Date: 20110322

File: 566-02-2173

Citation: 2011 PSLRB 35

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

NATHALIE CYR

Grievor

and

TREASURY BOARD
(Department of Human Resources and Skills Development)

Employer

Indexed as
Cyr v. Treasury Board (Department of Human Resources and Skills Development)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Patricia Harewood, Public Service Alliance of Canada

For the Employer: Michel Girard, counsel

Heard at Ottawa, Ontario,
March 1 to 3, 2011.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] Nathalie Cyr ("the grievor") suffers from environmental hypersensitivity. She is a project manager with the Department of Human Resources and Skills Development - Service Canada ("the employer"). Her position is classified PM-05. On February 2, 2007, Ms. Cyr filed a grievance alleging that the employer had discriminated against her and that it had contravened article 19 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada ("the bargaining agent") for the Program and Administration Services Group; expiry date June 20, 2007 ("the collective agreement"). The bargaining agent informed the Canadian Human Rights Commission that Ms. Cyr raised an issue in her grievance related to the application or interpretation of the *Canadian Human Rights Act (CHRA).*

[2] In her grievance, Ms. Cyr alleges that the employer failed in its duty to put in place and to maintain accommodations to address her physical limitations, which caused her physical and psychological harm. Ms. Cyr also alleges that Jo-Ann Dumont and May Morpaw discriminated against her and that they harassed her. Ms. Cyr claims that, therefore, the employer and its representatives violated the collective agreement and the *CHRA*.

[3] Ms. Cyr requests that acceptable accommodations be maintained and that the employer work with her to find her an interesting job and tasks. She also requests that the employer provide the managers concerned with training about the duty to accommodate and that the employer provide her with a written apology. Ms. Cyr requests that she be paid $20 000 for pain and suffering and $20 000 in special damages. Finally, she asks that the employer reimburse the sick leave and the annual leave that she was required to take because of the discrimination and harassment, along with the amounts she spent to obtain the medical certificates that it requested.

II. Summary of the evidence

[4] Ms. Cyr adduced 28 documents in evidence. She called Jean-Pierre Reid, Diane Bertrand and Dr. Jennifer Armstrong as witnesses. She also testified. The employer adduced four documents in evidence and called Ms. Dumont as a witness. Ms. Dumont was returning from sick leave at the time of the hearing. The employer asked that she testify by telephone given that her health did not allow her attend the hearing. Ms. Cyr did not object.

[5] During the first half-day of the hearing, I informed the parties that I had rendered the decision in *Dumont v. Canada Employment and Immigration Union*, 2010 PSLRB 37, which involved Ms. Dumont, the employer's witness. I provided each party with a copy of that decision. After reading it, each stated that it did not see any conflict of interest or appearance of bias on my part. I told them that I agreed with them but that it had seemed important to me to inform them of the decision involving Ms. Dumont.

[6] Ms. Cyr began working in the public service in 1992. In February 2004, she obtained a position with Service Canada at Place du Portage, Phase IV, in downtown Gatineau. Phase IV is an office tower and is part of a large complex made up of several towers comprising four phases that are attached and that are named Phase I, Phase II, Phase III, Phase IV and Place du Centre. Ms. Cyr was a project manager in 2004, was still one in 2007 when she filed her grievance and still in 2011 at the time of the hearing.

[7] Before working at Phase IV, Ms. Cyr had never had any particular health issues, including environmental hypersensitivity. One month after starting at Phase IV, Ms. Cyr began feeling very tired. She would have headaches and sinus pain about one hour after arriving at work. Some time after she returned home, the health problems would disappear. The next morning, the symptoms would return about an hour after she arrived at her office. Ms. Cyr spoke to her physician about the problems. She was referred to a specialist, who was unable to make a diagnosis. Then, in August 2004, she saw Dr. John Molot, who was very familiar with environmental medicine. However, Ms. Cyr did not obtain a medical certificate or a written diagnosis from Dr. Molot at that time.

[8] In March 2004, Ms. Cyr mentioned her health problems to her supervisor, Mr. Reid. Later, Ms. Cyr asked Mr. Reid if she could work from home. According to Ms. Cyr, she asked to telework five days per week. Mr. Reid does not recall whether Ms. Cyr's request was for full-time telework. Regardless, a telework agreement was signed on June 1, 2004 by which Ms. Cyr would work from home three days per week and at the office two days per week. Ms. Cyr testified that she was not fully satisfied with that accommodation. However, she did not speak to her bargaining agent and did not file a grievance because she did not want to create tension with management. Mr. Reid agreed to the arrangement without asking Ms. Cyr for a medical certificate.

[9] Ms. Morpaw, the director to whom Mr. Reid reported, was not in favour of telework. In 2005, she decided to have all employees working from home return to the office. Mr. Reid had informed Ms. Morpaw that Ms. Cyr had health problems. Therefore, Ms. Morpaw agreed to Mr. Reid's proposal that Ms. Cyr not return to the office full-time, but, as of August 31, 2005, she increased the number of days Ms. Cyr was in the office each week from two to three. Ms. Cyr did not agree with increasing the time she was in the office because it made her sicker. In contrast, she wanted to work from home full-time. To some extent, Mr. Reid was caught between Ms. Morpaw, who wanted Ms. Cyr to work in the office full-time, and Ms. Cyr, who wanted to work from home full-time. Ms. Cyr was aware of it and agreed to increase her hours working in the office because she wanted to maintain good relations with management. She never spoke to Ms. Morpaw because she did not believe that she should go over her supervisor's head and because she felt that she should respect the hierarchy. She did not contact her bargaining agent and did not file grievances or complaints to contest the employer's decision. Mr. Reid did not ask Ms. Cyr for a medical certificate, and she did not offer to provide one to him.

