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**Citation:** 2016 PSLREB 74

*Public Service Labour Relations  
and Employment Board Act and  
Public Service Labour Relations Act*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

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BETWEEN

**JAMES CHARINOS**

Grievor

and

**DEPUTY HEAD  
(Statistics Canada)**

Respondent

Indexed as  
*Charinos v. Deputy Head (Statistics Canada)*

In the matter of individual grievances referred to adjudication

**Before:** Margaret T.A. Shannon, a panel of the Public Service Labour Relations and  
Employment Board

**For the Grievor:** Gorette Fukamusenge, Public Service Alliance of Canada, and  
himself

**For the Respondent:** Sean Kelly, counsel

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Heard at Ottawa, Ontario,  
January 25 to 27 and May 3, 2016.

## REASONS FOR DECISION

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### **I. Individual grievances referred to adjudication**

[1] The grievor alleges that the respondent, Statistics Canada, wrongfully and without just and reasonable cause disciplined him on three occasions by imposing a three-day suspension without pay (PSLREB File No. 566-02-11372) and a five-day suspension without pay (PSLREB File No. 566-02-11373) and by terminating his employment (PSLREB File No. 566-02-11374).

[2] The grievor presented the suspension grievances in August and September 2014. 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 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 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*. These transitional provisions do not impact on the termination grievance as it was presented in January 2015, after the amendments had already come into force.

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

[3] The grievor was a distribution clerk employed at the CR-03 group and level. He was assigned in early 2013 to the respondent’s distribution centre, where initially, there were no issues with his behaviour. Approximately six months after he started working there, a pattern of inappropriate behaviour began, including questionable sick leave, tardiness, absence from his workplace without permission, and failing to perform his duties as directed.

[4] The respondent initially dealt with these concerns by way of a verbal reprimand. When no change was noted, the grievor received a written reprimand, which was followed by a series of escalated disciplinary suspensions, including a 3-day suspension without pay, a 5-day suspension, a 10-day suspension, a 20-day suspension, and, eventually, termination. The 10- and 20-day suspensions were not

grieved.

[5] The grievor received the three-day suspension for failing to do portions of his mail run on July 8 and 9, 2014; for failing to complete mail tracking sheets as directed on July 8, 9, and 10, 2014; and for disappearing on July 9, 2014, after completing part of his mail run.

[6] Approximately a month-and-a-half later, the respondent imposed a five-day suspension without pay on the grievor for failing to complete his mail rounds on August 21 and 22, 2014, for again failing to complete mail tracking sheets as directed by the respondent, and for sending an email critical of his manager to senior management and copying it to his supervisor and union.

[7] Following a workplace accident in late summer or early fall 2014, the grievor required accommodation. He was assigned to the task of address searches. Despite that change of duties, his behaviour in the workplace continued to be unacceptable. During this period, he received the 10- and 20-day suspensions without pay for his unacceptable behaviour. As indicated, he did not grieve them.

[8] By December 11, 2014, after the 20-day suspension was completed, the respondent continued to have concerns with the grievor's behaviour in the workplace. On both December 11 and 15, 2014, he still did not properly conduct address searches. He was away sick on December 14, 2014. On December 15, 2014, the respondent convened a fact-finding investigation into his ongoing refusal to comply with directions. On December 16, 2014, he sent another email critical of his supervisor and on the same day made a call to his assistant director's home in an attempt to intimidate him. The assistant director recognized the grievor's voice and reported the call to senior management. As a result, the grievor was terminated for failing to conduct his duties as directed, for sending the offensive email, and for making the threatening phone call.

#### Guy Joly's Evidence

[9] Guy Joly was the grievor's manager in 2014. He was responsible for the distribution of mail that entered the building in which they were located. He had a team of three to seven employees reporting to him at any one time, depending on the time of year, of whom the grievor was one; he was supervised by Peter McClements.

[10] The grievor started working as a clerk in the mail distribution centre in January 2013. His duties were to sort the mail in the morning, deliver it to the appropriate floors, and collect outgoing mail as well as search Microsoft Outlook for employee addresses to ensure their mail was delivered. He was provided with on-the-job training and was given the opportunity to job shadow another employee. At no time did he tell Mr. Joly that he needed more training on mail runs or address searches; each time he was asked how things were going, the grievor replied that all was good and that there were no problems. The training lasted two weeks and was conducted by two different employees.

[11] The grievor conducted more than 100 mail runs in the 18 months he was at the mail distribution centre. Before the summer of 2014, there were no problems with his performance of the mail runs. However, other problems existed, and Mr. Joly had to have several conversations with the grievor about his sick leave usage and tardiness.

[12] When examining the grievor's sick leave usage, Mr. Joly identified a pattern of using sick leave on Mondays, yet the grievor claimed to have no problems with working Mondays. Mr. Joly questioned why the grievor consistently took Mondays off by claiming sick leave. He could have used his vacation had he wanted Mondays off. The nature of the work for which the grievor was hired was to ensure the mail was delivered as rapidly as possible in the morning. The respondent needed its employees to be at work. The grievor would also schedule his medical appointments during his working hours, even though medical appointments are to be scheduled outside of work hours whenever possible, and when that is not possible, proof of the appointment may be required. In the grievor's case, he was required to certify his use of sick leave because of the obvious pattern of using sick leave on Mondays.

[13] The grievor blamed OC Transpo, the local transit system in Ottawa, Ontario, for his frequent tardy arrivals. Initially, Mr. Joly had the sense that the grievor understood the concerns with his attendance, but things did not improve. When his schedule was changed to accommodate his transportation problems, the grievor continued to be tardy. His excuses for being late were always the same. When Mr. Joly tried to discuss his concerns with the grievor, the grievor dismissed him and his concerns. Being late was of no concern to the grievor. Mr. Joly provided him with a summary of his expectations that the grievor report for work on time (Exhibit 1, tab 3).

[14] In April 2014, the respondent presented the grievor with a letter outlining his obligations to attend work on time and addressing his leave usage (“the terms and conditions letter”; Exhibit 1, tab 4). Mr. Joly met with the grievor in private to discuss the letter and its conditions. The grievor was advised that the respondent could no longer accept his continuing pattern of attendance. He refused to acknowledge receiving the letter; he simply got up and left without his copy. Mr. Joly then sent it to him electronically.

[15] Nothing new was discussed at this meeting. The grievor was aware of Mr. Joly’s concerns. In addition to the grievor’s leave usage and tardiness, the terms and conditions letter raised the respondent’s concerns with his tendency to disappear at work. Also addressed was his obligation to sign and abide by the respondent’s code of values and ethics. He was advised that his verbal communication at the time was insolent and that it violated that code.

[16] The grievor subsequently received a written reprimand (Exhibit 1, tab 6) on April 23 following a disciplinary investigation and disciplinary hearing, which concluded that he had breached the code of ethics and the respondent’s standards of conduct for refusing to send an email to his supervisor on April 17, 22, and 23, 2014, as directed, and for having been insubordinate towards his supervisor during a conversation on April 17, 2014. Richard Proulx, the operations manager responsible for the distribution centre, signed the letter.

[17] On June 18, 2014, the entire distribution centre team was told that a mail tracking sheet was being implemented and that everyone picking up internal mail was to count the pieces of mail collected and note where they were collected. This was to be noted on the form provided in the manner explained to them. This information was important as the respondent wanted statistics upon which to base its restructuring plans. It was made clear that all employees were to record the number of pieces of mail at each stop on their routes at the time each stop was made. The exact number of pieces of mail was to be recorded, and if there were none, it was also to be noted, with a zero.

