JEREMIAH CARRIER, Appellant v SASKATCHEWAN INDIAN GAMING AUTHORITY INC., Respondent and DIRECTOR OF OCCUPATIONAL HEALTH AND SAFETY, Respondent

LRB File No. 109-23 and 189-24; February 25, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Carrier v SIGA*, 2025 SKLRB 7

The Appellant, Jeremiah Carrier:	Self-Represented
Counsel for the Respondent, Saskatchewan Indian Gaming Authority Inc:	Shane Buchanan
For the Respondent, Director of Occupational Health and Safety:	No one appearing

Appeal Under Part IV – Improperly served – service deemed through Respondent's participation –

Appeal Under Part IV – New Issues Raised on Appeal - Appeal dismissed as issues could and should have been raised to the Adjudicator

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Jeremiah Carrier ("the Appellant") appeals against an adjudicator's decision in relation to his employment with Saskatchewan Indian Gaming Authority ("the Employer"). The appeal is filed pursuant to s. 4-8 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the SEA").

[2] The Appellant was employed by the Employer from February 6, 2023, to March 28, 2023. On March 28, 2023, the Employer dismissed the Appellant while he was still on probation.

[3] The Appellant filed a complaint with an OHS officer in relation to his termination. The complaint was dismissed by an officer.

[4] On July 12, 2023, the Appellant appealed to an adjudicator under Part VI of the SEA. The adjudicator heard this matter and on September 9, 2024, rendered a decision dismissing the appeal ("the Decision").

[5] The Adjudicator found that the Appellant had not engaged in protected activity under s. 3-35 of the SEA and also found that the Employer had established good and sufficient other reason to terminate the Appellant.

[6] On September 27, 2024, the Appellant appealed to this Board. The Appellant's Notice of Appeal focuses on the allegation that the proceeding before the Adjudicator was procedurally unfair because the Appellant did not have counsel.

[7] For the Reasons that follow, the Board dismisses the Appellant's appeal.

Relevant Statutory Provisions:

[8] The issue before the Adjudicator was whether s. 3-35 had been contravened:

> ***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.

[9] This appeal is pursuant to the Board's jurisdiction granted by s. 4-8:

Right to appeal adjudicator's decision to board
4-8*(1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*

(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.

(3) A person who intends to appeal pursuant to this section shall:

(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and

(b) serve the notice of appeal on all parties to the appeal.

(4) The record of an appeal is to consist of the following:

(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;

(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;

(b.1) in the case of an appeal pursuant to Part V, any written decision of a radiation health officer or the director of occupational health and safety, respecting the matter that is the subject of the appeal;

(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III or Part V, as the case may be;

(d) any exhibits filed before the adjudicator;

(e) the written decision of the adjudicator;

(f) the notice of appeal to the board;

(g) any other material that the board may require to properly consider the appeal.

> *(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.*
>
> *(6) The board may:*
>
> > *(a) affirm, amend or cancel the decision or order of the adjudicator; or*
> >
> > *(b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

Analysis and Decision:

Jurisdiction and Standard of Review

[10] The Board's jurisdiction in this matter is restricted to questions on law. This is the plain meaning of the Board's review jurisdiction pursuant to s. 4-8 of the Act: *Tysdal v Cameron*, 2025 SKLRB 1 (CanLII); *Olympic Motors (SK) Corporation v Fowler,* 2024 CanLII 84633 (SK LRB); This interpretation is supported by the obiter comments of the Saskatchewan Court of Appeal in *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII).