[10] Beginning in September 2005, Ms. Cyr's symptoms worsened because she was working one additional day in the office each week. Mr. Reid was aware of it but said that he could do nothing more for her because of Ms. Morpaw's telework position. In the meantime, Ms. Cyr's performance between 2004 and 2006 was excellent, based on the performance and learning agreements adduced and the testimony of Mr. Reid, who was her immediate supervisor.

[11] In April 2006, Mr. Reid informed Ms. Cyr that Ms. Morpaw wanted her to return to the office full-time and that she was terminating the telework agreement. Ms. Cyr responded that her health did not allow her to return full-time. Mr. Reid suggested that she obtain a medical certificate confirming her state of health. On April 28, 2006, Ms. Cyr obtained a certificate from Dr. Molot confirming that she suffered from environmental hypersensitivity caused by the work environment at Place du Portage, Phase IV. Dr. Molot recommended that Ms. Cyr's needs be met by allowing her to work from home and indicated that he did not know when she would be able to return to work in her workplace. Ms. Cyr gave Mr. Reid her medical certificate. As of that moment, the employer approved her working from home full-time. From then on, with a few exceptions to attend short meetings, Ms. Cyr has always worked at home. As of March 3, 2011, it was still the case.

[12] Ms. Cyr testified that her health problems from being in the office gradually dissipated after April 2006. However, she also testified that other symptoms have appeared. According to her, the harm had already been done because she had spent too much time in the physical environment of Phase IV. She had problems with insomnia, frequently caught viruses and suffered from food allergies. Her health is no longer what it was before 2004.

[13] In September 2006, Mr. Reid announced that he was retiring at the end of the year and that Ms. Dumont would replace him. She arrived in the division in September 2006 but did not assume responsibility for it until the end of October 2006. At that point, Ms. Dumont became Ms. Cyr's supervisor. It is clear from the testimony and from the correspondence exchanged that the relationship between Ms. Cyr and her new supervisor, Ms. Dumont, was tense and even confrontational.

[14] Ms. Cyr and Ms. Dumont had their first meeting on September 21, 2006. At that meeting, they discussed Ms. Cyr's tasks and responsibilities. Ms. Cyr mentioned to Ms. Dumont that she worked from home on her physician's orders because she had developed a sensitivity to her work environment at Place du Portage and that, in her condition, she could not longer work there without risking damage to her health. Ms. Dumont stated that she was aware of management's accommodation obligations but that she did not like that Ms. Cyr teleworked and that, in general, she was against it, especially for senior-level officers like Ms. Cyr. Ms. Dumont testified that she also told Ms. Cyr that she did not have a problem with the duty to accommodate but that she needed to know more about Ms. Cyr's tasks. Ms. Cyr knew then that her situation upset Ms. Dumont. That created a get deal of stress for her, made her anxious, and, according to her, contributed to the deterioration of her health.

[15] In November 2006, Ms. Dumont informed Ms. Cyr that, in future, the employer would charge her one hour of sick leave for her weekly visits to her doctor for allergy shots, something that it had not done before. Ms. Dumont testified that Ms. Cyr was very angry with that decision.

[16] Ms. Cyr and Ms. Dumont met for a second time on November 30, 2006. Ms. Dumont called the meeting to explain to Ms. Cyr, as she had with the division's other employees, her plan for reorganizing the division's work. Ms. Dumont explained that she had to deal with the departure of experienced people from her division and that she had to reorganize tasks. Ms. Dumont informed Ms. Cyr of her new

responsibilities. Those responsibilities meant that, as of January 2007, Ms. Cyr would have to stop teleworking and would have to work at Place du Centre, which is part of the Place du Portage complex. Ms. Cyr indicated that she did not agree, that it was contrary to her physician's recommendations and that the same air circulated through the entire Place du Portage complex. Ms. Dumont reiterated that Ms. Cyr was required to report to Place du Centre in January 2007. She suggested to Ms. Cyr that she verify whether a position was available in the appeals division, which would be suited to teleworking. She checked, and no vacant positions were available there. Ms. Dumont admitted that she did not consult Ms. Cyr before deciding what her new tasks would be as of January 2007. She also admitted that she had not done any research on the air quality situation or on Place du Centre's type of ventilation system.

[17] On December 7, 2006, Ms. Dumont and Ms. Cyr spoke by telephone. Ms. Cyr clearly indicated to Ms. Dumont that the request to report to Place du Centre contravened her physician's recommendations. On December 13, 2006, Ms. Cyr wrote to Ms. Dumont. She began by summarizing her version of what had happened during the previous meetings. She then wrote that Ms. Dumont's management style was very controlling, that Ms. Dumont had a moral obligation to treat her humanely and that, if that were not enough, the bargaining agent would ensure that Ms. Dumont met all her legal obligations. Ms. Dumont testified that she was hurt by Ms. Cyr's comments and that Ms. Cyr had been aggressive. Ms. Cyr testified that Ms. Dumont was impossible, insensitive and intimidating and that Ms. Dumont's attitude had upset her.

