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*Federal Public Sector Labour
Relations and Employment Board
Act and Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector Labour
Relations and Employment Board

BETWEEN

JEAN-PIERRE PELCHAT

Grievor

and

**DEPUTY HEAD
(Statistics Canada)**

Respondent

Indexed as
Pelchat v. Deputy Head (Statistics Canada)

In the matter of an individual grievance referred to adjudication

Before: Linda Gobeil, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Himself

For the Respondent: Andréanne Laurin, counsel

Heard at Ottawa, Ontario,
February 18 to 22, 2019.
(FPSLREB Translation)

REASONS FOR DECISION**(FPSLREB TRANSLATION)**

I. Individual grievance referred to adjudication

[1] The grievor, Jean-Pierre Pelchat, filed a grievance against the decision by Statistics Canada (“the employer” or Statistics Canada) to impose a one-day suspension on him following an incident that occurred on April 25, 2016. The May 27, 2016, suspension letter specifies that allegedly, he had behaved inappropriately towards his supervisor. As of the incident, he was represented by his union, the Canadian Association of Professional Employees (“the union”). On June 8, 2017, the union advised what was then the Public Service Labour Relations and Employment Board (PSLREB) that it no longer represented him.

[2] The grievor has retired. As of the incident that resulted in the disciplinary measure, he worked for Statistics Canada and held a position at the EC-06 group and level.

[3] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Summary of the evidence**A. For the employer**

[4] In its opening statement, the employer indicated that the evidence would show that on April 25, 2016, the grievor behaved inappropriately towards his supervisor, Kimberley Boyuk, and that therefore, it was justified imposing on him the one-day-suspension disciplinary measure. The employer stated that it applied the principle of progressive discipline because as of the incident, he already had a reprimand letter in his personal file for a similar offence.

[5] The employer called three witnesses in support of its evidence.

[6] Ms. Boyuk testified that she has worked at Statistics Canada since 1996. In April 2016, she held an EC-07 position, and the grievor reported to her. She stated that her supervisor was Alice Born, who at the relevant time was the director of Statistics Canada's Standards Division.

[7] Ms. Boyuk explained that on April 25, 2016, she arrived at the office at around 10:30 a.m.

[8] As of that date, Ms. Boyuk had been the grievor's supervisor for four or five months. She stated that around lunchtime, she was catching up on her emails when she received a copy of an email from the grievor addressed to a client named "R". In it, he informed the client of a link to a portal and provided the client with the password to access it.

[9] Ms. Boyuk stated that in her view, it was inappropriate to send an email with the password to the client, and it constituted a security breach. She stated that she immediately informed Ms. Born, so as to discuss the issue (Exhibit E-2, tab 3, pages 1 and 2, of the employer's book of documents).

[10] She reviewed the issue with Ms. Born. They agreed that even if sending the password with the portal link maybe did not breach security since there was no data, it was not the best way to proceed, and it certainly did not comply with the applicable best practices. Ms. Boyuk and Ms. Born agreed that the grievor had to recall the email immediately and that Ms. Boyuk had to speak with him about the issue.

[11] Ms. Boyuk indicated that she then emailed the grievor and asked him to recall his email to the client (Exhibits E-2, tab 3, page 1, and E-3, tab 5, of the employer's book of documents). She also went to his cubicle and, since it was lunch and he was not there, she left a blue sticky note on his computer monitor that read, "[translation] Come see me right away. Kim." Ms. Boyuk explained that she left the note because sometimes, people do not check their emails right away (Exhibit BA-3).

[12] Ms. Boyuk testified that at around 12:40 p.m., the grievor entered her office. He was very annoyed. Her office is also a cubicle. He shook the blue sticky note that she had left on his computer, said that "[translation] this is harassment", and said that he did not appreciate being treated that way. According to her, he was very angry with her and spoke very loudly. She stated that she asked him to sit down and that he did not

let her finish and kept interrupting her. Although it all lasted only a short time, nevertheless, she felt threatened. She stated that she was afraid that he might harm her. She stated that he was just on the other side of her office, in her space. His body language was aggressive. She felt trapped. She felt that way again at the hearing. When he finished complaining, he made a disdainful hand gesture to indicate that she did not know what she was talking about. He then left her office.

