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File: 166-02-32541

Citation: 2007 PSLRB 42



*Public Service
Staff Relations Act*

Before an adjudicator

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: [Raymond Piché, counsel, and Nadia Hudon, counsel](#)

Heard at Montréal, Quebec,
January 23-26 and 30-31, May 3-5 and 8-12, 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”) and holds a position at the PM-03 group and level. In 1999, he was President of Local 10405 of the Canada Employment and Immigration Union (CEIU), a component union of the Public Service Alliance of Canada (PSAC).

[2] On October 16, 2001, the grievor received a disciplinary measure of a 20-day suspension for incidents that took place in September and October 2001.

[3] The grievor was on sick leave from October 12, 2001, to June 2, 2002. Upon his return to work, he filed a grievance on June 6, 2002 contesting the disciplinary measure. The grievance was referred to adjudication on July 10, 2003.

[4] The period between the reference to adjudication and the hearing is explained by the fact that the grievor filed complaints under section 23 of the *Public Service Staff Relations Act* (“the former Act”). The grievor submitted that the employer had retaliated against him.

[5] 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, R.S.C., 1985, c. P-35.

Summary of the evidence

[6] The employer objected that the grievance was filed late. This objection was dismissed in 2007 PSLRB 14 and the adjudicator found that he had jurisdiction to hear the grievance on its merits.

[7] The breaches alleged against the grievor are stated in the letter of October 16, 2001 (Exhibit E-1) and summarized as follows in the Disciplinary Action Report prepared by the employer (Exhibit E-16):

[Translation]

...

The disciplinary measure involves six incidents. The details are as follows.

1 and 2. On September 6, 2001, Mr. Cloutier arrived at work at 10:45, 2 hours and 30 minutes late. On September 13, he arrived at 09:15, 1 hour after the scheduled start of his workday. He claimed that he was late because of illness. In addition, he did not submit a medical certificate, as required by the employer in a directive issued on August 28, 2001.

3. On Monday, September 10, 2001, Mr. Cloutier was away from his workstation without permission from 16:10 to 16:26. During this time, he was in the office of a co-worker, Micheline Rioux, a case-tracking agent at CIC - Investigations and Removals, to talk with her and financial services agent Diane L'Heureux about a matter not related to his work as an advisor.

4. On the morning of Wednesday, September 12, 2001, just the day after the tragic events in New York, he made the following comment in a conversation with co-workers about those events: "Arabs need to be carefully controlled."

5. Around 16:30 on Thursday, September 27, 2001, he left his workstation without permission to go to Ms. Rioux's office to discuss matters not related to his work. He was asked to return to his workstation by CIC Investigations and Removals director Lise Gignac. Ms. Gignac had to ask a second time before he deigned to return to his workstation.

6. On Tuesday, October 2, 2001, he informed me that he had wilfully disobeyed my instructions by working on personal matters during work hours.

...

[8] The following people at Citizenship and Immigration Canada gave testimony on the incidents involving the grievor: Carole Lamarre, Director, Inland Services; Lise Gignac, Director, Investigations and Removals; Miriam Ettinger, Deputy Director, Investigations and Removals; and Samra Rabie, Acting Supervisor.

[9] On October 16, 2004, Ms. Lamarre, as director, decided to impose discipline on the grievor based on facts stated in the letter and the grievor's previous disciplinary record (Exhibit E-1). As for the tardiness incidents on September 6 and 13, Ms. Lamarre stated that she had asked the grievor to produce a medical certificate (Exhibit E-18) if he wanted to use illness as grounds to justify his late arrival.

[10] Ms. Lamarre explained that in August and September 2001, the CEIU had been in a strike situation and was engaging in pressure tactics (employee absences and tardiness) across the country. At that time, the employer had issued a directive

requiring a medical certificate for all absences. Under the directive, an absence was considered an unauthorized leave that could result in disciplinary measures. Ms. Lamarre reminded the grievor of this in her email dated September 29, 2001 (Exhibit E-18).

[11] Ms. Lamarre was informed that the grievor was refusing to provide a retroactive medical certificate. He disagreed that he should have to bother a physician several days after the absence to obtain a medical certificate. The grievor even asked the employer to send him to a Health Canada physician to fulfil the employer's requirements (Exhibit E-19), a request that was refused.

