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Citation: 2020 FPSLREB 67

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

CARMINE PAGLIA

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Paglia v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Steven B. Katkin, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Christine Poirier and Sarah Godwin, Professional Institute of the Public Service of Canada

For the Employer: Geneviève Ruel, counsel

Heard at Ottawa, Ontario,
January 20 to 22, 2016, and July 10, 11, and 19, 2017.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Carmine Paglia ("the grievor") has at all material times been an employee of the Canada Revenue Agency (CRA or "the employer"). By letter dated May 22, 2014, the employer imposed a 30-day unpaid suspension on him for alleged fraudulent time reporting, conflict of interest, repeated misuse of its electronic networks, and failure to cooperate in an internal investigation.

[2] The grievor's grievance challenging the employer's disciplinary action was denied at all levels of the grievance procedure. On July 20, 2015, it was referred to the then Public Service Labour Relations and Employment Board, now the Federal Public Sector Labour Relations and Employment Board ("the Board"), pursuant to s. 209(1)(b) of what is now called the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s.2).

[3] The grievor was covered by the collective agreement concluded between the CRA and the Professional Institute of the Public Service of Canada (PIPSC or "the union") for the Audit, Financial and Scientific Group (AFS), which expired on December 21, 2011 ("the collective agreement").

[4] I was also seized of a grievance filed by the grievor contesting the employer having placed him on leave without pay from December 6, 2010, to March 31, 2011. However, as the employer conceded this grievance on the first day of the hearing, this decision deals only with the grievance concerning the 30-day suspension.

II. Summary of the evidence

[5] The letter of discipline addressed to the grievor (Exhibit E-1, tab 27) reads in part as follows:

…

> *Allegations concerning what appeared to be fraudulent time reporting, conflict of interest and repeated misuse of the Agency's electronic networks were reported to the Internal Affairs and Fraud Prevention Division (IAFPD) in March 2011. Subsequently, the IAFPD initiated an internal investigation and in February 2014, the IAFPD provided management with the final report detailing the results of their investigation; you were provided a copy of said report on February 25, 2014.*

…

> *The investigation report revealed that you failed to report 416.50 hours of leave between April 6, 2010 and December 5, 2010 and misreported 12.25 hours as paid leave; you failed to cooperate in the internal affairs investigation by refusing to answer any questions during your first interview and refused to answer questions related to your absences during your second interview; you violated the Conflict of Interest Policy by using Canada Revenue Agency (CRA) property to conduct private business and you misused the CRA's electronic networks to conduct union business.*
>
> …

[6] The employer called three witnesses: Randy Hewlett, Marie-France Leduc, and Cathy Hawara. The grievor testified on his own behalf. He also called Giovanni (John) Monti and Ronald Pétion to testify. The relevant portions of the documentary evidence tendered at the hearing will be referred to where appropriate.

A. For the employer

1. Mr. Hewlett

[7] Mr. Hewlett has been employed by the CRA since 1989. As of the hearing, he was the director general on an acting basis of its Income Tax Rulings Directorate (ITRD). In the spring of 2010, when he was a manager in the ITRD located in Ottawa, Ontario, he was asked by his supervisor, Wayne Adams, the director general, to work with the grievor as his manager.

[8] The grievor had been employed as an auditor in the Montreal Tax Services Office (TSO). According to the letter of offer dated March 5, 2010, which the grievor signed on March 15, 2010, he was given a one-year term appointment, ending on April 8, 2011, as a rulings officer (AU-03) at the ITRD, at which time he would return to his substantive position (Exhibit U-1, tab 4). The letter also stated that the term would be replaced by a "permanent" offer of an AU-03 position if he would be able to accept a position in Ottawa in that one-year period.

[9] Mr. Hewlett supervised the grievor from late April to June 2010. Mr. Adams had arranged for the grievor to work out of the Montreal TSO and to report to Mr. Hewlett remotely.

[10] Mr. Hewlett's role as the grievor's manager was to assign tasks in the expectation that the grievor would produce technical interpretations that could be sent to the requestors. Mr. Hewlett's experience included having supervised 50 employees

working remotely, and his expectations were no different from those concerning the employees physically located in his Ottawa office: reporting to work on time, producing the requested technical interpretations, and performing the assigned work.

[11] Mr. Hewlett understood that Mr. Adams had assigned three technical interpretations to the grievor. While he supervised the grievor, Mr. Hewlett assigned two technical interpretation files to him between April 26 and May 7, 2010 (see Exhibit E-1, tabs 1 and 2). One file concerned the technical interpretation of a long-term disability (LTD) plan, while the second dealt with the taxable benefit on employer-provided vehicles. The challenges he faced with the grievor were that the grievor did not respond in a timely manner to his requests to speak with him, and the one assignment the grievor did work on for him lacked quality.

[12] With respect to two emails Mr. Hewlett sent the grievor on May 3 and 5, 2010, respectively concerning the status of the files, Mr. Hewlett said that he expected to hear from the grievor but that the grievor did not respond to the May 3 email.

[13] The two files Mr. Hewlett assigned the grievor were straightforward, and he believed that the grievor had the technical skills to complete them. Normally, one file would take 5 to 10 hours, but an employee new to the ITRD would take 15 to 20 hours per file.

[14] With respect to the LTD-plan file, Mr. Hewlett reviewed it twice and sent it back to the grievor for further work (Exhibit E-1, tab 4). He wanted the grievor to complete the first assignment because if Mr. Hewlett finished it himself, it would not help the grievor in future assignments. Mr. Hewlett subsequently finished the file and issued it. On May 12, 2010, he emailed the grievor about completing assignments.

[15] On May 20, 2010, the grievor and Mr. Hewlett exchanged emails concerning timekeeping. There were two timekeeping systems. In the first one, employees account for absences from work, such as vacation and family leave. The second system is for budgeting purposes, such as tracking the gross number of hours spent on a particular assignment.

[16] Mr. Hewlett was asked about what sort of orientation is provided to employees who join his team, He explained that there was an orientation program in place with the purpose of introducing the employee to the ITRD and to using the research

database as well as having the employee meet with the manager to discuss the approach to work. His practice was to give the employee a sample file completed by another employee to show how the work was done. The sample file would contain the requests, the employee's research, analysis, and draft response, as well as the manager's edits. Specific orientation was provided about how to produce that work. Mr. Hewlett said that the grievor had the abilities and the technical training required because he had passed the AU-03 hiring process, which he understood involved an exam and an interview.

