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File: 166-02-35942

Citation: 2007 PSLRB 41



*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

CLAUDE ROBILLARD

Grievor

and

**TREASURY BOARD
(Department of Finance)**

Employer

Indexed as

Robillard v. Treasury Board (Department of Finance)

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

REASONS FOR DECISION

Before: Jean-Pierre Tessier, adjudicator

For the Grievor: Julie Skinner, counsel, and André Lortie, Professional Institute of
the Public Service of Canada

For the Employer: Karl Chemsî, counsel

Heard at Ottawa, Ontario,
February 7 to 9, May 30 to June 2, and June 7 and 8, 2006.
(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] Claude Robillard (“the grievor”) has been working at the Department of Finance since 2000. He works as an IT solutions analyst and is classified at the CS-02 group and level. He is part of the Information Management and Information Technology Directorate (“the Directorate”), Corporate Services Branch.

[2] On December 7, 2004, the employer summoned the grievor to a meeting at which he was questioned concerning a number of incidents that had taken place during previous months involving the disappearance of office equipment.

[3] On December 8, 2004, the employer again summoned the grievor, this time for a disciplinary meeting. He was told that he was suspected of theft and of making threats against certain employees. The employer suspended him from that day until the end of the investigation.

[4] On December 20, 2004, the grievor was summoned to a disciplinary meeting at which he was dismissed on grounds of theft and making threats.

[5] On December 23, 2004, the grievor filed a grievance to contest his suspension and dismissal. The grievance was referred to adjudication in April 2005. The hearing initially scheduled for September 19, 2005 was postponed at the parties’ joint request. The parties were not available for a hearing until February 2006.

[6] 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.

Summary of the evidence

[7] Along with this grievance, the grievor filed another grievance contesting the validity of the December 7, 2004 meeting that he described as disciplinary. That matter was the subject of the decision in 2007 PSLRB 40.

[8] Helen O’Kane is the Director of the Directorate. She is responsible for the procurement, installation and repair of computer equipment. The Directorate also

provides services to the Treasury Board Secretariat and to the Public Service Commission.

[9] Ms. O’Kane is responsible for the unit heads at the CS-04 group and level as well as staff at the CS-01, CS-02 and CS-03 groups and levels. The employees who report to her work at the Directorate’s premises and answer calls for service from outside the premises.

[10] Ms. O’Kane explained that in 2004 there was a degree of unease among the Directorate’s employees. Equipment worth a total of \$24,000, including diskettes, memory chips, printers and laptops, had disappeared from the warehouse (Exhibit E-1(a)). A logbook had to be signed to obtain the key to the warehouse. More than 20 people had access to it.

[11] In addition, the employees’ social committee had bought some wine and had collected money for a reception. Money (\$100) and bottles of wine had disappeared. This situation contributed to an atmosphere of mistrust at the Directorate.

[12] In the fall of 2004, Ms. O’Kane asked the managers under her responsibility to inform the employees that the security directives were to be changed. Notably, access to the warehouse would be limited to employees at the CS-03 group and level.

[13] Employees at the CS-01 and CS-02 groups and levels were offended by this directive, which seemed to cast doubt on some of them. Some of the employees asked to meet with their respective managers and informed them of rumours that it was one or more of the CS-03s who were responsible for the thefts.

[14] In a memo to Ms. O’Kane dated November 4, 2004, Gertie Senuik, a manager at the Directorate, raised this situation (Exhibit E-1(b)). In this memo, Ms. Senuik reported that some of the IT solutions analysts, namely Paul Levecque, Joseph Boushey and Roland Sarault, had heard comments regarding remarks and actions of the grievor and another employee (identified here as Mr. “A”).

[15] Another Directorate manager, Carole Mainville, sent a similar memo to Ms. O’Kane in which she addressed comments made by Mr. Boushey.

[16] Ms. O’Kane subsequently contacted Marilyn Dingwall, Senior Director, Human Resources Services, Human Resources Division, Corporate Services at the

Department of Finance. Ms. Dingwall is responsible for labour relations. Ms. O’Kane and Ms. Dingwall agreed to meet with about ten employees, some of whom had provided information, and with Mr. Robillard and Mr. “A,” who had been identified as possibly having committed certain infractions. Ms. O’Kane indicated that at that point, it was a matter of rumours.

[17] In light of their availability, Ms. O’Kane and Ms. Dingwall planned to meet with the 10 employees on December 7 and 8, 2004 to collect as much information as possible concerning the computer equipment’s disappearance. Each employee was seen individually off the Directorate’s premises. Each employee was telephoned to appear at a 30- to 40-minute meeting. They waited until each employee left before calling the next. Ms. O’Kane noted that each employee was told that the purpose of the meeting was to collect information. She asked each employee not to discuss with other employees what had been mentioned and not to spread rumours.

[18] The first employee they met with, Mr. Levecque, provided the following information concerning Mr. Robillard and Mr. “A” (Exhibit E-1(e)):

- Mr. “A” has a key to the warehouse and lent it to the grievor;
- Mr. Levecque discussed the disappearance of equipment with Mr. Boushey, who told him that Mr. “A” apparently had confided in him when they were having a beer after work that he had been able to obtain equipment belonging to the Department; and
- Mr. Levecque emphasized that Mr. “A” had apparently expressed the opinion that there was a difference between stealing from the government and stealing from an individual.

[19] Ms. O’Kane referred to the account of the meeting with Mr. Boushey on December 7, 2004 (Exhibit E-1(f)). Mr. Boushey allegedly made certain comments about Mr. Robillard and Mr. “A.” During the meeting Mr. Boushey confirmed that Mr. “A” had a key to the warehouse. Mr. Boushey has been working with Mr. “A” since 1999 and they have become friends. In 2000, the grievor joined them. The grievor spoke often with Mr. “A” because their wives work at the same place.

[20] During the December 7, 2004 meeting, Mr. Boushey indicated that one day he had observed that Mr. “A” had a Pentium 4 computer in his office. Mr. “A” apparently

explained to him that the grievor had sold a computer to a friend and that the motherboard was defective. Mr. "A" said that, to replace it, he had ordered another one under a different serial number. He said that on another occasion, Mr. "A" had apparently told him that he used taxi chits for personal reasons.

[21] When Ms. O'Kane and Ms. Dingwall met with the grievor on December 7, 2004, they had the information that appeared in Ms. Senuik's November 4, 2004 memo and the information obtained from the first two grievors they had met with, Mr. Levecque and Mr. Boushey. During the meeting with the grievor, they referred to the disappearance of equipment in general terms and asked if he knew anything. They then asked him some questions on specific subjects. They asked the grievor whether he knew that Mr. "A" had a key to the warehouse and if he himself had used it. The grievor apparently replied that he had used it only once and then that he had used it a number of times.

[22] Ms. O'Kane then noted that the grievor had been questioned about the use of taxi chits. He was asked whether he was aware that taxi chits had been used for unauthorized personal reasons and whether he himself had used any. He replied that he came to work on his bicycle. He nonetheless admitted that he had occasionally used taxi chits, but for authorized purposes. Ms. O'Kane indicated that the grievor had been instructed, as had the other employees questioned earlier, not to discuss the content of their meeting with other employees.

