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Public Service Labour Relations Act



Before an adjudicator

BETWEEN

PLACIDE KALONJI

Grievor

and

**DEPUTY HEAD
(Immigration and Refugee Board of Canada)**

Respondent

Indexed as

Kalonji v. Deputy Head (Immigration and Refugee Board of Canada)

In the matter of an individual grievance referred to adjudication

Before: Steven B. Katkin, adjudicator

For the Grievor: Yves Rochon, Canadian Association of Professional Employees

For the Respondent: Léa Bou Karam, counsel

Heard at Ottawa, Ontario,
September 15 to 19, 2014.
(PSLREB Translation)

I. Individual grievance referred to adjudication

[1] The grievor, Placide Kalonji, held a research officer position, classified at the EC-03 group and level, with the Immigration and Refugee Board of Canada (“the employer” or IRB) from February 2009. In a letter dated March 4, 2013, the employer terminated him for unsatisfactory performance pursuant to paragraph 12(1)(d) of the *Financial Administration Act* (R.S.C. 1985, c. F-11; *FAA*).

[2] The termination letter, dated March 4, 2013 (Exhibit E-1, Tab 1), was given to the grievor on March 6, 2013. The following excerpts summarize its essence:

[Translation]

...

This follows a series of assessments and follow-ups of your performance from summer 2010 to the present. The last assessment, which you signed on December 20, 2012, found your performance unsatisfactory.

During a meeting on October 4, 2012, management’s concerns about your unsatisfactory performance were communicated to you in the presence of the labour relations manager, your managers, and your union representative. By mutual agreement with you, management provided you with coaching and access to research tools and training to help you improve your performance and so meet the requirements of your position. Despite those measures, management did not note any significant and sustained improvement in your performance, which remains unsatisfactory.

Thus, I have concluded that you are unable to perform the duties of your Research Officer position. In addition, given that all the measures put in place to help you improve your performance have been unsuccessful, I find that it is not very likely that additional measures would allow you to close the identified gaps.

...

[3] On March 15, 2013, the grievor filed a grievance challenging his termination. As corrective action, he asked to be reinstated in a position with the employer, classified EC-03. His grievance was referred to adjudication on May 9, 2013, under subparagraph 209(1)(c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*). The applicable collective agreement is between the Treasury Board and the grievor’s bargaining agent, the Canadian Association of Professional Employees for the

Economics and Social Science Services group, which expired on June 21, 2014.

[4] 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 *PSLRA* as the Act read immediately before that day.

II. Summary of the evidence

[5] The employer called three witnesses: Simon Coakeley, Céline Beaudoin, and Annie Constantin. The grievor testified on his own behalf and called Catherine Smith as a witness. The employer adduced 31 exhibits as evidence; the grievor, 23.

A. For the employer

1. Mr. Coakeley

[6] Mr. Coakeley held a position as the IRB’s executive director from September 2008 until his retirement in November 2013. He explained that at that time, the IRB consisted of three divisions: the Status of Refugees Division, the Immigration Division, and the Immigration Appeal Division, now the Refugee Appeal Division. Those three divisions, which comprised about 200 employees, came directly under the IRB’s chairperson; the executive director was responsible for the employer’s 800 other employees.

[7] The grievor was a research officer at the Research Directorate, which is part of the employer’s Operations Branch. The Research Directorate supported mainly the Status of Refugees Division. The research work consisted of, among other things, preparing national documentation packages — namely, information kits about the conditions in different countries. Those documents are automatically presented with every application for refugee status, and decision makers and refugee status claimants use them. The methodology for preparing those documents was established several

years ago. The research officer must verify public documents and their authors and assess their validity. According to Mr. Coakeley, those kits have become world-renowned for their research quality.

[8] Another part of research work involves responses to information requests and consists of answering specific questions from decision makers; for example, verifying whether any evidence demonstrates that an incident occurred in a country. The research findings are shared with the parties.

[9] Mr. Coakeley testified that he decided to terminate the grievor's employment after learning about the related documentation, i.e., his performance assessments and emails and letters. He also spoke with those involved and held at least one face-to-face meeting with them to discuss the documentation about the grievor.

[10] Mr. Coakeley stated that when an employee's performance is unsatisfactory, the employer's policy is to conduct semi-annual or more frequent assessments, as in the grievor's case. According to Mr. Coakeley, although the grievor demonstrated some improvements along the way, in December 2012, his workload did not correspond to the normal amount assigned to research officers. Even though the employer took all possible steps to improve his performance, including mentoring, training, and access to research tools, his performance continued to deteriorate.

[11] In cross-examination, Mr. Coakeley stated that employees were generally assessed annually. As for the performance agreements management had with the grievor, Mr. Coakeley stated that although he did not consult all those documents, at the time, he consulted several documents of a similar nature in a file that had been prepared for him.

[12] Mr. Coakeley was referred to the performance agreement for January to May 2012 (Exhibit E-1, Tab 12), in which some improvements were noted. He acknowledged that at that time, the grievor had shown progress and that his performance had been acceptable. However, the assessment in question covered only a third of the fiscal year.

[13] Mr. Coakeley acknowledged that the fact that management had assigned the grievor the task of attributing keywords to documents in the national documentation packages was not mentioned in the performance agreements for November 29 to December 17, 2012 (Exhibit E-1, Tab 27), and December 18, 2012, to January 29, 2013

(Exhibit E-1, Tab 28).

[14] When asked why he did not consider the work that the grievor performed in January and February 2013, when he decided to terminate the grievor, Mr. Coakeley replied that during that period, the work that the grievor performed was normally assigned to an employee classified EC-02, while he was classified EC-03.

[15] As for the grievor's assessment for May 29, 2009, to May 29, 2010 (Exhibit S-2), Mr. Coakeley stated that it was acceptable in some respects but that concerns had already arisen about his performance despite the fact that he was only starting out.

[16] When asked whether December 2012 had been busy and whether he had been concerned about Bill C-11 coming into force, which would explain why the termination took place on March 4, 2013, Mr. Coakeley replied that he had waited for those involved in the grievor's file to take the time to properly prepare their recommendations before making his decision.

[17] Mr. Coakeley was then referred to the Treasury Board policy entitled *Guidelines for Termination or Demotion for Unsatisfactory Performance* (Exhibit S-3) ("the *Guidelines*"), specifically to the recommendation under the heading "General" that states that an employee must be provided with reasonable warnings. Mr. Coakeley did not know whether the grievor had received warnings other than the one in the October 3, 2012, email (Exhibit E-1, Tab 21).

[18] Mr. Coakeley was referred to the section of the *Guidelines* that mentions that, under the heading "General", sufficient efforts must be made such that "... reasonable alternative employment within the competence of the employee is considered." According to Mr. Coakeley, at the time in question, the restructuring that affected most employees came into effect, and the affected employees had to be placed. In addition, management tried to find a position classified EC-02 for the grievor, but found that it was not possible given his performance. It could not assess him on the tasks of a position classified EC-02 because he did not hold such a position.

[19] Mr. Coakeley affirmed that he was not aware of a conflict between the grievor and Ms. Beaudoin but that such a conflict was raised during the grievance process.

[20] In re-examination, Mr. Coakeley stated that representatives from management, human resources, and legal services took part in discussions about the grievor.

However, he assessed the file on his own.

2. Ms. Beaudoin

[21] Ms. Beaudoin is the manager of information and research analysis in the Country of Origin Information Unit at the IRB's Research Directorate. She has held that position since March 30, 2010. At the material times, she managed a group of about 10 research officers and 5 research analysis officers, as well as 2 supervisors, as indicated on an organizational chart dated February 8, 2012 (Exhibit E-1, Tab 31).

[22] Research officers conduct research and write research reports on refugee claimants' countries of origin. Research analysis officers revise the reports that research officers write. Ms. Beaudoin referred to the research officers' job description (Exhibit E-1, Tab 3), the first paragraph of which, under the heading "[translation] Main Activities", reads as follows: [Translation]

Produce research reports by researching, analyzing, and assessing information sources and information; by conducting interviews; and by writing reports according to a rigorous methodology and to schedule.

[23] Research reports use information sources that provide information on the prevailing conditions in refugee status claimants' countries of origin. Ms. Beaudoin affirmed that according to the standard, a research officer must produce at least four research reports per month. For decision makers to make informed decisions, the "[translation] rigorous methodology" consists of several criteria for each source, in particular that the information must be current and originate from a source that is named and not anonymous; the information must be corroborated with another, anonymous, source; and the information must be reliable and publicly accessible.

[24] Ms. Beaudoin indicated that "[translation] the schedule" lists the deadlines that must be respected for updating the 184 national documentation packages. In addition, every day, several information requests arrive from the decision makers, which must be answered within specified times.

[25] Ms. Beaudoin initially met the grievor during her first week as a manager. She then met with all the employees individually. At that time, the grievor's supervisor was Jill Zmud.

[26] Ms. Beaudoin affirmed that she had no conflicts with the grievor from March 2010 until his termination. She stated that she had managed the performance of about 20 employees, 7 or 8 of whom had to comply with performance plans.

[27] Ms. Beaudoin referred to an email dated December 15, 2010, which she sent to the grievor and that summarized their December 1 and 2, 2010, meetings. He acknowledged that the summary reflected the meetings (Exhibit E-1, Tab 5). The December 1 meeting was held in the presence of Ms. Beaudoin; Ms. Constantin, who was the revisors' supervisor; and Emily Cameron, the grievor's supervisor at that time. He and Ms. Beaudoin were at the December 2 meeting. Among other things, her email mentioned the revisions of his reports, as follows:

...

[Translation]

It was recommended to him that he show more rigour, care, and attention to detail when applying the Research Directorate's methodology and that he follow the revisors' advice or at least discuss and follow up with them, especially in cases in which he decides not to adopt a proposed work plan or method.

...

[28] Ms. Beaudoin stated that although in December 2010 she had doubts about the grievor's performance, she did not see the need for a performance plan at that time. All the reports the research officers wrote were revised daily. Feedback was provided that was considered training, particularly on verifying sources and their coordinates and whether that information complied with the applicable criteria. The research officers also had access to a writing and style guide. At the time, management felt that feedback would help the grievor improve his performance.