[12] Regarding the September 10, 2001 incident, i.e., the grievor leaving his workstation from 16:10 to 16:26 to discuss matters not related to his work, Ms. Lamarre stated that she had been referred to the report prepared by Ms. Gignac (Exhibit E-11) and the email from Ms. Ettinger (Exhibit E-12).

[13] According to information received from managers, on September 10, 2001, Ms. Ettinger apparently noticed the grievor and two other employees, Micheline Rioux and Diane L'Heureux, talking at Ms. Rioux's workstation. Ms. Ettinger asked the three employees if their discussion was work-related. She was unable to get a specific answer, but was told that they were working on a file. Ms. Ettinger apparently informed Louise Martin, the grievor's supervisor, and made a report on the incident (Exhibit E-12). Ms. Ettinger testified on this incident.

[14] Still regarding the September 10, 2001 incident, Ms. Lamarre referred to an exchange of emails between Ms. Martin and the grievor (Exhibit E-15). On September 12, 2001, Ms. Martin asked the grievor to describe the length and purpose of the September 10, 2001 meeting, the contents of the file and its relation to their work.

[15] On the afternoon of September 12, 2001, the grievor gave the following explanation in a dated email:

[Translation]

...

Since you have ordered me to respond, I will.

Diane L'Heureux responded to a survey on Department staffing. The Director of the Public Service Commission contacted her because it seems that an inquiry will take place.

He asked Diane if there were others in the Department who wished to testify at the inquiry. Diane met with us to see if we would allow her to give our names and contact information.

We were weighing the potential consequences of participating in the inquiry, given the Department's culture and the harassment we have received in the past for stating our opinion in good faith.

Our conversation lasted a few minutes; I do not remember exactly how long. I did not time it, since I was not expecting you to come investigating. My co-workers in all sections talk at the office; they are not investigated for doing so.

I would have preferred not to have to respond to this matter since, ideally, I would have liked to keep my participation in the inquiry confidential for the reasons above. You have given me no choice and I now fear the consequences. This adds to the stress you are putting me under, which justifies my requests for union time, which still have not been answered — the one related to my work and the one resulting from yesterday's events in New York. Just in case you weren't already aware.

. . .

[16] At the hearing, Ms. Ettinger stated that the grievor, Ms. Rioux and Ms. L'Heureux were at Ms. Rioux's workstation for about 20 minutes on September 10, 2001. She could not tell whether their discussion was work related. She was certain that one of the three employees told her that they were working on a file.

[17] Regarding the grievor's statement on September 12, 2001, namely, "[translation] Arabs need to be carefully controlled," according to the Disciplinary Action Report (Exhibit E-16) and the letter of discipline (Exhibit E-1), a number of documents were submitted. Ms. Rabie testified on this subject.

[18] Ms. Rabie's testimony is as follows. Ms. Rabie stated that she was in shock on the day after the September 11, 2001 events in New York. On the morning of September 12, 2001, she was returning to her office when she noticed the grievor conversing with three other employees. According to her, the grievor apparently said,

“[translation] Arabs need to be carefully controlled.” The group continued their discussion, and then the people left.

[19] Ms. Rabie felt offended that such statements could be made the day after the events of September 11, 2001. She emphasized that the grievor’s voice was quite loud, and that clients on the floor would have been able to hear it. She sent an email to Ms. Lamarre (Exhibit E-13) immediately after this incident. On October 9, 2001, Ms. Rabie made a more detailed 20-page declaration (Exhibit E-13).

[20] Ms. Rabie stated that, on September 12, 2001, she spoke with Ahmed Attab, who is of Arab descent, and who is the person to whom the grievor had addressed the statement. Mr. Attab apparently told her that he was not offended by the statement.

[21] Ms. Rabie also met with the grievor, who had no doubt been informed by the employer that he had made comments about people of Arab descent, since he told her that he was talking with Mr. Attab about an ashtray. According to the grievor, he was merely discussing “[translation] fire control.”

