



LRB File No. 040-24

IN THE MATTER OF:

AN APPEAL OF DECISION PURSUANT TO SECTION 3-53 OF *THE SASKATCHEWAN EMPLOYMENT ACT*, S.S. 2013, c. S-15.1, AS AMENDED, (THE "*SEA*") AND A HEARING PURSUANT TO SECTION 3-54 OF THE *SEA*

BETWEEN:

Jane Doe,

APPELLANT,

- and -

ABC Dental Clinic,

RESPONDENT.

APPEARANCES:

Appellant, Jane Doe: Self Represented

Respondent,
ABC Dental Clinic: Self Represented

BEFORE:

T. F. (Ted) Koskie, B.Sc., J.D., Adjudicator

DECISION DATE:

March 12, 2025

REDACTED DECISION

I. INTRODUCTION

[1] Jane Doe ("Doe") lodged a complaint¹ pursuant to section 3-36 of the *SEA* alleging that ABC Dental Clinic ("ABCDCL") had taken discriminatory action against her for a reason

¹Exhibit G-1, Complaint received by Occupational Health and Safety, Ministry of Labour Relations and Workplace Safety, Government of Saskatchewan ("OHS") on October 25, 2023

mentioned in section 3-35 of the *SEA*.

[2] An OHS officer decided ABCDC had not taken discriminatory action against Doe for a reason mentioned in section 3-35 of the *SEA* (the “Decision”).²

[3] Doe appealed the Decision (the “Appeal”).³

[4] The Saskatchewan Labour Relations Board appointed me as the adjudicator to hear and determine the Appeal.

2. FACTS

[5] ABCDC is a dental practice that has carried on business in Saskatoon, Saskatchewan, since on or about 1968. It is owned and operated by Doctors Smith (“Smith”), Jones (“Jones”) and Brown (“Brown”), collectively called the “Dentists.”

[6] Doe commenced employment as a Registered Dental Hygienist with ABCDC on July 4, 2023.⁴ Her Employment Agreement provided, *inter alia*, for her to:

- a) work each week from 8:00 a.m. to 5:00 p.m. on Tuesday, Wednesday and Thursday and 8:00 a.m. to 4:00 p.m. on Friday; and
- b) be on probation for three (3) months—July 4, 2023, to October 4, 2023.

By subsequent agreement requested by Doe, her work week was modified to 7:45 a.m. to

²Exhibit G-2, Decision dated January 17, 2024

³Exhibit G-3, Notice of Appeal dated February 7, 2024

⁴Exhibit E-1, Employment Agreement dated June 21, 2023

5:15 p.m. on Tuesday, Wednesday and Thursday and 7:45 a.m. to 4:15 p.m. on Friday.

[7] At the time Doe commenced employment with ABCDC, there were four (4) hygienists—three (3) full time and one (1) casual. ABCDC's clinic has three (3) dedicated rooms. Each of the existing three (3) hygienists were assigned to a specific room. According to Doe's testimony, each of these hygienists referred to their assigned room as "our room." Each room was stocked with instruments and supplies that each hygienist treated as theirs to use. Each hygienist—perhaps one or some more than others—were quite proprietary with respect to not only their room, but the instruments and supplies in same.

[8] ABCDC did not assign a specific hygienist room to Doe. Rather, she was hired to cover the times one of the full time hygienists was away. Doe would then work out of the room that had been assigned to the absent hygienist. ABCDC supplied a mobile cart that contained the instruments and supplies Doe was to use.

[9] Doe testified that there were a variety of times that she would need to use instruments and/or supplies from an assigned room rather than her cart. This might happen because she lacked a sterilized instrument or needed supply.

[10] Doe testified that:

- a) "soon after starting," two other hygienists would aggressively confront her about how she "used their stuff";
- b) this aggression persisted throughout the tenure of her employment;
- c) she characterized these confrontations as "bullying";

- d) during the early stages of her employment, she said she was afraid to speak out⁵ and, instead:
 - i) voiced her displeasure with the manner in which she was treated to the hygienists involved; and
 - ii) confided in and spoke to the receptionist;
- e) when circumstances did not improve, she reported and complained about this behaviour to ABCDC:
 - i) verbally on September 21, 2023; and
 - ii) in writing on September 27, 2023;⁶
- f) ABCDC neither properly investigated her complaints, nor took appropriate corrective action; and
- g) ABCDC terminated Doe's employment on September 29, 2023.

[11] Doe testified that:

- a) there were no problems with her performance;
- b) ABCDC did not convey to her any dissatisfaction with her performance; and
- c) she was not the subject of any disciplinary action.