[18] The grievor did not follow the directions. When he submitted tracking sheets, no numbers were noted; he merely reported that there was nothing to pick up rather than noting it appropriately on the form. It was explained to him that the method he was

using to fill in or not fill in the tracking forms was not acceptable, and the respondent's expectations were clearly explained to him. Despite this, he refused to follow the directions.

[19] Mr. Joly left tracking sheets on the grievor's desk with a note to fill them in properly and return them to him. The grievor was expected to note his name, initial where appropriate, and add the time and date the run was completed on each sheet, in addition to accurately noting the number of pieces of mail collected at each stop. On July 2, 3, 7, and 8, 2014, he refused to follow the directions given to him. An email was sent to the entire distribution centre staff reiterating the message delivered on June 18, 2014 (Exhibit 1, tab 8). It was sent to all staff, even though the grievor was the only one not following the direction.

[20] On July 9, 2014, the director responsible for mail distribution, Mr. Proulx, received an email (Exhibit 1, tab 9) questioning when mail delivery and pickup were to be done on the 11th floor of the Jean Talon building, where the grievor worked. According to the email, mail had not been delivered or picked up for a couple of days. Upon reviewing the tracking sheets for that building, Mr. Joly became concerned that the grievor was not doing the mail runs to which he was assigned. To determine whether that was true and that the grievor was in fact doing the mail runs as directed, Mr. Joly performed the floor rounds, counting the pieces of mail ahead of the grievor's scheduled rounds. After the grievor had completed his rounds, Mr. Joly redid the same runs, to see if the grievor had picked up the mail noted earlier that day. Mr. Joly then compared his results to the grievor's completed tracking sheet.

[21] This process was repeated on July 8 and 9, 2014 (see tracking sheets, Exhibit 1, tabs 10 and 11). The forms indicated that outgoing mail was not picked up at all or that it had not been recorded at several locations. The grievor's records did not reflect the counts as noted by Mr. Joly. While it was possible that someone put mail in an outgoing basket after the grievor had checked it, Mr. Joly's numbers noted on his quality assurance checks were the same before and after the grievor completed his rounds. When he asked the grievor if he was sure there was nothing to pick up, the grievor shrugged and said that everyone was on vacation. He then walked away from Mr. Joly while Mr. Joly was talking to him.

[22] On July 9, 2014, the grievor was to carry out the afternoon mail run. The times

of the mail runs are posted on the respondent's intranet so that clients know when to expect mail deliveries. He left to do the 13:00 mail run, which should have taken him between 30 and 40 minutes. When he was not back by 14:00, Mr. Joly went looking for him. He returned at 14:10, and Mr. Joly asked him whether he had done two runs at the same time. He responded with a big smile and said that he would never do that. He knew that Mr. Joly knew that he had not come back between rounds as he should have. On that run, courier mail requiring signatures was yet to be delivered, and clients were waiting for it.

[23] The grievor arrived just in time to do the next afternoon run. When he was not back at 15:00, Mr. Joly asked Jim O'Connell, who worked with the grievor in the mail distribution centre at the material time, to watch for his return. He never did return that afternoon. Mr. Joly went to the grievor's office looking for him and found his jacket and steel-toed shoes there. Apparently, the grievor had left at 14:20 for a cigarette break and never returned, which meant that there had been no service to the Jean Talon building. The grievor was expected to stay in the distribution centre when he was not out doing mail runs. If he had to leave for some reason, he was required to obtain his supervisor's approval, so that he could be replaced.

[24] The next day, July 10, 2014, the grievor's tracking sheet was completely empty after the morning run. Mr. Joly took it from the grievor's cart at 11:30 and advised him that he was not to do the afternoon run. That same morning, Mr. Proulx had received an email from a client asking when they could expect mail service as apparently there had been no mail pick up since July 7, 2014 (Exhibit 1, tab 14). As a result of these failures, the grievor was given a three-day suspension without pay on July 22, 2014 ("the suspension letter"; Exhibit 1, tab 16).

[25] Again, in August 2014, Mr. Joly was required to verify the grievor's counts because of the employer's concerns that he had not been conducting his rounds as required. On August 21, 2014, he did the round with Mr. McClements. On the next day, Mr. O'Connell and Mr. McClements verified the rounds. For both dates, the grievor's tracking sheets did not properly reflect the pieces of mail he had moved (see Exhibit 1, tabs 19, 20, 21, and 22). He never indicated to Mr. Joly that he did not know how to do the runs or how to fill in the tracking sheets or that he had any medical condition preventing him from doing them properly. The grievor did experience a workplace injury that had required him to be off work for a week; there were no restrictions on

his return. No medical reason prevented him from performing the mail runs as directed. The only restriction was in fall 2014 when it was indicated that he could not lift heavy boxes.

[26] The first six months of the relationship between the grievor and Mr. Joly were very good. It changed when Mr. Joly had to talk to the grievor about his absences. The quality of the relationship is reflected in an email the grievor sent to Larry McNabb, the assistant director responsible for mail distribution (Exhibit 1, tab 18). It was not copied to Mr. Joly, although it was sent to the local president of the grievor's union and his immediate supervisor. In it, he accused Mr. Joly of setting him up and of making him appear uncooperative.

[27] The grievor was provided direction via emails, such as changes to the delivery location for incoming mail. Rather than read them, he deleted them, which was confirmed by the use of a read receipt that sent a notice to Mr. Joly indicating how the different recipients dealt with the email when it was received. The grievor was told to stop this but obviously was not interested in following this direction as he also deleted that email without reading it. Even the electronic copy of the terms and conditions letter was deleted without it being read.

[28] Despite a good start at the mail distribution centre, the grievor's relationship with others there began to deteriorate. He isolated himself from them. He judged his coworkers negatively for doing things according to the respondent's directions. He knew that in Mr. Joly's opinion, things were not going well for him at work. The grievor's performance review for the year before he moved to the mail distribution centre indicated that he was reliable and punctual. Mr. Joly signed it since when performance reviews were being done, the grievor reported to him. However, it reflected the assessment of the grievor's previous manager. Mr. Joly did not remark on that manager's comments.

[29] By the time the next performance review was completed on March 31, 2014, the negative change to the grievor's attitude had been noted. His attendance issues and his disrespect for work hours were also noted. He had been verbally advised that his behaviour was unacceptable. Mr. Joly had met with him on numerous occasions, both informally and formally. On November 29 and again on December 13, 2014 the grievor was sent an email outlining the respondent's concerns with his attendance (Exhibit 1,



tabs 2 and 3). Nothing changed; he refused to talk to Mr. Joly. Not every problem was noted in the performance review. As issues with him rose, Mr. Joly met with him to discuss them.

#### The Evidence of Jim O'Connell and Peter McClements

[30] Mr. O'Connell worked with the grievor. Mr. Joly asked him to verify the grievor's whereabouts on July 9, 2014, and to watch for his return to the mailroom. Between 14:25 and 15:28, the grievor was out of the mailroom and he did not return, which Mr. O'Connell reported to Mr. Joly the next day.

