

Court of King's Bench of Alberta

Citation: Sobolewski v Advanced Completions Technology Services Ltd, 2026 ABKB 10

Date: 20260106
Docket: 2201 05500
Registry: Calgary

Between:

John Sobolewski

Plaintiff/Defendant
by Counterclaim

- and -

Advanced Completions Technology Services Ltd.

Defendant/ Plaintiff
By Counterclaim

**Reasons for Judgment
of the
Honourable Justice Lisa A. Silver**

Overview

[1] On April 1, 2022, John Sobolewski was dismissed without notice from his position as President of Advanced Completions Services Ltd or ACTS, a small boutique company providing bespoke tools for the oil and gas field. Not long after John's dismissal, ACTS learned John created a falsified document he used for a bid that would have generated 1.7 million dollars in revenue for the financially strapped company. Did ACTS know of John's misconduct before dismissal or was this knowledge acquired after the fact? If ACTS did not know, was John's dismissal for just cause? These are the main issues in this case.

[2] John was invited into ACTS at its inception by two engineers, Darryl Firmaniuk and Jason Wang, who had little experience running a company. The three men knew each other through previous employment. John, Darryl, and Jason were shareholders and Directors of

ACTS. In June of 2015, John and Jason travelled to China to meet with prospective investors known as the Polydoctor Group. This group invested approximately 5 million dollars into the company. Because of this investment, members of the Polydoctor Group were also on the Board of Directors of ACTS.

[3] Prior to and at the time of John's dismissal, the company was struggling financially. On March 20, 2022, John completed and submitted a bid to the Kerui company for what would amount to the largest bid ACTS had applied for to date. Shortly after John's dismissal Darryl and Jason learned that a falsified document was submitted by John as part of the Kerui bid. This document, which was a bid requirement, bestowed upon ACTS certification through the American Petroleum Institute (API). ACTS had no such certification.

[4] John testified that Darryl and Jason were part of the decision to create a false certificate, assisted in it, and were both present when the false certificate was fabricated. Darryl and Jason denied any knowledge of the false certificate until after John's dismissal.

[5] Although Darryl and Jason informed Polydoctor of the falsified certificate, they kept the information private. ACTS was not successful in the Kerui bid but the falsified document was not the reason. ACTS later submitted a bid for a different Kerui project, which was accepted.

[6] John had no employment contract with ACTS. He received five weeks of base salary in lieu of notice under employment legislation. After dismissal, John submitted a claim for mileage and for field bonuses. Neither of these claims were paid by ACTS.

[7] John asserts he was wrongfully dismissed and seeks damages for ACTS actions. ACTS maintains that John was not wrongfully dismissed because they acquired after the fact cause for dismissal and termination was a proportionate response. ACTS counterclaims for damages arising from the reputational harm suffered and caused by John's misconduct.

[8] For reasons to follow, I find ACTS acquired the knowledge of John's misconduct after termination. I further find that ACTS had just cause to terminate John and his dismissal was proportionate to the seriousness of the dishonest misconduct. I further find that there is no cause of action for the field bonus because John has not established on a balance of probabilities that the bonus was due to him in accordance with the field bonus policy. Finally, I find that John has no cause of action for the mileage claim because John had no intention of claiming mileage before he was dismissed.

[9] I also dismiss the counterclaim brought by ACTS because there is no evidence ACTS suffered reputational harm from John's misconduct.

Issues

[10] Several issues arise based on John's claim for unjust dismissal, unpaid bonus and mileage, punitive damages and ACTS counterclaim for reputational harm. I will only analyze the salient issues leading to my ultimate conclusion by answering the following questions:

- A. Was ACTS aware of John's fabrication of the false certificate at the time of dismissal?
- B. Was dismissal a proportionate response to John's dishonest misconduct?
- C. Is ACTS required to pay John's 2022 mileage claim and field bonus?

