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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

JOCELYNE LAVOIE

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Lavoie v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Steven B. Katkin, adjudicator

For the Grievor: Herself

For the Employer: Michel Girard, counsel

Heard at Montreal, Quebec,
February 7 to 10, 2012.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] The grievor, Jocelyne Lavoie, was an employee of the Canada Revenue Agency (“the employer” or “the Agency”) in Brossard, Quebec. She was hired as a collections contact officer at the PM-01 group and level for May 28, 2007 to March 31, 2008 (Exhibit E-1, tab 2). In a letter dated November 2, 2007, while the grievor was on probation, the employer informed her that it was terminating her as of November 16, 2007, under paragraph 51(1)(g) of the *Canada Revenue Agency Act (CRAA)* (Exhibit E-1, tab 1). The employer’s reason for the termination was that the grievor had not achieved the performance objectives required by her position, “[translation] in spite of all the efforts made by both sides.” The grievor filed a grievance challenging her dismissal on February 28, 2008, which reads as follows: “[translation] I challenge the employer’s decision to dismiss me on November 2, 2007, effective November 16, 2007.” On the reference to adjudication form submitted to the Public Service Labour Relations Board, the grievor referred her grievance to adjudication under paragraph 209(1)(b) of the *Public Service Labour Relations Act (PSLRA)*.

[2] In an earlier decision (*Lavoie v. Canada Revenue Agency*, 2011 PSLRB 91), I found that the grievor had the right to file a grievance against her dismissal and to refer it to adjudication.

II. Summary of the evidence**A. For the employer****1. Testimony of Liette Paradis**

[3] At the relevant time, Liette Paradis was a team leader at the Agency’s Montérégie office, a position she had held for approximately seven years. Her main duties included the human resources management of a team of employees, particularly in the T1 National Pool section, which involved collecting revenue from individual taxpayers’ accounts.

[4] Ms. Paradis first met the grievor during the hiring process, as she was part of the selection committee. Ms. Paradis said that, in addition to the grievor, two other people were hired at the same time for collections contact officer positions. The personnel management form that the grievor signed (Exhibit E-1, tab 2) indicates that

her period of employment was to be May 28, 2007 to March 31, 2008 and that she was subject to a probationary period.

[5] Ms. Paradis supervised the grievor from May 28 to November 16, 2007, except when she was on vacation from June 24 to August 6, 2007 and for two weeks in September 2007. Her office was adjacent to that of the grievor, whose duties consisted mainly of contacting taxpayers (by letter or by phone) to collect balances owed the Agency. Officers must often use legal action, mainly garnishment, to collect balances, which is why they must act quickly.

[6] Ms. Paradis explained that the term “inventory” refers to the workload assigned to each officer and that each inventory consists of 325 accounts. The expression “work an account” refers to an officer analyzing an account and its history, establishing an action plan, and performing transactions (i.e., deciding whether to proceed by phone, by letter or by garnishment).

[7] Ms. Paradis stated that the grievor underwent the same training as the other officers. She had 5 days of training on how national pools function and 20 days as part of a learning plan for all officers. New hires in national pool teams have the same workload as officers already working for the Agency, except that their inventories are reduced in their first weeks of work. Ms. Paradis indicated that the national pool is the easiest to work because it consists primarily of accounts of employed taxpayers. Therefore, sources are readily accessible.

[8] Ms. Paradis referred to an email dated August 2, 2007 that she received from Claude Decelles, the technical advisor for collections (Exhibit E-1, tab 6), which she became aware of on her return from vacation on August 6, 2007. Mr. Decelles was the officers’ technical support resource person. The email was a report on the three new employees, including the grievor. Mr. Decelles wrote the following about the grievor:

[Translation]

...

Meeting with Jocelyne on July 25: Review of work and accounts noted. I told her that I was very surprised that I had not received from her any garnishments to verify. She told me that, so far, she has not felt the need to create any for the clients that she contacted. She sent very few legal action

letters. After reviewing the files and corrections to make, I asked her to plan her inventory for the following week and to prepare summaries of each account that she has to work on because she has not yet prepared any summaries. I saw Jocelyne again on August 2. She again had many questions, and I gave her a work plan. The accounts are planned but not worked on. I must say that it concerns me because she is not taking calls (Log IN).

