LRB File No. 042-24

IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTIONS 3-53 AND 3-54 OF *THE SASKATCHEWAN EMPLOYMENT ACT*

BETWEEN

SAMANTHA VELDMAN

APPELLANT

- and -

RURAL MUNICIPALITY OF HAZEL DELL #335

RESPONDENT

Adjudicator: Larry B. LeBlanc, K.C.

For the Appellant: Self-Represented

For the Respondent: Michelle Bednarz, Administrator, Rural Municipality of Hazel Dell #335

Heard in Preeceville, Saskatchewan on November 14, 2024

DECISION

I. INTRODUCTION

1. The Appellant, Samantha Veldman, appeals pursuant to sections 3-53 and 3-54 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (the "Act") against a decision of Occupational Health Officers dated January 25, 2024 finding that the termination of Ms. Veldman's employment by the Respondent, Rural Municipality of Hazel Dell #335 (the "RM"), was not an unlawful discriminatory action contrary to section 3-35 of the Act.

2. I have concluded that the appeal must be dismissed but for reasons other than those of the Occupational Health Officers. My reasons follow.

II. FACTUAL BACKGROUND

3. The Respondent is a rural municipality in east-central Saskatchewan covering a land area of approximately 1,390 square kilometres. The significant communities within or surrounded by the rural municipality are the hamlets of Okla and Hazel Dell, and the village of Lintlaw.

4. Ms. Veldman was employed by the RM as a seasonal road maintenance employee for three seasons (2021, 2022 and 2023). She worked roughly seven months each year, from mid-April or beginning of May to some time in November.

5. The office, shop and equipment of the RM are located in Okla. Including seasonal employees, the RM employed a total of six employees in 2023 (four outside and two in the office)

and five in 2024 (three outside and two in the office). The reduction of one outside employee in 2024 was due to a move to custom mowing. The two office employees have consisted of a combination of Administrator, Intern Administrator (through a rural administrator internship program) and part time assistant. The RM is not unionized.

6. Time sheets for Ms. Veldman do not record start and stop times, only the number of hours worked (with some break down) on a daily basis.

7. In 2023, the Administrator of the RM, Michael Rattray, was employed on a half-time basis. The Intern Administrator, Michelle Bednarz, whose employment had commenced on December 1, 2022, was a full-time employee.

8. At a meeting on April 12, 2023, the RM Council passed a resolution concerning Ms. Veldman's employment for the 2023 season, stating "That the R.M. set the following dates for the Seasonal Employees to return to work for 2023: Samantha Veldman – April 17, 2023."

9. Ms. Veldman and the RM then entered into an employment agreement dated April 17, 2023. It includes the following provisions:

> Term of Employment: With resolution #109/23 passed at the April 12, 2023 meeting, subject to the provision for termination set forth below this agreement will begin on April 17, 2023.
>
> Duties and Position: The RM hires the Employee in the capacity of General Road Maintenance Employee ...
>
> Hours of Employment: The Employee will be paid from 7:00 am to 5:00 pm unless Council authorizes otherwise. The Employee will provide maintenance (grease/change oil/change blades, etc.) to all equipment they are intending to operate that day first thing when they arrive at work. Once this is completed the Employee will start grading/maintaining roads for the rest of the working day. Any persons employed by Rural Municipalities solely in connection with road construction or maintenance, or servicing of road repair or maintenance equipment that is not done in the shop will not be paid over-time.
>
> Termination of Agreement: Without cause, the RM may terminate this agreement at any time upon 7 days' written notice to the Employee, the RM will pay the Employee on the date of the termination a severance allowance according to Labor Standards less deductions required to be withheld. With cause, the RM may terminate this agreement at any time upon written notice to the Employee, with no compensation paid to the Employee. The Employee may terminate employment upon 7 days' written notice to the RM. Employee may be required to perform his or her duties and will be paid the regular salary to date of termination but shall not receive severance allowance.
>
> Disciplinary Action Leading to Cause: Notice to the employee shall be given in person by a member of council with an explanation of unsatisfactory behavior. This verbal notice shall be accompanied by a written notice duly signed by the administrator and one member of council, the employee shall be required to sign the notice as well and a copy shall be stored at the municipal office. Two written notices justify Cause for termination.
> In the case of a grievance between the employee and a member of council or another employee a written notice duly signed by the employee shall be served on the office, either through the

> administrator or a member of council, the notice then shall be taken to council and signed by one member of council and the administrator as well as the person who the grievance is file against. In either case, due time shall be given to correct disciplined behavior.
>
> Oral Modifications Not Binding: This instrument is the entire agreement of the RM and the employee. Oral changes have no effect. It may be altered only be a written agreement signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

10. On April 17, 2023, Ms. Veldman also signed a "Rural Municipality of Hazel Dell No. 35 Municipal Employee Code of Conduct". It contains a section entitled "Contraventions and Corrective Discipline Policy" which lists three corrective disciplinary steps, namely, verbal warning and disciplinary letter, disciplinary and short-term suspension, and termination.

11. At the material times the RM had a written policy on harassment.

12. On September 13, 2023, the RM issued a documented verbal warning to Ms. Veldman signed by the Reeve, Administrator and Intern Administrator stating:

> This meeting is to advise Samantha Veldman that she shall follow the direction of the intern administrator Michelle Bednarz as well as have better communication between herself and the Administrator when she will be absent work. This will be treated as a Verbal Notice regarding the RM's Disciplinary Action Leading to Cause and this Verbal Notice may be waived in the near future.

Ms. Veldman's co-worker, Hunter Walker, received a similar verbal warning.

13. The verbal warning related to the following set of circumstances. Stripped to the essentials, on Thursday, August 31, 2023, after lunch, Ms. Bednarz instructed Ms. Veldman and another employee, Hunter Walker, to put up detour signs at a location (known as Rockford) where a bridge was to be taken out of service for construction to start that Saturday. Ms. Veldman and Mr. Walker decided to attend to that task on Friday morning rather than Thursday afternoon. However, Ms. Veldman started to become ill after work on Thursday and was absent from work on Friday. Ms. Veldman did not inform Ms. Bednarz of the absence but did call or text at least one of the other outside employees. Ms. Bednarz ended up placing the detour signs herself, assisted by her husband, on Friday.

14. Following delivery of the September 13, 2023 disciplinary notice, Ms. Veldman submitted three documents, all on September 18, 2023, described as (i) grievance of the verbal warning received on September 13, 2023, (ii) harassment complaint against the HR Committee of Hazel Dell, and (iii) harassment complaint against the Intern Administrator Michelle Bednarz.

