form. Mr. Pearson testified that, in his time as project manager or Chinook, Hallbook never had anyone working alone on the project.

[35] He further described the field-level hazard assessment form, which was completed following a toolbox talk in the morning by each worker who looked at their own area for hazards and would write down tasks and note any hazards in their area. Hazards were then classified by priority and danger levels. FLHA's were then given to the foreman at daily sign-out and the worker would sign off on them at the end of a shift. Working alone was to be identified as a task with an accompanying plan to eliminate concerns based on hourly contact and in accordance with the handbook. He identified that Mr. Mullins' FLHA showed insulating and cladding work and identified tripping and head-banger hazards. He further identified that Mr. Mullins said he was "working alone in tight area on ladder" and "asked foreman to give me helper, but he refused." Mr. Pearson testified that these indications did not go together with the hazard plan to eliminate working alone. He believed Mr. Mullins to be working 20 to 30 feet from other workers

at any given time. Typically, a foreman monitors FLHAs by going to see workers two to three times a day, during breaks, to review the FLHA and make sure it accords with the work being done. He said that Richard Skinner was Mr. Mullins' foreman at this time.

[36] At the end of each day, foremen would give the FLHAs to Mr. Polny or Mr. Shackleton and it would be reviewed and logged into the files. Mr. Mullins' FLHA came to his attention the day that Mr. Mullins was away, October 31, 2018. At that time, Brian Polny was in charge at the site as site supervisor and General Foreman. The decision was made to lay off Mr. Mullins by Mr. Pearson and he understood that Mr. Mullins was notified the next morning of the layoff. Mr. Mullins immediately sent text messages to him and he believed that Mr. Mullins then spoke to PCL representatives. He also understood the layoff was communicated at 7 a.m. although there was no direct conversation between he and Mr. Mullins as Mr. Polny had communicated the layoff to Mr. Mullins.

[37] Mr. Pearson identified Exhibit A-14, which was five pages of text messages between he and Mr. Mullins. He indicated that he only communicated with Mr. Mullins through text messages during this period. He understood that Mr. Mullins had spoken to PCL safety representative, but that PCL had raised no concerns about safety following the meeting. The only safety conversation he had with PCL was on another occasion where an employee had fallen and broken his hip. Mr. Pearson indicated that he had no conversation with Mr. Mullins besides the text messages which ended with him indicating "please leave."

[38] In his 30 years of construction experience, he testified that it was not typical to give employees reasons for layoffs. The reason given for this is that, in construction, he believes most people know why.

[39] Mr. Pearson identified Exhibit A-15 as a list of employees at the Chinook Power plant. Among the Hallbook employees, there were a number of hires on October 16, 2018. He indicated these were in preparation of PCL indicating that a lot of new work was forthcoming. As it turned out, there was a shortage of work shortly following. He further identified three employees, namely, Hartwig, Levesque and van Vleck, who were transferred employees that worked on a re-application of insulation following stripping on SaskPower's request.

[40] Mr. Pearson testified that he did not agree with Mr. Mullins' suggestion to Occupational Health and Safety officers that Mr. Mullins was told he was good for employment until March or April 2019. He indicated that the project completion was otherwise, with manpower requirements showing an end date in December 2018. He believed PCL wanted the job done by Christmas.

[41] Mr. Pearson testified that he was familiar with Richard Skinner who he hired as a foreman for Chinook on October 16, 2018. They had no prior dealings. He identified the role of a foreman on the project as directing crews, ensuring materials were ready and pipe available to insulate, helping build scaffolding, checking progress of work, and updating progress sheets daily. Foremen also walked down the site to ensure work was complete.

[42] Mr. Skinner had first come to his office for an interview and Mr. Pearson decided to hire him as a foreman based on his previous work as a foreman, supervisor, and lead hand. Mr. Pearson identified Exhibit A-16 as the record of employment for Richard Skinner, which indicated his last day of work as March 2, 2019.

[43] He testified that, based on work performance, Mr. Skinner was approached by his supervisor, Mr. Polny, about his documentation reporting and progress sheets. He was asked to go from a foreman position to journeyman on tools, or alternatively take a layoff. Concerns had been brought to Mr. Pearson by Mr. Polny regarding incorrect progress completion and, specifically, pipe shown as 100% complete when it was not. Mr. Polny suggested a proposal for Mr. Skinner to either move from a foreman position to journeyman at a lower rate of pay or take a layoff. Mr. Pearson believed the options to be fair, and left it with Mr. Polny to complete. He had no direct discussion with Mr. Skinner. He further understood that, after the offer was made, Mr. Skinner left and returned the next day to inform Mr. Polny that he chose to be laid off. Mr. Pearson testified that numerous times foremen had previously moved to journeyman where they no longer had a crew or materials organized. He testified that, at the time of the layoff, he was unaware of any conversation between Mr. Skinner and Occupational Health and Safety representatives. He had no discussion about either Mr. Mullins or Mr. Skinner's layoffs with Occupational Health and Safety officers.

[44] Mr. Pearson confirmed that Exhibit A-17 comprised an email exchange between he and Mr. Mullins regarding Mr. Mullins return to work with Hallbook in February 2019. He indicated that things were lined up for Mr. Mullins to go back to work because of the Occupational Health and Safety Order that had been issued.

[45] He indicated that Mr. Mullins texted him on the start date and said he was not coming to "work in a hostile environment". Mr. Pearson indicated that he did not respond to Mr. Mullins' emails as he did not want to escalate the situation. Testing had been booked and certificates sent to the site, but Mr. Mullins has not returned to work. Mr. Pearson indicated that Hallbook has no Saskatchewan projects in progress or upcoming, and that Hallbook was intending to stay in Alberta.

[46] In cross-examination, Mr. Pearson confirmed that project manager role included ensuring compliance with occupational health and safety and employment standards measures. He was shown Exhibit A-15 and confirmed that "Jennifer", the payroll clerk at Hallbook, had prepared it and that it accurately set out who was working at Chinook power station for Hallbook. He confirmed that Larry Mullins was on the list for the period of January 15, 2019 to February 27, 2019 as Hallbook had to pay him. He further indicated that Mr. Mullins was to have returned to work. When asked whether Larry Mullins had been laid off on February 27, 2019, Mr. Pearson indicated "no"; rather, that Mr. Mullins "did not come back to work" on the date shown.

[47] Exhibit A-15 was reviewed in detail and Mr. Pearson confirmed that 14 other workers were hired on either October 16 or 17, 2018. All of them were laid off or let go after Mr. Mullins' departure. It was further noted that, of those employees, none were prior Hallbook employees besides Mr. Mullins.

[48] Mr. Pearson confirmed that Mr. Mullins' previous work with Hallbook was at the Module Yard in Edmonton, and he and his two sons were top employees there. He was a journeyman and a good guy there according to Mr. Pearson.

[49] Mr. Pearson was asked about Exhibit A-6 being an email thread commencing November 16, 2018, between Trevor Shackleton and himself followed by emails between Steve Bigoray, PCL, and himself. The emails discussed the slow releases of work to Hallbook and identified specific problems in matching manpower to available work. He indicated that Hallbook had not earlier prepared similar breakdowns to the ones set out in Trevor Shackleton's first email in the

thread, and none had been prepared prior to Mr. Mullins' termination. Before November 2018, the September schedule prevailed for a Christmas completion. At the time of Mr. Mullins' layoff, it was expected that all work would be completed by mid-December.

[50] In questioning regarding the employees that had been transferred into Chinook in mid-November, Mr. Pearson indicated that it was for the removal and replacement work on a few tanks, or at least this is what he understood. He believed one on-site foreman would oversee the work, but only the four transferees worked on it. He was uncertain as to which foreman was in charge. As far as he knew, the transferred employees did not do any other project work. Because he wasn't there, he was unable to say whether those employees were touching any of the original scope of work.

[51] With respect to Mr. Mullins' termination, he indicated that Mr. Polny requested that Mr. Mullins be laid off as there were too many people on site, and it required a spur-of-the-moment decision. He further confirmed that Mr. Polny informed him that Mr. Mullins had not shown up that day, although he could not recall Mr. Polny's exact words. He was not given any further information as to why Mr. Mullins was not at work nor did he ask why. When asked if Mr. Mullins' injury was a concern to him, he indicated "no" as Mr. Mullins had previously completed a FLHA and no issue was raised. He also had no knowledge of how Mr. Mullins came to work the last morning or how Mr. Mullins was to be getting home. Mr. Pearson confirmed that he received a text message from Mr. Mullins the next day. Mr. Pearson also confirmed that he did not ask either Mr. Mullins or his supervisor, Mr. Skinner, about the FLHA form. When asked whether he relied on the text message to approve the layoff, he said that it had nothing to do with the layoffs because the message came afterward.

[52] When questioned about the working alone policy given to employees in the hiring and orientation package, Mr. Pearson confirmed that the time spent completing the documents and reviewing them was in the range of half hour to 45 minutes. He agreed that in such a time frame the documents could only have been skimmed through. In questioning regarding the working alone policy in Mr. Mullins' case, he indicated that it was brought to Mr. Mullins' attention when he signed on as he had checked the required box indicated on the policy. He further confirmed that the working alone policy was not specifically brought to Mr. Mullins' attention, but rather it would be reviewed and kept on-site. If someone was to be working alone, it would be specifically reviewed at that time.

[53] He also confirmed that at the time of speaking to Mr. Polny they were looking for an opportunity to lay off employees. One factor in determining layoffs was previous work with Hallbook. Mr. Mullins had been a previous employee, but Mr. Pearson could not recall whether he missed work or had been treated adversely previously.

[54] Mr. Pearson confirmed that he wrote a Memo dated February 5, 2019 to Ministry of Labour Relations and Workplace Safety. In the memo, he indicated that Mr. Mullins' layoff was due to a shortage of work and that one other employee, Josh Fiddler, was also affected. On further questioning, Mr. Pearson indicated that there were performance issues related to Mr. Fiddler's layoff although this was not indicated in the memo. Mr. Pearson also testified that he wrote a Memo dated December 17, 2018 to the Ministry of Labour Relations and Workplace Safety and indicated that he understood the onus was on an employer to establish no discriminatory action had taken place. He confirmed that it was a full response to the Ministry and that the date indicated on each of the documents attached to the memo were the dates he received them. He was not aware of any reason that OH&S would have anything more from Hallbook than what was included with his response.

[55] Specific attention was then drawn to a text message exchange between he and Mr. Mullins on November 2, 2018. He acknowledged specific references to about "when accidents happen" and being made aware of Mr. Mullins' concerns with his back. He indicated that he became aware of these after receiving the text message. He acknowledged that Mr. Mullins indicated he would respect Mr. Pearson's decision either way, and he concluded the exchange by writing "please leave."

[56] Mr. Pearson agreed that Mr. Mullins had arrived at the Chinook power plant site on November 2, 2018 and attended at a safety meeting, but was not paid for November 2. Mr. Pearson said Mr. Mullins did not start work that day and was told before 7:00 a.m. what was happening. He did acknowledge that Mr. Fiddler, another laid-off employee, had been paid for the day of his layoff. Mr. Pearson was later not certain whether the layoff was implemented just before or after the morning meeting, which would have normally taken place at 7:00 am.

[57] Exhibit R-1 was confirmed as an email exchange between Mr. Pearson and Mr. Mullins regarding the amount paid to Mr. Mullins. According to Mr. Pearson, these amounts represent the only amount paid to Mr. Mullins despite his objections to the calculations as being below his expectations. He also said that the amount stated in the order had been paid to Mr. Mullins since his layoff.

[58] Mr. Pearson also acknowledged the emails identified in Exhibit R-4 as ones in which he participated. He was informed by Mr. Mullins of particular concerns regarding payment amounts as well as alleged threats made against him. Mr. Pearson indicated that because Mr. Mullins was not an employee of Hallbook at that time, the allegation of threats was not of concern to him. He stated that there was no evidence shown to him that Mr. Mullins was going into an environment such as he described so he did not respond at all to the concerns.

[59] Mr. Pearson stated that he understood the need to reinstate a worker to his former employment on the same terms and conditions given the Decision. He acknowledged receiving an email identified in Exhibit R-6 where Mr. Mullins inquired about returning to a safe and non-hostile work environment.