[29] Ms. Beaudoin explained that research officers had to write a minimum of four reports per month. The senior research officer revises reports before they are sent to the revisors. The senior officer expects his or her written comments to be considered before the report is sent to the revisors. The comments could indicate that the officer is not on the right path or that a source cannot be found. He or she might also question the officer's verification of a source or suggest that the officer deal with an issue in a certain way.

[30] In an email to the grievor dated March 8, 2011, which summarized a meeting that she had had with him that same day (Exhibit E-1, Tab 6), Ms. Beaudoin listed 11 things he had to comply with. Among other things, it mentioned that he was to meet with her each morning to discuss the progress of his work. She stated that those meetings were held daily at first but that they then became more occasional. Another point mentioned the fact that it was not the revisors' responsibility to conduct most of the research or to write his reports.

[31] According to the grievor's performance assessment report for April 1, 2010, to March 31, 2011 (Exhibit E-1, Tab 7), which consisted of 22 pages, his performance was unsatisfactory. Management's comments in the report are from Mses. Beaudoin, Cameron, and Constantin. The assessment report indicated that management had decided that Ms. Cameron would no longer supervise his work and that Ms. Constantin would assume that task while retaining her role as the revisors' supervisor. The grievor agreed with that decision. His responses to some of management's comments were included in the assessment report.

[32] Among the issues in the assessment report were the choice of sources, lack of clarity in the writing, and deficiencies in consulting sources and using disclaimer notices. In addition, the grievor's discussions with oral sources were not always properly documented. Ms. Beaudoin stated that management found that his workload was fair and that contrary to his allegation, she did not point out his errors more often than she did for other employees.

[33] After discussions with the grievor on June 16 and July 14, 2011, he and management established a performance agreement for July 14 to September 30, 2011 (Exhibit E-11, Tab 8). Ms. Beaudoin stated that the objectives set out in the performance agreement were excerpted from his job description and that they were listed in the staff recruitment statement of criteria.

[34] On December 21, 2011, after a meeting with the grievor and Ms. Constantin to discuss the grievor's performance progress, Ms. Beaudoin emailed him a summary of their discussion that highlighted the challenges that had to be met (Exhibit E-1, Tab 9). Among other things, he was informed that Ms. Constantin would update the follow-up table for his performance, to note progress and things to improve. He was also informed that management expected him to address all the concerns raised in the table.

[35] The follow-up table for the grievor's performance was prepared by Ms. Constantin, in collaboration with Ms. Beaudoin, for July 14 to December 21, 2011 (Exhibit E-1, Tab 10).

[36] The grievor's performance assessment for January to May 2012 was written by Ms. Constantin, in collaboration with Ms. Beaudoin (Exhibit E-1, Tab 12). They noted some quality improvement, but they could not find that his performance was satisfactory because the number of reports he produced was below the average of four reports per month that the other research officers produced. His average was three-and-a-half reports per month.

[37] On July 23, 2012, Ms. Beaudoin emailed the grievor (Exhibit E-1, Tab 13) a summary of the discussions they and Ms. Constantin had had on July 18 and 23 about his performance assessment for May to mid-July 2012 (Exhibit E-1, Tab 15). Ms. Beaudoin affirmed that it would take a research officer an average of about six months to be comfortable with the work. According to her, the quality of the grievor's reports deteriorated during that period. During those discussions with him, they discussed every file that had posed a problem. In her email, Ms. Beaudoin indicated that she and Ms. Constantin were not satisfied with the quality of his research reports, and she reiterated the 13 deficiencies that had been raised with him. Among other things, the email mentioned the following:

...

[Translation]

We have suggested to you several times work tools to improve your performance, whether in analysis, writing, or production. It seems that those tools, i.e., the research plan, a first draft of questions, and the daily activity report, did not yield the results that we expected. And you did not always follow our instructions on how to use those work tools. For example, although the performance agreement signed in July 2011 explicitly mentions that you must provide a writing plan for each report, you did so on only one occasion. It is difficult for us to help you achieve the objectives if you do not use the means that we put at your disposal.

Therefore, we expect you to follow the following instructions, as we have already asked you to before:

- 1) every morning, you will meet with Annie or Céline to provide an update of your work, including the sources*

that you plan to consult when we assign you an information request

- 2) you will take the opportunity to clarify any suspected misunderstandings or any unclear question; when in doubt, ask questions, as we are always available*
- 3) you will write a daily activity report, including the time spent on each task, which you will send to Céline and Annie at the end of the day*
- 4) you will write a draft of the questions that you plan to ask the sources before sending them to them and will systematically show them to us for each response and for each source that you plan to consult*
- 5) you will reread them several times before you submit your report to the revisors*
- 6) for any question in English that casts even a shadow of a doubt or any English term for which you are not absolutely certain of the meaning, please consult Céline beforehand to avoid a misunderstanding that would cause unnecessary delays as was the case in the past ...*

...

[38] According to the grievor's performance assessment for that period, his production was still below the research officers' standard, which was four reports per month. In that respect, the assessment noted the following:

[Translation]

...

We must work with Placide so that he is able to produce at that rate as quickly as possible, i.e., in the next three months, so that he can be at the same level as the other research officers.

[39] On August 20, 2012, Meses. Beaudoin and Constantin met with the grievor for more than three hours. The purpose was to discuss things to improve with respect to his performance. Another thing was the December 2011 performance agreement, which had not yet been formally discussed but had been signed at the August 20 meeting. The things discussed that required immediate improvement were summarized in an email that Ms. Beaudoin sent to the grievor on August 22, 2012 (Exhibit E-1, Tab 14), which ended as follows:

[Translation]

...

We hope that you will be able to apply these techniques and that our discussion was helpful to you. If you have any other questions about the techniques discussed or if you need help implementing them, do not hesitate to let us know.

In conclusion, we have reiterated to you that we consider your performance unsatisfactory and that we expect your full cooperation to remedy the situation.

We will assess your performance again in mid-October 2012, and we expect significant improvement on all the things mentioned above and during yesterday's meeting.

[40] Ms. Constantin stated that on both sides, the tone was cooperative during the meeting. She stated that the tools made available to the grievor consisted of a series of reference documents explaining the Research Directorate's methodology; for example, how to conduct research, how to write a report, and how to choose sources, as well as sample reports. She also pointed out that she and Ms. Beaudoin, as well as the revisors, were always available to answer his questions.

[41] During the meetings with the grievor, feedback and explanations on the comments were always provided so that he could apply them to writing his next reports. Ms. Constantin explained that each report is revised three times, sometimes by different people. The research officer's supervisor does the first one. After that, the research officer makes the suggested corrections and sends that modified version to a revisor for an in-depth revision. At that stage, the revisor verifies the sources, the accuracy of the information, the text's structure, and all applicable criteria. That second revision is sent to the research officer along with the revisor's explanations for the changes made and the recommendations. At that step, the revisor generally meets with the research officer. Another revisor does the third revision, its purpose being to verify the finishing touches, language, etc.

[42] Management also authorized expenses so that the grievor could take training courses. The first took place from March 21 to 23, 2012, and was entitled "[translation] Strategic Report Writing", and the second took place from August 1 to 3, 2012, and was entitled "[translation] Writing in Clear and Concise Language" (Exhibit E-1, Tab 17).

[43] On September 20, 2012, Ms. Beaudoin emailed the grievor (Exhibit E-1, Tab 18) a

summary of their meeting from the day before with Ms. Constantin. During that meeting, Mses. Beaudoin and Constantin gave him his performance objectives and the related criteria that would be assessed every two weeks. The first assessment took place on October 3, 2012. Ms. Beaudoin explained that by moving the assessment periods closer, she and Ms. Constantin thought that they would be helping him because he would receive feedback more regularly. In addition, one of the revisors, Kareen Martel, was tasked with mentoring him according to the assessment of the criteria for each report he would write. His workload was reduced, as indicated in the email, as follows:

...

[Translation]

We will assign you three responses per month and will revise that workload, which is less than that established for all research officers, in two months, according to your performance. We decided to assign you only three responses so that you can work on the things that require improvement, as indicated in the attached performance objectives, and by using the resources that we have provided to you and that have been at your disposal since you were hired as a research officer at the Research Directorate.

We hope that you will consult us for any questions or concerns that you may have.

In addition to the work tools available to you, this is a reminder that the Employee Assistance Program can provide support if necessary. We encourage you to inform us of any obstacle or internal or external problem that could prevent you from reaching your performance objectives as established yesterday and as found in the attached document (performance objectives).

...

[44] In response to a question from the grievor, Ms. Beaudoin told him in a September 25, 2012 (Exhibit E-1, Tab 19), email that he was to continue providing his daily activity reports. When asked whether the other research officers had to do it, Ms. Beaudoin responded that it had been done at one time but that the exercise became too demanding for the supervisors.

[45] Mses. Beaudoin and Constantin met with the grievor on October 3, 2012, about his performance assessment for September 19 to October 3, 2012. They told him that

his performance was unsatisfactory and that if no improvement was shown, the employer could terminate his employment. The same day, Ms. Beaudoin emailed him a summary of that meeting (Exhibit E-1, Tab 21), which included his objectives for October 4 to 17, 2012. The summary included the following:

[Translation]

...

You said that you agreed with our assessments of your performance to date. You also stated that you understood the performance objectives and that you found them reasonable.

I also indicated to you that management is required to clearly inform you of its dissatisfaction with your performance and to provide you with reasons and examples, even if that is unpleasant for you and for management.

Finally, we agreed that our common objective was for you to improve your performance for it to be satisfactory and meet the requirements detailed in the performance objectives.

We reiterated the fact that we are available any time to provide you with advice and assistance and that we are open to your suggestions, to improve your performance as a research officer.

We also informed you that the state of your performance is such that we could end your employment if it does not improve.

...

[46] Ms. Constantin affirmed that the grievor remained quite calm and that the tone of the meeting was cordial.

[47] On November 5, 2012, Ms. Beaudoin sent the grievor an email that attached her last performance assessment for October 4 to November 5, 2012. The assessment was for the last two research reports that he wrote (Exhibit E-1, Tab 22). The email mentioned that his performance was still unsatisfactory. Ms. Beaudoin and Constantin met with him the next day to discuss his performance. The comments on the last page of the assessment, which he signed (Exhibit E-1, Tab 23), indicated the following:

[Translation]

Today, November 6, 2012, Placide, Annie, and Céline reviewed each criterion and its assessment. Placide, the employee, was informed that his performance is unsatisfactory and that we will contact Human Resources for the follow up to be provided considering the earlier assessments and the continuing unsatisfactory performance. Placide stated that he was expecting to have a SATISFACTORY assessment because he feels that he has been making a great deal of effort to apply all the instructions that we have provided to him.

