Date: 20080905

File: 566-02-767

Citation: 2008 PSLRB 71

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

MICHAEL PEPPER

Grievor

and

DEPUTY HEAD
(Department of National Defence)

Respondent

Indexed as
Pepper v. Deputy Head (Department of National Defence)

In the matter of a remedy concerning an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievor: David A. Mombourquette, counsel

For the Respondent: Neil McGraw, counsel

Decided on the basis of written submissions
filed May 20, 21, 29 and 30, 2008.

I. Individual grievance referred to adjudication

A. Context

[1] The grievor, Michael Pepper, is a systems electronic technician (SR-EEW-11) with the Fleet Maintenance Facility at Cape Scott, Nova Scotia, in the underwater marine weapons maintenance shop. He is a marine electrician by trade and a member of the Federal Government Dockyard Trades and Labour Council East (''the bargaining agent''). He has been an employee of the Department of National Defence (''the respondent'') since 1977.

[2] On June 30, 2006, the grievor's employment was terminated as of July 14, 2006, pursuant to paragraph 11(2)(*g*) (now paragraph 12(1)(*e*)) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, due to his inability to attend work for medical reasons. As a result of a workplace conflict, the grievor had been on medical leave since 1999. The grievor referred his termination grievance to adjudication.

[3] The undersigned adjudicator allowed the termination grievance on two grounds. The first was that the termination was invalid because it was based on confidential information obtained during mediation. The second was that the respondent had not fulfilled its duty to accommodate the grievor. (See *Pepper v. Treasury Board (Department of National Defence)*, 2008 PSLRB 8.) The respondent was ordered to reinstate the grievor as of the date of termination, and I reserved my jurisdiction on a remedial award should the parties be unable to come to an agreement. The conclusion of that adjudication reads as follows:

. . .

> *[159] On the basis of these findings, I conclude that the employer failed to accommodate the grievor to the point of undue hardship.*
>
> *[160] The grievor requested that I award damages related to the long-lasting impact of the employer's actions on his career and benefits and the aggravation of his medical condition with respect to his harassment complaint and grievance.*
>
> *[161] As I have dismissed the grievance, there are no damages owing.*
>
> *[162] The grievor requested that I exercise my discretion under section 226(1)*(g) *of the* PSLRA *and award damages in*

> *the amount of $20,000 for his pain and suffering as a result of this ordeal and the violation of subsections 52(1)*(b) *and 53(2)*(e) *of the* Canadian Human Rights Act, *because the termination of his employment was discriminatory and the employer acted recklessly in not considering accommodation.*
>
> *[163] It is my finding that the grievor should also be entitled to a remedy with respect to the negative impact of the employer's breach of the confidentiality of the mediation process.*
>
> *[164] My decision with regard to a remedial award is taken under reserve. The parties are given 60 days to come to an agreement concerning such indemnity as may be owed to the grievor. Should the parties be unable to come to an agreement, I will receive their representations on a remedial award by an exchange of written submissions, no later than 90 days following the issuing of these reasons.*
>
> *[165] For all of the above reasons, I make the following orders:*
>
> ***Order***
>
> *[166] The application for the extension of time relating to PSLRB File No. 568-02-154 is closed.*
>
> *[167] The grievance relating to PSSRB File No. 166-02-31912 is dismissed.*
>
> *[168] The grievance relating to PSLRB File No. 566-02-767 is allowed.*
>
> *[169] The grievor is reinstated in the position he held at the time of his termination and entitled to benefits and wages, if that is the case.*
>
> *[170] I retain jurisdiction on the issue of a remedial award with respect to PSLRB File No. 566-02-767 for a period of 90 days.*

[4] The parties were unable to agree to a remedy that should flow from the decision. At their joint request, I authorized an additional period beyond the 90 days allocated in the decision to present their written submissions. This decision is therefore limited to the remedial award.