[60] Mr. Pearson acknowledged writing a Memo dated April 23, 2019 to the Ministry of Labour Relations and Workplace Safety regarding a complaint of discriminatory action of Richard Skinner. He indicated that he had not been previously aware of OH&S raising Mr. Skinner's matter, but was aware that Mr. Skinner was talking to Mr. Mullins over this time period. He was aware that part of Mr. Mullins' complaint was regarding the FLHA that Mr. Skinner had signed off on. When asked whether Mr. Skinner was demoted because of Mr. Mullins complaint, he responded that Mr. Mullins was to start a shift prior to Mr. Skinner leaving or being demoted.

[61] When asked about Mr. Skinner's employment and when concerns were originally raised, Mr. Pearson indicated that a phone call following Christmas from Brent Hartwig and another person initiated concerns, but Mr. Skinner was not informed of those concerns at the time. Mr. Pearson believe that Mr. Polny and Mr. Skinner talked before the demotion was to take effect and he was told that Mr. Skinner chose a layoff. In response to questions, Mr. Pearson agreed that no performance concerns had been raised with Mr. Skinner's work as a foreman prior to March 2, 2019 in response to OH&S and no documents were provided. However, he indicated that OH&S officers had been on site and allowed to refer to two available binders of materials,

but, to his knowledge, they did not review any of them. He was uncertain as to why he did not include any of this exchange in his written reply to OH&S.

[62] Mr. Pearson testified that he had not previously seen the May 7, 2019 letter from Occupational Health and Safety Officer Tallmadge, which ordered and required the reinstatement of Mr. Skinner. He confirmed that Mr. Skinner had not been paid anything by Hallbook after the day he left the work site at Chinook.

[63] In re-examination, Mr. Pearson confirmed a number of details including that the email in Exhibit A-14 shows a transmission time of 6:57 a.m., being before 7:00 a.m.

[64] In clarifying his statement that Mr. Mullins was supposed to return the shift before Mr. Skinner, he indicated that between Mr. Skinner's layoff and Mr. Mullins' return would have been a period of two weeks. A shift was 10 working days or 14 days if you count the 4 days off.

[65] With respect to Hallbook's response to OH&S, he indicated that he had prepared it without the benefit of legal advice, and that Travis Book helped him. They did not fully understand the OH&S process and sent their package in response to the notice of discriminatory action that was received. He understood that what was being asked for was to give Hallbook's side of the story. When asked to clarify whether Mr. Skinner was owed anything, he indicated that he was unaware anything had to be paid.

Evidence of Trevor Shackleton

[66] Trevor Shackleton testified that he had been with Hallbook for 6 years in roles as insulator then as Quality Control person for the past 3 years. His work on-site at Chinook started in summer 2018 and he had reported to the General Foreman, originally Josh Fiddler, then Brian Polny. He also reported to Barry Pearson, Project Manager. No workers reported directly to him. The role of Quality Control was to attend work areas at random times to check that the right type of insulation was being used, that foremen instructions on spacing was being followed, and that caulking was applied in appropriate locations.

[67] His workday started with attendance in the field for toolbox meetings where everyone was scheduled to work locations, addressed safety issues raised the previous day, and reviewed assignments to various foremen. He would then return to the office, scan any FLHAs, consider fall protections, aerial platform documents, and any heights checklists ensuring that all was filed appropriately in the computer. He would then walk the site and spot check insulation for correct thickness for Hallbook and any other required standards.

[68] Following this, he would return to the office to get turnovers for completed isometrics ready for hand over to the client. On each isometric drawing, the insulation and pipe size were indicated and confirmed by Barry Pearson. This cycle was repeated each day until the toolbox was held again, and employees could speak up then on safety issues. He usually completed 6 checks per day, but would sometimes complete up to 10 checks. He also confirmed that a work rotation consisted of 10 days on-site and 4 days at home. A "shift", he indicated, means 10 days at work.

[69] Mr. Shackleton testified that he only engaged in "chit chat" with insulators and did not talk to them about work as it was up to Mr. Polny to discuss work issues with the foremen. Such work talk was beyond his scope, and he only went to Mr. Polny if he identified work that was not up to standard. He had no role in decisions to hire, fire, or discipline workers.

[70] He stated that at the end of each day Brian Polny or other foremen would receive FLHAs and give them to him as it was his job to scan into Hallbook's system after toolbox the morning following receipt. He would sometimes glance at FLHA's for key points such as whether appropriate equipment was available. After scanning the FLHA, he would return it to Mr. Polny and then return to the office. He described his office location as next to Mr. Polny, originally side-by-side and subsequently with desks facing each other. From here, he physically handed over FLHAs to Brian Polny.

[71] Mr. Shackleton was asked whether he recognized the document at Exhibit A-9. He confirmed it was an FLHA. He acknowledged that, on the document, "working alone" was crossed off by Larry Mullins, and that he had seen the document previously. He indicated that Brian Polny had noted the foreman asked him to "give a helper" and it was refused. Mr. Shackleton indicated that he did not understand why this was indicated on the FLHA. He said that Mr. Polny asked him to look at other cards. He also mentioned that Mr. Polny asked that, because all FLHAs came to him why hadn't this particular one been brought to his attention? Mr. Shackleton indicated that he replied he wasn't looking for anything and did not notice it. Before handing the FLHA to Mr. Polny, he did not notice the change to "working alone" and also the request "to give me a helper." He further stated that nothing else was changed on any of the other cards and was not sure why he was to review other FLHAs.

[72] Mr. Shackleton indicated that he sent a copy of the FLHA to Mr. Pearson because Mr. Polny had asked him to. It was sent via email, and he indicated to Mr. Pearson that Brian Polny had asked him to send it.

[73] In response to further questions, Mr. Shackleton said that, as part of his experience as an insulator and work with Hallbook, his understanding of "working alone" was that it applied where a worker was the only person on-site or was working at a remote location where no one else was around and radio contact was needed. He had been told this when working at other job sites for Hallbook and was to be told by a foreman if he was going to a work alone situation. He further indicated that he did not see any other FLHA forms indicating "working alone."

[74] When asked what time of day the email regarding the FLHA was sent to Barry Pearson, he indicated that it was after the toolbox meeting, probably around lunchtime. Apart from this, he heard nothing else about the FLHA, and had no more conversation with either Brian Polny or Barry Pearson about it.

[75] He testified that the Chinook project had been completed "about three weeks ago" (October 2019) - it was supposed to end in December 2018, but went longer. He said releases were not coming in quickly enough and were to be 100% complete by end of November 2018. Burns McDonnell and PCL were not finishing their work and Hallbook's work was delayed as a result. He stated that Hallbook had manpower issues and he knew there were to be 15 hires in October 2018 as a "whole bunch of releases" were to be coming, but didn't come. Releases were received to his email address and he gave them to Brian Polny on a spreadsheet like that in Exhibit A-3. He said releases came from Steve Bigoray of PCL and would indicate what is complete and released. The releases could exclude some isometrics and all were given to Mr. Polny. He understood that Mr. Polny then gave them to foremen and they would do the work. The foremen would show workers what to do, go to locations, and say what material should be put on.

[76] Mr. Shackleton confirmed that he had 8 years of experience as an insulator and that, in the trade, manpower requirements were often up and down. Workers were hired either long term or short term usually on a set maintenance schedule, otherwise, it was considered a "temporary job." He testified that he had no other involvement with Mr. Mullins' layoff.

[77] Mr. Shackleton testified that he had knowledge of Mr. Skinner as a foreman on the Chinook project and of the circumstances of him no longer continuing there. He said Mr. Skinner made errors in reporting of progress, incomplete line numbers on progress reports, and line that had the wrong insulation on them. He concluded that this meant Mr. Skinner was not showing workers what to do or follow up to ensure they were doing the right things.

[78] When asked what the problem was with incorrect reporting on progress, Mr. Shackleton indicated that correct progress must be shown to indicate whether an isometric is complete for insulation and cladding. The sheet shows where workers are at each day for completion and the foreman had to hand this in. The information would then be given to the client and would indicate to Mr. Shackleton whether it could be written off by him as complete. On some reports of 100% complete, Mr. Shackleton indicated that they were only 20% complete when he checked.

[79] Mr. Shackleton testified that the documentation contained incomplete line numbers and that every isometric drawing has an associated number. Some may have multiple pages so are shown in parts. As an example, he said page 1 may show a single metre whereas page 8 may show 38 metres. He said the foreman was responsible for properly indicating page numbers and that Mr. Skinner wouldn't always include page numbers on the progress updates. This resulted in errors in transposing across to the spreadsheet and completion reports.

[80] Mr. Shackleton testified that some lines were found to have the wrong insulation on them. Insulation was to meet the heat value of the line and thicker insulation was required for higher heat values. On some lines, a lower thickness of insulation was applied than what isometrics required.

[81] When asked when he first noticed problems with Mr. Skinner's reporting, Mr. Shackleton indicated that from the beginning of his employment there were issues regarding his progress sheets, but a grace period was given of two weeks to a month for new foremen because the isometrics came from different makers. Both Siemens and CMI prepared isometrics for Chinook. He stated that they may vary in latitude, longitude, elevation, and orientation north and south. He said some sites will have identified central points on the isometrics and different ways of laying out and identifying pipe locations. He also noticed one Siemens drawing where the entire drawing was backwards. He said the grace period for new foremen allowed for some adjustments to be made because there were different terminologies used such as "valves" versus "socketlets" at joints for pipes as well as some had metric measurements and others had imperial measurements. The time allowed foremen to get familiar with isometric drawings from different drafters.

[82] Mr. Shackleton testified that after the grace period, he noticed Mr. Skinner asking for help and getting accustomed to the isometrics up until Christmas. Following Christmas 2018, Mr. Shackleton was approached by Julius, the blanket coordinator, who measured "soft covers" not insulation. Julius reportedly asked him how long he had to keep helping Mr. Skinner interpret isometric drawings. Mr. Shackleton indicated that he reported this conversation to Brian Polny. He also said that Mr. Skinner had asked him for help finding locations within the

plant from the isometric drawings. He said that a foreman should know the locations and be able to assign workers accordingly.

[83] Mr. Shackleton indicated that Mr. Skinner began as a foreman in October 2018 and asked him for assistance until mid-November 2018. Mr. Shackleton indicated that he noted incorrect progress entries, incomplete line numbers for the entire time Mr. Skinner was there. After Christmas, he indicated wrong insulation had been placed a number of times and these problems were taken by him to Mr. Polny as it was not his job to approach Mr. Skinner directly. When asked when he first discussed the problems with Mr. Polny, he indicated probably February. When asked why not earlier, he said that only after his conversation with Julius and his own double checking the work against isometric drawings and reviewing releases did it appear to be a concern. When asked how many foremen were handing in sheets to him, Mr. Shackleton indicated 3, including Mr. Skinner, and that the other foremen understood isometric drawings, lining numbers and proper progress reporting. In his experience as a quality control person, he indicated that he usually only had to address problems during the grace periods and foremen usually get better at the job.

[84] When presented with Exhibit A-17, a layoff request form, Mr. Shackleton confirmed that he had made the form for Hallbook in January. He stated that he had checked online for such a form and understood in January from PCL that there was different legislation in Saskatchewan than Alberta governing layoffs.

[85] Mr. Shackleton was also shown Exhibit A-18, representing isometric drawings for the Chinook plant and daily progress reports. He confirmed that he had seen them before and that various sticky notes appearing to be appended to them were in his own writing. He identified hand writing on other occasions as the foreman's. With respect to page one of Exhibit A-18, Mr. Shackleton indicated that the particular isometric drawing had been handed it at 100% complete when in fact was only done to 20% complete. Mr. Shackleton was questioned regarding numerous pages in Exhibit A-18 and, although unsure on a number of them, he indicated various documents where progress sheets failed to show pages numbers and, on others, percentage completion was overstated. On at least 5 of the isometric drawings he was unsure as to the concern with them. Similarly, Mr. Shackleton was questioned and commented on the 11 pages of daily progress reports and identified shortcomings such as no page and line numbers on a number of them. He stated that the shortcomings on the isometrics and progress were given to Mr. Skinner to work through with his workers. He also testified that when there are issues or concerns with a foreman, the general foreman would speak to them directly. He indicated that Mr. Skinner advised of concerns by Mr. Polny.

[86] Mr. Shackleton was also shown Exhibit A-19, and confirmed it as an email that he sent to Mr. Pearson attaching the FLHA form of Mr. Mullins.

