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Citation: 2017 PSLREB 27



Public Service Labour Relations Act

Before an adjudicator

BETWEEN

COLETTE MAJOR

Grievor

and

**DEPUTY HEAD
(Department of Fisheries and Oceans)**

Respondent

and

**TREASURY BOARD
(Department of Fisheries and Oceans)**

Employer

Indexed as

Major v. Deputy Head (Department of Fisheries and Oceans)

In the matter of individual grievances referred to adjudication

Before: Steven B. Katkin, adjudicator

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

For the Respondent and Employer: Kétia Calix, counsel

Heard at Gaspé, Quebec,
August 12 to 15, 2014, and March 24 and 25, 2015.
(PSLREB Translation)

I. Individual grievances referred to adjudication

[1] Collette Major (“the grievor”) held a fishery officer position (at the GT-04 group and level) with the Department of Fisheries and Oceans (“the department” or “the employer”) at the Grande-Rivière, Quebec, office. She was subject to the collective agreement that the Treasury Board and her bargaining agent, the Public Service Alliance of Canada (“the union”), entered into for the Technical Services Group and that expired on June 21, 2011 (“the collective agreement”).

[2] The grievor filed three grievances. One dealt with in this decision challenges a decision by the employer’s deputy head, and the other two challenge decisions by the employer. I will use the term “employer” to refer to both the deputy head and the employer.

[3] The first grievance (file 566-02-9107), filed on November 16, 2012, after the grievor was terminated for abandoning her position, allegedly under s. 12(1)(e) of the *Financial Administration Act* (R.S.C. 1985, c. F-11; *FAA*), was referred to adjudication on October 10, 2013, under two provisions of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*), s. 209(1)(c)(i) (unsatisfactory performance) and s. 209(1)(b), under which the grievor alleged that her termination was in fact a disguised disciplinary action. The second grievance (file 566-02-9108), filed on July 17, 2012, and referred to adjudication on October 10, 2013, under s. 209(1)(a) of the *PSLRA*, alleged that the employer required the grievor to relocate and raised the interpretation or application of the following articles of the collective agreement: 6 (Managerial Responsibilities), 36 (Notice of Transfer), and 59 (Employee Performance Review and Employee Files). The third grievance (file 566-02-9109), filed on February 6, 2013, and referred to adjudication on October 10, 2013, alleged that the employer refused to pay the grievor severance.

[4] At all material times, s. 12(1)(e) of the *FAA* read as follows:

12 (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,

...

(e) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other

than breaches of discipline or misconduct

[5] At all material times, the aforementioned provisions of the *PSLRA* read as follows:

209 (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct

[6] 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 to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 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 s. 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 that Act read immediately before that day.

II. Summary of the evidence

[7] The employer called six witnesses, Jean-Guy Morrison, field supervisor in the Grande-Rivière district; Stéphane Boulay, fishery officer and acting supervisor in the Grande-Rivière district; Marcel Picard, chief, enforcement operations, whose office was in Québec, and who was responsible for the Northern Quebec sector; Jean-François Sylvestre, conservation and protection area chief for the Gaspé-Lower St. Lawrence Area; John Chouinard, director, conservation and protection program for

the Quebec Region; and Richard Nadeau, director general, Quebec Region. The grievor testified on her own behalf.

[8] It is best to begin by describing the employer's perception of the situation at the Grande-Rivière office, as indicated in the following excerpt from the response to the grievor's three grievances at the third level of the grievance process, dated September 5, 2013:

[Translation]

...

As you know, since 2001, certain problems have been identified at the Grande-Rivière office with respect to the attitudes of certain fishery officers, including you. Industry complaints have also been received that question the ability of that office to carry out its mandate. Thus, all those factors contributed to a deterioration in the team members' relationships, including management, which resulted in a dysfunctional office and ultimately its inability to fulfil its mandate.

To find viable solutions to the problems identified above, since 2003, professionals led several group activities to properly identify the problems and to find solutions. And even a new supervisor was hired from outside, and a stricter performance management approach was adopted. Despite all those efforts, which were made over a long stretch of time, the result was failure.

Consequently, the decision to assign you and some of your other colleagues to other offices was the last possible solution, given the failure of the other attempts. You must have been aware of that option, as management has advised you since 2009 that if the office situation did not improve, staff movements would result.

...

A. For the employer

1. Jean-Guy Morrison

[9] Mr. Morrison began working as a field supervisor at the Grande-Rivière office on July 19, 2010. Before that, he was a police officer (10 years as a municipal officer and 20 years with the Royal Canadian Mounted Police as a major crimes investigator).

[10] In his testimony, Mr. Morrison stated that Mr. Chouinard had explained the

Grande-Rivière office situation to him; the problems had been ongoing since 2006. Mr. Chouinard asked him if he could improve the office's performance by 2 to 5%, as it was the largest office in Quebec, but it produced less than the other offices.

[11] Mr. Morrison stated that he wanted to create a climate of trust in Grande-Rivière, since he had noticed that there was none. He wanted the officers to trust the organization and to enjoy their work again.

[12] Mr. Morrison described his duties as follows: establishing work schedules, organizing fieldwork, ensuring that the employer's main missions were respected, granting leave, and appraising fishery officers' performances. He worked in cooperation with the supervisor, conservation and protection.

[13] Mr. Morrison described a fishery officer's duties as protecting resources, enforcing fishery rules and legislation, and ensuring that fishing licences are respected, for fishery sustainability. Fishery officers also need to ensure that fishers complete their logbooks of fishing grounds, hail-outs, and hail-ins.

[14] Mr. Morrison explained that once the peak fishing season ends, fishery officers' work is primarily administrative, including doing compliance reviews. It is a look back at the season and involves verifying databases for, among other things, at-sea hails and hail-outs by fishers, to determine if any laws were contravened.

[15] Mr. Morrison commented on the grievor's performance review for the period from January 1 to December 31, 2010 (Exhibit E-1, Tab 17). His comments applied only to the period from July to December 2010. He found that she had very good knowledge of the databases, that she had considerable experience (as was seen in her work, which was done well), and that nothing was left wanting. Mr. Morrison noted that she lacked initiative, in that she did not analyze submitted information. Instead, she forwarded it to other supervisors, including him. According to him, she could have done more in that area. In his opinion, the worst problem at the Grande-Rivière office was that the officers, including the grievor, seemed afraid to take initiative.

[16] Mr. Morrison met with the grievor on December 13, 2010, to discuss achieving her work objectives set out in the document titled "[translation] 2010 Work Objectives" that was attached to her performance review. That document indicated that she had achieved six of seven objectives and that she had partially achieved the seventh, on

initiative. Mr. Morrison's conclusion reads in part as follows: "[translation] As indicated above, Officer Major's performance is above average for the Grande-Rivière office, but she could still do better."

[17] One of the grievor's work objectives was to "[translation] demonstrate a spirit of understanding, collaboration, and positive communication in her interpersonal contacts, internally and externally". Mr. Morrison noted that she did not have any problems with external communications but that "[translation] ... however, there is internal discontent at the Grande-Rivière office". He noted that she was making efforts to remain positive. He stated that during their meeting, she told him that she was happy that someone from outside had been appointed field supervisor. She dreaded the return of the field supervisor who was on sick leave.

[18] Mr. Morrison and the grievor signed the performance review and the work objectives on January 10, 2011. Mr. Sylvestre made handwritten notes, which he signed, on both documents. The notes on the performance review are dated January 19, 2011, but those on the work objectives are not dated.

[19] Mr. Morrison stated that after the fishery officers' performance reviews were submitted in January 2011, he went on training until March 5, 2011. When he returned, nothing about the grievor drew his attention. He told the fishery officers that they could speak with him if they wished to. He added that he was often away from the office for training.

[20] Mr. Morrison then related an incident that stood out for him. In June 2011, he and the field supervisor from the Gaspé office organized a lobster operation, which would take place on June 14. The first part was in Gaspé, and the second was to take place in the Grande-Rivière area. The fishery officers' schedule for that operation began at 1:00, and the first part of it continued until late afternoon.

[21] Mr. Morrison noted that the fishery officers were tired. For safety reasons, and because the operation's objective had been met, he and his colleague decided to cancel the second part of the operation. Since the authorized overtime had been considerably exceeded, he then proposed to the fishery officers that they voluntarily change shifts, meaning that the employer would no longer be required to pay 3.75 hours of overtime under the collective agreement. According to Mr. Morrison, that proposal was to the fishery officers' advantage. However, after the proposal had been made and while they

were still at sea, things became heated. Mr. Morrison then understood that he could no longer do anything to resolve the situation.

[22] When he returned from the operation, Mr. Morrison called Mr. Sylvestre and handed him his resignation, since he realized that he could not change Grande-Rivière's working climate. Mr. Sylvestre advised him to take two days off, after which Mr. Morrison went to a New Brunswick office to help a fishery officer for one week. When he returned to the Grande-Rivière office, Mr. Morrison reiterated his intention to resign. Mr. Sylvestre then proposed that he take an assignment in major investigations at the Gaspé office.

[23] In cross-examination, Mr. Morrison stated that the grievor was present during the overtime incident but that she did not say anything. Shop Steward Mario Moreau and another fishery officer spoke. When Mr. Morrison told the fishery officers that he would honour the schedule already established, the other officer began to argue. Mr. Morrison then asked the Shop Steward and the other officer to go on another boat.

[24] For the grievor's work objectives, Mr. Morrison stated that his predecessor had set them. Once completed, the grievor's performance review was sent to Mr. Sylvestre, who added his handwritten notes.

[25] Mr. Morrison testified that in his first meeting with Mr. Chouinard after he was hired, Mr. Chouinard told him that performance at the Grande-Rivière office had been unsatisfactory since 2006, that the working climate was unacceptable, and that some fishery officers did not want to work together. The grievor did not want to work with two fishery officers in particular.

[26] Mr. Morrison stated that Mr. Sylvestre told him that the grievor contributed to the working climate at Grande-Rivière.

[27] Mr. Morrison stated that a meeting was held in December 2010 with fishery officers at Grande-Rivière to reiterate that they had to act more professionally and more effectively. However, he could see that he was having difficulties.

[28] Mr. Morrison gave his performance review to the grievor on January 10, 2011. He did not have an opportunity to appraise her fieldwork. However, he noted that she had done well in a case involving herring, in which two violations and a warning were handed down for exceeding the daily quota.

2. Stéphane Boulay

[29] Mr. Boulay began working for the employer as a fishery officer in Grande-Rivière in May 2008, at the same time as Mr. Sylvestre, his field supervisor at the Grande-Rivière office. Mr. Boulay stated that he had been an acting field supervisor in Grande-Rivière three times.

[30] In his testimony, Mr. Boulay stated that the fishery officers and management at the Grande-Rivière office had problems; they argued. He was asked to attend a staff meeting to improve the working climate. He emphasized that his testimony was not about one employee in particular.

[31] He stated that some people had been relocated to other offices. He was relocated to the Gaspé office for a major investigation from summer 2011 to summer 2012. He then returned to the Grande-Rivière office.

[32] In cross-examination, when asked to elaborate on the problems the fishery officers and management had, Mr. Boulay replied that relations were tense and that most of the problems occurred before he arrived at the Grande-Rivière office.

[33] Mr. Boulay stated that as an office employee, he had attended two staff meetings in Grande-Rivière with a labour relations psychologist. The purpose of the first meeting was to try to get the employees to work as a team. The problems were with employee interaction at the Grande-Rivière office and with team spirit. Mr. Boulay reiterated that the problem was with the office in general. According to him, the second meeting with the psychologist did not go well.

[34] Mr. Boulay stated that he was assigned to the Gaspé office to stay motivated. He works in the Gaspé office, but his substantive position is at the Grande-Rivière office.

3. Marcel Picard

[35] Mr. Picard has been the chief, operations, at the employer's Québec office for its Northern Quebec sector since 2002. His immediate supervisor is Mr. Chouinard. His responsibilities include coordinating aerial and maritime surveillance, information gathering, and coordinating the At-Sea Observer Program.

[36] Mr. Picard stated that Mr. Chouinard had told him that a new employee (the grievor) would start on August 27, 2012. The grievor had called Mr. Picard, but he did

not remember the subject of their telephone conversation. In his testimony, he stated that he welcomed her and that that he explained the type of work in his sector. She apparently spoke to him of reprisals, which he denied, and he told her that if she did not report to work, the matter would be transferred to another level.

[37] Since the grievor did not report to the Québec office on August 27, 2012, Mr. Picard sent her a letter that day entitled: “[translation] Notice of the possibility of termination for abandoning your position” (Exhibit E-1, Tab 9). The letter advised the grievor that she was considered absent without leave, that her pay was suspended, and that she had to report to work no later than September 4, 2012, failing which she could be terminated on non-disciplinary grounds.

[38] Mr. Picard stated that some cases in his sector were prepared in English. His intention was to ensure a progressive integration for the grievor by having her work with a bilingual colleague. He stated that he had become bilingual by working in an anglophone environment.

[39] Mr. Picard stated that he was pleased to have an additional fishery officer. Including the grievor, there would be four fishery officers, including him and a supervisor, which meant two teams of two fishery officers. The effect was positive.

