

LABOUR RELATIONS BOARD FILE NO. 142-21

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

BETWEEN

Russell Hodgins

APPELLANT

And

Regina Police Service

RESPONDENT



Adjudicator:	Terrance Chinn
Applicant:	Self Represented
Respondent:	Represented by Katrina Swan, K.C.
In Attendance:	Alyssa Sullivan (Manager of Human Resources for Regina Police Service)
	Sandra Burrows (former Manager of Human Resources for Regina Police Services)

DECISION

BACKGROUND

- (1) This is an appeal pursuant to ss 3-53 and ss 3-54 of the *Saskatchewan Employment Act (Act)* from a decision of an Occupational Health Officer dated May 14, 2021, regarding a complaint by Constable Russell Hodgins (Hodgins) against his employer, the Regina Police Service (RPS).
- (2) The allegation of Hodgins was that he has been harassed by RPS over a two-year period in an attempt to force him to quit RPS. Hodgins made a lengthy written complaint to RPS. On receiving Hodgins' complaint, RPS referred the matter to Bonnie Durnford of DC Strategic Management to review and screen the complaint and determine whether there may be grounds to find that there were actions amounting to harassment.

- (3) Ms. Durnford interviewed Hodgins by video conference. The review and screening concluded that there were complaints that could fall within the definition of harassment. Ms. Durnford provided that there were 26 allegations that could be considered for further investigation and consideration as harassment.
- (4) RPS, with what I understand to be with the agreement of Hodgins, engaged Alma Wiebe, K.C. (Wiebe) to investigate the allegations that came from Ms. Durnford. Wiebe is a lawyer based in Saskatoon, Saskatchewan. She described her duties in her investigative report to be “an objective, neutral party to conduct an investigation”. As well, she added that there was no interference from RPS in her duties to investigate or her analysis or conclusions.
- (5) Wiebe interviewed Hodgins and five members of RPS who she understood to be the persons claimed by Hodgins to have perpetrated the acts that showed harassment. The members included a direct supervisor and then three other RPS officers ranking above the direct supervisor. Most interviews were convened by video conference calls. Each of the five members and Hodgins were provided with a summary of their interview for their review. Wiebe also mentioned interviewing other RPS employees, without naming them. There were also numerous documents that had to be reviewed by Wiebe. The investigation by Wiebe concluded that there wasn’t evidence to support that Hodgins was being “targeted by management in an effort to pressure him to resign”.
- (6) Hodgins filed an appeal to the Harassment and Discriminatory Unit of Occupational Health and Safety (OHS) to review the investigation by Wiebe. The complaint was that there should have been other witnesses, who had been identified to Wiebe, interviewed. This could have corroborated that he was being harassed.
- (7) OHS officers met and engaged in emails with Hodgins. OHS officer, Jon Paradowski’s response to the complaint by Hodgins on behalf of OHS was included in a letter dated October 14, 2021, to Hodgins and Chief Evan Bray of RPS. The officer provided that the role of OHS is to ensure that the employer has taken its legal obligation to take reasonable steps to deal with the complaint of harassment. The decision of Paradowski went on to provide that the role of OHS was to examine whether the investigation by Wiebe was “impartial, thorough and procedurally fair and conducted by a knowledgeable, competent investigator”. In all respects the conclusion was that the investigation met these standards. The decision concluded that RPS followed the relevant legislation to take reasonable steps to address the concerns of Hodgins.
- (8) Hodgins has appealed the decision of the OHS officer by way of an email dated October 26, 2021, to Bryan Lloyd, Executive Director of OHS. The relevant portion of the emailed appeal is as follows:

The investigator spoke to myself and members of management that were involved in the harassment and was told of other people who were independent witnesses yet did not speak to any of them. Two of these witnesses were Staff Sergeants and as such, part of

management. One of them told me that I had been placed on more restrictions than someone released for murder and the other said that all my time during this period was all about me being punished. Knowing this, the investigator made no attempt to speak to these two and see why they made these comments. As such, this investigation was in no way thorough or complete but stopped once the investigator had enough to reach the conclusion that she was being paid for.

