Court of King's Bench of Alberta

Citation: Seth v K-Bro Linen Systems Inc, 2026 ABKB 790

Date: 20261106
Docket: 2203 08278
Registry: Edmonton

2026 ABKB 790 (CanLII)

Between:

Sunil Seth

Plaintiff

- and -

K-Bro Linen Systems Inc.

Defendant

Reasons for Decision
of the
Honourable Justice A.K. Akgungor

I. Introduction

[1] This matter is an action for wrongful dismissal. The Plaintiff, Mr. Sunil Seth, was employed by the Defendant, K-Bro Linen Systems Inc. ("K-Bro"), for over forty years. He worked his way up through the company starting as a cleaner on the production floor and finishing his tenure in the role of Senior Production Manager. By all accounts, Mr. Seth was a strong performer, a key leader, and a respected mentor to junior employees.

[2] I can only describe the circumstances which led to the end of Mr. Seth's employment with K-Bro as a series of unfortunate events. Ultimately, Mr. Seth lost meaningful employment with the company to which he had dedicated his working life and K-Bro lost a dedicated, valued

employee with a wealth of experience and institutional knowledge. The end of this employment relationship is regrettable for all concerned.

[3] Mr. Seth argues that he was constructively dismissed when, after he suffered a back injury, K-Bro refused to let him continue working from home and instead placed him on medical leave. K-Bro denies constructively dismissing Mr. Seth and argues that its actions were reasonable and justified when it placed Mr. Seth on medical leave and asked him to apply for LTD benefits. Mr. Seth did not apply for LTD benefits. Instead, he filed a Statement of Claim against K-Bro alleging he had been dismissed. K-Bro takes the position that, in filing the action for constructive dismissal, Mr. Seth resigned his employment.

[4] For the reasons that follow, I have determined that K-Bro did not constructively dismiss Mr. Seth from his employment. I find further that Mr. Seth resigned his employment with K-Bro.

2026 ABKB 790 (CanLII)

II. Background

[5] Mr. Seth commenced his employment with K-Bro's Edmonton facility on September 20, 1980. He was 22 years old at the time. By April 30, 2022, Mr. Seth had been a loyal employee of K-Bro for 41 years and 7 months.

[6] K-Bro is a commercial linen and laundry business that provides services to hotels, hospitals, and other large-scale operations. The Edmonton facility is approximately 125,000 square feet and employed approximately 140 employees at the time in question.

(a) Mr. Seth's employment history at K-Bro

[7] Mr. Seth worked his way up the ranks at K-Bro. He started as a cleaner on the wash floor where he would sort, wash and dry linens. After working on the wash floor for two years, Mr. Seth became a supervisor in the plant's packaging department. The packaging department prepared clean linens for delivery to customers. He was then promoted to supervising the ironing department, then the dry folding department, and finally the cart makeup department, spending a few years in each role.

[8] In 1990, Mr. Seth was promoted to a Production Manager. In this role, he was in charge of most of the plant's operations and plant supervisors reported to him. This role included ensuring that the production floor staff was properly managed and that the plant was meeting its production quotas.

[9] As the company grew, a new position of Senior Production Manager was created and Mr. Seth was promoted into this role. He held this role for at least the last 10 years of his employment. At the time that Mr. Seth's employment with K-Bro came to an end, Mr. Seth was indirectly responsible for supervising approximately 140 plant employees and directly responsible for supervising four supervisors and one Production Manager, Mr. Brian Lazaro.

[10] As a Senior Production Manager, Mr. Seth reported to the General Manager for the Edmonton facility, Mr. Trevor Rye. Mr. Rye, in turn, reported to the Senior Vice President, who reported to the Chief Executive Officer.

[11] Mr. Seth and Mr. Lazaro were the only two Production Managers for the Edmonton plant at the time Mr. Seth's employment ended. As the plant ran 7 days per week, Mr. Seth and Mr. Lazaro generally worked offsetting schedules to ensure that there was always at least one Production Manager at the plant to help ensure that it ran smoothly.

[12] At no point did Mr. Seth have a written contract of employment with K-Bro.

(b) Mr. Seth's back injury and the work from home arrangement

[13] On Sunday, November 7, 2021, Mr. Seth suffered a back injury while moving furniture at home. The back injury was the first of the unfortunate events. Mr. Seth went to see his doctor about the injury and provided a medical note dated November 8, 2021, which stated, "OFF WORK FROM November 8 to 15, 2021 due to medical problems." Mr. Seth advised Mr. Rye of his injury shortly after it happened.

[14] On or about November 15, 2021, Mr. Seth provided Mr. Rye with another medical note from his family doctor which stated, "OFF WORK FROM November 15, 2021 to January 3, 2022 due to medical problems."

[15] After receiving the November 15, 2021 medical note, K-Bro allowed Mr. Seth to work from home. As part of this arrangement, Mr. Seth performed administrative duties from home while Mr. Lazaro covered Mr. Seth's on-site responsibilities at the plant. K-Bro provided Mr. Seth with a laptop and a workstation to facilitate his work from home. Mr. Seth was also provided with video camera access to the production floor so that he could have real-time visual access. The cameras were in place at the plant before the work from home arrangement. Mr. Seth was simply given access to view the cameras at home. Mr. Seth was paid his regular salary and benefits while working from home.

[16] According to Mr. Seth, the pain in his back would flare up if he stood or sat for too long. Lying down helped alleviate the pain but Mr. Seth needed to be in different positions and to stretch his back regularly to prevent the pain from flaring up. Working from home allowed him to move around and do stretches to alleviate the pain, including lying down for periods of time.

[17] Mr. Seth continued to work from home into January 2022. He asserts that he met all his production schedules while working from home and there were no issues with his performance or the performance of his production team. K-Bro has not raised any performance concerns with respect to Mr. Seth's work from home.

[18] Mr. Seth provided a further medical note dated December 28, 2021 which stated, "OFF WORK FROM January 4 to March 30, 2022 due to medical problems."

[19] Mr. Seth had an appointment with a specialist in back and nerve pain who Mr. Seth understood would be conducting a more detailed assessment of his back pain and determining if he was a candidate for surgery. The appointment was booked for March 22, 2022, although it was later rescheduled to April 5, 2022. Mr. Seth expected to have a diagnosis and treatment plan after this appointment with the specialist.

(c) Transition to medical leave

[20] Mr. Seth continued to work from home until January 27, 2022. On that date, a discussion took place between Mr. Seth, Mr. Rye, and Ms. Elle Ethier, the Edmonton Human Resources Specialist for K-Bro. The substance of that discussion is characterized very differently by the parties. Mr. Seth contends that that he was told by Mr. Rye and Ms. Ethier that he was being terminated because he could not come into work. Mr. Seth says he was told that his last day was January 30, 2022 and he would not be paid after that date. Mr. Seth's access to his work portal and work-issued cellular phone were cut off and after January 30, 2022, Mr. Seth could no longer access emails, make calls from his work phone, or perform his duties.

2026 ABKB 790 (CanLII)

[21] Mr. Rye, however, states that what he and Ms. Ethier told Mr. Seth is that he was being placed on unpaid medical leave of absence with the expectation that Mr. Seth would soon transition to long-term disability benefits ("LTD"). Mr. Rye attested that he told Mr. Seth that K-Bro wanted him to go on LTD so that he could get better come back to work. He states that he told Mr. Seth that the qualifying period for LTD benefits was 119 days and that his absence to January 30, 2022 might count towards it.

[22] He further explained that Mr. Seth should apply for Employment Insurance ("EI") benefits to bridge any remaining portion of the Qualifying Period, consistent with K-Bro's common practice. According to Mr. Rye, at no point in their discussions about this issue did Ms. Ethier or Mr. Rye ever state or suggest that K-Bro was terminating the Plaintiff's employment. Mr. Rye specifically recalled Mr. Seth asking during the meeting whether they were letting him go permanently, to which he responded that they were absolutely not letting him go and that they were hoping he would be able to come back soon to help them manage the workload.

[23] K-Bro did not maintain a short-term disability policy. Instead, K-Bro's practice was to place injured or ill employees on an unpaid medical leave of absence during the qualifying period, during which time employees were encouraged to apply for EI sickness benefits.

[24] Mr. Seth also obtained and provided to K-Bro a medical note from his family physician dated January 28, 2022 which stated: "Physically unable to return to work. Specialist appointment on March 22, 2022."

[25] Following the meeting on January 27, 2022, both parties retained counsel and communications between counsel ensued. In correspondence dated February 17, 2022, counsel for Mr. Seth set out Mr. Seth's understanding that K-Bro would no longer permit him to work from home and that if he could not return to the office, he would no longer be paid but would be able to apply for EI or go on LTD unit his back injury was healed. Mr. Seth understood that he was promised he could return as Senior Production Manager if his injury healed and he was able to return to work at the plant. Until that time, K-Bro was terminating his position as Senior Production Manager.

[26] Mr. Seth took the position that K-Bro had a duty to continue accommodating him in the work from home arrangement and characterized the need for him to be physically present at the plant as K-Bro's preference.

[27] Counsel for K-Bro replied by letter on the same date and confirmed that K-Bro had no desire to see Mr. Seth terminate his employment. The difficulty from K-Bro's perspective was that Mr. Seth could not continue to work from home on an indefinite basis. K-Bro understood that the work from home arrangement would be short-term but that had not turned out to be the case as Mr. Seth had not been in attendance at the plant since November 2021. From K-Bro's perspective, a plant production manager needs to be in regular attendance at the plant to supervise employees, monitor production and deal with issues as they arise. As it was, many of Mr. Seth's key managerial duties had to be assumed by others.

[28] Counsel for K-Bro confirmed his understanding that Mr. Seth would be meeting with a back surgeon on March 22, 2022 and advised that K-Bro would keep Mr. Seth on paid status pending receipt of the surgeon's report. Counsel for K-Bro also confirmed that there was a possibly that Mr. Seth's 119-day qualifying period for LTD had started to run in November

2026 ABKB 790 (CanLII)

2021. However, as this was not certain, Mr. Seth was asked to complete and submit an LTD application as soon as possible. The LTD forms were enclosed with the letter.

[29] The back surgeon provided a letter to Mr. Seth's family physician dated April 5, 2022 indicating that he had seen Mr. Seth, that the MRI confirmed a small L4-L5 disc protrusion but it was not large or surgical looking. The surgeon confirmed that Mr. Seth was not a candidate for surgical decompression. The note also referenced that Mr. Seth found walking around on concrete all day at work especially hard.

[30] Through counsel, Mr. Seth provided the back surgeon's letter to K-Bro in correspondence dated April 18, 2022. A further medical note from Mr. Seth's family physician was also enclosed. The medical note, dated April 12, 2022 stated, "OFF WORK April 1 to July 2, 2022 due to medical problems". In this correspondence, Mr. Seth's counsel advised that he would be reassessed on July 2, 2022. The July 2, 2022 assessment would determine whether physiotherapy and other rehabilitation treatment that Mr. Seth was engaged in would allow him to physically return to work. Mr. Seth's counsel advised that until then, Mr. Seth could only work from home.

[31] Mr. Seth continued to take the position that he could continue to perform the duties of his position from home and that any duties that required him to be physically at the plant could be performed by the Production Manager who already performs these functions and reports to Mr. Seth. Mr. Seth denied that there were any aspects of his job that could only be performed by physically present at the plant.

[32] K-Bro responded through counsel on April 22, 2022. K-Bro confirmed that given Mr. Seth's medical condition and prognosis that Mr. Seth should be applying for LTD. K-Bro disputed the notion that all of Mr. Seth's duties could be performed from home. The work from home arrangement was never intended to be a permanent accommodation. K-Bro reinforced that a plant production manager needs to be out on the plant floor regularly to supervise and motivate employees, monitor production and deal with issues as they arise. K-Bro noted that other plant managers had been handling these duties for Mr. Seth during his absence, but this could not continue indefinitely as they had their own work to do.

[33] K-Bro advised that in the circumstances it would be placing Mr. Seth on unpaid medical leave effective April 30, 2022 and that Mr. Seth should submit an application for LTD benefits. Consistent with its view that Mr. Seth was on unpaid medical leave, K-Bro issued Mr. Seth a Record of Employment ("ROE") using code "D" as the reason for issuing the ROE. Code D stands for "illness or injury". The ROE would have been required so that Mr. Seth could apply for EI sickness benefits. I note here that there are distinct codes that would be used to indicate termination of employment on an ROE.

[34] Ms. Kristie Plaquin, K-Bro's Chief Financial Officer attested that the work from home arrangement was discontinued in late January or early February. While K-Bro's normal practice would be to place employees on unpaid leave of absence until LTD benefits kick in, K-Bro paid Mr. Seth his full salary and benefits until April 30, 2022 in recognition of Mr. Seth being a valued, long-service employee. From K-Bro's perspective, Mr. Seth was on paid medical leave from January 30 to April 30, 2022.