[22] Ms. Lamarre continued her testimony by stating that she had exchanged emails with the grievor (Exhibit E-17). From the grievor’s supervisor, Ms. Lamarre received a report on a meeting the supervisor had had with the grievor on September 12, 2001 (Exhibit E-20).

[23] Ms. Lamarre met with Mr. Attab on October 10, 2001 to obtain his version of the facts and wrote a report that the grievor submitted as Exhibit F-3. In that report, Mr. Attab maintains that he does not remember exactly what was said by the grievor, but that it was about fire and went something like, “[translation] You have control of the fire.”

[24] Ms. Lamarre also met with Johanne Bellerose, an employee who was present at the September 12, 2001 discussion. According to Ms. Bellerose, the grievor’s comment may have been, “[translation] You are good at putting out fires.” According to Ms. Bellerose, the comment was not discriminatory; at most, it was an idle remark. She does not believe that anyone in the group was offended. The grievor filed the written report prepared by Ms. Lamarre into evidence (Exhibit F-2).

[25] Ms. Lamarre maintains that the events of September 11, 2001, caused much stress, even for Canadians. In fact, on September 21, 2001, the employer decided to

issue a memorandum calling for the respect of people and cultural differences (Exhibit E-14).

[26] The fifth breach alleged against the grievor is that he left his workstation on September 27, 2001, to discuss a matter with Ms. Rioux that was not work related.

[27] Ms. Gignac testified on this incident and filed a report that she had written that very day, September 27, 2001 (Exhibit E-11).

[28] As stated in her report, Ms. Gignac corroborated that she had noticed the grievor talking with Ms. Rioux during working hours. Ms. Gignac states that she spoke with the grievor's supervisor and Ms. Rioux to ask if the grievor and Ms. Rioux had files in common that they had to discuss together, and the answer was negative.

[29] Ms. Gignac stated that she then went back to see the grievor. The grievor apparently confirmed that he had not been discussing work-related files. She therefore asked him to return to his workstation.

[30] Ms. Gignac added that she found it difficult to talk with the grievor, because Local 10405 had been placed into trusteeship in November 1999. That complicated matters when she had to meet with him, for he would refer to representation problems and would often correspond in writing.

[31] Ms. Gignac submitted that, in 1999, the PSAC had stated that the employer should deal with Robert P. Morissette, the PSAC regional representative, when the grievor's interests were at stake (Exhibit E-9). In 2000, the local was brought out of trusteeship and union representatives were elected (Exhibit E-10).

[32] The sixth alleged breach involves an incident on October 2, 2001. Ms. Lamarre criticized the grievor for using work time to prepare documents, such as emails and written remarks, to send to management. Ms. Lamarre referred to an email dated October 2, 2001 (Exhibit E-10), in which the grievor wrote: "[translation] Just letting you know that I wrote this during working hours, contrary to your request. Even though you have a broad interpretation of your rights as a manager, you should know that those rights are, thankfully, limited to working hours."

[33] The grievor's email (Exhibit E-10) was in reaction to the fact that Ms. Lamarre had summoned him to a disciplinary meeting on October 2, 2001, telling him that he

could be accompanied by a union representative. The grievor responded by email that he could not obtain fair and equitable representation from his union and that he would prefer to send written comments rather than attend a disciplinary meeting. Ms. Lamarre responded by email on October 1, 2001 (Exhibit E-12) that his written comments “[translation] must be prepared outside of working hours.”

[34] The grievor, as well as one of his co-workers, Désignette Beri, testified at the hearing. Ms. Beri’s testimony was about the incident on September 12, 2001.

[35] Regarding the employer’s complaint that the grievor was not at work on the morning of September 6, 2001, the grievor testified that he had the flu and woke up late that morning, which is why he arrived at work late, at 10:45, but that he had informed the employer by phone. He submitted that, at the time, he did not think it necessary to see a physician, so he went to work, but arrived late.

[36] To explain the September 6, 2001 incident, the grievor referred to an excerpt of a document he had prepared as part of a complaint filed with the Public Service Labour Relations Board (Exhibit F-4). In particular, the grievor referred to the following:

[Translation]

...

