



LABOUR RELATIONS BOARD FILE NO. 068-22

IN THE MATTER OF:

An Appeal pursuant to Section 3-53 and 3-54 of *The Saskatchewan Employment Act* with respect to a decision of an Occupational Health Officer in a matter of a claim of discrimination.

BETWEEN:

**RURAL MUNICIPALITY OF ITUNA BON ACCORD NO. 246
APPELLANT**

And

DARREN LINGELBACH

RESPONDENT

Adjudicator: Terrance Chinn

Counsel for Appellant: Adryan Toth

Respondent: Self Represented

DECISION

[1] This matter concerns an appeal of a decision made by Stephen Moorgan, Occupational Health Officer, dated March 25, 2022, regarding a complaint of discriminatory action brought by Darren Lingelbach (Employee) against the Rural Municipality of Ituna Bon Accord No. 246 (Employer). The appeal is pursuant to ss.3-53(1) and 3-54 (1) of *The Saskatchewan Employment Act* (the Act). The Employee's complaint of discrimination arises from his claim that his

employment was terminated because of raising concerns about health and safety matters related to harassment.

[2] The decision of Mr. Moorgan found that the Employer terminating the Employee's employment was an unlawful discriminatory action contrary to 3-35 of the Act. The decision also required the Employer to reinstate the Employee to his former employment under the same terms and conditions under which he was formerly employed. The Employer was also to pay wages the Employee would have earned if not wrongly discriminated against and remove any reprimand or reference to this matter on his work record.

[3] The Employer appealed the decision of the occupational health officer and maintained that the termination of the Employee was for good and sufficient reason and not due to any complaint by the Employee concerning health and safety because of harassment. The Employer also requested that the decision of Mr. Morgan be suspended pending the outcome of any appeal. The Employee did not return to work after the decision.

[4] I was appointed as an adjudicator to hear this appeal. Neither of the parties objected to my appointment. There were several emails to both parties, and a phone call to the Employee, to arrange a conference call to discuss a hearing and having the parties consider any possibility of a settlement. After there were attempts to set up a conference call, the Employee emailed on the arranged date for a conference call to advise that:

"Morning sorry for the early email. As my commonlaw (*sic*) is having some serious health issues, I will not be pursuing any further with the RM of Irina (*sic*) Bon accord. So I will not be involved with your phone conference today."

My email reply to him was:

"A bit confused now. You did not want to be part of this process any further. Based on that, I agree with RM counsel that the OHS decision would be cancelled.

As you are no longer intending, as I understand it, to go back to work for the RM, my Decision would simply cancel the OHS decision and nothing more. It would not be construed as a finding for or against the parties if they choose any other forum.

Otherwise, the decision of OHS in your favour will need a hearing to determine if it is to continue or not or be varied in any way.

Darren, can you confirm that you do not want any further involvement in this process. If so, I will simply cancel the decision of OHS.

Adryn, not meaning to keep you out of this and invite your Comments."

The Employee emailed a reply that:

“As I told you I have other priorities. Thanks”

[4] The Employer maintained it had the right to a hearing of the matter at hand. That is without question. Counsel for the Employer had been prepared to present considerable evidence to back their position. At my suggestion, it seemed impractical to go through a hearing of the appeal. Counsel for the Employee agreed to this suggestion and requested that the decision of Mr. Moorgan be simply vacated in the circumstances.

ORDER

[5] The Act sets out that:

4-6(1) Subject to subsections (2) to (5), the adjudicator shall:

(a) do one of the following:

(i) dismiss the appeal;

(ii) allow the appeal;

(iii) vary the decision being appealed;

In the circumstances I am varying the decision by cancelling and vacating the decision of the Occupational Health Officer, Stephen Moorgan, dated March 25, 2022, in whole.

Dated at Regina, Saskatchewan this 9th day of January 2023.

A handwritten signature in black ink, appearing to read "Terrance Chinn". The signature is written in a cursive style with a large, stylized initial 'T'.

Terrance Chinn, Adjudicator