

LRB File No. 091-21

In the matter of an appeal to an adjudicator pursuant to 3-53 and 3-54 of *The Saskatchewan Employment Act*.

Between

The R.M. of Buchanan No. 304

Appellant

-and-

Allan Veldman

Respondent



Adjudicator – Tiffany M. Paulsen Q.C.

Counsel for the Appellant – Courtney Riviere

The Respondent represented himself

Hearing conducted virtually March 29, 2022

DECISION

INTRODUCTION

1. This is an appeal pursuant to ss. 3.-3 of *The Saskatchewan Employment Act* ('the *Act*'), from a decision of an occupational health officer, dated June 25, 2021, regarding a complaint of discriminatory action brought by Allan Veldman against the RM of Buchanan No. 304 ('the RM'). The RM terminated Mr. Veldman's employment on May 5, 2021, through a motion at a regular council meeting as follows:

That employee Allan Veldman be terminated, effective immediately, due to conduct and unacceptable behaviour and concern for other employees' and council's safety (Exhibit A-1).

2. The occupational health officer's decision found the termination of Mr. Veldman's employment was an unlawful discriminatory action contrary to section 3-35 of the *Act*.

3. The occupational health officer ordered that the RM must reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed, pay any wages he would have earned had there not been a discriminatory action, and remove any reprimand or reference to the matter from any employment records with respect to this matter.
4. The RM did not appeal the finding of the occupational health officer that the termination of Mr. Veldman's employment was an unlawful discriminatory action contrary to section 3-35 of the *Act*. However, the RM did appeal the decision on the grounds that the decision did not take into account the workers' actual earnings during the period the RM was required to pay the wages, as contemplated by section 3-36(5) of the *Act*.
5. The Notice of Appeal asks for an Order quashing the decision and that the employer be directed to pay Mr. Veldman any wages he would have earned had he not been terminated, for the RM to cease the discriminatory action and to reinstate Mr. Veldman and to remove any reprimand, if same exists, or other reference to the matter from Mr. Veldman's employment records.
6. No objections were raised with respect to my appointment or my jurisdiction to hear and determine the appeal.

EVIDENCE

7. The RM called two witnesses, the RM administrator, Twila Hadubiak and the Reeve, Don Skoretz. Mr. Veldman gave evidence on his own behalf.

Ms. Hadubiak

8. Ms. Hadubiak holds the position of RM administrator. She describes her main responsibilities as being to levy and collect taxes, prepare agendas for meetings, take the direction of council and general office duties. Ms. Hadubiak also communicates on the RM Council's ('Council') behalf and keeps meeting minutes.
9. Ms. Hadubiak testified that Mr. Veldman was a seasonal employee at the RM. Mr. Veldman started work in 2019 and worked for the RM until his termination in 2021. Mr. Veldman worked approximately from April or May until November each year. If snow removal was required in the winter, the RM would call Mr. Veldman in on an as needed basis.
10. Ms. Hadubiak testified that Mr. Veldman was terminated, by a motion in Council, on May 5, 2021. This is confirmed by the Minutes of Council, dated May 5, 2021, Exhibit A-1.
11. The Minutes of May 5, 2021, further advise that the termination of Mr. Veldman is effective immediately and that Mr. Veldman be paid for 8 hours a day, for May 3, 4 and 5, 2021.
12. Exhibit A-2 was a copy of Mr. Veldman's paystub for May 3, 4 and 5, 2021, which showed the following information:

Wages - \$26/hr x 24 hours - \$624
Statutory holiday pay @ 4% - \$24.96
Annual holiday pay 3/52 - \$37.44
Total wages - \$686.40
13. The usual statutory deductions were then made.
14. On June 25, 2021, Ms. Hadubiak received a letter, on behalf of the RM, from Occupational Health and Safety ('OHS'), advising, *inter alia*, that the RM had failed to

provide good and sufficient other reasons for the termination of Mr. Veldman and that the RM needed to reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed, pay any wages he would have earned had there not been a discriminatory action. Exhibit A-3.

