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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

AMIR MAAN

Grievor

and

TREASURY BOARD
(Transport Canada)

Employer

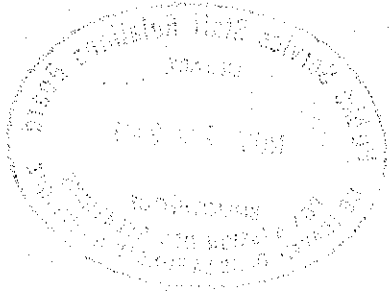


Before: D.R. Quigley, Board Member

For the Grievor: David M. Landry, Public Service Alliance of Canada

For the Employer: Robert Lindey, Counsel

Heard at Thunder Bay, Ontario,
August 20 to 22, 2002, and
June 23 to 27 and September 3 and 4, 2003.



DECISION

[1] This grievance concerns the termination of employment of Amir Maan, a Senior Marine Surveyor (TI-07), Marine Safety Branch, Ontario Region, at Transport Canada (TC) in Thunder Bay, Ontario. Mr. Maan subsequently filed a grievance on January 23, 2002, contesting the termination of his employment.

[2] The reasons for the termination of his employment are stated in a letter dated January 14, 2002, from Phillip Nelson, Regional Director, Marine Safety Branch, Ontario Region (Exhibit E-13):

As I advised when I implemented your indefinite suspension on December 5, 2001, I can now apprise you of the final results of the administrative investigation. I have now received and reviewed the final report of the investigator and the report documents the fact that you committed very serious misconduct. Your wilful behaviour on successive occasions has breached the core principles of our Department, namely respect, professionalism and client service, in the following ways:

⇒ you were negligent when you failed to fulfil your duties as Senior Marine Surveyor in a manner consistent with concern for our safety regulatory role;

⇒ you abused your authority when you failed to behave in a fair, judicious and non-abusive manner with domestic and foreign clients;

⇒ you were insubordinate when you failed to promptly and efficiently carry out the instructions of the supervisor who is in charge.

Your misconduct is entirely unacceptable and your demonstrated abuse of authority has breached the employment relationship, particularly considering the high level of trust and integrity required of you as a Senior Marine Surveyor. It is imperative that all stakeholders (including management and clients) have the utmost trust in you, especially given that your position requires that you perform your duties in a largely independent fashion and that you exercise significant authorities delegated to you by the Minister. You are also a representative of the Canadian government and Canadian people when you interact with clients, including foreign officials, and have an added responsibility in this regard.

I have considered your relatively short period of service and the fact that you have had other client complaints in your employment with us, about which I and other representatives of management have spoken to you and on those occasions made clear Transport Canada's expectations. I have also carefully considered the fact that you have consistently refused to examine your own behaviour, take any personal responsibility for the deteriorating relationship with your clients, participate with management to craft a solution to the problem (client complaints), and cooperate with the investigation until the eleventh hour.

Your actions constitute an irreparable breach of the trust necessary for your continued employment in the Federal Public Service. Consequently, under the authority delegated to me by the Deputy Minister of Transport, and in accordance with Sections 11(2)(f) and 11(4) of the Financial Administration Act and Section 50 of the Public Service Terms and Conditions of Employment, I hereby terminate your employment with the Federal Public Service for reasons of misconduct. This decision is effective immediately.

You have a right to lodge a grievance against this decision in accordance with the procedures outlined in your collective agreement.

[3] Counsel for the employer filed 43 exhibits, including the "Sorensen Investigation" (Exhibit E-12), and called five witnesses. The grievor's representative filed 51 exhibits and called six witnesses.

[4] In December 2002, the employer requested the assistance of the Board's Dispute Resolution Services to try to settle the matter. A mediation session was held on February 3, 2003; however, the parties were unable to reach an agreement.

Setting the Stage

[5] Canada is signatory to two international memorandums of understanding (MOUs): the Paris MOU and the Tokyo MOU. These MOUs were drafted to try to rid the world of substandard shipping practices. The Paris MOU is signed by most European nations, while the Tokyo MOU is mostly applied to the West Coast (Pacific Rim).

[6] At the time of this grievance, there were two shipping agents in Thunder Bay: Sandy Henderson, the owner of Lake Superior Shipping Ltd., and William Hyrb, the owner of Lakehead Shipping Company Ltd. At the time, the manager of the Thunder Bay Transport Canada Centre (TCC), Marine Safety Branch, Ontario Region, was

John Kingwell; Dave Mackrell subsequently replaced him, first on an acting basis effective November 20, 2000, and then permanently effective May 8, 2001. There were five senior marine inspectors: Amir Maan, Dave Mackrell, Charlie Nadkarni, Don Schroeder and Peter Mihalus. Mr. Mihalus was the Duty Port Warden and, in fact, he trained the other inspectors to perform port warden duties. The decision to train inspectors to perform port warden duties, in addition to their regular duties, was Mr. Kingwell's in order to help with the increasing demand for these services.

[7] Prior to 1996, the port of Thunder Bay would load cargo onto approximately 70 ships per year; from 1997 to 2001, approximately 180 ships entered the port each year to load cargo. The port warden duties are approximately 40% of an inspector's work year; the majority of these duties come into effect after the grain is harvested, shipped by train to Thunder Bay and loaded onto ships before the seaway (St. Lawrence) freezes. Therefore, from October to mid-December, the port is very busy. Of the commodities loaded in these vessels, 90% is grain.

[8] While the ships are in port, the port wardens will verify that cargo is loaded onboard vessels pursuant to the *Canadian Shipping Act* and the grain regulations, examine the credentials of the ship's personnel (captains, engineers, etc.), issue certificates, inspect holds and coordinate activities with the shipping agents, stevedores and other government agencies.

[9] The duties of the senior marine inspectors are, in part, to measure ships to drawings for tonnage measurement and approve ship plans prior to construction, modification and refits. They also enforce two acts covering marine pollution: the *Canadian Shipping Act* and the *Arctic Waters Pollution Prevention Act*.

[10] The sequence of events on a bulk cargo carrier (a "saltie", as referred to by the locals) is as follows. When the ship is at anchorage, a port warden boards her and performs a preliminary inspection and, if necessary, issues a recommendation certificate. This certificate certifies that the port warden has inspected and surveyed the compartments of the vessel that are intended for loading grain. The certificate is only issued if there are recommendations to comply with the grain loading regulations. These recommendations are considered deficiencies and are noted on the certificate. There is a nominal charge for the issuance of the certificate. When the recommendations have been complied with and verified by the port warden and Canadian Food Inspection Agency (CFIA) personnel, the certificate is issued,

confirming that the holds are free from insect infestation (fumigation may have been required) and that they meet the required level of cleanliness mandated by CFIA regulations. The port warden then issues a "Readiness to Load" certificate, which permits the stevedores and agents to begin loading the grain.

[11] The grain can only be loaded to an eight-metre draft in Thunder Bay because of the St. Lawrence Seaway regulations. If the vessel is over draft, it will be stopped at the Welland Canal, the ship's owners will be fined and grain will be discharged until it meets requirements. This is a very expensive undertaking. In fact, the loading of the grain in Thunder Bay has another inherent factor: although you can load 500 to 1,000 tons per hour, you can only discharge 35 tons per hour at Thunder Bay. It is better to have the ship loaded precisely to ensure its holds are evenly distributed with grain. The amount of grain in the holds not only has to meet the eight-metre draft regulation and be loaded in such a way as not to destroy the integrity of the hull, but also has to be loaded to meet the correct stability calculations designed for that ship. When the ship is at sea, the grain that has been loaded into the holds takes on semi-liquid characteristics insomuch as it will move from side to side traverse or from bow to stern. Stability calculations are designed to take into account these shifts to prevent the vessel from listing more than 12 degrees. Listing refers to a ship heeling over either from port or starboard. If the ship lists more than 12 degrees, there is a danger of the ship capsizing in rough seas. After the stability calculations are presented to the port warden and he is satisfied, he stamps his approval, the grain is loaded, the holds are sealed and the ship is issued a "Fitness to Proceed to Sea" certificate.

[12] The shipping season ends in mid-December, just around the time of the freeze-up in the Seaway. In January, February and March, the inspectors work on inspecting the "Lakers" (vessels that ply the Great Lakes). One ship is at dry dock at Thunder Bay at all times and in late April, early May, the "salties" arrive.

The Facts

[13] Phillip Nelson has been employed with TC for 15 years and for the last five years has been the Regional Director, Marine Safety Branch, Ontario Region.

[14] On August 31, 1998, Mr. Nelson offered Mr. Maan an indeterminate appointment (Exhibit E-1) as a Senior Marine Surveyor (TI-07) at the TCC in Thunder Bay. He stated that it was Mr. Maan's responsibility to ensure that the shipping companies complied

with the *Canadian Shipping Act* and other regulations. As a port warden, Mr. Maan would board vessels to verify that cargo loaded in Canada complied with relevant safety regulations. He could also conduct examinations of the qualifications of the ship's personnel.

[15] Mr. Maan reported to John Kingwell (TI-08). Mr. Nelson stated that Mr. Kingwell was a poor manager but had a vast knowledge of the marine industry and had a lot of experience. He also stated that in September 2000, Mr. Kingwell requested a transfer to Sarnia, which enabled Mr. Nelson "to make a supervisory change without taking action." It had come to Mr. Nelson's attention that there had been a number of complaints from various shipping agents and ship owners concerning the standard of service provided by the marine inspectors.

[16] Mr. Nelson testified that he became aware that there were complaints made against Mr. Maan through his Director General in Ottawa, Bud Streeter, as well as through the two shipping agents in Thunder Bay - William Hyrb (Lakehead Shipping Company Ltd.) and Sandy Henderson (Lake Superior Shipping Ltd.) - and through Ivan Lance, Chair of the Chamber of Shipping in Montreal. These complaints were to the effect that Mr. Maan was abusive to clients, rude to the crew and officers of foreign ships and overzealous in the application of rules. Mr. Nelson stated that clients were equally concerned about TC's user pay services, which included overtime payments. It was their belief that Mr. Maan was working the system for his own personal benefit.

[17] Mr. Nelson stated that it was Mr. Kingwell's belief that the shipping companies were being vindictive toward Mr. Maan and, initially, both he and Mr. Kingwell were supportive of Mr. Maan. However, the complaints became more serious. Mr. Nelson referred to a letter dated April 23, 2001, from Mr. Henderson (Exhibit E-2) in which the agent complained of an incident onboard the M/V Federal St. Laurent. On Saturday, April 21, 2001, Mr. Maan was discussing the issue of an "Arctic Pollution Prevention Certificate" (APPC) with the Master and stated he would return the following day (Sunday) to issue the APPC. Mr. Henderson advised Mr. Maan to return on the Monday instead, as the vessel would not be sailing before 16:00 hours on Monday and the Master agreed that Monday would be acceptable. Mr. Maan, however, stated that he was busy on Monday and would return on Sunday. In his letter, Mr. Henderson stated: "At no time while this discussion was continuing in my presence did the Master or C/Officer request his attendance Sunday." Mr. Nelson testified that Mr. Maan did

indeed visit the vessel on the Sunday and issued the APPC, which resulted in an overtime expense.

[18] Mr. Nelson identified Exhibit E-19 as an e-mail sent to Mr. Maan on April 11, 2001, by Mr. Mackrell. In his e-mail, Mr. Mackrell advised Mr. Maan that, as per his previous memorandum on this subject (Exhibit E-18), overtime would require "prior authorisation [sic] of the Manager." Mr. Mackrell testified that while he was acting manager, his previous memorandum (Exhibit E-18) was read, understood and signed by Mr. Maan on November 25, 2000. The memorandum stated, in part:

PORT WARDEN OPERATIONS AND PORT STATE CONTROL INSPECTIONS

Continuous monitoring of the loading operations of vessels is unnecessary and is to be discontinued. During loading, vessels are only to be visited by the Port Warden when the loading stevedore requests the Port Warden's attendance, to witness the completion of a hatch before the hatch is battened down for sailing, or if a request is made to recheck revised stability calculations resulting from a change of cargo plans.

Inspectors are not to attend any vessel outside regular working hours without pre-authorisation [sic] of the Manager except for the above and where requested to inspect a vessel for issuance of Readiness to Load or Fitness to Proceed. Overtime will not be approved for anything other than the above. (Emphasis added)

[19] Mr. Nelson stated that Mr. Maan was the highest overtime earner in the region. He testified that Mr. Henderson's letter of April 23, 2001 (Exhibit E-2), was shown to Mr. Maan on the same day. He stated that on April 26, 2001, he received another written complaint (Exhibit E-3) from Mr. Henderson through Mr. Mackrell. The complaint stated that on April 24, 2001, Mr. Maan told the Master and the Chief Officer of the M/V Federal St. Laurent, in Mr. Henderson's presence as well as in the presence of a stevedore (Vaso Popovic), that he would be withdrawing the APPC he had issued on the Sunday because of Mr. Henderson's letter of April 23, 2001, stating that Mr. Maan had unnecessarily worked overtime on the Sunday. Mr. Maan was alleged to have said that if Mr. Henderson retracted his letter, he would not withdraw the APPC.

[20] The witness also stated that there were other allegations in Exhibit E-3 that concerned him, namely:

Mr. Maan was alleged to have:

- deliberately overlooked deficiencies onboard the vessel;
- threatened to walk off the vessel and ensure that no other inspector would board; and
- threatened to call the Union with regard to this incident.

[21] Mr. Nelson considered these allegations to be of a very serious nature. In response, he sent an e-mail on April 26, 2001 (Exhibit E-5), to Mr. Mackrell advising him not to assign any work to Mr. Maan on vessels associated with Mr. Henderson and the Lake Superior Shipping Company Ltd., in view of the complaints filed by Mr. Henderson concerning Mr. Maan's behaviour and since TC might launch an investigation into the matter. This direction was to demonstrate good faith by TC if the allegations were proven to be true and to prevent a further escalation between Messrs. Maan and Henderson. On April 27, 2001, Mr. Mackrell sent an e-mail to Mr. Maan (Exhibit E-6) stating: "Until further notice you are not to attend any vessel using the services of Sandy Henderson as agent. Also you are not to have contact with Sandy Henderson for any reason."

