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File: 566-20-5245

Citation: 2013 PSLRB 3



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

“A”

Grievor

and

CANADIAN SECURITY INTELLIGENCE SERVICE

Employer

Indexed as

“A” v. *Canadian Security Intelligence Service*

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Linda Gobeil, adjudicator

For the Grievor: Herself

For the Employer: Karl Chemsî, counsel, and Guy Roux

Heard at Ottawa, Ontario,
July 3 to 6, 2012 and August 7 to 10, 2012.
Canadian Human Rights Commission submission, November 21, 2012.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] On November 10, 2010, “A” (“Ms. A” or “the grievor”) filed a grievance against her employer, the Canadian Security Intelligence Service (CSIS or “the employer”), challenging its October 5, 2010 decision to terminate her employment. In his letter of October 5, 2010, the employer’s representative, Mr. “B”, essentially alleges that the grievor was dismissed for performance issues. Ms. A maintained that her termination was disciplinary and stated that she was the victim of discrimination based on her ethnicity as well as harassment by the employer’s representatives. The grievor referred her grievance to adjudication under paragraph 209(1)(b) of the *Public Service Labour Relations Act* (“the Act”).

II. Summary of the evidence

[2] On May 10, 2012, a pre-hearing conference was held with the parties. I subsequently issued a decision on June 1, 2012, which was communicated to the parties the same day. During the May 2012 pre-hearing conference and the hearing on July 3, 2012, counsel for the employer raised a preliminary objection to my jurisdiction to hear the grievor’s grievance. Counsel for the employer maintained that the CSIS is unlike any other employer and its area of authority is particular. He also indicated that the CSIS is mandated to advise and guide the Canadian government on national security issues and activities that are a threat to the country’s security. Counsel for the employer argued that the CSIS is a separate employer under the *Financial Administration Act*, R.S.C. 1985, c. F-11 (FAA). According to him, the legislator recognized the employer’s separate nature under subsection 209(3) of the *Act*, which states that, in a case involving a separate agency, in this case the CSIS, a reference to adjudication contesting a termination of employment for a reason other than discipline or misconduct can occur only if the employer has first been designated by order of the Governor in Council. However, counsel for the employer indicated that the Governor in Council made no order designating the CSIS for the purposes of subsection 209(3) of the *Act*. Counsel for the employer stated that the legislator recognized the specialized nature of an agency such as the CSIS by limiting an adjudicator’s jurisdiction to references that are disciplinary in nature; in so doing, the legislator wanted to leave to the employer’s discretion references other than those for disciplinary reasons, including those relating to an employee’s competence and performance. Therefore, counsel for the employer submitted, I do not have jurisdiction to hear the grievance in this case because the reference is for reasons other than

disciplinary action, namely, performance issues, and because the CSIS is not a designated agency under subsection 209(3).

[3] Counsel for the employer argued that, in the circumstances, the employer must simply establish a *prima facie* case that the employment was terminated due to job performance. He submitted that, once that is proved, the burden of proof is then reversed, and it becomes the grievor's responsibility to demonstrate that her dismissal was unrelated to performance and that she was dismissed for a different reason.

[4] Furthermore, counsel for the employer submitted that an adjudicator is not to take the place of the employer when assessing the grievor's performance. According to him, my role is limited to verifying that the employer's grounds were unrelated to competence and performance in order to determine whether there was bad faith or camouflage of the real reasons. Therefore, counsel for the employer indicated that, unless I find that the reasons were unrelated to performance issues, I should declare that I do not have jurisdiction in this case. It is also not my place to substitute myself for the employer in assessing the grievor's performance.

[5] During the pre-hearing conference in May 2012, and at the beginning of the hearing, the grievor maintained that the employer's real reason for terminating her employment was disciplinary in nature and that, consequently, I have jurisdiction to deal with this grievance. Ms. A submitted that, in all the steps she took in this case from the outset, both with the employer and the CSIS Employees' Association, she has always mentioned how poorly she was treated by the employer's representatives and how they had harassed and discriminated against her.

[6] The employer had seven witnesses testify, all of whom were cross-examined at length by the grievor. Ms. A also testified for an entire day and had the necessary time, on numerous occasions before and during the hearing, to consult all the documents introduced into evidence by the employer.

[7] On December 20, 2012, the CSIS sent the Public Service Labour Relations Board ("the Board") a letter requesting that the names of the witnesses in this case not be disclosed pursuant to paragraph 18(1)(b) of the *Canadian Security Intelligence Service Act* (CSISA). The grievor made the same request during submissions. However, Ms. A cited personal reasons to support her request for anonymity. In accordance with

section 18 of the *CSISA*, I have decided to refer to the witnesses and the grievor by a single letter of the alphabet.

III. Employer's evidence

[8] The employer called as witnesses a director general, four supervisors and two colleagues who worked with Ms. A at the time of the grievance. The employer provided ample, detailed evidence with many supporting documents.

[9] Mr. "C", who was a director general at the CSIS at the time of the grievor's dismissal, was the employer's first witness. He is now retired after working for the government for 33 years. Mr. C testified that he met the grievor when she was first hired because it was his practice to meet all new employees in his directorate.

[10] Mr. C testified that, at the time of the events, he was the director general of Scientific and Technical Services (STS) and that his superior was Mr. B. He explained that, as the director general, one of his responsibilities was to supervise Mr. "D", who was the assistant director general at that time. In turn, Mr. D was the supervisor for Mr. "E" and Mr. "F", both of whom were the supervisors of a unit and who supervised Mr. "G" and Mr. "H", both of whom were level 10 deputy chiefs for each of the two units.

[11] Mr. C explained that the STS was primarily mandated to provide scientific and technical solutions and advice as part of security intelligence operations. The STS is divided into sectors, which are subdivided into units.

[12] Mr. C testified that Ms. A was hired on July 7, 2008, as a level 9 engineer in one of the engineering sector units. The letter of employment indicated that she would be on probation for one year (Exhibit 3, tab 2(c)). Mr. C testified that, when Ms. A was hired, it was decided that she would be mainly in charge of establishing a testing framework for the different products developed by her colleagues, in addition to performing specific tests on them.

[13] Mr. C testified that he recommended dismissing Ms. A on September 21, 2010 for performance-related reasons (Exhibit E-3, tab 3(a)). Mr. C explained that the letter to Mr. B recommending the dismissal included supporting documents, namely, a "Notice of Shortcomings" dated August 12, 2010, which had been prepared by Mr. G, the grievor's direct supervisor at the time of her dismissal. Mr. C stated that, in this

case, the purpose of the Notice of Shortcomings was to formally inform Ms. A that she had 60 days to improve her performance, failing which the employer would terminate her employment (Exhibit E-3, tab 3(c)).

[14] Mr. C testified that he reviewed the performance appraisals from the time Ms. A was hired until May 14, 2010. Those appraisals reported the grievor's shortcomings and performance issues six months into her employment (Exhibit E-3, tab 3(d)). Mr. C further testified that he also reviewed the reports from the weekly meetings between the grievor and her supervisor, Mr. G, and in some cases Mr. E. According to Mr. C, those reports show that, in spite of attempts by the grievor's supervisor and the chief to provide her with weekly follow-up and mentoring, her performance was still below the acceptable threshold for a level 9 engineer (Exhibit E-3, tabs 3 E, F and G).

[15] Referring to the grievor's performance appraisals, Mr. C explained that the first one, dated July 7, 2008 to January 7, 2009 (Exhibit E-3, tab 3(d)), when the grievor was being supervised by Mr. F, was acceptable and that the overall average was 3.0, above the minimum score of 2.5 required by the CSIS for that type of position. However, Mr. C indicated that the focus in those first six months was to provide the employee with general orientation and education, rather than to assess her performance on specific duties (Exhibit E-1, tab 3(d), page 5). Mr. C also referred to the second last paragraph on page 5, in which Mr. F states that it was already apparent in the first six months that the grievor was ill at ease at the CSIS (Exhibit E-3, tab 3(d)).

[16] Mr. C also testified that the first performance appraisal was followed by a second, also under Mr. F's supervision, for January 7 to July 7, 2009. Mr. C stated that the second appraisal had an overall score of 2.1, below the average of 2.5 required by the CSIS. In his testimony, Mr. C went through the second appraisal and concluded that, aside from one objective that had been partially achieved, none of the four other objectives had been reached (Exhibit E-3, tab 3(d)).

[17] Mr. C referred to the comments that Mr. F made in the second performance appraisal about the grievor having problems prioritizing her work, meeting her deadlines and working with a team. On the last point, Mr. C pointed out that teamwork is very important in their directorate because engineers work in a matrix-style environment in which everyone must collaborate, even though they do not have reporting relationships with their colleagues.

[18] Mr. C testified that, after the second appraisal, a decision was reached with Mr. F to help the grievor and to provide her with a more structured work environment. Thus, it was agreed to assign one of Mr. F's employees, namely, Mr. H, who was at a higher level than Ms. A, as her direct supervisor. Mr. C specified that Mr. H was an experienced bilingual manager and that the idea was to provide the grievor with direct supervision to help her meet the requirements of her level 9 engineer position.

[19] Mr. C mentioned that, although the grievor was on probation at that time for one year, until July 2009, and the employer could have rejected her on probation, the employer decided to give her another chance by placing her under the supervision of an experienced manager.

[20] Mr. C testified that there was no improvement in spite of the more direct supervision of the grievor. Mr. C referred to her third performance appraisal, prepared by Mr. H for July 7, 2009, to January 15, 2010 (Exhibit E-3, tab 3(d)). Mr. C testified that the third appraisal showed that there had been no improvement and that the objectives given to the grievor at the beginning of the review period had been achieved either only partially or not at all. Mr. C indicated that the third performance appraisal had an overall score of 2.2, which was still below the required average of 2.5. Mr. C mentioned that, once again, the performance appraisal referred to poor work quality, missed deadlines and difficulty working with colleagues.

[21] Mr. C indicated that the performance appraisal, signed by Mr. H, also referred to working documents prepared by the grievor that had to be rewritten and corrected many times. Mr. C specified that it was not normal for the documents of a level 9 engineer to have to be rewritten three, four or even five times (Exhibit E-3, tabs 5(c), (d) and (e)).

[22] Mr. C also referred to an email written by Mr. "I", the grievor's colleague, complaining about her work and asking that she be removed from his project (Exhibit E-3, tabs 5(a) and (b)).