II. Summary of the parties' positions

[5] The grievor claims the following:

1) compensation for lost wages and benefits suffered as a result of his unlawful termination;

2) $20,000 for pain and suffering pursuant to paragraph 53(2)(*e*) of the *Canadian Human Rights Act* (*CHRA*);

3) $20,000 in damages for the breach of the employment contract based on the principles set out in *Keays v. Honda Canada Inc.,* 2007 CanLII 564 (ON C.A.);

4) $20,000 in special compensation for the respondent's wilful and reckless violation of his rights pursuant to subsection 53(3) of the *CHRA*;

5) $50,000 in damages for the negative impact of the respondent's breach of confidentiality during the mediation process; and

6) interest pursuant to subsection 226(1)(*i*) of the *Public Service Labour Relations Act* (*PSLRA*).

[6] The respondent submits that pursuant to paragraph 52(1)(*b*) of the *CHRA*, the award should be limited to $7000 with respect to pain and suffering as all other damages were remedied by the grievor's reinstatement.

III. Summary of the parties' arguments

A. For the grievor

[7] With respect to his unlawful termination, the grievor submits that he is entitled to the reinstatement of all his employment benefits, such as pension, life insurance, and group health and dental insurance, retroactive to the date of the termination and to compensation for losses incurred from the cancellation of those benefits retroactive to the start of his medical leave, as well as to leave with pay retroactive to April 1, 2005, the date on which the Public Service Labour Relations Board (PSLRB) was authorized to interpret and apply the provisions of the *CHRA* (subject to the repayment of workers' compensation benefits).

[8] With respect to the respondent's violation of the duty to accommodate under the *CHRA*, the grievor submits that the termination was continued discriminatory treatment related to his absence for medical reasons because:

- his medical leave was work related;
- the decision to terminate him was but the culmination of a long-standing pattern of discrimination and insensitivity toward his medical condition;
- the respondent's failure to accommodate showed a reckless disregard of the recommendation of his physicians to find him another supervisor;
- the commanding officer gave him an ultimatum to either agree to a mediated settlement or face termination without addressing the issue of whether he could be accommodated;
- the respondent added to his distress by having uniformed officers deliver a medical request to his residence;
- the termination was founded on information improperly obtained from the mediation process; and
- the respondent terminated him without taking the steps to make an informed decision. The evidence presented to the Rear-Admiral implied that the grievor was at fault for the length and failure of the mediation process and that he had accepted the consequent loss of his employment.

[9] The grievor submits that the respondent's actions have aggravated his ongoing medical condition and have unnecessarily prolonged his inability to return to work.

[10] With respect to damages for pain and suffering, the grievor asks that I exercise my discretion to award the maximum amount of $20,000 for pain and suffering arising from a violation of his rights under paragraph 53(2)(*e*) of the *CHRA* as well as an additional $20,000 for pain and suffering arising from the breach of the employment contract. The grievor justifies such an award on the basis that the distress caused by the respondent's actions has significantly impacted his enjoyment of life, his relationship with his spouse and his day-to-day functioning and has interfered with his

ability to return to work. In that respect, the grievor relies on a decision of the Canadian Human Rights Tribunal, *Ali Tahmourpour v. Royal Canadian Mounted Police,* 2008 CHRT 10, where, for milder pain and suffering, the complainant in that case was awarded the sum of $9000. In this case, the grievor's pain and suffering has been long-standing and therefore should warrant the maximum amount.

[11] The grievor also refers me to the decision in *Ontario (Ministry of Community Safety and Correctional Services) v. Charlton* (2007), 162 L.A.C. (4th) 71, where the Ontario Public Service Grievance Settlement Board awarded $20,000, twice the statutory maximum, because there had been a breach of the grievor's contractual guarantee to be free from racial harassment. The grievor also refers me to the decision of the Ontario Court of Appeal in *Keays,* where an award of $100,000 in punitive damages was awarded to a disabled employee who was terminated in circumstances where the respondent knowingly breached its duty to accommodate.

[12] For the respondent's wilful and reckless violation of his rights pursuant to subsection 53(3) of the *CHRA*, the grievor asks special compensation of $20,000, based on the principles in *Tahmourpour,* a case of racial discrimination. The grievor submits that the respondent intentionally failed to give credence to the advice of his physicians that he be returned to his workshop under another supervisor, acted hastily after the mediation process was unsuccessful and terminated his employment for improper reasons, thus aggravating his psychological condition.

[13] For the violation of the confidentiality of the mediation process, the grievor asks for an award of $50,000 to remedy the stress of having had his employment terminated and of having to go through the adjudication process and for the uncertainty of having his employment reinstated.

