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File: 566-02-5684

Citation: 2015 PSLREB 37



Public Service Labour Relations Act

Before an adjudicator

BETWEEN

TERESA SZMUKIER

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Szmukier v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Michael F. McNamara, adjudicator

For the Grievor: Grace Chychul, Professional Institute of the Public Service of
Canada

For the Respondent: Lesa Brown, counsel

Heard at Saskatoon, Saskatchewan,
April 3 to 5, 2013;
written submissions filed April 29, May 13 and May 17, 2013.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] This matter involves a grievance for two suspensions imposed by the Correctional Service of Canada (CSC) on the grievor, Teresa Szmukier. The grievor is a CSC psychologist (classified PS-03) employed at the Saskatchewan Penitentiary in Prince Albert, Saskatchewan.

[2] On August 31, 2010, the grievor filed a grievance contesting the CSC's decision of August 25, 2010, to suspend her without pay for one day and then for two more days following the investigation of a harassment complaint against her. The letter of suspension (Exhibit 17) reads as follows:

...

Subject *Disciplinary Sanction - Harassment*
Complaint

A Harassment Investigation report was completed in August of 2009 by TLS Enterprises in regard to allegations of harassment brought forward by Ms. Debbie Hills against you. As a result; Regional Deputy Commissioner, Brenda LePage advised you via a memo dated August 20, 2009, that the allegations of harassment made by Ms. Hills were founded. The allegations are;

Allegation 1: *On November 4, 2008 Ms. Hills alleged that when she up-dated and distributed the counseling spreadsheets for psychologists, Ms. Szmukier accused her of falsifying the notes on the spreadsheet.*

Allegation 2: *Ms. Hills alleged Ms. Szmukier subjected her to demeaning, demanding and offensive behavior over time, but particularly in 2008.*

You previously submitted a written rebuttal to the investigation report, You attended a disciplinary hearing on August 5, 2010 with your Union Representative, Neil Harden. The purpose of the hearing was to afford you the opportunity to submit further information. At the hearing you gave a verbal rebuttal to the allegations and provided some documentation. Mr. Harden asked some questions.

In making the decision concerning the disciplinary sanction, I have taken both your written and verbal rebuttals into account, that there has not been previous discipline on your record, and the Treasury Board Guideline - Policy on Prevention and Resolution of Harassment in the Workplace which states; "Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the Public

Service, whether or not they are employees, should enjoy a harassment-free workplace.”

*The disciplinary sanction is as follows; **One (1) day suspension without pay for allegations #1 and two (2) days suspension without pay for allegations #2. The dates of the suspension will be from August 26th to August 30th inclusive.***

You are expected to demonstrate a high level of work ethic in accordance with the Standards of Professional Conduct. As such, more serious disciplinary action will be taken should there be any further misconduct up to and including demotion and/or termination of employment.

A copy of this letter will be placed on file for a period of two years.

...

[Emphasis in the original]

[Sic throughout]

[3] The two-day suspension for allegation #2 was later reduced to one day by decision rendered in the individual grievance process.

[4] As a remedy, the grievor requested that I cancel the suspensions, that I restore her pay and benefits, and that the letter of discipline be removed from her file and destroyed. She wanted to be made whole in every way.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the new Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) as that Act read immediately before that day.

II. Summary of the evidence

[6] The CSC called five witnesses, and the grievor testified on her own behalf.

A. Debbie Hills

[7] Debbie Hills had been employed as a psychology testing clerk (classified CR-04) for seven years as of November 2008. She reported to Chief of Psychology Fernando Larrea. Her main duties involved assessing inmates' psychology testing, producing and updating spreadsheets in a timely fashion, and looking after contractors, in addition to answering phones and monitoring the office area.

[8] Ms. Hills was also responsible for some referrals, that is, assigning inmates who were being referred to a psychologist's services. For a non-urgent referral, she was authorized to assign a psychologist. For an urgent referral, Mr. Larrea would make the assignment.

[9] Assignment information was placed on a hard drive shared by the psychologists (the "W" drive) and was updated biweekly, depending on the workload.