[40] In cross-examination, Mr. Picard stated that between 2002 and 2011, his team grew from two fishery officers to three for the Northern Quebec sector. The third fishery officer began working in 2005. He stated that the work could be done by two or three fishery officers but that ideally, four officers were needed. He also stated that his team had met some objectives but not all of them. He had asked that the budget be increased two or three times per year and had recently asked for a fourth fishery officer.

[41] Mr. Picard explained that the fishery officers in Quebec’s far north worked in partnership with Inuit, the Sûreté du Québec, and Quebec wildlife conservation officers. The work included prevention and enforcing regulations. The goal was to help Inuit become responsible for enforcing regulations.

[42] The workplace for the fishery officers was above the 55th parallel, which was accessible only by plane. The rotation period in the north was for two to three weeks at a time.

[43] Mr. Picard was referred to his letter to the grievor on August 27, 2012, in which he informed her that by refusing to go to work, she was breaching a condition of employment that stated that a fishery officer can be deployed anywhere in Canada or assigned to all types of enforcement activity, including inland, coastal, and offshore patrols. When asked whether the grievor had been deployed, Mr. Picard replied that she had left the Grande-Rivière office to go to the Québec office but that he had not verified if that was the case. He stated that he did not know the definition of the term “deployed”. He testified that since he had assumed the chief of operations position, he had never had a fishery officer deployed to his sector for two years. He did not ask that the grievor be on his team, but the need for operational assistance is always there.

4. Jean-François Sylvestre

[44] Mr. Sylvestre began working for the employer in 2004. From May 2008 to January 2009, he was the field supervisor at the Grande-Rivière office. He has held his current conservation and protection area chief for the Gaspé-Lower St. Lawrence Area position since 2009. He is responsible for carrying out the Conservation and Protection Program, for human and financial resources, for major investigations, and for aboriginal and industry relations. The Conservation and Protection Program consists of enforcing the *Fisheries Act* (R.S.C., 1985, c. F-14) and related regulations and laws. He stated that 22 fishery officers in the Gaspé region had peace officer status.

[45] According to Mr. Sylvestre, the Grande-Rivière office was not functional. There were two or three cliques, and nobody spoke to anyone. The office’s performance was insufficient, and although it was the largest office in Quebec, its performance was not comparable to that of offices in the region with two or three officers. It had a flagrant lack of initiative, even though it had fishery officers with 20 or 25 years of service who were able to do their work without being told what to do.

[46] Mr. Sylvestre stated that he met with industry representatives several times, at their request. They complained to fishery officers at the Grande-Rivière office, but those officers did nothing. They then directed their complaints to the Gaspé office. According to the industry representatives, the Grande-Rivière office’s complaint handling was minimal.

[47] Mr. Sylvestre explained that there were two types of violations. The first type was routine, i.e., ensuring compliance with the law in land and sea patrols and

dockside monitoring. The second type is related to complaints and information received by fishery officers. That means that informants must be found and developed. When fishery officers at the Grande-Rivière office received information about complaints, they did not look into them. Complaints are important to the industry because fishery officers must protect fishery resources.

[48] Mr. Sylvestre stated that the problems at the Grande-Rivière office had existed since 2001, well before his arrival in 2009. Several interventions and meetings with employees took place. Management had developed a charter for management and employees on how to do things. A few weeks later, several employees withdrew from the charter.

[49] Mr. Sylvestre's priority was to resolve the conflicts. Mr. Chouinard became involved, and a first meeting with employees was held in September 2009, which he attended. Not all employees were present. He asked the employees present to work together, or there would be changes. According to Mr. Sylvestre, nothing changed after that meeting. Several meetings were held on that topic with the President of the union local, who was aware of the Grande-Rivière office situation but had no solution to propose. He told Mr. Sylvestre that management had to do something and do it right. Mr. Sylvestre and Mr. Chouinard also met with the regional union President, but that person also had no solution. Mr. Sylvestre stated that the Grande-Rivière office's reputation was such that nobody in the employer's Quebec Region wanted to be the field supervisor there, and nobody wanted to work there.

[50] Mr. Morrison began working for the employer in 2010. Mr. Sylvestre described him as a strong man with considerable work experience. Mr. Sylvestre explained to him the Grande-Rivière office situation, since he had experienced it personally. After 8 or 10 months in the position, following an incident, Mr. Morrison called Mr. Sylvestre and wanted to resign immediately. Mr. Morrison stated that nobody would be able to change the situation with those employees. Mr. Morrison had asked for permission to try to improve the situation his way, but he saw that even if he put more time into it, he would not achieve the desired results.

[51] In 2011, Mr. Nadeau met with the Grande-Rivière employees. Not all were present. He told them that he was tired of hearing about the Grande-Rivière office and not in good terms. He trusted management. That meeting did not have the desired effect, and absences became more common after it. Mr. Chouinard went to the

Grande-Rivière office a few times, and management worked with Labour Relations.

[52] The decision was made to assign employees from the Grande-Rivière office to different offices in Quebec, to make the office functional again. Management planned to have fishery officers come from other sectors to the Grande-Rivière office for 10-day periods. Mr. Sylvestre stated that the dynamic changed at that point. The charges and findings of offences increased.

[53] According to Mr. Sylvestre, the Grande-Rivière office employees were sent on assignments for two years to address their shortcomings, to where there were vacant positions, good working climates, and supervision that could give them the support needed to address their shortcomings.

[54] Mr. Sylvestre stated that the assignments were made under the mobility clause. In the grievor's case, that clause is in her job offers dated October 23, 1990 (Exhibit E-1, Tab 13), and June 30, 2005 (Exhibit E-1, Tab 16). In the 1990 offer, the clause reads as follows: "[translation] ... geographic mobility must be considered a condition of employment for fishery officers throughout their career with the department." The 2005 job offer contains the following clause:

[Translation]

...

By accepting this offer, you also accept the following terms of employment:

- *Agree to be deployed anywhere in Canada or assigned to all types of regulatory enforcement activities, including inland, coastal, and offshore patrols and/or special operations.*

...

[55] In his testimony, Mr. Sylvestre stated that he had considered the grievor's 2009 performance review (Exhibit E-1, Tab 18) when he decided to assign her to the Québec office for two years. He stated that he had reviewed performance reviews prepared by the supervisors. He received the reviews a few weeks after the supervisors prepared them, and then he added his comments. He made the following comments on the grievor's 2009 performance review:

[Translation]

Collette needs to make every effort to get along with all the team members. She must be proactive in the field with respect to operations.

[56] Mr. Sylvestre explained that the first sentence meant that because of cliques at the office, the fishery officers needed to trust their partners, for safety reasons. The second sentence meant that the grievor was never the first person to arrive at the scene of an incident. Mr. Sylvestre asked her to sometimes be the first. He described the 2010 review as positive but that some things could be improved.

[57] According to Mr. Sylvestre, the Grande-Rivière office's working climate and results improved after the employees were sent on assignments.

[58] In cross-examination, when asked whether he was of the opinion that the grievor had been deployed, Mr. Sylvestre replied that the expression "[translation] temporary assignment for two years" was always used.

[59] With respect to the grievor's 2010 performance review, Mr. Sylvestre stated that he did not meet with her and that normally, the supervisor met with the employee. He acknowledged that he made the handwritten notes on the review.

[60] Mr. Sylvestre stated that he received performance reviews a few weeks or one or two months after the employees signed them. If an employee wanted an explanation of the comments, he could provide one by telephone or in person. According to him, he adds his comments based on the supervisor's review, with whom he is in constant communication, or based on facts that he has noted on his own. The review with the added comments is then given to the employee. In the case of the grievor's 2010 performance review, Mr. Sylvestre stated that because he endorsed Mr. Morrison's review, there was no need to bring his comments to the grievor's attention.

[61] In his testimony, Mr. Sylvestre stated that the grievor was part of a group of employees in Grande-Rivière who did not get along with other employees. She needed to compromise and to make an effort. Sometimes, she was asked to work on Saturdays with someone with whom she did not get along. In such cases, either she or the other employee took a sick day.

[62] When asked about the criteria management used to choose certain employees from Grande-Rivière for assignments, Mr. Sylvestre replied that the central group of fishery officers, which the grievor was part of, had made the working climate

unacceptable. He stated that he did not meet with the employees, as he was convinced that the supervisors had done that.

[63] According to Mr. Sylvestre, there was a problem in terms of performance and working climate at the Grande-Rivière office. Management was unable to improve the situation while keeping the employee group. It hoped that following their two-year assignments, the employees would return to the Grande-Rivière office and that the situation there would improve.

[64] When asked whether it was normal for an employee with unsatisfactory performance to be assigned to another office, Mr. Sylvestre replied that it was the performance of the office in general. The individual person was not the problem.

[65] Mr. Sylvestre stated that five people in Grande-Rivière, including the grievor, were identified as causing the problems. Of the five employees, one retired, the grievor was terminated, and two employees were on extended sick leave. According to Mr. Sylvestre, no employees who received an assignment letter remained at the Grande-Rivière office.

[66] Mr. Sylvestre stated that management did not seek the employees' consent at Grande-Rivière about the assignments' locations. It depended on vacant positions and organizational needs. Two employees were assigned to the same office because they were a couple. Mr. Sylvestre stated that it was not easy to send an employee to work somewhere else for two years but that it was the only solution. Otherwise, the person would continue to work and would be terminated for unsatisfactory performance.

[67] When asked whether the strengths of each employee in Grande-Rivière who was assigned to another office were considered, Mr. Sylvestre replied that although the decision was not up to him, they were considered. According to him, in the Northern Quebec sector, one employee was on sick leave, one was on parental leave, and a third was on leave for other reasons.

[68] When asked whether a letter was usually sent like the one Mr. Sylvestre sent to the grievor on January 23, 2012 (Exhibit S-1), he replied that employees on sick leave for more than six months received that type of letter. Its subject was the terms for the grievor's return to work. Mr. Sylvestre asked her to advise him in writing of her expected return-to-work date and of any instructions her attending physician specified

for her return. Mr. Sylvestre advised the grievor that after reviewing the information, he would contact her to advise her of management's terms for her return. The last sentence of the letter reads as follows:

[Translation]

...

Until I contact you, you are not authorized to return to work, and by January 27, you must send me all the departmental keys that you possess.

...

[69] Thus, according to Mr. Sylvestre, he wanted to avoid the grievor arriving at the office without management being aware of her condition or the medical reasons for her absence. According to the employer's instructions, employees on extended absences are not authorized to be in the workplace and must therefore return their keys.

[70] As to his June 14, 2012, letter to the grievor (Exhibit S-2), which advised her that she would return to work once her doctor had provided certain additional information about her ability to return, Mr. Sylvestre stated that he lacked certain medical information about whether she was fit to resume her duties. He added that she would not have been assigned to the Québec office had she not been fit to work. She advised management that she would return to work on June 25, 2012.

[71] With respect to the June 14, 2010, incident on board the boat with Mr. Morrison, Mr. Sylvestre stated that he had conducted an investigation and that he had requested a report from everyone involved. He submitted a report to the Québec office and stated that no manager had been responsible for it. He stated that he had read the fishery officers' versions of the facts but that he did not prepare a written report. He stated that the grievor was on board the boat when the discussion took place.

[72] In re-examination, Mr. Sylvestre stated that the employer used the mobility clause in the job offers to justify the assignments.

5. John Chouinard

[73] Mr. Chouinard has been retired from the public service since January 2014. From 2009 to 2012, he was the regional director, conservation and protection, for the Quebec Region, including Northern Quebec. His responsibilities included implementing the Conservation and Protection Program, enforcing fisheries legislation and regulations, assessing regulatory compliance, and the land, sea, and air surveillance program. The program's mandate was to ensure that fishery resources were protected and conserved and to combat illegal activities by those with fishing licences or by poachers. The fishery officers' role was at the forefront of the fishery management program.

[74] According to Mr. Chouinard, the Grande-Rivière office's problems began in 2001. Labour relations were difficult there. Problems arose sporadically, but they persisted. Management had set up meetings with a labour relations psychologist. Mr. Chouinard stated that the union representative was involved in the efforts and that the matter became increasingly complicated.

[75] Mr. Chouinard stated that the Grande-Rivière office was the employer's largest in the Quebec Region. It was no longer functional, and it produced few results. The only violations found were those that were easily identifiable, such as hail-outs and hail-ins.

[76] Mr. Chouinard stated that a very influential representative from the southern Gaspé inshore fishers' group complained to him that he did not trust fishery officers from the Grande-Rivière office with respect to protecting resources.

[77] In October 2009, Mr. Chouinard went to the Grande-Rivière office with a labour relations specialist. He told the employees that it was the least productive office in the Quebec Region and that in his opinion, it was not functional. He asked the employees to work together and to collaborate so that results could show that the office was functional. He added that if no change occurred, management would move them to other offices. Mr. Chouinard stated that Shop Steward Moreau, who was part of the group of employees who were causing problems, responded in this way, which Mr. Chouinard found scathing: "[translation] You have been telling us that for a long time." He replied that he had confirmed with his superiors that it was one of the options that they were considering.

[78] Mr. Chouinard went to the Grande-Rivière office in June 2011 to meet with the fishery officers. He told them that he was not happy with the situation and again asked them to work as a team. If nothing changed, management would take steps. Mr. Chouinard stated that the office was becoming less and less functional.

[79] Mr. Chouinard stated that he had consulted the union's upper hierarchy several times. Meetings and teleconferences were held to try to find solutions. According to him, the union had also found that the Grande-Rivière office was not functional, and it had no solution to propose. He told its representatives that management wanted to separate the group to make the office functional.