D. Should John pay reputational damages?

Analysis

A. Was ACTS aware of John's fabrication of the false certificate at the time of dismissal?

[11] Based on the following analysis of the evidence, I find that ACTS was not aware of John's fabrication of a false API certificate to support the Kerui bid at the time of dismissal.

[12] It is undisputed that John was dismissed from his employment. It is disputed whether ACTS had just cause to do so. According to ACTS, John's dismissal was justified because of acquired knowledge of John's dishonest misconduct after dismissal.

[13] If just cause existed at the time of dismissal, even if unknown to ACTS and not relied on at the time, dismissal may be justified for cause after the fact: *Specialized Property Evaluation Control Services Ltd v Les Evaluations Marc Bourret Appraisals Inc*, 2016 ABQB 85 at para 30; *Schafer v Pan Matrix Informatics Lt.*, (1987), 1987 CanLII 3500 (AB KB) at paras 35-36.

[14] ACTS bears the onus of proving just cause for John's dismissal: *Molloy v EPCOR Utilities Inc*, 2015 ABQB 356 at para 140.

[15] John admitted he fabricated the false API certificate but maintained Darryl and Jason, and therefore ACTS, were not only aware of this conduct but also took part in it. In other words, ACTS condoned the misconduct and cannot now rely on that misconduct for just cause: *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at para 55. John bears the onus of proving condonation: *McDonald* at para 55.

[16] Darryl and Jason denied they knew of and were involved in fabricating the false certificate.

[17] Because the evidence of John is at variance with the evidence of Darryl and Jason, the determination of this issue turns on the credibility of these witnesses. John, Darryl and Jason are all witnesses who have an interest in the outcome of the case. I must assess and "test" each of their narratives on the issue considering its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Klemke Mining Corporation v Shell Canada Limited*, 2007 ABQB 176 at paras 5-7, aff'd 2008 ABCA 257; *Faryna v Chorney*, 1951 CanLII 252 (BCCA) at p 357.

[18] My credibility finding is based on the plausibility, believability, and consistency of the totality of the evidence of John, Darryl, and Jason on the events surrounding the fabrication of the certificate. I make these findings based on a balance of probabilities: *FH v McDougall*, 2008 SCC 53 at para 86.

[19] I find John, Darryl, and Jason minimized the roles they each played in the management of the business. I do not accept Darryl and Jason's evidence that they left all the business decisions to John and that he took care of all the business aspects. The idea that Darryl and Jason who had started the company and relied on the company for their income and success would not have or want any say in major business decisions or the desire to know of the daily business of their company, is not credible. Similarly, I do not accept John's evidence that he did not make any business decision without Darryl and Jason. A business could not properly function on that premise.

[20] Moreover, ACTS was a closely held business by all three men who were each committed to its success for financial and personal reasons. This commitment was significant. For instance, each of them willingly reduced their salary when the financial health of the company was questionable.

[21] In making this finding, I acknowledge that each of John, Darryl, and Jason brought their own strengths to the business. John was the outward face of the business who had managerial strength and specialty knowledge of the tools in the field. While Darryl and Jason, with their engineering expertise, had their defined roles consistent with their abilities. Even so, all three men had worked in large corporations together. Darryl had managerial experience. All three were directors and shareholders and would logically be aware of, have knowledge of, and be concerned with the general operations of the business. However, I accept Jason, who was the designer, and Darryl, who worked with vendors, would not be brought into the minutiae of the daily running of the business.

[22] I find that Darryl and Jason would necessarily be involved in any bids the company would make. Both men admitted as much. Darryl and Jason provided supporting documents for the Kerui bid. I accept however the evidence of Darryl and Jason that they did not review and approve all documents sent as part of that bid. There would be no reason why they would do so. John was brought into the business based on his business acumen and expertise. It was John who had carriage of preparing bids. Indeed, John advised Kerui that he was the lead person on the bid. While Darryl and Jason would be apprised generally of the bid and its progress, they would not necessarily know the details of what went into the entire bidding process.