[35] Mr. Seth never did apply for LTD benefits despite more than one request from K-Bro that he do so. Mr. Seth attested that his physician told him that it was too early to determine the scope and extent of his injury and whether there were any treatment options. Mr. Seth further attested

2026 ABKB 790 (CanLII)

that he could perform nearly all, if not all, of his duties from home. He did not want to stop working. He wanted to continue working while being accommodated so that he could work from home. On this basis, he did not apply for LTD benefits.

(d) Wrongful dismissal action

[36] On May 30, 2022, Mr. Seth filed a Statement of Claim against K-Bro alleging wrongful dismissal. The Statement of Claim indicated that Mr. Seth was dismissed by K-Bro on April 30, 2022. K-Bro filed a Statement of Defence on June 20, 2022 taking the position that Mr. Seth had resigned his employment on April 30, 2022. On receiving the Statement of Claim, K-Bro re-issued the ROE to reflect its understanding that Mr. Seth had resigned.

[37] In July 2022, Mr. Seth started a treatment regime that proved very effective for his back and fully addressed his injury. Mr. Seth was in a position to return to work at the plant and he felt he could walk around on the concrete floor for the same amount of time as before.

[38] On August 15, 2022, counsel for Mr. Seth e-mailed counsel for K-Bro stating that he was writing to confirm that K-Bro would not permit Mr. Seth to return to work or to explore that possibility after positive treatment from his therapy received in July 2022. Counsel for Mr. Seth stated, “I have raised that to you a few times now and the indication was that K-Bro does not want Mr. Seth to return to work in any capacity.”

[39] There is no written response from K-Bro in evidence responding to the August 15, 2022 email. The last written response from K-Bro in evidence is the April 22, 2022 letter from counsel.

[40] Mr. Seth subsequently obtained a medical note from his physician dated September 12, 2022 which stated, “PATIENT can return to work on September 13, 2022”. It is unclear whether this medical note was provided to K-Bro.

III. Issues

[41] This matter engages the following issues:

(a) What were the essential duties of the Senior Production Manager?

(b) Did K-Bro expressly terminate Mr. Seth’s employment on January 27, 2022?

(c) If Mr. Seth was not expressly dismissed, was he constructively dismissed?

(d) Did Mr. Seth resign his employment?

(e) What damages are owing for wrongful dismissal?

IV. Analysis

(a) What were the essential duties of the Senior Production Manager?

[42] The parties have differing views on the nature and scope of Mr. Seth’s essential job duties as the Senior Production Manager. The key issue in dispute is whether regular, on-site attendance on the plant floor was an essential component of Mr. Seth’s duties as the Senior Production Manager. The resolution of this issue then informs the question of whether it was possible, as alleged by Mr. Seth, for him to carry out his essential duties while working from home.

2026 ABKB 790 (CanLII)

i. Mr. Seth's evidence

[43] In his affidavit, Mr. Seth described his job as "exclusively administrative", including reviewing and approving staff hours, ensuring appropriate staffing levels, ensuring production targets were met, dealing with suppliers, and ensuring that the General Manager and Vice President were kept apprised of what was happening on the production floor. Mr. Seth described himself as doing many of the same roles as a Production Manager but in a more supervisory capacity.

[44] Mr. Seth attested that he did the same tasks at home as he did at the plant. This included reviewing and approving staffing hours, reviewing and approving work schedules, preparing and reviewing production reports, receiving reports, and discussing issues with supervisors, delegating to, and reviewing the work of supervisors and department managers, and reviewing and ordering production supplies such as cleaning products and safety gear. He also led the daily production meetings remotely, which are meetings held each morning with the key production floor staff to ensure daily quotas were met.

[45] Mr. Seth attested that, prior to his injury, he spent a couple hours everyday walking around the plant floor, spread out in 15–20-minute walks. However, he asserted that walking the production floor was not a part of his duties. He stated that it was entirely in his discretion how much time he was on the production floor and he could have spent no time there as it was not an essential part of his job duties. His main role was ensuring that the production managers, supervisors, and those on the plant floor met production targets.

[46] Prior to his injury, Mr. Seth worked 12-13 hour days, often 6 and frequently 7 days per week, and when he was working from home, he worked 9-10 hour days. According to Mr. Seth, the difference in hours could be explained by the fact that Mr. Seth was not walking in the plant, not meeting with suppliers, and not attending staff meetings.

[47] In terms of time spent on the production floor, Mr. Seth indicated that when he and Mr. Lazaro were both present at the plant, Mr. Lazaro would spend more time on the production floor and he spent more time in his office to do his jobs. When Mr. Lazaro was not there, he would be on the production floor but not as much as Mr. Lazaro, who Mr. Seth characterized as "always on the floor". On days when Mr. Lazaro was not there, Mr. Seth would spend an hour to an hour and a half more on the floor than he normally would.

[48] Mr. Seth agreed that the Production Manager needs to be on the floor when there were problems such as bottlenecks or breakdowns. In these circumstances, he would need to be on the floor if Mr. Lazaro was not present. Mr. Seth further acknowledged that he would still spend some time on the floor when Mr. Lazaro was there. While he characterized being on the floor as within his discretion, Mr. Seth acknowledged that he needed to get down to the floor from time to time. However, he also described his supervisors as being on the floor and running their departments so he could talk to them on the phone if there was an issue.

[49] Mr. Seth stated that he did not do physical work on the plant floor but acknowledged that he would have to pitch in with the physical work on occasion where there was an emergency.

ii. Mr. Rye's evidence

[50] Mr. Rye is the general manager of K-Bro's Edmonton facility. He worked with Mr. Seth for about 25 years. Mr. Rye described Mr. Seth as having a lot of experience and Mr. Rye stated that he learned a lot from Mr. Seth as he grew up through the company alongside Mr. Seth. Mr.

2026 ABKB 790 (CanLII)

Rye previously held the role of a production manager and then was promoted to the role of operations manager before becoming the general manager.

[51] Mr. Rye characterized Mr. Seth's position as primarily involving work on the plant floor. However, Mr. Seth did also have some administrative responsibilities including meeting with customer service managers about customer relationships and requests; addressing personnel issues with Human Resources; approving and revising employee hours and schedules; ordering materials, supplies and equipment (e.g. PPE) and reviewing production numbers. The remainder of Mr. Seth's duties as Senior Production Manager required him to be physically present at the plant to be effective.

[52] Mr. Rye further attested that Mr. Seth's job as Senior Production Manager was not a sedentary role. The physical demands associated with the position were significant and included continual standing, walking, stretching, lifting, pushing, pulling and repetitive motion.

[53] According to Mr. Rye, one of Mr. Seth's primary responsibilities was to ensure that the plant was keeping up with its daily production targets. The nature of K-Bro's operations were such that it was not possible for Mr. Seth to effectively monitor efficiency rates from home. The only way to know how well the machines were functioning and how much linen was being ironed, sorted, loaded, or unloaded was to be physically present at the plant, where such information appears on various physical monitors throughout the facility. These systems were not networked and were not accessible online or from home. Even if this had been the case, Mr. Seth, working from home, would not have been in a position to take timely corrective action to improve efficiencies or production levels where required.

[54] Mr. Rye attested that another of Mr. Seth's primary responsibilities was to oversee deliveries to and from the plant. Mr. Seth's role required him to exercise oversight to ensure proper performance and to rectify mistakes when they did occur by working together with staff on the plant floor (e.g. physically counting and sorting carts, identifying products sent out on the wrong truck, coordinating delivery schedules to ensure product ultimately went where it was needed). As with most of his responsibilities, this key aspect of Mr. Seth's role was simply not possible to perform while sitting in front of a computer at home.

[55] A job description for a Production Manager, which was last revised in September 2021, indicates that the position is located in a production plant environment and office environment and that the position requires continual standing, walking, stretching, lifting, pushing, pulling and repetitive motion. While this is a job description for the role of Production Manager and not the Senior Production Manager, Mr. Rye attested that both the Senior Production Manager and the Production Manager perform essentially the same day-to-day responsibilities. The biggest differences between the roles were that Mr. Seth bore the ultimate responsibility for meeting production targets, bore primary responsibility for approving employee hours and schedules, was given priority in terms of his schedule and time-off requests and was generally responsible for ordering chemicals and PPE and meeting with vendors. Mr. Rye agreed that there were more administrative duties carried out by the Senior Production Manager than the Production Manager.

[56] Mr. Rye disagreed with Mr. Seth's estimate that Mr. Seth would spend 2-3 hours of a 10-12 hour day on the plant floor. In his view, it would have been a lot more time than just two hours. Mr. Rye acknowledged that Mr. Seth did not have to be on the plant floor the entire day, but stated that there would have been many times in the day where he would have had to go and

2026 ABKB 790 (CanLII)

see what had to be done next on the floor or follow up on the plant floor to ensure that people were doing what they were supposed to do.

[57] Mr. Rye's view was that troubleshooting on the plant floor, performing physical work on the plant floor when operations would fall behind, and filling in to cover for frontline duties as necessary due to staff absences or other circumstances were things that happened daily. If something was not running correctly, Mr. Seth would have to go see it directly and deal with it. For example, Mr. Rye explained that without seeing what trailer is done or not, there is no ability to make decisions regarding the production schedule. If Mr. Seth was at home there would be no way for him to tell anyone what to do next or what had to get done.

[58] According to Mr. Rye, prior to Mr. Seth's back injury, if Mr. Seth was at work for 10 hours, 7 or 8 of these hours would be spent on the plant floor. Mr. Seth was leading the production floor which required him to be present on the production floor.

iii. Mr. Lazaro's evidence

[59] Mr. Lazaro worked as a Production Manager from 2006 to November 2021 when he was required to backfill Mr. Seth's duties. From November 2021 forward, he fulfilled the responsibilities of Senior Production Manager. He assumed the role of Senior Operations Manager in January 2022. He reported to Mr. Seth for approximately 19 years.

[60] In Mr. Lazaro's view, as someone who has performed the responsibilities of both a Production Manager and a Senior Production Manager, these roles were not and are not administrative in nature. Rather, employees in these roles are required to spend the vast majority of their time on the plant floor to be effective. They have minimal office duties.

[61] According to Mr. Lazaro, the essential character of both roles is to ensure effective and timely deliveries and customer satisfaction while keeping up with the plant's production targets. This means being available onsite to coordinate production, monitor efficiency, oversee workflows, direct team members, fill gaps and troubleshoot frequent issues and productivity lapses as they arose. Mr. Lazaro described discussions between Production Managers (whether senior or not) and team leads such as freight managers and supervisors generally taking place on the plant floor while work was ongoing. These discussions concerned issues that were proximate to the plant floor. In his view, it would not have been efficient to call these employees off the plant floor to converse about the issues.

[62] Mr. Lazaro estimated that the Production Manager would spend approximately 4.5 hours per week on office-related/administrative responsibilities and that a Senior Production Manager would spend approximately 9-10 hours per week on office-related administrative responsibilities. Both Production Managers and Senior Production Managers work a schedule of 5 days per week and 10-12 hours per day. According to Mr. Lazaro, he spent between 50-55 hours of his time on the plant floor as that is where he was needed.

[63] In Mr. Lazaro's view, the character of his job did not change significantly when he assumed the additional responsibilities of the Senior Production Manager. These additional responsibilities required him to devote between 3.5 and 4 hours per week to office-related activities.

[64] Mr. Lazaro acknowledged that when he made these estimates he was working as both a Production Manager and filling in as the Senior Production Manager. He could not provide an

2026 ABKB 790 (CanLII)

accurate estimate of how many hours were spent doing office-related responsibilities for just the Senior Production Manager as he was not working solely in that role.

[65] However, the estimates were prepared based on Mr. Lazaro's personal experience of observing Mr. Seth in the role of Senior Production Manager, having been trained by Mr. Seth, knowing what Mr. Seth was looking for and what he was doing in terms of his everyday duties.

[66] Mr. Lazaro agreed that aside from the knowledge of the specific duties that he picked up when Mr. Seth was working from home, that he had no knowledge of the specific duties and requirements of the Senior Production Manager role.

[67] Mr. Lazaro rejected the notion that Mr. Seth only spent 2-3 hours of a 10–12-hour workday on the plant floor because, in his view, the role of production manager is always hands on and they are required to make quick decisions with respect to things that are happening right in front of them and they can't do that if they are not on the plant floor. Mr. Lazaro reported that whenever he was on the plant floor, Mr. Seth was always there too. Mr. Lazaro acknowledged that he did not have any precise or specific knowledge of how many hours Mr. Seth spend on the production floor each day as Senior Production Manager.