[14] The grievor requests that the amounts awarded be subject to interest pursuant to paragraph 226(1)(*i*) of the *PSLRA*.

B. <u>For the respondent</u>

[15] The respondent submits that the breach of the confidentiality of the mediation process has already been fully remedied by the decision to reinstate the grievor, which places the grievor in the same position as if his employment had not been terminated. Furthermore, at the time of his termination, the grievor was on leave without pay, and with the caveat that the grievor is entitled to benefits and wages "if that is the case," as

per paragraph 169 of 2008 PSLRB 8, my decision expressly envisions that the grievor was not medically fit to be in the workplace at the time of his termination. Accordingly, he should be restored to his pre-termination status.

[16] The respondent submits that there are no additional damages flowing from a breach of confidentiality and that additional damages claimed by the grievor do not meet the legal criteria for damages as stated by the Federal Court of Appeal in *Canada (Attorney General) v. Bédirian*, 2007 FCA 221, citing the four-point analysis developed by the Supreme Court of Canada in *Vorvis v. Insurance Corporation of British Columbia,* [1989] 1 S.C.R. 1085, and *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701. The respondent submits that the harm caused to the grievor by not taking the steps to make an informed decision has been repaired by quashing the respondent's decision.

[17] With respect to an award for pain and suffering under paragraph 53(2)(*e*) of the *CHRA*, the respondent submits that the circumstances of this case do not merit the maximum award and should be limited to $7000 in light of the following jurisprudence:

- *Day v. Canada Post Corporation,* 2007 CHRT 43: $6000;
- *Coulter v. Purolator Courrier Limited*, 2004 CHRT 37: $5000;
- *Knight v. Société de transport de l'Outaouais,* 2007 CHRT 15: $2000; and
- *Tanzos v. AZ Bus Tours Inc.*, 2007 CHRT 33: $3000.

[18] The respondent denies that it acted in a wilful or reckless manner, even if it did consider matters discussed during the mediation process. It acted in good faith but failed to accommodate the grievor to the point of undue hardship. In that regard, the respondent cites *Cole v. Bell Canada*, 2007 CHRT 7, with respect to the definition of reckless conduct as that which "evinces disregard of or indifference to consequences" (at paragraph 100), and *Montreuil v. Canadian Forces Grievance Board,* 2007 CHRT 52. The respondent asks that any claim for damages under subsection 53(3) of the *CHRA* be rejected.

[19] The respondent maintains that an award of $7000 and the reinstatement of the grievor fully compensate him for any pain and suffering related to the termination of his employment.

IV. Reasons

[20] One of the key changes introduced by the *PSLRA* was to empower adjudicators when hearing grievances to consider aspects of the grievance that relate to discrimination within the meaning of the *Canadian Human Rights Act*. This is the first case where the Board has had to interpret these provisions. Paragraph 226(1)(*g*) of the *PSLRA* provides for the adjudicator's authority to interpret and apply the *CHRA*, whereas, paragraph 226(1)(*h*) indicates the specific remedies that can be awarded by the adjudicator, namely compensation for pain and suffering up to $20,000 (paragraph 53(2)(*e*) of the *CHRA*) and special compensation up to $20,000 (subsection 53(3) of the *CHRA*):

> ***53.*** *(2) If at the conclusion of an inquiry, the member or panel finds that the complaint is substantiated, the member of panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member of panel considers appropriate:*
>
> . . .
>
> *(e) that the person compensate the victim, by the amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.*
>
> . . .
>
> *(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member of panel finds that the person is engaging or has engaged in the discriminatory practice willfully or recklessly.*

[21] The adjudicator's decision to fashion an appropriate remedy is a discretionary one. It is left to the adjudicator to adopt a balanced approach, taking into account the character of the violation of the grievor's rights and his other particular circumstances at the time of the violation.

[22] The *CHRA*, however, provides certain guidelines for deciding an appropriate remedial amount:

. . .

> ***54.*** *(1.1) In deciding whether to order the person to pay the penalty, the member or panel shall take into account the following factors:*
>
> *(a) the nature, circumstances, extent and gravity of the discriminatory practice; and*
>
> *(b) the willfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in and the person's ability to pay the penalty.*

. . .