15. Ms. Veldman's grievance against the verbal warning stated as follows:

> This is a grievance of the Verbal Warning I received on Sept. 13, 2023, from the HR committee of the RM of Hazel Dell.
>
> I am writing this grievance as I do not feel that I was given the opportunity to defend my side of the story of the events leading to the verbal warning. I did not disobey my superior, I was also not told that I was to let the Intern Administrator know the days I would be absent.

On Thursday Aug. 31, 2023, Hunter and I went to Rockford in the morning to see if it was too wet to mow. The Intern Administrator came out after our lunch period asking Hunter and I to put up detour signs in Rockford as the bridge work was starting Saturday. We had just come back from Rockford, and we would be heading back up there the next day (Friday) to mow. We decided not to waste extra time and gas driving up there again that day to put them up, we made up the signs to push in with the tractor to fill the rest of our day. We also wouldn't have to cover the signs with garbage bags Friday because the work that would be getting done the next day. We were making our steps count. The intern administrator did not voice she wanted it done on Thursday when she told us.

I was absent because of medical reasons the Friday so I was not present to get the signs done, I was told Tuesday by Hunter that Michelle had done the signs herself that Friday morning, even with 3 other field workers present Friday that could have put the detour signs up. I had full intentions Friday morning to do the detour signs as the intern administrator had asked.

I do not feel that getting a verbal warning on my record was appropriate or justified. Since I have returned this season in the spring, I was under the impression that Larry was my supervisor, I was not informed about the intern administrator being my foreman. I received no notice of the change until this incident.

16. Ms. Veldman's complaint against the HR Committee stated as follows:

A Harassment Complaint Against the HR Committee of Hazel Dell

(Reeve Donnie Holowachuk, councillor Allen Kreshewski, and councillor Collin Redman)

I am writing this harassment complaint because the HR committee did not properly investigate the incident on Aug. 31st, and Sept. 1[51], 2023. They gave me a verbal warning on Sept. 13 th, 2023 against my employment record, without investigating or giving me an opportunity to defend myself. I tried to explain to them my side, but they already had the verbal warning in hand and did not take anything I said into consideration. They looked at me as I was at fault without even considering anything I had to say. I feel this is harassment as I have been here now on my third season and have never done anything or had been told that I have done anything wrong in my entire employment here. This was not something that I did, and no one even considered talking to me before they had me guilty of something that I did not do.

17. Ms. Veldman's complaint against the Intern Administrator stated as follows:

This is a Harassment complaint against the Intern Administrator Michelle Bednarz by Samantha Veldman. Since starting work this spring Michelle has given me the impression that she is not being fair with me.

She paid all employees and did not pay me and gave the impression that it would be an inconvenience for her to have a council member come to the office to sign a cheque as she could not pay me through the e-transfer that she had gone over her limit for amount money sent. I was paid a week or more later when she could pay through e-transfer.

Next, she came into the shop looking for oil samples as another employee had wanted and 2 other employees were present, she tried accusing me of throwing them out when I cleaned the shop days prior. She never accused any of the other employees who were in the shop at the time. It was eventually found with the other sample kits where it belongs.

Next, she came to Rockford in look for me claiming that she was worried about my safety as no one could contact me during the day. In Rockford there is no service and there would be no/minimal contact. I have done this job for three seasons now and have worked in Rockford never having anyone coming to check on me. I have worked till 7 0'clock in the evening multiple times this year and no one has checked on me before. I was at my tractor servicing, and she showed up from behind me after she shut her truck off and coasted down the hill to my location. She said she was checking on me as no one could contact me. She had already gone home before this as she had her husband with her. I am a capable worker or at least I had thought and felt that it was inappropriate as I have never needed to be checked on in the past.

Then, she had stopped me from working longer hours claiming that OH&S would not allow me to work by myself longer than any other employees yet this is the first in almost 3 seasons now I have heard of this and when I was hired council themselves told me that I could work late hours if I want as well as weekends if the weather did not permit some days during the week to keep up with the mowing. Michelle also told me NO weekends. I have looked into this with OH&S, so long as I am in phone contact, they have no issue with this.

I have been back since April and have been under the impression that Larry is my supervisor, and since I have been back have only dealt through Larry and have never been told any different. No one has told me any different until I received my verbal warning.

Michelle has now given me a verbal warning for not obeying my superior or contacting them when that was not true. Michelle came to the shop Thursday Aug 31st, 2023, after Hunter and I had already come back from Rockford as it was to wet to mow. After lunch period Michelle had asked to get the detour signs put up before Saturday when the construction started for the bridge. We had already come back from Rockford and had to go back the next day to mow so we decided to do it the next morning because if we put them up Thursday, we would have to cover them and then go back again on Friday to remove the covers, trying to save on time and money and make our moves count. We had full intentions to take the tractor around and use the tractor bucket to put the signs in as it would be quicker and easier on us. Unfortunately, Thursday after work ... I had texted Larry and Hunter Friday morning explaining that I was ill and would not be able to work that day, again Larry is the only person I have been contacting all year, so he is the one I texted thinking he was my supervisor. No one at that time had informed me until the verbal warning that Michelle took over shop foreman position. ... When I came back to work Tuesday, I was told I was no longer allowed to put in as many hours as id like, I had no idea as to what had taken place and I was still in pain but did my job. That week I spoke with Larry as to me putting in more hours and that I was really wanting to get in the hours as I had done in the past he informed me he would speak to the Reeve and figure something out, that weekend I was contacted by Larry letting me know he had contacted Donnie on my behalf and I was allowed to do my longer hours again. Then to have been called into a council meeting the Wednesday after getting a verbal warning. I feel that Michelle had done this as retaliation for me going around her and having Donnie allow my longer hours, I mentioned it to Larry he went to Donnie I did not ask Larry to.

With all these things together, there is no reason for me to not feel that Michelle is harassing me and I do not know why but she is making it very difficult for me to do my job and it is making me question as to rather or not I will be wanting to do another season at the RM if the harassment keeps forward. I have been here almost three full seasons now without incident!

18. The grievance and harassment complaints came forward at a meeting of Council of the RM on October 18, 2023. As to the harassment complaint against Ms. Bednarz, the minutes record the following disposition:

> At 9:28 a.m. Intern Administrator Michelle Bednarz declared a conflict of interest on the next item on the agenda and left the meeting.
>
> IN CAMERA SESSION
> 263/23 Kreshewski - That this Council Meeting go to an In-Camera Session at 9:28 a.m. with the purpose being to discuss a harassment complaint against the Administration staff of the R.M. of Hazel Dell No. 335.
>
> CARRIED.
>
> RETURN TO REGULAR MEETING
> 264/23 Chornomitz - That the In-Camera Session end at 9:59 a.m. and that we return to the Regular Council Meeting.
>
> CARRIED.
>
> At 9:59 a.m. Intern Administrator Michelle Bednarz returned to the meeting.
>
> HARASSMENT COMPLAINT
> 265/23 Redman - That upon review of the investigation the harassment complaint from employee against administration was found to be unsubstantiated and did not comply with current policy so no further action will be taken.
>
> CARRIED.