[10] On November 4, 2008, an incident occurred (Exhibit 1). Ms. Hills prepared a memo for Mr. Larrea that outlined her version of the incident, as follows:

On 2008-11-04 I had been working on updating the counselling spreadsheet for psychology. Teresa Szmukier was given the updated counselling spreadsheet pertaining to the counselling screens assigned to her. At approximately 1330 hours when she read the two people on her list she said she wasn't previously told about them. I told her I had sent her emails on them and showed her on the spreadsheet where I had inserted the contents of the original email as a comment into the spreadsheet to show when the counselling had been assigned it to her. She then accused me of falsifying the spreadsheet by saying "you could have typed that in there anytime and I want to see the original". I produced the original emails and showed her the read receipts that tells the date and time she read the email. She then said that there was nothing on the file stating that she was given them. I told her that the emails I send her are the evidence that she is assigned them. She then told me that one of the offenders that I said was assigned to her was now assigned to Fernando. She told me it was my job to know this and I told her I had no way of knowing this if no one told me that they had been reassigned. I told her that she should have told me this and then I could have made the changes. She

said it wasn't up to her and that Fernando Larrea and Sandra Hayhow were there also. I said that seeing it was assigned to her she should tell me so I could make the appropriate changes. She then started raising her voice and was not allowing me to say anything and I raised my voice back at her and in the moment I said I could raise my voice if I wanted too. She then went on to tell me that as far as she was concerned I was just "tech support" and not her boss and she didn't have to tell me anything and that it was my job to know these things. At this point I left her office and didn't continue the conversation anymore.

It appeared that the more information I provided to prove that she had been assigned these offenders for counselling screens the madder she became and the more derogatory she was to me.

I feel that the way she treated me was uncalled for and very demeaning. This incident left me feeling harassed by Teresa Szmukier and I would like this behaviour to stop. This was witnessed by Marilyn Reiss who was in the office next door and heard the whole conversation.

Signature

[Sic throughout]

[11] On November 5, Ms. Hills followed up as follows with additional recollections of incidents with the grievor (Exhibit 2):

2008-11-05

Here are some other occasions that Teresa Szmukier has made me feel uncomfortable or degraded me; unfortunately I do not have dates or time to go with them.

About a year ago, at lunch one day in front of the rest of the staff, she told me that "all I do is filing" and I said "excuse me" and she repeated that "all I do is filing". I found that to be very degrading and it made me feel like all I do in my job is completely worthless.

When I assign her counselling, segs or assessments she always wants to know why they are being assigned to her and under whose authorization. It is my job to assign these assessments as they become due and yet she makes me feel like I shouldn't be assigning anything to her without written authorization from the A/Chief. I don't have to do that with anyone else in the department. I have gotten to the point that I hate to deal with her as it becomes an inquisition every time I try to do my job. She makes working here very

uncomfortable. It has gotten to the point that I dread having any dealings with her as I afraid of the reaction she will have.

She has made it uncomfortable to work here because she has demanded that I work with my door closed saying we are too noisy in my office. There are two of us working from this office and it holds the photocopier, printer and files. It gets to the point that it is so hot in our office that we can hardly function and there is poor air flow with the door closed. We have the windows open and two fans going and anyone coming into the office comments on how hot it is; yet I am the first person she comes to if her office is too hot or cold and wants me to phone and get it fixed.

I know there were other instances that have occurred but I am unable to remember the details at this time.

The following happened yesterday

*2008-11-05
1300 hours*

Teresa came to my office and asked me to forward her the documentation from Fernando asking me to update the counselling lists. I told her I didn't have any documentation as he told me verbally. She said "you don't have any documentation then?" I said no he told me orally. She said "good" and left my office.

As it is my job to look after the spreadsheets for the department for counselling and assessments it is not necessary to be asked to update as they are done when time allows. She is constantly making it sound like I don't do my job or everything that I do has to be given to me in writing by the A/Chief of Psychology

*Debbie Hills
Psychology Testing Clerk
Saskatchewan Penitentiary
306-765-8190*

[Sic throughout]

[12] Ms. Hills filed a harassment complaint on November 6, 2008.

[13] Ms. Hills wrote to Rosemary Slywka (Exhibit 4) about her additional recollections of interactions with the grievor, as follows:

To: *Slywka Rosemary (PRA)*
Subject: *harassment Complaint*

Hi Rosemary

Attached you will find the additional information that I can recall that has happened between Teresa Szmukier and myself in the last year or so. Hopefully this will be of use in the investigation into the harassment complaint I have lodged.

