

KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 216**

Date: **2024 12 12**
File No.: QBG-SA-00604-2021
Judicial Centre: Saskatoon

BETWEEN:

JOHN DENTON

PLAINTIFF

- and -

PARRIWI MANAGEMENT INC., ATLANTIS MERCANTILE
INCORPORATED, MAVERICK HOLDINGS CORP., and
KORIE MANAGEMENT LTD., carrying on a partnership under
the business name KORPAN TRACTOR AND PARTS

DEFENDANTS

Counsel:

Grant A. Richards
Jared D. Epp

for the plaintiff
for the defendants

JUDGMENT
December 12, 2024

R.S. SMITH J.

[1] The plaintiff, John Denton [John], is a 48-year-old heavy-duty mechanic with his journeyman certification. He asserts that the defendant partnership, operating as Korpan Tractor and Parts [Korpan], wrongfully terminated him and he is, therefore, entitled to reasonable damages in lieu of notice.

[2] Korpan takes the position that they did not terminate John, but rather John tendered his resignation in July 2020 and Korpan decided to accept said resignation in November 2020.

Background

[3] In 1996 John started as an apprentice mechanic with Korpan. He progressed over the years to his journeyman status, then lead-hand, and later fleet service manager. In 2015, he was appointed service manager of the entire repair shop.

[4] Korpan has a fleet of equipment which it leases to construction businesses. In addition, it sells construction equipment and will also service construction equipment its customers bring to it for repairs. As service manager, John oversaw the day-to-day operations of the repair shop attending to Korpan's fleet, as well as equipment belonging to customers.

[5] By July 2020, John was paid \$169,900 per year, plus pension contribution as well as a bonus structure, all of which resulted in an annual compensation of \$177,725.22.

[6] In the five years John was service manager, he would have supervised roughly 15 people. He was also responsible for hiring new mechanics and responsible for invoicing. Directly below John in the Korpan hierarchy was Paul Lee, who was tasked with primarily handling fleet repairs. He reported to John on fleet operating matters.

[7] John would hold weekly meetings with Brian Korpan [Brian] and Tyler Korpan [Tyler], as well as Paul Lee [Paul] and some administrative staff to deal with issues that arose from week-to-week. By spring 2020, there was considerable focus on the rental fleet as the scourge of COVID-19 was casting a shadow over all businesses in Saskatchewan.

[8] Brian and Tyler called John for an unscheduled meeting on July 15, 2020. It took place some time in the afternoon. At the meeting was going to be Brian, Tyler, Paul and the shop foreman (who also reported to John), Jarrie Hegg.

[9] At the time scheduled for the meeting to start, John was with a customer and, therefore, was late attending. As he approached the boardroom, he could hear profanity-laced yelling and when he entered, he saw Brian yelling (even screaming) at Paul. He said he thought Brian was yelling about some equipment repair.

[10] John heard Paul complain to Brian about his yelling. However, Brian's yelling did not get better, it got worse.

[11] Brian also ranted about costs in the service department and how they must be kept down. John heard Paul say that if Brian does not stop yelling, he is going to resign. As noted, the yelling did not stop. Paul then stated something to the effect of "I'm done" and walked out.

[12] John testified that after Paul walked out, Brian turned his wrath on him. John advised that he was taken aback by Brian's vitriol. He turned to Brian and said, in effect, "I am also done" and then walked out of the office.

[13] It should be noted that Brian and Tyler's remembrance of this exchange is somewhat different. They both concede voices were raised and there was some swearing but neither recalls Brian's conduct being quite as unhinged as John's recollection.

[14] Not to excuse anyone's behaviour, but it is worthwhile to recall that July 2020 was in the teeth of the COVID-19 pandemic. How it would end and its effect on business was uncertain. Everyone was on edge.

[15] From my perspective, I accept John's version of what went on during the incident. Not the least of which reason is that Brian's conduct was such that two senior employees, one with 24 years' tenure with Korpan quit "on the spot" and walked out.

[16] Brian and Tyler were also taken aback by the fact that John and Paul, two

senior middle managers, had quit and just walked out the door. Brian said to Tyler, something to the effect that “we can operate without Paul, but we need a service manager”. It was agreed that Tyler should go and speak to John.

[17] Tyler then walked down to John’s office where he was sitting in a chair at his desk. Tyler said something to the effect “don’t throw your career away. We know you have a problem. We want to help you”.

[18] Tyler also said that everything will be okay: “We have your back and we want you to get better.”