...

I think that the three of them should start taking calls like everyone else; in other words, start to LOG IN.

...

[9] Ms. Paradis explained that legal action letters and garnishments are central to an officer's work because, without them, no collections would occur. In addition, account summaries are important for providing overviews of the evolution of accounts and for making plans for them. Ms. Paradis said that an open session or a "log in" is a system that allows a taxpayer to communicate directly with an officer or to speak with another available officer. The officer must press a button to accept a call. If an officer does not accept a call, the distribution of work becomes more difficult and is done with fewer officers.

[10] Ms. Paradis said that she was very concerned about Mr. Decelles' statements about the grievor. She met with the three employees individually to discuss the August 2, 2007 email. As for coaching, Ms. Paradis said that it included assessing the training and determining whether an officer needed additional training or technical support or wanted to review some parts of the training. Ms. Paradis said that the grievor received coaching in August 2007, primarily from the technical advisor and from colleagues.

[11] Just before leaving for vacation in early September 2007, Ms. Paradis told the grievor that Mr. Decelles would work her inventory with her. The grievor refused, stating that he slowed down her work. The grievor claimed that Mr. Decelles misinformed her at the beginning, which was the reason for her lack of results. Ms. Paradis said that the grievor accepted some of the help offered from Sylvie Séguin, a team leader in the national pool.

[12] On September 21, 2007, Ms. Séguin emailed Ms. Paradis (Exhibit E-1, tab 11). She reviewed the grievor's work that Ms. Paradis had determined was of some concern.

The email indicated that the grievor had unilaterally modified legal action letters, even though Ms. Séguin clearly instructed her not to just a few days earlier. The email referred to the grievor's response to Ms. Séguin, which was that "[translation] . . . it sometimes takes several clear interventions for her to identify what she can and cannot do . . ." Ms. Séguin told the grievor that she would have to start over and that a coaching plan would be set up to that end.

[13] Ms. Paradis' reaction to the email was that she thought that the grievor needed closer coaching. After more meetings with the grievor, and after a discussion with her on September 25, 2007, an action plan to improve her performance was developed and signed by the grievor, Ms. Paradis and Ms. Séguin on September 27, 2007 (Exhibit E-1, tab 7). The action plan included the following warning for the grievor: "[translation] . . . A decision will be made about progress after four weeks to determine whether the training will be extended or discontinued by terminating the probationary period." The action plan limited technical support coaching to Ms. Séguin and Lucie Gill because the grievor said that technical advice did not help her. Ms. Gill was part of the national pool and provided the grievor exclusive training. According to Ms. Paradis, Ms. Séguin was considered a technical reference; she developed the applicable training and ensured consistency throughout the team. In addition, a special training code was to be used for 10 hours per week to reduce the group's average time per file. To help the grievor meet the performance objectives set out in the action plan, she could remain in "log out" from September 27 to October 15, 2007, meaning that she did not have to answer calls from taxpayers. The plan included weekly follow-ups with the grievor.

[14] The performance factors that the grievor was to improve on included avoiding paper follow-ups and using only the planning in the Agency's Automated Collections and Source Deductions Enforcement System (ACSES). Ms. Paradis said that the grievor did not follow up using the ACSES and that it was impossible to follow up on 325 files manually, on paper. In addition, the lack of daily follow-up on any action performed on a taxpayer's file in the ACSES made it impossible for another officer to access the grievor's accounts, which affected collection efficiency.

[15] Ms. Paradis referred to a document outlining the exclusive training that the grievor received from Ms. Gill in addition to her initial training (Exhibit E-1, tab 8). The grievor received a total of 15.50 hours of exclusive training in the weeks of September 29 and October 5, 12 and 19, 2007. The document indicates that the initial

training taken by the grievor and the other employees in May 2007 included creating a letter using the Agency's Electronic Letter Creation System (ELCS) in the ACSES system. The employees received a reference document (Exhibit E-1, tab 8). There is no question that an ELCS letter cannot be modified.