Upon my return to work at the end of August 2001, the employer informed the employees that, because of a threat of a strike, a medical certificate would be required for all sick leaves, effective immediately. Furthermore, the employer imposed a fixed schedule on all employees, from 08:15 to 16:30.

Having had the flu for a number of days, I arrived at work late on September 6. I had notified the employer beforehand and specified that seeing a physician was not necessary. In an email, I asked the employer to send me to a physician at Health Canada, so that the employer would have to assume the costs of its bureaucratic requirement. I explained that I thought it scandalous that the employer was using limited provincial health care services for the purposes of contractual negotiations. My MNA and MP were copied on my email.

...

[37] The grievor stated in an email dated September 6 at 13:26 (Exhibit E-19) that he thought it would be useless to burden a medical clinic, which was why he decided to see the physicians at Health Canada. The email reads as follows:

[Translation]

...

I am still waiting for an appointment with a physician at Health Canada. As health and occupational safety representative, you are no doubt aware that you give me no choice but to contaminate my co-workers and clients. Not knowing if you will grant me leave, I cannot afford to pay out of my own pocket for this leave, which I need, and then wait for reimbursement through the long grievance process.

...

[38] For the same reasons, he did not produce a medical certificate for being one hour late on September 13, 2001.

[39] Concerning the employer's complaint about a work absence on September 10, 2001 from 16:10 to 16:26, the grievor testified that he was in a meeting with two employees, Ms. Rioux and Ms. L'Heureux, to discuss a matter related to a staffing survey.

[40] The grievor filed an excerpt of his notes on this incident as part of his grievance (Exhibit F-4). In particular, he had written the following:

[Translation]

...

On or around September 9, Micheline Rioux phoned and asked me to go to her office because a co-worker, Diane l'Heureux, wanted to talk with us.

Diane told us that, after she had responded to a survey on staffing in the department, an investigator had been assigned to investigate the allegations in her response. This investigator asked her to find out if any co-workers wanted to testify at the inquiry.

We were weighing the consequences of participating, given the harassment we had received from the department when we were involved in this type of process in the past, when Myriam Ettinger, Micheline's supervisor, came to Micheline's

office to ask what our topic of discussion was and if the topic was work related.

I said yes but gave no details; we were obviously uncomfortable giving the employer information on the nature of our discussion, given the points stated above.

A number of days later I received an email from my director, Carole Lamarre, asking what I had discussed that day in Micheline's office. I asked for time to respond since I wanted to consult a lawyer, but I was immediately refused.

...

[41] The grievor maintained that his written description of the event was accurate. He submitted that it was awkward to disclose the content of the discussions with Ms. Rioux and Ms. L'Heureux to management, since it involved a staffing survey. Even if it was not a work file, he maintains that it was a work-related matter.

[42] Regarding the September 12, 2001 incident, the grievor referred to excerpts of the text he had prepared as part of his grievance (Exhibit F-4). The following excerpts confirm his allegations about that incident:

[Translation]

...

The day after the events at the World Trade Center, I talked about the events a lot with my co-workers, one of whom is of Arab descent.

...

On September 12, he gave me a present from Morocco, from which he had returned — an ashtray with a very simple mechanism to put out the cigarette. A trained architect, he had also just explained why the towers had collapsed from the heat of the fire that consumed the steel structure. In the emotionally charged atmosphere of the day, I directed a joke toward Ahmed, that Arabs are good at controlling fire, referring to the ashtray he had given me. Two people were present at the conversation: Johanne Bellerose and Désynette [sic] Beri. We all smiled at the joke.

A few minutes later, Ahmed informed me that Samra Rabie had asked him what I had said exactly, and that he had told her.

Louise Martin, my supervisor, then came to tell me that Samra Rabie had made a complaint about my saying that

“all Arabs should be arrested” or something like that. I immediately told Louise that that was far from what I had said. I invited Samra, who was walking past, to come see me so I could explain to her what I had said and what I had meant. She refused, saying that she “had chosen her method of complaint.”

Almost every day since then, my director has sent me emails asking me to explain, without delay, my version of this incident and the others described above, and saying that, if I wanted to respond in writing, that would have to be done outside working hours. First, I asked what I was being accused of, and then I said that the allegations against me were unfounded since I had never said, “Arabs had to be controlled.” Ahmed Attab told me he had again explained to my director the nature of my statements in a meeting she had had with him.