⁵I take this to mean she was afraid to speak to the Dentists.

⁶Complaint dated September 26, 2023, and delivered September 27, 2023

[12] Doe maintains ABCDC terminated her employment because she reported bullying in her workplace.

[13] ABCDC tendered evidence from the Dentists, their office manager and their receptionist. All addressed difficulties encountered with Doe's job performance. Cumulatively, these concerns related to:

- a) poor cleaning of clinical space and adherence to infection control protocols;
- b) a refusal to adhere to office protocols;
- c) an inability to receive and improve from professional feedback;
- d) incomplete and inaccurate note taking;
- e) a refusal to help with team sterilization and other shared duties;
- f) a refusal to use assigned instrument storage and respect shared work spaces;
- g) making clinical decisions without consultation or follow up with the dentist involved;
- h) negative patient interactions;
- i) concerns regarding accessing confidential clinical and patient information; and
- j) an inability to work with other team members.

[14] The evidence was clear that the Dentists found Doe to have the needed education, skill and experience to do her job. However, that was not enough. Their view was the aforementioned deficiencies needed to not only be addressed, but remedied. What appeared to be of critical importance was Doe's working relationship with her colleagues.

[15] The Dentists testified that members of their staff had approached them on a variety of occasions reporting workplace disagreement and conflict involving Doe. These reports primarily related to clinical compliance and Doe's aggressive and confrontational attitude during discussions. The consensus was that, while interaction may at times have been initiated by other staff members, conflict and interpersonal disagreements between Doe and other staff were mostly the result of Doe's refusal to work as a team member. They

were concerned Doe had a poor attitude—she had her own opinion on how things should be run and it was not aligned with how they wanted the clinic to be operated. That was causing workplace conflict.

[16] The Dentists admit they did not discipline Doe. However, they say they attempted to work with her in an effort to address the perceived deficiencies, but she did not improve.

[17] The Dentists had an “Ownership” meeting on September 13, 2023. Among other things, they discussed Doe’s employment. They decided not to keep Doe employed and that her last day was to be September 29, 2023. They testified the decision was based on her performance.

[18] ABCDC admits Doe verbally reported workplace conflict on September 21, 2023. However, ABCDC denies receiving any report of bullying—from Doe or any staff member—prior to that date. The Dentists, office manager and receptionist testified they did not witness any bullying during Doe’s employment.

[19] By email dated September 29, 2023, ABCDC terminated Doe’s employment effective that same day.⁷

3. ISSUES

[20] The issues herein are as follows:

- a) Did ABCDC take discriminatory action against Doe for a reason mentioned in section 3-35 of the *SEA*?
- b) If ABCDC took discriminatory action against Doe, did it have good and sufficient

⁷Email from Smith to Doe dated September 29, 2023

other reason to terminate her employment?

- c) If ABCDC took discriminatory action against Doe and did not have good and sufficient other reason to terminate her employment:
 - i) what remedy should I grant;
 - ii) did Doe mitigate her losses and, if she fully failed to do so, how should that remedy be limited?

4. DECISION

[21] I find ABCDC did not take discriminatory action against Doe for a reason mentioned in section 3-35 of the SEA.

[22] I dismiss the appeal.

5. REASONS

5.1 LEGISLATION

[23] The relevant provisions of the SEA are as follows:

PART III
Occupational Health and Safety

DIVISION 1
Preliminary Matters for Part

Interpretation of Part

3-1(1) In this Part and in Part IV:

...

- (i) "discriminatory action" means any action or threat of action by 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, discontinuation or elimination of a job, change of a job location, reduction in wages, change 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:
 - (A) steps are being taken for the purposes of clause 3-31(a) to satisfy the worker that any particular act or series of acts that the worker refused to perform pursuant to that clause is not unusually dangerous to the health or safety of the worker or any other person at the place of employment;
 - (B) the occupational health committee is conducting an investigation pursuant to clause 3-31(b) in relation to the worker's refusal to perform any particular act or series of acts; or
 - (C) an occupational health officer is conducting an investigation requested by a worker or an employer pursuant to clause 3-32(a);
- (j) "employer" means, subject to section 3-29, a person, firm, association or body that has, in connection with the operation of a place of employment, one or more workers in the service of the person, firm, association or body;
- ...
- (m) "notice of contravention" means a notice of contravention served pursuant to section 3-38;
- ...
- (gg) "worker" means, subject to subsection (6):
 - (i) an individual, including a supervisor, who is engaged in the service of an employer;
 - (ii) a member of a prescribed category of individuals;

but does not include an inmate, as defined in *The Correctional Services Act, 2012*, of a correctional facility as defined in that Act who is participating in a work project or rehabilitation program within the correctional facility;
- ...