[68] Mr. Lazaro did not agree that only a small portion of Mr. Seth's time would have taken place on the plant floor. In this view, the bulk of their responsibility is solely to be present on the plant floor. It is a hands-on role and the presence of plant managers on the production floor is not just to boost morale. Production managers help out on the production line as need be.

[69] While it may not have been the Senior Production Manager's responsibility to be the first person to detect issues on the plant floor, his presence on the floor would make a lot of difference in terms of the decision-making. When Mr. Seth was working as the Senior Production Manager, he would tend to address issues on the floor himself, rather than delegate the issues. This would include being hands-on on the production floor if need be.

[70] When Mr. Seth was working at the plant, if Mr. Lazaro needed to get his input on something, he would find him on the plant floor. He and Mr. Seth would divide the responsibilities when they worked together. Mr. Seth would look after some areas of the plant and Mr. Lazaro would look after other areas. Mr. Lazaro would know where to find Mr. Seth as he spent the bulk of his time on the plant floor.

[71] While Mr. Seth had access to the plant's security cameras, the cameras did not cover all areas. According to Mr. Lazaro, the utility of him having access to the cameras was questionable in any event because by the time he saw a problem on the cameras, the staff on the plant floor were generally already aware of it. Even if he could identify a problem on the cameras, the nature of him being at home meant he could not resolve it, leaving that responsibility to Mr. Lazaro or others covering for him at the plant.

[72] As an example, the mezzanine was not covered by the cameras. There are also no cameras in the dry fold area nor in part of cart makeup. According to Mr. Lazaro, the cameras do not cover the entirety of the plant or the wash floor or the dryers or the entirety of the ironing department, bagging area, cart makeup, or washing areas. Mr. Seth's view was that he could see the majority of the plant but not all of the plant floor.

[73] According to Mr. Lazaro, while Mr. Seth continued to attend daily production meetings from home, he was not leading the meetings, as he was not physically present. The purpose of

2026 ABKB 790 (CanLII)

his attendance was to ensure that he was informed about what was happening at the plant with the expectation that he would soon be returning to work.

[74] According to Mr. Lazaro, Mr. Seth's physical absence from the plant meant that he was unable to coach and mentor junior employees, unable to attend and participate in monthly departmental meetings and unable to assist with providing coverage when a supervisor was absent. That responsibility fell solely on Mr. Lazaro's shoulders.

iv. Ms. Plaquin's evidence

[75] Ms. Plaquin acknowledged that she had never served as the Senior Production Manager for K-Bro and that she was not involved in setting the tasks and responsibilities for the Senior Production Manager role when Mr. Seth was performing it. However, Ms. Plaquin has been with K-Bro for many, many years and has a good understanding of the expectations of operational roles.

[76] Ms. Plaquin characterized the Senior Production Manager role as production/operational role, not an administrative type/office role. The key role of the Senior Production Manager is to ensure that the linen gets delivered to the customers on a timely basis and that the carts are being loaded correctly into the correct delivery vehicles on time and in the right order.

[77] As the company's Chief Financial Officer, Ms. Plaquin understands what the key metrics are to determine the company's success, and one of those metrics is ensuring that the production schedule is managed as efficiently as it can be. In order for that production schedule to be managed efficiently K-Bro requires the presence of its production staff to monitor, mentor, and train the production employees that physically process the linen.

[78] Ms. Plaquin acknowledged that the Senior Production Manager role had some administrative and some supervisory components but stated that Mr. Seth was supervising a working labour force with production responsibilities and this was more operational in nature. In her view, the general expectation was that the operational team is working on the production floor.

[79] Ms. Plaquin listed some of Mr. Seth's administrative duties as ordering chemicals, linen supplies, approving payroll and approving the schedule. However, she noted that even approving payroll was difficult to do from home because Mr. Seth needed to physically verify if people were present in the plant. This was difficult to do by observing over a camera system. It would be difficult to know when the employees punch in and punch out or if they were approved for overtime. Mr. Seth would have needed assistance from someone physically in the plant to do that verification. However, Ms. Plaquin could not confirm that Mr. Seth did not rely on information from others such as the supervisors or the production manager to carry out payroll even when he was physically in the plant.

[80] According to Ms. Plaquin, from administrative duties perspective, a portion of Mr. Seth's duties could be completed solely by Mr. Seth (e.g. ordering supplies) and a portion required assistance from others (e.g. payroll) and then other duties had to be picked up entirely by individuals within the facility.

[81] From Ms. Plaquin's perspective, the reality of Mr. Seth's role was that he was a production manager which implies physically being present within the facility to manage staff, drive productivity, and ensure customer targets were met. As such, his presence was required on the plant floor to do those tasks, for example, mentoring staff, checking the status of delivery

2026 ABKB 790 (CanLII)

schedules, checking if there is burnt linen or wet linen. This cannot be done from looking at a camera screen from your bedroom. Other staff members were cancelling vacations and working long hours to make up for the loss of Mr. Seth's presence.

[82] The majority of Mr. Seth's tasks required his presence within the facility. Mr. Seth could perform some duties from home. He could not perform his entire role from home.

v. Analysis

[83] Mr. Seth and the witnesses for K-Bro depart on the nature and scope of the essential duties of the Senior Production Manager. Having considered the evidence, I do not find that the role of the Senior Production Manager was exclusively administrative. Rather, I find that Mr. Seth's core function as the Senior Production Manager was to oversee and ensure the efficiency of the production floor. While the role of Senior Production Manager also required Mr. Seth to carry out administrative functions such as confirming employee hours, meeting with vendors, ordering supplies (e.g. PPE and chemicals) and leading meetings, I find that these functions, while important, were incidental to his primary role of leading and directing plant production to ensure the timely and accurate processing of linen, which included washing, drying, sorting and freight (i.e. customer pick up and delivery).

[84] In reaching this conclusion, I find that the evidence of both Mr. Rye and Mr. Lazaro is particularly relevant given that they have both worked in the role of Production Manager and given that they both worked closely over many years with Mr. Seth and had the opportunity to observe him in his role of Senior Production Manager. While Ms. Plaquin had not served as a Production Manager, I accept that her long service with the company and her position as K-Bro's Chief Financial Officer would mean that she still had a general understanding of the role of the Senior Production Manager, even if she was not herself involved in setting the duties of the Senior Production Manager.

[85] I accept the evidence of the K-Bro witnesses with respect to the duties of the Senior Production Manager as credible given the long-term service of these employees with the company and their corresponding knowledge of the inner workings of the company, the intimate understanding that both Mr. Rye and Mr. Lazaro possessed of the production management role having served in that role themselves, the consistency of the witness accounts and the overall plausibility of their evidence.

[86] I appreciate, of course, that the K-Bro witnesses were called to testify by the party adverse in interest to Mr. Seth. However, there is no suggestion that any of the K-Bro witnesses held any animus against Mr. Seth or otherwise had any motive to fabricate how they described the roles and the work carried out at K-Bro. On the contrary, Mr. Rye described Mr. Seth as a team player and an "excellent leader" with "great, incredible dedication". Mr. Rye stated that he was really proud to work with Mr. Seth for his whole career. Mr. Lazaro described Mr. Seth's job performance as "really good". Mr. Seth was his mentor. He further stated that he appreciated Mr. Seth and wanted to support him. Ms. Plaquin referenced the long-term nature of Mr. Seth's employment and stated that at no point did K-Bro wish to terminate Mr. Seth's employment. I note that the absence of motive to fabricate does not automatically mean that the evidence is credible. It is, however, a factor to consider in the overall credibility matrix.

[87] All of Mr. Rye, Mr. Lazaro and Ms. Plaquin were consistent in their description of the Senior Production Manager being a hands-on role that required a physical presence at the plant

2026 ABKB 790 (CanLII)

to perform the role effectively. Mr. Rye, Mr. Lazaro, and Ms. Plaquin described the need for the Senior Production Manager to:

- know how well the machines were functioning and how much linen was being ironed, sorted, loaded, or unloaded;
- oversee deliveries to and from the plant;
- physically count and sort carts, identify product sent out on the wrong truck, coordinate delivery schedules to ensure the product ultimately goes where it is needed;
- coordinate production, monitor efficiency, oversee workflows, direct team members, fill gaps and troubleshoot frequent issues and productivity lapses;
- make quick decisions with respect to things happening right of front of them;
- mentor staff, check on the status of delivery schedules and check if there is burnt or wet linen; and
- ensure that the linen gets delivered to customers on a timely basis and that the carts are being loaded correctly into the correct delivery vehicles on time and in the right order.

[88] I accept, in the context of a busy production floor and given the nature of K-Bro's business (laundry and linen processing), that a regular and daily physical presence on the production floor was crucial to Mr. Seth being able to ensure that the plant was keeping up with its daily production targets.

[89] In my view, it would have been very difficult to effectively ensure the productivity of the plant floor remotely while working from home. While it may have been possible to identify issues in some areas of the plant via camera from home, it would not have been an efficient process to then have to contact someone who was physically present at the plant to attend and address the issue. As noted by Mr. Lazaro, on many occasions, when he was reporting issues to Mr. Seth, they had already been dealt with by those who were on-site at the plant.

[90] Indeed, during cross-examination, Mr. Seth agreed that when working from home, he could not regularly walk around the plant to monitor linen levels, productivity, equipment, and supply inventory levels (e.g. PPE, chemicals). He could not perform physical work on the plant floor when operations would fall behind, which could include, among other things, unloading trailers, dumping tubs, organizing linen carts, and cleaning the area to reduce congestion. He could not fill in to cover frontline duties as necessary due to staff absences or other circumstances. He could not conduct department meetings as needed in the lunchroom during break periods. He could not physically meet with the plant's chemical vendors in the plant and therefore could not examine and discuss linen samples to identify and evaluate issues and solutions. He also could not direct the flow of linen into the plant and for storage purposes.

[91] In my view, Mr. Seth's direct evidence overstates the role of the Senior Production Manager as "exclusively administrative". While he acknowledged in his evidence that a small portion of his time was spent walking through the production floor, he maintains that this was not part of his job duties. He stated that how much time he spent on the plant floor was entirely in his discretion and he could have spent no time there at all as it was not an essential part of his

2026 ABKB 790 (CanLII)

job duties. At one point in his evidence, Mr. Seth stated that he was not really on the floor at all and that he was up in the office, “exclusively administrative”.

[92] However, Mr. Seth’s position that his role was “exclusively administrative” and that he was not required to spend time on the plant floor is inconsistent with other points of his testimony. For example, he was asked on cross-examination: “so that was part of your job duties, to walk through the plant and see how things were going, right?”. Mr. Seth answered “yes”. He was then asked: “you had the discretion to decide when you went on the floor, but you needed to go on the floor at least for certain periods of time. You had to go down; you got to decide when. Would that be more accurate?” Again, Mr. Seth answered “yes”.

[93] At another point, he was asked “But you recognized that part of your role, part of your discretionary role should be spent on the floor, right? You understood that? You needed to get down there from time to time, correct?”. Mr. Seth answered “Yeah. I supposed to be on the – like go, on the floor – like, when --, when, like, I can go and see the staff, see the equipment, and all that stuff.”

[94] When asked during cross-examination what “exclusively administrative” meant, Mr. Seth conceded that it did not mean that he never had to go down to the production floor. He agreed that he would go to the production floor but he was not on the production floor all the time. He went to state that he never did physical work on the floor, but then softened this stance to say that he would do physical work in an emergency or something.

[95] Another point in Mr. Seth’s testimony which detracts from his position that a presence on the production floor was not a part of his job duties arises from the letter provided by the back surgeon on April 5, 2022. In this letter, the back surgeon states “He [Mr. Seth] finds walking around on concrete all day at work especially hard.” During cross-examination, Mr. Seth denied that he told the surgeon that he walked around on concrete all day. Mr. Seth acknowledged that the plant floor was concrete but indicated that all that he had told the back surgeon was that he worked 12 hours a day in a bigger plant. He stated that he told the surgeon that he worked in an office and spent “long time sitting in the office, few walking here and there.” As far as Mr. Seth was concerned, the back surgeon just wrote down something that was completely inaccurate.

[96] I struggle to accept that if Mr. Seth was telling the back surgeon that he worked primarily in an office within a bigger plant, and if Mr. Seth did not tell the surgeon that he walked on concrete all day that the back surgeon would, on his own initiative, decide to write in his medical report that “He [Mr. Seth] finds walking around on concrete all day at work especially hard.” First, it makes no sense if Mr. Seth was conveying to the surgeon that he spent a long time sitting in his office, that the surgeon would then decide to write in his report that “Mr. Seth finds walking around on concrete all day at work especially hard”. Walking around on concrete all day is a completely different notion than spending a long time sitting in an office. It is not plausible that the back surgeon would have simply made something up that bore no resemblance to what Mr. Seth was conveying to him. Second, “concrete” is a specific detail related to the type of floor that Mr. Seth was walking on. Even if the surgeon was aware that Mr. Seth worked within a bigger plant, it is not clear why the surgeon would simply assume that the plant floors were made of concrete.

