

Case Name:

Hooke v. Dakota Tipi First Nation

**IN THE MATTER OF Complaint of Alleged Unjust Dismissal Adjudication under
Division XIV - Part III of the Canada Labour Code**

Between

**Barry Hooke, Employee, and
Dakota Tipi First Nation, Employer**

[2010] C.L.A.D. No. 360

Human Resources and Skills Development Canada File No. YM2707-8367

Canada

Labour Arbitration

Winnipeg, Manitoba

Panel: Bryan P. Schwartz (Arbitrator)

Heard: October 12 & 13, 2010.

Award: November 12, 2010.

(59 paras.)

Employment law -- Wrongful dismissal -- Dismissal without cause.

Employment law -- Wrongful dismissal damages -- Notice period.

The complainant alleged that he was unjustly dismissed from his position as a teacher and principal with the employer First Nation. The complainant had been employed by the employer since 2005. He signed a one-year contract the first year but had been retained without a contract since. The complainant was dismissed following the election of new band councillors for the First Nation. He received no performance appraisals and was given no advance warning or reason for his termination. The employer suggested the complainant was not meeting the needs of the children, high school and mature students of the First Nation and that there had been a low high school graduation rate for the prior two years.

HELD: Grievance allowed. The complainant was unjustly dismissed. He was a dedicated,

competent and effective employee. He loved his job, performed it well, and he was respected for his efforts by the community familiar with his work. Nothing in the evidence remotely established any basis for criticism of his job performance. His termination came shortly after an election that changed the composition of the band council. Some newly-elected officials decided to terminate the complainant. There was no objective basis for his termination. He sought payment of lost income to the date of the award and an additional three month's compensation to reflect the fact that he would continue to be unemployed for some time. The complainant was awarded damages of \$90,606.

Statutes, Regulations and Rules Cited:

Canada Labour Code, s. 242

Appearances:

Counsel for Employee: Ryan Savage.

Employer: Dakota Tipi First Nation, Mary Pashe, Band Councillor.

Counsel for Employer: Unrepresented.

AWARD

1 This is a complaint of alleged unjust dismissal brought by Mr. Barry Hooke ("Mr. Hooke"). Mr. Hooke was dismissed from his position as a teacher and principal by Dakota Tipi First Nation ("Dakota Tipi"). I find that his complaint is justified and have made an order of compensation.

Procedural History

2 On January 15, 2009, Mr. Hooke was summoned to a meeting with elected Band Councillors Mary Pashe and Frances Pashe. Mr. Hooke was informed that he was dismissed with immediate effect. The dismissal was confirmed at a follow-up meeting on or about January 27th, 2009 with band officials including the same two councilors and Finance/Employment and Training Officer Miranda Pashe.

3 Mr. Hooke immediately wrote a letter complaining of unjust dismissal to Human Resources and Skills Development Canada. He submitted an official Complaint Registration form dated February 18, 2009 which was received by the Labour Program on February 20, 2009.

4 On April 2, 2009 Inspector Emina Omerkadic of Human Resources and Development Canada

-Labour Program - informed Chief Cornell Pashe of Dakota Tipi that a complaint had been made and requested a written statement be given for the dismissal. A written response was contained in the form of a two page letter dated April 27, 2009 and signed by Councillor Mary Pashe.

5 In a letter dated March 10, 2010 Mr. Guy Baron, Director General, Federal Mediation and Conciliation Service, Human Resources and Skills Development Canada, confirmed my appointment as adjudicator. The letter was sent to Mr. Hooke and to Mr. Norman Boudreau ("Mr. Boudreau"), legal counsel for Dakota Tipi.

6 Mr. Ryan Savage ("Mr. Savage") informed me that he was retained as counsel by Mr. Hooke. My office then informed both counsel of my availability for a two day hearing in one window in May and two in June, 2010. Mr. Boudreau indicated he was not free for any of the proposed dates and further stated he also did not have any available dates in July, but could make himself available in August, it was agreed by all parties that the hearing would take place August 10th and 11th, 2010.

