

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:

Guide Hair Salon,

APPELLANT,

- and -

Janessa Viczko (formerly Yausie),

RESPONDENT.

APPEARANCES:

For the Appellant, Guide Hair Salon: Candice D. Grant

For the Respondent, Janessa Viczko: David Fittes

BEFORE:

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

DECISION DATE:

January 20, 2025

CORRECTED DECISION

I. INTRODUCTION

[1] Janessa Yausie, now Janessa Viczko ("Viczko") lodged a complaint¹ pursuant to section 3-36 of the SEA alleging that Guide Hair Salon ("Guide") had taken discriminatory action against her for a reason mentioned in section 3-35 of the SEA.

¹Exhibit G-1, Complaint received by Occupational Health and Safety, Ministry of Labour Relations and Workplace Safety, Government of Saskatchewan ("OHS") on December 6, 2021

[2] An OHS officer decided Guide had taken discriminatory action against Viczko for a reason mentioned in section 3-35 of the *SEA* (the "Decision") and served the Decision and Notice of Contravention Number 1-00020424 ("NoC")² on Guide, requiring Guide to:

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

[3] Guide appealed the Decision and NoC (the "Appeal").³

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

2. FACTS

[5] Guide is a hair salon that has carried on business in Saskatoon, Saskatchewan, since on or about 1977. It is owned and operated by Kara Firman ("Firman").

[6] In December 2019, a new corona virus (SARS-CoV-2) was identified in Wuhan

²Exhibit G-2, Decision and NoC-1 dated March 8, 2022

³Exhibit G-3, Notice of Appeal

China. This corona virus became known as COVID-19. The virus quickly spread to other nations. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic, highlighting the rapid spread and severity of the virus.⁴

[7] On March 23, 2020, the Saskatchewan Government mandated, as part of its initial response to the pandemic, the closure of personal service facilities to curb the virus' spread. That included hair salons.⁵

[8] On May 19, 2020, under Phase 2 of the "Re-Open Saskatchewan Plan," hair salons were permitted to resume operations. This reopening required adherence to stringent health and safety protocols, such as personal protective equipment, enhanced sanitization, physical distancing and client screening.⁶

[9] By letter dated August 14,⁷ Guide offered Viczko the position of a Level 3 Hairstylist "starting in September." Her wage was to be commission based, with a guaranteed minimum hourly rate. Viczko accepted the offer on the same date.

[10] Guide has an Employment Manual ("Manual")⁸ and Code of Honour ("Code").⁹ Firman provided a copy of the Manual to Viczko at or before the time she commenced her

⁴World Health Organization, *WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020*, available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—11-march-2020>.

⁵These actions were taken under the authority granted by declaration under *The Emergency Planning Act*, S.S. 1989-1990, c. E-8.1 and Orders under *The Public Health Act, 1994*, S.S. 1994, c. P-37.1 enabling the government to implement necessary measures to protect public health during the COVID-19 pandemic.

⁶*Ibid.*

⁷Exhibit A-4, Letter dated August 14, 2022, from Guide to Viczko

⁸Exhibit A-1, Guide Hair Salon Employment Manual

⁹Exhibit A-2, Guide Code of Honour

employment. The Code was developed through an employee team-building exercise that Viczko participated in.

[11] During the course of her employment, Viczko was going through a difficult time personally, and that disrupted her work. She was going through a divorce and had become a single mother. These disruptions manifested primarily as attendance issues. She would come in late and leave early, and when confronted she would usually say that she had to take care of her child. Viczko also dressed inappropriately. Guide holds itself as an upscale establishment; and Viczko would come in wearing crop-tops and other casual attire. There were also instances of Viczko being rude and aggressive. As a result of all this, and on account of her frequent absences causing other staff to cover for her, the other staff began to take issue with Viczko.

[12] There was another problem. Staff at Guide are entitled to provide discounts to friends and family. Viczko would use these discounts, or at least her friends and family used the discounts through her. When this would happen, Viczko did not record it, or did not record it properly, which caused issues related to record keeping.