[48] According to Ms. Beaudoin, the grievor did not make a sufficient effort.

[49] The grievor's performance assessment for November 6 to 28, 2012 (Exhibit E-1, Tabs 24 and 25), which found unsatisfactory performance, contained the following comments from Mses. Beaudoin and Constantin:

[Translation]

Although certain improvements have been noted, especially in the quality of the writing, problems persist with time management and research quality. In addition, the communication quality also requires improvement. Improvement is also expected with respect to interview depth with oral sources. We already mentioned those things in several earlier assessments.

During the next assessment period, Placide will help the information officers identify keywords, to facilitate searches in the national documentation packages.

[50] Ms. Beaudoin stated that given that the grievor's performance did not sufficiently improve, he was assigned the work of an information officer classified EC-02. Thus, he was assigned to allocating keywords for the documents in the national documentation packages. He had to produce only one report before working on the keywords.

[51] The performance assessment for November 29 to December 18, 2012 (Exhibit E-1, Tab 26), addressed only the sources consulted for the Trinidad and Tobago report. His performance was deemed unsatisfactory, particularly because he "[translation] ... showed a flagrant lack of rigour by failing to verify the natures, mandates, and credibility of those sources before contacting them." In addition, he had "[translation] ... difficulty distinguishing between relevant and irrelevant sources."

[52] For the December 18, 2012, to January 29, 2013 (Exhibit E-1, Tab 28),

assessment, the grievor was not assigned any research report writing work because of the problems he was experiencing. According to Ms. Beaudoin, his problems had consequences for the division since they encroached on the revisors' and management's time. Their task was not to rewrite his research reports. That was neither efficient nor fair at the operational level.

[53] Exhibit E-1, Tab 29, consists of a series of emails between Ms. Beaudoin and the grievor about information requests assigned to him. According to her, his responses were not provided within the prescribed periods.

[54] When asked about the grievor's reaction to several management comments between July 2012 and March 2013, Ms. Beaudoin stated that he listened and sometimes commented. No behavioural problem was noted.

[55] In cross-examination, Ms. Beaudoin affirmed that the standard of four reports per month was communicated verbally and in writing to the research officers and that it was part of their performance objectives.

[56] When she was referred to the assessment notes dated July 19 and August 12, 2010, and written by the grievor's supervisor, Ms. Zmud (Exhibit E-1, Tab 4), Ms. Beaudoin stated that she understood from the note dated August 12 that some improvements had occurred, i.e., more work was being assigned to him. She added that he did not meet all the challenges, as indicated in the July 19, 2010, note, according to which he had received less work than his colleagues.

[57] The morning meetings with the grievor lasted between 10 and 15 minutes and included some subjects unrelated to the work. Ms. Beaudoin could not recall the frequency of those meetings.

[58] The grievor's performance assessment report for April 1, 2010, to March 31, 2011 (Exhibit E-1, Tab 7), did not include a signature page. Ms. Beaudoin did not know whether that assessment had been signed. She added that it was not necessary as long as the content was communicated to the grievor. It contained his comments. His workload was no larger than other research officers' was. She said that his comments did not change his unsatisfactory performance assessment.

[59] As for the grievor's assessment for January to May 2012 (Exhibit E-1, Tab 11), Ms. Beaudoin acknowledged that progress had been noted. Although his performance

was deemed unsatisfactory, that is not mentioned in the performance report. The assessment covered four months. When asked whether that assessment alone justified the termination, Ms. Beaudoin responded in the negative. She also acknowledged that the assessment denoted progress during those four months.

[60] The grievor's assessment for May to mid-July 2012 (Exhibit E-1, Tab 13), included that "[translation] ... we are afraid to assign him new responses because of the questionable quality of the responses that he has written since May (and before)." For Ms. Beaudoin, "[translation] and before" meant since the assessment comments dated July 19, 2010. When it was suggested that Ms. Constantin was satisfied with the grievor's work, Ms. Beaudoin responded that Ms. Constantin had stated that he had made progress.

[61] As for the daily activity reports, Ms. Beaudoin reiterated that at one point, all research officers had to produce one but that they had become too burdensome for the supervisors. Management continued to require them for employees whose progress it wanted to monitor, i.e., for two or three officers. According to her, those reports take about 15 minutes a day to prepare.

[62] As for the notes from the interviews with the sources, the practice was to transcribe them in the source's original language. The grievor's language of work was French, and he could write his notes in that language.

[63] When asked why the grievor's keywords work was not assessed, Ms. Beaudoin responded that he still held a research officer position and that the assessment was based on the work of that position. She did not ask the person to whom he reported in that respect to provide feedback on his work in that capacity. He had not been transferred to another position.

[64] Ms. Beaudoin was referred to the email that she sent the grievor on May 11, 2011 (Exhibit E-11, Tab 30), in which she mentioned to him that a report lacked depth and that among other things, the instructions on sources and his communications with her and her colleagues had not been followed. She was also referred to his email response the same day (Exhibit S-8), the last paragraph of which reads as follows:

[Translation]

... I am not hiding from you my concern about the determination to note in my file any misunderstanding without trying to discuss it with me? I would like to meet with you to discuss it because I feel that that way of doing things borders on harassment and has a very negative impact on my performance and morale and even my health.

[65] Ms. Beaudoin said that she was somewhat concerned by that paragraph. She could not recall whether the grievor had been followed up with, whether she had met with him, or whether she had responded to his email.

[66] As for the standard of aiming to produce four reports per month, Ms. Beaudoin stated that research officers had to do both research and writing. She acknowledged that in fall 2012, she asked the grievor to be a canvasser for a charity campaign. She affirmed that she had no concerns despite her opinion about his ability to manage multiple tasks. Ms. Beaudoin believed that she and her supervisor had discussed the fact that it had been a gratifying experience for the grievor and that it could have had a positive impact on his research officer role.

[67] When asked whether it is possible for a research officer not to have enough work to meet the standard of four reports per month, Ms. Beaudoin responded that she could not recall whether such a situation ever occurred. She stated that the language of work had no impact on the workload.

[68] As for her involvement in the decision to terminate the grievor, she affirmed that it was not her decision. Her responsibilities with respect to assessing his performance ceased with the last assessment report, dated January 29, 2012. She assigned other tasks to him, and the file was forwarded to senior management for follow up.

[69] Ms. Beaudoin was then referred to a memo dated February 25, 2013, and addressed to Mr. Coakeley, the executive director, which was about the grievor's termination. It was signed by Barbara Wyant, the employer's director general of human resources and professional development (Exhibit S-1). Ms. Beaudoin affirmed that she has not seen the document signed by Ms. Wyant but that she had been asked to confirm some of the facts found in it. She denied taking part in a discussion with Mr. Coakeley about terminating the grievor.

[70] The memo contains the following sentence: "[translation] On October 26, 2012,

Ms. Céline Beaudoin, the manager, confirmed that his performance was still unsatisfactory and wanted to proceed with termination because of his performance.” Ms. Beaudoin testified that the decision to terminate the grievor had not been hers and that she could not opine on something that someone else wrote. She never discussed it with Ms. Wyant.

[71] Ms. Beaudoin acknowledged participating in a meeting with her director, Gordon Ritchie, along with Ms. Wyant and Mr. Fréchette, director of labour relations, but could not recall its date.

[72] As for the grievor’s assessment for December 18, 2012, to January 29, 2013, Ms. Beaudoin was asked whether she recalled his reaction to it. She responded that she could not recall the meeting. When she was told that he had left the meeting before it ended, Ms. Beaudoin stated that she recalled that he had behaved that way in a meeting and that she believed that he had disagreed with something that she and Ms. Constantin had said to him. She recalled going to meet with him at his workstation to resume the conversation, but she could not specify after how much time had passed. She stated that she had been surprised by his reaction because it was the first time he had left a meeting that way, before it ended.

[73] At the end of the cross-examination, I asked Ms. Beaudoin whether she had ever recommended terminating the grievor to anyone. She responded that she had discussed the different options with Mr. Ritchie, including termination. She had also discussed with Ms. McTaggart, the acting director general, the fact that the assessments required following up. When asked whether she had been in favour of or against the termination, she hesitated and then responded that she had been neither for it nor against it.

[74] After my question, Ms. Beaudoin affirmed that she recommended terminating the grievor on November 6, 2012.

[75] In re-examination, Ms. Beaudoin stated that she did not participate in the discussions with senior management about the grievor’s termination. She could not recall November 26, 2012. She was preoccupied with the grievor’s assessment and wondered how to improve the situation.

[76] Ms. Beaudoin indicated that the organizational chart dated February 8, 2012

(Exhibit E-1, Tab 31), changed in January 2013, but she could not recall exactly when. She said that some employees were on assignments or on extended sick leave at that time.

[77] Ms. Beaudoin was referred to the assessment for April 1, 2010, to March 31, 2011 (Exhibit E-1, Tab 7), in which the grievor included a note from Ashley Lawery on his team spirit. Ms. Beaudoin stated that that person worked in the asylum request unit. For her, that did not show team spirit since assessments are based on facts, not opinions.

[78] When asked how many hours per week the grievor devoted to the charity campaign, Ms. Beaudoin responded that she was never involved in such a campaign but that she understood that one must devote more hours to it at the beginning than at the end.

3. Ms. Constantin

[79] Ms. Constantin started as a research analysis officer in March 2009. Since November 2010, she has held a senior research analysis officer position. In that capacity, she supervises the team of revisors and ensures that research reports are written according to the applicable methodology.

[80] Ms. Constantin worked with the grievor from 2009 to 2012. When she was a research analysis officer, she would sometimes revise his reports. She was his supervisor from May 2011 to March 2013. In that capacity, she reviewed his research reports, provided him with feedback so that his reports met the appropriate method's criteria, and ensured that he had the tools to do that.