[23] Mr. C testified that he believes the grievor was not performing as a level 9 engineer. He explained that a level 9 engineer must be able to work with broad concepts and develop specific projects. According to Mr. C, the grievor needed a degree of detail and clarification beyond what a level 9 engineer would normally need. Moreover, Mr. C stated that a level 9 engineer must work closely with colleagues,

especially since the grievor's duties were to test products developed by colleagues who were in charge of projects. However, according to Mr. C, , the grievor had great difficulty working with others and providing them with quality service on time, which frustrated her colleagues.

[24] Mr. C indicated that the grievor also had a confrontational attitude towards Mr. H. To illustrate, Mr. C referred to an incident in which she questioned Mr. H's request that she purchase glasses to perform tests. For Mr. C, such a request from a supervisor is entirely legitimate and is part of the duties an engineer must carry out (Exhibit E-4, tab 1(l)).

[25] Mr. C testified that the grievor commented on the performance appraisal prepared by Mr. H and that she filed a grievance against it on April 20, 2010 (Exhibit E-3, tab 6(a)). Mr. C indicated that he reviewed the grievance and comments made by the grievor but found that, aside from one or two changes, much of the appraisal and the overall score should not be changed (Exhibit E-3, tabs 3(d) and 6(b)). Mr. C testified that he met with the grievor in July 2010 to discuss the performance appraisal. In cross-examination, Mr. C testified that he did not remember Ms. A mentioning problems with Mr. H, who apparently called some of the women "[translation] the little misses." However, Mr. C agreed that the situation between the grievor and Mr. H appeared conflictual and that it was one of the reasons Mr. C that had felt it appropriate to assign her to another supervisor.

[26] Mr. C stated that, after the third appraisal, it became clear that there was no progress in the grievor's performance. Therefore, to give her one more chance, it was decided that she would be assigned to another unit under the supervision of Mr. G, a senior project manager.

[27] Mr. C testified that, to mentor the grievor as much as possible, it was decided that Mr. G would hold weekly meetings with her from the very beginning to make sure she had the help and support she needed. Mr. C indicated that, at that time, he believed the change in units would yield positive results since the unit was responsible for telecommunications, an area in which the grievor had experience and an interest. Mr. C said he thought that Ms. A was happy with the change.

[28] Mr. C testified that, although things appeared to improve at the beginning of the grievor's transfer in February 2010, performance issues soon resurfaced. They

continued under Mr. G's supervision, in spite of the weekly meetings between the grievor and Mr. G, who was replaced in his absence by Mr. E and Ms. "J", Associate Director General (Exhibit E-3, tab 3(e)). Mr. C referred to the grievor's fourth performance appraisal, for January 25 to May 14, 2010, under the supervision of Mr. G, who gave Ms. A's performance an overall score of 2.2. Mr. C testified that that appraisal showed further that the grievor met the set objectives only partially in some cases and not at all in others (Exhibit E-3, tab 3(d)). Mr. C made referred specifically to project "X", indicating that it was a very important project for the STS but that, because of the grievor's tardiness, the project had to be stopped. According to Mr. C, the grievor was unable to complete her task on time, even though she had been given a model to follow.

[29] Mr. C testified that, following the performance appraisal for January 25 to May 14, 2010, the weekly meetings between the grievor and her supervisor, Mr. G, continued but that her performance still did not improve (Exhibit E-3, tab 3(e)). Mr. C also testified that, in addition to the problems related directly to the grievor's performance, she continued to refuse to accept feedback from her superiors or colleagues, which made it even more difficult for her to learn. According to Mr. C, Ms. A was not receptive to constructive comments from others; she would challenge them and become defensive (Exhibit E-3, tab 7). Mr. C indicated in cross-examination that the grievor would argue a given subject for hours, would insist on being right, and would demand that her remarks or theories be accepted at face value. In response to the grievor's question as to how she could have defended herself against negative comments about her performance if everything she said was perceived as a negative attitude, Mr. C replied that it was up to Ms. A to improve the way she communicated with others and that, in her case, it was not with just one supervisor that she was unable to communicate, but with three supervisors and her colleagues, over a period of two years, no less.

[30] Mr. C testified that, in the circumstances, it was decided that the grievor would be given notice on August 12, 2012 to improve her performance within 60 days, failing which the CSIS would terminate her employment (Exhibit E-3, tab 3(c)). Mr. C explained that he was joined by Mr. G and Ms. J in giving that 60-day notice to Ms. A, who was accompanied by a representative of the CSIS Employees' Association.

[31] Mr. C testified that, following the notice, the weekly meetings continued between the grievor and Mr. G and that Mr. E also attended.

[32] Mr. C stated that, despite the mentoring and weekly meetings, there was no improvement in the grievor's performance and that there were still issues with her performance after August 12, 2010. Projects continued to be late, document quality was still lacking, some projects were not being updated and priorities were still not being set (Exhibit E-1, tab 3(e), emails from August 23 and 31, 2010, September 9 and 20, 2010, and October 5, 2010).

[33] Mr. C testified that, in October 2010, he and the grievor's supervisors concluded that, despite the efforts, there was no improvement in her performance. Mr. C referred in particular to the fact that the grievor's colleagues had become frustrated with having to work with her, as had contractors who had to involve her in their projects. Mr. C referred to an email from a contractor expressing his dissatisfaction with the grievor's work, asking not to have to deal with her anymore and stating that he preferred to continue the project without her help (Exhibit E-3, tab 5(h)).

[34] Mr. C testified that the grievor's performance issues affected CSIS operations because some projects had to be set aside or delivered late. Moreover, given the fact that her main duty was to establish a test plan and to perform tests on projects developed by her colleagues, shortcomings in completing those tests or delays in performing them could have harmed her colleagues' projects. Mr. C referred to a situation in which the grievor's colleague, Mr. I, said the grievor had not completed her task within the required time and asked that she be removed from his project (Exhibit E-5, tab 19, emails from June 17, 2009 and July 17 and 21, 2009).

[35] Mr. C said that, after two years of employment with the CSIS and its efforts to help the grievor by mentoring her, providing her with direction in the form of weekly follow-up for close to a year, placing her under the supervision of three different supervisors and assigning her to two different sectors dealing with different technological fields, her performance was deemed unacceptable by the employer. Mr. C concluded by stating that, based on those reasons, he made a recommendation on September 21, 2010 to his superior, Mr. B, to terminate the grievor's employment as of October 5, 2010.

A. Testimony from the grievor's direct supervisors and the unit chief

[36] Mr. F, Mr. H and Mr. G were all, at one time or another, the grievor's direct supervisors during her employment at the CSIS; they also testified for the employer. Mr. E, to whom Mr. G reported, also testified. Their testimony corroborated that of Mr. C and provided details on the shortcomings observed in the grievor's job performance. I must emphasize that those witnesses, all engineers with many years of service, testified at length and submitted numerous supporting documents. They were also thoroughly cross-examined. The following is a summary of their testimonies.

[37] The first to testify was Mr. F, who was a level 11 chief at the time of the grievance and who had several employees reporting to him, including the grievor. He retired in April 2010. He indicated that he, along with a human resources representative and Mr. E, was one of the members of a committee that hired the grievor in 2008. At that time, he was looking for an engineer, among other things, to prepare a testing framework and perform tests on products developed by other engineers (Exhibit E-3, tab 2(b)). Mr. F testified that, once the grievor's security screening was complete, he held a second interview with her, during which he and the committee members clearly informed her of her duties.

[38] Mr. F indicated that the grievor had been hired as a level 9 engineer and that, during the second interview, the committee members explained to her that, based on her level, she would be given general directions and that it would be her duty to operationalize them. Mr. F indicated that the grievor seemed satisfied with that proposition.

[39] Mr. F testified that the grievor was on probation for one year following her appointment and that the first six months were normal. However, Mr. F specified that the focus in the first six months was more on orientation and familiarization with the CSIS. Mr. F indicated that he explained to Ms. A how the CSIS operated and that he introduced her to her colleagues and the contractors with whom the CSIS did business. Mr. F also testified that he told the grievor that she could always see him if ever she experienced problems.

[40] Mr. F testified that he gave Ms. A an overall average score of 3, or entirely satisfactory, on her first six-month appraisal, but pointed out that she was not assessed on her skills as a level 9 engineer (Exhibit E-3, tab 3(d), page 5).

[41] Mr. F stated that things were more difficult for the January 7 to July 7, 2009 period, even though the objectives and tasks that the grievor was assigned were those normally assigned to an engineer at a level below level 9. Mr. F indicated that the other level 9 engineers had a heavier workload than her in terms of both volume and degree of difficulty (Exhibit E-3, tab 3(d)).

[42] In reference to the second performance appraisal, Mr. F said that only one of the six set objectives was partially achieved; the others were not achieved at all. Mr. F also stated that he consulted other employees who worked with the grievor for the second performance appraisal, which was a common practice at the CSIS. Mr. F indicated that the comments he received from Mr. H, Mr. I and Mr. "K" confirmed her performance issues (Exhibit E-5, tabs 19 and 20; Exhibit E-4, tab 1(c)). He mentioned that, not only did her colleagues have problems working with her, but also contractors complained about her services. Mr. F testified that he received a call from a contractor complaining that it was difficult to work with the grievor. Mr. F admitted in cross-examination that he did not mention that to Ms. A so as not to bother her.

[43] Mr. F testified that he followed up with the grievor throughout the period in question and that he held meetings every two months at the beginning and then every week to help Ms. A. Mr. F indicated that, in spite of those efforts, he had to give her an overall average of 2.1 for the second appraisal, which was below the score of 2.5 required by the CSIS (Exhibit E-3, tab 3(d)).

[44] Mr. F stated that he realized during the January 7 to July 7, 2009 period that Ms. A was not performing as a level 9 engineer and that he had to inform his supervisor, Mr. D, as well as Mr. C of the situation. Mr. F testified that, even though the CSIS could have rejected her on probation then, it was decided that she should be given another chance and that she would benefit from more direct supervision, something that Mr. F was not always able to give. Mr. F also indicated that he noticed at that time that Ms. A had problems communicating with her colleagues and that she refused to accept their advice, namely, from Mr. K and Mr. I. Mr. F also pointed out in his testimony that he felt the grievor's analyses were not always complete and that she often relied on others to do her work. Mr. F testified that, as a result, it was decided to place the grievor under the supervision of an experienced engineer and manager, Mr. H, who was a bilingual level 10 engineer and, according to Mr. F, an excellent teacher.