[16] In her email to the grievor on October 23, 2007 (Exhibit E-1, tab 9), Ms. Paradis provided copies of the reviews of the grievor's work conducted on October 4, 2007. Ms. Paradis indicated that a work review is just one of the many factors she considers. According to her, the grievor did not have control of her workload, did not master the computer systems and spoke too long with taxpayers instead of directing them to the appropriate department.

[17] Ms. Paradis submitted that the third meeting with the grievor as part of the action plan occurred on October 23, 2007, after the grievor received the email about the review of her work. The grievor showed Ms. Paradis several papers to demonstrate that she was in control of her accounts. The letters that the grievor sent were returned because adjustments were needed to taxpayers' files. The grievor was still not in control of her inventory, even though her tasks were always lightened, and was unable to log in. In spite of the efforts of the grievor and the employer, Ms. Paradis began to wonder if the employer should continue investing in the grievor's training.

[18] In the week of October 22, 2007, Ms. Paradis asked Mr. Decelles for an overview of the grievor's inventory. His findings, which were emailed to Ms. Paradis on October 26, 2007 (Exhibit E-1, tab 10), read as follows:

[Translation]

...

When I verified her inventory on October 26, 2007, there were 187 BFs [bring forwards] that day, including 130 that had yet to be worked on. There were also 45 new files in her inventory. When I last checked at 14:15, only 8 files had been worked on that day. Her inventory also has several accounts marked "Follow-up" but that were not yet touched (about 25).

...

[19] In addition, the grievor did not take appropriate action in two of the three randomly verified accounts on which she was working. And the third had been worked on, even though it was not yet due.

[20] Ms. Paradis maintained that, on October 26, 2007, she overheard a phone conversation between the grievor and a taxpayer. She noted that the grievor had no control of the conversation, which had nothing to do with the collection. One of her colleagues had to intervene to take control of the conversation.

[21] Ms. Paradis testified that she could see that the grievor was not progressing. She was determined to not continue employing the grievor and consulted Human Resources and the assistant director with that in mind. Ms. Paradis recommended that her manager, Michel Beausoleil, terminate the grievor's probationary period. She maintained that, if the employer terminated the grievor's probationary period, it would not be imposing discipline. The goal of the grievor's additional training was to achieve the desired objectives and to retain her, since a need for collection officers existed.

[22] In cross-examination, Ms. Paradis said that, even though she never worked as a collections contact officer, she was the collections team leader for six years before becoming the team leader for the national pool.

[23] When asked about the two others hired at the same time as the grievor, Ms. Paradis said that one had a banking background and that the other had worked in a call centre. She mentioned that those two employees showed improvement as far as their inventories were concerned and that they had settled well into their jobs.

[24] Ms. Paradis was referred to her handwritten notes from the October 4, 2007 meeting with the grievor as part of the action plan (Exhibit F-1). The notes included the following remarks:

[Translation]

...

Break the bad habit of managing work manually

...

Instruct her to stop all manual follow-up

...

The inventory must be replanned so that she can regain control

...

[25] With respect to her notes from the October 23, 2007 meeting with the grievor (Exhibit F-2), Ms. Paradis said that she was surprised that the grievor followed up manually on her inventory every month, even though it was not to be done manually. At the meeting, the grievor was told that she had to reduce the number of hours she spent on each file.

[26] In response to the grievor's question, Ms. Paradis affirmed that the weekly follow-up scheduled as part of the action plan was respected, except once when she had to postpone the date. Ms. Paradis emphasized that, even though no meeting took place, it did not mean that no follow-up was done.

[27] Ms. Paradis was referred to a document that she prepared outlining the support and coaching offered to the grievor until October 31, 2007 (Exhibit F-4). In response to the grievor's question about the objective of 1.8 hours per file, Ms. Paradis answered that the same criterion applied to all employees and that it was just one of the indicators.

[28] In response to the grievor's question about their August 7, 2007 discussion, Ms. Paradis recalled the grievor telling her that she had the impression that Mr. Decelles had given her erroneous information.

[29] As for logging in, Ms. Paradis said that she discussed it with the grievor on August 7, 2007, among other topics. The grievor told her that she found it very difficult to make a decision on a file that did not belong to her.