[17] With respect to absences from the workplace, Mr. Hewlett said that it was expected that employees would notify their managers for any absence, for any reason. Referring to certain emails concerning time reporting between him and the grievor on July 7 and 8, 2010, Mr. Hewlett said that at that point, he was not aware of the grievor's union activity. He had never received a request from the grievor for an absence for union duties and had never approved it. Had the grievor made such a request, he would have approved it. Mr. Hewlett said that he had been a union executive member and that he had other employees carrying out union duties. There is no issue with approving an absence for union duties, but notification is required.

[18] Mr. Hewlett did not think that the grievor's work on the assignments was good enough, and his requests for contact from the grievor were not returned on a timely basis. He understood that the grievor would report to Mr. Adams.

[19] In cross-examination, Mr. Hewlett said that while he was unaware that the grievor did not have an audit background, the grievor had passed the AU-03 exam and had the technical knowledge to do the job.

[20] When he was told that the grievor would testify that the three files assigned to him by Mr. Adams were hypothetical and without requestors, Mr. Hewlett replied that he had never seen those files and that he had no knowledge of them.

[21] The LTD file was the first one the grievor submitted to Mr. Hewlett; it required three drafts. The grievor did not respond to the vehicle taxable benefit file, and eventually, Mr. Hewlett assigned it to another employee. Mr. Hewlett's expectation was that the grievor would take less time and produce fewer versions than he did to complete the work, given the file's level of complexity.

[22] The grievor's orientation was geared to administrative training, such as how to use the time reporting system and the database. The orientation began two months after he became an AU-03. While he was assigned files before the orientation, they had nothing to do with it. When he began working on files in May 2010, he had not yet had the orientation.

[23] With respect to setting performance objectives for the grievor, Mr. Hewlett had not done so and was unaware as to whether Mr. Adams had done so. Mr. Hewlett would have communicated and exchanged emails with the grievor concerning the draft interpretations but would have had no specific discussion about his performance. Mr. Hewlett informed Mr. Adams about his dissatisfaction with the grievor's performance.

[24] Mr. Hewlett agreed that the CRA's *Employee Performance Management Guidelines*, at pages 7 and 8, applied to the grievor, which state that employees should get coaching and assistance to meet their performance expectations and improve their competencies, and that managers should provide timely feedback on performance and address any concerns as they occur. He offered the grievor comments on the files, by using the track changes feature in Microsoft Office, on how the work should be done. He emailed the grievor timely feedback and would have discussed those comments with him. After six to eight weeks had passed, he reported his issues with the grievor's files to Mr. Adams.

[25] Concerning the grievor's non-responsiveness to communications, Mr. Hewlett said that it should have been clear to the grievor from Mr. Hewlett's communications to him that he should respond in a timely manner. He expected the grievor to respond to his voicemails and emails within one day. He did not ask the grievor why the grievor did not respond because the grievor usually responded within two or three days. Mr. Hewlett did not consider the grievor's non-responsiveness misconduct. He reported to Mr. Adams the grievor's lack of responsiveness and his dissatisfaction with the grievor's work.

[26] Mr. Hewlett did not approve the grievor's time sheets for leave. While the grievor reported to him, there was only one issue concerning leave, which was that the grievor had not requested leave for union activity. The only time Mr. Hewlett was aware of the grievor's union activities was on June 22, 2010, when he received an

electronic document stating as much. He would have forwarded the document to Mr. Adams and would have asked if he had been notified. While the June 22, 2010, document indicated personal leave, Mr. Hewlett did not know if the reason for the leave had changed or who had approved it. He had no contact with the grievor after approximately July 8, 2010, and was not involved in the decision making concerning him.

[27] As will be explained later in this decision, the grievor was placed on leave without pay on December 6, 2010. The employer took this action because the grievor had not accounted for his time and activities since June 30, 2010, and had not demonstrated to the employer that he had performed any work.

2. Ms. Leduc

[28] Ms. Leduc has been employed by the CRA since November 2000 and has been an internal investigator with the IAFPD since March 2011.

[29] In describing the normal steps in an internal investigation, Ms. Leduc stated that once misconduct allegations are received, an investigation analyst in the Preliminary Investigation section carries out background work to determine if further investigation is warranted. If so, an official investigation is launched and a file is initiated and assigned to an investigator.

[30] The preliminary investigation disclosed certain misconduct by the grievor, namely, fraudulent time reporting, a conflict of interest, and his repeated misuse of the CRA's electronic networks. The investigation was initiated on June 6, 2011. Ms. Leduc was assigned as the investigator and began working on the file that month.

[31] The information provided to her included a table that the investigation analyst created. It contained the results of the review of the grievor's use of his building access card, the Internet, and the CRA's cell phone and his advertisements to rent his snowblower. Ms. Leduc met with witnesses and gathered information, including the grievor's Outlook calendar, time sheets, work schedule, and personal leave status report.

[32] Mr. Adams and Mr. Hewlett were interviewed on June 7, 2011. Mr. Adams stated that he had not authorized the grievor to work from home and that the grievor had not been provided with secure remote access to work from home.

[33] As the grievor was on sick leave, Ms. Leduc could not meet with him. She did not recall when he returned to work, but she stated that she believed it was May 2012. She did not recall when she was informed of his return to work. In August 2012, Labour Relations informed her that he was in mediation. She decided to await the outcome of that process, which occurred on August 28, 2012. He was on sick leave in November and December 2012 and returned to work in January 2013, of which Ms. Leduc was aware. While she planned to meet with him, due to her vacation and an all-staff meeting, she emailed him only on March 7, 2013, about an interview.

[34] The grievor's first interview was on March 12, 2013. He arrived with a union representative, Marie-Hélène Tougas, as an observer. Ms. Leduc read the standard cautions. Ms. Tougas interrupted her, stated that the interview was part of the discipline, and advised the grievor not to participate.

[35] By letter dated May 23, 2013, the grievor was invited to a second interview. Ms. Leduc stated that it was to provide him with another opportunity to explain his version of the alleged misconduct and to clarify certain matters. It took place on May 28, 2013.

