

LRB File No. 165-20 & 054-24



THE MATTER OF:

An appeal of the decision of an adjudicator pursuant to *The Saskatchewan Employment Act*,

BETWEEN:

WRIGHT CONSTRUCTION WESTERN INC.

APPELLANT

AND

**GOVERNMENT OF SASKATCHEWAN, DIRECTOR OF
OCCUPATIONAL HEALTH AND SAFETY DIVISION**

RESPONDENT

BEFORE:

Marlene Weston, Adjudicator

) DATED at Gull Lake Saskatchewan on
)
) the 16th day of April, 2025

AMENDED ORDER

Further to the Order issued by the Labour Relations Board pursuant to Section 4-8(6) of *The Saskatchewan Employment Act* that LRB File No 156-20 be remitted to the Adjudicator for amendment of the Decision in accordance with the direction provided in the Reasons for Decision. The Decision rendered by Marlene Weston, Adjudicator, is hereby amended to read as follows:

1. that Officer Dylan Holzer was incorrect in issuing Notice of Contravention, Report number 1-00011438, a contravention against Wright Construction Western Inc. relating to an Inspection of Wright's worksite on 600 5th St. N.E., Weyburn, Sk. The Adjudicator's finding is there was reasonable, credible and documented evidence that the employer did develop and implement a traffic control plan to protect the workers from traffic hazards.
2. that the intent to issue a Notice of Contravention displayed by Officer Holzer was relevant to the bias displayed in issuing the Notice of Contravention.

I HEREBY ORDER that:

- a) the appeal by Wright Construction Western Inc. be allowed; and
- b) the Notice of Contravention Number 1-000-11438 issued by Officer Dylan Holzer be quashed.

ME Weston

Marlene E.K, Weston, Adjudicator

WRIGHT CONSTRUCTION WESTERN INC. , Appellant vs. THE GOVERNMENT OF SASKATCHEWAN (DIRECTOR, OCCUPATIONAL HEALTH AND SAFETY DIVISION), Respondent

LRB File Nos. 156-20 and 054-24: March 24, 2025

Adjudicator : Marlene E.K. Weston

Counsel for the Appellant: Wright Construction Western Inc.

T. John Agioritis

Counsel for the Respondent: The Government of Saskatchewan
(Director, Occupational Health and Safety Division)

Alexa LaPlant and
Christoph Meier

Amendment of Decision by Adjudicator in compliance with an Order by THE LABOUR RELATIONS BOARD pursuant to Section 4-8(6) of *The Saskatchewan Employment Act* that LRB File No. 165-20 be remitted to the Adjudicator for Amendment of her Decision in accordance with the direction in the Reasons for Decision forming part of the Order.

Matter remitted to Adjudicator on appeal was “Whether OH&S Officer decision to issue Notice of contravention based on reasonable, credible and document evidence – intent relevant”.

REASONS FOR AMENDMENT

Background

(1) **Marlene E.K. Weston, Adjudicator:** This Order is a result of an Appeal by Wright Construction Western Inc. (Wright) of a decision by the Adjudicator, dated February 12, 2024 pursuant to Section 4-8 of *The Saskatchewan Employment Act* (the Act) in relation to LRB File No. 165-20. The Appeal to the Labour Relations Board of Directors was heard by Carol L. Kraft, Vice-Chairperson on October 30, 2024.

(2) After consideration of the presentations by the Appellant and Respondent upon appeal, the Vice-Chairperson issued the following Order on March 24, 2025:

“THE LABOUR RELATIONS BOARD, pursuant to Section 4-8(6)(b) of *The Saskatchewan Employment Act*, HEREBY ORDERS that LRB File No. 165-20 is remitted to the Adjudicator for amendment of the Decision in accordance with the direction provided in the Reasons for the Decision.”

(3) The Decision by the Adjudicator related to a visit on July 21, 2020 by Occupational Health & Safety Officer, Dylan Holzer (Officer Holzer), when he issued a Notice of Contravention (NOC) following an inspection of Wright’s construction site on a school at 600 5th Street NE,

Weyburn (the Worksite). The NOC indicated that Wright contravened ss.133(6) and (7) of *The Occupational Health & Safety Regulations 1996* (the Regulations).

(4) Subsequently, the following appeals of the issuance of the NOC were undertaken by Wright:

- On August 6 2020, Wright appealed to the Director, OH&S Division (the Director) who dismissed the appeal on October 6, 2020.
- On October 30, 2020 Wright appealed the Director's Decision and an Adjudicator was assigned to hear the appeal.
- A virtual hearing was held by the Adjudicator on April, 21 and 23, 2021 where each party presented evidence. The Adjudicator rendered her Decision on February 12, 2024.
- On March 7, 2024, Wright filed a Notice of Appeal with the Board (LRB File No 054-24.

(5) On March 24, 2025, the **LABOUR RELATIONS BOARD** issued an Order "that LRB File No 165-20 be remitted to the Adjudicator for amendment of the Decision in accordance with the direction provided in the Reasons for the Decision". The matter remitted to the Adjudicator was "Whether OH&S Officer decision to issue Notice of Contravention based on 'reasonable, credible and documented evidence - intent relevant..'"

Board's Direction to Adjudicator for Amendment of Decision

(6) In the Board's Decision of March 24 2025, the Reasons for the Decision set out the direction to the Adjudicator for amendment of her decision of February 12 2024 in accordance with their directions and the issuance of an appropriate order with the reasons.

(7) The directions to the Adjudicator for the Amendment of her Decision are set out in the following paragraphs of the Reasons for Decision as follows:

"(56) The Board ... finds that the Adjudicator erred in law in her finding that Officer Holzer's opinion was based on reasonable, credible and documented evidence."

"(59) The Board finds that Officer Holzer's intention is relevant to determining whether his opinion was based on reasonable, credible and documented evidence. A predetermined decision is necessarily an unreasonable decision as it is based not on

credible and documented evidence, but on one's **one (own)** predisposition, belief or intent. Bias relates to both the adequacy of an investigation and reasonableness."

"(65) In finding that Officer Holzer's intent was irrelevant the Adjudicator disregarded the evidence of Officer Holzer's behavior and failed to consider whether given all of the evidence of his behavior his opinion was based on reasonable, credible and documented evidence. This constitutes an error of law."

Conclusion

(8) This matter having been remitted to the Adjudicator for Amendment of the Decision, the Adjudicator has amended the Decision and issued an Order that:

a) the Appeal by Wright Construction Western is allowed; and

b) the Notice of Contravention Number 1-000-11438 issued by OH&S Officer Dylan Holzer be quashed.

ME Weston

Marlene E.K. Weston, Adjudicator