[45] Mr. H also testified for the employer. At the time of the hearing, Mr. H had been Deputy Chief for STS since May 13, 2002. He indicated that he was a level 10 engineer and project and program manager. During his testimony, Mr. H mentioned his long service primarily with the Department of National Defence (DND). Mr. H testified that, although his current duties did not involve supervision, he had been a manager at the DND, responsible for about a hundred employees.

[46] Mr. H testified that Ms. A was assigned to him in June 2009. He was pleased with the decision to have her as an employee because he had a number of projects to manage. Mr. H indicated that his supervisor, Mr. F, approached him about supervising the grievor because Mr. F was uncertain about her performance. Mr. H said he was chosen to supervise Ms. A for two main reasons: he had extensive project management experience, with 42 years of government service, and he had recently mentored two STS employees, which had gone very well. Mr. H explained that he instructed those two employees on the entire procedure involved in managing a project.

[47] Mr. H testified that, in June 2009, he had known a little about Ms. A because of her work with Mr. F. Mr. H also stated that he mentored her in spring 2009, shortly before becoming her supervisor in June 2009. Mr. H indicated that, when he mentored Ms. A in spring 2009, he noted that she did not appear very interested in a pilot project he was carrying out, even though she had been told by her supervisor, Mr. F, to help Mr. H on it. Mr. H indicated that Ms. A told him that the field in which the project was being carried out did not interest her. According to Mr. H, she did not put much effort into it, which meant that Mr. H had to finish the project himself. Mr. H testified that, even though engineers generally work in their field of expertise and experience, their engineering duties often require them to work in different areas. According to Mr. H, it was part of the duties of a level 9 engineer and project manager such as Ms. A to be involved in the projects of others and to work closely with colleagues. Mr. H said the project in question was important for the grievor's training because it went through all the steps involved in managing a project. Mr. H testified that, unfortunately, Ms. A did not want to become involved and learn.

[48] Mr. H indicated that, after a meeting with Ms. A on June 4, 2009, during which Ms. A and Mr. H discussed what she would be working on now that she was under his supervision, he sent the grievor an email on June 5, 2009, outlining the four objectives she was required to meet for the July 7, 2009, to January 15, 2010 period

(Exhibit E-4, tab 1(a)). According to Mr. H, the grievor was mainly responsible for establishing a test management framework, as well as anything else necessary to implement the tests, and for assisting other project managers by proposing specific tests for products they had to develop. Mr. H testified that Mr. F asked him, in the meantime, to comment on the grievor's work for the January 7 to July 7, 2009 review period (Exhibit E-4, tab 1(c)).

[49] Mr. H testified that Ms. A then requested a meeting with him and Mr. F to obtain clarifications on the objectives set on June 4 and 5, 2009. Mr. H indicated that he saw no need for the meeting with Mr. F and instead suggested meeting with the grievor himself to discuss the matter in person rather than through emails sent to everyone. Mr. H testified that, because by June 30, 2010 he had still not received a reply to his request for a meeting with the grievor, he went to see her in her office, which was located just beside his. Mr. H stated that, during the meeting, he had the impression that he had disturbed Ms. A and that she did not want to speak with him. Mr. H said that STS employees talk to one another and consult each other extensively and that the grievor's avoidance of others was unusual.

[50] Mr. H testified that he tried to give Ms. A as much assistance as possible the entire time she was under his supervision and that he attempted to integrate her into the CSIS. He indicated that, in spite of those attempts, he had to give Ms. A an overall performance score of 2.2 for the July 7, 2009, to January 15, 2010 period (Exhibit E-3, tab 3(d)). Mr. H further testified that, on the whole, the objectives set previously had not been met. In one case, even though the project was ultimately completed, everything had been done late, causing friction with the other project managers and contractors involved. In another case, although the project was completed for the most part, the manager in charge of the project had to get involved several times and had to make numerous corrections because the grievor had difficulty understanding the task. Moreover, Mr. H indicated in cross-examination that the projects to which the objectives referred did not all have to be done at the same time and that each had a different deadline.

[51] In his testimony on the grievor's performance appraisal, Mr. H referred to the second objective of the performance appraisal, which was about developing a framework for tests and their implementation. Mr. H said that, in spite of the many comments from the supervisor, the document still lacked in content and form, given

the audience it was targeting. Mr. H testified that the versions submitted by the grievor would come back with issues of substance and errors, contained far too many unnecessary details, and did not include recommendations (Exhibit E-3, tab 3(d)). Mr. H indicated that, to help the grievor prepare the document, she had been given an example to follow as well as the choice of writing in French, to no avail (Exhibit E-3, tab 3(g)).

[52] Mr. H also explained that one of the aspects of the fourth objective of the grievor's performance appraisal was to conduct a feasibility study on a certain type of glasses. Mr. H explained that that simple project elicited many reactions from her. According to Mr. H, she was offended that she had to buy the glasses, on which tests were to be performed. She considered it an administrative task, not one of her duties (Exhibit E-4, tab 1(l), email of December 2, 2009). Mr. H testified that, at one point, to express her frustration with the project, Ms. A wrote an email to Mr. H stating that slavery had been abolished a long time ago (Exhibit E-4, tab 4, email of October 21, 2009). Mr. H testified that he was surprised by the grievor's comment and maintained that the tasks involved were normal for such a project. Mr. H testified that he did not speak to the grievor about the email she sent on October 21, 2009 but indicated that he mentioned it to Mr. F.

[53] Mr. H testified that reviewing the grievor's performance appraisal proved difficult and resulted in the exchange of many emails between him and her. Mr. H referred to one of those emails in particular, in which the grievor questioned the veracity of Mr. H's statements and states that she was ready to take a polygraph, suggesting that the CSIS should have Mr. H take one as well (Exhibit E-4, tab 1(m), email of January 22, 2010).

[54] Mr. H testified that his appraisal of the grievor's work led him to conclude that she was not performing as a level 9 engineer, even though she had a lighter workload than other employees at her level. Moreover, Mr. H mentioned that the grievor was not very receptive to feedback. According to Mr. H, the grievor did not accept advice from others, whom she considered a threat.

[55] Finally, Mr. H referred to an email Ms. A sent on October 27, 2009, in which she stated that employees should be judged based on their skill and not on their gender or ethnicity. Mr. H testified that he was very surprised by the email and indicated that it was the first time Ms. A ever raised that sort of argument. He also said that the gender

or ethnicity of an employee has absolutely no relevance for him. To Mr. H's mind, Ms. A was an engineer like all the others at the CSIS. Mr. H stated that he mentioned her email to Mr. F, who was also surprised by what she wrote (Exhibit E-4, tab 1(i)).

[56] In cross-examination, Mr. H said that he did not remember telling the grievor that the CSIS had hired too many people, that there was no work for her and that that was why she had to work for him.

[57] In further cross-examination, Mr. H denied calling an employee from another CSIS division a "dragon lady." Mr. H also denied calling another female CSIS employee "[translation] the missy who doesn't know how to prepare submissions."

[58] In response to the grievor's questions, Mr. H said that, not only did he always treat the grievor in the same way as everyone else and consider her equal, but also that she had also been given more chances than the others given the training and mentoring she had received and the lighter workload she had been assigned compared to her colleagues. Mr. H said that he "[translation] bent over backwards" trying to help her succeed.

[59] Mr. H also categorically denied using his master key to enter the grievor's locked office and standing in front of her in an intimidating manner while she was on the phone. Mr. H indicated that it is not at all like him to do such a thing and that it was the first he heard of that allegation from the grievor.

[60] Moreover, Mr. H categorically denied getting angry that the grievor did not sit beside him during a meeting for all STS staff. Mr. H also denied speaking to Ms. A in a different tone than the one he used with other employees, stating that she refused to communicate verbally. Mr. H referred to an incident in which she turned her chair around and took notes facing the wall while he was speaking to her about the progress of one project.

[61] Mr. H specified that he had supervised women and employees from different ethnic backgrounds in the past and that there were never any problems. He mentioned that, although Ms. A is of Black origin, seven or so other employees within the STS are also not Caucasian.

[62] The witness told the grievor that he was unaware that she had approached the CSIS Employees' Association to file a harassment complaint and that she had been

advised to wait before filing her complaint. Mr. H concluded by stating that he has never been accused of harassment in his career.

[63] Mr. G also testified for the employer. He indicated that he is the deputy chief, that he has been a level 10 engineer since 2002 and that he reports to a chief, Mr. E.

[64] Mr. G indicated that the grievor was assigned to him in January 2010. He explained that Mr. D, the then assistant director of the STS, and Mr. E told him that Ms. A would be reporting to him from then on and that management felt that she could make good use of her skills and knowledge in telecommunications. According to Mr. G, Mr. D told him that the assignment was at her request.

[65] Mr. G explained that he and Mr. E held an initial meeting with the grievor to welcome her and to explain her role in the telecommunications group. Mr. G explained that, during that meeting with the grievor, he and Mr. E went over the details of the duties she would perform and the objectives contained in a document (Exhibit E-5, tab 1). However, Mr. G indicated that it was unusual for him and Mr. E to have to explain the duties to Ms. A in such detail. According to Mr. G, a level 9 engineer does not generally require such thorough explanations.

[66] Mr. G indicated that he had never worked with the grievor before she was assigned to him. He testified that, before Ms. A arrived, Mr. D and Mr. E told him that Ms. A had issues with her performance and suggested that he hold weekly meetings with her to help her follow up on projects and to mentor her. In spite of everything, Mr. G testified that he was happy to have Ms. A on his team because he was short of staff. Mr. G pointed out that Ms. A also appeared to be happy with the assignment.

[67] In cross-examination, Mr. G said that, although he knew that Ms. A had had performance issues in her previous unit, he never saw the performance appraisal prepared by Mr. H and that, regardless, the important thing was that she was in his unit. Mr. G indicated that Mr. H's appraisal had no bearing on the appraisal he prepared because the grievor's objectives and work were different from those she had been assigned in the other unit.

[68] Mr. G testified that he gave the grievor three main objectives for the January 25 to May 14, 2010 review period (Exhibit E-3, tab 3(d)). The objectives were outlined and discussed during the first meeting with the grievor and Mr. E.

[69] Mr. G indicated that the objectives for the review period were achieved either only partially or not at all and that he gave the grievor an overall score of 2.2, below the score of 2.5 deemed passable by the CSIS. Mr. G indicated that he expected better results from a level 9 engineer. He also stated that the grievor commented on the performance appraisal but did not file a grievance (Exhibit E-3, tab 3(d)). Mr. G also provided Mr. C with his comments on those made by Ms. A (Exhibit E-3, tab 3(d)).