15. The decision further notes that it was the RM's responsibility to contact Mr. Veldman to arrange for reinstatement upon receipt of the decision.
16. Ms. Hadubiak notes that the RM had a meeting on July 7, 2021, Exhibit A-4. The Minutes of the July 7, 2021 reflect the Ms. Hadubiak contacted Mr. Veldman on July 6, 2021 to return to work on July 7, 2021. Mr. Veldman advised that he was not available until July 12, 2021.
17. Mr. Skortez then telephoned Mr. Veldman on July 7, 2021, to discuss a return to work date. Mr. Skortez advised Mr. Veldman not to return to work until he had heard from Council again.
18. In cross examination, Ms. Hadubiak stated that she did not speak to Mr. Veldman directly but rather overheard Mr. Skortez, speak to Mr. Veldman. She testified that she heard Mr. Skoretz tell Mr. Veldman to stay home until they called him again.
19. On July 12, 2021 (Exhibit A-8), Ms. Hadubiak emailed Mr. Veldman, asking him to report to work the following day, at 7:00am.
20. Later that day, Ms. Hadubiak received a letter from Mr. Veldman's doctor that Mr. Veldman needed to be off work from July 9 to 23, 2021 for medical reasons (Exhibit A-9).
21. Ms. Hadubiak testified that there was not any further communication from Mr. Veldman after July 23, 2021, nor did he return to work.

22. Exhibit A-5 was then entered, Minutes of the Council of Keys, dated July 8, 2021. These Minutes reflect that Mr. Veldman be hired as a grader operator at a rate of \$25/hr with the RM of Keys.
23. Exhibit A-5 further shows that on June 25, 2021, Mr. Veldman was paid \$2,227.50 in wages from the RM of Keys.
24. Exhibit A-5 also shows that on July 9, 2021, Mr. Veldman was paid \$2,667.50 in wages from the RM of Keys.
25. Ms. Hadubiak testified that, as of late June, the RM was aware that Mr. Veldman was employed at the RM of Keys however, was unaware as to the amount of hourly wage Mr. Veldman was earning.
26. Exhibit A-6, shows the RM, on July 8, 2021, inquiring of Mr. Veldman as to the amount of money he was paid from the RM of Keys.
27. Exhibit A-10 shows that, on July 23, 2021, Mr. Veldman was paid \$1,695 in wages from the RM of Keys.
28. On August 4, 2021, Council held a meeting wherein they resolved to pay Mr. Veldman from May 6 to June 7, 2021, plus an additional two hours for each day on his May 3 – 5 cheque (Exhibit A-11). The additional hours issue arose as Council had previously paid Mr. Veldman for 3, eight hour days instead of 3, ten hour days for May 3 – 5, 2021, as Mr. Veldman worked a 10 hour work day instead of an 8 hour workday.
29. When asked why June 7, 2021 was chosen, Ms. Hadubiak testified that it was the RM's understanding that Mr. Veldman commenced his employment, on June 7, 2021, with the RM of Keys.
30. Exhibit A-12 shows Mr. Veldman being paid for 176 hours in May, by the RM, total wages \$4,576.

31. Exhibit A-13 also shows Mr. Veldman being paid for 50 hours in June, by the RM, total wages \$1,300.
32. Despite the RM's 'chosen' date of June 7, 2021 of terminating Mr. Veldman, Exhibit A-11, dated August 4, 2021, shows the RM still actively continuing to communicate with Mr. Veldman with respect to his return to work date (see resolution 171/2021).
33. On August 17, 2021, legal counsel for SARM, representing the RM, sent Mr. Veldman an email inquiring whether he was planning to return to work (Exhibit A-14).
34. Mr. Veldman had legal counsel for a brief period of time, there was some exchange of correspondence related to a return to work date, however, by September 9, 2021, Mr. Veldman's legal counsel advised she was no longer representing him (Exhibit A-16).

Don Skortez

35. Mr. Skortez testified on behalf on the RM. Mr. Skortez is the Reeve of the RM.
36. Mr. Skortez confirmed in his testimony that he spoke to Mr. Veldman on July 7, 2021 and advised him not to come back to work until Council contacted him again. Mr. Skortez testified that Mr. Veldman told him that Mr. Veldman did not really want to come back to work at the RM and that he was certain the RM did not want him back either.

Allan Veldman

37. Mr. Veldman gave testimony on his own behalf. He stated that, after speaking with Mr. Skortez on July 7, 2021, he understood that he was not to come back to work until he heard from Council.
38. Mr. Veldman claimed he "couldn't recall" whether he received the email from Ms. Hadubiak on July 12, 2021, (Exhibit A-8), telling him to return to work the following

day. However, Mr. Veldman did recall giving the RM a doctor's note on July 12, 2021, that he needed to be off work from July 9 – 23, 2021, (Exhibit A-9).

