



**IN THE MATTER OF:**

An Appeal to an Adjudicator Pursuant to Sections 3-53 and 3-54 of *The Saskatchewan Employment Act*

**BETWEEN:**

**Andritz Hydro Canada Inc.**

Appellant

- and -

**Tim Lalonde**

Respondent

Adjudicator	Perry Erhardt
For the Appellant	Steve Seiferling
For the Respondent	Keir Vallance

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**DECISION**

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**I. Introduction**

[1] The Appellant, Andritz Hydro Canada Inc. (“Andritz”), has appealed the decision dated November 1, 2019 (the “Decision”) of Occupational Health and Safety Officer, Shawn Tallmadge, which found that the Appellant acted contrary to s. 3-35 of *The Saskatchewan Employment Act* (the “Act”) in its dismissal of the Respondent, Tim Lalonde. The entire file pertaining to this matter was delivered to me by the Executive Director, Occupational Health and Safety Division, Ministry of Labour Relations and Workplace Safety.

[2] In the Decision, Officer Tallmadge (the “Officer”) concluded that the termination of Tim Lalonde by Andritz was an unlawful discriminatory action contrary to the Act and ordered, among other things, that Andritz reinstate him to his former employment under the same terms and conditions, pay him wages he would have earned had he not been wrongfully discriminated against, and remove any reprimand or reference to the matter from any employment records with

respect to Tim Lalonde. The Decision indicated that health and safety concerns were raised by Tim Lalonde, including an issue of workplace harassment, and that Andritz had not provided good and sufficient reasons for the termination.

[3] Andritz 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 dated November 5, 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 on the Decision as follows:

- (a) The decision of the Officer that Andritz contravened s.3-35 of the Act was made without due regard to the evidence provided, or completely ignoring the evidence provided by Andritz;
- (b) The Officer erred in failing to consider Andritz's good and sufficient other cause for the layoff, specifically that Andritz had fully dealt with all complaints filed by Mr. Lalonde, and determined that Mr. Lalonde was engaging in filing unfounded complaints;
- (c) The Appellant had good and sufficient other cause for laying off the Respondent, in that he was a probationary employee, pursuant to the collective bargaining agreement between Andritz and Mr. Lalonde's union; and
- (d) The Officer failed to consider evidence that the complaints of the Respondent had been dealt with by Andritz prior to his layoff, and were determined to be unfounded and frivolous.

[4] The Appellant also applied for a stay from the application of the Decision. On December 19, 2019, after receiving and hearing submissions from counsel, I made a preliminary order granting the stay and suspending the terms of the Decision pending the outcome of this appeal.

[5] Following prehearing calls with legal counsel for the parties to address representation, document disclosure, adjournments (due primarily to Covid-19 concerns), and hearing processes and dates, this appeal proceeded to a hearing before me from September 21 through 26, 2020, and resumed on October 6, 2020 when rebuttal evidence was called and final arguments from counsel were presented.

[6] This matter proceeded as a hearing *de novo* and was conducted by videoconference over the Webex platform.

## **II. The Evidence**

[7] The Appellant called four witnesses; namely, Josh Beckman, Marcel Labelle, Francoys Gauthier, and Gloria Carrier. The Respondent called two witnesses; namely, Shawn Tallmadge (Officer) and Tim Lalonde. All witnesses were affirmed prior to testifying.

### ***Evidence of Josh Beckman***

[8] Josh Beckman testified that he has been employed by SaskPower for approximately 5 years in the position of Safety Advisor for Field Services. In his role, he works directly from the Saskatoon Region to Lake Athabasca in the North Saskatchewan. Within his territory was SaskPower's E.B. Campbell Hydro Station where the events concerning this Appeal took place. Mr. Beckman advised that he travelled to various places and was regularly involved in the training and orientation of staff. Additionally, he worked on hazard assessments and audits, following which he addressed concerns that might involve either inspections or investigations.

[9] Mr. Beckman testified that, at SaskPower, safety is important in everything it does as their goal is to have every worker go home safe at the end of each day. He further stated that the E.B. Campbell site enjoyed a record of 25 years without a lost time injury, which means that no one was off-site for any time beyond the initial day that an injury might have occurred. He stated that everyday hazards were assessed regularly and safety walks and inspections with contractors were carried out. He said concerns would be addressed on site and documentation shared with contractors as mission zero was a priority for all of them. He said at the E.B. Campbell site hazard and risk assessments were done daily and there were daily meetings to ensure a good plan was in place.

[10] He testified that there was ongoing work at the site with the dismantling of Unit 4 and a series of rebuilds being carried out over a 5 year period. He indicated that 3 units were completed. At every stage of a rebuild, safety was maintained throughout and there was regular feedback following walks and audits of safety practices.

[11] Mr. Beckman testified that he had dealings with Andritz regularly and was on site. He conducted orientations and reviewed hazards regularly. He would also review reporting procedures if an incident occurred. He said that there was site orientation given to all the workers coming onto site as it was important for them to report safety concerns.

[12] Mr. Beckman identified Exhibit A-1 as the safety orientation slides used for workers at the E.B. Campbell Hydro Station. He was directed to slide 60 and confirmed it as the approved reporting structure of safety concerns at the site. He testified that any contract worker would first report to their contract supervisor who would then further report to the SaskPower Supervisor on site. He testified that all workers would have reviewed and received this presentation, including the respondent, Mr. Lalonde. When asked whether it would be unusual for a contract worker to report a safety concern directly to SaskPower, Mr. Beckman replied "yes" as they are supposed to go to their supervisor first so that everyone on site is aware and the matter can be dealt with immediately. He stated that if this process isn't followed it was possible that injury or further injury could occur. Mr. Beckman testified that SaskPower expects all safety matters to be addressed in the manner set out on the slide no matter how big or small.

[13] When asked about complaints received by SaskPower in late July of 2019, Mr. Beckman testified that SaskPower received two emails from their customer service area; the first being a phone call to customer service and the second was not sent directly to customer service. He indicated that two concerns were raised; firstly, a step was required to enter in to a lunch trailer, and secondly, a concern was raised with Nelson Carrier regarding access at the Gates intake structure. He further testified that there are two main structures at the site being an intake structure (also "Gates") and a power house ("Powerhouse"), each of which is separated by a road. He described that the hydro station operated such that the water was drawn from the lake in through the units as part of the power generation process.

[14] In response to where Mr. Lalonde worked on site, Mr. Beckman testified that Mr. Lalonde worked at the Powerhouse as an Overhead Crane Operator.

[15] When further questioned about the two issues raised in the complaint to customer service, Mr. Beckman testified that the step into the lunch trailer was dealt with by Andritz within a day or two of receiving the contact.

[16] He testified that the second complaint indicated that if safety concerns were brought up by workers, they were ridiculed and intimidated by Nelson Carrier and that nothing happened in respect of the safety concerns. No other specifics were given in the complaint. He testified further that it was not a normal practice to have such complaints come through the customer relations line as they would normally be dealt with onsite and addressed through the supervisor and proper channels. He further testified it was a concern that these matters came through Customer Service as the timing to get to them might be a few days following the concern. As such, the concern couldn't be addressed right away and that is why the process set out in slide 60 of Exhibit A-1 is so important.

[17] Mr. Beckman testified that upon receiving the complaint through Customer Service, it was given to the Plant Manager who further forwarded it to Mr. Beckman's manager and then along to the contract administrator who informed Andritz. A meeting was set up so that the concern was brought to Andritz's attention. He further testified that Andritz was somewhat shocked by the officer reporting and their site manager was to attend to the matter. He stated that SaskPower started a report at that point and asked Andritz for an action plan to address the concerns.

[18] When asked who had made the complaint to Customer Service, Mr. Beckman stated that the letter indicated Tim Lalonde. He further testified that the name of the complainant was not given to Andritz only the content of the concern. Mr. Beckman testified that in response to the two concerns, Andritz built a step into the lunchroom and also conducted an internal safety stand down meeting to discuss the concern expressed about Mr. Carrier. He qualified that SaskPower did not attend the safety stand down meeting, but received notes pertaining to it.

[19] When asked why a stand down meeting would be held, Mr. Beckman stated that the indication was that Mr. Carrier was being intimidating and that the complainant didn't feel that safety concerns could be reported, and partly because Mr. Carrier's wife also worked on site. No one else was mentioned other than Mr. Carrier and his wife.



[20] When asked whether there was a second complaint, Mr. Beckman testified that it had been received, and it contained much more information about safety onsite. It indicated that people felt threatened to report and workers couldn't speak to anyone about it. It also raised an improper access being used at the Gates as well as an altercation between Mr. Carrier and Mr. Lalonde at a safety meeting. Exhibit A-2 was then shown to Mr. Beckman who confirmed the correspondence. Exhibit A-2 is an email from Tim Lalonde to "Contact Us" at SaskPower. Mr. Beckman indicated that he assumed that the first complaint had been typed by Customer Service staff and forwarded to the Plant Manager. He indicated it was received July 29, 2019 at 3:30 p.m. He also testified that the two foot climb required into the lunch trailer was remediated.

[21] Mr. Beckman further testified about the safety stand down meeting which required all work be stopped on site, and the conversations held about both the required step and Mr. Carrier regarding safety issue. He further testified that SaskPower officials spoke to several workers about Mr. Carrier and the general consensus was that there were no major concerns with Mr. Carrier.

[22] When asked whether an email from Mr. Lalonde to SaskPower Customer Relations would be a normal practice, Mr. Beckman indicated "no", it would not be normal for this site. The concerns should be brought up immediately if it needed to be addressed. He said bringing up a real safety concern 4 days later meant a lot of problems could happen in the interim.

[23] When asked about the issue of improper access to the top of the Gates, Mr. Beckman testified that he understood that Andritz built a platform where a ladder had been previously set up. He said the ladder leaning on the building had not been safe and Andritz had to move the ladder. He said that SaskPower acted on this on August 1 by going to the contractor and asking that it be addressed immediately. He also confirmed that the concern was with another contractor, not Andritz.

[24] When asked whether the "ladder issue" remained a concern on August 3, Mr. Beckman indicated "no" as it had been addressed by then and furthermore, didn't concern Andritz at all.

[25] In a further question regarding an incident with a telehandler that was raised in the email, Mr. Beckman indicated that the concern had been reported to SaskPower by Andritz and an investigation carried out. He stated that a report had been received and corrective action taken as part of the incident.

[26] When asked when the email from Mr. Lalonde was received, Mr. Beckman indicated that SaskPower received the email on August 3<sup>rd</sup>, although it was not received at the E.B. Campbell site until August 7<sup>th</sup>. He further testified that SaskPower was aware that it originated from Mr. Lalonde as it had both his email address and name. He stated that the sender's name was not communicated to Andritz and Andritz was only provided the content of the email. He said that at an internal meeting it was determined that it would not be correct to send all of the information just the content without the writer's name.

[27] Mr. Beckman testified that meetings were held between officials of SaskPower and Andritz on August 8<sup>th</sup> to discuss investigations required, ongoing plans, and expectations for

safety on site. It was also stressed to Andritz that SaskPower wanted to know within two weeks that safety was being fully followed on site. He testified that Andritz was advised of the complaint on August 7<sup>th</sup> and given some time to digest and plan for next steps. He stated that Andritz and SaskPower agreed to do an investigation and determine the facts. He said that Marcel Labelle of Andritz was to lead the investigation and that he, himself, participated as SaskPower wanted to monitor and ensure that all was done that was agreed upon. Mr. Beckman testified that he took part in interviews with workers, and that Marcel Labelle put a final report together. He first met Marcel Labelle when he arrived in Saskatoon and they coordinated who should be interviewed.

[28] When asked what his conclusions were following the investigation, Mr. Beckman testified that throughout the interviews he understood from workers that safety was going well. He said no one indicated any fear for reprisals except for Mr. Lalonde. He indicated that a few workers talked about the fact that Mr. Lalonde and Nelson Carrier did not get along.

[29] Mr. Beckman further testified regarding the investigation report, marked as Exhibit A-3, and testified about the indication on page 2 of the report regarding the forklift and trailer incident. He said there was a gap in time as, when the incident was reported, a supervisor was away on course and although the report was late, it was received and corrected. Mr. Beckman further stressed the need to immediately report as SaskPower and Andritz took safety very seriously.

[30] In response to paragraph 3 on page 2 of the investigation report, Mr. Beckman testified that this occasion was the first where they had husband and wife working onsite. He said it appeared they separated work issues, and all safety matters were reported to ensure everyone went home safely every day. He indicated that differences in opinion and maybe some previous dealings on site resulted in Mr. Lalonde and Mr. Carrier clashing personalities. He further testified that working together is absolutely important as all workers need to have a focus on their jobs. He stated that some Andritz tasks are high risk so hazard assessments are done; however, not all of the work is dangerous. He said there would be risk if people weren't focused on their roles. He testified that there were no concerns expressed by anyone who needed to approach Gloria Carrier except for Mr. Lalonde's concerns about Nelson Carrier.

[31] As to the remaining concerns set out paragraph 4 of page 2 of the report, Mr. Beckman testified that Andritz submitted corrective action plans for the remaining concerns and a site wide inspection was done on each of August 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>. Pictures and an action plan were provided and he said Andritz corrected all of the concerns. This was also a requirement of Occupational Health & Safety he added.

[32] Mr. Beckman testified that he agreed with the conclusion of the report that there was good communication between SaskPower and Andritz. He said all concerns raised were safety concerns and addressed as action was taken.

[33] When asked whether there were specific concerns identified for him, Mr. Beckman testified that having a worker on site that didn't want to follow internal safety procedures was a concern, even if they brought safety concerns forward. He said that Mr. Lalonde seemed to

understand the process, but still went to the Contact Us line and there was a resulting delay. Additionally, he said a conflict between two people on site may result in focus coming off their jobs and that this focus was required to avoid damage or injury. He stated that workers needed to go through their supervisor to report safety concerns and it was a wrong approach to go offsite as concerns wouldn't be addressed as quickly.

[34] When asked whether SaskPower was generally happy with Andritz's safety on site, Mr. Beckman said "yes", he believed so particularly as the Occupational Health and Safety committee met monthly and there was ample opportunity to report. He also indicated that safety walks were held and good toolbox meetings indicated they tackled hazards well, that the supervisors were engaged, and they worked well with their crews. He further said hazard risk assessments were done almost every day.

[35] When shown Exhibit A-4, an email on which Mr. Beckman was copied and which displayed a text sent by Mr. Lalonde to Mr. Beckman, Mr. Beckman confirmed that he recognized the text. He testified that he received the text around August 19<sup>th</sup> and sent it on to his supervisor. He further stated that staff were instructed to not correspond further with Mr. Lalonde and that it was only to be through legal counsel. He had forwarded the text message to senior staff for it to be dealt with.

[36] Mr. Beckman also testified that he also received a phone call from Mr. Lalonde asking why he had been laid off when he was supposed to bring up safety concerns. Mr. Beckman said he told Mr. Lalonde to contact internal counsel at SaskPower and not to call him directly.

[37] Mr. Beckman was presented with Exhibit A-5, being a further text message that he indicated he received from Mr. Lalonde. He testified that he did not respond to any of the text messages and was surprised to receive it. He simply forwarded it to upper management as he preferred to be left alone.

[38] Mr. Beckman also testified that in a phone call that Mr. Lalonde placed to him, he informed Mr. Lalonde that he was not interested in talking on the phone and that the matters should be dealt with by upper management and legal at SaskPower. He said he told Mr. Lalonde that he needed to go to John Phillips in legal, or Kevin Schwing of the safety division.

[39] When asked about his overall impression of Mr. Lalonde, Mr. Beckman stated that Mr. Lalonde didn't seem to accept direction or supervision. He said that SaskPower was clear in its orientation and any conversations, but Mr. Lalonde did not do what was asked of him and had his own agenda. He said Mr. Lalonde tried communicating by different methods even after investigations were done and concerns were addressed. He said that Mr. Lalonde just would not let things go. He testified that Mr. Lalonde was not compliant with SaskPower's protocols even after being reminded of them in the stand down meeting and by others.

[40] In cross examination, Mr. Beckman confirmed that he was not present at the safety orientation conducted by SaskPower but indicated that a signing sheet was there for signing at the presentation, which was followed by an exam. He said the meeting was conducted by the construction supervisor and the signature sheets were subsequently stored in a binder onsite. He

indicated that the presentation took approximately 1.5 hours. On further questioning, Mr. Beckman confirmed that the slides in Exhibit A-1 were not identical to what would have been given as those were containing Covid-19 information. The presentation would be the same except for the new Covid-19 information.

[41] In response to a question regarding the complaints received by SaskPower and how they were received, Mr. Beckman indicated that both complaints came as emails to the site manager and further to the construction staff in that form. He said he understood the first concern was a phone call, which had been transcribed, and the second was an email. He testified that he did not know how customer service would take down the concern and that's why it should've been made onsite. He also said that the safety line was not called and the second complaint took almost 4 days to get to the proper person on site.

[42] When asked whether SaskPower would refuse to receive complaints outside of the standard process, Mr. Beckman indicated "no" but it is encouraged to go through the supervisors first and follow the process.

[43] When asked about the trailer step, Mr. Beckman recalled that it required a 2 foot step into the lunch trailer and that the complainant felt that if a safety issue was raised he would be ridiculed by Mr. Carrier. He stated that the complaint was remedied and was unsure whether it was brought up previously.

[44] When asked about the telehandler incident and whether it took time for frontline workers to hear about the resolution, Mr. Beckman said "yes, it would've taken some time", and believed that Andritz did the investigation and only later were sharing it with the workers and SaskPower. He agreed that a two week gap between the incident and reporting to workers was definitely a concern, but it was worked through on site. When asked whether there were other complaints brought up about Nelson Carrier besides that from Mr. Lalonde, Mr. Beckman indicated "no", he did not believe so.

[45] In response to questions regarding the worker interviews giving rise to the investigation report, Mr. Beckman stated that face to face meetings were held with each individual employee by Marcel Labelle and himself. He said that people were asked about the site management and whether action was being taken on safety concerns. He said there were no set questions but rather a more free flowing conversation, which led to other questions that were addressed. Mr. Beckman indicated that workers didn't seem to have any problems sharing their opinions with a senior manager such as Mr. Labelle.

[46] When asked whether Mr. Labelle would have known that the complaints originated from Mr. Lalonde when he was interviewed, Mr. Beckman said "no", and that he would have known someone from Andritz corresponded with SaskPower, but at no point was Mr. Lalonde's name shared with Andritz at that time. He said there was a conversation between the three of them, Mr. Labelle, Mr. Lalonde, and himself, and he did not recall the conversation being heated at all.