[23] This finding is consistent with the evidence of all three men that John asked Jason about the API certificate held by Polydoctor's subsidiary in China called Xi'an Haizhi Electromechanical Equipment Company. It was not unusual for ACTS to rely on that certificate should a company want or inquire about API certification. According to Darryl, this certificate often boosted ACTS credibility and enhanced the bids. To that end, in 2008 all three men had shared the certificate through a text message platform called WeChat.

[24] Darryl and Jason knew that John wanted the certificate for the Kerui bid. However, I find that Darryl and Jason did not discuss the certificate between themselves but were asked individually by John about the certificate. For instance, when John first started working on the bid, he asked Jason if Xi'an held a current certification. Jason looked into it and found the certificate had not been renewed.

[25] John testified that he asked Jason to send him the certificate from WeChat. Jason denied he did this because he no longer had the WeChat message on his new phone. According to Jason, that was the extent of his involvement in the certificate. Notably, there is no documentary or electronic evidence supporting John's position that Jason sent the Polydoctor certificate to him.

[26] John explained that he could not manipulate or alter the WeChat certificate which he received from Jason because it was image based. So, John asked Darryl to send him a better format of the certificate via email. Darryl agreed that John asked him for the certificate because Darryl was the only one who had access to the historical WeChat message containing the certificate. Darryl forwarded the certificate from WeChat to his own email address and then forwarded the certificate to John. Darryl did not look at the certificate before he sent it and did not verify its validity before sending.

[27] I find that John's recitation of why he needed both Jason and Darryl to send him the Xi'an certificate is not plausible because it is inconsistent with other evidence. I accept the evidence of Jason and Darryl in that regard because their version of the events is more plausible and more harmonious with the other evidence.

[28] For instance, there is no email confirming Jason sent the certificate to John. Moreover, the email sent by Darryl to John confirms Darryl's recollection of the request. Darryl sent the WeChat certificate to himself because he was the only one of the three who had access to the historic WeChat. Darryl then later forwarded the certificate to John. The certificate sent by Darryl was in the same image format as the WeChat message. No changes were made to it by Darryl. The email is therefore inconsistent with John's explanation that he needed a better version of the certificate in a different format than the WeChat image he received from Jason.

[29] I also find the timing of when John fabricated the API certificate better aligns with the evidence of Jason and Darryl. I appreciate these events happened three years ago and memories fade over time. For example, Darryl mistakenly testified that John asked him for the certificate in person on March 18th, when at that time John was in Estevan. However, because John maintains Jason and Darryl were both with him when the certificate was fabricated, dates do matter. I find it is more likely John manipulated the certificate while he was in Estevan at the field job.

[30] John's evidence on the date on which he fabricated the false certificate is at best confusing and at some points misleading. Initially, in direct examination, John testified that he fabricated the false API certificate at the ACTS office on March 16th while Jason and Darryl watched. He also testified that he travelled to Estevan after he created the false certificate from the vendor document received by Darryl.

[31] In cross examination, John changed the date of when the false certificate was fabricated. He said the certificate was fabricated on March 18th and that Darryl and Jason were standing behind him for "part" of the manipulation. When John was then challenged on this evidence because he was in Estevan on March 18th, he said he was mistaken and that he created it on March 17th before he started travelling. With this change in date, John said he fabricated the false certificate in front of Darryl and Jason on the 17th.

[32] John also testified in cross examination that Jason sent him the certificate on the 17th by WeChat but because the certificate could not be altered Darryl sent it by email on the 18th to clear up the problem. Later, John testified that Jason sent the certificate to Darryl on the 18th and then Darryl sent the certificate to him.

[33] John suggested that he created the false API certificate from the vendor's certificate on March 17th but he still asked Darryl to send him another version of the Xi'an certificate because he wanted to falsify the Xi'an certificate instead. John gave no explanation as to why he wanted to use the Xi'an certificate after fabricating a false certificate from the vendor's certificate.