[87] Mr. Shackleton recalled having a conversation with OH&S officers on April 30, 2019. He indicated that they came on site to investigate a diesel spill that had occurred at the time. He indicated Chinook had a diesel spill at the east side of the building and that all of the employers had representatives there as the area was quarantined and OH&S was looking at it to review for a soil removal. Mr. Shackleton testified that he sat in the office of Jim Gold, PCL, that morning and he met with two OH&S officers but did not recall their names. One asked whether he knew Richard Skinner as a complaint had come from the Chinook site; and also, whether he knew why Mr. Skinner was let go from his position. Mr. Shackleton testified that he had isometric drawings and dated progress reports prepared because of Hallbook's office request and asked if the officers would like a copy. He indicated that one of them replied "not at this time". The

officers also asked about his position at Hallbook and what kind of work he did. They specifically inquired of him as to if he kept a "daily log" on what he does on site, but he stated he does not maintain a diary. At the conclusion of what Mr. Shackleton described as a 5 minute meeting, he said that they told him if there was anything else that he should give them a call, they shook hands and left. Mr. Shackleton indicated that he offered them a booklet which was comprised of the same materials appearing in Exhibit A-18. He indicated that the OH&S officers made no subsequent request for information, nor did he call them. He said that one of the officers gave him his card, which he passed on to Dave Badger, PCL.

[88] On further questioning about his meeting with OH&S officers, Mr. Shackleton indicated that he had spoken to them about "turnover packages" that are given to the clients. He indicated that he would "walk everything" on the site to ensure work was completed before a walk was conducted with the client and all was signed off. He further stated that he told the officers there was an on-going issue with reading isometrics and Mr. Skinner was unable to read them entirely or communicate fully with workers. He testified that Mr. Mullins name never came up with the OH&S officers during this meeting and that he wasn't aware of the January 10, 2019 meeting between OH&S officers and Mr. Skinner at the time. Mr. Shackleton also testified that he was the site contact for all emails and thus received certain emails without having requested them previously. He identified that Henri Devlin of PCL as one person who in fact he received emails from.

[89] On cross-examination, Mr. Shackleton was first questioned about Exhibit A-9, the FLHA form of Mr. Mullins. Mr. Shackleton said it was his job to collect, scan and file these documents and the form was given to Mr. Polny. He stated that he had no power to amend anything or raise issues arising from them as this was Mr. Polny's responsibility, not his. He testified that FLHAs were sometimes collected each day in the field, but on October 30, 2018, he did not receive the FLHAs in person that day in the field. He received it when he was in the office, and did not recall the end of Mr. Mullins shift on October 30, 2018.

[90] He testified that on an earlier walk around, Mr. Mullins had indicated to him that he had a "sore back" and this might have been on October 30th. He stated that he didn't give any advice to Mr. Mullins on what he should do about it. When questioned regarding a sequence of certain events, and being shown his email at Exhibit A-19, Mr. Shackleton indicated that he received the FLHA the previous day, but first discussed it with Mr. Polny the following morning. He indicated that Mr. Mullins was not at work on October 31, 2018. He did not know why Mr. Mullins was away.

[91] Mr. Shackleton indicated that he was not personally involved in Mr. Skinner's demotion/layoff as others made that decision. He indicated that he did prepare the layoff request form, Exhibit A-17, and signed it himself. He said he witnessed Mr. Skinner signing it as he was involved in processing layoffs. He confirmed that he had made the form, but was not fully understanding of its purpose. He said he did a quick Google search on legislation and found templates from the Government of Saskatchewan. To questions involving his role at Hallbook, Mr. Shackleton testified that nobody reports to him and that he doesn't raise issues directly with employees. He only reports to Mr. Polny. He said that he was told he could sign off on the layoff request form but was not sure of his authority in this regard. He just remembered making up the form and putting names on it.

[92] Mr. Shackleton confirmed that he signed the Witness Statement that was provided by him to OH&S. He said he was not present when Mr. Skinner was given a choice of layoff and demotion, and Mr. Polny told him it was a layoff or demotion that would be offered to Mr.

Skinner. He stated that he learned second hand of the reason from Mr. Polny. His reference in this statement to "got confrontational" was also second hand information from Mr. Polny, and much information he reflected in the statement were events he had not actually witnessed. He stated he understood the need to not give false information and acknowledged having signed off on the statement knowing much of the information was second hand.

[93] When questioned about the April 30, 2019 meeting and encounter with the OH&S officers, Mr. Shackleton confirmed that the package of isometric drawings and daily progress sheets, being Exhibit A-18, had been prepared by him about two days before the meeting. He testified that isometric drawings and progress sheets are a regular part of Hallbook documentation and he was responsible for filing them in the file system. He testified that they could have been sent to OH&S at other times.

[94] When questioned specifically about the appearance of sticky notes on various pages within Exhibit A-18, Mr. Shackleton confirmed that he placed some of them on the pages in late April 2019. He also testified that prior to April 2019, he had not been asked to document Mr. Skinner's documentation error issues. When questioned about specific questions arising from the documents in A-18, Mr. Shackleton testified that he was unaware of what action was taken by Mr. Polny following Mr. Skinner's incomplete progress reports, and that he was only aware of one occasion where the incorrect thickness of insulation was applied. He could not recall the date of the over-insulation occurrence, and stated that he did not discuss it with Mr. Skinner. He agreed that a client may request the removal of insulation and the reinstallation of it at any point on a project. He also indicated that there were no sheets identifying strip requests from the client within Exhibit A-18.

[95] Mr. Shackleton was asked specifically about the OH&S officer providing him with the business card, which he confirmed was passed along to Dave Badger, PCL Safety. Mr. Shackleton believed it was not odd that Mr. Badger would request the card, and further confirmed that he did not contact OH&S officers directly following the meeting.

[96] On re-examination and responding to what a "witness statement" was for, Mr. Shackleton indicated that he understood it to be an opportunity to put your perspective on what happened. He said he had prior familiarity with such a form from a Hallbook manual, and confirmed that he gave the statement on April 17, 2019 as indicated.

Evidence of Brian Polny

[97] In direct examination, Brian Polny testified that he is currently working as a Superintendent with Hallbook and began working there on June 27, 2018. He previously worked with Hallbook about 10 years ago and has over 20 years of experience in the insulation industry. For about the past 8 years, he has worked as a foreman and served as general foreman on two projects, prior to the Chinook plant, for Hallbook over the last few years. He described the difference between a general foreman and superintendent noting that a superintendent oversees entire jobs on bigger projects. He indicated that, at Chinook, the superintendent and foreman titles were mixed and called general foreman. When asked how many people were overseen by a general foreman, he indicated that it changed throughout the job. He added that on other projects, the general foreman usually had 50 to 60 people working for them and a superintendent may have 300 people.

[98] Mr. Polny indicated that, while at Chinook, he reported to Barry Pearson. The project started on June 27, 2018 and he was one of the first people on-site. Originally, the project was to be completed by December 18, 2018. He stated that he remained on the project until it was completed about two weeks prior to this hearing. He originally went to the site as a ticketed journeyman and subsequently assumed the general foreman role when the incumbent in the position was released in mid-October 2018. He held a foreman position from the end of July until mid-October, going from insulator to foreman to general foreman. He remained as general foreman to the end of the Chinook project.

[99] He testified that manpower fluctuated constantly on the site. They began with 3 people, then 7 more. In mid-November, 4 were brought in. In January 2019 another 10 to 12 were hired, and similarly in February. Manpower went up and down and there was a drastic decrease in December 2018 because of a change in scope of work. There was a constant adjustment of manpower to available work.

[100] Mr. Polny provided a description of his role as dealing with clients and foremen, checking releases, materials, and deliveries. He said that safety was the number one aspect out there. He would oversee on-site work and efficient completion of it. He would make sure everyone was meeting their obligations. In part, he determined the number of people required on-site and would arrange getting them. He would discuss this with on-site workers to see who might be available and "put the word out" to guys on the site. He would try to have people who know each other and hoped to bring in good people. He worked to have the manpower required to meet the dates that PCL would give Hallbook to have work completed.

[101] In the hiring process, Mr. Polny would gather contact information and obtain information back on inquiries. He assessed whether each would be helpful on the site. Existing workers would often be used to source people and get them to send credentials. The information would be gathered by Trevor Shackleton and given to Mr. Polny. He often considered years of experience and whether a job was particularly complicated. In response to what timeframe was involved for understanding the need for people and having them on-site, Mr. Polny indicated it took a week to ten days given the need for a drug test and orientation.

[102] Mr. Polny testified that he communicated with Barry Pearson about what the client wanted on-site for workers. He would review this and "say yes or no" as to whether to bring people on-site. A list of prospective people did not go to Barry Pearson. Mr. Polny stated that Barry Pearson trusted his judgment on bringing new people on-site. He stated that he determined who would be hired and that Barry Pearson never overruled his hiring decisions. When decisions were made to get rid of people, he indicated it was "due to lack of work".

[103] He stated that Chinook project was a hard bid job. This meant that "here are the dollars, you do the project for the said amount and complete it within the scope of the project". This was seen as the most efficient way to maximize return to the company. This approach was different than other methods where work might be given and the client paid for the manpower on site. The Chinook project also had "add-ons". There were many change orders on this particular job.

[104] When asked why staff would be laid off, Mr. Polny indicated lack of work would lead to termination. He stated that extra manpower takes dollars away from the job. When asked who would be let go, he replied "weaker people", "those not wanting to be there", and "disruptive", workers. He would check with the foremen and find out who they wanted there and who they did not want around. When asked about how he became aware of concerns, he stated that he spent about 90% of each day in the field and helped the foremen out. Sometimes it would be

with complicated isometric drawings, other times he would walk materials down to workers, and throughout the day he would notice things such as where people were and where they shouldn't be, all the while studying people's characteristics. He estimated that he would spend 8 to 9 hours of the 10 hour day in the field each day moving in and around the plant. This was time that he was not in the office. On rounds, he would walk releases down and familiarize himself and know where things were by taking materials to foremen, looking for obstacles and so on. He indicated that the foremen were focused on their own crews and efficiencies.

[105] When asked about the process for layoffs, he indicated that when someone identified a need for a layoff, he would contact Barry Pearson and discuss both manpower and the work available. He would propose people to be laid off and always wanted the best people on site as weaker workers and disrupters should not be kept around to "pollute" other people. He made the final recommendation to Barry Pearson and had the final say as Barry never overruled him. He indicated that Barry Pearson was never on site.

[106] When asked how a layoff was effected, Mr. Polny stated that he would tell the direct supervisor to bring the employee to the trailer with their tools and he would inform them of the layoff. He did not delegate this task to the foreman. In his industrial insulation experience, this was typical process from start to finish. The reporting structure on this site was Barry Pearson to Brian Polny to foreman to insulators.

[107] Mr. Polny also testified that Trevor Shackleton reported to him. Releases would be received by Trevor and drawings would be pulled out to verify what was complete and correct against what was released. He received and broke out this information according to areas on the project. It would be checked on the many areas on site. He stated that he also had to ensure correct material was on site and provided separate binders to each foreman, which he would walk down to them. There were sometimes problems, such as scaffolding and other hurdles, so he would try to simplify things for the foremen. He would keep them in designated areas with the crews rather than spread them out around the project. He would also break down the sizes of insulation and material available to adequately complete the job.

[108] In response to questions regarding Mr. Mullins, Mr. Polny indicated that he knew him from the Chinook site and had never worked with him before. He made the decision to lay him off. When he took over as general foreman, he made changes to the way he ran the job, and some people did not like those changes. The prior foreman, Josh Fiddler, would allow smoke breaks and things were "freewheeling". Mr. Polny testified that he told crews that no smoking and no cellphone usage was permitted on the job except during their breaks. He stated that he expected an "honest day's work out of everybody". These requirements were set out in the last week of October, and both Mr. Skinner and Mr. Mullins were there at the time. He stated that this was his "first order of business" upon becoming general foreman and indicated all of this at toolbox meetings. He expected all workers to be professional and believed that standing in the smoke pit during work hours was not a good representation of Hallbook. He said that the client watches and notices these things and he had noticed them earlier and made the changes accordingly.