[31] Mr. McClements was at all material times the grievor's supervisor in the mail distribution centre. He reported directly to Mr. Joly. As the supervisor, Mr. McClements was responsible for ensuring that mail runs were done as scheduled and that the mail was being delivered on time. If new mail delivery locations were implemented, he was responsible for ensuring that they were added to the delivery schedule.

[32] On August 21 and again on August 22, 2014, Mr. McClements did quality control rounds in advance of the grievor's mail runs. On August 21, he was accompanied by Mr. Joly, and on August 22, he was accompanied by Mr. O'Connell. The rounds were done 15 minutes before the scheduled mail runs completed by the grievor. At each stop on the route, the number of outgoing pieces of mail was noted. Mr. McClements was aware of the complaints concerning the mail delivery on the grievor's mail runs that had been received from clients on July 9, 2014 (Exhibit 1, tab 9), and July 10, 2014 (Exhibit 1, tab 14). He also received the email from the grievor, alleging that he was being set up by Mr. Joly (Exhibit 1, tab 19).

[33] By the fall of 2014, the grievor was performing address searches and updating incomplete addresses in Outlook because he was on modified duties. On November 6, 2014, Mr. McClements emailed (Exhibit 1, tab 25) all mail distribution centre staff, advising them of a change to incoming mail. It would require address searches, due to quality control concerns. The grievor was included on this email.

[34] On November 7, 2014, Mr. McClements emailed the grievor, outlining deficiencies in his performance that had been noted (Exhibit 1, tab 28). Mr. McClements also met with the grievor to discuss his output and the quality of the work he had completed. The work was often incomplete, and his level of production was well below

acceptable standards, as indicated in the prepared spreadsheet (Exhibit 1, tab 27). To ensure that the grievor was aware of the expectations, Mr. McClements had arranged training for him on how to conduct address searches before November 2, 2014. During this training, it was discovered he had not been doing the searches properly, which was addressed in the training.

[35] The quota developed by the respondent, which the grievor was not meeting, was based on the grievor's assurance that he could complete two address searches in one minute. Based on that, the respondent set the quota at 1.5 per minute. The spreadsheet at (Exhibit 1, tab 27), clearly indicates that the grievor was well below the quota. The chart indicated the number of address checks he did on days on which he was on modified duties. The quality of those completed was also examined, and the number of substandard searches was noted.

[36] Mr. McClements met with the grievor again about this matter on December 15, 2014. The purpose was to again explain to the grievor how to perform address searches properly and to address the respondent's concerns over the quality and number of searches being done. The grievor did not provide any reason for his failings; he merely smiled. He did not say that he did not understand the process or provide a reason that he could not perform the task as assigned.

[37] The meeting was followed up by another email on December 16, 2014, which cited the area of concern as being the grievor's production and the poor quality of the work he did perform. He responded that same day, indicating that the materials he was handling did not constitute production as he was not creating anything and that Mr. McClements and Mr. Proulx were making false statements and conducting themselves in a highly prejudicial manner (see Exhibit 1, tab 28).

#### Larry McNabb's Evidence

[38] Mr. McNabb testified that the grievor was one of the employees in his chain of command. Mr. McNabb reported to Rock Lemay. In 2014, Mr. McNabb was responsible for the data centre, the mail centre, and the data capture centre. Approximately 125 employees worked in these areas. Mr. McNabb imposed the three-day suspension without pay on July 22, 2014. He decided to do that because the grievor failed to or refused to fill in the mail tracking sheets as required by management, failed to collect mail as required, and had disappeared from the workplace on July 9, 2014, contrary to

the terms and conditions letter given to him on April 16, 2014 (Exhibit 1, tab 5). Not picking up mail as scheduled has a direct impact on the respondent's ability to collect and compile information from outside clients, which is key to its business. It also affected its ability to communicate with its employees.

[39] Mr. McNabb, accompanied by Mr. Proulx, met with the grievor on July 10, 2014, in a fact-finding meeting to discuss the respondent's concerns. At the meeting, the grievor took no responsibility for his actions.

[40] The terms and conditions letter, referenced in the suspension letter (Exhibit 1, tab 16), explicitly set out the behaviour the respondent expected the grievor to demonstrate. Mr. McNabb was concerned that the grievor did not demonstrate them. He violated the provision about respecting his hours of work by disappearing at the end of the day and the provision about seeking permission to leave early for the day. The respondent expects to know where an employee is while on duty, and no one knew where the grievor was in the afternoon of July 9. He had previously received a written reprimand for insubordination (Exhibit 1, tab 6).

[41] Mr. McNabb received the grievor's email on August 21, 2014 (Exhibit 1, tab 18). In it, he accused Mr. Joly of trying to set him up. It came about after a training session in the mailroom on new X-ray equipment, which was to be installed to scan mail arriving at the building. The general tone of the email was insubordinate. It caused Mr. McNabb considerable concern and caused him to question Mr. Joly's actions. The grievor provided no information to support his comments, which Mr. McNabb determined were frivolous and vexatious. In Mr. McNabb's opinion, the grievor's comments, expressed in the manner they were, constituted a breach of the respondent's harassment prevention policy and the *Values and Ethics Code for the Public Sector*.

[42] A fact-finding meeting was held on August 28, 2014, into these concerns. The result was that the grievor was given a five-day suspension without pay, which he did not grieve. On October 14, 2014, he was again suspended without pay, this time for 10 days. The allegations of wrongdoing were again related to his refusal to comply with the terms and conditions letter (see Exhibit 1, tab 24). He did not grieve that suspension either. A second terms and conditions letter had been delivered to the grievor on July 30, 2014, which he did sign (Exhibit 1, tab 17).

[43] The grievor was again suspended, this time for 20 days without pay, on November 12, 2014, for failing to perform his assigned duties and for not returning from his break when scheduled. He indicated that he had assumed that the mail inserts were completed when he returned from his break, so he then carried out address searches. However, the mail inserts had not been completed, and the grievor made no attempt to ascertain whether there were more to do. He did not complete the task assigned to him and did not return to his workstation after the break as required, in violation of his terms and conditions letter, which clearly set out management's expectations.

[44] After that suspension, the grievor returned to work on December 11, 2014. He was again assigned to address searches as the respondent was still waiting for information about his physical limitations. It still had the same concerns as when Mr. McClements met with the grievor in November 2014, which were the grievor's level of production and accuracy. Mr. McNabb sent a copy of Mr. McClements' email to the grievor as a summary of their December 15, 2014, meeting. The grievor responded with a rude and unprofessional email (Exhibit 1, tab 28). Mr. McNabb then set a fact-finding meeting for December 17 with his director, Mr. Lemay, and the grievor. The purpose was to discuss the grievor's failure to complete work as assigned and the unprofessional tone in his communications with management. The electronic invitation was sent out on December 16, 2014, at 14:40.

[45] At approximately 19:30 that evening, Mr. McNabb was getting ready to go to a basketball game when he received a call at home from a Bell payphone. No caller was identified. His wife answered and was asked if "StatsCan Larry" was there. When Mr. McNabb answered the phone, the person on the other end of the line said "Gotcha", and hung up. Mr. McNabb recognized the voice as the grievor's as he had heard it many times at their numerous meetings. Mr. McNabb was furious since he went to great lengths to protect his safety and that of his family. Following the call, he obtained a picture of the grievor and showed it to his family so that they could be on the watch for him around their home.