[80] Management had difficulty getting other fishery officers to work at the Grande-Rivière office for two or three weeks because they did not want to work in an unhealthy environment. Supervisors did not want to work there temporarily.

[81] Mr. Chouinard stated that management had decided to separate the employees in Grande-Rivière and to reassign the fishery officers to offices in the Quebec Region with good working climates. That would be done with a support plan that included work objectives for a two-year period so the employees could be coached and could relearn how to work as a team. According to Mr. Chouinard, management did not want to terminate fishery officers but to give them a chance over two years to show their willingness.

[82] Mr. Chouinard stated that a group of five employees was identified that was not doing fieldwork. The only violations they raised were very technical.

[83] Mr. Chouinard stated that his June 11, 2012, letter to the grievor, with the subject line "[translation] Administrative changes at the Grande-Rivière office" (Exhibit E-1, Tab 3), was the same letter that was given to each affected fishery officer. In a letter to her on July 5, 2012 (Exhibit E-1, Tab 4), he gave her the names of the contact people for her assignment. The letter advised her that since work in Northern Quebec required knowledge of English, management was proposing a pre-evaluation before she wrote the Public Service Commission test and that if she did not pass the test, other options would be considered, such as training, working with a bilingual partner, or a change to the assignment location, other than to the Grande-Rivière office.

[84] In a letter addressed to Mr. Chouinard and dated July 17, 2012 (Exhibit E-1, Tab

5), the grievor asked for clarification of certain matters raised in his letter. He provided some answers in a letter to her on July 20, 2012 (Exhibit E-1, Tab 6).

[85] In a letter addressed to Mr. Chouinard and dated August 15, 2012 (Exhibit E-1, Tab 7), the grievor refused her assignment to the Northern Quebec sector. He sent her a letter on September 4, 2012, with the following subject line: “[translation] Final notice of possibility of termination”, advising her that she was still considered absent without leave and ordering her to report to the Québec office on September 10, 2012 (Exhibit E-1, Tab 10). On September 8, 2012, she responded, reiterating her grounds for refusing the assignment and advising Mr. Chouinard that it was a constructive dismissal (Exhibit E-1, Tab 11). In a letter to the grievor dated September 20, 2012, and having the subject line, “[translation] Second final notice of termination for abandoning a position” (Exhibit E-1, Tab 12), Mr. Chouinard advised her that the situation was under review to see if her case needed to be submitted to the regional director general to recommend her termination. Mr. Chouinard stated that he did not believe that that he had any other communication with the grievor after that letter.

[86] Mr. Chouinard explained the reasoning behind the two-year period for the assignments. He first stated that management had considered termination but that it felt it could help the employees. The first year of the assignment was used to learn about the geographic context and clientele. According to Mr. Chouinard, one year was not enough to learn about the work due to employee vacations and other leave (e.g., sick leave). In two years, with a plan to follow, the employee could achieve the objectives and then return to the Grande-Rivière office.

[87] In cross-examination, Mr. Chouinard stated that management did not have anything against the grievor in particular but that she was part of the group of problematic employees. Her work methods left much to be desired, and no verification was being done. The Grande-Rivière office had no team spirit.

[88] A plan was in place to keep the Grande-Rivière office functional, which consisted of deploying fishery officers there from other offices (Exhibit S-3). According to Mr. Chouinard, the term “redeploy” meant taking a fishery officer from the Magdalen Islands office, for example, and sending that officer to the Grande-Rivière office for a limited time. An assignment consists of taking an employee from somewhere else for two years, and a “redeployment” is usually for less than two years.

[89] When asked whether he had consulted employees in Grande-Rivière before making the assignments, Mr. Chouinard acknowledged that they were not consulted and that the assignments were made without their consent. He added that they knew in advance that management would make assignments.

[90] When asked whether management had used the reasoning for a deployment rather than that of an assignment, Mr. Chouinard replied that a deployment consists of a one-way move from point A to point B. An assignment means going from point A to point B and then returning to point A. Mr. Chouinard affirmed that the assignments were based on operational needs and that they were justified for the Grande-Rivière employees to develop team spirit skills. The assignments were not changes to the employees' employment contracts.

[91] As for the grievor's mediation request, Mr. Chouinard stated that it was submitted after the decision was made to make the assignment. Some employees had already left the Grande-Rivière office or were about to leave. One employee resigned, another accepted an assignment, and two were on sick leave. According to him, management was prepared to proceed with mediation on certain conditions of the assignment.

[92] When asked whether the assignment was a disciplinary action, Mr. Chouinard replied that management had taken an administrative action because the Grande-Rivière office was not functional. The possibility of termination was raised, but management thought that it could help the employees, who had to relearn how to work together.

[93] Mr. Chouinard was referred to his letter to the grievor dated June 11, 2012, which mentioned that she had to follow a supporting plan during her assignment, to improve her ability to do her work. When asked whether in his opinion she was unable to work at the Grande-Rivière office, Mr. Chouinard replied that it was instead a matter of her ability to work in a team. He was then asked if an employee who was unable to work in a group should be assigned elsewhere. Mr. Chouinard replied that it depended on the case and the situation. He stated that the grievor was no more at fault than other employees. The team spirit was not working.

[94] When asked whether management was responsible for the problem, Mr. Chouinard stated that it was hard to answer that question. In his opinion,

management had put everything in place to make the Grande-Rivière office functional. Assignment was the chosen option.

[95] In re-examination, Mr. Chouinard stated that the reassignment plan (Exhibit S-3) had been prepared as a working document. Discussions took place with management and Human Resources, and the reassignment option was chosen.

6. Richard Nadeau

[96] As the regional director general for the employer's Quebec Region, Mr. Nadeau manages activities in that Region. He signed the October 26, 2012, letter advising the grievor of her termination for abandoning her position (Exhibit E-1, Tab 1). The letter reads in part as follows:

[Translation]

...

As you did not report to your new headquarters area and thus did not respect the mobility clause in your terms and conditions of employment, I conclude that you have renounced your position as a fishery officer in the Quebec Region of Fisheries and Oceans Canada.

...

[97] Explaining the reasons for his decision, Mr. Nadeau stated that the Grande-Rivière office had had operational problems for many years involving several fishery officers. The problem had been ongoing since 2001, and several attempts were made to correct it. Management decided to relocate certain fishery officers, which was to and did allow management to make the office functional again.

[98] The grievor did not report to the Québec office despite management's many attempts. The only measure that remained was terminating her for abandoning her position.

[99] Mr. Nadeau stated that he based his decision on the identification of the grievor's problems, documents from supervisors on performance reviews, several efforts by management and specialists in group problems, and the grievor's arguments against the reassignment.

[100] When asked what weight was given to the grievor's September 8, 2012, letter,

in which she indicated that she had not abandoned her position and that it was constructive dismissal, Mr. Nadeau replied that her arguments were incorrect. The problem was not her but the Grande-Rivière office in general. According to him, the letter did not make any argument that would have led him to change his decision. He stated that it was not his intention to terminate anyone and that he had simply wanted to make the Grande-Rivière office functional.

[101] Mr. Nadeau mentioned that he first became involved in the Grande-Rivière office's problems in 2007, when he was the acting assistant director general responsible for Human Resources and Labour Relations. No fishery officers wanted to work at the Grande-Rivière office, and it was hard to find employees to replace those who left on sick leave. The department's organization had changed, and as of 2009, the Conservation and Protection group reported to the regional director.

[102] In 2009, the Grande-Rivière office's manager was replaced because he was contributing to the problem. The new Manager did not know anyone at the office, so he had no prejudices. However, the problems persisted. During the same week, a meeting was held with employees and a labour psychologist, and Mr. Nadeau was to meet with the employees. He had to cancel that meeting since the meeting with the psychologist did not go well.

[103] Mr. Nadeau stated that in his meetings with fishery industry representatives, they raised problems with the Grande-Rivière office.

[104] Mr. Nadeau added that in 2011, before implementing the relocation process, he had wanted to meet with the fishery officers for their point of view and had invited them to a meeting. Only two fishery officers came.

[105] The relocation process was discussed at all levels of management in the Region and in the department. It targeted fishery officers who were contributing to the problem.

[106] On the union's role, Mr. Nadeau stated that locally, the union tried to prevent management from taking action to make the Grande-Rivière office functional and that the shop steward, Mr. Moreau, was part of the group that was causing problems there. Mr. Nadeau met with the regional union President several times, who was concerned about the situation but could not propose a solution. He was not opposed to the

relocations but wanted management reassigned too.

[107] In cross-examination, when asked how many times he had tried to meet with the Grande-Rivière employees between 2009 and 2011, Mr. Nadeau replied that he had communicated with the union several times. Following the meeting with the labour relations psychologist, which management had mandated with the union's agreement, the fishery officers were not interested in meeting with management.

[108] When asked about the basis for his statement that the union did not object to assigning the fishery officers from Grande-Rivière, Mr. Nadeau stated that he had spoken to local and regional union representatives. He told the Regional President that problems within management also were evident. The Regional President stated that something should be done about management; something was done. Mr. Nadeau stated that the union was aware of the situation throughout the entire process.

[109] When asked why, if it wanted to help the fishery officers in Grande-Rivière, management did not ask for their consent before reassigning them, Mr. Nadeau replied that the fishery officers were invited to consent to the attempts made to improve the situation. They had no intention of participating in the solution. There was a lack of will.

[110] When asked whether he ensured that the employees in question had the opportunity to provide explanations, Mr. Nadeau replied that he had tried to obtain explanations before making his decision. Only one employee in Grande-Rivière provided one. According to the employees, the problem was with management. Mr. Nadeau stated that changing management did not resolve things.

[111] When questioned as to whether he had asked if other disciplinary actions had been applied, Mr. Nadeau replied that someone who does not report for work cannot be paid. Terminating the grievor was the only solution. According to him, her explanations were insufficient in the context in which they were given. She was the only fishery officer terminated. Mr. Nadeau stated that the Grande-Rivière office has been functional since 2012.

B. For the grievor

[112] The grievor began working for the employer in 1990. She had held a position at the Grande-Rivière office since 1996. As a fishery officer, her responsibilities included

among other things conducting land, sea, and air patrols; enforcing regulations, licences, and licence conditions; and combatting poaching.

[113] From 2001 to 2005, the grievor held an indeterminate position as a field supervisor at the Grande-Rivière office. In 2005, she asked to return to a fishery officer position because the employees had problems, and the same people were always recalcitrant. That had harmed her health, and she no longer wanted to be responsible for employees' interpersonal relationships.

[114] In 2002, when she was a field supervisor, she and Pierre Gagnon tried alternative dispute resolution with the Grande-Rivière office staff. They implemented a charter that all employees were to respect. That worked for a while, but two fishery officers, Mr. Moreau and Richard Bernatchez, decided to reject the charter because they did not get along with the office supervisor, Jacques Boudreau. For a few years after that, the same people had problems with Mr. Boudreau. Finding herself cornered, the grievor quit her field supervisor position to return to a fishery officer position.

[115] When she returned to a fishery officer position, officers in Grande-Rivière had submitted a letter to management asking that Mr. Boudreau be dismissed. Not wanting to become involved, the grievor did not sign it. She stated that after the letter, management met with employees to advise them that Mr. Boudreau had been removed from his position. Several people then acted in it, including Amélie Roberge.

[116] The grievor stated that she had had problems with Mr. Moreau and Ms. Roberge. She stated that Mr. Moreau used his union representative position to cause problems by challenging everything. He was also the occupational health and safety representative.

[117] The grievor testified that Mr. Moreau behaved harassingly toward her. In 2008, she asked a supervisor, Éric Mauger, to intervene with Mr. Moreau. Since Mr. Mauger did nothing, she contacted his supervisor at the Gaspé office, who called a meeting with the grievor and Mr. Moreau. That led to an agreement that Mr. Moreau would cease his harassing. The Supervisor stated that he would monitor the situation closely.

[118] As for her 2010 performance review, the grievor stated the first time she saw Mr. Sylvestre's comments was when she received a copy with them in it. She saw Mr. Moreau about it, and he told her that he would not represent her as the shop steward.

[119] The grievor met with Mr. Morrison on March 15, 2011, and told him that Mr. Moreau did not want to represent her and that she did not want to be accused of not being able to work with her colleagues. Mr. Morrison told her that he could not do anything about the union but that he had noted her efforts and that she could work with everyone.

[120] The grievor was pleased with Mr. Morrison's arrival. She worked only one day with him since he worked primarily with Mr. Boulay. She had to work most often with Mr. Moreau, but she could not advance the work the way she wanted to.

[121] The grievor gave an example of the difficulty of working with Mr. Moreau when carrying out her duties. She had received information on a fisher who was taking small lobsters, and she wanted to intervene. She was to work with Mr. Moreau on the day of the intervention in question. When she indicated what to do to intercept the fisher, Mr. Moreau questioned it and did not want to go with her. Mr. Boulay had to intervene and tell Mr. Moreau that Mr. Sylvestre wanted to intercept that same fisher.

[122] The grievor stated that in 2011, several events affected her family. Her father passed away, her spouse underwent emergency surgery, and her child suffered head trauma in a serious accident. The grievor was also on sick leave from July 2011 to July 2012.

