

**IN THE MATTER OF:**

An Appeal of Wage Assessment Number 1-000562 pursuant to section 2-75 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, as amended, (the "SEA") and a hearing pursuant to section 4-2 of the SEA

**BETWEEN:**

New North SANC Services Inc.,

APPELLANT,

- and -

Sunshyne Charles,

RESPONDENT (COMPLAINANT).

**APPEARANCES:**

Candice D. Grant, for the Appellant, New North SANC Services Inc.

Respondent (Complainant), Sunshyne Charles, Self Represented

**BEFORE:**

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

**DECISION DATE:**

April 24, 2023

**DECISION**

**1. INTRODUCTION**

[1] New North SANC Services Inc. ("SANC") appealed<sup>1</sup> (the "Appeal") Wage Assessment No. 1-000562<sup>2</sup> (the "Assessment") issued pursuant to section 2-74 of *The Saskatchewan Employment Act* (as amended)<sup>3</sup> (the "SEA") by the Director of

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<sup>1</sup>Exhibit G-2, Appeal dated May 10, 2022, and delivered, together with \$500.00 deposit, to the Director on May 11, 2022

<sup>2</sup>Exhibit G-1, Wage Assessment No. 1-000562 dated April 19, 2022

<sup>3</sup>S.S. 2013, c. S-15.1

Employment Standards (the "Director") on April 19, 2022.

[2] The Assessment directed SANC to pay \$5,320.90 to Sunshyne Charles ("Charles").

[3] By Order dated July 18, 2022, the Labour Relations Board ("LRB") selected me to hear and determine the Appeal.

## 2. FACTS

[4] At the outset, the parties submitted an agreed statement of facts.<sup>4</sup> It reads as follows:

1. Sunshyne Charles has been an employee of New North SANC Services Inc. off and on since 2008. Her most recent term of service to the employer is from January of 2017 to December 23, 2021.
2. Sunshyne's job title at the time of her termination was executive assistant to the CEO of New North SANC; as well she was a project manager for the CEO.
3. Sunshyne received a semi-monthly salary of \$2335.67 for working 37.5 hours per week.
4. On December 23<sup>rd</sup>, 2021, Sunshyne Charles was terminated by the employer. The employer takes the position that it had just cause for the termination, which is disputed by Ms. Charles.
5. The Director of Employment Standards issued a Wage Assessment dated April 19, 2022, which has been appealed by the employer.
6. The parties are agreed that if the Wage Assessment is upheld:
  - a. As an employee of three to five years Sunshyne would be entitled to four weeks of pay instead of notice; and
  - b. The value of four weeks of pay instead of notice and associated annual vacation pay is \$5320.91.
7. If the employer is successful in their appeal of the decision made by the director, no amount will be owed to the employee.

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<sup>4</sup>Exhibit G-3, Agreed Statement of Facts

[5] Charles duties were to attend to filing, check mail and assist with day to day administrative matters. Her regular hours of work were 9:00 a.m. to 5:00 p.m., Monday to Friday.

[6] Charles testified that on or about August 2021, she was “subjected to sexual harassment by her supervisor” the former CEO. She gave no particulars of the sexual harassment. She said she reported the harassment to the RCMP who, in turn, advised her not to have contact with the Former CEO.

[7] Charles subsequently met with SANC’s Board Chair, Bruce Fiddler (“Fiddler”). Fiddler agreed:

- a) Charles could work from home;
- b) another Board member would be her supervisor; and
- c) SANC would pay for counseling for Charles.

[8] On or about September 7, 2021, Susan McKenzie (“McKenzie”) became acting CEO. Besides Charles, McKenzie is the only other employee of SANC.

[9] When McKenzie started her job as acting CEO, Charles was not at the office. She wondered why. She had expected her to be. She had not been told Charles had been allowed to work from home. At some point, a Board member had told McKenzie that Charles had been at home quarantined because of COVID.

[10] McKenzie testified that on or about September 7, 2021, she reached out to Charles trying to begin their working relationship.<sup>5</sup> She said she could have a short conversation with Charles at 2:00 p.m. on September 8, 2021. McKenzie asked Charles about coming back to work. She said Charles agreed to come back on

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<sup>5</sup>Exhibit E-1, E-mail thread between McKenzie and Charles

September 13, 2021.

[11] Charles did not come in on September 13, 2021. Charles sent McKenzie a note saying she was waiting for a doctor's note before coming in. McKenzie said she thought this related to COVID. Charles testified she was uncomfortable coming in. However, she never told McKenzie she was not coming in because of harassment.