[97] The much more likely reason that the back surgeon included this statement in his report is because Mr. Seth made that statement to him during the course of the clinic visit. In my view, it

2026 ABKB 790 (CanLII)

is more probable than not that Mr. Seth told the surgeon that he walked around on concrete all day at work and this is why the surgeon included that statement in the medical report.

[98] The fact that Mr. Seth told the back surgeon that he walked around on concrete all day is consistent with the evidence of K-Bro's witnesses that the Senior Production Manager would spend the majority of his time over the course of a workday on the plant floor.

[99] At a further point, Mr. Seth was asked about Mr. Lazaro's evidence that "Discussions between production managers, whether senior or not, and team leads like freight managers and supervisors generally occurred on the plant floor while work was ongoing and concerned issues that were proximate to the plant floor. It would not have been efficient to call these employees off the floor to converse about such issues." Mr. Seth disagreed with Mr. Lazaro's statement and instead agreed with the proposition that it was more efficient to have people come up to his office and report on problems. Mr. Seth stated: "Yeah. Supervisor and anything—anybody, production manager if they have issue, they can come to the office. We talk." Mr. Seth noted further that when he does the walk-through, "sometime we talk on that time too."

[100] I have difficulty accepting Mr. Seth's evidence that it was more efficient, in the midst of a busy plant production floor, to have people leave the floor and come to the office to speak about issues arising on the plant floor. In my view, this is implausible. It is much more likely, as asserted by Mr. Lazaro, that it is more efficient to deal with these issues while on the plant floor. In this way, the issue can be dealt with in real-time, the problem can be directly observed and decisions can be made immediately regarding how to address the issue without the need for staff to go back and forth between the office to seek input from the Senior Production Manager.

[101] In my view, Mr. Seth's evidence that it was more efficient for people to leave the plant floor and come to his office to report on problems appears to be tailored, not to the realities of the plant floor, but to the narrative that the Senior Production Manager role is exclusively administrative.

[102] Mr. Seth also stated in his affidavit that he often worked 6 days a week and frequently 7 days a week. However, on cross-examination, Mr. Seth stated that he worked six days a week only in an emergency, which he estimated might happen 6-8 times per year. He further conceded that he had only worked 7 days per week a few times, like 4 or 5 times. In these circumstances, Mr. Seth's assertion that he often worked 6 days a week and frequently 7 days a week overstates the incidence with which he was in fact working 6- or 7-day weeks. Overstatements of this nature tend to diminish the overall reliability and credibility of Mr. Seth's evidence.

[103] In support of his position, Mr. Seth places significant emphasis on the fact that the roles of Senior Production Manager and Production Manager are distinct, with the role of Senior Production Manager being "exclusively administrative" and the Production Manager being the one who spent all the time on the production floor. I accept, as do all the K-Bro witnesses, that the Senior Production Manager role had greater administrative duties than did the Production Manager role. However, this does not detract from my finding that the core of Production Manager role, whether a Senior Production Manager or a Production Manager, is the management of the production floor. While the Senior Production Manager may have spent more time on incidental administrative tasks than the Production Manager, this does not transform the role of the Senior Production Manager into an exclusively administrative one. The administrative tasks are still incidental to the primary function of managing the production floor.

2026 ABKB 790 (CanLII)

[104] I accept, as do the K-Bro witnesses, that Mr. Seth enjoyed significant discretion as the Senior Production Manager and, as a result, he could determine when he would spend time on the plant floor. However, I do not accept that this discretion could be exercised such that Mr. Seth could decide that he would spend no time on the plant floor. That is simply not plausible in the context of his role. I find that the discretion was a matter of "when" and not a matter of "if". Even Mr. Seth acknowledged that he had to go down to the plant floor, although he got to decide when.

[105] Mr. Seth argues further that he could delegate tasks to lead hands, supervisors, or others such that he, himself, did not have to be present on the plant floor. Mr. Rye agreed that he had the authority to delegate as did Mr. Lazaro, but according to Mr. Lazaro's observations, Mr. Seth would generally address the issues himself rather than delegate. Mr. Lazaro also observed that when he was on the plant floor, Mr. Seth was always there too. Mr. Lazaro further testified that if he had to find Mr. Seth, he would find him on the production floor. I accept Mr. Lazaro's evidence that Mr. Seth would spend a significant portion of his time at work in a hands-on role rather than delegating the tasks to supervisors or other employees.

[106] Mr. Seth's hands-on presence as described by Mr. Lazaro is consistent with Mr. Rye's evidence that Mr. Seth went above and beyond to perform his duties and was a team player. Mr. Rye stated that there were many many times where Mr. Seth and the rest of the team would have to stay late or come in on their days off to get things done. In my view, it is more likely than not that Mr. Seth would be viewed in this light because he was on the plant floor pitching in. This characterization, however, would seem less likely if Mr. Seth were simply sitting in an office all day delegating tasks to others to carry out.

[107] I accept that Mr. Seth, as the actual Senior Production Manager, would have the best knowledge of the duties in his role and how and when they were carried out. I further acknowledge that none of Mr. Rye, Mr. Lazaro or Ms. Plaquin could provide specific details as to how much time Mr. Seth spent in the office versus on the production floor.

[108] However, as noted earlier, I have concerns that Mr. Seth's evidence overstates the administrative nature of his role and downplays the amount of time that he, in fact, was required to spend on the production floor dealing with hands-on responsibilities. Accordingly, I prefer the evidence of Mr. Rye and Mr. Lazaro that Mr. Seth likely spent 7-8 hours per day on the production floor over the 2-3 hour per day estimate provided by Mr. Seth.

[109] Further, during cross-examination on affidavit, Mr. Seth was taken through each task that he identified as one of his administrative responsibilities and asked how much time he spent on each. His low estimate totalled 6.33 hours per day and his high estimate totalled 7.75 hours per day. On either of Mr. Seth's own low or high estimates, this still leaves a large portion of his 12–13-hour workday unaccounted for. The logical inference, of course, is that this unaccounted-for time was spent on the plant floor. Accordingly, I find that the time spent on the production floor by Mr. Seth is significantly greater than his evidence suggests.

[110] In finding the essential duties of Mr. Seth's role required his physical presence at the plant, I have also considered the nature and scope of the duties that Mr. Seth was performing at home and how the work from home arrangement came to be. During questioning on November 16, 2022, Mr. Seth testified that Ms. Ethier and Mr. Lazaro called him at home after he had injured his back and queried whether he could work from home. He described their discussion as Ms. Ethier and Mr. Lazaro proposing that he could do his office job from home and Mr. Lazaro

2026 ABKB 790 (CanLII)

would look after the whole plant, the production floor. In terms of the specific duties that he would be performing at home, Ms. Ethier and Mr. Lazaro proposed that he would confirm the daily employee hours, deal with any payroll issues, schedule production and attend meetings virtually. Mr. Seth confirmed that those were the only duties that were identified for him to perform at home.

[111] Mr. Seth's description of the genesis of the work from home arrangement is consistent with Mr. Rye's evidence that K-Bro reached out to Mr. Seth to see if he could provide any assistance to K-Bro given that, at the time, it was a very busy period for K-Bro. K-Bro was taking on a number of new customers and Mr. Rye was often out visiting these customers and could not help out in the plant as a result. Given that K-Bro was short-handed, they turned to Mr. Seth to see if he could do anything from home to provide some additional assistance. Mr. Rye's view was that this was to be a temporary arrangement to help K-Bro out as well as to provide some benefit to Mr. Seth in that he would be kept in the loop regarding the daily happenings at K-Bro in preparation for his eventual return to work. As characterized by Mr. Rye, the work from home arrangement was "can you help us a little bit? If you can't, you can't. If you can, you can."

[112] In my view, the context in which the work from home arrangement came to be supports a finding that neither party approached the work from home arrangement as one where Mr. Seth would be performing his essential duties as the Senior Production Manager from home. Rather, the idea was that Mr. Seth would take on whatever administrative tasks that he could do from home to assist K-Bro through a busy period and, in doing so, remain connected to K-Bro operations.

[113] Ultimately, I accept, as submitted by K-Bro, that there were countless ways in which the plant's daily production targets might be put in jeopardy. People might make mistakes, call in sick, miscommunicate, or improperly sort, count or load product. Machines might stop working malfunction, linen could get burned or stained or linen or supply levels could become depleted. In order for K-Bro to meet its production targets, everything had to run smoothly. Ensuring these smooth operations on the plant floor was the essence of the Senior Production Manager role. These essential duties could only effectively be carried out through a physical presence on the plant floor. I reject Mr. Seth's submission from that it was simply K-Bro's preference to have the Senior Production Manager be physically present at the plant.

(b) Did K-Bro expressly terminate Mr. Seth's employment on January 27, 2022?

[114] Mr. Seth alleges that he was initially terminated from employment by K-Bro on January 27, 2022. K-Bro asserts that it did not expressly terminate Mr. Seth's employment at any point.

[115] A notice of termination must be specific and unequivocal such that a reasonable person will be led to the clear understanding that his or her employment is at an end at some date certain in the future. This is assessed on an objective basis: ***Beggs v Westport Foods Ltd***, 2011 BCCA 76 at para 37.

[116] Both Mr. Rye and Mr. Seth agree that during the conversation on January 27, 2022, Mr. Seth was informed that he could seek Employment Insurance medical benefits and then transition to K-Bro's LTD benefits until his back injury had healed. Both Mr. Rye and Mr. Seth

2026 ABKB 790 (CanLII)

testified to this effect and the fact that this conversation occurred in reflected in the February 2, 2022 letter from Mr. Seth's counsel to K-Bro.

[117] The February 2, 2022 letter also set out Mr. Seth's understanding that when the back injury healed and Mr. Seth could return to work at the plant, he would be returned to his position as Senior Production Manager.

[118] Further, according to Mr. Rye, Mr. Seth specifically asked whether they were "letting him go permanently." Mr. Rye responded that they were "absolutely not letting him go" and that K-Bro hoped he would recover and return to assist with the workload. I accept that Mr. Rye made these statements to Mr. Seth. K-Bro's witnesses have been consistent in characterizing Mr. Seth as a valued, hard-working employee and in the fact that at no point did K-Bro want Mr. Seth's employment to come to an end.

[119] In my view, a reasonable person would not have been led to a clear understanding that his or her employment was being terminated had they participated in the same conversation with Mr. Rye. First, the indication that Mr. Seth could receive EI and LTD benefits until he was healed and then return to work is inconsistent with the notion that employment is being brought to an end. Termination does not normally encompass a future return to work.

[120] Second, the discussion included the 119-day qualifying period for LTD benefits, whether Mr. Seth's existing absence could count toward that period, and using EI benefits to bridge any remaining portion of the qualifying period. Viewed in context, those statements are consistent with K-Bro dealing with Mr. Seth's continuing medical absence, rather than communicating that Mr. Seth's status as an employee had ended.

[121] Third, Mr. Rye expressly clarified that K-Bro was absolutely not letting Mr. Seth go.

[122] I am not satisfied that K-Bro's conduct during the meeting on January 27, 2022 amounted to a notice of termination which was specific and unequivocal such that Mr. Seth could have been led to the clear understanding that his employment was at an end at some date certain in the future. Indeed, there was no date certain discussed with respect to the end of employment. The only timeline discussed was "when his back injury had healed". At this point, he could return to work at the plant.

[123] In my view, what likely occurred here is that Mr. Seth confused the end of the work from arrangement with the end of the employment relationship. This was another unfortunate turn of events. On the one hand, this confusion may be understandable given that it was also explained to Mr. Seth that he would no longer be paid after January 27, 2022 and that his access to his work portal and work emails was being cut off. On the other hand, however, the termination of the work from home arrangement and the termination of employment are conceptually distinct. Duties or work assignments may change or end but it does not follow that the underlying employment relationship will also end at the same time.

[124] I find that K-Bro did not expressly terminate Mr. Seth's employment on January 27, 2022.

(c) If Mr. Seth was not expressly dismissed, was he constructively dismissed?

[125] Constructive dismissal is established where: (1) the employer has imposed unilateral substantial changes that constitute a breach of the employment contract; and (2) a reasonable person in the employee's position would have felt that the breach substantially altered a term of

2026 ABKB 790 (CanLII)

the employment contract: ***Potter v New Brunswick (Legal Aid Commission)***, 2015 SCC 10 at paras 32-39. The onus is on the employee to establish the first part of the test and the second part of the test is to be assessed objectively: ***Benke v. Loblaws Companies Limited***, 2022 ABQB 461 at para 51.