19. As to the harassment complaint against the HR committee and the grievance, the minutes record the following disposition:

> At 10:25 a.m. Intern Administrator Michelle Bednarz, Reeve Holowachuk, Councilor Redman and Councilor Kreshewski declared a conflict of interest on the next item on the agenda and left the meeting.
>
> IN CAMERA SESSION
> 266/23 Galbraith - That this Council Meeting go to an In-Camera Session at 10:25 a.m. with the purpose being to discuss a harassment complaint and the grievance against the H/R Committee of the R.M. of Hazel Dell No. 335.
>
> CARRIED.
>
> RETURN TO REGULAR MEETING
> 267123 Chornomitz - That the In-Camera Session end at 10.38 a.m. and that we return to the Regular Council Meeting.
>
> CARRIED.
>
> At 10:38 a.m. Intern Administrator Michelle Bednarz, Reeve Holowachuk, Councilor Redman and Councilor Kreshewski returned to the meeting.
>
> HARASSMENT COMPLAINT

268/23 Chornomitz - That upon review of the investigation the harassment complaint from employee against H/R Committee was found to be unsubstantiated and did not comply with current policy so no further action will be taken.

CARRIED.

GRIEVANCE

269/23 Galbraith - That the verbal warning issued to seasonal employees be withdrawn.

CARRIED.

20. With the 2023 season drawing to a close, Administrator of the RM, Michael Rattray, by letter dated October 20, 2023, provided Ms. Veldman with notice of layoff (for a date yet to be determined) worded as follows:

> Please be advised that the R.M. of Hazel Dell No. 335 hereby serves notice to yourself of a worker layoff with the date of layoff being at the R.M.'s Intern Administrator discretion.

In the same letter, Mr. Rattray reported on Council's withdrawal of the verbal warning:

> Please be advised that at the last Council Meeting on October 18, 2023, the Council decided to withdraw your verbal warning from the previous Human Resource Committee meeting on September 13, 2023. Your employment record will not show this verbal warning.

As to reporting relationships going forward, Mr. Rattray further stated in the letter:

> As I am only employed half time as the Administrator for the R.M. of Hazel Dell No. 225, Council has give full time Intern Administrator Michelle Bednarz the responsibilities as the Administrator. Going forward Michelle will be supervisor. Larry Ebel will be responsible for the daily organization of outside jobs. Hoping this clears up some of the misunderstandings from the past.

21. Ms. Veldman's last day of work was November 9, 2023.

22. On November 16, 2023, the RM issued a Record of Employment (ROI) regarding Ms. Veldman. It is certified by Michael Rattray with Michelle Bednarz listed as the contact for further information. Of note:

- As the "Reason for Issuing this ROE" (block 16), code A is selected and the words "Shortage of work / End of contract or season" appear in the blank space
- Regarding "Expected Date of Recall" (block 14), the form provides for the entry of a specific date or a choice between "unknown" and "not returning". In this case, "not returning" is selected.

On November 28, 2023 the ROE was amended by the addition in block 17, section C (headed "other monies") of the words "Pay in lieu of notice" -- $1,300.00"

23. In ROI forms following the end of the 2021 and 2022 seasons for Ms. Veldman the "unknown" box is checked for expected date of recall and there is no reference to pay in lieu of notice.

24. By letter dated December 1, 2023 from "R.M. of Hazel Dell council", Ms. Veldman was advised as follows:

> Please be advised that the R.M. of Hazel Dell No. 335 hereby serves notice to yourself of no return for the 2024 season.
>
> We are also required to inform you that with a no return to work your SARM benefits will be terminated immediately.
>
> With this letter you have also received one weeks wages per labor standards.

III. COMPLAINT TO OHS

25. On November 30, 2023, Ms. Veldman submitted a complaint of discriminatory action to the Harassment and Discriminatory Action Prevention Unit of the Occupational Health and Safety Branch ("OHS").

26. Ms. Veldman alleged in her complaint that she was "fired for filing a harassment complaint against the HR committee as well as the intern administrator":

> 2 weeks after asking the main adminastrator for the documents on the investigations for OH&S I was fired with no notice or termanation letter. I was told I was being laid off yet to find a week later to look at my ROE stating I was Not Returning and I was fired with no cause. I did not recieve a termination letter for being fired nor told to give my keys until I went to the office November 30th for my paperwork still yet to have investigation reports as well as a termanation paper for me.
> I was fired for filing a harassment complaint against the HR commitee as well as the intern administrator in my beliefs.

27. By email dated January 17, 2024 from OHS to the RM, the RM was advised that Ms. Veldman believed the no return for the upcoming season was because she put in a harassment complaint. The RM was asked to provide any additional documentation as to the reason for the termination of employment.

28. Ms. Bednarz for the RM responded by email on the same day giving reasons for termination as follows:

> Samantha was not terminated because of the harassment complaint. Samantha is not being recalled due to the fact that she signed an employment contract to start work at 7 am and seemed unable to fulfill that portion of her contract. As well as her inability to communicate with other staff members and her inability to follow direction from senior staff. Unfortunately non of this is necessarily documented, we do have cameras installed and I would be happy to go through the footage and provide you with dates and times of her late arrival to work. When given a verbal warning about following direction from senior staff she then proceeded to make her harassment complaints against staff and council, and at that point council decided to remove the verbal warning previously given.

29. In a decision dated January 25, 2024, Occupational Health Officers found that Ms. Veldman had engaged in a protected activity by making a complaint of harassment but that the RM had provided good and sufficient other reason for the termination. The determination is contained in the following paragraphs:

It is not the role of the OHS Officers in this matter to determine whether or not harassment took place, this is a claim of discriminatory action. The Officer's duty in this matter is to determine if in fact a health and safety concern was raised based on the legislation and if the worker was more likely than not, based on a balance of probabilities, terminated as a result of raising these concern(s).

1. Did the worker engage or participate in one of the activities described in section 3-35 that on its face could be the reason, even in part for the discriminatory action?

   Yes, Samantha Veldman made a complaint of harassment to the employer on September 18, 2023.

2. Did the employer take discriminatory action against the worker?

   No, the employer stated that Samantha worked out her season and received a layoff notice for no return to work for the upcoming season. The employer states:

   > "Samantha is not being recalled due to the fact that she signed an employment contract to start work at 7 am and seemed unable to fulfill that portion of her contract As well as her inability to communicate with other staff members and her inability to follow direction from senior staff."