[12] Some time after that, McKenzie "got" a copy of an e-mail Charles sent to municipalities served by SANC.<sup>6</sup> She sent a copy to SANC's Board, saying it needed immediate attention.

[13] On or about October 6, 2021, Fiddler wrote to Charles<sup>7</sup> advising:

- a) the Former CEO had resigned effective October 5, 2021;
- b) it believed accepting the resignation was "the most concrete way in which it can deal both with your complaint, and with the concerns you expressed about returning to a workplace in which the former CEO was present";
- c) it had "begun the process of enacting a new anti-harassment policy, which will also provide New North with a fully detailed procedure to use in the event that anything of a similar nature should arise";
- d) it had "set aside a budget to cover the cost of any counseling or mental health support you may require"; and
- e) it expected "that you will be in a position to return to work on Tuesday, October 12, unless your doctor or mental health practitioner should advise otherwise."

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<sup>6</sup>No evidence was tendered as to how she "got" the e-mail.

<sup>7</sup>Exhibit C-1, Letter dated October 6, 2021, from SANC to Charles

[14] Charles did not return to work on October 12, 2021. Charles said she was uncomfortable coming in. She did not communicate with SANC prior thereto.

[15] Charles started counseling sessions on October 13, 2021. Charles testified she attended every week after that.

[16] SANC subsequently received a letter from Heartland Psychological Services (“HPS”). It references having established a six-week treatment plan and an inability to offer a firm date for Charles’ return to work.<sup>8</sup>

[17] McKenzie attempted to meet with Charles to discuss her concerns. She said she wanted to reach out and communicate with her to have a healthy working relationship. She said she never had any success. As well, she never got an indication of when Charles would or could return to work.

[18] McKenzie testified that she needed access to “a number of things,” such as travel forms, accounting data, media information, web site information and the like. She needed these tools to continue SANC’s business.

[19] Beginning October 29, 2021, McKenzie asked Charles for SANC’s laptop and various codes for it and SANC’s telephone, accounting software, web site and social media. SANC’s annual general meeting was being organized and same was needed.<sup>8</sup> Charles did not supply the laptop and codes.

[20] On November 2, 2021, McKenzie wrote to HPS asking for a progress report concerning Charles.<sup>9</sup>

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<sup>8</sup>Exhibit E-7, Letter dated October 14, 2021, from HPS

<sup>8</sup>Exhibit E-3, E-mail thread between SANC and Charles

<sup>9</sup>Exhibit C-3, E-mail dated November 2, 2021, from McKenzie to HPS

[21] On November 3, 2021, SANC wrote to Charles:<sup>10</sup>

- a) asking for the return of SANC's laptop, cellular telephone and access codes by November 8, 2021; and
- b) suggesting a meeting to discuss her return to work and any questions that she may have.

[22] On November 4, 2021, Charles responded,<sup>11</sup> providing some, but not all, information and saying her return to work date is unknown. Charles did not provide SANC with the laptop and cellular telephone as requested.

[23] On November 5, 2021, McKenzie wrote to Charles again<sup>12</sup> requesting the laptop and various information, but allowing her to continue to use the cellular telephone until November 16, 2021. Charles did not respond to this e-mail. She did not provide the information and return the laptop as requested.

[24] On November 15, 2021, HPS sent a letter to SANC.<sup>13</sup> McKenzie expressed surprise with the content of the letter. She said she felt:

- a) Charles chose not to recognize her as her supervisor; and
- b) she had no intention of coming back to work.

[25] On December 20, 2021, SANC wrote to Charles.<sup>14</sup> It specifically asked for the return of SANC equipment, software and login information by December 22, 2021.

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<sup>10</sup>Exhibit E-4, Letter dated November 3, 2021, from McKenzie to Charles

<sup>11</sup>Exhibit E-5, E-mail dated November 4, 2021, from Charles to McKenzie

<sup>12</sup>Exhibit E-6, Email dated November 5, 2021, from McKenzie to Charles

<sup>13</sup>Exhibit C-2, Letter dated November 14, 2021, from HPS

<sup>14</sup>Exhibit E-2, Letter dated December 20, 2021, from SANC to Charles

McKenzie said such a demand was necessary as it needed the equipment. Operations were being affected as SANC had no other working computer and needed access to files. Charles testified she did not return SANC's equipment because a Board member—Ovid Michelle ("Michelle")—told her she did not need to. She did not call Michelle. McKenzie testified about attending a Board meeting at which Michelle offered to try to get the equipment back. The Board decided he should not—the matter should be handled by McKenzie.