[13] Ms. Boyuk testified that after the grievor left, she sat down in her office; she was shaking. She then entered the office of her neighbour, Vijaya Sharma, and asked her whether she had heard what had just happened. A few minutes later, Ms. Sharma dropped by Ms. Boyuk's office, to verify that she was well. Ms. Sharma did not testify at the hearing.

[14] Ms. Boyuk stated that at the time, she was taken aback and did not understand where the rage had come from. She recalled shaking uncontrollably. After the incident, the grievor emailed her, stating that recently, he had felt harassed by her and that he did not believe that he had violated a protocol (Exhibit E-2, tab 3). She then emailed Ms. Born. She wrote that she was afraid and that the grievor had been verbally violent. Ms. Boyuk also felt that being accused of harassment was a serious issue that had to be brought to Ms. Born's attention (Exhibit E-2, tab 3, page 1, of the employer's book of documents).

[15] Ms. Boyuk testified that after receiving her email about the incident, Ms. Born also went to her office, to see if she was well. She asked Ms. Boyuk to follow her to her office, which was a closed office, to discuss what had just happened. Ms. Born asked for advice from the Labour Relations section. Ms. Boyuk then returned to her office to record what had taken place with the grievor. The next morning, she sent her notes of the incident to Mélanie Shultz from the Labour Relations section and sent a copy to Ms. Born (Exhibit E-3, tab 5, of the employer's book of documents).

[16] In cross-examination, Ms. Boyuk stated that three years before joining the Standards Division, she had worked on a special project for the deputy chief statistician. She did not supervise any employees while in that position. She admitted that a harassment complaint had been filed against her in the past and that it had not yet been settled.

[17] Ms. Boyuk also admitted that contrary to what she had originally thought, the grievor's email to the client of April 25, 2016, did not constitute a security breach. Nevertheless, she maintained that it violated best practices and that passwords should never be shared.

[18] As for the sticky note that she left on the grievor's computer, Ms. Boyuk acknowledged that she put it there but that she had been neither annoyed nor angry; she simply had to deal with the situation. When she was asked whether she could have used less-aggressive language in the sticky note, she replied that she did not use aggressive language and that she simply asked to see him.

[19] When she was asked why in her note to Ms. Shultz and Ms. Born the words "[translation] this is harassment, and I don't appreciate being treated this way" were not mentioned, Ms. Boyuk explained that when she wrote it, she was on edge and therefore did not write everything down (Exhibit E-3, tab 5). When she was asked whether the grievor used a loud voice during the April 25, 2016, incident, she maintained that it was so; he spoke loudly and threatened her.

[20] Ms. Shultz was the employer's second witness. She has been the employer's senior labour relations advisor since 2016. She testified that on April 26, 2016, she was informed that an incident involving the grievor and Ms. Boyuk had taken place the day before. Therefore, she met with potential witnesses to the incident. Ms. Shultz stated that such witness meetings are part of a process to follow of establishing facts when inappropriate behaviour is reported.

[21] As part of her investigation, Ms. Shultz, accompanied by Ms. Born, met separately with Ms. Boyuk, Lise Chapados, and Ms. Sharma on April 26, 2016 (Exhibit E-5, tab 7, of the employer's book of documents).

[22] Ms. Shultz indicated that Ms. Boyuk had provided her version of the facts at the April 26, 2016, meeting and that she also did it in writing (Exhibit E-3, tab 5, of the employer's book of documents). According to Ms. Shultz, Ms. Boyuk's testimony was precise and unambiguous. Ms. Boyuk maintained that she was intimidated and that she felt threatened by the grievor during the lunch break on April 25, 2016.

[23] As for her meeting with Ms. Chapados, Ms. Shultz specified that Ms. Chapados was the grievor's colleague and that her office was located next to that of Ms. Boyuk.

Ms. Chapados allegedly stated that she did not pay attention to Ms. Boyuk's discussion with the grievor on that day and that she heard nothing in particular. According to Ms. Shultz, Ms. Chapados seemed "[translation] closed off with respect to her responses". According to her, Ms. Chapados did not wish to be involved. She did not testify at the hearing.