It is our decision that the employer, RM of Hazel Dell, has provided good and sufficient other reason for the dismissal of Samantha Veldman and that the termination was not an unlawful discriminatory action contrary to section 3-35 of The Saskatchewan Employment Act.

30. In her Notice of Appeal dated February 5, 2024, the Appellant states "I feel the officers did not investigate this thoroughly" and that "I have other documents as well as people I believe should have been questioned during the investigation".

IV. WITNESS TESTIMONY

31. The Appellant subpoenaed seven witnesses to testify at the hearing including the Reeve of the RM (Donald Holowachuk) and four councillors (Dallas Chornomitz, Allen Kreshweski, Collin Redman and Keith Galbraith), all of whom served in those capacities at the material time and continue to do so, as well as a current employee of the RM who was also employed at the material time (Larry Ebel) and a former employee who it was agreed would testify remotely (Hunter Walker).

32. At the outset of the hearing the Appellant requested an order for exclusion of all witnesses, including those she had subpoenaed, indicating however that Denise Veldman, a former councillor and the Appellant's mother who was present to provide assistance (hereinafter Denise Veldman in full to avoid confusion), should be allowed to remain because the Appellant proposed to file an affidavit from Denise Veldman rather than call her as a witness.

33. I indicated that in the circumstances I would not be prepared to accept an affidavit from Denise Veldman and that if she was to provide evidence it should be through testimony at the hearing. After further discussion on witness exclusion, and while not in keeping with the typical "one side at a time" exclusion, I ordered the exclusion of all witnesses except Ms. Veldman and

Ms. Bednarz, and one assistant or instructing party for each. Denise Veldman remained with the Appellant and Donald Holowachuk remained with Ms. Bednarz.

34. Some of the evidence strayed beyond what would be relevant for my determination of the matters in issue, but no objection was taken, and latitude was given knowing that in the end I would be able to assess what held out significance.

35. The main substance of the evidence of the two employee witnesses was as follows:

- Larry Ebel testified that he was not really a superior to Ms. Veldman, nor a foreman, but with eight years service was looked to as a "main guy"; that Ms. Bednarz was the foreman for outside duties and would inform Mr. Ebel of the work to be done, with the crew then getting it done. Mr. Ebel also testified that the RM never brought up with him the fact of Ms. Veldman being late for work. In cross-examination Mr. Ebel recalled an occasion of him sending Ms. Bednarz a text with regard to Ms. Veldman at a time when Ms. Veldman was beyond phone service and could not check in.

- Hunter Walker testified that 2023 was his first season with the RM, with another crew member also in his first season, and Ms. Veldman in her third. He testified that he did not arrive at 7:00 a.m. for work every day, but close to every day. With respect to the day he and Ms. Veldman were intending to put up the detour signs, Mr. Walker testified that Ms. Veldman phoned in sick; that while he was on his way to a location to mow, Ms. Bednarz contacted him and asked him to come back to the shop if it was too wet to mow, which it was; that upon return to the shop Ms. Bednarz was present and was not happy about the detour signs, giving him an earful; that he was assigned to a job at the culvert yard; that Ms. Bednarz and her husband proceeded to deal with the detour signs. On the question of who was the foreman, Mr. Walker's responses ranged from it being an open question for a while, to it being his impression that Larry Ebel was the foreman, to they did not really have an acting foreman, to no one told him who was the foreman, to both Michelle and Larry telling the crew what to do; but his overall understanding was probably captured by a comment that Larry Ebel was the closest thing to a shop foreman until the crew found it was Ms. Bednarz. In cross-examination, he acknowledged that Ms. Veldman arrived late for work sometimes (how often was not clear from his evidence) but on those days would stay at work longer. He added that when the crew was down to one mower Ms. Veldman arrived for work early.

36. The main substance of the evidence of the five councillors was as follows:

- Dallas Chornomitz was asked if there was a vote about giving out the verbal warning, and responded he couldn't remember. He was then asked, "was my firing voted on in council", and responded no.[1] Mr. Chornomitz further testified that on occasions when he would give Ms. Veldman a few things to do, she did well in the first few years,

[1] I suggested to Ms. Veldman that use of the word "fire" in her questions (as opposed to "terminate" or "layoff with no return") might cause a witness to misunderstand the question. As the hearing progressed, there appeared to be no significant miscommunication regardless of the exact phrasing.

except for small items as for example seat belt use. When specifically asked if council had any issues with Ms. Veldman before the verbal warning, he said that it was brought up that Ms. Veldman was late for work and another time left without letting anyone know and that she might be upset when Ms. Bednarz gave her a job. After further commenting that he did not remember Ms. Veldman being fired, Mr. Chornomitz was shown and acknowledged a group text from November 24, 2023 involving himself, other councillors, Mr. Rattray and Denise Veldman attaching an initial copy of the ROE (before the addition of "$1,300 pay in lieu of notice") and asking if severance money should be paid.

- Keith Galbraith was asked if there was a vote on Ms. Veldman's verbal warning, and responded no. After being asked if there was a vote on Ms. Veldman's non-recall, Mr. Galbraith, to assist with his recollection, was shown a copy of the December 1, 2023 notice of no return, which he recalled seeing, and stated that there was a vote when Ms. Veldman was laid off in November. When asked by Ms. Veldman if she did what she was told when given a job by council, Mr. Galbraith responded "there was no problem with your work". Regarding staffing in the ensuing 2024 season, Mr. Galbraith stated that no one was hired to do Ms. Veldman's work, and that a replacement was not hired for Mr. Walker after he was laid off as reflected on Minutes from August 14, 2024.

- Allen Kreshewski was asked if there was a vote on Ms. Veldman being fired ... on her non-recall ... and responded that if he saw it, he doesn't remember. When asked by Ms. Veldman how she performed if given instructions by Mr. Kreshewski, Mr. Kreshewski responded that he would not direct her to do work, but that "everyone said you were a good worker". Mr. Kreshewski was asked whether he investigated Ms. Veldman's harassment complaint, and responded, when shown the October 18, 2023 minutes and noting who was at the meeting, that he was not sure who investigated (but suggesting that one of them had). With respect to discussion concerning the verbal warning, Mr. Kreshewski stated that he remembered it was dropped and that everyone gave their version of what happened at the meeting or in Ms. Veldman's case possibly outside the meeting. In further questioning, Mr. Kreshewski testified that he would often stop at the shop to talk to the crew (later explaining that he is a bus driver whose route goes right past the shop); that in the last fall of Ms. Veldman's employment it appeared she was not coming to work on time and might still not be at work as late as 7:30 a.m. or 7:40 a.m.; that he had concerns when he saw everyone else there at 7:00 a.m.; and that "I know you signed that you would be at work at 7:00 a.m.". When asked why he would not bring this up, Mr. Kreshewski responded that it was a matter for administration to deal with, not him; that he did not question Ms. Bednarz about it, but did question Mr. Ebel; that he does not know if there was any reprimand issued.