[36] The grievor said that he was the treasurer of PIPSC's AFS subgroup and of PIPSC's Montreal Centre branch. He did not recall having been disciplined for using the CRA's networks for union business but acknowledged the policy when he was shown an email sent to PIPSC union representatives dated July 9, 2009, setting out the terms of use of the CRA's electronic networks. He said that he worked on union documents during the day and on weekends and that in 2009 and 2010, management at the Montreal TSO was aware of his union activities. He confirmed that he had emailed Mr. Adams and stated that he would withdraw from union activities to concentrate on his ITRD job.

[37] Following the grievor's interview, Ms. Leduc began working on her report and gathering further information while working on other files. The final investigation report was issued on February 5, 2014.

[38] Ms. Leduc described the type of information relied upon for her report. The grievor's work schedule from April 1, 2010, to April 1, 2011, was used to view the hours he was to work, on a compressed schedule. An employee on such a schedule inputs it into the system before the three-month compressed schedule cycle begins

and submits it to his or her supervisor for approval. In the grievor's case, the information he entered did not include his compressed days off.

[39] The grievor's personal leave status report for April 1, 2010, to March 31, 2011, added the dates of recorded leave in a comparative table and explained why he did not use email or his access card during that time.

[40] The log of the grievor's Internet browsing from April 1, 2010, to March 18, 2011, did not indicate whether he was in the office because he might not have used the Internet on a particular day. Together with another report, the log could indicate the websites he visited and whether they were work-related. Ms. Leduc used this information to determine whether he was in the office on a particular day and whether he used the Internet and if so, what use he made of it.

[41] The log of the grievor's use of his access card at the Montreal TSO was used to attempt to recreate whether he was in the office. If the log showed no activity on a particular day, it could mean that he was absent. It could also mean that another employee had used an access card and had held the door open for those employees following him or her. Ms. Leduc stated that at the Montreal TSO, access cards must be swiped to enter but not to leave the building.

[42] Ms. Leduc used the printout of the grievor's Outlook calendar from April 2010 to March 2011when she created the table of his absences.

[43] Ms. Leduc then testified about her analysis of the grievor's absences set out starting at page 19 of the investigation report. It was based on emails and Internet extracts and extracts from the grievor's work computer drive that support the allegations (Exhibit E-1, tabs 22-A to 22-W). Ms. Leduc said that concerning codes for union activities, PIPSC has a table setting out paid and unpaid leave for union business under the collective agreement. Code 6400 is for paid leave, while code 9100 is for unpaid leave. She said that in the analysis, "no tabs" for a particular day means that no emails were sent from the grievor's account, he did not use his access card or the Internet, and no leave was recorded on his personal status report.

[44] With respect to the inappropriate use of the CRA's electronic networks, Ms. Leduc said that the July 9, 2009, email to PIPSC representatives setting out the terms of use of the CRA's electronic networks was found in the grievor's email

account. She stated that between November 2, 2009, and June 7, 2011, he sent or received more than 900 emails dealing with union business. Of those, approximately 200 were discussions of PIPSC's financing and budget. His personal hard drive on his CRA computer contained 30 files of PIPSC finances.

[45] Concerning the conflict of interest and misuse of CRA property, Ms. Leduc referred to printouts of Internet advertisements bearing the phone number of the cell phone that the CRA had assigned to the grievor.

[46] In cross-examination, Ms. Leduc acknowledged that Mr. Adams first contacted the IAFPD on March 14, 2011, and that she was mandated to investigate back to April 6, 2010. She further acknowledged that initially, she was not asked to investigate the grievor's misuse of the CRA's electronic networks or its cell phone.

[47] Ms. Leduc acknowledged that following the grievor's sick leave, which was from May 12, 2011, to May 11, 2012, three months passed before she was informed, in August 2012, of his return and that to her knowledge, the delay was not attributable to him. While his mediation process completed on August 28, 2012, he was not informed that he was under investigation in September or October 2012; nor was he interviewed. He was on sick leave in November and December 2012 and was informed of the investigation on March 7, 2013.

[48] Concerning the initial interview with the grievor on March 12, 2013, Ms. Leduc was aware that Ms. Tougas was a PIPSC employment relations officer but not that she was a union representative. She was there as an observer and took issue with being characterized as such.

[49] When she was asked whether it was possible that errors in the investigation report were based on assumptions made of the grievor's whereabouts, Ms. Leduc said that his whereabouts were recreated based on the information available and the witness interviews and that had he provided information showing that the findings were erroneous, they would have been corrected.

[50] Ms. Leduc was referred to the first bullet on page 5 of the investigation report, which states that the grievor sent no emails, and to his email of June 11, 2010, to Mr. Hewlett concerning a draft of the vehicle taxable benefit file. She agreed that if this was about the second file, then there was communication. Ms. Leduc was then referred

to an email exchange of June 11 and 15, 2010, between the grievor and Mr. Hewlett (Exhibit U-1, tab 17), which indicated that Mr. Hewlett was not satisfied with the response on the vehicle taxable benefit file and questioned whether the grievor had done any work and why it had not been presented earlier. Ms. Leduc said that she had not seen those emails and that possibly, they were not in the grievor's email account when she reviewed it. In addition, he could have provided the emails had they had the opportunity to discuss them.

[51] When she was referred to a statement in the investigation report and was asked whether it was possible that the grievor had responded by telephone, Ms. Leduc replied that there was no email and that although she had requested the telephone logs, she had been unable to obtain them.

[52] With respect to the grievor's building access card (investigation report, page 2), Ms. Leduc agreed that it was possible for another employee to open the door. She also agreed that the investigation report did not mention that there is no turnstile at the Montreal TSO and that employees do not have to swipe access cards to gain entry. That information was not included because the need was not considered at the time, and no meeting was held with anyone from the Montreal TSO. Ms. Leduc did not check if the grievor had a replacement card and did not think that he had lost his card.

[53] Ms. Leduc was referred to the grievor's Outlook calendar for August 12, 2010, which indicated that he had a court appearance to contest a ticket (investigation report, page 22) and was asked whether she had asked him if he had attended court. Ms. Leduc replied that he refused to answer questions about his attendance at work. She was then told that he would testify that he had decided not to contest the ticket and that he had been in the office that day.

[54] Concerning the grievor's bicycle trip to a union meeting in Orford, Quebec (investigation report, page 20), Ms. Leduc used the time for the trip that Google Maps suggested. She did not ask him if he was an avid cyclist.