Thank you in advance

Debbie Hills

- 1. In almost all of my interactions with Teresa she refers to me as the clerk instead of by my name and I find this degrading and depersonalizing. It would appear that by being a clerk I hold a much lower status than a psychologist because of the way she refers to me. When verbally interacting with me in this manner in front of co-workers and offenders I find this humiliating and when observed by offenders it could put me at risk as I am flustered and embarrassed which could be easily picked up on by the offenders that are under my supervision and could have a direct impact on my authority of these offenders.*
- 2. When ever Teresa comes into my office she never asks for something she always demands it. For example she will come in for a file and regardless what I am doing whether on the phone or on the computer she will demand that I get her the file she wants right now. She will stand over me and watch what I am doing until I drop everything and help her. I find this behaviour very intimidating.*
- 3. Teresa also wants everything done for her that the other psychologists do for themselves. She want faxes sent for her; share printing to the NPB; calling up of offenders all things she could do for herself and then she stands over you while you are doing it as if she doesn't trust me to do it without supervision. This makes me nervous and uncomfortable doing my job.*
- 4. It is one of the duties that has been delegated to me by the Chief Psychologist to assign counselling screens and assessments to the psychologist. Teresa has no respect for this process and challenges me every time that I assign her a counselling screen or assessment. When I do checks on the assignments for the psychologist to see if they are completed and can be removed from my spreadsheet and she still has some that are outstanding she will try to put the onus on me by saying that she didn't know it was assigned to her or that it had been reassigned to someone else. I have gotten to the point where I have had to create*

- a paper trail of emails and extra notations on the spreadsheet to prove that I had informed her of her assignments. Even with these measures she still tries to bully me by saying that I could be falsifying these documents just to steer the blame away from her and onto me. I have to focus so much on the documentation for assignments to her that I can hardly do my job and it has affected my ability to the job I have been hired to do.
5. Whenever Teresa comes into my office she gets into my personal space and with her body language she makes me nervous because I never know what to expect.
 6. She had told me on one occasion in the May of 2007 in front of all the staff at lunch time that all I do is filing. When I confronted her on this statement she just repeated it again. I found that to be very insulting and embarrassing.
 7. To the best of my recollection on approximately November 6, 2008 she told me that she considered me to just be Tech support and that she didn't have to do anything that I assigned/told her as I was not her boss. Once again she showed disrespect for me and the system that we work under.
 8. I also recall a time that to the best of my recollection happened in the spring of 2008 that Teresa had gone to segregation and had a problem with the Correctional Staff in the area. When she returned to the Psychology Department she demanded that I phone the segregation unit and book her an interview room. She hung over me until her demands were met. She would not leave my office until I made these arrangements for her. Scheduling interview rooms for Psychologists is not my responsibility. I find these types of interactions by her intimidating and significant distraction to my job as she will not wait for me to complete a task I am already working on before assisting her.
 9. Last spring when the offices were very warm because we are on a boiler system and they hadn't turned the boilers off Teresa would come in to my office demanding that I phone the works department and have them come over because she was too hot in her office. I had told her we were all hot and the reason was because of the boilers. She stayed in my office demanding that I phone and stayed here until I phoned. This again is something she could do herself but she feels that it is somehow my job to do. Everyone else in the office capable of making these phone calls themselves. It is not because she is too busy to do these things herself as she stands here while I am doing them as if she is checking to see if I am doing it right or not. I find her attitude to be bullying and intimidating to the point that I am very nervous around her.

10. Another way that Teresa showed her power over me was this fall when she demanded to the Chief that I work with my door closed because the noise from my office bothered her. There are two of us that work out of this office and it houses all the files, two computers; the fax machine, the printer and the photocopier. This office also has the control mechanisms for the doors for the unit. These doors are automatically controlled in this office and are equipped with an intercom system which attributes to the noise in my office. This office gets extremely hot and uncomfortable with all the equipment in here as a result of the limited air circulation with the door closed. We worked with the windows open and two fans going and it was still hot in here. It appeared to be just another way for Teresa to show how she as a psychologist was better and more important than me as the clerk.

[Sic throughout]

[14] Also introduced were three letters from Paul Urmson, Acting Deputy Commissioner, Regional Headquarters, Prairies, CSC. The first was to Ms. Hills, acknowledging the receipt of her complaint (Exhibit 3). The second recognized the failure of a mediation attempt and the intention to establish a formal investigation of Ms. Hills' complaint (Exhibit 5). The third letter formally appointed TLS Enterprises to conduct the investigation (Exhibit 8).

[15] Ms. Hills summarized the effects on her work, her health and lifestyle by stating that coincidental with the incidents at issue, she developed asthma and Chronic Obstructive Pulmonary Disease (COPD), stress levels in her life built up, she had to switch jobs, and she was hospitalized three times and could no longer work with the grievor. She lost the job she really liked, had to work elsewhere, went on stress leave and eventually took medical retirement.