[47] When questioned about Mr. Lalonde's termination, Mr. Beckman testified that SaskPower supported it following the investigation, which was the contractor's responsibility to

conclude and decide next steps. He said SaskPower did not direct the contractor to remove Mr. Lalonde from site. He confirmed that he took no personal position on Mr. Lalonde's layoff and that all the facts were set out in the report. He said Andritz made the decision to lay off the employee. He said he had no participation beyond the investigation and that Mr. Labelle put the report together. He said that SaskPower did not request the removal of any employee.

[48] When asked whether he had observed Mr. Lalonde lacking focus as a result of conflicts with other workers, Mr. Beckman testified that "no", he had no observance of such lack of focus and he had seen Mr. Lalonde operate the crane a few times. He also said he did inspections and reviewed task cards and hazard risk assessments for SaskPower.

[49] When asked how he knew that text message he received from Mr. Lalonde actually came from him, Mr. Beckman testified that he had Mr. Lalonde's number in his phone and it displayed on the text messages. He confirmed that the messages were received following Mr. Lalonde's lay off.

[50] Of note, in response to questions on rebuttal evidence, Mr. Beckman identified Exhibit A-6 as the intake email received from customer service and Exhibit A-19 as a copy of the SaskPower Contact Us page. Mr. Beckman also testified about Exhibit A-16, the SaskPower video presentation played at the orientation of all workers coming onto the E.B. Campbell site, and Exhibit A-17, being the list of attendees at the July 15, 2019 orientation session and upon which Mr. Lalonde's name appeared. He testified that the video presentation was started with the push of a button and was about 45 minutes in duration. Exhibits A-6, A-16, A-17, and A-19 were confirmed and marked as full exhibits.

[51] Mr. Beckman testified that SaskPower's Contact Us page was accessed through its website. On it, questions could be asked of SaskPower and both names and phone numbers were entered. He said SaskPower staff determined which department it should be directed to. He further testified that SaskPower's Construction Safety page was new and there was no reporting mechanism on it.

### ***Evidence of Marcel Labelle***

[52] Mr. Labelle testified that he is the Safety Coordinator for Canadian Operations of Andritz Global. He reports to Andritz's Director of Hydro Division, and is based in Montreal. He stated that his duties include: investigating safety issues and visiting sites to ensure compliance. He also hires safety officers and trains individuals, monitors health and safety issues, and oversees risk assessments. He testified that he has served as Senior Safety Advisor for 8 years and previously had been an Occupational Health and Safety Officer for over 25 years with the Ontario Provincial Government. Mr. Labelle confirmed that he travelled from site to site and regularly monitored for safety compliance both against Andritz's and government regulation.

[53] He testified that from day one at the E.B. Campbell site there was mobilization and implementation of a health and safety management system. His personal assessment of the site was done, and they would see shared work with the client was carried out and gaps addressed.



He said that his role was to coordinate and provide anything required dealing with safety and the overall work plan. This was always put to the client for review and approval was part of the acceptance in the tendering of work. He said client approval was always required before starting work and he testified that all had to be compliant before work commenced.

[54] In response to a question regarding Andritz's safety policy for workers reporting on site, Mr. Labelle said that the policy was detailed to all workers in their orientation onsite. He said that all "near misses" and "any minor injuries" had to be reported. He said it was also used as an educational tool to prevent reoccurrences, and workers signed onto the policy. He said that the policy required workers to report incidents to their immediate supervisor or safety advisor. Also, reports could be given to worker representatives that were selected by their peers. He said the supervisor was the key person to be informed as they were dealing with the most day to day work and conducting toolbox meetings.

[55] When asked why he was on site at E.B. Campbell in August 2019, Mr. Labelle testified that he had been phoned by his Director and told a complaint had been sent in anonymously to SaskPower's hotline. After receiving this information, he indicated that he booked a flight and went to the site to investigate. He said a conference call was held on August 8<sup>th</sup> before he left for the site.

[56] When presented with Exhibit A-3, Investigation Report, Mr. Labelle confirmed that he knew the report. When asked to walk through a timeline of events, Mr. Labelle indicated that on August 8<sup>th</sup> he suggested to the client that there should be client participation in an investigation, which was agreed to by Josh Beckman of SaskPower. A discussion was then held with the management team, himself, Josh Beckman, the Project Manager, and several SaskPower Representatives. He said the first question raised was why had managers at the site not been informed of the concerns set out in the email. He said the accusations warranted looking into and included Andritz's worker names. Mr. Labelle testified that he was on site on August 9<sup>th</sup> to discuss the issues and coordinate the investigation.

[57] Mr. Labelle stated that, on August 10<sup>th</sup>, he and Josh Beckman went to the toolbox meeting of all employees from both the Powerhouse and Gates. He stated that the meeting was informed they were there to investigate concerns onsite and a complaint, but the name of complainant was not known. He said it was explained to workers that he and Josh would be consulting with them throughout the day to see if the accusations were real and what needed to be done in order to resolve things, then a report would be given back. He said the key issues were the 4 points set out in his report being fear of reprisal, failure to report incidents, potential conflict of interest, and safety concerns that were observed.

[58] He testified that at the toolbox meeting tasks were assigned and reviewed, and risks were also reviewed in detail. He said there was documentation which the workers signed at the bottom acknowledging the discussion that had taken place. He said that all workers were required to attend as well as the supervisors and health and safety advisor.

[59] When asked whether there were other safety meetings, Mr. Labelle indicated "yes" that there were weekly safety meetings held with workers on site. There may be a specific topic for



the meetings or simply finding out what was going on throughout the week. He said revisions might be made of inspections or corrective measures arising from site inspections. He believed the safety committee onsite held monthly meetings to review findings and recommendations as well as raising issues coming forward with workers.

[60] Mr. Labelle confirmed that he completed an investigation, including interviews and meetings, and that Mr. Beckman was there throughout. He said they both asked some questions and were complying with SaskPower's protocol. He further confirmed that all the individuals that were identified on page 3 of the Investigation Report had been spoken to.

[61] When asked how he first learned that Tim Lalonde was the complainant in the complaints that had been received, Mr. Labelle indicated that he learned this during his interview with Tim Lalonde, which was held at the Powerhouse. He said Mr. Lalonde confirmed that he had generated the complaint and told him so. Mr. Labelle indicated that this was the first that he knew it was Mr. Lalonde's complaint.

[62] When asked who Gloria and Nelson Carrier were, Mr. Labelle confirmed that Gloria was the Health and Safety Advisor onsite and that Nelson Carrier was the Superintendent in charge of the Gates. He further clarified that Mr. Carrier worked on the Gates at the top of the site and Mr. Lalonde operated a crane in the Powerhouse at a different location onsite.

[63] In response to questions regarding his conclusions following the investigation, Mr. Labelle said he believed that after talking to everyone and discussing things, the situation was calm and there was no intimidation. He said all interviewees were responsive and nobody said they had any issue with safety concerns. He said interviewees advised of good working relations with their supervisors, except that Mr. Lalonde and Nelson Carrier may have had differences in opinion and didn't like each other. This relationship was raised by a number of interviewees. He said that no one identified any issues with Gloria Carrier and that his observation of her work was that she was very diligent on all of her reporting and no one brought concerns to him about her. He said she has the utmost respect when it comes to safety issues from SaskPower and others. He indicated that she still remains on site as the Health and Safety Advisor.

[64] When questioned about 3 particular incidents, Mr. Labelle testified that the August 1<sup>st</sup> complaint regarding access by a stepladder was looked into and he was provided pictures. He said that at the time, the stairs had not been built and that a ladder being used to access the top of the building was not fully secured. He further stated that once he arrived on site, it had already been fixed. He said that holding a ladder by a person could be sufficient safety as the platform was under construction. He was unaware of who put the ladder up and it could have been Andritz or another contractor.

[65] When questioned about the second incident, regarding the telehandler hitch and a pin shearing off, Mr. Labelle indicated that this was not part of Mr. Lalonde's work as it appeared someone had backed a trailer to a position in the parking lot and turned too tight causing bolts to snap. He said nobody was in imminent danger and there were no injuries. He stated that the only concern was that the incident was slow to come in, which had been caused by a shift turnaround and communication was lacking in the swap-over of positions. He said that a later

meeting was held about the reporting mechanism and there was no serious damage. When asked whether there was any ongoing concern with the telehandler, Mr. Labelle said that there had been a concern but the unit was recertified by the Caterpillar dealer and the unit was operating today with no concerns.

[66] When asked about allegations of intimidation with safety issues being raised during meetings, Mr. Labelle indicated that interviewees had been asked about this and, had it been a problem, he would have dealt with it immediately. He said he would not take threats and intimidation lightly. He further testified that the issue was brought at the stand-down meeting and toolbox meetings, but no concern regarding reprisals came up or was observed.

[67] When questioned about the concern of a personality conflict, Mr. Labelle testified that the only person raising this concern was Tim Lalonde. He said no one else identified health and safety conduct in their actions and were all very professional on-site. He said worker representatives also had no concern and they were usually the liaison to management. Mr. Labelle further testified that with the ladder and forklift incidents all corrective action had been taken.

[68] When asked about the content of discussion at the toolbox meeting, Mr. Labelle indicated that they had discussed the forklift situation and confirmed that certification and approvals had all been achieved. He said no operators and nobody else expressed any concerns. He stated that they discussed reporting to their supervisors and their management and that it was clear they should go to their supervisor immediately if there were any hazards. He said that everyone seemed clear and positive following the meeting.

[69] When questioned about his interview with Mr. Lalonde, Mr. Labelle said that they had approached him and Mr. Lalonde identified all of his concerns to them. He said he made lots of comments about Nelson Carrier and made assumptions about Gloria without any evidence. He stated that Mr. Lalonde confirmed that he did not like Nelson Carrier to which Mr. Labelle said he told Mr. Lalonde he did not report to Nelson Carrier so he was unsure as to why he did not like him. Mr. Lalonde said that safety was not a priority to Mr. Carrier, which Mr. Labelle said he takes seriously. Mr. Labelle asked Mr. Lalonde why he did not go to his supervisors with concerns as it was his responsibility and Mr. Lalonde kept answering that nothing would happen. Mr. Labelle testified that, at the end of the interview, Mr. Lalonde agreed that they would let bygones be bygones and he would bring any future reports to his supervisor or the worker representative.

[70] Mr. Labelle said Mr. Lalonde told him that workers came to him with concerns. Mr. Labelle told him not to look into it himself but rather send it on to the supervisor. Mr. Labelle said Mr. Lalonde seemed to be acting on someone else's behalf with the safety concerns, but gave no additional information requiring more investigation. He stated that they shook hands and said bygones would be bygones and believed that they left the meeting with Mr. Lalonde on a positive note. He said that all were prepared to move on and Mr. Lalonde agreed to this. Mr. Labelle testified that Mr. Lalonde's supervisor was the Powerhouse supervisor, not Gloria Carrier or Nelson Carrier.

[71] When asked about what a worker representative was, Mr. Labelle testified that it was a nominee from the workers as someone chosen to represent them because of their competency, safety, and representation. These representatives would ensure worker concerns were being addressed and offered good liaison where there might be dislikes between management and workers. He testified that they could also make better mediators because they come from the workers side and are not management generated. He also stated that the names of worker representatives were posted on site, but was unsure of the names in this instance. Mr. Labelle testified that Mr. Lalonde was not a worker representative or part of any committee at all.

[72] When asked about the events of August 11<sup>th</sup>, Mr. Labelle testified that he had been at the office when he received a phone call from Mr. Lalonde inviting him to coffee. He said that Mr. Lalonde advised him of another safety issue resulting from a discussion he had with the crane operator on the night shift. Mr. Labelle said that he told Mr. Lalonde that he thought he clarified where to report things yesterday, and received nothing.

[73] *[During his testimony, Mr. Labelle indicated that he was receiving messages on his computer from Mr. Lalonde concurrently with his testimony. A brief recess was taken and Respondent's counsel was asked to investigate. Upon resumption, Respondent's counsel indicated that it appeared his client had inadvertently messaged the witness with a message intended for someone else.]*

[74] Mr. Labelle testified that Mr. Lalonde had texted him several times on August 11<sup>th</sup>. He stated that he did not respond, but went to the superintendent of the site that afternoon and asked him to meet with the telehandler operator and look into the alleged concern. He stated that he was informed by the superintendent that the operator had no concern and that nothing more came of this as it was not brought to anyone else's attention or mentioned in the August 12<sup>th</sup> meeting.

[75] Marcel Labelle testified that after asking who was text messaging him, a text message received at 12:29 a.m. indicated that it was Tim Lalonde. Mr. Labelle testified that despite the prior day conversation of moving on, Mr. Lalonde showed no interest in policy or proper reporting of concerns. He stated that he addressed the telehandler issues on August 12<sup>th</sup> and no one brought up a safety concern - only that the gears chugged and that it was just how a Caterpillar product runs.

[76] Mr. Labelle also testified that in addressing the "overhead crane issues", the concern was that when it was in motion it was said it would not to stop on a dime. He testified that SaskPower checked the equipment from top to bottom and identified no problem. He said in a full load it might move an inch or two. He said other operators of cranes had never had a concern with the crane operation functions and was not sure why it was reported. He said he also has an operating engineer certificate. Mr. Labelle testified that if the crane operator had concerns it should have been immediately reported to his supervisor and that it may simply have been an issue for someone to familiarize themselves with the controls. He stated that no issues had been raised by any prior night operator of the crane.

[77] When asked who Phillip Magnan is, Mr. Labelle testified that he was a superintendent head on shift at the Powerhouse and his scope was power generation. He stated that no formal concerns came to him and nothing was reported that night by the telehandler operator.

[78] When asked about the conclusions in his investigation report, Mr. Labelle testified that, at the end of the day, they talked and met with most workers and reviewed safety reporting mechanisms with them as well as legislated requirements and those of the client. He said there were no indications of preferences or conflict of interest, and no indication that any action was required as Gloria was doing a good job. He said it was only Tim Lalonde that said otherwise. He testified that the following morning, he made Mr. Beckman aware of the text message he received and they were on the same conclusion - that although things were moving along, Mr. Lalonde wanted to carry on his concerns. He believed that they had left on a positive note the day prior. Mr. Labelle expressed a concern for the potential of workers not following safety protocols and protecting their wellbeing. Mr. Labelle said Andritz wanted workers in the right frame of mind at the end of the day, and he gave his business cards to workers so they could call him directly.

[79] When asked when his investigation report was produced, Mr. Labelle testified that it was a few days after as this matter warranted attention immediately because a client had raised concerns. He said both the client and Andritz wanted to know the situation and, although the report wasn't complete when he left the site, he completed it a few days following. When asked whether he had any contact with Mr. Lalonde following August 12<sup>th</sup>, he testified that he had no more direct contact with Mr. Lalonde except to read his messages and texts.

[80] When shown Exhibit A-7, Mr. Labelle indicated that he did receive the text message and subsequently determined that it was from Mr. Lalonde. He confirmed that it appeared to have a witness statement within it, but he wasn't part of taking or observing such witness statement.

[81] When presented with the text message of August 19<sup>th</sup>, within Exhibit A-7, Mr. Labelle testified that he had no idea why Mr. Lalonde said that he had lied as the day prior they had agreed to move on. He stated that he did not make termination decisions and had nothing to do with Mr. Lalonde's removal, but maybe this was what he was referring to when he spoke of "reprisals". Mr. Labelle was uncertain in this regard.

[82] When asked about a text message of October 27<sup>th</sup> within Exhibit A-7, Mr. Labelle testified that at no time did he or Mr. Beckman ever threaten or harass Mr. Lalonde or coerce him into answering questions during the interview. He did not know why Mr. Lalonde would be giving him any kind of notice. He said that he notified Human Resources about the emails, but did not pursue it further or go to the police.

[83] When shown text messages dated November 4<sup>th</sup> and November 5<sup>th</sup> within Exhibit A-7, Mr. Labelle acknowledged receiving the text messages, but did not respond to them as he was not responsible for any of the matters raised in the messages.

[84] When asked whether there were "others" raising issues about approaching supervisors, Mr. Labelle testified that no other names were given, besides Mr. Lalonde, during their

interviews and he recalled no one else expressing concerns. He said this included any reluctance about going to Gloria because of her being married to Nelson Carrier.

[85] When asked about the conclusion in his investigation report, Mr. Labelle testified that there had been no issues and it was clear to him the complaints were third party issues in which Mr. Lalonde was not directly involved. He also noted that Mr. Lalonde never reported to his supervisor or management. He stated that, based on Mr. Lalonde attitude at the morning meeting, he believed Mr. Lalonde had trouble accepting instruction and misinterpreted things. He said at the time, and based on the later communication with him, he believed Mr. Lalonde's intention was not to do the right thing. He said he created havoc with accusations and Mr. Labelle wondered about what the next chapter might be as there might be problems for workers that were reluctant to report. He said this is why he believed it was best for Mr. Lalonde to get back on board and make things work, but that was not in Mr. Lalonde's plans. He said Mr. Lalonde was not going to be a team player. When asked about his further concerns with Mr. Lalonde's behaviour, Mr. Labelle said, given the constant text messaging and the facial expressions of displeasure shown in meetings, he had concerns about Mr. Lalonde's behaviour. He noted no personal attacks were made, but he was not overly responsive in meetings. He preferred to speak privately with Mr. Labelle.

[86] When asked why safety protocol was important to him, Mr. Labelle said in his career he had been exposed to 38 fatalities and this drove him to take safety very seriously. He said everyone must understand their roles and be part of the safety system and responsibility. He said that everyone wanted to go home safely, he must ensure instructions were given to workers, and that protocols must be followed and communications maintained. He also indicated that worker input was important and valued.

[87] When asked whether Mr. Lalonde followed protocol, Mr. Lalonde said "no", he didn't follow the reporting protocol as everyone should by notifying their immediate supervisor of concerns.

[88] When asked whether it was normal for an Andritz employee to report safety concerns to a site owner, Mr. Labelle stated that there was nothing wrong with it, but the first report should go to the immediate supervisor. When asked specifically again, whether he had concerns with Mr. Lalonde, Mr. Labelle testified that he had no concern following the interview with Mr. Lalonde and upon shaking hands with him as he felt good and positive that he would become part of the team; however, afterwards, and when text messages arrived, he had a change of heart and questioned Mr. Lalonde's good will. Mr. Labelle believed that Mr. Lalonde would pursue more concerns and involve himself in others concerns. He said it is important for everyone's wellbeing that they be part of the team as all have a role in safety and need to guide other workers who might be misinformed. He stated that there was fear of improper guidance if people weren't working on the team and that no site needed someone who creates havoc. He said it is not good for morale.

[89] When asked whether, in his experience, he believed it was safe to have a non-team player on site, Mr. Labelle testified that it would depend on whether someone was willing to change.



