



LRB File No. 256-24

In the matter of an appeal to an adjudicator pursuant to 3-53 and 3-54 of *The Saskatchewan Employment Act*.

BETWEEN

NICOLAE CHIPERI

Appellant

-AND-

BIRD CONSTRUCTION INC.

Respondent

Adjudicator – Tiffany M. Paulsen K.C.

The Appellant represented himself

Counsel for the Respondent – Steve Seiferling

Translator – Olga Bondarenko

Hearing conducted virtually August 13 and 14, 2025

DECISION

INTRODUCTION

1. This is an appeal pursuant to ss. 3-53 and 3-54 of *The Saskatchewan Employment Act* ('the *Act*') from a decision of an occupational health and safety officer dated November 26, 2024. The decision arose from a complaint of discriminatory action brought by Nicolae Chiperi against his employer, Bird Construction Inc. ('Bird'). Mr. Chiperi brought forward occupational health and safety complaints about his workplace. Shortly thereafter, Bird terminated Mr. Chiperi's employment. Mr. Chiperi claims he was dismissed due to the fact he made occupational health and

safety complaints. Bird's position is Mr. Chiperi's termination resulted from complaints of sexual harassment about Mr. Chiperi by other workers employed by Bird.

2. The occupational health and safety officer's decision found the termination of Mr. Chiperi's employment was not an unlawful discriminatory action contrary to section 3-35 of the *Act*.
3. The Notice of Appeal asks for an order quashing the decision, that the employer be directed to pay Mr. Chiperi any wages he would have earned had he not been terminated and for Bird to cease the discriminatory action and to reinstate Mr. Chiperi.
4. No objections were raised with respect to my appointment or my jurisdiction to hear, and determine, this appeal.
5. With the agreement of the parties, on May 7, 2025, I convened a pre-hearing meeting via Microsoft Teams. Mr. Chiperi did not have a translator present and there was difficulty with communication between the parties. As such, with the consent of all, the prehearing meeting was adjourned to June 10, 2025.
6. On June 10, 2025, the parties reconvened, with a translator present for Mr. Chiperi. Mr. Chiperi confirmed that he would not be represented by legal counsel during this process. Hearing dates of August 13 and 14, 2025 were set.
7. This decision addresses the issue of whether the OHS decision of November 26, 2024, finding that Mr. Chiperi's termination was not an unlawful discriminatory action contrary to section 3-35 of the *Act*, should be upheld.

EVIDENCE

Nicolae Chiperi

8. Mr. Chiperi testified on his behalf. Below is a summary of the relevant evidence.

9. Mr. Chiperi testified that, within a couple of months of his start date in March, 2024, he was injured on the job site. As a result, Mr. Chiperi's physician recommended lighter duties and Bird accommodated same.
10. On June 7, 2024, the day that Mr. Chiperi was dismissed, Mr. Chiperi testified that he started working with a large industrial compressor, without a face shield or industrial cage. Mr. Chiperi believed this was a breach of safety standards. As such, that morning, Mr. Chiperi stated he went to see a safety officer to make a report. Mr. Chiperi stated that the safety officer refused to give him a form to complete.
11. Mr. Chiperi testified that, later that same day, after his lunch break, he was dismissed by Bird. During the conversation about his termination, Mr. Chiperi was advised that complaints were made by other workers about Mr. Chiperi harassing them. Mr. Chiperi testified that, from his perspective, there was not an investigation by Bird into the complaints, he was not provided any written information or statements, nor was Mr. Chiperi given an opportunity to respond.
12. Referencing Tab E of Exhibit A-32, 'Bird Respectful Workplace Policy', Mr. Chiperi testified that he did not believe Section 1.3.3, labelled 'Procedure for Dealing with Harassment of Any Kind', was followed by Bird. Mr. Chiperi does not think Bird had any evidence he was harassing workers, or continued to harass workers. Mr. Chiperi stated he did not know about the allegations of harassment until July, 2025, well after he was fired.
13. In cross examination, Mr. Chiperi testified that, on June 6, 2024, he approached Tanya Cheeke, the Health, Safety and Environment Manager for Bird, asking for complaint forms. Mr. Chiperi testified he told Ms. Cheeke he had three violations to report. Thus, Ms. Cheeke gave him three forms to complete.
14. Mr. Chiperi completed the forms that same day and submitted three written complaints about workplace safety to Ms. Cheeke.