39. Mr. Veldman also testified that he did not respond to communication from the RM legal counsel because Mr. Skortez said stay home until he heard from Council and, therefore, Mr. Veldman "only deals with Council, not the lawyers".

40. Mr. Veldman testified that the pay information presented from the RM of Keys is accurate. Mr. Veldman further testified that he started employment with the RM of Keys on June 7, 2021 and continued to be employed at the RM of Keys until present date.

ISSUES

Did the RM of Buchanan:

- a) **Reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed;**
- b) **Pay any wages he would have earned had there not been a discriminatory action; and**
- c) **Remove any reprimand, or reference, to the matter from any employment records with respect to this matter?**

Was the RM of Buchanan entitled to reduce the amount of money paid to Mr. Veldman by any wages Mr. Veldman earned, or should have earned, during the period the RM was required to pay Mr. Veldman wages?

If the RM of Buchanan is entitled to reduce the amount of money paid to Mr. Veldman by the any wages Mr. Veldman earned, or should have earned, during the period the RM was required to pay Mr. Veldman wages, what amount, if any, should be used to reduce the award?

LEGISLATION

41. The relevant legislation is as follows:

From *The Saskatchewan Employment Act*:

Section 3-36(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) Reinstatement 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 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.*

Section 3-36(5) of *The Saskatchewan Employment Act*:

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.

ANALYSIS AND REASONS

ISSUE ONE - Did the RM of Buchanan reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed.

42. Based on the testimony provided, the following is a timeline of events:

July 6, 2021 – Ms. Hadubiak contacted Mr. Veldman and told him to return to work the following day. Mr. Veldman advised he was not available until July 12, 2021.

July 7, 2021 – Mr. Skortez called Mr. Veldman and told him to stay home until he heard further from Council.

July 12, 2021 – Mr. Hadubiak emailed Mr. Veldman telling him to return to work the following day, July 13, 2021. (Exhibit A-8)

July 12, 2021 – Mr. Veldman provided Ms. Hadubiak with a letter from his doctor advising that he was unable to return to work until July 24, 2021, for medical reasons. (Exhibit A-9)

August 4, 2021 – The RM Council resolves to have their legal counsel send Mr. Veldman a letter asking whether he is able to return to work. (Exhibit A-11)

August 17, 2021 – Legal counsel for the RM writes Mr. Veldman asking if he is able to return to work. (Exhibit A-14)

August 23, 2021 – legal counsel for the RM and legal counsel for Mr. Veldman have a conversation as to whether Mr. Veldman is returning to work for the RM. No determining information is provided.

September 9, 2021 – Mr. Veldman's legal counsel withdraws.

43. Attempts were made by the RM to determine a return to work date, with Mr. Veldman, on July 6, 2021, July 12, 2021 and August 17, 2021. Mr. Veldman was on a medical leave until July 23, 2021. Through legal counsel, on August 17, 2021, the RM, through their legal counsel, communicated with Mr. Veldman again to determine a return to work date. Mr. Veldman refused to communicate with the RM legal counsel.
44. Accordingly, I find that the RM did try to reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed.

ISSUE TWO: Did the RM of Buchanan pay any wages Mr. Veldman would have earned had there not been a discriminatory action?

45. The first point to consider is what was Mr. Veldman's last day of work with the RM. The RM argues that it was June 7, 2022, as that was Mr. Veldman's first day of work with the RM of Keys. In the alternative, the RM posits that Mr. Veldman's last day of work was July 24, 2021, the end of his medical leave.
46. Mr. Veldman did not put forward a specific date in his testimony or argument.
47. I find that Mr. Veldman's last day of work with the RM was August 17, 2021. As determined above, efforts were made on July 6, 2021 and July 12, 2021 by the RM to return Mr. Veldman to work. While the RM could expect Mr. Veldman to return to work in a reasonable amount of time, giving him less than 24 hours notice on July 6, 2021, was not. Mr. Veldman's position that he would return to work on July 12, 2021, was reasonable.
48. Mr. Veldman then presented a doctor's letter indicating that he was medically unable to work until July 24, 2021. Mr. Veldman did not communicate with the RM after that date.
49. The RM, through its legal counsel, corresponded with Mr. Veldman on August 17, 2021, inquiring as to when he planned to return to work (Exhibit A14). The onus then shifted to Mr. Veldman to make reasonable response to his employer. However, Mr. Veldman chose not to do so.
50. In fact, Mr. Veldman's testimony was that he deliberately did not respond to the RM's legal counsel because he did not "deal with lawyers", he only dealt with the RM Council directly. This was not a reasonable position for Mr. Veldman to take.