[23] In this case, in addition to the finding that the employer illegally terminated the grievor's employment because it failed to accommodate the grievor to the point of undue hardship, the employer was also found to have invalidly terminated the grievor based on confidential information obtained during mediation. Accordingly, the adjudicator's more general remedial authority found in subsection 228(2) of the *PSLRA* is also relevant to this remedial award:

> *(2) After considering the grievance, the adjudicator must render a decision and make the order that he or she considers appropriate in the circumstances. . . .*

. . .

[24] As the grievor is entitled to damages both under the *CHRA* and the adjudicator's general remedial authority, the grievor's claims will be examined under both these headings, as appropriate.

1) Compensation for lost wages and benefits suffered as a result of the grievor's unlawful termination

[25] The grievor claims lost wages and benefits retroactive to the date of reinstatement, compensation for losses incurred because of the cancellation of those benefits retroactive to the start of his medical leave and leave with pay retroactive to April 1, 2005, the date on which the PSLRB was authorized to interpret and apply the provisions of the *CHRA*.

[26] The respondent takes the position that because the grievor was on leave without pay at the time of his termination, I can only put him back in the position he was at the time of termination, that is, on leave without pay, and therefore no compensation is payable under this head.

[27] In the circumstances of this case, I take the view that the damages owed to the grievor as a result of his termination are not particular to the employer's breach of the *CHRA*, but come under my general remedial authority as an adjudicator under subsection 208(2) of the *PSLRA* as in any other case involving a termination. A reinstated employee is normally entitled to be compensated for his losses, retroactive to the date of termination. Therefore, the grievor is entitled to his salary, lost overtime opportunities, benefits and any losses incurred as the result of the cancellation of his benefits retroactive to the date of reinstatement. Since I dismissed the grievor's harassment grievance there is no justification for an award retroactive to April 1, 2005.

[28] In my decision, at paragraph 169, I stated that "[t]he grievor is reinstated in the position he held at the time of his termination and entitled to benefits and wages, if that is the case [emphasis added]." My understanding of the grievor's status at the time of the adjudication of his grievances was that he was receiving workers' compensation benefits. Accordingly, there is no compensation owing by the respondent before the date of grievor's termination since he was receiving statutory benefits for which he applied.

2) $20,000 for pain and suffering pursuant to paragraph 53(2)(*e*) of the *CHRA*

[29] With respect to damages for pain and suffering, I note that the respondent has conceded that the grievor is entitled to damages. The grievor claims the $20,000 maximum under this heading, while the respondent believes that $7000 for pain and suffering is sufficient.

[30] In determining an appropriate amount of compensation, the *CHRA* sets out the following guidelines that I consider relevant: the nature, circumstances, extent and wilfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in.

[31] On the merits of this case, I determined that the respondent acted precipitously in terminating the grievor. The respondent knew about the grievor's frail medical condition, yet it disregarded the possible consequences on his health in its haste to

terminate his employment. The respondent invoked before me the fact that the grievor's absence was not good for the morale of the unit, while admitting that there had been no complaints from other employees. However, there is no evidence that the respondent engaged in prior discriminatory practices against the grievor. I also held that although the grievor was on work-related medical leave, the respondent took no interest in his medical well-being until the time came to terminate his employment, and at that time the respondent did not heed the recommendations of the grievor's physician that he could be accommodated back into the workplace.

[32] I am satisfied that as a result of the respondent's actions, the grievor experienced undue pain and suffering as understood by paragraph 53(2)(*e*) of the *CHRA* and that he should be compensated for that consequence.

[33] I reviewed the precedents submitted by the parties. The grievor's position is that his pain and suffering were more than the complainant in *Tahmourpour* and certainly as great as the complainant in *Charlton*. The respondent's position is that the grievor's pain and suffering are more in line with the complainants in *Day*, *Coulter*, *Knight* and *Tanzos*. Each of these cases turns on specific facts:

- In *Tahmourpour*, the complainant's employment was found to have been terminated for reasons associated with racial discrimination.
- In *Charlton*, the complainant received anonymous threatening letters constituting racial harassment at her place of residence that were found to be in breach of the employment relationship.
- In *Day*, the complainant was placed on sick leave and removed from the workplace; he was not informed of the reasons for the employer's decision.
- In *Coulter*, the complainant suffered a debilitating disease and was terminated for the quality of his work in an accommodated position.
- In *Knight*, the employer refused to hire the complainant in a specific position that would have accommodated the complainant's functional disability;

- In *Tanzos*, the employer treated the obligation to accommodate very narrowly by putting the complainant in a part-time position on an availability basis to accommodate her disability without regard to her needs.

