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*Public Service  
Labour Relations Act*

Before an adjudicator and the  
Public Service Labour Relations Board

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BETWEEN

**CARLA SVED**

Grievor and Complainant

and

**DEPUTY HEAD (NATIONAL PAROLE BOARD),  
HARVEY CENAICO AND YVES BELLEFEUILLE**

Employer and Respondents

Indexed as  
*Sved v. Deputy Head (National Parole Board)*

In the matter of an individual grievance referred to adjudication and a complaint made under section 190 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** Michele A. Pineau, Vice-Chairperson

***For the Grievor and Complainant:*** Ray Domeij, Public Service Alliance of Canada

***For the Respondent:*** Caroline Engmann, counsel

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Heard at Ottawa, Ontario,  
January 10 to 14 and September 13 to 15, 2011.

## REASONS FOR DECISION

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### **I. Individual grievance referred to adjudication and complaint before the Board**

[1] The grievor and complainant, Carla Sved (“the grievor” for the purposes of this decision), was hired as an AS-01 for the Clemency and Pardons Division (“the division”) of the National Parole Board (NPB or “the employer”) at its Ottawa office on May 11, 2009. On December 4, 2009, the grievor was terminated during her probationary period.

[2] The grievor challenged her rejection on probation, alleging that it was in fact disguised discipline and that it was made in bad faith. The grievance was referred to the Public Service Labour Relations Board (“the Board”) for adjudication on April 23, 2010. She also filed an unfair labour practice complaint within the meaning of section 185 of the *Public Service Labour Relations Act (PSLRA)*, alleging a breach of paragraph 190(1)(g), on January 11, 2010, alleging that her termination was retaliation for filing harassment grievances against her supervisor and a co-worker on September 9, 2009.

[3] The employer objected to an adjudicator’s jurisdiction to decide the grievance because the provisions of paragraph 211(a) of the *PSLRA* exclude the adjudication of a grievance challenging a termination while on probation.

[4] Because the complaint and the grievance were consolidated for the purposes of a hearing, the employer argued that the grievor should present her evidence first, to establish a *prima facie* case of disguised discipline or the foundation for a complaint. The grievor objected to proceeding first because the grievance and complaint are related to the same incidents, and the employer had the burden of establishing that it had an employment-related reason to dismiss her.

[5] I decided that the employer should present its evidence first, subject to the shifting burden of proof under subsection 191(3) of the *PSLRA*.

### **II. Summary of the evidence**

#### **A. The employer’s evidence about the grievor’s rejection on probation**

[6] Corita Harty selected the grievor from a pre-qualified pool of AS-01 candidates. During the grievor’s probationary period, Ms. Harty was Director of Special Projects and Employee Training for the division, and she supervised the grievor between May 11, 2009 and November 5, 2009.

[7] Ms. Harty's interview of the grievor focused on personal skills and suitability, rather than qualifications for the position, since the grievor was already pre-qualified. The grievor convinced her that she had the skills for the job.

[8] The grievor was first hired as a term employee at the AS-01 level. When she told Ms. Harty a few days after she was hired that she had received an offer of indeterminate employment by the Treasury Board, Ms. Harty offered her an indeterminate AS-01 position. At the beginning of her employment, the grievor reviewed and signed her job description. Ms. Harty explained to the grievor how her expectations paralleled the job description.

[9] Yves Bellefeuille, Acting Director of the division, supervised the grievor from November 6 to December 4, 2009 and decided to terminate her employment during the probationary period.

[10] The employer presented its evidence through Mr. Bellefeuille and Ms. Harty. Their evidence was sufficiently consistent that I do not consider it worthwhile to delve into the minute details of their respective testimonies. Their evidence has been summarized by theme. All dates refer to the year 2009.

[11] The grievor was the sole administrative assistant for the division. As such, she was the focal point of administrative services. Her essential duties consisted of monitoring and purchasing office supplies, controlling the budget and monitoring financial commitments by verifying invoices and budget spreadsheet entries, and providing general office assistance to the division director as requested.

[12] The grievor's employment was terminated during her probationary period because of unsatisfactory performance in the following areas:

- Deficiencies in her ability to meet the requirements of the position.
- A belligerent attitude demonstrated by challenging her manager's authority, her poor attitude, and by refusing to meet with her manager to receive objectives and feedback about her work performance.
- Serious errors in contracts and finance.

[13] The following examples highlight the grievor's deficiencies in her ability to meet the requirements of the position.

### **1. Deficiencies**

#### **a. Ordering office supplies**

[14] Ms. Harty asked the grievor to assume, as had the previous administrative assistant, the duty of purchasing office supplies. The grievor replied that she was unwilling to because she was a probationary employee, and she did not want the responsibility for a credit card. Ms. Harty reminded the grievor that purchasing office supplies was an essential part of her duties. Ms. Harty prompted the grievor several times to complete the application authorization form for a credit card. The grievor did not comply until mid-July after several promptings by the Chief of Finance. Because she had no office credit card, the grievor asked Assia Turenne, previously responsible for these purchases on an interim basis, to accompany her when she shopped for office supplies. After several such requests, Ms. Turenne told Ms. Harty that having to accompany the grievor for office supply purchases was very disruptive of her duties. In mid-July, Ms. Harty insisted that the grievor assume responsibility for obtaining a credit card and for purchasing office supplies.

[15] The grievor did not keep adequate office supplies on hand, and her colleagues became frustrated with not having the necessary tools to do their work. The grievor instituted the unnecessary formality that all supplies be requested by email so that she could track them. After complaints from staff, Mr. Bellefeuille reminded the grievor that her role was to make sure the supplies were available in sufficient quantities at all times and that their cost was accounted for, not to control the use of every pen and pencil.

[16] The grievor had to be reminded several times to order the coloured folders that Mr. Bellefeuille used to organize his work. Colleagues complained to Mr. Bellefeuille that she did not order office supplies in sufficient quantities and regularly enough with the result that they had to fend for themselves to find what they needed.

#### **b. Setting priorities and getting work done**

[17] Ms. Harty noted that the grievor had difficulty coordinating priorities and meeting deadlines. To assist her, Ms. Harty set up regular Monday meetings to review

the week's priorities, review incomplete assignments and renegotiate deadlines. On more than one occasion, the grievor told Ms. Harty that tasks were completed when they were not (for example, completing organization charts and hotel bookings). Ms. Harty observed that the grievor had difficulty completing simple tasks, such as producing a briefing book, reserving meeting rooms, amending organization charts, editing documents (for example, a letter for the President's signature), following specific instructions about work to be done (for example, updating interview questions), reviewing documents (for example, information not in the correct order), recommending appropriate hotel reservations and making photocopies within required deadlines. The grievor sometimes left for the day without completing specific tasks requested by Ms. Harty or telling her that she had not completed them. Ms. Harty had to review the grievor's work to ensure completion.

[18] The grievor delegated requests to translate documents to other employees, rather than create her own account, which would have allowed her to make a request directly. As a result, translations were late and would arrive while meetings were in progress. Similarly, when Mr. Bellefeuille asked her to inventory office supplies, she delegated it to other employees.

[19] Ms. Harty and Mr. Bellefeuille provided the following examples of the assistance and training provided to the grievor to help her performance and to help her meet the job requirements.

