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

DECISION

ADJUDICATOR:

Shari L. Novick

APPEARANCES (VIA VIDEOCONFERENCE):

Jamie Chatfield (Complainant)

Saad A. Mirza, counsel for the Respondent

BACKGROUND:

Jamie Chatfield was employed by CQR Logistics (the "Employer") as a long-haul truck driver from January 18, 2018 to April 2, 2019. Mr. Chatfield ("the Complainant") was dismissed from his employment as a result of an incident on January 31, 2019, when several televisions were discovered to be missing from a load that he delivered to a customer in St. Leonard, Quebec. The Employer also alleges that Mr. Chatfield was "selling fuel" by using the fuel card that it supplied to pay for other truck drivers' fuel, and pocketing cash that they provided in exchange.

Mr. Chatfield disputes these allegations and challenges the Employer's decision to dismiss him for cause. He filed a complaint under section 240 of the *Canada Labour Code* alleging that he was unjustly dismissed. I was appointed by the Minister of Labour to adjudicate the matter, pursuant to section 242(1) of the *Code.* Various attempts at resolving this dispute were unsuccessful, and I convened a hearing at which evidence was heard from three witnesses.

Prior to initiating this complaint, Mr. Chatfield had filed a complaint under the *Code* seeking payment of unpaid wages. While that matter was resolved with the assistance of a Labour Affairs Officer prior to this hearing and was not part of my mandate, it was clear that the issues that surfaced in that process remained in the background to this unjust dismissal claim.

THE HEARING:

The hearing proceeded on October 6, 2020, via videoconference.

The Employer was represented by counsel and called two witnesses – Ravinder Saib, one of the owners of CQR Logistics, and Police Detective Constable John Powell. Mr. Chatfield represented himself and provided sworn testimony setting out his version of events. The gist of the evidence tendered is set out below.

EMPLOYER'S EVIDENCE:

Ravinder Saib

Mr. Saib has been involved in the trucking business for over fifteen years, as both a driver and dispatcher. He is one of the owners of CQR Logistics, the company that employed Mr. Chatfield. He has known the Complainant since 2013, when Mr. Chatfield was an independent operator, driving his own truck. He explained that that truck was damaged in an accident and had to be written off, and that Mr. Chatfield subsequently contacted him to inquire about driving for his company in late 2017. He was hired by CQR in January 2018.

Mr. Saib explained that the Complainant was regularly assigned to drive long-haul routes within Canada shortly after that. He stated that his performance as a driver was satisfactory, but that he was often late for his deliveries and regularly made long, unscheduled stops enroute to his destination.

The witness explained that drivers are advised of the company's general procedures when they begin their employment, and are required to sign a document confirming that they agree to abide by them. Mr. Chatfield did so before he was assigned to deliver any loads. He stated that one of the Employer's policies requires drivers to call dispatch if there are any problems with the equipment or difficulties experienced with their delivery. Mr. Saib recalled that Mr. Chatfield had sent him pictures and videos demonstrating problems with the trucks he drove prior to the incident in question, indicating that he was aware of this requirement.

Mr. Saib testified about the procedures that drivers were expected to follow when picking up and delivering loads. The driver assigned to a load would be provided with the pickup number and location of goods to be transported, and would drive to that location. The truck would be loaded, after which the shipper would close the trailer door and affix a seal. The number on that seal would correspond with the number on the Bill of Lading, and a copy of that document was provided to the driver. The shipper would then send a copy of the Bill of Lading to the receiver at the place the goods were being delivered to, along with the number of skids in the shipment.

The witness explained that a seal is affixed to the latch on the rear door of the trailer, to ensure that the load is not tampered with while it is in transit. Once the load arrives at its destination, the receiver confirms that the number on the seal matches that on the Bill of Lading, and either breaks the seal or advises the driver to do so. He stated that if a load is damaged, or any other problem is experienced during the delivery, the driver is expected to call the CQR office. The driver is also required to file and sign an Incident Report outlining the relevant details, and a copy of that report is sent to the customer.

Mr. Saib testified about the incident on January 31, 2019, that led to Mr. Chatfield's dismissal. He explained that another driver was assigned to pick up a load of large screen televisions from a customer in Halton the prior evening, and drove them to the Employer's yard in Brampton. Mr. Chatfield was assigned to pick up the load from there and deliver it to St Leonard, Quebec by 7 a.m., the following morning. Mr. Saib recalled that the Complainant called him around 9 p.m. to advise that he was leaving the yard, and that he told Mr. Chatfield that he was delivering a "high value" load containing large-screen TVs.

