IN THE MATTER OF AN APPEAL TO A NOTICE OF CONTRAVENTION PURSUANT TO PART III OF *THE SASKATCHEWAN EMPLOYMENT ACT*

LRB File No. 100-24

BETWEEN:

ATHABASCA CATERING LIMITED PARTNERSHIP

APPELLANT

- AND -

DEBBY STEWART

RESPONDENT

APPEAL DECISION

Adjudicator: Leslie Belloc-Pinder

Counsel for the Appellant: Danica McLellan

Respondent: Self-Represented

Virtual Hearing Date: January 28, 2025

Final Submissions Completed: April 5, 2025

I. OVERVIEW

[1] This is an appeal pursuant to ss. 3-53(1) and 3-54(1) of *The Saskatchewan Employment Act* ("the Act") from a decision of an Occupational Health Officer, dated April 12, 2024. The Officer upheld a complaint of discriminatory action brought by Debby Stewart ("Ms. Stewart" or "the Employee") against Athabasca Catering Limited Partnership ("ACLP" or "the Employer").

[2] The Employee's employment was terminated on December 19, 2023, approximately one year after she raised concerns about being harassed and bullied by a manager. She reported her termination to Occupational Health and Safety because she believed her dismissal constituted discriminatory action on the part of the Employer. An investigation was undertaken as provided for by s. 3-36(1) of the Act.

[3] The Officer could not substantiate the reason for the employment termination, in part because ACLP had not provided documentation to indicate that the Employee's complaints were investigated, or that ACLP had furnished training or coaching for her improvement. The Officer concluded that ACLP had not provided a "good and sufficient other reason" for the Employee's dismissal and, as a result, found the termination was an unlawful and discriminatory action pursuant to s. 3-35 of the Act.

[4] ACLP appealed that decision, and a virtual appeal hearing was convened in January 2025. Oral testimony and documentary evidence were presented at the hearing, and written submissions were filed by both parties afterward.

[5] Considered in its totality, the evidence supports a finding that the Employee's employment was terminated for a "good and sufficient other reason", within the meaning of s. 3-36(4) of the Act.

[6] As a result, the appeal is allowed for the reasons set out below.

II. HEARING PROCESS AND DOCUMENTS

[7] I was appointed to adjudicate this appeal in August 2024. In September, several pre-hearing conference calls occurred regarding scheduling and other matters. In November, documents were assembled, exchanged, and provided to me by both parties.

[8] As a self-represented litigant, Ms. Stewart had questions about the scope of this proceeding and how much evidence she was permitted to present supporting her

substantive harassment complaints. I provided the following direction on November 27, 2024.[1]

> Although you are entitled to testify about your experiences at work, this hearing will not focus upon them and/or whether these experiences amount to harassment. This appeal is only about whether you were terminated because (or primarily because) you filed a harassment complaint. The law prohibits employers from terminating people for that reason. Athabasca will present evidence demonstrating the reasons for your termination (presumably to show that your harassment complaint was not the reason), and you are entitled to challenge that evidence. But this hearing is not the place to determine whether or how you were harassed at work.

[9] Counsel for the Appellant and Ms. Stewart collaborated on an Agreed Statement of Facts and Joint Exhibit Book, which were filed shortly before the hearing occurred on January 28, 2025.

[10] Each party filed a few additional independent exhibits, and two witnesses testified – one for ACLP and Ms. Stewart herself.

[11] Counsel for the Appellant filed a written brief and Book of Authorities in early March 2025 and Ms. Stewart filed a written brief in response in early April 2025.

III. LEGISLATIVE AND ANALYTICAL FRAMEWORK

[12] Section 3-35 of the Act states as follows:

> 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;…

[13] To find a breach of section 3-35 of the Act, the Saskatchewan Labour Relations Board has upheld a three-part test, as set out in *Simonson v. Finning Canada and the Cat Rental Store*[2]:

> 1. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35?

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[1] Email from Leslie Belloc-Pinder to Danica McLellan and Debby Stewart, dated November 27, 2024.
[2] *Simonson v. Finning Canada and the Cat Rental Store,* SK LRB File No. 006-20 at para 32 ("Finning Adjudicator Decision") [Appellant Book of Authorities, TAB 2]; affirmed in *Simonson v. Finning Canada and the Cat Rental Store,* 2020 CanLII 103929 (SK LRB) at para 17 ("Finning SKLRB Decision") [Appellant Book of Authorities, TAB 3].
This citation comes from paragraph 11 of the Appellant's Brief.

2. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s.3-1(1)(i)?
3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3- 36(4)?

[14] The shifting onus of proof, from Employee to Employer in addressing the third question, is explained in the *Finning* LRB decision:

> The employee will bear the onus of proving the first two. Because of the presumption and reverse onus, the employer will bear the onus of establishing the discriminatory action was taken for a reason other than because the employee engaged in the protected activities, i.e. for a good and sufficient reason.

IV. EVIDENCE AND FINDINGS OF FACT

[15] The evidence provided through the materials considered at the hearing, and supplemented by oral evidence, is largely undisputed. Where there are differences, I will address them as they arise – especially in the Analysis section below.

[16] ACLP is a hospitality and site-management company which operates several accommodation facilities at and around mining sites in Saskatchewan. The site where the events described in this decision occurred is at McClean Lake, which services a nearby uranium mine.

[17] McClean Lake is a fly-in/fly-out location and most ACLP employees are on a 14-day rotation. Ms. Stewart was employed by ACLP for approximately 15 years, largely as a Camp Administrator. At each site, in the management hierarchy, the Camp Administrator reports to the Lodge Manager and there are two people for each position due to the two-week "cross shifts".

[18] In July 2022, a new Lodge Manager (Lisa Harris) was appointed for McClean Lake, joining the other cross-shift Lodge Manager (Brad Bell) who had been in the role for approximately 5 years. Sharon Schultz, was a newly appointed HR Director for ACLP and was getting acquainted with the operation when Ms. Stewart and Ms. Harris began experiencing some interpersonal challenges.

[19] Ms. Schultz testified at the hearing and said she decided to "hop on a plane" on August 9, 2022 to "do a mediation of sorts" with Ms. Stewart, Ms. Harris and Mr. Bell. Ms. Schultz's stated objective was to facilitate candid communication and improve prospects for Ms. Harris' success as a new manager, as well as to address some concerns about Ms. Stewart's workplace performance, habits, and attitude. Unfortunately, Ms. Harris did not ultimately attend this meeting.

[20] Despite Ms. Harris' absence, both Ms. Stewart and Ms. Schutlz testified that the meeting went well in that frustrations, feelings, and expectations were communicated. Ms. Schultz indicated that her expectations for Ms. Stewart going forward were clearly articulated. Ms. Stewart recalled that the "management group verbally agreed" to medical accommodations which, in effect, facilitated her working according to a customized daily schedule she designed.

[21] For approximately one week after the meeting, it was reported that Ms. Stewart's attitude and work performance had improved, but by August 16 the same concerns about Ms. Stewart's attitude, performance, and inconveniently taken break times, resurfaced. This time, Ms. Schultz convened an MS Teams video meeting, which was attended by herself, Mr. Bell, Ms. Harris, and Ms. Stewart. According to the Employer, the management team felt the conversation was significant and that Ms. Stewart again undertook to "work with both Lisa and Brad to ensure the McClean Lake team's success."[3] Unfortunately, management concerns about Ms. Stewart escalated thereafter as documented in written internal communications.

[22] On September 13, 2022, Ms. Schultz delivered a letter of reprimand to Ms. Stewart in person, which included the following comments:

> It is the opinion of Athabasca Catering that you fell back to behaviors that we discussed and indicated we would no longer accept. ACLP deems it appropriate to provide you with a formal letter of reprimand.
>
> Debby, you need to take the steps necessary to correct your behavior, and to work in a collaborative manner with your Manager. This is to include taking direction and being respectful.
>
> Please understand, if correction is not made, further steps shall [be] taken which could include termination of employment. We trust that you will respond appropriately.

[23] On the same day that she received the letter of reprimand, Ms. Stewart wrote that it was "one-sided" and that she intended to "pursue [Ms. Harris's] treatment of [her]… as bullying behavior".[4]

[24] Throughout October and November 2022, internal management communications refer to ongoing concerns regarding Ms. Stewart's attitude and performance. Ms. Stewart also sent messages repeating her intention to file a formal complaint against Ms. Harris and stating her opinion that Ms. Harris needed more or better management training.

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[3] Letter of Reprimand to Debby Stewart, dated September 13, 2022.
[4] Exhibit J-8, Email from Debby Stewart, dated September 13, 2022.

[25] Documented communication between Ms. Shultz and the ACLP upper management group, augmented by Ms. Schultz's testimony, proves that a decision to terminate Ms. Stewart's employment was made in late October 2022. Thereafter, logistics were discussed regarding training Ms. Stewart's replacement, but she had not yet been notified she would be dismissed.