...

[43] The grievor referred to the record of an interview of Ms. Bellerose, an employee who was present on September 12, 2001 (Exhibit F-26). He noted that Ms. Bellerose claims to have heard, “[translation] You are good at putting out fires.”

[44] The grievor also referred to the record of a declaration by Mr. Attab (Exhibit F-3), in which he talked about fire control, saying, “[translation] You have control of the fire.”

[45] The grievor maintains that he had never wanted to offend anyone. His sentence was uttered in a specific context after Mr. Attab, one of his friends, had given him an ashtray equipped with a lid designed to extinguish cigarettes. A conversation on the fire in the towers in New York then took place. The grievor apparently said, “[translation] You Arabs have control of the fire,” or something similar.

[46] On September 12, 2001, the grievor also referred to Ms. Beri’s testimony.

[47] Ms. Beri stated that she was present at the discussion on September 12, 2001, but that the employer never met with her to obtain her version of the facts. She claims that the group was discussing the September 11, 2001 disaster. Mr. Attab, who was of Arab descent, had returned from a trip to his country of origin. He had brought back a special ashtray for the grievor that could extinguish cigarettes. The group talked about the towers in New York and the fire that had destroyed them. Referring to the ashtray, the grievor apparently said to Mr. Attab, “[translation] It’s funny that an Arab should

bring us something to put out fires.” Those are not the exact words, but it had to do with “[translation] putting out fires.”

[48] Ms. Beri stated that, following that sentence, the discussion continued briefly, and that none of the four people present felt offended.

[49] In closing, Ms. Beri added that she had known the grievor since 1988, and that she had never heard him make a racist statement.

[50] The grievor pointed out that the testimony of each of the four people present at the September 12, 2001 discussion mentions fire or fire control. In his testimony, the grievor added that Mr. Attab had been trained as an architect and was explaining, in that discussion, that it was the heat of the fire that had weakened the structure of the towers in New York.

[51] Regarding the employer’s fifth complaint, i.e., the absence of the grievor from his workstation on September 27, 2001, the grievor stated that Ms. Rioux had received a notice from the employer to attend a disciplinary meeting. Ms. Rioux telephoned the grievor and asked him to meet with her. The grievor went to Ms. Rioux’s office to discuss the matter of meeting for a disciplinary measure.

[52] According to the grievor, it is normal that he be able to meet with his co-worker to discuss disciplinary issues.

[53] Finally, regarding the complaints, as for the contents of his email dated October 2, 2001, the grievor did not deny having written his version of the facts during working hours instead of presenting his position at a disciplinary meeting. He submitted that he was sending the employer a message.

Summary of the arguments

[54] The employer stated that in the summer and fall of 2001, public service employees were in a strike situation and were engaging in pressure tactics at various locations, resulting in tardiness or absences in various employee groups.

[55] The employer submits that it was to be expected that tighter control would be exercised when an employee reported an absence because of illness.

[56] Employees who did not give a reason for their tardiness or absence were considered to have taken unauthorized leave, and the employer would decide on the measures to take. If any of the late or absent employees stated that they had been sick, it was to be expected that the employer would require proof of their absence due to illness.

[57] The grievor arrived late on September 6 and 13, 2001. If he wanted to use illness as grounds for his work absence, he would have to comply with the employer's requirements, given the circumstances.

[58] Regarding the meeting between the grievor, Ms. Rioux and Ms. L'Heureux on September 10, 2001, the employer maintained that the employees would have had to obtain permission to stop their regular work if they wanted to interrupt it to meet and discuss something.

[59] Regarding statements made on September 12, 2001, about "controlling Arabs," the employer referred to the feeling of despair that prevailed in the wake of the destruction of the towers in New York. The directorate in which the grievor works processes the files of people from various countries with diverse cultures.

[60] Clients of various nationalities walk into the offices of Inland Services. It was therefore important that the grievor be aware of his role and careful of his statements made in the workplace.