[81] As for the revisors' production standards, Ms. Constantin affirmed that they had to revise an average of one page per hour, which included verifying sources and correcting grammar and structure. If it took a revisor more than one hour per page, then it could mean that the report was not written according to the standards and that a great deal of corrections had to be made. Their role was to identify problems and to recommend solutions, not to rewrite reports.

[82] When she revised the grievor's reports between March 2009 and November 2010, she noted that they did not always conform to the research standards and that a great deal of corrections had to be made before publication.

[83] She agreed with the summary of the meetings with the grievor that were held on December 1 and 2, 2010, about his performance (Exhibit E-1, Tab 5). Ms. Constantin noted that he had to make a greater effort to follow the revisors' advice. She also noted that he had not completely internalized a research officer's work method and that consequently, the revisors' workload was heavier, which could have had an impact on production in general.

[84] As for the grievor's performance follow-up table, which Ms. Constantin prepared with Ms. Beaudoin for July 14 to December 21, 2011 (Exhibit E-1, Tab 10), Ms. Constantin stated that Ms. Beaudoin decided when an assessment plan had to be prepared.

[85] The grievor's performance assessment for January to May 2012 (Exhibit E-1, Tab 11) was written by Ms. Constantin in collaboration with Ms. Beaudoin. Ms. Constantin observed some quality improvement but could not find that his performance was satisfactory because the number of reports produced was below the average of four reports per month that the other research officers produced.

[86] The first page of the assessment for November 6 to 28, 2012 (Exhibit E-1, Tab 24), included the following in bold type: "[translation] According to the standards, the grievor should produce three responses per month." According to Ms. Constantin, that mention in bold type was added so that the grievor could focus on the things to improve.

[87] As mentioned in the assessment report for November 29 to December 18, 2012 (Exhibit E-1, Tab 27), the grievor was assigned the task of helping the information officers allocate keywords to the documents in the national documentation packages. According to Ms. Constantin, those duties were assigned to him because his performance was not improving and because producing inaccurate reports was unacceptable.

[88] When asked whether at any meeting the grievor did not react calmly, Ms. Constantin recalled that he was less calm than usual during the meeting about the October 4 to November 5, 2012, assessment. He did not agree with the assessment and felt that his performance for that period had been satisfactory.

[89] Ms. Constantin affirmed that she had no conflicts with the grievor between 2009

and March 2013. In addition, she did not note any between him and Ms. Beaudoin.

[90] In cross-examination, Ms. Constantin affirmed that the appropriate method, which the grievor did not internalize, remained the same and did not change over time.

[91] As for the December 21, 2011, email that Ms. Beaudoin sent to the grievor after that day's meeting (Exhibit E-1, Tab 9), in which he was asked to write a research plan for each report, Ms. Constantin stated that generally, research officers are not required to make such plans. She did not know whether the grievor was the only one required to as she was unaware of measures being in place for other employees.

[92] The comments on the last page of the grievor's January to May 2012 (Exhibit E-1, Tab 11) performance assessment note that he was on vacation in March 2012. When asked whether leave has an influence on the standard of four reports per month, Ms. Constantin stated that the standard accounts for absences, vacations, and meetings. He had to produce 16 reports in 4 months, but he produced only 14.

[93] When asked whether it was usual or exceptional for a revisor to opine on a source, Ms. Constantin responded that that was not exceptional but that it was infrequent. The research officer is responsible for conducting exhaustive research on the source. Often, a revisor must remove a source because it is not reliable. Consequently, other sources might have to be verified, which is not always possible because of time constraints. Thus, the report's content is affected, as it will be incomplete.

[94] As for the November 29 to December 18, 2012 (Exhibit E-1, Tab 26), assessment report, Ms. Constantin stated that the revisor ensures that the report's quality meets the minimum standard. Had the grievor's work been better, then the revisors' tasks would have been lighter.

[95] As for the emails that stated that the grievor did not respond to the information requests within the prescribed deadlines (Exhibit E-1, Tab 29), Ms. Constantin acknowledged that it was possible for a report not to be remitted on time without holding the research officer responsible. If necessary, management notes it in the report. However, if the research officer cannot reach all the sources, he or she must mention that and provide the context, i.e., the reasons he or she could not reach them and the measures taken to contact other sources.

[96] Ms. Constantin was referred to an email exchange she had with the grievor on February 13, 2012 (Exhibit S-10). In it, she informed him that the deadlines for finalizing the responses to information requests for hearings on Nigeria would be pushed back to later dates, which she specified in the email. When asked whether that was an example of a deadline change, she responded that the deadlines were changed out of necessity and that management did not want to. That demonstrated that the grievor was experiencing difficulty managing multiple tasks, which was one of his objectives. When asked whether he was given files that other research officers had not completed, Ms. Constantin stated that she could not recall that happening.

[97] Ms. Constantin was then referred to Ms. Beaudoin's email to the grievor dated July 23, 2012 (Exhibit E-1, Tab 13). Among the six instructions that he was to follow, which were listed in the email, was the obligation to meet with either Ms. Beaudoin or Ms. Constantin every morning to provide an update on his work. Ms. Constantin said that those meetings were held regularly but not every morning. She said that he met with her at least once a week, without specifying further. When asked whether the same expectation was on him when he worked on the keywords, Ms. Constantin responded that because he was not working on research reports, he no longer consulted her. It was possible that those meetings took place until December 2012. Their duration varied between 5 and 20 minutes according to the subjects and the complexity of the reports.

[98] When asked about the purpose of the grievor's daily activity reports, Ms. Constantin responded that they were used to monitor his work progress. When asked whether she provided daily feedback to him, she stated that she could have done so but that the daily reports were quite cursory and not very detailed. In addition, he did not report the difficulties that he encountered. Consequently, he had to be provided feedback when he submitted the reports. The requirement to submit a daily activity report did not apply to all research officers and was put in place to help the grievor in his work.

[99] In an email addressed to Ms. Beaudoin on September 28, 2012 (Exhibit S-11), Ms. Constantin mentioned that one of the grievor's next performance objectives was to be able to write his questions to sources independently, using all the feedback that he had already received. She testified that at that time, the supervisors and revisors gave the grievor a great deal of feedback on the questions to ask sources. She decided that

he had had enough help and that he could do it independently. When asked whether that meant that the grievor's work was improving, Ms. Constantin stated that that was not what the email implied. He had to become independent.

[100] When he worked on the keywords, the grievor was not under Ms. Constantin's supervision. The information officers mainly do that work. She explained that a research officer allocates keywords to human rights documents that he or she reads. Once those documents are saved in the database, a user can search using those keywords.

[101] In an email that she sent to the grievor on November 21, 2012, about the keywords assignment (Exhibit S-12), Ms. Constantin indicated that they had not received an information request in French. She stated that the grievor wrote in French and that at that time, no information requests were in French. According to her, language had no impact on workload since the information had to be updated.

[102] When asked whether research work was assigned to the grievor after his keywords assignment, Ms. Constantin stated that he did not have to write any other reports but that he continued to work on a file that was assigned to him before he was assigned the keywords work.

[103] Ms. Constantin was referred to an email that the grievor sent her on February 13, 2013, which included his activity report for the same day (Exhibit S-13). She could not recall the file in question and did not know whether Ms. Cameron had assigned that work to him.

[104] In an email dated March 6, 2013, the day of his termination, Ms. Constantin asked the grievor to prepare a new response to an information request (Exhibit S-14). She could not recall whether the file had been assigned to him. She said that Ms. Beaudoin was always aware of the work assigned to the research officers.

[105] When asked whether the grievor's keywords work was deemed satisfactory, Ms. Constantin stated that his duties were those of an EC-03 research officer and that they did not include keywords work. His research officer work was assessed, and from December 18, 2012, to January 29, 2013, he did not demonstrate satisfactory performance. She could not recall his reaction at the January 29, 2013, meeting about his performance and could not recall whether he had left Ms. Beaudoin's office before

the meeting ended. She also could not recall whether he met with her on February 1, 2013, following her email of the same day (Exhibit S-20) to discuss the January 29, 2013, meeting; nor could she recall whether he told her that he would file a complaint against Ms. Beaudoin or that he would consult the relevant authorities.

[106] When asked if she knew whether vacant positions at the Research Directorate were filled in February 2013, Ms. Constantin stated that she did not.

[107] In re-examination, Ms. Constantin reiterated that she could not recall whether the grievor said that he would file a complaint against Ms. Beaudoin.

B. For the grievor

1. The grievor

[108] The grievor began working for the employer on February 23, 2009. According to his offer of employment letter (Exhibit S-16), he was subject to a 12-month probationary period, which he completed. His assessment report for May 29, 2009, to May 29, 2010, which was signed on February 4, 2010, by the grievor and his supervisor at the time, Sean Dineen (Exhibit S-2), included the following comments from Mr. Dineen:

[Translation]

Placide began working at the Research Directorate (RD) in February 2009. During his time there, he prepared all assigned RIRs according to the RD's qualitative standards and was capable of incorporating the RD's research methodology into his work. His work was generally clear, organized, and objective. However, Package Information Requests are a challenge for him; he must better plan/structure those responses and assess sources appropriately.

Placide is a pleasant colleague to work with, and he has shown that he is reliable.

[109] The grievor stated that his performance assessment for November 29 to December 18, 2012 (Exhibit E-1, Tab 26), addressed only his response on Trinidad and Tobago. He was not pleased with the finding because it was not clear what was assessed. He did not know why the assessment was not signed and could not recall seeing a signed version of it.

[110] The grievor was surprised by his performance assessment for December 18, 2012, to January 29, 2013 (Exhibit E-1, Tab 28). Among other things, he asked himself several questions about what was assessed that led to the unsatisfactory performance finding. He was expecting to be assessed on the keywords work. Ms. Constantin told him that he was doing well on that work.

[111] The grievor referred to the November 6 to 28, 2012 (Exhibit E-1, Tab 25), assessment and affirmed that he was not told that he would no longer prepare responses to information requests and that he had been assigned to other research files between November 21, 2012, and March 6, 2013. In that respect, he mentioned his email to Ms. Constantin dated February 13, 2013 (Exhibit S-13), and containing his activity report for that day, as well as the email that she sent to him on March 6, 2013 (Exhibit S-14), assigning him a new response to prepare.