[22] In late April, early May, Mr. Nelson directed Ed Lavender, Manager, Technical Services, Marine Safety Branch, Ontario Region, and Cyndie Kaufman-Sinclair, Team Leader, Labour Relations, Ontario Region, to conduct an administrative investigation of the complaints received from Mr. Henderson concerning Mr. Maan's conduct (Exhibit G-3). The investigators interviewed a number of people, including Messrs. Henderson, Mackrell, Popovic and Maan. The conclusions and recommendations were as follows:

Conclusions

Although there is a personality conflict between Sandy and Amir, the other interviews have confirmed that Amir has not acted professionally and has poor relationships with other marine clients.

In view of the fact that we were unable to obtain a letter from the captain it is difficult to refute Amir's claim that the captain requested this inspection on the Sunday. Strong discipline [sic] action over this incident is therefore not recommended.

Amir's future behaviour should be closely monitored and for any future complaints a procedure should be set up to handle them effectively and efficiently.

Recommendations

- 1. Amir needs to be counseled on client services.*
- 2. Amir needs to take a Respect in the Workplace course. All of the staff in the Thunder Bay office need to take this course. We are presently making arrangements for the instructor to give the course in Thunder Bay.*
- 3. A written set of procedures needs to be developed for the port wardens work and this needs to include the pre-authorization of overtime.*
- 4. A procedure needs to be developed for how to deal with complaints, both orally and in written form. This would include acknowledgement of the complaint, investigation, discussing with the inspector involved, possible discipline [sic] action and a reply to the complainer.*
- 5. A clear written direction needs to be given to all staff for the authorization of all overtime.*
- 6. Dave Mackrell needs to attend a Staff Relations course for Managers. This applies to all Marine Safety managers.*
- 7. Dave also needs management training. He has been nominated at CRB for a managers course.*

[23] Mr. Nelson recalled a meeting that was held with Mr. Maan, his local union representative, Christine Collins, Terry Gibson, the Regional Director General, and Mr. Lavender. The purpose of the meeting was to try to resolve complaints between the industry (Mr. Henderson) and Mr. Maan. Mr. Maan felt there were no issues to resolve and offered no possible solutions to resolve the matter. Mr. Nelson therefore decided, with Mr. Gibson's concurrence, to conduct a formal investigation into the alleged client complaints against Mr. Maan.

[24] On September 6, 2001, Mr. Nelson sent a letter to Al Tassie, of Sorensen Investigations Inc. (Exhibit E-7), setting out the terms of reference of the investigation. The letter stated, in part: "I would like to retain your services to investigate the allegations made against one of our inspectors [Mr. Maan] by a client - Sandy Henderson - in two separate letters that have already been forwarded to you by Cyndie Kaufmann-Sinclairwith the express purpose of preparing and submitting to us, a report of your fact-finding, and any analysis of the situation that you feel might be useful to assist us in our decision making." (Emphasis added)

[25] Mr. Maan was interviewed by Mr. Tassie in Thunder Bay on September 28, 2001, in the presence of two representatives of the Public Service Alliance of Canada (PSAC). At this meeting, Mr. Maan requested that Mr. Tassie put his questions in writing. The questions were subsequently sent by courier to Mr. Maan on October 23, 2001.

[26] Mr. Nelson met with Mr. Maan in Sarnia in mid-November and suggested that he work from home to submit responses to Mr. Tassie's questions. On November 19, 2001, Mr. Nelson received an e-mail from Christine Collins, Regional Vice-President Ontario, Union of Canadian Transportation Employees (Exhibit E-11), advising him that she had directed Mr. Maan to hold his answers in abeyance until the Union advised him otherwise. Mr. Nelson responded to Ms. Collins that same day, advising her that a report would be issued as a result of Mr. Tassie's preliminary investigation.

[27] Upon receipt of the investigation report and after discussions with staff relations officers in Toronto and Ottawa, Mr. Nelson decided to suspend Mr. Maan without pay effective December 5, 2001.

[28] On December 14, 2001, Mr. Tassie interviewed Mr. Maan in the presence of Ms. Collins and Simon Ferrand, a labour relations officer.

[29] The final investigation report was received early in January 2002, and Mr. Nelson again discussed the matter with staff relations officers in Ottawa and with Mr. Streeter. As they were discussing the report, another incident involving Mr. Maan, but not onboard a vessel, arose during the conversation. Mr. Maan had been told by Mr. Mackrell not to go to Nipigon, Ontario, to visit a client but he proceeded to go, regardless. This was viewed as an act of insubordination. Following these discussions,

Mr. Nelson felt there were sufficient grounds for terminating Mr. Maan's employment. These grounds are contained in Exhibit E-13, the letter of termination:

1. Mr. Maan was negligent in fulfilling his duties as a senior marine surveyor;
2. Mr. Maan abused his authority; and
3. Mr. Maan was insubordinate.

[NOTE: For ease of reference, during his testimony Mr. Nelson referred to incidents onboard five of the six vessels that formed part of Mr. Tassie's final report. The vessels and dates of the incidents are as follows:

- | | |
|------------------------------|------------------------------|
| (1) M/V Lake Champlain: | June 30, 2000 |
| (2) M/V Lok Rajeshwari: | September 22–October 2, 2000 |
| (3) M/V Millennium Condor: | December 2, 2000 |
| (4) M/V Pintail: | September 13, 2000 |
| (5) M/V Marilis-T: | September 14, 2000 |
| (6) M/V Federal St. Laurent: | April 21-24, 2001.] |

M/V Federal St. Laurent

[30] Mr. Nelson testified that Mr. Maan's behaviour, when dealing with the crew, Captain and agent responsible for the M/V Federal St. Laurent, was unacceptable. He threatened to rescind an issued APPC, to walk off the ship and ensure that no other inspector would return onboard and that he would approach the Union. His behaviour breached the values found in TC's "Vision/Values Statement" (Exhibit E-14): respect, professionalism, communication, teamwork and providing client services. He also stated that by overlooking deficiencies as a favour to the owners of the M/V Federal St. Laurent, Mr. Maan was negligent in the performance of his duties.

[31] Mr. Nelson stated that he spoke to all the inspectors and advised them to be prudent with regard to inspections because of an incident that arose on another vessel (True North II). The seriousness of that incident heightened awareness that inspectors pay attention to deficiencies.

[32] As stated earlier, Canada is signatory to the Paris MOU, which, in effect, aims to rid the world of substandard shipping practices. Approximately 370 mariners have lost their lives while onboard bulk carriers that have sunk without a trace. Mr. Maan's actions of overlooking deficiencies are contrary to the provisions of that MOU. Mr. Maan held a position of trust and had ultimate authority; overlooking deficiencies is a serious act of misconduct.

M/V Lok Rajeshwari

[33] Mr. Nelson stated that Mr. Maan issued a certificate even though Inspector Don Schroeder had issued a detention order against the vessel. Mr. Maan issued the certificate without visually verifying that the bilge strainers had been renewed and installed. Other inspectors would not have issued a certificate. This incident was also relied upon when deciding to terminate Mr. Maan's employment.

M/V Millennium Condor

[34] The witness stated that Inspector Charlie Nadkarni was assigned to be onboard this vessel on December 2, 2000, at 10:30 hours, to verify a rework of the stability calculations by the Chief Officer. However, Mr. Maan arrived onboard prior to 10:30 hours, contrary to Mr. Mackrell's instructions. Upon hearing of this, Mr. Mackrell sent Mr. Nadkarni to another vessel and instructed Mr. Maan to stay onboard to approve the stability calculations. Mr. Maan, however, did not remain onboard to pass the stability calculations but left to board another vessel. As a result, Mr. Maan delayed the loading of the vessel, costing the vessel's owners approximately \$3,300 in overtime wages for the stevedores.

M/V Lake Champlain and M/V Marilis-T

[35] The witness testified that he was advised of incidents onboard these vessels, although he did not elaborate during his testimony.

Nipigon District Incident

[36] Mr. Nelson stated that Mr. Maan's decision to proceed to Nipigon, even though he was advised by Mr. Mackrell not to, was considered insubordination. In a series of e-mails (Exhibit E-15), Mr. Nelson was made aware of an incident that occurred on September 27, 2001, involving Messrs. Mackrell and Maan. He testified that he asked Mr. Mackrell to get a report of the incident from Mr. Maan, but Mr. Nelson never received a response from Mr. Maan.

[37] Mr. Nelson based his decision to terminate Mr. Maan's employment on the above incidents, the fact that Mr. Maan had a short service record with TC and there was little hope of convincing Mr. Maan not to repeat these actions.

[38] In cross-examination, the witness agreed that Mr. Kingwell was the manager of the Thunder Bay Office, Marine Safety Branch, from 1997 until he left for Sarnia in August 2000. He acknowledged, as well, that Mr. Kingwell never showed any lack of integrity in the performance of his duties.

[39] Mr. Nelson was referred to Exhibit G-1, a series of e-mails from Mr. Kingwell requesting Mr. Nelson's advice/direction concerning forceful requests from Messrs. Henderson and Hyrb for the services of two duty port wardens, as opposed to the one he was authorized to provide. When asked about Mr. Kingwell's statement in one of the e-mails that he "received a call an hour ago from Sandy Henderson querying one of Amir's calculations which he terminated by calling Amir 'A fucking arsehole'... I have spoken to Amir whose calculations are immaculate and nothing less than awesome at times", the witness responded that it was Mr. Henderson's calculations that were reversed in error. As for Mr. Henderson's comment that Mr. Maan was "A fucking arsehole", Mr. Nelson stated that it was the only one brought to his attention and that Mr. Henderson denied making the comment. Since he had no proof, Mr. Nelson felt there was nothing he could do.

[40] In cross-examination, Mr. Nelson confirmed that he gave Mr. Tassie directions early in the investigation process to deal with any allegations or complaints that might be brought to his attention.

[41] Mr. Nelson was unclear on the time or date that he became aware of the incidents onboard the M/V Lake Champlain or the M/V Lok Rajeshwari. It could have been before the Tassie investigation.

[42] Mr. Nelson agreed during cross-examination that Mr. Mackrell should not have issued a "Readiness to Load" certificate for the M/V Lok Rajeshwari on September 29, 2000, without performing an inspection.

[43] The witness concluded by stating that he supported Mr. Kingwell's decision to provide the services of only one port warden.

[44] Dave Mackrell has been employed with TC for 20 years and has an engineering background. He became the manager of the TCC in Thunder Bay on May 8, 2001. He testified that port wardens are appointed by Order-in-Council and they would usually rotate with the other inspectors on a weekly schedule.

[45] The witness stated that Mr. Nelson advised him about complaints from agents and ship owners concerning port warden services and the amount of overtime the port wardens were accumulating. He stated that Exhibit E-18, dated November 20, 2000, and Exhibit E-19 advised Mr. Maan of the need for pre-authorization from the manager for overtime.

M/V Lok Rajeshwari

[46] The witness's account of the events is as follows. The initial inspection found problems with the frames and bilge strainers. According to the witness, the bilge strainers are stainless steel covers with a series of 3/8 inch perforated holes that keep the grain out of the bilge and the bilge system.

[47] On September 26, 2000, the witness boarded the ship at approximately 09:10 hours. He met with the Captain, crew and the fumigators, as the ship had a very bad insect infestation. He did not perform an inspection of the bilge strainers.

[48] On September 29, 2000, at 08:00 hours, he went onboard to issue a "Readiness to Load" certificate. The Captain discussed the issue of the bilge strainers and asked for a certificate backdated to September 26, 2000. The Master had not ensured that the bilge strainers had been passed and said he was in trouble. His mistake would cost the ship owners thousands of dollars. His explanation was that the ship was on a

charter (hire) from the ship's owners. Mr. Hyrb was representing the interests of the persons chartering the ship and Mr. Henderson the interests of the ship's owners. The ship owners are responsible for the ship to be in a readiness-to-load mode (i.e. all deficiencies to be completed) and once the ship is ready to load, the clock begins to tick and charges apply for the persons who have hired the boat. The witness testified that he had not seen if the bilge strainers had been repaired and installed; therefore, he would not issue a "Readiness to Load" certificate.

[49] The witness identified Exhibit E-22, stating that that certificate, which had Mr. Maan's signature and was dated September 26, 2000, was backdated. Mr. Maan was not onboard the ship that day according to the "Person Month Utilization" form (Exhibit E-23). The form indicates that on September 26, 2000, Mr. Maan spent one hour onboard the S.S. Oakglen, six hours performing general office duties and approximately one-half hour in travel time. The form also indicates that on September 28, 2000, Mr. Maan spent one hour onboard the M/V Lok Rajeshwari and approximately one-half hour in travel time.

[50] During cross-examination, Mr. Mackrell acknowledged that Exhibit E-20 was Mr. Schroeder's preliminary inspection of the ship. Exhibit G-11 states: "All cracked frames & bracket flange repaired to the satisfaction of attending surveyor." Exhibit G-12, dated September 24, 2000, is a request from the Lok Rajeshwari to have Pascol Engineering repair the cracked bracket on the starboard side of hold #2 and to make and place onboard five numbers of strainers (strum boxes) for hold bilge suction. Exhibit G-13, dated September 24, 2000, is Pascol Engineering's reply and states that the cracks had been repaired and the five strainers had been fabricated and supplied as per sample.

[51] As well, Mr. Mackrell stated that he had issued a "Readiness to Load" certificate on September 29, 2000, but did not inspect the bilge, as he was told by the CFIA that the bilge strainers were in place. Mr. Mackrell stated that he told Mr. Maan, on October 20, 2000, that the Captain would be asking for a backdated certificate and that he advised Mr. Maan not to issue one. This conversation took place in the TCC office in the presence of Mr. Mihalus, who at the time was the Acting Manager.

M/V Millennium Condor

[52] The witness stated that Mr. Maan was not assigned to approve the stability calculations; it was Mr. Nadkarni's responsibility. Mr. Maan, however, went ahead onboard; therefore, Mr. Mackrell sent Mr. Nadkarni to another vessel and told Mr. Maan to stay on this ship and approve the stability calculations and then issue a "Readiness to Load" certificate.