The witness explained that the company's trucks are equipped with "SAT phones" which permit him to track a truck's location at any time. He noted that the truck that Mr. Chatfield was driving had only travelled as far east as Oshawa by midnight, and had been stopped for awhile. He called Mr. Chatfield to ask why he had stopped, and was told that he was having dinner with his sister, who lived in the area. He checked the SAT signal again awhile later, and saw that the truck had made two more stops in the Oshawa area. He called Mr. Chatfield around 1 a.m., to ask why he was still in Oshawa, and was told that he had drove his sister's boyfriend home and had then stopped at his ex-wife's house to pick up some laundry and bedding. Mr. Chatfield also reported that he had stopped to fix the lights on the truck.

Mr. Saib testified that he received a call the next morning from the customer in Quebec, who reported that fifteen TVs were missing from the load delivered by Mr. Chatfield. The witness was surprised that Mr. Chatfield had not called in to report this, and called him in the truck. He recalled Mr. Chatfield telling him that he forgot to call the office, and that Tony, the receiver at the customer's yard in Quebec, had watched him break the seal.

Mr. Saib explained that he requested and received a video from the receiver that showed the Complainant exiting the truck to break the seal. It was clear from the video that the receiver had not gone out to the truck to ensure that the number on the seal matched the one on the Bill of Lading. The witness stated that Mr. Chatfield's back was to the camera and blocked the view of the back of the truck, so he could not tell if the seal had already been broken or whether it matched the number on the Bill of Lading.

Mr. Saib stated that he advised Mr. Chatfield to come to the office to complete an Incident Report documenting what had taken place. He recalled Mr. Chatfield doing so a day or two later, and signing a report that had been completed by the dispatcher. Mr. Saib stated that the report was based on what the Complainant had told him over the phone. This report was filed into evidence. The relevant parts read as follows –

> *As per him he reached at receiver around 7 – 7:30 a.m, no one told him to break the seal as he never went inside to confirm with the receiver to come and check the seal, still he broke the seal without notifying and his back was towards receiver and receiver could not confirm the seal number as he can only see driver's back not the seal (Tony at receiver), and then he backed up for offloading.*
>
> *After offloading about half the trailer, Tony found out an empty skid with shrink wrap on it, and advised him about this situation, after offloading, he left the site around 9 am, but he did not inform anyone in the office until one of company's owner (Ravinder Saib) called him to ask about the delivery, around 10 am and found out about the situation. Jamie accepted his mistake and agreed with Ravi for the $5000 deductible for the potential claim for the missing goods from the trailer which was in his possession all the time. A police report was made for the loss.*

The report purports to be signed by Mr. Chatfield. I note that Mr. Chatfield insisted in his evidence that he did not sign this document and that he does not agree with its contents.

Mr. Saib testified that he subsequently contacted the Durham Region police to report the theft, and filed a report. He provided the video he had received from the receiver and the SAT reports for the truck, showing that it had stopped at three locations near Oshawa for long periods. He stated that he was subsequently asked by the police to provide a video of the TVs being loaded onto the truck

in Halton. He requested that material and received a USB drive about two weeks later, which he delivered to the Durham police office.

The witness explained that he continued to assign loads to Mr. Chatfield to deliver, but that he was suspicious about the stops he had made in Oshawa that night. He felt, however, that as he did not have proof that he had stolen the goods, he should await the results of the police investigation. Mr. Saib stated that he then received a call from Detective Powell, who advised that someone he had spoken to in the course of the investigation had reported that Mr. Chatfield had approached them and tried to sell some TVs. The detective advised that this person was not prepared to come forward and testify in court.

Mr. Saib testified that he felt that this was "solid evidence" of Mr. Chatfield's involvement in the theft. He called him while he was enroute to a delivery in Calgary and asked him to return. Mr. Chatfield was dismissed from CQR a few days later.

Mr. Saib stated that another reason that contributed to the decision to dismiss Mr. Chatfield was the excessive amounts he had been charging to the fuel card provided to him. He explained that the company provides long-haul drivers with fuel cards for buying diesel and other supplies for the trucks while on deliveries, to be used at "Flying J" service stations around the country. He stated that the company can track the amount of fuel used by each driver, and that the average fuel consumption for newer trucks varies between 50 cents and 65 cents per mile, and between 60 cents and 75 cents per mile on older trucks. He advised that the records showed that Mr. Chatfield would average $1.29 per mile, approximately double the average. Detailed trip sheets and lists of fuel purchases for two long trips the Complainant took in March 2019 were filed, one of which showed an average fuel consumption of $1.29 per mile, the other approximately 97 cents per mile.