[123] The grievor stated that she filed grievance 566-02-9108 because while she was on sick leave, she had received a letter advising her that she was assigned to Northern Quebec due to performance problems. She stated that management had not met with her during the year to tell her that she had not acted correctly or to tell her what she had done. She did not know the basis of the decision. She stated that she had never received a verbal or written reprimand in her 20-year career.

[124] As for her 2009 performance review, the grievor became aware of Mr. Sylvestre's added handwritten notes when the review arrived in the mail while she was at work. Management did not give her a chance to explain herself with respect to those notes.

[125] The grievor stated that in the past, she had never refused assignments and that she had done several at different offices (the Magdalen Islands for three weeks, the North Shore, the Lower North Shore, Ste-Anne-des-Monts, and Gaspé and on a patrol boat for periods of one or two weeks).

[126] When asked whether she had received instructions on what to do during those assignments, the grievor replied that in the Magdalen Islands, she had met with the supervisor, who oriented her on the work to be done. The assignment letter dated June 11, 2012, had no directives on the work to be carried out.

[127] The grievor stated that she had been assigned to Québec for two years without an assignment agreement. She was entitled to relocation expenses.

[128] The grievor stated that she filed grievance 566-02-9107 because she was subject to a disguised disciplinary termination. The letter dated June 11, 2012, indicated that her assignment to Québec was to improve her performance, which she saw as disciplinary action. The response from the third level of the grievance process mentioned her attitude. She emphasized that management never met with her to discuss that.

[129] The grievor stated that she was shocked by management's response at the third level, first because she was chosen for an assignment due to a performance problem after having worked for so long. It had a psychological impact, which she still suffers from. She was judged without being heard or without being familiar with the facts. She was never consulted about whether an assignment elsewhere could achieve the same thing. She was on sick leave when she learned about her assignment.

[130] It also affected her family and her finances. She was caring for her 84-year-old mother, her child, and her spouse. Mr. Picard told her that she had to spend three weeks per month in Northern Quebec, while she still had to pay for housing in Québec. Was she to see her spouse only once a month in Québec?

[131] The grievor stated that she never refused to attend meetings to try to resolve the Grande-Rivière office's problems. She was not aware of Mr. Nadeau's attempt to meet with staff in 2011, since she had been on sick leave. In 2009, he did not speak to the fishery officers.

[132] With respect to the session with the psychologist, the grievor stated that three Grande-Rivière office employees did everything to ensure that it was a failure. They were Mr. Moreau, Ms. Roberge, who was on sick leave but was at the session, and Allen Langlois, who was transferred to the office in Gaspé, where he lives.

[133] As for the June 14, 2011, incident on the boat with Mr. Morrison, the grievor

stated that in no way had she been involved. She had become afraid when she saw two fishery officers, Mr. Moreau and Mr. Bernatchez, yelling at the supervisor, which had a terrible effect on her. She stated that during her sick leave, Marie Josée Rouleau from Labour Relations came to meet with her about that incident. The grievor stated that once again, certain people had made the situation worse, and that instead of them being penalized, everyone was affected.

[134] When asked why she had refused several notices of assignment, the grievor stated that the first letter was a complete injustice. From a financial point of view, how could she have kept her home in Grande-Rivière and paid rent in Québec, when she had to work in Northern Quebec three out of four weeks? She felt unable to balance her work and her family. When she told Mr. Picard that she could not do it, he told her that consequences would ensue. She stated that she had never been subject to disciplinary action in the past.

[135] The grievor stated that she filed grievance 566-02-9109 because the employer refused the severance pay to which she was entitled.

[136] The grievor asked to be reinstated to her position. Her termination has affected her reputation. In the small community of Grande-Rivière, people wonder if she stole something or committed fraud. Because Mr. Bernatchez returned to work in February 2014, people saw that he was working and that she was not. They wondered what she had done that had been so serious. She asked why management allowed Mr. Bernatchez, an instigator of problems at Grande-Rivière, to return to the Grande-Rivière office, while it refused to let her return.

[137] The grievor ended her testimony-in-chief by stating that she was pleased to be able to speak since it was the first time she had been allowed to.

[138] In cross-examination, the grievor stated that the day after she received the May 25, 2012, letter (Exhibit E-1, Tab 2), she contacted Mr. Sylvestre and asked him if he had an explanation. He told her that Mr. Chouinard was to send her a letter with an explanation, which he thought she had already received.

[139] Mr. Sylvestre told the grievor that she was not allowed to contact the office by phone, only in writing. She contacted the persons named in the July 5, 2012, letter. When she returned to the office on July 5, 2012, she did not have a computer. She

received one the following week, but everything had been deleted during her sick leave, including her emails.

[140] With respect to her letter to Mr. Chouinard of August 15, 2012, the grievor stated that she was in a difficult situation at that time and that she was emotional. As for the employer's Integrated Relocation Directive, the grievor had contacted Sylvie Nepton about it, the contact person that the employer had indicated. She had confirmed that the employer would not pay the cost of moving to Québec, her return to Grande-Rivière, or her rent in Québec.

[141] On Mr. Chouinard's August 16, 2012, letter, the grievor acknowledged that it was an order to report to Québec. She also acknowledged that she had disobeyed it but that she did not see how she could have obeyed it, from a financial standpoint. In addition, she had constraints, which she explained in her August 15, 2012, letter.

[142] The grievor considered Mr. Picard's August 27, 2012, letter to be based on disciplinary grounds, and she still had family and financial constraints. When it was suggested to her that she did not mention her family constraints, she replied that she had been working for the employer for 20 years and that management knew her.

[143] On the final notices of the termination possibility of September 4 and 20, 2012, the grievor stated that she had not contacted Mr. Chouinard because he was "[translation] sinking her, and she was sinking", and she considered the notices disciplinary.

[144] As for her relocation grievance (566-02-9108), the grievor stated that it was ongoing when she received the letter to report to the Québec office.

[145] The grievor stated that when she was a supervisor at the Grande-Rivière office from 2001 to 2005, she had approached management to propose meetings to improve the working climate. When asked whether she had approached Mr. Boulay or Mr. Sylvestre about that in 2008, she stated that she did not remember if she had made such a proposal but that she had agreed to such meetings.

[146] The grievor stated that she received her 2010 performance review in the mail in February 2011. She did not challenge it because Mr. Moreau had refused to represent her, and she was preoccupied with the head trauma that her child had suffered. She did not file a grievance against her 2009 review.

[147] The grievor did not agree with Mr. Sylvestre's handwritten notes added to her 2010 performance review. She had taken training about performance reviews, and Mr. Sylvestre's actions breached the performance review policy.

[148] The grievor was asked to explain Mr. Sylvestre's comments on page 6 of the performance objectives section of her 2010 performance review. To put her response in context, page 6 gives the following objective: "[translation] Support the field supervisor with the work, particularly in terms of the work requested and expected." The document Mr. Morrison prepared indicated that she had met that objective. His review was as follows:

[Translation]

When a field supervisor arrived from another department with little fisheries experience, Officer Major gave that person valuable advice. The supervisor particularly appreciated her excellent knowledge of the different databases and fishery management systems (VMS, 1002 and 402). Colette supported the supervisor by sharing her know-how in that area.

...

[149] The handwritten notes on the same page that Mr. Sylvestre added read as follows:

[Translation]

OK for J. Guy [Morrison], but was not always the case with Stéphane [Boulay], who was an acting supervisor. This must not happen again for an acting or other.

You were a supervisor and you know that when we make a decision, it is because we have analyzed it first.

The positives noted by J. Guy must remain. However, there is still work to be done on this point.

[150] The grievor stated that she did not understand Mr. Sylvestre's comments and that she did not know what he was referring to. Mr. Boulay was not involved in her review. Mr. Sylvestre never explained his comments to her. The grievor stated that she had always helped Mr. Boulay with his duties.

[151] The grievor was then referred to the notes Mr. Sylvestre added to page 4 of the same document. Once again, they must be put into context. The objective in question

is: “[translation] Demonstrate a spirit of understanding, cooperation, and positive communication in her interpersonal contacts, internally and externally”.

[152] Mr. Morrison’s review was as follows:

[Translation]

We are referring to internal C&P [conservation and protection] communications at the C&P office in Grande-Rivière. As for Officer Major’s external communications, there were no problems; however, there was internal discontent at the Grande-Rivière office. It was noted that she makes efforts to remain positive. Officer Major took steps in the right direction to correct relations with all staff at the Grande-Rivière office. However, Officer Major must continue to do everything she can to maintain the atmosphere of respect and courtesy that currently exists at the Grande-Rivière office.

[153] Mr. Morrison noted that the grievor had met the objective “[translation] ... but must continue to make the same efforts as in 2010 for the next period”.

[154] Mr. Sylvestre added the following comments:

[Translation]

We must forget old disputes from the past and focus on the present and the future. Problems must also be resolved at the source when they arise by speaking to those involved. The working climate at Grande-Rivière must be much more positive than it is now to achieve an acceptable level of performance. You must continue your efforts and not question supervisors’ decisions.

[155] The grievor stated that she did not ask to meet with Mr. Sylvestre about his comments because it was not her priority at that time, due to her family situation. She did not know what he was talking about or what decision she had questioned or the supervisor. Mr. Moreau was no longer speaking to her, and she did not question his decisions when he was the acting supervisor.

[156] The grievor was then asked to explain the following comment, which Mr. Sylvestre made on page 16 of the performance objectives section of her 2010 performance review: “[translation] No breach of conduct will be tolerated in that area.” Mr. Sylvestre added that comment, and others, in the section of the document entitled, “[translation] Comments by Officer Major”, which reads as follows:

[Translation]

...

I have always advocated for client service, communication, and collaboration, both internally and externally. However, the last few years spent at the Grande-Rivière office, where the atmosphere was troubled with respect to relationships at both the employee and management levels, brought its share of difficulties. Despite those facts, I chose to look forward. I chose to continue to work and to be professional in my words and in my actions, via respect and courtesy. And I expect the employer to extol those values and to otherwise assume its responsibilities.

With clear directives for fieldwork, indeterminate supervisors in place, and equity and support from supervisors for their employees, we can achieve only excellent results. And I have already noted excellent improvement this year after the arrival of an indeterminate GT-05.

...

[157] Mr. Sylvestre added the following notes:

[Translation]

The employer truly intends to improve the working climate at the Grande-Rivière office, which will have a direct positive effect on its performance. Stable supervision is also my objective. However, an acting supervisor has the same powers as a permanent one and is entitled to the same respect. No breach of conduct will be tolerated in that area.

[158] On the expression “[n]o breach of conduct”, the grievor stated that she did not know what Mr. Sylvestre was referring to. There had been several acting supervisors, and she was happy to see the beginnings of stability.

[159] The grievor was asked for her point of view on Mr. Sylvestre’s comments in the “[translation] Reviewing officer or review committee” section of her 2010 review, which read as follows:

[Translation]

Most of my comments are on evaluating objectives. In short, Colette must continue her efforts to improve the working climate, take initiative in everyday work, respect the decisions of the different supervisors, and take the lead in the field. She has excellent knowledge that must be put to good use.

[160] The grievor stated that Mr. Sylvestre did not work in the field and that he should have clarified the meaning of respecting the decisions of the different supervisors and the situations in question. She should not have been targeted.

[161] The grievor was then referred to her 2009 performance review, in which Mr. Sylvestre added the following comment, as a reviewing officer: “[translation] Colette needs to make every effort to get along with all the team members.” She stated that she had the impression that it was hearsay. Mr. Boudreau had prepared the review. He had been a supervisor at the Grande-Rivière office for about 10 years. His review of the grievor was as follows:

[Translation]

With respect to her work. I find that since I returned to Grande-Rivière as C&P supervisor in February 2009, Colette has carried out the tasks assigned to her.

Her fieldwork met expectations and operational needs. Colette was always available for every outside trip when she was asked for one.

Her end-of-season work in monitoring compliance is remarkable. She fully respected the set expectations, and some cases will require follow-up in 2010.

[162] In re-examination, the grievor stated about the comments that Mr. Sylvestre added to her reviews that she did not know the circumstances that he spoke of and that she never met with him to ask about those circumstances. She stated that her child’s situation was her priority at that time.

[163] The grievor stated that management was aware that she had a family and that her child had been in an accident. She had known Mr. Chouinard and Mr. Picard for a long time, and she had known Mr. Sylvestre since the beginning of his training.

C. The employer’s reply

1. Stéphane Boulay

[164] Mr. Boulay stated that in 2010 and 2011, he was the acting field supervisor at the Grande-Rivière office for one day short of four months, from spring to late summer. Starting in 2012, he held that position for two years following a competition. While he held it, he supervised the grievor.

[165] Mr. Boulay referred to the following comment, which Mr. Sylvestre added to page 6 of the grievor's 2010 review: "[translation] OK for J. Guy, but was not always the case with Stéphane, who was an acting supervisor." Mr. Boulay stated that he had provided the information to Mr. Sylvestre, who had asked him to advise him of any situation that could be problematic with respect to all Grande-Rivière office employees.

[166] Mr. Boulay noted that he did not prepare the employees' performance reviews. He handled only the operational aspects, such as work schedules, fieldwork planning, and leave approval.