DIVISION 5

Right to Refuse Dangerous Work; Discriminatory Action

...

Discriminatory action prohibited

3-35 No employer shall take discriminatory action against a worker because the worker:

- (a) acts or has acted in compliance with:
 - (i) this Part or the regulations made pursuant to this Part;
 - (ii) Part V or the regulations made pursuant to that Part;
 - (iii) a code of practice issued pursuant to section 3-84; or
 - (iv) a notice of contravention or a requirement or prohibition contained in a notice of contravention;
- (b) seeks or has sought the enforcement of:
 - (i) this Part or the regulations made pursuant to this Part; or
 - (ii) Part V or the regulations made pursuant to that Part;
- (c) assists or has assisted with the activities of an occupational health committee or occupational health and safety representative;
- (d) seeks or has sought the establishment of an occupational health committee or the designation of an occupational health and safety representative;
- (e) performs or has performed the function of an occupational health committee member or occupational health and safety representative;
- (f) refuses or has refused to perform an act or series of acts pursuant to section 3-31;
- (g) is about to testify or has testified in any proceeding or inquiry pursuant to:
 - (i) this Part or the regulations made pursuant to this Part; or
 - (ii) Part V or the regulations made pursuant to that Part;
- (h) gives or has given information to an occupational health committee, an occupational health and safety representative, an occupational health officer or other person responsible for the administration of this Part or the regulations made pursuant to this Part with respect to the health and safety of workers at a place of employment;
- (i) gives or has given information to a radiation health officer within the meaning of Part V or to any other person responsible for the administration of that Part or the regulations made pursuant to that Part;
- (j) is or has been prevented from working because a notice of contravention with respect to the worker's work has been served on the employer; or
- (k) has been prevented from working because an order has been served pursuant to Part V or the regulations made pursuant to that Part on an owner, vendor or

operator within the meaning of that Part.

Referral to occupational health officer

3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.

(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

- (a) cease the discriminatory action;
- (b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;
- (c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and
- (d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.

(3) If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3-35, the occupational health officer shall advise the worker of the reasons for that decision in writing.

...

**DIVISION 8
Appeals**

3-52(1) In this Division:

- (a) "adjudicator" means an adjudicator appointed pursuant to Part IV;
- (b) "decision" includes:
 - (i) a decision to grant an exemption;
 - (ii) a decision to issue, affirm, amend or cancel a notice of contravention or to not issue a notice of contravention; and
 - (iii) any other determination or action of an occupational health officer that is authorized by this Part.

(2) In this Division and in Part IV, "person who is directly affected by a decision" means any of the following persons to whom a decision of an occupational health officer is directed and who is directly affected by that decision:

- (a) a worker;
- (b) an employer;
- (c) a self-employed person;

- (d) a contractor;
- (e) a prime contractor;
- (f) an owner;
- (g) a supplier;
- (h) any other prescribed person or member of a category of prescribed persons;

but does not include any prescribed person or category of prescribed persons.

Appeal of occupational health officer decision

3-53(1) A person who is directly affected by a decision of an occupational health officer may appeal the decision.

(2) An appeal pursuant to subsection (1) must be commenced by filing a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.

(3) The written notice of appeal must:

- (a) set out the names of all persons who are directly affected by the decision that is being appealed;
- (b) identify and state the decision being appealed;
- (c) set out the grounds of the appeal; and
- (d) set out the relief requested, including any request for the suspension of all or any portion of the decision being appealed.

...

(10) Instead of hearing an appeal pursuant to this section, the director of occupational health and safety may refer the appeal to an adjudicator by forwarding to the adjudicator:

- (a) the notice of appeal;
- (b) all information in the director's possession that is related to the appeal; and
- (c) a list of all persons who are directly affected by the decision.

...

Appeals re harassment or discriminatory action

3-54(1) An appeal mentioned in subsection 3-53(1) with respect to any matter involving harassment or discriminatory action is to be heard by an adjudicator in accordance with Part IV.

(2) The director of occupational health and safety shall provide notice of the appeal mentioned in subsection (1) to persons who are directly affected by the decision.

Providing appeal material to adjudicator

3-55 In the case of an appeal mentioned in subsection 3-53(10) or section 3-54 that is to be heard by an adjudicator, the director of occupational health and safety shall forward to the adjudicator:

- (a) the notice of appeal mentioned in subsection 3-53(2);
- (b) all information in the director's possession that is related to the appeal; and
- (c) a list of all persons who have been provided notice of the appeal pursuant to clause 3-53(5)(a) or subsection 3-54(2).