The witness stated that he raised this issue with Mr. Chatfield, and that he responded that there was a problem with the truck that he was assigned to drive. He recalled providing Mr. Chatfield with a different truck for the next trip, but his fuel consumption was still higher than that of the other drivers. Mr. Saib conceded under cross-examination that Mr. Chatfield had told him that some of the trucks "ran cold" and suggested that a "skirt" be put on. He accepted that if the trucks

were running cold, their fuel consumption might be affected, but stated that it would only have resulted in an increase of 5 to 10 cents of fuel per mile.

Mr. Saib testified that he concluded from the above that Mr. Chatfield was using the company's fuel cards to "sell fuel" to other drivers. He explained that a few years before the Complainant worked at CQR, while Mr. Saib was driving his own truck, Mr. Chatfield had approached him at a gas station and offered to buy him some fuel with his employer's fuel card. He explained that some drivers who are provided with fuel cards will offer to pay for an owner/operator driver's fuel with their card, in exchange for the owner operator paying them a lesser amount in cash. He gave the example of a driver with a fuel card buying $400 worth of fuel and products for an owner/operator and charging it to his employer's card, and the owner operator giving him $200 or $250 in cash, which he would keep for himself.

Mr. Saib explained that he confronted Mr. Chatfield with this allegation, but that he denied that he had been "selling fuel". The witness stated that "we were not sure, but it pointed toward things not being right" and that this coupled with the missing TV incident, led to the decision to "let him go because he was costing us too much money".

Police Detective John Powell

Detective Powell has been a police officer for fifteen years and had been a detective for approximately three years prior to the time of this incident. He testified that he was the lead investigator appointed to look into the missing TV incident outlined above. He stated that he spoke to many people in the course of the investigation, and was provided with and reviewed the video of the truck backing up and being unloaded at the receiver's yard in Quebec. He was also provided with the GPS records of the truck that showed that Mr. Chatfield had made three different stops in Oshawa the night before the delivery.

The witness explained that after reviewing the above material, he contacted the Crown Attorney's office regarding the possibility of laying charges on the Complainant. He was told that he should obtain further material, such as a statement from the driver who had initially loaded (or supervised the loading of) the TVs onto the truck, and a statement from the receiver in Quebec addressing

who had removed the seal from the door of the trailer, after it arrived on the lot. Detective Powell advised that he contacted the Employer on various occasions to request this further evidence, but that no response was received. He stated that as no corroborating information was provided, he closed the investigation without laying any charges.

The witness explained that the video he reviewed shows a truck pulling into the receiver's lot, and stopping about fifty or sixty feet away from the building. The driver can be seen exiting the truck, walking to the rear of the vehicle, and opening the back door. He then reverses the truck, with the rear door open, toward the dock. Detective Powell stated that given the distance from which the video was taken, he was not able to see whether the seal on the truck's rear door was open or closed. He could also not identify the height or weight of the driver, or any other of his distinguishing characteristics.

Detective Powell also stated that he had received a "tip" from someone in the course of the investigation, who told him that Mr. Chatfield had offered to sell him some TVs. He testified that this person advised that they needed to remain anonymous and that they were not prepared to co-operate with the Crown Attorney's office or testify in court. When asked whether he could provide further details of this conversation, without revealing the identity of the person, Detective Powell claimed that he could not do so, as that could result in revealing who the person is and could potentially trigger "liability issues".

I asked Detective Powell to detail the efforts he made to obtain further information from the Employer before deciding to close the investigation. He advised that he both called and emailed Mr. Saib on May 23, 2019, requesting that statements be obtained from the two people referenced above. He repeated that request on August 27, 2019, when he was contacted by Christina Bowman, counsel to the Employer. He then sent a follow up email to Mr. Saib on September 16, 2019, and called him again on October 22, 2019, and left a message. No response was received to any of these queries, and the investigation was consequently closed on October 24, 2019.

COMPLAINANT'S EVIDENCE:

Mr. Chatfield denied that he was involved in the theft of televisions that came to light on January 31st. He stated that he has transported many loads for Mr. Saib over the years, and considered him to be a friend. He acknowledged that Mr. Saib had helped him out a few times, and testified that he "never took a dime from him", stating "I'm not about to steal from a friend". He stated that he had no idea what happened to the televisions that went missing from the load he delivered to Quebec, and denied having approached anyone to sell them while in Oshawa, as alleged.