[53] Mr. Mackrell stated that Mr. Maan basically told him that he was the port warden and he would do as he wanted. The witness stated that the priority in Thunder Bay is loading; anchorage inspections are secondary.

[54] Mr. Maan did not remain onboard. Mr. Mackrell received a telephone call from Mr. Henderson, who said that the stevedores were waiting to load. Mr. Nadkarni was sent onboard and approved the stability calculations. The effect of the delay was approximately \$3,300 in overtime for the stevedores and grain trimmers.

[55] The witness stated that he received complaints on December 4, 2000 (Exhibit E-26), from James Richardson International Limited, and on December 6, 2000 (Exhibit E-25), from Mr. Henderson, concerning the events onboard the M/V Millennium Condor.

[56] On December 7, 2000, Mr. Mackrell sent a letter (Exhibit E-27) to James Richardson International apologizing for Mr. Maan's actions. He indicated during his testimony that although his letter stated: "Disciplinary action has been taken in regard to this incident", none was taken. The reason was that Mr. Nelson felt it should not be pursued, as both Mr. Mackrell and Mr. Maan were competing for the office manager position.

[57] In cross-examination, Mr. Mackrell stated that at no time did Mr. Maan call him to let him know he was attending the ship and that he was leaving the M/V Millennium Condor before he had approved the stability calculations. The witness could not recall that it was Mr. Maan who was the port warden at that time.

[58] The witness clarified that it was Mr. Nelson's decision, because of the competition process for the office manager position, not to impose any discipline on Mr. Maan. He also stated that Mr. Nelson reviewed the letter of apology he sent to

James Richardson International (Exhibit E-27), which indicates: "Disciplinary action has been taken."

M/V Federal St. Laurent

[59] Mr. Mackrell stated that Mr. Maan was working overtime on Saturday, April 21, 2001, to approve the stability calculations, issue a "Readiness to Load" certificate and issue an APPC requested by Federal Navigation. Mr. Maan did not issue the APPC on the Saturday, but returned on Sunday, April 22, 2001, to issue it. On Monday, April 23, 2001, the witness was shown a copy of the complaint letter received from Mr. Henderson (Exhibit E-2) and stated that on April 26, 2001, he received a second complaint (Exhibit E-3) from Mr. Henderson.

[60] The witness spoke to Mr. Maan about the incident and asked for an explanation. Mr. Maan, however, would not acknowledge that there had been problems or arguments onboard. As instructed by Mr. Nelson, Mr. Mackrell advised Mr. Maan, by e-mail dated April 27, 2001 (Exhibit E-6), that he was to have no further contact with Mr. Henderson.

[61] In cross-examination, the witness recalled the request for an APPC made on April 18, 2001 (Exhibit G-14), and stated he was away on a personal interview the following day in Toronto. He had no recollection that Mr. Maan told him that he had never performed an APPC inspection. However, the witness said it was the first time he had assigned an APPC inspection to anyone at the TCC in Thunder Bay. He himself had performed this inspection several times before.

Nipigon District Incident

[62] The witness stated that Mr. Maan had been assigned to inspect a vessel (Jim Dan D). He had visited this fish boat in the past and was going back for a third time. Mr. Mackrell was in St. Catharines at the time but sent Mr. Maan an e-mail on September 26, 2001, requesting that Mr. Maan telephone him at 08:30 hours. Mr. Maan did not arrive in the office, therefore the secretary (Donna Sandberg) called Mr. Maan at 08:35 hours on his cell phone to instruct him to call Mr. Mackrell. Mr. Maan did call Mr. Mackrell at 08:53 hours and was asked why he was leaving for Nipigon. Mr. Maan's reply was that Mr. Mackrell had no authority over him. Mr. Mackrell stated that he ordered Mr. Maan to stop, turn around and proceed back to the office. It was then that

Mr. Maan hung up. There was no return call, even though there is continuous cell coverage as well as pay phones on the road to Nipigon.

[63] In cross-examination, the witness acknowledged that his e-mail to Mr. Maan was sent on September 26, 2001, at 5:07 p.m. even though Mr. Maan's normal workday ended at 4:30 p.m.

[64] The witness stated that he did not recall the interview with Mr. Lavender (Exhibit G-3) and stated the first time he saw Mr. Lavender's administrative inspection report was at this hearing.

[65] Mr. Mackrell said he never used the term "wog", as it was not an expression from his generation. His understanding was it meant "Worthy Oriental Gentleman". He could not recall if on December 2, 2000, he said: "You people."

[66] Sandy Henderson is the owner of Lake Superior Shipping Ltd., which has been in business since 1964. His responsibilities include representing the owners of the ships entering Thunder Bay, coordinating the loading of cargo and ensuring inspections and documents are processed. He reports to the ship's owners and interfaces with TC, the CFIA, Customs, and Canadian port clearance officials.

[67] The witness's testimony can be summarized as follows. When Mr. Maan first started working at TC, Mr. Henderson had no problems with him. However, after three or four months he noticed that Mr. Maan would slow down his inspections in order to create overtime for himself. The witness stated that overtime bills were higher when Mr. Maan was the port warden. Another area that concerned him was Mr. Maan's sarcastic manner when dealing with the ship's personnel. The Captain of a ship should be treated with respect. Mr. Maan thought he was the judge and jury and would lay down the law. If his authority were questioned, he would tell the person to stop talking and to shut up.

M/V Lake Champlain

[68] Mr. Henderson recalled that he received a call from Mr. Maan while he (Mr. Henderson) was picking up coffee and donuts. Mr. Maan told him that the Captain was giving him a hard time and that he only dealt with captains and not with chief officers. Mr. Henderson stated that the Captain is a friend of his and he was truly upset after being awakened from a deep sleep. The Chief Officer develops the stability

calculations, sometimes in the Captain's presence and sometimes not. Mr. Maan's job was to check the stability calculations and safety concerns, if there were any. Mr. Maan threatened to walk off the ship and ensure no other inspector would attend and to go to the Union if the Master did not receive him. Mr. Henderson stated that he apologized to the Captain for Mr. Maan's behaviour. Threatening to walk off the ship would have put the loading of the ship in turmoil and extra costs would have been incurred.

M/V Lok Rajeshwari

[69] Insects were found in the holds and the CFIA ordered fumigation. As well, the bilge strainers were found to be defective by Inspector Don Schroeder. Lake Head Shipping Ltd., arranged for the bilge streamers to be replaced by Pascol Engineering on September 24, 2000.

[70] On September 29, 2000, Mr. Mackrell issued a "Readiness to Load" certificate. The Captain requested that Mr. Mackrell backdate the original preliminary inspection certificate issued by Mr. Schroeder to September 26, 2000, but Mr. Mackrell refused, as he had not been called to inspect the renewed bilge strainers. The vessel finished loading on September 30, 2000, and there was no backdated certificate. On Monday, October 2, 2000, around 13:30 hours, the Captain produced a certificate backdated to September 26, 2000. Mr. Henderson had no choice but to backdate his statement of facts (Exhibit E-32). This document, prepared by the agent for every ship, sets the dates and times of loading, inspection, departure, etc. He wrote a letter of complaint on November 13, 2000, to Bud Streeter (Exhibit E-33), because Mr. Kingwell paid him no attention and thought he was a troublemaker; therefore, Mr. Henderson went over his head.

M/V Millennium Condor

[71] There were two port wardens providing services on Saturday, December 2, 2000.

[72] In 1999, Mr. Kingwell had sent two letters to Messrs. Henderson and Hyrb (Exhibit E-34). One was dated November 4, 1999, and concerned the scheduling of port warden inspections. Mr. Kingwell informed the agents that an inspection would only start if there were every expectation that it would be completed in one operation and a "Readiness to Load" certificate could be issued. The second letter was dated

November 8, 1999, and concerned multiple telephone calls to port wardens and also related to overtime. Mr. Kingwell requested that the agents restrict the number of calls, preferably to one call, when requesting services.

[73] The witness stated he wrote a letter of complaint to Mr. Mackrell on December 6, 2000 (Exhibit E-25). The essence of the complaint is as follows. The loading pattern had changed on the ship; therefore, the Chief Officer was redoing the stability calculations. Mr. Henderson stated he discussed with Mr. Mackrell the need for the services of a port warden. It was decided that Mr. Nadkarni would be sent onboard to do the inspection at approximately 10:30 hours. He stated that a stevedore informed him at approximately 10:15 hours that Mr. Maan was already onboard. He telephoned Mr. Mackrell and advised him that he and Mr. Nadkarni would head to another vessel. Mr. Maan chose to leave the ship to do an inspection of another ship at anchorage. Ship loading or readiness to sail is the number one priority. By leaving the vessel, Mr. Maan prevented the loading of the ship. Instead of finishing loading at 16:00 hours, it was finished at 19:30 hours.

[74] Mr. Henderson returned with Mr. Nadkarni at 14:30 hours. Mr. Nadkarni approved the stability calculations and the ship was loaded from 16:00 to 17:30 hours. Loading was interrupted but completed at approximately 19:30 hours.

[75] On December 4, 2000, Mr. Henderson received a letter (Exhibit E-26) from James Richardson International Limited complaining about costs of \$3,300 Canadian it incurred as a result of having to unnecessarily pay overtime for Saturday.

M/V Federal St-Laurent

[76] Mr. Henderson stated that it was because of his letter of April 26, 2001 (Exhibit E-3), to Mr. Mackrell that TC decided to conduct the Tassie investigation.

[77] On Saturday, April 21, 2001, Mr. Maan was onboard discussing the issuance of an APPC with the Master. Mr. Maan stated he would return the next day (Sunday). Mr. Henderson told him there was no need to, as the ship would not sail until Monday and Mr. Maan could come back then. Mr. Maan, however, replied that he was busy on Monday. By attending on Sunday, the owner of the ship would be billed for the overtime claimed by Mr. Maan. No one argued with Mr. Maan. Hence, Mr. Henderson wrote a letter (Exhibit E-2) to Mr. Mackrell hoping it would reach higher authority.

[78] On Tuesday, April 24, 2001, Mr. Maan arrived onboard the vessel. Mr. Henderson was sitting in the Captain's office with the Chief Officer and Mr. Popovic. Mr. Maan threatened to withdraw the APPC unless Mr. Henderson withdrew his letter of complaint (Exhibit E-2). Mr. Henderson told him that he could not withdraw the letter. Mr. Maan then said that he had overlooked deficiencies because of his good relationship with the Captain and Anglo-Eastern Ship Management Ltd. The Captain could not believe that there were deficiencies. Mr. Popovic asked Mr. Maan what would happen if the Captain refused to return the APPC. Mr. Maan replied that he would walk off the ship and it would not be able to sail. Mr. Maan wrote up an SI7 deficiency form (Exhibit E-4). The form stated that the ship needed two gyrocompasses to go to Churchill. The Captain, however, stated it only needed one and he telephoned Anglo-Eastern Ship Management Ltd.

[79] When he boarded the ship, Mr. Maan had not mentioned any deficiencies. He only raised this after Mr. Henderson refused to withdraw his letter of complaint. The Captain returned the APPC after he had made a photocopy and given it to Mr. Henderson (Exhibit E-35).

[80] The witness identified Exhibit E-29 as a fax he had sent to Mr. Mackrell on May 21, 2001, requesting a copy of the withdrawn certificate; Exhibit E-30 is Mr. Mackrell's response indicating that Mr. Maan had destroyed the document.

[81] In conclusion, the witness testified that Mr. Maan's rule was law; "he was God". "You had to do what he said or he would go to the Union". Mr. Henderson stated that he has had no problems with other inspectors. He stated: "There is a Scotsman, an Estonian, two East Indians and a Canadian. I've never had problems except for this guy."

[82] When asked in cross-examination if he had yelled at Mr. Maan onboard the M/V Lake Champlain, the witness acknowledged that he had because Mr. Maan was acting stupidly when dealing with the Captain. The witness also stated that there were times he was disrespectful toward Mr. Maan; it had nothing to do with his qualifications but rather with the way Mr. Maan treated people. Mr. Henderson stated that he also has some difficulty understanding Mr. Maan's speech.

[83] The witness also confirmed that, on several occasions, he used swear words when referring to Mr. Maan behind his back.

[84] The witness confirmed as well that he had called Mr. Maan a "fucking idiot" in the presence of Messrs. Mihalus and Schroeder but could not remember when. At no time did he apologize to Mr. Maan for the comment he made on the M/V Lake Champlain that Mr. Maan was an idiot.

[85] The witness also stated his understanding of the memorandum of May 26, 2000 (Exhibit G-8), from Mr. Kingwell that the port warden is to be presented the stability calculations upon his arrival onboard by the Master and it is not the port warden's responsibility to develop the stability calculations.

[86] The witness did not recall when he gave the APPC regulations back to Mr. Maan. He also did not recall that the Captain requested Mr. Maan's services on the Sunday, as the ship was not to sail before 16:00 hours on Monday, April 23, 2001. However, he agreed that, because of the weather, the ship did not sail until the following Tuesday, April 24, 2001.

[87] The witness saw the S17 form stating the deficiencies of not having two gyrocompasses but was unsure of the APPC regulation that states that the vessel must hold all valid certificates for the duration of the APPC. When asked why he was concerned about reviewing how the initial APPC was worded, since he had a copy of the original, the witness replied: "Because I felt like it and I wanted to see it." He stated he gave his copy of the original APPC to Mr. Tassie.

[88] In reply, Mr. Henderson confirmed his first written complaint against Mr. Maan was in July 2000, and that Mr. Kingwell ignored it. His first formal complaint to TC was on November 13, 2000 (Exhibit E-33). He commented that as far as which inspector got paid overtime by TC, in the end it was his client who eventually paid.

[89] He said that at no time was he consulted with regard to the competitive process for the position of manager at the TCC and he did not provide his name as a reference.

M/V Lok Rajeshwari

[90] The witness stated he sent a letter of complaint to Bud Streeter in Ottawa (Exhibit E-33) because he believed Mr. Kingwell was ignoring him and he had not met Mr. Nelson.