I am requesting a complete and thorough investigation be ordered so that a fair decision can be reached.

- (9) The parties held a hearing of the matter before me on September 14, 2022. There was a question raised by RPS if an adjudicator had the jurisdiction to hear and determine this appeal.
- (10) *The Saskatchewan Employment Act, S.S. 2014*, Section 3-1 defines harassment. Section 3-8 sets out the requirements of an employer to its employees, which is to protect their “*health, safety and welfare at work*”. This includes how to deal with complaints of harassment.
- (11) I have been provided with the file of OHS and it becomes the record for this hearing for my consideration. This includes parts of the file that included the more detailed interviews with the five members of RPS. The whole of those interviews were previously held back from the investigative report first provided to Hodgins. This was because of confidentiality considerations found in the RPS Policy Manual. RPS had left it up to me as to whether the whole file of OHS should be provided to Hodgins before any hearing. I concluded that fairness and transparency called for all material being provided to Hodgins.
- (12) Certain information in the OHS file is background information agreed to be used without question. Hodgins has been a constable with RPS since 1999. His duties have included patrol, Crimestoppers, school resource officer, crime investigations and front desk duties. Hodgins was diagnosed with spondylolisthesis in the fall of 2000. He was assigned to front desk duties in 2015 wearing a full duty belt but was not able to carry out the duties and was assigned to be an investigator with the Criminal Investigation Division. In January 2017 he was transferred back to the front desk duties which also included warrant duties and working 12-hour shifts. He had a standing desk and was provided with a modified duty belt. The complaints made by Hodgins that were the subject of the investigation fell in a period between September 2015 and the fall of 2018.

ARGUMENTS AND ISSUES

JURISDICTION

- (13) There was an issue of my authority to hear or determine any outcome of the complaint about the response and determination of OHS. RPS specifically referred to LRB Files 138-15 and 05-18. LRB Files No.116-17 and most recently 116-21 also concern the issue of the authority granted to an adjudicator in harassment issues. The argument was mentioned by RPS in a previous email and again in the hearing. Hodgins did not provide any comment on the issue and these previous LRB files.
- (14) The issue raised by RPS is whether the appeal would be a full-scale review of the Wiebe investigation. That is a subject that should have been put to a grievance. This appeal should at the very most be a review of the response from OHS that they considered the investigation met the standards of an acceptable investigation.
- (15) *K.O v Prairie North Health Region*, LRB 138-15 has been referenced in several Labour Relations Board decisions concerning claims of harassment in the workplace. In the decision the adjudicator suggested a two-step process in paragraph (5) and in paragraph (57) as to the scope of a review by OHS and an adjudicator:
- (5) Does the Appellant's complaint(s) concern harassment as defined by *The Saskatchewan Employment Act, 1993*. If so, has the Employer failed to comply with its obligations under the Act or the regulations?
- (16) *Priya Menom v Saskatoon Open Door Society Inc.*, LRB 050-18, which also referenced LRB 138-15, stated that neither OHS or an adjudicator on appeal is meant to re-investigate the specific allegations of the complaints and the employer's decision. In other words, OHS and the adjudicator on appeal are not to redo the investigation that might have already been performed. In the present appeal the issue is to determine whether RPS has complied with the applicable legislation of the employer to take reasonable steps in dealing with any complaints of harassment. Was there an investigation that was not reasonable in process?
- (17) Another issue that concerns an adjudicator's authority to hear an appeal was more recently raised in *Reuben Rosom v Prairie Spirit School Division No. 206*, LRB 116-21 in a decision dated May 17, 2022. The decision dealt with a unionized employee complaining of harassment.
- (18) The adjudicator found that the employee's Notice of Appeal did not allege any mistake by OHS in its decision and was not a proper appeal. The Notice of Appeal simply complained about decisions by certain persons employed by the Respondent, which had issued warning letters and suspensions to the employee. The employee thought that this was unfair without being able to give his version of events. It did not provide "natural justice" and should be considered harassment. The employee then wanted the disciplinary letters removed from their work file and pay reinstated. The Adjudicator decided that the employee should have grieved the employer's decision through the

collective agreement. There was no jurisdiction to adjudicate the appeal filed by the employee.

