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*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**FERNANDE MORIN**

Grievor

and

**STATISTICAL SURVEY OPERATIONS**

Employer

Indexed as

*Morin v. Statistical Survey Operations*

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** [Georges Nadeau, adjudicator](#)

***For the Grievor:*** [Laurent Trudeau, counsel](#)

***For the Employer:*** [David M. Bolger, counsel](#)

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Heard at Sherbrooke, Quebec,  
February 7 to 10, 2006.  
(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] Fernande Morin had worked for Statistics Canada's Statistical Survey Operations as an interviewer at the Sherbrooke office since February 2002. She was subject to the provisions of the collective agreement between Statistical Survey Operations and the Public Service Alliance of Canada.

[2] On November 29, 2004, Guy Oddo, Director, Eastern Region, notified her that her employment was being terminated. This was further to an investigation into Ms. Morin's asking of questions and recording of answers and, in particular, her completion of a questionnaire in the respondent's absence on November 18, 2004. The Director concluded as follows: [translation] "Since the essential procedures were not followed and, as a result, the bond of trust needed to maintain the employment relationship has been broken by your actions of November 18, 2004 when performing your duties as a telephone interviewer, I have no choice but to terminate your employment immediately."

[3] The same day, November 29, 2004, Ms. Morin presented a grievance against the termination of her employment. The grievance was dismissed at the final level on April 19, 2005 and referred to adjudication on May 25, 2005.

[4] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

Summary of the evidence

[5] The first witness called by the employer was Jill Bench, who has been working for Statistics Canada for 31 years and is the assistant director, Operations, Regional Operations Branch, Eastern Region. As such, she is responsible for all data collection in the Eastern Region, which includes the four Atlantic provinces and Quebec. She is also responsible for surveys, budgets, staffing and training both directly and through her subordinates. On request, she provides advice concerning data collection issues to the regional director and to head office.

[6] Ms. Bench then described the Labour Force Survey. This monthly survey, conducted on the basis of a sample, obtains data on employment and unemployment for Canada as a whole. Approximately 55,000 Canadian households are contacted every month. It is what is referred to as a mandatory survey under the *Statistics Act*. The persons included in the sample are obligated to answer the questions.

[7] The witness presented the oath that the grievor, Ms. Morin, took on January 24, 2002 (Exhibit E-1) and said that, once sworn, interviewers are given training on confidentiality, interview practices, interaction with respondents, refusal conversion and administrative practices. The specific training given for certain surveys also includes information about confidentiality.

[8] The witness described the security precautions taken in Sherbrooke to ensure that the information kept there remains confidential. There is controlled access to the premises. Visitors must be accompanied at all times and do not have access to confidential information. The computer equipment and programs used are encrypted, and the data are protected by a firewall.

[9] The witness also stated that employees being trained are warned against data falsification, and she drew my attention to paragraph 30(a) of the *Statistics Act*, which provides that an employee who wilfully makes any false declaration, statement or return in the performance of his or her duties may be convicted of an offence and liable to a fine.

[10] The witness stated that she had become aware of the situation involving Ms. Morin when Ms. Claudette Baillargeon had called her on the telephone. It was then that she learned that a Sherbrooke employee might have falsified data and that Christian Bernard and Joanne Choquette were conducting an investigation involving the person who had answered the questions asked by the employee during the survey (the respondent).

[11] Ms. Bench testified that she had been given the investigation results and that data had been falsified. She continued by saying that falsification is a serious offence because Statistics Canada's mandate is to collect data on national issues that will be used for the purposes of analysis and publication as well as to make decisions.

[12] The witness added that data falsification is a rare, unusual occurrence. She expressed the opinion that dismissal is appropriate given the importance of the relationship of trust. Such a breach of trust destroys the relationship of trust that must exist between an employer and an employee.

[13] Statistics Canada has an excellent reputation based on the confidentiality and quality of the data it gathers and publishes. The witness expressed the view that, in light of the breach of trust that occurred, Statistics Canada could not employ such a person again.

[14] On cross-examination, Ms. Bench confirmed that Ms. Morin had no disciplinary record. She also confirmed that Ms. Morin's performance appraisals referred to satisfactory performance and that she had not read them until after Ms. Morin was dismissed.