[26] Ms. Stewart completed a shift on November 15, 2022 and then, while at home, she filed a formal complaint against Ms. Harris by email on November 29. At that time, Ms. Stewart was on a presumably short term medical leave, which she required to attend various medical appointments.

[27] The communication between Ms. Stewart and Ms. Schultz does not lead to a conclusion that Ms. Stewart was placed on this leave because she was voicing complaints about bullying. On the contrary, the evidence establishes, and I find as a fact, that Ms. Stewart's leave was related to her request for time off for medical appointments.

[28] Meanwhile, Ms. Stewart's complaints of bullying described in her September 13, November 15, and November 29, 2022, emails remained with Ms. Schultz for investigation.

[29] Perhaps unexpectedly, Ms. Stewart's absence from work for medical reasons extended for much longer than a shift or two. In fact, more than a year passed before Ms. Stewart was cleared by her physician to return to work as of December 1, 2023. During these thirteen months, Ms. Stewart received disability insurance benefits and was not in communication with the Employer. Similarly, ACLP did not initiate communication with Ms. Stewart during her leave regarding the status of investigation of her complaint or its decision to terminate her employment. Ms. Schultz stated that she made a deliberate decision in this regard, believing it was right, lawful, and appropriate to hold Ms. Stewart's termination in abeyance until she was well enough to return to work. Ms. Stewart reached out once during this period – on September 6, 2023 – to ask Ms. Schultz a question about the status of her complaint. Ms. Schultz responded that the Employer was not prepared to discuss the issue until Ms. Stewart was cleared to return to work.

[30] From the Employer's perspective, dealing with Ms. Stewart's workplace harassment or bullying concerns receded in significance and priority since the plan was to release her from employment in any event. From Ms. Stewart's point of view, she expected the investigation would be undertaken during her medical leave and likely continue/conclude when she regained her health.

[31] The evidence establishes that the management group's plan was to meet with Ms. Stewart and terminate her employment the next time she presented herself at work. By late

November 2023, it appeared likely Ms. Stewart's return to work would occur in early or mid-December 2023.

[32] When this date did arrive, and Ms. Stewart reported for work on December 19, 2023, she was advised that her employment was terminated without cause.

V. ANALYSIS

[33] ACLP concedes that Ms. Stewart engaged in "protected activities" on two occasions: in her email on September 13, 2022 and when she filed her formal complaint on November 29, 2022[5]. ACLP also concedes that it took "discriminatory action" against Ms. Stewart when it terminated her employment on December 18, 2023.[6] Thus, the first two questions in the three-part test to determine whether s. 3-35 of the Act has been breached are answered affirmatively.

[34] The answer to the third question depends on the nature and sufficiency of Employer's evidence. ACLP bears the onus to prove that Ms. Stewart's employment was terminated for a reason other than because she engaged in protected activities. For ACLP to succeed in this appeal, its evidence must establish, on a balance of probabilities, that it had a "good and sufficient reason" for terminating Ms. Stewart's employment.

[35] Adjudicators, tribunals, and courts have considered this question many times, and the Appellant's written submissions reference leading Saskatchewan authorities, such as the following:

> From *Lewis v Regina School Board No. 4*:
>
> Innumerable examples could be recited of actions by an employer which have an adverse effect on employees, but are entirely unrelated to occupational health and safety, such as sanctions for tardiness; realignment of work schedules; salary adjustments because of economic factors; etc. To constitute a prohibited discriminatory action, however, the action by the employer must be for one of the reasons set out in s. 27.[7]
>
> From the *Finning* Adjudicator Decision
>
> For a discriminatory action, including termination, to have been taken for good and sufficient other reason, the action must not be arbitrary and must be objectively reasonable. This is not to say the decision made by the employer must be the same decision the adjudicator (or the occupational health officer in the original decision) would have made if placed in the employer's position at the time. There may have been

[5] Joint exhibits J-8 and J-18 respectively.
[6] Joint exhibits, J-21.
[7] *Lewis v. Regina School Board No. 4,* 2003 SKQB 344, para 42.

several options for action when the termination decision was taken that would have been objectively reasonable. The question is whether this is one of those options."[8]

From the *Finning* SKLRB Decision:

[sic] A finding of "good and sufficient other reason" is "not to be equated to a finding that [the Employer] terminated the worker for just cause".[9]

From *International Women of Saskatoon Inc. v. Gonzalez*:

65 The fact that an employee makes a complaint pursuant to s.3-36(1) of the Act, even where it's established that he or she had engaged in a protected activity and the presumption and reverse onus kick in, does not insulate the employee from the possibility of termination. The employee is only protected from discriminatory action where that action is taken *because* the employee engaged in the protected activity, subject to the comments below concerning the phrase 'good and sufficient other reason...