[20] Ms. Harty spent the better part of the grievor's first day of work with her, outlining her duties. Ms. Harty followed up by pairing the grievor with an administrative assistant who could explain procedures and with a finance and administration clerk to help her with data input, and by providing a contact for all her questions. The grievor was provided one-on-one training about financial matters and budget reconciliation with a senior member of the Finance Department staff. Ms. Harty also referred the grievor to the previous incumbent of the position for any background on files or on how things were done.

[21] When Mr. Bellefeuille took on the position of Director, he verified that the grievor had indeed been provided with adequate training with respect to contract administration and financial controls, setting up logs, data entry in spreadsheets, and handling petty cash, and was satisfied that she had been trained. He provided explanations and coaching when she did not understand a particular task.

**c. Untidiness of office space**

[22] The grievor barricaded herself in the reception area of the Director's office with telephone books and a self-made cardboard cubicle around her desk. Her isolation made it difficult and uncomfortable for her supervisor to get her attention and for employees to approach her. The grievor's office space remained very disorganized; old shoes lay on the floor, and empty ink cartridges and boxes littered the area. Ms. Harty and Mr. Bellefeuille reminded the grievor on more than one occasion of the need for office tidiness, but with limited success.

**d. Office key**

[23] When Mr. Bellefeuille arrived, he asked the grievor to provide him with an office key. In response, the grievor went back to her desk and attended to other matters. Mr. Bellefeuille had to make the request a second time and had to insist that she follow up immediately. The key she brought to him did not work, and he had to request another. When the grievor obtained that key, she emailed him about its location, but he found it elsewhere.

**e. Travel arrangements**

[24] The grievor was apparently unconcerned about Mr. Bellefeuille's travel arrangements. As part of a travel package, the grievor was to provide him with directions to Collins Bay Institution. She provided him with the copy of a map sourced on the Internet that did not show his destination or precisely how to get there.

**2. Attitude**

[25] The following examples highlight the grievor's belligerent attitude demonstrated by challenging her manager's authority, poor attitude and refusing to meet with her manager to receive objectives and feedback about her work performance.

**a. Interpersonal skills with colleagues and staff**

[26] During the summer, the grievor had conflicts with a colleague about assigned work. She would interrupt meetings by walking in unannounced. She did not cooperate with the division clerk in setting up a budget tracking system.

[27] The grievor engaged in long conversations with other employees and rebuffed a colleague's reminder on September 15 that her conversations were delaying important work.

[28] On December 1, the Financial Assistant informed the Chief of Finance of the grievor's abrupt manner of dealing with her when she requested Ms. Harty's signature for an invoice.

**b. Interpersonal skills demonstrated with her managers**

[29] On September 2, Ms. Harty asked to meet with the grievor about the tone of her emails. The grievor refused to meet unless accompanied by a witness. Later that day, the grievor left the office early without notifying Ms. Harty, who had to remind her to submit a leave form.

[30] On September 28, Ms. Harty advised the grievor that she wished to meet her with respect to the following three work-related issues: i) the grievor's inappropriate conversation with an external contractor, ii) her unwillingness to discuss work-related issues without a union representative present and iii) her disrespect towards Ms. Harty.

[31] The first issue concerned a conversation that Ms. Harty overheard. The grievor was speaking to a supplier and Ms. Harty heard the grievor blame her for not signing certain contracts and asked the contractor to put everything in writing so that the grievor could follow up with her. The second issue related to the grievor's unwillingness to meet with Ms. Harty for operational matters without a witness. The third issue concerned the grievor raising her voice inappropriately with Ms. Harty on four occasions by telling Ms. Harty the following "Speak up because I can't hear you."

[32] Starting in September, the grievor would not meet with Ms. Harty, regardless of the issue, without a union representative present. On October 9, the grievor asked a union representative to attend an operational meeting, which she was to attend. Also on October 9, the grievor wrote a strongly worded letter to the Acting Director General, challenging the employer's decision to dismiss two grievances.

[33] On October 20, Ms. Harty met with the grievor to present her with documents about performance objectives. She asked the grievor to read and sign them. The grievor requested time to read them. On October 20, the grievor wrote to Ms. Harty, stating that she did not agree with the documents and that she refused to sign them.

[34] Ms. Harty observed that the grievor was spending increasing amounts of time away from her desk. When she brought it to the grievor's attention on August 13, the grievor responded by leaving Post-it notes on her door for every absence, no matter how small.

[35] Mr. Bellefeuille similarly noted that the grievor was often away from her desk for extended periods without explanation and without concern for the work priorities that she had been assigned.

**c. Refusal to do certain tasks**

[36] Mr. Bellefeuille asked the grievor on several occasions to urgently make photocopies for his meetings. The grievor returned to her desk and set them aside to do later, forcing Mr. Bellefeuille to fend for himself.

[37] The grievor outright refused to perform some tasks. Mr. Bellefeuille had to remind her that she was required to do the work that he requested. The grievor objected to Mr. Bellefeuille putting more work on her desk. Mr. Bellefeuille summarized his interactions with the grievor as follows: "She did what she wanted when she wanted to."

**3. Errors**

[38] The following examples highlight the grievor's serious errors in contracts and finance.

**a. Tracking expenses**

[39] In July and August, Ms. Harty received complaints from Ms. Turenne about the grievor's deficiencies concerning the tracking of expenses and their reconciliation with the budget. Ms. Harty asked a division clerk, Mark Leblanc, to help the grievor develop a spreadsheet that would allow her to input figures in certain categories and to obtain an automatic reconciliation of the budget. The grievor continued nonetheless to neglect making the regular entries required to update the budget. In August, Ms. Turenne reported to Ms. Harty that the grievor was making substantial errors in her budget inputs, such as not differentiating between tax-included and tax-excluded invoices, charging the whole departmental telephone budget to the division (\$5000)



instead of the monthly \$15, and omitting certain expenses altogether. The grievor did not admit her errors and told Ms. Harty that she had other priorities.

[40] In September, Ms. Turenne asked for Ms. Harty's assistance in obtaining the grievor's cooperation about sharing budget information electronically. The grievor kept the division's financial information spreadsheet on her personal drive and refused to share it with Ms. Turenne by putting it on a shared drive, which prevented her from consolidating the divisional budget report. Ms. Harty had to intervene.

[41] When Mr. Bellefeuille arrived in November, he noted that the grievor was not appropriately tracking financial entries into the budget. He enlisted the help of a former administrative assistant to help the grievor set up an appropriate tracking system. However, the grievor continued to do things her way. Because she was tardy in reconciling budget expenditures, Mr. Bellefeuille was unable to immediately respond to a request from the Finance Department to estimate what unspent monies could be released for other expenditures. The grievor had a great deal of difficulty producing the financial information to respond to this request.

[42] Mr. Bellefeuille noted that the grievor did not log office supply expenses or track petty cash expenses until he reminded her. The grievor insisted on using her format for recording expenses and resisted Mr. Bellefeuille's request that the format be modified to identify expense dates and periods as part of her budget reconciliation.

[43] Following the delivery of a workshop without a service contract, which cost \$1430, the grievor was coached by the Contracting Management Advisor on what services or goods had to be purchased or acquired through a contract. The Advisor noted that the grievor showed indifference to financial information being provided to her.