[13] Viczko takes issue with any critique of her work performance. Additionally, she:

- a) denies rude and aggressive behaviour;
- b) says the times she had timing problems were not only limited in number, but also unavoidable due to personal and/or parenting needs; and
- c) denies she failed to dress in a professional manner.¹⁰

¹⁰Viczko did say there may have been times she came to work directly from the gym. She acknowledged gym clothing would not be appropriate apparel for work, but says she changed upon arrival at work.

[14] It seems that Firman was not always present at the salon. Though the owner and ultimate manager, she had Lauren Kimpton (“Kimpton”) managing the salon of her behalf.

[15] Firman met with Viczko one-on-one at least twelve times over the course of her employment to discuss her employment performance. She said she did not discipline Viczko. Rather, she attempted to discern what may be happening in Viczko’s life that could be the cause, so that they could work to address her concerns.¹¹

[16] Beginning in Spring 2021, COVID-19 vaccinations started to become available to the general public. After receiving her first vaccination, Caarlynn McCulloch (“McCulloch”)¹² testified:

- a) she started what she entitled a “Dose of Hope” list (the “List”) on a whiteboard in the staff room (the “Whiteboard”)—it had two columns, one for the first dose, and the other for the second;¹³
- b) the idea was that employees would sign their names on the List, signifying they had been vaccinated;
- c) this was her idea—she was excited about being able to be vaccinated and it was intended to be fun—and it was not directed by Guide;
- d) she was the first to sign the List and others followed, including Viczko;
- e) eventually all of the staff had added their names to both columns of the List; and

¹¹Viczko does not deny these meetings took place.

¹²A Guide employee

¹³The Whiteboard was neither visible, nor open to the public.

f) no one told other employees to add their names to the list.

[17] Viczko does not deny what McCulloch testified to about the List. However, she said she felt the very existence of the List “pressured” her to put her name on same. Viczko did not want to feel excluded. She said she intended to get vaccinated. She intimated she could interpret the List to mean vaccinated or intending to be vaccinated. All of these factors appeared to help her justify in her own mind adding her name to the List.

[18] In June 2021, the Saskatchewan government announced that all remaining COVID-19 public health restrictions would be lifted on July 11, 2021. In response, Guide sent a notice to its client database and staff saying it was “cautiously optimistic, but for now we won’t be changing anything.” It went on to advise:

- a) its COVID-19 protocols would remain in place until two weeks after all the staff received their second vaccination; and
- b) thereafter, it would slowly lift its restrictions, “likely starting sometime in August.”¹⁴

[19] On July 28, 2021, Guide sent another webmail to its client database and staff. It advised:

- a) the staff was fully vaccinated; and
- b) in August, masking was becoming optional.¹⁵

[20] Firman testified:

¹⁴Exhibit A-6, Webmail dated June 21, 2021

¹⁵Exhibit A-7, Webmail dated July 28, 2021

- a) Guide clientele had been asking if the staff was vaccinated;
- b) at that time, Guide had no requirement that any staff be vaccinated;
- c) Guide had not asked staff to verify their vaccination status; and
- d) based on the content of the Whiteboard, she assumed all staff were vaccinated.

[21] Viczko testified that she knew Guide had advised its clientele that all staff were fully vaccinated. She said she did not then advise Firman of her vaccination status. She said she “didn’t think there was a conversation to be had.”

[22] The Government of Saskatchewan enacted *The Employers' COVID-19 Emergency Regulations* (the “*Regulations*”).¹⁶ These *Regulations* authorized, *inter alia*, but did not require, employers to implement a vaccinate or test scheme.

[23] In anticipation of the *Regulations*, Guide modified the Manual to provide for a vaccinate or test process (the “*Revision*”). By e-mail dated September 30, 2021, Guide provided a copy of the revised Manual to its staff.¹⁷

[24] The *Revision* called for staff to provide Firman with their evidence of either vaccination or negative COVID-19 test results. In response, on October 3, 2021, Viczko sent Firman proof of her first vaccination given on September 21, 2021.¹⁸

[25] Firman advised Viczko she was disappointed to just learn she was not fully

¹⁶S.S. c. S-15 Reg 13—these *Regulations* became effective on October 1, 2021.

¹⁷Exhibit A-8, E-mail dated September 30, 2021

¹⁸Exhibit A-9, Record of COVID-19 Immunization for Viczko

vaccinated and asked that she provide a negative test as per the Revision.¹⁹ Viczko subsequently provided a negative test result.