[126] Mr. Seth alleges that K-Bro engaged in a series of actions that individually and collectively altered the essential terms of the employment contract such that Mr. Seth was constructively dismissed after more than four decades of loyal, dedicated and high-performing service. I will examine the relevant actions in turn.

i. The events of January 27, 2022 to April 30, 2022

[127] Mr. Seth first alleges that K-Bro's failure to assign duties to Mr. Seth and provide him with pay after January 30, 2022 amounted to constructive dismissal.

[128] While K-Bro initially planned to place Mr. Seth on an unpaid medical leave of absence, it is clear that Mr. Seth, in fact, received his full pay and benefits over the period from January 27, 2022 to April 30, 2022. Accordingly, a constructive dismissal claim cannot be founded on lack of pay over this period.

[129] Mr. Seth argues, however, this does not end the analysis, as constructive dismissal may also arise from the failure of the employer to assign duties. It is not disputed that K-Bro did not assign any work duties to Mr. Seth during this period. However, when an employer's conduct evinces an intention no longer to be bound by the employment contract, the employee has the choice of either accepting that conduct or the changes made by the employer, or treating the conduct or changes as a repudiation of the employment contract and suing for wrongful dismissal: ***Potter*** at para 30.

[130] After Mr. Seth was advised on February 17, 2022 that he would continue to receive his pay, the parties did not communicate again until April 18, 2022. Mr. Seth did not raise any concerns over these two months that he was not performing duties nor did he expressly object to being on paid medical leave without a requirement that he perform work. Accordingly, I find that, over the period from January 30 to April 30, 2022, Mr. Seth accepted that he would receive full pay and benefits and not have to perform any work in return. In other words, over this period, Mr. Seth condoned the employment arrangement.

[131] Mr. Seth further argues that K-Bro's explanation that Mr. Seth was not terminated but was placed on temporary lay-off is not supported by evidence. Mr. Seth asserts that none of the requirements of a temporary lay-off under section 62 of the *Employment Standards Code* were met including the issuance of written lay-off notice. However, I do not understand K-Bro to be taking the position that it temporarily laid Mr. Seth off. Temporary lay-offs are normally used in the case where an employer is experiencing a lack of work and wishes to temporarily reduce its workforce.

[132] Here, K-Bro was not seeking to temporarily lay Mr. Seth off but rather to place him on medical leave. It is clear that the reason that Mr. Seth could not perform his duties at the plant was due to medical issues. It was not the case that K-Bro was suspending Mr. Seth's employment due to a lack of work. Indeed, the evidence supports that K-Bro had just come through a very busy period where they were onboarding new customers.

[133] Accordingly, Mr. Seth was not constructively dismissed at any point between January 27, 2022 to April 30, 2022.

2026 ABKB 790 (CanLII)

ii. Placing Mr. Seth on unpaid medical leave as of April 30, 2022

[134] The next significant event occurred on April 30, 2022 when K-Bro ceased paying Mr. Seth and placed him on unpaid medical leave.

[135] Prior to this date, Mr. Seth had attended at the back surgeon on April 5, 2022. The back surgeon did not opine on Mr. Seth's ability to return to work, although he did note that Mr. Seth has been experiencing significant low back, right buttock, hip, and leg pain for roughly a year. The primary purpose of the back surgeon's letter was to provide an assessment of whether Mr. Seth was a candidate for surgery. It was determined that Mr. Seth was not a surgical candidate.

[136] Mr. Seth then attended at his family doctor on April 12, 2022 following the surgical consult. On this date, the family doctor provided Mr. Seth with a medical note which stated "OFF WORK April 1 to July 2, 2022 due to medical problems. Physically unable to attend work." This medical note was provided to K-Bro through counsel on April 18, 2022. The medical note was accompanied by a cover letter from counsel for Mr. Seth. Counsel for Mr. Seth indicated that Mr. Seth was capable of performing his duties during the period from April 1 to July 2, 2022 while working from home.

[137] Counsel for K-Bro responded on April 22, 2022 and advised that Mr. Seth should be applying for LTD benefits given his medical condition and prognosis. K-Bro also indicated its disagreement with the notion that Mr. Seth could perform his duties at home until July 2, 2022. K-Bro reasserted its view that a plant production manager needs to be out on the plant floor regularly. K-Bro noted that it recognized that Mr. Seth was reluctant to apply for LTD benefits because of the 119-day qualifying period, but noted that a significant portion of the qualifying period may have already passed. K-Bro then communicated that Mr. Seth was being placed on unpaid medical leave effective April 30, 2022. K-Bro further stated that under the terms of his employment agreement, Mr. Seth had an obligation to submit the LTD benefit application.

[138] Mr. Seth asserts that moving him to an unpaid leave of absence and failing to provide him with pay and duties amounted to a constructive dismissal.

[139] In ***Potter,*** the Supreme Court considered whether a unilateral indefinite administrative suspension amounted to constructive dismissal. Although ***Potter*** was not dealing specifically with a medical leave, the guidance provided by the Supreme Court on when an employer may validly withhold duties is instructive. ***Potter*** held that the inquiry is fact-specific and the fundamental question is whether the employer's decision to withhold duties was both reasonable and justified in the circumstances: ***Potter*** at paras 85 and 86.

[140] Mr. Seth argues that K-Bro failed to accommodate him by not returning him to the work from arrangement that was in place from late November 2021 to January 30, 2022. I note here that this matter is not a human rights claim for the failure to accommodate. This is a claim for wrongful dismissal. Human rights claims and claims for constructive dismissal are conceptually distinct. However, the steps taken by K-Bro in terms of providing duties, or not providing duties, to Mr. Seth from the perspective of constructive dismissal, intersect with the duty to accommodate and I will consider duty to accommodate principles in that light.

[141] Mr. Seth argues that he could perform the essential duties and functions of the Senior Production Manager while working from home. To this extent, K-Bro had a duty to accommodate him by allowing him to work from home until such time as his back had healed and he was able to return to work on the plant floor.

2026 ABKB 790 (CanLII)

[142] However, as I have found above, Mr. Seth was not able to perform the essential duties of the Senior Production Manager from home.

[143] While K-Bro allowed Mr. Seth to work from home from mid-November 2021 to January 30, 2022, this does mean that K-Bro was required to continue this arrangement indefinitely or that it was required to return Mr. Seth to the work from home arrangement after April 30, 2022.

[144] In my view, the accommodation process contemplates trying one working arrangement and then making adjustments or changes accordingly as the employee or the employer's circumstances change. Here, the work from home arrangement was put in place to assist K-Bro during a particularly busy period and to allow Mr. Seth to stay engaged with K-Bro and perform the work from home that he was capable of performing while recovering from his back injury.

[145] When the arrangement was put in place, the medical information available to K-Bro was that Mr. Seth would be off work from November 16, 2021 to January 3, 2022. On that basis, K-Bro's evidence that they expected the work from arrangement to be temporary was reasonable. At the time the work from home arrangement was put in place, no one contemplated that it would last beyond January 3, 2022.

[146] As noted by Mr. Rye in his affidavit, based on that medical information, neither party contemplated that the work from home arrangement was going to be other than short-lived and temporary. I accept that as time went on, and Mr. Seth continued to work from home past the original anticipated return date of January 3, 2022, that his physical absence from the plant began to pose challenges for K-Bro.

[147] Both Mr. Rye and Mr. Lazaro testified, and I accept, that Mr. Lazaro was required to take on a lot of extra responsibilities with Mr. Seth being at home. As a result, he was working more hours and extra days to fill in a lot of what Mr. Seth used to do. According to Mr. Rye, Mr. Lazaro was spending two extra hours per day or more as a result of Mr. Seth being at home.

[148] Mr. Lazaro was willing to manage the additional burdens and responsibilities created by Mr. Seth's absence for a short time because he appreciated Mr. Seth and wanted to support him. However, according to Mr. Lazaro, Mr. Seth being absent from the plant and working from home was not feasible as a long-term arrangement.

[149] For as long as Mr. Seth worked from home, Mr. Lazaro, at the beginning and end of his shifts, would spend time on the phone with Mr. Seth keeping him informed of the happenings at the plant. These calls would not have been necessary had Mr. Seth been physically present at the plant, since in that case, he would have already been aware of everything that Mr. Lazaro was otherwise reporting to him during the phone calls.

[150] While part of the purpose of the calls was to get Mr. Seth's input into various decisions, according to Mr. Lazaro, Mr. Seth was not able to provide much value because he was a big step removed from the daily happenings at the plant. As such, the primary purpose of the telephone calls was really to keep Mr. Seth in the loop so that he could hit the ground running when he returned to work at the plant. In reality, many of the updates that Mr. Lazaro was providing were with respect to things that had already been resolved at the plant so Mr. Seth's assistance in resolving the matter wasn't really needed. Mr. Lazaro estimated that these calls took between 1-1.5 hours of his day, time which he could have otherwise spent doing productive work.

[151] Mr. Seth acknowledged that these phone calls occurred but estimated that they took more like 15-20 minutes per day. Either way, I accept that the phone calls, along with the extra duties

2026 ABKB 790 (CanLII)

that Mr. Lazaro had to take on the plant floor in Mr. Seth's absence, created additional burdens on Mr. Lazaro that would not have been present had Mr. Seth been working on-site at the plant.

[152] Mr. Lazaro confirmed that Mr. Seth's input was very valued but stated it was just minimal when he was working from home. According to Mr. Lazaro, production managers and senior production managers are more valuable, however, when they are present on the plant floor.

[153] As stated by Ms. Plaquin, the situation which they thought when it was put in place was going to be temporary in nature was not as temporary as they had anticipated and K-Bro needed to make a decision as a company to fill that void. They could not continue to ask other employees to cancel vacations and work longer hours to pick up the tasks that were not being performed due to Mr. Seth's lack of ability to physically come into work.

[154] When a further medical note was provided on December 28, 2021 that indicated that Mr. Seth would remain off work until March 30, 2022, the length of time that Mr. Seth was anticipated to be away from work changed, and it was not unreasonable for K-Bro to assess at that point whether the work from home arrangement continued to be a reasonable accommodation.

[155] Given my finding that the essential duties of Mr. Seth's position could not be performed from home, and given that his absence was putting extra demands on other K-Bro employees, in particular on Mr. Lazaro who was required to carry out Mr. Seth's on-site duties, it was not unreasonable in my view, for K-Bro to discontinue the work from home arrangement when faced with the prospect that it was going to continue past January 3, 2022. By January 3, 2022, Mr. Seth had been working in an arrangement where he was not performing the essential duties of his position for approximately two and a half months.

[156] Further, while continuing the work from arrangement was not tenable from K-Bro's perspective in that Mr. Seth could not perform his essential duties from home, it is also not clear that the arrangement was working that well for Mr. Seth either. During questioning, Mr. Seth indicated that he could not sit for very long at a computer terminal and he would need to switch his position from sitting to lying down to standing to walking for a little bit to back to sitting. He estimated he could only sit for 10 minutes at a time.

[157] On cross-examination, Mr. Seth testified that when he was working from home, he would be lying down on his bed at home with his laptop on his stomach. In his affidavit, Mr. Seth testified that in the week following his injury he could not complete his work because the pain was far too intense for him to handle. During cross-examination on November 5, 2023, Mr. Seth indicated that he continued to experience this level of pain throughout December 2021 to April 2022. Mr. Seth stated that the pain never got better. In these circumstances, it appears that Mr. Seth was struggling even to carry out his incidental duties from home.

[158] Mr. Rye's evidence was that at the time, Mr. Seth was in severe pain. He remembered days when Mr. Seth would say "I can't even get out of bed. I try to get out of bed and I'm in so much pain." On this basis, Mr. Rye testified that there were many instances where Mr. Seth was unable to work at all even from home. He further noted that Mr. Seth's work from home was inconsistent. Mr. Seth "had good days and bad days where he was able to assist and there were days where he was not able to assist at all".

2026 ABKB 790 (CanLII)

[159] While an employer has a duty to provide reasonable accommodation, reasonable accommodation does not require employers to change working conditions in a fundamental way: ***Syndicat des employes de techniques professionelles & de bureau d'Hydro-Quebec***, 2008 SCC 43 at para 16. In my view, requiring an employer to provide accommodation by allowing an employee to perform only incidental administrative tasks rather than the essential duties of their role would amount to changing working conditions in a fundamental way. While it may have been reasonable for K-Bro to put this type of working arrangement in place for a period that was understood to be temporary, when the temporary nature of the accommodation changed, it was both reasonable and justified for K-Bro to revisit the nature of the working relationship.