[30] In response to the grievor's statement that correspondence was distributed to fewer officers during the summer vacation period, Ms. Paradis answered that that was why the employer hired officers in May, because it foresaw the urgency of having sufficient staff during the summer.

[31] The grievor asked Ms. Paradis whether she remembered that, on her return from vacation on August 6, 2007, the grievor visited her to discuss her inventory because it was causing her anxiety and to ask to be relieved of having to log in. Ms. Paradis remembered the conversation but said that she could not remember her answer.

[32] In response to the grievor's question about the technical support offered to her, Ms. Paradis affirmed that technical support was available at all times. She said that the official training had ended and that each officer had his or her inventory. As for

Mr. Decelles, Ms. Paradis said that he is reliable and knows his work well and that she has never doubted his competence. Mr. Decelles never expressed discomfort about working with the grievor. In addition, the two other officers hired at the same time as the grievor never told Ms. Paradis that Mr. Decelles had misinformed them, and the officers that consulted him accomplished their work.

[33] Ms. Paradis said that she never took steps to transfer the grievor to another group.

2. Testimony of Sylvie Séguin

[34] Ms. Séguin was the team leader for the national pool from August to September 2007 and was responsible for human resources management and program delivery. From April to August 2007, she was the team leader for complex cases. Since 2000, she has held PM-01, PM-02 and PM-03 collection positions. Given her experience, the technical aspect was added to her responsibilities.

[35] Ms. Séguin testified that she and Ms. Paradis managed the same individual collections teams and that the results of both teams were always reviewed together. Ms. Séguin managed the grievor in Ms. Paradis' absence.

[36] Ms. Séguin said that the grievor's probationary period was for the term of her contract, as set out in section 8.1-1(d) of the Agency's "Staffing Program" (Exhibit E-2), which reads as follows: "[translation] Temporary employees are on probation for the terms of their contracts or to a maximum of 12 months."

[37] Ms. Séguin testified that the grievor now works at the Agency's regional call centre for Quebec. She explained that the work consists of providing customer service and information to individuals. She added that she believes that call centre employees do not handle collections arrangements.

[38] Ms. Séguin said that, in 2004, she created a training manual for all national pool employees, to make new hires autonomous as quickly as possible. It was part of the grievor's training. Ms. Séguin referred to the learning plan for new employees in the national pool (Exhibit E-1, tab 3), which contains the documents that she prepared. Ms. Séguin trained 40 new employees at the Agency's tax centre in Shawinigan and indicated that the expectations associated with the technical aspects of a collections

contact officer's work are conveyed during the training, as provided in the learning plan.

[39] Ms. Séguin was referred to her email about the grievor sent to Ms. Paradis on September 21, 2007 (Exhibit E-1, tab 11). She explained that she sent the email because she found on a printer a legal action letter that the grievor had modified, which is not permitted. She explained to the grievor why she should not modify those letters. The grievor told her that she understood. Ms. Séguin testified that the grievor told her that her "mind wanders" and that she has to be brought back to reality. In her email to Ms. Paradis, Ms. Séguin suggested a coaching plan for the grievor because she told her that the grievor "is easily sidetracked."

[40] Ms. Séguin's role in the grievor's coaching plan was to sit down with her every morning and guide her processing of the accounts. During the first session, the grievor told her that she did not want Ms. Séguin sitting down with her and that Ms. Séguin was disrupting her work.

[41] Ms. Séguin was referred to an email exchange she had with the grievor (Exhibit E-1, tab 12). The first email, from the grievor and dated September 28, 2007, contained no text; the subject was "Lavoie_2007-2008.xls." Ms. Séguin said that she assumed that it was a statistics sheet. In her October 1, 2007 reply, Ms. Séguin commended the grievor on an improvement to her results, which she believed was the average hours per file. Ms. Séguin emphasized that, as part of the action plan, a special code was assigned to the grievor's training time so that that time would not affect the national pool statistics.

[42] Ms. Séguin was referred to an excerpt from the grievor's action plan for October 2007 (Exhibit E-3). That document includes a summary of work reviews for each officer on Ms. Paradis' team, with comments by Ms. Séguin. It shows that the average hours that the grievor spent on each file was much higher than those of the other officers. In addition, Ms. Séguin noted that, among other things, the grievor was not in control of planning her inventory. Ms. Séguin made the following remarks:

[Translation]

...