[26] On December 20, 2021, SANC wrote to Charles.<sup>15</sup> It set December 23, 2021 as the date for Charles to return to work. McKenzie testified Charles did not respond to the letter. Charles said she did—by writing to the Board.<sup>15</sup>

[27] Charles did not report for work on the date assigned. Charles testified she was not ready to come back to work. She also said that she did not have an opportunity to meet with HPS before December 23, 2021.

[28] On December 23, 2021, SANC wrote to Charles.<sup>16</sup> The letter said, in part:

In view of your failure to respond to efforts made to effect a return to work, and your refusal to return equipment and information belonging to New North, this letter shall serve as notice that you have been terminated from your position with immediate effect, for cause.

[29] McKenzie testified SANC's reasons for terminating Charles' employment were:

- a) a lack of communication;
- b) failure to return equipment, etc.; and

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<sup>15</sup>Exhibit C-5, Letter dated December 20, 2021, from SANC to Charles

<sup>15</sup>Charles did not tender this communication in evidence.

<sup>16</sup>Exhibit C-6, Letter dated December 23, 2021, from SANC to Charles



c) overall issues concerning an unwillingness to work with SANC.

[30] Charles testified that before August 2021:

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

### 3. ISSUES

[31] The issue herein is whether SANC unjustly dismissed Charles.

### 4. DECISION

[32] I find SANC justly dismissed Charles.

[33] I allow the Appeal.

### 5. REASONS

#### 5.1 LEGISLATION

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

##### **Interpretation**

1-2(1) In this Act:

...

(b) “business day” means a day other than a Saturday, Sunday or holiday;

...



**Corporate directors liable for wages**

2-68(1) Subject to subsection (2), notwithstanding any other provision of this Act or any other Act, the corporate directors of an employer are jointly and severally liable to an employee for all wages due and accruing due to the employee but not paid while they are corporate directors.

(2) The maximum amount of a corporate director's liability pursuant to subsection (1) to an employee is six months' wages of the employee.

...

**Wage assessments**

2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

(2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

- (a) the employer;
- (b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2768.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

...

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(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

(6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage assessment to be served on:

- (a) the employer or corporate director named in the wage assessment; and
- (b) each employee who is affected by the wage assessment.

(7) A wage assessment must:

- (a) indicate the amount claimed against the employer or corporate director;
- (b) direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:
  - (i) pay the amount claimed; or
  - (ii) commence an appeal pursuant to section 2-75; and
- (c) in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.

(8) The director of employment standards may, at any time, amend or revoke a wage assessment.

...

### **Commencement of appeal to adjudicator**

2-75(1) Any of the following may appeal a wage assessment:

- (a) an employer . . . who disputes liability or the amount set out in the wage assessment;

...

2-75(2) An appeal pursuant to this section must be commenced by filing a written notice of appeal with the director of employment standards within 15 business days after the date of service of a wage assessment.

...

(4) If the appellant is an employer or a corporate director, the employer or corporate director shall, as a condition of being eligible to appeal the wage assessment, deposit with the director of employment standards the amount set out in the wage assessment or any other prescribed amount.

(5) The amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced.

**Adjudicator – 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; and
- (c) carry out any other prescribed duties.

**Selection of adjudicator**

4-3(1) 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.

(2) On being informed of an appeal or hearing pursuant to subsection (1), the board shall select an adjudicator.

**Procedures on appeals**

4-4(1) After selecting an adjudicator pursuant to section 4-3, the board 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; and
  - (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.

(2) 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 (2) to (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.
- (2) If, after conducting a hearing, the adjudicator concludes that an employer or corporate director is liable to an employee or worker for wages or pay instead of notice, the amount of any award to the employee or worker is to be reduced by an amount that the adjudicator is satisfied that the employee earned or should have earned:
- (a) during the period when the employer or corporate director was required to pay the employee the wages; or
  - (b) for the period with respect to which the employer or corporate director is required to make a payment instead of notice.
- (3) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (2).
- (4) If, after conducting a hearing concerned with section 2-21, the adjudicator concludes that the employer has breached section 2-21, the adjudicator may exercise the powers given to the Court of Queen's Bench pursuant to sections 31.2 to 31.5 of The Saskatchewan Human Rights Code and those sections apply, with any necessary modification, to the adjudicator and the hearing.
- (5) If, after conducting a hearing concerned with section 2-42, the adjudicator concludes that the employer has breached section 2-42, the adjudicator may issue an order requiring the employer to do any or all of the following:
- (a) to comply with section 2-42;
  - (b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;
  - (c) to restore the employee to his or her former position;
  - (d) to post the order in the workplace;
  - (e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.