[70] During his testimony, Mr. G went over the objectives set out in the performance appraisal for the January 25 to May 14, 2010 period and explained the shortcomings observed in the grievor's work.

[71] Essentially, Mr. G noted that the versions of documents produced by the grievor constantly had to be corrected. He indicated that, in one case, a document that should have taken two weeks to complete by a level 9 engineer had taken Ms. A two months. Mr. G testified that Ms. A often did not refer to key points but rather included many unnecessary details that made the documents difficult to read, that the ideas she conveyed were unclear and too short in certain areas, and that the text often had to be rewritten.

[72] Mr. G indicated that he often commented on the grievor's projects during his weekly meetings with her. He said that the meetings were originally between just him and the grievor but that Mr. E later joined.

[73] Moreover, Mr. G mentioned that he always prepared reports of the weekly meetings, which he shared with the grievor to ensure that there was no misunderstanding about the expectations (Exhibit E-5, tabs 5, 6, 7, 8, 10 and 11).

[74] Mr. G also referred to a project involving a Canadian company that was quite simple but that gave the grievor significant difficulty. Mr. G testified that he asked for an update on the project during the weekly meeting before February 25, 2010 (Exhibit E-5, tab 10, email of February 25, 2010). However, the May 2010 review period came and went, and he had still not received an update on the project (Exhibit E-5, tab 10, email of March 23, 2010, and tab 11, email of May 21, 2010).

[75] Mr. G testified that, generally speaking, the grievor had trouble understanding the technical aspects of projects and that, instead of trying to learn, she would argue with her colleagues or with him, which ultimately caused delays.

[76] Mr. G explained that, in one instance on May 27, 2010, the grievor was put in charge of an important project and had to urgently deliver a strategy and the steps to take. Mr. G testified that, on June 16, 2010, he was still waiting for the results (Exhibit E-5, tab 14). He indicated that he received the product from the grievor in August 2010, three-and-a-half months after the initial request (Exhibit 5, tab 13). Mr. G testified that the product provided by the grievor was not good quality; both he and Mr. E were expecting to see a strategy plan like the one in Exhibit E-5, tab 18(a), which had been provided to her as an example (Exhibit E-5, tab 13, emails from August 9 and 23). According to Mr. G, a comparison of the two documents shows the version delivered by the grievor was far from the model she had been asked to follow.

[77] Mr. G testified that, after the performance appraisal for the January 25 to May 14, 2010 period, the grievor was given a Notice of Shortcomings on August 12, 2010, informing her that, if her performance did not improve in 60 days, she would be dismissed from the CSIS. To help her improve her performance, it was decided that the weekly meetings with Ms. A would continue, to regularly follow up on the priorities and objectives. Mr. G testified that, in spite of the meetings and follow-up, the grievor's performance still did not improve; the reports from the weekly meetings detailed her performance issues (Exhibit E-3, tab 3(e)).

[78] In cross-examination, Mr. G indicated that the purpose of the weekly meetings and the reports stemming from them was not to point out the grievor's shortcomings in writing but rather to clarify the objectives to achieve, the progress made and the deadlines to meet to make the follow-up easier, thus helping the grievor succeed at the CSIS.

[79] Mr. G testified that, on October 5, 2010, the grievor sent Mr. C a memo in which she commented on the notice she received on August 12, 2010 (Exhibit E-3, tab 8(a)). Mr. G testified that he and Mr. E were asked to comment on her remarks, which they did (Exhibit E-3, tab 8(b)). Mr. G referred to an incident she raised about a doctor-patient relationship. Mr. G denied the facts as reported by Ms. A, stating that he simply gave an example in which a patient must be willing to accept feedback from his doctor. Mr. G said he gave that example, which he had received in a course at Nortel, because the goal was to learn to receive feedback. Mr. G indicated that he used the example to explain that the grievor had to accept feedback from her supervisors but that his intention was never to draw comparisons with her.

[80] As for the grievor's accusation in the memo dated August 12, 2010 that Mr. G said that her work was "sh..," Mr. G denied ever using that word. He said that his mother tongue is Vietnamese but that he also speaks French and English. Mr. G indicated that his conversations with Ms. A were always in French. He testified that, when reviewing a working document, he told the grievor to "[translation] get rid of the crap," referring to the unnecessary details in the text, to make the document more readable since it was intended for senior management and because the details that were included were not absolutely necessary. Mr. G testified that he used the word "[translation] crap" because it is commonly used in Quebec to refer to unnecessary details (Exhibit E-3, tab 8(b)).

[81] Mr. G also testified that, contrary to the grievor's suggestion in her memo of August 12, 2010, he never yelled at her for scheduling a meeting on a day he had taken off to watch a soccer game. Mr. G testified that the grievor scheduled the review meeting contrary to the repeatedly reiterated procedure of not scheduling review meetings less than five days before the target date. Mr. G testified that he nonetheless attended the meeting but insisted that he never yelled at the grievor.

[82] In cross-examination, Mr. G indicated that his regular follow-up with the grievor was specific to her based on her needs and that all the efforts were meant to help her. He indicated that, when it comes down to it, he always treated her on equal footing with all the others, irrespective of the fact that she is a woman of Black origin.

[83] Mr. E also testified for the employer. He stated that he has worked for the CSIS as a level 11 chief since 1988. Mr. E said that he is a trained engineer and that a number of employees, including Mr. G, reported to him at the time of the events in question. Mr. E indicated that his employees all had a bachelor's degree in either engineering or science and that they were either at level 10 or level 9.

[84] Mr. E indicated that he played a part, along with Mr. F, in hiring the grievor in 2007. He also testified that Mr. D approached him in 2009 to find out whether there was a position for Ms. A. Mr. D told him then that she was having issues with her performance under Mr. F and that management wanted to give her another chance by assigning her to another supervisor in another directorate. Mr. E indicated that telecommunications seemed like an appropriate field for the grievor given her experience. Therefore, he decided that Ms. A would be transferred to another unit and that she would report to Mr. G, who in turn reported to Mr. E.

[85] Mr. E indicated that an initial meeting was held between him, Mr. G and Ms. A to inform the grievor of her objectives under Mr. G. Mr. E testified that he reviewed the objectives set out in Exhibit E-5, tab 1. However, Mr. E pointed out that that approach of reviewing the objectives in detail with a level 9 engineer was unusual because engineers at that level usually do not need to have everything outlined and do not require that degree of detail.

[86] Mr. E indicated that the grievor's performance in the first month-and-a-half following her assignment to Mr. G was satisfactory but that it was because she was very closely supervised and guided. Mr. E pointed out that the type of direct supervision Ms. A required was more appropriate for a level 7 or 8 engineer, not someone at level 9.

[87] According to Mr. E, when it came time to assign the grievor tasks at level 9, the problems recurred. Mr. E insisted that the duties assigned to her were simpler than those specific to her level and that her colleagues at the same level had far more difficult and demanding tasks.

[88] In cross-examination, Mr. E indicated that, for instance, the grievor was reluctant to conduct any research on new technology and that she avoided certain questions or relied on her colleagues to find answers to problems. Mr. E explained that, as a level 9 engineer, Ms. A should have generally met the level "D" requirements of the Ontario Classification Guide (Exhibit E-5, tab 17). Specifically, Mr. E testified that, for instance, a level 9 engineer must deal with more complex issues and be able to summarize a given problem and propose solutions. He also indicated that a level 9 engineer must be autonomous, especially since, in the grievor's case, she had to work in a matrix-style environment in which she supported her colleagues and reported to a particular supervisor. However, Mr. E said that that was never the case with her. He indicated that she proved incapable of carrying out projects at her level to a satisfactory degree and that she required considerable attention and time from her new supervisor, Mr. G. She had difficulty working in a team with her colleagues and with contractors, who complained about her performance and attitude.

[89] In reference to the grievor's performance appraisal for the January 25 to May 14, 2010 period, Mr. E indicated that he prepared the evaluating supervisor's comments on page 9 of the appraisal, which were signed by Mr. D (Exhibit E-3, tab 3(d)). Mr. E indicated that, during the review period, he noted that she had to learn

to work with less supervision and that her analytical skills and technical knowledge had to improve. Mr. E insisted that, in spite of his attempts and those of Mr. G, her performance did not improve, and she continued to be resistant to feedback; she refused to listen to others.

[90] Mr. E testified that, following that most recent performance appraisal, he and CSIS management had to agree that, despite all the efforts that had been made that far, progress was still non-existent. Therefore, the decision was made to give the grievor 60 days' notice (Notice of Shortcomings) on August 12, 2010.

[91] Following the letter of August 12, 2010, Mr. E indicated that he once again became personally involved in the grievor's supervision, namely, by attending the weekly meetings between her and Mr. G.

[92] In his testimony, Mr. E gave the example of a project that the grievor had been asked to work on in May 2010 but that was still incomplete in August 2010 despite multiple reminders and requests for updates during the weekly meetings. Mr. E indicated that, given the deadline, he and his colleagues had no choice but to meet with the clients at the end of August 2010 and present an incomplete project. Mr. E indicated that, at the end of the meeting, the client expressed frustration with having to wait more than three months for a project that was still incomplete. Mr. E stressed that, given the CSIS's mandate, it is critical that the work be of high quality and that it be delivered within the deadlines; the organization's credibility depends on it.

[93] Finally, Mr. E specified in cross-examination that Mr. H was not involved in the appraisal prepared by Mr. G, that both he and Mr. G did everything in terms of mentoring, advice and meetings to give the grievor a second chance, and that their efforts proved futile.

[94] Mr. K and Mr. I also testified for the employer. Both work at the STS as engineers at level 9 and 10, respectively.

[95] Mr. K indicated that, in a matrix-style work environment in which everyone has a project but must work with others, he had to work with the grievor. Mr. K explained that, as a project manager, he was responsible for a project that she had to test. Mr. K testified that it was important for the project to be completed by March 31, 2009, because it was being carried out in partnership with another country. The project was

completed in July 2009. Mr. K said that, although the delay was in part attributable to the partner involved in the project, nevertheless, he had to rewrite the part prepared by the grievor because the document was poorly written. Mr. K mentioned that her problems could be explained in part by the fact that she did not understand the operational aspects of certain scenarios, despite numerous explanations, and that often the tests she proposed were not practical when it came time to applying them (Exhibit E-5, tab 20, emails from July 17 and 21, 2009).