[112] The grievor stated that he generally worked in French and sometimes in English. According to the standard, notes were supposed to be taken in the sources' language. He added that he took his notes in French because he was not told about the standard at the time. In addition, he was not reproached for taking notes in French.

[113] As for the January to May 2012 (Exhibit E-1, Tab 12) assessment, the grievor stated that Ms. Beaudoin felt that he was not independent enough to write questions for the oral sources. He was surprised by that allegation because in general, he wrote and sent the questions, and he built up a questions bank. If he needed help, he requested it, especially for questions to be written in English.

[114] In the same assessment, under the heading about effective oral communications and effective interpersonal relations, it is noted that the grievor had to improve his ability to communicate with management and his colleagues. He was surprised by that comment, as communication was part of his tasks. As for his relations with his colleagues, he stated that he consulted them when necessary. He referred to two such requests, one dated September 13, 2011, and the other dated November 5, 2012 (Exhibit S-18). He also helped his colleagues when he was asked to. In that respect, he gave nine examples of helping them, the first in 2010, and the others in 2012 and 2013 (Exhibit S-19).

[115] The grievor then addressed his allegation that he was a victim of unfair differential treatment. He stated that Ms. Beaudoin repeatedly lost her temper with

him for no reason. When he wanted to see the director, Mr. Ritchie, the director refused to see him. In addition, special rules were imposed on him, which he considered exaggerated, such as daily activity reports, which the other research officers were not required to write. He wrote those reports from February 2012 until the end of his employment. It took him between 15 and 20 minutes every day to write them. At the end of the day, he had to reflect on what he had done, write a summary, and email it.

[116] Management also required him to report to his supervisor every morning. Those meetings took place an average of four times a week. Sometimes when he went to his supervisor's office, she was not there. He would then return to his office. Ms. Beaudoin constantly coming to see him began to affect his morale. For example, he recounted that in September 2012, he had to prepare a report and submit it on a Friday afternoon. Even though no return time was specified, Ms. Beaudoin asked him for the report eight times that day. She was never satisfied with what he did, and he asked her what he was supposed to do. For him, the situation became unbearable, and he did not know what she wanted.

[117] The grievor then described Ms. Beaudoin's temper tantrums. On August 5, 2012, he was invited to her office with Ms. Constantin. He was not yet seated when Ms. Beaudoin said to him, "[translation] Leave! Leave! What are you waiting for? You do nothing." He was surprised. He said that she calmed down after Ms. Constantin intervened.

[118] On January 29, 2013, he received an email from Ms. Beaudoin inviting him to a meeting to discuss his assessment for the period in which he worked on the keywords. Before the meeting, he had time to read the comments and the unsatisfactory performance finding. He arrived at the same time as Ms. Constantin. He asked Ms. Beaudoin what he had been assessed on. She stated: "[translation] Do you find that what you are doing is normal?", referring to the keywords. The grievor stated that she was angry for a few minutes and that he was still standing. He felt hurt and disappointed. He wondered what he had done to deserve such treatment. He decided to return to his office. Ms. Constantin went to his office and told him to remain calm. Five minutes after he had returned to his office, Ms. Beaudoin went to see him and asked him whether they could have a discussion. He stated that he did not speak and that he gestured with his hand for her to stop. She continued, stating that perhaps he

would like to speak with her at another time. He did not look at her and had his head in his hands. He stated that he went to the hospital on January 30, 2013, and again later on, for other tests.

[119] On February 1, 2013, the grievor emailed Ms. Constantin, asking her to meet with him (Exhibit S-20). He wanted to speak with her about the January 29, 2013, incident. During their meeting the same day, he said that he did not understand why he was given such an assessment. Ms. Constantin did not speak much, as he did the talking. He told her that he was considering going to see the relevant authorities. She stated, “[translation] Céline should not do that.” They then parted.

[120] The grievor requested a meeting with Colleen Mahoney, the acting director, to speak with her about the incident. The meeting was held on February 5, 2013. He told her that he was not assessed on the work that was assigned to him and that he completed and that he was told that his performance was unsatisfactory. He also told Ms. Mahoney that his health was affected. He told her about Ms. Constantin’s comment and that he had not spoken to Ms. Beaudoin since the incident. She replied that she would try to contact Ms. Beaudoin to talk to her about it and told him that she would be on vacation for a week.

[121] The grievor sought Ms. Mahoney’s assistance because he no longer felt capable of working that way. However, he did not express that expectation to her.

[122] When she returned, Ms. Mahoney went to see the grievor in his office. She asked him whether he had resumed talking to Ms. Beaudoin, and he responded affirmatively.

[123] On February 7, 2013, the grievor consulted a psychologist and called Mr. Ritchie from his home. He left a message that he wanted to talk to him about Ms. Beaudoin’s behaviour. He did not meet with Mr. Ritchie between February 11 and March 6, 2013 (Exhibit S-6). He wanted to talk to him about Ms. Beaudoin’s behaviour and ask him whether he could report to someone else.

[124] The grievor stated that he was taking medication for stress and that after the incident, the dose was increased. He mentioned his health problem to Ms. Constantin, who told him that he could take a few days of rest, if necessary. He took a week of rest and then returned to work.

[125] Mr. Ritchie, Ms. Bu-Aram, and Yves Rochon, the grievor’s union representative,

were present at the meeting that was held on the day of his termination, March 6, 2013. He did not expect that termination would be discussed. He had just worked on two reports for which he had not received any negative comments from management. He wrote the 11- and 8-page reports in less than 2 weeks. And in February and March 2013, he was asked to help some of his colleagues. According to him, only with the October 3, 2012 (Exhibit E-1, Tab 21), email did he first learn of a written warning about a possible termination. He did not receive any other warnings in that respect between October 3, 2012, and March 6, 2013.

[126] The grievor stated that Ms. Beaudoin asked him to canvass for funds for a charity campaign, which he did between July and September 2012 with a colleague from the Research Directorate. The beginning of the campaign required a great deal of work time spent in meetings with the canvassers or with his colleague. They had to send messages and distribute forms. During the three months of the campaign, the grievor devoted about 20 work hours to those purposes.

[127] The grievor referred to a series of emails from Ms. Constantin that had favourable comments about his work (Exhibit S-21). As for the deadlines to be respected for responses, he mentioned two emails that indicated that he was to wait for the sources' responses to complete his reports (Exhibit S-22). He stated that the fact that he did not submit reports on time did not stem from a lack of will. Sometimes, sources would not respond or would request money. He also produced three emails, dated September 16, 2010, May 24, 2011, and November 10, 2011, addressed to his supervisor, Ms. Cameron, in which he indicated that she could assign more work to him (Exhibit S-23). He attached his weekly report to the first of those emails.

[128] The grievor affirmed that he did not see his 2011-2012 assessment.

[129] In cross-examination, the grievor stated that he believed that he submitted the Djibouti report to Ms. Constantin in February 2013. She conducted a preliminary review and then a revision. He produced a second report on Djibouti.

[130] As for the January 29, 2013, incident with Ms. Beaudoin, during a discussion later with her in her office, he asked her why she had acted that way. She responded that she had the impression that he did not want to work. He then told her that if she wanted him to do something and he did not do it, she should tell him. Ms. Beaudoin

did not elaborate. When asked whether a misunderstanding had occurred, the grievor responded in the negative and stated that it was very clear that what had not been done had to be explained to him.

[131] The grievor stated that he was very surprised by Ms. Constantin's observation that he was not independent enough to write questions to send to oral sources. He pointed out that he had no problems in that respect and that he had built up a bank of questions. For her comments in the assessment report for September 19 to October 3, 2012 (Exhibit E-1, Tab 20), about his difficulty with the questions, he stated that the comments were general and that she should have said that he did not have any difficulty in French. Ms. Constantin recommended that a colleague consult the grievor to receive help in French. Had her comments been aimed at his English, he would not have been surprised. When he conducted a telephone interview, he always took his notes in French, as it was not easy for him to take them in English. If spoken to in English, he understood, but he had a limited vocabulary and translated into French in his head. After the note-taking comment, he took them in English.

[132] The grievor stated that according to his assessment report for May 29, 2009, to May 29, 2010 (Exhibit S-2), he wrote his responses in compliance with the criteria, and management was satisfied with his work. As for the comment from his supervisor, Mr. Dineen, according to which the information requests for the packages were a challenge for the grievor, he testified that at that time, he had not done much work on the packages and that that work was new to him.

[133] When asked whether he took his assessments seriously, the grievor responded that he read them and that he tried to improve. He stated that he never had the impression that the research officer job was not suitable for him. He told Ms. Beaudoin that he wanted to become a supervisor one day.

[134] The grievor stated that he did not choose conflicts by nature but that his relationship with Ms. Beaudoin was conflictual. If he did not agree with something, he expressed it to her. In 2011, in an email to her that copied management, he expressed his disagreement with the comments that she had made. He asked that his concern be addressed.

[135] As for the time required to prepare a daily activity report that consisted of two lines (Exhibit S-17), the grievor stated that writing one took only a few minutes but that

his reflection on the activities depended on the daily activities.

[136] In re-examination, the grievor stated that he had to produce the weekly reports as soon as he assumed his duties (Exhibit S-23). He stated that under Ms. Constantin's supervision, the reports' format was changed to Excel and that all the employees' reports could be seen.

[137] As for the January 29, 2013, incident, the grievor stated that he did not like the fact that Ms. Beaudoin had raised her voice, for which he had not seen the need. That and the fact that she was angry led him to leave her office.

[138] As for his note taking during telephone discussions, he did not have to conduct telephone interviews in English after he was warned to no longer take notes in French if he was spoken to in English. Therefore, the problem did not recur.

2. Catherine Smith

[139] Ms. Smith began working at the IRB on July 4, 2012, as an information officer. She was involved in the keywords project, which involved converting the national documentation packages from paper to electronic format. It was a large project since keywords had to be allocated for all those documents, i.e., 166 packages that contained from 200 to 2000 pages each. The work consisted of choosing appropriate keywords from an established list. During the peak period, about seven employees, including the grievor, worked on keyword allocation.

[140] Ms. Smith stated that the grievor was placed with the information officers rather than with the research officers. She did not revise his work. She testified that his work was appreciated and that it did not require revision. She stated that another employee did not do satisfactory work and that her keywords work had to be reassigned.