[24] Ms. Sharma was an employee of another department, and her office was also next to that of Ms. Boyuk. Ms. Sharma apparently also affirmed to Ms. Shultz that she heard nothing unusual that day and that she did not pay attention to what was going on. However, Ms. Sharma allegedly confirmed to Ms. Shultz and Born that during the lunch break on April 25, 2016, Ms. Boyuk dropped by and asked whether she had heard what had just taken place and that afterwards, Ms. Sharma went to verify whether Ms. Boyuk was well. Ms. Sharma confirmed to Ms. Shultz and Born that Ms. Boyuk did not seem well and that she had been shaken up; something had happened. According to Ms. Shultz, Ms. Sharma also seemed to not want to become involved.

[25] Ms. Shultz also stated that she met with the grievor and his union representative on April 28, 2016, to obtain the grievor's version of the April 25, 2016, incident (Exhibit E-8, tab 6, of the employer's book of documents).

[26] At that meeting, the grievor maintained that he did not display any aggression towards his supervisor and stated that instead, Ms. Boyuk behaved inappropriately by leaving a note with an aggressive tone on his computer. According to Ms. Shultz, the grievor could have provided his version of the facts at that meeting, but it had to be cut short because the parties did not agree on the procedure to follow. In particular, they did not agree on the union representative's right to speak (Exhibit E-5). Ms. Shultz indicated that she invited the grievor to submit other comments if he wished to, which in fact he did (Exhibits BA-6 and E-12, tab 9, of the employer's book of documents).

[27] Ms. Born was the employer's last witness.

[28] Ms. Born testified that since 2018, she has held the director position at the EX-02 level in Statistics Canada's Standards Division. As of the incident, she managed a team of about 30 employees, including 3 in EC-07 positions who reported directly to her, of whom Ms. Boyuk was one.

[29] Ms. Born stated that on April 25, 2016, she received an email from Ms. Boyuk stating that a potential security breach had occurred. Ms. Born indicated that as the director, she had to assess whether it had happened (Exhibit E-2, tab 3, of the employer's book of documents). Ms. Born stated that she understood that Ms. Boyuk affixed a sticky note to the grievor's computer monitor while he was away on his lunch break that asked him to see her as soon as possible to discuss the security issue. Shortly after that, Ms. Born received a copy of an email that the grievor had sent to Ms. Boyuk, indicating that he felt harassed (Exhibit E-2, tab 3).

[30] Ms. Born stated that she went to see Ms. Boyuk and that she saw that she was crying and was very upset by what had just happened with the grievor. She asked Ms. Boyuk to follow her to her closed office.

[31] Ms. Born indicated that she then called the Labour Relations section for advice and that she immediately met with the grievor. She stated that she asked him to go home. She explained that she did so because of his aggressive behaviour towards Ms. Boyuk and because she wanted to investigate the security issue.

[32] In cross-examination, she was asked why the grievor was sent home without an explanation. Ms. Born indicated that she had to separate the two people and that she did not have the time to research the facts right away. She stated that she made the decision based on the information she had at the time and on the fact that Ms. Boyuk was shaken and upset. It was clear that something had happened.

[33] The next day, April 26, 2016, with Ms. Shultz, she met separately with Ms. Boyuk, Ms. Chapados, and Ms. Sharma to obtain their versions of the April 25, 2016, incident. She also informed the grievor that he was to return to work on April 27, 2016 (Exhibit E-6, tab 4, of the employer's book of documents).

[34] Ms. Born stated that when she met with Ms. Shultz and Ms. Boyuk on April 26, 2016, Ms. Boyuk essentially repeated that the day before, the grievor came to her office and stated in a loud voice that he did not appreciate being harassed. She also maintained that he appeared aggressive and threatening and that she did not have the chance to explain because he did not let her speak. Ms. Boyuk repeated that she had been shaken up and frightened and that she seen Ms. Sharma about what had transpired.

[35] Ms. Born testified that on the same day, she and Ms. Shultz also met with Ms. Chapados. She stated that Ms. Chapados said that the discussion had been in English and that she had not heard loud voices or anything in particular.