[16] In cross-examination, Ms. Hills explained that some files were referred to the chief for assignment, while she routinely dealt with other files. Entries were placed on the "W" drive with a "Read-Receipt Notice" flagged. Ms. Hills could not say whether the grievor was aware of the "W" drive, but the other psychologists were, and they used it.

[17] Ms. Hills testified that her office chair was positioned so that her back faced the entrance door and that it was possible that the grievor's only way to approach her was from that direction. However, others would identify that they were coming in. Ms. Hills stated that she had asked the grievor not to startle her by walking up behind her.

[18] The grievor always referred to Ms. Hills as “the clerk.” Ms. Hills was never introduced, and the grievor referred to her in such ways as, “The clerk did it,” or, “Go ask the clerk.” The grievor never used her name. Ms. Hills agreed that the grievor treated all the clerks the same way and that the job was titled “Psych Clerk.” Ms. Hills had asked Mr. Larrea and Sandra Hayhow, Acting Chief Psychologist, to address this issue with the grievor but was not aware of the outcome of any discussions.

[19] The grievor would tell Ms. Hills, “I want this file,” and Ms. Hills would then have to get it for her. If Ms. Hills was on the phone, the grievor would just stare at her until the call (business or personal) was finished and until she retrieved the file.

[20] The grievor thought that the correctional officers did not treat her well, so she asked Ms. Hills to book interview rooms for her and to make calls for her appointments. Other psychologists did those things on their own.

[21] The temperature in the offices was an issue between the grievor and Ms. Hills, as was the noise level. There was only one temperature control, and the grievor made sure that Ms. Hills’ office door had to be closed so that the grievor’s office was quiet. It would become very hot and uncomfortable in Ms. Hills’ office, while the grievor appeared comfortable in hers. No resolution was possible under the circumstances because there was only one thermostat.

[22] Ms. Hills agreed that her health issues could have been the result of weather conditions or smoking but that doctors had told her that stress was the biggest factor. However, no medical evidence was adduced.

[23] When the grievor returned from a leave of absence, Ms. Hills was told that she had to work with Ms. Szmukier. Ms. Hills did not think that that was possible, so she transferred to another work location. She began working as a healthcare clerk at the CR-03 group and level and was subsequently reclassified to the CR-04 group and level, but she had enjoyed the work more in the CSC’s psychology department.

[24] Ms. Hills retired on March 28, 2013, and had been on disability since 2009 because of COPD.

[25] On the issue of referrals, most are done via email to either the chief or to a psychologist; a hard copy follows.

[26] In one incident, an inmate assessment had been calculated incorrectly. The grievor brought it to Ms. Hills' attention, and it was corrected.

[27] Asked if the grievor is an abrupt person, Ms. Hills answered, "Yes."

[28] On re-direct, Ms. Hills stated that the grievor:

- never said that she did not have access to the "W" drive;
- never, in seven years, asked about the clerk's duties;
- continued to approach Ms. Hills from behind without identifying that she was there; and
- never called about the heating but instead told Ms. Hills, "You know who to call."

B. Lorna Leader

[29] The second witness was Lorna Leader, an associate with TLS Enterprises in Winnipeg, Manitoba. In March 2009, the CSC retained her to conduct an investigation into an employee complaint of alleged harassment at the Saskatchewan Penitentiary. She identified the Treasury Board *Policy on Prevention and Resolution of Harassment in the Workplace* ("the policy"; Exhibit 7), the letter engaging TLS Enterprises (Exhibit 8) and the "Investigation Report" (Exhibit 6), as well as the "Standards of Professional Conduct in the Correctional Service of Canada" (Exhibit 9) and "CSC Guiding Principles on the Prevention and Resolution of Harassment in the Workplace" (Exhibit 10).

[30] Ms. Leader reviewed those documents as well as the original letter to Mr. Larrea (Exhibit 1), Ms. Hills' document of November 5, 2008 (Exhibit 2) and her letter to Ms. Slywka (Exhibit 4).

[31] Ms. Leader prepared a list of questions and interviewed Ms. Hills and the grievor. Other witnesses were identified following those initial interviews and included Marilyn Reiss, Matthew Gee, Mr. Larrea, Ms. Hayhow and Robert McIntyre. The grievor noted that Terry Fehr was not interviewed in the investigation, even though the grievor had suggested interviewing her. Ms. Leader testified that Ms. Fehr was considered but was not included because she had not witnessed the November 4 incident.