## 5.2 ANALYSIS

[35] Where an allegation of unjust dismissal is made, the burden rests with the employer—SANC—to establish that there had been, in fact, just cause for dismissal.



[36] In *Thomas v Saskatchewan Indian Gaming Authority*,<sup>17</sup> the Saskatchewan Court of Appeal outlined the governing legal principles of dismissal for cause:

21 The determination of whether an employee's alleged misconduct amounts to just cause for dismissal involves a contextual analysis with an eye to proportionality (*McKinley v BC Tel*, 2001 SCC 38, [2001] 2 SCR 161 [McKinley]; *Balzer v Federated Co-operatives Ltd.*, 2018 SKCA 93 at paras 19 and 50, [2019] 1 WWR 411; *Retail, Wholesale Department Store Union v Yorkton Cooperative Association*, 2017 SKCA 107 at paras 37 and 40). The question to be addressed is whether, in the circumstances, the behaviour of the employee was such that the employment relationship could no longer viably exist (*McKinley* at para 29). In *Dowling v Ontario (Workplace Safety and Insurance Board)* (2004), 246 DLR (4th) 65 (Ont CA), Gillese J.A. summarized the principles emerging from *McKinley* as follows:

[49] Following *McKinley*, it can be seen that the core question for determination is whether an employee has engaged in misconduct that is incompatible with the fundamental terms of the employment relationship. The rationale for the standard is that the sanction imposed for misconduct is to be proportional -- dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship. This is a factual inquiry to be determined by a contextual examination of the nature and circumstances of the misconduct.

[50] Application of the standard consists of:

1. determining the nature and extent of the misconduct;
2. considering the surrounding circumstances; and,
3. deciding whether dismissal is warranted (i.e. whether dismissal is a proportional response).

...

25 . . . . As I read *McKinley*, the . . . requisite contextual analysis calls for consideration of the degree of the misconduct that is said to justify dismissal and an assessment of whether, having regard to all the circumstances, it is of such a nature as to destroy the employment relationship.

...

35 . . . [O]ne of the central points of the decision in *McKinley*, [is] namely that, under the contextual analysis, the question of whether an employee's misconduct is sufficient to amount to cause for summary dismissal is largely factual in nature. It is fair to say that in many - perhaps even most - cases, a single incident of misconduct in the nature of insubordination or insolence will be insufficient to justify immediate dismissal. But it would be incorrect to say that a single incident of such misconduct can never justify immediate dismissal. The determining factor is whether the nature of the misconduct causes irreparable damage to the employment relationship. That determination must be rooted in the particular facts of each case, as Robertson J.A. observed in *Henry*:

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<sup>17</sup>2021 SKCA 164

[111] A review of the jurisprudence leads me to conclude that a single incident of insolence will justify summary dismissal of an employee in one of three circumstances: (1) the employee and superior are no longer capable of maintaining a working relationship; (2) the incident undermined the supervisor's credibility in the workplace and, correlatively, his or her ability to supervise effectively; or (3) that because of the incident the employer suffered a material financial loss, a loss of reputation or its business interests were seriously prejudiced. I confess that these three possibilities do not constitute discrete tests to be applied independently of one another. They may overlap and other exceptional circumstances may exist: see generally Ellen E. Mole, *The Wrongful Dismissal Handbook* (Toronto: Butterworths, 1997) at pp. 75-76.

[112] The impact of the misconduct on the working relationship between the two persons involved in the verbal exchange is a necessary consideration. Depending on what was said, the ability of the two employees to continue working together must be addressed. As well, the impact that the confrontation had on other employees who witnessed the incident is equally pertinent. A supervisor's ability to manage effectively can be undermined, if his or her credibility is destroyed in front of other employees. Finally, the misconduct may be prejudicial to the employer's legitimate financial interests.

[113] Admittedly, the above framework is not entirely objective. An element of subjectivity exists because of the need to draw inferences from primary findings of fact. The decision-maker must draw his or her own inferences based on the totality of the evidence. ...

(Emphasis in original)

### 5.2.1 Nature and Extent of the Misconduct

[37] In their letter December 23, 2021, SANC relies upon two grounds for terminating Charles' employment:

- a) her "failure to respond to efforts made to effect a return to work"; and
- b) her "refusal to return equipment and information belonging to SANC."