[96] Mr. K also testified that, in response to the request Mr. F made on June 16, 2009, he provided his comments on the grievor's performance on June 17, 2009. Mr. K explained that it was common practice at the CSIS, especially in a matrix-style work environment, for a supervisor to ask colleagues for their comments on another colleague's work (Exhibit E-5, tab 20, email from June 17, 2009). In his email, Mr. K indicated making reference to events and projects he believed showed that the grievor had trouble communicating with her colleagues and that she did not successfully integrate into the STS team. Mr. K indicated that the grievor refused the assistance she was offered and that, at the same time, she refused to help her colleagues, claiming that the requests did not fall within her area of expertise.

[97] Mr. K testified that one of the contractors was frustrated with the grievor's work and complained to him about it a number of times. The contractor also contacted Mr. D to express his dissatisfaction (Exhibit E-5, tab 20, email from June 17, 2009).

[98] Mr. I testified that his experience working with Ms. A was not good. He indicated that she was supposed to produce a test plan for a product that had just been delivered to him. Mr. I testified that, after numerous meetings over four months, the test plan produced by the grievor was of no value, so much so that Mr. I and his colleagues decided to produce their own test plan.

[99] Mr. I also testified that he commented on the grievor's work on June 17, 2009, at Mr. F's request. Mr. I mentioned that his experience with her was that the tasks assigned to her were not completed in certain cases, while in other instances, no progress was made; he also noted that she was disorganized.

[100] Mr. I further testified that, on July 17, 2009, he complained to Mr. H, the grievor's supervisor at that time, that the work had not been done and that she was of

no help to him (Exhibit E-3, tab 5(a), emails from July 17 and 21 and September 4, 2009).

[101] Mr. I indicated that, in July 2009, he was frustrated with the grievor's lack of collaboration. Therefore, he reiterated the problems he had had working with her in an email to Mr. D dated July 21, 2009, in which he pointed out that he had no confidence in her ability to meet expectations.

[102] Mr. I testified that, once, contractors complained that the directions Ms. A gave on one of the projects were difficult to follow and were even contradictory. He asked Mr. H to no longer authorize her to contact contractors without first consulting him. Mr. I indicated that Mr. H informed her of it and that all communications with contractors had to first be discussed with Mr. I. Mr. I testified that, despite that warning, the grievor continued to contact contractors, thus adding to the confusion. He indicated that he then asked for Ms. A to be removed from his project (Exhibit E-5, tab 19, emails from August 28 and September 4, 2009).

IV. Grievor's evidence

[103] Ms. A was the only one to testify.

[104] The grievor went over her curriculum vitae in detail (Exhibit E-3, tab 2(a)). She specified in particular that she had worked at Dataradio as an electrical engineer and that she gained experience in developing test plans and tenders, in addition to other experience. She then joined Spirent, where she worked from 2000 to 2002 developing concepts and selling them to companies. Ms. A indicated that she then had to develop test scenarios, just like at the CSIS, and test simulators. Ms. A insisted that, although she had been laid off from Spirent for lack of work, she had always been treated well.

[105] Ms. A explained that she was then employed by Thales, where she was asked to work on a test project involving the DND. She testified that the experience at Thales was more difficult because there were many players involved, everything was controlled, the work environment was military, in which she had little freedom, and her duties were not what she had expected. Ms. A indicated that she left Thales four or five months later. In November 2004, she received an offer from Motorola. Ms. A testified that she stayed with Motorola for only five months or so because her position had been cut due to lack of work. She stressed that she received a bonus from

Motorola as well as a positive performance appraisal. However, in cross-examination, Ms. A refused to share Motorola's appraisal on the ground that it was irrelevant. She also explained some of the gaps in her curriculum vitae by saying that the document was merely an introductory tool and that potential employers always went beyond simply reading it. Ms. A testified that she then joined the Société des Transports de Montréal for a little over a year before returning to Data in September 2006. Ms. A applied for a position with the CSIS and started at the STS in July 2008.

[106] Ms. A explained that her initial CSIS meeting was with Mr. F and Mr. E and that Mr. F explained how the department worked and spoke to her about training abroad. In cross-examination, the grievor agreed that the CSIS was correct to hire her, given her experience.

[107] Ms. A explained that there were often conflicts between the policy centre and the engineers and added that there was a lot of competition between engineers. Ms. A specified that Mr. K and, in some cases, another colleague were very competitive with her, often questioning her ideas and contradicting her.

[108] Ms. A testified that, while she was in the first unit as a test project manager, she had to manage the project like any other. She had to have test plans and find the right environment for performing the tests. She had to do everything herself because, unlike others, she had only one subcontractor to help her. Moreover, when she worked in that unit, there was no lab to perform the tests for which she was responsible. It was a challenge for her every time to find a place to perform the tests.

[109] Ms. A testified that what made her unique in the unit was that she was the only female engineer of Black origin. The other engineers within the STS were all Caucasian. Ms. A indicated that, when she was transferred to the unit in 2010, she was the only non-Caucasian person, aside from Mr. G who was Asian, until a man of Black origin joined the group in summer 2010. In cross-examination, Ms. A admitted that she did not know the statistics on visible minorities hired by the CSIS.

[110] Ms. A indicated that she was surprised by the second performance appraisal prepared by Mr. F for January 7 to July 7, 2009 period and the overall score of 2.1 (Exhibit E-3, tab 3(d)). According to her, she had not been made aware of any performance issues, especially since, at the meeting with Mr. F in May 2009, during which Ms. A reported on her work, Mr. F told her "[translation] I know where we're

headed,” which had reassured her. However, Ms. A indicated that at the same time as the May 2009 meeting with Mr. F, she consulted the Employees’ Association because she was concerned about certain remarks Mr. H made about her being hired for nothing and the fact that all the projects had already been distributed and that all that was left for her was to work for him, i.e., Mr. H. The grievor testified that, during her meeting with Mr. F in May 2009, she raised the result of the second performance appraisal with him, but he told her that he did not want to go over it again and that he had been “[translation] taken to task” by the other colleagues following the grievor’s performance on a consultation report for the test program.

[111] As for the performance appraisal prepared by Mr. H for the July 7, 2009, to January 15, 2010 (Exhibit E-3, tab 3(d)) period, Ms. A indicated that the overall score of 2.2 on the second appraisal continued to be detrimental to her because a score of 2.5 was required to be able to apply for other positions at the CSIS; she had been penalized and could not get another job with the CSIS. The grievor testified that she consulted the Employees’ Association, which helped her prepare comments on the appraisal carried out by Mr. H.

[112] The grievor testified that she filed a grievance against Mr. H’s appraisal on April 20, 2010. She indicated that, although she also wanted to file a harassment complaint against Mr. H, representatives from the Employees’ Association recommended that she wait. However, Ms. A testified that she contacted Professional Engineers Ontario in January 2010 to complain about Mr. H’s behaviour (Exhibit G-12).

[113] Ms. A indicated that she received a reply from Mr. C in response to her grievance against Mr. H’s appraisal in June 2010. She said that, although some aspects of her appraisal had been given a higher mark, the overall score remained unchanged at 2.2.

[114] Ms. A testified that she filed a grievance against her dismissal in October 2010, in which she referred to the ill treatment and harassment she had suffered. She mentioned that she also filed a formal complaint against Mr. H with Professional Engineers Ontario as well as with the Canadian Human Rights Commission and Ontario Human Rights Commission, which dismissed her complaint for lack of jurisdiction.

[115] Ms. A testified that, during her employment at the CSIS, she was in charge of far more projects than the employer admitted. She argued that she had been responsible

for at least 10 projects, that many times she inherited projects that had already been started by colleagues but that had progressed little and that she had to fend for herself.

[116] The grievor explained that, for example, many projects in her new unit did not have a time limit and that it was unfair to now claim that she was late and did not meet deadlines. According to Ms. A, some of the delays were exaggerated in her case and no consideration was given to her workload or the fact that the projects were sometimes late for reasons that were completely foreign to her. Some of the projects overlapped, and it was sometimes very difficult to prioritize, especially since, unlike her colleagues, she did not have subcontractors to help her, except once. In cross-examination, Ms. A argued that she was never the cause of the delays alleged by the employer.

[117] Ms. A submitted that the employer did not give her the necessary authority to organize her projects and that, unlike others, she was not authorized to contact the other people involved.

[118] Ms. A indicated that, in many cases, she was criticized for the quality of the documents she produced. According to her, the problems were largely due to the fact that Mr. H and later Mr. G constantly made her rewrite her documents, making new demands every time, thus causing delays and confusion for which she was later blamed.

[119] According to the grievor, she nonetheless met the expectations as best she could, and it is unfair to blame her for situations that were not always under her control.

[120] Ms. A argued that she was judged based on unfounded rumours and that the employer took the word of supervisors and colleagues who, in some cases, were directly competing with her and were trying to make her look bad. According to Ms. A, she never asked to be supervised that closely, and unlike her colleagues' work, her work was constantly being questioned.

[121] According to Ms. A, the situation did not improve when she was assigned to a new unit under Mr. G's supervision. She testified that, although she was glad at the beginning (in January 2010) to no longer be supervised by Mr. H, and although the field

of expertise in the new unit was a better fit given her experience, things became complicated in March 2010.

[122] The grievor testified that problems began in the new unit when she sought recognition as the author of a report she prepared while she was in the previous unit. According to Ms. A, Mr. G did not like her claiming to be the report's author, and he told her that he knew she had a problem with Mr. H and that she "[translation] better sing the same tune as everyone else if she wanted to stay." It was clear to the grievor that she had already been labeled a problem employee from the moment she arrived.

[123] Ms. A maintained that the same things happened in the new unit, namely, Mr. G and others made her redo work and rewrite documents, adding new demands every time, which complicated and delayed the production of the documents.

[124] In her testimony, Ms. A argued that she was treated differently and in a discriminatory manner, particularly by her supervisors, Mr. H and Mr. G.

[125] The grievor testified that she could not show initiative when she was being supervised by Mr. H because he tried to control everything. Moreover, she said that Mr. H encouraged the type of competitive behaviour she noticed in Mr. K.

[126] Ms. A indicated that she was harassed by Mr. H. She referred to an incident in which Mr. H apparently entered her office while she was on the phone, even though her office was locked. Ms. A recounted that Mr. H had used a master key to enter and that, once inside, he stood right in front of her, looking angry.

