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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CLÉMENT BISAILLON

Grievor

and

THE CANADIAN FOOD INSPECTION AGENCY

Employer

Before: [Guy Giguère, Deputy Chairperson](#)

For the Grievor: Pierrette Gosselin, Counsel, Professional Institute of the
Public Service of Canada

For the Employer: [Richard Turgeon, Counsel](#)

Heard at St-Hyacinthe, Quebec, from April 2 to 6, 2001
and at Montréal, Quebec, from October 16 to 18, 2001.

DECISION

[1] Clément Bisaillon, a veterinarian who holds a position at the VM-02 group and level, is an employee of the Canadian Food Inspection Agency (CFIA). His workplace is Establishment 76, a slaughterhouse owned by Viandes Richelieu inc. in Massueville, Quebec. On October 18, 1999, Ange-Aimée Deschênes, the CFIA's Regional Director in St-Hyacinthe, informed Mr. Bisaillon that he was being suspended for one day because he had harassed R.D., a CFIA inspector, on May 25, 1999 by making sexual remarks about him that had humiliated and embarrassed him. On October 21, 1999, Mr. Bisaillon presented a grievance against that disciplinary action.

[2] On December 14, 1999, Ms. Deschênes informed Mr. Bisaillon that he was being suspended for a 10-day period as a result of a report by Gilles Demers, a consultant who had been given responsibility for investigating. Ms. Deschênes indicated that Mr. Bisaillon had contravened the CFIA's policy on harassment in the workplace, which requires managers to take action and to put an immediate end to any harassment. She added that Mr. Bisaillon had also abused his authority by disparaging the inspectors' work in his remarks and by making intimidating remarks during a telephone conversation with his employee.

[3] On December 17, 1999, Mr. Bisaillon presented a grievance against this second disciplinary measure, asking that it be rescinded and that he receive salary and benefits for the 10-day suspension period.

[4] Since these grievances were dismissed at all levels of the grievance procedure, they were referred to adjudication and are the subject of this decision.

Summary of Relevant Facts

[5] Mr. Bisaillon began working at Agriculture Canada as a veterinarian in 1967. He resigned in 1982 to work in private practice and returned to work at Agriculture Canada a year later. After holding positions as a veterinarian in various establishments, in 1991 he began working at Establishment 76. At that time, three inspectors reported to him: J.G., R.D. and Mirianne Hudon. In 1996, in the wake of the 1995 federal budget, downsizing occurred. After the downsizing exercise, J.G. was the only inspector still working at Establishment 76. However, R.D. occasionally returned to work there, replacing J.G. when he was absent or conducting trichina tests.

[6] There was a period of uncertainty before the staff cuts were announced, and J.G. testified that Mr. Bisaillon enjoyed reminding the inspectors that their role was less important than the veterinarian's. Mr. Bisaillon said that in future there would no more inspectors. J.G. explained that, because of these remarks by Mr. Bisaillon, he had been afraid he would lose his job.

[7] R.D. also testified that Mr. Bisaillon had said inspector positions were unnecessary at Establishment 76. R.D. explained that those remarks made the inspectors feel insecure because the employer was in a period of downsizing.

[8] Mr. Bisaillon testified that, at the time of the downsizing, he had said that a veterinary certificate was required to export horse meat to Europe and that the veterinarian would therefore be the last one to go from Establishment 76. He explained that he was not consulted about the staff cuts and that he learned which inspector positions at Establishment 76 were being eliminated at the same time the inspectors did. Mr. Bisaillon indicated that he did not take part in the hiring process and could not fire the inspectors. On cross-examination, he denied saying that he did not need inspectors at Establishment 76.

[9] R.D. testified that in 1996 he had reported Mr. Bisaillon because of a potential conflict of interest situation (Exhibit G-15, page 14). R.D. explained that subsequently the relationship between them was strained and that Mr. Bisaillon often made remarks to him about his personal life. Mr. Bisaillon told him that, given his nature, no woman could endure him in a stable relationship. R.D. testified that, the more often these remarks were repeated, the more uncomfortable he felt, because his privacy was invaded and he felt unhappy.

[10] Mr. Bisaillon testified that he had never spoken with R.D. about R.D.'s relationships with women. However, he noted that on one occasion following a joke that was disparaging to women, he had told R.D.: [translation] "The way you treat women, I can see why you can't keep them." On cross-examination, Mr. Bisaillon stated that that was the only remark he had made to R.D. about his relationships with women and that he had made it a number of years before 1999. Mr. Bisaillon explained that R.D. spent his working days telling sexual jokes about women.

[11] Pierre Marie, an employee of the Viandes Richelieu slaughterhouse, testified that R.D. told racy jokes and that he found him vulgar. Mr. Marie stated that

Mr. Bisaillon never told jokes or made inappropriate remarks. On cross-examination, he stated that he had complained to Mr. Bisaillon about the inappropriate remarks made by R.D. He testified that the slaughterhouse employees joked among themselves but never with the inspectors or with Mr. Bisaillon.

[12] J.G. testified about the working atmosphere at Establishment 76 and his relationship with Mr. Bisaillon. J.G. explained that there had been a dispute between him and Mr. Bisaillon in the summer of 1998 about whether a horse could be prepared for slaughter or had to be disposed of. J.G. explained that, even before that incident, the working atmosphere with Mr. Bisaillon was unbearable because Mr. Bisaillon repeatedly teased him about his belly, saying: [translation] "Big gut, little dick." Mr. Bisaillon also told him that, with his belly, he must not be good in bed with his wife. Because these remarks were repeated constantly, J.G. found them unbearable. J.G. also stated that, on one occasion, Mr. Bisaillon made these remarks in Mr. Marie's presence.

[13] J.G. stated that he had had some pleasant times with Mr. Bisaillon, who is a generous man who has helped him out. However, when he needed Mr. Bisaillon's support because of disagreements with the employees of the Viandes Richelieu slaughterhouse, Mr. Bisaillon chose not to become involved. J.G. went to see Mr. Marie, who met with his employees and resolved the situation.

[14] On cross-examination, J.G. stated that he had been diagnosed as having bipolar (manic-depressive) disorder but was being successfully treated by Dr. Adams.

[15] J.G. also testified that, when he had gone to see Mr. Bisaillon after being made fun of by employees, Mr. Bisaillon had told him: [translation] "What do you want me to do? You hear voices." J.G. explained that in general he got along well with the slaughterhouse employees but that he had had problems with Martin Soulière and Patrick Parent.

[16] Mr. Soulière testified about an incident involving J.G. that occurred when Mr. Soulière was joking with Patrick Parent. J.G., believing that they were making fun of him, had called them hypocrites. They had then asked the foreperson, Sylvain Bonin, to intervene. On cross-examination, Mr. Soulière testified that racy jokes, some of them about homosexuals, were told at the slaughterhouse. He explained that the employees told these jokes among themselves, possibly in the presence of inspectors. He added

that no jokes were told about the inspectors. He said that, as a joke, he pretended to have sexual relations with the carcass of a horse. J.G. was present and laughed.