15. The first complaint was about a worker operating a vehicle unsafely. The worker attempted to drive away while another worker was still entering the vehicle, and not wearing a seatbelt.
16. The second complaint was about a washcar, that was used as a washroom, being out of water.
17. The third complaint was about a tool Mr. Chiperi had brought to the workplace, from his home. Mr. Chiperi was questioned by a supervisor for Bird as to why Mr. Chiperi had the tool. Then the supervisor tried to take the tool (which ultimately did not happen). Mr. Chiperi did not like the way the supervisor spoke to him.
18. When cross examined about the day he was dismissed, Mr. Chiperi stated he was told he was being fired for 'misconduct' and that someone on the job site had complained about him. Mr. Chiperi testified that he was not told what the misconduct was and that, until he saw the reply by Bird to his OHS complaint, dated November 11, 2024 (Exhibit A-32), Mr. Chiperi did not know that he had been terminated as a result of complaints that he was harassing other employees.
19. However, also in cross examination, when Mr. Chiperi was presented with Exhibit A-13, an email from himself to the 'Labour board and OHS', dated July 25, 2024, Mr. Chiperi stated that his termination was 'based on harassment charges'.
20. In the hearing, Mr. Chiperi denied all allegations of harassment, sexual or otherwise, that were made against him.

Tanya Cheeke

21. Tanya Cheeke testified on behalf of Bird Construction.
22. Ms. Cheeke is employed by Bird and, in 2024, was the health and safety lead at the BHP Jansen site for Bird. Ms. Cheeke's official title, in 2024, was Health, Safety and Environment Manager.

23. Ms. Cheeke's employment duties included meeting with new hires and overseeing their orientation process. Part of the orientation training is a review of workplace harassment policies. When Mr. Chiperi was hired, Ms. Cheeke worked with Mr. Chiperi directly. Ms. Cheeke believed Mr. Chiperi was familiar with workplace policies.
24. Similar to Mr. Chiperi, Ms. Cheeke testified that, within a couple of months of Mr. Chiperi's start date in March, 2024, Mr. Chiperi was injured on the job site. As a result, Mr. Chiperi's physician recommended lighter duties and Bird accommodated same.
25. On June 6, 2024, Ms. Cheeke testified that she received three occupational health and safety complaints from Mr. Chiperi. These complaints were described earlier in this decision. The first complaint was about a worker operating a vehicle unsafely. The second complaint was about a washcar being out of water. The third complaint was about a tool that Mr. Chiperi had brought to the workplace, from his home, and Mr. Chiperi's discussion with a supervisor about same.
26. With respect to the unsafe operation of a vehicle, Ms. Cheeke advised there was an investigation and the worker in question was disciplined. Ms. Cheeke further testified there she did not have any discussions, with other Bird employees, about disciplining Mr. Chiperi for bringing the complaint forward.
27. Regarding the washcar being out of water, Ms. Cheeke testified that the water was replenished within 20-30 minutes of Bird being advised the washcar was out of water by Mr. Chiperi. Ms. Cheeke further testified that there were at least 30 other operational washcars on the BHP site for staff to use.
28. With respect to the third complaint brought forward by Mr. Chiperi, which was about a tool Mr. Chiperi had brought from home, and the manner in which Mr. Chiperi was spoken to by another staff member when questioned about it. Bird approached the other staff member, a supervisor, and it was discovered that other employees

overheard the conversation between Mr. Chiperi and the supervisor. Bird determined that the conduct was not actionable and no one took Mr. Chiperi's tool from him.