[109] Mr. Polny testified that on October 31, 2018, during the day, he spoke to Richard Skinner in the earlier part of the day. He had previously noticed Mr. Mullins away from his work a lot and told Mr. Skinner to address this with Mr. Mullins. Mr. Skinner was Mr. Mullins' foreman at the time. Mr. Polny further testified that Mr. Skinner, on the morning of October 31, 2018, told Mr. Polny that Mr. Mullins needed a hand and wanted someone to work with him that day. He said that Mr. Mullins was working on a 10 inch pipe at ground under the heat recovery steam

generator (HRSG). He indicated that he had been working on it and in the same area the prior 2 to 3 days. Because of this, Mr. Polny stated that he denied the request by Mr. Mullins for a helper as he did not require someone with him at all times or throughout the day. He noted that others were around the site that could help. He further told Mr. Skinner to chat with Mr. Mullins about his expectations, and he assumed that Mr. Mullins was disgruntled with him in any event after the smoke break discussion. Mr. Skinner indicated to Mr. Polny that he would have a chat with Mr. Mullins, but Mr. Polny indicated that he was not sure when the conversation took place but left him to deal with it.

[110] Mr. Polny testified that a work day on the site was 7:00 am to 5:30 pm beginning with the morning toolbox, sign in, safety and checklist of work and obligations, as well as a right to refuse certain work. Mr. Polny testified that following his discussion with Mr. Skinner on October 31st, sometime between 2:00pm-5:30pm, in the later part of the day and after a break, Mr. Mullins said to him "for your information, I wasn't away from my place of work" and said he was gathering things. The message was conveyed in an angry tone of voice and Mr. Polny indicated that he avoided any further interaction with Mr. Mullins at the time. This occurred outside of the "unit" portion of the power station. He indicated that, at the time Mr. Mullins made these comments, he was going through the materials pile and did not respond choosing to leave it as it was. Mr. Skinner also never said another word at the time. Mr. Polny indicated there was no other interaction with Mr. Mullins from the discussion and he continued to interact with Mr. Skinner all day long on work related matters. He had no further discussion about Mr. Mullins.

[111] Mr. Polny testified that on November 1, 2018, he arrived at the Chinook site between 6:30-6:40 a.m. Work began with a 7:00 a.m. start and a morning talk with the safety bulletin, sign in, and document review. Everyone then went to work. Mr. Mullins was not present that day. Mr. Polny indicated that Mr. Skinner told him that Mr. Mullins "was sick" and wouldn't be in. This conversation took place shortly after the toolbox meeting. Mr. Polny indicated that "yes, people miss time and some people miss numerous days of work". This is all a normal process. Mr. Polny indicated that he received the FLHA's from workers that morning and checked over them before sending them to PCL. At the time, he noticed that the FLHA from Mr. Mullins had been changed. He had changed the form regarding "working alone" and indicated "direction from supervisor".

[112] When provided a copy of Exhibit A-9, he recognized it as Mr. Mullins' FLHA and the one he looked at on site. He noticed the cross out from "no" to "yes" and "superintendent instructions". He confirmed that he was superintendent at the time. Mr. Polny said he reviewed the FLHA with Trevor Shackleton briefly. He expected it would have been noticed by Mr. Skinner between 11:00 a.m. and 2:30 p.m. during which time it would have been signed off by his foreman. This was a process required to be done with the worker after each break.

[113] When questioned about working alone, Mr. Polny indicated that "working alone" never happened on the Chinook site. He said that "working alone" with the company requires certain paperwork and credentials. This is set out in the handbook for the company, and there is paperwork associated with the FLHA. When he saw the change to "working alone", he had Trevor send it to Barry Pearson on the morning of November 1, 2018. He stated that the events of the day before and this indication on the FLHA means there is a disgruntled employee. Mr. Polny said that he assumed the changes on the FLHA occurred after Mr. Skinner had signed off on it. He knew that if anything happened to Mr. Mullins after this FLHA was checked off there would be a lot of questions. The FLHA is a serious legal document and these forms are taken first if something happens on site, such as an accident.

[114] Mr. Polny indicated that safety is first and foremost on the Chinook project, that he made sure safety policies were in place, and that the workers on site were walked through the policies and told about safety measures. He testified that a change to the "work alone" box said to him that Mr. Mullins was being forced to work alone. He believes it was intended to reflect back on himself. Mr. Mullins was working "by himself" but others were within feet of him. Mr. Polny testified that Mr. Mullins was not working alone and did not require a helper; "working alone" means that nobody is present and that something could happen that goes unnoticed.

[115] Mr. Polny testified that he called Barry Pearson after the FLHA was sent to him and spoke to Mr. Skinner after that, but before 10:00 a.m. Mr. Polny said he recounted issues he had with Larry Mullins from the previous day as he had not always been at his place of work and spoke back in an angry tone. He said he believed Mr. Mullins was trouble. Mr. Polny testified that Mr. Pearson said they were running out of work and overmanned so he could "give him a lay-off". Mr. Pearson said lay him off first thing, but Mr. Polny said he was not on site as he called in sick.

[116] Mr. Polny testified that he had spoken to Mr. Skinner in the office regarding the FLHA and initiated the conversation with him. He asked Mr. Skinner to look at the document and point out anything out of the ordinary. Mr. Skinner replied to him that there was nothing out of the ordinary until Mr. Polny indicated that there were changes made. He stated that Mr. Skinner wasn't aware of the change and was not aware of any issues. He, however, declined to give a statement. He indicated that he was not good with words and didn't feel comfortable writing anything up. Mr. Polny indicated that Mr. Skinner looked at the FLHA for less than 5 minutes. Mr. Polny stated that he asked Mr. Skinner if there was any reason why this change would have been made during the day, and Mr. Skinner replied to him that he had not noticed a change. Mr. Polny indicated that he asked Mr. Skinner to provide a statement so it could be added to the paperwork and wanted to confirm that Larry left that day with nothing wrong. He wanted reasons given as to why he was "denied help" and also wanted to reiterate that Mr. Mullins was not put in an unsafe situation and that Mr. Skinner was in the best position to confirm this. Mr. Polny indicated that he couldn't force Mr. Skinner to provide a statement and left the matter without more as it would have to be in his own words, and he could not demand it from him.

[117] Mr. Polny indicated that he did not discuss a lay off with Mr. Skinner and he did not want distractions. His discussion with Mr. Skinner was roughly 10 minutes. Mr. Polny stated that, as Mr. Skinner made his way out of the office, he said he was going to call Mr. Mullins as he was "up to his old tricks" and that he did not want to be involved in it. He said that Mr. Mullins tended to cause trouble wherever he went, but no more particulars were given. Mr. Polny testified that Mr. Skinner said he needed his job and wanted to be there, and Mr. Polny replied that it did not involve him and he was not jeopardized. He further acknowledged the good job that Mr. Skinner was doing. Mr. Polny further testified that he spoke only to Trevor Shackleton in the office about Mr. Mullins imminent lay off and said to him that Mr. Mullins would be laid off when he returned to the site. This conversation took place later in the day. He stated that Mr. Shackleton needed to fill out forms and inform the main office, but nothing more was formalized that day regarding Mr. Mullins layoff.

[118] Mr. Polny testified that about 6:50-6:55 a.m. on November 2, 2018, he, some foremen, and Trevor Shackleton were in the office leaving for toolbox talk when he asked Mr. Skinner for a minute and told him Mr. Mullins was going to get a layoff. He stated that he told Mr. Skinner if Larry is in this morning to hold him back so we can lay him off after you sign everyone in. He indicated that Mr. Skinner told him "that's fine" and that there was no further discussion.

[119] Mr. Polny said that when he went to the toolbox talk, the sign-ins took place and the PCL safety representative was there. The foremen spoke to their own crews at 7:00 a.m. and the groups broke up. Mr. Polny indicated that he called Mr. Mullins over and said due to unforeseen circumstances and a lack of work you are getting a layoff and are no longer required on this project. Mr. Polny testified that, at this point, Mr. Mullins told him that he had not been sick the prior day but had business with the Union, Local 110 and Brad Hammond of the Local Insulators Union of Alberta in regards to Mr. Polny. Mr. Polny testified that Mr. Mullins had called Local 110 telling them that Mr. Polny was working in Saskatchewan. He received a fine and was no longer a member of the Union as a result of this call. Mr. Polny further stated that there was no work within the Union due to economic times and that the Union must approve who you work for as it does want workers signing up with non-union companies such as Hallbook. He stated that he made the decision to work for Hallbook for personal and family well-being and took the position with Hallbook knowing the possible repercussions. He stated that upon hearing this information from Mr. Mullins he had no response to him except that he indicated Mr. Mullins was still laid off and could do what he wanted on his day off.

[120] Mr. Polny testified that Mr. Mullins then went to Steve Weber, PCL, and said that he had a safety issue to report. He also said he did not want Mr. Polny as part of the discussion with Mr. Weber as it was a private conversation. Mr. Polny indicated that he followed Mr. Mullins because of the layoff he had just given and indicated that he needed Mr. Mullins off site. At this point, Mr. Weber took Mr. Mullins to the PCL office to discuss concerns with the lead safety, Mr. Devlin. As Mr. Devlin was not in the office when they arrived, Mr. Weber apparently asked Mr. Mullins to sit in the office until they tracked down Mr. Devlin. Mr. Polny testified that, at this point, Mr. Mullins began snapping pictures on his phone of Mr. Polny.

[121] Mr. Polny testified that Mr. Devlin arrived at the office about 10 minutes later, and took Mr. Mullins into another office where they contacted Jim Gold, PCL Site-Superintendent. He stated that Mr. Gold asked him to join them in the office, what was going on, and why is Larry in the office. He explained that Mr. Mullins was getting a lay off today because of his behaviour the day before. At that point, Mr. Weber indicated to Mr. Devlin that Mr. Mullins had a safety issue. Mr. Polny indicated that he told them he had received nothing as to why Mr. Mullins was off work the previous day. Mr. Gold and Mr. Weber then met with Mr. Mullins without Mr. Polny and held a 10 minute meeting. After the meeting, Mr. Polny indicated he met with Mr. Devlin and Mr. Gold in Mr. Gold's office and they told him that they wanted to ensure that Mr. Mullins previous day away from work was not a result of a work related matter. He stated that Mr. Gold said they were not concerned with a safety issue, and Larry Mullins could be removed from the site. They instructed Mr. Polny to take him to the security gate, give him his tools, and remove him. Mr. Polny indicated he then escorted Mr. Mullins to the gate. During the walk, Mr. Mullins made threats to him and stated that he "was the biggest piece of shit he's ever met in his life". He said that Mr. Mullins also indicated he would do what he could to get rid of Mr. Polny's pension from the Union, and was continually trying to take pictures. Mr. Polny said he reminded Mr. Mullins that handling a lay off this way with continued threats could end in termination for threatening behaviour. He then radioed Mr. Skinner to obtain Mr. Mullins' belongings and asked the security guard to hold Mr. Mullins until his belongings were given to him. Mr. Mullins then left the site.

[122] Mr. Polny testified that within 15 minutes of Mr. Mullins' departure, Mr. Mullins had made a number of posts on Facebook with pictures of Mr. Polny indicating he was "the biggest piece of shit around". Mr. Polny stated that he did not take the Facebook posts too seriously. For the rest of the day he spoke to no one about the layoff. He stated that Richard Skinner and Mr. Mullins were very close friends.

[123] Mr. Polny testified that he received no more information from PCL about Mr. Mullins safety issues apart from the conversation he had with Mr. Gold where he was told they did not believe there was a safety issue. There had been no concern about "working alone" when it was raised with PCL and, in fact, Mr. Gold discussed with a number of employees in the lunch room about a month later that nobody was working alone on the Chinook site.

[124] Mr. Polny was shown Exhibit A-14 and confirmed it as text messages between Mr. Mullins and Mr. Pearson. He stated that in October 2018, he stayed at a campsite outside of Swift Current and Mr. Mullins showed up there on October 16, 2018. Mr. Mullins apparently knew one of the workers and they met and had a few drinks. Mr. Polny indicated that he knew Mr. Mullins was previously a police officer and certainly respects public servants. He also stated that he denied Mr. Mullins a helper as it was not warranted for the task. It was not intended to make Mr. Mullins look bad, as he had suggested.

[125] When asked about the standard process for workplace injuries, Mr. Polny indicated that the general foreman would contact Mr. Pearson and, if the matter was severe, PCL would be contacted directly by radio. It was within the foreman's judgment whether an injury was severe. Following a radio call, PCL safety would attend at the site and get a hold of the appropriate person. Much paperwork would follow as well as questions and investigations, followed by days of going through materials. PCL safety would conduct any investigation.