Mr. Chatfield acknowledged that he had stopped a few times in Oshawa enroute to the delivery in Quebec. He explained that he had arranged to have dinner with his sister who lived in the area, and that Mr. Saib had been aware of that. As noted above, he stated that he also drove his sister's boyfriend back to his place after dinner, and that he then stopped to pick up laundry and some bedding from his ex-wife's house before heading back onto the highway.

Mr. Chatfield testified about the usual process involved in delivering a load to a customer. He stated that he would pull the truck into the lot, give the paperwork to the receiver, and ask which door to pull into for unloading. He would also ask whether the receiver wanted to come out to the truck and break the seal, or whether he should do so. Mr. Chatfield stated that 99% of the time, receivers would not come out to break the seal and would tell the driver to do so.

The witness advised that on the day in question, he arrived at the customer's location and brought the Bill of Lading into the office. He recalled asking Tony, the receiver on the lot, whether he wanted to break the seal, or whether he should do it, and that Tony told him to break the seal. He went back out to the truck and "snapped it with my fingers", explaining that it was easy to snap a plastic seal. He stated that he opened the right rear door of the truck and tossed the seal onto the floor of the trailer, after which he backed the truck into the designated spot. He stated that he had not seen the video referred to by the Employer's witnesses, but that given that he is over six feet tall and weighs 300 pounds, it is not surprising that anyone viewing it would not be able to see him breaking the seal, as his body would have blocked that view.

Mr. Chatfield testified that after pulling the truck up to the unloading dock, he exited the cab to watch the cargo being unloaded. He stated that the TVs were stacked on skids, and that there was an empty skid in the middle of the trailer. He recalled that he and the worker unloading the cargo both counted the skids a few times in order to confirm that one skid of TVs was missing. They then went into the main office to report the missing items.

Mr. Chatfield agreed that he left the site after the missing skids were discovered, and did not call Mr. Saib or anyone at the CQR office to report the incident. He acknowledged that he should have done so, but explained that he was booked to pick up another load and was running late. He also stated that Tony the receiver had told him that "he would call Ravi".

Mr. Chatfield denied that he had used the Employer's fuel card to sell fuel to other drivers. He testified that each truck drives differently, and that several factors can affect fuel consumption. He listed wind and weather conditions, the weight of the load being carried, the maintenance history of the truck, and whether the terrain travelled is hilly, as factors that affect the amount of fuel used. He also stated that if a truck runs in cold winter weather without a "skirt", it would burn more fuel.

Mr. Chatfield advised that the Flying J service stations have video surveillance of their premises, and questioned why the Employer had not obtained any such surveillance to back up its claim that he had used his fuel card to sell supplies to other drivers.

When he was cross-examined about the details regarding how the seal on the trailer load was broken, Mr. Chatfield stated that he had placed a second, cable seal on the door of the trailer after being advised that he would be delivering a high value load. He explained that unlike the plastic seals – which he said can be snapped open with your fingers – the cable seal can only be cut with a pair of large cutters, and he felt that the load would be safer with this extra layer of protection. He stated that he used a pair of cutters to cut this second seal, and did so at the same time that he snapped the plastic seal with his fingers.

When asked whether he had been told by the Employer to place this cable seal on the truck, or whether he had chosen to do so on his own, Mr. Chatfield said it was his decision to use it. He

stated that it was "not out of the norm" to do so, and that Mr. Saib was aware that he had affixed a second seal on the latch.

Counsel for the Employer pointed out that Mr. Chatfield did not mention that he put a second seal on the trailer at any point earlier in the process, and suggested that this omission on an important point should affect my assessment of his credibility.

The Employer did not call any evidence in Reply to rebut or dispute any of the evidence provided by the Complainant.

ANALYSIS & FINDINGS:

Workplace theft is a serious issue. Any employer who discovers that its products, or those that it transports on behalf of others, have been stolen is justified in taking any and all steps to determine what happened and who is responsible. I certainly understand Mr. Saib's dismay in being advised by a customer that the load of high-priced electronics that it had contracted to deliver had been tampered with, and that several units were missing. I can also appreciate that the Employer would be suspicious of the driver who delivered the load and did not call the office to report the theft, and who could not provide an explanation for the missing TVs.