[46] The night he received the phone call, Mr. McNabb emailed his director screenshots of the phone with the phone's listed owner and the phone number. This was not the first time Mr. McNabb had received a mysterious call at home. On December 15, 2014, he received a phone call from a Government of Canada phone

number, which went to voicemail. The caller left no message. When Mr. McNabb did a search of the federal government employee directory service (GEDS), he discovered that that number was assigned to the grievor as appears from the screenshot and search results that were entered into evidence (Exhibits 14 and 15).

[47] After December 17, 2014, Mr. McNabb could no longer be objective in his dealings with the grievor, so he removed himself from the discipline process. He reported the phone calls to the Ottawa Police Service. Mr. Lemay, the director responsible for, among other things, the mail distribution centre where the grievor worked, took over the disciplinary process from Mr. McNabb. The fact-finding meeting scheduled for December 17, 2014, never occurred. The grievor called in sick that morning. Instead, Mr. Lemay investigated the phone calls reported by Mr. McNabb (Exhibit 1, tab 31).

#### Mr. Lemay's Evidence

[48] Mr. Lemay tried to contact the grievor by phone starting at approximately 10:30 on December 17, 2014. He left several voicemails for the grievor throughout the course of the day. He told the grievor that the fact-finding meeting would take place on December 18, 2014, and that there was the option of scheduling it at 10:30, 13:00, or 15:00. He also asked the grievor to provide him with a medical certificate for his absence that day and to call him back with the information he had requested.

[49] Once he began investigating the phone calls reported by Mr. McNabb, Mr. Lemay determined that it was best if the grievor did not come to work on December 18, 2014, as planned. Mr. Lemay felt that the phone call issue was severe enough that they needed to meet in a controlled environment. Consequently, he notified the grievor by phone that he was to meet with him at the security office in the Jean Talon building. Mr. Lemay left two voicemails for the grievor to this effect and tried to leave a third, but the voicemail inbox was full. The grievor never responded to the calls and never emailed Mr. Lemay. The fact-finding meeting did not occur on December 18, 2014.

[50] After he completed his investigations, and in the absence of any contact with the grievor on December 17, 2014, Mr. Lemay determined that discipline was warranted. Given the grievor's past disciplinary records, the consistency of his past infractions, and the totality of the events that occurred between December 16 and 18, 2014, it was clear to Mr. Lemay that the grievor should be terminated for unacceptable

behaviour, failing to complete work as required, and violating the respondent's code of conduct and the code of values and ethics for public servants.

[51] Mr. Lemay determined that the grievor had failed to complete address searches as required on December 11 and 15, 2014; that he had sent inappropriate emails that were disrespectful, sarcastic, and unprofessional; and that he had made phone calls to Mr. McNabb's home with the intention of intimidating him, which the grievor never denied making.

[52] In the course of his investigation, Mr. Lemay spoke to his labour relations advisor and Mr. McNabb. He looked at the security aspect of the calls. He consulted GEDS and confirmed that the phone used to call Mr. McNabb from the mail distribution centre was assigned to the grievor. The totality of the work production issues, unprofessional emails, and disturbing phone calls were the basis upon which the grievor was terminated.

#### The Grievor's Evidence

[53] The grievor spent the last 8 years of his 18-year public service career with the respondent. As a CR-03 distribution clerk in the mail distribution centre, he took business return mail, documented it, and distributed it as required. He was trained on processing certified and registered mail, performing address searches, and operating a lift truck to deliver boxes. He described his job as "menial and demeaning".

[54] He was aware of the respondent's concerns with his disregard of working hours. In April 2013, Mr. Joly mentioned to him the concern with his use of sick leave on Mondays. He told Mr. Joly that he had a life and that things happened on weekends, so it was reasonable for Mr. Joly to expect him to be off on Mondays. Mr. Joly did not like the way the grievor challenged him when he raised concerns. The sick leave issue was raised by the employer again in November 2013.

[55] The hours-of-work issue came up at a time when there was considerable construction on the grievor's bus route. When he was told that his coworkers did not like him being late, he responded that "they should not worry about it because they leave early." Had the grievor taken an earlier bus, he would have been at work 25 minutes early, so he saw no issue with taking a bus that got him there late. When he discussed this with Mr. Joly, Mr. Joly did not understand his reasoning. Suddenly,

Mr. Joly was no longer concerned about the Monday issue; he started “badgering” the grievor about being late, which was “unreasonable and hypocritical”, in the grievor’s opinion. He made no efforts to adjust his attendance to meet the respondent’s concerns because in his opinion, they were not founded.

[56] The grievor did recall receiving the terms and conditions letter. He remembered meeting with Mr. Joly, who read the letter to him, using his finger to follow along in the document. The grievor said it was clear to him that Mr. Joly “couldn’t read English”, which indicated to the grievor that Mr. Joly was not qualified for his job. Mr. Joly told the grievor to sign, acknowledging receipt of the letter, and the grievor told him, “No way”, and then walked out of the meeting. He took umbrage with Mr. Joly saying that they had discussed the concerns identified in the terms and conditions letter. They had not done so several times but a few times. According to the grievor, the letter was an insult.

[57] The grievor was familiar with the tracking sheet that Mr. Joly had introduced. He was aware that he was expected to fill it out when completing a mail run and was aware of how Mr. Joly expected to have it filled out. He had no problem with the concept but disagreed with how Mr. Joly expected it to be completed. He filled it out as he thought appropriate. He stated that Mr. Joly “lied” when he testified that the grievor did not fill in the tracking sheet properly. If the grievor picked up mail, he put a check mark next to the location from which the mail was picked up. If no mail was picked up, he left the box blank, as nothing was required. He stated: “Anyone with an IQ would know that if the box was blank it meant that no mail had been picked up.” At this point in his testimony, the Board cautioned the grievor that personal attacks of this nature were not going to be accepted and that he should exercise restraint in how he conveyed his evidence.

[58] The grievor attributed discrepancies between his records and those of the quality control checks to someone “walking around behind [him] screwing with the mail.” At no time did he leave mail behind in an outbox. If he was unsure where a box was or if it appeared that a box had been moved, he did not ask anyone where it was. In his words, Messrs. Joly and McClements were “‘mistaken’ since [he] was not allowed to get personal” when they completed their tracking sheets. The grievor opined that he was not Mr. Joly’s favourite person because he had challenged the respondent’s introduction of X-ray equipment into the mail distribution centre, from which all this

negative attention resulted.

[59] From his first day in the mail distribution centre, the grievor spent his downtime on the Internet in the library. He chose to leave the terminal in the mail distribution centre for the drivers to use. He did not ask permission to go to the library, but his supervisor knew where he was. He was not playing games on the Internet, as his colleagues and Mr. Joly did. He read newspapers and gained knowledge on current issues caused by, in his words, “this country’s terrible government”. He was educating and bettering himself. If he did not complete an article he was reading when it was time for the next mail run, he just stayed until he finished. When he was asked to change his hours, to help a pregnant colleague deliver mail at 15:30, he agreed. If there no mail was to be delivered, he would leave work, even though his hours were from 07:45 to 15:45.