[160] Other cases have reached similar conclusions. In ***McAlpine v Econotech Services Ltd.***, 2004 BCCA 111, the employee was returning to work after a lengthy LTD leave. She began the return-to-work process by performing heavily modified, non-managerial duties for 9 hours per week at home. The employee requested more hours but was wholly unable to perform major portions of her job description. Eventually, the work she was requested to do declined and she claimed constructive dismissal. In determining that there was no constructive dismissal, the court held as follows at paras 27 and 28:

> *There was throughout the submissions on this issue the proposition that Econotech was required to continue to provide either part-time or full-time work for Ms. McAlpine at those tasks she believed she could perform. Regrettably, those functions did not include the substance of her managerial duties.*
>
> *Whatever may be the extent of the [duty to accommodate], it does not extend in my view to a contractual obligation to amend a job by deleting a component which is significant both in time and responsibility, such as the managerial duties here.*

[161] In ***U.F.C.W., Locals 175 and 633 v Community Nursing Home – Port Hope,*** 1996 CarswellOnt 5429 (Ont. Arb. Bd.), a healthcare aid whose inability to lift, pull or push prevented her from performing the essential duties of her position was not entitled to a job comprised of non-physical duties that would have effectively required the creation of a fundamentally different position.

[162] ***Greyhound Canada Transportation Corp v ATU, Local 1415***, 2011 CarswellOnt 4691 involved a bus driver whose medical restrictions made it unsafe for him to lift luggage. The employer was not required to modify his position so as to remove the luggage handling function as this would have fundamentally changed the position by removing an essential aspect of the work.

[163] Similarly, in my view, the contractual obligation here did not extend to permitting Mr. Seth to perform only the incidental and not the essential duties of the Senior Production Manager role. This would have amounted to a fundamental change to the position.

[164] Mr. Seth argues that his situation is similar to the circumstances in ***Irvine v Gauthier (Jim) Chevrolet Oldsmobile Cadillac Ltd***, 2013 MBCA 93. In ***Irvine,*** the general manager, who was struggling with deteriorating eyesight, which was impacting his work, was called into a meeting. During the meeting, the general manager asked to take a leave of absence and apply for LTD. The employer told him he could take time off and return to work when he was better.

2026 ABKB 790 (CanLII)

However, within two weeks, the employer had filled the general manager position and the general manager brought an action for wrongful dismissal. The trial judge found that the employee had resigned when he asked to take time off, convalesce and apply for LTD. On appeal, the Manitoba Court of Appeal found that the general manager had been constructively dismissed, noting as follows at para 63:

> *There was no invitation to the plaintiff to obtain a medical report or to return to discuss the difficulties he was having in order to develop a mutually satisfactory plan. Rather, the plaintiff was removed from his position indefinitely and lost his salary after two weeks. What occurred at the May 5th meeting can only be described as a "fait accompli," decided unilaterally. The plaintiff was a long-standing senior employee. He was effectively told to go home and to apply for disability coverage. This was, in my view, a forced leave of absence.*

[165] In my view, the circumstances of this case are markedly different. The parties in this case first attempted a period of work from home. Next, K-Bro relied on medical information provided by Mr. Seth's physician to assess next steps when the work from home arrangement was no longer tenable. It then placed Mr. Seth on a paid medical leave for a period of three months. When it was apparent at the end of that three months that there was no clear prognosis or timeline for recovery, based on the medical information available at that time, K-Bro moved, only at that point, to place Mr. Seth on an unpaid leave of absence and to ask him to apply for LTD.

[166] This decision was, unlike the situation in ***Irvine,*** based on medical information and the fact that Mr. Seth could not perform the essential duties of the Senior Production Manager, after an attempt to have Mr. Seth work from home. Further, K-Bro did not move to re-organize its staffing complement to Operations Manager and two Production Managers until after Mr. Seth filed his Statement of Claim. There was no "fait accompli" as was the case in ***Irvine***.

[167] In my view, it is clear that the work from home arrangement needed to be revisited when the new medical was obtained which made it clear that Mr. Seth would not be ready to return to work in January 2022, as originally understood.

[168] Rather than revert to the work from home arrangement in the circumstances, K-Bro opted, at this point, to place Mr. Seth on unpaid medical leave, with the expectation that he would apply for LTD income replacement benefits. I accept, as argued by K-Bro, that an employee whose injury prevents them from performing their essential duties may be accommodated through a period of absence from work.

[169] The decision to place an employee on medical leave ought to be driven, of course, by the medical information available about the employee. By this point, K-Bro had first received a medical note stating that Mr. Seth was expected to return to work by January 3, 2022. Subsequent medical was provided extending the expected return to work date to March 30, 2022. Further medical was then provided on April 12, 2022 extending the expected return date to July 2, 2022. The April 5, 2022 medical report from the back surgeon did not opine on a return-to-work date but did refer to Mr. Seth experiencing significant pain.

2026 ABKB 790 (CanLII)

[170] Accordingly, on April 22, 2026, when the decision to place Mr. Seth on unpaid medical leave was made, there was no clear indication of when Mr. Seth might be fit to return to his essential duties. Further, it is important to consider what the medical conveyed in terms of Mr. Seth's ability to work. The first two medical notes simply describe Mr. Seth as "off work due to medical problems" and the third medical note uses the same description except also adds "physically unable to attend work". In the February 2, 2022 correspondence to K-Bro from counsel for Mr. Seth, the following is stated: "Enclosed with this letter are notes from Mr. Seth's family physician outlining that he is unable to work at the facility because of his back injury and that his must work from home in the interim."

[171] Further, Mr. Seth makes the following assertions in his affidavit: "I obtained an additional medical note advising that I was required to work from home until I saw the specialist." (para 37); "I informed the Defendant of the update and enclosed an additional medical note from my medical doctor requesting to continue to work from home" (para. 44).

[172] In my view, the assertions by Mr. Seth and his counsel that the medical notes indicated that he was required to work from home plainly mischaracterize what the medical notes say. At no point did any of the medical notes provided by Mr. Seth's physician opine that Mr. Seth should be working from home.

[173] Faced with a seemingly moving target in terms of any expected return to work date and no clear prognosis and considering the frailties of the work from home arrangement, it was both reasonable and justified, in my view, to place Mr. Seth on a medical leave at this point. The fact that the medical leave was unpaid does mean it was unreasonable. Absent a contractual or statutory obligation or a policy of the employer (none of which are present here), there is no freestanding obligation on an employer to pay an employee who is on medical leave and not performing work as a result. In the present case, K-Bro did not provide paid sick leave or short-term disability.

[174] What it did provide, however, was a long-term disability plan. Long-term disability plans, such as the one provided by K-Bro, are considered as integral parts of the employment contract: ***Sylvester v British Columbia***, 1997 CanLII 353 (SCC), [1997] 2 SCR 315 at para 13. The clear purpose of employer-provided LTD plans is to provide sick or injured employees with income replacement benefits when illness or injury prevents work.

iii. The request to access LTD benefits

[175] Mr. Seth argues that K-Bro, in its April 22, 2022 letter, stated that Mr. Seth was being placed on injury leave and that he could only remain on injury leave if he applied for LTD benefits. Mr. Seth characterizes this as K-Bro making Mr. Seth's continued employment conditional upon him applying for LTD benefits. He argues that this represents a unilateral, unreasonable change to essential aspects of the employment agreement.

[176] I am unable to accept Mr. Seth's position in this regard. The April 22, 2022 letter states "Mr. Seth can remain on an unpaid medical leave and submit an application to Manulife Insurance for LTD benefits" and "Under the terms of his employment agreement, he instead has an obligation to submit the benefit application [LTD]".

[177] First, I fail to see how, on a plain reading of the letter, that Mr. Seth's continued employment relationship was made conditional on an application for LTD. It was explained to Mr. Seth that he had an obligation to apply for LTD. There is nothing in the letter to suggest that

2026 ABKB 790 (CanLII)

K-Bro would terminate the employment relationship in the event Mr. Seth does not apply for LTD.

[178] Second, it is clear that for the month of May 2022, Mr. Seth remained on unpaid leave even though he had not applied for LTD benefits. Ms. Plaquin gave evidence during her cross-examination on affidavit that K-Bro does not actively monitor LTD applications or diarize LTD applications. This is because typically employees are quite diligent in making their LTD applications to ensure their financial security.

[179] It is difficult to see how Mr. Seth's employment was conditional on making an LTD application if K-Bro did not even follow up with Mr. Seth to see if he had applied or even set a date by which the LTD application had to be made, failing which his employment would be terminated. K-Bro did not chase Mr. Seth to determine whether or not he had applied for LTD. Rather, K-Bro left it up to Mr. Seth as to whether he wanted to avail himself of income replacement benefits while he was on medical leave. As it was, Mr. Seth was left, undisturbed, on unpaid medical leave from April 30, 2022 until May 30, 2022 when he filed his Statement of Claim against K-Bro.

[180] Third, I fail to see how a request to complete an application for LTD benefits amounts to a unilateral fundamental change in the employment relationship. As noted in ***Sylvester,*** LTD plans are integral parts of employment contracts. As such, it would have always been in the contemplation of the parties to the employment contract that if Mr. Seth became unable to perform the essential duties of his position due to injury or illness that he could and presumably would apply for LTD benefits.

[181] Mr. Seth argues that K-Bro made his ability to access injury leave under the *Employment Standards Code* dependent on applying for injury leave. Section 53.97 of the *Code* provides employees with an annual entitlement to up to 16 weeks of unpaid job-protected illness or injury leave upon providing the employer with a medical certificate confirming the estimated duration of the leave. Mr. Seth argues that by requiring him to apply for LTD, K-Bro erected a barrier to accessing a job-protected leave that is not found in the *Code*.

[182] I struggle to accept this argument. An employer's obligation under section 53.97 is to allow an employee to be away from work for up to 16 weeks as a result of injury or illness. The employee is not entitled to pay during this time and the employer is not permitted to terminate employment during the period of leave. In my view, by April 30, 2022, K-Bro had allowed Mr. Seth to remain on leave since January 31, 2022, a period of approximately 13 weeks. During this period, K-Bro was providing Mr. Seth with his full salary. In other words, K-Bro was providing a benefit to Mr. Seth over and above the obligations found in section 53.97 of *Code*. As of April 30, 2022, K-Bro advised that it would switch the leave status from paid to unpaid. This is permitted by the *Code*.

[183] Again, I fail to see how the continuation of the leave was conditional on an application for LTD. K-Bro maintained Mr. Seth on unpaid leave status, without any LTD application having been made, until May 30, 2022, when it was served with the Statement of Claim. At no point did K-Bro take steps, of its own initiative, to terminate the unpaid leave status. The intervening event that changed the employment status was the Statement of Claim.

[184] I note here, parenthetically, that by May 30, 2022, Mr. Seth had been provided with more than the 16 weeks of job-protected leave provided by section 53.97 of the *Code*.

2026 ABKB 790 (CanLII)

[185] Mr. Seth further argues that K-Bro's placement of him on unpaid injury leave amounts to constructive termination because it was done without his consent. However, I do not understand the consent of the employee to be required in these circumstances. As noted, earlier placing an employee on unpaid illness or injury leave is a form of accommodation. Employees are not entitled to dictate the terms of accommodation. While accommodation should be generally be approached in a consultative and collaborative spirit, the employer is ultimately the party who determines the nature of any workplace accommodation. Employees are entitled to reasonable accommodation, not perfect accommodation, and the employer is not required to accept the employee's own subjective assessment of his or her abilities: ***Callan v Suncor Inc.***, 2006 ABCA 15 at para 21.

[186] Mr. Seth also asserts that K-Bro breached its own policy by requiring Mr. Seth to apply for LTD to remain on injury leave. K-Bro's policy in the event of illness or injury was to ask employees to apply for EI medical benefits to bridge them financially until they were eligible to access LTD benefits (after the 119-day qualifying period and once Manulife assessed the employee as eligible for benefits). Ms. Plaquin testified that Mr. Seth's circumstances were the first time that they had encountered an employee who was resistant to applying for LTD benefits. However, this is not the same as requiring Mr. Seth to apply for LTD benefits in order to stay on injury leave. Again, I am unable to see anything in K-Bro's actions that could be construed as requiring Mr. Seth to apply for LTD in order to stay on injury leave.

[187] It is common ground that at no point did Mr. Seth submit an application for LTD benefits. I find this choice on Mr. Seth's part somewhat baffling. His hesitation might possibly have been understood had it arisen from the fact that the LTD benefit would only provide 70% of monthly earnings. However, Mr. Seth expressly rejected this proposition when it was put to him during cross-examination on affidavit. Rather, Mr. Seth's refusal to apply for LTD was based on the fact that "I can still work so why go on LTD?".