[91] According to the witness, up until 09:30 hours on September 29, 2000, Mr. Mackrell had not been called to view the bilge strainers and Mr. Henderson had not known that the Captain had asked for a backdated certificate, which Mr. Mackrell refused to issue. The witness had no recollection of the Captain's name, what nationality he was or if Mr. Maan was the port warden the week of September 25 to October 1, 2000. He responded: "It does not matter." He stated that he never discussed the backdated certificate issue with Mr. Maan, nor did he send him a copy of his complaint. It is Mr. Henderson's belief that the certificate had been backdated by three days. Upon instructions he received from his principles, he amended the statement of facts document (Exhibit E-32) to show that at 14:00 hours on September 26, 2000, the bilge strainers were okay. The witness stated that it was TC's responsibility to deal with this incident.

M/V Millennium Condor

[92] The witness confirmed that, according to a stevedore onboard the ship, Mr. Maan left at approximately 12:30 hours. Mr. Henderson stated he called Mr. Maan at 10:30 hours and Mr. Maan said he would be leaving at 12:00 noon to board another ship (Shipka). Mr. Maan should have stayed onboard, as ships at anchorage are last to be inspected. The witness stated: "I pay for their services, I pay the bills. I have done this work for 40 years. I request their services, as I know when the port warden is needed."

[93] In cross-examination, the witness admitted that he called Mr. Kingwell and suggested that Mr. Maan should not get paid overtime for that call but rather Mr. Nadkarni should.

[94] Mr. Henderson stated that at no time did he attempt to have Mr. Maan's employment terminated. He just wanted to have him change his behaviour.

[95] When referred to Exhibit E-12, tab 15, his interview with Mr. Tassie in which he said that Mr. Maan was onboard the ship at 12:00 noon, Mr. Henderson stated that the incident had occurred 11 months prior and it was difficult to remember.

[96] Vaso Popovic has been a stevedore with Logistics Stevedoring Co. Ltd. in Thunder Bay since 1996. The witness's involvement with TC starts with the inspection prior to the issuance of the "Readiness to Load" certificate. As a stevedore, he loads

grain into holds according to a plan designed for the ship and approved by the Duty Port Warden. The Duty Port Warden may come back onboard a ship two to three times, as the plan may change (i.e. lack of commodity, the necessity to load more commodity, etc.). Therefore, the original approved plan may change and stability calculations might have to be reworked prior to being approved. Port wardens have a level of tolerance with respect to the calculations but it is not uniform; it varies with each port warden.

[97] The witness described his dealings with Mr. Maan as mixed, to say the least; some were pleasant and some were not pleasant at all. He stated that he was never sure of Mr. Maan's mood; he had a Dr. Jekyll and Mr. Hyde personality. If Mr. Maan's authority was questioned, he turned into Mr. Hyde - pushy, arrogant and insulting to captains and chief mates.

M/V Federal St. Laurent

[98] Mr. Popovic stated that he was in the ship's office with the Captain, the Chief Mate and Mr. Henderson. Upon arrival, Mr. Maan started talking about a letter of complaint that Mr. Henderson had sent to the local management of TC. To the best of his recollection, Mr. Maan had come to the ship on the Sunday to issue the APPC even though Mr. Henderson had requested that Mr. Maan do it on the Monday to avoid incurring overtime costs. The witness stated that he had not seen Mr. Henderson's letter of complaint. He heard Mr. Maan tell Mr. Henderson to retract the letter; otherwise, he would withdraw the APPC. Mr. Henderson replied that it was too late, as the letter was in the hands of TC's local management. Mr. Maan said he would then rescind the APPC. At that point, Mr. Popovic asked Mr. Maan what would happen if the Captain refused to return the certificate. Mr. Maan replied that he would inform the Union and no other inspector would attend the ship. Mr. Henderson then asked Mr. Maan: "Is that a threat?" Mr. Maan replied that he had only issued the certificate because of his good relationship with the ship's owners, as he had worked for them in the past, and that he had overlooked some deficiencies.

[99] In cross-examination, the witness acknowledged his interview with Mr. Tassie (Exhibit E-12, tab 14). He did not recall whether he had mentioned the interview to Mr. Henderson but conceded he might have.

[100] The witness's account of the incident was that he came onboard at 08:00 hours but he could not recall at what time Mr. Maan issued the "Readiness to Load" certificate nor at what time the ship sailed. Also, he could not recall whether the Chief Mate and Mr. Maan discussed the gyros needed onboard the vessel. However, he did recall the discussion concerning the removal of the APPC. His recollection was that, at the time, he was approximately two to three metres from Messrs. Maan and Henderson. The two were involved in a heated discussion about whether the Captain had agreed to the Sunday inspection. The Captain left, saying: "I am not a part of this."

[101] The witness recalled that Mr. Maan told Mr. Henderson that no overtime would be claimed for the Sunday inspection. The witness did not recall whether the Captain asked Mr. Maan if he could keep the certificate; however, he did see the Captain return the certificate to Mr. Maan.

[102] With respect to his question to Mr. Maan as to what he would do if the Captain did not return the certificate, Mr. Popovic stated that Mr. Maan replied that he should come to the office at another time to ask that question. It was established by the grievor's representative that the witness never did ask the question again. Mr. Popovic stated that he took no notes, nor did he file a complaint concerning this incident.

[103] Mr. Popovic recalled that the argument between Messrs. Henderson and Maan started when Mr. Maan threatened to walk off the ship and call the Union.

M/V Marilis T

[104] The witness's testimony of this incident is as follows. He was onboard the vessel, in the Captain's quarters, with the Captain and Mr. Maan. Mr. Maan reviewed the stability calculations but stated that the calculations were not at 500 moments. He told the Chief Mate that if he did not have 500 moments, he would have to sound all tanks. This procedure would consume a lot of time and the vessel would not be available for loading.

[105] Mr. Popovic asked Mr. Maan why 50 to 100 moments were not enough, as he did not know of any requirement to have 500 moments. Mr. Maan rudely replied: "It's none of your business. Don't ask questions." His tone was loud and out of control. Mr. Popovic said: "This is a free country, not a dictatorship run by Transport Canada."

[106] In cross-examination, the witness agreed that Mr. Maan issued Exhibit G-20, the "Readiness to Load" certificate, on September 14, 2001, at 10:20 hours. The witness agreed that the ship had approximately 400 moments and that it was the Captain's responsibility to do the stability calculations.

[107] The witness agreed as well that Mr. Maan probably said to him that he should not ask questions since he was not the Captain or Chief of the vessel. However, he stated that he has done stability calculations for ships in Thunder Bay even though Logistics Stevedoring Co. Ltd., in which the Canadian Grain Trimmers is a division, issues his pay cheque.

[108] Mr. Popovic did not agree that one should do a sounding of the fuel and water tanks but conceded that he was only aware of what was on the stability calculations form and unaware that the fluid amounts on the vessel were not checked.

[109] Craig Koenig has been a CFIA inspector since March 15, 1997. He recalled being interviewed by Mr. Tassie and vaguely remembered the incident onboard the M/V Lake Champlain. He recalled that when Mr. Henderson asked Mr. Maan why the Captain was awakened, Mr. Maan said he wanted to deal with the Captain. The conversation was not hostile, but the witness heard the Captain say to Mr. Maan: "Amir, you're lying." The witness had not heard any prior conversation between the Captain and Mr. Maan.

[110] In cross-examination, the witness said he never took any notes or reported the incident.

[111] John Kingwell started working in the marine environment at the age of 13 while living in the United Kingdom; in 1951, he began working full time. In 1979, he started working with the Canadian Coast Guard (CCG) as a master and senior officer on search and rescue ships. In 1988, he transferred to the TCC, Marine Safety Branch, and worked as a marine surveyor (now referred to as a marine inspector). In 1997, he became the Manager of the Branch but left for Sarnia on August 24, 2000, to become the Manager of Program Services.

[112] The witness testified that he holds a "Master Mariner Certificate" that authorizes him to qualify any ship in the world.

[113] The witness's testimony can be summarized as follows. He stated that there were a lot of expectations by the shipping agents with respect to the services that TC provided. As the new manager of the TCC, he had to deal with diminishing resources. The level of service expected by the shipping agents, combined with his lack of resources, created a lot of friction. He issued Exhibit G-8 to remind the agents that it was not a port warden's responsibility to do stability calculations. The port warden is to be presented the calculations from the Master and can assist by pointing out errors, but that is all. This did not sit well with the agents and they would not concede the point.

[114] It is the Master's responsibility to meet all aspects of the grain loading regulations, which include the stability calculations. The witness identified Exhibit G-22 as the "Grain Cargo Regulations". Section 6.2 ("Intact Stability Requirement") states: "No ship shall be loaded with grain in Canada until the master has demonstrated to the port warden, using the grain stability information, the ability of the ship throughout the voyage to meet the requirements of subsection (1)." It is the port warden who determines whether or not the stability calculations have been complied with. It is Mr. Kingwell's view that Mr. Henderson believes that he has the right to direct a port warden. There is nothing in the *Canadian Shipping Act* that allows an agent line authority to direct a public servant of Canada.

[115] TC attempts to comply with and accommodate the agents' requests but at the end of the day, it is the Treasury Board of Canada that pays the inspectors' wages and the services they provide are charged under a tariff to the shipping companies.

[116] Mr. Kingwell stated that as the manager of the TCC, Marine Safety Branch, he discussed at length with all the inspectors their role and responsibilities. In fact, he set up a dispatch desk in the office. The problem was that the agents were trying to task staff independently and that was not on. The agents felt that the inspectors should abandon all their other duties and only perform port warden duties. They believed TC existed only for them.

[117] Further proof of the agents' cavalier attitude came after the inception of the *Canada Labour Code (CLC)*. The *CLC* contains certain criteria for boarding a vessel: hardhat, safety glasses and boots. The agents refused to abide by the *CLC*; therefore, the witness issued a direction that agents were to be prevented from boarding unless

they complied with the *CLC*. This again created problems, as the inspectors are expected to endorse the *CLC*.

[118] With respect to the incident on the M/V Lake Champlain, Mr. Kingwell investigated Mr. Henderson's allegations that Mr. Maan misconducted himself, including an allegation that Mr. Maan woke up the Captain. He concluded that Mr. Maan was simply doing his job and that it was Mr. Henderson who misconducted himself by calling Mr. Maan "an idiot" in front of his colleagues and by stating: "Don't be stupid."

[119] The witness stated that the competition for Mr. Maan's position was posted in Sarnia in 1998. There were three applicants but Mr. Maan was the only one interviewed, as the other two candidates did not show up and Mr. Maan had passed the written test. Mr. Kingwell never contacted Mr. Maan's former employers in Vancouver or India because the staff relations officer involved said that Mr. Maan's references were satisfactory. The witness stated that Mr. Maan possesses an "Extra Chief Certificate" that is of a completely different level of study, as well as expertise in the steam and motor disciplines. This qualification is equal to a Ph.D. He is considered to be one of the top two in his field in the entire nation in terms of his experience and knowledge.

[120] Messrs. Nadkarni and Mackrell mentored Mr. Maan as a new recruit. Mr. Kingwell decided to waive Mr. Maan's probationary period and he was considered to be a prime candidate for advancement. This was agreed to by a committee that included Mr. Nelson.

[121] The witness stated he supervised Mr. Maan for two and one-half years and rated him as "fully satisfactory" in the "Performance Review and Assessment of Potential Report" (PRAPR) (Exhibit G-23) for the period 98/08/31 to 99/03/31. In the PRAPR for the period 99/04/01 to 00/03/31 (Exhibit G-10), he rated Mr. Maan "fully satisfactory" but rated him as "superior" [constantly exceeds all requirements] in the areas of "Construction, Repair and Inspection", "Seaworthiness Inspections", "Subdivision Intact and Damage Stability", "Electrical Equipment", "Adaptability" and "Interpersonal Relations". With respect to the "Interpersonal Relations" factor, Mr. Kingwell wrote that Mr. Maan was "very courteous and polite - at all time conducts himself as a professional". He stated that he had asked Mr. Nelson on at least six to eight occasions

to sign Mr. Maan's PRAPRs, but he never did. In his three years with the TCC, Marine Safety Branch, Mr. Nelson never signed his PRAPRs.

[122] Mr. Kingwell testified that the term "fucking wog" used by Mr. Mackrell means the following. (For the purposes of this decision, the adverb needs no explanation.) "Wog" was a British Army expression used during the building of the Suez Canal. The acronym "wog" stood for "Workers on Government Contract" and was stamped on the back of the workers' coveralls. It was a dismissive and derogatory term aimed at persons originating from the Middle East.

[123] The witness testified that Mr. Henderson had specifically stated, during a telephone conversation, that Mr. Maan was a "fucking asshole." Mr. Henderson made many complaints about inspectors. In Mr. Maan's case, Mr. Kingwell found the complaints to be groundless and frivolous. He stated that he checked out every complaint but always found Mr. Maan's work to be very good and that clients, including the U.S. Coast Guard at St. Mary's River, thought very highly of him.

[124] The witness stated that Mr. Maan was not the number one earner of overtime among the five inspectors. In fact, Mr. Maan was usually ranked third in the monthly overtime reports that were a part of Mr. Kingwell's budget.

[125] The witness stated that it is a frivolous statement that a ship can legally go to sea if it has one moment as the stability calculation. The last 12 ships that left the Port of Thunder Bay had stability calculations ranging from 2,000 to 10,000 moments. In developing these stability calculations, up to 30 variables are considered in the formula. Five hundred (500) moments are better than one. If there is a concern about the stability calculations, the normal procedure is to sound the tanks.

[126] In cross-examination, the witness stated that he has worked as a port warden in Churchill, Little Cornwallis Island, the Arctic and in Thunder Bay and held a supervisory role with the CCG.

[127] The witness stood firm on his assessment that Mr. Maan was among the top two persons in his field. He made this judgement after having worked with inspectors in both coasts as well as in Ottawa.

[128] Mr. Kingwell stated that port warden duties were assigned to an inspector on a rotating basis, Monday through Sunday. The agents and inspectors would receive a copy of the roster system he used.