He said, with him, everyone is given a chance, but if they are not a team player, it can create problems. In this case, an option was given, but Mr. Lalonde still chose to carry on his ways.

[90] When asked whether he believed Mr. Lalonde continued to want to raise havoc, Mr. Labelle stated "yes".

[91] In cross-examination, Mr. Labelle reiterated many answers he had given previously regarding the interviews conducted with workers in the course of the investigation conducted by him and Mr. Beckman. He stated that the interviews were conducted face-to-face on site, not in separate locations. They communicated with everyone in the plant facility as well as in a meeting on August 12<sup>th</sup>. He stated that he introduced himself the day prior to the investigation interviews and set out the purpose of the investigation. He believed that most staff knew him, but not everyone.

[92] When asked about the order of interviews, Mr. Labelle indicated that Mr. Lalonde's interview was not conducted first, although he could not give an exact number. He said management had questions about who brought anything to their attention and he believed that it was an interview near the beginning but he had talked to a lot of people and couldn't recall. When asked whether it could have been near the end of interviewees, Mr. Labelle indicated that it could have been; he stated that he didn't know who the complainant was then and was looking for validation of complaints as this was his intent. He needed facts of the complaint to provide to SaskPower and his main concern was whether workers shared the concerns outlined. He was not looking for the creator of the complaint and didn't know it was Mr. Lalonde until he spoke with him.

[93] When asked whether other workers had raised concerns about Mr. Carrier and Mr. Lalonde's relations, Mr. Labelle replied that "yes", some other workers said they noted the personal differences between them. When asked whether he had suspicions of who the complainant might be, given the nature of the complaint regarding Mr. Carrier and other workers then raising the difficult relations, Mr. Labelle said that not until he spoke to Mr. Lalonde did he know that he was the complainant. He had asked others whether there were issues with Mr. Carrier. He said apparently there were issues in some other meetings, but he didn't know the complainant until Mr. Lalonde confirmed it to him.

[94] When asked whether a harassment complaint would be dealt differently than an Occupational Health and Safety investigation at Andritz, Mr. Labelle said "yes, there was a different approach". When further asked whether a harassment investigation was done against Nelson Carrier, Mr. Labelle said "No. None by me." He said the only complaint was from Mr. Lalonde. He also said that he met with Nelson Carrier who confirmed there was no love between the two men. He also said that Mr. Lalonde had mentioned harassment, but no harassment complaint was filed. When asked whether intimidation or bullying raised on the worksite was not investigated unless there was formal complaint, Mr. Labelle said any harassment complaint was investigated and that none came to him.

[95] In response to a question as to whether he acted on the purported witness statement appearing on page 1 of Exhibit A-7, Mr. Labelle indicated that he didn't know where it



originated from and couldn't recall seeing it. He questioned whether it was an official Andritz document. He said there was no header on the messages as they appeared on his phone, but the August 6<sup>th</sup> date and the name was on the bottom. He further stated that this was not part of his investigation and agreed it appeared Mr. Lalonde felt harassed by Nelson Carrier. When asked whether he took action on the witness statement, Mr. Labelle indicated "no", he had a conversation with Mr. Lalonde prior to August 6 in the stand-down meeting. He said he understood that things had become elevated in the meeting when it was raised at the stand-down, and that Nelson admitted this to him, but it wasn't meant for direct reprisal. He indicated that inappropriate words had been shared and only followed up because of this.

[96] In response to a question as to whether he believed Mr. Lalonde left their meeting feeling positive, Mr. Labelle indicated that "yes", although he couldn't say word for word what had been spoken. He said all agreed what was going to be done going forward and told Mr. Lalonde there would be not reprisals for this; that there was a new slate moving on.

[97] When further asked whether Mr. Lalonde was "displeased" during the interview, Mr. Labelle said "yes, in certain things". He said that when commenting on Gloria and her husband, Mr. Labelle said there was no point going to them unless there were other contributing facts such as whether she was not doing something for workers on safety matters. He said that Mr. Lalonde kept reiterating things and gave him nothing more to justify taking action. He said Mr. Lalonde showed displeasure when he was reminded he hadn't seen much of what happened at the reported events, and Mr. Labelle indicated he hadn't provided witnesses or led them to someone who could speak to it as there should be more conversation. Mr. Labelle said that he asked Mr. Lalonde where he was getting the accusations that Andritz was not doing safety and Mr. Lalonde said workers were fearful to report. Mr. Labelle stated at the end of the conversation that Mr. Lalonde did not say he would not cooperate. Mr. Labelle stated that he sincerely thought that Mr. Lalonde would follow the program and reporting as well as guide other workers to report appropriately. He told Mr. Lalonde that if you exhaust internal avenues everyone has the right to call the Ministry.

[98] When asked whether a worker who wasn't getting proper action on site had the right to go directly to the site owner rather than Andritz, Mr. Labelle replied "yes" and that good ministry officials will ask the question whether all internal avenues were followed. They will ask whether the matter has been reported to a supervisor and whether action was taken. He said they will also inquire as to whether the employer failed to respond to the concern. Mr. Labelle said workers can always refuse unsafe work.

[99] When asked whether Mr. Labelle could confirm if there was a worker representative selected and onsite at the time, Mr. Labelle confirmed that Andritz had just mobilized so he was not sure about the committee and couldn't guarantee that it was in place yet. He said he hadn't looked at the issue that closely.

[100] When asked about the investigation report and whether there was some "uncertainty" regarding reporting at the E.B. Campbell Site, Mr. Labelle replied that "no", not at all was there uncertainty. Following the interviews it was clear that SaskPower had given instruction and, as

general contractor, Andritz was to have all instructions. He said the comment regarding uncertainty about the access ladder and forklift were communication that had not been addressed in a timely way. Mr. Labelle said things were a bit more chaotic at the beginning as they were setting up binders. At no time during the process was well-being ever jeopardized, but it did take some time to get the paperwork aligned. He said the new supervisors from the union were all lining into the health, safety, and environment structure, and the plan came into place on implementation when they started working.

[101] When asked what parts were not working so well, Mr. Labelle stated there might have been a few examples where there were delays, such as the lack of communication on turnaround, and he mentioned the forklift incident as an example. He stated that things needed to be done in a timely manner and everyone participated in the toolbox meetings. It was more administrative than anything else. He stated that the instructions given to workers were all being done although there was some delay in the weekly instructions during the setup. He said that everything important was reviewed at toolbox meetings.

[102] When asked whether workers should report incidents that take place on-site but outside of their own work areas, Mr. Labelle said they encouraged workers to report and it wasn't his intent to suggest otherwise. He said that the incidents had been referred and had no direct involvement with Mr. Lalonde. Mr. Lalonde did not report these to anyone or to management until the complaint came to SaskPower.

[103] When asked if a worker believes there is a safety issues, and is wrong about it, is this a reason to remove a worker? Mr. Labelle replied "no, not at all". He said if a complaint is not valid, it doesn't warrant not looking into. He said this was not the case here. He said that with respect to removing workers, he would not remove them for assuming that there was a problem or unsafe situation. He stated that he wanted to be clear with workers that it was a safe task.

[104] When asked whether he had any direct input in the decision to layoff or terminate Mr. Lalonde, Mr. Labelle said that it had not been his decision as it was one for upper management. Unless there was an imminent threat, he would not be involved. He further stated he only makes recommendations based on his findings, which would be taken to management and then Human Resources would collectively decide. When asked whether he specifically recommended removal in this case, Mr. Labelle said "yes, after Mr. Lalonde's unwillingness to be a team player and not follow the rules". He said this was not determined on the day of his investigation but was his observation the following day.

[105] When pointed to the fact that the investigation report indicated that the employee should be removed, Mr. Labelle said that workers may lose focus and create incidents. He said that after hand shaking about doing the right thing, he took Mr. Lalonde at his word; however, the next day he persisted with another complaint and nothing more came forward. He wasn't aware whether his recommendation had any impact on the decision to layoff Mr. Lalonde. He also confirmed that his report was provided to Francoys Gauthier, Project Manager, and that he didn't send it to other site management. Mr. Labelle testified that he was not aware of any safety issues at the

E.B. Campbell site with Tim Lalonde's work as a crane operator and he was not aware of any situations where he might have lost focus.

[106] When asked whether the telehandler incident breached the reporting protocol, Mr. Labelle indicated that he would not say it was a breach; rather, a delay because of cross shifts. He indicated that they didn't see a priority to report it immediately on-site but that the protocol for on-site was not followed. He testified that Nelson Carrier agreed that he had missed this one and admitted the mistake. He said he spoke with Mr. Carrier about it and did not deny that, in the future, all incidents would be reported. He further stated that Denis Fournier also discussed the matter with Nelson because they needed to report it to SaskPower. He also confirmed that Denis Fournier was responsible for overseeing the Gates and Powerhouse for Andritz.

[107] When asked whether Mr. Carrier carried on as supervisor at the Gates, Mr. Labelle indicated "yes", and that he was there from the beginning on site. He further indicated that Mr. Carrier remains in the same position. In response to a question as to why the results of the investigation into the telehandler incident were not reported to the frontline staff until August 12<sup>th</sup>, Mr. Labelle testified that he could not speak to prior incidents but made mention of this particular incident in his investigation. He confirmed that there was an investigation of the incident conducted and believed it would have been discussed at a wrap up meeting to prevent any reoccurrence.

[108] When asked for clarification about the phrase "reluctant to tell the truth" at paragraph 2 of page 3 of the Investigation Report, Mr. Labelle testified that this was the information he received and was not prepared to say the complainant was lying, but was misinformed. He indicated that the complainant, Mr. Lalonde, was giving hearsay and no leading indicators as to where else to go with the investigation. Mr. Labelle said it came down to matter of intention as the facts Mr. Lalonde was addressing were not actually truthful. He said that "not accurate" might have been a better choice of words.

[109] Respondent's counsel referred Mr. Labelle back to earlier testimony where he indicated words to the effect of "you told Mr. Lalonde you could report to a supervisor or to you" and later you said "contact supervisor only", which is correct? Mr. Labelle testified that he said the same thing to all interviewees and that it was proper to report to your immediate supervisor or the worker representative or health and safety officials. He further said "anyone is free to call me anytime" if they are unhappy still. He said "24/7 my phone is open and that's what was meant". When asked whether Mr. Lalonde might have misinterpreted the information to contact him directly, Mr. Labelle said "yes, he could've". He said his information was in the presentation but, as they were talking to Mr. Lalonde, he showed a reluctance to want to understand the proper reporting in the workplace. On August 12<sup>th</sup>, he noted the expression in Mr. Lalonde's face that he did not want to be there – this was his personal observation.

[110] When asked whether he believed it was improper for Mr. Lalonde to invite a manager to connect on LinkedIn, Mr. Labelle said that it would depend on the purpose and whether it was showing ongoing communication. He said he received an invite to meet on-site for a chit chat. He said in his report that the prior handshake from Mr. Lalonde meant nothing, and there was

nothing done on his part to do differently. He also stated that you should use your real name on LinkedIn rather than run under names such as “SaskFlyer”.

[111] When asked whether the subsequent communications about the night shift concerns turned his mind to removing Mr. Lalonde, Mr. Labelle stated that was his suggestion. He stated that he thought he and Mr. Lalonde had sorted things out and nothing was brought up at subsequent meetings. He said Mr. Lalonde showed no willingness to move on. He then believed it was best he not to be part of the team for the benefit of all workers. He said this was simply his personal opinion.

[112] When asked about further conversations with Mr. Gauthier about Mr. Lalonde’s removal, Mr. Labelle indicated that he had discussions with Francoys Gauthier but couldn’t recall who else was on any of the calls. He also discussed it during the weekend with his own Director and reiterated that he just provided the facts and observations of Mr. Lalonde’s unwillingness to cooperate.

[113] When asked further about the overhead crane issues, Mr. Labelle indicated that the complaint indicated that the crane moved in travel and there was a time delay. He stated that the crane had a braking mechanism and was an industrial crane that does move in this way. He thought perhaps Mr. Lalonde was unfamiliar with the operation of this crane as it was normal activity for it. He also said that Mr. Lalonde looked at the situation and said “yeah yeah”. Mr. Labelle said he checked the certification with SaskPower and all was in order. When asked how the issues had been raised with him, he said it was mentioned, perhaps through Denis Fournier, and he approached Mr. Lalonde about it. He also said Josh Beckman came because it was the client’s crane and there turned out to be no issues. He said the safety certification had been done on it by a third party. When asked whether he checked the mechanical soundness of the telehandler, Mr. Labelle indicated that the unit had only been there one month and had been fully inspected and safetied by Caterpillar just prior. He said other workers said there was no indication of a malfunction except the transmission was a little shaky with gear shifting. He said there was no safety concern raised and some workers said it was just a “Caterpillar” and not as smooth as other manufacturers.

### ***Evidence of Francoys Gauthier***

[114] Mr. Gauthier testified that he is a Project Manager at Andritz and has been with Andritz for 30 years, 12 of which were with GE Hydro, which was sold to Andritz. He has served in his current position for 3 years and is responsible from the start to end of customer contractors assigned to him. He stated that his work required going through all the steps – model testing, engineering, logistics, commissioning, and training – all aspects. He stated that team management reported to his position and he coordinated work and deliverables.

[115] When asked about the E.B. Campbell Hydro Station site, Mr. Gauthier advised that he was responsible for the onsite part of the project where product was installed. He stated that this was a multiyear contract with SaskPower as it involved refurbishing of 6 units. He said other

work such as engineering, manufacturing and shipping product was done by others. He stated that the site manager reports to him as he is not on site but had attended there about monthly. Since Covid began he had not visited the site.

[116] When asked what Andritz was doing on site, Mr. Gauthier said the scope of the work was to refurbish the 6 units, which required dismantling of each and a full refurbishment. He said there were some replacement parts and others required just cleaning and inspection. He said once parts were produced and shipped, they would be installed or reinstalled all together, then commissioned and tested, with the final stage bringing it back into service. He described the project as having two locations, which were physically apart. Firstly, the Powerhouse which was a turbine generator unit, and secondly, the Gates or intake which was water being brought into the turbine. He indicated that you can't be at both places at the same time and there were two teams physically apart. He said sometimes they move, but usually they were only at one of the two locations. When asked whether each had separate supervisors, he said "yes" and that the supervisor at the gate intake was Nelson Carrier. He said there were multiple supervisors at the Powerhouse because that is where more of the work was taking place.

[117] When asked who supervised at the Powerhouse in summer of 2019, Mr. Gauthier indicated Denis Bjergovich and others. He also said Philip Magnan supervised at night sometimes.

[118] Mr. Gauthier testified that there was a project agreement for the work being done at the E.B. Campbell site that was with a number of unions. This was an exclusive contract. When asked to describe how they worked with the unions, Mr. Gauthier indicated that Andritz would call for workers from the union and set out their needs on site including specific requirements, dates, and duration of work terms. He said unions would respond and propose candidates then send them to site and they would all work together. In summary, the union dispatched workers to site according to Andritz requirements. Exhibit A-8 was identified as the project agreement for the E.B. Campbell Project entered into between Andritz Hydro Canada Inc. and a number of unions.

[119] Mr. Gauthier confirmed that Andritz was the employer under the project agreement and that it had a program of completing one unit per year with the expected duration of the project was 8-9 months per unit. He testified that Unit 1 was started in early July 2019 although the actual work began in early August. He said that not all workers needed to be on site at all times and it was dependent on the phase of the project. He said Andritz would try and give an indication of the time required so the workers could determine whether they were interested to their union. When asked whether the work allocation was based on each unit being completed, Mr. Gauthier indicated yes, and that there were 4-5 months between units being completed so they would not keep everyone employed then. Workers could go to other work until Andritz remobilized for the next unit and placed another call for workers. He said that on some occasions they would get the same workers, but not always.

[120] When asked whether a crane operator was required for each unit, Mr. Gauthier said that it depended as they had a variety of needs - sometimes there would be one shift required or two if



they were working nights. He said that there was also a rotation between the employees onsite with a one week turnaround. He also stated that the arrangement could be different between specific workers. He said Andritz couldn't keep everyone on site, but a worker could be there from July through the following March.

[121] In response to a question as to which unit was being worked on in 2019 to 2020, Mr. Gauthier indicated unit 3. He said there were multiple operators working at that time and some were let go for various reasons. He indicated that some were there for a short time because they had a night shift operator to keep the work going. He stated that there were probably 4, 5, or 6 operators on site for the work on Unit 3. Mr. Gauthier confirmed in his testimony that the International Union of Operating Engineers (IUOE) had signed onto the Project Agreement, Exhibit A-8, and that Mr. Lalonde was dispatched by IUOE. Mr. Gauthier also testified that there was provision for a 3 month probationary period for any workers under the agreement. He indicated that Section 10.4 allowed Andritz to re-hire good workers and that this provided some stability to Andritz. He indicated that they had received some good comments from workers and that this was a good project. When asked whether work was guaranteed to any worker, Mr. Gauthier said no, it was not, but that Andritz maintained a right to call workers back.

[122] Mr. Gauthier was asked whether as Project Manager he was responsible for safety. He stated that safety is a big part of project management and that everyone is responsible for quality, scheduling, cost, and safety. He said safety is a priority for Andritz and comes "first before everything".

[123] When asked whether Andritz had a Health and Safety program, Mr. Gauthier replied that it has a good and thorough program as this was required given their work with many Canadian utilities. He stated that it is a very high standard with them and it is a global company. Safety programs are very important. He indicated that Andritz is a leader in Canada for companies in this industry based on their experiences, and their clients have high demands on safety. He also testified that in meetings at Andritz, safety was always the first topic and there was a clear policy to follow. He said there were permanent resources at Andritz designed specifically to safety.

[124] In response to a question as to how Andritz handled safety on the E.B. Campbell site, Mr. Gauthier indicated that it was a big project and a full time safety officer was maintained onsite to ensure procedures were in place and followed. He said it was a place where employees could raise concerns. He said the safety officer also went to the site and ensured there was an orientation before any work started. There was always someone looking after safety on site.

[125] When asked whether safety concerns were raised in late July 2019, Mr. Gauthier stated that the site was being mobilized beginning July 15, 2019 and work began on August 5, 2019. He said that once onsite they were doing set up of trailers and a lunchroom with a supervision team. He said there were some workers helping with the setup. He stated that Tim Lalonde was one of the first employees on the site as a crane operator because when they received material they would require an overhead crane operator in the Powerhouse to take deliveries off of trucks and place them in the Powerhouse. He also testified that this was a new site so things were not always perfect at the start, and some adjustments were made in the first weeks. He stated that



SaskPower said meetings were needed and action required, which Andritz acted on to get all in order. He said it wasn't all smooth at the beginning and some adjustments were made, but then things went pretty well. He testified that they did need to improve communication between the client and Andritz in the beginning.