Appeal of director's decision to adjudicator

3-56(1) A person who is directly affected by a decision of the director of occupational health and safety made pursuant to subsection 3-53(8) may appeal the decision to an adjudicator in accordance with subsection (2) within 15 business days after the date of service of the decision.

(2) An appeal pursuant to subsection (1) is to be commenced by filing a written notice of appeal with the director of occupational health and safety that:

- (a) sets out the names of all persons who are directly affected by the decision being appealed;
- (b) identifies and states the decision being appealed;
- (c) sets out the grounds of the appeal; and
- (d) sets out the relief requested, including any request for the suspension of all or any portion of the decision being appealed.

...

**PART IV
Appeals and Hearings re Parts II, III and V**

...

Adjudicator's duties

4-2 An adjudicator shall:

- (a) hear and decide appeals pursuant to Part II and conduct hearings pursuant to Division 5 of Part II;
- (b) hear and decide appeals pursuant to Division 8 of Part III;
- (c) hear and decide any appeals pursuant to Division 6 of Part V; and
- (d) carry out any other prescribed duties.

Selection of adjudicator

4-3(1) In this section and sections 4-4 and 4-7, "registrar" means an employee of the ministry who is designated as the registrar by the chairperson of the board.

(2) The director of employment standards and the director of occupational health and

safety shall inform the board of an appeal or hearing to be heard by an adjudicator.

(3) On being informed of an appeal or hearing pursuant to subsection (2) and in accordance with any regulations made pursuant to this Part, the registrar shall select an adjudicator.

Procedures on appeals

4-4(1) After selecting an adjudicator pursuant to section 4-3 and in accordance with any regulations made pursuant to this Part, the registrar shall:

- (a) in consultation with the adjudicator and the parties, set a time, day and place for the hearing of the appeal or the hearing; and
- (b) give written notice of the time, day and place for the appeal or the hearing to:
 - (i) in the case of an appeal or hearing pursuant to Part II:
 - (A) the director of employment standards;
 - (B) the employer;
 - (C) each employee listed in the wage assessment or hearing notice; and
 - (D) if a claim is made against any corporate directors, those corporate directors;
 - (ii) in the case of an appeal or hearing pursuant to Part III:
 - (A) the director of occupational health and safety; and
 - (B) all persons who are directly affected by the decision being appealed; and
 - (iii) in the case of an appeal or hearing pursuant to Part V:
 - (A) the director of occupational health and safety; and
 - (B) all persons who are directly affected by the decision being appealed.
- (2) Subject to the regulations, an adjudicator may determine the procedures by which the appeal or hearing is to be conducted.
- (3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.
- (4) An adjudicator may determine any question of fact that is necessary to the adjudicator's jurisdiction.
- (5) A technical irregularity does not invalidate a proceeding before or by an adjudicator.
- (6) Notwithstanding that a person who is directly affected by an appeal or a hearing is neither present nor represented, if notice of the appeal or hearing has been given to the

person pursuant to subsection (1), the adjudicator may proceed with the appeal or the hearing and make any decision as if that person were present.

(7) *The Arbitration Act, 1992* does not apply to adjudications conducted pursuant to this Part.

Powers of adjudicator

4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:

- (a) to require any party to provide particulars before or during an appeal or a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;
- (c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:
 - (i) to summon and enforce the attendance of witnesses;
 - (ii) to compel witnesses to give evidence on oath or otherwise;
 - (iii) to compel witnesses to produce documents or things;
- (d) to administer oaths and affirmations;
- (e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not;
- (f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;
- (g) to adjourn or postpone the appeal or hearing.

(2) With respect to an appeal pursuant to section 3-54 respecting a matter involving harassment or a discriminatory action, the adjudicator:

- (a) shall make every effort that the adjudicator considers reasonable to meet with the parties affected by the decision of the occupational health officer that is being appealed with a view to encouraging a settlement of the matter that is the subject of the occupational health officer's decision; and
- (b) with the agreement of the parties, may use mediation or other procedures to encourage a settlement of the matter mentioned in clause (a) at any time before or during a hearing pursuant to this section.

Decision of adjudicator

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

- (a) do one of the following:
 - (i) dismiss the appeal;

- (ii) allow the appeal;
- (iii) vary the decision being appealed; and
- (b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety, as the case may be, and any other party to the appeal.

...

5.2 ANALYSIS

[24] Section 3-35 of the *SEA* protects employees against retaliatory measures and ensures that employers are unable to avoid addressing legitimate occupational health and safety concerns by removing employees who raise these issues.