[15] With regards to the investigation conducted by Christian Bertrand and Joanne Choquette, the witness stated that she had never spoken directly with them and that she had dealt with the situation through the Sherbrooke district manager, Ms. Baillargeon. The witness stated that, to her knowledge, only one respondent had been contacted during the investigation. She also said that Mr. Bertrand and Ms. Choquette had each contacted that respondent in turn. The respondent was contacted the second time to ensure that the information gathered did indeed relate to the supplementary survey conducted at the same time as the Labour Force Survey (LFS). The witness also said that the respondent had not produced any written documents in this regard.

[16] The witness confirmed that the supplementary survey was the Canadian Travel Survey (CTS), which is not a survey to which respondents are obligated to respond by statute. Under the *Statistics Act*, some surveys are mandatory while others are voluntary. The witness also confirmed that Ms. Morin had been dismissed not because of a breach of confidentiality but rather because of a breach of trust.

[17] The second witness called by the employer was Ms. Joanne Choquette, who has been working for Statistics Canada since September 2001. She began as an interviewer, then became a communications officer and finally became a senior interviewer on August 31, 2001.

[18] The witness' principal duty in November 2004 was quality control, which she performed by monitoring telephone surveys. This work is done using a computer and headphone on a network with the interviewers' work stations. The witness said that surveys are monitored to ensure that the interviewers are doing their work in accordance with the basic criteria established by Statistics Canada.

[19] According to the witness, the purpose of quality control is to make sure that data are collected in a professional manner and to ensure that they can be correctly captured for the purposes of analysis.

[20] Ms. Choquette said that the monitoring is done using a form that is completed while observing the survey the interviewer is conducting with the respondent. She sees the same screen as the interviewer and hears the conversation. The interviewer is not told that a specific interview is being monitored. However, the interviewers are informed that such observation may occur at any time.

[21] With regards to the observation done on November 18, 2004, the witness stated that it concerned an interview for the Labour Force Survey. She observed at the time that the survey with the respondent began on more friendly terms than it should have, and she noted a critical error, as the opening statements were not made. One of those statements concerns the fact that a monitor may be on the line for quality control purposes, and the other asks the respondent his or her language preference.

[22] Ms. Choquette stated that, after confirming the address, the interviewer had failed to correct the postal code. She said that the survey had then not been conducted as it was supposed to be conducted. The interviewer read the questions as if she were asking herself. Ms. Morin did not seem to wait for the respondent's answers. The survey ended with the entry of a final code. The survey was supposed to be followed by the CTS. The witness stated that the survey as such had not been conducted and that the interviewer had entered the answers on the screen after finishing with the respondent and thanking her. The respondent was no longer on the line when the interviewer entered the answers on the screen.

[23] She also stated that the LFS is conducted through six telephone interviews over a six-month period and that the CTS is conducted during the second and sixth interviews.

[24] Ms. Choquette presented the quality control observation form (Exhibit E-2) she had completed for the survey. She stated that, in her view, after three questions it had become impossible to continue taking down the answers and that Ms. Morin was instead asking herself the questions. Ms. Choquette tried to fill out everything she could on the form. In her opinion, the interview was not valid.

[25] Ms. Choquette said she had noted down that the interview had lasted one minute, that the interviewer had said to the respondent, [translation] “your name seems familiar to me”, that the postal code had not been corrected and that perhaps it would be corrected later in the notes. She stated that she had done a screen print at one point.

[26] Ms. Choquette notified her supervisor, Ms. France Corriveau, of the way the survey had been conducted and went back to work.

[27] Ms. Baillargeon, a supervisor, later called her into her office to ask her to contact the respondent to determine whether she had answered the CTS. The respondent’s answers were given to the supervisor.

[28] On cross-examination, Ms. Choquette stated that she had completed the observation form while listening to the interview and had given it to the supervisor five to ten minutes later. She believes that it was the respondent herself who answered the telephone, but she does not know where she was. However, she acknowledged that a secretary might have answered the call and that the respondent might have been in her office. She confirmed that this was not the first time this respondent had been questioned and that there were already notes in the file. She had the impression that Ms. Morin had already talked to this respondent. On the issue of whether the interviewer knew the respondent, she said that she had never checked this observation with the interviewer. She added that, if an interviewer knows a respondent personally, the interviewer should normally suggest that a co-worker conduct the interview. She does not remember exactly how the employee introduced herself.

[29] Ms. Choquette confirmed that respondents are less cooperative by the fifth or sixth interview and that it sometimes has to be explained why the same questions are being asked again. She also noted the importance of gathering accurate data that reflect the answers given by respondents.