7 In a letter dated July 9, 2010, Mr. Boudreau wrote to me and Mr. Savage to say that his services had been terminated by Dakota Tipi. Mr. Boudreau indicated that Dakota Tipi would be retaining new counsel to represent them and that the new lawyer will contact me directly or alternatively I could contact Councillor Mary Pashe. I was informed that same day that Robert W. Olson ("Mr. Olson") had been retained to act as counsel for Dakota Tip and I wrote to him on July 9, 2010 to ascertain whether he was available to attend the hearing presently scheduled to take place on August 10 and 11th, 2010.

8 Mr. Olson emailed me on July 23, 2010 indicating that he and Mr. Savage had agreed to adjourn the matter "to allow me some time to prepare, review the file and meet with the client and potential witnesses".

9 My office e-mailed both counsel putting forth some dates in September for the hearing of this matter. On August 6, 2010, Mr. Olson offered September 8 and 9th hearing dates. Mr. Savage informed me that Mr. Hooke would not be available, and counsel for both sides were then able to agree with me on hearing dates of October 12 and 13, 2010.

10 On September 15, 2010, Mr. Olson faxed a letter to me stating that he too had been dismissed by Dakota Tipi. In his correspondence he stated:

"Dakota Tipi First Nation is aware based on previous discussions with the writer, and by way of receiving a copy of this letter to serve as a reminder, that this matter is scheduled to proceed on October 12 and 13, 2010, commencing at 9:30 each day, at the offices of Pitblado, located on 2500-360 Main Street."

Below Mr. Olson's signature, is a notation that a copy of the letter was forwarded

via email to Mary Pashe.

11 On September 16, 2010, I sent the following letter via fax to Councillor Mary Pashe for Dakota Tipi and to Mr. Savage, counsel for Mr. Hooke:

"As you are aware, the above noted matter was scheduled to be heard on August 10th & 11th, 2010. Shortly before the hearing, you terminated the services of your counsel, Norman Boudreau. You then retained Robert Olson to act on your behalf and as a courtesy new hearing dates were arranged and the matter is presently scheduled to be heard on October 12th and 13th, 2010. We have just been informed that you have now terminated the services of Mr. Olson.

We are writing to you at this time to advise that it is our intention to proceed with this hearing as scheduled on August 12th and 13th, 2010. We would advise you that if you are going to retain counsel that you do so immediately in order to provide them with enough time to prepare for the hearing as scheduled. In light of the previous rescheduling of the hearing and the nature of unjust dismissal proceedings as a process that is intended to be expeditious, it is not our intention to reschedule this hearing."

12 I have on file a fax transmission sheet confirming that it was received. Out of an abundance of caution a hardcopy of the letter was also forwarded by regular mail to Mary Pashe.

13 On reviewing the record while writing this Award, I noticed that the second paragraph of my September 16, 2010 letter (transcribed above) refers to August 12th and 13th . 2010. This is obviously a mistake, but the intent of the letter remains clear. The first paragraph of my letter states plainly that the hearing had been rescheduled to October 12th and 13th, 2010; the second paragraph refers to my intention to "proceed" with it. As Mr. Olson records in his own letter dated September 15, 2010 he had informed Dakota Tipi of the October 12th and 13th, 2010 hearing dates and he was further reminding them by emailing a copy of his letter to Mary Pashe.