[188] Mr. Seth further asserts that he did not want to go on LTD as he wanted to try the new treatment regime that his doctor had developed for him, which was to be assessed 11 weeks later in July 2022. In his affidavit, Mr. Seth states that he asked his doctor numerous times if he qualified for LTD and that he was told and believed that it was too early to determine the scope and extent of his injury and whether there were any treatment options.

[189] Whatever Mr. Seth may have understood from his physician about his injury, his physician was not the arbiter of whether or not Mr. Seth would have qualified for LTD benefits. While his physician would have been required to complete a portion of the claim form, it is clear from the LTD benefits booklet attached to the affidavit of Ms. Plaquin that Manulife assesses whether or not the employee meets the eligibility criteria to receive LTD benefits. Physician information is undoubtedly a key part of that assessment, but the decision remains that of Manulife.

[190] As noted in the submissions of K-Bro, it appears that Mr. Seth would have preferred to stay on unpaid medical leave than to apply for LTD benefits. Ms. Plaquin was repeatedly questioned as to why K-Bro would not simply let Mr. Seth go on unpaid leave as opposed to apply for LTD. As I have found, K-Bro, in fact, permitted Mr. Seth to stay on unpaid leave in the absence of any LTD application.

[191] Why Mr. Seth would have preferred an unpaid leave to accessing income replacement benefits while he was on medical leave remains unclear. As noted by the K-Bro witnesses,

2026 ABKB 790 (CanLII)

applying and receiving LTD benefits would have been to Mr. Seth's advantage. LTD benefits are there specifically to provide financial security to employees who are unable to work as a result of illness or injury.

[192] Further, while it was not entirely clear if the full length of time from Mr. Seth's back injury in November 2021 could be used against the 119-day qualifying period, Mr. Seth testified that when he spoke to Mr. Rye and Ms. Ethier on January 23, 2022, he was told about the qualifying period and advised that, at that point, he would have run out about 72 days. Certainly then, by April 30, 2022, he would have been well past the 119-day mark. In these circumstances, he would have been entitled to start receiving LTD benefits (assuming he qualified for them) by May 1, 2022 and seamlessly mitigated the financial impact of moving to an unpaid medical leave.

[193] Finally, I note the definition of "totally disabled" under the Manulife policy which is stated as "a restriction or lack of ability due to an illness or injury which prevents you from performing the essential duties of your own occupation" (or any occupation after a period of two years). Even if Mr. Seth felt he was capable of performing the incidental functions of his work from home, and therefore, in his own mind, he would not have qualified for LTD, the definition of "total disabled" does not require a complete inability to do anything at all. Here, as I have found, Mr. Seth was restricted from performing the essential duties of his position, and, to this extent, he may well have qualified for LTD.

[194] All Mr. Seth was asked to do was a submit an application for LTD benefits to determine if he qualified to receive them. But this he steadfastly refused to do. His objection to doing so is, again, not clearly discernible. I cannot see how it would have been an overly onerous task to submit an application and there was no apparent downside for Mr. Seth had he done so. At best, he would have qualified for LTD benefits and been financially supported while he recovered from his back injury, and at worst, he would not have qualified for LTD.

[195] In the event that Mr. Seth did not qualify for LTD, Ms. Plaquin testified that Mr. Seth would have remained on unpaid medical leave. When he was healthy and fit to return to work, he would have had his full job and pay back.

[196] As noted earlier, an employer is not required to accept an employee's own subjective assessment of his or her abilities: ***Callan*** at para. 21. As such, I accept K-Bro's submission that it was entitled to request medical information through the form of the LTD adjudication process. The results of the LTD adjudication would have provided valuable information to both parties with respect to whether Mr. Seth met the definition of "totally disabled" for LTD purposes or whether he was in fact fit to perform the essential duties of his position. Unfortunately, this assessment did not take place.

[197] I further accept that Mr. Seth has his own duty to participate in and facilitate the accommodation process. K-Bro's request that he submit an application for LTD benefits was not unreasonable in the circumstances. In my view, Mr. Seth ought to have submitted his LTD benefits application as part of the shared duty to accommodate.

[198] I have also briefly considered whether Mr. Seth's failure to apply for LTD benefits in the face of at least three requests by K-Bro (on January 27, 2022, February 17, 2022, and April 22, 2022) might have amounted to insubordination. However, K-Bro did not take this position at any

2026 ABKB 790 (CanLII)

point as the events were unfolding nor did it take this position at trial. Accordingly, I will not consider this issue further and make no finding in this regard.

[199] Perhaps Mr. Seth understood that transitioning to LTD benefits meant the end of the employment relationship. But that was not the case. Whatever the reasoning behind his resistance, it again led to an unfortunate turn. Had he applied when asked by K-Bro, and been accepted, we know now with the benefit of hindsight, that he would have remained on LTD for only a short period, until September 13, 2022, when he was cleared to return to work. The employment relationship would have remained intact until this point and then he would have been back working in his Senior Production Manager role, undoubtedly much to the delight of both Mr. Seth and K-Bro.

[200] For the reasons set out above, I find that placing Mr. Seth on unpaid medical leave and requesting him to apply for LTD benefits was reasonable and justified in the circumstances. In my view, a reasonable person in the same position as Mr. Seth would not have determined that the essential terms of the employment contract were being substantially changed. Applying for LTD benefits in the face of illness or injury would be a step reasonably contemplated within this employment contract. Accordingly, I do not find that these actions on the part of K-Bro amounted to constructive dismissal.

[201] Having found that there was no constructive dismissal, I turn now to consider the question of whether Mr. Seth resigned his employment.

(d) Did Mr. Seth resign his employment with K-Bro?

[202] Mr. Seth argues that he did not resign his employment by commencing an action for wrongful dismissal against K-Bro. He argues that resignation must be clearly expressed both subjectively and objectively. Mr. Seth asserts that his consistent communication of his desire to work from home, his updating of K-Bro on his medical progress and his demands that he be allowed to continue his job demonstrate a commitment to preserve the employment relationship and not sever it. For its part, K-Bro submits that Mr. Seth resigned when he filed a Statement of Claim asserting that he had been dismissed without cause and had ceased employment effective April 30, 2022.

[203] Mr. Seth relies on ***Beggs v Westport Foods Ltd***., 2010 BCSC 833 aff'd 2011 BCCA 76 for the proposition that seeking legal advice, exchanging letters between lawyers, or filing a statement of claim does not equate to resignation. The circumstances in *Beggs* involved an employee whose home had burned down. She called the employer the next day to advise of the fire and indicated that she would not be coming into work and did not know when she would return. There was no contact from the employee for a month. The employer called twice and could not reach her. It assumed she had resigned and issued an ROE stating she had quit. The Court in ***Beggs*** found that there was no clear and unequivocal resignation in the circumstances and the employer ought to have made more of a genuine attempt to contact her to determine whether she intended to resign or not. Accordingly, the employee's claim for wrongful dismissal was made out.

[204] While the employee in ***Beggs*** did retain legal counsel and filed a claim against her employer, I do not read ***Beggs*** as standing for the proposition that seeking legal advice, exchanging letters between lawyers, or filing a statement of claim does not equate to resignation. It was not the fact of filing a claim that was relied on as the employee's resignation in ***Beggs***.

2026 ABKB 790 (CanLII)

Rather, it was the fact that she had advised that she did not know when she would be back after the house fire and then did not contact the employer for a month. ***Beggs*** does not address the question of whether filing a Statement of Claim amounts to a resignation in and of itself.

[205] Similarly, in ***Lippa v Can-Cell Industries***, 2009 ABQB 684, another case relied on by Mr. Seth, the act relied on as resignation in that case was not the filing of a Statement of Claim but the fact that the plaintiff had not communicated with the employer over an extended period and accordingly had abandoned her position.

[206] In considering whether an employee resigns employment by taking legal action against the employer, the Supreme Court of Canada in *Potter* noted as follows at para 111:

> *The courts below took the view — as does the Commission — that a resignation had been effected by operation of law. In Suleman, for example, an employee whose workload had been reduced had failed to make out a case of constructive dismissal and was found to have repudiated her contract "by the position she took in her statement of claim" (p. 144; Court of Appeal reasons, at para. 99). This view certainly finds support in the traditional principles of the law applicable to constructive dismissal, and I have no doubt that the employee will be found to have resigned in the majority of failed constructive dismissal cases. However, I will leave open the question whether there are factual circumstances in which an employee whose constructive dismissal action is unsuccessful might nevertheless argue that he or she did not resign.*

[207] In ***Suleman v British Columbia Research Council***, 1990 CanLII 746 (BCCA), the Court found as follows at para 8:

> *The trial judge was of the view that neither the commencement of the action nor the pleadings required him to conclude that Mrs. Suleman must be taken to have resigned. I have difficulty in understanding that view. It seems to me that the commencement of the action was either an acceptance by Mrs. Suleman of a constructive dismissal, if she could establish that result, or a repudiation by her of her contract of employment, if she failed to establish that result.*

[208] ***Potter*** provided further clarification as follows at paras 108 and 109:

> *I would note, however, that in many failed constructive dismissal cases, the reason why the question of resignation by the employee does not arise will be that it is clear that the employee has resigned, given that, after the employer acted unilaterally to, for instance, demote the employee or transfer him or her to a new position, the employee elected to quit work and sue the employer. In this typical situation, if the constructive dismissal action fails, the employee cannot then argue that he or she did not quit work.*

2026 ABKB 790 (CanLII)

> *Nevertheless, there are instances in which it will not be necessary to conclude that the employee has resigned in bringing the constructive dismissal suit. One such case would be where, following the changes to the contract, the employee has continued to work under protest. This Court has held that employees have a duty to mitigate their damages by remaining in the workplace, provided that doing so would not be objectively unreasonable: see, e.g., **Evans v. Teamsters Local Union No. 31**, 2008 SCC 20, [2008] 1 S.C.R. 661. Where the employment relationship has not become untenable, it is not evident that by commencing legal action the employee should be held to have resigned by operation of law.*

[209] Mr. Seth further relies on ***Garner v Bank of Nova Scotia***, 2015 NSSC 122. The Court in ***Garner***, picking up on the Supreme Court of Canada's comments in ***Potter***, proposed at paras 194 and 195 the following contextual approach to assessing whether the commencement of legal action will amount to repudiation of the employment contract by the employee:

> *In my view, the Supreme Court's suggestion that where the employment relationship has not become untenable, it is not evident that by commencing legal action the employee has resigned by operation of law, allows for a more contextual approach to this issue and a consideration of all of the circumstances in order to determine whether a resignation or repudiation actually occurred. Clearly, there will be circumstances in which the filing of an action against an employer will constitute repudiation of the employment contract or a resignation by operation of law. **Suleman**, supra, and **Hulme**, supra, (where the plaintiffs declined to work further for their employers) are both examples of such cases. However, there may be cases where the circumstances will dictate against such a finding. Each case will have to be decided on its own facts.*
>
> *In analyzing the situation, the court will first ask whether the employee actually resigned. If the answer to that question is negative, the court should go on to ask whether, in the circumstances of the case, the employee's actions were such that he should be found to have resigned by operation of law or to have repudiated the employment contract by filing an action against his employer. In assessing this issue, the court should consider, inter alia, the nature of the plaintiff's employment, the length of his service, the context in which the action was brought, the nature and seriousness of the allegations made against the employer and the extent to which the lawsuit impacts upon the employment relationship. In essence, was it reasonable to expect the employee and employer to continue the relationship? Put another way, has the filing of the action given rise to a breakdown in the*

2026 ABKB 790 (CanLII)

> *employment relationship to the extent that continued employment has become untenable?*

[210] In ***Garner,*** the Court was not satisfied that the filing of the proceedings against the employer amounted to repudiation of the contract of employment. The Court found that continued employment was not untenable. However, this conclusion was driven by the fact that the employee had first filed a human rights complaint before filing the wrongful dismissal action. After filing the human rights complaint, the employee continued to work for the employer and there was no evidence that the human rights complaint affected his performance or his interactions with other employees.

[211] On this basis, the Court concluded that the employment relationship was still tenable in the face of legal proceedings. However, the Court also noted that the employee "upped the ante" by filing the wrongful dismissal action and accepted that allegations of constructive dismissal, tortious interference with contractual relations and a failure to treat him fairly and in good faith were serious allegations. Shortly after filing the claim, the employee was told not to report to work. However, given that the parties had previously been able to work together in the face of litigation, the Court was not satisfied that continued employment was untenable such that there had been a repudiation of the employment contract by the employee.

[212] It is clear in the present case that Mr. Seth did not actually resign in the sense that he did not provide K-Bro with a letter of resignation or inform K-Bro that he was quitting his employment. However, that is not the end of the story. It must also be considered whether Mr. Seth's actions indicate that he resigned his employment or repudiated the employment contract by filing the action against K-Bro.