[30] Ms. Choquette drew this interview to the supervisor's attention so that it could be conducted again. She felt that it had not been conducted normally. With regard to having given a dismissal warning (Exhibit E-2), the witness stated that her role was to notify the supervisor and that she considered this important for data capture. Her role involved commenting on quality control and helping interviewers do their work where necessary.

[31] When asked whether she remembered Ms. Morin asking a question differently than it appeared on the screen, the witness said that she did not remember. Bombarded with questions by the grievor's representative concerning the notation on Exhibit A-2 indicating that the respondent, a dentist, had stated that there had been "no change" since the previous month, the witness said that Ms. Morin may have asked questions but that she had asked them of herself. She also admitted that, generally speaking, the respondent dentist had answered "no change" and that she had also noted down, [translation] "I imagine she is referring to the CTS".

[32] Christian Bernard also testified for the employer. Mr. Bertrand is a project manager in the Statistical Operations Division. In November 2004, he was working at the Sherbrooke office as a senior interviewer. Management asked him to check whether the survey questions had been asked. However, his testimony was cut short by the employer's representative, who had called him to testify, due to the provisions of the *Statistics Act* concerning the confidentiality of answers given by respondents.

[33] The employer called Ms. Corriveau to testify. She has been a project supervisor at Statistics Canada's regional office in Sherbrooke since August 2001. Before that, she was a project supervisor in Montreal for nine months. She stated that, in Sherbrooke, she supervises teams of about 15 interviewers responsible for conducting surveys. For the LFS, this involves contacting some 8,000 respondents every month of the year. The work on the LFS lasts for 10 days each month, and the CTS work adds two days. The work on the LFS is done solely by telephone, and the data are entered directly into the computer.

[34] Ms. Corriveau stated that her role was to distribute the total sample among the various interviewers, with 110 to 130 cases per work station. In November 2004, 90 percent of the work stations had 124 cases.

[35] With respect to the events of November 18, 2004, the witness said that Ms. Choquette, a senior interviewer, had come into her office and said that she could not overlook what she had just heard. She reported everything to Ms. Baillargeon.

[36] Ms. Corriveau stated that she had previously experienced a situation in which an employee had entered data for someone who was not on the line. However, this was the first time such an incident had been reported to her in Sherbrooke. She had not been concerned about the performance of Ms. Morin, who was an experienced, dependable interviewer.

[37] The witness stated that monitoring is done to verify the quality of the data and to change the interviewers' training if a topic is misunderstood. The monitoring is done randomly but does take into account the classification of the interviewers. Less experienced interviewers are monitored more often.

[38] The witness said that Ms. Baillargeon had asked her to meet with Ms. Morin and tell her to go home while an investigation was being conducted. They would call her back once the investigation was completed.

[39] She asked to see the grievor with two goals in mind, providing information and asking questions. She wanted to check whether the grievor had talked to the respondent and asked her the CTS questions, and she wanted to tell the grievor that she had to leave while everything was being verified.

[40] The meeting took place in the conference room and lasted about 10 minutes. According to the witness, she asked Ms. Morin whether she remembered talking to a respondent. Ms. Morin said that she did. With regards to the CTS, Ms. Morin said that she remembered the respondent saying that she had not travelled. Ms. Corriveau testified that she had asked Ms. Morin whether she had conducted the LFS with the woman and that Ms. Morin had answered yes. Ms. Corriveau asked Ms. Morin whether she had asked questions about travel. Ms. Morin answered that the woman had said she had not travelled. Ms. Corriveau asked whether Ms. Morin had gone into the CTS at the time she was asking the questions, but she does not remember how Ms. Morin answered. She testified that she had told Ms. Morin that it was known she had not gone into the CTS.



[41] With regard to Ms. Morin's reaction, Ms. Corriveau stated that she had seemed surprised and had also been angry. Ms. Morin expressed the opinion that perhaps someone wanted her head, and she asked the witness, [translation] "do you really believe this?".

[42] Ms. Corriveau notified Ms. Morin that Ms. Baillargeon had asked her to tell her she would be paid, to which Ms. Morin retorted, [translation] "tell her to take her time".

[43] The witness stated that Ms. Morin was not being targeted and that she took an interest in monitoring only when there was a specific problem.