[61] Regarding the meeting between the grievor and Ms. Rioux on September 27, 2001, the employer pointed out that neither one was a union representative at the time. If Ms. Rioux wanted to discuss a notice to attend a disciplinary meeting, she would have had to obtain permission from the employer for time off to meet with her union representative.

[62] Following the incident on October 2, 2001, the employer stated that the grievor often exchanged a number of emails with the employer when asked to attend a meeting. The employer referred to emails filed in a bundle (Exhibit E-17).

[63] The employer maintained that repeated exchanges of correspondence burdened the normal relationship between the employer and the grievor. Moreover, the language used by the grievor in his emails sometimes resulted in unnecessary confrontation with the managers to whom they were sent.

[64] It was not the first time that the grievor had left work without permission. It was not the first time that he had met with Ms. Rioux or other employees during working hours. The grievor received a letter of discipline in 1998 for unauthorized leave. He received disciplinary measures consisting of a three-day suspension without pay on November 5, 1999, a five-day suspension in 2000 and an eight-day suspension for leaving work to meet investigators to discuss an employee file.

[65] Given that the grievor did not follow the employer's instructions and that he continued to leave work without permission, even though he had been previously disciplined, the employer had the right impose a severe penalty to encourage the grievor to change his behaviour and make him understand that, unless he changed, he would suffer greater consequences. In this situation, the 20-day suspension without pay was appropriate.

[66] The grievor stated that in September 2001, the employer established a new work schedule, from 08:15 to 16:30. Usually, the grievor followed a flexible schedule and started work around 09:00.

[67] The reasons for his arriving late are illness and changes to the work schedule. The employer has not shown that employees were engaging in pressure tactics on September 6 and 13, 2001. Given the circumstances, the managers were not justified in insisting that a medical certificate be produced for a 1- or 2-hour absence.

[68] The grievor argued that he had a valid reason to meet with Ms. Rioux and Ms. L'Heureux on September 10, 2001. They were discussing a document from a government agency about a staffing survey. Should employees have to respond to requests about work organization (staffing) issues on weekends or in the evening? The grievor submits that the employer was being inconsistent.

[69] The grievor emphasized that, in all his years of work, the employer had never had reason to reprimand him for making a statement that offended people of foreign nationality.

[70] The grievor maintains that the managers did not consider the explanations he had given. None of the co-workers with whom he spoke on September 12, 2001, was offended by his statements.

[71] He met with Ms. Rioux on September 27, 2001, because she had received a notice to meet with the employer and he felt that the meeting would affect him.

[72] Regarding his response dated October 2, 2001, during working hours, the grievor submitted that he was answering one of the employer's questions.

[73] The grievor maintains that he did not deserve a penalty of one month's salary.

Reasons

[74] The first two breaches alleged against the grievor involve two late arrivals and the fact that the grievor did not produce a medical certificate.

[75] The employer stated that the department was entitled to increase the requirements regarding medical certificates to justify sick leave because in 2001, employees were engaging in pressure tactics.

[76] Clauses 35.02 and 35.03 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada, Program and Administrative Services, which expired on June 20, 2003, provide for the following:

35.02 An employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury provided that:

(a) he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer,

and

(b) he or she has the necessary sick leave credits.

35.03 Unless otherwise informed by the Employer, a statement signed by the employee stating that because of illness or injury he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 35.02(a).

[77] Clause 35.03 provides that, usually, a simple statement signed by the employee meets the requirements unless otherwise indicated by the employer. Given the circumstances, I agree that, according to the points presented by the employer, the employer could demand a medical certificate.

[78] The employer has not shown that any of the grievor's co-workers were late or that they were engaged in pressure tactics.

[79] The grievor's is an isolated case. I find it hard to see how his tardiness can be linked to pressure tactics. Nevertheless, the employer was justified in applying the regulation requiring a medical certificate.

[80] However, the consequences of producing a medical certificate must be examined. Article 35 of the collective agreement discusses sick leave benefits. Not fulfilling the requirements results in a loss of those benefits, with the consequence that the employee was not paid by using them for the hours that he was late.

[81] In its email dated September 26, 2001 (Exhibit E-18), the employer reminded the grievor that an unauthorized leave could lead to disciplinary measures.