[34] I find that John's narrative regarding the fabrication of the certificate evolved and changed during his testimony. In my view, John did this to ensure his evidence corresponded with the indisputable evidence that Darryl sent himself the WeChat image of the Xi'an certificate on March 18th and then forwarded it on the same date to John.

[35] In fact, Darryl emailed the WeChat certificate to himself from WeChat in a "jpg" or image format at 4:19 PM on March 18th. Darryl did not forward that same image in "jpg" format until 10:20 PM on March 18th. John's mileage claim confirms that John left for Estevan on

March 17th. He stopped enroute to Estevan that evening. He then finished his journey to Estevan the next day, which was March 18th. John was not at ACTS when Darryl sent him the certificate.

[36] I find that John's lack of consistency on the dates was more than an understandable lack of memory but was a product of John's desire to tailor his evidence to support his position that Jason and Darryl saw him fabricate the Polydoctor certificate. This necessarily included accounting for the March 18th email from Darryl. Notably, in John's evidence at the Questioning he did not say that Darryl also sent him the Xi'an certificate.

[37] I also reject John's evidence on how he accessed the vendor certificate, which he ultimately used to fabricate the false certificate. John testified that because he could not alter the Xi'an certificate, Darryl "sent" him another subsisting certificate from a vendor ACTS used. In fact, the certificate John used happened to be a vendor on the Kerui bid who provided pipe threading for the equipment.

[38] Darryl testified that the vendor's certificate was on the main server to which John had ready access. He further testified that if asked he would have directed John to the server for the certificate. Darryl denied he sent the certificate to John. There was no documentary or electronic evidence such as an email supporting John's evidence that Darryl "sent" him the vendor's certificate for manipulation. In any event, as the vendor certificate unmanipulated was relevant to the bid, I find there is nothing nefarious about Darryl advising John where that certificate would be located.

[39] I also find that John would not have necessarily brought Darryl and Jason into his confidence regarding the falsified certificate. John testified that although the falsifying of the certificate made him "uncomfortable" it did not cause him enough concern not to do it because the certificate merely "checked the boxes" on the list of documents needed for the bid. Moreover, John was only a "little embarrassed" by his conduct. This evidence supports why John would not have brought Jason and Darryl into his confidence because the false certificate on its own was not something John thought was of great concern. The certificate was a mere "formality," according to John's evidence.

[40] Finally, not only is John's evidence inconsistent with the timing of Darryl's email it is also inconsistent with the objective evidence of when John created the fake API certificate. John's computer files confirm that the falsified Xi'an certificate was created by John on his laptop on March 18th, 2022 at 4:44 PM and was last modified on March 18th, 2022 at 4:58 PM.

[41] I find that the only reasonable inference to draw from the totality of the evidence is that John, on his own, created and manipulated the vendor API certificate into a valid but falsified Xi'an API certificate on March 18th when he was alone in Estevan. I completely reject John's evidence that Darryl and Jason were involved in or aware of the falsified certificate. On a balance of probabilities, I find John's evidence on this issue is implausible, inconsistent, and not worthy of belief.

[42] I therefore find that John has not shown on a balance of probabilities that ACTS condoned his misconduct because ACTS did not know of the misconduct until after John's dismissal.

B. Was dismissal a proportionate response to John's dishonest misconduct?

[43] The next step in the analysis requires me to determine whether there was just cause for John's dismissal based on John's admitted dishonest conduct of falsifying a certificate used to

bolster ACTS bid with Kerui. The onus is on ACTS to prove just cause for dismissal: *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at para 63.

[44] This analysis is contextual and fact-driven: *McKinley v BC Tel*, 2001 SCC 38 at para 57. It requires a consideration of whether, in the circumstances, John’s dishonest conduct “was such that the employment relationship could no longer viably subsist”: *McKinley* at para 29.