14 On October 12, 2010, Mr. Savage appeared with his client Mr. Hooke. No one appeared for Dakota Tipi. I officially called the hearing to order, and then stated that I would allow some additional time for Dakota, Tipi to arrive. I asked my assistant to see if she could track down Dakota Tipi to ascertain why they were not in attendance at the scheduled hearing. My assistant's note to file then explains the steps she took which are as follows:

* At approximately 10:00 a.m. as no one had called or attended from Dakota Tipi I called the Dakota Tipi Band office requesting to speak to Councillor Mary Pashe. I was informed by the receptionist that Mary Pashe wasn't in yet but would probably be in later that morning;

- * I then explained to the receptionist that I need to speak to Mary Pashe as there was an arbitration hearing scheduled for today and that she was supposed to be in attendance. The receptionist then gave me the cell phone number for Mary Pashe;
- * I then called Mary Pashe on her cell. Mary Pashe did not answer her cell, but I left a detailed message explaining the hearing was scheduled for today and that Dakota Tipi should be in attendance. I requested that Mary Pashe call me as soon as possible as in the event she did not remember that the hearing was scheduled for today or was unavoidably detained that perhaps we could arrange for the hearing to start in the early afternoon or perhaps the following day;
- * I then called the Dakota Tipi Band office again and asked the receptionist if there was anybody else in charge that I could speak to. She said Chief Cornell Pashe was in charge (the receptionist stated Chief Cornell Pashe and Mary Pashe are brother and sister) but he also wasn't in the office. The receptionist then provided me with Chief Pashe's cell phone number.
- * I then called Chief Cornell Pashe on his cell. Chief Cornell Pashe did not answer his cell, but I left a detailed message explaining the hearing was scheduled for today and that Dakota Tipi should be in attendance. I requested that Chief Cornell Pashe call me as soon as possible as in the event Mary Pashe did not remember that the hearing was scheduled for today or was unavoidably detained that perhaps we could arrange for the hearing to start in the early afternoon or perhaps the following day. I informed Chief Pashe that I left the same message for Mary Pashe.
- * To date neither Mary Pashe nor Chief Cornell Pashe have returned my calls.
- * Later on that morning, I received a call from Frances Pashe. Frances Pashe informed me that she is also a Band Councillor and was informed by the Band office that I had been trying to get a hold of someone in charge regarding a hearing that was taking place. I then transferred Frances Pashe's call to the Arbitrator, Bryan P. Schwartz.

15 I spoke to Councillor Frances Pashe at around 11:00 a.m. and explained that the hearing had

been scheduled but no one from Dakota Tipi was in attendance. I further explained the steps that had been taken to ensure that Dakota Tipi was aware of the hearing, including referring to Mr. Olson's letter of September 15, 2010 and to my letter of September 16, 2010. I provided the precise time my letter was sent and the fax number which the letter was sent to which hopefully would assist Councillor Frances Pashe in retrieving it. Councillor Frances Pashe stated she wanted some time to investigate the matter. She said she did not know about the hearing. In response to my query about whether Councillor Mary Pashe had been in the office during the last month or so, Councillor Frances Pashe indicated that she had come in to the office on a number of occasions to "check on things".

16 I informed Councillor Frances Pashe that I would wait a while longer to hear back from her or any other representative of Dakota Tipi before permitting Mr. Hooke's counsel to begin its case. I further offered that if Dakota Tipi would commit to appearing that afternoon or the next day, I would postpone the hearing until its representatives arrived. When I did not hear back from Councillor Frances Pashe, I phoned her one more time. We spoke at around 11:45 a.m. Councillor Frances Pashe did not indicate that Dakota Tipi would be participating.

17 Mr. Savage on behalf of Mr. Hooke stated that he cooperated with Dakota Tipi when they dismissed their first counsel, Mr. Boudreau, and agreed to an adjournment to permit Dakota Tipi to retain replacement counsel and allow new counsel to prepare its case, but that he was firmly against any further postponements.

18 I then agreed to Mr. Savage's request that he be permitted to enter his evidence and arguments.

19 My reasons for proceeding with the case are as follows.

20 The unjust dismissal procedure in the *Canada Labour Code* is supposed to provide for timely and expeditious dispute resolution. This is why adjudicators have, for example, been cautious about ordering extensive pre-hearing production processes. The practical reality is that an employee who has been dismissed may be in a situation of both emotional and financial distress. The stigma associated with a dismissal can make it difficult to obtain alternate employment. Repeated delays can also multiply the cost, inconvenience, and anxiety of preparing for hearings, or actually attending them and finding that the other party is not present.