[23] Ms. O'Kane indicated that an incident had occurred during the afternoon of December 7, 2004, and that she had been informed of it the following morning. An employee had sent an email to about 20 of his co-workers, including the grievor. There was a photo of a computer dating from 1983 with which the employee in question had previously worked. In reply, another colleague forwarded a photo of an old model of a communication device that she had used in the Canadian Forces. Later, at around 15:20, the grievor sent an email showing a submachine gun and some rifles, including a precision rifle used by snipers, indicating that these weapons worked very well and that he knew how to use them. The chain of emails stopped at that point.

[24] Mr. Boushey related that about 15 minutes later the grievor came to see him at his workstation. The grievor asked Mr. Boushey whether he had seen the email that he had sent. Mr. Boushey told him that he had minimized its size on his screen. The

grievor asked him to maximize the size of the email showing the firearms and the text that the grievor had written.

[25] This was followed by a discussion during which Mr. Boushey reportedly questioned the grievor about shooting distances. The grievor apparently indicated that he was very proficient at using the sniper rifle and that he would not miss him if he had to shoot from far away. Another colleague, Hugues Choiniere-Bélanger, came over to Mr. Boushey's workstation. The grievor apparently told Mr. Choiniere-Bélanger that he would not miss him either. The grievor then returned to his office.

[26] Mr. Boushey told Ms. O'Kane about this incident on the morning of December 8, 2004. Mr. Boushey seemed nervous and indicated to Ms. O'Kane that he felt threatened and had slept very badly on the night of December 7, 2004.

[27] Ms. O'Kane left a message for Ms. Dingwall right away. Ms. Dingwall spoke with her in the early afternoon and they discussed the December 7, 2004 incident. They agreed to contact Robert Brodeur, Executive Director of the Directorate.

[28] On the afternoon of December 8, 2004, Ms. O'Kane and her colleagues summoned Mr. Boushey, Mr. Choiniere-Bélanger and Mr. Levecque to a meeting. All of them had been questioned and had provided information the previous day. Ms. O'Kane and Ms. Dingwall had alerted the Ottawa Police. Two officers came to take statements from Mr. Boushey, Mr. Choiniere-Bélanger and Mr. Levecque. The three statements appear in Exhibits E-1(i), (j) and (k).

[29] A union representative had been informed that the grievor would be at a meeting late in the afternoon of December 8, 2004. The grievor was met with on December 8, 2004, as agreed. He was informed that he could be accompanied by a union representative, who was present in another room. Initially the grievor did not ask for a union representative, but when he was informed that the matter involved theft and threats, he asked to have his representative present.

[30] In the union representative's presence, the grievor was informed of the December 7, 2004 incident. Employees felt threatened and an investigation was to be conducted on this incident and on questions relating to the disappearance of equipment. The grievor did not offer much in reply, saying that there had not been any threats, and that it was just a joke. The grievor was informed that he had to leave his

work and that he was being suspended without pay for the duration of the investigation. He was issued a memo to that effect (Exhibit E-1(l)).

[31] Ms. Dingwall was informed by Ms. O’Kane in November 2004 about the disappearance of equipment at the Directorate. She stated that she had agreed with Ms. O’Kane to question certain employees who had reported infractions or had shared rumours concerning certain employees, including Mr. Robillard and Mr. “A,” who both had to be seen to find out whether they had any information to share.

[32] Ms. Dingwall described what had taken place at the meetings on December 7 and 8, 2004. Her testimony corroborated that of Ms. O’Kane.

[33] With respect to the email of December 7, 2004 and the alleged threats, Ms. Dingwall indicated that she had met with the head of security, who showed her a security report made in 2000 regarding the grievor (Exhibit E-2). He told her that the grievor had previously served in the Canadian Forces and had been on missions in Bosnia and Somalia. The grievor had been trained as a sniper. She noted in the security report that the grievor had been involved in assaults in 1987. The grievor objected to the admissibility in evidence of the security report. I will deal with this objection in the reasons for this decision.

[34] After meeting with Mr. Boushey, Mr. Choiniere-Bélanger and Mr. Levecque, Ms. Dingwall felt that the employer had to act. She took into consideration the fact that these three employees were very nervous when they met with her. She also noted that Ms. O’Kane was somewhat nervous.

[35] Ms. Dingwall took a number of factors into account in determining what actions would be appropriate in the circumstances. The grievor’s email had been sent to a number of employees. After having sent the email at around 15:20 on December 7, 2004, the grievor went to see Mr. Boushey, who was one of the employees that Ms. O’Kane and Ms. Dingwall had met with that morning. The grievor knew how to handle firearms and had been trained as a sniper. According to Ms. Dingwall, the grievor had to be removed from the workplace because the other employees did not feel safe. There was definitely some worry on the part of not only Mr. Boushey but also Ms. O’Kane and the other employees who had been seen on December 8, 2004. According to Ms. Dingwall, there was enough evidence to summon the grievor to a meeting that same day and to hear his version of the facts before suspending him while a

disciplinary investigation was being carried out. She felt it was appropriate to alert a union representative.

[36] According to Ms. Dingwall, the employer must protect employees from any form of harassment. It is important that employees become involved to help maintain a harassment-free workplace. In this context, it seemed to her that the grievor had broken the relationship of trust necessary to the continuation of his employment.

[37] Ms. Dingwall summoned the grievor to a disciplinary meeting to be held on December 20, 2004. She informed André Lortie, Labour Relations Officer for the Professional Institute of the Public Service of Canada, that the grievor would be informed during the meeting that the employer had decided to dismiss him. For reasons of security and discretion, the meeting took place off the Directorate's premises.

[38] The grievor was accompanied by his union representative during the December 20, 2004 meeting. He was informed of the decision to dismiss him. Mr. Brodeur read the letter setting out the reasons for the dismissal (Exhibit E-1(u)). Neither the grievor nor his union representative made any comments.

[39] According to Ms. Dingwall, the grievor did not provide a valid explanation for the December 7, 2004 email or for his encounter with Mr. Boushey that same day. He simply said that the words had been spoken in jest. According to her, the grievor had to be suspended while a disciplinary investigation was being carried out. She also believed it was important to reassure Mr. Boushey, Mr. Choiniere-Bélanger and Mr. Levecque, who felt intimidated by the December 7, 2004 email. In closing, Ms. Dingwall noted that she had reviewed a number of emails sent by the grievor. She noted that he made inappropriate comments about certain employees. For example, he referred to one of his co-workers as follows: "[translation] that big, fat 'X' had to get off her butt to get some information."

[40] In addition to making a written statement, Mr. Boushey testified at the hearing. His testimony confirmed all of his previous statements (Exhibits E-1(f) and (j)). He explained the context of the events that had taken place in December 2004. For the past several years he had been friends with Mr. "A." The grievor then joined the group. In 2004, rumours began circulating about the disappearance of equipment. Mr. Boushey did not like the fact that Mr. "A" made comments about taxi chits and about

how much equipment there was at the Department. He did not like the fact that Mr. “A” joked about the disappearance of equipment in the presence of the grievor, who did not say anything but smiled. As of spring 2004, Mr. Boushey had distanced himself from Mr. Robillard and Mr. “A.”

[41] Mr. Boushey indicated that he had not seen fit to bring these incidents to his employer’s attention because there were only rumours, which were allusions without concrete proof. However, he knew that Mr. “A” had a key to the warehouse (a copy of the original key) and that the grievor used it. When the employer tightened up the security rules, Mr. Boushey found that an atmosphere of mistrust set in at the Directorate and he decided to inform the employer of certain facts.

[42] Following his December 7, 2004 meeting with Ms. O’Kane and Ms. Dingwall, Mr. Boushey did not speak to anyone. That afternoon, he was at his workstation when he saw the chain of emails on his screen. He minimized the size of the grievor’s email and continued working. Approximately 10 to 15 minutes later, the grievor came to see him at his workstation. The grievor asked him if he had seen the email. Mr. Boushey replied that he had minimized it on his screen. The grievor asked him to maximize the size of the email. The grievor pointed his finger at the photos of firearms and said that he was very proficient at using them. Mr. Boushey stated that at that point he felt nervous but did not want to show it. He therefore asked the grievor questions like what kind of training he had taken and how far he could shoot. The grievor said that he would not miss Mr. Boushey even from far away. Mr. Choiniere-Bélanger came into Mr. Boushey’s office at that point. The grievor then left, apparently telling Mr. Choiniere-Bélanger, who had just joined them that “I would not miss you either.”

[43] Mr. Boushey added that he had been disturbed by the grievor’s visit. At that point, he had not spoken to the grievor for quite some time. The grievor had not come to see him in his office for a long time. Then suddenly on the afternoon of December 7, 2004, after Ms. O’Kane and Ms. Dingwall had met with him concerning the theft of equipment and he had provided them information, the grievor came to see him to talk about firearms.

[44] Mr. Boushey testified that on the evening of December 7, 2004 he had thought again about the incident that had taken place that afternoon. He thought about cases of violence at work, such as the December 6 shooting at l’École polytechnique de Montréal and the one at OC Transpo in Ottawa. That was why he met with Ms. O’Kane

on December 8, 2004 to tell her about the email of the day before and the conversation that had taken place. During the meeting on the afternoon of December 8, he was alone in a room when he drafted his statement for the police.

[45] In closing, Mr. Boushey indicated that he had previously discussed military service with the grievor. He knew that the grievor had been on missions abroad and that the grievor knew how to handle firearms.

[46] Mr. Choiniere-Bélanger is an IT solutions analyst at the Directorate. On December 7, 2004, he read the emails, including the one from the grievor showing firearms. He found it a little strange. His workstation is located close to that of Mr. Boushey. A little while later, he went over to Mr. Boushey's workstation (they work in an open work area). The grievor was at the entrance to the workspace when he saw Mr. Choiniere-Bélanger coming over. He pointed a finger at him and said, "[translation] I would not miss you either with this." Then he left.

[47] Mr. Choiniere-Bélanger testified that he did not understand what was going on. He found that the grievor had an aggressive tone. After the grievor left, Mr. Boushey told Mr. Choiniere-Bélanger to look at the firearms on the screen. He could not remember if the grievor had talked about anything else.

[48] Mr. Choiniere-Bélanger stated that he had thought about that afternoon's incident again on the evening of December 7, 2004. The following day he was summoned by Ms. O'Kane, Ms. Dingwall and Mr. Brodeur. While he was waiting, Mr. Boushey spoke to him about the investigation into the disappearance of equipment and told him that the grievor was the subject of certain rumours.

[49] Mr. Choiniere-Bélanger indicated that at that point he did not know about the investigation carried out on December 7, 2004. He then understood that the grievor might be the subject of the investigation. He made a connection with the comments of the afternoon of December 7, 2004, although he did not feel threatened by the comments made the day before. He noted that the situation might be different if there were any consequences from the investigation. He stated that this was also what he had indicated in his written statement of December 8, 2004. He confirmed that he had written the statement himself in an empty office close to the location of the meeting.

[50] Mr. Lortie represented the grievor at the hearing. He nonetheless asked to testify concerning the events that had taken place in 2004, and began handling the cases of Mr. Robillard and Mr. "A" on December 13, 2004.

[51] Mr. Lortie stated that Ms. Dingwall had alerted him to the December 20, 2004 meeting and the fact that the employer intended to dismiss the grievor. Mr. Lortie participated in the December 20, 2004 meeting and did not say anything, choosing instead to meet with Ms. Dingwall afterwards. They met on December 22, 2004 and on January 21, 2005 to go over the grievor's case in more detail.

[52] Mr. Lortie said that he had not received much information during the January 21, 2005 meeting. There was a document on overtime and taxi chits. As for the comments regarding the disappearance of equipment, Ms. Dingwall informed him that the statement had been made orally. Mr. Lortie did not have an opportunity to see a copy of the written statements made to the police regarding the threats. Ms. Dingwall indicated to him that they would be shown when necessary. Mr. Lortie stated that he was concerned about the December 7, 2004 meeting with the grievor that the employer described as having had the intention of collecting information. He told Ms. Dingwall that he considered this meeting to be disciplinary in nature and that a trap had been set for the grievor. The January 21, 2007 meeting closed on a rather tense note.

[53] In cross-examination, Mr. Lortie admitted that, from the start, regarding the threats uttered on December 7, 2004, the grievor was able to indicate that Mr. Boushey was involved, but that he was unable to identify the other employee involved in this matter.

[54] Mr. Lortie agreed that the grievor could have obtained all of the documents through access to information, but that the names and identifying information would be crossed out, making it difficult to have a complete picture of the case. Mr. Lortie said he had not made a special request to obtain other information. According to him, it was up to the employer to provide information pertaining to the accusations made against the grievor.

[55] Yves Cloutier is Manager, Security Operations, Security Services Division at the Department of Finance. At the hearing, he had in his hand the sign-out sheets for access to the keys to the warehouse. He said he had reviewed these documents and

had determined that the grievor had signed the keys out frequently, during each month of 2004.

[56] The grievor indicated that he had started working at the Department of Finance in 2000, at the CS-01 group and level. In 2001, he was promoted to the CS-02 group and level. His work consisted of providing technical support and information by telephone and of going to see clients to repair defective equipment. He also participated in a number of special projects, including organizing support equipment at conferences and providing support to senior officials to cover the tabling of the budget, at the federal level as well as for certain provinces. The employer even asked him to go to Montréal to repair the Minister of Finance's computer. Participation in such special projects is assigned on merit, and he said that Mr. Boushey had never been chosen for such projects. He noted that he had received positive performance reports (Exhibits F-3 to F-8).

[57] The grievor said that he got along well with his co-workers and helped organize social activities. He was also involved in the community in recreational and sports groups (Exhibit F-9).

[58] In terms of the work itself, the grievor indicated that co-workers sometimes engaged in competitions at the call centre to determine who could complete the most calls. He said he had often been among the top people, unlike Mr. Boushey. According to the grievor, customer service is demanding work and joking around is necessary to create a relaxed atmosphere.

[59] On occasion the grievor has spoken with his co-workers about missions that he carried out in the armed forces. At lunchtime, five or six co-workers would often be eating at the office. This gave the grievor an opportunity to bring in photo albums showing his work in the armed forces. Some of his co-workers also served in the armed forces, including Christiane Marcoux-Conrad, who performed her military service in the communications unit. Mr. Levecque had been a reservist, and Alain Chartrand served abroad as a civilian employee.

[60] Regarding the matter of the disappearance of equipment, the grievor stated that he was not aware of the problem. However, in fall 2004, he was informed of the disappearance of a laptop computer. He then heard comments about the disappearance of bottles of wine and the theft of \$100 from the hockey pool. On

December 7, 2004, when he met with Ms. O’Kane and Ms. Dingwall, he indicated to them that he did not have any specific information concerning the theft of equipment and that he was willing to cooperate. He was then questioned about the use of keys and taxi chits.

[61] On this point, he reiterated the comments he had made during the December 7, 2004 meeting, as Ms. Dingwall related in her testimony. He nonetheless added that, with regard to Mr. “A”’s key, he had the impression that Mr. “A” had special permission. Regarding the taxi chits, he established that use of the latter was largely for authorized purposes.

[62] Concerning the incident involving his email of the afternoon of December 7, 2004, the grievor did not deny that the events had taken place but noted that his actions had been misinterpreted. According to him, the chain of emails pertained to equipment with which employees had worked regularly. The first email showed an old computer, the second showed a telegraph used in the armed forces and the third (his) showed firearms used in the armed forces. According to him, this was a logical sequence, and the comment about his ability to use firearms proficiently and to reassemble one with his eyes closed was only a response to the wording of the email that came before his.

[63] The grievor testified that he ran into Mr. Boushey by chance because he had been on his way back from somewhere else and passed in front of Mr. Boushey’s workstation (in the open work area). He insisted that the comments reported by Mr. Boushey were taken out of context because in reality the grievor had apparently asked Mr. Boushey to look at the email and the photos of firearms. Mr. Boushey then apparently questioned him about the range of the weapons. Looking out the window, Mr. Boushey apparently had asked him whether he would be able to hit the office they were in from the building across from them. The grievor indicated that he had answered “[translation] I wouldn’t miss you from that distance.” He had said this as a joke.

[64] The grievor insisted that he could not remember his encounter with Mr. Choiniere-Bélanger. Up until the hearing, he had been unable to identify the other employee involved in this matter. At one point he thought it was Mr. Chartrand, who had the office next to his, because he had spoken to him when he left work at around 16:30 on December 7, 2004. Although he heard Mr. Choiniere-Bélanger’s testimony at

the hearing, the grievor said he could not remember having run into him on December 7, 2004.

[65] At the December 8, 2004 disciplinary meeting, the grievor added that, regarding the equipment thefts, he had said to call the police and to check his home to make sure that he was not in possession of any equipment that had disappeared. Regarding the December 7, 2004 afternoon incident, Mr. Brodeur focused more on the email in which the grievor sent the firearms photos than on the threats. When the grievor replied that the photos of firearms had been on the Canadian Forces website, Mr. Brodeur had nothing to say in reply.

[66] During the December 8, 2004 meeting, Mr. Brodeur reportedly never mentioned to the grievor which comments or actions constituted threats but had nonetheless told him that the police had been summoned to take statements.

[67] After December 8, 2004, the grievor contacted the police to see the statements. They told him that no charges had yet been brought against him. These were statements, and he could not have access to them until the police investigation had been completed. Even then, the personal information would be crossed out.

[68] The grievor reiterated that his comments had been a joke and that he had never had the opportunity to see Mr. Boushey to explain himself. He now realizes that his emails and comments of 2004 might have been inappropriate and might have bothered certain people, but he never intended to threaten anyone.

[69] In cross-examination, the grievor indicated that he had never participated in anti-harassment training sessions. It is true that the employer's policies are available on the Internet and that there are references to it on his computer screen.

[70] The grievor reiterated that he had always been sociable with his co-workers and that he enjoyed joking around. He stated that at lunchtime he would sometimes talk about his missions in the armed forces and showed photos of things that had happened and of the weapons used. His co-workers seemed very interested.

[71] When questioned about his relationship with Mr. Boushey, the grievor reiterated that he had always communicated well with him. He even helped him out by telephoning him to wake him up when there were meetings at work because Mr. Boushey had a tendency to arrive late. He agreed that since the fall of 2004 he and Mr.

Boushey had spoken less often. He noted that Mr. Boushey had confided in him that he had used Mr. "A"'s key.

[72] The grievor confirmed that he spoke often with Mr. Choiniere-Bélanger. There had been only one incident between them when the customer telephone help line had been very busy. Mr. Choiniere-Bélanger had telephoned several times to speak with a co-worker, but the grievor apparently responded to him as follows: "[translation] I told him not to bother us because there was work to be done."

[73] The grievor noted that there was some confusion regarding the keys in question. There are keys for the cabling rooms (small rooms on the floors where the cables go through), which are quite different from the warehouse.

[74] On the matter of the taxi chits, the grievor provided some clarification concerning the documents adduced at the hearing. He pointed out that addresses identified as personal residences were actually work locations. There are in fact three or four taxi trips in the evening that do not correspond to overtime reports, but the grievor indicated that he did not report all of his overtime and that his reports were filed later. As for the other taxi trips, he stated that at that time there was some confusion concerning the hours during which taxi chits could be used.

Summary of the arguments

[75] The grievor's representatives maintained that, in meeting with the grievor on the morning of December 7, 2004, the employer had not respected the collective agreement signed by the Treasury Board and the Professional Institute of the Public Service of Canada on June 3, 2003 for the Computer Systems bargaining unit (Exhibit F-1(a)). In their view, this was a disciplinary meeting, and the failure to abide by the procedure set out in the collective agreement ruled out filing the meeting report in evidence. Clause 36.03 of the collective agreement reads as follows:

***36.03** Where an employee is required to attend a meeting on disciplinary matters, the employee is entitled to have a representative of the Institute attend the meeting when the representative is readily available. Where practicable, the employee shall receive in writing a minimum of two (2) working days notice of such meeting.*

The grievor's representatives further maintained that the failure to respect this obligation had had an impact on the sequence of events. According to them, if a union

representative had been present during the December 7, 2004 meeting, the representative could have advised the grievor not to contact any of his co-workers, which would have prevented the December 7 afternoon incident with Mr. Boushey.

[76] On this point, the employer noted that the December 7, 2004 meeting was administrative in nature. At this meeting there was a general discussion of the thefts, and the grievor was asked some questions concerning the use of keys and the use of taxi chits.

[77] However, the December 8, 2004 meeting may have been disciplinary in nature. The employer did not give any notice because two employees had reported threats. The employer had to act, and a union representative was present.

[78] In this decision I will not deal with the detailed arguments and case law presented by the parties with respect to the validity of the December 7, 2004 meeting since, as I mentioned earlier, this was covered by the decision in 2007 PSLRB 40.

[79] In support of its decision to dismiss the grievor, the employer indicated that the sending of the email and the threats uttered against two employees constituted the primary grounds for dismissal. Added to this were the grievor's violations with regard to the illegal use of taxi chits and the use of duplicate keys, contrary to the control procedures in place. For all of these reasons, there was a breach of the relationship of trust necessary to the continuation of the grievor's employment.

[80] The employer noted that in fall 2004 there was an unusual atmosphere at the Directorate. On November 4, 2004, Ms. O'Kane was informed of the disappearance of equipment worth a total of \$24,000. Security measures were tightened, and a number of employees informed their team leaders of rumours involving some of their co-workers.

[81] Ms. O'Kane and Ms. Dingwall were therefore justified in verifying certain allegations and collecting information from the employees whose names had been mentioned in the administrative notes of November 2004. Approximately ten employees were seen, either because they had provided information or because they were the subject of certain statements, even if they involved rumours.

[82] The incident involving the emails and the threats precipitated things. On December 8, 2004, the grievor was suspended while an investigation was carried out.

At that point the employer had enough statements and information to justify the suspension.

[83] The employer gathered evidence between December 9 and 20, 2004. A union representative was informed that the employer intended to impose a major disciplinary sanction on December 20, 2004. The grievor and his representative, Mr. Lortie, had the opportunity to ask questions and make submissions during the December 20, 2004 meeting.

[84] There were other meetings with the grievor's union representative, on December 22, 2004 and January 21, 2005, at which the union representative had the opportunity to ask any necessary questions.

[85] The parties met in March 2005 to discuss the case. The grievor had access to all of the documents held by the employer (Exhibit E-15). It is true that the *Access to Information Act*, R.S.C. (1985), c. A-1, requires that personal information be crossed out. However, these documents gave the grievor sufficient information to be able to file a full and complete defence. If there were any points that needed to be clarified, the grievor could have asked for the necessary information before the hearing. The hearing itself constitutes a *de novo* proceeding that provides an opportunity to discuss all of the facts, as established in *McIntyre v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-25417 (19940718).

[86] On the merits of the case, the employer argues that the evidence establishes the grievor's breaches of the security rules. On a number of occasions he used Mr. "A"'s key, and there were allegations that he had his own copy of the key. There is also proof of unauthorized use of taxi chits.

[87] Although Ms. Dingwall had already decided on December 16, 2004 that there was a possibility of dismissal, a review of the documents contained in the grievor's computer between December 16 and 20 is relevant and can support the decision. The copies of emails (Exhibit E-1(w)) constitute further evidence justifying the breakdown of the relationship of trust.

[88] Regarding the December 7, 2004 email and the threats, the employer noted that it was inappropriate to show photos of firearms. Furthermore, there is a question as to why, particularly on December 7, 2004, the grievor went to see Mr. Boushey when equipment thefts were being investigated. Mr. Boushey stated that he had not spoken

much with the grievor during the fall of 2004; Mr. Boushey was distancing himself from the grievor and Mr. "A."

[89] The grievor's actions during the encounter at Mr. Boushey's workstation on December 7, 2004 were established. The grievor gave a different interpretation and said that it was a joke. The grievor also made threatening remarks without explaining the context to a second employee, Mr. Choiniere-Bélanger. The employer noted that the testimonies of Mr. Boushey and Mr. Choiniere-Bélanger were credible and that they had no interest in lying.

[90] According to the employer, the threat was real and the context had to be taken into account. There was an investigation into the disappearance of equipment. The grievor had served in the armed forces, knew how to handle firearms and had been a sniper. It was understandable that his co-workers would have been fearful.

[91] The grievor did not provide any explanation for the comments that he made to Mr. Choiniere-Bélanger. He said he could not remember them. In this case, it cannot be claimed that Mr. Boushey is overly sensitive and that he misinterpreted the grievor's comments. Mr. Boushey and Mr. Choiniere-Bélanger gave statements to the police. The employer had to take the situation seriously.

[92] In light of the context of the investigation into the theft and the uttering of threats, the employer had to protect the employees' safety. Such acts of intimidation have no place in a workplace.

[93] On this point, the employer referred to the decision in *McCain Foods (Canada) v. United Food and Commercial Workers Union, Local 114P3* (2002), 107 L.A.C. (4th) 193. In that decision, the employee never admitted to having uttered threats.

[94] The employer also referred to *Livingston Distribution v. I.W.A.-Canada, Local 700* (2001), 94 L.A.C. (4th) 129.

[95] For their part, the grievor's representatives argued that the employer had not provided the grievor all of the documents and all of the information to enable him to present a full and complete defence.

[96] Regarding the use of taxi chits, the employer provided little evidence. At the hearing, the grievor established that there were some mistakes in the identification of

addresses and that they were places of work. For other occasions, the grievor certified that he had worked in the evening and was entitled to use the taxi chits.

[97] As for the use of a duplicate key, the employer spoke of the key to the cabling rooms. On some occasions, it came back to the use of the key to the warehouse, of which Mr. "A" had a copy. The grievor admitted to having used Mr. "A"'s key a number of times. However, the evidence showed that he regularly signed the control sheets for the keys.

[98] The grievor's representatives are of the opinion that the employer was wrong in claiming that sending photos of firearms by email constituted inappropriate behaviour in the workplace. According to them, the grievor's email was a logical continuation of those already sent by other colleagues. The second email spoke about the use of a telegraph used in the armed forces, and the employee who sent it added that she was able to take it apart and put it back together and that it worked. The grievor's email logically followed this line of thought. He said he had used firearms and picked up on the comment made in the second email in saying that he knew how to take it apart and put it back together and that it worked.

[99] The employer did not investigate to see whether any other employees found this email inappropriate.

[100] According to the grievor's representatives, the encounter with Mr. Boushey on December 7, 2004 can be explained by the fact that the grievor was on his way back from another room and had to pass by Mr. Boushey's workstation. He had spoken previously with Mr. Boushey about firearms and about his missions in the armed forces. For the grievor to talk to him about the email was not out of the ordinary.

[101] The grievor did not deny the comments that he made during his encounter with Mr. Boushey on December 7, 2004 and explained the context in which they had been made. It was after Mr. Boushey asked him whether he could shoot from a certain distance that he answered, "[translation] I wouldn't miss you from that distance." This is quite different from saying "I'm going to kill you."

[102] With regard to Mr. Choiniere-Bélanger, the grievor stated that he could not remember their encounter. According to Mr. Choiniere-Bélanger's written statement and his testimony at the hearing, he did not feel threatened by the grievor's comments.

[103] In closing, the grievor's representatives argued that, although the December 7, 2004 incident may have disturbed certain employees, the employer imposed a disproportionate sanction. The grievor admitted that he realizes in retrospect that his comments may have been offensive but said that he had never threatened his co-workers.

[104] According to the grievor's representatives, the adjudicator must take into account the context in which an action is taken and determine whether the safety of other employees has been compromised.

[105] In *Ajax Pickering Transit Authority v. Canadian Union of Public Employees, Local 129-01* (2003), 123 L.A.C. (4th) 51, the adjudicator held that the dismissal was inappropriate and that the employee could return to his duties if the necessary precautions were taken.

[106] The grievor's representatives referred to other decisions in which an adjudicator had to assess the notion of what constitutes a threatening comment:

- *Katchin v. Canadian Food Inspection Agency*, 2003 PSSRB 24;
- *OSF Inc. v. United Steelworkers, Loc. 5338* (2000), 89 L.A.C. (4th) 52;
- *Proulx v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 45; and
- *Noël v. Treasury Board (Human Resources Development Canada)*, PSSRB File Nos. 166-02-26820, 26913, 26929 and 27458 to 27462 (19971022).

[107] The grievor's representatives concluded that, on evaluating the evidence and taking into account the context as well as the case law in similar matters, the adjudicator must set aside the employer's decision.

[108] In reply, the employer commented on the decisions filed by the grievor's representatives. According to the employer, those cases are different from this one. In *Proulx*, the employer took into account the stress the employee had been under. In *Noël*, there was a sequence of events, and the employer did not intervene.

[109] The employer argued that the evidence is clear in this case. The testimony is credible; the grievor has not admitted to anything and has claimed that he was simply making a joke.

Reasons

[110] In 2007 PSLRB 40, I previously decided on the validity of the December 7, 2004 meeting of Ms. O'Kane and Ms. Dingwall with the grievor. The grievor was critical of the fact that he had not been informed of this meeting in advance and did not have the opportunity to be accompanied by his union representative. I determined that this was an administrative meeting for the purpose of collecting information, and that the grievor was not entitled to be represented by his bargaining agent.

[111] In reviewing the account of the December 7, 2004 meetings with employees (Exhibits E-1(e), (f) and (g)), and in light of the testimony at the hearing, I note that the following three points were discussed with the grievor on December 7, 2004:

- the disappearance of equipment;
- the use of taxi chits; and
- the possession of duplicate keys and the use of keys without going through the control system.

There were no allegations aimed at the grievor specifically, although he may have felt concerned by one of these matters.

[112] On December 8, 2004, another meeting took place with the grievor. Mr. Brodeur informed him that the allegations of theft and threats against him were to be investigated. He was accompanied by a union representative. Finally, on December 20, 2004, a disciplinary meeting was called and Mr. Brodeur gave him a letter of dismissal.

[113] The letter reads as follows:

[Translation]

...

Following an in-depth review, with regard to the taxi chits, I have determined that you used them numerous times when there was no connection with work, specifically overtime. When we asked you for information concerning taxi chits during the investigation, you replied that you did not use them because you came to work on your bicycle. You also replied that you could not transport equipment on your bicycle when you were asked questions about the computers.

Furthermore, on December 7, 2004, you sent an email showing photos of rifles that you had worked with. Although

you maintained that these photos could be viewed on government sites, it was the way in which you used them that is being called into question. You have received training on harassment and inappropriate behaviour in the workplace. Despite this, you chose to send the email in question to your co-workers. You then turned to two of your co-workers and indicated to them that you would not miss them with the rifles. This is clearly considered a threat and is not tolerated in the workplace. As an employer that takes such actions seriously, we referred the matter to the local police. When you were confronted with these incidents, you replied that it was a joke. In my opinion, there is no place for this type of joke in the public service.

One of your co-workers said that you had admitted to having made copies of the keys to the cabling room. You were aware that you were not entitled to do so, since entrance control procedures were in place. You also indicated that, although you were aware of the procedures, you had a friend who was a locksmith and who had made copies for you. You then shared these keys.

Your conduct has irreparably tarnished your integrity and the trust that the employer placed in you. The incidents attest to some serious errors in judgment on your part. I have taken into consideration the fact that you were not completely sincere during the investigation process and that you have failed to recognize the seriousness of your actions.

Your conduct has betrayed the trust that the other members of management and I had in you with respect to the handling of government equipment and your ability to maintain professional and respectful relations with your colleagues.

...

[114] The employer is accusing the grievor of emailing photos of firearms and of verbally threatening two co-workers. In my opinion, this is the main reason argued by the employer in support of the dismissal. Two other reasons are also raised: the unauthorized use of taxi chits and the unauthorized possession and use of copies of the employer's keys.

[115] For the period from October 7, 2002 to July 14, 2004, the employer filed a record of 11 taxi chits (Exhibit E-15). It considers that only one of these 11 taxi chits was authorized. The grievor established that two cases involved trips to places of work and that there was some confusion concerning the directives regarding overtime

between 16:30 and 18:00, thus justifying the use of taxi chits for six or seven cases of the ten contested by the employer.

[116] This would leave three or four taxi chits that were apparently used in the evening and that the grievor claims were justified by the fact that he was working overtime even though he did not file an overtime report.

[117] As for the use of keys, the evidence has not established that the grievor made a copy of the key to the warehouse. The employer nonetheless established that the grievor had used Mr. "A"'s key to gain access to the warehouse. The grievor admitted that he had used Mr. "A"'s key a number of times. The grievor did not sign out either key.

[118] Regarding the taxi chits, it must be noted that the grievor was unable to justify the use of three or four taxi chits over a three-year period. There is also the use of duplicate keys, contrary to the established procedure. These breaches tarnish the grievor's integrity in terms of compliance with the control procedures established by the employer. This is a situation of fact, and I am not taking into account the grievor's hesitations or remarks that he may have made during the December 7, 2004 administrative meeting. These breaches in themselves are not sufficient to warrant dismissal. However, they must be taken into consideration in the review of the primary infraction of which the grievor is accused.

[119] The primary infraction of which the grievor is accused relates to an afternoon incident on December 7, 2004. In the letter of dismissal dated December 20, 2004, the employer wrote as follows:

[Translation]

...

Furthermore, on December 7, 2004, you sent an email showing photos of rifles that you had worked with. Although you maintained that these photos could be viewed on government sites, it was the way in which you used them that is being called into question. You have received training on harassment and inappropriate behaviour in the workplace. Despite this, you chose to send the email in question to your co-workers. You then turned to two of your co-workers and indicated to them that you would not miss them with the rifles. This is clearly considered a threat and is not tolerated in the workplace. As an employer that takes

such actions seriously, we referred the matter to the local police. When you were confronted with these incidents, you replied that it was a joke. In my opinion, there is no place for this type of joke in the public service.

...

[120] Although the photos of the firearms in question appear on a government website, the employer seems to indicate in its letter of dismissal that the fact of including them in an email sent to co-workers is not consistent with the anti-harassment training and constitutes inappropriate behaviour in the workplace.

[121] The evidence showed that three of the grievor's co-workers had worked in the armed forces. On a number of occasions, the grievor showed his co-workers photos taken during his missions with the Canadian Forces. The email was part of a chain concerning the type of equipment that IT solutions analysts had worked with during their careers. It is therefore difficult to conclude that sending such an email in itself constitutes inappropriate behaviour in the workplace.

[122] The other accusation made against the grievor is that after sending the email he told two of his co-workers that he would not miss them with a firearm.

[123] The evidence established that 10 or 15 minutes after sending his email, the grievor went over to Mr. Boushey and asked him to look at the photos of firearms included in the email. In the conversation that followed the words "[translation] I wouldn't miss you" were uttered. The grievor did not deny these facts. However, he gave another account of this conversation and felt that the words in question had to be put in context. According to him, they were said in jest. The grievor did not deny having said "[translation] I would not miss you either with this" to Mr. Choiniere-Bélanger. However, the grievor said he could not remember having spoken to him.

[124] Mr. Choiniere-Bélanger testified that he had run into the grievor on December 7, 2004 and certified that the grievor had pointed to the weapons on the screen and said, "[translation] I would not miss you either with this." Mr. Choiniere-Bélanger gave a written statement to the police to that effect on December 8, 2004 (Exhibit E-1(i)). He added that the grievor's tone of voice was aggressive.

[125] The question to be asked is whether this incident constituted threats.

[126] In his testimony, the grievor indicated that Mr. Boushey had confided in him that he had used Mr. "A"'s key. On the morning of December 7, 2004, the grievor was questioned about the use of Mr. "A"'s key. The grievor did not deny that Mr. Boushey had distanced himself from him and that they had barely spoken for the past several months. The relevance of the encounter with Mr. Boushey should be questioned. Did the grievor simply want to have a conversation? Might he have suspected that the statement that Mr. "A" had a key came from Mr. Boushey?

[127] I indicated earlier that, in itself, an email showing firearms does not constitute an inappropriate act in the workplace. However, holding a conversation on the accuracy of those firearms and the ability to use them and indicating that one would not miss one's target, with photos of firearms on the screen, constitute inappropriate comments. In my opinion, the fact that the sentence "I would not miss you either with this" was spoken in front of the computer screen showing photos of firearms constitutes intimidation and threatening comments.

[128] As noted by the grievor's representatives, the comments were made using the conditional tense ("I would not miss you either with this") (Exhibit E-1(i)) and were repeated in French to Mr. Choiniere-Bélanger. However, these comments were made in front of the computer screen showing firearms. This is an intimidating situation for the subject of such remarks. In Mr. Boushey's case, the photos of firearms, the indication that the grievor knew how to use them and the fact that the grievor would not miss his target may have taken on an aspect of intimidation and threatening or worrisome comments since Mr. Boushey knew that the grievor had been on a mission with the armed forces and had been a sniper. Mr. Boushey testified that he had had difficulty sleeping on December 7, 2004 and had met with Ms. O'Kane on December 8, 2004 to speak to her about the incident.

[129] Even if I were to accept the grievor's account that he ran into Mr. Boushey by chance and that there was no threatening intent in their conversation on the accuracy with which the grievor was able to handle firearms, the fact that the grievor repeated these comments to Mr. Choiniere-Bélanger, using an aggressive tone (according to Mr. Choiniere-Bélanger's testimony), contradicts the grievor's explanation that he had run into Mr. Boushey by chance and that it was a joke.

[130] The grievor did not have a valid explanation to justify his presence at Mr. Boushey's office on December 7, 2004 and was unable to explain the comments that he made to Mr. Choiniere-Bélanger.

[131] After reviewing all of the documents and the evidence filed, I have concluded that the grievor suspected that Mr. Boushey might have made some statements concerning Mr. "A"'s key and might have given some information concerning the grievor. He could not stop himself from going to see him on the afternoon of December 7, 2004. He tried to find out how Mr. Boushey would behave if he showed him the photos of firearms. He made intimidating comments to him. I do not believe this was a direct threat such as "I'll shoot you," but in my opinion the use of the conditional tense constitutes a form of intimidation intended to make Mr. Boushey feel uncomfortable. I find that the same holds true for the comments made to Mr. Choiniere-Bélanger.

[132] I have concluded that there was intimidation and that threatening comments were made on the part of the grievor. It remains to be determined whether the sanction of dismissal constitutes a valid measure in the circumstances.

[133] In the past, it would have been necessary to rule on the argument by the grievor's representatives that he did not obtain all of the information needed to be able to make a full and complete defence. The grievor's representatives presented decisions pertaining to procedural fairness and the disclosure of all information to the grievor. I do not believe that those decisions apply in this case for the following reasons. In this case, the facts are simple. The grievor is accused of having sent an email on December 7, 2004 and of subsequently having threatened two employees. In his testimony, the grievor never indicated that he had spoken of the email to co-workers on a date other than December 7, 2004. For the grievor, it is thus clear that the incident in question occurred on the afternoon of December 7, 2004. His email was sent at 15:20 and he left the office at around 16:30. All of the elements relating to the threat took place between 15:20 and 16:30 on December 7, 2004.

[134] On the matter of threats, the employer indicated that the grievor apparently told two employees that he would not miss them. We are not dealing here with a situation in which someone is being accused of intimidating employees over an extended period. In such a case, the facts, dates, names and circumstances would be

extremely important. In this case, the primary accusation pertains to an email and an encounter between 15:20 and 16:30 on December 7, 2004.

[135] During the December 20, 2004 meeting, and in the letter of dismissal that was issued, reference was made to threats uttered against two employees, with no mention of their names. The grievor and his union representative did not endeavour at that time to determine the identity of the two employees in question. However, the union representative met with Ms. Dingwall on December 22, 2004 and on January 21, 2005. A subsequent meeting took place in March. At no time did the union representative or the grievor ask for the names of the employees concerned or at least the name of the second employee, whom they had difficulty identifying. The grievor stated that he had previously thought that the second “threatened” employee might have been Mr. Chartrand.

[136] The grievor obtained all of the documents referred to in this decision through access to information. It is true that the personal information contained in these accounts has been crossed out. However, Mr. Choiniere-Bélanger’s name appears on the list of employees that Ms. O’Kane and Ms. Dingwall met with, while Mr. Chartrand’s name does not (Exhibit E-15, page 00195 of the documents obtained through access to information). I find that the grievor had all of the information needed to prepare a full and complete defence and, while certain details were missing, he could have sought clarification.

[137] In assessing the sanction, I have not taken into account the employer’s statements regarding the grievor’s involvement in an assault case in 1987. This incident dates back 20 years, and, given that the employer has no detailed information on it, it would be difficult to assess the context as a whole.

[138] Regarding the copy of the emails deleted from the grievor’s computer, which were brought to Ms. Dingwall’s attention between December 16 and 20, 2004, I believe that they complete the primary evidence with respect to the grievor’s behaviour towards his colleagues, but without adding any additional grounds to the letter of dismissal of December 20, 2004.

[139] Is the sanction imposed by the employer appropriate? I have considered certain precedents filed by the parties.

[140] In *Ajax Pickering*, the adjudicator held as follows:

...

In my opinion, the grievor's conduct for more than a year following amalgamation, including his obsessive reiteration of his complaint, his physical and verbal manifestations of stress, and his reports that a faction was out to get him, should have alerted the supervisors, managers and Union officials with whom he was interacting that this was an employee at risk. It was irresponsible not to take appropriate steps to address this risk. The appropriate steps would have included progressive discipline to follow up the Moskalyk memorandum as well as a prompt investigation of the grievor's substantive concerns and the clear communication of the results. Depending on the grievor's response to these initiatives, they might also have included a referral for counseling or medical intervention.

...

[141] In *Katchin*, the adjudicator reached the following conclusions:

...

[209] Could these comments have crossed the line and fallen into the realm of violence and implied threats? It is possible, but Dr. Katchin denies it and has consistently denied it.

[210] On the other hand, Dr. Powell did not jot down the comments she heard immediately or shortly after hearing them. She did not report them to her supervisors within a reasonable period of time. Instead she discussed them with friends and family members. Can Dr. Powell's discussions with friends and family have altered the perceptions she had of the comments she actually heard? It is possible. We know now that Dr. Powell has an unreliable memory; she admitted as much in her testimony. It is possible that what she reported to Dr. Rathlou was the product of a faulty memory supplemented by her conversations with family and friends.

...

[212] I cannot understand why Dr. Powell waited so long to make a disclosure. She has repeated that she was not afraid. However, she believed Dr. Katchin to be "not normal". According to Dr. Rathlou, she did not know Dr. Powell much before her revelation of the comments. On a balance of probabilities, I must find that the comments made by Dr. Katchin were more likely to have been as he described them rather than the more serious fantasy of shooting or killing people at the Guelph office reported by Dr. Powell.

...

[142] In *Proulx*, the adjudicator indicated as follows:

...

[72] . . . I consider that Mr. Proulx pushed his stamina to the limit, erroneously believing that he could “take it”. The excerpts from the above-quoted medical assessments and reports clearly indicate that Mr. Proulx was experiencing depression at the time of the August 11, 2000 incidents.... According to Mr. Proulx’s testimony, the remorse he felt following the incidents was what made him return to Sainte-Anne-des-Plaines Institution in order to apologize to his co-workers on August 11, 2000. He also acknowledged to Mr. Beaudry at the disciplinary meetings, and to Mr. Chaumont at a meeting with him held shortly after the incidents, that he had behaved badly. On these different occasions, therefore, Mr. Proulx acknowledged that he was aware of the acts he had committed and of the seriousness of those acts. As well, he was aware that those acts could lead to disciplinary measures because, according to his testimony, he apparently said it was “all over” for him and that he could no longer return to work after such incidents.

[73] According to the testimony at the hearing, the employer took Mr. Proulx’s state of health into consideration in determining the disciplinary measure. Although the Warden of the Institution had not been informed by either Mr. Proulx or his representatives that Mr. Proulx was depressed, and although the Warden was unaware of the medical assessments and reports submitted to Health Canada, he was well aware that Mr. Proulx was fatigued and stressed. This stress and fatigue constituted an attenuating factor that the employer took into consideration in determining the severity of the penalty it imposed. This factor was also taken into consideration at the various levels of the grievance procedure, as was emphasized by Deputy Commissioner Watkins’ reference to [translation] the “state of human weakness” in his response dated November 3, 2000.

...

[143] In the decisions cited above, the adjudicators took the following points into account:

- the stress that an employee who had threatened someone was under;
- the fact that the employer could have intervened;
- the fact that the threatening remarks were reported in vague terms; and
- the fact that the persons who had been threatened did not report the facts quickly.

I do not believe that these decisions apply in this case.

[144] In *McCain Foods*, the adjudicator arrived at the following conclusion:

...

Threats of violence, especially uttering threats to one's life in the workplace, are the most serious threats imaginable. The employer must take such threats seriously and take steps to protect its workers. Calling police is a natural reaction to this end. Removing the employee from the workplace is another.

...

In the instant situation the grievor has consistently denied ever having made the threats or that he intimidated Messrs. Domingo and Anton. The facts do not coincide with his denial.

Having accepted the evidence of Messrs. Domingo and Anton that the grievor made a life-threatening statement, it is reasonable that anyone hearing the grievor's statement would take it seriously. If his statement had been made in a jocular fashion the evidence does not support that being the case. It, along with the statement to Messrs. Domingo and Anton to not work so hard, was intimidation. There is nothing jocular about it. The employer's reaction was reasonable. It took the matter seriously and was concerned over the safety and protection of its employees.

In my view the discharge was not an excessive response and the grievance is dismissed.

[145] In *Livingston Distribution*, the adjudicator presented his reasons as follows:

...

. . . The fact that the comments were repeated, that there was reference to multiple victims and that an escape plan was referred to are all factors which, in my view, render the matter extremely serious in nature. While, as Mr. Fishbein emphasized, the evidence did not establish that Mr. Manilall possessed a firearm or that there was any real intention of carrying out a threat, Mr. Manilall's failure to acknowledge making a threat of any kind is a matter which must weigh against him in balancing these and other factors which can be viewed as favourable to him. An acknowledgement of wrongdoing has the effect of providing an assurance that the seriousness of the action in issue has been recognized and thus gives some confidence that the employment relationship, a relationship of trust, can be rehabilitated. . . .

...

[146] The decisions in *McCain* and *Livingston Distribution* make reference to the following points:

- the credibility of the explanations provided by the employee suspected of uttering threats;
- the fact that the threats were made in front of a number of people; and
- the context of the workplace.

In my opinion, these decisions are more closely related to this case, in which the grievor has failed to provide a reasonable explanation concerning his presence at Mr. Boushey's workstation. He did not indicate why he asked Mr. Boushey to look at the email containing photos of firearms. He commented about his ability to handle such firearms and stated that he would not miss his target when he spoke with Mr. Boushey. However, he never explained why he repeated these remarks to Mr. Choiniere-Bélanger.

[147] As well, the December 7, 2004 afternoon meeting took place in the context of an investigation into thefts totalling \$24,000 and after an administrative meeting that morning during which the employer had asked specific questions concerning keys and taxi chits. This suggests that facts had been brought to management's attention by other employees.

[148] The testimony of the two employees threatened, Mr. Boushey and Mr. Choiniere-Bélanger, is credible, and the grievor's intimidation and threats marked these employees and created an atmosphere of fear among the managers who conducted the investigation.

[149] It is important that the employer protect the health and safety of its employees. The evidence has shown me that a number of employees wanted to maintain a healthy environment and were not afraid to report some of their co-workers who had allegedly engaged in actions that violated the security rules.

[150] Reinstating the grievor could give rise to a reaction of distrust for staff at the Directorate, since the grievor intimidated and threatened two employees, one of whom had provided information to the employer.

[151] In his testimony, the grievor showed that he did not have much respect for his co-workers. He spoke about Mr. Boushey being late and about the fact that Mr. Boushey

handled fewer calls than he did and was not assigned to special projects. Furthermore, the grievor indicated that he had pointed out to Mr. Choiniere-Bélanger that he was bothering him at work. In his emails, he referred to one of his co-workers as follows: “[translation] that big, fat ‘X’ had to get off her butt to get some information.” How would the grievor act with his co-workers if he felt criticized by them in future?

[152] I do not believe that the grievor intended to suggest that he would use firearms. However, I am convinced that he wanted to intimidate his co-workers. Unfortunately, when intimidation takes place in front of a computer screen showing firearms, an atmosphere of fear is created. The decision to separate the grievor from his co-workers is appropriate in the circumstances. I share the employer’s opinion that, in the circumstances, the relationship of trust needed to maintain the grievor’s employment has been irreparably broken.

[153] In his grievance, the grievor contested the suspension while the investigation took place. The parties did not provide any specific arguments to that effect at the hearing. The parties considered this question to be complementary and related to the adjudicator’s decision on the dismissal. With respect to the dismissal, I find that there was intimidation and that there were threatening comments. I therefore find that the suspension during the investigation from December 9 to 20, 2004 was justified.

[154] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[155] The grievance is dismissed.

April 26, 2007.
P.S.L.R.B. Translation

**Jean-Pierre Tessier,
adjudicator**