[34] On the basis of these cases and the evidence I heard at the hearing, I am of the view that the grievor's pain and suffering were somewhat greater than in *Day*, *Coulter*, *Knight* and *Tanzos*, but not as great as that in *Charlton*. I find that the grievor's case is more closely associated with the facts and consequences in *Tahmourpour*. Accordingly, I find it appropriate to award the grievor compensation in the amount of $9000.

3) $20,000 in damages for the breach of the employment contract based on the principles set out in *Keays v. Honda Canada Inc.*

[35] On June 27, 2008, after the parties presented their written submissions, the Supreme Court of Canada reversed in part the decision of the Ontario Court of Appeal in *Keays* (see: *Honda Canada Inc. v. Keays*, 2008 SCC 39). In that case, the plaintiff's employment had been terminated because of his unwillingness to meet with the defendant's representatives about his continuing absence. The plaintiff sued for wrongful dismissal. Among other findings, the trial judge held that the defendant had committed acts of discrimination, harassment and misconduct against the plaintiff and awarded him an amount of $500,000, a costs premium and costs on a substantial indemnity scale. The Ontario Court of Appeal reduced the costs premium and the punitive damages award to $100,000 but otherwise upheld the trial judge's decision with respect to the notice period. On appeal from the appellant defendant, the Supreme Court, in a majority decision, set aside the award of aggravated damages for the manner of dismissal as well as the award of punitive damages. The Supreme Court reasoned that generally, damages are not available for the actual loss of employment or for the pain and distress suffered as a consequence of being terminated, except where these damages were within the reasonable contemplation of the parties at the time the contract of employment was entered into (the rule in *Hadley v. Baxendale* (1854), 9 Ex. 341, 156 E.R. 145). Similarly, punitive or aggravated damages are awarded only in exceptional circumstances where advertent wrongful acts are so malicious and outrageous that they deserve punishment on their own.

[36] Similar to the reasoning of the Supreme Court in *Keays* with regard to the availability of punitive damages at common law in the case of the termination of employment, I take the view that damages for the simple loss of employment or for the pain and distress suffered as a consequence of the loss of employment are not available under the *PSLRA*, but rather the length of the notice period is the appropriate remedy. In this case, as the grievor was reinstated and I have awarded full compensation for the loss of salary and other benefits from the date of termination, the grievor has been fully compensated for the breach of the employment contract.

[37] Based on the reasoning of the Supreme Court in *Keays*, the only reason for awarding punitive damages would be where the respondent's wrongful acts were so malicious and outrageous that they deserve punishment on their own. In this case the respondent's actions may have been disingenuous, but it was not demonstrated that the respondent's conduct was so malicious or outrageous as to constitute separate grounds for an award for a breach of contract other than the other statutory remedies in this award. Accordingly, there are no damages owing under this claim.

4) $20,000 in special compensation for the respondent's wilful and reckless violation of the grievor's rights pursuant to subsection 53(3) of the *CHRA* and
5) $50,000 damages for the negative impact of the respondent's breach of confidentiality during the mediation process

[38] I have chosen to treat these claims together as they both address additional compensation, but for different reasons. To the extent that I find that the grievor is owed damages flowing from the respondent's breach of the mediation process, then my general remedial authority applies to the amount of the damages that can be awarded, without a legislated maximum compensation. To the extent that I find that the respondent acted wilfully and recklessly within the meaning of the *CHRA* in failing to accommodate the grievor, then damages are limited to the maximum compensation of $20,000 under subsection 53(3).

[39] In this case, I am of the view that the negative impact of the respondent's breach of confidentiality during the mediation process goes hand in hand with the respondent's actions in the course of terminating the grievor's employment. Accordingly, a combined award of damages is appropriate. I must also consider the respondent's position that the reinstatement of the grievor is the ultimate remedy for any damages that may have been caused by the breach of the confidentiality of the mediation process and that no award is appropriate.