[36] In their meeting, Ms. Born felt that Ms. Sharma was very reluctant to speak and that she did not wish to be involved. According to Ms. Born, nevertheless, Ms. Sharma confirmed that Ms. Boyuk dropped by and that she went to Ms. Boyuk's office to check whether she was well.

[37] Ms. Born stated that on April 28, 2016, again with Ms. Shultz, she met with the grievor and his union representative to gather his perspective on what had happened. The grievor told Ms. Born that on April 25, 2016, he was never aggressive towards Ms. Boyuk, he was calm, and he spoke in a low voice. He also denied acting threateningly towards her or saying loudly, "this is harassment, and I don't appreciate it". As for the presumed security breach, he stated that it was not serious and that he had carried out that act before, and no one had complained. Ms. Born stated that the meeting ended with a disagreement between Ms. Shultz and the union representative about how the meeting should proceed (Exhibit BA-6). Ms. Born indicated that at the end of the meeting, the grievor had the opportunity to provide additional comments and information had he wished to. He submitted additional observations on May 24 and 27, 2016 (Exhibits E-12, tab 9, page 4, and BA-6 of the employer's book of documents).

[38] When she was asked for the factors she considered when she imposed the one-day suspension on the grievor, Ms. Born explained that she reviewed all the testimony and that she concluded that he acted threateningly towards his supervisor on April 25, 2016. She based her conclusion on the fact that she saw Ms. Boyuk immediately after the incident, who clearly was shaken up and crying, as well as on the uncontested fact that Ms. Boyuk immediately went to see Ms. Sharma, who then felt compelled to visit Ms. Boyuk, to ensure that she was well. Ms. Born also concluded that even if the grievor maintained that he never told Ms. Boyuk that he felt that it was harassment, nevertheless, he used exactly those words in the email he sent just after the incident (Exhibit E-2, tab 3, of the employer's book of documents).

[39] Ms. Born also explained that she decided to impose the one-day suspension after considering Statistics Canada's "Code of Conduct", which clearly prohibits all

inappropriate behaviour. In addition, she considered the fact that less than two years before, on November 14, 2014, the grievor had received a reprimand letter for similar behaviour towards another supervisor, Ms. Drysdale (Exhibits E-9, E-10, and E-11, tabs 2, 10, and 11, of the employer's book of documents). He did not file a grievance about that letter.

[40] In cross-examination, Ms. Born was asked why she decided to believe Ms. Boyuk's version when both Ms. Chapados and Ms. Sharma stated that they heard nothing that day. Ms. Born explained that even if Ms. Sharma said that she heard nothing, clearly, she was reluctant to become involved. Even though she did not wish to be involved, nevertheless, she confirmed to Ms. Born that Ms. Boyuk had dropped by immediately after the incident and that she was sufficiently shaken up that Ms. Sharma felt compelled to go see her. Finally, Ms. Born indicated that she had seen the state Ms. Boyuk was in after the incident; she was still shaken up and crying. According to Ms. Born, Ms. Boyuk's version of the incident was more credible.

B. For the grievor

[41] In his opening statement, the grievor argued that the disciplinary action was unfair and in bad faith and that the investigation process was both poorly managed and had numerous shortcomings. According to him, imposing the one-day suspension clearly showed the employer's malicious intent throughout this matter.

[42] Nicholas Martinez testified that he worked under the grievor's supervision from April 8 to May 15, 2016. Mr. Martinez stated that in that role, he had to meet with the grievor occasionally to discuss things, such as performance-agreement objectives, and that during that period, the grievor was always courteous and polite and never acted disrespectfully. Mr. Martinez never felt threatened by the grievor.

[43] Mr. Martinez indicated that once, he told the grievor that he wished to leave the Standards Division. Mr. Martinez explained that he did not like working with Ms. Boyuk. Even though he did not report directly to her, he believed that her instructions and those of the grievor were often contradictory. He also stated that he did not like her management style. He felt that it was not easy working with her and that she micromanaged his work. He wanted to leave before a conflict arose.

[44] The grievor stated that he was an agronomist by training and that he has been retired since July 27, 2016. He stated that overall, he had a good public service career, and that generally, he had mostly good managers and good employees.