[60] When the grievor started to work at the mail distribution centre, an X-ray machine was in use. Mr. Joly told him that he need not go near it because he was not trained. Eighteen months later, a new machine was installed, and he was to be trained on it, which he challenged. The federal government had told corporations, such as the producer of the new X-ray machine, to police themselves. There were no longer government inspectors for airlines or railways. When told he had to be trained on the new machine, the grievor asked Mr. Joly if it was safe. He was told that the equipment met all safety requirements. Mr. Proulx gave him a Health Canada paper stating that the manufacturer was responsible for ensuring that the machine ran according to Health Canada guidelines. Since there was no third-party independent review to ensure that the machine met safety standards, the grievor presumed it did not.

[61] While the training was being done on the new X-ray machine, the grievor stood 10 feet away from it. Mr. Joly asked if he was participating in the training. The grievor indicated that he was but that he was staying away from the machine. He also indicated that he would not use it because it was not in his job description. Mr. Joly asked him if he was refusing to perform X-ray work. The grievor responded in the negative, but he would not go near the machine until it was proved to him that it was safe and it was included in his job description. Mr. Joly then told Mr. McNabb that the grievor was refusing to work.

[62] Following this, the grievor emailed Mr. McNabb, copying Mr. McClements. In this



email, the grievor accused Mr. Joly of “setting him up”. Mr. McNabb then violated the grievor’s privacy by forwarding the email to other people. It was used to suspend the grievor. There was no basis for the rumour that he had refused to work. In his words, Mr. Joly had “lied”.

[63] The grievor signed the July 30, 2014, terms and conditions letter, which reissued the earlier terms and conditions letter (Exhibit 1, tab 17). He signed it because it came with the promise from Mr. McNabb that he would be freed from his toxic work environment. The situation was to be reviewed on November 10, 2014, but Mr. McNabb cancelled that meeting without notice and without rescheduling it. The grievor stated that he might be “crazy but [he] ain’t stupid”. That letter came with a very definite promise of relief from the mail distribution centre.

[64] Mr. McNabb, referred to as “Larry” by the grievor, was not, in his words, as “kosher” as he said he was. He had no intention of keeping his promise. The grievor testified that he would not “dignify” Mr. McNabb’s evidence that he made no promises with a comment, because he had to be polite. The grievor did not care what Mr. McNabb told the Board or what it thought. He would not have signed the July 30, 2014, letter unless a promise had been made to him. In his words, Mr. McNabb was also “a liar”.

[65] The terms and conditions letter had little impact on the work the grievor did in July 2014, although he did feel that he was under a microscope. He did not have the freedom others did to come and go as they pleased. He was no longer able to go to the library to educate himself. His coworkers could go to a bar at lunch and come back, in his words, “half corked”, but he was required to stay behind and carry out address checks. It was insulting and degrading; it prevented him from getting the skills and education from the library he required for job competitions. In his words, he was “stuck in a menial and demeaning job”, with no chance of advancement or lateral movement.

[66] The grievor testified that the 10-day suspension in October 2014 was a “farce”. He had not been disrespectful or insubordinate; nor had he again failed to comply with the terms and conditions letter. He was absent from work on September 29, 2014, but was unable to call in to report his absence since he had taken painkillers, which had put him to sleep. He visited a doctor at 09:45. He took more pain medication and a

muscle relaxant before going there. He reported to the mail distribution customer service desk that the doctor had put him off work for a few days. He left a voicemail with Mr. Joly, which the grievor stated Mr. Joly deliberately deleted so that he could run to Mr. McNabb “crying” again. The grievor did not speak to Mr. McNabb about the allegations because in his words, “it was a waste of time.” After that point, the grievor lost all respect for Mr. McNabb.

[67] When he was suspended for 20 days without pay, the grievor intended to grieve it but could not because he could not find a union representative to help him. He missed the deadline for filing the grievance by 10 days. He believes that the respondent found the draft of the grievance while cleaning out his desk after he was terminated, but that the respondent threw it out rather than process it, as he claims should have been done. The reason for the 20-day suspension was that he was asked to go into the production centre to stuff envelopes. He spent 1½ hours doing it after lunch until 14:15, when the table was empty. No one else was there, so he went to check addresses as he had been directed to earlier.

[68] A couple of days later, he was summoned to a fact-finding meeting with Mr. Proulx because he had allegedly failed to return from his break on time, had not done the job assigned to him, and had been absent from the workplace. The grievor knew that all that was lies. Mr. McNabb claimed that he spoke to the other staff members about this, but he did not; Mr. Proulx did.

[69] The grievor was never provided with a copy of the spreadsheet indicating that he failed to meet production standards when checking addresses. It was a fabrication and should be discounted because it listed times up to 15:30. Messrs. Joly and McClements were never at work at 15:30, so how would they know what he had done? Their concerns were irrelevant and trivial.

[70] Mr. Joly carried out quality control checks to embarrass and demean the grievor. There was no tone in his email communication; the respondent read it in. The grievor claimed to have the right to freedom of expression, which he exercised regardless of the respondent’s opinion. The respondent did not even know what production was; it thought he worked in a production area. “Production” is creating something from nothing. He was processing junk mail, which he got to when he got around to it; he was not creating something from nothing. It was using the wrong term, to accuse him of

something prejudicial.

[71] At this point, the Board again had to warn the grievor that his language was unacceptable and disrespectful to those present, including the respondent, members of the gallery, his representative, and the Board. He was cautioned that if he did not refrain from this type of conduct, the hearing would be adjourned. He showed no remorse for his conduct and responded that that was “what he thought and [he] was going to say it”. He figured that in a roundabout way, the respondent was trying to make him look bad.

[72] When the grievor was terminated, it surprised him. There was no reason for it other than the questionable phone calls, which could not be linked to him. He never heard about the fact-finding meeting on December 17. He was off sick and had turned off his phone. When he turned it on again, there were two messages from Mr. Lemay, not several, as he had said, so for the grievor, Mr. Lemay was also a “liar”. He never phoned Mr. Lemay back because he did not get the message until after business hours, so there was no point calling him. The grievor did not know what work he had failed to complete. He had not made the calls to Mr. McNabb and did not know who had.

[73] The grievor’s entire time in the mail distribution centre was turbulent. While it started out well, beginning in April 2013, things began to deteriorate when Mr. Joly pulled out 18 months of time sheets to show the grievor the sick leave pattern, which was apparently unacceptable, even though it had been approved when he had worked elsewhere. Mr. Joly was out of line criticizing the grievor’s leave usage, but the grievor let it go. By June 2013, he came to realize that in his words, his coworkers were “crass and disrespectful” and made inappropriate comments about women. The grievor claimed that he was berated by a German coworker for wearing Greek T shirts at work and felt harassed by it. He had no respect for his coworkers as they were nowhere near as intelligent as he was, in his own assessment. They were satisfied with their menial jobs and did not try to better themselves.

[74] In July 2013, the grievor requested Christmas off because he was Greek, and Christmas is very important to Greeks. Mr. Joly asked him to withdraw his request as it was too early, and vacation time had to be distributed equally across all the employees. In September, he tried again. This time, Mr. Proulx asked him to retract his requests.

[75] In November 2013, the grievor met with Messrs. McClements, Joly, and Proulx to

discuss the “Opportunity Knocks” program. The grievor felt that Mr. Joly’s interpretation of the program was wrong, so he interrupted him and told him so. Mr. McClements warned him that management did not like people with ambition, so he should be careful. Regardless, the grievor was left with the impression that he would be sent to the transportation section for a six-week assignment.