[141] Ms. Smith testified that at a certain time, and without specifying when, she noted that Ms. Beaudoin was yelling at the grievor. She recalled that because she found it strange. The yelling lasted about two to three minutes, i.e., long enough to make her uncomfortable. She could not recall what was said, and she added that the grievor did not speak loudly. She did not believe that she discussed the incident with the grievor, and according to her, it would have been inappropriate to see Ms. Beaudoin about it.

[142] In cross-examination, Ms. Smith stated that her work does not include revising

other employees' work. According to her, the incident took place in 2013. She reiterated that she could not recall the tone of Ms. Beaudoin's words. She stated that the grievor had been tense and that she did not approach him in that respect because they were not very close.

[143] In re-examination, Ms. Smith stated that the incident took place shortly before the grievor's last day of work at the IRB.

III. Summary of the arguments

A. For the employer

[144] The employer submitted that the matter in dispute is the following: Was the deputy head's decision reasonable to terminate the grievor for unsatisfactory performance?

[145] The employer submitted that the legal framework is circumscribed by section 230 of the *PSLRA* and section 12 of the *FAA*. It argued that it satisfied the four criteria set out at paragraph 131 of *Raymond v. Treasury Board*, 2010 PSLRB 23, allowing it to find that the deputy head's decision was reasonable about the grievor's unsatisfactory performance.

[146] The employer first indicated that the performance standards were clearly communicated to the grievor. It cited 13 exhibits filed as evidence in support of that allegation (Exhibit E-1, tabs 8, 9, 10, 13, 14, 16, 18, 20, 21, 23, 24, 27, and 28). As for the performance reports that the grievor did not sign, the employer pointed out that the fact that the documents were not signed does not mean that they were not communicated to him. For example, it mentioned Ms. Beaudoin's email to him dated July 15, 2011, to which was attached a table of his performance objectives and of the measures to achieve them (Exhibit E-1, Tab 8). In that email, Ms. Beaudoin pointed out the following: "[translation] The objectives are based on those indicated in your 2010-2011 assessment report, which we discussed on June 16 and July 14, 2011." The employer argued that communicating by email satisfies that criterion.

[147] As for the criterion according to which the grievor was to be subjected to appropriate performance standards, the employer submitted that Mses. Beaudoin and Constantin testified that the requirements were related to his job description. The employer referred to the position's first main activity listed in the job description,

which was the following: “[translation] Produce research reports by researching, analyzing, and assessing information sources and information; by conducting interviews; and by writing reports according to a rigorous methodology and to schedule.” The employer indicated that that requirement was also listed in the grievor’s performance objectives, particularly for July 14 to September 30, 2011 (Exhibit E-1, Tab 8).

[148] The employer then addressed the criterion requiring that the grievor receive the tools, training, and supervision required to meet performance standards within a reasonable time. It approved training requests for courses that the grievor took, i.e., a strategic report writing course, which was held from March 21 to 23, 2012, and a course about writing in clear and concise language, held from August 1 to 3, 2012 (Exhibit E-1, Tab 17). In addition, one of the revisors, Kareen Martel, was tasked with mentoring the grievor according to the assessment of the criteria for each report that he would write. As of July 2011, formal and informal meetings were also held almost daily with Mses. Beaudoin and Constantin.

[149] As for a reasonable period for achieving the performance standards, the employer relied on Ms. Beaudoin’s testimony, according to which a research officer needs on average about about six months to be comfortable with his or her duties. The employer submitted that the period covered by the grievor’s performance plan was reasonable, i.e., from July 2011 to November 2012.

[150] According to the last criterion set out in *Raymond*, management’s assessment of an employee’s performance must be conducted in good faith. The employer submitted that good faith is presumed. It pointed out that several people assessed the grievor’s performance and that aside from Ms. Dineen, the other supervisors noted problems.

[151] Mr. Coakeley read the memo and some of the documents, and he discussed them with the managers. The employer submitted that the testimonies of Mses. Beaudoin and Constantin demonstrated the seriousness and rigour of the grievor’s performance assessment. The employer argued that it was not demonstrated that its assessment was tainted by malice or bad faith or that the grievor was subjected to bias or unfair treatment.

[152] With respect to the grievor’s testimony about his open conflict with Ms. Beaudoin, the employer pointed out that the only conflict occurred on

January 29, 2013, i.e., after the performance assessment. He added that the grievor had to demonstrate that the conflict influenced the assessment. He submitted that any improvement to the grievor's performance was recorded in the assessments. In addition, Ms. Constantin's testimony, according to which the tone with the grievor was cooperative, was not contradicted. The employer argued that the grievor was unable to meet the requirements of his position.

[153] However, during its argument, the employer admitted that the grievor's performance assessment for December 18, 2012, to January 29, 2013, which was deemed unsatisfactory (Exhibit E-1, Tab 28), was invalid. During that period, he had been assigned keyword work.

[154] As for the termination, which Mr. Coakeley imposed, the employer submitted that it relied on the memo that Ms. Wyant signed (Exhibit S-1), which indicated that because no EC-02 position had been available, demotion was not an option. The employer argued that I did not have jurisdiction to decide the appropriateness of the demotion or termination measure.

[155] The employer also argued that the *Guidelines* are not binding.

[156] In support of its arguments, the employer also referred me to *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90; *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6; *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94; *Agbodoh-Falschau v. Canadian Nuclear Safety Commission*, 2014 PSLRB 4; and *Swan and McDowell v. Canada Revenue Agency*, 2009 PSLRB 73.

B. For the grievor

[157] By addressing the criteria set out in *Raymond*, the grievor acknowledged that management had provided him with the tools, training, and supervision required to meet the performance standards.

[158] The grievor indicated what his main arguments were about. First was the fact that he had not been subjected to defined and appropriate standards; instead, they were vague and anecdotal. Second, he pointed out that the applicable standards were not communicated to him. Finally, he raised that his performance assessment was tainted by bad faith.

[159] The grievor first addressed the issue of whether he had been subjected to defined and appropriate performance standards. He argued that management did not set clear and quantitative standards for the percentage of acceptable typos and grammatical, spelling, and terminological errors. Mostly, responses to information requests were emphasized.

[160] As for the April 1, 2010, to March 31, 2011 (Exhibit E-1, Tab 7), assessment, the grievor submitted that he did not sign it and that it consisted of excerpts from emails containing comments that were sometimes suggestions and sometimes overall reviews or even anecdotal examples of his incorrect understanding. Quantitatively, the assessment was not very clear. According to him, that assessment had no summary.

[161] The grievor emphasized that no performance assessment was done for the fiscal year from April 1, 2011, to March 31, 2012. Ms. Beaudoin testified that she prepared an annual assessment for each employee and that she could not recall what happened in the grievor's case. According to him, since he was heavily scrutinized, why was no overall assessment of his performance done for that period? That raised doubt, as there was no overall view. He argued that the fact that the employer established performance standards without producing an annual assessment allowing one to verify whether those standards have been met constituted flagrant negligence. He was subjected to eight performance agreements in which the standards were not identified and for which the quantitative standards were not always measured.

[162] In the assessment reports, the assessment column is an indictment against the grievor, as the employer displays of a range of errors. However, Ms. Constantin explained that to avoid errors, a strict, three-step revision process was applied to all research officers. However, not all research officers were heavily scrutinized. The grievor submitted that it was impossible to escape the micromanagement system. In addition, the employer did not assess his tasks from late November 2012 to March 2013.

[163] The grievor then submitted that the standards were not clearly communicated to him. He alleged that no qualitative and quantitative scale existed and that he was at the mercy of management's micromanagement, which held anecdotal errors against him.

[164] The grievor's performance assessment for January to May 2012 (Exhibit E-1, Tab

12) mentioned some improvement. Ms. Constantin testified that his performance for that period was unsatisfactory. However, since that finding was not indicated in his assessment, he thought that his performance was satisfactory. He emphasized that according to the assessment, he was to be assigned the number of responses that corresponded to the standard, i.e., four per month. In addition, from November 2012 to the end of his employment, the employer did not provide him with any performance standard.

[165] The grievor then argued that by assessing his performance, management engaged in an exercise tainted by bad faith. He submitted that the evidence demonstrated that the process was biased and that it was largely based on differential treatment and a finding established in advance.

[166] As an example, the grievor referred me to the first paragraph of the termination letter, which indicates that his termination took place two-and-a-half months after the last assessment that he signed, which was on December 20, 2012. Therefore, the decision to terminate him was made without considering the work he performed from December 18, 2012, to March 6, 2013. The employer's representatives refused to assess the EC-02-classified work that he performed. He submitted that he worked in vain because it was not possible for him to redeem himself. He argued that it was unfair and unreasonable on the employer's part not to consider an employee's last months of work before terminating that employee for unsatisfactory performance. He submitted that contrary to *Mazerolle*, in which the grievor was warned that he could be terminated, in this case, the grievor was terminated without notice.

[167] As a second example, the grievor indicated that in February 2013, he took a week of leave to recover. Despite that, he completed two information request responses on Djibouti, which were not assessed. He argued that the fact that management forgot that that work was assigned to him was flagrant proof of bad faith.

[168] The third example of the employer's bad faith that the grievor presented was about assigning the keywords work. Ms. Constantin's November 21, 2012, email (Exhibit S-12) indicated a lack of French information requests. According to the grievor, management no longer had confidence in his ability to perform the tasks.

[169] As a fourth example, the grievor submitted that the memo to Mr. Coakeley

(Exhibit S-1) included a unilateral and inaccurate report of Mr. Dineen's assessment of the grievor. The memo indicated that according to Mr. Dineen's assessment, the grievor's performance was "[translation] acceptable", while that term does not appear anywhere in the assessment.

[170] In addition, the memo referred to Ms. Zmud's July 19, 2010, comments, which noted some of the grievor's weaknesses, but it did not mention the August 12, 2010, notes, which reported improvements. The grievor submitted that on two occasions, the memo to Mr. Coakeley mentions the 2011-2012 assessment, while that assessment was not adduced as evidence. In addition, he submitted that Mr. Coakeley and Ms. Beaudoin acknowledged that his performance improved from January to April 2012, but that was not mentioned in the memo to Mr. Coakeley.