[17] Mr. Bisailon testified about his working relationship with J.G., stating that they had worked together on good terms for a number of years. Mr. Bisailon stated that J.G. did his job well but no more. If something out of the ordinary occurred, J.G. was not independent and Mr. Bisailon or Mr. Marie had to intervene. Mr. Bisailon stated that one incident occurred involving J.G. and two slaughterhouse employees. J.G. had complained that they were making fun of him and talking about him behind his back. Mr. Bisailon met with the employees, who told him that they had been talking and laughing about hockey and that J.G. had suddenly become angry. Mr. Bisailon then spoke with J.G. to calm him down, and everything went back to normal. In his testimony, Mr. Bisailon explained that J.G. experienced mood swings and had hearing problems. Mr. Bisailon stated that he was misquoted on this point in the investigator's report (Exhibit G-15, page 12). The report indicates that Mr. Bisailon told the investigator: [translation] "(J.G.) often complained that the people on the floor were making fun of him. I often warned them, but sometimes they started again. I told him 'You hear voices' — he is hard of hearing — and 'You let things bother you too much.' He thinks they are saying things against him." Mr. Bisailon testified that he had never said [translation] "You hear voices" or "You let things bother you too much." He testified that he had told the investigator only: [translation] "He's hard of hearing; he's deaf. He thinks other people are saying things against him." On cross-examination, Mr. Bisailon stated that he had never said [translation] "Big gut, little dick" to J.G.

[18] Mr. Marie testified about J.G.'s behaviour at work. He described J.G. as a paranoid person who believed that the slaughterhouse employees were making fun of him. He would start shouting, which frightened some employees. On cross-examination, Mr. Marie stated that on the floor of the slaughterhouse, the following was said about J.G.: [translation] "Big gut, little dick." Mr. Marie stated that he had a good relationship with J.G. and that J.G. confided in him, saying that he wanted to stay at the slaughterhouse and that he got along well with Mr. Bisailon. Mr. Marie also explained that J.G. did not want to be assigned to another establishment. When that was a possibility, J.G. called in sick or went to see Mr. Marie to have him tell Mr. Bisailon that horses were to be slaughtered the following day and that J.G.'s presence was required at the slaughterhouse.

[19] Mr. Bisaillon also testified about his working relationship with Ms. Deschênes, Regional Director at St-Hyacinthe. He explained that he had always had good evaluation reports (Exhibits E-11 to E-14) but that his relationship with Ms. Deschênes was strained as a result of an incident in 1997 concerning the HV-11 form. Initially, the incident had involved André Paquette, an inspector at Establishment S-704, who had asked Mr. Bisaillon to complete the HV-11 form. Ms. Deschênes had intervened and ordered Mr. Bisaillon to complete the HV-11 form. Mr. Bisaillon had then presented a grievance (Exhibit E-18) challenging that order, which was contrary to the procedure established by his previous supervisors as well as the procedure approved by program management in 1993. Eventually, Mr. Bisaillon was proven right (Exhibit E-19). Mr. Bisaillon explained that, following that incident, Ms. Deschênes' attitude toward him changed: she no longer spoke to him, and everything was done through her secretary.

Incidents of May 24, 1999

[20] J.G. testified that R.D. came to visit him at his home on the evening of May 23, 1999 and told him that he now had a roommate. The following day, J.G. told Mr. Bisaillon that R.D. had a roommate at his home.

[21] Mr. Bisaillon testified that J.G. told him: [translation] "Guess who I saw on the weekend? (R.) skated over to our place and told me he's got a roommate." J.G. then said: [translation] "I always thought he was a queer. Now that he's got a roommate, I'm sure of it."

[22] J.G. testified that Mr. Bisaillon was very surprised at this news and could not get over it, saying: [translation] "I never would have thought that." Mr. Marie then came into the inspectors' office and said: [translation] "I've known that for a long time, I always said so." J.G. then added that he found it strange and even odd. Afterward, J.G. and Mr. Marie left the inspectors' office and went downstairs to the floor of the slaughterhouse, where the employees were working in the cutting room. J.G. then said to Mr. Marie: [translation] "Hey! That bastard (R.D.) played a trick on me a few months ago when he started working here", referring to the fact that R.D. had stolen overtime from J.G.

[23] Mr. Marie testified that J.G. then said to the employees who were there: [translation] "Hey, guys! Listen to this. I ran into (R.D.) in St-Hyacinthe yesterday, and

he told me he had somebody to share his apartment." Mr. Marie explained that J.G. was the one who had spread that rumour. He testified that his employees had laughed but had not teased R.D. on the subject.

[24] On cross-examination, J.G. admitted that he was the one who had started the rumour, saying: [translation] "I gossiped. I took it as a joke, lightly, but I didn't mean to be nasty. When I saw the way it was going, I felt bad. . . . I had already been teased by Mr. Bisailon."

Incidents of May 25, 1999

(a) Version of the Employer's Witnesses

[25] On May 25, 1999, R.D. reported to Establishment 76 because he was supposed to conduct trichina tests. R.D. testified that, when he entered the inspectors' office, Mr. Bisailon said to him: [translation] "So, have you gone over to the other side, have you turned into a queer?" R.D. stated that his reaction was to remain calm and smile; he vaguely recalled turning the remark into a joke. When Mr. Bisailon made his remarks, J.G. and Mr. Marie were present.

[26] J.G. testified that, when R.D. came into the inspectors' office on May 25, 1999, Mr. Bisailon said to R.D.: [translation] "So, you've turned into a queer, you've gone over to the other side."

[27] J.G. explained that he felt uncomfortable when Mr. Bisailon made these loud remarks to R.D. because he was the only one who could have reported that R.D. had taken a roommate. When R.D. left to conduct his tests, J.G. spoke to Mr. Bisailon, saying: [translation] "Don't you think you went a bit too far? You don't have proof of anything." Mr. Bisailon replied: [translation] "Don't think that bothers me; don't think that scares me." J.G. stated that Mr. Bisailon later said to R.D.: [translation] "No wonder you don't have any luck with women, the way you are." R.D. was uncomfortable; he conducted his tests, but his mind was elsewhere. R.D. then went to see J.G. and told him: [translation] "I'm not gay." J.G. noted that R.D. was visibly upset at that point.

[28] Afterward, when Mr. Bisailon was leaving, he told J.G. as he was reaching for the door: [translation] "I hope you've got underwear on, because he's going to try to do you from behind." J.G. testified that in his opinion that remark had gone too far,

become vulgar and gone beyond a good joke. R.D. then completed his tests and spoke with J.G. about his roommate, saying that there was nothing between them.

[29] R.D. also testified that he was conducting his trichina tests at the end of the day and heard Mr. Bisaillon tell J.G.: [translation] "Make sure you put on your underwear. He's going to do you from behind." He testified that he felt uncomfortable. He explained that Mr. Bisaillon's remarks that day affected his life because they went beyond the workplace. He felt deeply embarrassed, and the remarks caused him considerable stress.

(b) Mr. Bisaillon's Version

[30] Mr. Bisaillon testified that, on May 25, 1999, R.D. reported to the office and he jokingly said to R.D.: [translation] "I hear you've got a roommate. Have you changed sides?" R.D. replied: [translation] "Don't try to do me up the ass." J.G. was present; he said nothing, but he laughed. R.D. did not return to the office all day. Mr. Bisaillon stated that, at the end of the day, he never asked J.G. in R.D.'s presence whether J.G. had underwear on [translation] "because he's going to try to do you up the ass".