29. Regarding the safety complaint that Mr. Chiperi says he attempted to make on the morning of June 7, 2024, Ms. Cheeke denied that Mr. Chiperi tried to make a safety complaint with her that day. Ms. Cheeke stated that she did not refuse to give Mr. Chiperi any forms and, that if any worker ever comes into her office to request forms to make a safety report, she always provided the forms. Ms. Cheeke testified that it would be a breach of her duties not to provide the forms.
30. Turning to the harassment complaints against Mr. Chiperi, Ms. Cheeke testified that on June 7, 2024, an employee of Bird, 'A.A.', came into her office and A.A. stated she had an issue with another co-worker. Ms. Cheeke asked A.A. if she was making a formal complaint and A.A. said she was. Ms. Cheeke gave A.A. the appropriate forms to complete.
31. A.A. completed a statement which was attached as Tab D to Exhibit A-32.
32. A.A.'s statement was a complaint about being sexually harassed by Mr. Chiperi. In A.A.'s statement, she referenced a co-worker as a witness, 'C.C.'
33. Ms. Cheeke brought A.A.'s statement to her supervisor and they decided to investigate further. Ms. Cheeke spoke to C.C. and received a statement from C.C. as well (also attached as Tab D to Exhibit A-32). C.C.'s statement also contained allegations of sexual harassment by Mr. Chiperi as against C.C.
34. Ms. Cheeke brought C.C.'s statement to her supervisor as well. Ms. Cheeke also provided her supervisor with Bird, and BHP's, respectful workplace policies. Ms. Cheeke was later notified by her supervisor that Mr. Chiperi had been dismissed.

LEGISLATIVE AND ANALYTICAL FRAMEWORK

35. The relevant provisions of the *Act* are cited below.

Section 3-1

3-1(1) In this part....:

- (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....

Section 3-31

A worker may refuse to perform any particular act or series of acts at a place of employment if the worker has reasonable grounds to believe that the act or series of acts is unusually dangerous to the workers health or safety or the health or safety of any other person at the place of employment until:

- (a) sufficient steps have been taken to satisfy the worker otherwise;
or
- (b) the occupational health committee has investigated the matter and advised the worker otherwise

Section 3-35

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;...
- (f) refuses or has refused to perform an act or series of acts pursuant to 3-31
- (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.

Section 3-36

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.

....

(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.

36. 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* 2020 CanLII 103929 (SKLRB) (para 17):

- a. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35
- b. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s.3-1(1)(i)
- c. 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)

37. The shifting onus of proof, from employee to employer, in addressing the third question is explained in the *Finning* 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 was engaged in the protected activities, i.e. for good and sufficient reason.

ANALYSIS

38. One of the main purposes of section 3-35 of the *Act* is to protect employees, who bring forward occupational health and safety issues about their workplace from

retaliation by their employers who attempt to avoid addressing genuine concerns by removing the employees who raise these issues.

Issues One and Two – Did Mr. Chiperi engage in protected activities that resulted in Bird taking discriminatory action against him?

39. In the case at bar, for Mr. Chiperi to succeed on a claim brought pursuant to section 3-35 of the *Act*, Mr. Chiperi must show he was terminated because he brought forward a series of occupational health and safety issues to Bird and that Mr. Chiperi was dismissed as a result of raising those complaints. Section 3-36(4)(a) of the *Act* provides, where an employee has made out a *prima facie* case that the employer took discriminatory action against him, and the employee was engaged in a protected activity under section 3-35, it will be presumed that the discriminatory action was taken in response to the employee's activities.
40. As such, while not onerous, the initial burden is on Mr. Chiperi to prove that the complaints he made to Bird were protected activities within section 3-35 of the *Act*.
41. The burden is quite low and I find that Mr. Chiperi meets the first two parts of the test such that he was involved in a protected activity (raising occupational health and concerns), which Mr. Chiperi believed was the reason Bird dismissed him (discriminatory action).
42. Bird raised the argument that Mr. Chiperi's health and safety complaints did not meet the definition of 'protected activity'. Bird's argument is the first two complaints brought forward by Mr. Chiperi were investigated, action taken and resolved. The third complaint was investigated, determined no further action was required and the matter was resolved.
43. However, section 3-36 of the *Act* states the test is that "a worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him" for bringing forward occupational health and safety concerns. I find that, at least in part, Mr. Chiperi genuinely believes he was dismissed because he brought forward occupational health and safety concerns. While I accept that issues of misconduct

were raised by Bird to Mr. Chiperi, at the time of dismissal, given the low onus on Mr. Chiperi to show that he had reasonable grounds to believe he had been fired as a result of his complaints, I find that Mr. Chiperi has met the burden of the first two parts of the test.