[32] In assessing who would be additionally interviewed, people having direct information were considered.

[33] The investigation centred on two allegations. The first dealt with the November 4, 2008, incident, and the second dealt with an alleged pattern of harassing behavior by the grievor.

[34] For the first allegation, Ms. Leader found that the evidence supported a finding of harassment by the grievor.

[35] For the second allegation, Ms. Leader found that the grievor's behavior, over time, had been offensive and demeaning.

C. Ms. Reiss

[36] Ms. Reiss was unable to attend the hearing in person but was permitted to give evidence by phone.

[37] Ms. Reiss was a psych clerk (classified CR-03) in the Psych Unit from September 2008 to March 2009. She was cross-trained with Ms. Hills. They shared responsibility for being in the office as well as for inmate testing in the units. She and Ms. Hills reported to Ms. Hayhow and then to Mr. Larrea.

[38] Ms. Reiss reviewed the memo she wrote to Mr. Larrea on November 4, 2008, about the incident that day (Exhibit 11). Ms. Hills was always careful around the grievor. On November 4, the grievor entered the office and moved close to Ms. Hills. The grievor looked angry and said that she did not have the two inmate files assigned to her. She accused Ms. Hills of falsifying the spreadsheet. Ms. Hills produced the original emails and read receipts, but the grievor was adamant and annoyed and said that the files had been reassigned. Ms. Hills stated that she would not know about any reassigned files if she were not notified about them.

[39] Ms. Reiss went on to testify that the discussion was heated and that voices were raised. Then she heard the grievor state, "just tech support," from the hallway.

[40] After the incident, Ms. Reiss sat with Ms. Hills, who was visibly upset. Ms. Hills said that she was shaken and devastated, that she would never fake a spreadsheet, and that it was like a slap in the face. Ms. Hills felt bullied into admitting that this was all her fault.

[41] Ms. Reiss prepared her November 4 memo at Mr. Larrea's request.

D. Mr. Larrea

[42] In November of 2008, Mr. Larrea was the acting chief of psychology, and both the grievor and Ms. Hills reported to him. Mr. Larrea has worked in that area since 2001 and has worked with the grievor since her first day at the Saskatchewan Penitentiary. His main responsibility is line supervision over psychologists, who assess inmates via a variety of risk assessments, segregation assessments and counselling.

[43] A referral involves a request from outside the psychology unit for the counselling or risk assessment of inmates. The psych clerk manages the referral database and integrates all information in order to prioritize, manage and organize the duties of the section, all in consultation with the section chief.

[44] The task of making assignments is delegated to the psych clerk, who is competent in assigning the referrals (in consultation with the chief if necessary). That is the clerk's job.

[45] The referral database is stored on the "W" drive, which is a common drive. A tracking spreadsheet is used to track the steps of a referral. Everyone in the Psych unit has access to the "W" drive.

[46] Before 2008, Mr. Larrea was aware of ongoing conflicts between Ms. Hills and the grievor. Ms. Hills took offence to the grievor's comment that she was "just a clerk." Mr. Larrea addressed the issue with the grievor at that time and counselled her about how she was coming across to Ms. Hills. No other incidents occurred with the grievor before 2008.

[47] Mr. Larrea identified the "Standards of Professional Conduct in the Correctional Service of Canada" (Exhibit 9), the anti-harassment training that everyone is required to complete and the "CSC Guiding Principles on the Prevention and Resolution of Harassment in the Workplace" (Exhibit 10), and stated that all those documents are available to all employees through the CSC's "INFONET."

[48] Mr. Larrea was questioned about the grievor's Eastern European background but had no specific comments about it. He knew that she was Polish.

[49] Mr. Larrea is Chilean and is aware of cultural norms and stereotypes. He stated that he thought that Latin males are often thought of as loud and expressive but that

in reality, behaving that way is a choice. In the working environment, one is still expected to follow guidelines. In his case, he avoids being loud and expressive.

[50] In cross-examination, Mr. Larrea stated that he received an email from the grievor about the incident. He was out of the office when it occurred. He then talked to Ms. Hills and asked her to provide an account of what had happened. He also talked with Ms. Reiss and so had information from all three parties. He was not involved in preparing the harassment complaint because the CSC staff in Regina, Saskatchewan, deals directly with such issues.