[126] When asked about a "safety infraction", Mr. Polny testified it would be dealt with internally by Hallbook and, depending on the severity, it would be investigated and possible discipline imposed. PCL would be advised of any safety concerns at Hallbook and he was aware of 4 safety investigations at this site.

[127] When asked whether "working alone" would start a safety protocol, Mr. Polny indicated that he did not see any "working alone" in this case. When asked further if there was working alone pursuant to Hallbook's policy, what process would be followed, Mr. Polny answered that there would be an investigation and paperwork to follow.

[128] When asked about his familiarity with Richard Skinner, Mr. Polny advised that he was aware he was pulled as a foreman in March 2019. Mr. Pearson had removed him from the position "due to lack of performance". Mr. Polny testified that when Mr. Skinner started on October 17, 2018, he, himself, was only a foreman. Mr. Polny was given the job to show Mr. Skinner around and identify the way things worked at the Chinook site. Mr. Skinner told Mr. Polny that he had little experience in a plant and had mostly been in the "mod yard" where they built pieces in the yard and those pieces subsequently joined together at sites like the Chinook plant. Mr. Polny testified that an isometric at a mod shows everything in front of you without any coordinates. At a plant, coordinates were used to locate pipes you are to work on. He stated that the Chinook job was put together at three different places, so there were different coordinates for different areas of the plant. He said "it was confusing".

[129] Mr. Polny stated that Mr. Skinner wasn't familiar with how to locate piping and had his own markings on isometric drawings in order to locate tags and piping so he could catch on and figure things out. Mr. Polny testified that he showed Mr. Skinner around for two weeks and he was appreciative. Mr. Polny testified that following his promotion to general foreman, another foreman, Chris Kirkman was appointed. He worked with both foremen to transition them and was always on site to answer questions for them. He also said that he helped people throughout the job and sometimes there were stops, starts, and hurdles to the job, but mistakes were fixed

whenever made. Mr. Polny stated that Mr. Skinner made mistakes and that everyone does at some point. He solved some of what he could and was going through tough times in his life.

[130] Mr. Polny testified that towards the end of February 2019, after spending approximately 20 days per month together, he believes Mr. Skinner lost interest in his work and began making more and more mistakes. This resulted in confrontations with Quality Control about the mistakes and he had to make a decision. He said he discussed drawings handed in at 100% complete, but when looking at certain locations it was confirmed the job was not complete and had mistakes on it. He took the drawings and discussed them with Mr. Skinner at the end of February and pointed out that it wasn't complete. He indicated that Mr. Skinner identified one incomplete work as something Mr. Polny told him to leave, which was false. Two others were identified as left open and not done. Another had a missing cap, which Mr. Skinner told Mr. Polny that he had asked someone to complete. Mr. Polny indicated that he was then not checking work appropriately.

[131] Mr. Polny testified that Skinner said he was picking on him because of the Larry Mullins' incident. This conversation occurred around 9:30am either on February 28 or March 1, 2019. He said that Mr. Skinner walked away very upset and went to the end of the unit where he said he needed time to clear his head and may need to leave the site. He did leave at about 10:30 a.m. and, in Mr. Polny's view, this was all about the drawings and visits to the site. Mr. Polny indicated that prior to this event, he had discovered things not properly done and needed fixing and that the fixes were not completed. He said that Mr. Skinner appeared to not be communicating with other foremen, and had lost interest in his job. Mr. Polny stated in the beginning, there will be a few mistakes but not too many and people are educated as they go. Towards the end, there were more and more mistakes, particularly in the last week of February, and this was more concerning.

[132] Mr. Polny advised that Mr. Shackleton brought issues to his attention that, at first, were fairly minor and he told Mr. Shackleton to handle them internally with Mr. Skinner. As he worked with Mr. Skinner and two other foremen, Mr. Shackleton had to walk a fine line with the client and was needing to know much information. Things changed when Mr. Shackleton came to Mr. Polny and said he couldn't work with Richard who was getting irate with him when mistakes were pointed out to him. Mr. Polny testified that, on hearing this, he took matters into his own hands and called Barry about the quality and performance issues associated with Mr. Skinner's work. This occurred three or four days prior to his discussion with Mr. Skinner and the site visit with isometric drawings to view location errors. Mr. Polny said that he told Barry Pearson that he had to go back and fix stuff and redo work. He let Barry Pearson know what was going on site and Barry said to make sure there's documentation to back up any decision. Mr. Polny said he suggested that Mr. Skinner should be relieved of his duties as foreman.

[133] Mr. Polny directed Mr. Shackleton who "had a record of everything" including progress reports to foremen completed daily with percentages. Mr. Shackleton walked daily to make sure he passed quality inspection for the client's purposes. The progress reports and isometrics all had to be pulled to be sure that everything was in line. Mr. Polny stated that on the morning when Mr. Skinner left the site, he went through drawings of Mr. Skinner's work areas and noticed more mistakes than he had previously thought. Mr. Pearson said to him that as long as it's warranted and you have appropriate back up information, you do what you have to do. Mr. Polny said that in conversations with Mr. Skinner, where his unacceptable mistakes were brought to his attention, Mr. Skinner made excuses for mistakes and Mr. Polny told him "you're better than what's going on now" and "your head's not in the game". Mr. Polny stated that Mr. Skinner's response was simply that he was picking on him, but this was untrue and was entirely

a performance issue. Mr. Polny said that Hallbook had to bring people back to correct mistakes and were over hours therefore losing money to complete this. Mr. Skinner got very upset and walked away from him and said "you are picking on me" and "you were yelling". Mr. Polny indicated that he had raised his voice due to a loud heater nearby, but the conversation was concluded.

[134] Mr. Polny stated that his decision to remove Mr. Skinner from his position was solidified because he was not performing to the standard expected and thus the decision had been made to demote him. When asked why a demotion, he indicated that the mistakes did not warrant a termination therefore a layoff option was given to him if he did not want the demotion. Mr. Skinner could go on tools or "request" a layoff. Mr. Polny said that demotions from foreman to journeyman weren't as common and may often occur near the end of a work project or for the benefit of the employer or company.

[135] Mr. Polny testified that the next morning when Mr. Skinner started work with his crew, he told him that he had documents for him. Another foreman, John Guthrie, attended and Mr. Skinner was told he was no longer required as a foreman and being demoted to tools. He was offered a layoff provided he sign the appropriate documentation. At the toolbox, he was informed that paperwork was in the office. Exhibit A-17 was identified as the layoff form. Mr. Polny stated that he met with Mr. Skinner at the center of the plant after being called aside and informed him of the decision that had been made. He presented the option and Mr. Skinner said he would take the layoff. He was told he needed to go to the office as Trevor Shackleton had the form and it would need to be signed. He then would be free to go. Mr. Polny indicated that he had no more interaction with Mr. Skinner and there were no incidents.

[136] Mr. Polny further testified that on the day he decided, in his mind, to demote Mr. Skinner he had no knowledge of Mr. Skinner's involvement with Mr. Mullins investigation and indicated that "there was no way I could've known". He testified that at the time of the decisions, he was aware that Mr. Mullins was to be returning on work on site. He knew between two and three weeks before the decision was made that Mr. Mullins would be returning. He said that the decision regarding Mr. Skinner was made in the best interest of the company and for performance.

[137] When questioned directly about whether he "stared at him for three hours" in relation to Mr. Skinner, Mr. Polny indicated that the statement was untrue. When questioned about a comment that "there is an informant on site" Mr. Polny indicated that he knew nothing about such a statement. He concluded questions in direct examination by indicating that he had zero contact with OH&S officials about either Mr. Mullins or Mr. Skinner.

[138] In cross examination, Mr. Polny affirmed much of the testimony he gave in direct examination. When questioned about Mr. Mullins being away from work on November 1, 2018, he didn't recall the word "sick" or "injured" being used in a conversation with Mr. Skinner. He was also questioned regarding the time of day during which the FLHA submitted by Mr. Mullins had been amended. He was unable to answer any more clearly than on direct examination with respect to the precise timing. When questioned about the timing of various reports prepared by Mr. Shackleton for assessing Mr. Skinner's work, Mr. Polny was unable to be more specific regarding dates than what he testified to in direct examination. When asked whether Mr. Shackleton was asked to prepare Exhibit A-18 in April 2019, Mr. Polny indicated he was not positive as to the date on which this occurred. He could not say when the complete package of materials identifying mistakes in work had been prepared.

Evidence of Richard Skinner

[139] In direct examination, Mr. Skinner confirmed he had 13 years of experience as an insulator. He had been a general foreman three times and a foreman for 8 – 10 years previously on a number of different jobs. He confirmed that Exhibit R-7 represented his resume and previous work as an insulator. He stated that he is currently employed in Dawson Creek, B.C. as a lead hand foreman at a compressor station. Among his previous jobs, he spent 6 years as a general foreman at JV Driver overseeing 8 foremen for two years straight. When asked if he had worked at industrial sites previous to Hallbook's work, he confirmed that he had with CNRL when employed by Panels and Pipes.

[140] Mr. Skinner testified that he was hired as a journeyman insulator for Hallbook and had obtained the position after responding to a message from Josh Fiddler a couple of days before going to the Chinook site where he started work on October 16, 2018.

[141] Mr. Skinner confirmed Exhibit R-8 as a Journeyperson Orientation Form document that he had reviewed and recalled filling out on the Chinook site. He originally signed the first page on October 9, 2018 when he was being hired. He testified that it was Hallbook policy that the document was signed at the office and then another version signed on the worksite. He confirmed having checked off a number of boxes after receiving paperwork from Trevor Shackleton and the forms required him to set out what he was capable of doing and what he was not capable of doing. He advised that this was a similar process for every company. In response to questions regarding an orientation for employees and sub-contractors by Hallbook, he indicated he had not received the full book of policies to review them and only received the orientation manual during his orientation. At that time, there was no opportunity to review the policies and nobody explained them to him. He indicated that he just checked them off and went to work. When asked specifically about question 9 on page 5, of Exhibit R-8, Mr. Skinner confirmed that he checked the answer to question 9. Although it indicated whether you could use a defective tool at work and he checked yes, he stated that you cannot use a defective tool at work because it is not safe. You need to tag it out. When asked if anyone reviewed his answers, Mr. Skinner said he did not know what the company does with them. He confirmed that he signed at the end of Section 5, but was uncertain as to who signed on behalf of Hallbook. He further confirmed having signed the bottom of other pages and having checked the number of boxes throughout the documents. Further, he testified that he similarly checked boxes and signed off on documents in Exhibit R-9, being a supervisor or foreman orientation forms. He also confirmed that he and Trevor Shackleton signed a number of the pages in Exhibit R-9 but indicated that there was no time given to review the health safety and environmental manual. When asked about the about of time taken to review, check off and sign the manuals, Mr. Skinner indicated not very much, half hour maybe. Following this, he indicated that he got his tools, walked around the site and the lunch room and determined the muster point locations.

[142] Mr. Skinner testified that on starting work at the Chinook plant on October 16, 2018, there were only a small group of workers on site. While he was able to name some and unable to name others, he indicated that there should have been 8-10 people but doesn't recall them all now. When asked whether he recalled additional workers being requested during the first couple of weeks being on site, he indicated that everyone was paired up so there were no such requests. At the end, he indicated that it did change a little bit. When asked what "at the end" meant, Mr. Skinner said when the ground work was done there was more work required on ladders and much more stepping up. There was more work there than expected and Brian

[143] Polny was always looking to be efficient. When asked whether it was Brian Polny's decision to not pair up some workers and to work alone, Mr. Skinner indicated "yes".

[144] Mr. Skinner testified that he recalled requesting a helper on October 31, 2018 of Mr. Polny for Larry Mullins. Mr. Mullins expressed to him that he needed up on a ladder to put up double layering insulation by himself and there were usually pairs to do this. When asked if he had any concern for Mr. Mullins working alone, he indicated that, as Mr. Mullins was by himself, he thought it was nice to ask. He said normally a foreman can make their own decision, particularly where there is standing pipe up and down. It is more reasonable if the helper is there and that is how he felt. When asked where and when he made the request to Mr. Polny, Mr. Skinner advised that he approached Brian Polny in the unit in the early morning and was told that Mr. Mullins does not need any help. Mr. Skinner then told Mr., Mullins that the boss said you don't need any help and left it at that. Mr. Skinner did not recall any conversation between Mr. Mullins and Mr. Polny later that afternoon.