51. Moreover, Mr. Veldman did not follow his own commitment to only correspond with the RM, because he did not do that either. Mr. Veldman simply did nothing. That was not reasonable behaviour by Mr. Veldman. Accordingly, I determine Mr. Veldman's last day of work with the RM to be August 17, 2021.

52. The next point to consider is what wages were paid to Mr. Veldman, from the RM, during the time period of May 3, 2021 to August 17, 2021.

53. Evidence on behalf of the RM was that the payments described below were made. Mr. Veldman did not challenge this evidence.

54. Exhibit A-2 was a copy of Mr. Veldman's paystub for May 3, 4 and 5, 2021, which showed the following information:

Wages - \$26/hr x 24 hours - \$624

55. Exhibit A-12 shows Mr. Veldman being paid for 176 hours in May, for total wages of \$4,576:

Wages - \$26/hr x 176 hours - \$4,576

56. Exhibit A-13 also shows Mr. Veldman being paid for 50 hours in June, by the RM, total wages \$1,300:

Wages - \$26/hr x 50 hours - \$1,300

57. No further amounts were paid to Mr. Veldman by the RM of Buchanan.

58. Below is the breakdown of amounts that should have been paid to Mr. Veldman by the RM during the May 3, 2021 to August 17, 2021 period.

May
20 days – 10 hours/day

Wages - \$26/hr x 200 hours - \$5,200

June

22 days – 10 hours/day

Wages - \$26/hr x 220 hours - \$5,720

July

21 days – 10hours/day

Wages - \$26/hr x 210 hours - \$5,460

August

11 days – 10 hours/day

Wages \$26/hr x 110 hours - \$2,860

TOTAL OWING from the RM to Mr. Veldman - \$19,240

ISSUE THREE - Did the RM of Buchanan remove any reprimand, or reference, to the matter from any of Mr. Veldman's employment records with respect to this matter.

59. No evidence was led by either party with respect to this issue. Accordingly, I make no finding regarding this issue. However, it continues to be the expectation of the RM, that they comply with the direction of OHS on this matter.

ISSUE FOUR: Was the RM of Buchanan entitled to reduce the amount of money paid to Mr. Veldman by any wages Mr. Veldman earned, or should have earned, during the period the RM was required to pay Mr. Veldman wages.

60. The answer to this issue is, very obviously, yes.

61. Although Mr. Veldman objects to same, the legislation is clear in this regard:

Section 3-36(5) of *The Saskatchewan Employment Act*:

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.

62. Accordingly, the RM is entitled to deduct any wages earned by Mr. Veldman during the time period of May 3, 2021 to August 17, 2021 from any amount owing from the RM to Mr. Veldman.

ISSUE FIVE: If the RM of Buchanan is entitled to reduce the amount of money paid to Mr. Veldman by the any wages Mr. Veldman earned, or should have earned, during the period the RM was required to pay Mr. Veldman wages, what amount, if any, should be used to reduce the award.

63. Based upon the calculations above, the total amount of wages owed by the RM to Mr. Veldman for the time period of May 3, 2021 to August 17, 2021 was \$19,240.

64. The RM has already made the following payments to Mr. Veldman:

\$624 (Exhibit A-2)

\$4,576 (Exhibit A-11)

\$1,430 (Exhibit A-12)

65. The total net owing from the RM to Mr. Veldman is \$12,610.

66. Consideration of the amounts paid from the RM of Keys to Mr. Veldman is appropriate.

67. On June 25, 2021, Mr. Veldman received \$2,227.50 from the RM of Keys and on July 9, 2021 received \$2,667.50 from the RM of Keys (Exhibit A-5). Exhibit A-10 shows a wage payment to Mr. Veldman by the RM of Keys of \$2,695 on July 23, 2021. The total of these wage payments is \$7,590.

68. The total net owing to Mr. Veldman from the RM is then reduced to \$5,020.

69. Based on the examination of the pay periods from the RM of Keys, it appears that Mr. Veldman's pay on July 23, 2021, represented the two week pay period of July 3, 2021 to July 16, 2021.