[19] Tyler apologized for Brian’s outburst. John said he rescinded or took back his resignation. Tyler does not remember those words being spoken, but each party understood the *status quo* would remain as it was before the meeting.

[20] This was not the first time John had been overcome at work. He had had some problems brought on by several factors. Firstly, John had to lay off half of his workforce, many of whom he regarded as friends and like family. These layoffs, required by COVID-19, took a toll on him.

[21] Further, sometime in February or March of that year, John had lost his father and that bereavement weighed heavily on him. He had had a breakdown in his office on a Wednesday. Tyler became aware of the problem and advised John to take the rest of the week off. At that time Tyler presented as commiserative, just as he did after the fiasco of the July 15, 2020 meeting.

[22] Shortly thereafter John made a claim under the company benefits plan for short-term disability (seven weeks at \$1,000/week). Tyler, on behalf of Korpan, signed off on behalf of John on Empire Life’s short-term disability claim form.

[23] On May 11, 2022, Tyler was questioned by counsel for John Denton and

he admitted that in that time period after the July 15, 2020 meeting he still considered John an employee. From the questioning of Tyler Korpan (page 56, lines 3-6):

Q Yeah. Up until the November letter, Exhibit P-1, is it accurate to say John was still considered an employee of the defendant?

A Yes.

[24] John went home after his supportive talk with Tyler. Later that evening, Brian texted him. Brian's text said:

I'm sorry about today John it was very unprofessional of me. I hope you stay with us. We really do appreciate all that you do.

[25] John texted an appreciative message back and indicated that he felt like a failure, was embarrassed, and ashamed. Brian replied:

You haven't let us down John your the best and your welcome back anytime. Don't be ashamed it's not a big deal. Take a break and get better we want you to be happy and healthy not stressed. It's not your fault it's just the economy and a recession. Everything will get better so don't worry. Catch up on your sleep, go fishing, relax, do things that make you happy. We can handle it until your better it's all good!

[26] Sometime later, on September 21, 2020, Tyler also provided John with a very supportive text. It read:

Hey John, just checking in to see how you're doing. Thinking about you and wanted to let you know. Let me know if you have sometime to chat – feel free anytime.

[27] John replied, outlining to Tyler the very difficult time he was having getting his medications right. Tyler responded on September 30:

John, thank you for getting back to me. I dropped the ball I thought I had replied.

Please know that you are in our thought front and center each minute of every day. Your health & well being is of utmost importance and it needs to be treated that way. Albeit the desire for a quick fix is human nature's wish. This may take some time to get sorted out, and it will present itself to you. If there's anything you need we are here for you – pls know that!

So sorry to hear about what happened with Jason. Please keep in touch as to what you learn we hope he is recovering and is doing well.

Take care take your time & take some deep breaths. Breathing exercises are free and accessible. The breath is the only thing you truly have control of which is true powerful.

The vibrations of the universe may not be where you want them however they are present. I want to share a podcast it's only 15 minutes that is worth a listen it is quite simple.

[28] As noted, John had already been having some psychological concerns and contacted his psychologist. Medications were prescribed and things actually got worse, he became physically sick from the medications, and it took some time to regularize his medical regime.

[29] The seven weeks short-term disability expired and John sought long-term benefits. Empire Life declined long-term disability. John appealed through Empire Life's appeal process and was again disappointed.

[30] Empire Life explained to John via a letter of October 20, 2020 (Exhibit P-12):

... We are aware of the occupational problems you were experiencing and understand the reaction this has caused you; however there is no evidence to support your function is compromised to the point of causing total disability.

Ms. Belzile [Empire employee] spoke with your employer and she was advised there was no decline in your ability to perform your job duties leading up to your last day at work, this would not be indicative of an illness being present that interferes with

the ability to perform occupational duties.

[31] John found himself at home, psychologically frozen and without any income. He contacted Korpan to get some of his vacation pay and he was given some relief. It was necessary for John's wife to take a second job. They also began to sell chattels they did not need and dip into RSP savings.

[32] Piled upon the trauma of no paycheque, John has been burdened by a catalogue of medical issues. Since 2017 he had a problem with hearing loss in his right ear. There was a fluid buildup in the ear. Tubes were placed in the ear and further x-rays were taken. It was discovered he had a tumour between his ear and the brain. In addition, he also suffered from tinnitus (ringing in the ear).

[33] His problem with his ears continued to worsen. Surgery was engaged in 2021 and the tumour was removed. However, he lost hearing on his right side. He also lost his sense of taste and the tinnitus continued. Further, he had balance issues.