[55] With respect to the grievor's email exchanges with union members, Ms. Leduc did not contact those employees. She agreed that it is possible that an employee may not have any Internet activity for a day or may be in his or her office but may not use email or the Internet. She stated that since the grievor did not provide any information, she had to use reports of his access card use and his email and Internet activity.

[56] Ms. Leduc did not interview anyone from PIPSC concerning the grievor's union activities or his attendance at union meetings; nor did she interview anyone from the Montreal AFS subgroup. She did not interview anyone from the Montreal TSO who could attest to his whereabouts.

[57] Ms. Leduc agreed that investigations should be conducted in the most time-efficient way possible. When she was asked about the timeline from March 14, 2011, when Mr. Adams reported the allegations, to the issuance of the investigation report on February 5, 2014, she replied that the formal investigation was launched on June 6, 2011.

[58] In re-examination, Ms. Leduc said that the grievor was not informed earlier that he was under investigation because the IAFPD's practice is to inform respondents 48 hours before an interview. This is done to preserve the integrity of the information and to avoid causing unnecessary stress to the respondents. In terms of how investigations are prioritized, she said that it is done case-by-case but that cases involving employees suspended without pay take precedence.

[59] Ms. Leduc said that an investigation report may have several drafts, revisions, and several approval levels. A report is submitted to a senior reviewer, then the investigator's manager, and then the director who finalizes and signs the report. It then returns to the investigator's manager and the investigator for their signatures. The report then goes to the director general for the signature of a cover memorandum and a transmission to the assistant commissioner.

[60] When asked about the chances that on a given day, an employee would have no swipe card accesses, no email, and no Internet activity, Ms. Leduc replied that it is a possibility but that the probability that it might recur makes it more unlikely.

3. Ms. Hawara

[61] At the material time, Ms. Hawara was the director general of the CRA's Charities Directorate and had been since September 2009. Her responsibilities included overall direction and guidance of the charities program and charity-related issues. Her general role with respect to labour relations and discipline consisted of advising and guiding managers concerning potential discipline. Sometimes, she handled the disciplinary process herself. The grievor had joined her directorate in November 2013 as an audit

advisor, which was noted in the investigation report. Ms. Hawara concluded that she should deal with the grievor's case given that he was new to the directorate and given the seriousness of the alleged misconduct set out in the investigation report.

[62] A copy of the investigation report was provided to the grievor on February 25, 2014, and the disciplinary hearing was held on March 13, 2014. The notes of that hearing were prepared by the labour relations advisor in attendance. The purpose of the hearing was to give the grievor an opportunity to provide additional information and an explanation and to bring up any mitigating factors.

[63] The grievor presented as context his personal life, the work environment before and after his ITRD appointment, and his union work. He referred to the problems in the Montreal TSO and to his supportive role to employees as a union representative and executive member. He explained how he used time and reported it and said that there was an unwritten rule concerning the use of time as issues arose. He showed time sheets demonstrating that he had used leave without pay to indicate his union executive work.

[64] As for the ITRD, the grievor said that he had a communication breakdown with management and that he had received no training, except when he went to Ottawa. He also addressed some of the investigation report's findings and stated that the facts had not been fairly represented. He provided a CRA system report of his time sheets over a number of years. I note that the parties agreed that only those concerning the relevant period should be considered. He wanted to show that he had used code 6400 for leave with pay for union business that his supervisors had approved. Mr. Adams approved his time sheets until July 1, 2010.

[65] The grievor also explained the two ways to enter time sheets at the CRA. The first, termed positive reporting, requires employees to input daily the correct time code for how their time is being spent. In the second, termed negative reporting, the system is programmed to indicate by default that an employee is at work. If the employee is absent or on leave, the employee must access the system and enter the leave code. While in the Montreal TSO, the grievor was on positive reporting, and while with the ITRD, he was on negative reporting. Up to July 5, 2010, someone inputted the time codes. Effective that date, the entry "admin" meant that the time was automatically programmed.

[66] Ms. Hawara said that the impact of the identified misconduct was that it demonstrated that management approved leave in the system when the grievor used codes. She had to go back to the time reports to determine if the appropriate code had been properly used. After July 5, 2010, the grievor did not enter the time sheets himself to reflect what he was doing. During the disciplinary hearing, he did not present much new information from what Ms. Hawara knew from the time report. The collective agreement sets out the terms of leave with or without pay for union business and states that management approval is required in advance.

[67] As the disciplinary hearing had not addressed the grievor's other alleged misconduct during the scheduled two hours, it was agreed to reconvene. It continued on March 18, 2014.

[68] Half the time in the second hearing dealt with the grievor's activities after communication with management was cut. Essentially, he worked on union-related matters. He said that there was an unwritten rule in the Montreal TSO that any union work was treated as paid leave. He could not substantiate his discussion with Mr. Adams. Ms. Hawara did not find the grievor's explanation compelling.

[69] The grievor said that the investigation placed too much emphasis on swipe-card access to the building, as employees could enter behind each other without swiping their cards. Ms. Hawara said that based on her experience and the report of multiple accesses by the grievor, as well as her knowledge of CRA premises and the encouragement given to employees not to let other employees in behind them, it did not seem credible that on all the days noted in the report, the grievor did not swipe his card to access the premises.

[70] With respect to the grievor's use of the CRA's electronic networks and the 900 emails about union business, he said that it was an unwritten practice in the Montreal TSO that had been accepted by management. He had previously been reprimanded for his improper use of the CRA's electronic networks.

[71] Concerning the use of the CRA's cell phone and the forwarding of its number to his personal device, the grievor said that he did so for the convenience of not carrying two cell phones and that he saw nothing wrong in doing so.

[72] After the disciplinary hearings, Ms. Hawara consulted with her labour relations advisor and followed up on certain issues raised in them, particularly the grievor's reference to an unwritten practice concerning time codes and prior management approval. Ms. Hawara's labour relations advisor consulted the CRA's Quebec Region Labour Relations. A report was created from the timekeeping system for the period from January 1, 2010, to January 1, 2011, to determine whether one or both codes were used for leave with pay. The report indicated that both codes had been used. Ms. Hawara stated that the Director of Labour Relations for the CRA's Quebec region said that leave for union business was applied according to the collective agreement and that there was no unwritten practice.