[51] Mr. Larrea confirmed that he directed that the office door where Ms. Hills worked was to be closed after the grievor claimed that it was too loud in that area, that she was getting interrupted and that she had difficulty concentrating. Mr. Larrea explained to the staff that noise was an issue and that it was disruptive to the grievor. Following that decision, the clerks complained about the heat in the office and stated that the air was stuffy and that the printer made an odour that caused them headaches.

[52] Mr. Larrea explained that the database is not the spreadsheet; they are integrated but are two different things. The spreadsheet has multiple tabs containing all the documents and all the information.

[53] Referrals were sometimes requested over the phone and sometimes in writing. Speaking hypothetically, when a referral was requested, Mr. Larrea would talk to the psych clerk to determine workload and priorities in order to assign it to a psychologist, and in some cases, it would be assigned to him.

[54] The grievor discovered several testing errors that Ms. Hills had made and made Mr. Larrea aware of them. She spoke with another psychologist about them as well. Mr. Larrea spoke with Ms. Hills, and the resolution was to find a quieter area to do the work. Mr. Larrea was not aware that this issue might be the cause behind Ms. Hills' complaint.

[55] The grievor was generally a conscientious worker. She could be friendly but also rigid at times, and she sometimes made condescending comments about others. Mr. Larrea had difficulty with the grievor's attitude toward the psych clerks, which she expressed as, "You are just a clerk here to serve us." Her attitude was the subject of a heated debate between them, but he stated that the grievor just did not "get it."

E. Maureen Rask

[56] Maureen Rask has worked in various positions at the CSC since 1996 and became Assistant Warden of the Saskatchewan Penitentiary on December 1, 2008. She became aware of Ms. Hills' complaint at that time. She was not involved with the complaint or its investigation and was not interviewed.

[57] In August of 2010, the grievor reported to Mr. Larrea, who reported to Ms. Rask.

[58] Ms. Rask recalled receiving the investigation report, reviewing it, meeting with the warden and discussing discipline. No hearing was held until the grievor returned from leave and settled back into her position in August 2010. The grievor was on sick leave and needed a return-to-work plan followed by a gradual reintegration into the workplace.

[59] Ms. Rask was satisfied with the disciplinary report. The grievor still continued to state that she was justified in her actions, just as she had stated during the investigation. Ms. Szmukier did not change her position.

[60] In arriving at her decision about discipline, Ms. Rask conferred with the Chief of Human Resources, reviewed relevant jurisprudence, and consulted with regional labour relations staff and the Harassment Coordinator.

[61] Ms. Rask determined that a three-day suspension was an appropriate level of discipline. One day was for the accusation about Ms. Hills falsifying the notes on the spreadsheet, and two days were for the grievor's demeaning, demanding and offensive behaviour over time, particularly in 2008.

[62] The grievor grieved this discipline, and it was reduced at the second level of the grievance process to two days from three, one day for each issue. Ms. Rask was not involved with the second-level decision.

[63] In cross-examination, reviewing her decision to impose three days of suspension, Ms. Rask said that she believed that the grievor displayed no remorse and that she continued to justify her actions.

[64] In re-direct, Ms. Rask stated that the issue of whether Ms. Hills had falsified any read receipts was not relevant to the harassment. The grievor's actions were

demanding and demeaning. She knew she was acting in that way and knew the effect it was having on Ms. Hills. Knowing that and still acting that way was not proper behaviour.

F. Ms. Szmukier

[65] Ms. Szmukier has worked for the CSC in Prince Albert since December 1995 and is an indeterminate psychologist classified at the PS-03 group and level. She is of Polish descent and has been in Canada since 1991. She speaks Polish at home but English in the workplace. She was educated in Poland, receiving her psychologist diploma in 1980.

[66] In the investigation report, Ms. Leader stated that language was not an issue for the grievor, which the grievor disputed. As an immigrant and a psychologist, she noted that she is aware that Canada is multicultural and that she realizes that 80 different nations are represented here, all of which have different social and cultural perceptions. She has received substantial training at the CSC to upgrade her qualifications with respect to aboriginal issues in order to more precisely estimate an aboriginal inmate's risk of reoffending. The main part of the job is assessing an inmate's risk of reoffending. So, she operates on two cultural fronts on a daily basis; therefore, she disagreed with the investigator's conclusions.