- Collin Redman was asked if there was a vote about the verbal warning and responded that Ms. Veldman was just called in and given a verbal warning (adding later in his testimony that the verbal warning was investigated and that Ms. Veldman at the meeting said what happened). He could not recall if there was a vote on the "no return".

He testified that when given a job to do by council, "you were doing your job for the most part". As for whether Mr. Redman had any issues with Ms. Veldman, he stated "you could work as many hours as you could as long as you were and could be gotten a hold of". He could not remember when the HR committee was created. He did not remember seeing the December 1, 2023 letter serving notice of no return but said that he must have read it at the time. He remembered seeing the November 24, 2023 group text messages but stated that the "fired" word was never in fact used, rather "we just laid you off". Regarding the harassment complaint, he testified that he was told it was investigated but the investigation was not by him; that council did not believe there was anything indicating harassment at all; and that there was no evidence that would constitute harassment.

- Donald Holowachuk responded "no" to whether there was a vote of council on either the verbal warning or the non-recall. He testified that he never gave Ms. Veldman a job to perform. As for any issues with Ms. Veldman during her first two seasons, Mr. Holowachuk said he had none but added that members of council would tell him she would come to work later or sometimes would not use a seat belt or wear steel toe boots. Regarding putting up the detour signs, Mr. Holowachuk stated that Ms. Bednarz is covered for outside duties and that while there was nothing stopping Hunter Walker from putting up signs if he had been directed to do that (rather than being assigned work at the culvert yard) two other employees were busy trying to fix a grader. He said that as a seasonal employee the RM did not have to call Ms. Veldman back. He stated that Ms. Bednarz made the decision on the non-recall. Regarding the verbal warning, Mr. Holowachuk was asked whether it was investigated before being handed to Ms. Veldman and responded that the discussion about it would be an investigation and that Ms. Veldman was allowed to speak to the matter and give her version.

37. Denise Veldman was called as a witness by the Appellant. The main substance of her evidence was as follows:

- On the day of the verbal warning there was a discussion among councillors about forming an HR committee to deal with the issue that had arisen. Ms. Bednarz in the discussion started yelling that when she requests something to be done she expects it to be done, mentioning that she and her husband put up the signs. Mr. Kreshewski asked if this was permitted. There was a vote as to who would go on the HR committee which councillors said could not include Denise Veldman due to the involvement of her daughter. Ms. Bednarz left the meeting and later came back with some papers that Denise Veldman did not see. Samantha Veldman and Hunter Walker were to meet with the HR committee. To Denise Veldman's knowledge, the verbal warning was not investigated.

- The harassment complaints came before council at its October meeting. Michael Rattray read out the complaint against Ms. Bednarz. Ms. Bednarz (having left the meeting) was called back and asked whether there were other circumstances in which Samantha Veldman had not listened to her, to which Ms. Bednarz responded that there

were a couple. Ms. Bednarz left the room again with the rest of council remaining. Mr. Rattray spoke up and stated that complaint did not follow the policy for harassment. There was a vote. Ms. Bednarz was called back again and told what had been decided.

- Regarding the complaint against the three members of the HR committee, also dealt with at the October meeting of council, it appeared they had not been aware of the complaint. After an in-camera session this complaint was also found to be unsubstantiated. In the course of the discussion, Collin Redman commented that Samantha needed a thicker skin and Keith Galbraith commented that Samantha was lucky she had a job. (I noted that these statements should have been put to Messrs. Redman and Galbraith when they testified.)

- There is a council policy #1-2022 passed by resolution 31/22 that allows council to be involved in the operations and affairs of the RM including the hiring and termination of employees. It had not been changed before the end of Ms. Veldman's employment. There had been discussion about changing the RM's harassment policy, but it remained in force.

- In 2023, before the Ms. Veldman and Hunter Walker commenced their seasonal employment, Denise Veldman spoke with Ms. Bednarz and asked if Ms. Bednarz would be taking on the role of telling outside employees what to do. Ms. Bednarz said she was getting to learn and mentioned that Larry Ebel would tell them what to do in the meantime.

- In cross-examination, in response to the question whether she felt she was in a conflict of interest when she sat in the in-camera sessions, Denise Veldman commented that she did not know the rules.

38. The final witness for the Appellant was the Appellant herself. The main substance of her evidence was as follows:

- In her three seasons of employment with the RM there had never before been a problem. She had not received a reprimand. Her salary increased yearly.

- If she was not at work on time, she made up for it that evening.

- Larry Ebel was her foreman. She talked to him day to day.

- This was a situation where "I have to stick up for myself, so I put in the grievance against the verbal and the two harassment complaints".

- Ms. Veldman identified certain text messages with Larry Ebel including:

  September 9, 2023

  Mr. Ebel: Stopped and talked to donny, he says u can work longer days.
  Just let us know if your staying longer and when your done.

  Ms. Veldman: Perfect. Thanks!!

September 13, 2023

Mr. Ebel: Can u go into the dually and give Michele that 1/2 inch impact, maybe keep the battery

November 8, 2023

Mr. Ebel: Michelle says layoff tomorrow so we'll have to clean and move them mowers and stuff tomorrow.
Ms. Veldman: Okay do you want mowers pressure washed?
Mr. Ebel: Ya I guesd

- As to the events of Thursday, August 31, 2023 to Tuesday, September 5, 2023, Ms. Veldman's testimony covered essentially the same ground as set out in her complaints and the grievance.

- Ms. Veldman did not obtain alternate employment until the fall of 2024.

39. Michelle Bednarz was the only witness called by the Respondent. The main substance of her evidence was as follows:

- In relation to the second paragraph of the complaint against her (beginning "She paid all employees and did not pay me ..."), Ms. Bednarz identified an exchange of text messages with Ms. Veldman as follows:

  June 2, 2023

  Ms. Veldman: Soooo am I gonna get paid?
  Ms. Bednarz: Yes it is not letting me do an etransfer so I might have to do a cheque for you
  Ms. Veldman: Not a worry
  Ms. Bednarz: Hey, so if I transfer $1300 today and the rest next Wednesday would that work for you? Or would you like me to try and get a cheque signed tonight for you
  Ms. Veldman: That will work for me
  Ms. Bednarz: Thank you and it won't happen again I am sorry
  Ms. Veldman: No problem! Shit happens!