Inventory planning is not under control. Planning is done using a system similar to the ACSES because the officer has difficulty using that system. She uses paper to follow up on legal action letters that were mailed, and only she knows what she entered.

...

[43] Ms. Séguin explained the importance of using the ACSES, which is like an electronic agenda. If an officer gives a taxpayer 14 days to respond to a collection request, failing which a garnishment is put in place, the system issues an automatic reminder in 14 days, which is why entering everything in the ACSES is important.

[44] Ms. Séguin said that the grievor's performance after four months of work was unsatisfactory and that she was not at the level management expected of a person with four months' experience.

[45] In cross-examination, Ms. Séguin said that, if a garnishment is not possible, the account is removed from the officer's inventory and is transferred to a regional officer. She said that an account cannot remain in the national pool for more than two years. An account becomes productive as soon as a payment arrangement is made or when the first payment is received. If no arrangement is made, the account is considered broken and is returned to the national pool. The account is then transferred to the first officer with fewer than 325 accounts in his or her inventory.

[46] When she was referred to a document showing the grievor's inventory dated October 23, 2007 (Exhibit F-8) and indicating that she had 171 BFs, Ms. Séguin said that it showed a lack of control over the inventory because there were too many BFs in one day. Ms. Séguin testified that officers were supposed to work on between 25 and 30 accounts per day.

[47] Ms. Séguin said that the objective of 1.8 hours per file was set for the T1 National Pool and that it was communicated to the officers in September 2007 in a document that included a method for reaching it (Exhibit F-10). Ms. Séguin explained that management set that objective in an attempt to improve the results of the T1 National Pool and to achieve the national statistic for the five national pools of three hours per file. According to Ms. Séguin, were the objectives not met, the national pool's work could have been taken away from their office and relocated elsewhere in Quebec or Canada.

[48] Ms. Séguin testified that the officers easily achieve the objective of 1.8 hours per file. In an email sent to the officers on September 19, 2007 (Exhibit F-11), Ms. Séguin included all of their anonymous manual statistics for April to August 2007. The grievor's average was 10.71 hours per file for July 2007 and 10.02 hours per file for August 2007. The grievor suggested that the email showed that some officers did not achieve the objective of 1.8 hours per file. Ms. Séguin replied that adjustments were communicated in September 2007. In addition, the officers were again informed of the objectives during a meeting held on October 17, 2007 (Exhibit F-12).

[49] With respect to log ins, Ms. Séguin said that a uniform call distributor is used and that all officers must be connected to it to not penalize the team. She said that new employees do not use the system during their first week of work. When an officer performs a log in, it becomes a production on the file of the officer who owns it. Ms. Séguin said that log ins are not reflected in the statistics but that they apply to all officers.

[50] Ms. Séguin was referred to an excerpt of the grievor's action plan that she prepared in October 2007 (Exhibit F-13). The excerpt notes that 10 hours per week would be counted under a learning code for the grievor to prevent her time per file from increasing the team average. Ms. Séguin said that the positive comments that she added about the grievor reflected an improvement in the first week of the action plan. She mentioned the improvement in her email to the grievor on October 1, 2007 (Exhibit E-1, tab 12). Ms. Séguin affirmed that she prepared reviews of the grievor's work, which are contained in Exhibit E-1, tab 9.

[51] Ms. Séguin said that she prepared the grievor's development plan (Exhibit F-14) on September 20, 2007 and that she submitted it to Ms. Paradis and Mr. Beausoleil.

[52] Ms. Séguin was shown an Excel file containing the grievor's statistics for June to October 2007 (Exhibit F-15). Ms. Séguin said that the file was incomplete. According to her, the missing items were the hours per file, the garnishment profiles and the number of hours actually completed. Ms. Séguin explained that the "amount collected" column shows the amounts generated by the grievor. Ms. Séguin mentioned that, when a production of zero appears in the "production number" column for a week, it could mean that the grievor did work without accounting for it. Since a part of the document was missing, the actual hours did not appear in it. When no production is listed for a week, the time spent per file increases. Ms. Séguin said that inventory planning is part

of the workload. If an officer is not working on BFs, then they are carried forward either automatically or by the officer.