[45] The grievor indicated that he was appointed to a position at the EC-06 group and level in the Standards Division in 2008. However, following workforce reductions in 2012, the then-supervisor, Ms. Drysdale, became nervous, and things became more difficult. He tried to leave the division but was unsuccessful. He explained that in August 2014, Ms. Drysdale was dissatisfied with his work, and he was called to Ms. Born's office. He found the situation unfair, reportedly lost his temper, and allegedly insulted his supervisor, which resulted in a reprimand letter of November 14, 2014 (Exhibit E-11, tab 2, of the employer's book of documents).

[46] Ms. Boyuk became his supervisor in fall 2015. The grievor had known her since 2005 because she had supervised him for about three months at that time.

[47] As for the alleged security breach on April 25, 2016, the grievor said that in the past, he had interacted directly with client R; he had a connection with the client. After a break of about three years, the grievor took the initiative to contact R again. This meant having to enter the password to restore the client's file. The grievor maintained that in no way did he breach security measures in his email to R and that in the past, he had always done things that way. In addition, according to him, the password in the email had expired; thus, there had been no security risk (Exhibit E-2).

[48] Returning to the April 25, 2016, incident in his testimony, the grievor stated that when he returned to the office at around 12:30, he saw the blue sticky note on his computer monitor. He stated that he was surprised and that "[translation] his throat tightened". He stated that he felt attacked. He explained that the words, "Come see me right away. Kim", on the blue sticky note indicated impatience. According to him, it was a form of anger; "[translation] it was abrupt".

[49] The grievor recounted that he then took the blue sticky note and went to Ms. Boyuk's office but that he stayed outside. He said that he did not enter her office. He maintained that he then said the following: "[translation] Kim, I don't like this approach. I consider it as being attacking."

[50] According to the grievor, Ms. Boyuk then allegedly began to explain that he had violated the security protocol by sharing the password with client R and that it was serious. The grievor maintained that despite his explanations about past practice and the fact that the password had expired, Ms. Boyuk's tone was aggressive. She asked him to recall the email. According to him, she then rose and moved towards him. He became afraid and left because he claimed that there was no point in trying to reason with her.

[51] The grievor testified that he returned to his office and recalled the email sent to R. He indicated that he was called to Ms. Born's office (Exhibit E-6 of the employer's book of documents). She then just ordered him to go home, without giving him a reason.

[52] The grievor stated that he attended a meeting on April 28, 2016, with his union representative present. Ms. Shultz and Ms. Born were also present. The purpose was to obtain his version of the facts of the April 25, 2016, incident. At the meeting, he allegedly affirmed again that he had said the following, calmly: "Kim, I don't like this approach. I consider it as being attacking."

[53] The grievor also maintained that at the April 28, 2016, meeting, the employer's representatives prevented his union representative from speaking and that as a result, the process was flawed. According to him, under the circumstances, the employer should have launched an independent investigation, which would have been more credible.

[54] The grievor also explained that on May 5, 2016, he met again with Mses. Boyuk and Born. Allegedly, they confirmed that security had not been breached by sending the email on April 25, 2016, but that that way of doing things contravened the best practices that were to be followed.

[55] On May 13, 2016, the grievor informed Ms. Born that he intended to retire in September 2016. In June, he changed his mind and moved his retirement date forward to July 27, 2016.

III. Summary of the arguments

A. For the employer

[56] First, the employer returned to the grievor's statement that at the April 28, 2016, meeting, Ms. Shultz and Ms. Born prevented his union representative from speaking up. According to the employer, if in fact procedural unfairness occurred, it was corrected by this hearing *de novo*. It referred me to *Patanguli v. Canada (Citizenship and Immigration)*, 2015 FCA 291 at paras. 38 to 42, which confirmed that a hearing before the Board is a hearing *de novo*.

[57] The employer also argued that not only did the grievor have the opportunity to state his version at the April 28, 2016, meeting, but also, he sent his comments to the employer in his May 24, 2016, email (Exhibit BA-6).

[58] The employer maintained that the questions to be asked in this matter are the following: Was there misconduct on the grievor's part on April 25, 2016? If so, was the one-day suspension reasonable?