- (19) I do not think that LRB 116-21 has an application to this case. The email from Hodgins to OHS, dated October 26, 2021, has been accepted as the Notice of Appeal. The email stated that Hodgins went to OHS with the complaint that the Wiebe investigation was not thorough and did not meet all necessary requirements. Hodgins thought that there were witnesses that should have been interviewed and included in the investigation. OHS decided that there was a proper investigation that met reasonable standards. There is a notice of appeal that alleges a mistake by OHS and I have the authority to consider the appeal by Hodgins.

ARGUMENTS

- (20) The file provided by OHS provides the Policy Manual of RPS setting out what is to be done on complaints of harassment by any employee. The process started with Hodgins' initial complaint form to RPS dated October 30, 2020, which included a lengthy list outlining his claim of harassment.
- (21) Bonnie Durnford's review indicated that there were complaints that if proven could or would be considered harassment. RPS sent this off for a more thorough fact-finding investigation. This indicates an implied acknowledgement that harassment fitting the legislative parameters could be found. The decision in *Tammy Young v SaskPower*, LRB 116-17 at paragraph (52) sets out that the Appellant's complaints only must show that they could fall within the definition of harassment.
- (22) The role of OHS is to determine whether RPS has taken reasonable steps to address a harassment complaint. RPS provided their Policy Manual on how to deal with harassment claims. The manual sets out what is considered harassment, responsibilities of parties, including the duties of the Human Resource Manager, the complaint process, and responsibilities of all parties, and conducting of an investigation. These steps follow the requirements found in section 36(1) of the *Regulations to the Act*.
- (23) Hodgins has not suggested that RPS hasn't followed the relevant steps in the Policy Manual. The complaint was that the investigation by Wiebe was not valid. The issue to be determined is whether OHS has made a proper conclusion that the Wiebe investigation met all necessary requirements.
- (24) If the Wiebe investigation followed the parameters of impartiality, procedural fairness, and thoroughness, then RPS has taken reasonable steps. The decision by the OHS officer should be upheld. I do acknowledge that there is a fine line between whether this becomes a full-scale review of the investigation as opposed to examining whether RPS has followed reasonable steps when the interview did not meet thoroughness or procedural fairness. This appeal is a consideration of the process followed by Wiebe.

- (25) This appeal can be answered by considering whether certain other persons should have been interviewed. Would it have resulted in the same or different conclusions but without knowing the answers is it fair? Was the process fair?

HODGINS ARGUMENTS

- (26) The arguments of Hodgins presented at our hearing set out that his main concern was that there were certain persons that should have been interviewed to provide clarification and corroboration of his allegations. Further these persons were known to Wiebe and no explanation was given as to why they weren't interviewed. Hodgins complains that only the witnesses put forward by RPS were interviewed and not persons he had suggested.
- (27) Hodgins' arguments at the hearing go to critiquing parts of the detailed interviews of the five officers included in the OHS file. For the purpose of confidentiality, I will identify each of these officers by last initial only.
- (28) Wiebe's interview of K on page 13, in Allegation 3, concerned a note held by another employee who told Hodgins that it stated, "keep putting the heat on Hodgins". This was also mentioned in the interview of S on page 16, Allegation 8. Hodgins suspected it was a note left by S. S denied making the note. Again, in the interview of K, Hodgins complained that there was another employee who overheard K discussing with other co-workers that he had been faking his back injury.
- (29) In the interview of M on page 10, in Allegation 2, Hodgins stated that he was told by another employee that he was being treated with more restrictions than someone charged with murder. Hodgins claimed that the employee could also show that his being assigned to work in an interview room was not because of his medical condition.
- (30) Hodgins referred to Wiebe's interview of W where she stated that she had talked to other witnesses but there was no naming of these witnesses, their background, or knowledge of his situation. Hodgins further maintained that there were comments made by other employees that Hodgins' assignment to the front desk was punishment. An employee stationed at the front desk could corroborate his version of events was not interviewed.
- (31) Hodgins brought up the interview of L on page 10, in Allegation 1, where there was mention of his receiving the silent treatment by other co-workers. Hodgins stated that there was a fellow co-worker, known to Wiebe, who was not interviewed for their comments on the matter. There was also mention of Wiebe interviewing unnamed employees who did not substantiate his claim. He questions who they were and what they knew