[53] When shown the document entitled “[translation] Work Evaluation Checklist” for the grievor (Exhibit F-17), Ms. Séguin mentioned that all officers use that work checklist. It is the Word document that was attached to the October 23, 2007 email that Ms. Paradis sent to the grievor (Exhibit E-1, tab 9).

3. Testimony of Michel Beausoleil

[54] During the grievor’s period of employment with the Agency, Mr. Beausoleil was the manager of accounts receivable revenue. He was responsible for 6 to 7 team leaders and 85 employees, including the grievor.

[55] Mr. Beausoleil indicated that he issued the rejection-on-probation letter to the grievor because of the team leaders’ follow-up. He considered the grievor’s record and the follow-up done for the two others hired at the same time as she was. He asked the team leaders questions and was assured about the coaching given to the three new employees. Mr. Beausoleil indicated that the grievor did not demonstrate that she could fulfill the duties of the position for which she had been hired.

[56] In cross-examination, Mr. Beausoleil said that his only alternative was termination, that the employer made every effort and that it offered her additional support. He testified that it was not in the employer’s interests to terminate the grievor, because it needed employees. Mr. Beausoleil said that he read the action plan and that he was satisfied with the steps taken with the grievor.

B. For the grievor

[57] The grievor began her testimony by referring to the document entitled “[translation] Overall Assessment of Learning Activity” (Exhibit F-20) that she completed, along with her comments on the base training of May 28 to June 4, 2007, as well as the additional training of June 20, 2007. The grievor referred to her comments in response to question 7 of the document, which reads as follows: “[translation] Was the learning method suitable for you? Explain if necessary.” In response to that question, the grievor wrote in part the following:

[Translation]

...

Because my mind wanders and I have a tendency to dwell on things too much, I needed Lucie [Gill] to show me the important items to view on the different screens. In retrospect, receiving that coaching earlier in the learning process would have been better.

[58] The grievor said that the fact that her mind wanders should have been considered a mitigating factor that affected her performance. She also mentioned that she did not have “[translation] . . . any experience writing in computer systems with multiple functions and tabs for line returns.”

[59] With respect to supervision, the grievor raised the fact that Ms. Paradis went on vacation and that another team leader, Geneviève Samson, was absent for six weeks. Thus, the team leader Johanne Allard was temporarily responsible for both teams.

[60] The grievor said that, on June 19 or 20, 2007, Ms. Allard discussed the inventories with her and one of the other new employees. According to the grievor, another officer had previously worked on the third new employee’s inventory; thus, he was able to show production for files that had already been started. As for her inventory, the grievor said that no work had been done on 95% of the files. Therefore, she had to write a summary, perform a bank trace, prepare an action plan and take action for each file.

[61] The grievor mentioned that, because she did not know how to enter the information on a screen, she manually followed up on paper. Her work method was to first contact the taxpayer by phone when she received a file. She would strongly suggest that full payment be made electronically. The grievor then referred to a table of full payments for her files from June to October 2007 (Exhibit F-21). According to her, the payments showed up in the system within 24 or 48 hours, which is consistent with Ms. Allard’s instructions to act quickly.

[62] As for the training, the grievor said that, on June 21, 2007, Ms. Gill spent two to three hours with her in her office showing her how to look for information on the computer and how to make phone calls. According to the grievor, it was the only follow-up she received until her meeting with Mr. Decelles on July 25, 2007. The grievor maintained that no one told her to not manually follow up on her files.

[63] According to the grievor, when Mr. Decelles told her to do seven files per day, she replied that Ms. Gill had told her to do between three and five per day, except on Fridays. When Mr. Decelles insisted that she follow his instructions, the grievor said that she did not have the computer skills to work on so many files per day. He then told her to do only the summaries and bank traces. According to the grievor, that stopped her production. Based on Mr. Decelles' instructions, she was supposed to process 35 files per week, rather than the 20 or so Ms. Gill had told her to do. The grievor said that the problem raised in her work reviews was that she prepared summaries without taking action. The grievor said that that shortcoming resulted from the instructions she received from Mr. Decelles and that it adversely affected the rest of the tasks in her inventory.