[18] Ms. Cyr then consulted her bargaining agent. She saw Dr. Molot. He gave her a new medical certificate on December 20, 2006. In it, he wrote that Ms. Cyr is sensitive to air pollutants in buildings equipped with mechanical ventilation systems like Place du Portage, even if the air quality is normal according to accepted standards. Those standards are not adapted to persons with environmental hypersensitivity, like Ms. Cyr. Dr. Molot also wrote that Ms. Cyr had to continue to work from home because her level of sensitivity had not decreased despite treatment. Therefore, it was likely that she would continue to experience similar health problems if she worked in other public buildings. Consequently, she should be authorized to continue to work from home on telework. Ms. Cyr personally handed the medical certificate to Ms. Dumont.

[19] On January 22, 2007, Ms. Dumont wrote to Ms. Cyr to clarify the situation and to follow up. She wrote that she had to establish the possible date of Ms. Cyr's return

to the office so that she could fully perform the tasks of which Ms. Dumont had informed her at the November meeting. She also wrote that she was not questioning Ms. Cyr's environmental sensitivity but that Ms. Cyr had been seen in other buildings with a mechanical ventilation system in recent months. Ms. Dumont asked Ms. Cyr to provide her with another medical evaluation, indicating the approximate date of her return to work in an office equipped with a mechanical ventilation system, providing an opinion on the feasibility of a return to work in the near future at Place du Centre or another location close to Place du Portage, indicating whether Ms. Cyr was able to handle her full workload, indicating whether Ms. Cyr was able to attend meetings from time to time, and establishing the possible locations of those meetings. In the letter, Ms. Dumont requested written consent from Ms. Cyr for the employer to consult relevant resources in the medical field, including Health Canada, to determine the accommodations to make.

[20] On January 24, 2007, Ms. Cyr again saw Dr. Molot, who gave her a much more detailed medical certificate generally reiterating what had already been written on December 20, 2006 about Ms. Cyr's health and her limitations working in an office with a mechanical ventilation system. Ms. Cyr gave the new medical certificate to her employer. She asked it to reimburse her the $300 for the cost of the certificate. Ms. Dumont refused. On February 1, 2007, among other things, the grievor wrote to Ms. Dumont to inform her that she would not return to work in buildings equipped with mechanical ventilation systems because they would trigger negative health symptoms.

[21] Ms. Cyr filed this grievance on February 2, 2007. Because Ms. Cyr alleged in the grievance that Ms. Dumont was harassing her, the employer decided that in future Ms. Cyr would report to Ms. Bertrand, for whom Ms. Cyr did most of her project management work. At that time, Ms. Bertrand was the chief registrar of the Office of the Umpire of employment insurance and Ms. Cyr's client. Therefore, Ms. Cyr continued to do the same work she had been doing before her grievance, but with a different supervisor. Ms. Bertrand supervised Ms. Cyr until December 2008, when she retired. Ms. Bertrand testified that she was fully satisfied with Ms. Cyr's work, both as her client and her supervisor.

[22] Dr. Armstrong testified about the symptoms that people suffering from environmental hypersensitivity experience and about Ms. Cyr's particular situation,

whom she has been treating since October 2007. Dr. Armstrong is one of the few environmental medicine specialists in Canada. Based on her c.v. and her testimony, I recognized her as an expert in the field at the hearing at the request of the bargaining agent. The employer did not object but mentioned that Dr. Armstrong began treating Ms. Cyr several months after she filed her grievance. Dr. Armstrong explained that environmental hypersensitivity is difficult to diagnose and that, often, those suffering from it must consult several physicians or specialists before it is properly diagnosed. Those who suffer from environmental sensitivity cannot deal with the chemical pollutants in the air of many office buildings. When they are no longer exposed to those pollutants, their situations improve. Dr. Armstrong testified about Ms. Cyr's precarious state of health, beginning in 2007. In her opinion, Ms. Cyr's problems were caused by having been exposed for too long to the pollutants in the air at Place du Portage, Phase IV. Additionally, the stress that she experienced when she had to defend her situation to Ms. Dumont might have aggravated her condition.

[23] When the employer agreed to Ms. Cyr working from home in June 2004, it provided her with a laptop computer. On January 9, 2007, Ms. Cyr asked Ms. Dumont for the employer to provide her with a printer for her work. She explained that all she needed was a basic printer that would cost between $200 and $300. Ms. Cyr also requested that the ergonomic chair that the employer had purchased for her when she worked at the office be delivered to her house. On January 11, 2007, Ms. Cyr asked that two large boxes containing all her work files and certain personal items be delivered to her at the same time as the printer and the chair. She also asked that she be provided with a filing cabinet in which to place all her documents. The same day, Ms. Dumont responded that she would get back to Ms. Cyr with an answer sometime that week or at the beginning of the next week. On January 25, 2007, Ms. Cyr emailed Ms. Dumont, reminding her that it had been more than two weeks since she had received Ms. Cyr's equipment request and that the employer was failing in its duty to accommodate by not providing the equipment required to do the work. On January 26, 2007, Ms. Dumont replied that the chair, printer and boxes were available and that Ms. Cyr could come get them. On January 26, 2007, Ms. Cyr emailed that the equipment should be delivered to her home.