[76] In December 2013, the grievor was called into Mr. Proulx’s office with Mr. Joly. He was told that he had to go to transportation even if he did not want to go. The next day, Mr. Proulx called the grievor into the office again. He wanted to know why the grievor would not make eye contact with Mr. Joly. The grievor responded by asking why he should. He mentioned that he was unhappy with how the Christmas leave issue had been dealt with and asked for a transfer because he was sitting with a bunch of, in his words, “crass uneducated bastards”. He told Mr. Proulx that Mr. Joly would stand behind women and ogle their breasts. He wanted out because he was not allowed to learn anything, there was no opportunity for advancement, and the mail distribution centre was a dead end. It was not a good environment for him. The assignment never materialized.

[77] One of the conditions in the terms and conditions letter was that on his arrival every morning, the grievor had to email Mr. Joly. The grievor felt threatened when he received an email from Mr. Proulx on October 6, 2014, reminding him of the requirements of the terms and conditions letter (Exhibit 16). The grievor felt that Mr. Proulx was being unreasonable, so he retrieved the security log to show that he had not been that late. He replied to Mr. Proulx’s email, expressed his disagreement with Mr. Proulx’s version of the facts, and threatened to file a harassment complaint against him. He called him hypocritical and questioned the motivation behind his actions.

[78] The grievor stated that he has no remorse for his actions. He has done nothing wrong. He was wronged, and he demanded justice. He was sure that Mr. Joly had sabotaged him. He would not trust any quality control checks done by in his words Mr. Joly and his “two best buddies who were trying to get [him].” Someone in the organization was going behind the grievor putting mail in the outboxes so that Mr. Joly had reason to discipline him; maybe it was even Mr. Joly himself. When Mr. Joly gave the grievor a hard time over how he was filling in the mail count sheets, the grievor filled in the boxes with whatever occurred to him. He thought that if he put check marks in the boxes, Mr. Joly would leave him alone.

[79] The grievor had concerns about wearing his steel-toed boots when he was on break or when he went to the library. He would take them off each time he left the work area. He believed that wearing the work boots on the stairs was a safety hazard. Just because Mr. Joly saw his boots in the grievor's office did not mean that he had gone home for the day.

[80] Mr. McNabb was no better. In the grievor's words, he was also a "liar". He lied to the grievor about reviewing the work arrangement and the terms and conditions letter in November 2014. He shared the grievor's private thoughts in an attempt to make it look like he was refusing to do work. Neither Mr. Joly nor Mr. McNabb is credible.

[81] The grievor was unable to identify the respondent's code of conduct. He might have been given a copy of it when he started work at Statistics Canada, but he could not recall. He did not believe that he had a duty to treat his coworkers with respect. He stated that he respected his coworkers "only if they treated [him] with respect". The grievor also did not recognize the *Values and Ethics Code for the Public Sector*. He stated that he "[did not] need a code of values and ethics." He lived by his own code and conducted himself in an honourable manner. He did recall Mr. McNabb mentioning it to him when his term was renewed. The grievor stated that Mr. Joly did not follow the code, so why should he? It was hypocritical of Mr. Joly to remind the grievor of an employee's obligation to conduct himself or herself consistent with the code of conduct and the values and ethics code when he did not follow either.

[82] The grievor did not heed the many warnings that the respondent had given him (Exhibit 1, tab 28) to watch the tone of his emails. He testified that he treated his managers as they treated him. There was nothing wrong with the comments he made in the email correspondence; they were just an exercise of freedom of speech. Management knew that the grievor had asked to be moved elsewhere, but it chose to ignore his requests, to keep him there and to continue to badger him.

[83] At the close of cross-examination, the grievor was very agitated and angry. He was visibly upset with the conduct of the cross-examination and his counsel's conduct of the case. He was cautioned to control his anger and to address the Board and counsel with courtesy and respect, using only appropriate language. Rather than continue further that afternoon, the hearing was adjourned until the next day for redirect examination. At the opening of the hearing the next day, the grievor's

representative advised the Board that she could no longer represent him effectively and withdrew as his representative. She asked for a further adjournment, which was granted.

[84] Shortly after this, the Public Service Alliance of Canada, the bargaining agent, advised the Board that it was withdrawing representation to the grievor. The Board then gave him the option of securing counsel or proceeding on his own. He chose to represent himself. He was instructed on proper hearing room decorum before the start of the next hearing day and had to be reminded several times throughout that day of what was expected of him, with little effect.

[85] In his words, his supervisor and his manager were “caustic”. His relationship with management was not good because they perceived him as a know-it-all. The mailroom environment was not nurturing, and the grievor had asked to leave it at least four times. The respondent did not take advantage of his skills, which would have greatly benefited the mail distribution system. Mr. Joly and other members of management were always on the grievor’s case and did whatever was required to get rid of him, including lying. Management disliked him because he would challenge its decisions; it felt threatened by him.

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

#### **A. For the respondent**

[86] The Board must decide two issues: (1) was there misconduct, and if so, (2) was the discipline imposed reasonable. The grievor had the onus of demonstrating that the three- and five-day suspensions without pay and his termination were unreasonable in the circumstances. He failed. The respondent has shown that the pith and substance of the reasons for the disciplinary action taken against the grievor was his failure to perform the duties assigned to him by the respondent. He failed to deliver the mail as directed, failed to complete the required paperwork, did not perform other duties such as the address searches as required, and surfed the Internet for personal reasons rather than perform his duties. He also failed to abide by the code of conduct, the code of values and ethics, and the directions that management provided to him.

[87] Surfing the Internet rather than performing his duties was raised as a defence to the allegations of inappropriate behaviour. Inappropriate behaviour cannot be used to

excuse other inappropriate behaviour. The undisputed evidence is that the grievor did not pick up the mail as directed by the respondent, that he refused to fill out the tracking sheets as directed, and that he left his workplace without authorization on July 9, 2014. His explanations for his failings are improbable in the face of the respondent's undisputed evidence. His evidence lacks credibility.

[88] The test of a witness's credibility is laid out in *Faryna v. Chorney*, [1952] 2 D.L.R. 353, and *F.H. v. McDougall*, 2008 SCC 53. The real test of the truth a witness's story tells must be its harmony with the preponderance of the probabilities that a practical and informed person would consider reasonable. Evidence must always be sufficiently clear, cogent, and compelling to satisfy the balance of probabilities. The grievor's evidence was that he could not even identify the mail tracking sheets implemented by the respondent. The respondent's witnesses provided clear and cogent evidence of what was expected, what they did, and how they did it. The respondent has met its burden of proving misconduct in all three instances of disciplinary action.

[89] Failing to deliver and pick up mail was determined to be behaviour warranting discipline (see *Canada Post Corp. v. Canadian Union of Postal Workers*, [2003] C.L.A.D. No. 233 (QL)), as was failing to do the necessary paperwork (see *Saint-Jacques v. Treasury Board (Supreme Court of Canada)*, PSSRB File No. 166-02-20619 (19910527), [1991] C.P.S.S.R.B. No. 116 (QL)), performing no work during working hours (see *Mandel v. Treasury Board (Post Office Department)*, PSSRB File No. 166-02-12032 (19820811), [1982] C.P.S.S.R.B. No. 136 (QL)), and surfing the Internet for personal reasons during working hours (see *Andrews v. Deputy Head (Department of Citizenship and Immigration)*, 2011 PSLRB 100).