[31] On cross-examination, Mr. Bisaillon testified that Mr. Marie was not present when these events occurred, that J.G. was the one who had mentioned Mr. Marie's presence and that he himself did not recall Mr. Marie being present.

[32] In a letter of apology dated October 19, 1999 (Exhibit G-14), Mr. Bisaillon wrote to R.D. as follows:

[Translation]

. . . on May 25, 1999, I jokingly asked you: "Have you changed sides?" and you (jokingly) answered: "Don't try to do me up the ass because you'll encounter some resistance." We made these remarks in the presence of (J.G.) in the inspection office and not in the presence of Pierre Marie, since he said he did not recall hearing such remarks. . . .

[33] On September 27, 1999, Mr. Bisaillon told the investigator, Mr. Demers (Exhibit G-15, page 11) that Mr. Marie and J.G. were also present when Mr. Bisaillon told R.D.: [translation] "I hear you've changed sides", to which R.D. replied: [translation] "Don't try to do me up the ass; you'll see I've got some resistance." Mr. Bisaillon then told him: [translation] "I keep away from that." Mr. Bisaillon told Mr. Demers (Exhibit G-

15, page 12) that J.G. was the one who said: [translation] "Have you got underwear on, because he's going to try to do you from behind."

[34] At an August 20, 1999 meeting (Exhibit G-5), Mr. Bisailon told Ms. Deschênes that, on May 25, 1999, he asked R.D.: [translation] "Have you turned into a faggot?" R.D. allegedly then gave as good as he got, answering: [translation] "Don't try to do me up the ass, because you'll see I've got some resistance." Mr. Bisailon told Ms. Deschênes that Mr. Marie was present at that point.

Incidents of May 26, 1999

[35] J.G. testified that, on the morning of May 26, 1999, he was in the inspectors' office with Mr. Marie and Mr. Bisailon. Mr. Bisailon then said to him: [translation] "If (R.D.) goes to your place, it's because you're not afraid of blow jobs." J.G. explained that he was surprised and answered: [translation] " I have my wife and I'm quite satisfied with things that way."

[36] In a document having to do with a September 1999 application for benefits to the Commission de la santé et de la sécurité du travail (CSST), J.G. describes these events as follows (Exhibit G-17, page 9):

[Translation]

...

The following day, May 26, in the morning, he said to me in the presence of Pierre Marie, in a mocking way: "(R.) goes to your place to give you blow jobs". . . .

Starting that day and until June 11, 1999, I began to be harassed again by certain employees on the floor of the slaughterhouse.

...

[37] At an August 17, 1999 meeting with Ms. Deschênes, J.G. stated (Exhibit G-4) that Mr. Bisailon told Mr. Marie on May 26, 1999 [translation] "that if he went to (J.)'s place, (J.) would give him 'a blow job' or 'suck him'. (J.) answered: 'I'm married and my wife satisfies me.' (J.) thinks that all the employees at the plant heard about these remarks."

[38] According to the investigator's report (Exhibit G-15, page 8), J.G. told the investigator that he was in the office with Mr. Marie on May 26, 1999 and that Mr. Marie told him: [translation] "If (R.D.) goes to your place, it's to give you blow jobs." J.G. also told the investigator:

[Translation]

I was surprised; they were both looking at me. Mr. Bisaillon was there too. They were both looking at me scornfully. I told them: "I have a wife and I'm very satisfied with her." I found that remark very inappropriate. That was not the first time I had heard something really malicious, particularly with Dr. Bisaillon, but that time I was starting to get tired of it, it was too much, I was getting fed up with it. . . .

[39] J.G. testified that there was a mistake in the investigator's report and that it was indeed Mr. Bisaillon and not Mr. Marie who made that remark to him. J.G. explained that he subsequently had the definite impression that a rumour that he was having homosexual relations was circulating among the slaughterhouse employees. One of the employees, Mr. Ostau, told him: [translation] "Bisaillon is a goddamn son of a bitch." J.G. explained that this remark was a message for him, since the same employee later told him that another employee in the cutting room [translation] "swung both ways" (Exhibit G-15, page 8).

Other Incidents

[40] There were other incidents involving some of the slaughterhouse employees. While J.G. was working, Éric Villard passed close by, looking at him disdainfully as if he were contaminated and therefore untouchable. Patrick Lavallée was in front and watched the entire incident. The same thing happened the next day, and J.G. went to see him, saying: [translation] "You know, I'm not that way." Mr. Bisaillon looked at him but did not answer.

[41] On the morning of June 11, another incident occurred involving three slaughterhouse employees, including Patrick Parent. J.G. testified that Mr. Parent had a marked stutter but that he did not stutter when he was making inane remarks. According to J.G., Mr. Parent said very loudly in front of the other employees, while walking in an effeminate way: [translation] "Just like a big snatch, with a cock up the ass." As he said that, he laughed and looked at J.G.

[42] R.D. testified that Mr. Parent stuttered less and less as he became familiar with his work environment and that he could say a simple sentence without stuttering. R.D. explained that Mr. Parent could have said [translation] "Just like a big snatch, with a cock up the ass" without stuttering too much.

[43] Mr. Parent testified that he had a marked stutter and that he would never have [translation] "dared to call (J.G.) that. Those are things you don't say. It's not possible." On cross-examination, Mr. Parent stated that he occasionally told jokes about homosexuals at the slaughterhouse, adding that there had not been any jokes about R.D. or any inappropriate jokes. Mr. Gauthier testified that Mr. Parent could not say three words in a row without stuttering.

[44] J.G. explained that he had been dumbstruck by Mr. Parent's remark; although the remark affected him a great deal, he remained at the slaughterhouse. He did not speak about the incident to anyone and went home for the weekend. He explained that he could not talk about the incident to Mr. Bisailon, because Mr. Bisailon would have said that it was untrue, that he was hard of hearing and that it was all in his head and would not have supported him. J.G. therefore went home depressed, unhappy and very nervous. He felt he had been made a fool of, he was completely thrown and he was considering leaving his job. He did not return to work subsequently. He called the person at the CFIA who was responsible for attendance to say that he was unwell. On Tuesday, June 15, 1999, he went to see Dr. Larouche, his physician, and told her that things were not going well with his boss and some of the slaughterhouse employees. Dr. Larouche prescribed sick leave for him.

[45] J.G. testified that, some three weeks after the events of June 11, Mr. Paquette came to visit him at his home. J.G. confided in Mr. Paquette, repeating to him the remarks Mr. Bisailon had made on May 26, 1999 and explaining that he felt ashamed because of the employees' comments. Mr. Paquette told him that the matter was serious and that he needed to say something about it. It was then that J.G.'s wife learned what had happened. Until then, J.G. had felt too uncomfortable to speak to her about it, which had caused a great deal of tension between them. J.G. explained that, according to the strict upbringing he had received, homosexuality was a bad thing. He stated that he had nothing against homosexuals but that he felt humiliated by the situation he had experienced at Establishment 76.