[45] Misconduct by an employee is not in and of itself grounds for dismissal. The analysis is necessarily nuanced. In this analysis I must examine “both the circumstances surrounding the conduct as well as its nature and degree” to determine whether dismissal is a just and proportionate response to the misconduct: *Baker v Weyerhaeuser Company Limited*, 2022 ABCA 83 at para 28; *McKinley* at para 34.

[46] To that end, there are various contextual factors to consider, balance, and weigh. I will first discuss the factors that weigh against dismissal as a proportionate and just response to John’s dishonest misconduct. These factors are as follows:

- The misconduct was done for the greater good and in an effort to save the company from pending financial ruin;
- There was a dimension of desperation to the act;
- The misconduct was done with the encouragement of the person John was in contact with at Kerui;
- The misconduct was done at a stressful time when John was travelling and took on extra duties;
- John’s dismissal was done in a provocative manner as he was unceremoniously fired at a board of directors meeting;
- John did not hide the falsified certificate as it was found in the Kerui Bid folder he left the company when he was dismissed;
- John was part of the company when it first started, worked hard for seven years for its success, and had an enduring personal commitment to the company;
- There were no previous acts of misconduct nor was there any poor performance reviews prior to his dismissal.

[47] Equally, I must consider the following factors that favour dismissal:

- Although John did not conceal the falsified certificate when he left ACTS, this conduct could also be viewed as an indication of the cavalier attitude John had towards his conduct;
- John advised Kerui that he was solely in charge of the bid and therefore at the time of the deceit, he had sole access to Kerui and the bid process;
- John repeatedly minimized his dishonesty in his testimony by characterizing the false certificate as less meaningful because it merely “checked the boxes” for the required information needed for the bid;
- John’s misconduct could be viewed as a serious betrayal because of the close personal and business relationship between the three men;

- John’s misconduct was an intentional, planned, deliberate, and sophisticated fabrication of a document considering the high level of information and details John needed to change the originating certificate into a certificate that looked “real” enough to be relied on and not rouse suspicion;
- John’s misconduct was conducted in secret which suggests that it was also used to bolster John’s status and position in the company;
- John’s misconduct did not just deceive Kerui but also deceived ACTS employees and directors, particularly the Polydoctor Group who provided the capital for the company;
- John’s misconduct is heightened because John was a knowledgeable business manager who did not challenge the need for a false certificate and in the end did not do enough to protect his reputation and that of ACTS;
- John’s role as President of a small closely held boutique business required the highest level of ethics and fiduciary trust.

[48] Counsel for Mr. Sobolewski pointedly called dismissal from employment for cause as the “capital punishment” of employment law: *Ross v IBM Canada Limited*, 2015 ABQB 563 at para 30. Dismissal is therefore the ultimate sanction.

[49] Justice Iacobucci in *McKinley* emphasized the need for proportionality to ensure “an effective balance” between the “severity” of the employees misconduct and the “sanction imposed”: *McKinley* at para 53. This proportionality requirement accounts for the key role employment plays in a person’s life that transcends financial need. Work reflects a person’s “sense of identity and self-worth” and “human dignity”: *Lavoie v Canada*, 2002 SCC 23 at para 45; *McKinley* at para 53; *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, Dickson CJ, at p 368. Therefore, dismissal from work should be reserved for those circumstances where such a response is warranted.

[50] I recognize that a person is often defined by their career and work life. Being employed has obvious financial significance but it is also vitally important to a person’s well-being and conception of themselves as a productive member of society. A dismissal therefore can have an outsized impact on an individual’s life journey and must not be done lightly. This is why termination must be viewed contextually and must be a proportionate response to the misconduct.

[51] I therefore account for these principles in considering whether the “severity” of Mr. Sobolewski’s misconduct as expressed in the contextual factors arising from the evidence and the “sanction imposed” of dismissal was proportionate in the circumstances: *McKinley* at para 53. In determining this, I am mindful that proportionality is tethered to John’s self-worth and identity as an employee of ACTS, a business he was involved in for seven years from its conception. I am also mindful of the manner in which John was terminated, which was done unceremoniously before the entire Board of Directors.