68 The reverse onus in s.3-36(4) 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'?

69 It is not to be equated with 'just cause' in relation to wrongful dismissal, although I suggest a dismissal for just cause would meet the test of good and sufficient other reason. However, I am not required to determine that here...

72 I find that the termination based on the considerations advanced by the employer was a reasonable option and therefore good and sufficient other reason within the meaning of the reverse onus. The performance issues cited by the director could reasonably justify her decision. They were set out in significant detail in the probationary review report and expanded on in the executive director's oral evidence. I need not assess each element of the executive director's explanation to determine that her decision could be a reasonable option. Additionally, the apparent failure in the relationship between the executive director, established by the executive director's testimony and corroborated by evidence from the president and several of the emails exchanged among the various players, explains an additional reasonable reason for the decision to terminate.[10]

[36] Determining whether an Employee was terminated for engaging in a protected activity or for another unrelated, but defensible, sufficient, and reasonable, reason is a fact-finding exercise.

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[8] *Finning* Adjudicator Decision, at para 43.
[9] *Finning* SKLRB Decision, at para 28.
[10] *International Women of Saskatoon Inc. v. Gonzalez* , SKLRB File No. 203-19.

[37] The Employer presented documentary and oral evidence that Ms. Schultz decided to terminate Ms. Stewart's employment due to ongoing performance, behavior, and attitude concerns which had not been rectified despite meetings with Ms. Stewart in August and issuance of a reprimand letter in September 2022.

[38] Ms. Stewart countered by referencing her longstanding employment history with ACLP and that she only began receiving negative feedback about her performance and attitude when Ms. Harris appeared at the McClean Lake camp in July 2022. Ms. Stewart testified and submitted that Ms. Harris' relative inexperience and management style, which contrasted with her own, led to Ms. Harris being overly sensitive and critical toward her. She noted that other Lodge Managers, including Mr. Bell, did not have as many issues with her work performance, and that the timing of her morning breaks did not upset the camp routine, as Ms. Harris complained they did. Ms. Stewart also expressed concern about Ms. Harris appearing to pander to Ms. Shultz and that favoritism or bias may be the result of a connection they formed while working together in the past for another employer.

[39] While acknowledging receipt of the reprimand letter following the two meetings about her performance and workplace attitude, Ms. Stewart submitted that the letter should have contained more information about required corrections, and that other disciplinary or corrective actions should have been taken before termination.

[40] In her written submissions, Ms. Stewart also emphasized that she believed she had a formal accommodation her Employer was required to follow. She maintained her doctor's advice was explicit - about taking sleep breaks as and when it best suited her- and that the Employer had accepted this accommodation.

[41] The doctor's note upon which Ms. Stewart relied to demonstrate her accommodation is dated August 8, 2022 and reads as follows: "58 year old patient with chronic insomnia on sleep aids for more than 10 years. This mostly interferes with her sleep patterns and affects her sleep cycle. In a 14 and ½ hour shift, she finds that a morning break works best for her. If acceptable, kindly assist her with her request."

[42] Ms. Stewart testified that she believed the medical accommodation/morning break issue was "resolved" by this note and not subject to question or change. The Employer did not agree, and the evidence does not support Ms. Stewart's view that medical advice directed or required an immutable accommodation that countermanded the direction she had been given about her morning breaks. Instead, the note reads like a suggestion, and that morning breaks would be better for Ms. Stewart, but only "if acceptable" to the Employer – which, by the summer of 2022, it wasn't.

[43] Scrutinizing the Employer's decision to terminate Ms. Stewart's employment, I can agree with Ms. Stewart that there may have been other options available to address her workplace shortcomings. However, the Employer did not choose one of these options, and this appeal is not about whether the Employer should have chosen differently. The only test the Employer must overcome in this appeal is whether the termination decision was objectively reasonable and not arbitrary.