[46] Furthermore, R.D. explained that he returned to Establishment 76 around the end of June 1999 to conduct tests and noticed that the employees were telling a great many jokes about homosexuals. He did not make the connection with the events of May 25, 1999 at the time, but a woman friend later asked him if he and his roommate were gay. Then, on August 9, 1999, R.D. saw J.G. at the drugstore. J.G. came over to talk with him about the events of May 25, 1999. R.D. testified that J.G. told him: [translation] "What Mr. Bisaillon said about you is very serious. He talked to the company about it."

[47] On August 10, 1999, R.D. wrote to Ms. Deschênes to file a complaint against Mr. Bisaillon. In his letter (Exhibit G-2), he specifically told Ms. Deschênes:

[Translation]

I am writing to you to file a defamation complaint against Clément Bisaillon, VM-2. According to a witness, my reputation with the company Viandes Richelieu, Establishment 76, located in Massueville, has been tarnished by Mr. Bisaillon.

The subject matter of this complaint, according to the witness, is of a sexual nature concerning me. I would first like to get to the bottom of this in order to confirm whether the complaint is justified.

[48] J.G. testified that, on Friday, August 13, 1999, he received a telephone call from Mr. Bisaillon, who asked him: [translation] "Listen, have you heard through the grapevine what's going on with (R.)?" J.G. answered that he was aware of the matter and that it had to do with the incident of May 25, 1999 between R.D. and Mr. Bisaillon. Mr. Bisaillon said: [translation] "Ah! That's it. I thought that was it. I'm going to call him and apologize right away." J.G. told Mr. Bisaillon he did not think that was what R.D. wanted. Mr. Bisaillon then said: [translation] "You were involved, too." J.G. answered: [translation] "Don't get me mixed up in it. I told you that day that maybe you went a bit too far." Mr. Bisaillon said that that was true. His tone changed and he ended the conversation by saying: [translation] "We'll see what happens with it."

[49] R.D. testified that, around 5:00 p.m. on Friday, August 13, 1999, he received a call from Mr. Bisaillon, who said, referring to what had happened on May 25, 1999: [translation] "It's Clément. What happened was just a joke." R.D. told him the matter was in the hands of the employer, which would get to the bottom of the incidents.

[50] Mr. Bisaillon testified that, on August 13, 1999, he talked with Jacques Caron of the Professional Institute of the Public Service of Canada, who notified him that R.D. had filed a complaint against him and said that it might be a good idea for Mr. Bisaillon to call R.D. and settle the matter informally. Mr. Bisaillon called J.G. and asked him whether he knew about the complaint filed by R.D., and J.G. told him that he did know about it and that it had to do with the events of May 25, 1999, when Mr. Bisaillon had called R.D. a homosexual. Mr. Bisaillon told J.G.: [translation] "I wasn't the one who started that. You were the one who talked about it at the slaughterhouse." J.G. then said: [translation] "Hey, don't get me mixed up in it." Mr. Bisaillon understood from those answers that J.G. was supporting R.D. He then called R.D., who said that he did not want to talk with Mr. Bisaillon and that the matter was in the union's hands.

[51] J.G. testified that Mr. Bisaillon called him again about half an hour later. He seemed nervous and told J.G.: [translation] "I called the big guy (R.). I tried to say I was sorry. He doesn't want to hear from me; he doesn't want to talk to me." Then he said to J.G.: [translation] "Listen here: you're deaf and you didn't hear anything, get it? You're deaf and you didn't hear anything." J.G. stated that he was shocked to hear Mr. Bisaillon say that and answered: [translation] "I'm going to tell the truth." Mr. Bisaillon then said to him: [translation] "Listen, what side are you on, whose side are you on? Anyway, listen here, just you think twice, who do you think you're going to be working with once it's over? Just you think about it." He then hung up. J.G. explained that, immediately after that telephone call, he called Julien Arpin, his union representative, and told him that Mr. Bisaillon had called him twice.

[52] Mr. Bisaillon testified that he never called J.G. a second time on August 13, 1999. He told the investigator, Mr. Demers, the same thing (Exhibit G-15, page 12), stating that he called J.G. once and asked him: [translation] "What side are you on?" On cross-examination, he said: [translation] "I don't remember calling him twice."

[53] Mr. Arpin testified that he received two calls on August 13, 1999. First, R.D. called to tell him about a telephone conversation he had just had with Mr. Bisaillon. Next, J.G. called him in a state of panic, explaining that he had just had a conversation with Mr. Bisaillon during which Mr. Bisaillon had said: [translation] "Listen, (J.), you know who you're going to be working with afterward."

[54] Mr. Arpin made a written statement to Louise Vienne of the CSST (Exhibit G-24) in which he stated that he had received the calls from R.D. and J.G. on August 13 and had advised them to request a meeting with Ms. Deschênes as soon as possible.

[55] Ms. Deschênes testified that, when she returned from holidays on Monday, August 16, 1999, she learned of a complaint filed by R.D. on August 10, 1999. On August 17, 1999, she met with R.D., who gave her the details of his complaint. He told her that he had a witness, and she therefore met with J.G. that same day. At that interview, J.G. told Ms. Deschênes about the events of May 25, 1999 concerning R.D. and about the events of May 26, 1999 when Mr. Bisaillon had said in the presence of Mr. Marie that R.D. was visiting J.G. to give him [translation] "blow jobs". J.G. also mentioned the events of June 11, 1999 involving the slaughterhouse employees. As well, J.G. described the two telephone calls he had received from Mr. Bisaillon on August 13, 1999.

[56] On August 20, 1999, Ms. Deschênes met with Mr. Bisaillon in the presence of Mr. Gagnon, a union representative, and Ms. Chaput, a human resources advisor at the CFIA. Ms. Deschênes questioned Mr. Bisaillon about the complaint filed by R.D. and the telephone calls made by Mr. Bisaillon to R.D. and J.G. on August 13, 1999. Ms. Chaput then consulted headquarters about what steps should be taken in order to advise Ms. Deschênes.

[57] On August 31, 1999, J.G. saw his physician and explained the incidents that had occurred at his workplace. The physician listened to him, got out a CSST medical certificate form (Exhibit G-6) and signed it, indicating: [translation] "Harassment in the workplace leading to depressive disorders. . . ." Ms. Deschênes explained that she received a copy of this form a few days later and that, after consulting Ms. Chaput, she forwarded the file to Mr. Bertrand, the CFIA's Executive Director for the Quebec Area.

[58] Ms. Deschênes noted that Mr. Bisaillon had attended a training session on harassment in the workplace (Exhibits G-8 to G-11) during which the harassment policy had been discussed. Ms. Deschênes testified that the CSST document (Exhibit G-6) was not in itself a harassment complaint by J.G. but that it had been treated as such in light of the CFIA's policy on harassment in the workplace (Exhibit G-7), the first paragraph of which, on page 3, reads as follows:

Managers are responsible for putting an end to any harassment that they are aware of, whether or not a complaint has been filed.

[59] Mr. Bertrand decided that an investigation into the harassment complaint would be conducted and gave responsibility for this to Mr. Demers, as confirmed in a letter dated September 8, 1999. On September 14, 1999, Mr. Bertrand informed Mr. Bisailon that he was being investigated (Exhibit G-12).