**b. Parole application kits**

[44] One of the grievor's responsibilities, for which she was trained, was to replenish the supply of parole application kits as quantities dwindled. The grievor was to order the kits from a printer with an appropriate sequence number. Without informing Ms. Harty or Mr. Bellefeuille, the grievor delegated the monitoring of the number of application kits on hand to a pardons officer. The grievor delayed ordering the kits because apparently she was waiting for the approval of the user fee increase. The

grievor was unable to locate the blueprints from the previous printing. She misunderstood the numbering sequence, and no amount of explanation by Mr. Bellefeuille made her understand the mathematics of ordering sequential forms. Mr. Bellefeuille had to remind her about retrieving the kits from the temporary storage area once they arrived from the printer.

[45] In November, the grievor ordered an additional 6000 copies of the application guide without a contract. Mr. Bellefeuille was required to provide an after-the-fact justification for this printing.

[46] Because of her repeated difficulties with financial matters, Ms. Harty repeatedly encouraged the grievor to attend training to improve her knowledge of financial administration. Ms. Harty put as much in writing as a performance objective on October 15. The grievor did not communicate to Ms. Harty any initiative about taking this training.

## **B. The grievor's evidence about the probationary period**

[47] The grievor testified about her extensive employment history. Until she obtained employment with the NPB in May 2009, she had been employed as a casual or through an employment agency. She has a bachelor degree in music, one in Spanish literature and is completing a third, in translation and revision. The grievor also gave an overview of her current position as an administrative assistant within the Treasury Board Secretariat.

### **1. Deficiencies**

[48] The grievor responded as follows to the examples of deficiencies in her ability to meet the requirements of the position.

#### **a. Ordering office supplies**

[49] In examination-in-chief, the grievor declared that she never had signing authority for expenditures. Her role consisted of making a list of office supply purchases and of having her supervisor sign and approve it. No MasterCard was ever issued in her name; it was in the name of Ms. Turenne. She used Ms. Turenne's credit card for office supply purchases and for reserving hotel rooms as part of making travel arrangements. She did not handle petty cash.

[50] The grievor stated that, at first, another employee accompanied Ms. Turenne to purchase office supplies. Eventually, the grievor bought the supplies on her own, except in one instance when Mr. LeBlanc accompanied her to purchase a headphone. The grievor testified that she never received a MasterCard; nor was its use ever explained to her. According to her, she had to insist on being briefed on credit card procedures, but that did not occur until August.

[51] In cross-examination, the grievor testified that she was confused about having to apply for a MasterCard and that she may have asked Ms. Harty for an explanation, but could not recall the conversation. When presented with a copy of the application for a MasterCard dated June 9, the grievor recognized her signature. She admitted that she did not immediately send the signed application to the Chief of Finance because she wanted more information. She could not recall having discussions with the Chief of Finance, other than to provide clarification with respect to her liability and responsibilities. When prompted, the grievor recognized that she made an entry in her daily diary on July 13th about her ongoing discussions with the Chief of Finance, but added that she might not have recorded that entry until a few days later, and therefore, she was unsure of what had been discussed.

[52] When shown a copy of the credit card, the grievor acknowledged receiving it and stated that she used it only two or three times because her name was misspelled on the card. When confronted with five pages of transactions made on the card, the grievor could not recall making the purchases.

**b. Setting priorities and getting work done**

[53] In examination-in-chief, the grievor testified that, when she arrived in the division, the office was disorganized, and no transition was organized from the previous incumbent. There was a lot of new work. After three weeks, she was stressed by not being able to get things done. She stated that Ms. Harty was unhelpful and that she referred her to another administrative assistant. Ms. Harty changed her priorities daily, if not hourly, and the grievor could not finish one priority before being requested to complete another.

[54] The grievor testified that, when she began working at the NPB, she was not given any documents about her responsibilities. She stated that, when her position was

converted from a term to an indeterminate position, the job description remained the same.

[55] The grievor explained that, during the first month of her employment, Ms. Harty requested her assistance to organize a retreat for 45 people, including the venue, food, bus transportation and photocopying of the presentations. In the meantime, Ms. Harty also assigned her other tasks, such as updating the organization chart and handling correspondence. She was overwhelmed by such a project.

[56] The grievor testified that she kept a daily diary of her work, which she completed at break time or after work, more or less regularly. She skipped some days when she was too busy. The grievor admitted amending it at times. She completed priorities that the previous administrative assistant had left behind, tended to Ms. Harty's priorities and did her regular duties as well. She soon realized that the work was ongoing and that priorities were more and more urgent and increasing. The grievor testified she was always busy.

[57] The grievor's normal duties consisted of making lists of required office supplies, getting them approved, obtaining translations, reviewing her email, making photocopies, sending faxes, greeting people who came for meetings and interviews, making reference checks on behalf of Ms. Harty, taking minutes of meetings, and keeping track of invoices and leave forms. She stated that she was usually given tight deadlines for the minutes of meetings and that they had to be produced in English and French.

[58] In cross-examination, the grievor admitted receiving a job description a day or so after beginning her employment. When shown an email from Ms. Harty, the grievor acknowledged completing one section and signing it. When asked whether she had asked for clarification about her job description, the grievor stated that she might have asked some questions of Ms. Harty; however, the answers were "not as much as [she] would have hoped."

[59] The grievor testified that she did not follow the job description very closely, except with respect to what Ms. Harty asked of her on a daily basis. The grievor admitted receiving performance objectives on October 15.

**c. Untidiness of office space**

[60] In examination-in-chief, the grievor testified that her workspace was organized and that it contained the usual files, in and out boxes, pencils, pens, stapler, three-hole punch and a personal printer. The grievor denied having any cardboard around her desk. New and used ink cartridges on both sides of the filing cabinet were left by the previous incumbent. The grievor requested an additional filing cabinet for her things. Mr. Bellefeuille helped her find space in the existing two cabinets. The old shoes on the floor did not belong to her. The grievor used a telephone book and a sheaf of paper to prop up her monitor.

[61] In cross-examination, the grievor testified that she was not asked whether the shoes on the floor belonged to her. The grievor denied being asked to remove the shoes or to tidy up her workspace. She did her best with the space at her disposal and with her responsibilities for office supplies.

**d. Office key**

[62] In examination-in-chief, the grievor testified that, when Mr. Bellefeuille requested a key to his office, she did as he requested and remitted the key to him. Since she obtained the key from the division's administrative services, it was not her responsibility to ensure that it worked. Mr. Bellefeuille's first greeting to her on the day he commenced work was not cordial; he stayed in his office that day.

[63] In cross-examination, the grievor testified that she obtained a key for Mr. Bellefeuille and that she did not recall whether it worked. Had it not worked, she would have had it replaced.

**e. Travel arrangements**

[64] In examination-in-chief, the grievor testified that she made all travel arrangements requested of her.

[65] In cross-examination, the grievor could not recall the specifics of Mr. Bellefeuille's request for an itinerary for his trip to Collins Bay Institution.

## **2. Attitude**

[66] The grievor responded as follows to the employer's examples of her belligerent attitude, demonstrated by challenging her manager's authority, her poor attitude and by refusing to meet with her manager to receive objectives and feedback about her work performance.

### **a. Interpersonal skills demonstrated with colleagues and staff**

[67] In examination-in-chief, the grievor testified that other employees complained to her about the working environment and Ms. Harty when they came for office supplies from her. The grievor declared that she got along well with her colleagues but that there was a lot of tension within the division.