[167] When asked to explain Mr. Sylvestre's comment, "[translation] ... not always the case with Stéphane ...", Mr. Boulay referred to surveillance events on a boat. After he had begun as an acting supervisor in 2011, he was then in a vehicle with the grievor and another fishery officer. The discussion focused on planning overtime that he had anticipated for the weekend for surveillance on a boat. He asked the two fishery officers to work on the Saturday and a third fishery officer, who was not there, to work on the Sunday. The grievor told him that she did not understand why she and the other fishery officer would work on the Saturday and the third fishery officer would work on the Sunday. Saturday overtime was paid at time-and-a-half, while Sunday was paid at double time. The third fishery officer was to work evenings the following week, so Mr. Boulay decided to have him work Sunday evening. He told the fishery officers that it was his decision.

[168] Mr. Boulay stated that the grievor came back to the issue three times in a short period. The third time, he lost patience, and he told her that if she was not happy, she simply needed to apply for the position that he had applied for. Mr. Boulay stated that he did not argue with the grievor or with the other fishery officer.

[169] Mr. Boulay testified that a short time later, the issue was the schedule for fishery officers assigned to patrols on boats for full weeks. He was to consider vacations, which had been approved before he had assumed the acting position. The grievor had one month of summer vacation that had been authorized, along with other authorized vacation in the summer.

[170] Mr. Boulay told the grievor that he had assigned her to a boat for the second week of May 2011. She replied that the Sunday was Mother's Day. He replied that he did not know that and that two fathers would be on the boat. She replied that he was

beginning his career and that he should be familiar with each letter in the word “discrimination”. The discussion ended, and the grievor carried out the patrol.

[171] Mr. Boulay stated that he had a good relationship with the grievor and that he had never had bad relationships with employees.

[172] Mr. Boulay stated that at one point, fishery officers told him that the grievor was often in Mr. Boudreau’s office with the door closed. According to Mr. Boulay, if Mr. Boudreau wanted to meet with an officer, he informed him. Mr. Boulay called a meeting of fishery officers with Mr. Boudreau and told them that if the officers had personal or work-related problems, they were to go through him. After that meeting, the matter was resolved.

[173] In cross-examination, Mr. Boulay confirmed that during the events in question, Mr. Boudreau was his supervisor and that Mr. Sylvestre was at a level above Mr. Boudreau. He reported events involving all employees at the Grande-Rivière office to Mr. Sylvestre.

[174] When asked about the incidents involving the grievor and whether he spoke to her before submitting the information to Mr. Sylvestre, Mr. Boulay replied that he did not. He stated that he was her supervisor but that it was not his mandate to resolve conflicts. His mandate was strictly operational. According to him, he discussed it with Mr. Boudreau before submitting the information to Mr. Sylvestre.

[175] With respect to the incident in the vehicle with the grievor and the other fishery officer about overtime planning for the weekend work, Mr. Boulay acknowledged that there was no investigation, that he had not prepared a report, and that there was no follow-up.

[176] Mr. Boulay reiterated that he always had a good relationship with the grievor.

2. Jean-François Sylvestre

[177] Before summarizing this part of Mr. Sylvestre’s testimony, I point out that he remained in the hearing room for the testimonies of the employer’s witnesses called after him, i.e., those of Mr. Chouinard and Mr. Nadeau, and for the grievor’s testimony-in-chief.

[178] Mr. Sylvestre stated that the five people who received assignment letters were

the grievor; Mr. Moreau and Ms. Roberge, who were a couple and who were assigned to Blanc-Sablon, where the employer provided housing; Mr. Bernatchez, who was assigned to the Magdalen Islands; and one final fishery officer, who retired rather than be assigned to another office.

[179] However, of those fishery officers, only Ms. Roberge reported to her headquarters area. Mr. Bernatchez was on sick leave for two years and returned to work at the Grande-Rivière office in February 2014. Mr. Moreau was on sick leave for two-and-a-half years and returned to work there a few months after Mr. Bernatchez. When they returned, the two fishery officers submitted requests for accommodation for family reasons to Mr. Sylvestre. Mr. Bernatchez submitted the request first, after returning from sick leave in 2014, citing a change to his family situation that resulted in him having custody of his children one week out of every two. Mr. Moreau submitted the same request when he returned. Mr. Sylvestre forwarded the requests to management and Labour Relations; they were approved. The situations had to be reassessed in September 2015. Mr. Sylvestre stated that he never received a request for accommodation from the grievor.

[180] As for the comments he added to the grievor's performance reviews, Mr. Sylvestre stated that he had not worked long as a field supervisor at the Grande-Rivière office and that he knew the situation well enough. On accepting the position of area chief for the Gaspé-Lower St. Lawrence sector, he met with first- and second-level supervisors and told them that he wanted to know everything that was going on at the Grande-Rivière office, whether positive or negative. Mr. Sylvestre stated that he often worked at the Grande-Rivière office and that he worked with the supervisor, office manager, and field supervisor. He sometimes worked with fishery officers in the field. According to Mr. Sylvestre, all these facts allowed him to add his comments to the grievor's performance reviews.

[181] As for the grievor's emails that were deleted while she was on sick leave, Mr. Sylvestre stated that the practice was to block employees' accounts 30 days after they left. He asked information technology services to block incoming emails on the day an employee left, since he could not ask another employee to read them. Mr. Sylvestre stated that he had done the same thing for other employees on extended leave. When they returned, the officers were advised of important topics and directives. He did not understand why all the grievor's emails had been deleted.

[182] In cross-examination, Mr. Sylvestre was asked about the grievor's request to have her assignment suspended for mediation, which management refused. He stated that he did not receive anything from the grievor. Once she received her assignment letter, Mr. Picard was responsible.

[183] With respect to his request to be advised about fishery officers at the Grande-Rivière office, Mr. Sylvestre stated that he had not only asked Mr. Boulay but also Mr. Morrison and Mr. Boudreau.

[184] When asked whether he had requested that Mr. Boulay or the other supervisors discuss with the grievor the information they were submitting, Mr. Sylvestre replied that he told them to share certain information with her. He could not ask someone in an acting position to do everything that an indeterminate employee could do. Several problems were resolved right away or in employee meetings.

[185] Mr. Sylvestre stated that the message was clear for everyone; management expected the office to become functional. He stated that the employees chosen for assignments were parts of cliques and were the reason the office was not functional.

[186] At my request, the employer provided additional information on the assignments of Mr. Bernatchez and Mr. Moreau.

[187] In the case of Mr. Bernatchez, he received a letter from Mr. Chouinard on August 15, 2012, assigning him to the Magdalen Islands office. From August 31 to September 18, 2012, Mr. Bernatchez was on paid sick leave. From September 19, 2012, to February 24, 2014, he was on unpaid sick leave. On February 24, 2014, he gradually returned to work over four weeks, and on August 7, 2014, he submitted a request for accommodation.

[188] On May 22, 2012, Mr. Moreau received Mr. Chouinard's letter assigning him to the Blanc-Sablon office. From June 18 to July 3, 2012, he was on paid sick leave and family care leave. From July 4, 2012, to December 2, 2014, he was on unpaid sick leave. On December 2, 2014, he began a gradual return to work over 12 weeks. On December 22, 2014, Mr. Moreau submitted a request for accommodation based on family status.

[189] Mr. Bernatchez and Mr. Moreau never left the Grande-Rivière office.

III. Summary of the arguments

A. For the employer

[190] With respect to the termination grievance, the employer pointed out that under s. 12(1)(e) of the *FAA*, it can terminate an employee on grounds that are not disciplinary, such as for abandoning a position. According to the employer, the evidence shows that the grievor was advised more than once of the consequences of not reporting to her new headquarters area. She refused to follow the direction, although she had filed a grievance (obey first, then complain). She offered no valid explanation that reporting to her headquarters area was out of her control, and she submitted no request for accommodation. So, it was reasonable for the employer to conclude that she had renounced her fishery officer position, and it terminated her for reasons that were not disciplinary.

[191] As for the assignment grievance, the employer objected to the jurisdiction of an adjudicator on the grounds that the grievor had no recourse under s. 209 of the *PSLRA*. The employer pointed out that its decision had not been made under the provisions of the collective agreement but that it had been based on the mobility clause in the job offer letters and that geographic mobility was a condition of employment. According to the employer, it was a temporary two-year assignment, not a deployment. The grievor's substantive position remained at the Grande-Rivière office. She should have invoked s. 209(1)(c)(i) of the *PSLRA* if she was deployed. In addition, deployments are governed by ss. 51(1) and (6) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), which read as follows:

51 (1) Except as provided in this or any other Act, a deputy head may deploy employees to or within the deputy head's organization.

...

(6) No person may be deployed without his or her consent unless

(a) agreement to being deployed is a condition of employment of the person's current position; or

(b) the deputy head of the organization in which the person is employed finds, after investigation, that the person has harassed another person in the course of his or her employment and the deployment is made within the same organization.

[192] The employer submitted that an adjudicator does not have jurisdiction to rule on the assignment decision. However, if the adjudicator were to conclude that there was jurisdiction, the employer's position was that it was an administrative decision.

[193] For the severance pay grievance, the employer pointed out that since article 64 of the collective agreement (on severance pay) does not refer to abandoning a position, the grievor was not entitled to severance. Article 64 refers only to the following circumstances: layoff, resignation, rejection on probation, retirement, death, and termination for cause for incapacity or incompetence.

[194] The employer continued with the facts that it considered important. The Grande-Rivière office had many problems with respect to team spirit, collaboration, initiative, and performance. They affected how the office functioned to such a degree that it was unable to fulfill its conservation and protection mandate. The employer referred to the industry representatives' complaints and their loss of trust in fishery officers at the Grande-Rivière office and to Exhibits E-8 (the itinerary for Mr. Nadeau's visit to the Gaspé sector) and E-9 (the agenda for a July 19, 2011, meeting of the employer and fishery industry representatives). Fishery officers at other offices did not want to work at the Grande-Rivière office, and according to Mr. Sylvestre, it was hard to staff positions there.

[195] The employer submitted that several times, management had tried to resolve the Grande-Rivière office's problems, for example by holding meetings with a psychologist, by implementing a charter, by having discussions with the union, by hiring Mr. Morrison, and by Mr. Nadeau and Mr. Chouinard meeting with the employees. Despite those attempts, since the office was still not functional, management decided to temporarily assign certain fishery officers to other offices for two years, while keeping their substantive positions at the Grande-Rivière office. According to the employer, management considered the situations of the affected fishery officers.

[196] The grievor was assigned to the Northern Quebec sector, based out of the Québec office. She was to work there three out of four weeks. The initial date of her assignment was changed to reflect her gradual return from sick leave. In her July 17, 2012, letter, she asked management questions about her assignment.

[197] In the July 20, 2012, response, Mr. Chouinard advised the grievor of the

assignment's terms, which were that the employer would pay the costs of her relocation to Québec and her return to Grande-Rivière but that she had to cover the cost of her accommodations in Québec. She refused the assignment.

[198] The grievor was prepared to suspend her grievance to proceed with mediation. According to management, mediation was possible, but the grievance process could not be stopped.

[199] In a letter dated August 16, 2012, management ordered the grievor to report to her headquarters area on August 27, 2012, and suspended her pay on August 27, 2012, because it considered her absent without leave. The letter dated September 4 again ordered the grievor to report to work, which she refused in her response on September 8, 2012, in which she indicated that she did not consider that she had renounced her position. In a letter to her dated September 20, 2012, and with the subject line, "[translation] Second final notice of termination for abandoning a position" (Exhibit E-1, Tab 12), Mr. Chouinard advised her that the situation was under review to determine whether her case needed to be submitted to the regional director general to recommend terminating her employment. The grievor and Mr. Chouinard did not communicate between September 20 and October 26, 2012, the date of the termination letter.

[200] According to the employer, before concluding that the grievor had abandoned her position, it considered all the reasons she cited for refusing the assignment. She had not mentioned family obligations and had not submitted an accommodation request to the employer.

[201] For the termination grievance, the employer pointed out that it has the authority to terminate an employee for reasons that are not disciplinary (s. 12(1)(e) of the *PSEA*). Those reasons include abandoning a position (see *Hayter v. Deputy Head (Department of National Defence)*, 2015 PSLREB 15; *Kwan v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File No. 166-02-27120 (19960830), [1996] C.P.S.S.R.B. No. 66 (QL); *Lindsay v. Canada Border Services Agency*, 2009 PSLRB 62, upheld in 2010 FC 389; *Okrent v. Deputy Head (Department of Public Works and Government Services)*, 2013 PSLRB 65; *Laye v. Deputy Head (Department of Agriculture and Agri-Food)*, 2013 PSLRB 27; *Pachowski v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-28543 (19990909), [1999] C.P.S.S.R.B. No. 115 (QL), upheld in 2000 CanLII

16436 (F.C.); and *Jensen v. Deputy Head (Department of the Environment)*, 2009 PSLRB 153).

[202] The employer's decision must be examined based on its reasonableness, i.e., it acted fairly and in good faith (see *Hayter, Laye, and Lindsay*). The grievor should have complied with the labour law principle of obeying first and then complaining (see *Cavanagh v. Canada Revenue Agency*, 2015 PSLREB 7; *Sainte-Marie v. Canada Customs and Revenue Agency*, 2006 PSLRB 30; and *Kwan*). Since she had already filed a grievance, she should have reported to her headquarters area and awaited the conclusion of the grievance process.

[203] The grievor was insubordinate. A finding of insubordination requires proof of the following: that the employer gave an order, that the order was clearly communicated to the employee, that the person giving the order had the proper authority to, and that the employee did not comply on at least one occasion (*Cavanagh*; and *Focker v. Canada Revenue Agency*, 2008 PSLRB 7).