[38] SANC points to the following communications with Charles:

- a) on September 7, 2021,<sup>18</sup> McKenzie first asked to meet and later asked to speak

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<sup>18</sup>*Supra*, footnote 5



with Charles;

- i) Charles subsequently agreed to and spoke with McKenzie on September 8, 2021; and
  - ii) at this meeting Charles agreed to go back to work on September 13, 2021—she did not;
- b) in its correspondence dated October 6, 2021,<sup>19</sup> SANC advised that, unless medical advice advised to the contrary, it expected Charles to return to work October 12, 2021;
- i) Charles did not respond to the October 6, 2021, letter and did not return to work on October 12, 2021; and
  - ii) on October 14, 2021, Charles' psychologist, Kerry Spice ("Spice") wrote to SANC<sup>20</sup> and, without providing further detail, advised of a 6-week treatment established to address Charles' concerns preventing her from going back to work;
- c) in its correspondence dated October 29, 2021,<sup>21</sup> McKenzie asked Charles to provide certain social media and website information;
- i) besides some information provided later, Charles did not supply all of this information;
- d) in its correspondence dated October 30, 2021,<sup>22</sup> McKenzie asked Charles to

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<sup>19</sup>*Supra*, footnote 7

<sup>20</sup>Exhibit C-4, Letter from Spice to SANC

<sup>21</sup>*Supra*, footnote 8

<sup>22</sup>*Ibid.*

pickup the laptop;

- i) Charles did not facilitate its return;
- e) in its correspondence dated October 31, 2021,<sup>23</sup> SANC asked Charles for the return of its computer and telephone and various information concerning SANC's social media particulars;
- i) though Charles did provide some information some time later, she did not return the equipment;
- f) on November 2, 2021, SANC asked Spice for a progress report,<sup>24</sup>
- i) Spice did not respond until November 15, 2021;<sup>25</sup> and
  - ii) Spice conveyed several "needs" and requested certain information before "a plan for gradual return to work will be established";
- g) in its correspondence dated November 3, 2021<sup>26</sup> SANC asked Charles to return SANC's laptop and cellular telephone by November 8, 2021, and advise of a date and time to meet and discuss her return to work;
- i) Charles did not return the items by the date requested;
- h) in her correspondence dated November 4, 2021,<sup>22</sup> Charles did not advise of a date for her return to work or a date to discuss same, said she can have the

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<sup>23</sup>*Ibid.*

<sup>24</sup>*Supra*, footnote 9

<sup>25</sup>*Supra*, footnote 13

<sup>26</sup>*Supra*, footnote 10

<sup>22</sup>*Supra*, footnote 11

laptop dropped off any time and asked for time to get a new cellular telephone before returning SANC's cellular telephone;

- i) Charles did not drop off the laptop and did not return the cellular telephone;
  
- i) in its correspondence dated November 5, 2021,<sup>23</sup> SANC again asked Charles for a meeting, again asked for the return of the computer and gave until November 16, 2021 for the return of the cellular telephone;
  - i) Charles did not respond to this correspondence and did not return the computer and telephone;
  
- j) in its correspondence dated December 20, 2021,<sup>24</sup> SANC demanded the return of its equipment and information by December 22, 2021;
  - i) Charles did not return the equipment and information; and
  
- k) in its correspondence dated December 20, 2021,<sup>25</sup> SANC set December 23, 2021, as the date for Charles to return to work;
  - i) Charles did not respond to the letter.

[39] SANC maintains:

- a) it made repeated requests for Charles to return to work and return its equipment and information;

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<sup>23</sup>*Supra*, footnote 12

<sup>24</sup>*Supra*, footnote 14

<sup>25</sup>*Supra*, footnote 15

- b) Charles not only failed to return to work and return its equipment and information, but she also did not engage in any meaningful discussions with SANC in connection therewith; and
- c) no one brought to its attention a medical issue that would prevent Charles from returning to work and returning its equipment and information.

As a consequence, SANC argues it had cause to terminate Charles' employment.

[40] Charles gave no credible explanation for why she did not return the telephone.

[41] The only explanation Charles gave for not returning the computer was that Michelle told her she did not need to. However, McKenzie testified that Michelle had offered to help get the computer back, but the SANC Board directed him not to get involved. It is worthy or note that Charles did not call Michelle as a witness. I do not find Charles evidence credible in that regard and do not accept it.

[42] Charles' evidence was that she was uncomfortable going back to work. She said she felt SANC left her in the dark. She was not prepared to go back to work until she could trust and feel comfortable within her workplace.