[82] The grievor stated that he had refused to produce a retroactive medical certificate several days later; it was his own choice. However, he would have to explain to the employer the reason why he could not be punished for arriving late twice.

[83] The grievor stated that he had woken up late; that he had the flu at the time. The grievor did not establish that he was sick to the point of not being able to go to work on time.

[84] In September 2001, employees were engaging in pressure tactics. The grievor should have known that the employer would be stricter regarding the work schedule, and he should have done his best to be on time and follow the schedule. Therefore, it is more because of the fact that he was late that the grievor deserved to be disciplined.

[85] When occasional tardiness occurs, the employer must determine whether a penalty should be imposed. In this case, the grievor was late twice in less than two weeks. I think that the employer was justified in imposing discipline for that tardiness.

[86] The third ground states that, on September 10, 2001, the grievor left his workstation to discuss a staffing survey with Ms. Rioux and Ms. L'Heureux.

[87] The grievor knew that he had already been criticized for interrupting his work to discuss matters not related to the files he was processing.

[88] I appreciate that it was a staffing survey, but there was no need to act quickly, as of September 10, 2001. When Ms. Rioux telephoned the grievor, he could have told her that he was interested in discussing the matter. He could then have sought permission from the employer to hold a meeting.

[89] The grievor could also have informed the CEIU so that it could make arrangements with the employer to have the employees participate.

[90] While it is desirable for employees to participate in inquiries, the participation must be done in a specific context, and the grievor could not spontaneously assume the right to stop working for close to 20 minutes without prior permission. Therefore, I am satisfied on the evidence that the grievor committed the breach alleged by the employer, and that this unauthorized absence from his workstation warranted discipline.

[91] The same reasoning applies to the fifth ground given by the employer, which is that on September 27, 2001, the grievor left his workstation to meet with Ms. Rioux and discuss the notice to appear that she had just received. The grievor was not a union representative, and he could not assume the right to leave his workstation to meet a given employee.

[92] Even if he had been a union representative, the grievor should have made sure to obtain permission from his employer before leaving his workstation, in accordance with clause 13.04(a) of the collective agreement, which reads as follows:

13.04

(a) A representative shall obtain the permission of his or her immediate supervisor before leaving his or her work to investigate employee complaints of an urgent nature, to meet with local management for the purpose of dealing with grievances and to attend meetings called by management. Such permission shall not be unreasonably withheld. Where practicable, the representative shall report back to his or her supervisor before resuming his or her normal duties.

[93] I therefore find that this unauthorized absence from his workstation on September 27, 2001 may be subject to a disciplinary measure.

[94] Regarding the allegations of making inappropriate statements in the workplace on September 12, 2001, I have studied all of the documentation and considered all of

the testimony on that incident. The employer states the following in its disciplinary measure (Exhibit E-1):

[Translation]

...

This statement, which was made in the workplace while you were at work and spoken loudly and clearly enough to be heard by people outside of the conversation, shows a lack of respect for people of Arab descent, your co-workers and our clients in general.

Never would such a statement be tolerated with the CIC. That statement is all the more unacceptable because it was made on the day after the terrorist attacks in the United States. By making that statement, you have offended co-workers and breached the CIC Quebec Region Code of Ethics, the CIC Code of Conduct, the CIC Strategy for a Respectful Workplace, the Treasury Board Policy on Harassment in the Workplace and the Canadian Human Rights Act.

...

[95] If the employer deems the grievor's statement to be extremely reprehensible and contrary to the Code of Ethics, the CIC Code of Conduct, the Strategy for a Respectful Workplace and the *Canadian Human Rights Act*, the employer should have held an inquiry led by specialists on this topic.

[96] After conducting an "in-house inquiry" led by the managers in the group, the employer decided that the grievor had made the remark, "[translation] Arabs need to be carefully controlled."

[97] From statements made by witnesses to the incident, it appears that:

1. The September 11, 2001 disaster was discussed.
2. Mr. Attab had given the grievor an ashtray that could extinguish cigarettes.
3. The ashtray issue was raised by the grievor himself on September 12, 2001.
4. The grievor spoke with Ms. Rabie on September 12, 2001, and told her that he had been talking about fire control.