[26] Firman testified that she:

- a) had relied on the List to tell Guide clientele the staff was fully vaccinated;
- b) wished Viczko had brought her unvaccinated status to her attention;
- c) felt Viczko's misrepresentation of her vaccination status on the List caused her to question her ability to trust Viczko;
- d) conveyed to Viczko that trust was "a big deal" to both Guide and fellow staff; and
- e) indicated she wanted to meet with her and discuss the trust issue and to "work on going forward."

[27] Firman scheduled a meeting with Viczko on Tuesday, October 5, 2021, at Guide's premises. Firman attended at the set time and place, but found Viczko had left. Viczko says she left because her daughter was sick. Firman testified she was disappointed and felt let down. She said she expected Viczko could have at least told her she was unable to meet with her.

[28] Viczko testified that she did not see the meeting in her schedule and that is why she did not attend.

[29] Firman testified that she "reached out" to Viczko and told her she would like to meet and ensure her expectations were understood. She said Viczko was not willing to talk to

¹⁹*Ibid.*

her and meet with her. Firman said it was at that point she decided to terminate Viczko's employment. She said the reasons for same were:

- a) the "trust issue";
- b) a lot of tension with her and staff;
- c) staff were uncomfortable;
- d) Viczko was not taking her job seriously; and
- e) "so many little things."

She denied Viczko's partial vaccination status was a factor in her decision to terminate Viczko's employment.

[30] By letter dated October 6, 2021, Guide terminated Viczko's employment effective October 20, 2021.²⁰

3. ISSUES

[31] The issues herein are as follows:

- a) Did Guide take discriminatory action against Viczko for a reason mentioned in section 3-35 of the *SEA*?
- b) If Guide took such discriminatory action against Viczko, did it have good and sufficient other reason to terminate her employment?
- c) If Guide took such discriminatory action against Viczko and did not have good and sufficient other reason to terminate her employment:

²⁰Exhibit A-10, Letter from Guide to Viczko dated October 6, 2021

- i) what remedy should I grant;
- ii) did Viczko mitigate her losses and, if she fully failed to do so, how should that remedy be limited?

4. DECISION

[32] I find Guide did not take discriminatory action against Viczko for a reason mentioned in section 3-35 of the SEA.

[33] I allow the appeal.

[34] I set aside the Decision and cancel the NoC.

5. REASONS

5.1 LEGISLATION

[35] 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 MANUAL

[36] The relevant provisions of the Manual are as follows:

...

2 EMPLOYEE DEFINITION AND STATUS

...

HAIRSTYLISTS

...

Must wear proper attire

...

Should be a team player, respectful of others and offer consistent customer service

...

4 STANDARDS OF CONDUCT

...

4.2 Attendance and Punctuality

Guide Hair Salon expects employees to be ready for work at the beginning of the assigned daily work hours to the end of the assigned work hours. They are expected to clock in and out, if required, according to their training.

...

4.4 Absence and Lateness

From time to time, it may be necessary for employees to be late or absent from work. Guide Hair Salon is aware that emergencies, illnesses, or pressing personal business that cannot be scheduled outside work hours may arise. It is the responsibility of all employees to contact all affected parties if they will be absent or late. Employees may be asked to provide documentation for reasons of absence.

...

4.11 COVID-19 Vaccination Policy

COVID-19 is a serious condition and has had a devastating impact on Canadians and others across the globe. Guide Hair Salon adopts this policy to protect the health and well-being of our employees, customers and community.

The Government of Saskatchewan has introduced regulations to provide employers to choose to require evidence of vaccination or a negative COVID-19 test result from employees before they enter the workplace. Guide Hair Salon will be implementing this Policy as of October 3rd 2021. Fully vaccinated individuals are those who have received the required number of doses of a COVID-19 vaccine approved by Health Canada and that 14 days or more have passed since the individual received the recommended dose.

Partially vaccinated individuals will be required to show evidence of a negative COVID-19 test before entering the workplace. Individuals with medical conditions that prohibit them from receiving a COVID-19 vaccine would be required to show evidence of a negative COVID-19 test every seven days. A negative COVID test is good for seven days from the date of the test.