[73] In arriving at a decision on a disciplinary measure, Ms. Hawara considered the facts, advice from Labour Relations, and the mitigating and aggravating circumstances. Referring to the grievor's misconduct set out in the letter of discipline, she said that his failure to report the 416.5 hours was as set out in the investigation report. During the period in question, the grievor had no email correspondence, no Internet use, no entries in his Outlook calendar, and no access to the Montreal TSO. During his interview, he acknowledged that he did no CRA work during that time. He did not demonstrate to Ms. Hawara that he performed CRA work during that time. With respect to misreporting 12.25 hours as paid leave, Ms. Hawara said that those hours would have been eligible for leave without pay for union business.

[74] During the grievor's period at ITRD from April 6 to December 5, 2010, Ms. Hawara did not consider his leave without pay as part of the misconduct for the application of the discipline.

[75] Ms. Hawara referred to the following sections of the CRA's *Code of Ethics and Conduct* ("the *Code*") dated June 2009: page 15, paragraph (k) (hours of work and attendance); page 13 (fraud — attempting to obtain leave to which the person is not entitled); and page 11, paragraph 4(b) (care and use of government property or valuables). She stated that a failure to report leave is considered a group 4 offence out of five groups in the CRA's table of suggested disciplinary measures. Knowingly allowing the system to have time sheets reflect that work is being done when that is not the case is a serious breach of the *Code*.

[76] The grievor's failure to cooperate in the investigation was based on the investigation report. He had said that he was not prepared to discuss his time sheets because he had filed a grievance, and he acknowledged that he would not cooperate in the investigation. When she was asked how a failure to cooperate in an investigation violated the *Code*, Ms. Hawara referred to the version dated February 25, 2013, at page 7, which states in part as follows: "You are obliged to co-operate and help with the conduct of an investigation by providing information to an investigator …". Employees are required to review the *Code* annually. It is sent to them electronically, and they must attest that they have reviewed and understood it.

[77] Ms. Hawara also referred to the CRA's *Conflict of Interest Policy* and the *Conflict of Interest Code and Guidelines* that flows from that policy. She stated that integrity is a cornerstone at the CRA and that managing conflicts between official work and personal activities is of great importance. Employees must annually disclose their outside activities, and supervisors can decide whether they should continue. The *Conflict of Interest Code and Guidelines* were available on the CRA's intranet.

[78] With respect to the grievor's use of a CRA cell phone, while he had a disclosure on file, he had not disclosed his management of a rental unit. As stated at page 4 of the *Code*, it is unacceptable to use CRA property in such a manner. If someone knew that it was CRA property, he or she could, rightly or wrongly, have assumed that the CRA supported the activity in question.

[79] Ms. Hawara stated that the CRA's *Monitoring of Electronic Networks Usage Policy* is available on its intranet, refers to the *Code*, and should be read in conjunction with page 11, paragraph (g) (electronic networks access and use), of the latter.

[80] Ms. Hawara addressed the factors she considered when imposing the 30-day suspension. Based on the analysis in the investigation report and the information provided by the grievor, she concluded that misconduct had occurred.

[81] The mitigating factors she considered were the grievor's 15 years of service, his positive attitude to his new job with the Charities Directorate, his cooperation with the disciplinary interview process, and his expression of remorse. She also considered management's actions. He had not been informed of a stoppage of his pay or that reporting time or failing to could lead to a disciplinary process.

[82] Among the aggravating factors Ms. Hawara considered was the most serious misconduct of failing to report time. It occurred and was repeated over the six-month period for which she imposed the discipline. She was troubled by the grievor's approach that there were unwritten rules in the Montreal TSO and by his lack of presentation of evidence in support of that approach. That differed from her understanding of how union stewards work. He liberated himself, and assuming that management agreed with that was irresponsible. He communicated with management only when his pay was stopped. Furthermore, he used the CRA's electronic networks for union business after he had been warned and reprimanded for it. He disregarded the rules set out in the collective agreement and the CRA's policies that as a union steward, he should have upheld.

[83] In cross-examination, Ms. Hawara said that she met the grievor for the first time at the disciplinary hearing, had no interaction with him in 2010 or 2011, and had no communication with him about the investigation. She assumed that he was aware of the investigation and that he had participated in it.

[84] Ms. Hawara said that the grievor had acknowledged certain wrongdoing, said that he would not do it again, and expressed some remorse.

[85] When she was asked about delays in the process, Ms. Hawara said that they were due to circumstances beyond the investigator's responsibility.

[86] Concerning the grievor's misuse of the CRA's electronic networks, Ms. Hawara referred to the first and second boxes of the table of suggested disciplinary measures. She was not concerned with security, as it was more of a storage issue caused by the 900 union business emails. While the grievor had no control over received emails, he could have made an effort to inform senders to redirect their emails, which nothing in his emails indicated he had done. He said that sending union emails was condoned by an unwritten rule at the Montreal TSO.

[87] When she was referred to the minimum measures in the first or second boxes of the table of suggested disciplinary measures, Ms. Hawara said that they applied to a single offence. The CRA's approach is to treat multiple offences together. She considered the most serious offences, considered the other misconduct as aggravating factors, and applied group 4 of the table. She did not use progressive discipline.

[88] With respect to the grievor's time reporting, he had told Ms. Hawara that he was working full-time on union matters. When it was put to her that the Montreal TSO's practice was to allow union executives to conduct union business freely, Ms. Hawara replied that she understood it as his role as a union steward, which was code 6400, as opposed to as part of the union executive. She understood that he held three union positions. He said that he was an active steward, but most of his emails concerned his union executive positions. Ms. Hawara's conclusion was based on her understanding of the rules, which were that management approval of the leave was required in advance, time sheets were required, and the proper codes were to be entered.

[89] Ms. Hawara said that time reports were pulled to see if two codes were used in the CRA's Quebec region and nationally and stated that management's minds were not turned specifically to the role of a union steward as opposed to a union executive. Her labour relations advisor told her that the labour relations director for the Quebec region had communicated that union officials were to follow collective agreement rules.

[90] She was asked during her testimony about an investigation that the Royal Canadian Mounted Police (RCMP) was conducting into the Montreal TSO in 2009 and, in particular, the need for involvement by union officials. Ms. Hawara understood that affected employees were offered legal counsel. She said that during the disciplinary hearings, the grievor said that he had to attend many meetings during that time.