[44] On cross-examination, the witness confirmed that she had signed Ms. Morin's appraisal and that it referred to the higher response rate that Ms. Morin obtained when administering questionnaires. According to the witness, Ms. Morin was able to seek out a greater number of people. The grievor had been part of the refusal teams, whose role was to try to convince uncooperative individuals to answer questionnaires. In the witness' opinion, Ms. Morin had the qualities needed to be part of those teams, namely experience, persuasiveness and tact. The witness also confirmed the annotation on the performance appraisal to the effect that Ms. Morin had a sense of ethics.

[45] Asked when the meeting with Ms. Morin had been held, the witness said that it was at about 4 p.m. and that she had been informed of the situation at about 1:45 p.m.

[46] Ms. Corriveau confirmed that a procedure had been used to get into the computer system. She added that the work station assigned to the grievor was number 4, although she could have worked at a co-worker's station.

[47] The grievor, Fernande Morin, testified next. She began working for Statistics Canada as an interviewer in February 2002. At the time of the alleged incident, she was single and was looking after her two elderly parents, who were dependent on her care. More specifically, her mother was in the hospital that week while her father, who was ill, was home alone. In these circumstances, she had to go and see her father every day at noon to make sure he was all right, and in the evening she visited her mother in the hospital.

[48] With regards to the alleged incident, Ms. Morin said that she had been working on the LFS when she contacted the respondent at her workplace. The respondent is a dentist, and her secretary answered the call. She asked to talk to the dentist,

identifying herself as Fernande Morin from Statistics Canada. When the respondent took the call, she told her that this was her last month participating in the LFS. The respondent then said, [translation] “Let’s get it over with . . . there’s no change”. The witness testified that, sensing the respondent’s impatience, she had offered to call her back at another time but that the respondent had declined.

[49] Ms. Morin confirmed that she had not notified the respondent that the conversation might be monitored and that she could choose the language in which she wanted to communicate. As this was not the first call and it was necessary to do things quickly and hurry in the circumstances, she went ahead and verified the information on the screen and, for each question, the respondent said that there had been no change. She confirmed that she had been as brief as possible, saying [translation] “yes . . . we went quickly”.

[50] Ms. Morin stated that, to be able to go from the LFS screens to the CTS, it is necessary to close one program and start another. There are about 20 seconds between the end of one and the start of the other. Ms. Morin said that, during that time, she had asked the respondent whether she had travelled and that the respondent had answered no. In light of that answer, Ms. Morin ended the call without asking her the question about income. She completed the survey on the computer in the respondent’s absence using the answers given, and she put a question mark after the question about income.

[51] Ms. Morin stated that the respondent had the same name as a well-known personality, which explains why she said to her, [translation] “I feel like I know you, is that possible?”. She added that interviewers sometimes have to contact seniors for the LFS and that, in the case of individuals over 70 years old, interviewers have been instructed not to insist if they have too much trouble answering. They must then confirm the address and close the case. Likewise, near the end of the LFS, if respondents have said they will be absent, an attempt will be made to confirm the address with the person who answers the telephone and then the survey will be closed with the information from the previous month.

[52] With respect to the day of November 18, Ms. Morin said that she had continued working on her survey in the afternoon before being called into the office of the supervisor, Ms. Corriveau. At that time, she had no idea what was going on. She was

surprised and incredulous at what her supervisor said. She thought she must be dreaming.

[53] With respect to the meeting held the following November 29, Ms. Morin stated that the employer's representative, Luc Quesnel, had begun by asking her whether she knew why she had been called to the meeting and that she had answered by saying, [translation] "You are going to explain it to me". Mr. Quesnel then said that she had completed a survey without asking the respondent the questions, and he asked her whether she was maintaining that she had asked the questions. Ms. Morin maintained that she had asked the questions. Ms. Baillargeon then said that the respondent, who had been contacted twice, had stated the contrary. Ms. Morin was given the choice of resigning or being dismissed. After consulting with her representative, the grievor told the employer that she refused to resign.

[54] When questioned about her participation in the refusal and special cases teams, Ms. Morin testified that, in administering the so-called mandatory surveys, there were always people who were reticent to answer the survey questions. Teams were formed as needed to deal with such refusal cases. It was necessary to have a good understanding of the survey and good judgment to assess the situation and convince the respondent to answer the questions. Ms. Morin said that she had often been asked to be a part of such teams. With regards to special cases, Ms. Morin gave the example of a health survey for which she had been asked to put the problems encountered in administering the questionnaire down on paper for the national office in Ottawa and to suggest how the questionnaires could be improved to obtain a higher response rate. Ms. Morin also gave other examples of her involvement in special projects.