21 The facts of this case exemplify the predicament for a complainant who is faced with repeated delays. Mr. Hooke was completely taken by surprise by his dismissal and suddenly found himself without income. He made strenuous efforts to find alternative employment, but met with very little success. He applied for many teaching positions, and obtained none. He frankly acknowledged he could not know for sure whether the fact of the dismissal on his record was interfering with his job prospects. But he did testify that he was forthright with prospective employers about the circumstances surrounding the termination of his position at Dakota Tipi, and that he was concerned that notwithstanding his explanations, educational employers were discouraged by the incident from hiring him. Mr. Hooke had retained counsel early in the course of these proceedings and arrived at

the hearing with his counsel, Mr. Savage. Postponing the hearing further would likely have added considerable more expense for Mr. Hooke at a time when Mr. Hooke was receiving little or no income.

22 The *Canada Labour Code* provides that:

"Reference to adjudicator

242. (1) The Minister may, on receipt of a report pursuant to subsection 241(3), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection 241(1).

Powers of adjudicator

(2) An adjudicator to whom a complaint has been referred under subsection (1)

(a) shall consider the complaint within such time as the Governor in Council may by regulation prescribe;

(b) shall determine the procedure to be followed, but shall give full opportunity to the parties to the complaint to present evidence and make submissions to the adjudicator and shall consider the information relating to the complaint: and

(c) has, in relation to any complaint before the adjudicator, the powers conferred on the Canada Industrial Relations Board, in relation to any proceeding before the Board, under paragraphs 16(a), (b) and(c).

(emphasis added).

23 Section 242 (2)(b) confirms a principle of administrative law that would apply in any event to these proceedings. It is fundamentally unfair to make a legal binding determination, especially one with serious consequences, against a party who has not been provided the opportunity, including fair notice of a hearing, to participate.

24 The principle that applies here, however, is that a party shall have the opportunity to participate. A party cannot effectively stymie a proceeding, and potentially deny justice to its adversary, by effectively opting out. If a party is offered a reasonable time and place in which to have its say, and challenge the other party's case, it must use that opportunity or accept the

consequences of non-participation, see, for example *Beardy v. Lake St. Martin First Nation*, [2008] C.L.A.D. No. 359.

25 Dakota Tipi was fully consulted on an initial hearing date. Its scheduling wishes were accommodated even though doing so delayed the process for several months. Dakota Tipi then dismissed its first counsel. Mr. Hooke responded with patience and cooperation and agreed to set a second hearing date.

26 Before the scheduled second hearing could take place, Dakota Tipi again dismissed its counsel. When informed that the adjudicator intended to proceed with the second hearing date as scheduled Dakota Tipi did not respond prior to the hearing. Dakota Tipi did not request an extension with accompanying evidence of reasons. It remained silent.

27 Even after the second hearing was called to order and Dakota Tipi was absent, further efforts were made to provide it an opportunity to participate. Dakota Tipi had had ample time since the complaint was filed to retain at least one legal counsel it found satisfactory. Even without one, it remained free to participate in the proceedings and still would have had a reasonable opportunity to make its case. As noted above, Dakota Tipi had by April 27, 2009, already formulated and filed a two page written response with Inspector Emina Omerkadic, HRSDC -Labour Program. If Dakota Tipi wished to reassert its position at the hearing, one or more band officials involved in the dismissal could have attended and presented their version of the events. Dakota Tipi's offices are located within several hours drive from the location of the hearing, and one or more band representatives or witnesses could have attended the hearing in the afternoon or the next day. Proceedings would have been postponed in the meantime. Any Dakota Tipi representatives or witnesses would have received a respectful hearing. Dakota Tipi would also have been invited to ask questions of Mr. Hooke. I would have taken pains as well to explain to Dakota Tipi the issues it might wish to address - such as whether there was progressive discipline, and whether dismissal was a proportionate response to any lack of performance.