- (32) Hodgins complains that in the interview of L on page 10, in Allegation 2, there was an incorrect understanding of the allegation of his leaving his shift early. An employee could have been talked to about the facts. Hodgins also denied that he told Wiebe that he did leave his post.
- (33) In the interview of M, on page 12 in Allegation 5, Hodgins had complained about management targeting him. As a result, other employees did not want to associate with him. Wiebe might have come to this conclusion if she interviewed other employees. Hodgins also disagreed with the comments of M stating that putting Hodgins at the front desk was safe. Hodgins said that his doctor, if questioned, would have confirmed he was at risk of serious injury at the front desk.
- (34) Hodgins indicated that in the interview of M in Allegation 5, Wiebe called a certain situation of an RPS officer having to draw his firearm at the front desk was hypothetical, but Hodgins said there was a real incident.
- (35) Hodgins complains that Wiebe concluded that he was placed at the front desk with proper accommodations for his medical condition. Hodgins is of the opinion that it was dangerous for him to be at the front desk without a full duty belt. Hodgins said that an interview of his doctor and other employees might have led to another conclusion.
- (36) Hodgins stated that on page 14 of the interview of S, there was a mention about Hodgins being docked pay because of being late. The interview stated that S didn't dock the pay. Hodgins said he was docked pay and Wiebe could have confirmed this from RPS records if properly investigated. Then on page 16, Hodgins pointed out that Wiebe found inaccurate data on the amount of his workdays and could have found the proper data from RPS attendance records. As well, negative statements by S about Hodgins work performance would be contradicted if there was a more thorough investigation of S's comments.
- (37) In the S interview, Hodgins mentioned a derogatory remark about him made by S to another employee. Hodgins did not think the employee was interviewed. Hodgins complains that Wiebe could have interviewed other employees to consider the credibility of S. Instead, there was a reference to unnamed witnesses to corroborate credibility. Hodgins also suggested that there might be bias by Wiebe.

REGINA POLICE SERVICE ARGUMENTS

- (38) The oral argument of RPS provided that Wiebe properly took information from her interviews with Hodgins and the five RPS officers who were identified as possibly being responsible for harassment. The officers were important witnesses who were in a direct chain of management of Hodgins. Other witnesses would more likely be providing subjective and hearsay evidence. There were other relevant witnesses interviewed but were unnamed because of the confidentiality commitments found in the RPS Policy

Manual. There was acknowledged animosity between Hodgins and S but that does not detract from the conclusions by Wiebe. Wiebe acknowledged that there were unnamed RPS employees who probably questioned Hodgins' medical issues. These attitudes were not traced back to the five officers. As well, the comments in themselves do not constitute acts of harassment. The complaints of Hodgins concerning the investigation by Wiebe are merely speculation. RPS reminded that this hearing was not to be a rehearing of the investigation by Wiebe.