That said, an employer must have solid evidence to justify dismissing an employee for theft. The case law provides that in order to sustain a dismissal for a criminal act such as theft, an employer must provide "clear and compelling" evidence of the employee's guilt or involvement. I find that the Employer has failed to do so in this case.

Mr. Chatfield has denied taking the televisions off the truck, or being involved in the theft in any way. While he offered no explanation for what happened to the missing skid, the Employer did not provide any direct evidence linking him to the theft. Mr. Saib stated that he considered Detective Powell's statement that someone had come forward and alleged that Mr. Chatfield had tried to sell them some TVs to be "solid evidence" of his involvement in the theft. I disagree. The fact that this person would not agree to be identified or co-operate with the police or Crown

Attorney's office raises doubts about the veracity of the information provided, and should have caused concern to the Employer.

Detective Powell testified that he contacted Mr. Saib on at least five occasions over the course of five months, after receiving the initial material from him, to request further information. It was clear from his evidence that no one from CQR responded to his queries, and he was left with no choice but to close the investigation. Mr. Saib's evidence was quite different on this point. He testified that he received a request from the police to provide a video from the yard where the skids were loaded onto the truck, and that he delivered a USB drive containing this footage to the Durham Police office once he received it. He did not refer to any request having been made for a statement from Tony, the receiver at the lot in Quebec, or acknowledge that any further calls or messages were received from Detective Powell.

The evidence provided by these two witnesses on this important point is clearly inconsistent. I would have expected counsel for the Employer to question Detective Powell closely on this point, and to ask him to clarify what information had been received and requested. I would have also expected Mr. Saib to be called to provide evidence in Reply to refute these statements. Neither of these occurred, and I can only assume that the Employer decided at some point that no further information would be provided to the police, likely because the chance of laying a charge was low.

The Employer did not call Tony, the receiver at the customer's lot in Quebec, as a witness at the hearing. Given Mr. Chatfield's statements that he broke the seal on the load at Tony's request, and that Tony had told him after the theft was discovered that he would call Mr. Saib to report it, his evidence would have been central to the Employer's case. The Incident Report referenced above states that Mr. Chatfield advised that "no one told him to break the seal" and that he never "went inside to confirm with receiver to come and check the seal", and that he "broke the seal without notifying". This is in direct contrast with Mr. Chatfield's evidence at the hearing, and Tony's evidence on these points would have been useful to assess the credibility of these statements.

Given that the hearing proceeded via videoconference, the fact that Tony lives in Quebec would not have been a barrier to him participating. While I will not go as far as to draw an adverse interest

from the Employer's decision not to call this key witness, its failure to provide any evidence from him certainly leaves me wondering whether such evidence would have supported or harmed its case.

Mr. Saib testified that the decision was made to dismiss Mr. Chatfield from employment because he was "costing the company too much money", in part because of the high fuel charges he incurred on the fuel card he was provided. The Employer seemed to suggest that either Mr. Chatfield had engaged in illegal conduct, or that his fuel charges were simply too high for the company to continue to pay. Once again, the Employer is required to provide clear and compelling evidence to support its allegation of criminal behaviour, and has failed to do so. While the trip sheets provided suggested that Mr. Chatfield's average fuel consumption exceeded that of other drivers, no evidence was called in Reply to refute his suggestion that several other factors could potentially affect a truck's fuel consumption, such as hilly terrain, strong wind and cold weather.

Having reviewed the evidence closely, it is clear that Mr. Chatfield's actions surrounding the "missing TV incident" were not without fault. He did not report the missing skid of TVs to the Employer when he became aware of the theft, and instead continued on to his next pickup. He acknowledged in his testimony that that was a mistake, and that he should have called the office to advise them what had occurred.

I can understand why Mr. Saib initially wondered whether Mr. Chatfield was involved in the theft, given his failure to report it, and the fact that he made three stops in Oshawa the night before the delivery, after leaving the Employer's yard in Brampton. I find, however, that mere suspicion cannot ground a dismissal for cause. As noted above, the evidence provided by the Employer simply does not approach the "clear and compelling" standard required to prove that Mr. Chatfield was involved in the theft of TVs that he was assigned to deliver.

The Supreme Court of Canada stated in *McKinley v BC Telephone* [2001] 2 S.C.R. 161 that "an effective balance must be struck between the severity of an employee's misconduct and the sanction imposed". I note that this decision was applied by the Federal Court in reviewing an Adjudicator's decision in an unjust dismissal case under the *Canada Labour Code*, in *Caron*

Transport v Williams (2018) FC 206 (CanLII). When the "proportionality test" is applied here, the Employer may have had grounds to give Mr. Chatfield a written warning, or perhaps a suspension, for failing to follow the expected procedure and report the theft in a timely manner. Its decision to dismiss him from employment was excessive, however, and in the circumstances, cannot stand.