Issue Three – Did Bird have good and sufficient other reason for the dismissal of Mr. Chiperi

44. Given that Mr. Chiperi has met his onus of proof for the first two parts of the test, the burden of proof then shifts to Bird to show Mr. Chiperi's dismissal was for a good and sufficient other reason, and not because Mr. Chiperi brought forward occupational health and safety concerns.
45. The answer to whether Bird has met its onus of good and sufficient reason depends on the nature and sufficiency of Bird's evidence. For Bird to succeed in this appeal, its evidence must establish, on a balance of probabilities, that it had a 'good and sufficient reason' for terminating Mr. Chiperi's employment.
46. Bird asserts that Mr. Chiperi's termination resulted from the sexual harassment complaints made about Mr. Chiperi by other workers.
47. I am satisfied by the evidence that:
 - a. Unprompted by Bird, A.A., brought forward a complaint of Mr. Chiperi sexually harassing her.
 - b. Bird considered the complaint and decided to investigate further.
 - c. After investigation, Bird received another written complaint, from a different employee, of Mr. Chiperi sexually harassing that employee.
 - d. After receiving of two complaints of sexual harassment against Mr. Chiperi, from two different employees, Bird decided to terminate Mr. Chiperi's employment
 - e. Bird's decision to terminate Mr. Chiperi was not related to the occupational health and safety complaints brought forward by Mr. Chiperi

48. As such, I find that Bird had a good and sufficient other reason for terminating Mr. Chiperi's employment. I am satisfied that the reasons provided by Bird, as to why Mr. Chiperi was dismissed, justified Bird's decision. I further find that Mr. Chiperi's occupational health and safety complaints did not influence Bird's decision to terminate his employment.
49. There was a disagreement in the evidence as to whether Mr. Chiperi brought forward a different occupational health and safety concern on June 7, 2024, and then was not provided the appropriate forms by Ms. Cheeke. While I have doubts as to whether this whole event occurred, it is immaterial to the analysis as I have found that any of the occupational health and safety concerns brought forward by Mr. Chiperi did not have a nexus to the decision by Bird to dismiss him.
50. Mr. Chiperi brought forward a variety of complaints about his termination, ranging from an allegation that he was dismissed because he made occupational health and safety complaints to the fact that he does not believe that Bird followed its own internal investigation policy.
51. It is important to remember that, for this particular type of appeal (pursuant to Part III of the *Act*) the issues to be addressed are whether the employee has engaged in a protected activity and if the employer took discriminatory action as a direct result of the employee being engaged in that protected activity. As such, Mr. Chiperi's assertions that Bird did not follow its own internal procedures does not have any bearing on this appeal, subject to the extent it might bring into question the employer's sincerity in conducting the investigation.
52. There were deficiencies in Bird's investigation of the harassment complaint in accordance with their own policies. Bird should be mindful to follow their own policies, should they encounter any similar situations in the future. However, the evidence persuades me that Bird's efforts to question other employees, after the initial complaint of harassment against Mr. Chiperi was made, meant Bird was sincerely concerned about the impact of Mr. Chiperi's behaviour on other employees. It was Bird's decision to protect those other employees from harassment by

dismissing Mr. Chiperi, which I find to be a good and sufficient other reason for Mr. Chiperi's termination.

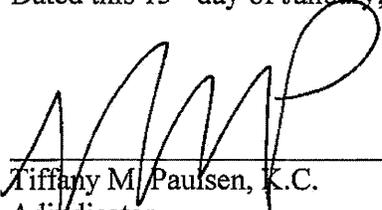
CONCLUSION

53. Based on the foregoing description of evidence and analysis above, I find that Bird Construction has given good and sufficient other reason for the termination of Mr. Chiperi. I further find that the termination was not an unlawful discriminatory action contrary to section 3-35 of the *Act*.
54. As such, I dismiss the appeal by Mr. Chiperi.

ORDER

55. This Order is issued pursuant to section 4-6 of *The Saskatchewan Employment Act*. The appeal is dismissed. The decision of the occupational health and safety officer is upheld.

Dated this 15th day of January, 2026



Tiffany M. Paulsen, K.C.
Adjudicator