[11] The standard of review on questions of law is correctness. For a question of mixed fact and law to rise to an error of law, the adjudicator must not just err in the weighing of the evidence or sufficiency of reasons but err in principle. This was discussed by the Court of Appeal in *P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission)*, 2007 SKCA 149 (CanLII):

> *[68] It follows that a tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence.1 To do so is to err in principle or, in other words, to commit an error of law. (In addition to the cases referred to above, see Toneguzzo-Norvell v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 S.C.R.114 at 121; Wade & Forsyth, Administrative Law (7th ed.) (Oxford: Clarendon Press, 1994) at pp. 316—20; Jones & de Villars, Principles of Administrative Law (4th ed.) (Toronto: Thomson Carswell, 2004) at pp. 244—43 and 431—36; and Hartwig v. Wright (Commissioner of Inquiry), 2007 SKCA 74). Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact.*

Service

[12] The Respondent raises a preliminary objection on the basis that the Appellant at no time effected service as required by s 4-8(3) of the Act:

> *(3) A person who intends to appeal pursuant to this section shall:*
>
> > *(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*

> *(b) serve the notice of appeal on all parties to the appeal.*

[13] The Board agrees with the Employer that the Act requires service. The Employer has explicitly not waived service, and the Appellant has not filed any proof of service in this case. However, the Board finds that service is deemed by the Employer's participation in this appeal and therefore the Board declines to dismiss the appeal on the basis of the Appellant's failure to serve the notice of appeal.

[14] The Board relies on s. 9-9(2)(d) of the Act which permits any method of service acceptable under the King's Bench Rules. Service is deemed by virtue of Rule 12-2(5) of the King Bench Rules, see: *Gardiner v Canada (Attorney General)*, 2023 SKKB 38 (CanLII). Rule 12-2(5) deems personal service of a commencement document where the person to be served files a defence of takes any step that is necessary to participate in a proceeding. The Employer has filed a reply along with a brief of law and attended the hearing. These are necessary steps to participate in the appeal. The Board finds that service is deemed through this participation. If the Employer had not participated, the failure to serve would have been a basis for dismissing the appeal.

Arguments Not Raised Before the Adjudicator

[15] The primary arguments advanced by the Appellant related to procedural fairness were not raised before the Adjudicator. The Adjudicator cannot err in law in questions the parties did not raise. Further, the Appellant is essentially seeking to split the case between the Adjudicator and this appeal.

[16] The general prohibition against new arguments on appeal was discussed by the Court of Appeal in *Zunti v Saskatchewan Government Insurance,* 2023 SKCA 82 (CanLII)

> *[29] As a general rule, this Court does not permit new arguments to be raised for the first time on appeal: see, for instance, Silzer v Saskatchewan Government Insurance, 2021 SKCA 59 at paras 35–39 [Silzer]; Ernst v Saskatchewan Government Insurance, 2019 SKCA 12 at para 8, 34 MVR (7th) 180 [Ernst]; and Farr-Mor Fertilizer Services Ltd. v Hawkeye Tanks & Equipment Inc., 2002 SKCA 44 at para 3, 219 Sask R 148. The theory underlying this stance rests in the desirability for finality in litigation and that the law "requires litigants to put their best foot forward" (Barendregt v Grebliunas, 2022 SCC 22 at para 38, 469 DLR (4th) 1 [Barendregt], quoting Danyluk v Ainsworth Technologies Inc., 2001 SCC 44 at para 18, [2001] 2 SCR 460) and that they not get a "second kick at the can" (S.F.D. v M.T., 2019 NBCA 62 at para 24, 49 CCPB (2nd) 177). Where a similar bias-type argument was raised on appeal in Ernst, this Court observed that it would be unfair to SGI to be required to "respond where that party might have adduced additional evidence at trial if it had been aware of the issue" (at para 8).*

[17] Similarly, this Board also took the position that it is inappropriate to raise new issues on appeal in *Stimco Services Inc. v Robert Steman and Director of Employment Standards, Government of Saskatchewan*, 2021 CanLII 51233 (SK LRB)

> *[24] It is generally inappropriate to raise new issues for the first time on appeal; issues should be raised at the first opportunity so that they can be addressed in a timely manner. The Employer has provided no explanation for why it could not have raised this issue during the prior proceedings, whether at the time of the wage assessment or before the adjudicator. The Board notes that there is nothing in the record that could have alerted the adjudicator to any jurisdictional issue….*