[60] Mr. Demers testified about his investigation and explained his work method, which involves tape recording his interviews with the various persons whom he questions. He noted that, in his report, he used quotation marks to indicate word-for-word quotations. Mr. Demers explained that he had wanted to meet alone with the slaughterhouse employees and particularly Mr. Marie but that Sylvain Gauthier, the superintendent at the slaughterhouse, had insisted on being present, telling Mr. Demers: [translation] "You meet with the employees when I'm there or not at all."

[61] Mr. Gauthier testified that he had asked to be present at Mr. Demers' meetings with the employees. He explained that some employees were nervous and that his presence would reassure them. Mr. Demers told him that he saw no problem with Mr. Gauthier being present. On cross-examination, Mr. Gauthier testified that he did not think he told Mr. Demers: [translation] "If you want to meet with the employees, I'm going to be there." He explained that he was not categorically opposed to Mr. Demers' request, although Mr. Demers did not explain why there was a need to meet alone with the employees.

[62] On October 18, 1999, Ms. Deschênes wrote to Mr. Bisailon to inform him that he was being suspended for one day, October 21, 1999, for harassing R.D. In that letter, Ms. Deschênes asked Mr. Bisailon to apologize in writing to R.D. by October 22, 1999 and explained the reasons for the suspension as follows:

[Translation]

...

The Canadian Food Inspection Agency's policy on harassment in the workplace describes sexual harassment as any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of

incidents that might reasonably be expected to cause offence or humiliation to the employee at whom it is directed.

On May 25, 1999, you made sexual remarks about Mr. (D.) in the presence of a co-worker and even in the presence of a plant employee, with the result that Mr. (D.) felt humiliated and embarrassed.

...

[63] On October 27, 1999, Mr. Demers submitted his investigation report, in which he concluded that Mr. Bisailon had harassed J.G. and abused his authority, noting as follows:

[Translation]

...

... Concerning Mr. Bisailon, in light of the facts and the testimony, we believe that he contravened the policy on harassment in various respects and at various times. During the events of May 25, he twice antagonized his employees. During the August 13 telephone call to Mr. (G.), he was aware of Mr. (G.)'s vulnerability and should therefore have known that his words would have an effect on him. Although he denies the allusions that he allegedly made about his employees' personal lives, the inspectors' testimony is credible and confirms that harassment did occur. In addition, there was an abuse of authority — as clearly explained in the definition of "harassment" in the Canadian Food Inspection Agency's policy — when he antagonized the inspectors by calling into question the relevance of their work. On this point, the definition of harassment refers to improper use of authority and intimidation. Furthermore, again in the policy on harassment (page 3), managers are responsible for putting an end to any harassment they are aware of. Whether or not a complaint was filed, he failed to carry out his responsibilities when he told Mr. (G.): "You hear voices." Mr. Bisailon contravened the Canadian Food Inspection Agency's policy on harassment. He was not only in a position of authority over the inspectors but also, by his own admission, aware of Mr. (G.)'s emotional fragility.

[64] On November 15, 1999, Mr. Bertrand wrote to Mr. Bisailon to inform him that Mr. Demers had submitted his report and had concluded that Mr. Bisailon had harassed J.G. and abused his authority. Mr. Bertrand indicated that the employer was considering the appropriate disciplinary measure, of which Mr. Bisailon would soon be informed. Mr. Bertrand concluded by stating, in accordance with the CFIA's practice,

that Mr. Bisailon could obtain a copy of the report from the co-ordinator of the CFIA's Access to Information and Privacy Office.

[65] On December 14, 1999, Ms. Deschênes wrote to Mr. Bisailon to inform him that, as a result of Mr. Demers' report, he was being suspended without pay for a 10-day period. In that letter, Ms. Deschênes indicated the reasons that had led her to make this decision, stating:

[Translation]

...

First, you made hurtful remarks about an employee that made him feel humiliated. As well, you did not take action when Mr. (G.) said he was bothered by words and actions with sexual connotations from the plant employees.

Your apathy contravenes the policy on harassment of the Canadian Food Inspection Agency (CFIA), which requires managers to take immediate action in these situations to put an end to any harassment.

Secondly, you abused your authority as set out in the CFIA policy by disparaging, in your remarks, the importance of and need for the work performed by your inspectors. You also abused your authority during a telephone call to your employee on April [sic] 13 by making intimidating remarks even though you were aware of his emotional fragility.

The CFIA endeavours to guarantee all employees a productive, respectful and harassment-free workplace. As a manager, you are therefore responsible for ensuring the well-being of your employees, not belittling or humiliating them.

For all these reasons, I consider your behaviour unacceptable and, to ensure that you realize how serious your actions are, I am obliged to take strong measures against you.

...

[66] On November 30, 1999, Mr. Gauthier wrote to Mr. Bertrand to tell him that Viandes Richelieu inc. no longer wanted inspector J.G. to work at Establishment 76. In his letter, Mr. Gauthier complained that J.G.'s behaviour was unacceptable and that he had halted the processing line for no reason because he believed that [translation] "the employees were saying things against him". In his testimony, Mr. Gauthier explained

that he wrote the letter after learning that a complaint had been filed against Mr. Bisailon. He testified that he wrote the letter [translation] "to indicate my position and my dissatisfaction with that complaint".

Argument of the Employer

[67] Mr. Turgeon argued that the employer has an obligation to provide a workplace that is free of all forms of harassment. Because of this obligation, Ms. Deschênes was required to take action when she was informed of R.D.'s defamation complaint. She was also required to take action when she received a copy of the medical certificate signed by J.G.'s physician indicating that J.G. had been harassed in the workplace, which had led to depressive disorders.

[68] Mr. Turgeon stated that Mr. Bisailon contravened the CFIA's policy on harassment. Mr. Bisailon was aware of the state of J.G.'s health and should have been doubly careful in his remarks, both at the slaughterhouse and on the telephone on August 13, 1999. J.G. was so upset by the situation he experienced from May 26 to June 11, 1999 that it took him several months to speak to his wife and his family physician about it. Furthermore, Mr. Bisailon had the same obligation as the employer and should have taken action when J.G. complained to him about the behaviour of the slaughterhouse employees.

[69] Mr. Turgeon reviewed the evidence and argued that there were contradictions in the testimony of Mr. Bisailon and the slaughterhouse employees. He also pointed out that the testimony of J.G. and R.D. was consistent and that there were no contradictions between their testimony and their previous statements.

[70] Mr. Turgeon argued that the employees did not testify freely when they answered Mr. Demers' questions in the presence of Mr. Gauthier and that they are still afraid of losing their jobs. Mr. Gauthier's testimony contains a number of contradictions; it also protects Mr. Bisailon because the position of veterinarian is important to the slaughterhouse. Mr. Bisailon has a good relationship with the management of the slaughterhouse, and it is therefore to its advantage that Mr. Bisailon remain in his position.

[71] Mr. Turgeon submitted that the employer has discharged its burden of proof concerning the two disciplinary measures. Since two separate incidents are involved, the grievor has not been doubly penalized as he alleges.