[59] The employer reviewed the facts by emphasizing that I had to decide the credibility of the witnesses to decide whether effectively on April 25, 2016, the grievor entered Ms. Boyuk's office and intimidated her by brandishing the blue sticky note and by telling her in a raised voice that she was harassing him and that he did not appreciate it.

[60] The employer maintained that I had to prefer Ms. Boyuk's version to that of the grievor, who stated that he did not enter her office, that he spoke to her in a calm voice, and that he simply told her that he did not like her approach and that he found it to be attacking. According to the employer, if in fact the grievor had used a calm tone of voice, it would not have caused such a reaction in Ms. Boyuk.

[61] In support of its arguments, the employer referred me to Ms. Born's testimony, in which she stated that Ms. Boyuk was stressed and crying. In his testimony, the grievor stated that Ms. Boyuk got up and that he was afraid. Yet, he never told that to Ms. Born or mentioned it in his notes of May 24 and 27, 2016 (Exhibits BA-6 and E-12, tab 9). In addition, the email he sent immediately after the incident also referred to the word "harassment" (Exhibit E-2, tab 3, page 1, of the employer's book of documents).

On witness credibility, the employer referred me to *Faryna v. Chorny*, [1951] B.C.J. No. 152 (QL).

[62] With respect to the one-day suspension that was imposed, the employer argued that under the circumstances, the measure was reasonable, given the fact that less than two years earlier, the grievor received a reprimand letter for similar behaviour towards another supervisor. It referred me to the following decisions: *Tanciu v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-27712 (19970805), [1997] C.P.S.S.R.B. No. 80 (QL); *Nessrallah v. Deputy Head (Public Service Commission)*, 2007 PSLRB 121; *Focker v. Canada Revenue Agency*, 2008 PSLRB 7; *Singaravelu v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 178; and *Szmukier v. Deputy Head (Correctional Service of Canada)*, 2015 PSLREB 37.

[63] The employer argued that it had met the burden of proof and that it had shown that the grievor behaved aggressively towards his supervisor on April 25, 2016. In the circumstances, the one-day suspension was reasonable, given the fact that the grievor had already been penalized for similar aggressive behaviour. As a result, the employer argued that I must dismiss the grievance.

B. For the grievor

[64] The grievor argued that the employer acted unjustly and in bad faith towards him. According to him, the investigation process was badly managed. In particular, he mentioned the April 28, 2016, meeting with Ms. Shultz and Ms. Born, in which his union representative was not permitted to speak up.

[65] The grievor also argued that the employer was not justified in imposing the one-day suspension on him. According to him, Ms. Born had no reason to send him home without an explanation on April 25, 2016. In addition, Ms. Boyuk's version of the facts was not at all consistent with what happened on April 25, 2016.

[66] In effect, the grievor maintained that he never said the following, in an aggressive manner: "[translation] you're harassing me, and I don't appreciate it". Instead, he said the following in a calm voice: "Kim, I don't like this approach. I consider it as being attacking." He insisted that the words he chose were respectful and that they expressed that he had not felt good when he saw the sticky note on his

computer. He insisted that there was nothing wrong with making it known to Ms. Boyuk that he felt attacked and even harassed.

[67] The grievor also cast doubt on Ms. Boyuk's version when she stated that when he spoke to her, he was loud. He insisted that both Ms. Chapados and Ms. Sharma (who occupied the offices right beside that of Ms. Boyuk) stated that they did not hear anything. According to him, since the evidence is inconsistent on this point, how could the rest of Ms. Boyuk's testimony be believed?

[68] The grievor returned to the fact that on April 28, 2016, Ms. Shultz prematurely ended the meeting in which he, his union representative, and Ms. Born were participating. According to the grievor, the real reason for ending it was that Ms. Shultz was unable to tell him what he was being accused of. In addition, the employer should have named an independent person to investigate the matter and not Ms. Shultz, who reported to it. In support of his arguments, the grievor referred me to *Canada (Attorney General) v. Public Service Alliance of Canada*, 2015 FCA 273.