[52] In this case however, after reviewing the factors arising from the evidence contextually and generously, I find that John’s dismissal was proportionate to his misconduct and was the only response open to ACTS. John was the outward face of the company; he met with people in the industry, potential clients and even supervised in the field. He was also the role model for

other employees. Even if John falsified the document for the company and not for his own benefit (although as shareholder he had an obvious interest in the health of the company), money overcame ethics.

[53] The Kerui bid was big, being the largest financial bid thus far for ACTS. The bid was crucial to the financial health of the company that was faltering due to the COVID slow down. The stakes were high and John took a chance the deception would not be uncovered, seemingly because he thought the risk of disclosure was small. John was willfully blind to the true situation and deliberately ignored the obvious warning signs created by the request for a false certificate. This alone should have caused John to at least vigorously challenge this request and even step back from the bid it required dishonest conduct. John was not just the President, he was the putative leader of the company when he submitted the Kerui bid, and ought to have conducted himself with the highest level of ethical conduct.

[54] In making this decision, I have also considered whether there were alternate actions open to ACTS short of dismissal. Counsel for John suggested a reprimand or warning or ethical training but John knew what he did was wrong and did it despite his knowledge of the risks. Ethical training would not redress the issues. All those alternate approaches fall far short in a closely held company where trust between the three men, all co-shareholders and co-directors was vital to the further growth of the company. ACTS was a boutique business and therefore the actions of one mattered to the others. Moreover, the major shareholder who loaned an enormous amount of money to start the company already had a negative view of John who they blamed for ACTS sluggishness in the market.

[55] Still another alternative might have been to require John to withdraw the Kerui bid but that would have hurt ACTS more than help John. In not dismissing John, ACTS would have to take responsibility for his actions and weather a potential storm. They would be faced with their own ethical dilemma because if they kept him on knowing what he did, they would be obliged to disclose it widely. Otherwise, the company would be tainted by this misconduct as well.

[56] Finally, I have considered that this misconduct was the only act of misconduct of John throughout his time at ACTS. His conduct was not a continuing pattern of conduct. Still, considering the factors I outlined earlier, the nature and extent of the misconduct was significant and cannot be distilled to a mere numeric count. This one intentional and deliberate dishonest act by John was significant enough that, if revealed at the time, would have caused an irreparable breakdown in the relationship between ACTS being Jason and Darryl including Polydoctor as Directors and financial supporters of ACTS.

[57] For instance, although I find ACTS reputation was not damaged, the fact that Jason and Darryl as engineers, were concerned with the impact John's one act of misconduct could have on their own professional regulatory status shows the seriousness of the conduct for ACTS. In a closely held corporation like ACTS, John, Jason, and Darryl needed to rely on one another without second thought. Complete trust between them was key to the company's success. Their actions needed to align with their future vision of the company. To build a successful company, their ethics needed to align as well. In my view, this future vision was irredeemably marred by John's misconduct.

[58] Moreover, although the false certificate could be viewed as one act of deceit, as earlier mentioned, the falsification of the certificate took many steps to come to fruition. It involved multiple changes to the certificate, requiring detailed information, to create a reasonable and

presentable facsimile of an API certificate. In this way, the one act of misconduct was created by many dishonest acts.

[59] I find that Mr. Sobolewski's conduct breached the "faith inherent to the work relationship": *McKinley* at para 48. Although dismissal for cause is the ultimate punishment for this one misdeed, on balance and recognizing the work as an inherent and fundamental aspect of a person's identity, if the company knew of this misconduct at the time, dismissal for just cause would have been appropriate in the circumstances. Contextually, the nature and degree of the dishonest misconduct warranted the ultimate sanction of dismissal.