[129] The witness stated that his overtime budget was approximately \$36,000 per year and most of the overtime was allocated to port warden duties. If an inspector were called by an agent to visit a ship after working hours or on weekends, the inspector would be paid for three hours even if the call only took two minutes, as provided for in the collective agreement. The agents continuously phoned requesting the services of a port warden. During business hours, if the agents needed the services of a port warden they would go through the dispatch desk; after working hours, Mr. Kingwell would refer to the duty roster. The agent or Master of any ship is required to notify a port warden before loading grain, as per section 538(1) of the *Canadian Shipping Act* (Exhibit E-38).

[130] In cross-examination, Mr. Kingwell stated that the problem was that his budget only allowed him to retain the services of one port warden, but the agents wanted the services of more than one at the same time. He would ask the agents to work it out among themselves but if they could not, TC would. The rule of thumb for a port warden's services is "the first ship on site ready to load, gets the priority; the first ship ready to leave for sea, gets the priority."

[131] The witness stated that if a ship was ready to load and a port warden left to go to anchorage, the agents would complain, as it would hold up the elevator staff, pilots, etc., and additional costs would be incurred. It would be unthinkable to do so.

[132] Mr. Kingwell stated that in his four years, he never received any specific complaints from Mr. Hyrb against Mr. Maan. All the written complaints from Mr. Henderson were put on file and Mr. Kingwell would telephone Mr. Henderson to discuss them. If the complaints were oral, they would meet for lunch to discuss them. The witness stated that he always advised Mr. Nelson by e-mail whenever he received a complaint against Mr. Maan. Mr. Nelson was kept fully informed.

[133] In response to a question concerning the statement in the "Port Warden Handbook", with respect to the ship's grain stability form, that states: "On boarding the vessel, the Chief, 2nd Officer, or in some instances, the Master will present the Port Warden with a completed copy of a Canadian 'Grain Stability Calculation' form",

Mr. Kingwell stated that the Handbook is a West Coast document that a port warden may or may not use. The Handbook holds no water; it is not a regulation. It is the Master who is responsible and liable and it is the Master who presents the stability calculation to the port warden.

[134] With regard to the alleged incident onboard the M/V Champlain, Mr. Kingwell stated he discussed it with Mr. Maan. Mr. Maan returned to the ship; the Captain did not file a complaint; there were no hold-ups loading the cargo or overtime incurred. Mr. Maan suggested that perhaps he should contact Mr. Henderson and explain the *Canadian Shipping Act* and regulations (Chapter S-9, Part VIII, Port Wardens) (Exhibit E-12, tab 5) and Mr. Kingwell agreed. A fax was sent to Mr. Henderson. Mr. Henderson called Mr. Kingwell 20 minutes later on his cell phone to tell him that he had not stated to Mr. Maan "Don't be an idiot; don't be stupid" and that he was going to put a complaint in writing. Mr. Kingwell told him that was fine but he did not intend to take the matter any further. Mr. Kingwell noted that there are disagreements, voices are raised and there is a lot of stress at grain loading time.

[135] In reply, the witness said he approved sending the regulations to the agent. The port warden's responsibility is to keep the show on the road but it can be difficult at times, as an inspector may be waiting for the ship to do stability calculations and another agent is waiting for a preliminary inspection at anchorage. There may also be tugs or elevator personnel waiting. In these circumstances, the port warden is caught in the crossfire.

[136] Richard Nisbet is a Multi-Commodities Specialist (EG-04) for the CFIA. He has worked in this field for 12 years and is responsible for administering 13 different acts and 16 different regulations in the areas of grain, pesticides, forestry, etc.

[137] Mr. Nisbet testified that he and Mr. Maan had worked together many times. He also stated that he has never witnessed Mr. Maan threaten a shipping agent, a Captain or the crew. Mr. Nisbet stated that it was usually Mr. Henderson who was the instigator while Mr. Maan remained calm and let Mr. Henderson vent.

[138] The witness acknowledged that Mr. Tassie interviewed him (Exhibit E-12, tab 18), but when asked whether he had been questioned about the incident onboard the M/V Champlain, he responded that he had not. His account of the incident on the M/V Champlain is as follows.

[139] Mr. Nisbet boarded the vessel at 06:30 hours. Mr. Maan was already onboard but the shipping agent (Mr. Henderson) was not; he arrived approximately 15 to 20 minutes later. This was unusual, as an inspector insists that the agent be present to facilitate the meeting between the Captain and officers. Upon boarding the vessel, Mr. Nisbet proceeded, along with three CFIA trainees, to the Captain's cabin. The Captain was at his desk with Mr. Maan standing beside the Chief Officer. At no time did Mr. Nisbet hear Mr. Maan threaten the Captain, state that he only dealt with captains, and not with chief officers, or that he would walk off the ship and ensure that no other inspector would return to do an inspection. There was no disagreement between the Captain and Mr. Maan; in fact, Mr. Maan was assisting the Captain with the stability calculations. It was Mr. Henderson who was agitated; his voice was loud and directed at Mr. Maan; it was a one-way conversation by Mr. Henderson. Mr. Henderson told Mr. Maan to shut up and stop being an idiot. Mr. Nisbet stated that he saw no evidence that the Captain was upset with Mr. Maan, that the Captain called Mr. Maan a liar or stated that he was twisting the truth. Mr. Nisbet left the M/V Champlain with the CFIA trainees at approximately 08:00 hours.

[140] In cross-examination, Mr. Nisbet reiterated that the Captain was in no way upset with Mr. Maan and stated that if the Captain had been, he would have remembered. He also confirmed that upon his arrival at 06:30 hours, the Captain was in his office sitting at his desk and he and the CFIA team greeted the Captain.

[141] Mr. Nisbet recalled another incident that occurred late in August 1999, at a meeting with Doreen Moore and Gerry Dignard, both from the CFIA, Mr. Hyrb, Roy Ward, from the Canadian Ports Clearance Association, and Mr. Henderson. At this meeting, a discussion ensued concerning changes by the CFIA to services provided. Mr. Henderson became irate and said: "This is fucking ridiculous." He threw his binder on the floor and said that Ms. Moore had no clue about the shipping industry and CFIA policies.

[142] Peter Mihalus worked at the Thunder Bay TCC, Marine Safety Branch, for seven and one-half years as an inspector (TI-07) and acted in Mr. Kingwell's absence approximately 25 to 30 times.

[143] The witness's testimony can be summarized as follows. He never found Mr. Maan to be rude toward anyone, either a captain or the crew. He recalled Mr. Henderson calling Mr. Maan a "fucking idiot" in his and Mr. Schroeder's presence.

The witness told Mr. Henderson that that comment was unacceptable. He also heard Mr. Henderson comment, on more than one occasion, "the asshole [Mr. Maan] is not coming down here today."

[144] The witness also stated that a problem arose between Messrs. Maan and Henderson while they were onboard another vessel (The Halifax) and he heard Mr. Mackrell call Mr. Maan a "fucking wog". It was a term Mr. Mihalus had not heard before. He later found out that it was a derogatory term aimed at workers or persons from the Middle East.

[145] Mr. Mihalus recounted his five to 10-minute interview with Mr. Tassie (Exhibit E-12, tab 10). At no time did Mr. Tassie question him concerning a backdated certificate onboard the M/V Lok Rajeshwari. Mr. Mihalus was the acting manager at the time and was not informed of complaints about a backdated preliminary inspection certificate. A certificate costs \$135 and agents are reluctant to have another one issued. However, if the recommendations have not been taken care of, another one could be issued. You cannot issue a "Readiness to Load" certificate until the CFIA clears that any fumigation needed has been completed and that the holds meet their regulations.

[146] The witness stated that stability calculations, the moments of leeway, are a safety margin. He stated he would question the calculations if they are 400 moments and he had a figure of 500 moments in his mind. Thunder Bay is the only port in Canada that does not have a marine consultant that can assist the ship's personnel in the development of stability calculations. This is a major bone of contention with shipping agents, who expect the inspectors to do the stability calculations. Inspectors can help ship officers develop stability calculations but their job is simply to ensure that the calculations are correct. The reason for this is that if the inspectors did the stability calculations themselves and there was an accident, the CCG could be held liable. On May 26, 2000, Mr. Kingwell sent a memorandum to Messrs. Hyrb and Henderson reminding them of this fact. He stated (Exhibit G-8):

Comments: PORT WARDEN DUTIES - STABILITY CALCULATIONS

This memo is to remind you that it is not the Port Warden's responsibilities to become involved in the calculation of the Grain Stability Calculations. Rather it is the Master's

responsibility to present them completed on the Port Warden's arrival onboard.

The Port Warden may give the occasional verbal general direction to expedite the workflow, and will point out any errors as found so that the Master can rework his figures for subsequent representation and checking.

Your attention to this matter is appreciated.

[147] Mr. Mihalus stated that he trained all the inspectors, including Mr. Maan, starting with Mr. Nadkarni in 1997. If he cannot get a stability calculation of at least 500 moments, he will "watch it [the ship] like a hawk." The stevedores drop grain into a hold at a rate of 800 to 1,000 tons per hour and this factor can change the stability calculations two to three times. Although it is important to move commerce, inspectors must ensure that rules and regulations are followed.

[148] The witness stated that he and Mr. Maan worked together for four years. He stated as well that Mr. Maan is a professional and his work is very thorough. Mr. Maan was always willing to help his colleagues and had a very good reputation with Canadian ship owners and stevedores. Mr. Mihalus stated he would have no problem working with Mr. Maan again.

[149] The witness's last comment was that Mr. Henderson complained about everyone but "he picked on Amir."

[150] In cross-examination, Mr. Mihalus explained that, because of liability concerns and Exhibit G-8, a port warden could only approve calculations, although he himself prefers to have at least 500 moments. He stated that if he cannot reach 500 moments, he will dig deeper because the stability calculations could have been made when the ship was in dry conditions, there was no fuel or water onboard, there could have been a foot of mud in the bilge, etc. If a ship is listing, inspectors are legally able to check ballast tanks, fluid levels, etc. It might take time and cost money, but a port warden has this authority.

[151] The witness stated that he always insists that the Master of the vessel present the stability calculations, as it is the Master's responsibility. No chief officer presents the stability calculations directly to a port warden; it is always the Captain.

[152] Mr. Mihalus stated that he has never been asked for another preliminary inspection certificate probably because of the cost (\$135 fee). He stated that he does not backdate certificates. If repairs are required, he asks to see the documentation and will check the defects himself before issuing a certificate. He stated that inspectors do not issue backdated certificates. He has never heard of this nor has he heard of any complaint regarding the issuance of a backdated certificate.

[153] John Haikalis currently works for Hayes Stewart Inc. as a Consultant Marine Surveyor. At the time of this grievance, the witness was employed by Empire Stevedoring. His primary duty was loading grain. The M/V Millennium Condor was his ship.

[154] The witness stated that Mr. Maan arrived onboard on Saturday, December 2, 2000, to check if the holds were full. Mr. Haikalis was waiting to load the ship but the stability calculations were not ready. The witness was very firm in his statement: "I can load grain at 800 to 1,000 tons an hour but at Thunder Bay I can only discharge grain at a rate of 35 tons an hour. If there's a mistake made, I pay the hit and the hit can be \$10,000 to \$15,000 a day." The witness holds approximately 500 tons in reserve. He recalled Mr. Maan leaving the ship at 12:30 hours. Mr. Haikalis stated he stopped loading grain, as he was waiting for the stability calculations. From 13:20 to 13:45 hours, he loaded approximately another 100 tons and waited for another stability calculation. From 13:45 to 15:00 hours, the Chief was redoing the stability calculations and the ship was shifting.

[155] The witness stated that at no time did Mr. Maan cause a delay in the loading of the ship. Mr. Henderson wanted the witness to take on more grain under the old stability calculations. He was screaming: "You can take more." The witness stated: "I never listen to him. He's just an agent. It is I who take the blame and it is I who pay the bills. I have no problem working with anyone at Thunder Bay except for Mr. Henderson. I do not pay any attention to him."

[156] There was no cross-examination of this witness.

[157] Amir Maan started his employment in the Marine Safety Branch of the TCC in Thunder Bay on August 31, 1998. His last day at work was December 5, 2001.

[158] Mr. Maan arrived in Canada in February 1997, and his family arrived in May 1998. While he was in Vancouver, he noticed the job posting for the TI-07 position on the Public Service Commission website. In order to qualify, he wrote a "First Class Canadian Steam and Motor" exam, even though he has held this certificate in the United Kingdom since 1980.

M/V Lake Champlain

[159] Mr. Maan testified he boarded the vessel at 06:15 hours, as per Mr. Henderson's request of the previous day. To his surprise, there was no one on the gangway waiting to greet him, which was not the normal protocol. After waiting for five minutes, he proceeded to the Captain's office. The Captain came to the door and Mr. Maan informed him that there was no one in the gangway and inquired of the Captain whether or not he was expecting him. He also asked the Captain if he was ill, to which the Captain replied: "No, I am all right. Give me five minutes."

[160] Mr. Henderson was not present. The Captain invited Mr. Maan into his office and they exchanged business cards. The vessel's particulars (i.e. tonnage, registry) were given. Mr. Maan then called Mr. Henderson, who should have been there at 06:30 hours. The protocol is that the agent should be onboard the vessel when the port warden arrives.

[161] The Chief Officer arrived in the Captain's office with the stability calculations. Some CFIA officers were also now present. Mr. Henderson arrived at 07:00 hours and stood beside a bulkhead. When the Captain turned to Mr. Henderson and informed him that Mr. Maan had come onboard by himself, Mr. Henderson replied that Mr. Maan was an "idiot". The stability calculations were satisfactory and a photocopy was made for the report. The inspection was made with the Chief Officer and the CFIA inspectors.

[162] Mr. Maan stated that, as far as he was concerned, there was no argument. He issued a "Readiness to Load" certificate and left the ship at 08:00 hours. He re-boarded the ship on July 1, 2000, and issued a "Fitness to Proceed to Sea" certificate. There were no problems and the ship sailed on time.

[163] Mr. Maan stated that he brought to Mr. Kingwell's attention the name-calling incident ("idiot"). He was told to check the *Canadian Shipping Act* and the Grain Cargo Regulations to determine the responsibilities of the Captain and agent. Mr. Kingwell said he was trying to change from an old system to a new one and this would help clarify the roles for all inspectors who reported to him. Mr. Maan made a photocopy of the regulations, showed them to Mr. Kingwell and he agreed and they should be sent to Mr. Henderson.