- In relation to the fourth paragraph of the complaint against her ("Next, she came to Rockford in look for me claiming she was worried about my safety ..."), Ms. Bednarz identified an exchange of text messages between her and Larry Ebel as follows:

  [Date not shown]

  Ms. Bednarz: Is that your first thought Larry. Lol
  Mr. Ebel:Yup
  Ms. Bednarz: Maybe I will check.
  Mr. Ebel: C sam up there
  Ms. Bednarz: No truck was there but no mower I am heading out now
  Mr. Ebel: No been phoning and texting but no reply
  Ms. Bednarz: Sam is ok I found her
  Ms. Ebel: Ok good

- Ms. Bednarz testified that, prior to the November 16, 2023 ROE, there was a council discussion (all members except Denise Veldman) concerning the "not returning" layoff of the Appellant. She indicated that the discussion did not involve a motion that was voted on, but "was more of a phone conversation, not necessarily at a meeting". The thinking behind the layoff with no return was Ms. Veldman's lateness. Ms. Bednarz also mentioned failure to communicate with the office on sick days (citing one example in addition to the August 31 situation) and inability to follow direction (giving an example of Ms. Veldman being asked to do grass cutting ands not getting it done).

- In cross-examination Ms. Bednarz acknowledged that at no point did the Appellant receive a reprimand for showing up late, nor any notice for showing up late under the provision of the employment agreement regarding "disciplinary action leading to cause" or under the steps of the "contraventions and corrective discipline policy" in the Municipal Employee Code of Conduct. Ms. Bednarz further acknowledged that she has no documentation concerning the grass cutting matter she referenced.

40. At the conclusion of the evidence the parties indicated that they had nothing to add by way of argument.

V. ISSUES

41. The issues on this appeal are the following:

- Did the Appellant engage in a protected activity that falls with the ambit of section 3-35 of *The Saskatchewan Employment Act*?

- If so, was the Respondent's termination of the Appellant's employment (being a "discriminatory action" as defined) taken for good and sufficient other reason within the meaning of section 3-36(4) of *The Saskatchewan Employment Act*?

This formulation is consistent with the analytical framework set out by the adjudicator in *Banff Constructors Ltd. v. Arcand*, LRB File No. 149-19, April 28, 2020 (Tegart).

VI. *DE NOVO* HEARING

42. An appeal such as the present involves a *de novo* consideration of the matter by the adjudicator. The matter is heard anew or afresh as in a hearing of first instance. The appeal is based on the evidence introduced by the parties at the hearing and, as may be determined by the adjudicator, the material provided by the director pursuant to sections 3-53(10) or 3-55 of the Act.[2] The adjudicator's decision is not limited by the reasons or decision of the Occupational Health Officer. See in that regard:

> *Nicholson v. Domsask Holdings Ltd.,* LRB File No. 220-14, May 13, 2015 (Sask. LRB) at para 25

[2] In the present case, the material from the director was filed as an exhibit by consent, with the pages in the package numbered sequentially as 1 through 68 to assist with identification of the individual documents.

Hallbook Enterprises Ltd. v. Mullins, LRB File No. 051-19, September 18, 2020 (Adjudicator Erhardt) paras 13 to 17.

Arch Transco Ltd. and Director of Occupational Health and Safety, LRB File No. 262-18, September 29, 2022 (Adjudicator Tegart) at paras 18 to 29

VII. ANALYSIS

A. Legislative Provisions

43. The provisions of the Act relevant to this appeal include the following (amendments effective May 17, 2023 are incorporated):

> **3-1**(1) In this Part and in Part IV:
>
> (i) **"discriminatory action"** means any action or threat of action by an employer or person acting on behalf of an employer that does or would adversely affect a worker with respect to any terms or conditions of employment or opportunity for promotion, and includes termination, layoff, suspension, demotion or transfer of a worker, discontinuance or elimination of a job, change of a job location, reduction in wages, changes in hours of work, reprimand, coercion, intimidation or the imposition of any discipline or other penalty, but does not include:
>
> (i) the temporary assignment of a worker to alternative work, pursuant to section 3-44, without loss of pay to the worker; or
> (ii) the temporary assignment of a worker to alternative work, without loss of pay to the worker, while: ...
>
> ...
>
> (l) **"harassment"** means:
>
> (i) any inappropriate conduct, comment, display, action or gesture by a person towards a worker:
>
> (A) that either:
>
> (I) is based on any prohibited ground as defined in *The Saskatchewan Human Rights Code, 2018* or on physical size or weight; or
>
> (II) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause the worker to be humiliated or intimidated; and
>
> (B) that constitutes a threat to the health or safety of the worker; or
>
> (ii) any conduct, comment, display, action or gesture by a person towards a worker that:
>
> (A) is of a sexual nature; and
>
> (B) the person knows or ought reasonably to know is unwelcome;
>
> ...
>
> (4) To constitute harassment for the purposes of subparagraph (1)(l)(i)(A)(II), either of the following must be established:
>
> (a) repeated conduct, comments, displays, actions or gestures;

(b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

(5) For the purposes of subparagraph (1)(l)(i)(A)(II), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment.

...

3-21.1(1) An employer shall develop and implement a written policy to prevent harassment after consultation with:

(a) the occupational health committee;

(b) the occupational health and safety representative; or

(c) the workers, if there is no occupational health committee and no occupational health and safety representative.

(2) A policy statement required pursuant to subsection (1) must include any prescribed provisions.

(3) An employer shall ensure that an investigation is conducted into any incident of workplace harassment.

...

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; ...

(b) seeks or has sought the enforcement of:

(i) this Part or the regulations made pursuant to this Part; ...

...

3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him 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) 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 who has acted or participated in an activity described 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.

44. In addition, section 3-25(1) of *The Occupational Health and safety Regulations, 2020*, Chapter S-15.1, Reg 10 requires the development of a policy to prevent harassment that includes, among other items, a definition of harassment that includes the definition in the Act.

B. Did the the Appellant engage in a protected activity that falls with the ambit of section 3-35 of *The Saskatchewan Employment Act*?

45. A worker who seeks the enforcement of the Act and regulations pertaining to harassment is protected from discriminatory action by clause 3-35(b)(i) of the Act.

46. In the present case, however, the Appellant's two harassment complaints (although labelled as such) do not in my view, on their face, contain allegations that if established could qualify as "harassment" as defined.

47. To constitute "harassment" in the present context there would need to be inappropriate conduct, comment, display, action or gesture by a person (HR committee member or Ms. Bednarz) towards a worker (Ms. Veldman) that:

- adversely affects the worker's psychological or physical well-being, or ought reasonably to have been known to cause the worker to be humiliated or intimidated;
- constitutes a threat to the health or safety of the worker; and
- involves repeated conduct, comments, displays, actions or gestures, or a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker;

subject to a qualification that is carved out regarding reasonable action relating to management and direction of the workplace.