[24] Ms. Bertrand testified that she complied with Ms. Cyr's request for the equipment that she required except for a computer, because she did not have the budget to purchase one for Ms. Cyr. According to Ms. Cyr, the filing cabinet and the

printer were not provided to her until fall 2008. Denis Bélanger replaced Ms. Bertrand as the chief registrar. Ms. Cyr asked Mr. Bélanger to provide her with what she was missing at home so that she could have an ergonomic workstation. According to her testimony and the documents adduced, as of November 19, 2009, Ms. Cyr still did not have all the equipment she required to work from home, namely, a computer and a keyboard tray.

[25] The employer's telework policy, which took effect on December 9, 1999, was adduced in evidence. Mr. Reid testified that he was familiar with it. Ms. Dumont testified that she was familiar with it and that she knew that the employer was required to provide work tools to people on telework.

[26] Ms. Cyr testified that neither public health insurance nor the private plan covering federal employees covers the costs of consulting Dr. Molot or Dr. Armstrong. The plans also did not cover the several medical and paramedical expenses that Ms. Cyr had to incur for her care. On that point, Ms. Cyr adduced in evidence invoices totalling approximately $17 000. She also incurred significant expenses when she travelled to see a specialist in Florida.

[27] Ms. Cyr has suffered considerably from her illness and from the stress that resulted from the employer's conduct. She stated that she has experienced a great deal of anxiety and fear at the idea of having to take legal action against her employer. Her personal and family lives have suffered a great deal because of it. The situation even affected her children and her spouse. At one point, she developed food allergies to the point that her diet became very restricted. She testified that she had to wait until October 2010 to be fully accommodated, except that she feels excluded from the work environment because she does not take part in meetings and is not informed of what goes on. She also believes that her tasks have been reduced and that she does not have an opportunity to do all the work corresponding to her classification.

[28] In early 2007, Ms. Cyr submitted a claim to the Commission de la santé et de la sécurité du travail du Québec (CSST). Her claim was denied on May 18, 2007. The CSST concluded that Ms. Cyr did not demonstrate that she was suffering from a work-related illness. Ms. Cyr did not appeal the decision and did not submit a new claim to the CSST.

III. Summary of the arguments

A. For Ms. Cyr

[29] The evidence adduced demonstrated that Ms. Cyr has suffered from environmental hypersensitivity since 2004. The employer did not contest that evidence. By refusing to accommodate Ms. Cyr, the employer failed in its duty. It did not prove that undue hardship prevented it from accommodating her. By acting as it did, the employer violated the *CHRA* and the collective agreement.

[30] In 2004, Ms. Cyr asked to work from home because the air in the office was making her ill. The employer refused to fully accommodate her and instead agreed to three days per week of telework. Even though Ms. Cyr's health did not improve and the office air was still making her ill, the employer unilaterally decided in August 2005 to reduce her telework to two days per week, forcing her to spend three days per week in the office. Then, in November 2006, it unilaterally changed her duties and told her that she had to return to the office full-time as of January 2007.

[31] Ms. Cyr began feeling ill one month after starting work at Place du Portage, Phase IV. The evidence clearly demonstrated that she felt better when she was not in the office and that the employer was aware of that fact. In 2004 and 2005, the employer did not ask her for a medical certificate but still refused to fully accommodate her. The employer did not show any concern for her health. Things got worse with the arrival of Ms. Dumont, because she harassed Ms. Cyr in addition to refusing to provide her with work tools, changing her tasks and threatening to revoke her teleworking.

[32] Quantifying the damages that Ms. Cyr has suffered is difficult. It must be considered that she suffered humiliation, anxiety and stress, which contributed to the deterioration of her health. The situation affected her children and her spouse. After 2007, the problems affected her so much that she was no longer able to eat. In addition, the employer isolated her from the office, and she no longer has contact with her colleagues.

[33] In terms of special damages, consideration must be given to the fact that Ms. Dumont made a deliberate effort to have Ms. Cyr return to Place du Portage even though she knew that Ms. Cyr was ill. Ms. Dumont questioned Ms. Cyr's credibility by doubting that she was sick because Ms. Dumont said that she had seen Ms. Cyr in an

office building. Overall, the employer demonstrated very little tolerance toward an employee with a physical disability. It must be punished for its attitude.

[34] Ms. Cyr referred me to the following decisions: *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 ("*Meiorin*"); *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536; *Lloyd v. Canada Revenue Agency*, 2009 PSLRB 15; *Pepper v. Deputy Head (Department of National Defence)*, 2008 PSLRB 71; *Panacci v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 2; *Maljkovich v. Canada*, 2005 FC 1398; *Ontario Public Service Employees Union v. Ontario (Ministry of Correctional Services)*, 2002 CanLII 45774 (ON G.S.B.); and *Johnstone v. Canada Border Services Agency*, 2010 CHRT 20.

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

[35] According to the employer, nothing in the conduct and decisions of its representatives should lead the adjudicator to conclude that Ms. Cyr was not fully accommodated between 2004 and November 2006. In addition, if Ms. Cyr wants to claim damages for the problems caused because she worked at Phase IV, she must do so to the CSST, which has jurisdiction over such cases.