28 It was also open to Dakota Tipi to provide, if it wished, a submission as to why I should not proceed with the case as scheduled, but instead grant yet another postponement in light of any compelling factual or legal considerations.

29 There appears on the record no reason to believe that Dakota Tipi lacked adequate notice of the second hearing. Mr. Olson's (the second lawyer) fax of September 15, 2010 made it clear that Dakota Tipi was aware of the dates to which it had previously agreed. He took the extra precaution on behalf of his former clients of copying his letter to Councillor Mary Pashe - the same official who informed Mr. Hooke of his dismissal, and who wrote to Inspector Emina Omerkadic, HRSDC - Labour Program -justifying it. These facts are sufficient in themselves to establish that Dakota Tipi had adequate notice and a fair opportunity to participate. On the day of the hearing itself, however, I took additional steps. Messages were left by my assistant with Mary Pashe and Chief Cornell Pashe and I had several conversations with Councillor Frances Pashe. Dakota Tipi thus had one further

opportunity to either participate or to make a reasoned case for a further postponement.

30 In light of these considerations, I agreed with Mr. Savage that he could put in his case, and I will now consider its merits.

Mr. Hooke's Credibility

31 I found Mr. Hooke to be a highly credible witness. His memory was good, but he had no hesitation to acknowledge where it was limited. His account was intrinsically plausible and internally consistent. He testified under oath throughout, and some key parts of his testimony included evidence that could easily be contradicted by later investigation if they were false, because they concerned events involving many witnesses from the community or outside government officials. On some key points, I asked follow up questions to test his evidence. Among other things, I asked him about statements against him in Councillor Mary Pashe's letter of April 27, 2009. All of Mr. Hooke's replies reinforced the overall credibility of his testimony.

Review of the Facts

32 Mr. Hooke has bachelor's degrees in education and teaching. He taught as an adult education teacher in Assiniboine Community College in 1978. The next four years he served as a teacher in the Long Plains School. His career path then turned to sales, where he was involved first in pharmaceuticals and then in real estate. In 2005 he returned to teaching. Dakota Tipi hired him as a teacher. He signed a contract for a term of one year. This was the last written contract. In subsequent years, both sides understood his employment to be ongoing. He would be routinely told in June each year "see you in September".

33 Students from the community tended to go to an external high school. The community school at which Mr. Hooke taught was focused on educating youngsters who had dropped out and adults who wished to complete their high school education.

34 There were about twenty students in the school. Mr. Hooke testified that he performed well as a teacher, and I have no reason at all to doubt that. His subjects included language arts and law. At one point, he was given a mandate to organize and take a group of his students to Australia. While funding ultimately was not available, the mandate indicates a high level of trust by his superiors and the community. In June 2007, the position of "principal" was advertised, and Mr. Hooke was awarded the position over other applicants. From then on he served as both a teacher and a principal. He continued the same amount and kind of teaching, but took on some added "principal" functions.

35 Mr. Hooke's duties as "principal" included assisting with developing plans to expand the mission of the school to offer education to students from the community beyond teens who had interrupted their schooling or adults who wished to return. His "principal" position was not of the senior managerial nature that excludes employees from the protection of the unjust dismissal

provisions of the *Canada Labour Code*; a review of the case law in this area is offered in my own recent award in *Harrison v. Canadian National Railway Co.* [2010] C.L.A.D. No. 239. He had no employees, no ability to hire, and took instructions from the Director of Education rather than having a substantial measure of managerial autonomy.

36 In any event, Mr. Hooke was eventually dismissed from both his teacher and principal positions, and he seeks no additional compensation on account the latter. It is irrelevant for all practical purposes in this case, therefore, whether his principal position is within the scope of those protected by the *Canada Labour Code* from unjust dismissal.