[68] The grievor testified that she had a serious disagreement with a particular colleague. Ms. Harty called both of them into her office and tried to remedy the matter. According to the grievor, things were left up in the air. In her opinion, her relationship with Ms. Harty changed after this incident. In September, the grievor filed harassment grievances about the incident against the colleague and against Ms. Harty for not appropriately handling the incident. The grievor testified that she requested help from the Human Resources Department about finding another job within the NPB but that she was told that that was not its role. The grievor testified that she did not receive the reply to her grievances dated October 9, 2009, other than the copy she received through her union representative.

### **b. Interpersonal skills demonstrated with her managers**

[69] In examination-in-chief, the grievor testified that she was never told about performance issues. The harassment by Ms. Harty and the colleague began at the very start of her employment. The grievor said that Ms. Harty told her that she was her eyes and ears and that she was to observe certain employees. She learned that some employees were unhappy. As time passed she started her diary and backtracked to the first days of her employment. She wanted to protect herself from any criticism that she was not a productive employee.

[70] The grievor complained that Ms. Harty did not listen to her and that she belittled her. Her work demands were unreasonable; she changed priorities several times a day and expected her work to be done immediately.

[71] The grievor did not appreciate Ms. Harty's inquiries about her health and comments about how unwell she looked at times.

[72] The grievor testified that in mid-October she met with Harvey Cenaiko, Chairperson of the NPB, to discuss her issues concerning Ms. Harty. He apparently replied, "hang in there, she will be gone in the next few weeks." Mr. Bellefeuille became the new manager shortly thereafter. Mr. Bellefeuille did not ask her to participate in meetings or take minutes of meetings he organized in his office.

[73] In cross-examination, the grievor reviewed all her prior experience with respect to duties similar to what was requested of her at the NPB. She recalled reading in the job description that she was to provide services for divisional staff but she could not recall the number of managers and employees in the division. The grievor stated that Ms. Harty asked her to change the names and titles, levels and language requirements, or to add a box and date to the organization chart, very frequently, if not daily. The grievor stated that she did not have the right program to make the changes and that that task took time away from her more urgent tasks. The grievor agreed that her supervisor could have asked her to do that type of work.

**c. Refusal to do certain tasks**

[74] In examination-in-chief, the grievor testified that she was overwhelmed by the amount of work that she was required to do. There was simply too much work, and she could barely keep up with Ms. Harty's ever-changing priorities and her requests to modify the organization chart, along with making reservations, fielding requests for translations, making photocopies, and so on. She blamed her inability to quickly make changes to the division's organization chart on her lack of access to a program called "Visio."

[75] The grievor denied that Mr. Bellefeuille communicated his job expectations to her. She testified that he did not provide feedback about her work, did not discuss her incompatibility to work with him, did not offer any training or suggestions on how to get along better with staff, and did not assist her in meeting her work requirements. The grievor denied challenging Mr. Bellefeuille's authority, refusing to do the work he requested or refusing to meet with him to discuss her job objectives, since he never requested a meeting with her.

[76] In cross-examination, the grievor admitted that she began to look for a new position on June 22, when she submitted several applications. She admitted applying for about 80 positions during her 7 months of employment at the NPB. She admitted working on the applications from her workstation during working hours. She could not recall how much time she spent on each application. She did not tell Ms. Harty that she was looking for other employment. She wrote a qualifying examination for another position on July 23 and went for an interview. On August 5, the grievor met with a representative in the Human Resources Department for assistance on how to find another job.

### **3. Errors**

[77] The grievor responded as follows to examples of serious errors in contracts and finance.

#### **a. Financial administration**

[78] In examination-in-chief, the grievor testified that her manager asked her to take further training on financial administration in the public service. The appropriate course was the “Fundamentals of Budget Formulation and Control” (FBFC), given by the Canada School of Public Service. The grievor stated that she did not take the course immediately for the following reasons: “The dates were inappropriate. At that point I was aware of the disorganization and I was being overwhelmed. I had so much work to do. It was offered in December and February of the next year.” The grievor admitted that it was offered before December 2009 but that she missed the earlier offerings. The grievor filed in evidence a printout of her inquiry about taking the FBFC, dated November 18, 2009. She took three other courses while at the NPB, one called “The Outstanding Administrative Assistant” given by an outside trainer, as well as the “Public Service Initiation Course” and “Creating a Respectful Workplace,” given by the Canada School of Public Service.

[79] In cross-examination, the grievor admitted that she followed other courses instead of the one on financial administration since that one was not her priority because she had too much work. She knew how to make financial entries. She testified that she was not advised that she had made serious errors in contracting services. There was no financial log when she started and she had to set one up. She recalled her understanding of financial responsibilities as having to monitor invoices, expenses



and budgets as having to prepare a tracking document. The grievor insisted that she received no training on how to handle financial matters.

[80] When shown the entries in her diary, the grievor admitted to meeting with several people from the Finance Department for further instructions. She met on June 9 with the Chief of Finance about financial issues and the MasterCard, and with M.-J. Cole concerning the coding manual; on June 10, to discuss several issues; on July 13 about the rules that applied to MasterCard purchases; on August 9, to discuss invoices; on August 12 with the Chief of Finance and Ms. Cole for undisclosed reasons as well as with Mr. Leblanc with respect to inputting invoices and codes; on August 19 with Ms. Cole and Ms. G. about budgets; and on September 10 with Carole Martel with respect to consultant contracts.

**b. Parole application kits**

[81] In examination-in-chief, the grievor testified that she knew nothing about ordering parole application kits except what she learned by attending office meetings. She did not know that ordering the kits required a call for proposals through the MERX system or that the applications had been put on hold pending an increase in the user fee. A consultant was involved with ordering the kits, but she had no idea of his role in the process.

[82] In cross-examination, the grievor denied delegating this work to other colleagues, admitting only that she asked for help with certain tasks. She stated that she was denied help with ordering pardon application kits. She used the same print shop as for the previous order of kits because the printer was familiar with the work. She stated that she contacted the printer to resolve the issue of the sequential numbering of the ordering of the kits. The printer admitted in an email that it had made a mistake, which she attributed to human error.

**C. The grievor's evidence about her complaint**

[83] During her examination-in-chief, the grievor stated that her rejection on probation was retaliation for filing two grievances. The connection was the termination of her employment within four weeks of Mr. Bellefeuille's arrival, which happened shortly after she told him that she was attending a third-level grievance hearing. She stated that several employees filed harassment grievances against Ms. Harty but that

she was the only employee on probation, and she was terminated. The others withdrew their complaints.

[84] John Edmunds is President of the Union of the Solicitor General Employees (USGE or “the union”). When the grievor filed her harassment grievances against Ms. Harty and the colleague, the office of president of the USGE-NPB local was vacant because no employee was prepared to run for it. In an effort to get employees involved and interested in union activities, Mr. Edmunds took a personal interest in the grievor’s and other employees’ grievances. He met with them and heard their very emotional complaints. Mr. Edmunds also met a number of times with managers at the NPB about union issues. Some meetings included the grievor; some did not.

[85] Mr. Edmunds testified that he was not aware of any performance issues concerning the grievor until he received a courtesy call from Mr. Cenaiko that she was to be terminated that day, in Mr. Edmunds’ words, “for just cause.” In the same conversation, Mr. Cenaiko mentioned that he was unhappy with the outcome of the union elections that took place on December 3, 2009, including that the administrative assistant of the Vice-Chairperson of the NPB had been elected the local president.