[36] Mr. Reid testified that Ms. Cyr did not complain about teleworking three days per week. Therefore, he was unable to do more to accommodate her. In August 2005, when Ms. Cyr's telework was reduced to two days per week, she did not produce a medical certificate to confirm that that arrangement was unacceptable. In addition, she did not speak to Ms. Morpaw. At that time, the employer had nothing in hand to confirm Ms. Cyr's illness and required accommodations. In April 2006, when Ms. Cyr provided a medical certificate, the employer fully accommodated her.

[37] The employer's requirements in terms of Ms. Cyr's work changed in August 2006, which was why Ms. Dumont wanted to reorganize Ms. Cyr's tasks. Employees were retiring, and Ms. Dumont wanted Ms. Cyr to return to Place du Centre. Ms. Dumont was prepared to accommodate Ms. Cyr and asked her for a medical certificate to better understand her limitations.

[38] It is certainly obvious from the evidence adduced that Ms. Dumont and Ms. Cyr did not have a healthy relationship. However, it is not possible to conclude that

Ms. Dumont harassed Ms. Cyr. Ms. Dumont did not seek to humiliate or demean Ms. Cyr. She simply wanted Ms. Cyr to take on other duties and to return to work in an office or to provide a medical certificate to justify why she could not.

[39] The employer referred me to the following decisions: *Hydro-Québec*; *Pepper*; *Lloyd*; *Rees v. Canada (Royal Canadian Mounted Police)*, 2005 NLCA 15; *Callan v. Suncor Inc.*, 2006 ABCA 15; *Béliveau St-Jacques v. Fédération des employés et employées des services publics inc.*, [1996] 2 S.C.R. 345; *Canada (Attorney General) v. Demers*, 2008 FC 873; *Lowe v. Landmark Transport Inc.*, 2007 FC 217; *Gibson v. Treasury Board (Department of Health)*, 2008 PSLRB 68; *Joss v. Treasury Board (Agriculture & Agri-Food Canada)*, 2001 PSSRB 27; *Lafrance v. Treasury Board (Statistics Canada)*, 2007 PSLRB 31; and *Spooner v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 60.

IV. Reasons

[40] Ms. Cyr alleged that the employer discriminated against her by failing in its duty to put in place and to maintain accommodation measures for her physical limitations. She also alleged that Ms. Dumont and Ms. Morpaw harassed her. Ms. Cyr claimed that the employer and its representatives violated the collective agreement and the *CHRA*.

[41] Clause 19.01 of the collective agreement deals with eliminating discrimination. It reads as follows:

> ***19.01*** *There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.*

[42] The following provisions of the *CHRA* also apply to Ms. Cyr's grievance:

> . . .
>
> ***3****. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.*
>
> . . .

> ***7.*** *It is a discriminatory practice, directly or indirectly,*
>
> *(*a*) to refuse to employ or continue to employ any individual, or*
>
> *(*b*) in the course of employment, to differentiate adversely in relation to an employee,*
>
> *on a prohibited ground of discrimination.*

. . .

[43] I accept the evidence adduced by Ms. Cyr that demonstrated that she suffers from environmental hypersensitivity and that the symptoms of her illness first appeared in 2004 while working at Place du Portage, Phase IV. Additionally, the employer did not contest that Ms. Cyr suffers from environmental sensitivity. Given the testimonies of Ms. Cyr and Dr. Armstrong and the documents adduced during the hearing, I consider that the environmental hypersensitivity from which Ms. Cyr suffers is a disability within the meaning of subsection 3(1) of the *CHRA* and is a physical disability within the meaning of clause 19.01 of the collective agreement. The employer did not present any argument to the contrary.

[44] Since Ms. Cyr proved that she suffered and that she continues to suffer from a disability or physical disability, the question is whether the employer failed in its duty to accommodate, as Ms. Cyr claims, and whether it harassed her because of her physical disability.

[45] The Supreme Court established in *Simpsons-Sears* that employers have a duty to take reasonable steps to accommodate employees' functional limitations, provided that the steps do not cause it undue hardship. The Supreme Court also specified in *Meiorin* that employers must make sustained and prolonged efforts to find a solution that enables employees to remain at work in spite of their medical constraints. In its arguments, the employer did not claim that Ms. Cyr's requests represented undue hardship. Therefore, I do not believe it useful to analyze how the principles developed in *Hydro-Québec* or *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, apply to this case.

[46] The duty to accommodate also includes procedural aspects in the sense that an employer must seriously examine how it can accommodate a given employee. To that end, the employer must first obtain all relevant information about the employee's

disability. It must then work with the employee to see how he or she can be accommodated. As the adjudicator wrote in *Panacci*, failing to give any thought or consideration to accommodation is failing to satisfy the duty to accommodate.

[47] Ms. Cyr began working at Place du Portage in February 2004. One month later, she began having health problems. She spoke about them to Mr. Reid, who agreed to accommodate her by allowing her to work from home three days per week. It is somewhat late to argue in 2011 through the adjudication of a grievance filed in 2007 that the 2004 accommodation was inadequate. I understand that Ms. Cyr chose at that time not to "rattle the cage" to remain on good terms with the employer and that she agreed to the arrangement suggested by Mr. Reid. The employer thought that the arrangement was satisfactory. If not, it was Ms. Cyr's responsibility to discuss it. She could have spoken to Mr. Reid's superiors, contacted her bargaining agent or filed a grievance. She could also have obtained a medical certificate supporting her full-time relocation from Place du Portage, Phase IV. She did not, and I am not prepared, several years later, to hold the employer responsible.