[126] When asked about an October 4, 2019 letter sent to Shawn Tallmadge, Occupational Health and Safety Officer, Mr. Gauthier indicated that he wrote and sent a letter to Mr. Tallmadge in response to a letter received and dated September 24<sup>th</sup>. A copy of the letter was tendered as Exhibit A-9. In response to a question regarding HSE concerns sent to the employer, as referenced in the letter, Mr. Gauthier was asked whether he recalled an email from SaskPower on August 2<sup>nd</sup>. Mr. Gauthier indicated that in the early days there was a lot communication and that, yes, he was aware of the email and some issues that they wanted Andritz to take care of on site. When asked what he did in response to the email arriving, Mr. Gauthier said that it was discussed and decided to have a stand-down meeting. They would stop all work onsite because the concern was serious enough that all should be part of the same discussion. He said that the purpose was to clarify safety issues on site. He further stated that Andritz was kind of shocked by the information from SaskPower and he wanted to better understand the issues. He believed it was clear to workers that they were to report concerns to Andritz and that going to another channel or client was not the way to start out. He indicated that the instruction had been to let Andritz deal with it. At the time, he was not sure if SaskPower observations well-founded or not.

[127] When asked why concerns should be taken to management staff first under an open door policy, Mr. Gauthier said that if we don't know about it, we can't act on it and remove the concern onsite. He testified that supervisors were not in the field as much as the workers and the workers must bring it up if action is warranted - and that is why there is an open door policy as matters cannot always wait. He said that workers must report to someone who can act, which means you should come to Andritz site management anytime, without appointment, and are welcome to raise such issues. He testified that a worker should first go to their supervisor who would then go to their further supervisor or site management team. He indicated that others may elevate to the right one who could act. He said at any time there were 7-8 supervisors on site and, at the time, there would have been at least 5 or 6.

[128] When asked what tailboard meetings entailed, Mr. Gauthier indicated that these occurred daily before any work commenced on site with the workers and they reviewed the day's activities, risk mitigation, and other issues - all of which took about 15 minutes. Workers would then go to their work locations, do their tasks, and review their own immediate risks with a TASC card to ensure all safety measures were being taken. He stated that workers could bring issues anytime to the tailboard meeting or at health and safety environment meetings.

[129] When asked about the incident "where an unsecured load fell off a trailer onsite", which was referred to in Exhibit A-9, Mr. Gauthier replied that there were two issues with this incident. First, he said there was miscommunication between two people on site as the person witnessing went on a week turnaround and it took a full week to report at the site because he wasn't there. Secondly, some were not clear as to SaskPower's policy about reporting a "property damage"

incident. He said this was property damage and later classified as a “near miss”. He said all of this took time to resolve.

[130] In response to a question as to whose property was involved, Mr. Gauthier said it was Andritz’s property, but under SaskPower’s policy it doesn’t matter whose property it is, it must be reported. He said Andritz didn’t realize this then. When asked about the corrective action taken, Mr. Gauthier said that an investigation was finished and a full report issued regarding the incident. He said they ensured that the trailer was in good condition and the telehandler as well. He said they also ensured that all were informed about the report on the incident. He also stated that usually Andritz is not required to report property damage to its customer if the equipment is owned by Andritz. He said this incident was reported to SaskPower. Mr. Gauthier said he was happy about the report, but didn’t like the fact it hadn’t been dealt with right away. He indicated that Andritz issued preliminary reports and the full report was prepared following investigation.

[131] When asked about the concern of “unsafe ladders” on page 2 of the letter, Mr. Gauthier said he thought there was confusion because originally someone else had used the ladder - although Andritz staff used it later on, and it was properly used. He said the ladder was a temporary measure until the permanent use of the platform using stairs was available. He testified that there was one day between the observation of the concern and a fix being implemented – that stairs were built. He stated that they were not using the ladder on the first day and the matter was otherwise dealt with to ensure safety compliance by Andritz workers. He confirmed that the ladder issue was dealt with by August 2, 2019.

[132] In response to a question about Andritz’s treatment of safety issues and discussions with SaskPower, Mr. Gauthier testified that Andritz takes safety issues very seriously and deals with them quickly. He said they discussed safety issues every week with SaskPower and believes SaskPower is satisfied with Andritz.

[133] When asked whether he was given copies of the specific complaints received by SaskPower, Mr. Gauthier indicated that they only received the content of the messages as they were provided anonymous. He confirmed that Exhibits A-2 and A-6 were copies of the complaints. Mr. Gauthier said they were informed by SaskPower that they couldn’t give names of complainants, however, they came back and copied text onto the page. He confirmed that this led to an investigation. Mr. Gauthier testified that workers were to report issues to their supervisors or at tailboard or health safety and environment meetings. Workers were to go to Andritz first, then Andritz could act on it. We only report “incidents” to SaskPower if we can’t solve an issue and sometimes it didn’t have to be reported to SaskPower if it was addressed right away. He said it might be mentioned informally, but was not always required. When asked if it was normal for a complaint to go directly to SaskPower, Mr. Gauthier indicated “no, it was not normal.”

[134] When asked whether they addressed all the complaints, Mr. Gauthier said he believed they did. When asked who initiated the investigation that took place, Mr. Gauthier said that it was a joint decision made between SaskPower and Andritz. He said that, when a second complaint was received, SaskPower was very upset and wanted to discuss it. He said they had to

respond to upper management. He said there were two safety complaints in a small amount of time and as E.B. Campbell site had an excellent record on safety it was high priority. They believed it was best to proceed with a joint investigation so both Andritz and SaskPower could hear from on site. They wanted to converge and agree on the root causes and what action might need to be taken.

[135] When asked who was selected to conduct the investigation, Mr. Gauthier indicated that Marcel Labelle, who had a strong knowledge of safety and was neutral at the site because he was not full time there, was chosen as an upper management representative. He indicated Mr. Labelle was highly credible. Mr. Gauthier further stated that both sides were shocked, wanted to learn about problems, and everyone thought it was good to idea neutrality to the investigation. He said at the time there was some suspicion about Andritz's of handling of safety on site and that was on Andritz to demonstrate proper safety handling. They believed it was better to do this together. When asked what the conclusion for the investigation was, Mr. Gauthier said that the investigation didn't find safety issues that had not been resolved and that there was also no conflict of interest. He stated that workers on site saw no issues regarding safety except for the complainant, Mr. Lalonde. He said everyone was taking safety seriously and no fear of reprisal was brought up as an issue. He said that the complaint was not founded and he looked to move forward and move on. He said Andritz was going to try and improve communication to be clear on its policy.

[136] When asked about the second last bullet on page 2 of his letter and the comment regarding "Tim", Mr. Gauthier stated that he was told Tim was not focused on his work and distracted about reporting issues that other had with safety. He said he could only report what he was told and might have mentioned this to Marcel Labelle and Josh Beckman.

[137] When asked if he had any personal conflict with Mr. Lalonde, Mr. Gauthier indicated that he was on site August 6<sup>th</sup> to the 8<sup>th</sup> and discussed some matters with Mr. Lalonde personally. He also discussed with Denis Fournier and Cory Cawley of the IUOE. Mr. Gauthier indicated that Mr. Lalonde was complaining about Nelson Carrier's behaviour and was threatening to bring a harassment complaint. He said he called Cory Cawley to discuss the matter. He said at the end of their conversation, Cory convinced Tim Lalonde not to file a complaint as it was not founded and was not harassment. He stated that he was certainly aware of the personal conflict between Mr. Carrier and Mr. Lalonde.

[138] When asked about his view of personal conflicts given his role of Project Manager, Mr. Gauthier said they can't live with such conflicts for very long on site as they are not productive and must be resolved. He said there was a need for workers to work together, respect each other, and find solutions.

[139] When asked whether there had been a resolution or path forward determined on the conflict concern, Mr. Gauthier testified that Tim Lalonde had accepted not to file a complaint, but was not happy. He said that Mr. Lalonde followed the business agent's recommendation and accepted to work as a team player. He further testified that the others had suggested Mr. Lalonde not talk to Mr. Carrier to avoid conflict altogether. He said they may need to talk to each other

sometime but should follow his own supervisor. He stated that Mr. Lalonde was told that all must be respectful on site. He also said Andritz would try to avoid putting him with Nelson Carrier, if possible. Mr. Gauthier said he also spoke to Nelson Carrier, but he didn't have much issue with Mr. Lalonde and didn't see a real conflict arising in the circumstances. Mr. Gauthier said that although Andritz managed by team, Nelson Carrier was not Tim Lalonde's direct supervisor.

[140] When asked further about the comments attributed to the night shift operator of the crane, Mr. Gauthier confirmed that the matter had been investigated and turned out to be inaccurate. He said that the complaint had not been well-founded. When asked about the third bullet on page 3 of his letter, Mr. Gauthier testified that, based on the results of the investigation and the interviews done by Marcel Labelle and Josh Beckman, he put all of the facts together and was told that Tim Lalonde didn't want to tell everything and disclose all of the facts during his interview. He confirmed that he wrote the middle paragraph on page 2 of his letter which stated that the allegations made to SaskPower were not reflective of the group, but instead of one worker who was evidently not a team player. He was causing tension and frustration between the crew and supervisors.

[141] When asked about reporting false safety concerns, Mr. Gauthier stated that there was no harm in bringing issues which may not be concerns following investigation. He said this is normal. With Mr. Lalonde, he said that so many items were brought and all were not well-founded. As a result of this, Mr. Gauthier said he had to question Mr. Lalonde's honesty and agenda as he was not playing fair game. Mr. Gauthier believed it was obvious Mr. Lalonde was trying to bring safety issues for his own purpose.

[142] When asked whether he was familiar with Mr. Lalonde, Mr. Gauthier said "yes", they met once at the site. He said that the first time was on August 6<sup>th</sup> when Mr. Lalonde came to see him and wanted to talk to him about some things on site and safety issues he had seen. Mr. Gauthier indicated that he listened to Mr. Lalonde and at some point during the meeting Denis Fournier came in and became part of the conversation. He stated that this was simply an unofficial meeting.

[143] Mr. Gauthier was shown a record of employment indicating the employee's name as Tim Lalonde. He confirmed that he recognized the document and it was marked as Exhibit A-10. Mr. Gauthier confirmed that the document indicated Mr. Lalonde's first day of work as July 15, 2019 and the last day which he was paid was August 17, 2019 so Mr. Lalonde had been on site for 5 weeks. Mr. Gauthier further confirmed that there was a 3 month probationary period in the project agreement and that Mr. Lalonde was in his probationary period for the time he was on site.

[144] When asked whether a term of work was given to workers on site, Mr. Gauthier indicated that he didn't recall a specific timeframe mentioned for crane operators. He said it would depend on the services of the worker; and, if they are on probation there would be no guarantee that they would keep the worker. He said Andritz could ask for a resume and for past experience under the agreement, but hadn't done so in this case as they had confidence the union hall would send a

good worker. He further testified that Andritz needed an operator from the start of the project to the end as it was a critical operation. He said when more than one shift was worked in a day, they would need two operators - as well as to cover turnaround. He said that there was no guarantee you would stay on site for the duration.

[145] When asked when two crane operators would be necessary on site, Mr. Gauthier said during the first two month period it was required and they would dismantle a machine in two shifts. He said after 3-4 weeks they would start nights and need a second operator. Later, they would need an operator for piling and other work. Overall, an operator was required about half of the time. He said there was an agreement with the crane operators on site - where they agreed to be two weeks on and two weeks off sharing the work between them.

[146] When asked whether there was a guarantee for length of work time on a project, Mr. Gauthier said there would be no guarantee at all. He said sometimes work goes well and they would need them for a short time; and other times there would be issues and need workers for a longer period of time. He said there was also no guarantee set out in the project agreement that said one worker would stay on site over any other worker.

[147] In response to a question as to whether Mr. Lalonde had gone through an orientation process, Mr. Gauthier said that everyone on site goes through an orientation. Although he hadn't checked the records, he understood that Mr. Lalonde had. He said that no worker was allowed onsite without it and SaskPower would not allow work to go on without the orientation.

[148] When asked whether the orientation included procedures about reporting incidents, Mr. Gauthier said "yes" and that the report was to be a worker supervisor first and eventually be reported to SaskPower. He said Andritz's policy was the same as SaskPower where workers report to their supervisors first and then it was further taken care of.

[149] When asked who Mr. Lalonde's supervisor was, Mr. Gauthier said it was Denis Bjergovich, and at nights it was Philip Magnan. He said Mr. Lalonde didn't report to Nelson Carrier.

[150] When asked whether all safety concerns had been addressed initially, Mr. Gauthier said, not exactly - only what they knew about at the time. There were other complaints that came in. He said they met with SaskPower upper management and Andritz upper management and addressed all of the concerns a few days following.

[151] When asked about Mr. Lalonde's work on site, Mr. Gauthier said he didn't think his work was an issue - it was just his general attitude that was a concern. He said Mr. Lalonde did not want to work with the team as was expected of a team player. He said, as an operator, he should have known better and was looking to find issues elsewhere. He said it was okay to report concerns, but that Mr. Lalonde should be focusing on the job he had to do. He said reporting incidents shouldn't be his main concern. He was told to focus on his work and reminded of the chain of command a few times. It was causing concern to Mr. Gauthier and others onsite that Mr. Lalonde did not follow through on any commitments.



[152] When asked about if anyone else onsite had concerns Mr. Gauthier said that they went to the site about every 4 weeks and attended meetings where he heard about “suggestions”, not complaints, on how to be safer on site. He said these had been acted on and not raised by one person but a variety of people. When asked about the crane controllers, Mr. Gauthier said that there had been no issues operating the crane controllers and that Mr. Lalonde had not been accurate about the night shift operator’s concerns.

[153] When asked whether he raised chain of command issues with Mr. Lalonde, Mr. Gauthier said he thought he had in the conversations involving Mr. Fournier and Cory Cawley. He said Mr. Lalonde did not follow it. He also confirmed that Mr. Lalonde had not been a part of the ladder or telehandler incidents.

[154] Mr. Gauthier was questioned about the removal about Mr. Lalonde from the site and how it proceeded. He indicated that he had received the investigation report and he said they sat down as a team and considered the recommendations in the report. He said they looked at the facts, and looked at whether it was appropriate to remove Mr. Lalonde. They looked at the 5 weeks he was on site and, for various reasons, found him not suitable. He said that given Mr. Lalonde was on probation they decided to lay him off without more explanation. When asked who decided about the layoff, he said it was discussed by the team, but he implemented the layoff as project manager. He said SaskPower did not want to be involved in the decision although they supported the decision.

[155] When asked whether the reasoning for the layoff was set out in the 6 bullets in page 3 of his letter to OHS, Mr. Gauthier said “yes, it does”. When asked for his comments regarding bullet 2, he said everyone has the right to file complaints, but if they are unfounded complaints it simply becomes annoying and embarrassing. He said that after the investigation they were aware the complaints had come from Mr. Lalonde, and that all had been resolved. He said it got in the way of the work they had to do. He said they simply couldn’t accept these things continuing forever. He also stated that he did not feel Mr. Lalonde would stop as he didn’t follow the chain of command. He believed that Andritz couldn’t have more unfounded complaints following this. Mr. Gauthier said he wanted to resolve matters and move on to more important things.

[156] When asked to elaborate on bullet 3, Mr. Gauthier said that he believed Mr. Lalonde was trying to influence others to do the same as he was doing on site. He said that Mr. Lalonde was not a good influence on site and the risk of not working as a team member and working against your team members could result in dangerous activities and not helping anything. He said no grievance had been received and no harassment complaint had been filed.

[157] When asked about the final bullet and the lack of knowledge about his own trade skills, Mr. Gauthier indicated that this pertained to the crane control issue, but that each single bullet point raised may not been enough to warrant the removal. He said that, considered cumulatively, there was no return for Mr. Lalonde.

[158] When asked about the final paragraph on page 3 and the contact with Cory Cawley, Mr. Gauthier indicated that he had advised Cory Cawley of the pending layoff prior to imposing it



and there was no objection raised by him. Mr. Gauthier was presented with Exhibit A-11, being a letter from himself to Tim Lalonde dated August 19, 2019, Mr. Gauthier confirmed that he wrote the letter to a probationary employee and, as mentioned earlier, had spoken to Cory Cawley and informed of his intention to layoff Mr. Lalonde. Mr. Gauthier said he didn't remember the words spoken between them, but Mr. Cawley didn't object to the layoff.

[159] When asked whether Mr. Lalonde was laid off for raising health and safety issues, Mr. Gauthier said "not at all". He said safety was always dealt with first onsite at Andritz, and that they investigated all incidents and applied corrective actions. He said "a lot of effort was put into this". He said that anyone with a valid concern was welcome to come to us.

[160] When asked what was ultimately determined about Tim Lalonde, Mr. Gauthier stated that they decided he was not suitable to do work and be part of the team at the site, and further that this was not just about qualifications to do the work. He reiterated that Andritz had a special agreement with the unions for this project and it entailed the concept of working together. He said the agreement went much further than their standard agreements and trades can do work on other trades as part of the overall agreement. He stated that Andritz wanted productive work on site. He also said that some things were not documented in the letter - such as Mr. Lalonde being harassing with text messages, emails, and calls to the site following his layoff. He said that no one should be able to threaten and harass like this and they believed it was more professional to simply ignore Mr. Lalonde's ongoing actions. Mr. Gauthier testified that Mr. Lalonde's subsequent actions proved that their decision was correct after the fact.

[161] In cross examination, Mr. Gauthier was first asked whether he agreed that Mr. Lalonde was a probationary employee at the time of his layoff and whether there was a grievance filed. Mr. Gauthier stated that "yes, Mr. Lalonde was on probation" at the time, and that "no grievance was filed" regarding his layoff.

[162] Respondent's counsel indicated that in prior testimony Mr. Gauthier said that Cory Cawley didn't object when notified that Andritz intended to lay off Mr. Lalonde. He then asked if Mr. Gauthier believed he would have changed his mind about the layoff if the union had objected. Mr. Gauthier replied "probably not".

[163] When further asked who was involved in the team decision to dismiss, Mr. Gauthier indicated that the team onsite included the site manager, the Health, Safety, and Environment officer, and others responsible for interaction onsite including SaskPower and Andritz upper management. He said all had been part of the discussion, so the decision to lay off was not done without consultation. In response to who he specifically spoke to, Mr. Gauthier answered Gloria Carrier, Antoine Prevost (Marcel Labelle's supervisor), Marcel Labelle, Josh Beckman, and people in SaskPower management. All had meetings with him about this. When asked whether the client supported the decision, Mr. Gauthier said "yes, SaskPower did not want to make the decision, but had an opinion and supported the decision". When challenged on the difference between "directing" and "supporting" the decision, Mr. Gauthier said that there had been discussion with SaskPower and this was written into the investigation report.