[44] Addressing this test, the reprimand letter Ms. Stewart received, preceded by two meetings regarding her performance and attitude, foreshadowed her termination. The letter states that termination of employment might be one of the consequences if Ms. Stewart did not adjust her behavior to better meet the Employer's expectations. A tradition of Employer forbearance regarding Ms. Stewart taking inconvenient morning breaks may have been established in previous years. However, the appearance of a new Lodge Manager and new HR Director signaled the implementation of new, and perhaps clearer, expectations for the performance of certain duties at specific times during Ms. Stewart's workdays.

[45] Ms. Shultz testified that she had no doubt in her mind that, after the August meetings, Ms. Stewart knew what she was being asked to do and that she would need to change her previously established routines and behaviors to remain employed by ACLP. She noted that Ms. Stewart appeared to take notes while they were talking and it was unnecessary to detail and repeat the expectations, again, in the letter of reprimand.

[46] These expectations are relevant to consideration of whether the termination was objectively reasonable. Again, Ms. Stewart's evidence was that she ran her own schedule the way she saw fit and had been successful doing so for many years. The Employer's evidence, on the other hand, was that Ms. Stewart was not so successful. She was neglecting certain of her duties by taking ill-timed and extensive breaks, and this situation was particularly acute during the days Ms. Stewart was scheduled to fly away from the camp.

[47] The evidence supports a finding that Ms. Stewart was instructed by Ms. Harris not to take an extended morning break on any day she was scheduled to "fly out" because her presence and assistance with various tasks was especially critical at that time before her departure. This direction was reinforced to Ms. Stewart by Ms. Shultz, and perhaps others, however Ms. Stewart's practice continued.

[48] Disregarding direct instruction from a superior which, in effect, also inconveniences and negatively affects others in a workplace, is an example of behavior for which an employee may be disciplined or terminated. It is objectively reasonable that an employee should strive to meet employer expectations, and that failure to do so results in sub-par performance. If an employee also exhibits a disrespectful attitude or difficult behavior, the situation deteriorates further.

[49] The Employer's position is that it decided to terminate Ms. Stewart's employment after it determined her behavior was unlikely to change, and that her continued presence in the workplace caused difficulties that would be alleviated if she was replaced by someone else. Efforts began to find another person to fill Ms. Stewart's position, but the termination plan was placed in abeyance due to Ms. Stewart's ill health and consequential medical leave.

[50] The evidence supports my finding that it was a reasonable option for the Employer to terminate Ms. Stewart's employment due to her performance and attitude problems. Although she was a long-term ACLP employee, the evidence establishes that for at least the last six months of her active employment (not including her medical leave) Ms. Stewart was aware of the Employer's concerns and did not adequately address them. While the Employer could have continued to coach and progressively discipline Ms. Stewart for a longer period before it resorted to termination, it is objectively reasonable and not arbitrary for the Employer to do what it did - to provide the Employee with clear communication about expectations and six months within which to demonstrate efforts to meet those expectations. At the end of that period, with Ms. Stewart's performance still not meeting the mark, termination was reasonably available.

[51] This finding does not mean the Employer should have disregarded Ms. Stewart's concerns about Ms. Harris' bullying treatment/management style. Her concerns warranted attention, which the evidence establishes was given. It is apparent that Ms. Schultz took Ms. Stewart's concerns seriously both before and even after the decision was made to terminate Ms. Stewart's employment. She decided it was not necessary to question other employees about Ms. Stewart's complaint, but she worked to understand its context. The two meetings Ms. Schultz convened in August 2022 demonstrate Ms. Schultz's effort to bridge the gap that was widening between the two women and address their interpersonal conflict. Thus, Ms. Stewart's concerns were addressed informally at the same time as she was being encouraged and instructed to improve her attitude and compliance with management instructions. Additionally, during the time Ms. Stewart was on medical leave, Ms. Schultz testified that she provided Ms. Harris with management training and frequent feedback.

[52] The evidence establishes, and I find as a fact, that the Employer's decision to terminate Ms. Stewart's employment without cause was made before Ms. Stewart prepared and filed her formal harassment complaint on November 29, 2022. However, this decision was not communicated to her until she returned from medical leave thirteen months later.

[53] The totality of the evidence supports the conclusion that termination of the Employee's employment was a reasonable option for the Employer and not arbitrary. Consequently, I

find that the Employer's reasons for termination constitute "good and sufficient other reasons" unrelated to a protected activity within the meaning of s. 3-35 of the Act.

VI. ORDER

[54] This Order is made pursuant to s. 4-6(1) of the Act, and the Appeal is allowed.

Dated at Saskatoon, Saskatchewan this 24 day of April, 2025.

Leslie Belloc-Pinder, K.C.
Adjudicator