[48] Mr. Reid, Ms. Dumont and Ms. Cyr testified that Ms. Morpaw was not in favour of telework. Ms. Morpaw was entitled to that opinion. In August 2005, based on Ms. Morpaw's opinion of telework, Mr. Reid asked Ms. Cyr to increase her time in the office from two to three days per week. According to Mr. Reid, Ms. Morpaw agreed to not require Ms. Cyr to return full-time to the office, where she experienced health problems. Even though she did not agree with that arrangement, Ms. Cyr accepted it. She did not contact Ms. Morpaw or her bargaining agent, did not file a grievance and did not submit a medical certificate to support her relocation from the workplace. Once again, I am not prepared, several years later, to hold the employer responsible.

[49] In April 2006, Ms. Morpaw wanted Ms. Cyr to return to the office full-time. At Mr. Reid's suggestion, Ms. Cyr then provided a medical certificate certifying that she suffered from environmental hypersensitivity caused by the ambient air quality in Place du Portage, Phase IV. The employer then approved her working from home full-time. Until then, the employer had fully met its duty to accommodate. As soon as Ms. Cyr presented a request to telework full-time with a supporting medical certificate, the employer accommodated her as she requested.

[50] However, the employer's attitude changed beginning in September 2006 with the announcement of Mr. Reid's departure. Ms. Dumont was aware of Ms. Cyr's state of

health, which had been confirmed by a medical certificate dating from less than six months before. Ms. Dumont also knew that Ms. Cyr had been authorized to work from home because of her health. Nevertheless, Ms. Dumont, with full knowledge of the circumstances, informed Ms. Cyr that she did not like her teleworking and that, in general, she was against it. That was the employer's first failure of its duty to accommodate. It is very clear from analyzing the case law that the employer must make sustained and prolonged efforts to accommodate employees. Ms. Dumont, by her comments, did exactly the opposite. From her first contact with Ms. Cyr, and without a legitimate reason, she questioned the existing accommodations simply because of her own organizational preferences, without attempting to understand Ms. Cyr's limitations.

[51] In November 2006, Ms. Dumont informed Ms. Cyr that, in future, the employer would charge her one hour of sick leave for her weekly visit to the physician for her allergy shots. No evidence was adduced at the hearing to show that Ms. Dumont's decision was discriminatory or that it constituted harassment of Ms. Cyr. By acting as she did, Ms. Dumont was simply applying the collective agreement and the employer's general interpretation of it, right or wrong.

[52] On November 30, 2006, Ms. Dumont met with Ms. Cyr and explained to her that she was reorganizing the employees' tasks. As part of that reorganization, Ms. Cyr was required to assume new responsibilities and, as of January 2007, to stop teleworking and begin working at Place du Centre, which is located in the Place du Portage complex. Ms. Cyr indicated that, for health reasons, she did not agree with that decision. Ms. Dumont never consulted Ms. Cyr before deciding to change her tasks and to terminate her telework arrangement. That amounts to another failure by the employer of its duty to accommodate. Rather than making sustained and prolonged efforts to accommodate Ms. Cyr, Ms. Dumont proposed putting measures in place that were precisely contrary to accommodating Ms. Cyr. No evidence was adduced that might lead me to conclude that major organizational requirements justified Ms. Dumont's decision to terminate the accommodation.

[53] On December 20, 2006, Ms. Cyr obtained a new medical certificate. On that certificate, which was given to Ms. Dumont, Dr. Molot established that Ms. Cyr needed to continue to work from home because her level of sensitivity to the ambient air had not improved and because it was likely that she would continue to have similar health

problems if she worked in other public buildings. Rather than discussing with Ms. Cyr the accommodations and limitations arising from the new medical certificate, Ms. Dumont asked her for another medical certificate. No evidence was adduced to indicate that Ms. Dumont was reacting to major organizational constraints. In addition, no evidence was adduced to show that the employer made a sustained effort to accommodate Ms. Cyr at that time. Once again, the employer failed in its duty to accommodate Ms. Cyr. Rather than helping her, it appeared to be trying to catch her because she had been seen in buildings possibly equipped with mechanical ventilation systems. In addition, she was required to obtain a new medical certificate but was not told that she would have to assume the associated costs.

[54] By failing in its duty to accommodate Ms. Cyr's physical disability, the employer discriminated against her from September 2006 to the end of January 2007. Thus, the employer violated the *CHRA* and clause 19.01 of the collective agreement.

[55] Ms. Cyr also claimed that Ms. Dumont and Ms. Morpaw harassed her. The only evidence adduced with respect to Ms. Morpaw was that she was not in favour of teleworking and that she might have had a role in the employer's decisions to approve or deny Ms. Cyr's telework arrangement. At the most, Ms. Morpaw might have been involved in the discrimination against Ms. Cyr, but no evidence leads me to find that she harassed Ms. Cyr. Although the situation is less clear with respect to Ms. Dumont, I also find that the evidence adduced does not allow me to find that Ms. Dumont harassed Ms. Cyr about her physical disability. Of course, Ms. Dumont was directly and actively involved in discriminating against Ms. Cyr, but she did not harass her. Ms. Dumont's comments created stress and anxiety for Ms. Cyr. Ms. Cyr's comments hurt Ms. Dumont. According to Ms. Dumont, Ms. Cyr was aggressive. According to Ms. Cyr, Ms. Dumont was impossible, insensitive and intimidating. In *Joss*, the adjudicator wrote the following about the current public service policy:

. . .