[164] When asked about how much influence Mr. Labelle's report had on the layoff decision, Mr. Gauthier indicated it was one element, but not the only one.

[165] He said that he answered Officer Tallmadge's letter as he wanted to inform him of everything. He stated that someone from the OH&S office did a full audit in late August and reported that all was in good order and there were no deficiencies. Mr. Gauthier stated that Andritz wanted to inform OH&S of all the facts including the investigation report, which was one part of a larger story.

[166] When asked whether the texts and emails following Mr. Lalonde's layoff had been part of the decision because they occurred after the layoff, Mr. Gauthier said that these were just examples of Mr. Lalonde harassing Marcel after the decision. He said these just demonstrate that Mr. Lalonde would not have stopped anyways.

[167] On further questioning about Mr. Labelle's report and its importance in its decision to layoff, Mr. Gauthier reiterated that it served as only one element and not the only one. He said there were multiple factors as told to OH&S in his letter.

[168] When asked about the reference to "lack of trade skills", and whether Mr. Lalonde was disciplined for any deficiency in his work, Mr. Gauthier said that there had been no time to evaluate his work as they were only there for 5 weeks. He said there was no issue with his work *per se*, and that he never wrote that Mr. Lalonde did not do a good job. He said it can be dangerous if you do not know what you are doing. When asked why there was nothing written up about this, Mr. Gauthier said that they do not discipline for a lack of knowledge when you are in a probationary period. He said it was a worker's chance to demonstrate good fit and whether to retain the employee. He said it was a chance to shine - and that Mr. Lalonde did not shine. He said he was not suitable for the team at E.B. Campbell.

[169] When asked about his August 6<sup>th</sup> meeting with Mr. Lalonde and wanting to give him a "second chance" Mr. Gauthier said that this was to be a second chance to follow the chain of command in reporting. He said Mr. Lalonde was informed of the chain of command, but did not follow it. He did not move on and work together, and he was not respecting people. He said that Andritz pays attention to how we fit and what we tell each other. He said that is what he meant in the conversation with Mr. Lalonde.

[170] When asked how Mr. Lalonde would know that the telehandler incident had been acted upon, Mr. Gauthier indicated that he wasn't sure if Mr. Lalonde had spoken to his supervisor. He said that workers would not get an answer the day after a complaint sent to a help line, and it was not the right channel to follow to get any answers. Mr. Gauthier said that is why you go to your supervisor to get answers. He testified that between the receipt of the complaint at SaskPower and Andritz being made aware of it was about a week. He said there was about 4 days for the site team to know, and more days required for Andritz to be aware.

[171] Mr. Gauthier was referred to Exhibit A-10, Mr. Lalonde's Record of Employment, and the indication that the layoff was the result of a "shortage of work/end of contract". Mr. Gauthier said that there had been a mistake and miscommunication between the site team and the

payroll staff entering the information. He testified that the right reason should have indicated "layoff".

[172] When asked when Mr. Lalonde was hired within the project term, Mr. Gauthier said that he was among the first hired and that a second hire had been made by the time Mr. Lalonde left. That employee continued until the end of December.

[173] Mr. Gauthier was asked about a replacement operator for Mr. Lalonde following his layoff and Mr. Gauthier confirmed that such a replacement had been hired and that he continued in the role until the end of the project - being demobilization on March 18, 2020 the beginning of Covid-19. Mr. Gauthier further clarified that there is not direct replacement of one person with another. He said there were several employees on the site and they don't necessarily take the job of a previous employee. When asked whether a crane operator was hired after Mr. Lalonde worked there, Mr. Gauthier said he could not be sure that they stayed until March 18, 2020.

[174] When asked how the E.B. Campbell site was demobilized following March 18, 2020, Mr. Gauthier indicated that it was demobilized until July 6, 2020. He further confirmed that crane operators were hired then, but was not sure whether Andritz requested specific operators from IUOE at that time. He stated that he was uncertain and would need to check whether the same crane operators were hired July 6, 2020 as had been working at shutdown in mid-March.

[175] When asked whether Mr. Lalonde had requested a turnaround just prior to his layoff, Mr. Gauthier stated that he was going on a week turnaround at the time of his layoff. He said that Andritz had sent him on turnaround on the Saturday, and he was laid off on the Monday following. He didn't recall if the turnaround had been requested, but it was part of the project management plan. When asked why they would impose a turnaround two days before laying off an employee, Mr. Gauthier said that usually employees went on turnaround after 4 weeks and Mr. Lalonde had already been on site for 5 weeks. When asked whether other things were considered when the turnaround was imposed, Mr. Gauthier said that they needed another crane operator because a turnaround was starting. They needed to orientate and get another crane operator on site so they thought this was a good time to do it.

[176] When asked whether Mr. Lalonde had been disciplined for any deficiencies in his work or for failing to follow safety protocols, Mr. Gauthier said "no", he had not been previously disciplined for that.

[177] In rebuttal evidence, Mr. Gauthier was asked to confirm Exhibit A-13, Incident Report, which included A-14, and it was accepted as a full exhibit. He testified that a copy of the Incident Report had been provided to SaskPower.

### ***Evidence of Tim Lalonde***

[178] Timothy John Lalonde testified that he is currently employed by Mocon Construction, a construction company that works on, among other things, roads, weirs, and dams. He primarily operates a gravel truck as well as other machinery. He stated that he also participates in safety

meetings and inspects trucks at Mocon. He said that he will take trucks for drives and write down everything that is wrong as some others are reluctant to bring concerns forward. He said that Mocon is pleased with him because it wants to get things fixed.

[179] Mr. Lalonde testified that he began working with Mocon on August 4 or 5, 2020, and has a position there as long as he wants as it is not a term position. He has taken time off from work to attend this hearing.

[180] He testified that he is a member of Local 870 of the International Union of Operating Engineers, and that in his current job he did not obtain his current job through the union. He stated that he applied online and knocked on doors. Upon taking a test drive with Mocon, he was hired on the spot.

[181] Mr. Lalonde testified that he has been a journeyman carpenter since 1999, and since 2008 has been a hydraulic crane operator. He holds other tickets, but some required only day courses whereas the crane operator requires 4500 hours and additional education.

[182] Mr. Lalonde testified that he began work for Andritz on July 15, 2019 as a crane operator. He performed duties that he described included “a little of everything”. He said he ran telehandler, drove one ton truck, did some carpentry work, inspected harnesses and retractable lanyards – lots of safety duties.

[183] When asked whether he received a safety orientation at the E.B. Campbell site, he said “yes” as he was part of the first crew on site. He stated that Gloria Carrier started the same day and “she just opened the manual and started reading”. He testified that SaskPower gave a 10 minute orientation; “that they went through muster points, when doors lock and so on”.

[184] When asked whether Gloria Carrier’s reading of the Andritz manual was something different than the SaskPower presentation, Exhibit A-1 in the proceedings, Mr. Lalonde stated that he had never seen the SaskPower book (Exhibit A-1) before. He said that the SaskPower presentation did not set out the reporting structure for safety concerns and that Andritz’s presentation said to “report all incidents” and “that’s all they said”.

[185] Mr. Lalonde testified that he worked for Andritz for about 5 weeks. He typically arrived on site at 6:30 a.m. for a workday and left the site at about 5:30 p.m. When asked about there being “no jurisdiction” between workers he said that as between building trades, ironworkers would work with scaffolders, he was the only carpenter, and there were electricians working on site.

[186] When asked whether he was disciplined by Andritz, he said he was never disciplined before and added that he received compliments from employees at Enerserv. In his third year of apprenticeship he had been asked to teach load charts.

[187] In response to whether Andritz had done reviews with him, Mr. Lalonde stated that in the beginning SaskPower had asked him to do a competency with “Greg” and that he was later referred to as “the guy with all the experience”. He said there were no other evaluations.

[188] In response to a question seeking clarification of a safety concern regarding a “trailer step”, Mr. Lalonde testified that the lunch trailer had been set up, but there was no step to get in. He said he mentioned verbally “can we do something about this” and was teased by the site supervisor as Mr. Lalonde is 5’3” tall. He said others said you’re the only one with a problem. He stated that he raised the concern at several safety meetings, three times formally and several times informally. After sending an anonymous email about it to SaskPower, he said it was fixed the next day. When asked who he raised the concern with, he indicated Joanne Hart, Gloria Carrier, Nelson Carrier, Denis Bjergovich, Denis Fournier, Philip Magnan, and Josh Beckman. He testified that he never raised the concern in writing, but mentioned it on entry and exit at the building. He said he raised it at two tailgate meetings and once at a weekly meeting. He said it was over two feet high to get in and he had to physically roll into the trailer.

[189] When asked about sending the concern by email to SaskPower, Mr. Lalonde said that he tried to send it to the Construction Safety Site, which could be done anonymously. He said he was getting flack about bringing up safety issues. When asked whether it was his concern set out in Exhibit A-6, Mr. Lalonde said he believed so and indicated that he did not intend for his name to appear on the complaint.

[190] In response to a question asking him to recall and summarize an incident with a telehandler, Mr. Lalonde testified that “Pierre made a sharp turn in the public parking lot, and the trailer broke off and rolled toward the water.” When asked what the nature of his concern was with this event, he wondered why the event wasn’t being reported. He stated that Nelson Carrier “told everyone to shut their mouth about this”. He said Nelson and Gloria made the decision not to report this. He went on to add that there was no turnaround on the shift change going on and that one needed to look at employee records. Mr. Lalonde testified that the telehandler operator could not speak English well and “didn’t have a ticket to run a telehandler”. He said Pierre didn’t read the manual, that there were no safety chains, and there were no electric brakes on the trailer. He stated that it rolled a ways and was stopped by the pylons at the end of the parking lot.

[191] When asked whether he had seen what happened. Mr. Lalonde said “no”. He said he had loaded a seacan on a trailer. Pierre was to take it to the parking lot, unlock the trailer from the zoom boom, take the seacan off the trailer, and hook the trailer up. He stated that Pierre walked back to him, said he’d had an accident, and pointed to the parking lot. Mr. Lalonde said “I got that there was an accident, so I went up.” He stated that he went to the parking lot and that the telehandler was gone by then. He saw the trailer against a post where it had rolled and stopped. He said a truck came along driven by Dan, an ironworker. Mr. Lalonde said he asked why no one was reporting this and was told that Nelson and Gloria said not to. Mr. Lalonde testified that



they did not want many incidents at the start of a job, but that safety was important in construction. He said this was the first time where they were wanting to hide incidents; he thought it might come up at safety, but it never came up. He believed the event occurred either July 30 or 31, 2019.

[192] When asked what happened when he raised a concern, Mr. Lalonde testified that he was told to shut up. He stated that he said to “put safety chains on at least” and that Nelson Carrier replied “yeah, yeah, - we’ll look after that”. Mr. Lalonde testified that they planned to lie about it and bury it and believed it was raised at the August 1 safety meeting. He further said there was no turnaround then and that Nelson and Gloria were always there.

[193] In response to a question about when safety issues were raised, Mr. Lalonde testified that they should be able to be raised every day at tailgate meetings. He said “at Andritz, it never happened this way. They just barked out orders to work” and that they never really asked about safety concerns. He testified that “Nelson overstepped Gloria on this. If anyone said anything, he’d shut you down right away.” He said that, when he asked what was going to be done about the telehandler incident, he was told to mind his own business.

[194] When asked if the incident was raised by him again, Mr. Lalonde said “yes, to SaskPower”. He said he tried to raise it anonymously as the event took place in a public parking lot and it was lucky no one was hurt. He said the fishing was good and the parking lot was busy with people going fishing. He described the incident as a “major ‘near miss’” and that “it was big time”.

[195] Mr. Lalonde confirmed Exhibit A-2 as his email reporting another incident to SaskPower. He said that he didn’t actually see the stepladder being used initially, but that it was brought up by workers carpooling with him who said it was dangerous and they were scared to bring it up with Nelson. He said that you “don’t step off a stepladder onto another level – you just don’t do it.”

[196] He testified that he was instructed by Denis Fournier to get the zoom boom and caught a ride to the Gates. He was then following Rene Langevin and driving around the Gates to turn around when Rene called him over and they spoke. He said Rene asked him if this was the stepladder mentioned in the safety meeting previously. Mr. Lalonde indicated that it had been raised and Nelson said it was “not us, it’s another contractor”. He stated that he told others it was unsafe and should be looked at, but Nelson said “no, no, no.” Mr. Lalonde testified that at that point, he hadn’t yet seen the ladder and, once he saw it, it was much worse than described and that it was horribly unsafe. He said that Rene indicated it was not another contractor, “it’s you guys” and to check it out. He stated that he then returned the zoom boom and, when parking it, saw Nelson climbing the ladder. He said Rene hollered out of his window to get off the ladder, and Nelson did.

[197] Mr. Lalonde testified that some ironworkers had previously used the ladder when it was unsafe. He described the SCOT warning and that you never use a stepladder to access another level and it's against s.254 of the OH and S Act. He said a ladder must be 3' past the level, secured top and bottom, have handrails, and that the platform was unsafe. He said he thought Rene was going to do something about it.

[198] When asked whether Rene took any action, Mr. Lalonde stated that he deemed it unsafe and it was not to be used again until an access was built. Mr. Lalonde testified that there was some question about who would build an access and that he volunteered to do it as he is a journeyman carpenter. He said Nelson was upset at this. Mr. Lalonde said that he told him "I know how to build stairs" and offered himself to do it. This exchange took place at the next following tailgate meeting.

[199] Mr. Lalonde testified that the tailgate meeting turned into a "yell fest" and questions were raised about who was speaking to SaskPower. It was mentioned that if someone didn't want to be here, "that can be arranged".

[200] He said that he talked to Rene and to Joanne Hart as she stayed a week and Mr. Lalonde believed she could see a problem coming up with Nelson and Gloria. He said that Denis Fournier went to the fridge and ripped up Joanne Hart's number, and then mentioned that he had her business card. He testified that Denis Fournier came over to him and ripped up his also. Mr. Lalonde said you would lose your employment if you contact anyone outside of Andritz. In questioning, Mr. Lalonde confirmed that all of this was said and took place at the same meeting on a Friday. Mr. Lalonde further said that Nelson was at the table in front of him and slammed his hand on the table saying "that was safe – that ladder was open". Mr. Lalonde said he replied to him "not according to SaskPower and OHS." He said that Nelson then "lost it" was very angry and said to him, "fuck you". He added that other Andritz personnel were saying "it was safe, it was safe". He said "other workers got mad at me – they were ready to hang me for bringing this up". Mr. Lalonde said he sent the email to SaskPower about this event either the day of the meeting or the next day.

[201] In response to a question as to whether he was aware of any investigation being undertaken in the telehandler incident, Mr. Lalonde said "there was absolutely no investigation". He said that "Pierre had no ticket and worked for Enerserv". He added that Pierre knew "no English". He said the move to cover it up only came after Nelson and Gloria got involved. He said Andritz told Enerserv that nothing would be done. He stated that later on, "they said we are doing statements at the safety meeting."

[202] When asked whether he heard anything more about reporting this incident, Mr. Lalonde said it happened only after sending his email and when Mr. Labelle arrived onsite. He said Mr. Labelle indicated they had no time to investigate, and that he replied "you had two weeks". Mr.

Lalonde stated that he told Mr. Labelle no one left the site and that there was no cross-shift to Nelson.

[203] When presented with Exhibit R-1, Mr. Lalonde said that he was getting nowhere bringing up issues to Nelson so he brought it up to Gloria. He said he told her he was working on a harassment complaint against Nelson. He said that Gloria said "Ok" and went to Denis Fournier. He said that Denis Fournier got all excited about a harassment complaint being made against an Andritz employee and that no one gets to speak to him that way. Mr. Lalonde said the threat of firing kept coming up and that they wanted to talk to Cory Cawley of the union and that "this isn't gonna stand". He said there was no investigation or attempt to investigate.

[204] Mr. Lalonde testified that "Cory actually suggested, let's just move on". He said he then went back to Gloria and got a form. He said he filled it out and took a picture of both sides. He testified that he said "I'm still filing this" and gave it to Gloria. He said he "never heard of it again". He stated that he later sent a picture of the statement to Marcel Labelle as Marcel had told him that Gloria would never do anything improper.

[205] When asked why he submitted the form, Mr. Lalonde stated "I know about my rights and whistleblower protection" and that they were bullying people. He said he was previously responsible for the near death of a worker and takes this very seriously.

[206] When asked why he sent an email about the trailer step, Mr. Lalonde responded that nothing was happening on site and they wouldn't listen. He said it was a "Hail Mary" pass, and it got something done so he continued. He said that the next day, Dan and Rene said they would be fixing the step and "we got a trailer step".

[207] When asked why he went only to SaskPower regarding the telehandler incident, Mr. Lalonde responded that he "got no action on site" and was bringing things up to supervisors and to Safety. He said he was being ridiculed and harassed, but when he sent it to SaskPower things got done.

[208] In describing his interview with Marcel Labelle and Josh Beckman, Mr. Lalonde testified that he climbed down from his crane on the ladder and Marcel and Josh rushed over and said "no one's backed you up on your concerns" and he couldn't get a word in with them. He said they told him no one said there is any harassment except you.

[209] Mr. Lalonde testified that he was told by Mr. Labelle that he was the last one interviewed, and that SaskPower had informed them it was him that was making complaints. He said "they went right at me". When asked about the zoom boom incident, he said Mr. Labelle said he hadn't had time to address it, and Mr. Lalonde responded that they had had 2 weeks. He said Mr. Labelle told him it was a minor incident. Mr. Lalonde said it was a major incident as there were no electric brakes. It was serious as the seacan was unsecured and the incident took place near the water in a public parking lot. He said Mr. Labelle indicated there might have been

things overlooked. He stated that, at one point, Mr. Beckman said that he should have reported directly to his supervisor and that Mr. Lalonde said he had. Mr. Lalonde said that he did not gain any respect for Mr. Beckman as he simply nodded along with Mr. Labelle who was waving his hands and telling Mr. Lalonde his credentials.

[210] Mr. Lalonde described the exchange as him indicating that “we are in Saskatchewan where we have an incident we report it.” He said that Mr. Labelle told him it had been reported, and that he replied it had not yet. He said Mr. Labelle then indicated that it will be reported. Mr. Lalonde said that he was not the only one who is onto Nelson and that other SaskPower employees have to see it. He also brought up the step ladder incident, which Mr. Labelle told him was rectified. Mr. Lalonde replied that it only happened after he raised it at safety. Mr. Lalonde testified that he said “what does it take to get things done around here”? He said that, in response, Mr. Labelle was shouting at him.