[64] As for log ins, the grievor said that she found it difficult to respond to calls about files belonging to other officers. When Ms. Paradis returned from vacation, the grievor asked her if she could be exempted from log ins. Ms. Paradis refused and stated that the grievor had to help the team.

[65] The grievor testified that, on August 23, 2007, Mr. Decelles showed her how to prepare legal action letters and garnishments. Mr. Decelles told her that he would not look at the BFs, so the grievor did not need to defer the files. According to the grievor, had she received feedback about the legal action letters earlier, she could have continued her probation. She said that some letters had to be modified, based on what Ms. Samson had shown her.

[66] The grievor said that she saw the first work review on October 4, 2007, during the action plan. She realized then the importance of the BFs. She indicated that that was why she refused Ms. Paradis' offer for Mr. Decelles to coach her.

[67] As for the meeting about her action plan, the grievor said that she suggested that she be coached by Ms. Gill, with whom she had a good working relationship. She found the termination clause draconian but accepted the action plan because she thought that Ms. Gill could help her and because she saw it as an opportunity to be coached. Before that meeting, Ms. Séguin showed her the statistics (Exhibit F-11) and asked her for an explanation. The grievor told her that she was not used to being last and that she would make the necessary effort. During the meeting, the grievor negotiated work hours suitable to her.

[68] The grievor said that she was satisfied with the first week of the action plan. During her meeting with Ms. Paradis and Ms. Gill, she was told to improve her inventory planning, to regain control.

[69] The grievor testified that, during the October 4, 2007 meeting, Ms. Paradis told her that she should pay attention to her production. It surprised her, and she asked about the number that she should reach. She said that Ms. Paradis did not reply. She said that it was the first time she sensed that she was not fulfilling some measurement criteria.

[70] At the October 4, 2007 meeting, Ms. Paradis gave the grievor the document containing the objectives, including the manual rate of 1.8 hours per file. The grievor testified that she could not achieve that objective.

[71] The grievor said that, at the October 23, 2007 meeting, she brought a coloured inventory profile showing her possible production deadlines so that Ms. Paradis could see the potential statistics for the coming weeks.

[72] As for the phone call monitoring noted in the work review conducted by Mr. Decelles (Exhibit E-1, tab 10), which states that the conversation was not focused on resolution and that the grievor was not in control of the conversation, the grievor said that she was aware of the situation. She said that the context was that two log ins occurred for the same officer. For the first, the taxpayer also owed municipal taxes and did not want to lose his house, which is why she talked about a mortgage. The grievor said that the second log in ended with a payment arrangement.

[73] The grievor received the termination letter during her meeting with Ms. Paradis on November 2, 2007. Ms. Paradis showed her a chart with a column comparing her performance to the position's requirements. The grievor said that she replied that it corresponded to late July to early August, when she was supposed to redo her inventory.

[74] In cross-examination, the grievor acknowledged that she did not request coaching from June to the end of July 2007. She said that she had questions about certain things and that the employer could have suggested coaching.

[75] In response to the question of why she did not bring her problems with Mr. Decelles to Ms. Allard's attention, the grievor said that Ms. Allard was on vacation

and was being replaced by another team leader from another section. She said that she spoke with Ms. Allard about it when she returned from vacation.

[76] The grievor acknowledged that she is more customer-service focused and that the Agency's call centre environment, where she currently works, suits her better. She said that the employer could have suggested reassigning her to the call centre instead of dismissing her.

[77] The grievor said that she brought a profile of her inventory and not a manual follow-up to the meeting with Ms. Paradis on October 23, 2007. According to her, Ms. Paradis did not appear to be a technical person, which is why she had to be shown the information so that she could be made to understand. She coloured the information on the inventory profile to show the deadlines and her future production estimates.

C. Employer's rebuttal

[78] Ms. Paradis maintained that the grievor chose to work compressed hours, from 07:30 to 17:00, to shorten her workweek.

III. Summary of the arguments

[79] It will become evident in the reasons for this decision why I did not summarize the parties' arguments about the details of the grievor's employment.