48. The actions of which the Appellant complains in the present case are not alleged to fall within these criteria in my view.

49. On September 13, 2023 the Appellant received a documented verbal warning from the HR Committee of the RM. This led to three filings by the Appellant on September 18, 2023 as previously noted, consisting of a grievance against the verbal warning, a "harassment complaint against the HR Committee of Hazel Dell (Reeve Donnie Holowachuk, councillor Allen

Kreshewski, and councillor Collin Redman)" and "a Harassment complaint against the Intern Administrator Michelle Bednarz".

50. In the complaint against the HR Committee, the Appellant states "I am writing this harassment complaint because the HR committee did not properly investigate the incident on August 31st, and September 1st, 2023". Carrying on in that vein, the Appellant states, "I feel this is harassment as I have been here now on my third season and have never done anything or had been told that I have done anything wrong in my entire employment here". On my reading, there is nothing here to suggest employer action causing a health or safety concern let alone an action that would satisfy the elements of the definition of harassment.

51. The complaint against the Intern Administrator begins with an overall statement that "Since starting work this spring Michelle has given me the impression that she is not being fair with me". The complaint then proceeds to refer to the following occurrences over the course of the season: an administrative delay on a salary payment; an issue of missing oil samples in respect of which Ms. Bednarz "tried accusing me of throwing them out"; an occasion on which the Appellant was working at a location beyond service and was checked on by Ms. Bednarz as no one could contact her during the day; a disagreement over working longer hours and related OHS rules on working alone. The complaint after that discusses circumstances giving rise to the verbal warning, as well as events following Ms. Veldman's return to work on the following Tuesday, during which Ms. Veldman states she was still in pain from her illness but did her job and had discussions about being allowed to put in longer hours as she had in the past ("as many hours as I'd like"). The complaint concludes with a paragraph beginning "With all these things together, there is no reason for me not to feel that Michelle is harassing me ...". Again, on my reading, there is nothing to suggest employer action causing a health or safety concern let alone an action that would satisfy the elements of the definition of harassment.

52. The addition of the word "harassment" to complaints of this nature is insufficient, in my view, to engage a status reserved for protected activities under occupational health and safety legislation.

53. I am comforted in this approach upon review of the decision of the Labour Relations Board in *I.G. v. International Women of Saskatoon and Government of Saskatchewan, Executive Director, Occupational Health and Safety*, LRB File No. 086-20, March 31, 2021, on appeal from the decision of an adjudicator, particularly as follows:

> [50] The adjudicator applied the definition of harassment to the conduct about which the appellant complained – an exercise that was not only within his jurisdiction but necessary. In performing this analysis, he was limited to the contents of the complaint; this is because he was required to consider whether the appellant was terminated because she was seeking the enforcement of Part III of the Act, not whether she was terminated after experiencing harassment. ...
>
> [51] The adjudicator assessed the contents of the email against the definition of harassment contained in clause 3-1(1)l), as qualified subsections (4) and (5), and concluded that the email did not contain a complaint of harassment. He assessed the email against both categories of harassment, outlined in

clauses 4(a) and (b). The appellant does not raise specific issues with respect to the relevant tests under clauses (a) and (b).

[52] Given his conclusion, it was not necessary to consider whether the action was reasonable, relating to management and direction of the employer's workers, pursuant to subsection (5). In concluding that the email did not constitute a complaint of harassment, the adjudicator was not making a comment about whether harassment had occurred. He was simply stating that the contents of the compliant did not describe harassment.

54. I should note that the RM's harassment policy contains explanation and commentary on harassment that may not include and fully align with all aspects of the definition in the Act. However, even based on the harassment policy alone, I reach the same conclusions as above.

55. Accordingly, I would dismiss the discriminatory action complaint, not for the reason provided by the Occupational Health Officers, but on the basis that the Appellant had not engaged in a protected activity falling within the ambit of section 3-35 of the Act.

56. It is nevertheless desirable for me to proceed to the next stage of the analysis as if, which I have found not to be the case, the filing of the complaints constituted a protected activity.

C. If the Appellant had engaged in a protected activity (contrary to my finding above) was the Respondent's termination of the Appellant's employment taken for good and sufficient other reason within the meaning of section 3-36(4) of *The Saskatchewan Employment Act*?

57. By virtue of section 3-36(4) of the Act, if a worker has acted or participated in an activity described in section 3-35 (including seeking the enforcement of Part III of the Act or regulations thereunder) and discriminatory action (defined as including layoff and termination) has been taken against the worker, a presumption and reverse onus are triggered.

58. Specifically, 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 of the Act, and the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

59. What this means for the present case is that if, contrary to my finding in section B above, Ms. Veldman did engage in a protected activity through her filing of either or both of the complaints on September 18, 2023, then:

(i) there is a presumption that Ms. Veldman's layoff on a "not returning" basis (as reflected in the November 16, 2023 ROE, amended November 28, 2023) was because she engaged in that protected activity, and

(ii) there is an onus on the RM to establish that the action was taken for good and sufficient other reason.

60. Under the workings of section 3-36(4) of the Act, an employer is not required to establish just cause for termination, but only good and sufficient other reason. This point is made in *AgraCity*

Crop & Nutrition Ltd. v. Clarke, LRB File No. 229-18, November 30, 2020 (Erhardt) at para 378, with the adjudicator continuing at para 379:

> My inquiry and determination need not consider whether or not Janet Clarke ought to have been dismissed, but whether the termination was made for good and sufficient other reason – and not for the reason of having reported harassment and bullying in the workplace.

The above comments are referred to approvingly by the Labour Relations Board on appeal in *Clarke v. AgraCity Crop and Nutrition*, LRB File No. 184-20, July 28, 2021, at para 22.

61. In *Hallbrook Enterprises Ltd. v. Skinner*, LRB File No. 148-19, September 18, 2020 (Ehrardt) the adjudicator commented as follows regarding "a few minor mistakes alone" (page 36):

> Mistakes are commonly recited reasons for dismissing unwanted employees. However, in order to constitute good and sufficient other reasons for terminating a worker's employment, a few minor mistakes alone will not meet this threshold. Greater frequency and severity of mistakes will move the dial from "some reason" to "good and sufficient reason".