> *Harassment means any improper behaviour by a person employed in the Public Service that is directed at, and is offensive to, any employee of the Public Service and which that person knew or ought reasonably to have known would be unwelcome. It comprises objectionable conduct, comment or display made either on a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee.*

. . .

My analysis of the evidence leads me to conclude that Ms. Dumont was indeed insensitive to Ms. Cyr's physical disability, but that evidence does not enable me to conclude that harassment occurred. I do not believe that Ms. Dumont was aware of the effect and the inappropriateness of her attitude, comments and decisions.

[56] Since 2004, Ms. Cyr has teleworked part-time or full-time. It is clear that her initial request to telework was motivated by her health, which the employer was aware of. It is also clear that the employer knew in 2006 that Ms. Cyr's request to work from home full-time was also motivated by her health. From then on, the employer had an obligation to provide Ms. Cyr with proper office equipment as it did for other employees working in the office without a physical disability. Were the employer to disagree with providing Ms. Cyr comparable equipment because she works from home due to her illness, it would be discriminating against her based on her disability unless providing her with the necessary equipment would constitute undue hardship.

[57] When Ms. Cyr began teleworking in 2004, she had access to the employer's computer network, and it provided her with a laptop. Then, in January 2007, Ms. Cyr asked that she be provided with a printer because of work requirements. She also requested boxes of her documents, which were at the office, a filing cabinet for those documents, and the ergonomic chair that she used in the office. That equipment was not expeditiously delivered to Ms. Cyr. Ms. Bertrand testified that she fulfilled Ms. Cyr's request, but she did not specify when. Ms. Cyr testified that she did not receive the equipment until fall 2008. Ms. Cyr also asked Ms. Bertrand and then Mr. Bélanger to provide her with a computer and a keyboard tray. In November 2009, Ms. Cyr had still not received the computer and tray. In contrast, when Ms. Cyr was in the office, she had access to all the equipment that she required. The employer's negligence providing Ms. Cyr with the equipment required to perform her work represents a failure in its duty to accommodate. By its actions, the employer discriminated against Ms. Cyr and violated the *CHRA* and clause 19.01 of the collective agreement.

[58] Ms. Cyr testified that working at Place du Portage, Phase IV, had made her ill. Dr. Armstrong's testimony was similar. Ms. Cyr adduced evidence of receipts totalling $17 000 for expenses that she incurred for her care. I do not have jurisdiction to determine whether Ms. Cyr became ill because of her work and then determine

whether the expenses she incurred were from an illness contracted at work. The question of work-related illnesses and accidents does not fall under an adjudicator's jurisdiction but rather that of the provincial administrations mandated to that effect, in this case, the CSST. Fundamentally, those questions fall under the *Government Employees Compensation Act*, Chapter G-5. That statute stipulates that compensation for a government employee who suffered an industrial disease or workplace accident is payable at the rates and in accordance with the conditions of the province in which the employee is employed. Rather, my jurisdiction is limited to determining if discrimination occurred or if the employer failed to accommodate.

[59] Ms. Cyr asked me to order the employer to reimburse her for the sick leave and vacation leave that she had to take because of the discrimination that she experienced. She did not submit any leave records to support her claim. In addition, the evidence did not permit me to establish a direct or indirect causal relationship that the employer's actions resulted in Ms. Cyr having to take leave.

[60] Ms. Cyr asked that I order the employer to reimburse the $300 that she had to spend to obtain a medical certificate from Dr. Molot because of Ms. Dumont's request of January 22, 2007. Ms. Cyr adduced evidence that the certificate cost her $300. She also adduced evidence that the certificate signed by Dr. Molot on December 20, 2006 and given to Ms. Dumont was amply sufficient to justify accommodation. Given that the employer did not actually require that new certificate and that the December 20, 2006 certificate was amply sufficient, Ms. Cyr should not have had to assume the cost of that whim of the employer, and it must pay her the $300.

[61] Ms. Cyr also asked for $20 000 for pain and suffering and for $20 000 in special damages. I agree that she should be paid damages. On that point, the parties referred me to *Pepper, Johnstone* and *Lloyd*, which may serve as comparisons for determining the amounts payable to Ms. Cyr.

[62] Paragraph 226(1)(*h*) of the *Act* provides adjudicators with the power to give relief in accordance with paragraph 53(2)(*e*) of the *CHRA*, which reads as follows:

> ***53.*** *(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or 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 or panel considers appropriate:*
>
> . . .
>
> *(*e*) that the person compensate the victim, by an 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 or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.*

[63] In *Pepper*, the adjudicator reviewed a great number of precedents in which the Canadian Human Rights Tribunal (CHRT) had awarded damages. That decision was the first in which a Board adjudicator awarded damages because of a violation of the *CHRA*. In *Pepper*, the adjudicator ordered the employer to pay the employee $9000 for pain and suffering and $8000 under subsection 53(3) of the *CHRA*. The adjudicator based her decision on the fact that the employer had discriminated against Mr. Pepper by unfairly terminating his employment while he was ill, by acting recklessly toward him and by breaching the confidentiality of the mediation process.