[86] In cross-examination, Mr. Edmunds testified that approximately 15 harassment grievances were filed against Ms. Harty. Only the grievor pursued her grievance, and only the grievor was terminated. Mr. Edmunds admitted that the union is not automatically advised of an employee’s performance issues. He was unaware that, on September 18, management provided the grievor with a witness for meetings during the grievance process. Mr. Edmunds took the view that, even though asked to, the employer did not apply the Treasury Board Policy that states that parties to a harassment grievance are required to be separated. According to Mr. Edmunds, the employer did nothing to resolve the grievor’s grievance, other than to assign Ms. Harty to another position on November 6, 2009. Mr. Edmunds testified that Fred Sadori, the union representative, told him that the grievance concerned workplace bullying, threats, screaming and yelling, and a generally unprofessional manner of treating employees. The grievor complained of ever-changing priorities. Mr. Edmunds admitted that he did not know the specifics of the work that Ms. Harty assigned to the grievor.

### **III. Summary of the arguments**

#### **A. For the employer**

[87] The employer argues that the grievor was terminated for employment-related reasons and that its evidence clearly pointed out the issues with her job performance.

[88] The employer argues further that section 190 of the *PSLRA* does not apply in this case and that the complaint was filed in an attempt to bring before the Board a matter over which it has no jurisdiction under paragraph 211(a).

[89] The probationary period is when an employee's performance is assessed. A determination is made as to whether the employment relationship should continue. The employer argues that, since *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, the employer's burden of proof is to establish that the employee was on probation and was terminated for an employment-related reason, which is a lesser burden of proof than just cause.

[90] An adjudicator cannot substitute his or her judgment for that of the employer. The mere fact of being on probation is sufficient notice that an employee's performance is being assessed. If the employee does not meet the employer's expectations, he or she may be rejected on probation.

[91] The employer argues that it established that the grievor was on probation when she was rejected for the employment-related reason of unsatisfactory performance. She was made aware of her duties and was provided with a job description and assistance in performing those duties. In her application and job interview, the grievor listed the skills and experience required for the position of administrative assistant, which were client service, experience creating spreadsheets and schedules, and financial experience. On the other hand, the grievor stated in her testimony that she had little financial experience. She raised her concerns about dealing with financial matters in her daily diary. This raises a question of her credibility.

[92] Although the grievor testified that she complained about her job description, she did not file a job description grievance or bring this up with her supervisor. The financial aspects of her responsibilities with respect to monitoring and tracking budgets and financial delegation are clearly stated in her job description. Even though she stated in her job application that she had extensive experience with purchasing

and procurement, she balked when asked to assume this responsibility under Ms. Harty. The priorities set by Ms. Harty and discussed with the grievor were within the realm of her duties. Her main issue was her inability to complete tasks. Ms. Harty set priorities for her because she had demonstrated that she was unable to do so herself. That was not harassment.

[93] When cross-examined about bullying and threats, the grievor could not provide examples, other than an incident with the colleague against whom she had filed a harassment grievance. What the grievor reports in her daily diary is how she feels about her communications with Ms. Harty for the benefit of her meetings with her psychologist, not what actually occurred. Mr. Edmunds could provide no specific examples of incidents, only what the grievor told him about how she felt.

[94] Ms. Harty had a vested interest in the grievor's success since she hired her. There was no reason for Ms. Harty to antagonize the grievor. Quite the contrary, the grievor demonstrated a lack of respect. Her belligerence and poor attitude is evident in the entries in her daily diary.

[95] The employer submits that serious issues arose with the grievor's performance. Mr. Bellefeuille testified that he discussed his expectations of the grievor with respect to the fast-paced work environment immediately upon taking his position. Mr. Bellefeuille noted major mistakes in her work, such as placing orders without a contract and not knowing the sequential order of parole application kits, which the grievor should have mastered after seven months. Her workspace was disorganized; the time Mr. Bellefeuille spent explaining office procedures to her produced marginal results. Ms. Harty observed the same fact.

[96] From the employer's perspective, whether from a lack of skill or just an unwillingness to do the work, the grievor could not perform the work required of her. This conclusion is supported by the numerous documents filed in evidence and is not a sham or a camouflage.

[97] The employer argues that the grievor's evidence was not credible compared to the clarity and consistency of Mr. Bellefeuille's and Ms. Harty's evidence. The grievor did not refute her supervisor's concerns; the grievor could not produce her work on time. The grievor replied that she felt harassed, not that she got the work done. She

could not juggle her priorities, regardless of the help offered. This constitutes the main argument for rejecting her on probation.

[98] The employer argues that no evidence supports the grievor's complaint of anti-union animus. Mr. Edmund testified about his frustration with the union local's lack of interest in union activities. Mr. Cenaiko's opinion about union politics do not relate to the grievor's rejection on probation. The employer further argues that the other harassment grievances filed in evidence by the grievor are not relevant as they are not identical to her grievance. The grievances were acknowledged and dealt with on their merits. The grievor adduced no convincing evidence concerning the anti-union animus of either Ms. Harty or the colleague against whom the grievor filed her harassment grievances.

[99] The employer cited the following decisions in support of its arguments: *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (C.A.); *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529; *Owens v. Treasury Board (Royal Canadian Mounted Police)*, 2003 PSSRB 33; *Wright v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 139; *Bilton v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 39; *Kagimbi v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 67; *Boudreau v. Treasury Board (Department of National Defence)*, 2010 PSLRB 100; *Hamza v. Deputy Head (Department of National Defence)*, 2010 PSLRB 119; *Tello v. Deputy Head; Ducharme v. Deputy Head (Department of Human Resources and Skills Development)*, 2010 PSLRB 136; *Quadrini v. Canada Revenue Agency and Hillier*, 2008 PSLRB 37; *Gignac v. Fradette*, 2009 PSLRB 18; *Hager et al. v. Statistics Survey Operations and the Minister responsible for Statistics Canada*, 2009 PSLRB 80; *Laplante v. Treasury Board (Industry Canada and the Communications Research Centre)*, 2007 PSLRB 95; *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33; *Olson v. Canadian Food Inspection Agency*, 2009 PSLRB 6; *Chaudhry v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 72; *Lundin v. Canada Customs and Revenue Agency*, 2004 PSSRB 167; and *Rousseau v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 91.

#### **B. For the grievor**

[100] The grievor, through her representative, maintains that the employer's evidence is contrary to the reasons given for the grievor's termination. The evidence of her office being disorganized, her inability to provide travel directions and the office key

are new. The termination is a sham because the reasons set out at adjudication were not in the letter of termination, which prevented the grievor from preparing her case. She claims that invoking other reasons is a ruse, is dishonest and brings the adjudication process into disrepute. The grievor alleges that her termination was disciplinary and that it was retaliation because she filed grievances.

[101] The grievor accuses Mr. Bellefeuille of being biased from the start of his supervision of her and that he was influenced by Ms. Harty's opinion.

[102] The office key that did not work was not the grievor's fault as she did not cut it. The locks could have been changed without her knowledge. Neither Mr. Bellefeuille nor Ms. Harty asked the grievor who owned the old shoes. The grievor denies being asked to remove them or to tidy up her workspace. These are trivial reasons for a rejection on probation.