- (39) RPS commented that Hodgins did not argue Wiebe's overall competency. As well, Wiebe had examined numerous relevant documents and emails. There was information about Hodgins' medical issues provided through information from the RPS EFAP Health and Safety Coordinator. The Safety Coordinator related that she had done her utmost to accommodate Hodgins' repeated concerns and make his superiors aware of his restrictions. The evidence from the Safety Coordinator was that the assignment to the front desk was because there was a need for it to be staffed. It was an administrative need and not punishment. RPS argued that other witnesses would not have known about the accommodations and would only provide opinions and speculation.
- (40) Hodgins complained about restrictions only placed on him at the front desk. Witnesses had provided evidence that the restrictions were within management's rights and were not unreasonable and were applicable to all employees at the front desk. The interview of K, on page 12, sets out that Section 3-1 of the *Act* allows reasonable actions by management on management and directions of an employee's work. Hodgins' assignment to the desk would be found within this allowance. In addition, he was further provided with accommodations for his medical issue. Other complaints such as telling other staff that leaving the front desk was encouraging courtesy and safety rather than harassment.

CONCLUSION

- (41) This appeal is based on a decision provided by an OHS officer denying the appeal from Hodgins. OHS determined that it was shown that RPS took reasonable steps in dealing with the allegations of harassment. This was based on the conclusion by the OHS officer that the investigation was impartial, thorough, procedurally fair and conducted by a knowledgeable and competent investigator.
- (42) Hodgins' complaint for my consideration is whether the investigation lacked thoroughness and procedural fairness. I would agree that if the process followed by Wiebe is at fault it would amount to less than reasonable steps being taken to deal with the complaint of harassment, as necessitated by the *Act*.

- (43) Hodgins' arguments are based on other employees of RPS not being interviewed. The investigation by Wiebe clearly set out that she did interview several unnamed employees. Because of confidentiality concerns they were not named. It does become a matter of Hodgins merely speculating that relevant witnesses were not interviewed. In addition, in many instances interviews of other RPS employees were not necessary because there was evidence to back up what had been stated by the five officers. It is also noted that any of the witnesses that Hodgins thought should have been interviewed would only be providing hearsay, opinions, and speculation on their parts.
- (44) There are many examples found in Hodgins' arguments that are merely a matter of speculation as to what other officers could say, whether what they could say was merely opinion or whether they hadn't been interviewed. This was evident in paragraph (31) above, where he thought S was the author of a note. On reading Wiebe's investigation on these points, it is quite clear that she did follow up interviews. Similar examples of speculation can be found in the preceding paragraphs (32-37). Paragraph (35) concerned issues with L. In reviewing the complete interview of L, the conclusion went on to indicate that there were other witnesses interviewed. Not naming them or discussing their comments was understandable for the purpose of confidentiality.
- (45) The issues in paragraph (36) involved whether Hodgins was docked pay and (34) concerning a firearm having been drawn. The issues do not seem to be determining factors that needed further examination.
- (46) In reference to paragraph (35), Hodgins felt that interviewing other officers might shed light on whether it was safe to be at the front desk. Wiebe interviewed many officers and comments from them would again be at best opinions not necessarily based on facts. Wiebe had access to the Safety Coordinator for RPS for medical related information and the accommodations that were made for his condition.
- (47) The real question before me is whether Wiebe followed proper process. I have considered whether there were faults in the Wiebe investigation because she should have interviewed other witnesses. In my opinion, Wiebe followed a fair and reasonable process. The important witnesses, being Hodgins and the five officers, were questioned in detail. There were other witnesses interviewed. There were good reasons provided why other officer were not interviewed. Simply because Hodgins rejects Wiebe's conclusion from the interviews is not a reason to dismiss Wiebe's investigation.
- (48) I find, as did OHS, that RPS met their legal requirements under the *Act*. The appeal of Russell Hodgins against the decision of the OHS officer, Jon Paradowski, is denied.

Dated at Regina, Saskatchewan November 1, 2022.



Terrance Chinn, Adjudicator