[72] Mr. Turgeon concluded by stating that the disciplinary measures taken against Mr. Bisaillon were appropriate given the seriousness of the misconduct. He noted that harassment is very serious misconduct and that the threats made by Mr. Bisaillon during the telephone conversations on August 13, 1999 were even more intolerable. He emphasized that, in the case law, harassment has often warranted dismissal.

[73] In support of his arguments, Mr. Turgeon referred to the following decisions: *McMorrow* (Board file 166-2-23967), *Joss*, 2001 PSSRB 27 (166-2-27331), and *Lachance* (Board file 166-2-26840), as well as the book by Jean-Maurice Cantin, Q.C., entitled *Abuse of Authority in the Workplace: A Form of Harassment* (Carswell).

Argument of the Grievor

[74] Ms. Gosselin stated that the same standard of behaviour cannot exist in an office and in a slaughterhouse. The jokes that led to the two disciplinary measures against Mr. Bisaillon are slaughterhouse jokes; they are the way young men talk among themselves in a slaughterhouse. In ascertaining whether harassment has taken place, account must be taken of the context and the fact that the employees of Viandes Richelieu did not report to Mr. Bisaillon as a manager; he had no control over them.

[75] According to Ms. Gosselin, the subjective nature of the questions put to the slaughterhouse employees by the investigator, Mr. Demers, must also be taken into consideration.

[76] Ms. Gosselin reviewed the evidence and noted various contradictions in the testimony of J.G. and R.D. and in Mr. Demers' report.

[77] Ms. Gosselin argued that at no time did Mr. Bisaillon tarnish R.D.'s reputation. R.D. filed a defamation complaint because his reputation with the company was tarnished but, by J.G.'s own admission, he was the one who spread that rumour. It was malicious of J.G. to start those rumours. It was not an everyday thing and it was certainly reprehensible, but no disciplinary measures were taken against him.

[78] Mr. Bisailon admitted saying to R.D.: [translation] "Have you turned into a queer?" That remark was a bad joke, but it does not constitute harassment. According to the definition of sexual harassment in the CFIA's policy, the remarks or the behaviour must be such that they can reasonably be expected to cause offence or humiliation to the employee.

[79] Mr. Bisailon was not commenting on R.D.'s sexual orientation, since he saw R.D. as a heterosexual; the remark was a joke. Ms. Gosselin argued that R.D. filed the complaint because he wanted to harm Mr. Bisailon; the relationship between them had been strained since R.D. reported Mr. Bisailon for a conflict of interest in 1996.

[80] Ms. Gosselin argued that, according to Appendix B of the CFIA's policy on harassment, (Exhibit G-7, page 6), complainants are responsible for making their disapproval or unease known to the respondent, within a reasonable time, prior to filing a complaint. R.D. did not file his complaint until three months after the May 25 incident.

[81] As well, according to Appendix C of the CFIA's policy on harassment, *Investigation Procedures* (Exhibit G-7, pages 7 and 8), "No person directly or indirectly involved in the supervision of either party to a complaint shall conduct such an investigation." Ms. Deschênes was directly involved; she was Mr. Bisailon's immediate supervisor. As well, page 2 of the policy states that ". . . persons conducting investigations . . . are impartial and have no supervisory relationship with the parties". As Mr. Bisailon testified, he and Ms. Deschênes had not been on speaking terms for two years. In that context, she therefore could not be impartial.

[82] The policy on harassment also states that the respondent has the right to obtain a written statement of the allegations made and to reply to it. Ms. Gosselin submitted that Mr. Bisailon could not obtain a copy of the complaint except through an access to information request.

[83] Ms. Gosselin argued that the procedural flaws in the investigation into the complaint filed by R.D. were significant and that the disciplinary measure against Mr. Bisailon should therefore be rescinded.

[84] Ms. Gosselin stated that there were also irregularities in the investigation leading to the second disciplinary measure, which should therefore be rescinded. She

explained that Ms. Deschênes took an active part in the investigation and was present when J.G. gave evidence. Her participation in the investigation contravened the policy on harassment in the workplace, since she was involved in supervising Mr. Bisailon.

[85] Ms. Gosselin argued that the second disciplinary measure doubly penalized Mr. Bisailon because the employer was aware of the allegation that Mr. Bisailon had said to J.G., in the presence of R.D.: [translation] "Have you got underwear on. . . ." These facts had to do with the first disciplinary measure and could not form part of the second disciplinary measure.

[86] Ms. Gosselin stated that, for there to be abuse of authority as defined in the CFIA's policy on harassment (Exhibit G-9, page 7), there must be power or a relationship of authority that is being improperly used. Mr. Bisailon had very little authority over the inspectors within the meaning of the policy on harassment. When there were cuts, Mr. Bisailon's opinion did not count. In any case, Mr. Bisailon testified that his comment was that the veterinarian would be the last one to go. In Ms. Gosselin's view, this remark, which went back to 1996, did not disparage the inspectors' work and does not constitute abuse of authority.

[87] Concerning the telephone calls of August 13, 1999, Ms. Gosselin submitted that Mr. Bisailon might have called J.G. twice. Mr. Bisailon was hurt and felt betrayed. What Mr. Bisailon said was not to forget with whom J.G. would be working when the whole thing was over. This remark cannot be described as coercive or threatening.

[88] Ms. Gosselin argued that the situation does not constitute abuse of authority and that J.G. did not file a complaint against Mr. Bisailon but that the employer treated a medical certificate as a harassment complaint. It was Ms. Deschênes' zeal and relentlessness that were unjustified.

[89] Ms. Gosselin concluded by asking that Mr. Bisailon's grievance against this second disciplinary measure be allowed as well and that he be reimbursed for the 10-day suspension imposed on him. In support of her position, Ms. Gosselin cited *Canadian Labour Arbitration*, 3rd edition (Brown and Beatty) and *Canada Law Book*, 7:3660, 7:4240, 7:4300, 7:4412, 7:4416 and 7:4428.

Reply of the Employer

[90] Mr. Turgeon argued that, according to the CFIA's policy on harassment, Mr. Bisailon was a person in a position of authority over R.D. and J.G. He completed the inspectors' performance evaluations and authorized transfers of inspectors when there was no work at the slaughterhouse.

[91] Mr. Turgeon stated that, contrary to Ms. Gosselin's allegations, there were no procedural flaws in the conduct of the investigation leading to the first disciplinary measure. Mr. Turgeon explained that, initially, Ms. Deschênes was investigating a defamation complaint filed by R.D. and that, as a result of her investigation, she was able to determine that in fact there was harassment.

[92] Concerning the investigation leading to the second disciplinary measure, Mr. Demers, an independent investigator, was the one who conducted the investigation. At the interview with J.G., Ms. Deschênes was present at J.G.'s request in order to reassure him.

[93] In her testimony, Ms. Deschênes stated that she did not investigate and that she relied on the investigator's report. In accordance with the CFIA's policy, when Mr. Bisailon was informed of the findings of the report, he was told that he could obtain a copy of the report by making an access to information request under the *Access to Information Act*.