[127] Ms. A also testified that, another time, Mr. H entered her office and pointed his finger at her and said, "[translation] that's what you're going to do, Ms. A." In cross-examination, she admitted that, even though she had a tendency to note everything down, she never mentioned those incidents with Mr. H to her superiors; nor did she put them in writing. However, she said that she told her family about it but that she could not remember whether she informed the Employees' Association.

[128] The grievor testified that Mr. H commented about women, referring to them in some cases as "[translation] little misses."

[129] Ms. A indicated that she mentioned slavery in her email of October 21, 2009 because she was frustrated and felt that she was being treated differently and unfairly

(Exhibit E-4, tab 4, email of October 21, 2004). In cross-examination, she indicated that she should not have used the word “slavery” but that it accurately conveyed her state of mind at that time. She concluded that she was being treated that way because Mr. H was Caucasian and she was of Black origin. Ms. A added that the fact she was a woman did not help because Mr. H spoke to other women in the same demeaning way. Ms. A reiterated that she did not file a harassment complaint against Mr. H on the advice of the Employees’ Association, which recommended that she wait.

[130] Ms. A testified that the discriminatory behaviour and harassment continued under Mr. G’s supervision. According to her, the tone Mr. G used with her changed around March 2010. It became difficult to work with him. Ms. A said that Mr. G belittled her in front of other colleagues, constantly made her rewrite documents and forced her to ask others for feedback, which was humiliating and caused delays for which she was later blamed.

[131] The grievor testified that, on one occasion, Mr. G accused her of setting criteria for hiring a contractor that were too demanding. However, Ms. A said she was only following the specific instructions that Mr. G had given her.

[132] The grievor testified that, in good faith, she scheduled a meeting for Mr. G on a day he had taken off to watch a soccer game. According to her, Mr. G’s schedule was free, and she did not know that soccer was so important to him. She testified that Mr. G criticized her in the hallway for doing it, telling her that what she had done “[translation] was the type of mistake a level 5 or 6 engineer makes, not a level 9.”

[133] The grievor indicated that she did not file a harassment complaint against Mr. G simply because she was dismissed before she had time to do it. In cross-examination, Ms. A agreed that she took training on harassment at work and that she is familiar with the procedure to be followed in cases of harassment.

[134] Ms. A said the employer was trying to get rid of her, as shown in Exhibit G-10. According to her, that draft, dated April 27, 2010, shows that the employer had already decided at that time to terminate her employment, even before the end of Mr. G’s review period. In cross-examination, the grievor indicated that, although she did not believe that Mr. C, Mr. F, Mr. H, Mr. G, Mr. E, Mr. I and Mr. K were colluding against her, she believed that Mr. H and Mr. G had conspired against her to get rid of her.

[135] As for the remedies and damages sought by the grievor, she submitted Exhibit G-13 detailing her request. In particular, she indicated that, under the circumstances and since she does not want to return to a workplace that traumatized her, she does not want to be reinstated in her former position.

[136] The grievor requested that the CSIS provide her with references and that the subject of this grievance and information about her identity not be mentioned or made public.

[137] Ms. A also requested financial compensation for the moral damages she suffered as well as lost wages for the October 2010 to November 2011 period, when she found another job. Ms. A also asked to be compensated for the debts she incurred as a result of the termination of her employment.

[138] Ms. A further requested that she be able to file harassment complaints against Mr. H and Mr. G. Finally, she asked for a written apology from the CSIS.

V. Summary of the arguments

A. For the employer

1. Preliminary objection

[139] Counsel for the employer reiterated the arguments raised during the pre-hearing conference and at the beginning of the hearing that I do not have jurisdiction to deal with this grievance. He argued that, on one hand, the evidence shows that the grievor was dismissed for performance-related reasons and that, on the other hand, the CSIS is a separate employer under the *FAA* and is not part of core government. Therefore, according to counsel for the employer, paragraph 209(1)(d) of the *Act* does not apply because the CSIS was never designated under subsection 209(3). He indicated that, in this case, it is not disputed that the Governor in Council never adopted an order designating the CSIS under subsection 209(3), which would have given me jurisdiction in cases involving terminations for non-disciplinary reasons.

[140] Thus, counsel for the employer maintained that the *Act* is clear and that I have jurisdiction to deal with this grievance only if the grievor successfully demonstrates that the termination was disciplinary in nature. He argued that, once the grievor's performance is proven as the ground for termination, the burden of proof will lie with

her. She will have to demonstrate that the termination was motivated by reasons other than those related to employment.

[141] Counsel for the employer drew an analogy between the legal situation applicable in this case and the other cases in which the *Act* does not allow a reference to adjudication, the most common of which is rejection on probation. In cases involving rejection on probation, the adjudicator has jurisdiction only if it is alleged and proven that the termination of employment was for a reason other than one related to employment, such as disciplinary action.

[142] According to counsel for the employer, the case law has already established the rules on burden of proof applicable in a case such as this. He maintained that, in this case, the CSIS basically had to show that the termination was related to employment and that the cause was the grievor's poor performance. He argued that an employer is not required to justify the reason but merely to prove that a connection to employment exists.

[143] According to counsel for the employer, after it has been proven that the termination was for employment-related reasons — in this case, the grievor's performance issues — the burden of proof shifts, and the grievor must demonstrate that the employer's evidence was just camouflage, that it acted in bad faith, or that it in fact discriminated against the grievor or that, in other words, it is a case of constructive dismissal.

[144] In support of his arguments, counsel for the employer referred me to *Archambault v. Canada Customs and Revenue Agency*, 2003 PSSRB 28, which states that an employer's requirement that an employee perform does not qualify as bad faith. That decision was upheld by the Federal Court in *Archambault v. Canada Customs and Revenue Agency*, 2005 FC 183, which states that, just like the CSIS, the Canada Customs and Revenue Agency is a separate employer excluded, by the *Act*, from referring performance issues to adjudication.

[145] The Federal Court's decision in *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529, was also cited by counsel for the employer. Although that decision also deals with rejection on probation, counsel for the employer referred me to paragraph 37 of that case, which states that an adjudicator's role is not to interfere in

the performance appraisal conducted by an employer but rather to verify whether there were reasons other than those related to employment.

[146] Counsel for the employer believes that, in determining my jurisdiction, I must not put myself in place of the employer's engineers and supervisors who assessed Ms. A. My role is to establish whether the real reason for her dismissal was performance, not the fact that she is of Black origin or a woman.

[147] As for the issue of discrimination, counsel for the employer argued that I have jurisdiction to decide whether the grievor was discriminated against by her employer. If she was, counsel for the employer agreed that I would have jurisdiction to deal with this grievance because discrimination demonstrates bad faith. Therefore, it can be concluded that the termination was disciplinary in nature.

[148] Counsel for the employer submitted that there is no evidence that Ms. A was discriminated against by CSIS employees. He referred me to *Souaker v. Canadian Nuclear Safety Commission*, 2009 PSLRB 145, specifically paragraphs 131, 136 and 137. In that case, there was evidence of discrimination against the grievor. Counsel for the employer argued that there is none in this case. According to him, although Ms. A referred to Mr. H's behaviour, there is no documentary evidence or proof from witnesses to support the theory that discrimination or harassment occurred. According to counsel for the employer, the grievor's evidence is based on her personal perception. She presumes that Mr. H treated her differently because she is of Black origin. However, allegations of discrimination or harassment cannot be proven by perceptions.

[149] Counsel for the employer argued that it is at the very least curious that the only reference to discrimination is in the grievor's email dated October 21, 2009 (Exhibit E-4, tabs 1(h) and 1(i)). He also found it very strange that the only argument raised by someone like the grievor, who said that she remembers everything and claimed that she wrote everything down in her notebook, to support her allegation of discrimination and harassment is that she spoke about it to the Employees' Association, which suggested that she wait. Nothing was in writing. According to counsel for the employer, that version is not credible. Ms. A acknowledged that harassment is a serious matter and admitted to taking training on harassment and knowing the procedure to follow in such cases. It is inconceivable that both she and the Association would decide to do nothing about it. According to counsel for the

employer, there is no indication that any of the employer's representatives referred to the grievor's gender or race. With respect to the incident she recounted in which Mr. H allegedly entered her office and stood in front of her in an intimidating manner, counsel for the employer asked me to give no credibility to it. He added that, considering the grievor's incredible meticulousness when it came to contradicting something someone said or pointing out a detail, Ms. A surely would have reported that incident but never did.

[150] Counsel for the employer maintained that, although the grievor appears to have an eye for detail in some cases, she is also very selective about the details she wants to disclose. According to him, the cross-examination revealed that the curriculum vitae the grievor submitted to her employer when she applied for a position as an engineer (Exhibit E-3, tab 2(a)) was apparently riddled with errors or omissions with respect to her job history before her employment with the CSIS. Once again, counsel for the employer submitted that her explanation that it was just an introductory document are not very credible coming from someone who said that she remembers specific details and writes everything down.

[151] As for the evidence as such, counsel for the employer pointed out that all seven of the employer's witnesses testified to the same shortcomings demonstrated by the grievor, which were the basis for her dismissal for incompetence. According to counsel for the employer, not only were the employer's witnesses unanimous about the grievor's performance issues, but the undisputed evidence also shows that independent contractors had problems with the grievor and asked that she be removed from their projects. For instance, the seven witnesses all said that Ms. A had difficulty accepting feedback and that, when she received comments, she became argumentative and tried to show that she was right, instead of focusing and completing her assigned tasks. Counsel for the employer argued that the grievor showed that she could not function in a matrix-style workplace, in which services have to be delivered even though the recipient is a colleague. Moreover, counsel for the employer stated that the grievor would not even accept her superiors' authority.

[152] Counsel for the employer submitted that the grievor's testimony is hardly credible in that she always claimed that the problems raised by the employer were never her fault. For instance, counsel for the employer maintained that the employer's witnesses all said that not only was the quality of the grievor's work lacking, but also

that she was always late delivering her projects. According to counsel for the employer, in her testimony, she again refused to take any blame whatsoever, placing responsibility for the delays on someone else. Counsel for the employer argued that, in a work environment in which the national interest is at stake, it is critical for the organization to be able to rely on the competence of its employees.

[153] Counsel for the employer insisted that, unless it is determined that all seven of the employer's witnesses made everything up, conspired against the grievor and were racist toward Ms. A or harassed her, I must find that the version presented by the employer is more credible than that provided by the grievor.