[34] John needed a second ear surgery in November 2023. No improvement from that. A third surgery was arranged in April 2024. He noticed some improvement in his hearing and a reduction of dizziness. However, the tinnitus persists. He has recently obtained hearing aids and that has helped somewhat.

[35] Besides his mental health issues and ear problems, John also has a back problem. Years of being a heavy-duty mechanic had taken its toll, and although as service manager he would not crawl on his back as much, he was still dealing with residual issues.

[36] In 2021, he was advised that significant back surgery would be required. Unfortunately, the delays caused by COVID-19 and the chronic understaffing of the Saskatchewan health system did not permit him to get the surgery until August 2024.

[37] The problem John was having with his back prompted his doctor to suggest he should apply for Canada Pension Plan Disability [CPP Disability], which the doctor would support. He finally received approval for CPP Disability in 2024.

[38] However, back in 2020 John was at home, focussing primarily on his mental health. That became something of a challenge as in late November John received a letter from Korpan Tractor dated November 24, 2020 which stated:

Mr. Denton:

This letter is to acknowledge that Korpan Tractor has accepted your resignation which you John Denton verbally announced to Brian and Tyler Korpan with Jarrie Hegg as witness on July 15, 2020 was your last day worked at Korpan Tractor.

Please return all and any property of Korpan Tractor including your company cell phone along with any company passwords needed by the company. You are welcome to come pickup your personal items at a scheduled time or we can arrange for them to be packed up for you and delivered.

[39] The letter was signed by Tyler and Brian. John felt aggrieved and retained the services of Cuelenaere LLP. Correspondence from Cuelenaere LLP went to Korpan Tractor on December 23, 2020 and advised they regarded John as being terminated without cause and entitled to damages. Suffice it to say, that set the table for this litigation.

[40] John continues to grapple with his mental health and his other medical issues. He has not worked since the meeting of July 15, 2020 and he has not looked for a job since then as he is unfit to work.

[41] There is one more item of relevance by way of background. John sued Empire Life because of their denial of his long-term disability benefits. That action was settled for \$25,000 in November 2023, with John netting after legal fees \$21,056.57.

Did John retire on July 15, 2020?

[42] The short answer is no. Although he said the words and walked away, John was within minutes importuned by Tyler who cautioned him not to throw away his career. Tyler offered that if John needed time, he should take time to get better.

[43] Tyler disputes that John spoke the words about rescinding or taking back his resignation. Nonetheless, it is clear from the texts that both Tyler and Brian sent that John's status as an employee was to continue. Unfortunately, neither party addressed their mind to how much time John was to be given to get fit enough for work.

[44] Further, two co-workers at Korpan, Andre Lalonde and Jamie Gardiner, who were employed by Korpan in July 2020, testified that within a day or two of the July 15, 2020 meeting, Brian and Tyler called a meeting of all the employees in the service department. At the meeting, Brian and Tyler advised the group that John had not resigned but he needed some time off for his health. They confirmed Korpan was giving him that time off and he was expected to return.

[45] In short, there is no characterization of the facts which leads to a conclusion that John resigned on July 15, 2020.

[46] Although it is clear Tyler and Brian wanted John to take some time off to address his mental health, it is unfortunate that at no time did any one of the three of them direct their minds to the issue of "how long?" As noted, eventually Korpan simply shrugged its corporate shoulders and sent the letter of November 24, 2020.

[47] Korpan argues that if the Court concludes that John did not resign on July 15, then there is no question that he simply walked away and abandoned his employment relationship with Korpan.

[48] I am of the view that John did not consciously leave his employment

relationship with Korpan between July 2020 and November 2020. He was focussing on his health, specifically his mental health, and trying to get his medical regime stabilized. I conclude he did not abandon his employment.

When was John fired?

[49] John's counsel makes the case that he was fired on July 15, 2020. In his brief, starting at paragraph 27, he opines:

27. In the alternative, John submits that Brian's verbally abusive tirade against Paul Lee and then directed at John at the July 15, 2020 meeting constituted a constructive dismissal.
28. Brian yelled, used profanity, refused to use a respectful tone when asked to do so and threatened everyone's job without giving either John or Paul Lee an opportunity to respond. In his text to John, Brian characterized his own behaviour at the meeting as "unprofessional," and it caused not one, but two of Korpan's senior employees (John and Paul Lee) to resign on the spot rather than face further abuse. In addition, this verbal abuse took place in front of one of John's subordinates, Jarrie Hegg.
29. Case authority to the effect that such verbally abusive conduct on the part of an employer will constitute constructive dismissal, includes *Ulmer Chevrolet Oldsmobile Cadillac Ltd. v. Kowerchuk*, 2005 SKPC 18 (CanLII) at (Tab 2) as well as the cases referred to therein at paras. 22 to 25, and the decision of the Saskatchewan Court of Appeal in *Berg v. Cowie*, 1918 CanLII 319. (Tab 3)

Respectfully, John's counsel overread the cases relied upon. The conduct of Brian at the meeting on July 15 was egregious. However, one bad meeting is not enough to underpin a case for constructive dismissal. The constructive dismissal debate is rendered academic because of subsequent facts.