A. For the employer

[80] The employer challenged my jurisdiction to hear the grievor's grievance. It indicated that the grievor filed her grievance under paragraph 209(1)(b) of the *PSLRA*, which applies to an individual grievance about a disciplinary action resulting in termination, demotion, suspension or financial penalty. The employer pointed out that the grievor was rejected on probation for a just employment-related cause, namely, her poor performance, not for disciplinary reasons.

[81] The employer submitted that it had to prove only that the grievor was dismissed for an employment-related reason. Once that was proved, the burden would reverse, and the grievor would have to show that her rejection on probation was for disciplinary reasons or that the dismissal was a sham or a camouflage of a disciplinary action. In support of its argument, the employer cited the following decisions: *Monette*

v. Parks Canada Agency, 2010 PSLRB 89; *Hajjage v. Canada Revenue Agency*, 2011 PSLRB 5; and *Lundin v. Canada Customs and Revenue Agency*, 2004 PSSRB 167.

B. For the grievor

[82] The grievor submitted that her rejection on probation was a disciplinary action and that she perceived the action plan as a disciplinary action. She referred me to Brown and Beatty, *Canadian Labour Arbitration*, 4th edition, at para 7:5020.

[83] The grievor submitted that the measures taken by the employer were unrealistic and unreasonable and that the probationary period was too short.

IV. Reasons

[84] The grievor's employment contract (Exhibit E-1, tab 2) states that she was subject to a probationary period for the duration of her employment from May 28, 2007 to March 31, 2008 and that the employer could terminate her employment with two weeks' notice. The termination letter (Exhibit E-1, tab 1) indicates that the grievor in fact received that notice.

[85] Subsection 209(1) of the *PSLRA* lists the types of grievances that can be referred to adjudication, as follows:

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration:

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) *deployment under the Public Service Employment Act without the employee's consent where consent is required; or*

(d) *in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.*

[86] The legal framework summarized as follows by the adjudicator at paragraph 12 of his decision in *Hajjage* also applies to the grievor:

12 Since the Canada Revenue Agency is not part of the core public administration and since Mr. Hajjage was not an employee of a separate agency designated under subsection 209(3) of the PSLRA, I have jurisdiction to hear Mr. Hajjage's grievance only if the grievance is about an interpretation or application of the collective agreement or about a disciplinary action as set out in paragraphs 209(1)(a) and (b). Mr. Hajjage is not represented by his bargaining agent. Therefore, the grievance cannot be about an application or interpretation of the collective agreement. It remains to be determined whether the grievance is about a disciplinary action

[87] As was Mr. Hajjage, the grievor was not represented by her bargaining agent.

[88] As for whether the grievance is about a disciplinary action, in fact, in the wording of her grievance, the grievor stated that the employer "dismissed" her. In addition, she referred her grievance to adjudication under paragraph 209(1)(b) of the *PSLRA*, which applies to grievances against disciplinary sanctions. In her arguments, the grievor submitted that she perceived the employer's action plan as a disciplinary action. However, the grievor's perception is not sufficient evidence that the employer dismissed her for disciplinary reasons. Actual evidence is required that a disciplinary action was imposed or that her dismissal was a sham or a camouflage of a disciplinary action. Aside from her perception, the grievor was unable to produce any incident, document or comment attributable to the employer with the slightest connection to a disciplinary action.

[89] The grievor focused her evidence and arguments on her dissatisfaction with the employer's evaluation of her work. That falls under staffing and therefore is not adjudicable.

[90] The evidence clearly demonstrated that the employer was sincere and that it acted in good faith when it concluded that the grievor did not have the qualifications to fulfill the requirements of the position for which she was hired.

[91] Having analyzed the evidence, I find that the grievor provided no evidence to support her argument that the employer's decision to reject her on probation was of a disciplinary nature. In addition, no evidence was adduced that the employer acted in an arbitrary or discriminatory manner by terminating her probation. Therefore, I find that this grievance is not adjudicable.

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

(The Order appears on the next page)

V. Order

[93] I declare that I do not have jurisdiction to hear this grievance.

[94] I order the file closed.

November 19, 2012.

PSLRB Translation

**Steven B. Katkin,
adjudicator**