70. Neither party presented any evidence of Mr. Veldman's pay from the RM of Keys from July 17, 2021 to August 17, 2021.
71. There was testimony that Mr. Veldman remained employed by the RM of Keys from July 17, 2021 to August 17, 2021, and Exhibit A-5 reveals Mr. Veldman's rate of pay with the RM of Keys as \$25/hr.
72. Based on the pay information from the RM of Keys, it appears that Mr. Veldman has a similar hours of work schedule to what he had at the RM of Buchanan. In other words, Mr. Veldman's schedule was Monday to Friday, 10 hours a day. Accordingly, it is likely Mr. Veldman was paid the following amounts from the RM of Keys.

July 17 – 31 – 10 days/10hrs day/\$25 hour - \$2,500

August 1 – 17 – 11 days/10hrs day/\$25/hr - \$2,750

73. The combined totals of the wages for July 16 – August 27, 2021 is \$5,250, which exceeds the amounts owing by the RM to Mr. Veldman of \$5,020. Accordingly, no amount is owing from the RM to Mr. Veldman, except for the consideration of holiday and statutory holiday pay noted below.

CONCLUSION

74. The RM attempted to reinstate Mr. Veldman to his former employment under the same terms and conditions under which he was formerly employed for the period of May 3, 2021 to August 17, 2021. Mr. Veldman refused to co-operate, or even communicate, with the RM. Accordingly, Mr. Veldman's employment ended with the RM on August 17, 2021.
75. The wage calculation time period is May 3, 2021 to August 17, 2021.
76. The following is a summary calculation of wages owing from the RM to Mr. Veldman, as well as payments already made by the RM. Finally, payments made by Mr. Veldman's new employer, the RM of Keys, were also considered.

Amounts owing to Mr. Veldman by the RM of Buchanan:

May - \$5,200

June - \$5,720

July - \$5,460

August - \$2,860

Total - \$19,240

The following payments were made to Mr. Veldman:

\$624 – RM of Buchanan

\$4,576 – RM of Buchanan

\$1,430 – RM of Buchanan

\$2,227.50 - RM of Keys

\$2,667.50 - RM of Keys

\$2,695 – RM of Keys

\$2,500 – RM of Keys

\$2,750 – RM of Keys

TOTAL - \$19,470

77. It appears that no amounts are owing from the RM to Mr. Veldman. However, there have been two assumptions made with respect to the amount of the last two payments by the RM of Keys, which are discussed in more detail in the schedule below.

78. Accordingly, I order the parties shall adhere to the following schedule of obligations:

- 1) Within 30 days of the release of this decision, Mr. Veldman shall provide confirmation of his pay from the RM of Keys, to legal counsel for the RM, for the time period of July 16, 2021 to August 17, 2021. If Mr. Veldman does not provide this information, within the allocated time period, then the figures used in my calculation shall be presumed correct.
- 2) My calculation does not include the statutory holiday pay, or the holiday pay, that the RM typically included in their bi-weekly pay to Mr. Veldman. After the 30 day period expires in point #1, counsel for the RM shall provide to Mr. Veldman the calculation of statutory holiday pay and general holiday pay owing to him, as well as any statutory deductions. This revised calculation shall be

provided to Mr. Veldman within 21 days of receiving the pay information from Mr. Veldman, or the expiration of the 30 day period, whichever occurs first.

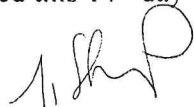
- 3) After receiving the final calculation from the RM described in #2, Mr. Veldman has 14 days to raise any issues he may have with the RM calculation of holiday and statutory holiday pay, as well as statutory deductions. If no issues are raised by Mr. Veldman, the RM shall pay any amount owing (if there is any) within 14 days after the expiry of the period that Mr. Veldman can raise any concerns about the calculation.
- 4) If there are any questions, or issues, by the parties arising from points 1, 2 and 3, that need to be addressed by me during the above described time periods, they can jointly contact me to communicate about same.

79. Once the expiry of the time periods described above has occurred, this decision is final.

ORDER

80. This Order is issued pursuant to section 4-6 of *The Saskatchewan Employment Act*. The appeal is allowed such that a more detailed calculation of wages owing to Mr. Veldman was determined.

Dated this 14th day of July, 2022.



Tiffany M. Paulsen, Q.C.

Adjudicator