Sabotaging Long-Term Disability

[50] I conclude that when Korpan personnel refused to support John's application for long-term disability that was the equivalent to termination. The fact that Korpan, John's employer, scuttled John's access to long-term disability was consistent with terminating the relationship between Korpan and John and could, therefore, serve as the date of termination without cause.

Letter of November 24, 2020

[51] Finally, the letter of November 2020 which purported to accept the resignation of July 15, 2020 could also be characterized as the employer taking steps to terminate the relationship.

[52] As outlined previously, there was no extant resignation available to accept but the nature of the letter indicates the decision by Korpan to end its relationship with John.

[53] In sum, regardless of what facts you review, there is no rational conclusion to reach other than Korpan terminated John's employment, without cause.

Reasonable Notice

[54] It is well settled, if not trite, that when an employee is terminated without cause he or she is entitled to termination pay in lieu of reasonable notice. The difficulty is always in the calculation of reasonable notice.

[55] Korpan argues that if somehow the Court mistakenly concludes that John was terminated without cause, then the case law, which it reviewed in Schedule A of its brief, would lead to a conclusion that a reasonable notice period of 12 to 18 months is appropriate.

[56] Not surprisingly, John has a different perspective. John was a 24-year employee who had progressed through the ranks to a position that could be characterized as senior middle management. He is 48 years of age. The plaintiff asserts that he is entitled to 24 months' reasonable notice. John's counsel outlines in his brief:

- 38. John submits that he is entitled to 24 months pay in lieu of notice. Based on his 2019 T-4, which indicated an annual employment income of \$177,725.22 (including the employer's pension contribution), John should receive an award of \$355,450.44.
- 39. Case authorities for such an award include *MacDonald v. Saskatoon Minor Basketball Association* (supra) at Tab 4 and *Ketch v. Meadow Lake Mechanical Pulp Ltd.*, 2023 SKKB 241 at Tab 5.

[57] In *Ketch v Meadow Lake Mechanical Pulp Ltd.*, 2023 SKKB 241 [*Ketch*], I did my own research, reflected at paragraph 78 of the judgment:

[78] I have unearthed a number of cases with reasonably similar circumstances that have provided me guidance on an appropriate notice period. They are:

Case Name	Age	Years of Service	Position	Reasonable Notice (in Months)
<i>Pohl v Hudson's Bay Company</i> , 2022 ONSC 5598, 83 CCEL (4th) 87	53	28	Senior Supervisor	24
<i>Keenan v Canac Kitchens Ltd.</i> , 2015 ONSC 1055, 2015 CLLC 210-025	63 & 61	25 & 32	Supervisor	26
<i>Miller v ICO Canada Inc.</i> , 2005 ABQB 226, [2005] 9 WWR 386	47	30	Special Projects Supervisor	22
<i>Sandy v Beausoleil First Nation</i> (2003), 24 CCEL (3d) 304 (Ont Sup Ct)	46	30	Property Manager/Executive Assistant	24
<i>Kuny v Owens-Corning Canada Inc.</i> , 1999 ABQB 540, 246 AR 168	60	Predecessor company for 13; current company for 20	Shift Supervisor	22

[58] In *Ketch*, I awarded 24 months' reasonable notice. Having considered the above cases, as well as those outlined by counsel, I have no hesitation in concluding that a reasonable notice period for this contest is 24 months.

Mitigation

[59] Korpan takes considerable umbrage that John, from their perspective, has not lifted a finger in an attempt to mitigate his damages. Starting at paragraph 59 of its brief, it argues:

59. Mr. Denton has also neglected to address his failure to mitigate his damages in any meaningful way. Other than citing "medical reports" and noting that Korpan Tractor bears the burden of proof, Mr. Denton sidesteps the mitigation issue completely. He does so at his own peril as this is, if the Court concludes that Mr. Denton was terminated, one of the most crucial issues in this case.