[164] Mr. Maan testified that it was not until he saw the questionnaire from Mr. Tassie on October 24, 2001, that he realized there was a complaint outstanding against him with respect to the M/V Lake Champlain. Mr. Kingwell had told him that all complaints from Mr. Henderson had been resolved.

M/V Lok Rajeshwari

[165] Mr. Maan was the acting manager from September 25 to October 1, 2000, and Mr. Mihalus acted from October 2 to 15, 2000. Mr. Mackrell was the Duty Port Warden from September 25 to October 1, 2000, and from October 2 to 9, 2000, Mr. Maan was the Duty Port Warden.

[166] Mr. Maan stated that on Tuesday, September 26, 2000, he was onboard the S.S. Oakglen at Pasco Dry-dock. At approximately 13:15 hours, he received a telephone call from Mr. Mackrell stating that he was busy but needed an inspector onboard the M/V Lok Rajeshwari. Since the other inspectors were busy, Mr. Maan went onboard. Mr. Henderson had requested a "Readiness to Load" certificate. According to Mr. Henderson, the deficiencies listed by Mr. Schroeder had been complied with.

[167] Mr. Maan boarded the vessel at 13:40 hours. The ship was not ready; the frames in the holds were still being repaired. Mr. Henderson stated that they were ready to load but the Captain said that they were not. Mr. Maan requested the preliminary inspection certificate and the Captain showed him two certificates: the first one was dated September 23, 2000 (Exhibit E-20), and was signed by Mr. Schroeder. It listed deficiencies in hold #2 ("cracked frames and bracket flange"), hold #6 ("bilge strainers to be repaired to the satisfaction of surveyor") and in holds #1, #3, #4 and #5 ("bilge strainers to be inspected by crew and repaired, if required, to satisfaction of surveyor"). The second certificate (Exhibit G-11) was signed by Mr. Schroeder on

September 24, 2000, and confirmed that all cracked frames and the bracket flange were repaired to his satisfaction.

[168] Exhibit G-13 is an invoice from Pascol Engineering, indicating "five bilge strainers fabricated and supplied per sample". Exhibit G-35, dated September 26, 2000, signed by the Master, confirmed that the bilge strainers were supplied to the ship.

[169] Mr. Maan stated that he then went to hold #6 with the Chief Officer to inspect the bilge strainers, also referred to as the "Rose Box". The Chief Officer called the engine room to start bilge suction. In hold #6, it worked and according to the Chief Officer, the other bilge strainers had been installed. Mr. Maan did not physically inspect the others, which is a common practice. He issued a preliminary inspection certificate (Exhibit E-22) at 14:00 hours on September 26, 2000, indicating that the bilge strainers were fitted onboard and in order. He did not issue a "Readiness to Load" certificate that day.

[170] On September 27, 2000, Mr. Mackrell said the ship was waiting to be fumigated. Mr. Maan returned to the ship the next day. Fumigation was continuing; therefore, he did not issue a "Readiness to Load" certificate.

[171] On September 29, 2000, Mr. Mackrell issued the "Readiness to Load" certificate (Exhibit G-36). Mr. Maan stated he revisited the ship on October 2, 2000. While he was onboard, Mr. Mackrell did not mention anything about a backdated certificate. Mr. Maan stated that he was never asked for one. He did not know about the allegations until March 20, 2002, when he first saw the complaint. Before that date, he had no idea who had made the complaint. He was never asked about a backdated certificate by either Mr. Mackrell, Mr. Henderson, Mr. Lavender or by Mr. Mihalus, who was his supervisor at the time.

M/V Millennium Condor

[172] Mr. Mackrell became the acting manager of the Thunder Bay TCC, Marine Safety Branch, in November 2000. On November 27, 2000, Mr. Maan was working as a port warden; Mr. Nadkarni was not working as a port warden that week as far as Mr. Maan knew. On November 3, 2000, Mr. Maan issued a "Readiness to Load" certificate. At 09:00 hours, he boarded the M/V Utviken and performed an anchorage inspection. He

left for the M/V Millennium Condor at 10:30 hours. On his way, he called a stevedore (Mr. Haikalis) to inquire if any of the holds were full. He was informed that there were a few; therefore, he asked the stevedore to shift the ship. At approximately 10:35 hours, Mr. Maan re-boarded the M/V Millennium Condor, anticipating being there for 10 to 15 minutes; however, the Captain informed him that there was a change in the loading plan and he was waiting for new stability calculations. Mr. Maan informed him that he had another appointment at 12:15 hours.

[173] At 10:40 hours, Mr. Henderson called and Mr. Maan informed him that he was leaving to board another vessel (Shipka) at anchorage at 12:15 hours.

[174] Mr. Mackrell called at 11:00 hours to say that Mr. Nadkarni was outside the ship. Mr. Maan stated that the stability calculations were not ready and Mr. Mackrell replied that he would send Mr. Nadkarni elsewhere. Mr. Maan explained to Mr. Mackrell that the agent for the ship (Mr. Hyrb) and a team of CFIA inspectors were booked on a tug to visit another vessel (Shipka). The agent was waiting for a "Readiness to Load" certificate. If Mr. Maan did not attend that vessel, those persons would be kept waiting. He waited for one and one-half hours onboard the M/V Millennium Condor for the stability calculations to be completed. The Captain said it looked as if the Chief Mate was stuck doing the calculations. Mr. Maan explained to him that he had to go to another vessel (Shipka).

[175] Mr. Maan stated that he called Mr. Mackrell at 12:25 hours to explain that the stability calculations were not finished and that he should have the Captain call Mr. Henderson once they were done. Mr. Maan's log for December 2, 2000, confirms that he left the other vessel (Shipka) at 16:00 hours. No one informed him that Mr. Nadkarni was also working as a port warden. He found out later that this was decided on the Friday. Mr. Maan stated that since he was the port warden, he should have been informed.

[176] Mr. Maan called Mr. Henderson at 15:45 hours to advise him that he could sail out the vessel. Mr. Maan then called Mr. Mackrell to let him know that he would take care of the ship. Mr. Mackrell replied: "You will not attend the vessel. You people, you wog, you can complain to anyone you like." Mr. Maan stated that Mr. Mackrell had called him a "wog" back in 1999. At that time, Mr. Maan showed Mr. Mackrell the definition of the term in the dictionary yet, despite knowing its negative connotation, Mr. Mackrell nonetheless chose to continue to use this term in Mr. Maan's presence.

[177] Exhibit G-25 confirms Mr. Maan's cell phone number as (807) 628-6450 and he called Mr. Mackrell's cell ((807) 628-5151) at 15:45 hours.

[178] Exhibit G-26 confirms that Mr. Maan called Mr. Mackrell at 12:26, at 15:45 and at 15:46 hours. Mr. Maan sent an e-mail to Mr. Nelson informing him that he found Mr. Mackrell's remark insulting. He stated he found out about the allegation in the summary of Mr. Tassie's questionnaire on October 29, 2001. However, it was not until March 20, 2002, that he found out the complaint was filed by Mr. Henderson. At no time did anyone raise the complaint with him or bring it to his attention.

[179] Exhibit G-24 confirms that on November 30, 2000, hold #3 was empty onboard the M/V Millennium Condor and on December 2, 2000, hold #3, at 15:00 hours, was going from empty to a load of 1,550 metric tons of flax.

M/V Federal St-Laurent

[180] Mr. Maan was the Duty Port Warden and on April 18, 2001, he was to issue a APPC. He had never issued one before, even though he had received familiarisation training in 1999.

[181] Mr. Maan stated that he received Exhibit G-37 from Mr. Mackrell; it was an application from Anglo-Eastern Ship Management Ltd. for an APPC. The vessel would be arriving Friday evening, April 20, 2001, and sail on Sunday morning, April 22, 2001. There were no zones mentioned in the application for the APPC. Mr. Maan arrived onboard on Saturday, April 21, 2001, at 16:15 hours, completed a preliminary inspection and issued a "Readiness to Load" certificate.

[182] Exhibit G-38 is an excerpt from Mr. Maan's log, which shows seven calls from Mr. Hyrb requesting inspections. Call #3, at 12:55 hours on Saturday, April 21, 2001, requested an inspection for 06:30 hours on Monday, April 23, 2001, for the M/V Federal Yoshino. The M/V Federal St. Laurent was scheduled to leave at 12:00 noon on the Monday. To do an APPC inspection, it would have taken approximately two hours. Mr. Maan told the Captain that he could not perform an inspection; it was not possible for Monday. They settled for Sunday and there was no argument from Mr. Henderson.

[183] On Saturday, April 21, 2001, the ship was not ready and, as well, the Captain did not have the APPC regulations or publications onboard. The Captain was unclear on what zones he needed the APPC for, as it was not indicated on the application from Anglo-Eastern Ship Management Ltd. (Exhibit G-37).

[184] Mr. Maan stated he gave Mr. Henderson his regulations and publications in order to have them photocopied and requested that Mr. Henderson return the originals. The next day, the day he indicated he would attend the ship (Sunday), Mr. Henderson was not present. Mr. Maan did the APPC inspection and at 11:20 hours, he called Mr. Mackrell to verify the minimum allowances for this type of inspection. It was Mr. Maan's first inspection of this type. Mr. Mackrell indicated that if the ship held a valid "International Oil Pollution Prevention" (IOPP) certificate, then that was sufficient to issue an APPC.

[185] Mr. Maan stated that he believed there was more to an APPC inspection than what Mr. Mackrell told him; however, he did issue the APPC on Sunday, April 22, 2001. The "Shipping Safety Control Zones" map (Exhibit G-40) indicates that the ship's destination from Thunder Bay to Montreal to Churchill required the ship to sail through zones 14 and 15.

[186] On Monday, April 23, 2001, Mr. Maan was researching further into the regulations and publications (Exhibit G-41, *Arctic Waters Pollution Prevention Act, Navigating Appliances and Equipment Regulations*.) It became clear that the vessel needed to have two gyrocompasses, as the ship was 20,837 tons and she was a non-Canadian ship; her flag was from the Barbados. The ship fell into the international convention concerning safety of life at sea (safety convention) and was considered a safety convention ship according to the *Act*. As a non-Canadian safety convention ship, she had to comply by carrying onboard the "Cargo Ship Safety Construction Certificate" (CSSCC) and the "Cargo Ship Safety Equipment Certificate" (CSSEC). Exhibit G-43, "International Load Line Certificate" issued by Det. Norske Veritas (Shanghai, China) on February 13, 2001, was extended to July 13, 2001. Exhibit G-44, "International Oil Pollution Prevention Certificate", issued by Det. Norske Veritas (Shanghai, China) on February 14, 2001, was extended to July 13, 2001. Exhibit G-45, the "Cargo Ship Safety Equipment Certificate" issued by Det. Norske Veritas (Shanghai, China) on February 14, 2001, was valid until April 30, 2001. This certificate was not extended while the others had been. Mr. Maan stated that he became aware of this

deficiency on Tuesday, April 24, 2001. Exhibit G-42 is a TC document entitled "Notice to Surveyors". It indicates the following with respect to the general duties of marine surveyors:

2. *The Canada Shipping Act, in Section 316(5), puts the onus of responsibility for having a vessel certificated upon its owner; the owner must also state the type of inspection certificate required, e.g. passenger or non-passenger, class of proposed voyages, vessel's intended complement etc.*

[187] At no time did the Master limit the sailing zones to 14 and 15. The application (Exhibit G-37) simply stated the Master's desire to apply for an APPC.

[188] With respect to the inspection of ships, the "Notice to Surveyors" (Exhibit G-42) states "Where a Marine Surveyor is of the opinion that the provisions of paragraph (a) or (b) of subsection 17(2) of the A.S.P.P.R. applies, the certificate may be declared to be invalid or, where the certificate is available to the Marine Surveyor, may be invalidated by an appropriate entry on the back of the certificate." [Section 8(13)(b) of the "Arctic Shipping Pollution Prevention Regulations - Certification and Inspection".]

[189] Mr. Maan stated that he was a duly qualified pollution prevention officer under the CSA. Section 11.10 of the regulations (Exhibit G-42) states that the APPC is valid for a period of not more than one year and it will always expire on March 31. He then advised Mr. Mackrell, who informed Mr. Maan that he had to write up another certificate. Mr. Maan stated that he explained to Mr. Mackrell that he could not, that it had to be a representative of Det. Norske Veritas, as they acted on behalf of the ship flag (Barbados). Also, on Tuesday morning, April 24, 2001, Mr. Maan talked with Mr. Nabil, from TC's Winnipeg office, who had performed many APPC inspections. He said the ship needed two gyros, two echo sounders and two radars and all the certificates had to be valid.

[190] The ship was still being loaded at 10:20 hours on Tuesday, April 24, 2001, when Mr. Maan went onboard. He asked the Captain how many gyros and echo sounders he had onboard and the Captain replied one of each. Mr. Maan went through the regulations with the Captain, showing him the requirement for two of each. The Captain indicated the sister ships of the fleet had an APPC and they only had one of each. Mr. Maan stated that he explained that perhaps they had a restriction or an exemption. The Captain still wanted the APPC; therefore, he called his principals in

Montreal, who were to fax copies of the other relevant certificates. Mr. Maan stated that no faxes were received while he was onboard. Mr. Maan wrote an SI7 deficiency report and cancelled the original certificate by drawing a line through it.

[191] Mr. Maan stated that the Captain never complained to him about the withdrawal of the APPC or the overtime on Sunday, April 22, 2001. After Mr. Maan showed him the regulations requiring two gyros and two echo sounders, the Captain seemed satisfied.

[192] Mr. Maan stated that the SI-7 form (Exhibit E-4) clearly states that the reason for the withdrawal of the APPC is that (1) the ship must hold all valid certificates for the duration of the APPC, and (2) there were to be two gyrocompasses fitted onboard. Mr. Maan stated he only deals with the Master of the ship when it comes to important marine safety issues.