[91] Ms. Hawara understood that the Montreal TSO had some awareness of the grievor's union involvement and that Mr. Adams seemed to have some sense of it, but it was unclear as to the extent of the ITRD's knowledge of it. The grievor said that his union activity would diminish.

[92] When she was referred to the CRA's list of mitigating and aggravating factors, Ms. Hawara did not think she used it. She considered the issue of the timeliness of the process and that management had never warned the grievor that he was misreporting time. She considered as an aggravating factor that he failed to correctly report time over six months. While the incorrect reporting occurred over one year, she considered only a six-month period. Although management had not warned him, nevertheless, she considered his failure to report time as an aggravating factor because the point of a warning is to inform an employee that serious disciplinary consequences could ensue.

In the grievor's case, he knew how to report time and had done so. Management's lack of warning did not mitigate the fact that he should have followed the collective agreement rules; he knew that what he was doing was wrong, and he told Ms. Hawara as much.

[93] When she was asked whether there was a policy that prevented a manager or a director general from informing an employee that he or she was under investigation for misconduct, Ms. Hawara replied that she was unsure but that in her experience, when an investigation is launched, she is asked not to inform the employees because of the need to gather information.

[94] When she was referred to the grievor being unaware of the investigation until March 2013, Ms. Hawara replied that he had been on leave for a year and a couple of months, from April 2011 to May 2012 and in November and December 2012. There was no contact with him during that time.

[95] Ms. Hawara did not contact Mr. Adams while she deliberated on a disciplinary penalty. She considered the investigation report, advice from Labour Relations, and the grievor's disciplinary hearings.

B. For the grievor

1. The grievor

[96] While working at the Montreal TSO, the grievor phoned the ITRD to ask whether it was hiring. In his email to Mr. Adams on March 4, 2010, he informed Mr. Adams that he could not move to Ottawa, as his father had health issues. He also told Mr. Adams that he was involved in union affairs that took much of his time. He wanted Mr. Adams to know that he would reduce his union involvement to focus on his rulings officer work. He also informed Mr. Adams that as his background was in finance, he did not feel suited to the rulings officer role. He was unable to reduce his union activities as planned due to the RCMP investigation into the Montreal TSO, which required him to deal with many calls from union members.

[97] In April 2010, while retaining his primary role as an active union steward, the grievor held the following union positions: treasurer of the Montreal AFS subgroup, treasurer of the Montreal Centre branch, and secretary-treasurer of the AFS group.

[98] By email on March 5, 2010, Mr. Adams offered the grievor a one-year term assignment as a rulings officer working out of the Montreal TSO, which the grievor accepted. He began that work on April 6, 2010.

[99] In terms of training, before beginning as a rulings officer, he had many telephone discussions with Mr. Adams and Mr. Hewlett. In early June of 2010, he travelled to Ottawa for training on the Web-based Correspondence and Issues Management System (WebCIMS) and for a discussion on the approach to file preparation. He was given access to the research software on June 9, 2010. Most of his training was on the job. He was given files to work on but no performance objectives. He first reported to Mr. Adams and then to Mr. Hewlett.

[100] In February 2010, the grievor was in Ottawa on union business. He met with Mr. Adams, who gave him three files to give him an idea of the type of work a rulings officer carried out. He did not complete them and was given no deadline to but had several discussions with Mr. Adams about them.

[101] With respect to time reporting, the grievor said that if an employee had one activity code, the system would automatically enter it every day and generate a daily time sheet. If the employee took a vacation day, he or she would have to enter the appropriate code. The time worked on each file was entered into WebCIMS. The grievor did not enter the time worked on the files given to him in February 2010 as they were in hard copy and were to give him a flavour of the work. At that time, he did not have access to WebCIMS.

[102] The grievor recalled his email exchange with Mr. Hewlett on May 5 and 6, 2010, concerning remote access to the systems and said that while he was occupied with union matters, he wished to continue working as a rulings officer.

[103] The grievor referred to several examples of email exchanges to indicate that management delayed responding to him. The first example involved the LTD file (Exhibit U-1, tab 8) and his emails with Mr. Hewlett on May 7, 2010 (Exhibit E-1, tab 2). Another example was the file concerning the taxable benefit on employer-provided vehicles (Exhibit U-1, tab 9) and an email from Mr. Hewlett (Exhibit E-1, tab 4). The grievor pointed out a delay from May 11 to the response on May 21, 2010.

[104] Concerning an email from Mr. Adams to the grievor on May 19, 2010, the grievor said that it related to a timekeeping discussion he had had with Mr. Hewlett; they had exchanged emails concerning that subject on May 20, 2010. The grievor said that he sent his response on the LTD plan file (Exhibit U-1, tab 12) to Mr. Hewlett on May 7 and that he received a reply on May 21, 2010.

[105] The grievor described his working relationship with Mr. Adams as satisfactory at first but stated that later, they did not view matters in the same way. Mr. Adams wanted more rapid and more complete responses, while the grievor did not have the same level of experience as did the other rulings officers. He said that their relationship began to change in mid-June 2010. He pointed to an email from Mr. Adams on June 16, 2010, in which the manager claimed that he had "nothing positive" to say about the grievor's performance and that he would be terminating his "term assignment" at the end of the summer. The grievor would then be offered a position provided he reported to work at the ITRD Ottawa office by September 7, 2010. I note that the investigation report indicated that the investigator had not found any information that Mr. Adams sent the grievor the notification referred to in his June 16, 2010 email, namely that his term appointment would be terminated at the end of the summer.

[106] The grievor said that he perceived Mr. Adams' conduct as an attempt "to bury" him. He had not received adequate training and was just two months into his position. He said that there was no follow-up to the email and that he did not interact with Mr. Adams for a lengthy period after that.

[107] With respect to his email exchange with Mr. Hewlett on July 7 and 8, 2010, about his time reporting, the grievor said that he would have called Mr. Hewlett, as he had taken June 22, 2010, as a personal day. He would have reminded Mr. Hewlett that Mr. Adams knew that he had union responsibilities.

[108] In the period of June to July 2010, the grievor completed the two files that Mr. Hewlett had assigned to him, and no other files were assigned to him. He said that he was in his office every day and that he spent his entire time on union business. Between April and July 2010, the only discussion concerning the grievor's performance was Mr. Adams' email.