[94] These arguments were never previously raised but, in any event, they do not hold up because, as the case law establishes, the adjudication process remedies procedural flaws.

Reasons for Decision

[95] I must first establish whether the investigation leading to the two disciplinary measures was so seriously flawed procedurally that the measures must be rescinded.

[96] In *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (QuickLaw), the Federal Court of Appeal established that, assuming there was procedural unfairness during an investigation leading to a disciplinary measure, "that unfairness was wholly cured by the hearing de novo before the Adjudicator at which the Applicant had full notice of the allegations against him and full opportunity to respond to them." In the

context of the present hearing, Mr. Bisaillon was notified and made aware of the allegations against him. As well, he had ample time to respond to these allegations. The employer adduced evidence of the acts that Mr. Bisaillon allegedly committed, and he had an opportunity to adduce evidence in support of his position. I must examine this evidence as an impartial third party. Any possible procedural flaws in the investigation leading to the disciplinary measures are therefore remedied by the hearing *de novo* that was held before me.

I Complaint by R.D.

[97] In this case, there are two versions of the events and the remarks that were made: the grievor's version and the employer's version. Consequently I must, secondly, establish which of the two is the more credible version; to this end, adjudicators usually refer to the decision by O'Halloran J.A. of the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354. I must therefore determine which version is in harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in the circumstances.

[98] In the suspension letter dated October 18, 1999, the employer indicated that, on May 25, 1999, Mr. Bisaillon had made sexual remarks about R.D. in the presence of a co-worker (J.G.) and even in the presence of a slaughterhouse employee (Mr. Marie) and that those remarks had made R.D. feel humiliated and embarrassed.

[99] The definition of sexual harassment set out in the CFIA's policy on harassment includes the following:

Any conduct or comment of a sexual nature, whether on a one-time basis or in a continuous series of incidents, that can reasonably be expected to cause offence or humiliation to any employee.

(a) Grievor's Version

[100] Mr. Bisaillon testified that, when R.D. reported to the office on May 25, 1999, he said to him: [translation] "I hear you've got a roommate. Have you changed sides?" However, at a meeting on August 20, 1999, Mr. Bisaillon told Ms. Deschênes that, on May 25, 1999, he asked R.D.: [translation] "Have you turned into a faggot?" On cross-

examination, Mr. Bisailon admitted that Ms. Deschênes' notes on the August 20, 1999 meeting are an accurate reflection of what he said.

[101] R.D. then allegedly gave as good as he got, answering: [translation] "Don't try to do me up the ass, because you'll see I've got some resistance." Mr. Bisailon then told R.D.: [translation] "I keep away from that." Mr. Bisailon testified that J.G. was present in the office at that point and that he laughed but said nothing. R.D. did not return to the office all day; no further comments were exchanged with R.D. Mr. Bisailon explained that, as a result, he could not have said to R.D. at the end of the day in the presence of J.G.: [translation] "Have you got underwear on? He's going to try to do you from behind."

[102] On the other hand, Mr. Bisailon told the investigator, Mr. Demers (Exhibit G-15, page 12) that J.G. said: [translation] "Have you got underwear on, because he's going to try to do you from behind." This statement seems to contradict Mr. Bisailon's testimony that J.G. laughed but said nothing and that no further comments were exchanged with R.D. all day.

[103] On August 20, 1999, Mr. Bisailon told Ms. Deschênes that Mr. Marie was also present; on September 27, 1999, he told Mr. Demers the same thing. However, in his letter of apology to R.D. dated October 19, 1999, Mr. Bisailon explained that Mr. Marie was not present [translation] "since he said he did not recall hearing such remarks". On cross-examination, Mr. Bisailon explained that it was J.G. who had misled him about Mr. Marie's presence during that incident. The statements of August 20 and September 27, 1999 and the explanation given by Mr. Bisailon on October 19, 1999 suggest that Mr. Marie was indeed present but told Mr. Bisailon he did not want to be involved.

(b) Employer's Version

[104] R.D. testified that, when he came into the office on May 25, 1999, Mr. Bisailon said to him: [translation] "So, have you gone over to the other side, have you turned into a queer?" J.G. confirmed that Mr. Bisailon had made these remarks to R.D., and R.D. testified that he vaguely recalled turning the remarks into a joke. He said that J.G. and Mr. Marie were also present. J.G. testified that Mr. Bisailon later told R.D.: [translation] "No wonder you don't have any luck with women, the way you are", referring to his alleged homosexuality.

[105] J.G. and R.D. both testified that, when Mr. Bisaillon was leaving at the end of the day, he told J.G. as he was reaching for the door: [translation] "I hope you've got underwear on, because he's going to try to do you from behind." This testimony is consistent with these witnesses' statements to Ms. Deschênes and Mr. Demers.

[106] J.G. also testified that he spoke to Mr. Bisaillon, saying that he thought Mr. Bisaillon had gone a bit too far with R.D. and that he did not have proof of anything. Mr. Bisaillon answered: [translation] "Don't think that bothers me; don't think that scares me." Later, R.D. went to see J.G. and told him: [translation] "I'm not gay." J.G. could see that at that point R.D. was visibly upset. J.G. also testified that, after Mr. Bisaillon left, R.D. spoke with J.G. about his roommate, repeating that there was nothing between them. R.D. testified about the effect of Mr. Bisaillon's remarks and the stress they had caused him.

(c) My Decision

[107] There are contradictions among the various versions of these events that Mr. Bisaillon gave to Ms. Deschênes and to Mr. Demers and gave during his examination in chief and on cross-examination. The version of the events given by R.D. and J.G. in their testimony is consistent and much more probable than Mr. Bisaillon's version. Their version is also supported by the balance of evidence.

[108] J.G.'s testimony indicates that he could clearly see that R.D. was embarrassed by Mr. Bisaillon's remarks. These remarks went beyond a joke and were offensive and even humiliating to R.D. Mr. Bisaillon was even warned by J.G., but responded: [translation] "Don't think that scares or bothers me."

[109] J.G. admitted that he was the one who started that rumour on the floor of the slaughterhouse and told Mr. Bisaillon about it. In his letter of apology of October 19, 1999, Mr. Bisaillon stated that R.D. should focus instead on the person who really was guilty: J.G., who admitted that he had acted wrongly. However, that fact does not mean that Mr. Bisaillon is not responsible for own bullying of R.D. that day.

[110] A number of witnesses explained that R.D. told racy jokes, which they often found inappropriate. Although this behaviour by R.D. was inappropriate, it did not authorize Mr. Bisaillon to humiliate him. I consider that, after Mr. Bisaillon received

complaints about those jokes, he should have notified R.D.'s supervisor and asked R.D. himself to stop making those jokes while he was at Establishment 76.

[111] The disciplinary measure imposed, a one-day suspension, is reasonable under the circumstances, and Mr. Bisailon's grievance concerning this measure is therefore denied.

II 10-day Suspension

[112] Concerning the second disciplinary measure, the actions and remarks Mr. Bisailon is accused of fall into two categories. First, he is alleged to have harassed J.G. and to have failed to intervene when J.G. complained of harassment. Second, he is alleged to have abused his authority.

(a) Harassment of J.G.