[69] According to the grievor, I should not give too much weight to the fact that Ms. Boyuk was supposedly shaken up and crying after their encounter. In fact, according to him, there is no basis for concluding that it was due to his behaviour; perhaps she was troubled by other things that had nothing to do with him.

[70] The grievor also maintained that since the employer used words like "violence" to describe the April 25, 2016, incident, it should have followed the procedure in its guidelines entitled, [translation] *Violence prevention in the work place* - 934-1-IPG-081 ("the violence prevention guidelines"), which it did not do.

[71] In light of the evidence, the grievor asked me to allow the grievance.

IV. Reasons

[72] In his arguments, first, the grievor insisted that during the April 28, 2016, meeting with him, Ms. Born, Ms. Shultz, and his union representative, his representative was not permitted to speak up. Allegedly, Ms. Shultz then abruptly decided to end the meeting. The grievor maintained that therefore, the employer's investigation process was flawed and that I should disregard it (Exhibits BA-6 and E-8, tab 6).

[73] The grievor also argued that under the circumstances, the employer should have launched an independent investigation and not asked Ms. Shultz, one of its representatives, to investigate.

[74] I do not agree with these arguments. On one hand, the continual jurisprudence states that a hearing before the Board is a hearing *de novo*. Therefore, if there were failures at the April 28, 2016, meeting, they were corrected through holding this hearing. On that note, I would like to stress that the grievor fully exercised his right to be heard at the hearing and to cross-examine the employer's witnesses.

[75] On that subject, it is useful to recall the words of Justice Gauthier in *Patanguli*, who reviewed the jurisprudence on this subject and confirmed as follows that if a lack of procedural fairness occurred, it could be remedied by a hearing *de novo* before the Board:

...

[38] The Public Service Labour Relations Board case law is clear: a hearing held before an adjudicator of a grievance constitutes a de novo hearing (For example, see "B" v. Canadian Security Intelligence Service, 2013 PSLRB 75, para. 30.)

...

*[42] ... In McBride v. Canada (National Defence), 2012 FCA 181 [McBride], Justice Pelletier also concluded that the breach of Ms. McBride's right to procedural fairness (specifically the failure to disclose the medical records on which the first administrative decision-maker [sic] had relied) had been remedied by the de novo hearings held before the Grievance Board and the Chief of Defence Staff (McBride, para. 45). In that decision, Justice Pelletier clarified the question to be considered when a breach of procedural fairness is followed by a de novo procedure. He stated at paragraph 44 that it is more useful to frame the question in terms of "whether, given **the circumstances as a whole**, the procedure was fair"....*

...

[Emphasis in the original]

[76] In addition, I note that the grievor also had the opportunity to provide his version of the facts in two emails, namely, those of May 24 and 27, 2016 (Exhibits BA-6 and E-12, tab 9, page 2, of the employer's book of documents).

[77] As for the grievor's argument that Ms. Shultz was not a "competent person", under the violence prevention guidelines, to investigate the matter, I wish only to emphasize that the guidelines are linked to the *Canada Occupational Health and*

Safety Regulations under Part II of the *Canada Labour Code* (“the Code”). Yet, in this case, no proceedings were filed under those regulations or that Part II. Nor was any evidence adduced or were any arguments made with respect to applying those regulations or Part II in general to the facts of this case.

[78] With respect to the evidence submitted, recall that Ms. Boyuk maintained that on April 25, 2016, she felt threatened by the grievor, who allegedly entered her office and spoke to her in a loud voice. She claimed that she was afraid of him. He denied that version of the facts and maintained that he never entered her office and that he spoke to her in a calm voice.

[79] The employer had the burden of proving that the incident took place; that is, the grievor behaved inappropriately and aggressively towards his supervisor on April 25, 2016. The facts must be assessed by considering the rule of the preponderance of the evidence. In that respect, note that in *Faryna*, the British Columbia Court of Appeal insisted that the credibility of a witness should be assessed not only by considering his or her testimony but also by considering the context, which is the preponderance of the whole of the evidence heard.