For all of the reasons cited above, I find that the Employer's decision to dismiss Mr. Chatfield was unjust, and in violation of the *Code.*

REMEDY:

Given my findings above, I must determine the appropriate remedy to grant to Mr. Chatfield.

Section 242(4) of the *Code* provides as follows:

> *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.*

As can be seen, this provision provides an Adjudicator who determines that an unjust dismissal has occurred with the authority to both order the employer to pay compensation that would have been paid if the unjust dismissal had not occurred, and to reinstate the employee into his or her position. Subsection (c) also provides Adjudicators with broad power to order further compensation "to counteract any consequence of the dismissal".

Mr. Chatfield does not seek to be reinstated to his position. That is understandable in the circumstances. He has found other employment, but in any event, it is clear from the evidence and my dealings with the parties that the "bond of trust" between the parties cannot be restored and the

employment relationship is not salvageable (see *Defence Construction Canada Ltd v Girard*, 2005 FC 1177). The Employer's actions triggered the initiation of two separate proceedings under the *Code* by Mr. Chatfield, each of which were hard-fought and required a determination by a third party fact-finder. The Employer initiated a police investigation into Mr. Chatfield's actions as a result of the missing TVs, which understandably raised the already high level of tension between the parties.

While the Employer suggested that this was done at the behest of its insurer, it was clear that this had a (not surprisingly) chilling effect on the parties' relationship. It was clear from the conduct of the parties during the hearing process that these events have unfortunately destroyed any goodwill that may have previously existed between them. It is clear to me that reinstating Mr. Chatfield to his position with CQR would not be a productive exercise.

Statutory Entitlements

Mr. Chatfield was employed with CQR Logistics for just over one year and three months. He is therefore entitled to both Termination Pay under section 230 of the *Code*, and Severance Pay under section 235. Section 230 provides as follows:

> *(1) Except where subsection (2) applies, an employer who terminates the employment of an employee who has completed three consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, give the employee either*
>
> > *(a) notice in writing, at least two weeks before a date specified in the notice, of the employer's intention to terminate his employment on that date, or*
> >
> > ***(b) two weeks wages at his regular rate of wages for his regular hours of work, in lieu of the notice.***

Given subsection (b), Mr. Chatfield is entitled to termination pay equivalent to two weeks of wages at "his regular rate of wages for his regular hours of work". As is the case with most long-haul truck drivers, Mr. Chatfield does not have a regular weekly wage, and is paid on the basis of mileage driven. I did not hear evidence on the details of his remuneration, so **will leave it to the parties to calculate a figure reflecting two weeks pay, based on Mr. Chatfield's average earnings during the period from February 1, 2018 to January 31, 2019.**

Mr. Chatfield is also entitled to Severance Pay in accordance with section 235 of the Code. It provides:

> *(1) An employer who terminates the employment of an employee who has completed twelve consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, pay to the employee the greater of*
>
> > *(a) two days wages at the employee's regular rate of wages for his regular hours of work in respect of each completed year of employment that is within the term of the employee's continuous employment by the employer,* ***and***
> >
> > *(b) five days wages at the employee's regular rate of wages for his regular hours of work.*

Given his one year and three-month period of employment, Mr. Chatfield is entitled to the equivalent of seven days of wages under this provision. **I leave it to the parties to calculate the value of seven days of wages, in the same manner as outlined above for calculating the termination pay owing.**

I emphasize that these entitlements are distinct from the amounts considered by the Labour Affairs Officer who investigated the claim initiated by Mr. Chatfield for unpaid wages under the *Code.*

Other compensation

As noted above, I do not find this an appropriate case in which to order that Mr. Chatfield be reinstated to his job. Instead, I will award compensation in lieu of reinstatement, in accordance with subsection (c) of section 242(4) of the *Code.* Considering factors such as the Complainant's relatively short period of employment, the length of time it took him to find another job, and the loss of his job with CQR, I order the Employer to pay Mr. Chatfield an additional sum of $5,000.

DISPOSITION:

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.

DATED at TORONTO, ONTARIO this 11th DAY OF DECEMBER, 2020

Shari L. Novick,
Adjudicator