[171] As a fifth example, the grievor raised the possibility of demotion. He submitted that the employer knowingly failed to assess the work that he had done since November 2012 and at the moment the memo was submitted to Mr. Coakeley. According to the grievor, had the employer assessed him during that period, it would have noted that he was performing his work well.

[172] As a sixth example of the employer's bad faith, the grievor argued that he did not receive a sufficient number of warnings that he could possibly be terminated. In that respect, he referred to the *Guidelines*, which indicate that among the principles guiding the decision to terminate or demote an employee whose performance is deemed unsatisfactory, the employee must have been "... provided with reasonable warnings about the consequences of his or her continued failure to meet the required level of job performance ...". The grievor emphasized that he received a written warning on October 3, 2012, and an oral warning at a meeting the next day. He was terminated on the spot, five months after those warnings were given. He argued that that demonstrates the employer's bad faith, cynicism, and offhandedness, especially in that Ms. Beaudoin recommended his termination on November 6, 2012. He believed that his employment would continue. He submitted that in all the performance agreements, no timespans were ever mentioned for complying with the employer's standards. In support of that argument, he cited *Morissette v. Treasury Board (Department of Justice)*, 2006 PSLRB 10, at para. 123.

[173] As a final example, the grievor reiterated that the employer never explained to him why it no longer had confidence in his ability to write responses to information

requests. The November 6 to 28, 2012 (Exhibit E-1, Tab 25), performance assessment makes no mention of it. In January 2013, the employer assigned him an information request response about Djibouti. He was not surprised, as he was never told that he would no longer write information request responses. In addition, another request was assigned to him on March 6, 2013, i.e., his termination day.

[174] The grievor then addressed his allegation that he was a victim of differential treatment. He submitted that the employer imposed expectations and behaviour on him to which most research officers were not subjected: for example, daily meetings and daily activity reports. As for the time required to complete those tasks, he testified that the daily reports required between 15 and 20 minutes, while the meetings lasted between 5 and 20 minutes. He emphasized that the meetings did not take place every day. He submitted that the daily meetings and daily activity reports took him an average of 1 hour and 40 minutes per week.

[175] According to the employer, the activity reports were required to help the grievor improve his performance. However, Ms. Beaudoin testified that the employer stopped requiring daily activity reports from all research officers because they required too much supervision. When asked whether she provided the grievor with feedback on his daily reports, Ms. Constantin responded that she did not, as they were too succinct. According to the evidence, because the grievor's activities were discussed during his meetings with Mes. Beaudoin and Constantin, preparing reports became pointless. Because of the time he had to devote to those two tasks, he had less time than the other research officers did to comply with the employer's required standard of four reports per month. Furthermore, the time devoted to the charity campaign undermined the possibility that he could achieve the objectives. In support of that argument, the grievor referred me to *Pugh v. Deputy Head (Department of National Defence)*, 2013 PSLRB 123, at para. 146.

[176] The grievor then addressed the issue of Ms. Beaudoin's behaviour towards him. He cited four related incidents. On August 5, 2012, when he was invited to her office with Ms. Constantin, Ms. Beaudoin angrily commanded him to leave her office before he even had the chance to sit down. Second, in 2011, he emailed Ms. Beaudoin, with a copy to management, in which he expressed his disagreement with remarks that she had made. He asked that his concern be addressed. Third, in September 2012, he was to submit a report on a Friday afternoon. Although he was not given a set time to

return it, Ms. Beaudoin asked him for it in person eight times that day.

[177] The fourth incident occurred on January 29, 2013. The grievor emphasized Ms. Smith's testimony, in which she said that Ms. Beaudoin yelled at him. He spoke to Ms. Mahoney about it. He also wrote to Mr. Ritchie and left him a message in his voicemail inbox on that subject. The grievor felt humiliated by that incident.

[178] In conclusion, the grievor argued that the employer's decision to terminate him was tainted by bad faith. He added that its assessments were unreasonable and that he was caught in a spiral from which he could not escape. He submitted that according to the evidence, his colleagues generally appreciated him. He argued that he was subjected to performance plans for 15 months. From January to April 2012, his performance was deemed satisfactory, and from December 2012 to February 2013, his performance was not assessed. The employer never told him that he was to comply with the standards by a set date.

[179] In support of his arguments, the grievor referred me to *Raymond; Agbodoh-Falschau; Mazerolle; Plamondon; Gauthier v. Deputy Head (Department of National Defence)*, 2013 PSLRB 94; *Bahniuk v. Canada Revenue Agency*, 2011 PSLRB 75; and *Djan v. Treasury Board (Correctional Service of Canada)*, 2001 PSSRB 60.

C. Employer's reply

[180] The employer submitted that its standards were defined and appropriate. Even if certain elements are not quantifiable, such as rigour, the standards were clear. The employer argued that nothing in the evidence indicated that the grievor stated that he did not understand what he was assessed on.

[181] As for the grievor's performance assessment for 2011-2012, the employer pointed out that several were done during that period.

[182] As for the grievor's argument that he could not perfectly comply with the standard because making errors is normal, the employer referred to the assessment for January to May 2012 (Exhibit E-1, Tab 11), in which it pointed out errors and improvements. According to the employer, errors are often not pointed out because it is normal to find some in the reports. However, it submitted that the grievor's errors were not normal considering his level and that so many occurred.

[183] As for the grievor's assessment of his keywords work, the employer argued that it wanted him to comply with an EC-03 research officer's performance standards, not those of an EC-02 officer.

[184] With respect to Ms. Beaudoin's November 6, 2012, recommendation about the grievor's termination, the employer referred to the October 4 to November 5, 2012, assessment (Exhibit E-1, Tab 23), which contains the following comments:

[Translation]

Placide, the employee, was informed that his performance is unsatisfactory and that we will contact Human Resources for the follow-up to be given considering the preceding assessments and the continuous unsatisfactory performance.

[185] As for the possibility of demoting the grievor, the employer cited *Plamondon*, at para. 59, in support of its allegation that the adjudicator did not have jurisdiction in that respect.

[186] The employer submitted that the grievor's performance assessment was conducted over a period of 16 months, i.e., from July 2011 to November 2012, and that nothing demonstrated that his performance was satisfactory.

[187] As for the grievor's argument that his colleagues appreciated his work, the employer submitted that an employee's performance assessment is not up to his or her colleagues.

IV. Reasons

[188] Under the *FAA*, the deputy head has the power to terminate an employee when the deputy head's opinion is that the employee's performance is unsatisfactory. The jurisdiction of an adjudicator seized of a case of an employee's termination for unsatisfactory performance is limited by section 230 of the *PSLRA*, which reads as follows:

230 In the case of an employee in the core public administration or an employee of a separate agency designated under subsection 209(3), in making a decision in respect of an employee's individual grievance relating to a termination of employment or demotion for unsatisfactory performance, an adjudicator or the Board, as the case may be, must determine the termination or demotion to have been for cause if the opinion of the deputy head that the

employee's performance was unsatisfactory is determined by the adjudicator or the Board to have been reasonable.

[189] In *Reddy*, the adjudicator summarized the jurisprudence with respect to the scope of the adjudicator's jurisdiction in such cases as follows:

87 Since it was proclaimed in force in 2005, section 230 of the Act has been considered in Raymond, Plamondon, and Mazerolle. All three decisions came to the same conclusion about the scope of an adjudicator's intervention. The adjudicator's role is to determine whether it was reasonable for the employer to deem the employee's performance unsatisfactory and not whether the decision to terminate was reasonable. If the employer's assessment that the employee's performance was unsatisfactory was reasonable, I must find that the termination that ensued was for cause, and I cannot interfere with that decision, as my jurisdiction is exhausted. The termination can be overturned only if the employer's unsatisfactory assessment was not reasonable. No other conclusion is possible. For example, I cannot substitute my own opinion for that of the employer with respect to the assessment of the employee's performance. As recognized by the adjudicator in Raymond, at paragraph 123, "... the employer is in a better position than the adjudicator to assess the quality of an employee's performance, whom it sees perform on a daily basis." Similarly, I cannot substitute my own opinion for that of the employer with respect to the assessment of the termination measure and impose a penalty that I consider more appropriate.

88 Therefore, the scope of my intervention is limited to answering this single question: Was it reasonable, based on the evidence adduced by the parties, for the employer to deem the performance of the employee in question unsatisfactory?

[190] In *Raymond*, the adjudicator set out as follows the appropriate criteria for assessing whether a deputy head's assessment that a grievor's performance was unsatisfactory was reasonable:

...

131 ... I do not see how it would be possible to find that it was reasonable for a deputy head to consider the performance of one of his or her employees unsatisfactory if the evidence showed the following:

- *the deputy head or the supervisors who assessed the employee's performance were involved in a bad faith*

exercise;

- *the employee was not subject to appropriate standards of performance;*
- *the employer did not clearly communicate the standards of performance to the employee that he or she was required to meet; or*
- *the employee did not receive the tools, training and mentoring required to meet the standards of performance in a reasonable period.*

...

[191] Those principles were revisited in *Plamondon*, *Mazerolle*, and *Reddy*. Given the evidence, I propose assessing the reasonableness of the deputy head's assessment of the grievor's performance according to those criteria.

[192] As mentioned, the grievor acknowledged that management had provided him with the tools, training, and supervision required to meet the performance standards.

[193] The next issue to decide is whether the grievor was subjected to appropriate performance standards and, if necessary, whether they were communicated to him. The grievor argued that among other things, management did not set clear and quantitative standards for the percentage of acceptable typos and grammatical, spelling, and terminological errors. He also argued that not receiving an annual performance assessment for April 1, 2011, to March 31, 2012, meant that the employer did not establish performance standards and that it deprived him of the possibility of verifying its expectations.

[194] Ms. Beaudoin testified that the objectives set out in the performance agreements were excerpted from the grievor's job description and that they were listed in the statement of criteria for workforce recruitment. For example, his assessment report for April 1, 2010, to March 31, 2011 (Exhibit E-1, Tab 7), contains a section entitled "[translation] agreement on work objectives ... and expected results". That report also has a full page entitled, "[translation] The Research Directorate's qualitative standards by which objectives must be met".

[195] As another example, on July 15, 2011, Ms. Beaudoin emailed the grievor and attached a table of his performance objectives and the ways to achieve them (Exhibit E-1, Tab 8). Her email informed him that the objectives were based on those indicated in

his 2010-2011 assessment report, which they discussed on June 16 and July 14, 2011.