[55] Ms. Morin added that, during the disciplinary meeting, the employer's representative, Luc Quesnel, had been asked whether he had read her employee file and had answered: [translation] "No, that's not relevant".

[56] On cross-examination, Ms. Morin confirmed that she is not working and is looking for a job. She acknowledged her signature on the oath of office and secrecy (Exhibit E-1). She said that she was familiar with the quality control observation form (Exhibit E-2) because she had seen it during training and following a discussion with Ms. Choquette. During that discussion, Ms. Choquette had said that she was obligated to note down these comments. The question had not been asked as it appeared on the

screen, which it must be unless a change has been approved by the national office in Ottawa.

[57] When asked about her relationship with Ms. Choquette, Ms. Morin said that she had a good relationship with her, as with all her co-workers. She added that, when Ms. Choquette had started doing monitoring, the “joke” that went around was: [translation] “Joanne (Ms. Choquette) is coming . . . we’ll be careful”.

[58] When asked about the training she had received when starting her job, Ms. Morin said that data entry is very important and that she is the last person who would falsify data. She maintained that she is too honest to have done such a thing.

[59] The employer’s representative then asked her how she could reconcile her conduct with the training she had received. Ms. Morin answered that the situation was clear to her. Obtaining clear answers is what is most important. It is also necessary to proceed quickly, because otherwise the respondent might hang up. She believes that the way she handled the case was designed to prevent a refusal. She did not falsify the data.

[60] When asked about the number of questions on the LFS, Ms. Morin answered that there were about 18 questions, although, depending on the answers given, some of them might not be asked. The CTS can be long if the person has travelled.

[61] Ms. Morin explained that when switching from the LFS to the CTS, she had asked the respondent whether she had travelled. The respondent answered no and said that there had been no change since the previous time. Ms. Morin does not think she asked the question about income, and she later put down a question mark or noted that the respondent had refused to answer the question. She does not remember the exact number of questions on the CTS.

[62] Ms. Morin thinks the survey with the respondent lasted three to four minutes, and certainly more than one minute as stated by Ms. Choquette. She believes that Ms. Choquette is mistaken.

[63] With respect to the LFS, Ms. Morin stated that the computer sometimes freezes but that the survey continues, even if it means entering the data later. Usually, the LFS takes five to seven minutes if there are changes.

[64] With regards to the CTS, Ms. Morin reiterated that she had not insisted to Ms. Choquette that the respondent had hung up. Ms. Morin reaffirmed that she had already asked the questions.

[65] In closing, Ms. Morin confirmed that she would like to have the disciplinary penalty rescinded and to be reinstated in her employment.

Summary of the arguments

[66] The employer's representative presented the case as involving the dismissal of an employee with less than three years of service who falsified data. Ms. Morin violated her oath when she deliberately entered data without asking the respondent the questions.

[67] He stressed Ms. Bench's testimony that data falsification is rare in her experience, that employees are informed of how serious data falsification is and that, in her view, dismissal is the correct and the only penalty. The breach of trust is such that the grievor cannot continue to be employed. The representative added that Ms. Bench has 31 years of experience in the field and that data falsification affects the agency's reputation. That reputation is built on the confidentiality and quality of the data gathered and published.

[68] He continued by stating that Statistics Canada interviewers are the front-line soldiers and that, if the employer does not trust an interviewer, the employment must be terminated.

[69] The employer's representative stated that Ms. Choquette, a senior interviewer, had been monitoring surveys on November 18, 2004 and that such monitoring was done on a random basis for assessment, mistake correction and training purposes.

[70] Ms. Choquette completed the observation form (Exhibit E-2) for the survey conducted by Ms. Morin. The form indicates that the survey lasted only one minute. According to this witness, Ms. Morin asked the questions not of the respondent but of herself. On the form, Ms. Choquette referred to two critical errors involving the first two points of the survey, which related to the fact that a monitor might be listening and that the respondent had the choice of language. The representative noted that Ms. Choquette had heard Ms. Morin thank the respondent after the LFS and hang up. Ms. Choquette also testified that, after the end of the conversation, Ms. Morin had gone

into the CTS and entered data even though the respondent was not on the line and even though the questions had not been asked.