[204] The grievor did not submit an accommodation request to the employer. She did so only during her testimony. She had a duty to facilitate the search for a compromise with the employer (*Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 at para. 43).

[205] For the assignment grievance, the employer referred to s. 209(1)(a) of the *PSLRA* and articles 6, 36, and 59 of the collective agreement. It pointed out that the term "assignment" is not defined in the *PSEA* but that instead the concept is defined in the jurisprudence. In support of that argument, it cited the following decisions: *Yarney v. Treasury Board (Department of Health)*, 2013 PSLRB 45; *Elmore v. Canada (Attorney General)*, 2000 CanLII 14814 (F.C.); *Roberts v. Canada (Attorney General)*, 1999 CanLII 7726 (F.C.A.); and *Canada (Attorney General) v. Dawidowski*, [1994] F.C.J. No. 1791 (QL).

[206] The employer pointed out that this grievance was not referred to adjudication as one challenging a disciplinary action and that it could not, at that stage, be changed to such a grievance (see *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.); *Boudreau v. Canada (Attorney General)*, 2011 FC 868; and *Mutart v. Canada (Attorney General)*, 2014 FC 540). That leaves only the collective agreement's provisions.

[207] Article 36 of the collective agreement deals with deployment notices. Deployments are dealt with in ss. 50 to 53 of the *PSEA*. If the grievor's assignment is considered a deployment, then an adjudicator has jurisdiction under s. 209(1)(c)(ii) of the *PSLRA* only if the deployment took place without the grievor's consent, if such consent was required. That provision reads as follows:

209 (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

...

(c) in the case of an employee in the core public administration,

...

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required

[208] Under s. 51(6)(a) of the *PSEA*, consent is not required if it is a condition of employment of the employee's current position. The employer argued that since the grievor had given her consent in the job offers (Exhibit E-1, Tab 16), an adjudicator did not have jurisdiction. When an adjudicator is seized of a grievance under s. 209(1)(c)(ii) of the *PSLRA*, the adjudicator has the authority to determine whether consent to being deployed was a condition of the employee's employment (s. 231(a) of the *PSLRA*).

[209] Paragraph 51(6)(a) of the *PSEA* reads as follows:

51 (6) No person may be deployed without his or her consent unless

(a) agreement to being deployed is a condition of employment of the person's current position

[210] Paragraph 231(a) of the *PSLRA* states the following:

231 An adjudicator or the Board, when seized of a grievance referred to in subparagraph 209(1)(c)(ii), may determine any question relating to whether

(a) consent to being deployed was a condition of the employee's employment

[211] The assignment grievance refers to article 59 of the collective agreement, which is about performance reviews. The employer pointed out that that is not the way to challenge a performance review. If the grievor disagreed with the content of her performance review, she should have challenged it at the time through a grievance or by requesting a Federal Court judicial review.

[212] The employer pointed out that if I conclude that I have jurisdiction over the termination because this grievance was referred to adjudication as challenging a disciplinary action, its position was that it was an administrative action taken to make the Grande-Rivière office functional (see *Canada (Attorney General) v. Frazee*, 2007 FC 1176; and *Gingras v. Treasury Board (Citizenship and Immigration Canada)*, 2002 PSSRB 46).

[213] The employer pointed out that management had decided to assign the employees in question based on each one's situation, so each result and outcome was different. In management's opinion, it was the decision with the least impact. The employer asked that the grievor's assignment grievance be dismissed.

[214] On the severance pay grievance, the employer pointed out that abandoning a position is not one of the cases entitled to severance pay under article 64 of the collective agreement. Since the grievor was not entitled to it, her grievance must be dismissed.

B. For the grievor

[215] The grievor first addressed the assignment grievance, which was about being assigned to Northern Quebec. She pointed out that her grievance had raised the fact that the employer had incorrectly applied administrative changes. Although it was an administrative action, it was incorrectly applied, to correct a performance problem. She mentioned that it was constructive dismissal.

[216] The grievor emphasized that the employer's response at the third level of the grievance process indicates that it was not a disciplinary action. According to her, the action that the employer qualified as administrative must be analyzed to determine whether the principles of natural justice were respected and whether the decision was arbitrary or made in bad faith. She pointed out that the form of the grievance must not take precedence over its content and that if the grievance is dismissed based on its form, she has no other valid recourse.

[217] The grievor maintained her allegation of constructive dismissal because the action that the employer qualified as administrative was effectively corrective and therefore of a disciplinary nature.

[218] The grievor raised that the support plan that the employer imposed for the duration of her assignment constituted a disciplinary action imposed on an employee with 20 years of service. That action lays blame on her, which was contrary to her performance reviews. Since the employer claimed that its objective was to correct her performance, the action was corrective and therefore disciplinary. In this case, the employer acted in bad faith. If it cited problems with communication and collaboration, it should have met with the employees individually to advise them of their shortcomings and propose a means of improving. It claimed that the problems existed since 2001, but it waited a decade before acting. The grievor had no disciplinary action on her record, so how could management have targeted her as being a problem, without any proof? Mr. Chouinard testified that he had to send the problematic employees elsewhere to learn how to work as a team. Therefore, it was a disciplinary action.

[219] As for the employer's argument that the hearing for the assignment grievance must not examine performance reviews, the grievor noted that the employer raised the issue of her performance as the ground for her assignment.

[220] In his testimony, Mr. Sylvestre stated that he had asked first- and second-level supervisors to advise him of everything that happened at the Grande-Rivière office. The grievor pointed out that that information was not discussed with her in advance and that he added it to her performance reviews. Mr. Boulay submitted reports to Mr. Sylvestre but did not follow up with the grievor before doing it so she could justify herself. Given that the employer based its decision to assign her on those reviews, it was a violation of the principle of natural justice.

[221] In support of that argument, the grievor cited the well-known decision in the labour law field, *Edith Cavell Private Hospital v. Hospital Employees' Union, Local 180* (1982), 6 L.A.C. (3d) 229. That decision sets out the criteria that an employer must meet when it seeks to dismiss an employee for a performance deficiency for which the employee is not culpable. According to the grievor, since the employer respected none of those criteria, it could not cite the grievor's performance to justify her assignment. The fact that the employer qualified the measure as administrative is not a

determining factor (see *Canada (Attorney General) v. Basra*, 2008 FC 606 and 2010 FCA 24; and *Fraze*). The effects of the employer's action on the employee can be examined to determine whether it was a disguised disciplinary action (see *Fraze*; and *Boutziouvis v. Financial Transactions and Reports Analysis Centre of Canada*, 2010 PSLRB 135 (application for judicial review dismissed in 2013 FCA 118)). In this case, the grievor faced enormous consequences, i.e., being separated from her family and assuming significant financial obligations.

[222] The grievor pointed out that the principles set out in those decisions give an adjudicator jurisdiction under s. 209 of the *PSLRA* since the employer's decision was based on culpable and rectifiable misconduct on her part. According to her, *Burchill* does not apply because she did not change the nature of the grievance and because the grievance and the referral to adjudication are inclusive.

[223] The grievor pointed out that the employer acted in bad faith by invoking the mobility clause, which it chose knowingly, as indicated in Exhibit S-3. According to her, the employer invoked that clause, which applies to deployments, while leading the employees to believe that they were in an assignment situation.

[224] The grievor referred to her job offer dated June 30, 2005 (Exhibit E-1, Tab 16), which included the following condition of employment:

[Translation]

...

Agree to be deployed anywhere in Canada or assigned to all types of regulatory enforcement activities, including inland, coastal, and offshore patrols and/or special operations.

...

[225] According to the grievor, the word "or" indicates that there is a distinction between being deployed anywhere in Canada and regulatory enforcement activities. The sentence does not say that for assignments to all types of regulatory enforcement activities, the employee may be sent anywhere in Canada. And the examples of activities are not comprehensive. The grievor pointed out that it was not a deployment. However, the employer adopted the concept of deployment in its decision to assign the Grande-Rivière employees to other offices.

[226] If I conclude that the employer acted in bad faith when it imposed discipline, then I have the jurisdiction to decide the grievance (see *Courtemanche v. Parks Canada Agency*, 2007 PSLRB 119). In this case, the grievor claimed that she was subject to constructive dismissal, which is disciplinary in nature.

[227] However, if I conclude that the employer's action was not disciplinary, I must consider that natural justice was breached. The employer's letters ordering the grievor's assignment were based on allegations of shortcomings in her performance and her attitude, without giving her the opportunity to justify herself. If that argument is not upheld, then I must consider that the three grievances are related and that the grievor has no other recourse that truly offers redress. In support of her arguments, she cited the following decisions: *Canada (Attorney General) v. Boutilier*, [1999] 1 F.C. 459 at para. 48; and *Galarneau v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 70 at para. 42. The grievor pointed out that the employer understood the nature of her grievance (see *Gingras v. Treasury Board (Citizenship and Immigration Canada)*, 2002 PSSRB 46 at paras. 22, 23, and 26). According to her, her grievance must be read liberally.

[228] The grievor then addressed the grievance about being terminated for abandoning her position. She emphasized that the second paragraph of the termination letter contains two points, which were her refusal to report to her headquarters area and not respecting the mobility clause. The employer concluded that she had renounced her position. According to her, those points satisfy the conditions for insubordination in paragraph 103 of *Focker*, and the action the employer took was for disciplinary reasons. It characterized that action as abandoning a position in order to avoid an adjudicator's jurisdiction and paying severance. To determine whether a position was abandoned, the applicable criteria are reasonableness and objectivity. According to the grievor, under the circumstances, the employer should have followed the disciplinary process.

[229] The grievor pointed out that with respect to the objectivity criterion, consideration must be given to the facts that she was returning from sick leave, that she had financial and family constraints, and that because she worked at a small office, everyone knew her situation. She argued that neither the collective agreement nor s. 12(1)(e) of the *FAA* provides for a deemed abandonment of a position.

[230] The grievor pointed out that an employer must act fairly and in good faith when

terminating an employee for reasons that are not disciplinary (see *Laye*, at para. 153). She submitted that in this case, the employer's position is that she should have respected the mobility clause when it knew that the clause did not apply in the circumstances. Referring to paragraph 173 of *Laye*, the grievor argued that she had valid reasons for refusing the assignment because it imposed impossible conditions on her, and those constraints constituted constructive dismissal.

[231] The grievor submitted that Mr. Chouinard had continued to threaten to terminate her rather than discussing the situation with her. Because the employer wanted to transfer her, no other option was available other than terminating her. She pointed out that she had never expressed an intention to resign or abandon her position. She had indicated to the employer that she wanted to remain at the Grande-Rivière office. According to her, its characterization of abandoning a position is false, and it is a disciplinary termination. Alternatively, it is a non-disciplinary termination.

[232] The grievor pointed out that the decisions in *Yarney*, *Elmore*, and *Roberts*, cited by the employer, were rendered in cases of deployments, which can be distinguished from this case.

[233] With respect to the grievance about the employer's refusal to pay the grievor severance, she submitted that it is about abandoning her position and that the collective agreement does not mention such a situation. The facts were skewed to benefit the employer.

[234] The grievor pointed out that were I to conclude that her termination was justified on unsatisfactory performance grounds, she would be entitled to severance pay. Her relocation was based on her performance.

[235] As for the employer's argument that the grievor could not question her performance reviews at the hearing, she responded that the employer had raised them and that it would thus be unjust, unfair, and contrary to the principles of natural justice were she prevented from referring to them.

[236] As corrective measures, the grievor seeks reinstatement to her duties in the same position and level, with all the benefits she would have received had she remained in her position in Grande-Rivière. She also seeks \$20 000 in damages because

the employer acted in bad faith, humiliated her, and characterized her as a problematic employee with no supporting evidence. Since her two colleagues have returned to work and not her, people in Grande-Rivière wonder why she has not returned to the office. That has had enormous consequences for her. And she seeks \$50 000 in punitive damages because the employer based the termination on the mobility clause, knowing that it did not apply. It planned that strategy.

C. Employer's reply

[237] As the employer's witnesses explained, the mobility clause was used to make the Grande-Rivière office functional. Referring to the mobility clause in the 2005 job offer letter, Mr. Chouinard explained that the Grande-Rivière office specialized in one area of activity, while the Québec office specialized in another. According to the employer, when a fishery officer at the Grande-Rivière office was assigned to another area of activity, the mobility clause applied. Referring to the mobility clause in the job offer letters from 1990 (Exhibit E-1, Tab 13) and 1992 (Exhibit E-1, tab 15), the employer pointed out that geographic mobility includes assignments and deployments.

[238] With respect to the financial impact on the grievor, the employer emphasized that the letters she sent to it mentioned only two rents. There is no evidence of financial repercussions, and she should have provided more detail on that subject. She did not prove her allegation that she was not paid for travelling to visit her family, and the employer's witnesses were asked no questions about that.

[239] As for the termination letter, Mr. Nadeau explained that he had concluded that the grievor had abandoned her position because she had refused to report to her headquarters area, even though she had been advised more than once of the consequences of refusing to. He stated that he had analyzed the reasons for her refusal and had decided that they were not valid. The grievor did not ask to have the date on which she was to report to the headquarters area changed or extended.