[109] With respect to the time he spent on union business, the grievor said that he was heavily involved with the union as a result of the 2009 RCMP investigation into the Montreal TSO. Several employees were terminated, and others were under internal investigation. Of the members of the AFS's Montreal subgroup executive, the grievor and Mr. Monti were the main support for the members.

[110] The grievor did not quantify his time spent on union business from April 6 to June 30, 2010, except to say that he met with some members during the workday and with others before and after work. He testified that from June 30, 2010, to April 6, 2011, his entire time was spent conducting union business and that Mr. Adams was aware of his union involvement. He asserted that if he did not receive work files, it was a green light for him to carry out union work.

[111] The grievor stated that management and employees in the Montreal TSO were aware of his union involvement; he had campaigned for union office and had held meetings with management and with members. He said that Mr. Adams especially knew of his union involvement, as did Mr. Hewlett.

[112] The grievor said that he did not receive any work from Mr. Adams after his June 16, 2010, email to the grievor. The grievor acknowledged that after that email was received, he did not report his time on time sheets. He said that it was an oversight and that it was done without malice. He received emails from Mr. Adams and Mr. Hewlett about time reporting but then did not receive any communications about it from the employer for a couple of months. He did not do more work after the first two files because he did not receive any more files, and he was inundated with union work. As management did not contact him, he assumed that it was aware that he was working full-time on union matters, since it knew about the RCMP investigation. With respect to his email exchange with Mr. Adams on February 7 and 8, 2011, the grievor said that it struck him as odd because Mr. Adams was aware that he was involved with the union and that he had not received any files.

[113] The grievor acknowledged that he did not submit time sheets as requested because he felt that he would be "entrapped" by Mr. Adams, who was looking for reasons to terminate the grievor's term appointment. He referred to Mr. Adams' letter, which had been emailed to him on February 9, 2011. It requested an accounting of his time and activities and offered to help him reconstruct the data. The letter also

indicated that his actions could be interpreted as a desire to terminate the employment relationship.

[114] The grievor testified that Mr. Adams terminated his "contract" at ITRD. I note that according to the documents filed in evidence, the grievor was placed on leave without pay effective December 6, 2010 (letter addressed to the griever dated January 18, 2011), and according to the investigation report, the grievor returned to his substantive position in April 2011 (i.e., at the end of the one-year term appointment).

[115] The grievor testified that he was later transferred to the Laval, Quebec, TSO, where he worked from his return from sick leave in May 2012 until November 2013. He was not given a clear reason for his transfer there but asserted that it was done to prevent him from providing service to union members at the Montreal TSO.

[116] Next, the grievor commented on certain of Mr. Hewlett's statements set out in the notes of the investigator's interview of him. With respect to the statement that the grievor "failed to return calls", he said that he did not know why Mr. Hewlett said that. He testified that he always returned calls or emails. If Mr. Hewlett called the grievor's cell phone, and the grievor could not immediately answer, he would call back. Concerning Mr. Hewlett's statement that he met with the grievor for two days during his first week in Ottawa, the grievor said that Mr. Hewlett alluded to meeting him in telephone discussions. He said that he did not meet Mr. Hewlett in person until he went to Ottawa in June 2010.

[117] The grievor first became aware that he was the subject of an investigation when he received the email from Ms. Leduc on March 7, 2013. He contacted Ms. Tougas, who accompanied him to the interview on March 12, 2013. Ms. Tougas informed Ms. Leduc that the grievor could not respond to certain questions because his grievance on what she described as his "employer-imposed" leave without pay was at the adjudication level. Ms. Tougas emailed Ms. Leduc about the matter on March 13, 2013.

[118] The grievor commented on certain elements of the final investigation report. He acknowledged that ITRD was not satisfied with his work and that he stopped providing time sheets after June 30, 2010. Concerning his use of the CRA cell phone, the number of which he forwarded to his personal device, he said that it was easier to remember the CRA phone number than that of his personal phone. He added that as his personal

phone was subsidized by PIPSC with an unlimited plan, while the CRA phone's charges were based on usage, he saved the CRA money. The grievor stated that when he put the CRA phone's number on the advertisement to rent as well as for the sale of the snowblower, he did so inadvertently.

[119] The grievor disagreed with the investigator's analysis of his absences and stated that she should have considered other possibilities. He said that he cycled to the Montreal TSO almost daily. To access the building's garage, cyclists announced their names to the security guard, who opened the door. No swipe card was required. The grievor's office was on the 8th floor, and his swipe card gave him access to only that floor. If he met with a union member on the 6th floor, the member would meet him there and open the door. If he left the building for lunch, on his return, he would show his card to the security guard, and the door would open. He said that sometimes, an employee would follow another employee in without swiping a card. The grievor stated that the investigator could have checked video cameras or queried certain individuals, such as management of the Montreal TSO or members of the union executive.

[120] The grievor said that when analyzing his absences, the investigator considered only three elements: his Internet and email activity and his swipe card. Concerning email, he said that he might not have sent any or had deleted them. Some days, he did not connect to the CRA's electronic networks, but worked off the laptop's hard drive. He stated that the absence of Internet activity would not necessarily lead to a conclusion that he was not in the office on a particular day. He might have been taking care of other matters. Furthermore, he was asked questions two to three years after the events at issue, and he had not kept detailed records.

[121] The grievor contested the investigation report's conclusion that concerning his bicycle trip to Orford for a union meeting, he had travelled on Thursday, May 13, 2010, and that based on Google Maps, it had taken him 5 hours and 45 minutes. He said that he cycled to Orford with a friend. They left the friend's home together on Friday, May 14, 2010, at 7:00 or 7:30 a.m. and arrived at Orford before lunch, at 11:00 or 11:15. He said that they rode at 30 to 35 km/h, not at 20 to 25 km/h.

[122] With respect to the entry in his Outlook calendar of a court appearance on August 12, 2010, the grievor said that it concerned a traffic offence in Prescott, Ontario. As he lived in Montreal, it was not worth his time to contest the ticket, and he

did not attend court. He asserted that just because the event was in his calendar did not mean that he was absent from his office.

[123] The grievor testified that he could have better managed his work relationship with Mr. Adams. Rather than trying to resolve the situation, he did not make the right decisions and should have been more conciliatory, for which he apologized. He had no bad intentions toward the employer.

[124] On cross-examination, the grievor acknowledged that before signing the offer letter for the rulings officer position, he had read and understood the two codes it referred to, namely, the *Conflict of Interest Code and Guidelines* and the *Code*.

