

**IN THE MATTER OF A COMPLAINT OF UNJUST DISMISSAL UNDER Part III,  
CANADA LABOUR CODE, R.S.C 1985, c. L-2;**

**AND IN THE MATTER OF AN ADJUDICATION UNDER SECTION 242 OF THE  
CANADA LABOUR CODE, R.S.C 1985, c. L-2;**

**BETWEEN:**

**JAMIE CHATFIELD**

*Complainant*

- and -

**2132135 ONTARIO LTD. O/A CQR LOGISTICS**

*Respondent*

**SUPPLEMENTARY DECISION - REMEDY & QUANTUM OWING**

**ADJUDICATOR:**

Shari L. Novick

**PARTIES & REPRESENTATIVES:**

Jamie Chatfield (Complainant)

Saad A. Mirza & Christina Bowman , counsel for the Respondent

**SUPPLEMENTARY AWARD :**

Mr. Chatfield filed a complaint under section 240 of the *Canada Labour Code*, alleging that he was dismissed by his Employer, 2132135 Ontario Ltd. (operating as CQR Logistics). After hearing evidence from both parties, I upheld the complaint and determined that his dismissal was unjust. I found that this was not an appropriate case to order that Mr. Chatfield be reinstated to his position with CQR Logistics, and ordered the Employer to pay him various amounts.

My decision was issued on December 11, 2020. The last section is titled “Disposition”, and provides as follows –

*Mr. Chatfield’s complaint of unjust dismissal is allowed.*

*He is entitled to ten days of Termination pay in accordance with section 230 of the Code, and seven days of Severance pay pursuant to section 235 of the Code. He is also entitled to additional compensation of \$5,000 in accordance with subsection (c) of section 242(4).*

*The parties are directed to proceed as follows:*

- 1. The Employer shall calculate a figure representing either a full day or full week of pay, as directed earlier in the decision, and determine the appropriate amount of termination pay and severance pay owing. They shall advise Mr. Chatfield of the amounts calculated, and the manner in which they were calculated, within fifteen days of the date of this decision. This time frame may be extended by mutual consent.*
- 2. Mr. Chatfield shall review the figures provided and advise the Employer within fifteen days after receiving them as to whether or not he agrees with amounts arrived at. If he does not agree, he should provide his calculations and figures to the Employer within a further ten days. This time frame may be extended by mutual consent.*

3. *If the Employer agrees with Mr. Chatfield's calculations, or if the parties agree on an appropriate figure for the compensation to be paid, the Employer shall make that payment within a further ten days of that agreement.*

*I remain seised of this matter in the event that the parties are unable to agree on the proper amounts to be paid to Mr. Chatfield. Either party may contact me by email in the event that they cannot reach an agreement, and arrangements will be made for me to hear further submissions and be provided with the relevant information.*

As cited in my initial award, section 242(4) of the *Code* provides:

*Where an adjudicator decides pursuant to subsection (3) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to*

*(a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;*

*(b) reinstate the person in his employ; and*

*(c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.*

### **ATTEMPTS TO QUANTIFY “REGULAR RATE OF WAGES”:**

The provisions in the *Code* that outline amounts to be paid for Termination Pay and Severance Pay require a calculation of an employee's “regular rate of wages”. Mr. Chatfield worked as a long-haul truck driver, and was paid on the basis of miles driven, rather than hours worked. As a result, his earnings would vary from week to week. Given that section 230 provides that an employee who is dismissed is entitled to “two weeks wages at his regular rate of wages for his regular hours of work”, I directed the parties to calculate a figure reflecting either a full day or full week's pay, based on Mr. Chatfield's average earnings during his period of employment, so that amounts owing for Termination Pay and Severance Pay could be calculated.

Mr. Chatfield contacted me fifteen days after the initial decision was released on December 11, 2020, to advise that the Employer had not provided him with its calculations. I suggested he wait a few more days, in light of the Christmas and New Years holidays, and consequent disruptions in work. He contacted me again on January 7, 2021 and advised that no response had been received.

I then wrote to counsel for the Employer to inquire why no calculations had been provided, as required by the award. Counsel subsequently responded, stating that they had not received my decision. They explained that their office had experienced technological issues in December, and suggested that may be why it had not been received. I note that my initial decision was sent to counsel for the Employer by both fax and email, given that personnel in most law offices are working remotely due to the COVID 19 pandemic.

In the circumstances, I provided the Employer with an extension to provide its calculations for the amounts payable with regard to the Termination and Severance Pay to January 13<sup>th</sup>. When no response was received by that date, I invited Mr. Chatfield to provide me with his calculations regarding his average earnings. He responded that his log sheets and pay stubs had been stolen, and that he did not have detailed records supporting his earnings. He also advised that he had some documentation suggesting that he had earned \$4,700 over a three-week period, for trips taken to Calgary and Montreal.

I granted two further extensions to the Employer to provide a response to this figure, or any documentation supporting a different calculation. Despite counsels' suggestion that they would contact their client to obtain this information, I have received nothing to date from the Employer.

In the circumstances, I am prepared to accept Mr. Chatfield's figures for the purposes of the Termination Pay and Severance Pay calculations.

**TERMINATION PAY OWING:**

Using the figure of \$4,700 for a three-week period (fifteen days), I calculate a daily earnings figure of \$313.34. When that daily amount is multiplied by the ten days of pay that Mr. Chatfield is entitled to under section 230 of the *Code*, a total amount of \$3,133.34 is arrived at.

**SEVERANCE PAY OWING:**

Mr. Chatfield is entitled to seven days of Severance Pay in accordance with section 235 of the *Code*. When the daily figure of \$313.34 is multiplied by seven, a total amount of \$2,193.34 is arrived at, representing his entitlement under this provision.

**ADDITIONAL REMUNERATION:**

As cited above, section 242(4) of the *Code* provides an Adjudicator with the jurisdiction to reinstate an employee who was unjustly dismissed into his position, and to make any further order that is equitable to remedy the consequence of the dismissal. I ruled in my initial decision that Mr. Chatfield should not be reinstated into his former position as a driver for CQR. I determined that in accordance with section 242(4), he was entitled to a further \$5,000 in additional compensation as a result of the loss of that employment.

**TOTAL AMOUNTS OWING:**

When the three amounts set out above are added together, they total **\$10,326.68**. The Employer is therefore *required to pay this amount in full to Mr. Chatfield within fourteen days of the date of this decision.*

If CQR Logistics fails to make the above payment by *February 19, 2021*, Mr. Chatfield will be entitled to enforce this award in the Federal Court.

**DATED AT TORONTO, THIS 5<sup>th</sup> DAY OF FEBRUARY, 2021**



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**Shari L. Novick,  
Adjudicator**