[18] The Board also notes that matters of procedural fairness are not supposed to be raised for the first time on review, as stated in *Athwal v Johnson*, 2023 BCCA 460 (CanLII):

> *[55] It is well accepted that allegations of procedural fairness cannot be raised for the first time on judicial review "if they could reasonably have been the subject of timely objection in the first-instance forum": R.N.L. at para. 72, citing Taseko Mines Limited v. Canada (Environment), 2019 FCA 320, leave to appeal ref'd [2020] S.C.C.A. No. 49 (S.C.C.). The rationale for this principle is straightforward—a first-instance decision maker should be afforded the opportunity to address procedural fairness issues before any harm is done, and a party that is aware of a procedural defect should not be permitted to "stay still in the weeds and later brandish it on judicial review when it happens to be unsatisfied with the first-instance decision": Tsigehana v. Canada (Citizenship and Immigration), 2020 FC 426 at para. 21, citing Hennessey v. Canada, 2016 FCA 180 at para. 21.*
>
> *[56] The opportunity to raise a procedural fairness issue arises when "the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection": Benitez v. Canada (Minister of Citizenship & Immigration), 2006 FC 461, at para. 220, aff'd 2007 FCA 199.*

[19] These rules are not to be applied with too much rigidity. The Board has discretion to consider issues that were not raised at first instance where it would be in the interests of justice to do so. The Board does not consider it to be in the interests of justice in this case as the Appellant was aware of the issues, could have raised them to the Adjudicator, and it is reasonable to expect that the Appellant should have raised issues as to the hearing procedure to the Adjudicator.

[20] The Appellant's primary ground of appeal in the notice of appeal is that the hearing before the Adjudicator was unfair because he did not have legal counsel. The Appellant did not apply to the Adjudicator for the appointment of legal counsel, nor did the Appellant seek an adjournment of the hearing to allow further preparation. The Adjudicator was not given an opportunity to address the procedural fairness concerns, and the Appellant is not permitted to relitigate the case after the fact.

[21] The Appellant was aware of the issue. If the Appellant required further accommodations than were provided to receive a fair hearing, the request should have been made to the Adjudicator. The Adjudicator did respond to the Appellant's request to file written submissions and granted the Appellant leave to file substantial written submissions.

[22] The Appellant did seek an adjournment during the hearing, which the Adjudicator denied. The purpose of the adjournment was to facilitate the transportation of a family member for an issue unrelated to the hearing. This is not an issue of procedural fairness, and the denial of this adjournment request is not a breach.

[23] The Appellant did raise the issue of not having legal counsel in his written submission to the Adjudicator after the conclusion of the hearing. However, it did not include a request to re-open the case or why counsel was necessary at that point. The Appellant exhaustively addressed issues in the written submission. The issue of requiring assistance in order to proceed with the hearing was never properly raised to the Adjudicator. The appeal is dismissed on the basis that the issue in the notice of appeal was never raised at first instance.

[24] Even if the Board were to consider the merits of the appeal, it is not an error of law to proceed on a Part IV appeal without counsel. The adjudication process is not meant to be a process that requires representation for an individual to participate. This Board is meant to be accessible to people without legal training, so too are adjudications under Part IV of the SEA.

[25] The Adjudicator's duty is to ensure that there is a fair process and that the Appellant as a self-represented litigant was able to participate in it: *Pintea v Johns*, 2017 SCC 23 (CanLII), [2017] 1 SCR 470. The record discloses that the Appellant was able to participate in the hearing. The Appellant at the hearing before this Board repeatedly asserted that he lacks legal capacity. The Board disagrees. The Board finds that the record before the Adjudicator and the Appellant's representations before the Board demonstrate that the Appellant has the capacity to fairly participate in this matter and in the hearing before the Adjudicator.