[103] The grievor argues that Mr. Bellefeuille did not ask who had developed the spreadsheets before telling her that he did not like them. The spreadsheets had been developed by another person and were not of her making. The issue of providing an incomplete Internet map is especially capricious since she could not have been expected to test the route before giving the directions to Mr. Bellefeuille.

[104] The grievor claims that Mr. Bellefeuille's decision to terminate her employment was arbitrary because he considered her overall performance and documents that he did not generate and that he did not limit his reasons to his personal observations. The grievor argues that she did not have the slightest chance of performing her duties to his satisfaction since he never told her what he thought of her performance. Mr. Bellefeuille did not witness the grievor's so-called "belligerent" attitude, and he did not provide any examples of her challenging his authority. Mr. Bellefeuille did not witness all the examples of deficiencies enumerated in the grievor's letter of termination. Nor did he witness first-hand the training and instructions allegedly given to the grievor in contracts and finance. Therefore, he cannot authoritatively state as a reason for termination that she made mistakes, despite having been trained. The grievor argues that Mr. Bellefeuille's decision was based on perceptions, not reality.

[105] The grievor further argues that I should consider the three harassment grievances filed in evidence as strong indicators that there was workplace harassment and intimidation. The fact that they are form grievances does not lessen their value;

nor does the fact that the grievors amended them. The date of Mr. Bellefeuille's appointment indicates that he replaced Ms. Harty to deal with real workplace complaints. The grievor argues that I should draw a negative inference from the fact that Mr. Cenaiko did not testify since he is a named respondent in the complaint. On the other hand, Mr. Edmunds testified as to the circumstances of her complaint with the NPB.

[106] The grievor argues that the workplace became quickly poisoned because she could do nothing right. It was next to impossible to keep up with Ms. Harty's changes in priorities and requests for changes to minutes of meetings, and nothing would satisfy her. The grievor further argues that I should consider her daily diary for what it is, notes to herself each day and not a document prepared for the purposes of the hearing. She could not have been terminated for what she was thinking.

[107] The grievor maintains that she was terminated because she dared exercise her rights under the law, the employer's harassment policy and the relevant collective agreement. She recalls Mr. Edmunds' testimony about meeting distraught employees. The grievor associates Mr. Cenaiko's announcement to Mr. Edmunds that her employment was being terminated "for cause" and his remarks about the outcome of the local elections with anti-union animus and with interference in union activities that reflect directly on her case. The grievor submits that the employer did not contradict her evidence of a poisoned workplace or anti-union animus.

[108] The grievor argues that I should not condemn her for standing up for herself and fighting back. She states that no evidence showed that she behaved threateningly. She argues that she lived in fear and intimidation for the months in which she worked for Ms. Harty. Mr. Bellefeuille could not appreciate her situation in the four brief weeks that he supervised her. The grievor labels the situation as capricious, arbitrary and bad faith.

[109] The grievor submits that I should weigh the credibility of the employer's witness on the same scale as her. That is, Mr. Bellefeuille made the decision to terminate her without first speaking to Ms. Harty and on the basis of hearsay evidence. The grievor argues that, since *Penner*, adjudicators have made exceptions in cases of rejection on probation in which there is overt discrimination, evidence of union activity and a grievance filed before termination. That gives jurisdiction to an adjudicator to deal with the situation, which is so in this case.

[110] The grievor argues that, because a probationary employee has significantly less employment security, a termination must be fair, and an employee is entitled to know the reasons for which he or she is being dismissed. Mr. Bellefeuille was unfair because he decided to terminate her, a mere four weeks into supervising her.

[111] The grievor cited the following cases in support of her position: *Hager et al. v. Statistical Survey Operations (Statistics Canada)*, 2011 PSLRB 79; *Monette v. Parks Canada Agency*, 2010 PSLRB 89; *Jacmain v. Attorney General of Canada et al.*, [1978] 2 S.C.R. 15; *Bergeron v. Canadian Security Intelligence Service*, 2011 PSLRB 103; *Lavoie v. Canada Revenue Agency*, 2011 PSLRB 91; and *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109.

[112] The grievor asks that I uphold the grievance and that I allow the parties to reach an agreement on the proper redress.

### **C. The employer's reply**

[113] The employer replies that no evidence supports the grievor's allegations. If the letter of termination is dishonest, it should have been put to the witness who wrote it. The letter speaks for itself and is not required to be a litany of every incident. The evidence supports the broad areas of concern, which are the grievor's compatibility, failure to meet work requirements and errors.

[114] The concrete examples of the grievor's behaviour that were part of Mr. Bellefeuille's and Ms. Harty's testimony do not detract from the nature of the termination or the reasons for it. The details of the reasons do not change the nature of a discharge on probation.

[115] The employer asserts the principle that good faith is to be presumed and that bad faith must be proven. In this case, the grievor did not prove the employer's bad faith. The only evidence was that the grievor filed a grievance against Ms. Harty, the grievance was denied and the grievor pursued her grievance to the final level. This is not evidence of bad faith. Ms. Harty honestly acknowledged that she was aware of the grievor's grievance. This is not bad faith or an indication that the termination was a camouflage. The employer submits that the fact that Mr. Cenaiko spoke with Mr. Edmunds on the day the grievor was rejected on probation is not an indication that the termination was disciplinary or that it was tainted with anti-union animus.



Mr. Edmunds was not involved in the employer's decision to terminate the grievor and admitted that he did not know about the quality of the grievor's performance.

[116] The employer submits that the grievor's position that she was unaware of her poor performance is not supported by the evidence. The email that Ms. Harty sent on October 15 states that she was asked to sign and return the performance objectives discussed that day.

[117] The employer submits that the grievor chose the grievance route to complain about harassment. Since this was not a complaint under the Treasury Board policy on workplace harassment, the employer was not obligated to separate the grievor from Ms. Harty during the grievance process.

[118] The employer asks that I dismiss the grievance.

#### **IV. Reasons**

[119] *Jacmain, Penner* and *Leonarduzzi* contain the quintessential legal principles that govern the jurisdiction of an adjudicator appointed under the *PSLRA* in cases of rejection on probation.

[120] Subsection 62(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 ("the *PSEA*") stipulates as follows that a deputy head may reject an employee at any time while on probation:

*62. (1) While an employee is on probation, the deputy head of the organization may notify the employee that his or her employment will be terminated at the end of*

*(a) the notice period established by regulations of the Treasury Board in respect of the class of employees of which that employee is a member, in the case of an organization named in Schedule I or IV to the Financial Administration Act . . . .*

. . .

[121] Even though section 209 of the *PSLRA* provides for the referral of a termination grievance to adjudication under the circumstances that it details, section 211 excludes from adjudication a termination under the *PSEA* and, notably, a rejection on probation.

[122] An adjudicator's jurisdiction is limited to verifying that the employer's reasons for rejecting an employee on probation were made in good faith and were employment related.

[123] As stated in *Penner*, and the numerous cases that followed it, the purpose of the probationary period is to enable the employer to assess an employee's suitability for a job. If an employee does not have the necessary aptitudes, he or she may be rejected, without recourse to adjudication. If the employer's decision was made in good faith, an adjudicator is without jurisdiction over a rejection on probation (see *Jacmain*). If the reason for the rejection was related to the employee's employment, such as his or her performance or conduct, the employer does not have to justify the rejection as appropriate in the circumstances (see *Leonarduzzi*). The employer is not required to adduce evidence of just cause, as in the case of the termination of an indeterminate employee, but simply to provide some evidence that the rejection was made for employment-related reasons (see *Wright*).