[60] Counsel for Mr. Sobolewski provided me with several cases where termination was not proportionate to the misconduct. For instance, in *Soost v Merrill Lynch Canada Inc*, 2009 ANQB 591, the employee, a stockbroker, breached company policies and practices. The court found the employer should have given the employee specific warnings to remediate his breaches rather than immediate termination. As I have already pointed out ACTS is a closely held boutique business. I have found John's misconduct were not mere breaches of company policy that could be easily fixed. Moreover, John's role was more than a mere employee, he was an integral part of the management team who took the lead in the Kerui bid. The bid itself was not trivial but had outsized importance for ACTS because of the financial reward if the bid was accepted.

[61] I will not review all the cases presented by both parties to support their positions on whether termination was a proportionate response. Considering the determination is contextual and fact-driven, these cases have limited value and are distinguishable on their facts. By taking a contextual approach, rather than an approach heavy with precedent, I am ensuring that the sanction imposed has meaning to John as a working, living individual and to ACTS which must respond to John's deceitful conduct. My focus is the relationship between John and ACTS.

[62] In the end, based on the totality of the circumstances, I find that ACTS has discharged their onus and have established that termination was a proportionate sanction for John's dishonest misconduct.

C. Is ACTS required to pay John's 2022 mileage claim and field bonus?

[63] Counsel for ACTS argued that John does not have an action for his mileage and field bonuses, separate from his wrongful dismissal claim. I will first discuss the field bonuses.

i) Field Bonus

[64] I find the bonus claim is a separate cause of action. There are instances where a bonus is such an integral part of an employee's wage structure that if a wrongful dismissal claim is granted, the earned bonus should be paid: *Maier v E & B Exploration Ltd*, 1986 ABCA 96 at paras 23-24. In this case, the field bonus is not an integral part of John's wage structure. Rather it is a performance bonus based on John doing work that he did not usually do in his Presidential role.

[65] However, although the bonus claim is separate from the wrongful dismissal claim, I dismiss the bonus claim because there is no evidence that the conditions necessary for the eligibility of the field bonus were extant at the time of John's dismissal. Moreover, the provision of the field bonus was discretionary and ACTS did not unreasonably exercise its discretion in declining to pay John the bonus.

[66] The field bonus program is described in ACTS Variable Pay Programs Policy. This was a policy John created with the help of human resources professionals for field workers. John was not a field worker but at the time in question, John was working in the field and performing work a field worker would have performed.

[67] There are several eligibility requirements in the policy that restrict John's eligibility for the bonus.

[68] First, the job bonus is payable at the conclusion of the work. John finished the job and returned to Calgary on or about March 22, 2022. He therefore "earned" the bonus.

[69] Second, the field bonus was "contingent" on the customer's agreement to pay it. John testified that "to his knowledge" the bonus was payable because "all conditions" required under the bonus policy were fulfilled. John was directly asked if the customer agreed to pay the bonus. John's response was equivocal and non-responsive. Instead of directly answering the question, John gave a response generally outlining what would need to be done for "a" claim to be payable. For instance, John testified that once "we" finish a job, a service ticket is completed and signed by the client in the field for which "we" would submit the ticket to the office manager, who would send it to the customers.

[70] Third, there was no documentary evidence filed at trial supporting John's general evidence nor was there any documentary evidence supporting John's "knowledge" that "all conditions" for payment of the bonus were fulfilled. Specifically, there was no documentary evidence of the signed ticket for the jobs and no evidence that the office manager submitted the ticket to the customer in the field.

[71] The documentary evidence is important because, according to the policy, the job bonus accrues only if "all job related documentation, reporting and administration (tracking, other paperwork) is properly completed by the worker" by the job bonus date. The job bonus date is when the job concludes and payment of the "ticket agreed-to by the customer". There is no evidence if the ticket was "agreed-to by the customer" or if the required documentation, reporting, and administration was completed by John.

[72] Finally, the bonus is discretionary. The policy clearly and unequivocally gives ACTS the "sole" discretion to determine eligibility.