[67] The grievor understood from her colleagues that it was okay to refer to the clerical staff as "the clerks." In 2008, there were no signs on doors that identified the different workers, so that psychologists, nurses, psychiatrists and clerks could not be distinguished by clients, who were often confused as to who was who. She posted notices that stated a range of services provided and became more organized to respond to the inmates' needs, so that when an inmate wanted a library book, she would introduce them to the "clerical staff" because she thought it necessary to identify their function.

[68] Mr. Larrea had identified the grievor's demeanor as condescending. She recalled some kind of conversation about an incident, but did not agree with him. The situation was discussed; as a result, she felt that the situation was resolved as being, in the grievor's words, "not that serious." It was a very brief conversation and there were no hard feelings. She further stated that two days later, her feeling was corroborated

when he came to her office and told her, “You are right, this clerk is pissing me off too!”

[69] Thus, the grievor was receiving mixed messages and was not good at reading them. This was common; it happened every day. Some days Mr. Larrea would say something serious and then joke that it would all be OK.

[70] An email exchange between the grievor and Mr. Larrea (Exhibit 15) illustrates her point, as she refers to a conversation in which Mr. Larrea suggested she might consider going on disability leave, which she thought was out of line and made her feel uncomfortable. Mr. Larrea’s response was that he was joking with her and that he had thought that they were having an informal discussion. He stated that in the future, he would look forward to a strictly professional relationship, to prevent miscommunication.

[71] The grievor was completely surprised by Ms. Reiss’ statement that some inmates did not want to be referred “to that lady,” meaning the grievor. The grievor believed her performance was always fully satisfactory and that it lived up to the CSC’s expectations. There were never any grievances from inmates, and she was culturally sensitive to aboriginals. She received no negative feedback and was never asked to change her attitude or process. She stated that she always appreciates feedback.

[72] The grievor explained that she went to the clerical office only for work-related issues; she had no other reason to visit because she and Ms. Hills were not friends. She went only to access files because they were under the clerical staff’s control and because a signature was required to sign out a file. Sometimes, Ms. Hills was on the phone, and the grievor would have to approach her from behind, but not to startle Ms. Hills, just to get her attention and to have Ms. Hills stop her phone call and attend to her requests.

[73] The grievor explained that the whole event of November 4, 2008, was very emotionally charged and that things happened very quickly. After lunch, she approached her mailbox; Ms. Hills was at her desk. Ms. Hills told her that two inmates were on her spreadsheet and smiled in a mischievous way.

[74] The grievor became upset because two outstanding cases were assigned to her on the spreadsheet, which would not have reflected well on her. She challenged the

legitimacy of those assignments with Ms. Hills and determined that in both cases, the information was incorrect. The grievor suspected that Ms. Hills was irritated with her since she had exposed to her colleagues some errors that Ms. Hills had made in inmate-assessment testing and believed that Ms. Hills might have been behaving somewhat maliciously towards her as a result.

[75] Generally, the grievor avoided unnecessary interaction with Ms. Hills, but this time, she questioned her about the spreadsheet. Ms. Hills told the grievor that she had two assignments, that they were on the spreadsheet and that she had the read receipts to prove it. The grievor asked to see the file, but what she was shown was about a different inmate, and then Ms. Hills turned off the computer monitor. The grievor told Ms. Hills that the information was fabricated because she was not shown the necessary background documentation.

[76] The grievor then left the office with the spreadsheet. Ms. Hills followed her to her office and approached her. A heated exchange occurred, and the grievor raised her voice. Ms. Hills then did the same. They shouted at each other about raising their voices, which Ms. Reiss overheard.

[77] The confrontation ended, and the grievor decided to report the incident. She wrote an email (Exhibit 24) and met with Ms. Hayhow and Mr. Larrea the next day, November 5, 2008. She talked about Ms. Hills' attitude. Mr. Larrea told her that she had harassed Ms. Hills the day before. The grievor testified that she felt harassed at the meeting because everyone ganged up on her about the incident.

[78] The grievor stated that when Ms. Hills followed her to her office, she thought she might be in physical danger. Ms. Hills had clenched her fists and teeth. The grievor recalled being assaulted in 2002 and stated that she feared that something like that might be happening again.

[79] At this point in the meeting on November 5, 2008, the grievor asked to see her bargaining agent representative. She did not file a harassment complaint about the meeting. On November 7, as part of her performance evaluation with the acting warden, the grievor was informed that a complaint had been filed against her.

III. Summary of the arguments

[80] The CSC asked me to find that the grievor had harassed Ms. Hills and that a two-day suspension was reasonable in the circumstances.