[124] In view of the position of the courts, the bar is very high for a grievor alleging that his or her termination resulted from a deception or camouflage or that it was made in bad faith. In view of section 211 of the *PSLRA*, the grievor must demonstrate that, on the balance of the evidence, the employer acted in bad faith. The employer does not have to follow the disciplinary process during the probationary period but may reject an employee for an employment-related reason (see *Owens*). The *caveat* is that the employer cannot invent an employment-related reason to camouflage other reasons that had nothing to do with the employee's aptitude to perform the work (see *Dhaliwal*).

[125] In this case, the employer's reasons for discharging the grievor were three-fold: deficiencies in her ability to meet the requirements of the position; a belligerent attitude demonstrated by challenging her manager's authority and by refusing to meet with her manager to receive objectives and feedback about her work performance; and serious errors in contracts and finance.

[126] The grievor argued that her termination was a sham because the reasons set out during adjudication were more fulsome than those set out in the letter of termination, which impeded her ability to prepare her case. I am singularly unpersuaded by this argument. In its letter of termination, an employer must indicate the reasons for its decision. The legislation does not prescribe a format or regulate the content of such a

letter. Therefore, the employer need only set out its reasons clearly so that the employee is made aware of the shortcomings that led to the termination of his or her employment, which it did.

[127] In presenting its case, the employer provided many examples of the grievor's shortcomings that do not undermine the essential reasons for which she was terminated. The employer presented its case first, and thus, the grievor was able to fully comprehend the case against her. Notably, an eight-month hiatus occurred between the initial hearing dates (January 10 to 14, 2011) and the continuation (September 13 to 15, 2011), which allowed ample time for the grievor to prepare her case, especially since the grievor's case was not closed when the matter resumed. I received no indication at any stage of the proceedings that the grievor's case was incomplete. She did not raise the issue of inadequate preparation or of being taken by surprise at the outset or during the hearing, and it is a little late to raise this in argument. Accordingly, I dismiss the grievor's argument that providing concrete examples of her shortcomings brings the adjudication process into disrepute.

[128] In addition, the employer did not do what the grievor alleges it did. In providing concrete examples of her shortcomings in all three areas which were set out in the letter of termination, the employer did nothing more than what was required of it. If the grievor's argument is accepted, the employer's evidence would be limited to a simple recitation of the three reasons for rejection on probation, devoid of any concrete examples. In presenting its case, the employer did not introduce any new grounds, it merely lead evidence regarding its stated reasons for rejecting the grievor on probation. The grievor argued that the employer's evidence was contrary to the reasons given for her termination. I find that the employer's examples served as concrete illustrations of the grievor's conduct to buttress the reasons given for her termination.

[129] I also take the view that, contrary to what the grievor argued, the manager who signs the letter of termination is not required to have personally witnessed the incidents or conduct that led to the grievor's termination. What is required is that the manager makes an informed decision, citing the reasons for the termination, whether they are his or her own observations or those of others. The fact that the manager in this case considered documents that he did not author does not make them hearsay. It is common for a probationary employee to have more than one supervisor. To find

that the employer was unfair or that it acted in bad faith in its treatment of a probationary employee due to the mere fact that the person who signed the letter of termination did not personally witness the deficient skills or unsuitable conduct is unreasonable and unrealistic. In this case, the employer adduced substantial evidence through the grievor's two supervisors of the reasons for terminating her employment. Documentary evidence was provided in support of their testimony. The grievor did not object to the introduction of the documents in evidence. Thus, there is no evidence that the employer's reasons for terminating the grievor were deceptive, irrelevant or bad faith.

[130] My analysis of the evidence starts with the representations made by the grievor to the employer when she was hired. In her online application, the grievor answered all questions positively. The grievor's statement found on page 5 of the document describing her experience reads as follows:

*I have **much** experience in using Word, Excel, Powerpoint, Outlook and Internet Explorer; in **coordinating travel itineraries** and preparing travel and hospitality claims; **organizing meetings** and conference calls, and **preparing meeting summaries**; **purchasing and procurement of equipment and office supplies**; dealing with the public and senior officials from various organizations (pls see resumé) as well as coordinating the day-to-day schedule of a senior official as well as providing administrative support **including preparing budgets and financial reports at the executive level**, as I am presently working as As-02 for the Director General of Knowledge & Research/SPPR at the Canada Public Service Agency as well as for the Director of Knowledge, Development and Management: Blagovesta Maneva-Sleyman. - and **am doing both AS-2 positions simultaneously and successfully.***

[Sic throughout]

[Emphasis added]

[131] In addition, the grievor's resumé attached to the online application states, among other qualities, the following recent and significant experience:

...

*Excellent communication skills*

*Ability to work well in a team environment*

*Ability to resolve conflicts and keep a positive attitude*

*Experience in organizing travel arrangements*

*Experience in organizing... meetings*

*Ability to organize one's work and establish priorities*

*Ability to multi-task*

*Ability to work under pressure*

*Ability to work with minimum supervision*

*Ability to research and retrieve data from financial management systems*

*Ability to prepare financial reports using spreadsheet software*

*Ability to research, analyze and suggest solutions.*

[132] From that extract, I conclude that the grievor represented to the employer that she had all the required skills in the key areas of her job. Given the “much experience” and abilities that the grievor professes, I find her testimony about her lack of knowledge and training in financial matter as an impediment to the proper execution of such tasks as contracting requirements, inputting data and preparing financial reports unconvincing as an explanation for her errors and inability to perform in this area. Her testimony about not having adequate training in financial matters is contradicted by the entries in her daily diary about numerous meetings with staff from the Finance Department.

[133] The grievor’s testimony that she did not have responsibility for a MasterCard with which to purchase office supplies, and her denial that she used the credit card for those purposes, is contradicted by the documentary evidence of a copy of the credit card and related statements. Furthermore, her declaration in the updated resumé that she provided in support of her testimony at the hearing also contradicts her testimony, as follows:

*I have done ... ordering regular office supplies on a regular basis... Being the Responsibility Centre for the Division, I have been paying off invoices with the Corporate Master Card and keeping a log of all invoices. . . .*

[Sic throughout]

[134] I also do not attach much credibility to the grievor's testimony that the dates for the FBFC course were inappropriate and that the course was not offered until December or February. The course printout filed in evidence by the grievor demonstrates that she did not look into taking the FBFC course until November 11, well after Ms. Harty requested that she take it. Hence, it was not until a month after the grievor was faced with her performance objectives and the arrival of Mr. Bellefeuille as her supervisor that she started looking for the opportunity of taking this course. The fact that she followed other courses contradicts her statement that the office was disorganized, that she was overwhelmed and that she had too much work to do so.

[135] In light of the grievor's declared abilities to establish priorities, multi-task, work under pressure and do the job of two AS-02's, her testimony about being overwhelmed by the quantity of work assigned daily by Ms. Harty, the difficulty of setting priorities and getting the work done in one day is also unconvincing. On the other hand, the grievor testified that she prepared no less than 80 applications for employment while on the job. In my view, this more likely explains why she had so little time to complete her work and why she felt pressured by Ms. Harty about her daily priorities. It is also difficult to reconcile the grievor's lack of initiative with respect to printing the parole application kits with her declared ability to research, analyze and suggest solutions.