Arguments Not Raised in Notice of Appeal

[26] At the hearing of this matter, the Appellant asked the Board to review the entire 91 page submission to the Adjudicator as the basis for the appeal. This is in no way averred to in the Appellant's Notice of Appeal or written submissions, the Board and the Respondent were not given notice that this was the basis of the appeal. This is despite the Appellant having an original filing deadline that was not complied with and being granted an adjournment and additional time

to file the written submission. The Board would dismiss the grounds of appeal raised at the appeal hearing on this basis alone.

[27] However, to ensure this matter is fully addressed, the Board will consider the request to review the written submission and the Adjudicator's decision. This request is patently an attempt to ask the Board to reweigh the evidence and is outside of the Board's jurisdiction on appeal. This was also clear from the Appellant's oral argument that the Adjudicator did not give sufficient weight to the Appellant's submission.

[28] The Board has reviewed the Appellant's submission to the Adjudicator, the record before the Adjudicator and the Decision. The Board finds no error of law in the Decision. The primary conclusions were made in relation to whether the Appellant had engaged in behaviour protected by s. 3-35, as found by the Adjudicator at paragraphs 37-40 of the Decision:

> *[37] I agree with the Respondent's position on this issue. I have carefully reviewed the materials provided to me in connection with the Appellant's meeting with Romans where he alleges he raised the issue of workplace discrimination. Although Carrier undeniably used the words "isolation" and "bullying" when he reached out to Romans, none of what he alleged was substantially related to harassment. Instead, the Appellant claimed that other employees were discussing matters in the workplace that offended his personal sensibilities-like commenting on drug use by members of the public or that the elevator smelled like smoke.*
>
> *[38] Carrier also complained about a number of other concerns, including that:*
> *a) his training was disorganized and insufficient;*
> *b) he was overwhelmed by his work responsibilities;*
> *c) a variety of changes should be made to workplace procedures including the policy around taking breaks;*
> *d) efficiency scores should not be publicly accessible to other operators; and*
> *e) he felt judged when other employees learned of his vaccination status.*
>
> *[39] Although it is clear that Carrier was struggling in his employment, none of these issues are connected to a credible claim of workplace harassment.*
>
> *[40] I find that the Appellant did not allege an incident of actual harassment that would give rise to a prima facie case that he was terminated for raising concerns about the same. An employee is not required to prove that harassment actually occurred to advance their case that retaliatory action was taken. However, as in Racic, I conclude that there must be more than a bare allegation-even one that uses the word harassment-in order to engage the protections of the SEA.*

The Adjudicator has identified the legal test under s. 3-35. The conclusions are findings of mixed fact and law. The Board finds no error in principle in the findings of fact.

[29] The Adjudicator found in the alternative that even if he was wrong that the Appellant had engaged the protections of s. 3-35, that the Employer had established good and sufficient cause for the termination, as stated at paragraph 48:

> *[48] I agree with the foregoing statements. If the Appellant had shown he was terminated because he took action to exercise his rights under the SEA, the Respondent would bear the burden of establishing that it had a good and sufficient other reason for taking action against Carrier. I find that they have easily done so here. The record before me is dispositive that Carrier was, in fact, terminated for absenteeism and because of the Appellant's abrasive behaviour.*

This is a finding of mixed fact and law. The Appellant has not demonstrated, nor does the Board find an error of law in this analysis.

[30] The Board granted leave to the parties to file additional submissions addressing the *Veldman* decision. The Appellant's submissions in response raised further grounds of appeal. The Board would dismiss these grounds of appeal for being raised in a procedurally unfair manner. Even when considering the merits of the new grounds of appeal, the grounds lack merit and would not support overturning the Adjudicator's decision.

[31] As a result, with these Reasons, an Order will issue that the Appeal in LRB File No. 109-23 is dismissed.

[32] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **25th** day of **February, 2024.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson