

**Date:** 20070511

**File:** 166-02-34652

**Citation:** 2007 PSLRB 50



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**SIMON CLOUTIER**

Grievor

and

**TREASURY BOARD  
(Department of Citizenship and Immigration)**

Employer

Indexed as  
*Cloutier v. Treasury Board (Department of Citizenship and Immigration)*

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:***     [Himself](#)

***For the Employer:***     [Nadia Hudon, counsel, and Raymond Piché, counsel](#)

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Heard at Montréal, Quebec,  
January 23 to 26, 30 and 31, May 3 to 5 and 8 to 12,  
and October 31 to November 3, 2006.  
(P.S.L.R.B. Translation)

**Grievance referred to adjudication**

[1] Simon Cloutier (“the grievor”) works for the Department of Citizenship and Immigration (“the employer”). At the time of the events presented below, he held a position at the PM-03 group and level. In 1999, he was President of Local 10405 of the Canada Employment and Immigration Union, a component of the Public Service Alliance of Canada.

[2] On July 8, 2003, the grievor received a disciplinary measure of termination of employment. The conclusions in the letter stated as follows:

[Translation]

...

*Moreover, you never once attempted to find any common ground with your employer or suggested solutions to the problems you keep raising. The prospect of this ongoing conflict with you over several more years is unacceptable to your employer, particularly since this kind of conflict may affect both your health and that of your supervisors due to the unhealthy tensions and stress it generates.*

*Consequently, considering your disciplinary history, your attitude towards your employer's directives and your refusal to change your conduct despite the numerous warnings and disciplinary sanctions, and considering the excessive costs associated with managing your conduct and your attitude, I regret to inform you that, in accordance with the powers conferred on me, I have decided to terminate your employment under paragraphs 11(2)(f) and (g) of the Financial Administration Act. Your employment is terminated effective July 9, 2003 at zero hours.*

...

[3] The letter also states several incidents of unauthorized absences and insubordination of which the employer accuses the grievor that occurred between May 5 and July 3, 2003. The details of these claims are presented in the summary of the evidence.

[4] The grievor filed a grievance on August 7, 2003 contesting the employer's decision. This grievance was referred to adjudication on August 20, 2004. The hearing took place between January and November 2006 in connection with several other grievances.

[5] The reason for the lapse between the referral to adjudication and the hearing is that the grievor filed complaints under section 23 of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (“the former Act”) that the Board had to handle and close.

[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 former Act.

### **Summary of the evidence**

[7] The employer first called Julie Thibodeau to testify. In 2002 and 2003, Ms. Thibodeau was a supervisor at the Montréal office of the Inland Services Directorate of the Department of Citizenship and Immigration. She was the grievor’s immediate supervisor at the time of the events.

[8] Ms. Thibodeau had previously worked as an immigration officer and as an investigator. In 2001 she was a supervisor in the Sherbrooke and Trois-Rivières regions.

[9] Ms. Thibodeau explained that, in April 2002, when she started working at the Montréal office, the grievor was on sick leave and then was on leave without pay until May 2003. Therefore, Ms. Thibodeau had never supervised the grievor. She asked about him prior to his return, but wanted to make up her own mind about him so they could “start fresh,” so to speak.

[10] According to comments made by certain employees and discussions with the unit’s director, Ms. Thibodeau learned that the grievor had been given several disciplinary measures in previous years. She understood that he had been accused of having problems with punctuality (late arrivals) and of absences from the workplace.

[11] Ms. Thibodeau indicated that upon his return to work in May 2003 after a long absence, the grievor received a copy of the 2001-2002 evaluation reports prepared by Louise Martin, Assistant Director at that time of Inland Services (Exhibit E-2). The grievor was given the performance objectives for Inland Services employees (Exhibit E-3).

[12] Ms. Thibodeau met with the grievor to discuss those objectives (Exhibit E-3), in particular compliance with the work schedule, late arrival notifications and absences. They also discussed leave request authorizations. According to her, the grievor well understood the objectives. However, he raised the matter of his work schedule.

[13] The grievor wanted flex hours as he preferred to start around 09:00 or 09:30 and finish at 18:00 or 18:30. Ms. Thibodeau explained that provisionally, the grievor's schedule had to be between 08:30 and 17:10 because she wanted to have a supervisor present during his hours of work.

[14] Ms. Thibodeau testified about various incidents the employer had accused the grievor of, as set out in the letter of termination (Exhibit E-1).

[15] On May 6, 2003, the grievor sent an email about his work schedule and the layout of his work area. He asked for free time to contact a union representative (Exhibit E-4). That email was forwarded to Dianne Clément, Ms. Thibodeau's supervisor, in her absence.

[16] Ms. Thibodeau indicated that she was absent on May 8 and 9, 2003. On May 13 and 14, 2003 (Exhibit E-5), she responded by email to the grievor's requests. She confirmed her position regarding his work schedule. She verbally informed the grievor that this was a temporary situation and that it would be reassessed in a few weeks. Moreover, she said that she spoke to him about the length of his May 13, 2003 break, which apparently had gone beyond 30 minutes.

[17] Regarding the leave to meet with the union, Ms. Thibodeau had granted one hour, but she had asked the grievor to let her know when he was going.

[18] On June 2, 2003, the grievor was supposed to start training on the changes to the *Immigration Act* and its regulations that were made in 2002 (Exhibit E-6). On June 2, 2003, the grievor arrived late to the training session, which started at 08:30. Ms. Clément was informed of his late arrival. She asked Ms. Thibodeau to inform her of any other incidents involving the grievor. On May 13, 2003, Ms. Thibodeau confirmed by email that the grievor had been away from the office on break between 10:00 and 10:50. Moreover, on May 15, 2003, he did not submit a request for leave before taking the hour-long leave he had previously been given (Exhibit E-7).

[19] Ms. Thibodeau indicated that around the end of June 2003, several emails had passed back and forth between her and the grievor concerning his requests for leave to consult with the union. Ms. Thibodeau wanted to know if the grievor was meeting with a union representative and if so, with whom. He told her that he wanted to consult with the union representative in writing (Exhibit E-9). On July 3, 2003, Ms. Thibodeau sent the grievor an email about his requests to meet with a union representative (Exhibit E-10). It read as follows:

[Translation]

...

*Reply to the request below sent to Ms. Clément.*

*Thus, you must contact a union representative from Local 10405. To my knowledge, the following people are still members of the Executive: Jaqueline Lemoine, Eric Gagnon and Marthe Bernard. You can refer to the message about the local's change in representatives, which has been forwarded to you and of which I offered you a copy.*

*The selected representative will then have to contact me and copy Dianne to indicate his or her need to be in touch with you and he or she will have to specify when and for how long. I need not remind you that the meeting must take place in our offices.*

...

[20] Continuing her testimony on the different accusations, Ms. Thibodeau reported that on June 25, 2003, the grievor came to the office in shorts adjusted to mid-thigh length and shorter than Bermuda shorts. She told him that it was inappropriate attire for an office where there were clients.

[21] On July 2, 2003, Ms. Thibodeau noticed that the grievor had taken a 40-minute break. She met with him and told him that he had to respect the 30-minute interval for morning breaks (employees had the option of combining two 15-minute breaks in the morning and not taking any in the afternoon). She also pointed out to him that he had stepped outside to smoke and that he was away often enough not to have to extend the morning break. Ms. Thibodeau pointed out that for several months, she had been talking to other employees about managing their cigarette breaks because, with the 30-minute break, these added up to a lot of time away. The employees had understood the message.

[22] Ms. Thibodeau indicated that she wanted to restrict herself to a verbal warning because she wanted to keep the contact between herself and the grievor more direct. However, by the end of the afternoon of July 2, 2003, the grievor had asked Ms. Thibodeau to confirm her comments in writing. She sent him the following email (Exhibit E-10):

[Translation]

...

*Hello Simon,*

*Here is a summary of our conversation this morning.*

*As I see it, you took a 40-minute break this morning instead of the 30 minutes allowed in your schedule. Moreover, you had already been out to smoke before the break.*

*I remind you that you are entitled to 30 minutes for breaks per day. I leave it to you to arrange how you want to take them, but I want to be informed if you change your current schedule.*

...

[23] On the afternoon of July 2, 2003, the grievor sent Ms. Thibodeau the following email:

[Translation]

...

*I told you this morning that I did not agree with your calculation of my break time. In effect, I left after 10:00 this morning because I had finished what I had started before taking my break.*

*Moreover, you accused me of having taken too much time to smoke. I told you that I was doing the same thing as my colleagues who are smokers. You replied that people take seven to eight minutes to smoke. This is very surprising because it takes a few minutes to go out and come back in. And yet, cigarettes are all the same length. I often go out to smoke with my colleagues, so I take the same amount of time.*

*I think you are exaggerating. You are looking for problems, and this amounts to harassment. I repeat that I am only doing what you allow my colleagues to do.*

*Moreover, I overheard you talking on the phone about the welcome tax. I do not think this is part of your job. Am I the only one who is not authorized to conduct personal business at the office?*

...

[24] Ms. Thibodeau replied as follows at 15:53 on July 2, 2003:

[Translation]

...

*I remind you that the rules of conduct that apply to you are based on the departmental Code of Conduct, the Program and Administrative Services collective agreement and your performance and disciplinary history. Regarding other employees' break times, I do not intend to discuss your colleagues' working conditions with you because they are none of your business.*

*Moreover, if you feel that you are being harassed, I invite you to contact one of the following departmental representatives who have been designated to deal with harassment issues: Daniel St-Arnaud, Analyst, Strategic Planning Directorate; Lauraine Gagné, Regional Director, Entrance Points and Local Operations or François Milo, Program Advisor, Regional Programs Directorate. They will be able to provide you with more information on the subject and the recourse measures available to you, if you wish.*

...

[25] The following morning, July 3, 2003, Ms. Thibodeau was away. During her absence, the grievor sent Ms. Clément the following email:

[Translation]

...

*You should explain to your employee the rudimentary notions contained in the Public Service Staff Relations Act and the Canada Labour Code, in particular the ones that stipulate that there must be no distinction effected toward an employee who exercises the rights that were conferred on him or her by the law. Contrary to what she thinks, I certainly do intend to discuss my colleagues' working conditions and compare them with mine because that is my right. I informed you that a new distinction was made towards me yesterday and that it constitutes intimidation.*

*In fact, I was wondering whether I would be authorized to contact in writing, on the subject of working hours, the people my supervisor mentioned.*

. . .

[26] On being informed of the July 3, 2003 email sent by the grievor, Ms. Thibodeau met with Ms. Clément. They discussed the fact that it would be necessary to lighten the mood with the grievor. Communicating in writing was not easy, and they considered that they had made several efforts to attempt to talk to the grievor, but there had been delays, absences and numerous written transmissions about his absences.

[27] Ms. Thibodeau was aware that other discussions had taken place between the grievor and Ms. Clément after July 3, 2003 and that the grievor's employment had been terminated on July 8, 2003. She said that she had not made any recommendations regarding the measure that the grievor eventually received because she was not familiar with the entire disciplinary history.

[28] Ms. Thibodeau indicated that the seven weeks during which she supervised the grievor seemed very hard. She had supervised staff before and indicated that she had had more difficulty this time. When there was a problem, they would talk it out and things would get resolved within a few weeks.

[29] Ms. Thibodeau was particularly surprised by the grievor's comment in the July 2, 2003 email where he accused her of discussing personal matters on the phone. She had been talking about her relocation and related expenses, such as the welcome tax. She said that she had acted in good faith, but that the grievor was quick to accuse and demanded justifications and answers in writing. According to Ms. Thibodeau, he had little trust in managers, and he questioned their facts and actions.

[30] The employer had Dianne Clément testify. Ms. Clément has more than 27 years with the public service. She had worked as an immigration officer (1976), as a supervisor and hearing officer (1989), and as a manager since 2001. She had been Assistant Director for Inland Services, Department of Citizenship and Immigration, and was appointed Acting Director in 2003.

[31] In 2003, Ms. Clément was advised that the grievor would be returning to work in early May 2003. He had been absent from work for over a year. Ms. Clément reviewed the grievor's disciplinary history and discussed it with Ms. Thibodeau. She was aware



that he had received several disciplinary measures, but she hoped that after his absence he would improve his conduct. Neither she nor Ms. Thibodeau had ever worked with the grievor; she believed that they had a chance to develop a good working relationship.

[32] In view of the grievor's previous history, Ms. Clément suggested that his work schedule be from 08:30 to 17:00 because she wanted to have a manager monitor his attendance and absences. Having a manager around would have enabled them to determine whether the grievor had improved.

[33] Ms. Clément indicated that she had been informed on June 2, 2003 that the grievor had arrived late for a training session. On June 3, 2003, she called him in to a disciplinary meeting for June 4 or 5, 2003 (Exhibit E-17). On June 4, 2003, the grievor informed Ms. Clément that he wanted the questions in writing, and he asked if he could answer them instead of having a meeting. Ms. Clément replied that same day by email (Exhibit E-18) that she wanted to meet with him, not exchange correspondence.

[34] The meeting was postponed to June 5, 2003 at 08:30. That morning, the grievor indicated that he had not managed to reach his union representative and asked what he should do (Exhibit E-14).

[35] Despite his email (Exhibit E-14), the grievor appeared for the June 5, 2003 meeting at around 08:30. He indicated that he wanted to defer the meeting because he had been unable to reach his union representative, Janina Lebon, National Vice-President. Ms. Clément said that she then told the grievor that, in her opinion, only Local 10405 representatives were authorized to represent employees, and that the local would have provided a list of authorized representatives.

[36] Ms. Clément said that she had explained to the grievor that the person he had been trying to reach was a national representative, not one from Local 10405. She had indicated to him that the meeting would proceed and questioned him about the reason for his late arrival on June 2, 2003. He answered that he "had slept right through."

[37] Ms. Clément said that she had reminded the grievor that in May 2003 Ms. Thibodeau had given him objectives, which included the issue of attendance. She wanted to remind the grievor that he had already been disciplined for being late. He said he could not remember that.

[38] The grievor mentioned that he felt harassed and intimidated. They discussed the fact that he had responded to an email after the deadline.

[39] Ms. Clément indicated that the grievor was involved in other incidents, specifically on June 25, 2003, when he wore inappropriate attire (shorts) to work, and on July 2, 2003 when he apparently extended his break by 10 minutes.

[40] Finally, there was another incident on July 2 and 3, 2003. On July 2, 2003, an email exchange took place between the grievor and his supervisor about the break and the time taken to smoke (Exhibit E-10). On July 3, 2003, the grievor wrote directly to Ms. Clément to complain about his supervisor's conduct (Exhibit E-10).

[41] Ms. Clément referred to the July 2, 2003 email addressed to Ms. Thibodeau. They met and discussed the entire email exchange and, at around 14:30, Ms. Clément decided to call the grievor to a meeting.

[42] This was followed by several email exchanges with the grievor, in particular those that follow (Exhibit E-10).

[43] The grievor sent Ms. Clément the following email at 14:40:

[Translation]

...

*You have just asked me to come to your office. I asked you to have present the representative you designated to me. She is currently on the phone. I left her a detailed message and asked her to call me back.*

...

[44] At 15:18, the grievor sent her the following email:

[Translation]

...

*Jacqueline reminded me to first ask you the reason for this meeting, which I am entitled to know.*

...

Ms. Clément indicated that she answered him as follows in writing, at 15:35:

[Translation]

...

*I want to talk to you about three things:*

- *the line of communication*
- *the reporting structure*
- *the email you sent me today at 10:57*

...

[45] At 15:43 the grievor responded as follows:

[Translation]

...

*My representative is reading the 10:57 message and will call me right afterwards.*

...

At 15:52 the grievor sent another email, as follows:

[Translation]

...

*Jacqueline and I suggest that you simply transmit in writing what you want to talk to me about.*

*However, if you order me to come to your office, I will do so, with Jacqueline. She is available until 16:30 this afternoon.*

...

[46] Ms. Clément added that before the meeting, she received a call from the union representative. She told the representative that she wanted to meet with the grievor, accompanied by his union representative if he wished, but that, in her opinion, the presence of the union representative was not required because she only wanted to talk to the grievor.

[47] Ms. Clément said she noticed that after the last email from the grievor at 15:52, he kept trying to avoid the meeting and insisted on written exchanges. It was at that moment, at around 16:15, that she called him to her office and insisted that he meet with her. The grievor presented himself, and the meeting lasted only a few minutes.

[48] Ms. Clément indicated that after the meeting with the grievor, she prepared an email to a manager explaining what had happened. The 16:39 email reads as follows (Exhibit E-12):

[Translation]

...

*Evidently it did not go well; I almost ordered him to come see me. He did not want to come without his union representative. He came to my office after 10 minutes, just as I was about to go get him a second time. Julie was there. He told me that this was illegal and that he had the right to be represented for any meeting in a manager's office because you never know how things will turn out.*

*I told him that I only wanted to discuss our working method, and I talked about three things (still calmly):*

- 1) Our method of communication, for which I wanted him to use verbal means.  
He does not want this because he is in court and he wants everything in writing.*
- 2) The reporting structure, for which I want him to go through his supervisor Julie before he contacts me. He told me that he wrote to me directly because he did not agree with her.*
- 3) His email today, which I found disrespectful. He got angry because he had no witness to hear me say that it was not respectful.*

...

[49] Later, at 17:18, the grievor sent her the following email:

*I would like to take this opportunity to summarize the meeting we just had. In light of the tremendous amount of stress it caused me, this is to ensure that I understood your comments correctly.*

*I started by telling you that denying me representation was illegal and constituted harassment, since one never knows ahead of time which direction the conversation will take. I had told you to check the jurisprudence in this regard. When I was with the Alliance, my supervisor had instructed me on this right. I told you that I was not in agreement with having this meeting without a witness.*

*You told me that Julie Thibodeau would serve as the witness.*

*You told me that I had a communication problem. That you wanted us to talk and that you would not write to me. I explained to you that we were in a serious legal process, and that this would not be possible under the circumstances. You maintained your position.*

*You told me that in my email I had not respected the reporting structure. I told you that, on the contrary, in view of the fact that I did not agree with Julie Thibodeau's position, I was complaining to you. You told me that I should file grievances instead.*

*You told me that my email was disrespectful, without specifying in what way, even though I asked you to.*

*Finally, you told me that I was authorized to contact the people who had been designated to hear harassment complaints. I told you that I would be doing so promptly.*

...

[50] An almost identical situation had occurred the month before, when Ms. Clément had tried to meet with the grievor about his late arrival on June 2, 2003. She thinks the same sequence was repeated with the July 3, 2003 meeting. Ms. Clément explained that she was exasperated with the grievor's insistence on communicating in writing rather than attending meetings.

[51] Ms. Clément explained that she had to address the issue of the grievor's conduct. In the space of two months, she had observed several breaches on his part. She was prepared to work with him, but she had noticed that he had no trust in management. There had been several email exchanges, and, in her opinion, the grievor was demanding that every interaction occur in writing. She had spent a great deal of time trying to organize a meeting with him, especially on July 3, 2003.

[52] Ms. Clément indicated that she had taken into consideration the fact that the grievor had already received several disciplinary measures, specifically in 2001, at which time he had been asked to change his ways. Ms. Clément decided to discuss the grievor's case with the director general of the Quebec Region. At their meeting, they concluded that he should be called to a disciplinary meeting to discuss the termination of his employment.

[53] In cross-examination, Ms. Clément explained that the letter of termination had been signed before the meeting by Lorraine Frigon, Acting Director General of the

Quebec Region, Department of Citizenship and Immigration, but that she could have recommended that the disciplinary sanction be changed if the grievor had given her valid explanations and if, at their meeting, she had sensed a possibility of maintaining a level of trust. According to her, this did not happen.

[54] The employer then called Lorraine Frigon. Ms. Frigon indicated that in early July 2003, Ms. Clément had met with her to discuss the grievor's history. Ms. Frigon was already aware that he had been given four disciplinary measures between 1999 and 2002. The grievor had been absent from work for over a year and had returned in May 2003. The discussion with Ms. Clément had covered the grievor's conduct between May 3, 2003 and early July 2003, or approximately two months of work.

[55] Ms. Clément told her that the grievor had been informed on his return (in May 2003) that he had to work hard on respecting his work schedule and on avoiding any late arrivals and absences. Ms. Clément told him that he had committed the following breaches:

- taking 10 minutes longer than his allowed break time on May 13, 2003;
- arriving late on June 2, 2003;
- coming to work dressed in shorts on June 25, 2003;
- not speaking to his supervisor;
- extending his break on July 2, 2003;
- causing difficulties for management in connection with organizing a meeting on July 3, 2003;
- making disrespectful statements about his supervisor; and
- always wanting to deal with management in writing.

[56] Ms. Frigon indicated that based on what she knows of the grievor's behaviour, every one of his supervisors had had difficulty discussing with him his problems with absences and attendance. The grievor constantly bombarded management with emails and always wanted to converse in writing before meeting with management.

[57] Ms. Frigon indicated that in the past the grievor had not attended internal grievance hearings. It was difficult to talk to him and to determine whether he understood what he was being accused of and whether he could improve. In her opinion, he did not trust his superiors.

[58] Ms. Frigon pointed out that when it came to disciplinary issues, the grievor had been warned at the time of his last sanction that he would suffer more severe consequences if he refused to correct his ways. The number of incidents between May and July 2003 justified stronger measures by the employer. Even a long suspension would not get the grievor to change because he was incapable of functioning in an administrative environment that required that he respect the reporting structure, work schedule, rules about absences and timeliness, and meetings with management, that all seemed to elude him.

[59] Ms. Frigon had already declared that the grievor had done nothing positive and had provided no explanation that would enable her to change the content of the July 8, 2003 letter of termination (Exhibit E-1).

[60] The grievor testified at the hearing. He indicated that after an 18-month absence, he returned to work on May 3, 2003. According to him, his return started on a strange note because the Director asked him to report to Céline Grégoire (her assistant). For the grievor, “reporting” is a term of control, as when a criminal has to report to someone.

[61] When he arrived at work, he noticed that his office faced that of his supervisor, Ms. Thibodeau. Moreover, the arrangement of his workstation’s divider did not comply with security requirements. He sent an email regarding this, and everything had to be rearranged (Exhibit F-2). He said that before the divider was moved, his supervisor had a direct line of sight to him and, according to his colleagues, this amounted to intimidation.

[62] The grievor indicated that the work schedule he had been given was from 08:30 to 17:00, unlike his previous work schedule, which had been from 09:30 to 18:00. He sent an email regarding this (Exhibit E-4) and later filed a grievance.

[63] The grievor indicated that his supervisor had met with him on May 13, 2003 because he had prolonged his break by 10 minutes. He explained to her that the reason

for this was that there was a demonstration, and that, like all of the other employees, he had to use another entrance to the building, which caused the delay. The grievor continued his testimony, stating that when people demonstrate he likes to go up to them and read what their signs say. He considers this a part of his work in a way. He filed handwritten notes taken by Ms. Thibodeau at the May 13, 2003 meeting (Exhibit F-3).

[64] Regarding his late arrival for training on June 2, 2003, the grievor said that he would have provided written explanations on June 4 and 5, 2003 if he had been given time off. He would have liked to have pointed out that he had sleep problems, that being on training changed his normal work schedule and that he had difficulty sleeping. This was why he woke up late. The grievor said that he had explained to Ms. Clément that he had “slept right through” on the morning of June 2, 2003 and that he did not think this would cause any problems.

[65] The grievor then explained that on June 25, 2003, he had gone to work in shorts because it was extremely hot. According to him, this was an isolated incident.

[66] Regarding the July 2 and 3, 2003 incidents, the grievor pointed out that he had communicated with Ms. Clément because he disagreed with Ms. Thibodeau. He wanted information in writing on July 3, 2003 before meeting with the director. According to him an employee has to be careful when meeting with a manager.

[67] The grievor said that when he was a union representative, one of his union colleagues had informed him that problems could arise even in informal meetings.

[68] The grievor felt that the director had breached his right of representation by meeting alone with him on July 3, 2003. In fact, he filed a grievance in this regard. According to him, he had been the subject of discrimination by his supervisor and the director in May, June and July 2003.

[69] He claimed that his supervisor watched him closely and refused to give him any time away (Exhibit F-10). He also claimed that she apparently wanted to use stricter rules with him than with others when it came to breaks and time for smoking. As for Ms. Clément, he accuses her of having imposed a representative from the union local.

[70] In closing, the grievor indicated that he had to file several grievances to contest his supervisor’s decisions and those of Ms. Clément in May, June and July 2003 (Exhibit



E-13). These grievances had to do with the work schedule, the request for leave to prepare a complaint, the choice of union representative and the lack of representation at the disciplinary meetings on June 5 and July 3, 2003.

### **Summary of the arguments**

[71] According to the employer, the termination of employment is partly disciplinary and partly administrative. The grievor was given several disciplinary measures between 1999 and 2001. He was away for close to 18 months, and, after returning to work, managed to spark several incidents in less than eight weeks of work.

[72] According to the employer, the grievor apparently needs to be repeatedly reminded about the same things. However, in this case, the employer had to explain why he was being warned about a late arrival, remind him that he had already been late and, in some cases, had to get into an exchange of emails with the grievor, who was requesting explanations in writing. Thus, there is a common thread running through the grievor's conduct around mistrust of management. Under normal working relations, managers and employees should be able to explain themselves, talk to one another and, if necessary, give reminders and directions without these being seen as confrontations. The system has to work.

[73] Upon his return to work in May 2003, the grievor's supervisor reminded him of the unit's objectives and insisted on the issue of attendance and compliance with the work schedule.

[74] The grievor arrived late, took too much time for breaks and turned a comment from his supervisor about breaks and time for smoking into a debate.

[75] From the employer's point of view, the grievor's July 2, 2003 emails constitute a declaration of war. The grievor was looking for a confrontation.

[76] The grievor did not demonstrate that he could correct his conduct and avoid late arrivals and absences. Moreover, he was looking for a confrontation with his supervisor and the unit's director. The grievor was constantly demanding explanations from management. According to the employer, the rule of gradual sanctions applies in this case. The grievor showed no interest in changing.

[77] On July 3, 2003, the Director had to spend several hours phoning and exchanging emails to meet with the grievor.

[78] The employer referred to the following decisions: *Syndicat québécois des employés de service, section locale 298 (F.T.Q.) c. Centre d'hébergement et de soins de longue durée Cœur-du-Québec (Accueil Bon-Conseil)*, (March 25, 2002), 1020-2587 (T.A.); *Champagne and Staff of the Non-Public Funds, Canadian Forces*, PSSRB File No. 166-18-15650 (19870324); and *Le Syndicat professionnel des ingénieurs d'Hydro-Québec c. Hydro-Québec*, (April 4, 2006), 2005-2845 (T.A.).

[79] In his arguments, the grievor referred to his testimony for the background on his return to work in May 2003.

[80] Regarding the June 2, 2003 late arrival and the breaks on May 13 and July 2, 2003, the grievor referred to the notes he wrote for a complaint filed under section 23 of the former *Act* (Exhibit F-5). Specifically, the grievor referred to the following paragraphs:

[Translation]

...

*I am accused of not wanting to be associated with management. I do not understand. I am also accused of asking my supervisor to send me her questions in writing. I think that this is my right, given the unfounded verbal accusations that are regularly made to me. The report is intended to provoke me and make work for me (my defence) to divert me from preparing for my hearing before the Board.*

*On May 9, I asked the employer for time to file a new complaint to the Board and to prepare for my hearing, which was denied. I was invited to request annual leave if I so wished. I was denied requests for leave without pay. They were trying to use up my vacation leave, since I do not have any more sick leave, in order to exhaust me. I had to file several grievances.*

*On May 12 [sic], my supervisor met with me supposedly because I had taken too long for my coffee break. I had to explain that there was a demonstration at the entrance, which meant that we had to go around the building to get in and out. Two people were with me on my break and neither one of them was reprimanded. She mentioned that I could*

*not take time off to smoke. I explained that I was only doing what my colleagues were doing.*

*Since I slept in on my first day of training, I notified the employer as soon as I could. Two days later my supervisor was waiting for me at the entrance to the training room with a request that I attend a disciplinary meeting on the next day or the day after. I was told that I had until 10:00 the following day to indicate when I would be available, which was impossible since I was in training. I had to call the manager during my break. I asked to see her questions in writing, which she refused. I was also threatened with sanctions, in writing, if I did not show up for the meeting.*

*The following day, the employer refused to give me time to contact my union representative, which meant that I could only reach her the night before the meeting. I told the employer about this on the morning of the meeting, and was told that I would have to pick a local representative. I was allowed to consult with Janina Lebon, National Vice-President for Immigration, on the issue of grievances. They were trying to get me to come with someone who was not familiar with the details of my situation and who was in a conflict of interest. My right to choose my representative was denied. I was only told of this the morning of the meeting, which meant I had no representation. I was forced to go to the meeting alone.*

...

[81] Finally, the grievor pointed out that the termination of employment sanction was out of proportion. According to him, in *Syndicat québécois des employés de service*, adjudicator Foisy pointed out that the employer had made efforts to find a compromise. In fact, the grievor said that all he wanted was to be treated without discrimination. The employer had to stop watching him all the time. Work at home might be preferable. He believed that communicating in writing rather than insisting on meetings would make it easier to avoid clashes.

[82] In response, the employer submitted that the outcome was the same after several disciplinary sanctions and the current termination of employment sanction. The grievor claimed that it was not his fault. He maintained that the employer was not supposed to watch him more than the other employees. Overall, the grievor admitted no wrongdoing. Trust had to go both ways between the employer and the employees. The grievor attached no credibility to the managers' statements. How could they maintain their trust in the grievor and believe that he would change his ways? According to the employer, the termination was justified.

**Reasons**

[83] Before turning to the reasons for my decision on this grievance regarding the termination of employment, it would be useful to specify that the grievor filed several grievances regarding the events that occurred starting May 3, 2003 and ending with his termination on July 8, 2003, all of which are linked to the circumstances leading up to his termination.

[84] Grievance 166-02-36340 concerned the denial of representation at the June 5, 2003 meeting.

[85] Grievance 166-02-36342 concerned the absence of notice for the July 3, 2003 meeting.

[86] Grievance 166-02-36343 concerned the denial of representation at the July 3, 2003 meeting.

[87] Grievance 166-02-36341 concerned the fact that he had not been informed of the documents that had been filed in his file that justified the termination of his employment.

[88] Other grievances were also filed: grievance 166-02-36345 concerning his work schedule and grievances 166-02-36339 and 166-02-36344 concerning the denial of leave.

[89] Having been referred all of these grievances, and having heard them throughout the hearings scheduled between January and November 2006, it is useful to point out the following: in Board File Nos. 166-02-36342 and 36343, concerning the July 3, 2003 meeting, I dismissed the grievances (2007 PSLRB 48). In Board File No. 166-02-36341, concerning the documents about which the grievor was not informed, I dismissed the grievance (2007 PSLRB 49).

[90] In Board File No. 166-02-36340 concerning the absence of representation at the June 5, 2003 meeting, I allowed the grievance in part (2007 PSLRB 47). I concluded that the grievor had the right to be accompanied by a union representative for June 5, 2003, but that this breach did not invalidate the entire disciplinary process. However, none of the statements made by the grievor at that meeting could be used against him in future proceedings.

[91] Regarding this grievance, the July 8, 2003 letter of termination referred to the late arrival on June 2, 2003 and to a series of other incidents that had occurred at different times in May, June and July 2003. These are facts and must be taken as such.

[92] The letter of termination also referred to the grievor's statements at the June 5, 2003 meeting. I refer to my order (2007 PSLRB 47), and these statements will not be taken into consideration in my assessment of the reasons for termination.

[93] I retain the testimonies of Ms. Thibodeau and Ms. Clément about wanting to give the grievor the chance to start over at zero and show that he could meet the objectives regarding the schedule by avoiding being late and absent from work without permission or valid reason.

[94] Although she gave the grievor the opportunity to demonstrate his good faith, Ms. Thibodeau indicated that she wanted to make up her own mind about his conduct by keeping an eye on him throughout the workday. This is why, with her director's agreement, she asked the grievor to change his work schedule to between 08:00 and 17:00 so that a manager would be on duty.

[95] Ms. Thibodeau noted that on May 13, 2003, the grievor had extended his break by 10 minutes. She did not give him a written warning, but reminded him by email the following day, on May 14, 2003, as follows:

[Translation]

...

*You will remember our discussion yesterday about your problems with past attendance and yesterday's break.*

*The Director is not copied on this email.*

...

[96] It was only at the Director's request on June 4, 2003 that Ms. Thibodeau sent her an email informing her that the grievor had extended his break on May 13, 2003, when he took 40 minutes instead of 30 (Exhibit E-7).

[97] Despite the fact that on May 13, 2003, she had already told the grievor to be careful about the length of his breaks, when he extended his break on July 2, 2003, she verbally warned him again. It was only after the grievor requested it that she confirmed

in writing that he had extended his break on July 2. She added (Exhibit E-10): “[translation] Moreover, you had already been out to smoke.” Once again, the grievor wanted more precision. He launched into a discussion of the cigarette break and indicated to Ms. Thibodeau that she was exaggerating, that she was looking for problems and that this amounted to harassment (Exhibit E-10).

[98] I consider Ms. Thibodeau’s testimony to be fully credible. From May to July, her first impulse was to verbally warn the grievor of his breaches surrounding the work schedule. In my opinion, this approach could have established a situation between them that was conducive to discussion and exchange, rather than his requesting everything in writing.

[99] In the case of Ms. Clément, she was doing her duty as a manager. She intervened with the grievor on June 3, 2003, and called him to a disciplinary meeting on June 4 or 5, 2003. The Director took no disciplinary measure in June 2003.

[100] I consider that no concerted effort was taken against the grievor in the first five weeks after his return (May 3 to June 5, 2003).

[101] The grievor and Ms. Clément did discuss the issue of union representation. She asked him to refer to the representative from the local rather than to try to contact a union official in another city. I agreed with the manager on this point in 2007 PSLRB 47. The grievor came back to the issue of union representation on July 3, 2003. He did so when he wrote that he wanted to consult the union representative who had been imposed on him.

[102] Before addressing the incidents of July 2 and 3, 2003, which I consider determining factors that led the Director to comment on the grievor’s conduct from May to July 2003, I want to point out that the grievor never indicated that he had approached the union between June 5 and July 3, 2003 to clarify the issue of his representation even though the Director had raised this matter with him at the meeting on June 5, 2003.

[103] The incidents on July 2 and 3, 2003 are a key element in the reasons for the termination of employment. In reviewing the emails exchanged between the grievor and management, I conclude that the grievor was largely responsible for turning a

simple verbal comment from his supervisor on July 2, 2003 into an incident that extended over two days, during which almost a dozen emails were exchanged.

[104] The chronology is as follows: after the verbal warning about the break, the grievor asked for written confirmation. Ms. Thibodeau's written response confirmed that the break had been prolonged, and she added that the grievor had gone out to smoke. This email did not address the length of the cigarette break.

[105] The grievor wanted to debate the length of the cigarette breaks and replied to the manager that she had accused him of taking too much time to smoke and that he was taking the same amount of time as the others. He also wrote that his supervisor had exaggerated and that this constituted harassment.

[106] On July 2, 2003, Ms. Thibodeau made no written accusation about the length of the grievor's cigarette breaks. Nonetheless, the grievor considered that he was being treated differently. He indicated his intention to discuss his colleagues' working conditions and to compare them with his own since that was his right.

[107] From the preceding exchanges, I understand that this referred to comparing the duration of cigarette breaks.

[108] The grievor did not provide any explanation during the hearing about an entitlement to cigarette breaks in terms of working conditions. He did not refer to any provision in the collective agreement on this matter.

[109] If the grievor thought that cigarette breaks warranted discussion and a comparative study of employees who used it, he should have talked to his union or filed a grievance rather than state in his July 3, 2003 email: "[translation] In fact, I was wondering whether I would be authorized to contact in writing, on the subject of working hours, the people [his colleagues] my supervisor mentioned."

[110] Ms. Thibodeau indicated in her testimony that following the July 2, 2003 emails, she met with Ms. Clément to discuss the need to lighten the mood in the workplace. At the time, Ms. Thibodeau mentioned that it was impossible for her to talk to the grievor the way she would have liked to do.

[111] Ms. Clément wanted to meet with the grievor on July 3, 2003. The evidence shows that this was not an easy thing to do. The grievor requested the reasons for the

meeting. After demanding the reasons in writing, he suggested that she send him in writing what she wanted to say to him rather than meet with her. However, he indicated that his union representative, Jacqueline Lemoine, was available until 16:30.

[112] The Director called the grievor in at 16:15; he came alone. He provided no explanation about the fact that at 16:15 his union representative did not accompany him since she was available until 16:30. It should be noted that in the first email to the Director on July 3, 2003, the grievor talked about the representative who had been imposed on him.

[113] I believe that both Ms. Thibodeau and Ms. Clément made the necessary efforts to try to establish a good line of communication between themselves and the grievor.

[114] As Ms. Frigon mentioned, there is no trust between the grievor and the managers. He did not demonstrate that he wanted to work within the established framework and to follow the work schedule by avoiding tardiness and absences.

[115] I agree with the employer's conclusion. The content of his emails and the testimony provided by the grievor at the hearing confirm that he mistrusted management.

[116] A paragraph in the grievor's email sent on July 3, 2003 at 15:18 clearly reflects his frame of mind during the period between May and July 2003. He replied as follows to Ms. Clément:

[Translation]

. . .

*You told me that I had a communication problem. That you wanted us to talk and that you would not write to me. I explained to you that we were in a serious legal process and that this would not be possible under the circumstances . . .*

. . .

[117] Regarding the May 12, 2003 incident, when his supervisor mentioned to him that he had extended his break by 10 minutes, the grievor explained to her that there had been a demonstration and that he had to take a longer route to enter by another door. However, in his testimony at the hearing, the grievor explained that when there were demonstrations he liked to go up to the demonstrators and read the signs to find



out what they were demonstrating about. Could the time he had spent doing this account for his late return?

[118] Regarding his June 2, 2003 late arrival, he showed up at 09:45 instead of 08:30 and called at 09:05. He explained that he had gotten up late. On this point, in his email, the grievor criticized management's position, which reminded him that he had to call in 15 minutes before he was scheduled to arrive. He answered that if he slept in, he could not call 15 minutes before he was scheduled to start work.

[119] Finally, regarding the July 2, 2003 incident, in my opinion, the grievor had no reason to start a debate via email with his supervisor after her verbal warning. As I explained before, the grievor provided no valid explanation to justify his refusal to meet with his director on July 3, 2003. His union representative was available until 16:30 that day.

[120] Although these actions and emails are of relative significance when taken singly, the overall email exchange between the grievor and his management between May 3, 2003 and July 5, 2003, and the number of incidents in which he was involved (extended breaks, late arrivals, in less than eight weeks on the job), lead me to conclude that the grievor did not understand that he was supposed to be diligent in his work and follow the rules of timeliness and approval for absences. He did not learn from the four disciplinary measures he received between 1999 and 2001. Although he contested those disciplinary measures, the grievor should have paid attention to the employer's accusations and been more cooperative rather than defiant in his attitude.

[121] The grievor failed to show that he was capable of functioning in an established framework and of following his work schedule despite the objectives and reminders provided by his managers. Consequently, in my opinion, the employer's decision is justified in terms of its administrative and disciplinary nature.

[122] I believe that the statement made by adjudicator Foisy in *Hydro-Québec* applies in this case. The following are a few extracts:

[Translation]

...

*Nor can I find, as the union asked me to, that the unit's  
expulsion was unlawful because the employer approached*

*the subsequent negotiations from a position of authority and in an attempt to intimidate the complainant, who was made into an example. Nothing in the evidence supports these ideas. On the contrary, the evidence indicates that management was more than patient with the complainant and that it had no choice in view of the latter's chronic behaviour of being unable to work in a structured and group environment. The evidence does not allow me to conclude that the removal was in any way related to the bargaining strategy. Rather, the removal was driven by the fact that the complainant no longer fit with the team.*

*Moreover, we are not dealing with a double sanction in this case, as the union claims, because on the one hand we are dealing with an administrative rather than a disciplinary matter. In addition, the removal from the unit was not designed to punish the complainant but rather to remove from it an element that created an unhealthy and intimidating environment for the members. It is up to the employer to provide the unit's members with a friendly and serene work environment.*

...

[123] The employer was right in sanctioning the grievor's conducts listed in the letter of termination (Exhibit E-1). In disciplinary terms, the adjudicators applied the principle of graduated sanctions. The application of successive disciplinary measures is designed to make the grievor understand that he will face progressively stronger disciplinary measures if he does not correct his conduct. The employer had already indicated this to him in previous disciplinary letters.

[124] The grievor received four previous disciplinary measures:

1. a three-day suspension, reduced to one day (2007 PSLRB 37);
2. a five-day suspension;
3. an eight-day suspension, reduced to six days (2007 PSLRB 38); and
4. a twenty-day suspension, reduced to fifteen days (2007 PSLRB 42).

[125] In this case, the employer carried out its responsibility of demonstrating to me that it was fully justified, for the reasons listed above, in imposing a most severe disciplinary measure, comprising termination of employment, based on the facts

surrounding the accusations and the grievor's previous history. The termination of employment does not strike me as unreasonable under the circumstances.

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

*(The Order appears on the next page)*

**Order**

[127] The grievance is dismissed.

May 11, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**