[213] There is no question that Mr. Seth was a well-respected and valued employee of K-Bro for over 40 years. He was 63 years of age when the employment relationship came to an end. His long service and his age might favour a conclusion that he did not intend to repudiate the employment relationship. At that point in life and with that many years of service, it might be inferred that Mr. Seth would have sought to remain employed with K-Bro until retirement.

[214] Another factor for consideration, as noted in the passage from ***Garner*** above, is whether the employee declines to work further for the employer. This was described as a clear case of repudiation. In the present case, Mr. Seth did not decline to work further for K-Bro, but he did decline to apply for LTD benefits notwithstanding K-Bro's multiple requests that he do so. Instead, Mr. Seth continued to insist that he be able to work from home notwithstanding that his injury prevented him from performing the essential duties of his position from home. To this extent, Mr. Seth's conduct suggests that he was treating K-Bro`s placement of him on unpaid medical leave and its request that he apply for LTD as a repudiation of the employment contract by K-Bro.

[215] Perhaps another way to cast this situation is that the employment relationship had become untenable as Mr. Seth would only work from home when this was not a work arrangement contemplated under the fundamental terms of the employment relationship.

[216] I have also considered that the nature of the allegations against K-Bro are very serious. Paragraph 5 of the Statement of Claim was characterized by counsel for K-Bro as a "scathing indictment" of the company. It reads, in part, "the dismissal was the culmination of a period of intimidation, and egregious and unlawful treatment, which included withholding payment and

2026 ABKB 790 (CanLII)

threatening termination due to Seth's medical condition". Paragraph 46 accuses K-Bro of dismissing Seth in an egregious and callous manner and not dealing with him fairly and in good faith. As found in ***Garner***, there is no question that these are very serious allegations.

[217] Unlike in ***Garner,*** however, there is no evidence that the employment relationship could have continued unbothered in the face of the serious allegations and the litigation. Given the Court's comments in ***Garner*** that the employee had "upped the ante" by filing the claim in court and given the Court's acceptance of the seriousness of the allegations made against the employer, it may well be that, but for the evidence of the proven prior ability to continue the employment relationship, the Court in ***Garner*** would have reached the conclusion that filing the claim did, in fact, amount to a repudiation of the employment contract.

[218] Mr. Seth argues his claim was filed in order to preserve his rights. As noted by K-Bro, Mr. Seth had two years from April 30, 2022 in which to file his Statement of Claim. However, as it was, Mr. Seth filed his claim only one month after April 30, 2022. In my view, this timing is more consistent with Mr. Seth having accepted the end of the employment relationship than it is with preserving rights that were extant until April 30, 2024.

[219] The timing of the filing and service of the Statement of Claim is again unfortunate. Had Mr. Seth held off on legal action at least for a few months until he had attempted the new treatment plan put in place by his physician, we know now, with the benefit of hindsight, that he would have been cleared to return to work as of September 13, 2022 and, by all of K-Bro's accounts, he would have been put back to work in the Senior Production Manager at that time. The filing of the claim at such an early juncture is yet another unfortunate turn in this unfortunate series of events.

[220] Having weighed and considered the above factors, I find that this the filing of the Statement of Claim in this case amounted to a "resignation by operation of law". Having failed to make out his claim for constructive dismissal, Mr. Seth repudiated the employment contract by the position taken in the Statement of Claim.

[221] In the event I am wrong with respect to my conclusions on wrongful dismissal and resignation and Mr. Seth was, in fact, dismissed by K-Bro, I will go on to assess the damages owing for wrongful dismissal.

(e) What are the damages for wrongful dismissal?

[222] In the event that he was wrongfully dismissed, Mr. Seth claims a reasonable notice period of 30 months, his bonus for the 2021-year, aggravated damages of $150,000 and punitive damages of $50,000. By contrast, K-Bro takes the position that Mr. Seth is entitled to a reasonable notice period of 19 months.

i. Reasonable notice period

[223] Damages for wrongful dismissal are assessed based on the following factors: (a) age; (b) length of service; (c) the character of employment; and (d) the availability of similar employment: ***Bardal v Globe & Mail***, 1960 CanLII 294.

[224] There is no question that Mr. Seth's age of 63 years and his nearly 42 years of service to K-Bro point to a lengthy reasonable notice period.

[225] I further accept that Mr. Seth held a key role at K-Bro as the Senior Production Manager. He was relatively high up the organizational hierarchy reporting to the General Manager, who, in

2026 ABKB 790 (CanLII)

turn, reported to the Vice President. Mr. Seth was directly responsible for supervising four supervisors and a Production Manager and indirectly responsible for supervising approximately 140 plant employees. He was responsible for managing the production floor and ensuring that daily production targets were met. Achieving daily production targets was key to meeting K-Bro's overall business objectives.

[226] There was limited evidence before me with respect to the availability of similar employment. As of the date of trial, Mr. Seth had not been able to find new employment. I accept that Mr. Seth worked in a somewhat specialized role in that his expertise and experience related primarily to the commercial laundry industry. This could serve to limit his employment prospects to a similar industry. On the other hand, there may be certain skills obtained through the management of a production floor that could be transferable to other production floor settings in different industries.

[227] On balance, I find that the character of Mr. Seth's employment and the likely limited availability of similar employment also point to a reasonable notice period at the lengthier end of the spectrum.

[228] Both parties pointed to the existence of a notional 24-month cap on reasonable notice periods in Alberta. However, I note that a 26-month reasonable notice period was recently awarded by this Court in ***Lischuk v K-Jay Electric Ltd,*** 2025 ABKB 460**.**

[229] In ***Lischuk***, the notional 24-month cap was exceeded as a result of exceptional circumstances. "Exceptional circumstances" usually arise where an individual begins working for a company as a young adult and is terminated near potential retirement age, after becoming a key or highly specialized employee. The employee, upon termination, is in a situation where their prospects of obtaining similar and comparable employment are significantly limited based on factors specific to their singular employment, such that they have effectively been "forced into retirement": ***Lischuk*** at para 20.

[230] In ***Lischuk***, the plaintiff was 58 years old at the time of his termination and had worked at for the employer for 34 years. His only other work experience was as a labourer in his early twenties. K-Jay was effectively the only employer Mr. Lischuk had. When Mr. Lischuk started at K-Jay in 1978, the business was small, and he was a labourer. He was promoted to the position of General Manager, responsible for the day-to-day running of the business and was second in command. Over those same years, K-Jay grew to be one of the top companies in electrical contracting industry, earning multi-million-dollar annual revenues and annual profits in excess of $1 million or more. Mr. Lischuk was a key employee for many years at K-Jay.

[231] K-Bro relies on ***Novakowski v Canadian Linen & Uniform Service Co.***, 2015 ABQB 53. It asserts that Mr. Seth's circumstances are on all fours with the plaintiff in ***Novakowski*.** The plaintiff in that case was an extremely long service managerial employee (over 40 years) of a linen company, was in his late 50s and was employed as the District Manager. The Court declined to award a reasonable notice period as high as 24 months as it found that this limit was reserved for only the most senior employees in management with significant responsibilities. Here, although the plaintiff was in management, he was not in such a senior management position that he would be entitled to the upper limit of 24 months. Accordingly, the reasonable notice period was set at 19 months.

2026 ABKB 790 (CanLII)

[232] Mr. Seth relies on a number of Alberta cases involving managerial employees ranging in age from 44 to 57 who had worked for their employees for between 22 and 29 years. In three of these cases, 24 months of reasonable notice were awarded and in one case 22 months of reasonable notice was awarded: ***Jones v Temple Real Estate Trust***, 2018 ABQB 606, ***Jonasson v Nexen***, 2018 ABQB 598, ***Hansen v Altus Energy***, 2010 ABQB 820 and ***Mitchell v Westburne Supply Alberta***, 2002 ABQB 377.

[233] In the circumstances, I am satisfied that a reasonable notice period of 24 months is appropriate for Mr. Seth. While he did not hold the most senior management position at K-Bro, Mr. Seth is somewhat older than the employee in ***Novakowski,*** and I find that his circumstances are very much like those of Mr. Lischuk. Mr. Seth devoted his entire working life to K-Bro and K-Bro was effectively his only employer. He worked in the specialized field of commercial laundry and developed skills which were specific to K-Bro. He helped grow the company into the successful business that it is today. At 63 years of age and with a skill set largely unique to K-Bro, I find that Mr. Seth's prospects of finding new employment would be relatively limited.

[234] The onus of establishing a failure to mitigate rests on the employer. The employer must demonstrate both that the employee failed to take reasonable steps to obtain alternative employment and that, had reasonable efforts been made, the employee would likely have obtained suitable alternative employment: ***Red Deer College v. Michaels,*** 1975 CanLII 15 (SCC), [1976] 2 SCR 324. K-Bro made no submissions on any failure to mitigate. Accordingly, there should be no deduction for the failure to mitigate.

[235] Based on my finding of a 24-month reasonable notice period, Mr. Seth would be entitled to 24 months of salary, benefits, and contributions made on Mr. Seth's behalf in K-Bro's RRSP matching program.

ii. Bonus payment

[236] Part of Mr. Seth's remuneration package included consideration for an annual discretionary bonus in an amount up to 15% of this annual salary. The award of the bonus each year was within Mr. Rye's discretion based on Mr. Seth's performance. While the bonus was discretionary, Mr. Seth was awarded bonuses in 2018, 2019 and 2020 and I find based on his strong performance reviews and the universal view of him as a valued and respected key employee at K-Bro that he would have been awarded a bonus for his work in both 2021 and 2022.

[237] K-Bro's bonus policy states that "in addition to any other conditions set out in the Bonus Plan, you must be Actively Employed in Good Standing on the date the bonus is payable in order to qualify for a bonus that year." Bonuses were usually paid in May or June for the prior fiscal year (fiscal year end was December 31).

[238] Where an employee is wrongfully dismissed, damages ordinarily include the bonuses or incentive compensation the employee would have received had the employment continued throughout the reasonable notice period. The court first asks whether, but for the dismissal, the employee would have been entitled to the bonus during that period. If so, the Court then asks whether the employment contract or bonus plan contains clear and unambiguous language removing or limiting that common-law entitlement: ***Matthews v. Ocean Nutrition Canada Ltd***., 2020 SCC 26.

2026 ABKB 790 (CanLII)

[239] In the present case, I have found that Mr. Seth would have been entitled to the both 2021 bonus and the 2022 bonus had he remained employed during the 24-month reasonable notice period. I find that the language of the K-Bro Bonus Plan does not clearly and unambiguously remove that common law entitlement, if for no other reason than the Bonus Plan provides no definition or explanation as to what "Actively Employed in Good Standing" means or how one would assess whether an employee is "Actively Employed in Good Standing" on any given day.

[240] Accordingly, I would have awarded Mr. Seth the average of the bonuses he received from the years 2018 to 2020 ($10,554.72) for each of 2021 and 2022.

iii. Aggravated and punitive damages

[241] Mr. Seth seeks aggravated and punitive damages based on K-Bro's "bad faith, high-handed and egregious" conduct. In my view, K-Bro's conduct in placing Mr. Seth on medical leave did not amount to a "calculated and deliberate attempt to sideline Mr. Seth" as alleged. To the extent that it is found that K-Bro constructively dismissed Mr. Seth, I accept that K-Bro was motivated by a genuine desire to see Mr. Seth, a long-time and valued employee, recover and return to work in his full capacity as soon as possible.

[242] Mr. Seth alleges that K-Bro was neither forthcoming nor transparent with Mr. Seth. I do not see how that is the case. From January 22, 2022 on, K-Bro clearly communicated to Mr. Seth that he should apply for LTD benefits so that he could have income replacement while on medical leave. I do not see this as an intentional attempt to sideline him, but rather as an indication to Mr. Seth that he could and should seek financial support through LTD benefits while he was recovering from his back injury.

[243] I do not see a basis in the evidence for either an award of aggravated or punitive damages and accordingly I would not award either head of damages to Mr. Seth.

V. Conclusion

[244] Mr. Seth's action for wrongful dismissal is dismissed.

[245] As the successful party, K-Bro is presumptively entitled to costs. I encourage the parties to discuss and reach agreement on costs. In the event that the parties are not able to agree on costs, they may return to me within 60 days of the date of this decision to determine a procedure for addressing costs.

[246] I thank counsel for their able and helpful submissions in this matter.

Heard on the 10th day of September, 2025.
Dated at the City of Edmonton, Alberta this 6th day of November, 2026.

A.K. Akgungor
J.C.K.B.A.

2026 ABKB 790 (CanLII)

Appearances:

Avnish Nanda
Nanda & Company
for the Plaintiff, Sunil Seth

Damon S. Bailey, K.C. & Alex D. MacDonald
McLennan Ross LLP
for the Defendant, K-Bro Linen Systems Inc

2026 ABKB 790 (CanLII)