[25] To succeed on a claim pursuant to section 3-35, an employee must show that she was terminated because she took action to exercise her rights under the *SEA*. However, section 3-36 (4)(a) provides that, where an employee has made out a *prima facie* case that the employer took discriminatory action against her, and the employee engaged in a protected action under section 3-35, it will be presumed that the action was taken in response to the employee's activities.

[26] Where that presumption has been triggered, the burden then shifts to the employer to show that the action was taken against the employee for a good and sufficient other reason, and not because of the protected conduct.

[27] Termination of employment falls under the definition of "discriminatory action" in the *SEA*. When Doe was fired, it was a discriminatory action. That is not contested and it is not even contrary to the *SEA*. The question is whether the discriminatory action was taken because Doe was engaged in an activity described in section 3-35.

[28] Simply alleging that harassment has occurred is insufficient to establish a *prima*

facie case under the *SEA*.

[29] Doe argues ABCDC terminated her employment in contravention of section 3-35(a)(i), which prohibits discriminatory action against a worker because the worker acted in compliance with Part III of the *SEA* or a regulation made pursuant to same. Specifically, Doe argues ABCDC terminated her employment because she lodged a complaint of discrimination.

[30] ABCDC disputes:

- a) the allegation Doe was bullied; and
- b) terminated her employment in contravention of section 3-35.

[31] I have carefully reviewed the evidence and material submitted by the parties. At the outset, I must say Doe did not allege bullying or harassment by the Dentists. She has characterized the conflict she had with other hygienists as bullying. The ABCDC staff did not view Doe as bullied, nor did the Dentists. Regardless of how the other staff's actions are labelled, it is not my task on this appeal to determine whether or not harassment or bullying took place. My job is to decide if Doe raised a complaint and if she did, whether ABCDC terminated her employment as a result. I am satisfied on the evidence that:

- a) ABCDC made a decision on September 13, 2023, to terminate Doe's employment on September 29, 2023;
- b) ABCDC did not schedule any shifts for Doe after September 29, 2023;
- c) Doe only reported staff bullying well after September 13, 2023, that is:

- i) orally on September 21, 2023; and
- ii) in writing on September 27, 2023.

[32] Since Doe lodged her complaint at a time subsequent to the date ABCDC made its decision to terminate her employment, I find that she did not allege an incident of actual harassment that would give rise to a *prima facie* case that she was terminated for raising concerns about the same.

[33] Having determined that Doe did not establish a causal connection, the Appeal must fail. However, I will nonetheless address whether ABCDC had a good and sufficient other reason to terminate Doe's employment.

[34] ABCDC argues that, even if Doe did make out a *prima facie* case that she engaged in protected action, she was not terminated for that reason. Instead, ABCDC claims that she was dismissed because of the difficulties encountered with her job performance as previously enumerated.

[35] Doe takes the contrary view. She alleges that:

- a) the hygienist staff's actions amounted to bullying;
- b) ABCDC knew—or presumably ought to have known—the bullying was taking place and took no steps to stop it; and
- c) once she complained, ABCDC terminated her employment for doing so.

[36] I am satisfied by the evidence that:

- a) ABCDC attempted to address their concerns with Doe's workplace performance;
- b) upon concluding they would be unsuccessful in satisfactorily remedying same, ABCDC decided to terminate her employment within her probationary period;
- c) ABCDC's decision had no connection with Doe's claim of workplace harassment.

[37] I find Doe's submission is speculative and contains no substantiation of her claim that she was fired for any reason other than the one identified by ABCDC, let alone that she was fired specifically because she raised a concern about workplace harassment.

[38] I have previously held that where there is no indication of any causal connection between the protected activities and the discriminatory action, it may require little from the employer to establish good and sufficient other reason.

[39] I am satisfied ABCDC did have a good and sufficient reason for terminating Doe's employment. I am satisfied that the reasons provided by ABCDC as to why Doe was dismissed are the true reasons, and that her complaint was not material in the decision to terminate her employment.

[40] If Doe had shown she was terminated at or after she took action to exercise her rights under the *SEA*, ABCDC would bear the burden of establishing that they had a good and sufficient other reason for taking action against her. I would have found that they have done so here. The record before me establishes that Doe was, in fact, terminated because of her unacceptable work performance.

[41] Having determined that the Appeal must be dismissed, it is not necessary to address Doe's arguments as to the appropriate remedy.

[42] Because of the above, I dismiss the Appeal.

Dated at Saskatoon, Saskatchewan, on March 12, 2025.

A handwritten signature in black ink, appearing to read 'T. F. Koskie', written over a horizontal line.

T. F. (TED)KOSKIE, B.Sc., J.D.,
ADJUDICATOR