[145] When shown the FLHA tendered as Exhibit A-9, Mr. Skinner confirmed that it was Mr. Mullins FLHA for October 31, 2018. When asked whether Mr. Skinner knew at the start of the day if Mr. Mullins would be working in a particular area, he replied that he knew he'd be working in an area by himself and that's why he requested help for him. He was hoping to get him help, but it just didn't happen. When asked if he knew when the form was changed, he indicated that it was at the end of the day that he was made aware of it. He had a conversation between Trevor Shackleton, Larry Mullins, and himself when they showed up at the end of the day. Mr. Mullins said his back was sore but didn't want to go to the hospital and should probably take a day off. Trevor Shackleton indicated that he wasn't sure whether to take Larry Mullins to the hospital, or request Brian Polny to take him. Mr. Skinner said that the conversation was left at that and they finished sign out as the last ones there. Mr. Skinner recalled that the FLHA was handed in at the end of shift, about 5:30 p.m. and was received by Trevor Shackleton as that was his job every day.

[146] Mr. Skinner recalled Mr. Mullins did not come to work the following day because he was taking a day off to rest. When asked whether he spoke to Mr. Polny about the FLHA on November 1, 2018, Mr. Skinner indicated that Mr. Polny called him over, showed him the FLHA form, and said "what's this" and "who does this clown/idiot think he is". Mr. Polny told Mr. Skinner to deal with it, but Larry Mullins wasn't there and he couldn't deal with it then. He indicated that Mr. Polny had left early the day before and they had been unsure what to do about taking Mr. Mullins to the hospital. Mr. Skinner testified that Mr. Polny did not tell him what was wrong with the form, and he didn't consider it his concern.

[147] Mr. Skinner testified that he was contacted by OH&S investigators sometime in January 2019 concerning Mr. Mullins' matter. He was originally called on a Tuesday but was at work so interviewed on the following Thursday at 3:00 p.m. when the shift ended. Mr. Skinner recalled meeting with the Occupational Health officers on January 10, 2019 in Swift Current where his conversation was recorded with them. Mr. Skinner indicated he was concerned that Larry Mullins had been terminated as he was a pretty good friend.

[148] He recalled speaking to Larry Mullins the evening he learned that Mr. Mullins was to be reinstated to his former position with Hallbook. He indicated some concern with him coming into work the next day and had noted his name on a sign in sheet as he was put on Mr. Skinner's crew. Mr. Skinner recalled Mr. Shackleton stating "he won't be here long. We will have him crucified". Mr. Skinner said he told Larry to not come into work tomorrow and Mr. Mullins did in

fact not return to work. When asked about Mr. Shackleton's comments that "we will have him crucified" and specifically, who he believed was "we", Mr. Skinner stated he figured it was Hallbook and Brian Polny. He believed that the Chinook plant was a good place not to come back to, and would have never come back himself if he were in Mr. Mullins shoes.

[149] When asked whether there were changes at the worksite for Mr. Skinner at this time, he indicated that "no, not right away", however, later on absolutely there were changes. He said people stopped talking to him, particularly Curtis and John, two other foremen. He said "I'm a good person. I get along with everybody". Mr. Skinner testified that Larry Mullins had made a call to the union and all of those guys had gotten into trouble. He said that being Larry's friend and supervisor, "I no longer clicked with them".

[150] Mr. Skinner indicated that it was in early March 2019 when he met with Mr. Polny to review isometric drawings. He said that Mr. Polny brought him two small section pipes and said 'this was wrong' and 'that was wrong'. He said he was not about to dispute this with Mr. Polny at this time. He provided explanations as to why some work was not finished. In particular, when shown one valve, he indicated that the guy working on it had left early one day to go back to Saskatoon and didn't get it done. He figured it would be finished eventually, but apparently it had not been. Brian Polny told him that it was costing the company lots of money when things were done wrong. Mr. Skinner stated that he had an awesome crew and that everyone was working phenomenal. He said they loved working for him. Mr. Skinner testified that after being critiqued by Mr. Polny, he took a deep breath, and told Mr. Polny he'd leave for the rest of the day to relax and calm down. When asked if this was the first time Hallbook raised issues like this with him, Mr. Skinner indicated "yes".

[151] During questioning, when shown the isometrics drawings and progress sheets comprising Exhibit A-18, he was taken through select pages and asked specific questions. On each occasion, Mr. Skinner had explanations where he was able to identify some of the work and explanations for its delay, where warranted. On occasions there was a lack of insulation and, on others, there were numerous markings and comments that were not his own writing. Other pages were identified as work that was done after he had left the site. There were a couple of occasions that Mr. Skinner identified where he was aware of changes being required but was busy with other matters on the ground. He indicated he would have gotten them done, but was let go. On one occasion, there was to be a two inch layer completed over a cat walk that had numbers marked on the line, however, two guys working for him got it wrong and the section needed to be change. He was told it needed to be fixed, but didn't get a chance and couldn't recall the entire circumstances. Mr. Skinner indicated he was passing in progress reports and on occasion, when Trevor Shackleton said a number was wrong, he would go ahead and change it.

[152] Mr. Skinner said that on this job things were changing all the time to meet the client's requirements. When asked about what changed regarding client requirements, Mr. Skinner indicated that he simply went with what Brian Polny or Trevor Shackleton told him to do. When questioned about pages 24 and 25 of Exhibit A-18, being daily progress reports, he confirmed that these were done in early January and submitted every day. When asked if there were any issues raised with particular line numbers. Mr. Skinner testified that no line numbers were used as all of the work was being done in the HRSG on the big drum and not the lines coming off of it. When asked whether there were any performance or discipline measures before late February, 2018, Mr. Skinner indicated there had been none and he would have certainly responded if there had been one. Mr. Skinner confirmed that Mr. Polny regularly walked around the site and interacted with foreman.

[153] When presented with a layoff request form dated March 3, 2019, Mr. Skinner confirmed that he signed the layoff request as he was being demoted and offered the choice of either going to tools or a layoff. He indicated that going to tools would not be good in that environment so he told Brian Polny so and signed the layoff papers. When asked what would happen if he had not signed the layoff request, Mr. Skinner indicated they would consider him a "quit" and he would probably not receive any income. He indicated that he did not quit a foreman position.

[154] Mr. Skinner recalled submitting his complaint to OH&S and making an allegation of discriminatory action. He recalled a call from an OH&S officer around May 6, 2019. He described in his report that Brian Polny would stare at workers for hours. He said that if Mr. Polny saw someone standing for a second, he considered them not working and he considered this immature. He also recalled, while inside at a toolbox meeting, Mr. Polny sang "there's an informant on site" Mr. Skinner said he would never forget those words and that there were other witnesses present to hear them.

[155] In response to questions regarding his damages and mitigation efforts since his layoff from Hallbook, he confirmed that he continually sought new work. He had 12-13 days' work in Grand Prairie but found it pretty hard to make a go of things. He had been employed at \$42 to 43 dollars/hour and worked 10 days on 4 days off. His shift was 10 hours /day when working. He testified he obtained employment with AECOM beginning July 26, 2019. He had just finished working a shift for them, 7 days on 7 days off. He indicated that job is a pretty good job and indicated the income earned since leaving Hallbook was approximately \$35,000 in total.

[156] In cross examination, Mr. Skinner confirmed the previous work experience set out in his resume and, when asked about whether Chinook plant was his first industrial experience at a power plant setting, Mr. Skinner confirmed that it was. He then answered numerous questions regarding the orientation package and essentially confirmed the answers he had given in direct examination. Mr. Skinner agreed in cross examination that the various signatures he placed on forms and documents throughout the document meant he had read and agreed with its contents. He indicated that "yes", is what it meant. On some occasions he wasn't sure he read everything, but testified that he understood the matters as the same as on other jobs. He confirmed that the process was not unfamiliar to him as he had gone through this with other companies and generally understood safety issues for insulation companies.

[157] When asked questions concerning Mr. Polny as a general foreman, Mr. Skinner agreed that part of a general foreman's job was to ensure crews ran efficiently. Mr. Skinner agreed that Mr. Polny made some changes to work conducted on the Chinook site and at some point had decided to get more efficient and pair people up. He subsequently decided to break up some pairs; however, Mr. Skinner testified he wasn't aware of any other workers working by themselves besides Mr. Mullins on his own crew. He was further questioned regarding the events on October 31, 2018, and in particular, his conversation with Trevor Shackleton and Larry Mullins. He confirmed the same answers as given on direct and discussions regarding Mr. Mullins sore back. When questioned further about the FLHA he indicated that Trevor Shackleton and he knew all about it and realized at the end of the work day that Mr. Mullins had changed the form. All of this conversation about the FLHA occurred before Mr. Shackleton returned with it to the office. Mr. Skinner indicated he did not know what to do with the form. When asked about his conversations with Mr. Polny the following day and the FLHA, Mr. Skinner reiterated that Mr. Polny asked what this clown was doing. When questioned about the specific changes to the FLHA, Mr. Skinner testified that he told Mr. Polny he would take care of it. He also confirmed that he told Mr. Polny that Mr. Mullins was away from work on that day but did not indicate why.

[158] When questioned about the layoff request form, Mr. Skinner confirmed that he would be at a financial disadvantage if he had quit rather than take a layoff. He indicated it would be harder to get employment insurance if a person quit. He was also questioned about the OH&S interview and, in particular, statements about Mr. Polny staring at him. Mr. Skinner indicated this was "bird-dogging" at a worksite and that he had seen Mr. Polny do it. He would stay in an area and make people on edge. When asked whether Mr. Polny was in charge of the site, Mr. Skinner replied that in his experience over the years, a general foreman had better things to do than "bird-dogging most of the day". He also confirmed that Mr. Polny was in charge of both he and other foreman on the site and understood that Mr. Polny had the authority to do his job as he saw fit.

[159] Mr. Skinner testified he had not worked for Hallbook before this project and that his employment at the Chinook site was from October 16, 2018 to March 3, 2019 comprising about 5 months.

[160] Mr. Skinner confirmed in some of the earlier testimony of Mr. Polny he indicated that the workers were not allowed to smoke whenever they wanted too or use their cellphones. Mr. Skinner agreed that Mr. Polny's rules allowed for only two smoke breaks throughout the day. Previously, under Josh Fiddler, general foreman, workers could take smoke breaks whenever, according to Mr. Skinner. He confirmed that there were smokers on his crew and that Larry Mullins was among them.

[161] When asked if he was involved in layoffs, Mr. Skinner indicated he was not. Only Mr. Polny that made those calls, but may ask a foreman who they want to get rid of. When asked about the construction industry and whether the work force numbers go up and down regularly, Mr. Skinner agreed that they did based on the percentage of work. He confirmed that Mr. Pearson's description of it as "temporary employment" fits the construction industry as the way it was. He said "I'm not at any job forever". He also agreed the reasons for layoffs would be lack of work or annoyance to a supervisor, and from one day to the next in construction a person might get laid off.

[162] When asked about Mr. Mullins work and whether he was working alone, Mr. Skinner agreed that there were other workers within 30 to 40 feet of Mr. Mullins. He also agreed that there were hundreds of workers on the site and that Mullins was not the only Hallbook worker on the site. He also agreed that in the event of an emergency, there would be help readily available. When asked about the area in which Mr. Mullins had been working on October 31, 2018, Mr. Skinner indicated he had been working there for a few days and previously had a helper who took a layoff.

[163] When asked whether Mr. Mullins ever refused to do the work, Mr. Skinner indicated "no" and that he had been the one asking for Mr. Mullins to receive help. When questioned about the purpose of a FLHA, Mr. Skinner agreed that it was intended to check for hazards in particular work areas and that it was his job to verify all the FLHA forms and make sure they are in order. He also confirmed that if there was an injury on shift that it would be recorded on a FLHA as well as any continuing safety issues. Mr. Skinner confirmed that when he signed off on Mr. Mullins FLHA in the morning, no changes had been made to it. The reference to 'superintendent instructions' were not there in the morning when he signed it. On further questioning, Mr. Skinner confirmed that with the FLHA and plan in place, the jobs could all be done safely. He added that with help they could have been done faster.