5. Three people who were present with the grievor have stated that he talked about fire and the ability to control it.

[98] It is possible that Ms. Rabie heard parts of the conversation out of context. She was not part of the discussion, although there is no doubt that she acted in good faith when she reported the statements she says she heard.

[99] The employer, if it had conducted an independent inquiry, could have obtained testimony from all of the persons present at the discussion.

[100] The employer could have made its decision based on the fact that there was another version of the discussion involving the topic of fire control and that the statement was made in a specific context.

[101] Given the evidence and documents filed, I cannot conclude that the grievor lacked respect for people of Arab descent. Moreover, I cannot conclude that the grievor offended his co-workers. Therefore, I do not accept any of the employer's allegations on this point, because the evidence is inconclusive.

[102] Regarding the incident on October 2, 2001, the employer criticizes the grievor for disobeying its instructions not to work on personal matters during working hours. On October 2, 2001, the grievor replied to the director by email during working hours even though she had asked him to reply after 17:30.

[103] In her testimony, Ms. Gignac stated that it was often hard to meet with the grievor because the local was in trusteeship, and the grievor said he had a problem obtaining union representation.

[104] In his email dated October 1, 2001 (Exhibit E-17), the grievor stated, "[translation] As you know, I am unable to get fair and equitable representation from my union. Given the circumstances, I would ask that you send me your questions in writing so that I may give you clear answers."

[105] In my opinion, the exchanges of correspondence burdened the relationship between the managers and the grievor.

[106] If the grievor had problems obtaining union representation, it was in his interest to resolve the issue with his regional union or another PSAC body. The evidence for the

incident on October 2, 2001, is insufficient for me to judge whether the grievor could have obtained time to respond to his manager. Therefore, I do not accept this allegation against the grievor.

[107] Given the body of evidence for the allegations (Exhibit E-1), I agree that the employer has proven the allegations of tardiness on September 6 and 13, 2001. The same holds true for the allegations of the grievor being absent from his workstation on September 10 and 27, 2001. Those alleged facts justify the discipline imposed by the employer.

[108] Given the body of evidence, the allegation regarding statements uttered on September 12, 2001, and the allegation regarding the communication written on October 2, 2001, cannot be used to justify the discipline imposed by the employer.

[109] The grievor had received three disciplinary measures prior to September 2001:

1. A three-day disciplinary measure on November 5, 1999. This measure was reduced to one day (2007 PSLRB 37).
2. A five-day disciplinary measure on June 2, 2000. The grievor's grievance was late, and the adjudicator found that he had no jurisdiction (2007 PSLRB 15).
3. An eight-day disciplinary measure on June 1, 2001. This measure was reduced to six days (2007 PSLRB 38).

[110] In this case, in one month of work, the grievor arrived late twice and was absent from his workstation without permission twice.

[111] I am concerned by the grievor continually assuming the right to leave the office whenever he sees a problem or whenever he is asked for help. The employer referred to the fact that the grievor had previously left without justification.

[112] I think that the grievor will have to change his behaviour and understand that he cannot unilaterally decide to leave work.

[113] Even if the previous disciplinary measures were reduced through adjudications, I think that, in this case, the employer should impose a severe penalty.

[114] For all of the allegations against the grievor, the employer imposed a 20-day disciplinary measure on October 16, 2001. It is difficult to determine which parts of the penalty correspond to each of the employer's allegations.

[115] I indicated above that the incidents on September 12, 2001, and October 2, 2001, cannot be used to justify a disciplinary measure.

[116] Given all the above considerations, I replace the employer's disciplinary measure with a 15-day penalty.

[117] Even though I have reduced the penalty imposed by the employer, the grievor must understand that he cannot leave without permission and he must follow the employer's instructions; otherwise, he will have to deal with the consequences.

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

(The Order appears on the next page)

Order

[119] The grievance is allowed in part. The penalty imposed by the employer has been changed, and I reduce it to a 15-day suspension without pay. The employer must reimburse the grievor an amount equal to five days' pay plus any appropriate benefits.

April 27, 2007.
P.S.L.R.B. Translation

**Jean-Pierre Tessier,
adjudicator**