An employee can choose any of the following COVID-19 tests administered at a testing site approved by the minister of Health:

- a polymerase chain reaction (PCR) test for SARS-CoV-2;
- a point-of-care antigen test for SARS-CoV-2;
- any other test for SARS-CoV-2 approved by the minister of Health

For employees who choose to show evidence of a negative COVID-19 test, they must take the test during non-work hours and are responsible for any costs associated with testing, unless otherwise agreed to by the employer.

Please contact Kara Firman in person or via email to guidehair@gmail.com to submit your evidence of vaccination or negative COVID-19 test results. All vaccination records will be securely stored and information on vaccination status will not be disclosed to any third party without employee consent.

4.12 Ethical Standards

Guide Hair Salon insists on the highest ethical standards in conducting its business. Doing the right thing and acting with integrity are the two driving forces behind Guide Hair Salon's great success story. When faced with the ethical issues, employees are expected to make the right professional decision consistent with Guide Hair Salon's principles and standards.

4.13 Dress Code

Employees of Guide Hair Salon are expected to present a clean and professional appearance while conducting business, in or outside of the salon. Dressing in a fashion that is clearly unprofessional, that is deemed unsafe, or that negatively affects Guide Hair Salon's reputation or image is not acceptable. Management reserves the right to send an employee home if it deems clothing choices inappropriate for the salon floor.

...

4.25 Outside employment

Employees may not take an outside job, either for pay or as a donation of their time, with a competitor of Guide Hair Salon; nor may employees do work on their own if it competes or interferes in any way with the sales of products or services that Guide Hair Salon provides to its clients. If providing services for a Wedding for friends/family etc. an alternate payment may be arranged only with the Owner of Guide.

4.26 Employment Termination/Resignation

After the application of disciplinary steps, if it is determined by management that an employee's performance does not improve, or if the employee is again in violation of Guide Hair salon's practices, rules, or standards of conduct, following a Decision-Making Leave, employment with Guide Hair Salon will be terminated. The following conduct is prohibited and will not be tolerated by Guide Hair Salon. Prohibited conduct may result in discipline, up to and including discharge. This list of prohibited conduct is illustrative only; other types of conduct that threaten security, personal safety, employee welfare and company operations also may be prohibited.

- Failure or refusal to perform job duties and management requests
-
- Unauthorized taking or removal of employer funds or property, or unauthorized charges to one of our accounts
-
- Excessive absenteeism, tardiness, or failure to report in when absent or late for work
-
- Inappropriate selling of merchandise or solicitation
-
- Mistreatment of a client, fellow employee, either verbal or physical
- Violation of any other Guide policy

Although these are examples, other conduct that adversely affects performance or the reputation of our salon may also be grounds for disciplinary action, up to and including discharge.

. . . .

9 EMPLOYEE COMMUNICATIONS

9.1 Open communication

Guide Hair Salon has an open-door policy with employees. Communication is essential to our success, so employees are encouraged to talk with management any time they have a concern, idea or problem in their relationship with another employee.

. . . .

9.3 Bulletin Boards

Guide Hair Salon has posted bulletin boards in the staff room where employees can find organizational announcements, news/events, company policy/pricing updates and discussions about specific topics. The employee is responsible for reading necessary information posted on the bulletin boards.

...

5.3 CODE

[37] The provisions of the Code are as follows:

BE MINDFUL - show up with a positive attitude, gratitude and be ready for the day

BE ACCOUNTABLE - to yourself, guests, team and the salon

COMMIT TO OPEN, HONEST AND CLEAR COMMUNICATION - being approachable to give and hear feedback and never being afraid to ask a question or ask for help

WATCH YOUR WORDS - no badmouthing guests, salons, yourself or each other, mind the sarcasm and keep salon talk about the guest not you

BE PRO-ACTIVE VS. REACTIVE - If something needs to be done do it, making sure to do things right the first time and remember when emotions are high intelligence is low

HAVE AWARENESS - of what is going on in the salon, where you can help out / check in with space, guests and each other

5.4 ANALYSIS

[38] Section 3-35 of the *SEA* prohibits employers from taking discriminatory action against workers for engaging in specific protected activities related to occupational health and safety. These protected activities include, *inter alia*:

- a) complying with the *SEA* or its regulations;
- b) seeking enforcement of the *SEA* its regulations;

- c) assisting with or serving on occupational health committees (“OHC”);
- d) establishing an OHC or endeavouring to become an Occupational Health and Safety (“OHS”) representative;
- e) performing functions of an OHC member or OHS representative;
- f) refusing dangerous work; and
- g) providing information.