### 5.2.2 The Surrounding Circumstances

[43] The factual background on this question is that Charles alleged the previous CEO sexually harassed her. Upon being advised of the complaint, SANC allowed Charles to work from home. SANC took steps to investigate the matter. The previous CEO soon after quit. SANC, *inter alia*:

- a) quickly informed Charles of this update;
- b) advised her of its commitment to enacting a new anti-harassment policy; and

- c) invited her to return to work.<sup>26</sup>

[44] SANC appointed McKenzie to replace the previous CEO. She reached out to Charles on a considerable number of occasions—first, trying to meet, discuss and secure her return to work and later to add the issue of a return of SANC’s equipment and information. All these efforts were unsuccessful. Charles gave no meaningful and substantial information that would show the basis upon which—and when—she would return to work and return SANC's equipment and information.

[45] I am satisfied it was reasonable for SANC to conclude Charles:

- a) was not willing to engage with it regarding her return to work and the return of its equipment and information; and
- b) would not return to work and return its equipment and information in the reasonably foreseeable future.

[46] SANC is a small organization. Its full time staff is the CEO and the Executive Assistant position that Charles had filled. To carry on its business, it was critical for SANC not only to have the services of the Executive Assistant, but also to secure the return of its only computer. Additionally, it needed the various codes required for access to needed software. With the change in CEO, ongoing matters and upcoming time-sensitive business—an Annual General Meeting—SANC could not leave the matters unresolved indefinitely.

### 5.2.3 Is Dismissal Warranted

[44] In the circumstances, I am satisfied Charles conduct and behaviour was such that it was incompatible with the fundamental terms—and struck at the heart—of her employment relationship. It caused irreparable damage to and destroyed the

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<sup>26</sup>*Supra*, footnote 7

employment relationship and justified immediate dismissal.

#### 5.2.4 Progressive Discipline

[45] I would be remiss if I did not address the question of whether SANC was required to use progressive discipline.

[46] The facts are important in this regard. Without restating same in their entirety, I will only do so crisply. Charles went on leave shortly after the allegations were brought forward to SANC. During her leave, McKenzie frequently tried to meet or chat with Charles, but she continuously neglected these attempts. Those attempts turned more serious until finally SANC sent a letter to Charles telling her to get in touch or be fired. There was no response and Charles was fired.

[47] The question, then, is whether SANC was required to give Charles an opportunity to remedy her behaviour before terminating her employment. The principle behind progressive discipline is that employees should be told that they are at risk of punishment and given an opportunity to better themselves. Progressive discipline is ever more becoming a rule in Canadian employment law. This is true especially in circumstances where an employer has a policy stating as such, but it still applies absent the same.

[48] The exception to progressive discipline is an act by the employee so serious that it makes it so that the employment relationship cannot continue. This is, in essence, the contextual analysis I have reviewed above.

[49] The fact is that Charles failed to report to work for months, while retaining important work equipment and information. For that, coupled with her continued absence, I am the view termination is a proportionate response. An additional factor is Charles' continued ignorance of McKenzie. I find that to be insubordination, which in turn has fractured the employment relationship. Charles' conduct was actively preventing SANC from accomplishing its goals, which is just cause for dismissal.

[50] Should SANC have put Charles on notice her job was at stake before the letter of December 20, 2021, was sent out? Or, was her conduct up to that point so serious that termination was the proportionate response? In my view, Charles was put on notice several times throughout the absence that the matter was serious, yet she paid no attention, continuing her absence and withholding property. SANC was justified in determining that there was no future for Charles with the organization.

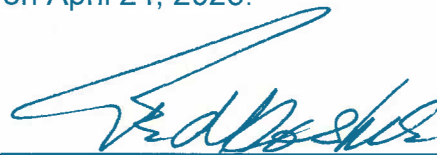
[51] I find that:

- a) Charles' conduct was incompatible with her duties and went to the root of her contract;
- b) the result is that the employment relationship is too fractured to expect the SANC to provide Charles any further chances;
- c) Charles' conduct was such that it precludes continuing her employment relationship; and
- d) Charles' behaviour—as set forth in the facts above—warranted the termination of her employment.

[52] I therefore find SANC has met its burden of establishing that there had been, in fact, just cause for Charles' dismissal.

[53] For the reasons above, I allow the Appeal.

Dated at Saskatoon, Saskatchewan, [on April 24, 2023](#).



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T. F. (TED) KOSKIE, B.Sc., LL.B.,  
ADJUDICATOR