[211] When asked whether other concerns were raised with him following the interview, Mr. Lalonde said “yes, with a telehandler incident”. He said that Mr. Labelle told him that our Caterpillar doesn't lurch forward. He said, “now I know hydraulic pressure from the pump can cause surge and that this can be adjusted”. Mr. Lalonde said that he found this out about 2 months ago. He indicated they had the same model at the union hall for training, but it didn't surge. He said this was not the first time he brought it up and had raised it at safety with Gloria. He said she went to Dan, an iron worker, who said it was good.

[212] When asked about Exhibit A-7 and text messages within it, Mr. Lalonde said he sent text messages after work as there was no cell service at the site. He could not send them earlier. He said he sent the witness statement picture as it was the same one he left with Gloria Carrier. He said he had also communicated with the night operator who said that in third gear the telehandler didn't do that and that it was only acting that way in every other gear. He said this was illustrating his point about something being incorrect with the machine and that it could maybe help rectify things by looking at the equipment.

[213] When asked why he sent the text message to Mr. Labelle, Mr. Lalonde said that Mr. Labelle told them they could come to him with anything. He said phone 24 hours a day as he was open for all safety concerns. This was expressed in a meeting with Mr. Labelle when he met with workers in the morning to announce the investigation. He said Mr. Labelle talked all about his credentials. He said Mr. Labelle said at the end of the meeting to “email me, text me, I'll reply to anything about safety”.

[214] When asked specifically about the text message of August 19, Mr. Lalonde said that he did not recall sending that text and only recalled sending one about safety. When asked further about the text message of October 27, Mr. Lalonde said that he never met with CBC and did not know what that's about. He said he could not recall sending this text message. He recalled sending the further text messages of November 4<sup>th</sup> and 5<sup>th</sup>.

[215] Mr. Lalonde testified that he left the worksite on Aug 19<sup>th</sup>. He said it was a Saturday because he was told he had to take turnaround. He said he was told on the Friday that he had to take the turn around and left on Saturday. He stated that he received an email on the Monday saying he was no longer an employee.

[216] Mr. Lalonde testified that he had never been disciplined during his time with Andritz. He said that the Enerserv group praised his work as he was also lifting for them and they got along well.

[217] When shown the investigation report tendered as Exhibit A-3, Mr. Lalonde said that he had not seen it before the hearing. When asked specifically about the Aug 11, 2019 entries, Mr. Lalonde said that the night shift operator told him that when the machine was in third gear it didn't surge forward. He said he was just putting that information forward.

[218] When questioned about a LinkedIn invitation, Mr. Lalonde said that he does not use his real name on social media because he is a landlord and some tenants will attack landlords on social media. When asked why he tried to contact Mr. Labelle on LinkedIn, he said he was contacting quite a few people including his cousin. He said it was a useful tool for looking for jobs. He stated that he had Mr. Labelle's card and checked it on LinkedIn, but that he was not raising safety concerns that way.

[219] In response to a question regarding an invitation he extended to Mr. Labelle for coffee, Mr. Lalonde said that he wanted to discuss safety issues with him. He said that Mr. Labelle said that he had lied. Further, Mr. Lalonde said that Mr. Labelle assured him if he raised anything about Nelson it would be investigated; but he had given a harassment complaint to Gloria and she went directly to Denis Fournier with it. Mr. Lalonde said that Mr. Labelle was convincing and seemed sincere at one point, but he was not really sincere.

[220] Respondent's counsel indicated that Marcel Labelle said that, after the interview, you parted with a handshake and agreed to let bygones be bygones. Counsel then asked - how do you recall the conversation ending? Mr. Lalonde testified that Marcel Labelle "attacked him like a rabid dog". He said that Marcel eventually calmed down and told him to report things to his supervisor. Mr. Lalonde said that he had, but they did not write anything down. He said his harassment complaint totally disappeared.

[221] In response to a question about whether he had other interactions or raised concerns between August 12<sup>th</sup> and his removal from the work site, Mr. Lalonde said "just the same concerns", and he reiterated those already brought up that he claimed Andritz was ignoring.

[222] Mr. Lalonde testified that he received the letter of August 19 from Andritz by email and that nothing else was said to him. He stated that they said the opposite as Philip Magnan and Denis Bjergovich said "see you next week".



[223] When asked what actions were taken following his removal from site, Mr. Lalonde testified that he spoke to his union about it and they filed a grievance. He said that upon getting legal advice, it was decided that the matter was an OHS discriminatory action as there were no performance issues. He then went to OHS about it. Mr. Lalonde testified that he had to fill out a questionnaire and spoke to Shawn Tallmadge. He said he told him that he didn't want anyone to get hurt. He said he spoke with Officer Tallmadge a few times after that.

[224] Mr. Lalonde testified that following receipt of the OHS decision, which forms part of this record, he did not get reinstated or receive any reply at all from Andritz. He said they would not answer the phone and he tried texting them. He said Andritz behaves poorly.

[225] Upon questioning, Mr. Lalonde confirmed that he immediately checked the workboard and began looking for work following his lay off. He said there was work in Alberta and he went to Alberta about 2 weeks after leaving the worksite - around Labour Day 2019. He said it was just a shutdown and a couple of weeks work were available to him here and there, all of which ended by the end of October.

[226] When asked whether he looked for work through the union, Mr. Lalonde indicated "no, it was only through Indeed and Kijiji". He sent his resume as a crane operator at first, but instead knocked on doors and got a job right away. He said he probably sent 200 applications. He also said others had told him not to put crane operator on your resume or they'll think you are going to leave when crane operator work comes available.

[227] Mr. Lalonde testified that he made most applications online but that Covid had an effect and work slowed considerably in March 2020. He said he was accepted for 2 shutdown jobs in Alberta, but Covid prevented them. He said winter was slow and he sent trucking applications. He also said that he bid on any job he was qualified to do through the union board.

[228] When shown Exhibit R-2, Mr. Lalonde identified it as a printout from indeed.ca which lists the last 25 places he was looking for work. He said the job search program looks at all over Canada and condenses results to one site for someone searching. He also said the jobs were all Saskatchewan-related. He testified that he would have looked elsewhere, and sent applications to Local 115 in British Columbia for the TransMountain Pipeline job, but all were cancelled due to Covid. He said there might be an uptick at a camp in Vanderhooft, B.C. and expects to work there next year. He also said the Jack Cooper job looked good, but because of Covid decided he didn't need it. He testified that a lot of employers don't want union employees.

[229] Mr. Lalonde confirmed Exhibit R-3 as a paystub of his from Mocon, his current employer, and that it represented a two week period.

[230] Mr. Lalonde was shown a Discriminatory Questionnaire, marked as Exhibit R-4, and indicated that he recalled filling it out. When asked why he referred at page 6 to Denis Fournier,

he said that Denis Fournier was site manager and Mr. Lalonde thought that Denis Fournier was the one responsible for letting him go.

[231] Mr. Lalonde testified that he still feels he should have his job back with back pay. When asked to respond to the comments of Marcel Labelle and Denis Fournier that he was not a team player, Mr. Lalonde said that “if it means shut my mouth and go with the herd, I guess I’m not”. He said he checked all the boxes about safety and doing his job, and came to work every day clean and sober. He testified that he was always laughing and joking, and that they were always asking for another joke. He said he kept it clean around the ladies, and did bring up safety issues.

[232] When questioned about the crane reference in the Investigation Report, Mr. Lalonde said that he had read the manual and knew the crane extremely well. He said he was not confused about the crane and knew it better than anyone else.

[233] Mr. Lalonde testified that he did not know either Nelson or Gloria Carrier before July 15, 2019 when he met them within minutes of each other.

[234] When asked if he had seen the Andritz letter to OHS, A-9, before the hearing, Mr. Lalonde said he had seen parts of it from Shawn Tallmadge. He disagreed with the statement that “Tim displayed a bad attitude”, and said that his attitude was positive and he was always telling jokes and trying to make things safe. He said that Andritz was not good at safety, but had things that he liked. He said he complimented them more than criticized and provided two examples of compliments. He also said he told Gloria Carrier that Frank, the night crane operator, was diabetic and could use a sharps container. He said Gloria thought it was a great idea and placed one in the washroom. He was very pleased with that.

[235] When asked about the reference in A-9 to having filed a non-founded harassment complaint, Mr. Lalonde testified that he had actually filed the complaint, but there had been no investigation. He said he did not go to Andritz, but to Gloria and asked for a witness statement telling her that he was filing a harassment complaint against Nelson.

[236] In cross examination, Mr. Lalonde was first asked about his mitigation efforts and when he began working Alberta. He stated that he found work right away but started a little later following a drug test and qualification process. He said he found work on shutdown and that continued until the end of October. Except for the Giesbrecht crane, he began again in early 2020. He testified that his next work following the end of October was about March 11, but he wasn’t sure exactly. He said then Covid hit. He was out of work from the end of October until March 11<sup>th</sup>, but was looking for work.

[237] When asked about changing his resume to remove any reference to crane operator, Mr. Lalonde stated that he left his resume at home and just showed up at places. He said some would not hire if you look over-qualified. He saw that Mocon wanted help, called their number, and spoke to Adam, his foreman. He said they met, and he started the next day after a driving test. He

testified that he just told Adam about himself and did not mention that he was a crane operator - just a truck driver. He said he changed his "oral resume" and told Adam where he worked before. He said his Indeed and Kijiji resumes said crane operator and journeyman carpenter. He said he was frustrated looking for work and it was difficult during Covid. He said he had some crane work lined up until Covid hit. He stated that his job at Mocon could last several years but there was no guarantee.

[238] When asked specifically whether his online resume stayed the same, Mr. Lalonde indicated that "yes, the change was kind of an immediate thing". He said that the same day he was informed to leave out certain qualifications he went to Mocon and got the job.

[239] In response to a question about when he was hired at Mocon, Mr. Lalonde said it was a few days after the long weekend in August 2020. He saw an ad on Tuesday and went to see the office the same day; however, the doors were locked and there was only a phone number. He called Adam who he met at their Lutheran Road job. He said Adam asked some questions. The next day, they met at the shop at 6:30 AM and did a road test. He stated that Adam said "you're hired, you know how to drive." He confirmed that he started this job on August 6, 2020.

[240] When asked whether he had been paid union rates on his job in 2019 through the end of October, Mr. Lalonde said "yes". He also confirmed that he was paid union rates in March 2020. When asked about his union membership as a carpenter, Mr. Lalonde said that he had been a member, but let his membership go.

[241] Mr. Lalonde was asked about his familiarity with safety legislation and, in particular, section 254, which he had earlier referred to in testimony. He said, "yes it has to do with ladders". When asked whether might refer to fly form deck panels, he said he might have it wrong. He said maybe it is section 264.

[242] When asked whether he would agree that Andritz was responsible for Andritz safety on site, Mr. Lalonde said "no" and that all personnel are responsible for all safety on site. He said "you see it, you say it". He said you report anything you see that is unsafe, and not necessarily just for your own company.

[243] When asked whether Andritz was responsible for managing Andritz's safety programs on site, Mr. Lalonde said he could not say for sure. When further asked whether he was responsible for managing Andritz's safety program, Mr. Lalonde said "yes, as a worker for them, I'm responsible". He said everybody's a safety person. In response to a question as to whether he was responsible for developing a safety plan and making sure it's followed, Mr. Lalonde said "not for laying it out, but to be sure people follow it, I hold everybody accountable". He said he knows his rights, 1) to know 2) to participate and 3) to refuse work. He agreed that it was not his responsibility to develop the program.

[244] When asked – is it your responsibility to develop SaskPower’s safety program, Mr. Lalonde answered, “no, it would’ve been done better if I’d done it.”

[245] Appellant’s counsel referred Mr. Lalonde to his earlier testimony where he said “they said there was opportunity to bring up safety, but that wasn’t the case”. Mr. Lalonde agreed that’s what he said. Appellant’s counsel then referred to earlier testimony that Mr. Lalonde said “I raised safety issues at tailboard meetings”. Mr. Lalonde said, “yes, I was shut down and told it was nothing to do with us.” When asked whether he said “I raised concerns on numerous occasions at tailboard”, Mr. Lalonde said, “I did”. When referred to his earlier comment that he had not been given an opportunity to raise safety issues, Mr. Lalonde said “I jammed it in.” He said sometimes they didn’t even ask us so I would raise my hand and say I have a concern here. He said that until he raised concerns and became abrupt, it was all “poo-pooed”. He said that later in the meetings they would sneer and ask if anyone had any safety concerns. He stated that he would say “not today, but maybe tomorrow”. He said others would not bring up any concerns, and he even asked the ladder guys to get involved. He said he asked them why didn’t they bring it up, and they said they did not want to get fired.

[246] Appellant’s counsel then showed a document on screen, which included a picture of an individual. Mr. Lalonde indicated that he did not recognize the document, but said the picture was from the E.B. Campbell site and illustrated a view of something totally unsafe and against OHS. When asked whether a measurement of height to ground was shown in it, he said, “yes”. Mr. Lalonde then said, “that’s dum dum” in reference to the man in the picture. He said “I call him that out of affection.” A second picture was shown to Mr. Lalonde in which steps had been erected in the location where measurements had previously been taken. Mr. Lalonde said “yes, that’s proper safe access. My reporting made this a safe access.” When asked about his second complaint of August 3, Mr. Lalonde first said “those stairs aren’t to regulation, by the way.” He then said he thought he brought it up before that, at a prior meeting. He stated that he first raised the issue at a meeting and because he was not getting any action, he eventually put it in writing. When told the August 3 complaint was the first written record of the complaint, Mr. Lalonde said that Rene had told Nelson to get off the ladder and had ordered stairs built previously.

[247] When asked about stairs having been “built right away” from his earlier testimony, Mr. Lalonde said, “I thought I said steps to the lunch trailer were built right away”. He said he offered to help build the stairs at the Gates as Nelson had trouble building them. He said if they are not built to regulation, they are unsafe. He was not aware whether they were built on August 1 or 2, but knew that SaskPower had halted all work on the building until safe access was there.

[248] When challenged on his comment that “every complaint I made I put in writing”, Mr. Lalonde agreed he first went to people orally, and said “I did, when I didn’t get anywhere, I put it in writing – yes, to the best of my recollection”.

[249] When presented with Exhibit A-6, an intake email regarding a step to the lunch trailer, Mr. Lalonde indicated that he did not recognize it. He said he never sent anything from [t.lalonde@sasktel.net](mailto:t.lalonde@sasktel.net) and only sent messages from his phone. When asked whether he raised a complaint on July 29 through an online portal, he said "I believe so". With the complaint to SaskPower, he said he was promised anonymity and that there was more than what was shown on A-6. When asked who he had previously raised the complaint with, Mr. Lalonde said with Gloria Carrier many times and with Josh Beckman at two meetings. When challenged that he had not raised the issue with either Gloria Carrier or Josh Beckman, Mr. Lalonde said "I disagree." He said he wanted to step in without rolling up because he had suffered harassment and been told short jokes.

[250] In response to a question about where his written complaints to Andritz were, Mr. Lalonde said they only went to SaskPower and he didn't believe there were any sent to Andritz as he had only raised them several times orally with Andritz. He said once he sent them to SaskPower, safety improved. He agreed that the first time the complaints were reduced to writing, they were only sent to SaskPower. He said the only issue that did not go to SaskPower was his statement about Nelson, which was given to Gloria Carrier.

[251] Regarding the telehandler incident, Mr. Lalonde agreed that Pierre was the operator although he had not witnessed the event and only saw the aftermath. When asked about his earlier testimony that Pierre didn't have a ticket to operate the telehandler, Mr. Lalonde agreed, and said that's what he was told by the guy in charge of Enerserv, and had heard this in the lunchroom. He was relying on what he heard. He said that Andritz was saying to "bury it"; then they wanted statements. Mr. Lalonde said the employer keeps track of tickets and they said Pierre didn't have a ticket. He said Pierre barely speaks English.

[252] Appellant's counsel challenged Mr. Lalonde on his earlier testimony about who was supervising at the time of the telehandler incident. Mr. Lalonde said it was Andritz's telehandler and needed a response from Andritz's safety. He said it was Nelson Carrier that repaired it and he didn't go on turnaround. When asked if he knew who was supervisor that day, Mr. Lalonde said "you're splitting hairs" and he believed it was Nelson Carrier. Appellant's counsel suggested that Denis Bjergovich was supervisor at the time. Mr. Lalonde said, "no, I don't agree".

[253] Mr. Lalonde was shown a document titled "Incident Report" by Appellant's counsel. Respondent's counsel objected to production of the document and any testimony about it. For reference, the document was subsequently marked as Exhibit A-13.

[254] *[Of note, at various times during Mr. Lalonde's testimony, discussions were held with Appellant's counsel and Respondent's counsel to resolve concerns about both documents and issues arising from Mr. Lalonde's testimony that had not been identified prior to testimony from the Appellant's witnesses. Recognizing the manner in which the hearing is conducted and the*



*lack of any ability for the parties to question the other party's witnesses in advance, I ruled that previously undisclosed documents may be referred to where they were relevant to issues raised by either the Appellant or Respondent. I also ruled that limited rebuttal evidence could be called on issues not apparent in either the disclosed record or the decision appealed from, and which were raised in testimony subsequent to the close of the Appellant's case. I made it clear that these were not opportunities for either party to attempt to redo or rebuild its case. This decision was made with a view to the scope of my jurisdiction and authority under the Act while maintaining fairness in the proceeding. I commented about such in camera sessions with counsel each time the hearing resumed.]*

[255] Appellant's counsel asked a series of questions relating to Exhibit A-13, including whether Mr. Lalonde had previously seen the document. He said he had not, and was directed to the section identifying "witnesses". Mr. Lalonde confirmed he knew Pierre Desrochers and Jason Small's names on the list, and agreed that it did not list Nelson Carrier. He added that he disagreed with several items on it.

[256] When asked whether page 3 was a photo of the trailer in question, he said "No. Do you see a seacan? If no seacan, it's not the trailer". He went on to say that he did not believe it was the trailer as the trailer he'd seen had a seacan on it.

[257] Appellant's counsel asked Mr. Lalonde whether he was told that no TASC card was filled out. He answered that "no", you must fill out a log whenever you use equipment and must inspect it. He said that the TASC card in Exhibit A-13 (which would subsequently be marked as A-14) isn't the same TASC card as he completed. He said he signed a different TASC card. When directed to review it closer, Mr. Lalonde indicated that his signature was on the 2-page TASC card being presented to him, and that it was the proper TASC card. He then said he should have been informed as a signer on the TASC card. He agreed that he had not been there and witnessed the event and for that reason was not identified as a witness.