By safeguarding these activities, section 3-35 ensures that workers can actively participate in maintaining and promoting workplace health and safety without fear of retaliation from their employers.

[39] To succeed with a claim under Section 3-35, an employee must:

- a) show that she engaged in a protected activity;
- b) show that the employer took a discriminatory action against her; and
- c) establish a causal connection between her engagement in a protected activity and the discriminatory action taken by the employer—in other words, show that the adverse action was taken because of the employee’s participation in the protected activity.

This establishes a *prima facie* case.

[40] Once an employee establishes a *prima facie* case—that is, the initial evidence is

sufficient to support her claim—the burden shifts to the employer to prove that the adverse action was unrelated to the protected activity and there were legitimate, non-retaliatory reasons for the action.

[41] Termination of employment falls under the definition of “discriminatory action” in the *SEA*. So, when Viczko 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 Viczko was engaged in an activity described in section 3-35.

[42] Viczko argues Guide 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, Viczko argues Guide terminated her employment because she was acting in compliance with the *Regulations*.

[43] The *Regulations* are engaged by this case. Under engaged *Regulations*, workers have duties—but most of the duties fall on the employer. The workers' duties are to vaccinate or, if they are going to take tests instead of getting vaccinated, to test outside work hours and pay for any costs associated with taking the tests. The implication in this matter is therefore that Guide terminated Viczko’s employment either because she was testing outside of work and/or was paying for her own tests. With all due respect, that implication makes no sense. I find that Guide did not terminate Viczko’s employment for one of those reasons.

[44] I find that Viczko did not allege an incident that established a causal connection with the *Regulations* that would give rise to a *prima facie* case that she was terminated for attempting to comply with same. In order to engage the protections of the *SEA*, there must be more than a bare allegation of discrimination.

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

[46] Guide argues that, even if Viczko did make out a *prima facie* case that she engaged in protected action, she was not terminated for that reason. Instead, it claims that she was dismissed because of the breakdown of trust that eroded their relationship and Viczko's failure to meet with Firman to discuss expectations.

[47] Viczko takes the contrary view. She alleges that:

- a) at the hearing Firman admitted Guide did not have cause to terminate Viczko's employment;
- b) "performance issues are essentially moot";
- c) there cannot be after-acquired cause for termination, even if it were so alleged; and
- d) it is "subterfuge" to say Viczko was dismissed for any reason other than her vaccine status and response to the *Regulations*;

[48] I am satisfied Guide did have a good and sufficient reason for terminating Viczko's employment. I am satisfied that the reasons provided by Guide as to why Viczko was dismissed are the true reasons, and that her actions regarding the *Regulations* were not material in the decision to terminate her employment.

[49] It was apparent that Guide had several concerns with Viczko. A significant concern is that Viczko lied about her vaccination status to the staff and management of Guide. She represented that she had been vaccinated, which led to marketing decisions regarding the

vaccination status of the staff at Guide. These were implemented by Guide before Viczko revealed she had not been vaccinated. While Viczko may not have provided falsified documents regarding her vaccination status, she did make false representation to her employer and fellow employees. Trust was eroded not only between Viczko and Guide, but between Viczko and Guide's other staff members.

[50] Another concern was that Viczko had frequent issues with unexplained absences from work. Yet another is that she caused problems with the accounting system by providing unrecorded discounts to friends and family. Finally, there were concerns about Viczko's professionalism and presentation while at work.

[51] The result of these concerns is that Guide did not trust Viczko, and did not have faith in her ability to maintain professionalism in the workplace. I am satisfied that those were the reasons for Viczko's termination, and that the termination had nothing to do with her vaccination status or compliance with the *Regulations*.

[52] Having determined that the Appeal must be allowed, it is not necessary to address Viczko's arguments as to the appropriate remedy.

[53] Because of the above, I allow the Appeal.

Dated at Saskatoon, Saskatchewan, on January 20, 2025.



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