[154] According to counsel for the employer, the grievor based her claims on erroneous perceptions, combined with a tendency to reject feedback from her superiors and peers. Counsel for the employer submitted that indications in this case suggest that the grievor had a problem with a reporting structure such as the one that exists at the CSIS and in all departments. Counsel for the employer argued that the grievor feels diminished and uncomfortable in that type of environment, which she calls military. According to counsel for the employer, she experienced the same type of unease when she worked for a previous employer, Thales, at which the same situation occurred and at which she felt she was being treated as a junior employee. The work experience there did not seem successful.

[155] According to counsel for the employer, the CSIS did everything to try to help the grievor. For instance, performance issues had already been identified when the grievor was on probation. However, the employer decided to give Ms. A another chance and used other strategies, unfortunately to no avail. All that is indicative of the employer's good faith. Counsel for the employer argued that, given the performance issues that began to emerge when she reported to Mr. F, it was decided that she would be assigned to an experienced manager, Mr. H. Since that did not work out either, the employer decided to give her another chance by assigning her yet again to another supervisor, Mr. G, in a different area of expertise within a different unit. Counsel for the employer pointed out that even the director, Mr. E, had been asked to become involved on a regular basis, to give Ms. A every possible chance. Unfortunately, after four supervisors and a lighter workload than that assigned to others at the same level, the evidence could not be ignored, and her employment had to be terminated.

[156] As for the remedies sought by the grievor, counsel for the employer concluded that I do not have jurisdiction to make an order on points 1, 3 and 4 of Exhibit G-13. As for point 2, counsel for the employer submitted that, although I would normally have jurisdiction to render a decision on financial compensation, no evidence, particularly concerning moral damages, was introduced to support her allegation.

[157] In the circumstances, counsel for the employer asked me to deny Ms. A's grievance.

B. For the grievor

[158] The grievor argued that I had jurisdiction to deal with her grievance because the evidence showed that the employer's representatives demonstrated bad faith and harassed and discriminated against her because she is a woman of Black origin. Therefore, the grievor considers her dismissal a disguised disciplinary action.

[159] According to the grievor, the evidence introduced by the employer is just hearsay. It is based on rumours that are not to be believed.

[160] The grievor submitted that she had made it clear from the beginning that she was the victim of harassment and discrimination; it all started when she was assigned to Mr. H and continued when she worked for Mr. G. The grievor pointed out that she filed a grievance under paragraph 209(1)(b) of the *Act*, which is a clear indication that her grievance was about disciplinary action.

[161] To support her argument that the real reason for her dismissal was disciplinary in nature, the grievor submitted that her very first appraisal, for the July 7, 2008 to January 7, 2009 period was satisfactory but that everything went downhill when Mr. H became her supervisor. As an example, Ms. A referred to a project headed by Mr. H, who testified that, because of the grievor's delays, he had to finish the project himself. However, the grievor said that Exhibit G-1 shows that that project is still in progress. Therefore, she claimed that that project must not have been so urgent because it is still ongoing. Ms. A said that everything together proves that the employer acted in bad faith.

[162] Ms. A also referred to the test framework document that Mr. H had her rewrite numerous times, which she claimed was unreasonable and in bad faith. According to her, Mr. H changed the requirements at each instance, which complicated and delayed

the production of the document. Moreover, the grievor stated that Mr. H often took issue with the layout, which delayed production of the document even further.

[163] Ms. A also argued that some of the projects under Mr. H had no deadline, so he was wrong to claim that she was late and did not meet deadlines. Moreover, unlike other employees, she was not invited to the training for one of those projects, which made her job even more difficult.

[164] As for the performance appraisal conducted by Mr. H, the grievor argued that it was unfair that the overall score was not raised after Mr. C made the changes. According to Ms. A, the fact that her grievance was not allowed seemed based on the fact that she is of Black origin.

[165] Ms. A indicated that, although she decided to wait before filing a harassment complaint against Mr. H on the advice of the Employees' Association, nonetheless, she complained about his behaviour to Professional Engineers Ontario in January 2010 (Exhibit G-12).

[166] As for the email she sent Mr. H referring to slavery, Ms. A indicated that perhaps she should not have used the word "slavery," but that the email accurately expressed how she felt about Mr. H's attitude because he always treated her differently from all the others. On that point, Ms. A argued that Mr. H made sexist remarks, such as "[translation] little miss," when talking about other women at the CSIS.

[167] The grievor also argued that the incident in which Mr. H entered her office and intimidated her as well as the time he was unhappy about her not sitting beside him during a staff meeting are other examples indicative of harassment and discrimination to which she had fallen victim.

[168] Ms. A also mentioned that things were no simpler when Mr. G became her supervisor in January 2010. The grievor also maintained that, no matter what the employer's witnesses said, she was in charge of a dozen projects, not one or two as they claimed.

[169] According to the grievor, everything was going well with Mr. G at the beginning, but his tone changed, and he became stricter as of March 22, 2010. The grievor said that Mr. G's attitude toward her changed because she insisted that her name, not that of Mr. H, should appear on a report since she was its actual author. The grievor argued

that, from that moment on, the relationship with Mr. G became difficult, and he constantly had her redo her work in front of other colleagues, which was humiliating for the grievor.

[170] The grievor referred to a project involving the relocation of the lab. According to her, there was much work to be done, because little had been accomplished. However, she said she completed the project and that she did not understand why Mr. G accused her of not updating the working document for it when the person in charge of the project before her had not done it. According to the grievor, Mr. G had a double standard, since her colleague had been excused but she was deemed to have performance issues.

[171] Ms. A argued that Mr. G was supposed to supervise her temporarily and that the employer did not fulfill its commitment to return her to her substantive position after her assignment (Exhibit G-3).

[172] According to the grievor, Mr. H and Mr. G conspired to make her look bad; they wanted her perceived as a problem employee. Ms. A argued that, after she filed the grievance against Mr. H's performance appraisal, for instance, Mr. G criticized her for the grievance and said that, if she wanted to succeed in the group, she would have to "[translation] sing the same tune" as all the others.

[173] Ms. A also referred to an incident in which Mr. G apparently drew comparisons between her and a medical patient, as well as another in which Mr. G apparently told her that her work was "[translation] crap." She stated that both incidents were indicative of harassment and discrimination.

[174] The grievor argued that the incident in which Mr. G criticized her for scheduling a meeting during a soccer game, which she did in good faith, also shows that she was the victim of harassment.

[175] According to Ms. A, she did not have a choice in some cases but to set things straight and give her version of the facts. However, she stated that, every time she wanted to share her point of view, both Mr. H and Mr. G saw it as refusal to accept feedback. The grievor claimed that she had no chance. She either had to accept the facts as reported by the employer's representatives, which were documented and made

her look like a problem employee, or had to give her version of the situation, which was viewed by the employer as a refusal to accept feedback.

[176] According to the grievor, not only did the employer's representatives harass and discriminate against her; what is more, they retaliated when she filed her grievance against the performance appraisal prepared by Mr. H. The grievor stated that she filed her grievance on April 20, 2010 and that, by April 27, 2010, Mr. C was already considering giving her a Notice of Shortcomings. That is an odd coincidence and shows that the employer had already made up its mind (Exhibit G-10).

[177] According to the grievor, Mr. H and Mr. G colluded to make it seem as though she had performance issues. As for Mr. C, Mr. F and Mr. E, they gave into the comments made by Mr. H and Mr. G. The grievor also argued that her colleagues, Mr. I and Mr. K, were in competition with her and that it is not surprising that two contractors complained about her. In one case, she did not retain the services of the contractor, and in the other, Mr. G preferred the other contractor's version, even though she was right.

[178] In response to the argument put forward by counsel for the employer that she never spoke about or referred in her emails to the incidents she attributed to Mr. H and Mr. G, Ms. A said that she always kept the Employees' Association informed of those situations and that the Association recommended that she not file the harassment complaint.

[179] Moreover, with respect to the doubts expressed by counsel for the employer about the content of her curriculum vitae, Ms. A submitted that a curriculum vitae is only one of many reference tools and that people are not so foolish as to limit themselves to what it contains. As for her job at Thales and the reasons she left, Ms. A played down the fact that she left because she was uncomfortable with the "more military" structure. According to the grievor, the fact that Thales had a military environment was just one of many factors in her decision to leave.

[180] The grievor concluded by saying that, given what had happened, she did not want to be reinstated in her former position with the CSIS but instead wanted corrective action to be taken, which is that she be provided with references, that a letter of apology be given to her by the employer, that she be allowed to file

harassment complaints against Mr. H and Mr. G and that she be granted financial compensation as outlined in Exhibit G-13.

VI. Reasons

[181] On October 5, 2010, the CSIS terminated the grievor's employment due to issues with her performance, which did not improve in spite of the employer's efforts. The grievor had been hired by the CSIS as a level 9 engineer. The letter of employment dated May 28, 2008, with a start date in the new position of July 7, 2008, stated that she would be "[translation] on probation for a period of one year as of the effective date of your appointment."

[182] On November 10, 2010, the grievor filed a grievance against her dismissal. The grievance was referred to adjudication before the Board on March 31, 2011, under paragraph 209(1)(b) of the *Act*. At that time, the grievor had not sent a notice to the Canadian Human Rights Commission (CHRC) under section 92 of the *Act*. However, she had originally brought a discrimination complaint before the CHRC about the same facts as set forth in the grievance. According to the grievor, the CHRC informed her that it would suspend her complaint and that the Board had jurisdiction to hear her discrimination complaint. Subsequently, the grievor sent the CHRC the notice provided for in section 92. The CHRC notified the Board that it did not intend to intervene in this matter.

[183] On May 10, 2012, I held a pre-hearing conference for the grievance hearing that would start on July 3, 2012. During the pre-hearing conference, my jurisdiction was challenged under paragraph 209(1)(d) and subsection 209(3) of the *Act*.

[184] The *Act* states that, in matters involving a separate agency, I do not have jurisdiction over a termination for reasons other than disciplinary action unless the separate agency has been designated by the Governor in Council under subsection 209(3), 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:

(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.

(3) The Governor in Council may, by order, designate any separate agency for the purposes of paragraph (1)(d).

[185] In this case, it has not been disputed that the CSIS is a separate agency within the meaning of paragraph 209(1)(d) of the *Act* not designated by the Governor in Council for the purposes of subsection 209(3) of the *Act*.

[186] During the hearing, the employer reiterated its objection to my jurisdiction to deal with this grievance on the ground that the CSIS is a “separate agency” within the meaning of paragraph 209(1)(d), that the Governor in Council has not designated the CSIS under subsection 209(3) of the *Act* and that the CSIS terminated the grievor’s employment for reasons other than disciplinary action. Counsel for the employer maintained that it was the grievor’s responsibility to prove that the reasons put forth by the employer are just camouflage and that it acted in bad faith.