[71] The employer's representative submitted that Ms. Choquette had been convinced of her observations and flabbergasted by them. She had then informed her supervisor of the situation.

[72] The representative continued by saying that Ms. Corriveau, the supervisor, had been surprised at the situation because, in her five years in Sherbrooke, this was the first time anyone had been accused of falsifying data. After meeting with and questioning Ms. Morin, Ms. Corriveau sent her home.

[73] The employer's representative noted that Ms. Morin admitted in her testimony that she had completed the answers to the questions after hanging up the telephone. He added that Ms. Morin denies falsifying the answers to the survey questions but does not recall the number of questions on the LFS or the CTS.

[74] Ms. Morin does not remember the answer she entered for the question on the respondent's income in the CTS. The representative asked me to conclude that Ms. Morin's memory is faulty.

[75] The representative noted that the quality control observation form (Exhibit E-2), which was completed at the same time as the interview, clearly states: [translation] "then once the respondent hung up, she went into the CTS". He asked me to conclude that Ms. Choquette is a principled person who observed Ms. Morin completing the CTS without having asked the respondent the questions.

[76] With respect to the severity of the penalty, the employer's representative said that, according to the testimony of Ms. Bench, Ms. Choquette and Ms. Corriveau, data falsification is a rare occurrence. Ms. Bench testified that there had been a breach of trust and that there could be no question of reinstatement.

[77] The employer's representative argued that the case law confirms that, where a job requires the protection of confidential information, a breach of trust will lead to dismissal. He referred me to the following decisions: *Bradley and Treasury Board (Revenue Canada, Customs and Excise)*, 2000 PSSRB 82; *Côté v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2002 PSSRB 103; *Parsons v. Treasury Board (Solicitor General of Canada - Correctional Service)*, PSSRB file

No. 166-2-27007; and *Rose v. Treasury Board (Revenue Canada, Customs and Excise)*, PSSRB file Nos. 166-2-27307 and 166-2-27308.

[78] The representative added that the question of witness credibility is a fundamental one in this case. Ms. Morin has admitted that she hung up the telephone after the LFS and answered the questions from memory. However, she does not recall the number of questions in either survey. She does not even remember the answer she entered for the question about the respondent's income in the CTS.

[79] Furthermore, Ms. Choquette, who has no interest in the outcome of this grievance, told us that she had observed Ms. Morin's screen and listened to her during the discussion. Ms. Choquette, a witness, told us that Ms. Morin had not asked the CTS questions. In the representative's opinion, this evidence is the best evidence rather than Ms. Morin's failing memory.

[80] The employer's representative pointed to the test set out in the decision of the Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.):

[. . .]

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.*

[. . .]

[81] The representative asked me to rely on Ms. Choquette's testimony because she had heard, observed and taken note of Ms. Morin's actions.

[82] In conclusion, the employer's representative argued that, despite Ms. Morin's performance, the fact that she falsified data on November 18, 2004 damaged her reliability and affected the integrity of Statistics Canada data. The employer no longer trusts this person, which means that it would be impossible to integrate her into the workplace. He asked me to dismiss the grievance.

[83] The grievor's representative began by suggesting that the case law submitted by the employer actually deals with extreme cases, which is not the situation here.

[84] The reason for dismissal found in Exhibit S-2 has to do with completing a questionnaire in the respondent's absence.

[85] The representative noted that Ms. Morin admits she entered the answers after the telephone conversation ended. He said that Christian Bernard's testimony added nothing to the inquiry. With regards to Jill Bench's testimony, his view is that she drew a general picture of the situation, emphasizing confidentiality. However, nothing in the description of Ms. Morin's actions can be interpreted as a breach of confidentiality.

[86] The representative is of the view that what is in doubt here is the validity of the information recorded by Ms. Morin. Did the grievor make up or fabricate the answers, or did she enter information provided by the respondent?

[87] The representative asked me to examine Ms. Choquette's testimony. Ms. Choquette believes that Ms. Morin made up answers. The observation form indicates that the respondent was asked three questions and that Ms. Morin was then questioning herself in the sense that she asked the questions but did not really wait for the answers. At other times during her examination, Ms. Choquette stated that Ms. Morin had not asked any questions.

[88] The grievor's representative noted that Ms. Choquette wrongly interpreted the beginning of the conversation between Ms. Morin and the respondent as indicating a personal relationship between them. Ms. Choquette based this on the following comment: [translation] "Your name seems familiar to me". This interpretation coloured her interpretation of what happened next. Yet, Ms. Morin explained to us that there was no personal relationship and that the respondent simply had the same name as a well-known person.