[113] First of all, according to Ms. Deschênes' letter of December 14, 1999, Mr. Bisailon contravened the CFIA's policy on harassment by making hurtful remarks about J.G. and failing to take action when J.G. complained about the words and actions with sexual connotations from the slaughterhouse employees.

[114] On this point, J.G. testified that Mr. Bisailon had said to him repeatedly over a long period of time: [translation] "Big gut, little dick." J.G. said that Mr. Bisailon had made this remark in the presence of Mr. Marie. Mr. Bisailon denied making this remark to J.G. at any time. Mr. Marie testified that Mr. Bisailon never told jokes or made inappropriate remarks.

[115] Mr. Marie also testified that, on the floor of the slaughterhouse, the following was said about J.G.: [translation] "Big gut, little dick." As well, Mr. Bisailon told Mr. Demers (Exhibit G-15, page 12) that [translation] "(J.G.) often complained that the people on the floor were making fun of him. I often warned them, but sometimes they started again." Thus, it appears that the employees did make fun of J.G.

[116] J.G. also testified that, on May 26, 1999, in the presence of Mr. Marie, Mr. Bisailon said to him: [translation] "If (R.D.) goes to your place, it's because you're not afraid of blow jobs." Mr. Bisailon and Mr. Marie denied that this remark was made.

[117] J.G. testified that, before the events of 1999, when he had problems with the employees or they were making fun of him, Mr. Bisaillon chose not to become involved. In his testimony, Mr. Bisaillon explained that J.G. experienced mood swings and had hearing problems. Mr. Bisaillon stated that he was misquoted on this point in the investigator's report and that he did not tell J.G.: [translation] "You hear voices, you let things bother you too much." J.G. also told the investigator that, in the past, Mr. Bisaillon had said to him [translation] "You hear voices" when he complained about sarcastic comments by the slaughterhouse employees.

[118] Mr. Demers is an independent investigator. He explained that the quotations in his investigation report were the exact words used by the persons being questioned. Mr. Bisaillon obtained this report by an access to information request. It was only at the hearing that he indicated that the investigation report did not accurately reflect his words.

[119] Here again, I apply the principle set out in *Faryna v. Chorny*, (*supra*), to establish which version of the facts I must accept. In my view, Mr. Bisaillon's testimony is not as credible as J.G.'s testimony. In addition, I consider that Mr. Marie did not want to get involved and preferred to say that he did not hear anything and was not present, as was the case with the events of May 25 involving R.D. and Mr. Bisaillon.

[120] J.G.'s version is more in harmony with the preponderance of probabilities than Mr. Bisaillon's version. I consider that Mr. Bisaillon's remarks to J.G. constitute harassment and violate the CFIA's policy on harassment.

[121] Mr. Parent and Mr. Soulière both testified that the employees told racy jokes, some of them about homosexuals, but they denied making fun of J.G. or R.D. However, I do not have to determine whether J.G. was harassed by the slaughterhouse employees. In the disciplinary letter of December 14, 1999, the employer blames Mr. Bisaillon for failing to take action when J.G. said he was bothered by words and actions with sexual connotations from the workers at the slaughterhouse.

[122] As indicated above, it appears from the statements by Mr. Bisaillon and Mr. Marie that the employees did make fun of J.G. Mr. Bisaillon might have preferred J.G. to be more [translation] "independent" and to solve his problems with the employees himself.

[123] However, Mr. Bisailon was required to take action when J.G. complained about the words and actions with sexual connotations from the slaughterhouse employees. As a manager, Mr. Bisailon had to get to the bottom of that complaint. He therefore violated the CFIA's policy on this point as well.

III Abuse of Authority

[124] In the disciplinary letter of December 14, 1999, Ms. Deschênes indicated that Mr. Bisailon had abused his authority by disparaging, in his remarks, the importance of and need for the work performed by the inspectors. She wrote that he had also abused his authority by making intimidating remarks during a telephone call to J.G. on August 13, 1999.

[125] Appendix A of the CFIA's policy on harassment in the workplace, page 5, defines abuse of authority as follows:

. . .

Abuse of authority is a form of harassment and occurs when an individual improperly uses the power and authority inherent in his or her position to endanger an employee's job, undermine the performance of that job . . . or in any way interfere with . . . the career of the employee. It includes intimidation, threats, blackmail or coercion.

. . .

[126] J.G. and R.D. both testified that Mr. Bisailon said the inspectors' positions were unnecessary. They also both explained that, because these remarks were made during a period of downsizing, they had been afraid of losing their jobs.

[127] Mr. Bisailon denied saying that he did not need inspectors at Establishment 76. He instead explained that a veterinary certificate was required by the rules of the European Economic Union and that the veterinarian would be the last one to go from Establishment 76.

[128] J.G. testified that Mr. Bisailon called him twice on August 13, 1999. During the second call, Mr. Bisailon said: [translation] "Listen here. You're deaf and you didn't hear anything. Just you think twice, who do you think you're going to be working with once it's over?"

[129] Mr. Bisaillon acknowledged calling J.G. the first time but denied calling him a second time. On cross-examination, he qualified that response by stating: [translation] "I don't remember calling him twice." This qualification suggests that he could have called J.G. a second time.

[130] Mr. Arpin, J.G.'s union representative, testified that J.G. called him that day in a state of panic just after a conversation with Mr. Bisaillon, who had told him: [translation] "Listen, (J.), you know who you're going to be working with afterward."

[131] I consider the version of the employer's witnesses to be in harmony with the preponderance of probabilities and reasonable in these circumstances. Mr. Bisaillon's testimony is not very credible. In a context of downsizing, Mr. Bisaillon's remarks on the necessity of his employees' positions constitute abuse of authority. Whether or not he had the authority to eliminate these positions, what he said to his employees was that their positions were unnecessary and could readily be eliminated. That is abuse of authority. Similarly, Mr. Bisaillon's remarks during the second call to J.G. were threatening, consisted of intimidation that was clearly related to J.G.'s employment and constituted abuse of authority. Here again, therefore, Mr. Bisaillon violated the CFIA's policy on harassment.

III Conclusion

[132] The employer has the burden to prove the actions it has accused Mr. Bisaillon of, as described in the disciplinary letter of December 14, 1999. After considering all the evidence and arguments, I have therefore concluded that the employer has discharged this burden and that Mr. Bisaillon violated the CFIA's policy on harassment.

[133] I have considered the mitigating factors in Mr. Bisaillon's favour, his lengthy service and his positive evaluation reports. In the circumstances, however, I consider these elements insufficient to allow me to change the one-day and 10-day disciplinary measures against him. As I explained earlier, I consider that Mr. Bisaillon's testimony was neither honest nor open.

[134] Mr. Bisaillon seems to justify his behaviour by pointing to the fact that R.D. told inappropriate jokes and that J.G. had behaviour problems at work related to his health. As a supervisor, Mr. Bisaillon should have taken action if R.D.'s jokes were inappropriate and if he was not satisfied with J.G.'s behaviour at work. At no time,

however, did those facts allow him to harass his employees and abuse his authority through intimidating behaviour.

[135] For all these reasons, Mr. Bisailon's grievances are denied.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, February 6, 2002.

PSSRB Translation