[196] The evidence demonstrated that the grievor's assessment reports or performance agreements all contained performance objectives related to his job description. In addition, they contained a column entitled "[translation] special measures required" as well as one in which management specified the criteria to use to measure his progress with respect to the objectives.

[197] Having carefully read those documents, I noted that the objectives and standards are described meticulously and in detail. Furthermore, several documents filed as evidence are emails addressed to the grievor that reviewed his discussions with Meses. Beaudoin and Constantin and that reiterated the feedback he received and the objectives and standards that he was to meet. Examples are the July 23, 2012 (Exhibit E-1, Tab 13), and August 22, 2012 (Exhibit E-1, Tab 14), emails. In addition, some of those emails were reproduced in the assessment reports or performance agreements. And the assessments contain management's comments on specific files that were assigned to the grievor. In addition, no evidence demonstrated that he challenged or did not understand the objectives or the standards.

[198] The fact that the grievor did not sign one or more assessment reports or performance agreements does not mean that they were not communicated to him. It is sufficient for the employer to be able to demonstrate that it gave them to him or that their contents were discussed with him. For the 2010-2011 assessment (Exhibit E-1, Tab 7), although it does not bear his signature, it contains his responses to management's comments. Therefore, it is clear that he read it.

[199] I find that the grievor was subjected to appropriate performance standards and that were clearly communicated to him. It remains to be decided whether his performance assessment was tainted by bad faith.

[200] The main points of the grievor's arguments alleging management's bad faith in how it assessed his performance are summarized as follows: the process was biased, it was based largely on differential treatment, and the finding was established in advance. He cited a few examples in support of his allegations.

[201] According to the grievor, the memo to Mr. Coakeley (Exhibit S-1) emphasizes that the assessment that Mr. Dineen conducted in May 2010 was "[translation]

acceptable”, while that term does not appear in the assessment. Since Ms. Wyant, the memo’s author, did not testify, it is not possible to affirm whether the word in question was simply a conclusion that she drew. However, in the memo’s next sentence, she mentions the following observation by Mr. Dineen: “... [translation] his responses should have been better planned and structured and he should have done a more appropriate assessment of his sources”. In my opinion, using the word “[translation] acceptable” in the circumstances and in the context of the memo did not establish a deliberate attempt to influence Mr. Coakeley’s decision. And in cross-examination, Mr. Coakeley testified that Mr. Dineen’s assessment had acceptable elements in it but that the grievor had just begun to work and some things were already raising concerns.

[202] As for Ms. Zmud’s observations, summarized in the memo, I agree that they do not include the improvements that she noted on August 12, 2010, about the fact that the grievor seemed to be becoming more comfortable working on several files simultaneously. However, the omission of those notes is not proof of bad faith. The memo seems to constitute an overview of the grievor’s situation, not an exhaustive history. In addition, according to Mr. Coakeley’s testimony, he decided to terminate the grievor after reading the documentation, i.e., the grievor’s performance assessments, the emails, and the letters. He also spoke with those involved and held at least one face-to-face meeting with them to discuss the documentation on the grievor.

[203] The grievor argued that he did not receive sufficient warning of a possible termination. He cited *Morissette* in support of that allegation. He referred to the *Guidelines*, which state as follows: “The employee is provided with reasonable warnings about the consequences of his or her continued failure to meet the required level of job performance ...”.

[204] In this case, the grievor received a written warning on October 3, 2012, and a verbal warning the next day, stating that if his performance did not improve, management could terminate his employment. His performance was continuously monitored from July 2011 to December 2012. Despite some improvements that management noted between January and May 2012, his performance was consistently deemed unsatisfactory. The October 4 to November 5, 2012, assessment, which the grievor signed on November 6, 2012, includes the following comments from management: “[translation] Placide, the employee, was informed that his performance

is unsatisfactory and that we will contact Human Resources for the follow-up to be provided considering the earlier assessments and the continuing unsatisfactory performance.” I can find only that the grievor was aware that he could lose his job.

[205] It is true that before October 3, 2012, the employer did not officially warn the grievor that his job was at stake. However, it granted him an additional month to improve his performance, which he was unable to do. There is no proof that an additional extension would have improved his performance.

[206] In addition, considering all the facts that were presented to me, the grievor did not establish that he did not know that his job was in danger. The many emails, meetings, discussions, and assessments of his performance, formal and informal, clearly demonstrated the employer’s dissatisfaction.

[207] The grievor emphasized that he was not terminated until March 6, 2013. He added that management did not consider the work that he did in January and February 2013, when he was assigned to keyword allocation. Therefore, according to him, he was led to believe that his employment would continue.

[208] The employer admitted that the unsatisfactory assessment of the grievor’s work for the period from December 18, 2012, to January 29, 2013, was invalid. During that period and until his termination, he worked on the keyword allocation project, a task normally performed by employees classified EC-02. Mr. Coakeley testified that the grievor could not be assessed for the tasks of an EC-02 position because he held an EC-03 position. In addition, the first paragraph of the termination letter refers to the November 29 to December 18, 2012, assessment, which the grievor signed on December 20, 2012. To justify terminating him, the employer relied solely on his performance when he performed the duties of an EC-03 research officer. Therefore, my opinion is that the employer acted reasonably when it did not consider the grievor’s work when he performed keyword allocation tasks.

[209] Although it seems to me that management could have better handled the grievor’s termination, I agree with the adjudicator’s comments in *Mazerolle*, as follows:

...

154 Despite my unease with the manner of the grievor’s termination, I believe that the issue falls outside of the scope of an adjudicator’s jurisdiction under section 230 of

the PSLRA, as it relates solely to the decision to terminate his employment and not to the assessment of his performance....

...

[210] To demonstrate the employer's bad faith, the grievor also alleged that he was a victim of differential treatment. He submitted that the employer imposed expectations and behaviour on him to which most research officers were not subjected, i.e., daily meetings and daily activity reports. Ms. Beaudoin testified that although all research officers had once had to submit daily activity reports, the requirement was abandoned. However, management continued to require them for employees whose progress it wanted to monitor, i.e., for two or three officers. The grievor submitted that the time required to submit to those requirements meant that he had less time than the other research officers did to perform his tasks and improve his performance.

[211] The evidence adduced demonstrated that management imposed those requirements on the grievor in good faith to help him improve his performance. He did not demonstrate on a balance of probabilities that those requirements disadvantaged him compared to his colleagues. None of his colleagues testified about their workloads. In addition, management eventually reduced the grievor's workload from four to three reports per month, to help him achieve the performance objectives.

[212] The grievor pointed out that he did not receive an assessment for the 2011-2012 fiscal year and that consequently, he did not have an overview of his performance. In effect, such an assessment was not presented as evidence. However, it was demonstrated that during that period, management conducted several assessments of his performance, followed up with him, and provided him feedback. Therefore, I feel that he was well aware of its expectations.

[213] The grievor argued that Ms. Beaudoin's behaviour towards him demonstrated the employer's bad faith. He cited four incidents in that respect. According to his testimony, the most serious incident occurred during the January 29, 2013, meeting to discuss his performance from December 18, 2012, to January 29, 2013. He testified in detail about his reaction to that assessment. On February 1, 2013, he emailed Ms. Constantin, requesting a meeting with her (Exhibit S-20) about the January 29, 2013, incident. He testified that during their meeting that same day, he told her that he did not understand why he was given such an assessment. According to him, Ms. Constantin did not say much, as he did the talking. He told her that he was considering

seeing the relevant authorities. She stated, “[translation] Céline should not do that”. In cross-examination, Ms. Constantin testified that she could not recall meeting with the grievor on February 1, 2013. However, the January 29, 2013, incident must be assessed when considering the employer’s admission at the hearing that the assessment was invalid and that it did not rely on it to justify terminating the grievor.

[214] As for the other incidents, it is possible that the grievor had the impression that his relationship with Ms. Beaudoin was not perfect. However, in addition to Ms. Beaudoin, several other individuals assessed him during his employment, i.e., Mr. Dineen, Ms. Zmud, Ms. Cameron, and Ms. Constantin. The evidence on both sides is that the tone between the grievor, Ms. Constantin, and Ms. Beaudoin was generally cooperative. Furthermore, the January 29, 2013, incident did not occur while the grievor was working as a research officer but instead when he was assigned to keyword allocation.

[215] Ms. Smith testified that she saw Ms. Beaudoin yelling at the grievor. However, she could not specify the date of the incident or what was said. She did not discuss it with him. Given the lack of details, I did not retain her testimony about the January 29, 2013, incident. Anyway, even if Ms. Beaudoin was angry, I do not believe that that, in and of itself, is proof of bad faith.

[216] Given the evidence, I cannot find that the grievor’s performance assessment was tainted by bad faith. Nothing in the evidence suggested that his supervisors were prejudiced against him or that their performance assessments were unfair or unreasonable. I find that it was reasonable for the deputy head to believe that the grievor’s performance was unsatisfactory.

[217] The grievor argued that the employer should have considered the possibility of demoting him, in accordance with the following wording from section 3 of the *Guidelines*: “Once the inability to meet the required level of job performance has been established, reasonable alternative employment within the competence of the employee is considered.”

[218] The memo that Ms. Wyant signed and on which Mr. Coakeley relied indicates that management considered demotion but that it did not make that choice because no EC-02 positions were available, and the grievor required a high level of supervision. Mr. Coakeley also testified that at the time, a restructuring required placing affected

employees. Faced with such an argument, I endorse the following comments from the adjudicator in *Plamondon*:

...

59 Mr. Plamondon argued that the employer made no efforts to find him another position, in accordance with the Treasury Board policy. Examining that issue exceeds my mandate, which is to examine whether it was reasonable for the employer to decide that Mr. Plamondon's performance was unsatisfactory....

...

[219] Under section 230 of the *PSLRA*, as I found that it was reasonable for the deputy head to believe that the grievor's performance was unsatisfactory, I must find that his termination was for cause. As the adjudicator expressed at paragraph 154 of *Mazerolle*, "There are no other elements in that equation." Thus, I must dismiss his grievance.

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

(The Order appears on the next page)

V. Order

[221] The grievance is dismissed.

April 6, 2016.

PSLREB Translation

**Steven B. Katkin,
adjudicator**