[80] Although I realize that neither Ms. Chapados nor Ms. Sharma testified and that according to Ms. Born, the employer’s witness, they told her that they heard nothing, all the same, I find that on April 25, 2016, the grievor spoke to his supervisor threateningly and that he distressed her. Again, although Ms. Chapados and Ms. Sharma stated that they heard nothing, in my opinion, there is no question that the grievor’s behaviour was telling, which thus in my view corroborated Ms. Boyuk’s testimony.

[81] In fact, from Ms. Sharma’s behaviour, it appears that something truly did happen on April 25, 2016, around the lunch break. Ms. Boyuk testified that she went to see Ms. Sharma immediately afterwards, and that Ms. Sharma returned to see her a few minutes later, to see if she was well. Ms. Born, who met with Ms. Sharma a few days later, also testified that Ms. Sharma confirmed to her that Ms. Boyuk sought her and that Ms. Boyuk had been shaken up. Ms. Sharma reportedly also stated that a few minutes later, she checked as to whether Ms. Boyuk was well. When she was asked to explain why Ms. Sharma did not confirm that she heard a dispute, Ms. Born explained that Ms. Sharma works for another department and that she was reluctant to become

involved in the matter. I have to say that Ms. Sharma's behaviour was not surprising; many hesitate to become involved in workplace conflicts. However, I note that her behaviour after the incident, as reported by Mses. Boyuk and Born, led me to believe that effectively, the grievor did raise his voice inappropriately with his supervisor on that day. As for Ms. Chapados, as stated, she did not testify. However, I note from Ms. Shultz's testimony that Ms. Chapados seemed "closed off with respect to her responses" and that she did not wish to become involved.

[82] As for Ms. Boyuk's testimony, she stated that she was shaken up and that she felt threatened by the grievor. Her actions immediately after the incident lead me to believe that she told the truth. She immediately went to see Ms. Sharma, who told Ms. Born that Ms. Boyuk appeared shaken up. I also note Ms. Born's testimony. To me, her description of Ms. Boyuk after the incident seemed very credible, namely, Ms. Boyuk was crying and was worked up. Given the testimonies of Ms. Boyuk and Ms. Born that immediately after the incident, Ms. Boyuk was crying and upset, and given that Ms. Sharma reportedly confirmed to both Ms. Born and Ms. Shultz that she had gone to determine Ms. Boyuk's state immediately after the incident, I find that as a whole, the evidence supports Ms. Boyuk's version, which is that the grievor behaved inappropriately on April 25, 2016.

[83] As for the grievor, who stated that he spoke to his supervisor in a calm voice, I do not understand how, if that was so, it could have affected Ms. Boyuk to such a degree. Recall Ms. Born's testimony that Ms. Boyuk was shaking and crying. In addition, the grievor stated that he never used the words "[translation] this is harassment, and I don't appreciate being treated this way". However, like Ms. Born, I note that in his email to Ms. Boyuk immediately after the incident, he again used the word "harassment" (Exhibit BA-2).

[84] In *Basra v. Canada (Attorney General)*, 2010 FCA 24, the Court made an order to follow the approach in *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 Can. LRBR 1. According to that approach, the questions to answer when deciding the disciplinary measure to impose are as follows:

1. Did the employer prove misconduct that justified imposing a disciplinary measure?
2. If so, was the disciplinary measure imposed excessive in the circumstances?
3. If so, what disciplinary measure should be substituted?

1. Did the employer prove misconduct that justified imposing a disciplinary measure?

[85] As stated, considering the whole of the evidence, I find that the employer discharged its burden of proof and that it showed that the grievor behaved inappropriately towards his supervisor on April 25, 2016.

2. If so, was the disciplinary measure imposed excessive in the circumstances?

[86] On November 14, 2014, the grievor was given a reprimand letter for another incident of behaving inappropriately towards a supervisor. Therefore, I believe that the principle of progressive discipline applied and that the measure imposed, the one-day suspension, was not excessive. Thus, I need not intervene.

3. If so, what disciplinary measure should be substituted?

[87] Given my response to question 2, I do not need to address this question.

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

(The Order appears on the next page)

V. Order

[89] The grievance is dismissed.

October 25, 2019.

FPSLREB Translation

**Linda Gobeil,
a panel of the Federal Public Sector
Labour Relations and Employment Board**