37 Mr. Hooke was never given any formal performance appraisals. The informal feedback was all positive. He was never told there were any problems with the way he was doing his tasks. His record is free of any warnings, reprimands or other disciplinary measures.

38 In the autumn of 2008, several new councillors were elected, including Councillor Frances Pashe. There were no warning signs that Mr. Hooke received, however, that the new political situation would jeopardize his continuing employment relationship.

39 In January 2009, Mr. Hooke and the Director of Education, Ms. Natasha Moat, were summoned to a meeting at the band office. They were not told what the meeting would be about. On the basis of some earlier comments from Councillor Frances Pashe, Mr. Hooke thought that perhaps he and Ms. Moat would be offered a new contract and a raise.

40 Instead, Mr. Hooke and Ms. Moat were both dismissed. Mr. Hooke recalls that Councillor Mary Pashe did "most of the talking". In response to a question from his counsel, Mr. Hooke was clear in his recall that he was told he was "fired". No band official said that the position was instead being discontinued. The meeting was brief. Mr. Hooke recalled being in "shock".

41 Mr. Hooke "loved his job" and hoped to persuade Dakota Tipi to reconsider. He requested a follow up meeting with senior officials of Dakota Tipi. He wanted to "plead his case". At the follow up meeting, however, Councillor Mary Pashe stated that she was "having none of it", and asked "what the fuck don't you understand about being fired?"

42 In her letter dated April 27, 2009, Councillor Mary Pashe suggests a variety of reasons for the dismissal. There is a reference that "Mr. Hooke was not meeting the needs of the children, high school and mature students of Dakota Tipi First Nation" and there was a low high school graduation rate in the last two years. But Mr. Hooke's evidence is that most students were attending a high school outside of the community, and the enrolment at the community school was small. Nothing in the letter suggests that Mr. Hooke could be faulted for his performance as a teacher or principal in relation to the latter. As noted, there is absolutely nothing in the record to contradict Mr. Hooke's testimony that he performed in a competent manner in this respect and that Dakota Tipi and the community respected the quality of his efforts.

43 The focus of the April 27, 2009 letter instead shifts to Mr. Hooke's efforts in outreach and support to external schools, and why Mr. Hooke did not take the initiative to visit them and see if he could provide additional support, such as assistance with homework after regular school hours.

44 Mr. Hooke testified that his superior, Natasha Moat, had asked him to visit an external high school attended by many students from the community, and the very next day he did. He wanted to see student records to determine who might need help. He was informed that for privacy reasons, he could not see student grade records without the consent of the parents. He spent over a week going to homes in the community to obtain the necessary permissions. As for elementary school students, the subject of the comment by Councillor Mary Pashe, Mr. Hooke explained that he was not asked by Natasha Moat to contact them and their parents. Ms. Moat was doing that herself.

45 Councillor Mary Pashe's letter of April 27, 2009, briefly alleges that "when the community held gatherings or meetings at the school Mr. Hooke could often be found reading a book or sleeping in his office." It is not spelled out what these gatherings were, what time of day they occurred, and whether they had anything to do with Mr. Hooke's duties as an employee, or who supposedly made these observations about Mr. Hooke. In any event, Mr. Hooke characterized the statement as simply false. As noted above, I found Mr. Hooke to be a highly credible witness in all respects and I accept his testimony.

46 I similarly reject any suggestion in Councillor Mary Pashe's letter of April 27, 2009 that Mr. Hooke said anything at his meetings involving her to the effect that the dismissal would not stand.

47 At the end of Councillor Mary Pashe's April 27, 2009 letter there is a final asterisk with the statement, among other things, that Mr. Hooke never submitted to the Chief and Council for review the required criminal records check for staff who work with children. Mr. Hooke testified that he submitted the necessary documentation the week he was hired and I have no doubt that this is the case.