[90] The undisputed evidence clearly established that on the morning of July 8, 2014, the grievor failed to pick up mail on numerous floors at the Jean Talon building (Exhibit 1, tab 10). On the morning of July 9, 2014, he also failed to pick up mail there (Exhibit 1, tab 12). On July 8, 9, and 10, 2014, he failed to complete the respondent's required mail run tracking sheets in accordance with its instructions. The evidence is also undisputed that the grievor left the workplace without authorization on July 9, 2014. For those offences, the respondent imposed a three-day suspension without pay, having previously given the grievor verbal and written reprimands for similar infractions.

[91] In *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119, and *Ranu v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 89, the former Board indicated that determining an appropriate disciplinary measure is an art and not a science. The adjudicator should refrain from tinkering with the disciplinary measure unless it is clearly unreasonable or wrong. Moreover, it is well established that it is not a requirement that discipline progress by preordained steps (see *King v. Deputy Head (Canada Border Services Agency)*, 2010 PSLRB 125). Furthermore, this matter is analogous to *Laurin v. Treasury Board (National Defence)*, PSSRB File No. 166-02-15100 (19860610), [1986] C.P.S.S.R.B. No. 145 (QL), in which a three-day suspension without pay was upheld as discipline for the negligent performance of duties by a data-entry clerk.

[92] There was nothing unreasonable in the respondent progressing from a written reprimand to a three-day suspension without pay in these circumstances. In any event, a three-day suspension in these circumstances was still a reasonable disciplinary measure to any of these acts of misconduct, in and of themselves.

[93] The repeated nature of the grievor's refusal to perform his duties as required and to be present in the workplace unless otherwise authorized warranted further discipline in August 2014. His misconduct was aggravated by the additional misconduct of being critical in communications about his manager in an email sent on August 21, 2014, about Mr. Joly. Adjudicators have consistently held that a grievor is guilty of serious misconduct when he or she sends critical communications about a supervisor (*MacLean v. Treasury Board (Revenue Canada - Customs, Excise and Taxation)*, PSSRB File No. 166-02-27968 (19990107), [1999] C.P.S.S.R.B. No. 1 (QL), and *Fontaine-Ellis v. Treasury Board (Health Canada)*, PSSRB File No. 166-02-27804 (19980114), [1998] C.P.S.S.R.B. No. 3 (QL)).

[94] All that resulted in the five-day suspension without pay. In this case, the aggravating factors, which are the seriousness of not picking up the mail and of sending a critical email about management, the grievor's previous disciplinary record, the repeated nature of the offences, the impact of the email on Mr. Joly, and the grievor's refusal to accept responsibility for his misconduct warranted the five-day suspension. There were no mitigating factors that would warrant a lesser penalty. There was nothing unreasonable in the respondent's application of progressive discipline and the escalation of disciplinary action from a three-day to a five-day



suspension.

[95] Despite the 3- and 5-day suspensions, which were grieved, and the 10- and 20-day suspensions, which were not grieved, the grievor persisted in his misconduct. The evidence clearly demonstrated that on both December 11 and 15, 2014, he made an unacceptable number of errors in address searches and failed to meet his daily quota for them. In addition, he sent another critical email about his supervisor on December 16, 2014. Later that same day, after being summoned to a disciplinary meeting to be held the next day, the grievor made an anonymous harassing telephone call to his assistant director. As such, the respondent had sufficient grounds to discipline the grievor again.

[96] The grievor failed to demonstrate that the termination of his employment was clearly unreasonable or wrong. The aggravating factors, including his disciplinary record, reinforce the reasonableness of the respondent's decision to terminate his employment. Furthermore, he has not accepted full or any responsibility for his misconduct. In the absence of any mitigating factors, the penalty was justified. Each act of misconduct constitutes a culminating incident that would warrant termination in and of itself.

## **B. For the grievor**

### **1. Three-day suspension grievance**

[97] As to the allegation that the grievor had failed to pick up mail, at every level of the grievance process, he asked on which floor he had failed to pick up mail. The respondent never told him. There is no way to know for whom the remaining mail was intended. Mail is not time sensitive and can be dropped off anytime. If the grievor wrote down the number of items picked up and some were left behind, it was because someone put them there after he had gone by, to set him up.

### **2. Five-day suspension grievance**

[98] The respondent relied on the same reasons for imposing this discipline as it had done for the three-day suspension. Again, the grounds were generic and lacked specificity such as the floors missed, when they were missed, and the number of envelopes missed. The vexatious letter the grievor sent pertained to the introduction of a new X-ray machine in the workplace. Neither using that machine nor picking up

mail was included in the grievor's job description; only distributing mail was in it, so he was entitled to challenge Mr. Joly on this matter.

[99] When the grievor began working in the distribution centre, Mr. Joly showed him the X-ray machine and told him that he was not required to use it because he had not been trained to. Then, when the machine was replaced, he was expected to be trained on the new machine. During the training, he stood 10 feet away from the machine. He was asked if he was participating in the training, to which he responded, "Yes." Then, Mr. Joly began using language that indicated that the grievor had refused to do the work. The email sent to Mr. McNabb and Mr. McClements was about Mr. Joly saying that the grievor was not required to use the X-ray machine. Mr. Joly mentioned a work refusal; he was trying to set up the grievor.

[100] Mr. Joly also spread rumours that the grievor had deleted Mr. Joly's emails without reading them, which was another lie, since it is impossible to delete emails without first looking at them. The only way to delete an email is to highlight it and then delete it. Mr. Joly also testified that he recognized the grievor's writing, which was impossible, since their only communication had been via email.

[101] The grievor was given a terms and conditions letter alleging that he was always late. He was not always late; it happened only four times between August and November. That may be excessive to some people, like Mr. Joly, but to the grievor, it was not. Besides those, no dates were provided about when the grievor was late, and his coworkers were never disciplined for leaving early.

[102] The grievor's performance reviews indicated that he got along with everyone, yet the respondent stated that he got along with no one in the distribution centre. If that were the case, the respondent could have moved the grievor, but it did not.

[103] The grievor is entitled to express his opinions in writing or otherwise on any matter whatsoever. He has a right to freedom of speech. If the respondent considered the tone of the grievor's communications judgemental, it was the respondent's problem, not the grievor's. There is no evidence that the grievor made threatening phone calls. There is no police report. The fact that the number assigned to the grievor in GEDS was used to call Mr. McNabb is irrelevant since the grievor did not request that that number be assigned to him in the phone management system.

[104] The respondent noted in the grievance replies that the grievor showed no remorse for his actions. He could not show remorse if he did nothing wrong.

[105] The grievor was never told of the respondent's guidelines for discipline. He never received an oral reprimand. Mr. Joly asked him only if he had picked everything up. Mr. Joly could have told him where he missed mail to be picked up. It should be noted that the grievor's job description did not include picking up mail, only distributing it. Distributing mail requires handling incoming mail, not outgoing mail. The grievor did receive a written reprimand for not emailing Mr. Joly as required in the terms and conditions letter but not for failing to pick up mail. A follow up should have been done throughout the entire disciplinary process, per infraction. Otherwise, the respondent wasted its time writing the guidelines.

[106] The grievor was repeatedly suspended, and he was never told why. Disciplining him without explaining why was harassment and a violation of paragraph 3.1 of the respondent's harassment prevention policy.