[258] Mr. Lalonde was directed to the 2 pages of A-13 immediately following the TASC card, which were tickets for operation of a forklift in the name of Pierre Desrochers indicated on each. Mr. Lalonde expressed surprise at the tickets and said "I'm incorrect. He has a ticket" and he apologized for being ill-informed.

[259] Appellant's counsel then referred Mr. Lalonde to his earlier testimony that there had been no pictures taken of any either the ladder situation or trailer incident. Mr. Lalonde said that he was never shown the pictures and they had not been taken until after he reported the incidents. He said if pictures had been taken immediately after the incident, there would have been a seacan on the trailer. When shown Exhibit A-12 again, Mr. Lalonde agreed that it contained pictures of both before and after construction of a set of stairs.

[260] In response to a question about whether he had interacted with Joanne Hart at the worksite, Mr. Lalonde replied that he had. When asked whether Joanne Hart was made fully

aware of issues at the worksite, Mr. Lalonde said he had called her over at a morning meeting and asked her if she had seen how Nelson took over the meeting from Gloria. He said Nelson had shut down suggestions very rudely so he brought it up to her. He said that she indicated to him that she had noticed it as well. He said that as a crane operator there will be incidents. Mr. Lalonde said that he and Joanne Hart discussed safety issues in detail and that's when she left her business card on the fridge for anyone to call with issues about Nelson Carrier.

[261] Mr. Lalonde was asked whether he told jokes on site, and he said that he did quite often and told them at the beginning of tailboard meetings sometimes. He denied that he was ever spoken to about inappropriate humour at the worksite by Gloria Carrier or others, and said that he always kept jokes clean and above board. He said if there were no women around he would possibly tell jokes of a sexual nature, but never in front of a woman – not to his knowledge.

[262] Appellant's counsel asked Mr. Lalonde whether he had any discussion with his union prior to coming to the E.B. Campbell site, and he said that he had discussions with Cory Cawley. When asked whether he recalled whether the conversation discussed his prior behaviour, Respondent's counsel objected to the question.

[263] I ruled that the conversation with Mr. Cawley was not directly relevant, and no further questions were asked on this topic.

[264] Mr. Lalonde stated that he had first arrived at the worksite on July 15 as part of the first wave of hiring. He said he arrived in the morning and went to Carrot River to fill out paperwork. When Appellant's counsel referred to his earlier testimony about the Andritz orientation took "no time at all", Mr. Lalonde said they had read through the book – Gloria Carrier read it and did a good job – and they followed along. He said the orientation with Gloria took over an hour, but, at most, it was only 10 minutes of orientation with Dan at SaskPower. When presented with a document entitled "HSE Site Orientation", Mr. Lalonde reviewed it and agreed that he signed it. The document was entered as Exhibit A-15.

[265] When asked about the SaskPower orientation, Mr. Lalonde said that it took about 10 minutes and this was the first time he had seen the presentation materials. He was asked whether he recalled watching a video presentation as well, and Mr. Lalonde testified that he did not recall watching a video, including the one shown (in part) to him during his testimony. The digital file of the video was marked as A-16 for identification purposes.

[266] Mr. Lalonde was shown a document entitled "Orientation List by Company", which he said he had never seen before. The Orientation List was marked as Exhibit A-17. He agreed that his name appeared on it and that his orientation took place on July 15, 2019, the date appearing on the document. He confirmed that he took the orientation with others and recalled telling a joke then. He said the joke was "Golf is like sex, you don't have to be good at it to enjoy it". He agreed that Gloria Carrier was present as things were just getting organized for the meeting.

[267] When asked whether he attended a site tour, Mr. Lalonde said it was pretty brief and couldn't recall whether it took place the same day as the orientation. He said he thought they walked downstairs and upstairs from one end of the building and back, which took 5 to 6 minutes. This was additional to the 10 minutes of orientation, he said. When it was suggested to him that the orientations took the entire morning, Mr. Lalonde said he disagreed as he was in Carrot River before lunch.

[268] Mr. Lalonde was shown a document entitled "Information Sheet", and he confirmed that he recognized his own name and signature, as well as "Dan's name" on it. The Information Sheet was entered as Exhibit A-18. Mr. Lalonde agreed that he had signed off on the SaskPower orientation.

[269] When asked whether he recalled any discussion at the orientation about reporting incidents, Mr. Lalonde said that they wanted everything reported. He said they wanted every incident and unsafe condition reported to them. When asked whether his first duty was to report this to a supervisor, he said that so long as someone is in a supervisory position, as per OHS, who had the power to deal with it. He agreed that it should be reported as quickly as possible.

[270] In response to a question as to whether it would be easiest to report to your own supervisor, Mr. Lalonde said "no, look at who I had for supervisors". He added that it would be easiest and fastest to get service by going to SaskPower. When asked who had the most accessible supervisory personnel on site, he said "with Andritz, no one".

[271] When asked whether his supervisor was Denis Bjergovich, he said he was never instructed on that, and that he mainly reported to Denis Fournier. When it was suggested to him that Denis Bjergovich was the supervisor on days at the Powerhouse, Mr. Lalonde said "I didn't see him too much, but if you say so". He said that he didn't recall getting direction from Denis Bjergovich ever, but agreed that he worked in the Powerhouse.

[272] When asked who he understood the supervisor to be, Mr. Lalonde said Denis Fournier always gave the orders. In response to a question as to whether he recalled Denis Bjergovich overseeing tasks, Mr. Lalonde said "no, I was the crane operator". He did agree that Denis Bjergovich was a supervisor and that he was in the Powerhouse, although Mr. Lalonde said he thought he went up to work with Nelson.

[273] When asked whether he was aware of Denis Bjergovich going on turnaround, Mr. Lalonde said he was not aware of it. He said maybe near the last week, but he didn't know. He said he had his "own bubble. I was the crane guy and if it involved crane, I looked after it". He said that he was the man that you went to. He also looked after safety equipment and tagged it in his spare time. He said he helped Gloria Carrier code the tools and tested them. He took a lot of Gloria Carrier's equipment out of service because it wasn't safe and he was happy to do it for her.

[274] Mr. Lalonde testified that he did not work much with Philip Magnan, but that he recalled Philip watching one lift that he did as he wanted to make sure it was within chart; otherwise, they had very little interaction.

[275] When asked about the availability of Gloria Carrier and Denis Bjergovich, as supervisors, Mr. Lalonde agreed that he saw them around on the average day. He denied that they were readily accessible to provide written complaints to. He said Denis Bjergovich often went to the Gates. When asked who was supervisor when Denis Bjergovich was at the Gates, Mr. Lalonde testified that a lot of the time they didn't have one. He said sometimes supervisors were doing paperwork, going to town, and other things - and that he was on the crane.

[276] Appellant's counsel asked a series of questions regarding Exhibit A-6. Mr. Lalonde responded that he did not recognise the bolded language within the exhibit, but agreed that he had sent a message to an online portal. He also said that he believed he had sent it to SaskPower's "Contractor Safety" site rather than to the "Contact Us" page. When asked about the phone number, name, and email address on the document, Mr. Lalonde said it was all his, but he believed he had used his dexterdraco email address. When asked whether the bolded language was accurate, Mr. Lalonde said that he thought he put more in there, but was maybe thinking of the second one. He testified that he tried to submit this anonymously because he feared a backlash bringing safety complaints with Andritz. He added that he was in fear of Andritz and that SaskPower had run to Andritz with his name. He said he never gave SaskPower permission to hand out emails. Mr. Lalonde said he didn't believe he included his name in the first complaint submitted to SaskPower.

[277] When asked whether the first complaint went to "Contact Us" and the second to "Contractor Safety", Mr. Lalonde thought both had gone to Contractor Safety, but couldn't be sure as he "was in huge distress" because of the lack of safety onsite. He reviewed the "Contact Us" document, which was entered for identification purposes as Exhibit A-19.

[278] When presented with Exhibit A-2, Mr. Lalonde confirmed that it contained his email address and outlined the four complaints that he had regarding 1) the telehandler incident, 2) the ladder incident, 3) issues with Nelson Carrier and Gloria Carrier, and 4) fear of reprisal from raising safety concerns. He then said that Denis Fournier made threats at a safety meeting. He subsequently agreed that Denis Fournier was not mentioned in the complaint.

[279] In response to questions posed about the telehandler incident, Mr. Lalonde indicated that he did not know whether Denis Bjergovich went on turnaround after the incident and said he was there when it happened. He agreed that a report about the incident was filed but said "it was full of lies". He questioned why Denis Bjergovich hadn't signed the TASC card and why Pierre would have walked back to him if there had been witnesses. He did not believe that two supervisors were witnesses to the event. He agreed that Pierre had been the operator at the time of the incident and, despite not being identified on the TASC card, believed Nelson Carrier was

involved and had covered it up. He maintained a number of times that Nelson Carrier did not go on turnaround and was adamant that Nelson Carrier was the supervisor who was purported to have gone on turnaround.

[280] Appellant's counsel showed Mr. Lalonde the pictures pertaining to the ladder incident, and Mr. Lalonde again referred to a person in the picture as "Dum Dum". He verified that Nelson Carrier was the person in the picture. When it was put to him that the stairs to the platform had been built before August 3, the date of his second complaint, Mr. Lalonde said "I didn't know that". He also confirmed that he wasn't personally involved in the ladder incident but had been informed of it by other workers. When it was suggested to him that the stairs were built on August 2<sup>nd</sup>, Mr. Lalonde said they had been ordered to be built immediately. He said he offered help to Nelson Carrier because he was a journeyman carpenter, and didn't know who built them. He said there was no 1 inch nose on the stairs so the stairs were not to Code. When asked why he had not raised the issue previously with his supervisor, Mr. Lalonde said that he raised it at a safety meeting and the supervisor was there. He said the stairs were not in his area, and they can't even be seen from his spot. He said he brought it up to Gloria Carrier and that Nelson Carrier answered.

[281] When asked whether he believed there was a concern with Nelson and Gloria Carrier on site, Mr. Lalonde said that there is and that Gloria was reprimanded. He maintained that he believes there is still an issue with them on site. Mr. Lalonde testified that Nelson Carrier tried to intimidate him when he first met him, but he is not intimidated easily. He agreed that there were disagreements between him and Nelson Carrier over the stairs, and he said Nelson swore at him. He said Nelson "came out of his chair like he was going to hit me". He agreed that such specific facts about Nelson Carrier were not included in his first complaint.

[282] When asked about the second complaint - and a reference to "all workers threatened with loss of employment" - Mr. Lalonde said that he was the only one who stood up to Nelson Carrier. He said Nelson would get upset when Mr. Lalonde told his ironworkers to re-rig a load. He said he did it a couple of times as when it was not lifting well they needed longer lines on one end.

[283] In response to questions about the specifics in Exhibit R-1, Mr. Lalonde indicated that all employees were being threatened. He said that Nelson Carrier ridiculed and ripped apart Andy Morris the second week. Andy said he was going to quit that day and couldn't go to Gloria Carrier about it. He said Nelson also went off on Trevor, a scaffolder, quite a few times. Mr. Lalonde agreed that the heated discussion between him and Nelson Carrier described in R-1 was only between them. He said Nelson was angry, but that he had kept his cool and didn't recall raising his voice to Nelson.

[284] Mr. Lalonde testified that on August 6, he found Gloria Carrier and got the Witness Statement (Exhibit R-1) from her, filled it out then, and handed it back to her. He said all of this



was done after the phone call involving Cory Cawley. He testified that he told the guys he was going to drop it just to get out of the meeting. He said he still planned to go forward with the harassment complaint against Nelson, and intended to speak to Francoys about it. He said that Denis Fournier came along and said it was unfounded. Mr. Lalonde said he listened to Corey Cawley and everyone agreed just to drop it. He said he then went downstairs and filled out the form and handed it in.

[285] Appellant's counsel read aloud the last 2 lines of Mr. Lalonde's writing in Exhibit R-1, which Mr. Lalonde acknowledged – "I am man enough to move past this. Swearing at each other and not listening to each other never works!!!" Mr. Lalonde stated that he was man enough, but he wanted an apology.

[286] Referencing Exhibit R-4, the Questionnaire completed by Mr. Lalonde, Appellant's counsel cited the reference to "...in the meeting, it was decided to move on.." Mr. Lalonde said "it wasn't me that decided", and added that it was in the meeting, but not me. He testified that he forgot to write down the harassment complaint, and that he and Shawn Tallmadge spoke a lot later.

[287] Mr. Lalonde reiterated answers given on direct testimony regarding his interview with Mr. Labelle and Mr. Beckman. He said that he could hardly get a word in as Mr. Labelle was talking and would cut him off. Mr. Lalonde indicated that Mr. Beckman would have known who the complainant was, and Mr. Lalonde said he didn't believe that it was kept anonymous when SaskPower gave the information to Andritz. He said that he didn't disclose himself as the complainant during the interview. Mr. Lalonde agreed that his interview was a negative experience. He said they had no time to hear about the zoom boom concern. He said that when he raised the ladder issue, Mr. Labelle said "it was safe" and he also said Nelson Carrier admitted yelling at you, but that you said something too.

[288] When questioned about making a coffee invitation to Mr. Labelle, Mr. Lalonde said that Mr. Labelle had given him his card and said he could call him. He said he thought he would make an attempt to talk, but that Mr. Labelle ended up using everything he said against him. He said that he had asked him to go for coffee, but that you don't get anywhere with Andritz. This is why he had to go to SaskPower and then to OHS. Mr. Lalonde said Andritz is like dealing with a stubborn old mule.

[289] In response to questions regarding the crane operation on the night shift, Mr. Lalonde said that the operator, Frank Scheck, had said that there was an issue that only happened when the crane was put in third gear. He thought a mechanic should look at it, and wanted to raise all of this with Mr. Labelle despite the earlier negative interview with him. When asked if he had planned to go to SaskPower with it, Mr. Lalonde said "yes, about more issues for sure". He said that on August 12, Mr. Labelle had been full of promises and that he could call him 24/7, anytime, and all will be investigated. As he hadn't earlier raised the crane operation issue, Mr.

Lalonde wanted to see a proper certification for the crane as one certificate on the wall was not enough for him. He said that he wanted an inspection.

[290] Appellant's counsel subsequently posed a number of questions about events following Mr. Lalonde's removal from the E.B. Campbell site. Despite agreeing that his phone number appeared on an August 19 text message within Exhibit A-7, Mr. Lalonde denied sending it and also confirmed that he did not have relatives working in upper management at SaskPower. He also denied sending the August 20 text message in the thread.

[291] Appellant's counsel then asked Mr. Lalonde whether he had ever threatened to have a lawyer disbarred. Before Mr. Lalonde answered, I directed a recess.

[292] Respondent's counsel objected to the question posed by Appellant's counsel as it fell outside of the scope of the action and was not relevant. Appellant's counsel stated that credibility was a live issue given the testimony and circumstances. Exercising my discretion, I allowed the single question to be asked.

[293] In response to whether he had ever threatened to have a lawyer disbarred, Mr. Lalonde said "one lawyer".

[294] Upon further questioning, Mr. Lalonde confirmed that it was his phone number that appeared in Exhibits A-5 and A-7.

[295] Appellant's counsel asked Mr. Lalonde if he had interrupted during Josh Beckman's testimony on this hearing, and suggested he be charged with perjury. Mr. Lalonde stated "yes, and I plan on going forward with that".

[296] When asked whether he considered himself a troublemaker, Mr. Lalonde said "no".

[297] Appellant's counsel presented a copy of a Labour Relations Board decision, *Lalonde v. United Brotherhood of Carpenters and Joiners of America Local 1985*, 2004 CanLII 65627 (SK LRB), and Mr. Lalonde acknowledged that he recognized it. He said he knew this was coming up sooner or later.

[298] Appellant's counsel referred to paragraph 141 of the LRB decision and Mr. Lalonde's reference to himself as a troublemaker. Mr. Lalonde said he believed he had made that statement, and had the Meadow Lake RCMP detachment reprimanded previously. He said he might have been a troublemaker back then, but that people change and he is not a troublemaker now.

[299] In re-examination, Mr. Lalonde testified that, in 2004, he was under a lot of stress concerning family members, and that he was no longer such an angry person. He said he takes safety issues very seriously.

[300] On further re-examination, Mr. Lalonde confirmed that he had not previously seen the pictures at the step ladder location that had now been entered into evidence. He said that he had never seen the completed access nor been told that the access issue has been resolved. He said neither Mr. Labelle nor Mr. Beckman mentioned it. He also said that he had not seen Exhibit A-13, Incident Report, previously. He testified that no one had told him there had been an investigation started and had only been told it was a non-issue issue when he met with Mr. Labelle on August 11.

[301] When questioned about Exhibit A-2 and the reference to Nelson Carrier's comment "fuck you", Mr. Lalonde confirmed that it had only been directed at one worker and it was him. He phrased it this way to maintain anonymity.

[302] Mr. Lalonde was shown s.254 of *The Occupational Health and Safety Regulations*, and confirmed it was the section he was referring to in earlier testimony about ladders.

### ***Evidence of Shawn Tallmadge***

[303] *[Prior to Mr. Tallmadge testifying, Appellant's counsel objected to him being called as a witness given that he had not participated in the events in question. He submitted that the witness could only give hearsay evidence, which would have no value, and that what was in his mind during the investigation was not material. Respondent's counsel contended that the witness could speak to his interaction with Mr. Lalonde during the investigation. He submitted that this should be allowed, particularly in view of the Appellant raising the Respondent's conduct of 15 years earlier. Exercising my discretion, I allowed the witness to testify and noted Appellant counsel's concerns about hearsay.]*

[304] Mr. Tallmadge testified that he is an Occupational Health and Safety Officer with the Government of Saskatchewan and has been in the role about 10 years. He investigates complaints of harassment and discriminatory action as well as enforces all occupational health and safety legislation. He described the steps involved in investigating a matter after a complaint is received.

[305] Mr. Tallmadge recalled receiving a complaint from Mr. Lalonde and that he had no prior interaction with Mr. Lalonde before receiving the complaint. He testified that after receiving the complaint, he reviewed the information to ensure it met the legislation before going further. He said he contacted Mr. Lalonde by phone and possibly by prior email. He indicated that he did not recall what was said in his first phone conversation and that he would have gone over the information set out in the complaint.

[306] When Respondent's counsel asked about the "tone" of the call, Mr. Tallmadge said that Mr. Lalonde was standoffish at first to the point of accusing him of making decisions before having all the facts. He said that Mr. Lalonde was not verbally abusive but that the conversation

was heated and voices were raised. He said it got to the point that he asked Mr. Lalonde whether he wanted another officer assigned. When asked whether Mr. Lalonde apologized, Mr. Tallmadge said that he did.