[40] According to the *Canadian Oxford Dictionary*, "reckless" means lacking caution or disregarding the consequences; "wilful" means intentional and deliberate. These definitions imply a standard of conduct that is somewhat below the malicious or outrageous conduct described by the Supreme Court. Consequently, to the extent that actions taken are deliberate and disregarding of the consequences, I believe they come within the parameters of the statute.

[41] On the merits of this case, I found that the respondent's representatives did not heed the undertaking of confidentiality that they signed before the mediator, a situation over which they had control. In that sense, I find the respondent's conduct to have been deliberate. I also found that the respondent's decision to terminate the grievor's employment was based not only on misleading information but that it was also made without considering the conditions imposed by law or the consequences on the grievor. In that sense, the respondent's conduct was reckless.

[42] In the reasons for decision in 2008 PSLRB 8, I highlighted that the mediation process was now a cornerstone of the Board's statutory mandate. I also set out how the confidentiality of the mediation process was now a well-established principle upheld by the courts. I further held that without a confidential process, the integrity of the Board's mediation process would be compromised. These elements emphasize how a breach of the confidentiality of the mediation process must be taken as a serious matter, especially when it leads, as in this case, to the unwarranted termination of an employee.

[43] In this case, the grievor's confidential information was disclosed not only to unauthorized persons outside the mediation process, that is, Captain Hainse and Ms. Stringer, it was also selectively and distortedly relayed in the briefing note to the Rear-Admiral that served as a justification to terminate the grievor's employment (see 2008 PSLRB 8). The following observations concerning the grievor's behaviour were not only irrelevant to the decision to terminate his employment but also set the grievor in the worst possible light: that the length and apparent lack of progress of a mediation process related to a different matter were due to the grievor, when this was clearly not the case; that mediation of a grievance failed because the grievor was uncooperative in refusing to accept the respondent's proposals; and reference was made to the participation of the grievor's spouse during the mediation process apparently to legitimize the respondent's termination process.

[44] In light of these considerations, I find that the grievor is entitled to a combined amount of additional compensation in the amount of $8000 based on my broad remedial authority under subsection 228(2) of the *PSLRA* and subsection 53(3) of the *CHRA*.

6) Interest pursuant to subsection 226(1)(*i*) of the *PSLRA*

[45] Paragraph 226(1)(*i*) of the *PSLRA* provides for an award of interest in the case of a grievance involving termination or financial penalty at a rate and for a period that the adjudicator considers appropriate. The ability to award interest is part of the changes introduced by the *PSLRA* with respect to the power of adjudicators. Moreover, in all the cases submitted by the parties, the Canadian Human Rights Commission awarded interest to the complainants for the termination of their employment because of discriminatory actions by the employer. I find the circumstances of this case and the previous decisions by the Canadian Human Rights Commission to be sufficiently persuasive to justify an award for interest as set out in the order below, based on the average rate of interest (daily series) determined by the Bank of Canada for the period of July 1, 2006 to August 1, 2008 retroactive to the date of termination.

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

(The Order appears on the next page)

V. Order

[47] The grievor is awarded the following compensation as of the date of reinstatement:

1) salary retroactive to the date of termination under subsection 228(2) of the *PSLRA*;

2) lost overtime opportunities retroactive to the date of termination under subsection 228(2) of the *PSLRA*;

3) employment benefits retroactive to the date of termination under subsection 228(2) of the *PSLRA*;

4) losses incurred as the result of the cancellation of the grievor's benefits under subsection 228(2) of the *PSLRA*;

5) $9000 for pain and suffering under paragraph 53(2)(*e*) of the *CHRA*;

6) $8000 as additional compensation under subsection 228(2) of the *PSLRA* and subsection 53(3) of the *CHRA*;

7) interest payable with regard to paragraphs 1), 2) 5), and 6) of this order under paragraph 226(1)(*i*) of the *PSLRA*, in the form of simple interest calculated on a yearly basis at the rate of 4.32 percent accruing from the date of the termination until the date of payment of the compensation.

8) I retain jurisdiction with respect to all aspects of this remedial award for a period of 60 days for the purpose of implementing this award.

September 5, 2008.

Michele A. Pineau,
adjudicator