48 Councillor Mary Pashe's letter of April 27, 2009 suggests that as Mr. Hooke had no written contract from the time he was initially hired, and that the band official he dealt with at the time was no longer in office and accordingly, "the current Council have the right to review and end employment if no signed contract is in place". It is possible that Councillor Mary Pashe's view was that Dakota Tipi had the legal right to terminate Mr. Hooke without cause.

Conclusion on the Facts

49 Mr. Hooke has proved that he was an employee of Dakota Tipi who falls within the protection of the unjust dismissal provisions of the *Canada Labour Code*. He had served more than twelve months of continuous employment. He was not excluded by virtue of being a manager. The duration of the employment relationship was indefinite, rather than being limited to a fixed term contract. Accordingly, he could only be dismissed for just cause.

50 The burden of proving that a dismissal is just is on the employer. Dakota Tipi in this case chose not to participate at the hearing. On the evidence I heard, however, I am convinced that Mr. Hooke was unjustly dismissed. He was a dedicated, competent and effective employee. He loved his job, performed it well, and he was respected for his efforts by the community familiar with his work. Nothing in the evidence remotely establishes any basis for criticism of his job performance.

51 His termination came shortly after an election which changed the composition of the band council. Some newly-elected officials decided to terminate Mr. Hooke. They might have had some political or policy objective for doing so, or they might simply have had someone else in mind for the job. Their motivation need not be determined. The issue is whether there was an objective basis in Mr. Hooke's job performance for dismissing him. There was none.

Remedy

52 The *Canada Labour Code* authorizes an adjudicator to provide for a remedy that is just in the circumstances. Ordinarily, that would be reinstatement and compensation for lost income prior to reinstatement.

53 Reinstatement is not a realistic option in this case. This is not due to any fault on Mr. Hooke's part. I simply do not see, however, how a functional working relationship could be established given the arbitrary nature of the dismissal, and some of the accompanying statements by senior elected officials who remain in office.

54 Mr. Hooke asks, if reinstatement is not ordered, that compensation should include income lost to the time of my award, and an additional three months worth of his ordinary compensation to reflect the fact that reinstatement is not possible and Mr. Hooke will likely continue to be unemployed for some time. I find the request of three months from the date of the hearing to be reasonable. It is my hope that the issuing of this award will remove any doubt or stigma associated with Mr. Hooke's dismissal and that he will indeed be able to find alternative employment in the near future.

55 Counsel for Mr. Hooke presented financial documentation showing that based on what Mr. Hooke was actually paid while he was employed (and foregoing the extra compensation he was never paid for performing principal duties) he should receive the following compensation:

•	Lost compensation prior to the date of hearing	\$74,376.12
•	An additional three months compensation beyond the hearing	\$10,875.00
	TOTAL:	<u>\$85,251.12</u>

56 Mr. Hooke has been industrious in attempting to mitigate the consequences of his dismissal. He applied for many different jobs. The only thing he succeeded in securing, however, was an

opportunity to earn commissions (not salary) in the retail area. He earned in this respect \$644.56 net of expenses, and I will deduct that amount from the order of compensation.

57 Counsel for Mr. Hooke also sought compensation for legal fees. Mr. Savage had to prepare for a two day hearing, although in the end the hearing only took one day to complete, he had to do additional preparatory work in light of the changes in counsel for Dakota Tipi, and with that, some difference in approach from his respective counsel with whom he was dealing. I believe that in view of the time spent by counsel, and adopting a "party and party" approach to the fee rates that are covered by a cost award, \$6,000.00 is reasonable.

58 No specific request was made for compensation to reflect pre-award interest and none is included in this award.

59 Accordingly, I hereby order that Dakota Tipi pay to Mr. Hooke the amount of \$90,606.56.

DATED at the City of Winnipeg, in Manitoba, the 12th day of November, 2010.

BRYAN P. SCHWARTZ - Adjudicator

qp/s/qlspi

---- End of Request ----

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Time Of Request: Wednesday, August 17, 2011 14:19:29