[81] According to the CSC, the way that the grievor treated Ms. Hills met the definition of harassment in the policy. The grievor's conduct towards Ms. Hills was improper and offensive, and the grievor ought to have known that it would have made Ms. Hills feel demeaned, humiliated and intimidated.

[82] The CSC argued that its psychologists "... are expected to model appropriate behaviour for the inmates with whom they deal on a regular basis." The CSC added that the two-day suspension conveyed to the grievor a clear message that her conduct towards Ms. Hills was unacceptable and that it needed to be corrected.

[83] The CSC referred me to *Bisaillon v. Canadian Food Inspection Agency*, 2002 PSSRB 16.

[84] For her part, the grievor replied that no credible evidence linked Ms. Hills' COPD to her interactions with the grievor.

[85] The grievor argued that Ms. Hills' harassment complaint against her was too vague to allow her to present a meaningful response. She added that contrary to the policy, the CSC investigation considered events that preceded the complaint by more than one year. She alleged that, like in *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70, the CSC unduly favoured Ms. Hills' version of events in its investigation of the harassment complaint.

[86] The grievor submitted that her interactions with Ms. Hills should be considered in light of her Polish background. She alleged that Polish social rules are based on formality and rigor and that they define people by their positions and titles. She added that her insistence on documentation from Ms. Hills came from her time living under martial law in Poland, when proper documentation was of the utmost importance.

[87] The grievor stressed that neither her interactions with Ms. Hills nor her allegation that Ms. Hills committed wrongdoing amounted to harassment. She reminded me that the CSC never investigated her allegation that Ms. Hills had falsified the counselling for psychology spreadsheet.

[88] The grievor believed that the CSC failed to address, in a timely fashion, any concerns in the work unit. She stated that Mr. Larrea poorly managed the situation and that he never gave her clear directions on how to interact with Ms. Hills.

[89] The grievor distinguished the case before me from that in *Bisaillon*.

[90] The CSC rebutted as follows:

... there was no evidence presented to support a claim that there a [sic] specific characteristics attached to an individual with a Polish background, that specific characteristics and behaviours of Ms. Szmukier can be attributed to her Polish background or that her Polish Background had any link whatsoever to her conduct in the workplace.

[91] The CSC stressed the grievor's continued failure to recognize that her conduct was inappropriate. It added that Ms. Leader exercised her discretion in conducting her investigation of Ms. Hills' harassment complaint.

IV. Reasons

[92] The grievor challenged the CSC's imposition of a one day suspension for the incident of November 4, 2008. She also challenged the imposition of a two-day suspension on her (later reduced to one day by decision rendered in the individual grievance process) following an investigation and a report, which found that she had harassed Ms. Hills. The grievor's evidence was that she was simply doing her job by questioning the work and the veracity of Ms. Hills' statements about the spreadsheet. The grievor also believed that she acted appropriately in all situations, professional and social, and that Ms. Hills was trying to protect her position and perhaps undermine the grievor's.

[93] Ms. Hills' description of the events and situations that she found herself in eventually contributed to her ability to work in the same environment as the grievor. She filed her harassment complaint following the altercation with the grievor on November 4, 2008, when the grievor accused her of falsifying the spreadsheet data.

[94] Ms. Reiss confirmed the substance of the altercation on November 4, 2008. The grievor acknowledged in her testimony that she confronted Ms. Hills about fabricating information reported on the spreadsheet.

[95] Mr. Larrea agreed that the grievor was sometimes difficult to deal with and that she seemed to express an attitude toward the psych clerk as one of her being “just here to serve us” and testified that the grievor just did not “get it.”

[96] Ms. Rask reviewed and accepted the harassment investigation findings and then imposed suspensions totalling three days on the grievor. Those three days were later reduced to two days by decision rendered in the individual grievance process.

[97] In the circumstances of this case, I am satisfied that the grievor, over an extended period, knew or ought to have known that she was acting in such a manner that offended Ms. Hills and her colleagues to an unreasonable extent and did so regardless of any counselling or advice she received from her supervisor, Mr. Larrea.

[98] While her cultural background was identified as a possible explanation for her conduct, again, Mr. Larrea explained how he managed to temper his own cultural background in the workplace. It seems to me that the grievor ought to have done the same.

[99] I find that a two-day suspension was warranted in this case and was a clear indication to the grievor that her attitude and actions in the workplace needed to change.

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

(The Order appears on the next page)

V. Order

[101] The grievance is dismissed.

April 28, 2015.

**Michael F. McNamara,
adjudicator**