[73] I find that even if the field bonus was payable ACTS was not unreasonable to decline to exercise their discretion to pay John the field bonus because John was part of the executive team and not ordinarily a field operations worker. According to Darryl, the field bonus was intended for the field staff not the executive team. John was fulfilling the role of a field worker because there were no field workers on staff to fulfill the role. ACTS was just coming out of the COVID years in which the company's business had greatly reduced. As a result, the work force of the company was also reduced. John therefore took on the role of a field worker to fill a gap in a way that was financially sound.

[74] It was reasonable and unsurprising that ACTS would decline to pay a field bonus for a member of the executive, namely the President, who was filling a role they would not otherwise fill because of financial reasons. It is counter-intuitive for ACTS to pay such a bonus when the executive team, including John had agreed to reduce their salary because the company was in financial straits.

[75] I therefore find that John has failed to establish the claim on a balance of probabilities.

ii) Mileage Reimbursement

[76] The mileage claim also accrues separately from the salary because it is a permitted reimbursement for expenses paid by an employee when using their personal vehicle for business purposes. I find that the mileage claim was not payable at the time of dismissal for the following reasons.

[77] First, John claimed for some mileage outside of the policy's deadline for submitted such a claim. For instance, the "monthly km reimbursement report" found at Tab M of the Agreed Book of Documents submitted at trial lists reimbursements starting with "12-Oct-22". John was dismissed April 1, 2022. The Plaintiff provided another document during the trial, which suggested the claims for October to December of 2022 were in fact for 2021. Notably the mileage policy requires "all personal mileage reporting for the previous year must be completed by the first week of January in the subsequent year." The 2021 mileage claims were not reported by the first week in January of 2022. The 2021 claims are not valid and subsisting claims and are dismissed.

[78] Second, although the other claims are made within the time allotted in the policy, I have concerns with John's mileage claims considering he had not claimed for mileage since 2019 and only made these 2022 (and 2021) claims six days after he was dismissed. In fact, Darryl recalled John saying that he was "doing the company a favour" by not claiming mileage during COVID and the resulting downturn in ACTS financial health.

[79] John suggested he did not submit the claim earlier because it "slipped his mind." This explanation is not credible considering how carefully John noted down the mileage in a journal kept in his car. Moreover, he had recently returned from making two lengthy car trips to Saskatchewan and Manitoba for which the mileage claim was large.

[80] I reject John's explanation for his delay in submitting the claim. I prefer and accept the evidence of Darryl that the executive team agreed they would not make mileage claims because of the company's tenuous financial situation. I find John made an informed decision not to claim for mileage to assist the company financially. This is consistent with the agreement of all three men to reduce their salary. I find John never intended to claim for this mileage and waived his right to do so.

[81] I therefore dismiss the mileage claim because there is no basis for it.

[82] Finally, because ACTS did not act improperly, unreasonably or unfairly in its refusal to pay the claims submitted by John, I dismiss the John's claim for punitive damages.

D. Should John pay reputational damages?

[83] I dismiss ACTS counterclaim for reputational damages because ACTS failed to prove on a balance of probabilities any reputational damage suffered by the company. ACTS did not lose any business from John's actions, did not face any disciplinary action from APEGGA the engineering profession's regulator, nor any other kind of loss attributable to the misconduct. ACTS also mitigated significantly any potential loss by not disclosing the misconduct. There are therefore no damages to compensate ACTS for and I decline to order them.

Costs

[84] The parties are encouraged to arrive at a consent order for costs by January 30th, 2026. If the parties cannot do this, they may submit brief concise letters of no more than 3 pages each plus attachments to my attention by February 6th, 2026.

Heard on the 20th day of October, 2025 to the 24th day of October, 2025.

Dated at the City of Calgary, Alberta this 6th day of January, 2026.

Lisa A. Silver
J.C.K.B.A.

Appearances:

Dylan Snowdon,
Carbert Waite LLP
for the Plaintiff/Defendant by Counterclaim

Lee Carter,
Field LLP
for the Defendant/Plaintiff by Counterclaim