62. In *Gillespie v. Life Force Home Health Care Inc.*, LRB File No. 150-19, March 4, 2022 (Tegart) the adjudicator outlined an approach that looks to the objective reasonableness of the employer decision:

> [61] In considering whether the employer has met the reverse onus in s. 3-36(4), I'm mindful that it doesn't simply require the employer to rebut the presumption, but to do so by establishing "that the discriminatory action was taken against the worker for good and sufficient other reason". What is "good and sufficient other reason"?
>
> [62] For a discriminatory action to have been taken for good and sufficient other reason, the action must not be arbitrary and must objectively be reasonable. This is not to say the decision made by the employer is the same decision the adjudicator (or occupational health officer in the original decision) would have made if placed in the employer's position at that time. There may have been several options for action when the employer's decision was taken that would have been objectively reasonable. The question is whether this is one of those options.

63. In *Banff Constructors Ltd. v. Arcand, supra*, the adjudicator observed that the "the evidence required to rebut the presumption against the employer and satisfy the onus will depend on the circumstances (para 45).

64. In the present case, the decision in mid-November to proceed with a "not returning" layoff appears not to have been documented (other than in the ROEs and the brief letter of December 1, 2023). Memories regarding the process are vague. In their evidence, one councillor thought there was a vote; another that there was no vote; two had no recollection one way or the other as to a vote; and yet another thought that Ms. Bednarz made the decision. The evidence of Ms. Bednarz as to the process seems to be the most probable in the circumstances, namely, that the matter was not dealt with at a council meeting but that there was less formal discussion with councillors, over the phone for example.

65. Whatever the exact process might have been, in answer to a request by Occupational Health Officers to provide reasons for the termination of Ms. Veldman's employment, Ms. Bednarz on behalf of the RM responded with an email dated January 17, 2024 stating (set out again here for ease of reference):

> Samantha was not terminated because of the harassment complaint. Samantha is not being recalled due to the fact that she signed an employment contract to start work at 7 am and seemed unable to fulfill that portion of her contract. As well as her inability to communicate with other staff members and her inability to follow direction from senior staff. Unfortunately non of this is necessarily documented, we do have cameras installed and I would be happy to go through the footage and provide you with dates and times of her late arrival to work. When given a verbal warning about following direction from senior staff she then proceeded to make her harassment complaints against staff and council, and at that point council decided to remove the verbal warning previously given.

Ms. Bednarz echoed the RM position in her evidence.

66. The items "inability to communicate with other staff members" and "inability to follow direction from senior staff" as stated in the email relate principally to the events giving rise to the verbal warning, which had been withdrawn. Ms. Bednarz in her evidence was able to provide two other examples – a further instance of lack of communication regarding a sick day and one of not attending to grass cutting as directed.

67. The main factor cited in the email was inability to start work at 7:00 a.m.

68. How regularly this occurred is not clear from the evidence. Start times are not specified on the time records and as indicated in the email Ms. Bednarz would have had to resort to camera footage to provide dates and times of late arrival. The term "occasionally" would probably be an understatement; "often" or "frequently" might be closer to the mark. The evidence of Hunter Walker and Allen Kreshewski and the general tenor of other testimony would suggest this.

69. Importantly, however, I am satisfied on the whole of evidence that council and administration were aware of frequent late arrivals of Ms. Veldman for work (offset by staying longer) and chose to overlook it.

70. Some members of council may have been content with this hours of work situation, others concerned by it, but the circumstances were generally known and no action was taken or directed to be taken as a result. Most of the councillors were questioned on the point and this was the import of their testimony.

71. At no point was Ms. Veldman reprimanded or, it appears, spoken to and asked to conform to the prescribed regular start time of 7:00 a.m. In her evidence, Ms. Bednarz acknowledged the absence of a reprimand or notice for showing up late, and there is no evidence of any other discussion about the matter with Ms. Veldman. The fact of Ms. Veldman being late for work was not brought up with Larry Ebel either.

72. The frequent instances of lateness in these circumstances, with the employer having refrained from requiring (as it could have) observance of the 7:00 a.m. start time, would not in my view have been a relevant business consideration in determining the basis for Ms. Veldman's

layoff in mid-November 2023 – i.e. whether it should be a "not returning" layoff as opposed to a layoff with an "unknown" date of recall.

73. This is particularly so when, added to employer acquiescence in late start times (with corresponding late quitting times), Ms. Veldman:

- was one of the RM's more experienced outside employees (three complete seasons)
- had no reprimands on record
- was generally considered by her employer to be a good worker – in the words of councillors in the evidence reviewed above, that Ms. Veldman "did well" when assigned jobs, that "there was no problem with your work", that "everyone said you were a good worker", and that when given work to do by council "you were doing your job for the most part"

74. It would also have been a simple matter for the ensuing year (the 2023 season having concluded by mid-November) to require observance of the 7:00 a.m. start time.

75. In my view, if either or both of Ms. Veldman's complaints qualify as complaints of "harassment", contrary to my finding on that point, there is insufficient evidence to overcome the presumption and establish that the layoff on a "not returning" basis was for good and sufficient other reason. In all of the circumstances, the issuance of a "not returning" layoff (rather than a layoff with recall for next season at an uncertain date) would not be considered an objectively reasonable choice.

76. On the matter of remedy if I had found that Ms. Veldman was laid off because she engaged in an activity that is protected (as opposed to one that is not), and drawing on the provisions of section 3-36(2) of the Act:

- I would have ordered payment to Ms. Veldman of the wages she would have earned during the 2024 season for road maintenance employees of the RM had her employment not been terminated in November 2023, subject to a credit to the RM for the $1,300 paid to Ms. Veldman as severance money on termination. As further direction in that regard, given actual staffing for 2024 (one fewer crew member than in 2023 and no one hired to replace Hunter Walker after he was laid off on or about August 14, 2024), the payment period would end in mid-August.
- Regarding a resumption of employment at a future date, i.e. the commencement of the 2025 season, an order for reinstatement would need to be sensitive to what, in the ordinary course of business, the staffing structure for outside employees will be for 2025, and how Ms. Veldman as a recalled seasonal employee (as though her employment had not been terminated at the end of the 2023 season) would fit into that structure. With that in mind, I would have fashioned an order along the lines that Ms. Veldman be reinstated to her former employment as a seasonal road maintenance employee for the 2025 season, if and to the extent that such employment in the normal course will be available to her, on the same

terms and conditions under which Ms. Veldman was formerly employed by the RM as a seasonal road maintenance employee.

77. I have found, however, that the Appellant did not engage in a protected activity. Accordingly, the termination of the Appellant's employment was not an unlawful discriminatory action under the Act.

VIII. ORDER

78. Pursuant to section 4-6(1) of the Act, the appeal is dismissed.

Dated this 2nd day of December, 2024.

Larry LeBlanc

Larry B. LeBlanc, K.C., Adjudicator