[193] With respect to Mr. Popovic's question as to what would happen if the Captain refused to give back the certificate, Mr. Maan stated it was inappropriate to do so in front of the Captain. Mr. Maan stated he explained to Mr. Popovic that he would discuss this issue with him at another time in his office. Mr. Maan stated he dealt with Mr. Popovic on issues that concerned commerce, as that was his role as a stevedore. Mr. Maan stated he did not say that no other inspector would come onboard or threaten to go to the Union. It was Mr. Maan's opinion that there was friction between Mr. Henderson, the Captain and him. Therefore, Mr. Maan said to the Captain that he would not charge overtime for the Sunday and he did not claim overtime.

[194] Exhibit E-37 is a letter from Anglo-Eastern Ship Management Ltd., dated June 1, 2001, complaining about Mr. Maan's withdrawal of the APPC. In paragraph (iii) it states that all certificates were valid and that the full term certificates were underway. Mr. Maan testified that he did not see this complaint until June 25, 2001, and no certificates arrived while he was onboard.

[195] As a result of complaints from Mr. Henderson, Mr. Maan was not assigned to work on any vessels associated with Lake Superior Shipping Ltd. and Mr. Henderson until further notice, as stated in the e-mail of April 27, 2001, from Mr. Mackrell to Mr. Maan (Exhibit E-5).

[196] Mr. Maan testified he was interviewed by Mr. Lavender on May 17, 2001. He did not receive a copy of his investigation report (Exhibit G-3) until April 4, 2002 - 11 months later. At no time did anyone speak to Mr. Maan about any incident on the M/V Federal St. Laurent.

M/V Marilis T

[197] Mr. Maan stated that he boarded the vessel at approximately 07:00 hours with Mr. Hyrb to issue a "Readiness to Load" certificate. There had been some preliminary deficiencies but as the repairs had not been completed, Mr. Maan left and returned at approximately 09:50 hours. He was presented with the stability calculations but there was a lot of data and some calculations were missing. For example, the Captain was unclear on how much bunker fuel was taken onboard in Montreal and as they were unclear in their destination, fuel consumption was also unclear. Mr. Maan stated he asked that the calculations be redone. Mr. Maan stated that he asked the Captain to add more ballast in an effort to satisfy his belief of the appropriate number of moments for the stability calculations. It was then that Mr. Popovic suggested that he should not be asking the Captain to add more ballast. Mr. Maan stated that he was responsible for the safety of the ship and it was his signature that would appear on the stability calculations form.

M/V Pintail

[198] Mr. Maan, who was the port warden, boarded the vessel at approximately 15:00 hours to issue a "Readiness to Load" certificate. There were deficiencies and since they had not been corrected, he could not issue the certificate. Mr. Hyrb called at approximately 07:00 hours requesting that Mr. Maan return to the ship, as the repairs had been completed. Mr. Maan re-boarded the vessel at 20:15 hours, issued a "Readiness to Load" certificate and left at approximately 20:45 hours.

[199] Mr. Maan confirmed that he found out about this complaint on March 20, 2002.

Nipigon District Incident

[200] Exhibit G-47 is a letter dated August 19, 2002, from the Ontario Ministry of Natural Resources confirming that it requested Mr. Maan to return on September 27, 2001, to complete his inspection of the Jim Dan D.

[201] Mr. Maan stated that Mr. Mackrell's e-mail (Exhibit G-16) dated September 26, 2001, requesting that Mr. Maan remain in the office until Mr. Mackrell had spoken to him, was not received in the office until 17:07 hours. Mr. Maan stated he left the office at 16:45 hours and he left for Nipigon at approximately 08:20 hours the next day in the company vehicle. At approximately 08:35 hours on September 27, 2001, Mr. Maan talked to the office secretary, who informed him that Mr. Mackrell wished to speak to him. At 08:40 hours, Mr. Maan called Nipigon to inform them that he was en route. At approximately 08:53 hours, he received a call from Mr. Mackrell from St. Catharines inquiring as to why Mr. Maan was proceeding to Nipigon. Mr. Maan stated he said to Mr. Mackrell: "You're not acting; it is Nadkarni. And you and I can discuss it on your return." The signal was faint, it was difficult to hear him and he then lost the signal on his cell phone. Mr. Maan said he called Mr. Mackrell at 14:35 hours explaining that the inspection went well. Mr. Maan explained that there was no financial benefit claimed by him (i.e. overtime) or meal allowances for this trip.

[202] Exhibit G-6 is a series of e-mails between Messrs. Nelson, Mackrell and Mann. The final e-mail, dated October 10, 2001, at 12:17 hours. from Mr. Nelson to Mr. Maan states: "Thanks Amir. I understand that you and Dave [Mackrell] have discussed this issue and it appears that there was some poor communication and inaccurate information being passed around, which resulted in the earlier confusion. From what Dave has said, it appears that this issue is now resolved. If you have any further concerns please let me know. Regards, Phil" [Nelson]

[203] Mr. Maan stated that Mr. Tassie never discussed the Nipigon incident with him. The first time Mr. Maan became aware of this incident was at this hearing.

Tassie Investigation

[204] Mr. Maan testified that on September 1, 2001, Mr. Nelson called him and explained that Mr. Tassie was conducting an investigation. On September 28, 2001, Mr. Maan and his union representative met with Mr. Tassie. Mr. Tassie refused to disclose who made the complaint and would not provide copies of it. The PSAC representative asked for a copy of Mr. Tassie's mandate. Mr. Tassie had a flight to catch and could not provide a written copy of the questions he proposed to ask.

[205] On October 29, 2001, Mr. Maan received the questionnaire from Mr. Tassie. There were questions relating to vessels Mr. Maan had performed inspections on dating back to almost one year.

[206] On December 3, 2001, Mr. Maan met with Mr. Nelson and his union representative for approximately one hour. The meeting concluded at approximately 17:30 hours, and Mr. Maan was asked to hand over his computer and other TC material. At this meeting, Mr. Nelson never discussed any incidents onboard the different vessels and Mr. Maan had still not received a copy of the complaints or Mr. Tassie's report.

[207] On December 5, 2001, Mr. Maan was indefinitely suspended and effective January 14, 2002, his employment was terminated (Exhibit E-13).

[208] Mr. Maan stated that the complaint from Mr. Henderson (Exhibit G-3) was reviewed word-by-word with Mr. Lavender. The conclusion was that Mr. Maan did not claim overtime and as far as Mr. Maan was concerned, the issue was resolved.

[209] In cross-examination, Mr. Maan reiterated that Mr. Henderson said: "Amir is an idiot" in front of the Captain of the M/V Lake Champlain. By sending Mr. Henderson the regulations, with Mr. Kingwell's approval, Mr. Maan wished to close the file and any misunderstanding that had occurred on the M/V Lake Champlain. Mr. Maan noted that the CSA regulations (sections 561(1) and 561(3)) do not mention the agent and his/her responsibilities; they only mention the Master's and the port warden's responsibilities. Mr. Maan also pointed out that in his fax he wished Mr. Henderson all the best for Canada Day (Exhibit E-12, tab 5).

[210] Mr. Maan explained that the invoice for five strainers from Pascol Engineering (Exhibit G-35) related only to the preliminary inspection certificate (Exhibit E-20) of hold #6 ("bilge strainers to be repaired to the satisfaction of surveyor"), holds #1, #3, #4 and #5 ("bilge strainers to be inspected by crew and repaired, if required, to the satisfaction of surveyor"). Each hold has two bilge strainers. The ship may hold additional bilge strainers onboard. The bilge strainers are stainless steel and are 10 inches in length and approximately eight inches in diameter. They are sometimes called a "Rose Box", which fits onto a bilge suction pipe.

[211] On September 26, 2000, Mr. Maan met with the Chief Officer who had a walkie-talkie. The Chief Officer called the engine room and hold #6 (starboard bilge suction pipe) was turned on for approximately 15 to 20 minutes. There were no leaks; therefore, he left the hold at 15:15 hours and issued a certificate (Exhibit E-22) that the repairs were found to be in order.

[212] Mr. Maan stated that in the Tassie investigation report (Exhibit E-12, tab 3, page 3) Mr. Maan confirmed that he inspected the strainers on September 26, 2000, and showed Mr. Tassie his logs indicating he had.

[213] With respect to the M/V Millennium Condor, Mr. Maan confirmed in cross-examination that he was not in the loop with Mr. Mackrell and that without his knowledge Mr. Mackrell had assigned additional port warden duties to Mr. Nadkarni.

[214] In cross-examination, Mr. Maan clarified that during a two-week course that he took in 1999, only one day was geared toward APPC inspections.

[215] Mr. Maan stated he showed the Captain the APPC regulations, which the ship did not meet. The certificate was cancelled and a S17 form then became the official and legal document.

[216] With regard to Mr. Henderson's letter of April 23, 2001 (Exhibit E-2), Mr. Maan explained that he never considered it a complaint; it was more of a scheduling issue, as to whether he worked on the Sunday as opposed to the Monday. Mr. Maan stated he had a prior commitment with another shipping agent scheduled for the Monday. In an effort to minimize the perceived incident by Mr. Henderson, Mr. Maan did not claim overtime for the Sunday.

[217] Mr. Maan confirmed in cross-examination that he had not seen the complaints until March 20, 2002, and had not heard anything further with regard to his visit to Nipigon until the start of this hearing.

ArgumentsFor the Employer

[218] Counsel for the employer stated that Mr. Maan established a pattern of misconduct through his negligence, abuse of authority and acts of insubordination. Counsel's arguments are summarized as follows.

M/V Federal St. Laurent

[219] Although he worked overtime on Sunday without the permission of his manager, this was viewed as a minor offence; it was noted that Mr. Maan never charged for the overtime. However, Mr. Maan threatened to withdraw the APPC if Mr. Henderson did not withdraw his letter of complaint. The SI7 form, depicting deficiencies of not having two gyrocompasses, was a bargaining chip that Mr. Maan intended to use to force Mr. Henderson to withdraw his complaint.

[220] Mr. Popovic heard Mr. Maan threaten to walk off the ship and call the Union if the Captain did not return the APPC. As well, Mr. Popovic recalled that Mr. Maan said he overlooked deficiencies because of his good relationship with Anglo-Eastern Ship Management Ltd. Mr. Maan also issued an APPC even though he was unsure if the certificate conformed to regulations. When Mr. Henderson asked for a copy of the withdrawn certificate, he was advised that Mr. Maan had destroyed it.

M/V Lok Rajeshwari

[221] Mr. Maan abused his authority and displayed negligence by backdating a certificate. Mr. Maan had many opportunities to offer the information that he had performed an inspection on September 26, 2001, but chose not to until this hearing.

M/V Lake Champlain

[222] Mr. Maan demanded to deal with the Captain only and not the Master. Mr. Koenig heard the Captain say: "Amir, you're lying." As well, Mr. Henderson testified that Mr. Maan threatened to walk off the ship and call the Union.

M/V Millennium Condor

[223] Mr. Nadkarni had been assigned to this vessel; however, Mr. Maan arrived earlier and was then ordered to stay onboard and approve the stability calculations. Mr. Maan decided to leave the vessel before the stability calculations were completed to go to another vessel (Shipka), which was a lower priority ship. This delay cost the clients approximately \$3,300 in overtime.

Nipigon District Incident

[224] Mr. Maan denies completely any confrontational conversation with Mr. Mackrell. He hangs up on his supervisor, does not return the call and proceeds to Nipigon claiming he lost reception on his cell phone.

[225] A high level of integrity and trust and proper behaviour are required of senior marine surveyors. They work independently and unsupervised. TC cannot condone inspectors overlooking deficiencies.

[226] Mr. Maan had a relatively short career with TC and had been spoken to on many occasions by Messrs. Mackrell and Nelson with respect to his behaviour. Mr. Maan did not cooperate with the Tassie investigation until the eleventh hour, after he was suspended without pay. Even today, Mr. Maan admits no wrongdoing, and remembers meticulously every detail.

[227] Counsel for the employer argued that reinstatement should not be considered because of the number of incidents onboard the different vessels produced in evidence as well as the Nipigon incident.

[228] Counsel also stated that rehabilitative potential is not an option, as there has been no admission by Mr. Maan that he had done anything wrong. If there is no admission, there is no likelihood of change.

[229] Counsel referred me to the following cases: *Matthews* (Board file 166-2-20753), *Re Retail Store Employees Union Local No. 832 and Canada Safeway Ltd.* (1974), 41 D.L.R. (3d), 449, and *Re IPSCO Saskatchewan Inc. and United Steel Workers of America, Local 5890* (1999), 83 L.A.C. (4th) 396.

For the Grievor

[230] The grievor's representative argued that Mr. Maan had participated in the Lavender investigation in May 2001, but had not received a copy of the report until April 2002. If the issues were that critical and serious, why was Mr. Maan not disciplined or sent on training? Why was there no mention of this in his PRAPRs?

M/V Lake Champlain

[231] There were no complaints from either the Captain or the First Mate. Mr. Nisbet testified that it was Mr. Henderson who was rude and called Mr. Maan an "idiot" in front of his colleagues and others.

[232] Mr. Henderson's letter of complaint (Exhibit E-18) dated July 2, 2000, was a malicious letter and was not shown to Mr. Maan until October 29, 2001, some 16 months after the fact.

[233] Mr. Kingwell investigated the incident and no fault was found. He investigated all the complaints filed by Mr. Henderson. What was discussed was that Mr. Henderson, on several occasions, had called Mr. Maan a "fucking arsehole", "fucking stupid" and had stated "shut up and stop being an idiot".

M/V Lok Rajeshwari

[234] During his cross-examination, Mr. Nelson noted that Mr. Mackrell had issued a "Readiness to Load" certificate on September 29, 2000, without inspecting the bilge strainers.

[235] Mr. Mihalus, who was the Acting Manager from October 2 to 15, 2000, did not talk to Mr. Maan about an allegation of a backdated certificate because no one brought this complaint or allegation to Mr. Mihalus's attention. This complaint was brought to Mr. Maan's attention on October 29, 2001, some 13 months after the ship had sailed from Thunder Bay.