[240] With respect to the grievor's argument that by developing the plan indicated in Exhibit S-3, the employer acted in bad faith, it responded that it was not bad faith for it to consult resource people before making a decision.

[241] As for the jurisdiction of an adjudicator over the assignment decision and the recourse available to the grievor, the employer argued that not all its decisions can be referred to adjudication. For example, it referred to rejections on probation, in which

an adjudicator has jurisdiction in specific circumstances. In this case, the grievance was referred under collective agreement articles and not as a grievance challenging a disciplinary action. The grievor was not without recourse. She could have gone before the Federal Court with the reasonableness of the employer's decision.

[242] On applying the principles of natural justice to the content of the grievor's performance reviews, the employer pointed out that she could have exercised recourse to challenge her reviews but did not. Being before an adjudicator is not the forum for challenging performance reviews. The employer was led to action by the employees' impact on the Grande-Rivière office's operations.

[243] As for severance pay, article 64 of the collective agreement refers to incompetence, not unsatisfactory performance.

[244] Although the employer could have imposed discipline, it decided to resort to reasons that were not disciplinary, and on several occasions, it warned the grievor that she would be terminated for reasons that were not disciplinary if she did not report to her headquarters area. Given that the employer chose the option that was not disciplinary, the issue of whether disciplinary action could have been imposed is irrelevant. Whether the employer's decision was reasonable must be evaluated.

[245] As for the grievor's argument that the employer acted in bad faith when it used the mobility clause when it knew that it did not apply, the employer emphasized that its witnesses provided explanations for using the clause. None mentioned knowing that the clause did not apply. On the contrary, they believed that it applied. In the employer's view, that claim is unfounded.

[246] As for the corrective measure that the grievor seeks, the employer pointed out that an adjudicator's authority is limited by s. 226 of the *PSLRA*, which read as follows at the time:

226 (1) An adjudicator may, in relation to any matter referred to adjudication,

(a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner as a superior court of record;

(b) order that a hearing or a pre-hearing conference be conducted using a means of telecommunication that permits the parties and the adjudicator to communicate

with each other simultaneously;

(c) administer oaths and solemn affirmations;

(d) accept any evidence, whether admissible in a court of law or not;

(e) compel, at any stage of a proceeding, any person to produce the documents and things that may be relevant;

(f) subject to any limitations that the Governor in Council may establish in the interests of defence or security, enter any premises of the employer where work is being or has been done by employees, inspect and view any work, material, machinery, appliance or article in the premises and require any person in the premises to answer all questions relating to the matter being adjudicated;

(g) interpret and apply the Canadian Human Rights Act and any other Act of Parliament relating to employment matters, other than the provisions of the Canadian Human Rights Act related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;

(h) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the Canadian Human Rights Act;

(i) award interest in the case of grievances involving termination, demotion, suspension or financial penalty at a rate and for a period that the adjudicator considers appropriate; and

(j) summarily dismiss grievances that in the opinion of the adjudicator are frivolous or vexatious.

(2) At any stage of a proceeding before an adjudicator, the adjudicator may, if the parties agree, assist the parties in resolving the difference at issue without prejudice to the power of the adjudicator to continue the adjudication with respect to the issues that have not been resolved.

IV. Reasons

[247] I will examine each grievance individually.

A. Grievance 566-02-9108 (relocation)

[248] The grievor filed this grievance on July 17, 2012, and referred it to adjudication on October 10, 2013. The notice of reference to adjudication was submitted using Form 20 (Interpretation or Application of a Provision of a Collective Agreement or an Arbitral Award) under s. 209(1)(a) of the *PSLRA*. The grievance alleges that the

employer required her to relocate, and it raised the interpretation or application of the following collective agreement articles: 6 (Managerial Responsibilities), 36 (Notice of Transfer), and 59 (Employee Performance Review and Employee Files). The applicable provision of the *PSLRA* is s. 209(1)(a), which read as follows at the time:

209 (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award

[249] Mr. Chouinard's June 11, 2012, letter advising the grievor of her assignment to the Northern Quebec sector also informed her that her substantive position remained at Grande-Rivière (Exhibit E-1, Tab 3). As indicated in the last job offer letter on June 30, 2005 (Exhibit E-1, Tab 16), as of that date, she held a fishery officer position at the GT-04 group and level with the Conservation and Protection Branch at the Grande-Rivière office. That position's linguistic requirement was unilingual French, while the Québec office position's was bilingual. That last letter of offer replaced those that preceded it.

[250] The employer objected to an adjudicator's jurisdiction to rule on the assignment decision on the grounds that the grievor had no recourse under s. 209 of the *PSLRA*.

[251] The employer maintained that its decision was not made under the provisions of the collective agreement but instead that it was based on the mobility clause in the job offer letter that the grievor accepted and that geographic mobility was a condition of employment. However, if the adjudicator were to conclude that he has jurisdiction, the employer's position would be that the decision to assign her to the Northern Quebec sector was administrative.

[252] The employer pointed out that the term "assignment" is not defined in the *PSEA* but that instead the concept of assignment is defined by the jurisprudence. However, the decisions the employer cited in support of that argument are about deployments. And the questions at issue in those decisions do not include the employee's consent to change geographic areas for an extended time. Therefore, those decisions can be

distinguished from the issues in this case.

[253] The grievor cited the following collective agreement clauses:

...

Article 6

Managerial Responsibilities

6.01 *Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the public service.*

...

Article 36

Notice of Transfer

36.01 *Where practicable, advance notice of a change in posting or a transfer from an employee's Headquarters' area as defined by the Employer shall be given to an employee. Such notice shall not normally be less than three (3) months.*

...

Article 59

Employee Performance Review and Employee Files

59.01

- a. *When a formal assessment of an employee's performance is made, the employee concerned must be given an opportunity to sign the assessment form in question upon its completion to indicate that its contents have been read. A copy of the assessment form will be provided to the employee at that time. An employee's signature on his or her assessment form will be considered to be an indication only that its contents have been read and shall not indicate the employee's concurrence with the statements contained on the form.*
- b. *The Employer's representative(s) who assess(es) an employee's performance must have observed or been aware of the employee's performance for at least one-half (1/2) of the period for which the employee's performance is evaluated.*
- c. *An employee has the right to make written comments to*

be attached to the performance review form.

59.02

a. Prior to an employee performance review the employee shall be given:

i. the evaluation form which will be used for the review;

ii. any written document which provides instructions to the person conducting the review;

b. if during the employee performance review, either the form or instructions are changed they shall be given to the employee.

59.03 *Upon written request of an employee, the personnel file of that employee shall be made available once per year for his or her examination in the presence of an authorized representative of the Employer.*

...

[254] As for article 6 of the collective agreement, my opinion is that it does not apply in this case. The grievor did not demonstrate that the employer's authority to relocate her was limited in any way by the collective agreement.

[255] Article 36 of the collective agreement deals with notices of changes to postings or transfers. The collective agreement does not define the expression "change in posting" or the term "transfer" or "posting".

[256] As demonstrated by the employer's letters to the grievor dated July 20, 2012 (Exhibit E-1, Tab 6), August 14, 2012 (Exhibit E-1, Tab 7), August 16, 2012 (Exhibit E-1, Tab 8), and August 27, 2012 (Exhibit E-1, Tab 9), it justified her relocation by relying on the following clause in the job offer letter dated June 30, 2005, which it characterizes as the "mobility clause":

[Translation]

...

By accepting this offer, you also accept the following conditions of employment:

- Agree to be deployed anywhere in Canada or assigned to all types of regulatory enforcement activities, including inland, coastal, and offshore patrols and/or*

special operations.

...

[257] That clause contains two things about conditions of employment, which are agreeing to be deployed anywhere in Canada and agreeing to be assigned to regulatory enforcement activities.

[258] Subsection 2(1) of the *PSEA* defined the word “deployment” as follows at the relevant time in this case: “*deployment* means the transfer of a person from one position to another in accordance with Part 3 ... (*mutation*)”. The French version read as follows: “Transfert d’une personne d’un poste à un autre sous le régime de la partie 3 ... (*deployment*)”. Paragraph 51(6)(a) of the *PSEA* stated the following at that time:

51 (6) No person may be deployed without his or her consent unless

(a) agreement to being deployed is a condition of employment of the person’s current position

[259] Section 52 of the *PSEA* read as follows at that time:

52 On deployment, a person ceases to be the incumbent of the position to which he or she had previously been appointed or deployed.

[260] The employer had advised the grievor that her substantive position remained at Grande-Rivière. Therefore, she did not cease to be the incumbent of the position to which she had been appointed. Consequently, the decision to relocate her to the Northern Quebec sector did not constitute a deployment under the *PSEA*. Both parties adopted that position.

[261] Given that the grievor’s relocation was not a deployment, it must now be determined whether nevertheless the employer had to provide her with three months’ notice of her relocation in accordance with article 36 of the collective agreement.

[262] The English and French versions of article 36 read as follows:

Article 36
Notice of Transfer

36.01 Where practicable, advance notice of a change in posting or a transfer from an employee’s Headquarters’ area as defined by the Employer shall be given to an

employee. Such notice shall not normally be less than three (3) months.

...

Article 36
Avis de mutation

36.01 Lorsque c'est possible, un préavis de changement de poste ou de mutation de la zone du lieu d'affectation de l'employé-e, selon la définition de l'Employeur, est communiqué à l'employé-e. Ce préavis est normalement donné au moins trois (3) mois à l'avance.

[263] As indicated earlier in this decision, the terms “change in posting”, “posting”, and “transfer” are not defined in the collective agreement. In addition, no other clause in the collective agreement contains the term “transfer” or *mutation*. However, in the *PSEA*, the French term *mutation* is defined as “deployment” in the English version. But unlike the French version of article 36 of the collective agreement, the English version does not use the term “deployment” but rather the generic term, “transfer”.

[264] The text of the French version of article 36 could be interpreted as follows. When an employee is relocated in circumstances that are neither a deployment nor a change in posting, the employer does not have a duty to provide the employee with three months’ notice. Such an interpretation would mean that if the employer wanted to relocate an employee to another geographic area when it was not a deployment or change in posting, the employer could order the employee to report to the new location from one day to the next.

[265] I find such an interpretation illogical and unfair toward employees. It seems to me that the intent of the collective agreement is instead what is reflected in the English version of article 36, in which the use of the term “transfer” is less limiting than *mutation* or “deployment”.

[266] Therefore, I conclude that under the circumstances of the grievor’s relocation in this case, the employer had a duty to provide her with three months’ notice. It must now be determined whether the employer fulfilled that duty.

[267] Mr. Chouinard’s letter advising the grievor of her assignment to Québec as of Monday, August 13, 2012, is dated June 11, 2012 (Exhibit E-1, Tab 3). That date was later extended to Monday, September 10, 2012 (see Exhibit E-1, Tab 10). Although

technically, there are less than 3 months between June 11 and September 10, 2012, the fact remains that there are 91 days between those two dates.

[268] September 11, 2012, was a Tuesday. Usually, an employer wants an employee to report to a new workplace on a Monday, rather than a Tuesday. The grievor did not present any evidence that the fact that the notice was one day short of what was required under article 36 of the collective agreement caused her any hardship. Therefore, I find that for all intents and purposes, the employer did not breach article 36 of the collective agreement.

[269] Article 59 of the collective agreement deals with the protocol to follow for employee performance reviews. One of the grounds the employer alleged to justify the grievor's relocation were shortcomings noted in her performance. She vigorously contested that allegation. She pointed out that the employer acted in bad faith and used false pretexts to justify her relocation and that it was a disguised disciplinary action.

[270] My opinion is that that argument by the grievor is not covered by s. 209(1)(a) of the *PSLRA* since it is not based on the interpretation or application of article 59 of the collective agreement. She was not able to demonstrate that by relocating her to Northern Quebec, the employer incorrectly interpreted or applied article 59. She could not change the nature of her grievance at adjudication.

[271] Because the grievor did not demonstrate that the employer breached the collective agreement, my opinion is that her relocation grievance must be dismissed since she did not discharge her burden of proof.

B. Grievance 566-02-9107 (termination)

[272] The grievor referred this grievance to adjudication under two provisions of the *PSLRA*, s. 209(1)(c)(i) (unsatisfactory performance) and s. 209(1)(b), under which she alleges that her termination was in fact a disguised disciplinary action.

[273] The jurisprudence under the *PSLRA* and its predecessors supports the employer's statement that it can terminate an employee for abandoning a position or for not reporting to work (see *Jenson, Kwan, Pachowski, Lindsay, Okrent, Lay, and Hayter*). In addition, when terminating an employee for reasons that are not disciplinary, the employer also has a duty to act fairly and in good faith (see *Lindsay*,

Laye, and Hayter).

[274] The termination letter sent to the grievor on October 26, 2012, reads as follows:

[Translation]

...

Re: Termination for abandoning a position

Ms. Major:

This is pursuant to the letters to you from Messrs. Marcel Picard and John Chouinard on August 27, 2012, September 4, 2012, September 10, 2012, and September 28, 2012, in which they informed you that you had to report to the Québec regional office to begin your 2-year assignment in the Northern Quebec sector. In those letters, you were also advised that I could end your employment if you did not follow that directive.

As you did not report to your new headquarters area and thus did not respect the mobility clause in your conditions of employment, I conclude that you have renounced your position as a fishery officer in the Quebec Region of Fisheries and Oceans Canada.