[89] The representative stressed the contradiction between Ms. Choquette's testimony and the documentary evidence. Although Ms. Choquette stated that the respondent had not been asked any questions about the CTS, the notes taken concerning the questionnaire indicate the following (Exhibit E-2): [translation] "... dentist says no change since last month - interviewer answers sometimes there may be small - to make; I imagine she is referring to the CTS".

[90] The representative also cast doubt on Ms. Choquette's testimony that she had completed the observation form (Exhibit E-2) while listening to the telephone



conversation with the respondent. Writing down the observations noted on the document would take more time than the length of the telephone conversation as indicated on the form.

[91] He noted that Ms. Choquette had ended up acknowledging on cross-examination that the respondent had answered “no change” to the questions asked by Ms. Morin. She also acknowledged that the respondent’s tone had revealed some impatience.

[92] The grievor’s representative noted that the burden of proof is on the employer and that the employer has not proved that the employee made up the answers to the questions.

[93] Although Ms. Morin admits that she rushed to complete the interview quickly, her representative submitted that it must be understood that a dental surgeon’s time is valuable and that this was the sixth time the same questions were being asked. With regards to the CTS, the grievor asked the questions before they appeared on the screen. Having obtained the necessary answers, the grievor ended the telephone conversation and then entered the answers she had obtained on the computer screen.

[94] The grievor’s representative noted that the grievor is not a person whose talent, listening ability, response rate or ethics are in question, as shown by the performance appraisals adduced in evidence (Exhibit S-3).

[95] The grievor’s representative asked me to overturn the dismissal and restore the employment relationship, with no loss of benefits. He also asked me to reserve jurisdiction over the case in the event that I reinstate the employee so that I can determine the amount of damages if the parties are unable to agree.

[96] In reply, the employer’s representative noted that, in Statistics Canada’s view, data falsification equals fraud. Many businesses rely on the data compiled by Statistics Canada. This is serious misconduct that merits the most severe disciplinary penalty.

### Reasons

[97] To determine whether it was appropriate for the employer to impose a disciplinary penalty, the employer has to establish that the grievor behaved reprehensibly. However, I am not satisfied from the evidence adduced that the grievor engaged in deliberate wrongdoing that would justify a disciplinary penalty.

[98] In its dismissal letter, the employer accuses Ms. Morin of completing a questionnaire in the respondent's absence. However, during his argument, the employer's representative maintained that the grievor deserved to be dismissed because she had falsified data. This argument is consistent with the testimony of Ms. Bench, who accused the employee of data falsification. I conclude from this that the employer is trying to change the reason for dismissal by making, as it were, a more serious charge against the grievor.

[99] However, Ms. Choquette's testimony is not credible or precise enough to support such a charge. Although she stated under oath that she had prepared Exhibit E-2 while listening to the telephone conversation between Ms. Morin and the respondent, the actual content of the document establishes that this cannot be true. The comments made on page 2 of the exhibit indicate that she warned management about a dismissal based on monitoring. Those comments could not have been written until after her meeting with her supervisor and even after dismissal was considered. She therefore did not prepare the document at the time she claims. Moreover, given the imprecision of her testimony about the questions asked as well as the notes recorded on Exhibit E-2, I find that Ms. Morin's version is more plausible. The grievor wanted to proceed quickly. She went right to the essential matters to avoid taking up too much of a dentist's time during office hours. The fact that she recorded the answers after hanging up does not, in my opinion, amount to reprehensible misconduct in the circumstances, especially as nothing proves to me that the answers Ms. Morin recorded were false or that she had malicious intentions.

[100] The employer has not discharged its burden of proving on a preponderance of evidence that the grievor falsified data during a survey for which she was responsible, nor has it proved that recording answers in the respondent's absence was, in the circumstances, misconduct that justified disciplinary action.

[101] For these reasons, I make the following order:

*(The Order appears on the next page)*

Order

[102] I allow the grievance and rescind the termination of employment. I order the employer to reinstate the grievor and reimburse her for any loss of wages and benefits resulting from that decision. I reserve jurisdiction in case the parties are unable to agree on the amount of damages to which the grievor is entitled.

May 15, 2006.

P.S.L.R.B. Translation

**Georges Nadeau,  
adjudicator**