[136] The grievor's statement that she received no documentation about her responsibilities is contradicted by her signature on the job description that she signed on May 13, two days after beginning her employment at the NPB. The grievor's statement that Mr. Bellefeuille did not communicate his expectations to her and that he did not assist her in any way is contradicted by his day-to-day notes. Although the grievor had 29 pages of notes on her interactions with Ms. Harty, ending October 28, she did not have a single note about her interactions with Mr. Bellefeuille.

[137] The grievor's argument that her managers did not ask her who owned the old shoes does not justify an untidy workspace as described by her managers. In this respect, Mr. Bellefeuille and Ms. Harty's testimonies were unanimous that the grievor erected a cardboard cubicle and that there was litter, empty ink cartridges and boxes, in her work area.

[138] The many contradictions in the grievor's testimony reported in the summary of the evidence are self-evident, and it is not necessary to repeat them all. I noted the

many times she could not recall certain facts when cross-examined, even though she had kept a daily diary. Moreover, the test put forward as follows in *Faryna v. Chorney*, [1952] 2 D.L.R. 354, on the issue of witness credibility, is of particular relevance in this case:

...

*... the real test of the truth . . . of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

[139] In the circumstances of this case, I find that the grievor's testimony is not in harmony with the preponderance of probabilities that I recognize as reasonable. Consequently, on a balance of probabilities, I find that the employer has demonstrated, by clear, convincing and cogent evidence, employment-related reasons for terminating the grievor while she was on probation and that the grievor has failed to prove that the reasons given were a sham, a camouflage or made in bad faith.

[140] With respect to the grievor's complaint under section 190 of the *PSLRA*, her evidence is that she was terminated because she dared exercise her rights under the law, the employer's harassment policy and the relevant collective agreement. The basis of the grievor's testimony is that she filed two harassment grievances, that Mr. Cenaiko announced the termination of her employment to Mr. Edmunds "for cause" and that, in the same breath, Mr. Cenaiko commented negatively on the outcome of the union local elections.

[141] My view is that despite the reversal of the burden of proof found in subsection 191(3) of the *PSLRA*, it is not enough for a complainant to make any allegation he or she wishes, claiming that such allegations have established a *prima facie* case and then sit back to watch, requiring the opposing party to lead evidence to disprove the allegations. The Board's role is to decide whether the complainant has established the required elements of a *prima facie* case before the employer is required to shoulder the burden of disproving the allegations. That principle was applied by the Canada Industrial Relations Board in *Wilson (Re)* [2000] CIRB no. 99, as follows:

*[13] ...as the Board found in Canada Post Corporation (1983), 52 di 106; and 83 CLLC 16,047 (CLRB no. 426), "notwithstanding the burden of proof provisions of section*

188(3) [now section 98(4)] of the Code, there has to be some substance to a complaint upon which a contravention of the Code can be founded. It is not enough for a complainant to throw out accusations, then sit back and rely on the inability of the other party to disprove them." The Board has the authority to decide whether the complainant has established the required elements of a *prima facie* case, before the burden of proof can be shifted to the employer. This rule was applied as well in the following decisions: CHUM western Ltd., Radio CKVN (1974), 3 di 18 (CLRB no. 6); Radio Ste-Agathe (CJSA) Inc. (1975), 8 di 8; and 75 CLLC 16,154 (CLRB no. 39); Air Canada (1975), 11 di 5; [1975] 2 Can LRBR 193; and 75 CLLC 16, 164 (CLRB no. 45); and Provost Cartage Inc. (1985), 61 di 77 (CLRB no. 517).

[142] The provisions of the *Canada Labour Code* on the onus of proof are similar, if not identical to those of the *PSLRA*. There is no reason not to apply a similar principle in this case.

[143] Indeed, the Board has explicitly adopted a similar interpretation of its own provisions on the reverse onus of proof. In *Hager et al. v. Statistics Survey Operations and the Minister responsible for Statistics Canada*, 2009 PSLRB 80, the Board held as follows:

[34] As outlined in *Quadrini*, the reverse burden of proof feature operates as long as the complainants have made a *prima facie* case that the respondents have breached the identified prohibition under the Act. *Quadrini* outlined the question to be posed as follows:

32. At heart, the issue of *prima facie* case here is one of common sense. Were it the case that a person could simply file a complaint stating his or her conviction that there has been a violation of subsection 186(2) of the new Act and, by doing so, trigger the legal requirement that the respondent prove the contrary, the possibilities for vexatious litigation would be substantial. An allegation of a breach of subsection 186(2) must be reasonably arguable on its face. As stated earlier, the threshold is the following: taking all of the facts alleged in the complaint as true, is there an arguable case that the respondents have contravened subparagraphs 186(2)(a)(iii) or (iv) of the new Act?



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*Following that approach, my task in considering the respondents' objection to my jurisdiction to hear this complaint is to answer the following question: "Taking all of the facts alleged in the complaint as true, is there an arguable case that the respondents discriminated against the complainants with respect to employment because they were members and officers of an employee organization?"*

[144] The Board held that so as not to frustrate the legislator's intent that the written complaint is itself evidence that the failure occurred, the *prima facie* test must be applied in a fashion that errs on the side of allowing a complaint to be heard on its merits unless there is no arguable case to be made, presuming the facts as alleged to be true. Accordingly, the complainant needs to establish facts sufficient to establish an arguable link between the respondents' decision to terminate her and the complainant's exercise of her rights under the *PSLRA*. I find that the complainant has not provided facts that demonstrate that link.

[145] While it is undisputed that the complainant filed grievances against her managers, this fact alone does not establish a link between the filing of grievances and the grievor's termination. Nor do I see any connexion between Mr. Cenaiko's comments on the outcome of the local union's elections and the decision of Mr. Bellefeuille to reject the grievor on probation. In this respect, I find that the employer's evidence successfully disputes any link between the two events. The evidence led by the employer has convinced me that the sole and true reasons for its decision to reject the grievor on probation stemmed from the issues that it justifiably had concerning her work performance. The allegation that the grievances were the source of the employer's decision to terminate remains, therefore, nothing more than a bald allegation. The grievor has not led any evidence to prove a tie between her grievances and her termination, I therefore dismiss her complaint.

[146] Even if I had found that the grievor had established a *prima facie* case on her complaint, the evidence leads me to conclude that the employer's evidentiary burden has been discharged and that there was no anti-union or discriminatory animus which motivated the employer to reject the grievor on probation. No evidence was led concerning anti-union or retaliatory intention with respect to Mr. Bellefeuille's action of rejecting her on probation. There is no evidence to suggest that the issue of the local union president, raised by Mr. Cenaiko in his conversation with Mr. Edmunds, was linked with the complainant's termination. Mr. Edmunds did not indicate in his

testimony that the complainant was terminated as a result of the outcome of the union election or as a result of her having filed complaints. As a result, I am unable to conclude that the employer's decision to reject the grievor on probation was a contravention of section 185 or paragraph 190(1)(g) of the *PSLRA* and I must therefore dismiss the complaint.

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

*(The Order appears on the next page)*

**V. Order**

[148] As an adjudicator, I have no jurisdiction to decide this grievance.

[149] The complaint is dismissed.

February 14, 2012.

**Michele A. Pineau,  
Vice-Chairperson**