Consequently, under s. 12(1)(e) of the Financial Administration Act, I terminate your employment with Fisheries and Oceans Canada, effective at the close of business on October 26, 2012.

...

[Emphasis added]

[275] In the grievance before me, the employer invoked termination for administrative reasons under s. 12(1)(e) of the *FAA*. The administrative reason it cited was abandoning a position. The position it referred to in the termination letter was “[translation] ... fishery officer in the Quebec Region of Fisheries and Oceans Canada.”

[276] Under ss. 209(1)(b) and (c) of the *PSLRA*, an adjudicator has jurisdiction over any termination of an employee in the core public administration, subject to the exceptions set out in ss. 208(2) and 211. Subsection 208(2) of the *PSLRA* read as follows at the time relevant to this case:

208 (2) *An employee may not present an individual grievance in respect of which an administrative procedure*

for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act.

[277] Subsection 208(2) of the *PSLRA* does not apply to this grievance.

[278] Section 211 of the *PSLRA* read as follows at the time:

211 Nothing in section 209 is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to

(a) any termination of employment under the Public Service Employment Act; or

(b) any deployment under the Public Service Employment Act, other than the deployment of the employee who presented the grievance.

[279] The *PSEA*'s termination provisions are found at ss. 62, 63, and 64. Section 62 deals with rejection on probation, s. 63 with a public service employee's resignation, and s. 64 with laying off employees, resulting in them losing employee status. None of them apply to the grievor.

[280] Because I have already determined that the grievor's relocation to the Québec office was not a deployment, s. 211(b) of the *PSLRA* does not apply. Consequently, the exceptions set out in s. 211 of the *PSLRA* do not apply in this case.

[281] Therefore, nothing prevents an adjudicator from ruling on the grievor's termination. Taken together, ss. 209(1)(b) and (1)(c)(i) mean that an adjudicator has full jurisdiction to examine an employee's termination from the core public service, subject to ss. 208(2) and 211 of the *PSLRA*, which do not apply in the circumstances before me.

[282] In this case, one of the issues is as follows: Did the grievor abandon her position, as the employer claims? To answer that question, it must be determined whether her position was in Québec.

[283] I will now examine the jurisprudence the employer submitted in support of its argument that the grievor's refusal to report to work at the Québec office constituted abandoning a position.

[284] In *Kwan*, the grievor worked in the Revenue Collections Division. He got into a physical altercation with another employee in the workplace. After that event, the employer temporarily assigned him to the Audit Division. At the end of his

assignment, the employer asked him to return to work in the Revenue Collections Division due to a staff shortage there.

[285] The grievor refused, citing his fear of the other employee. The employer proposed other workplaces. He refused to report to the Revenue Collections Division. The employer advised him that if he did not report to work, he would be terminated. When he did not report for work, he was terminated. On dismissing the grievance, the adjudicator concluded that the grievor had had no valid reasons to refuse to comply with the order to report to one of the locations that the employer had specified and that he had had no valid grounds to fear for his safety had he returned to work in the Revenue Collections Division.

[286] In *Pachowski*, following an incident of harassment by a work colleague, the grievor left her workstation and went on sick leave for one year. She then repeatedly refused to return to work at her position and rejected other work locations that the employer proposed. It warned her several times that if she did not report to work by a certain date, she would be terminated. It acted on its final warning and terminated her. The adjudicator was satisfied that the grievor had been informed that the employer intended to act on its final warning. Therefore, the grievor was not misled by the employer's failure to act on its earlier warnings. The adjudicator concluded that the employer's termination of the grievor was justified under the circumstances.

[287] In *Lindsay*, the adjudicator determined that the grievor's termination was based on an administrative reason, namely, the grievor's prolonged absence from work; thus, he had no jurisdiction to decide the grievance.

[288] In *Jensen*, the grievor was terminated after failing to report to work. She had been absent two years. The employer attempted to accommodate her based on the medical information it had received. She was not satisfied with the accommodation but never so advised the employer. It twice extended an offer of a position in a new work setting. She did not show up at the workplace and provided no explanation. Denying the grievance, the adjudicator found that the employer had accommodated the grievor to the point of undue hardship.

[289] In *Laye*, the grievor was terminated under s. 12(1)(e) of the *FAA* when she returned from an extended unpaid leave after having taken paid sick leave. The employer alleged that she was on unauthorized leave for 38 months and that she had

abandoned her position. She stated that she had never been disciplined or told that her position was in jeopardy and that she had been on authorized leave. Allowing the grievance, the adjudicator found that no reasonable basis existed to conclude that she had abandoned her position. Her actions indicated an intention to continue the employment relationship.

[290] In *Okrent*, the grievor grieved her termination for administrative reasons. She did not justify her absences from work over a period of 17 months. The employer had warned her many times to provide medical information and to complete leave request forms, failing which she was liable to termination. She did not respect the employer's instructions and was on unauthorized leave. Denying the grievance, the adjudicator found that she was deemed to have abandoned her position.

[291] In *Hayter*, the adjudicator denied the grievor's grievance against her termination for reasons that were not disciplinary for abandoning her position. After a period of illness, Health Canada declared the grievor fit to work. She returned to work, but sporadically. She consented to a fitness-to-work evaluation and offered to provide a medical certificate to justify her absences.

[292] The grievor provided a medical certificate that indicated that a new assessment of her ability to return to work would be performed, but the employer received no further medical confirmation. Since she had failed to confirm her attendance at the fitness-to-work evaluation, a new appointment was made. She again failed to confirm her attendance. The employer sent her a letter advising that she was on unauthorized leave and that it would recommend terminating her for reasons that were not disciplinary should she fail to contact the employer to provide a satisfactory reason for her absence. She did not contact the employer, yet the employer did not proceed with the termination.

[293] Three months later, the employer sent her another letter advising her that she had failed to provide medical documentation, that she had failed to confirm her attendance at the fitness-to-work evaluation, that she was on unauthorized leave, and that it would begin the termination process. Since the grievor did not contact the employer, it terminated her employment.

[294] In each decision that the employer cited, the facts show that contrary to the grievance before me, there was no conflict between the employer and the employees

about the positions to which they were to report.

[295] As indicated in the underlined sentence in the termination letter, the employer ended the grievor's employment based on s. 12(1)(e) of the *FAA* on the sole grounds that by not reporting report to her headquarters area, she allegedly did not comply with the mobility clause of her conditions of employment.

[296] The grievor's conditions of employment were set out in the collective agreement, the *PSLRA*, the *PSEA*, the *FAA*, and the offer letter dated June 30, 2015 (Exhibit E-1, Tab 16), for fishery officer position 30899 at the GT-04 group and level in Grande-Rivière. The earlier offer letters were for different positions. The offer letter of October 25, 1990 (Exhibit E-1, Tab 13), was for fishery officer position 440-3033 at the GT-01 group and level in Blanc-Sablon, Quebec. The offer letter of April 8, 1992 (Exhibit E-1, Tab 14), was for fishery officer position 440-3018 at the GT-02 group and level in Ste-Anne-des-Monts, Quebec. And the offer letter of September 16, 1992 (Exhibit E-1, Tab 15), was for fishery officer position 440-3018 at the GT-03 group and level in Ste-Anne-des-Monts. Therefore, the past offer letters could not contain the conditions of employment for her fishery officer position in Grande-Rivière.

[297] The job offer letter dated June 30, 2005, contains a mobility clause that reads as follows:

[Translation]

...

By accepting this offer, you also accept the following conditions of employment:

- *Agree to be deployed anywhere in Canada or assigned to all types of regulatory enforcement activities, including inland, coastal, and offshore patrols and/or special operations.*

...

[298] As I have already indicated in this decision, that clause contains two things: the agreement to be deployed anywhere in Canada, and the agreement to be assigned to regulatory enforcement activities.

[299] The grievor pointed out that the word "or" in the mobility clause indicates that there is a distinction between a deployment anywhere in Canada and an assignment to

regulatory enforcement activities. According to her, the portion of the sentence following “or” does not mean that for regulatory enforcement activities, an employee may be sent anywhere in Canada.

[300] I find that after reading the mobility clause, the ordinary meaning of the words supports the grievor’s position, which is that the word “or” is disjunctive, not conjunctive. It seems to me that had the employer’s intention been that an employee subject to the mobility clause, as worded in the June 30, 2005, offer letter, could be deployed or assigned anywhere in Canada, it would have been easy to insert words in that sense to clearly express such an intention.

[301] By accepting the job offer on June 30, 2005, the grievor consented to “[translation] ... be deployed anywhere in Canada ...”. However, I conclude that that consent does not apply to the portion of the sentence following the word “or”.

[302] Mr. Sylvestre and Mr. Nadeau testified that management did not seek the grievor’s consent to assign her to the Northern Quebec sector for two years.

[303] If I accept the employer’s argument, it would mean that under the mobility clause applicable in this case, the employer could assign an employee to another geographic area for any determinate period, regardless of length, without the employee’s consent, be it to Québec or Vancouver. I find that that is unreasonable and that it would have disproportionate and devastating consequences for employees.

[304] In the grievor’s case, the consequences of assigning her to the Northern Quebec sector included being separated from her family and assuming considerable financial obligations. Given that the employer would cover only the costs of moving to Québec, she had to pay the cost of an apartment there in addition to her home in Grande-Rivière, while having to spend three out of four weeks in Northern Quebec. Concluding that she had consented to such an assignment would require a much clearer text than the mobility clause in her offer letter of June 30, 2005, particularly given the personal consequences of such an assignment. Therefore, I reject the employer’s argument that by accepting the 2005 offer letter, the grievor consented to the assignment to the Northern Quebec sector.

[305] The only reason the employer cited in its letter terminating the grievor was that by not reporting to her headquarters area, she had renounced her position, since she

had not respected the mobility clause. Because she had not consented to an assignment anywhere in Canada, a two-year assignment outside the Grande-Rivière district was not legitimate. Thus, she was not required to report to the Québec office. The fact that she did not report there could not constitute abandoning a position, since her fishery officer position remained at Grande-Rivière, and the assignment was not legitimate.

[306] Therefore, the reason the employer provided for terminating the grievor is not supported by the evidence before me. It incorrectly believed that it could assign her to the Northern Quebec sector without obtaining her consent. When it decided to assign her to another geographic area, it had a duty to obtain her consent, unless otherwise clearly indicated in her conditions of employment.

[307] Under the circumstances, since the employer did not prove that terminating the grievor for abandoning a position was justified, her termination grievance is allowed.

[308] Although the grievance is allowed because the employer did not prove the grounds of abandoning a position cited in support of the grievor's termination, I will examine one other issue raised at the hearing, for discussion purposes. One of the arguments the employer made at the hearing was that the grievor had been insubordinate when she failed to report to her headquarters area.

[309] The termination letter clearly states that the employer invoked only a reason that was not disciplinary, based on s. 12(1)(e) of the *FAA*. Under well-established labour-law principles and the concept of procedural fairness, the employer could not at adjudication invoke additional grounds to support the termination. It had to stay with the grounds cited in the termination notice. Therefore, I do not allow the employer to invoke before me the grievor's alleged insubordination.

[310] That said, in light of all the evidence before me, I am convinced that the real reason for the termination was the fact that the employer felt that the grievor had refused to comply with an order that was clearly given to her, many times, to report to the Québec office. I conclude that the employer considered that refusal insubordination. Under those circumstances, it disguised her termination for insubordination under the appearance of abandoning her position. However, I do not need to conclude that it was a disguised disciplinary action, since I have rejected the ground of abandoning a position that the employer invoked in support of the

termination.

[311] In addition to being reinstated to her fishery officer position in Grande-Rivière, as corrective measures, the grievor requested \$20 000 in damages since the employer allegedly acted in bad faith, humiliated her, and characterized her as a problem employee, with no supporting evidence. She also seeks \$50 000 in punitive damages since the employer allegedly based the termination on the mobility clause, knowing that it did not apply.

[312] Although an adjudicator has jurisdiction to grant compensatory damages, the grievor did not present any evidence to support her claim for damages. Consequently, that claim is dismissed.

[313] The grievor also requested punitive damages. For discussion purposes, even if I were of the opinion that such damages were appropriate in this case, I feel that her reinstatement already meets the punitive and deterrent objectives and will ensure that the employer does not terminate employees in the same circumstances in the future.

C. Grievance 566-02-9109 (severance)

[314] Given that I allowed the grievor's termination grievance, there is no need to examine her severance pay grievance, which therefore is dismissed.

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

(The Order appears on the next page)

V. Order

[316] I declare that an adjudicator has jurisdiction to hear the grievance in PSLREB File No. 566-02-9107.

[317] The grievance in PSLREB File No. 566-02-9107 is allowed.

[318] I order that the deputy head of the Department of Fisheries and Oceans reinstate the grievor to her fishery officer position at the GT-04 group and level and at the Grande-Rivière, Quebec, office, retroactively to October 26, 2012, with all her rights and benefits. Simple interest, calculated annually at the rate applicable to Canada Savings Bonds, shall be added to the salary for the period from October 26, 2012, to the date of this order.

[319] I shall remain seized of this grievance for a period of 90 days from the date of this decision to resolve any disputes that may arise about the amounts owed to the grievor under this order.

[320] The grievances in PSLREB File Nos. 566-02-9108 and 566-02-9109 are dismissed.

March 22, 2017.

PSLREB Translation

**Steven B. Katkin,
adjudicator**