[307] Mr. Tallmadge testified that he went over the Discriminatory Action Questionnaire and meeting notes with Mr. Lalonde to determine if a letter should be sent to the employer. He said a letter was sent and a response received. Mr. Tallmadge was shown Exhibit A-9, which he identified as the response he received from the employer. He confirmed that it was and that he received nothing more from the employer. When asked about his determination in the matter, Mr. Tallmadge said that he determined there was discriminatory action and that Mr. Lalonde should be returned to his position.

***Evidence of Gloria Carrier (Appellant witness – rebuttal)***

[308] *[I exercised my discretion to allow this witness for rebuttal purposes as, among other things, there was suggestion in the Respondent's testimony of a harassment complaint having been "buried". I allowed Ms. Carrier to be called as a witness for limited scope questioning regarding Exhibit R-1 and new issues arising from the Respondent's testimony only.]*

[309] Ms. Carrier testified that she is the Health, Safety and Environment Officer for Andritz at the E.B. Campbell Hydro Station site and commenced work there on July 15, 2019. She said she was familiar with Mr. Lalonde. When asked if she had been Mr. Lalonde's supervisor, she said she was not a supervisor.

[310] When asked about the SaskPower's orientation program on July 15, 2019, Ms. Carrier testified that she had been there and that Mr. Lalonde was also there. She said that she watched a SaskPower video presentation and that Mr. Lalonde had as well.

[311] In response to whether she attended tailboard meetings, Ms. Carrier said she did and was involved in the safety portion.

[312] When asked whether Mr. Lalonde told jokes at tailboard meetings, Ms. Carrier testified that he did and that many were offensive toward women and homosexuals and that some of his jokes were racist. She said that she spoke to him about the inappropriate jokes "on day 1". She stated that she went into detail as telling offensive jokes onsite can be a problem. She said that both she and his supervisor later told Mr. Lalonde that he should stop telling such jokes as they could be harassment. She said that he continued telling such jokes.

[313] Ms. Carrier testified that Mr. Lalonde never reported a concern regarding a step into the lunch trailer to her.

[314] When asked about a possible harassment complaint, Ms. Carrier stated that she attended a stand-down meeting in early August. She said Denis Fournier had earlier approached her and said someone had been going to SaskPower with safety concerns and asked whether she knew who it was. She said she didn't know. She stated that Denis Fournier wanted a stand-down meeting to discuss chain of command and if there were any safety issues reported to supervisors or her. She said subcontractors were asked to leave the room, and Denis Fournier asked if anyone was going to SaskPower because they should be going to their supervisors or to her. She said Tim Lalonde began speaking up.

[315] Ms. Carrier testified that there had been an incident between Nelson Carrier and Tim Lalonde during the stand-down meeting. She said that after the meeting, Mr. Lalonde approached her and said he wanted to file a harassment complaint against Nelson, which she indicated to him was his right. She said that tempers had been raised and there needed to be some time to cool off. She said she told Mr. Lalonde that if he then still wanted to do so, he could come to her. She said she did not give him any forms then.

[316] When asked whether she informed anyone else that a complaint may be coming, she said "no".

[317] She testified that Mr. Lalonde approached her again and still wanted to file the harassment claim. She gave him a form and an envelope to put the completed form into. She said that she then went to Denis Fournier, site manager, and contacted Andritz's office in Point Claire, and then went to others with forms and envelopes because the complaint was to be against her husband, Nelson Carrier, and she wanted to ensure there was no conflict of interest. She said she received forms from Tim Lalonde, Nelson Carrier, and Paul Hardwicke, and all were sealed in envelopes.

[318] When asked to describe what happened next, Ms. Carrier said that Denis Fournier later returned to her and said that no harassment complaint was going ahead as he and Tim Lalonde had a meeting with the business agent and all was worked out. She said she handed over the sealed envelopes to Denis Fournier and does not know what happened to them after that. She said that no one else ever said to her that the matter was not closed.

[319] In cross examination, Ms. Carrier confirmed that Mr. Lalonde was not reprimanded or written up for his joke-telling.

[320] When asked if, after receiving the witness statement from Mr. Lalonde, she told him that she handed it off to Joanne at Point Claire, she said "no" - that he never asked, and she never said.

[321] Ms. Carrier was shown Exhibit R-1 and was asked whether she had seen it before. She said she didn't know as what she received was in an envelope. She had not seen it before.



[322] No further evidence was called.

### III. Analysis and Discussion

[323] As with other cases of a similar nature, 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).

[324] I am also 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)?

[325] I agree with the statements set out by the adjudicator in *Banff Constructors*, and have followed the analysis in other decisions. I will apply the same 3 part analysis here as it is consistent with the Act and the adjudicator's determinations in paragraph 46 above.

### ***Appellant's Position***

[326] The Appellant's brief of law highlights significant parts of the evidence that was called on the hearing from all witnesses. It sets out four issues to be determined in this appeal:

- (a) Credibility of the Respondent.
- (b) Was the Respondent engaged in a protected activity under s. 3-35 of the Act?
- (c) Does "termination" fall within the definition of "discriminatory action" in the Act?
- (d) Did the Appellant have good and sufficient other reason for the Respondent's dismissal.

[327] To narrow this inquiry expeditiously, the answers to (b) and (c) above are "yes".

[328] The other two questions are answered directly in my following analysis.

### ***Respondent's Position***

[329] In its brief of law, the Respondent framed the overall issue to be determined as "whether the Employer took discriminatory action against the Employee, contrary to s.3-35 and 3-36 of the Act, by dismissing him on or about August 19, 2019." The Respondent framed a number of sub-issues to be considered, the first three of which are as follows:

- (a) Has the Respondent demonstrated a nexus between his dismissal and exercising his rights under the Act?
- (b) Has the Appellant demonstrated the Respondent's dismissal was untainted by reprisal?

(c) Is the Respondent's probationary status at the time relevant?

[330] While I directly address the overall issue of the Respondent in my analysis below, the answers to the sub-issues may be less clear.

[331] To sub-issue (a), it is resolved in my following answers to questions 1 and 2.

[332] To sub-issue (b), I disagree that there is any onus on the Appellant to demonstrate that the layoff was untainted by reprisal as the question suggests. As my analysis and assessment of the evidence will illustrate, the Appellant's actions did not have the appearance of reprisal in any event, particularly given my conclusion that the Respondent was afforded an opportunity become a team player and move forward with improved working relationships.

[333] To sub-issue (c), I accept that a probationary employee is afforded the same protections under s.3-35 of the Act as non-probationary employees so probationary status is not determinative of the outcome in this case.

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

[334] Yes. The Respondent reported health and safety concerns to SaskPower, with whom his employer was contracted. The reported concerns were subsequently brought to the attention of Andritz. The reporting was not carried out in accordance with either SaskPower or Andritz's documented policies. The evidence discloses a number of issues around the propriety of the reporting and the Respondent's credibility in both the manner and substance of the reporting. Regardless, the reporting of such concerns constitutes a protected activity within the ambit of s. 3-35. Concerns respecting the method and manner of reporting will be considered later in my analysis.

[335] The Appellant contends that the Respondent's reportings of alleged health and safety concerns were "frivolous and vexatious" and that this effectively disqualifies them as protected activity under the Act. At this stage of my analysis, I must consider only whether the activity of reporting itself was a protected activity. Further consideration of the allegations, including the circumstances and substance of each, is properly a live issue for consideration in the third part of my analysis. This approach is consistent with and honours the presumption in favour of the worker set out in s. 3-36(4)(a).

[336] In its brief of law, the Respondent maintains that it need not demonstrate "good faith" in raising health and safety concerns, but rather that the employer must demonstrate "bad faith" as to require otherwise would effectively reverse the statutory presumption. Given my pronouncement in the preceding paragraph, the issue is resolved such that the inquiry extends beyond the first question; however, I disagree that the employer must necessarily or specifically

demonstrate “bad faith” in the Respondent’s reporting. The third part of the analysis below is not constrained to such specific questions; and, a determination of “bad faith”, or otherwise, would only be one of many considerations.

**2. Was the Appellant’s layoff of the Respondent from his employment a discriminatory action as defined in clause 3-1(1)(i) of the Act?**

[337] Yes. Layoff from employment is included within the definition of “discriminatory action” in the Act.

**3. Was the Appellant’s termination of the Respondent a discriminatory action taken “for good and sufficient other reason” within the meaning of section 3-36(4) of the Act?**

[338] My inquiry now turns to a consideration and determination of whether the Appellant had “good and sufficient other reason” for laying off Mr. Lalonde when it did so in August 2019. For this, I am primarily concerned with the approximately 5 week timeframe that Mr. Lalonde worked at the E.B. Campbell site. While I heard evidence regarding events following Mr. Lalonde’s layoff, such information would neither have been known to the Respondent prior to the layoff nor could it have played a part in the determination to impose a layoff. It is of limited value except as to the credibility of witnesses called on the hearing.

[339] I also note that the Appellant is not required to establish that the layoff of the Respondent was for just cause. A correct characterization is set out by Adjudicator Tegart in *International Women of Saskatoon and Ivette Gonzalez*, SK LRB File No. 203-19, where he wrote the following at paragraph 65:

[65] The fact an employee makes a complaint pursuant to s.3-36(1) of the Act, even where it’s established that he or she engaged in a protected activity and the presumption and reverse onus kick in, does not insulate the employee from the possibility of a termination. The employee is only protected from discriminatory action where that action is taken *because* the employee engaged in the protected activity, subject to the comments below concerning the phrase “good and sufficient other reason”.

[340] Adjudicator Tegart appropriately directs the assessment to whether good and sufficient other reasons existed for a termination or layoff. This interpretation is consistent with the Act, and serves to preclude a worker from making complaints, whether valid or not, as a shield to protect her or him from a layoff that may be forecast or forthcoming for other valid reasons.

[341] It is useful to first consider the context into which the Respondent came into his work with the Appellant. Mr. Lalonde was deployed to the E.B. Campbell site following consultation



and pursuant to the Project Agreement between Andritz and the IUOE. There is no evidence that he was ever interviewed by Andritz and would not necessarily have been known to them. The Project Agreement, at Article 10.2, contained a provision providing a probationary period of 3 months for each worker, which would have given Andritz a window of opportunity to assess a worker without committing to a long term arrangement.

[342] The Project Agreement provided the Appellant with, among other things, broad authority to direct work and compel observation of the Appellant's rules and regulations as well as the sole right to judge the merit, suitability and competence of employees.

[343] Article 6.1 of the Project Agreement reads as follows:

6.1 The Unions recognize that the management and the direction of the work force, including the right to plan, direct, schedule, and control operations, to maintain the discipline and efficiency of work and workforce on the Project, including setting work and employee schedules, to make and require employees to observe Employer rules and regulations, to hire, lay off or relieve employees from duties, to suspend, demote, transfer, promote, discipline and discharge employees for cause, and the sole right to judge the merit, ability, suitability and competence of its employees are the sole right and function of the Employer.

[344] The Appellant was never compelled to rehire any employee, but held discretion to do so if it desired. In other words, there was no guarantee of continued employment. Article 10.4 states as follows:

10.4 Employees and workers who perform well on the **Project may be sought for rehire by the Employer**, by name, for future years of the Project. The Unions agree to return any worker to the Project, if requested by the Employer, so long as the worker is willing to return to the Project. [emphasis added]

[345] These provisions must be borne in mind in assessing the relationship between the Appellant and Respondent. I interpret these provisions to mean that the Appellant owed neither the Respondent nor any other of its workers a guarantee of work, and it retained an ongoing ability to assess the merit and suitability of any worker.

[346] It is also important to note that the Appellant, at Article 11.4, committed to be bound by *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations*.

[347] I accept that within about two weeks of arriving at a new worksite, which was still in the set-up stages, Mr. Lalonde reported a safety concern regarding the lack of a step into a lunch trailer. A written report was not submitted to his employer, but rather, a complaint was given directly to the site owner, SaskPower, disregarding and bypassing the protocol established for the site and conveyed to workers at their orientation on their first day at the site. Within days of

submitting the first complaint, and in an attempt to remain anonymous, Mr. Lalonde submitted a second concern to SaskPower, again bypassing and disregarding the appropriate channels. I also accept Gloria Carrier's evidence about Mr. Lalonde telling inappropriate jokes and continuing to tell them after being told to stop.

[348] Upon learning of reports submitted alleging serious safety concerns at the E.B. Campbell site, both SaskPower and Andritz immediately deployed significant resources to investigate, address and resolve the concerns. Meetings were held, officials transported to site from other provinces, plans were made and carried out. These measures are all consistent with organizations genuinely committed to safety in the workplace. Mr. Beckman testified to SaskPower's receipt of complaints regarding the E.B. Campbell site in an unusual and unexpected manner, and that they were acted upon seriously. He also testified about the interviews conducted with workers by him and Mr. Labelle. I accept the evidence of both Mr. Beckman and Mr. Labelle regarding the investigation process, interviews, and the Investigation Report. Their work was important and was carried out with reasonable dispatch and a plan - followed by a conclusive report based on the findings.

[349] As part of the investigation, Mr. Lalonde spoke with Mr. Labelle and Mr. Beckman. Mr. Lalonde indicated a willingness to abide by appropriate processes, but within hours of his conversation with Mr. Labelle, Mr. Lalonde began raising additional issues outside of the appropriate protocols.

[350] I have observed that Mr. Lalonde often drew conclusions, which he treated as fact, without having either complete information or any information at all. In direct examination, he insisted that the telehandler incident had never been investigated. In cross examination, he was presented with an investigation report into the telehandler incident. He was wrong about an investigation taking place, and he spoke and acted without complete information. In direct examination, he testified that Pierre did not have ticket to operate the telehandler. In cross examination, when presented with a copy of the certification that Pierre had to operate a telehandler, Mr. Lalonde was surprised – and was clearly wrong in his first conclusion. On many occasions throughout his testimony, Mr. Lalonde adamantly stated things as fact, which were later proven to be otherwise. He was often argumentative and dismissive when alternative descriptions of his "facts" were presented to him. On occasion, to his credit, he did admit that he wasn't aware of certain things and appreciated being corrected. On the whole, Mr. Lalonde often lacked credibility in his testimony, and I have accepted the evidence of others over his own in most circumstances.

[351] Despite the site having a union presence, there was no evidence called that any union was expressing health and safety concerns to either SaskPower or the Appellant. The only union involvement disclosed in the testimony was during the attempt to allay escalated relationship problems between Mr. Carrier and the Respondent.

[352] Witnesses, including Mr. Lalonde, confirmed that Mr. Carrier was not Mr. Lalonde's direct supervisor. Mr. Lalonde had some difficulty identifying who actually was his direct supervisor when questioned about it. I found this alarming, but also concerning. Many witnesses testified that Mr. Lalonde and Mr. Carrier expressed a dislike for each other and had heated, unfriendly discussions. There was clear evidence of a personality conflict. During his testimony, upon seeing a picture of Nelson Carrier, the Respondent referred to him as "Dum Dum". Mr. Carrier was a supervisor for the Appellant at the worksite. Mr. Lalonde's expression of disrespect for a work supervisor in this manner during the hearing amplified the depth of his disdain for Mr. Carrier and disregard for chain of command at the workplace. Despite this observation, I have not given Mr. Lalonde's derogatory name-calling much weight in the overall context of the evidence.

[353] As I heard Mr. Lalonde's testimony, it also struck me as odd that a journeyman carpenter would not offer to help build a single step or two into a lunch trailer, the entry to which was problematic for him, but would eagerly offer to help build a set of steps at another location on-site. The simple task of doing so for the lunch trailer seems an obvious place to have first offered assistance. Mr. Lalonde testified that he regularly offered assistance to others when he was not operating a crane. If this was his nature, the lunch trailer step would have been an obvious place to start. Instead, he submitted an anonymous health and safety concern to the site owner about it.

[354] I am left questioning Mr. Lalonde's motivations and intent in many circumstances, and doubt his sincerity about becoming a team player with others at the work site. He intentionally resisted reducing his concerns, especially safety concerns, to writing within his employer's protocols and systems and he only ever wrote to SaskPower, the site owner. This was inconsistent with the obligation agreed to within the Project Agreement as well as orientations and policy reviews.

[355] There were valid concerns raised by a number of witnesses regarding Mr. Lalonde's insolent behaviour and resistance to observing the worksite rules, notably, the delays in messages returning to the worksite and the ability to address safety concerns in a timely way. Mr. Lalonde said that he was acting reasonably in submitting the concerns directly to SaskPower yet was disregarding protocols that applied to all workers on the site that were developed and taught to ensure the highest level of safety and appropriate responding to valid concerns. In short, Mr. Lalonde believed he could choose what rules to observe and what rules to ignore. This situation created a valid concern for the employer. If even a handful of workers on site adopted a similar approach, significant problems could develop on the site.

[356] Mr. Lalonde was confronted about his concerns and was informed that his approach had to change. He purportedly agreed to change his ways during his conversations with Mr. Labelle and others, *but he did not*. I accept the evidence of Mr. Labelle, who indicated that he was prepared to give Mr. Lalonde a second chance and both were prepared to move on. Mr.

Lalonde's agreement to work better with others was immediately abandoned by him, and he demonstrated to Andritz and SaskPower staff that his commitments were not sincere and he could not be trusted. All of the events, conversations, and interviews occurred within a very few weeks at the commencement of work at a new worksite.

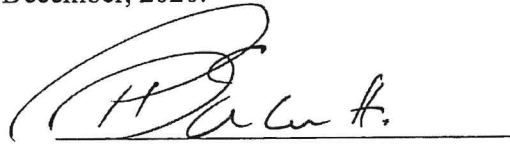
[357] I accept that it was not the reporting of safety concerns that led the Appellant to lay off Mr. Lalonde, but rather Mr. Lalonde's insolence, insubordination, and failure to follow established safety reporting protocols that underpinned the decision. The sum of the insolence, insubordination, and failure to follow established safety reporting protocols created the potential for new safety concerns, which the Appellant wanted to avoid. This is clearly set out in the evidence of Francoys Gauthier and Marcel Labelle, and I accept their evidence in this regard. The evidence is corroborated by Josh Beckman of SaskPower.

#### **IV. Conclusion and Order**

[358] Having considered and weighed all of the evidence, I am satisfied that there were good and sufficient other reasons for Andritz to terminate Tim Lalonde's employment and the within Appeal must succeed.

[359] This order is made pursuant to s.4-6 of the Act. The Appeal is allowed. The Decision is quashed and set aside.

Dated at Regina, Saskatchewan this 21st day of December, 2020.

A handwritten signature in black ink, appearing to read "Perry D. Erhardt", is written over a horizontal line.

Perry D. Erhardt, Q.C., Adjudicator