M/V Millennium Condor

[236] According to Mr. Haikalis, Mr. Maan in no way delayed the loading of grain onboard this ship. As well, Mr. Mackrell did not inform Mr. Maan that he had also assigned port warden duties to Mr. Nadkarni. As Mr. Kingwell stated, there are

circumstances where port wardens are caught in the crossfire. Mr. Maan's decision to leave this ship, because the stability calculations were not ready and he had another commitment (Shipka), put him in such a situation. Two agents were then competing for Mr. Maan's services at the same time.

M/V Federal St. Laurent

[237] The evidence shows that the ship was to arrive on Friday, April 20, 2001, and sail on Monday, April 23, 2001. However, the ship did not arrive until Saturday, April 21, 2001, in the afternoon, and because of the weather, it did not sail until Tuesday, April 24, 2001. The overtime is a secondary issue. According to Mr. Mackrell's policy, if overtime is not pre-authorized it is not approved. If Mr. Maan submitted a claim for overtime and Mr. Mackrell refused to approve it, Mr. Maan had the right to file a grievance. It is not Mr. Henderson who approves overtime; it is the employer - TC.

[238] There were no complaints from either the Master or the Chief Officer. The request for an APPC from Anglo-Eastern Ship Management Ltd. had no zone restrictions. Mr. Maan acted responsibly and diligently in reviewing material and regulations relating to the issuance of the APPC.

[239] The grievor's representative referred me to the following cases: *Re AFG Industries Ltd. and Aluminium Brick Glass Workers Union* (1998), 75 L.A.C. (4th) 336, *Re Corporation of the Borough of North York and Canadian Union of Public Employees, Local 373* (1979), 20 L.A.C. (2d) 289, *Re Calgary Co-operative Association Ltd. and Calco Club* (1991), 23 L.A.C. (4th) 142, *Re Nanaimo Collating Inc. and Graphic Communications International Union, Local 525-M* (1998), 74 L.A.C. (4th) 251, *Re Mercury Builder's Supplies and Teamsters Union, Local 879* (1990), 18 L.A.C. (4th) 168, *Amarteifio* (Board file 166-2-25829), *Bastie* (Board file 166-2-22285), *Jalal* (Board file 166-2-27992), *Fontaine-Ellis* (Board file 166-2-27804), *MacLean* (Board file 166-2-22580) and *Jadwani* (Board files 166-2-23622, 23623 and 24104).

Reasons for Decision

[240] For the reasons stated below, I order that Mr. Maan be reinstated immediately as a TI-07 Marine Inspector in Thunder Bay or at any other location that the parties may agree upon. Mr. Maan will not receive any compensation for the period he was

suspended without pay, specifically December 5, 2001 to January 14, 2002. Mr. Maan is to be fully compensated as of January 14, 2002, without any loss of seniority or benefits.

[241] I will remain seized of this matter for a period of three months after the issuance of this decision in the event the parties encounter any difficulties in its implementation.

[242] The reasons for the employer's decision to terminate Mr. Maan's employment are found in Exhibit E-13. In his letter, Mr. Nelson stated that Mr. Maan was negligent, abused his authority and was insubordinate and that these actions of misconduct had breached the employment relationship with TC.

[243] What triggered the investigation were complaints that Mr. Maan misconducted himself onboard the M/V Federal St. Laurent. The employer received two letters of complaint (Exhibits E-2 and E-3) from Mr. Henderson. Mr. Nelson tasked Mr. Lavender to conduct an administrative investigation. Mr. Lavender issued a report with recommendations. However, Mr. Nelson felt that it was inconclusive; therefore, he ordered another investigation, which was undertaken by Mr. Tassie.

[244] Mr. Nelson's initial mandate to Mr. Tassie was to investigate the allegations made by Mr. Henderson in his two letters with respect to incidents involving Mr. Maan while he was onboard the M/V Federal St. Laurent. During cross-examination, Mr. Nelson stated that he tasked Mr. Tassie to deal with any other allegations or complaints that might come to his attention. Mr. Nelson stated this occurred early in the investigation.

[245] The investigation had now escalated from the M/V Federal St. Laurent allegations (April 21 to 24, 2001) to include allegations onboard the M/V Lake Champlain (June 30, 2000), the M/V Lok Rajeshwari (September 22 to October 2, 2000), the M/V Millennium Condor (December 2, 2000), the M/V Pintail (September 13, 2000), the M/V Marrilis T (September 14, 2000) and the Nipigon District incident (September 27, 2001).

[246] Mr. Nelson would have me believe that these incidents, which were never formally brought to Mr. Maan's attention prior to the investigation, were only discovered as Mr. Tassie interviewed witnesses. I do not subscribe to that proposition.

During cross-examination, Mr. Nelson stated that he was unsure if he knew of the incidents onboard the M/V Lake Champlain and the M/V Lok Rajeshwari prior to Mr. Tassie's investigation. If Mr. Nelson knew of these incidents, which I believe he did, as the Regional Director of the Marine Safety Branch why did he not take action? Mr. Kingwell testified that, as the manager and supervisor, he investigated the complaints and was satisfied that no corrective or disciplinary action needed to be taken.

[247] Mr. Kingwell testified that he investigated all the written and oral complaints that Mr. Henderson made against Mr. Maan and that he kept Mr. Nelson informed. Mr. Nelson stated in his examination-in-chief that Mr. Kingwell was a poor manager and when he requested a transfer to Sarnia it was a relief, as Mr. Nelson could "make a supervisory change without taking action." The uncontradicted testimony of Mr. Kingwell was that in his three years with the TCC, Marine Safety Branch, Mr. Nelson never signed his PRAPRs and even though he asked Mr. Nelson on at least six to eight occasions to sign Mr. Maan's PRAPRs, he never did. In other words, one can assume that if Mr. Maan or Mr. Kingwell had performance or behavioural shortcomings, Mr. Nelson would have reflected these concerns in their PRAPRs.

[248] Mr. Nelson also testified that, with regard to the Nipigon incident, he asked Mr. Mackrell to get a report of the incident from Mr. Maan but that he never received answers to his request from Mr. Maan. However, Exhibit G-6 is an e-mail dated October 10, 2001, from Mr. Nelson to Mr. Maan in which he states: "Thanks Amir. I understand that you and Dave [Mackrell] have discussed this issue [Nipigon]... From what Dave has said, it appears the issue is now resolved. If you have any further concerns, please let me know. Regards, Phil "[Nelson] Mr. Nelson testified that he relied on this incident as part of his decision to terminate Mr. Maan's employment.

[249] With respect to the letter of December 7, 2000 (Exhibit E-27) from Mr. Mackrell to James Richardson International apologizing for Mr. Maan's action while onboard the M/V Millennium Condor, Mr. Mackrell indicated that, even though the letter stated that "Disciplinary action has been taken in regard to this incident" against Mr. Maan, nothing was done. Mr. Mackrell testified that the reason no discipline took place was that Mr. Nelson felt that the matter should not be pursued, as both Mr. Mackrell and Mr. Maan were competing for the position of office manager. In cross-examination, Mr. Mackrell testified that Mr. Nelson edited the letter before it was sent.

[250] Mr. Mihalus testified that he was the Acting Manager during the time of the incident onboard the M/V Lok Rajeshwari and at no time was he made aware of a backdated certificate having been issued. Mr. Mihalus also testified that he had not received any complaint from the Captain, the Chief Officer or Mr. Henderson with regard to this incident. Mr. Maan's testimony is that he did sign a certificate (Exhibit E-22) on September 26, 2000, after he and the Chief Officer inspected the bilge strainers in hold #6. There was no evidence forwarded from the Chief Officer or Captain to refute this claim. In fact, Mr. Nelson, who testified that no inspector would sign a "Readiness to Load" certificate without reviewing the repairs, agreed later in cross-examination that Mr. Mackrell's issuance of the "Readiness to Load" certificate without an inspection on September 29, 2000, was not appropriate. Mr. Nelson testified in cross-examination that he knew about an act of insubordination involving Mr. Maan onboard this vessel, but he could not recall if it was before or after the start of Mr. Tassie's investigation.

[251] It is my firm belief that the employer was well aware of the allegations against Mr. Maan and had investigated some of them but found no reason to pursue them any further. For these reasons, in the determination of this decision, I have only considered the alleged incidents onboard the M/V Federal St. Laurent; I have not considered the alleged incidents onboard the other vessels, as well as the Nipigon incident.

[252] I support the decision of Mr. Maan's local union representative when she advised Mr. Maan not to reply to Mr. Tassie's questions regarding allegations that appeared out of the blue. I do not consider this to be insubordination. Rather, I consider this course of action as a precautionary measure taken by Mr. Maan until the actual mandate of the investigation was made clear to him. The Union representative obviously understood that fundamental staff relations principles were not being applied.

[253] Mr. Nelson testified that he had a meeting with Mr. Maan, his local union representative and Mr. Lavender to try to resolve complaints between industry (Mr. Henderson) and Mr. Maan. In hindsight, perhaps Mr. Henderson should have also been invited. Regardless, it was during Mr. Tassie's investigation that other complaints regarding incidents on other vessels came to light. I understand the reason for Mr. Maan's local union representative to stand pat.

[254] In *Noël* (Board files 166-2-26820, 26913, 26929 and 27458 to 62), Chairperson Yvon Tarte states:

[...]

The employer must, however, accept a large share of the responsibility in this sad affair. Fundamental staff relations principles require that, in the vast majority of situations involving unacceptable conduct, progressive discipline must be applied....

[255] The employer cannot, in my view, be cognisant of events, which may prove to be acts of misconduct, and silently document them (referred to as "black booking") then use them as a culminating factor to justify a termination of employment. In the instant case, Mr. Maan had not seen the actual complaints from Mr. Henderson until March 20, 2002, and had heard nothing in regard to the Nipigon incident until this hearing.

M/V Federal St. Laurent

[256] The issue for me to decide is whether, on a balance of probabilities, Mr. Maan threatened to withdraw the APPC he had issued unless Mr. Henderson withdrew the complaint he filed that Mr. Maan was abusing overtime.

[257] The issue of overtime, as suggested by counsel for the employer, is secondary. The fact Mr. Maan did not charge for overtime can lead to two different conclusions. Firstly, if Mr. Maan had charged overtime, Mr. Mackrell would not have approved the overtime, as it was not pre-authorized. If he disagreed, Mr. Maan would have the right to file a grievance. Secondly, by not claiming overtime, could Mr. Maan be acknowledging that he could have performed the inspection on the Monday instead of the Sunday? The fact that the Captain did not testify leads me to the same conclusion stated by Mr. Lavender in his administrative investigation report:

In view of the fact that we were unable to obtain a letter from the captain it is difficult to refute Amir's claim that the captain requested this inspection on the Sunday. Strong discipline [sic] action over this incident is therefore not recommended.

[258] It seems evident from the evidence that at times there has been an outbreak of "Pinocchioism" in Thunder Bay or, perhaps, at times, the truth changed. Contradictory testimonies show a lack of credibility on both sides. It is also evident that Messrs. Henderson, Mackrell and Maan do not hold each other in high esteem. As testified to by a number of witnesses, Messrs. Henderson's and Mackrell's lack of professionalism by calling Mr. Maan a "fucking arsehole", "fucking wog", "fucking idiot", "you people", "stupid" and "idiot" certainly made the working relationship strained. I can appreciate that often events occur in a shipyard that result in the use of inappropriate language and actions taken are perhaps not as civil as they would be in a boardroom. However, it is the right of the Canadian taxpayer to expect that Public Service employees conduct themselves in a professional and honest manner and uphold a high level of trust and integrity. If a Public Service employee does not meet expectations, progressive discipline, up to and including discharge, may be warranted.

[259] On the flip side, Public Service employees deserve the right to be treated professionally and with dignity and respect. If a client from the private sector chooses not to treat a Public Service employee in this manner and respect these values, then perhaps the employer should consider whether or not it should provide services to that client. In all fairness, when a client files a complaint, the client has the right to expect that the matter will be dealt with.

[260] I find that, on the balance of probabilities, Mr. Maan did threaten to remove the original APPC if Mr. Henderson did not rescind his letter of complaint. After all, he had already issued the APPC. That being the case, then I would agree with the employer that Mr. Maan issued an APPC without applying proper due diligence toward the regulations he was empowered to enforce. However, it was after he was made aware of Mr. Henderson's overtime complaint that he spent an extraordinary amount of time researching the APPC regulations. From researching and digging deeply enough, Mr. Maan ascertained that the ship did not meet regulations. Therefore, he could indeed use this as a bargaining chip. Mr. Popovic's testimony also substantiates Mr. Henderson's claim. Also, I find it suspicious, after observing throughout the hearing Mr. Maan's meticulous logbook entries, phenomenal account of events and record keeping, that he would not have kept a copy of the original APPC that he cancelled. However, in reaching my decision I took into account Mr. Henderson's conduct toward Mr. Maan and consider it a mitigating factor. As well, I believe Mr. Mihalus's testimony that Mr. Henderson complained about all the inspectors but he

picked on Mr. Maan. Mr. Henderson's original complaint (Exhibit E-2) may well have been another incident on top of the numerous name-calling incidents (whether in front of Mr. Maan's peers, colleagues or behind his back) that Mr. Maan had to endure. I agree that Mr. Maan's threat to withdraw the APPC is a serious infraction even though he had found legal authority for doing so. However, I mitigate this infraction due to Mr. Henderson's behaviour toward Mr. Maan.

[261] I have considered the views of counsel for the employer and Mr. Nelson that Mr. Maan's rehabilitative potential is non-existent. Perhaps if the employer had followed the standard fundamentals of labour relations, any perceived flaws in behaviour could have been addressed and, at the very least, documented. Although unsigned by the Regional Director, Mr. Maan's PRAPRs show no indication of poor performance. Therefore, I have no direct evidence demonstrating that there was a performance or behavioural problem that could not have been corrected.

[262] This grievance, therefore, is allowed in part.

[263] I suggest that the employer review the recommendations in Mr. Lavender's administrative investigation report found in evidence in this decision, as they might prove helpful. I would also recommend the assistance of the Board's Dispute Resolution Services if the parties are unable to agree on a suitable relocation for Mr. Maan or to ensure his successful reintegration into the TCC, Marine Safety Branch, in Thunder Bay.

**D.R. Quigley,
Board Member**

OTTAWA, November 6, 2003.