60. As first explained in *Red Deer College v. Michaels*, [1976] 2 SCR 324:

In the ordinary course of litigation respecting wrongful dismissal, a plaintiff, in offering proof of damages, would lead evidence respecting the loss he claims to have suffered by reason of the dismissal. He may have obtained other employment at a lesser or greater remuneration than before and this fact would have a bearing on his damages. He may not have obtained other employment, and the question whether he has stood idly or unreasonably by, or has tried without success to obtain other employment would be part of the case on damages. If it is the defendant's position that the plaintiff could reasonably have avoided some part of the loss claimed, it is for the defendant to carry the burden of that issue, subject to the defendant being content to allow the matter to be disposed of on the trial judge's assessment of the plaintiff's evidence on avoidable consequences. ...

61. This duty was also explained in the often cited case of *Forshaw v. Aluminex Extrusions Ltd.*, 1989 BCCA 234

[39 BCLR (2d) 140]:

The duty to "act reasonably", in seeking and accepting alternate employment, cannot be a duty to take such steps as will reduce the claim against the defaulting former employer, but must be a duty to take such steps as a reasonable person in the dismissed employee's position would take in his own interests—to maintain his income and his position in his industry, trade or profession. ...

62. In this case, Mr. Denton openly admitted during his cross-examination that:
- (a) He has not applied for a single job;
 - (b) He has not, on any occasion, searched the market to see what jobs are available; and
 - (c) Has has not attempted to enroll in any course or taken any type of job training or retraining.

[60] John freely admits he has not looked for work; a combination of ongoing mental health issues, combined with what can only be described as a catalogue of medical issues, has meant he is unable to seek employment. As noted, he is now on CPP Disability.

[61] I accept John's testimony with regard to his continuing problematic mental health and physical health challenges. He has not mitigated because he has been unable to.

Intentional Infliction of Mental Suffering/Moral Damages

[62] John argues that the Court should not stop at damages for reasonable notice. Starting at paragraph 40 of his brief, he argues:

40. John submits that Brian's verbal abuse of John at the July 15, 2020 meeting and the subsequent dismissal in November of 2020 caused and was intended to cause mental distress to John at a time when Korpan knew that John was

in a somewhat fragile mental state caused by his having to lay off half of the people who worked under him at Korpan and the death of his father just a short time prior to the meeting.

41. Additionally, Korpan advised Empire Life of the termination of John's employment, which had the effect of disentitling him to any further disability benefits.
42. Based on John's testimony, the uncontroverted medical evidence and the testimony of John's wife, it is submitted that Korpan's conduct concerning John's dismissal warrants an award of exemplary or aggravated damages. Case authority for such an award includes:
 - a) *Keays v. Honda Canada Inc.*, 2008 SCC 39 – Tab 6;
 - b) *Lalonde v. Sena Solid Waste Holdings*, 2017 ABQB 374 – Tab 7 – A Plaintiff was a millwright, who was unexpectedly called into a meeting and accused of various misconducts and infractions without being given a reasonable opportunity to respond. Aggravated damages of \$75,000.00 were awarded against the Defendant company. It is submitted that these circumstances are similar to those in the present case, and John seeks a similar award in addition to the pay in lieu of notice.

[63] I must respectfully disagree with John on this point. Yes, the meeting of July 15, 2020, was unfortunate but, as noted, the problems imposed on all aspects of life by COVID-19 frayed the nerves of even the most reasonable.

[64] It is also telling that once Brian and Tyler realized what had happened, they immediately adopted a supportive and commiserative attitude with John. What no one considered was “how long could it go on?” Obviously by November, Korpan Tractor decided to end its relationship with John. Again, arguably clumsily handled but not maliciously.

[65] In my view, there is no conduct which underpins an award for moral damages like those awarded in the cases mentioned by John or in the Ontario Superior

Court decision in *Rutledge v Markhaven Inc.*, 2022 ONSC 3183.

Adjustments and Conclusion

[66] Korpan asserts that as John received \$7,000 in short-term disability payments, that should be deducted from any final judgment, I agree.

[67] Korpan also argues that the net settlement received from Empire Life for the denial of long-term disability (\$21,056.57) should also be deducted from the judgment. In my view, that sum of money that arises in the litigation against Empire Life is sufficiently removed from the relationship between John and Korpan that it is not a proper deduction from the judgment. I decline to do so.

[68] Therefore, John will have judgment against Korpan in the amount of \$355,450.44, less \$7,000, resulting in a net judgment of \$348,450.44.

[69] John shall also have his costs against Korpan under Column 1.

R.S. SMITH J.