[164] When asked about Hallbook bringing in 4 transfer employees to strip an area shortly after Mr. Mullins' departure, Mr. Skinner did recall them coming but was not involved in the discussion about scope of work. He only understood that an area need to be restriped and that otherwise it had nothing to do with him. When asked whether he heard that releases were coming slowly in mid-October, Mr. Skinner recalled that there was worry for a while as some workers worried about their job.

[165] When questioned about looking for work following his departure from Hallbook, Mr. Skinner indicated that he went to the job site online called "Indeed" and phoned a number of places. His next employment started in September and he had 12-13 days in Grand Prairie with IPAC. He worked briefly for Northern Industrial in Edmonton in June in a plant in Fort Saskatchewan which required him to drive every day. He had to leave that employment as he was losing money. He had a maintenance job with AECOM at CNRL which was a 7 on 7 off position but nothing transpired. Subsequently, he had job at Foster Creek which was to last 3 to 4 weeks, but only resulted in 6 days of work. He is now working in BC for ISSL. Mr. Skinner testified that he received employment insurance once since March 2019, and believed it ran out in June 2019.

[166] Subsequent to his testimony, copies of Mr. Skinner's Record of Employment, earnings statements, and Employment Insurance were tendered as exhibits.

Evidence of Larry Mullins

[167] Mr. Mullins testified that he had been an industrial pipe insulator for 13 years. All of his experience was in Alberta and Saskatchewan. He had a journeyman qualification and had experience as a supervisor, mostly within the last 8 years. He indicated he had been a general foreman and superintendent on jobs up to 150 employees. He confirmed his resume as Exhibit R-11. Mr. Mullins indicated he is not currently not employed and was laid off approximately a week ago before the hearing when a job he was working on finished up.

[168] Mr. Mullins testified that he began working at the Chinook plant on October 16, 2018. He could not recall if Barry Pearson had called him or vice versa. He had definitely heard that Hallbook needed people on the project from Richard Skinner. When asked if he had worked with Barry Pearson before, he indicated that he had - at Morley Parsons at the old mod yard in Edmonton.

[169] He testified that upon arriving on the Chinook site, he was handed a booklet, tax forms and sheet to check off certain boxes, and this was completed with Mr. Shackleton. He acknowledged signing the pages identified as Exhibit R-12 being Journeyman Orientation forms, as well as an acknowledgment form. He indicated that he had checked off the various boxes on the form but that he had not read the full policies and indicated nobody does as there is no way to go through them within a half hour. He believed there had been a brief discussion between him, Mr. Shackleton and Josh Fiddler, and that Mr. Shackleton was conducting the orientation. When asked about specific questions on the form, he confirmed he had checked various boxes, in particular those regarding unsafe work.

[170] When asked about the events of October 31, 2018, he indicated that his understanding was that a request had been made to obtain a helper for him to Mr. Polny, but did not know of the denial at the very outset of the shift. He learned of it about 15 to 30 minutes after being shown the work site. He confirmed that the FLHA of that date had been prepared, and he was

assessing the work area and filling out the FLHA while waiting for others. He indicated that while he was in his work area, his foreman, Richard Skinner, took him aside while doing his look around and came back and said Mr. Polny won't let you have a helper that Mr. Polny said it's a one man job. Mr. Mullins testified that he continued to work away by himself but first had to go outside of the building and gather materials required for his work.

[171] When asked whether he amended his FLHA, Mr. Mullins indicated "yes" it was done later in the day at the same time he had marked down that the superintendent wouldn't give him a helper at the request of his foreman. He estimated this to have happened at 4:00 p.m. give or take a half an hour, as his back was getting sore. When asked what he had in mind when he amended the form, he testified that his back was starting to kill him, so he was covering his butt in case something more came of it. When his back hurt later in the day, he marked on the FLHA. He realized that he had originally marked "not working alone" and changed it to "working alone" and initialled it. He carried on working for the balance of the day.

[172] Mr. Mullins testified that, at the end of the work day, he signed out and went to the seacan where everyone met at the toolbox at the end of the day and handed in FLHA cards. He confirmed his FLHA form as Exhibit A-9. The form was given to Trevor Shackleton and Richard Skinner who was standing beside him. Mr. Mullins indicated he was last to leave that day, and both the others were anxious to leave. When asked if there was any conversation at the time, Mr. Mullins indicated "yes" and that he had given the card to them and the printed notation was shown at the time. He said he had a bad back after working all day by himself and a discussion followed between Trevor Shackleton and Richard Skinner discussed who might take him to the hospital, because they did not know who should. Mr. Shackleton indicated that Brian Polny would have to take him. Mr. Mullins indicated that he did not ask to go to the hospital and that it would have been an inconvenience to be taken there. He was, however, afraid his back might get worse and said he had never been injured on the job so he would instead just see how it felt the next day.

[173] Mr. Mullins testified that he was unable to sleep that night since his back wasn't any better and decided it was best to rest in his trailer the following day rather than aggravate it.

[174] He testified that he returned to work on November 2, 2018, and attended the toolbox meeting. After it was over, he spoke to the PCL Safety representative who was at the toolbox meeting. Before the meeting was over, Mr. Mullins said he asked whether he could come speak to them after the toolbox.

[175] Mr. Mullins indicated he had not been instructed to meet with the PCL Safety representative by Mr. Polny and, as he and PCL representative were walking away from the meeting privately, Mr. Polny started following them walking about 10 feet away. He moved closer to Mr. Mullins and the PCL representative 3 or 4 times before saying to the PCL guy that he's not allowed to talk to you as he no longer works for Hallbook.

[176] Mr. Mullins testified that this was the first time he heard he was not working for Hallbook. He further stated that the PCL representative said he still could express his concerns and suggested they go to the office about a 5 minute walk away. Mr. Mullins indicated that he believed Mr. Polny did not want him to speak to the PCL representative and that's why he interrupted. After meeting with the PCL safety representative, Mr. Mullins said that the individual told him that his issues were above his pay grade and he was taken to the Head Safety and Project Manager, Jim Gold. After about half an hour, this meeting took place and Mr. Mullins says he expressed his concerns about how he was forced to work alone without a helper. He

was informed by Mr. Gold that they couldn't get involved in Hallbook's affairs and it was between Mr. Mullins and Hallbook.

[177] Mr. Mullins testified that after this meeting, Mr. Polny tried to escort him off site, but he did not leave immediately as the PCL officer indicated that he could stay on site until Mr. Mullins retrieved his tools. When asked whether he was paid for that day, Mr. Mullins indicated he was not.

[178] When asked if he posted anything on social media, Mr. Mullins stated that he put too much on social media to remember, but did put pictures of Mr. Polny on there and expressed what he thought of Mr. Polny. When presented with a series of text messages of November 2, 2018, Mr. Mullins confirmed they were between him and Mr. Pearson as he believed it was time for Mr. Pearson to know what Brian Polny was all about and how he was running the show at the Chinook plant. He indicated these were sent from the lunchroom and he showed one of the other employees, Billy Tyndall, before stepping out the lunch room door. He testified that he believed Mr. Polny was the only problem on the job. He said Mr. Pearson could be hard, but he had respect for him and believed that the respect was mutual.

[179] Mr. Mullins was asked specifically about one paragraph in the text exchange *"I know you saw my FLHA from yesterday. I did that for a purpose – to cover my butt. I was unable to go to work today, as my back was sore from having to do shit work on the ladder all day, with no help, because Polny wants to make me look slow"*. Mr. Mullins explained that he sent that because Mr. Polny was trying to make him look bad and look slow. If a worker is not keeping up their production, he said there is good reason to get rid of them if they want to. Mr. Mullins further affirmed the details and complaint allegations conveyed to OH&S.

[180] Mr. Mullins was referred to Exhibit R-3 and confirmed it was an email sent by him to Mr. Pearson on February 5, 2019. He indicated that this was his first contact with Mr. Pearson since the January 28, 2019 decision of the OH&S officers. He further confirmed additional emails where he and Mr. Pearson were calculating the hours that Mr. Mullins was to be paid as well as an upcoming orientation and drug and alcohol testing for his return to work. Mr. Mullins confirmed that he received a payment from Hallbook based on the breakdown of hours set out in Mr. Pearson's email, but that he believed it was incomplete as he had not been paid for the period February 9th-19th, 2019. He also indicated that he was surprised so much was deducted tax, something like \$13,000.00, and this was part of the email discussion.

[181] Mr. Mullins was asked about the reference in his email about his living accommodations in Swift Current. He indicated he had secured accommodation there for October 15, 2018 but hadn't secured in February 2019. He indicated that he wanted to get back and see how the long the job would take and didn't want the hassle of bringing a trailer for 2 or 3 weeks. This statement contradicted the indication in the email that he had secured living accommodations in Swift Current as of February 19, 2019.

[182] He also testified that he was told by Mr. Skinner, while driving to Swift Current, that Mr. Skinner believed he should not come back to the job site. When asked why that was the case, he indicated "their gonna crucify you". Mr. Skinner told him Trevor Shackleton was laughing and said he "cost the company a lot of money and won't be here for long". Mr. Mullins indicated that he expressed concerns to Mr. Pearson about his treatment by supervisors, but received no response.

[183] When asked about Exhibit R-4 representing a further email to Mr. Pearson on February 21, 2019, which confirmed that the hours were closer to correct than he earlier anticipated, he also raised the issues about threats that were made against him by supervisors on site. He indicated that Mr. Pearson did not respond to the issue. When asked whether he returned to Hallbook, he indicated he had not, and he had not been paid any additional amounts by them.

[184] Mr. Mullins testified that he raised the concerns about his return to work with OH&S officer and received a callback from Susan Boan indicating that, as the matter had originally been appealed, all issues were in the hands of the adjudicator. He testified that he never indicated to OH&S that he did not want to go back to work, but certainly would have preferred to work elsewhere.

[185] Mr. Mullins testified that his usual earnings from Hallbook were approximately \$2,500 gross/week. He indicated that he would work 40 hours a week and up to 10 hours of overtime for a total of 50 hours of week as set out in Exhibit R-2, his email of February 13th to Barry Pearson.

[186] Mr. Mullins indicated that following his departure from Hallbook, he worked for Skyway commencing November 6, 2018 on a short job as a buddy called him saying a hand was required in Lloydminster. This was at the Husky Plant in Lloydminster. Subsequently, he had brief employment with Brock Canada in Lloydminster and worked one pay period for them. He also worked for Kondrea Insulation from September 1, 2019 until a recent layoff occurring about October 10, 2019. Mr. Mullins also confirmed the various documents at Exhibit R-16 being messages pertaining to job inquiries that he made. He testified that about 90% of jobs in this trade are obtained by word of mouth and that he tried calling in every favour for the past 13 years for additional work, but there was not much out there.

[187] In cross-examination, Mr. Mullins was referred again to the various acknowledgment and orientation manuals that were presented to him earlier. He confirmed that he had signed the documents and that he may not have read them, but understood them as they were part of the on-boarding process regarding competence and safety in the industry. He also confirmed that both employer and employees breezed through the policies and were comfortable with the general set of rules in the trade. He testified that he knew how to handle an injury in the workplace and Hallbook's process was not unusual within the industry.

[188] Mr. Mullins was questioned about the "working alone" policy and indicated that he had not understood the difference. He confirmed that he listened to earlier testimony about "working alone" in the policy but believed it was not his concern. He stated that he realized he was not working two miles away from anyone but rather alone on the cart and took it to mean that he was working without a helper. He didn't realize the meaning within the policy when he put his indication down on the FLHA card. He said that he was not in danger "working alone" and realizes that it can mean something different from the evidence he heard. His concern was his injury to his back and to not get a two way radio in time to call for help. He said that people close by were above him, it was a noisy site, and they were working behind a tarp.

[189] Mr. Mullins confirmed that he believed the FLHA was very important as a hazard assessment tool typical in the industry. He also understood that safety was important to all working in the business. He confirmed that his concern was about not having a helper. He also confirmed that he knew other people would review and look at the FLHA and understood the work being undertaken at the Chinook site. When asked specifically about having checked "no", where there was an injury at the time, Mr. Mullins confirmed he had checked "no". At the end of

the day he had discussions with others, but only marked the changes and made the notes following the discussion. The changes he made were done around 4:00 p.m. following Mr. Skinner's sign off. He testified that he added the reference to having no helper when his memory was jogged as he made the change to the "working alone" section.

[190] When asked whether he understood that indicating a workplace injury on the FLHA would trigger an investigation, Mr. Mullins indicated "yes". He also confirmed that he did not indicate an injury as he did not like to make trivial complaints. He said some companies ask if you had previous work place injuries and he didn't want to cost the company money as this might be something that will get better with a bit of rest. He confirmed that he was given the opportunity for medical attention, but felt his sore back didn't warrant going to the hospital.

[191] When further questioned about filling out the FLHA, Mr. Mullins indicated it was done at the work area and that he had been told by Mr. Skinner that Mr. Polny denied the helper. He noted that he could've made the change to the form then, but didn't. When asked whether there were more hazards arising because no helper was given to him, he said "no", but it made him think more about the dangers despite the work being no more complicated. He testified that towards the end of the day his back was really hurting him and he asked himself why he was having to go up and down the ladder a hundred times over pipes and rails at age 55 doing headers, covering off pipe with 2 inch layers and another 2 inch layer. He said he couldn't reach his arms around from side to side to get all the layers on. He was continually going up and down getting materials and making cuts. When his back got sore, he was working alone and believed this became a hazard prompting him to update things. He agreed that Mr. Polny was the one who could assign a helper.

[192] In response to a question whether he liked Mr. Polny, Mr. Mullins replied that he had a steak with him three nights earlier and drinks the following night, and there were no problems between them until the day he made a request for a helper. When asked whether he didn't get along with Mr. Polny by October 31, 2018, Mr. Mullins testified that there had been three guys in the materials pile hiding and smoking and Mr. Polny didn't like that. He also confirmed that he was angry at Mr. Polny as he saw no reason to deny him a helper and the more his back hurt, the more he didn't think it was the right decision. He believed he was being a bully. When asked whether Mr. Polny could essentially set him up, Mr. Mullins said "yes" he had thought about that. He said when he made a change to the FLHA only his back was on his mind. When it was suggested to him that making the change on the FLHA to 'working alone' was because Mr. Polny was picking on you, Mr. Mullins indicated that was not the situation at the time and was not on his mind then. He thought it was personal because it made no sense work-wise or professionally to not have a helper, and agreed that it may be one reason to set him up with a layoff.

[193] Mr. Mullins confirmed at the time, it was strictly safety going through his mind when he did the FLHA. Mr. Mullins confirmed that he observed Mr. Polny's testimony and agreed that he had not challenged whether Mr. Mullins had been sick or been late.

[194] When asked about making a call to Union Local 110, Mr. Mullins said he called Local 110 to tell them Mr. Polny and two other foremen were working non-union. He hoped there would be consequences and was prepared to be called vindictive. He said he did it. He testified that he tried to make them lose their union membership and to lose work and jobs associated with it. He fully understood there would be a financial impediment to them. He said he would not mind that all of them would be fined and it would cost them their union pension. All of this was okay with him and Mr. Mullins said he wasn't going to sugar coat it. When asked specifically

about the two foremen besides Mr. Polny who were reported, Mr. Mullins said the union asked whether there were any other union guys on the site. He said he wouldn't lie, and said there were - but it wasn't his original intention to tell them about the others. He was simply answering truthfully, but was vindictive towards Mr. Polny not the others. Mr. Mullins testified he called the union on Mr. Polny because he didn't give him a helper, and that the call was made to the union before he was laid off. When asked whether he had known Mr. Polny for only 5 days, Mr. Mullins said "yes" and that he was a pretty good judge of character.

[195] The final questions related to job searches and confirmed the evidence in direct examination about various job searches and jobs obtained. When asked about employment insurance and whether Mr. Mullins received any, he said he was denied employment insurance because the record of employment had been done incorrectly by Hallbook. His pay had been identified as a lump sum severance so he was refused employment insurance.

Analysis and Discussion

[196] The following legislative provisions from the Act are central to the questions that must be addressed on this appeal:

Discriminatory action prohibited

3-35 No employer shall take discriminatory action against a worker because the worker:

- (a) acts or has acted in compliance with:
 - (i) this Part or the regulations made pursuant to this Part;
 - (ii) Part V or the regulations made pursuant to that Part;
 - (iii) a code of practice issued pursuant to section 3-84; or
 - (iv) a notice of contravention or a requirement or prohibition contained in a notice of contravention;
- (b) seeks or has sought the enforcement of:
 - (i) this Part or the regulations made pursuant to this Part; or
 - (ii) Part V or the regulations made pursuant to that Part;
- (c) assists or has assisted with the activities of an occupational health committee or occupational health and safety representative;
- (d) seeks or has sought the establishment of an occupational health committee or the designation of an occupational health and safety representative;
- (e) performs or has performed the function of an occupational health committee member or occupational health and safety representative;
- (f) refuses or has refused to perform an act or series of acts pursuant to section 3-31;
- (g) is about to testify or has testified in any proceeding or inquiry pursuant to:
 - (i) this Part or the regulations made pursuant to this Part; or
 - (ii) Part V or the regulations made pursuant to that Part;
- (h) gives or has given information to an occupational health committee, an occupational health and safety representative, an occupational health officer or other person responsible for the administration of this Part or the regulations made pursuant to this Part with respect to the health and safety of workers at a place of employment;
- (i) gives or has given information to a radiation health officer within the meaning of Part V or to any other person responsible for the administration of that Part or the regulations made pursuant to that Part;

- (j) is or has been prevented from working because a notice of contravention with respect to the worker's work has been served on the employer; or
- (k) has been prevented from working because an order has been served pursuant to Part V or the regulations made pursuant to that Part on an owner, vendor or operator within the meaning of that Part.

Referral to occupational health officer

3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.

(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

- (a) cease the discriminatory action;
- (b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;
- (c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and
- (d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.

(3) If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3-35, the occupational health officer shall advise the worker of the reasons for that decision in writing.

(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35:

- (a) in any prosecution or other proceeding taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and
- (b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

(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).

[197] To make appropriate determinations under the above provisions, I am guided by the adjudicator in *Banff Constructors Ltd. and Lance Arcand*, LRB File No. 184-19, where he set out the following considerations at paragraphs 44 through 46:

[44] While it isn't necessary, in interpreting these provisions, to approve the public policy that underlies them, the creation of a presumption and reverse onus as set out in subs. (4) does not seem unusual. The worker is required to establish he or she was engaged in protected activities and that the employer took a discriminatory action. Both of these are within the knowledge of the worker and can readily be proven by the worker if the facts exist. While the worker may believe, on reasonable grounds, that there is a causal connection between the two, proving that is potentially far more difficult. Consequently,

the onus shifts to the employer, who has knowledge of why the discriminatory action was taken and is required to establish that it was taken for good and sufficient other reason.

[45] One might argue there should, as a practical matter, be a requirement for a nexus (adopting the term from the adjudicator in *Britto*) between the protected activity and the discriminatory action to the extent it can logically be concluded, based on the evidence that the discriminatory action may have been taken because the employee engaged in the protected activity. However, this is unnecessary, since the evidence required to rebut the presumption against the employer and satisfy the onus will depend on the circumstances. In some instances, for example where there is a clear causal connection established between the two actions, the presumption will be difficult to overcome. However, in other instances, for example where there is no indication of a causal connection between the two actions, including a temporal connection as discussed by the adjudicator in *Britto*, it might require little from the employer to meet the onus and rebut the presumption. In some cases, the presumption will be rebutted by the worker's own evidence.

[46] Having reached this conclusion on the interpretation of s. 3-36(4), the broad issues to be determined in the instant case are:

1. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35?
2. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s. 3-1(1)(i)?
3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3-36(4)?

[198] I agree with the statements set out by the adjudicator in *Banff Constructors*, and will apply the same 3 part analysis as he determined in paragraph 46.

1. Was the Respondent, Mr. Mullins engaged in an activity described in s. 3-35 of the Act (i.e. a protected activity)?

Yes. Mr. Mullins submitted a FLHA that raised safety concerns. The evidence of both parties confirmed that a "safety first" approach was taken on the Chinook project, and that FLHAs were important instruments for identifying and reporting safety concerns. The concerns were occupational health and safety issues, which are governed by Part 3 of the Act.

2. Was the Appellant's termination of the Respondent's employment a discriminatory action as defined in clause 3-1(1)(i) of the Act?

Yes. Termination of employment and layoff from employment are both included within the definition of "discriminatory action" in the Act.

3. Was the Appellant's termination of the Respondent's employment an unlawful discriminatory action pursuant to any other subsection under section 3-35 of the Act or was the discriminatory action taken for good and sufficient other reason within the meaning of section 3-36(4) of the Act?

[199] Much of the evidence called on behalf of the Appellant focused on the narrow band of time between Mr. Mullins' submission of the amended FLHA and the delivery of his layoff notice by Mr. Polny. Mr. Polny consulted Mr. Pearson prior to the layoff and Mr. Pearson was apparently unaware of the amended FLHA when he agreed with Mr. Polny that Mr. Mullins should be released. Throughout the timeframe, Mr. Polny was aware of the amended FLHA and, for whatever reasons, may or may not have elected to inform Mr. Pearson of it. Regardless, by the amended FLHA, Mr. Mullins had raised a health and safety concern that ought not to have been ignored or summarily disregarded.

[200] I accept the evidence called on behalf of the Appellant regarding the up and down nature of its workforce, of the need to match human resources to available work, and the frustration it must feel when factors beyond its control caused disruptions in work flow and efficiencies. Nonetheless, this is nothing new in the industry, and decisions will continue to be made to dismiss workers on very short notice. These factors, however, do not necessarily align and place Mr. Mullins as an obvious choice for next worker to be released, particularly as the mismatch of available work to manpower was not flagged as a significant concern by Hallbook until mid-November. Had Mr. Mullins' concerns been adequately investigated, or investigated at all, and determined to be more mischief than *bonafide* health and safety concerns, his subsequent release might be viewed differently. In the result, I find that Mr. Mullins was not released for other good and sufficient reasons. All of the witnesses confirmed that safety was considered a first and foremost concern in the industry. Any safety concern raised ought to have been followed up with some degree of objective investigation. Mr. Polny did not feel the need to act on or even further investigate Mr. Mullins' concern. Whether this was because he knew enough about the circumstances that he believed the concern was not a *bonafide* health concern or because he knew he could release him summarily in any event is not fully apparent.

Conclusion

[201] After considering all of the evidence, I have concluded that Mr. Mullins was terminated because he raised a health and safety concern identified through the submission of a FLHA on October 31, 2018. Without this, Mr. Mullins and Mr. Polny may have tolerated each other for a longer period of time. While I accept that work in the insulation industry was up and down, and workforce requirements adjusted often, I am not convinced that Mr. Mullins was released to allay manpower concerns and because of such concerns. Matching manpower to available work was an ongoing challenge for Hallbook, but Mr. Mullins layoff could have been effected any number of days before or after the submission of an amended FLHA. This was not how events transpired.

[202] Unfortunately, the Decision and accompanying Notice of Contravention dated January 28, 2019 (the "Order") cites the incorrect subsection of section 3-35 in the final paragraph. As the issues before me are brought in a hearing *de novo*, and my authority extends broadly in determining an appropriate result, I am not constrained by the precise subsection cited in the Order, and am prepared to sustain the original outcome that Mr. Mullins was entitled to reinstatement and appropriate payment in accordance with the Decision.

[203] I further conclude that Hallbook has substantially complied with the Decision. Hallbook made a return to work possible for Mr. Mullins commencing February 19, 2019. It was Mr. Mullins who failed to attend and resume work on February 19, 2019 and thereafter. While he expressed concerns to Mr. Pearson in advance of his return date, he ought to have returned and followed appropriate steps if problems at the worksite actually materialized. If he had fears

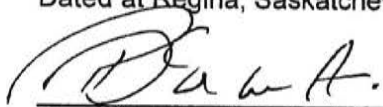
about his return because of his own prior mischief, he was obliged to fulfil his obligation, particularly as it was a remedy he sought in the first place. Hallbook met its obligation by making a return to work available to him and nothing further is owed to Mr. Mullins by Hallbook. I am satisfied that the extent of Hallbook's compliance in the circumstances was sufficient.

Order

[204] Pursuant to s. 4-6 of the Act:

- (a) the appeal is dismissed;
- (b) the Decision is amended to remove the reference to subsection 3-35(f) in the final paragraph; and
- (c) the Respondent's claim for an additional award for the period after February 19, 2019 is dismissed.

Dated at Regina, Saskatchewan, this 18th day of September, 2020.



Perry D. Erhardt, Q.C., Adjudicator