[64] In *Lloyd*, the adjudicator concluded that the employer had discriminated against the grievor because it had put in place an accommodation plan not suited to her physical disability and because it had delayed helping her. The adjudicator ordered the employer to pay the grievor $6000 for pain and suffering. However, he decided not to order compensation under subsection 53(3) of the *CHRA* because the grievor did not establish that the employer had engaged in a discriminatory practice wilfully or recklessly.

[65] In *Johnstone*, the CHRT required the employer to pay $15 000 for the employee's pain and suffering and $20 000 in damages under subsection 53(3) of the *CHRA*. The CHRT determined that, by refusing to accommodate the employee's family situation, her employer had caused her significant pain and suffering and had undermined her personal and professional confidence and reputation. The CHRT also

found that the employer had acted wilfully and recklessly and that it had not respected the employee's family situation.

[66] The discrimination that Ms. Cyr suffered did not result in the loss of her job, as was the case for Mr. Pepper. However, the consequences for her health were very serious. Ms. Cyr testified that Ms. Dumont's attitude caused her a great deal of stress, made her anxious and contributed to the deterioration of her state of health. The situation also negatively affected Ms. Cyr's family life. On those points, I believe Ms. Cyr, especially since her testimony was not challenged. Of course, Ms. Cyr did not have to suffer objective consequences as serious as those of Mr. Pepper, but what she felt and the subjective consequences of the employer's decisions were no less serious. I read *Lloyd* very carefully. I find that Ms. Cyr's pain and suffering was much greater than that of Ms. Lloyd. It is difficult to establish a parallel with *Johnstone*. First, the CHRT did not provide detailed reasons for awarding $15 000 for pain and suffering to the employee. In addition, the discrimination in that case occurred over a much longer period than in Ms. Cyr's case.

[67] Given the cited cases and the nature, circumstances and severity of the discrimination, I conclude that the employer should pay Ms. Cyr an amount of $8000 for the pain and suffering that she experienced.

[68] As for the special award payable under subsection 53(3) of the *CHRA*, a comparison with the cited decisions seems even more difficult. Instead, I believe that the issue is to determine the extent to which the perpetrators of the discriminatory practices acted wilfully and recklessly.

[69] Nothing in the evidence adduced allowed me to conclude that the employer deliberately discriminated against Ms. Cyr or that, in other words, there was intent to discriminate. However, analyzing that same evidence demonstrates that the discrimination consisted of reckless acts, i.e., acts that showed a lack of thought and of consideration in managing an employee with a known physical disability and in applying known legal obligations.

[70] The employer's representatives were all aware of the telework policy. They also knew the employer's accommodation duties. They all worked for the federal department that assumes the government's responsibility for fostering employment equity in Canadian society. The employer's representatives have no excuse because

they knew what they should have done. In spite of that, the employer delayed months before providing Ms. Cyr with appropriate work tools, despite known policies contrary to its actions. Even worse is that Ms. Dumont, on her arrival, clearly let Ms. Cyr know that she disagreed with telework even though she knew that Ms. Cyr had a physical disability. That is clearly reckless conduct. It is akin to telling a sight-impaired person that one is opposed to having a guide dog in the office. The evidence reveals that reckless comments and written communications continued to accumulate over the months that followed and that Ms. Cyr suffered because of them.

[71] I consider that conduct a serious violation of the duties of the employer and of its representatives who, in addition, stated that they knew the accommodation laws, policies and obligations. Therefore, I order the employer to pay Ms. Cyr $10 000, half the maximum that I can award under subsection 53(3) of the *CHRA*.

[72] Ms. Cyr also asked that acceptable accommodations be maintained and that the employer work with her to find her an interesting job and tasks. Based on what I heard at the hearing, Ms. Cyr's current work arrangements are satisfactory, and they accommodate her. If those arrangements change, Ms. Cyr will always be able to contest them through the grievance process and to argue that they no longer accommodate her. In addition, the evidence does not allow me to draw any conclusions about her tasks.

[73] Finally, Ms. Cyr asked that the employer apologize to her and that it train its managers in the duty to accommodate. It is clear from my decision that the employer acted improperly toward Ms. Cyr. A letter of apology would not help in any way to repair the harm caused her. In addition, the evidence adduced does not allow me to conclude that the employer's managers have not already been trained in the duty to accommodate. Therefore, I will not order those measures.

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

(The Order appears on the next page)

V. Order

[75] The grievance is allowed.

[76] I order the employer to pay, within 60 days, the amount of $8000 to Ms. Cyr for the pain and suffering that she experienced.

[77] I order the employer to pay, within 60 days, the amount of $10 000 to Ms. Cyr as a special award pursuant to subsection 53(3) of the *CHRA*.

[78] I order the employer to pay, within 60 days, the amount of $300 to Ms. Cyr, representing the amount paid for the medical certificate obtained from Dr. Molot in January 2007.

March 22, 2011.

PSLRB Translation

Renaud Paquet,
adjudicator