[187] Paragraph 209(1)(d) and subsection 209(3) of the *Act* are clear. Considering that the CSIS is a separate agency and that it has never been designated under subsection 209(3), the employer must present me with *prima facie* evidence that the real reason for dismissing Ms. A was related to employment, in this case an issue with performance. Once that evidence is established by the employer, the burden of proof shifts to the grievor, who must, for me to have jurisdiction in this matter, show that the reasons given by the employer are just camouflage, that the real reason for her dismissal is disciplinary in nature, and that the employer acted in bad faith by, for instance, harassing her or discriminating against her.

VII. The evidence

[188] After a hearing lasting eight full days, I have no doubt that the employer amply demonstrated that the grievor had performance issues. The employer had seven witnesses testify, some of whom are now retired and detached from the facts in dispute. The witnesses testified at length unreservedly and were thoroughly cross-examined. All were unanimous in their assessment of the grievor’s work. They all indicated that the grievor had difficulty understanding the technical aspects of the work to be done, that she had trouble prioritizing her work and meeting deadlines, and that she was not receptive to feedback from superiors or peers. Moreover, the

employer's evidence was extensively supported by many reports, emails and other documents.

[189] The grievor was under the direct supervision of a number of supervisors, including Mr. E. Although I understand that her relationship with Mr. H and Mr. G was more difficult, the fact remains that all the employer's other witnesses testified to the shortcomings in her performance.

[190] In her arguments, the grievor submitted that her problems began when she was placed under Mr. H's supervision and that he is largely responsible for the problems she experienced. I do not agree. Mr. F testified that he had already noticed significant shortcomings in the grievor's performance during her second performance appraisal, so much so that he gave her an unsatisfactory overall score of 2.1. Ironically, the overall score Mr. F gave Ms. A on the second performance appraisal was even lower than the one she received from Mr. H on the third performance appraisal, which had an overall score of 2.2.

[191] The evidence showed that the grievor was given specific objectives to achieve from the moment she arrived at the CSIS. Mr. F, an experienced manager and public servant, testified that he gave the grievor a chance to prove herself in the first six months, which was an adjustment period. However, Mr. F indicated that her performance required more regular follow-up and that he had to ask Mr. H to supervise Ms. A directly.

[192] Although it is true that the period during which the grievor was supervised by Mr. H was difficult, I nonetheless note that the same shortcomings identified by Mr. F were also raised by Mr. H, namely, the lack of technical knowledge, the tendency to rely on others, failure to meet deadlines, difficulty writing documents and problems accepting feedback.

[193] The testimony given by Mr. C is also telling. After the appraisals conducted by Mr. F and Mr. H, the employer considered rejecting the grievor on probation but preferred to give her another chance by assigning her to another supervisor in another unit.

[194] Although the grievor said that the first two months under Mr. G went well, the evidence shows that, even under a different supervisor in another unit, the same problems reported by Mr. F and Mr. H resurfaced.

[195] The grievor's colleagues were equally adamant about her performance issues in their testimonies, going as far as asking to not have to work with her any longer.

[196] In her testimony and arguments, the grievor argued that the employer's evidence was based on rumours that should not be believed. She also indicated that Mr. H and Mr. G conspired to terminate her employment. I do not agree. Once again, the employer's witnesses testified specifically on the facts that they were able to observe. Moreover, I must point out that no evidence was introduced to support the grievor's allegations that Mr. H and Mr. G joined forces to collude against her. I will simply emphasize that the testimony of the employer's other witnesses, particularly Mr. F and Mr. E, were just as specific and adamant as those of Mr. H and Mr. G. Finally, I must reiterate that the employer's evidence was not limited to appraisals from the grievor's supervisors and colleagues but that it also included statements from contractors who had to work with the grievor and who were dissatisfied with her work.

[197] In the circumstances, satisfied by the employer's evidence that it had an employment-related reason for terminating the grievor's employment, I find that the employer discharged its burden of proof.

A. Discrimination

[198] Still to be determined is whether the grievor managed to demonstrate that the employer discriminated against her on the basis of her ethnicity and the fact that she is a woman. I must also ask myself whether the employer's representatives harassed her through their actions.

[199] It goes without saying that allegations of discrimination must be taken very seriously. In this case, Ms. A claimed that Mr. H and Mr. G discriminated against her and treated her differently from the other employees because she is of Black origin and a woman. Although I agree that discrimination can be insidious and underhanded, I note that, after hearing and observing all the witnesses, I am not convinced that any of them discriminated against the employee.

[200] In her testimony, Ms. A reported that Mr. H referred to other women as “[translation] little misses.” Mr. H denied it. No further evidence was introduced to corroborate the grievor’s claims. In cross-examination, she explained that Mr. H’s behaviour toward her could be attributed only to discrimination because he was a Caucasian man and she was a woman of Black origin. Once again, allegations of discrimination must be taken seriously. However, it cannot be concluded that discrimination occurred simply by default or on the basis of a mere perception. I must also note that Ms. A, except in the text of this grievance, never reported discriminatory behaviour on the part of Mr. H to her supervisors. Ms. A testified that she is meticulous and that she notes every significant event. Aside from the fact that the grievor apparently mentioned Mr. H’s behaviour to a representative of the Employees’ Association, no evidence was submitted to support that allegation against Mr. H. I note that Ms. A had opportunities to raise those claims specifically in her grievance against Mr. H’s appraisal, during the meeting with Mr. C in July 2010, during the meeting in August 2010 or when she received the Notice of Shortcomings. I also note that, in the correspondence submitted by the parties, an email refers to slavery. However, that reference was made by Ms. A, not Mr. H or Mr. G.

[201] With respect to the third supervisor, the grievor indicated that he tried to diminish and humiliate her in front of her colleagues, which Mr. G categorically denied. Again, the evidence did not prove the grievor’s allegations. Ms. A explained that she tried to approach certain people to support her claims. However, she said that they were reluctant to testify against their employer. I agree that it may be very difficult to convince an employee to testify against his or her employer. However, I note that, during the pre-hearing conference in May 2012, I offered the grievor the possibility of subpoenaing the witnesses she felt would support her allegations, but Ms. A did not take me up on this offer.

[202] In the circumstances, I find that there is no evidence to support the grievor’s claims that either Mr. H or Mr. G discriminated against her.

B. Harassment

[203] The grievor also alleged that Mr. H and Mr. G harassed her. In Mr. H’s case, the grievor referred to an incident in which Mr. H allegedly forcibly entered her office, looking menacing. He categorically denied it. I agree that evidence may be difficult to establish in certain cases when the alleged incidents pit the accuser and the accused

against each other. However, as mentioned, I note that Ms. A never spoke of the incident to her superiors in person or in emails or other documents. In fact, the allegation was brought to Mr. H's attention only during the hearing in August 2012. Moreover, I note that the grievor did not report any of the incidents to her superiors, including Mr. C, Mr. D, Mr. F and Mr. E, especially since she admitted to taking training on harassment in the workplace that outlined the procedure to follow in such a case.

[204] Ms. A also referred to an incident in which Mr. G apparently told her that her work was "[translation] crap" and that, to illustrate the situation, he used the example of a doctor who had to treat a patient. Mr. G explained that he used a doctor-patient example, which he had heard used during a training session at Nortel, and that he had absolutely no intention of hurting the grievor. As for the word "[translation] crap," Mr. G indicated that French is not his first language and that he chose that word to refer to the unnecessary details in a document prepared by the grievor, not to her work. Finally, Ms. A mentioned Mr. G's behaviour when he learned that she had scheduled a meeting on a day he had taken off to watch a soccer game. Mr. G defended his anger with the grievor and insisted that she should have looked at the schedule before scheduling a meeting for him.

[205] Although Mr. G's choice of examples and words might have been unfortunate, I can in no way conclude that he tried to harass the grievor. He testified that he was happy about Ms. A joining his team in 2010. Mr. G was forthcoming in his version of the alleged facts. I truly believe that, for the entire time Ms. A was under his supervision, he tried to integrate her and give her another chance, which unfortunately did not work out.

[206] The case law dictates that it is the responsibility of the party claiming to be the victim of discrimination or harassment to make a *prima facie* case. In a case such as this, the witnesses' credibility with respect to the issues of discrimination and harassment is therefore very important. Just like the adjudicator in *Souaker*, ". . . I must assess the credibility of the witnesses and determine the version of the facts that seems the most probable to me in view of all the evidence in this case."

[207] In this case, I was able to thoroughly review the evidence submitted by the parties during the eight-day hearing. That review of the evidence led me to conclude that the version presented by the employer appeared most probable in light of all the facts in this matter and the testimony given by the parties.

[208] In my opinion, although the witnesses testified at length, Ms. A did not introduce any evidence of discrimination or harassment directed at her. I believe that her allegations were based on personal perceptions or, as mentioned, her conviction that her performance was satisfactory and that the poor results she received on her appraisals must have been the result of discrimination or harassment by Mr. H and Mr. G.

[209] Although it is true that the grievor was in a difficult position after receiving unsatisfactory appraisals, nothing supports her claim that she was discriminated against or harassed. The employer had the right to assess her against its objective standards. In the absence of evidence to the contrary, it cannot be concluded that harassment or discrimination took place because the outcome of the appraisal was not favourable for her. Therefore, she asked that she be allowed to file harassment complaints against Mr. G and Mr. H. That request is rejected because I have already analyzed and disposed of this matter in ruling that neither Mr. G nor Mr. H harassed her or discriminated against her.

[210] On the whole, based on the evidence submitted, I believe that, in this entire affair, the employer truly tried to help the grievor improve her performance. The employer could have decided to reject her on probation during her first year of employment, but did not. Moreover, she was supervised by several different managers in two different units, which did not produce the desired results. Ultimately, the employer gave her 60 days' notice. I believe Mr. C when he said that terminating her employment was not his first choice and that he tried to give her every chance to succeed before dismissing her.

[211] In the circumstances, I find that the employer demonstrated that it terminated the grievor's employment for a reason clearly related to employment and that Ms. A did not demonstrate that she was the victim of discrimination or harassment by her employer.

[212] Therefore, I do not have jurisdiction to deal with this grievance.

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

(The Order appears on the next page)

VIII. Order

[214] I order file 566-20-5245 closed.

January 11, 2013.

PSLRB Translation

**Linda Gobeil,
adjudicator**