[107] The grievor showed respect for the respondent until he was disrespected and forced to sign the terms and conditions letter and stay until 15:30, when his coworkers were allowed to leave earlier. His coworkers did not warrant his respect given that they were crass and ignorant and happy to be in their menial jobs, unlike the grievor. Even Mr. McClements left at 15:00, so why did the grievor have to stay until 15:30? He was also harassed when he was told that he had to meet the respondent's objectives. He spoke to managers about leaving the mail distribution centre but did not put the request in writing. He did not want to be labelled a problem.

[108] Mr. Joly was not vigilant with respect to the workplace climate. He has not demonstrated the leadership competencies required by the respondent. He also violated the code of ethics. He did not tell the grievor what he did wrong and never afforded the grievor the opportunity to correct the situation. Mr. Joly never mentioned to the respondent what he did wrong in the discipline process. Mr. Lemay should have asked Mr. Joly whether the grievor was afforded the benefit of the discharge of every respondent obligation under the discipline guidelines; he would have learned that Mr. Joly did not follow the rules. Mr. Joly did not build a safe, healthy, and respectful division. Neither did Mr. Lemay, since he allowed everything to go on. If anyone should have been disciplined, it is Mr. Joly and not the grievor.

[109] The reasons for Mr. Joly's terms and conditions letter were fabricated, and for that reason, the grievor would not sign it. Before signing the second terms and conditions letter, he asked Mr. McNabb how signing it would resolve things. The only reason he signed it was that Mr. McNabb told him that signing it would get him out of the mail distribution centre. Mr. McNabb lied too; he cancelled the November 10, 2014, review date and never rescheduled it. There was no career development or support for the grievor's career plans, which is one of the reasons he took it upon himself to become educated, via the Internet. Since he was trying to educate himself and prepare for a better career with the respondent, it was only proper that the grievor's attempts to educate himself be done on the respondent's time.

[110] The same lack of ethics that Mr. Joly demonstrated were demonstrated at all levels of management. Mr. McClements did not distribute tasks equally. Address checks were left to the grievor, while others were allowed to drink at lunchtime and leave early.

[111] Given all that, it is evident that the grievor was disciplined and terminated without cause.

[112] The quality of representation the grievor received from his union representative should not be held against him; he should not lose his case because his counsel was incompetent and would not follow his directions.

[113] With respect to the above summary of the grievor's arguments, the Board notes that the grievor was no longer represented by counsel at the argument phase. During the respondent's argument, the grievor was inattentive and did not listen to or take notes of the argument put forward by the respondent's counsel. The grievor chose not to introduce any case law to support his argument or to address the respondent's, even though he was given the opportunity to review it and prepare his comments, because he was not being paid by the hour, as other people there were. In addition, the grievor had to be reminded on at least two occasions in the course of his argument that he was to demonstrate respect for those in attendance, including the respondent and the Board.

### **C. Respondent's reply**

[114] In his submission, the grievor stressed only what management did not do for

him. He knows the respondent's case against him, yet he did not address it or show any remorse. Any procedural discrepancies in the respondent's disciplinary process were remedied by this *de novo* hearing (see *Patanguli v. Canada (Citizenship and Immigration)*, 2015 FCA 291). There is no evidence to support any of his allegations. There is no evidence of a collective agreement violation; in fact, the bargaining agent withdrew its support of these grievances, and without that, if they were collective agreement grievances, then this matter could not proceed.

[115] Contrary to the grievor's argument, the respondent is not obligated to follow each and every step in the disciplinary guidelines. Paragraph 4 of those guidelines clearly states that that flexibility exists, as does *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43.

[116] Every piece of mail the grievor collected was supposed to be noted on the tracking sheets. It is irrelevant why he was required to. The respondent has the right to determine duties and how they are to be performed. The grievor has no credibility; there is significant evidence to establish his infractions. Clearly, his statements were inaccurate.

#### **IV. Reasons**

[117] The evidence before me has established that disciplinary action in all three grievances before me was justified, if not for each allegation listed in the different letters of disciplinary action separately then for the cumulative effect of the grievor's unacceptable behaviour. He was insubordinate, disrespectful if not contemptuous of management and his coworkers, and clearly violated the code of ethics and standards of conduct for the workplace.

[118] In his testimony and argument, the grievor admitted to being disrespectful to management, in particular Mr. Joly. He refused to perform the duties assigned to him as demanded by his respondent. He also admitted to being late and absent from the workplace when he should have been there. Furthermore, by his demeanour towards those in attendance at the hearing, he clearly demonstrated the behaviour for which he was disciplined. The best evidence against the grievor was his testimony, in which he acknowledged the misconduct. The excuses he put forward lacked any credibility, given the entire defamatory nature of his testimony. He did not deny any of the allegations against him, with the exception of the phone call to Mr. McNabb, including

being disrespectful. In fact, it appears from his evidence that he was proud of his actions and that he felt justified in his behaviour.

[119] The code of conduct requires employees to treat all people with respect and dignity and to refrain from making personal remarks or comments about the organization, its staff, or the federal government (Exhibit 1, tab 33). Clearly, the evidence of both the respondent and the grievor has established that he has not met this obligation. The disrespect he demonstrated in writing and in his description of his coworkers is irrefutable. His behaviour also clearly violated expected behaviours identified in the *Values and Ethics Code for the Public Sector* (Exhibit 1, tab 34), in particular, treating every person with respect and fairness and working together in a spirit of openness, honesty, and transparency that encourages engagement, collaboration, and respectful communication. The grievor's refusal to perform the duties assigned to him as identified by the respondent, to attend work as expected, and to be present at work also violated the requirement that he act at all times with integrity and in a manner that would bear the closest public scrutiny.

[120] Also clearly established were that the grievor did not fill in the mail tracking sheets as directed, that he did not abide by the terms and conditions letter, that he was tardy for work, that he was absent from his workplace without permission, and that he left early if no mail had to be delivered.

[121] Contrary to the grievor's argument that the progressive disciplinary process must be applied step-by-step to each infraction, progressive discipline does not work that way (see *King*, at para. 200); nor do the respondent's guidelines for discipline require that discipline progress that way.

[122] The grievor's lack of remorse, clearly demonstrated throughout the process, including at the adjudication hearing, cannot be ignored. He repeatedly denied any wrongdoing and has shown no insight into his actions and into how they contributed to his circumstances. It was not the respondent that was unreasonable. For someone who considers himself smarter than most, he has shown a remarkable lack of self-awareness and insight. Despite his argument that his counsel was incompetent and that if he lost his case, it would be for that reason, his actions have resulted in him being where he is. The respondent demonstrated significant tolerance in its disciplinary treatment of the grievor. He was given numerous opportunities to redeem

the employment relationship. Instead, he set himself on a course doomed to destroy it, which is in fact what he did.

[123] I agree with the respondent's counsel that the disciplinary action taken, given the aggravating and mitigating factors, including the repetitive nature of the offences and the defiance demonstrated by the grievor throughout the process, was within the realm of reasonable discipline and should not be tinkered with. The respondent clearly demonstrated that the employment relationship has been destroyed and that termination was warranted in the circumstances. All the other discipline imposed, up to the termination, was not unreasonable or wrong in the circumstances.

[124] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[125] The grievances in files 566-02-11372, 566-02-11373 and 566-02-11374 are dismissed.

August 15, 2016.

**Margaret T.A. Shannon,  
a panel of the Public Service Labour  
Relations and Employment Board**