[125] Although several times, Mr. Adams had asked the grievor to complete files, the grievor said that the files were given to him so that he could have a flavour of a rulings officer's work, of which Mr. Adams was aware. In the email exchanges, the grievor said that they were "butting heads". He said that after he and Mr. Adams had discussions, of which they had several, several months later, Mr. Adams would email him.

[126] The grievor was referred to the second paragraph of Mr. Adams' email to him of April 8, 2010, which requested a draft analysis of the three files. He acknowledged that at the time, he had a good working relationship with Mr. Adams. He said that he carried out some research and took notes but that he did not complete and submit a draft analysis.

[127] When he was referred to an email exchange with Mr. Hewlett on May 12, 2010, the grievor said that his relationship with Mr. Hewlett and Mr. Adams was good at that time. He said that his interpretation was that the discussion about the three files was to determine the ITRD team he should be placed in.

[128] The grievor said that when Mr. Adams emailed him on May 19, 2010, his relationship with Mr. Adams was good. Mr. Adams had asked him for a proposed response, but he said that it did not make sense as he had just begun as a rulings officer, and he was given five files.

[129] The grievor acknowledged that he did not provide a final response to the three files as requested in Mr. Adams' email of February 21, 2011. The files were not in WebCIMS, but he did not inform Mr. Adams of that. His explanation for never checking with Mr. Adams as to whether the files had to be completed despite several requests to

do just that was that they were given to him as an indication of the work, and he was not told that a taxpayer was awaiting a response.

[130] The grievor acknowledged receiving the July 9, 2009, email to union representatives concerning the terms of use of the CRA's electronic networks.

[131] With respect to his failure to provide an accounting of his time despite several requests, the grievor said that it had been a mistake and that he was hard-headed. He said that Mr. Adams was aware of the situation in the Montreal TSO because of the press coverage and that he knew of the grievor's union involvement. The grievor acknowledged that he had an obligation to submit time sheets for his union activity. When he was referred to the letter attached to Mr. Adams' February 9, 2011, email offering the grievor assistance to reconstruct the data, the grievor said that he did not accept the offer because Mr. Adams knew of his activities.

[132] The grievor acknowledged that for the period of July to December 2010, he did not inform anyone in Ottawa that he was working entirely on union business. While he admitted that none of his emails to Ottawa indicated the extent of his union activities, he said that Ottawa management was aware of it. When it was put to him that for July to December 2010, he never submitted time sheets for union business or for absences, he replied that was what the investigation report stated. He admitted that for the same period, he did not obtain from management in Ottawa prior approval for union activities and did not submit time sheets to the employer.

2. Mr. Monti

[133] Mr. Monti has been employed by the CRA for 25 years and works in the Montreal TSO as a domestic auditor (classified AU-04) in the International Large Business Directorate. He occupied a group-lead management position (classified MG-05) in other units from 2006 to 2012. He has known the grievor since 2006 or 2007, when he was on the union executive and the grievor became a steward with the union's Montreal branch. From April 2010 to April 2011, Mr. Monti was an active union steward and is still in that role.

[134] As a result of the RCMP investigation into the Montreal TSO in April 2009 and the ensuing internal investigation, the atmosphere was one of fear, confusion, and

paranoia. Many employees went on sick leave, including Mr. Monti, who did so from January to March 2010.

[135] From April 2010 to April 2011, the union executive carried on with routine activities and monthly meetings that dealt with staffing processes, performance evaluations, and acting appointments. The non-routine activities included meeting with members concerning the investigation and accompanying them to investigation interviews, if requested. Some union stewards were not active, and the active stewards did not always have time. The grievor did the majority of the work of meeting with members in connection with the internal investigation.

[136] Mr. Monti said that from April 2010 to April 2011, 50% of his time was devoted to union business. At the time, management and employees in the Montreal TSO knew that he was active in the union; his immediate supervisor, the director, and assistant director of audit were aware of it.

[137] Mr. Monti said that he would meet with members during the workday, although management did not react well to it. At the time, Mr. Monti was a manager and reported operational time worked as code 001 on time sheets; for union business, he charged the time as code 6400. He testified that all stewards and union executives in the subgroup were supposed to charge code 6400 when they were involved in union activity.

[138] Mr. Monti stated that when he was to meet with a member, he would inform his manager. If the manager resisted, Mr. Monti met with the member anyway. If the manager asked where he had been, he would reply that he had been at a meeting with a member.

[139] When he was asked whether he had faced repercussions for union activity, Mr. Monti said that he had been reprimanded for emailing all union members. From April 2010 to April 2011, he emailed members using the CRA's electronic networks.

[140] From April 2010 to April 2011, Mr. Monti discussed union business with the grievor at least once per day if they were both in the office. This would occur on breaks, at lunch, or after work. If the matter was urgent, the grievor would come to his desk, or he would go to the grievor's desk.

[141] With respect to his access to the Montreal TSO, Mr. Monti said that at the front door, he would show his access card to the security guard and then take the elevator to the 10th floor. After exiting, he would swipe his access card at the door to gain entry. If he were with other employees, he would follow them in, as there was no requirement to swipe cards individually.

[142] In cross-examination, Mr. Monti was referred to an email concerning the grievor's absence of April 26, 2010 (Exhibit E-1, tab 22-B). He confirmed that it had been for a PIPSC activity. When he was shown documents concerning the grievor's absence of June 8, 2010 (Exhibit E-1, tab 22-F), he again confirmed that it had concerned union matters.

[143] Mr. Monti testified that code 6400 was the only one for charging time to union business. He had used code 9100 for leave without pay when, for example, attending a union regional council meeting from a Friday to a Sunday. He could have used that code or claimed a vacation day had he wished to be paid by the employer.

[144] When he was asked about access to the Montreal TSO's garage between April 2010 and April 2011, Mr. Monti replied that he was uncertain as to whether a card had to be swiped or if he had to sound the vehicle's horn and then state his name to the security guard. To go the garage from inside the building, he took the elevator from the 10th floor and did not have to swipe his card to exit the floor. To exit the garage, the security guard would open the door if the employee's name was on a list.

[145] Mr. Monti acknowledged being well aware of the July 9, 2009, email to union representatives stating that using the CRA's networks for union business emails was not permitted and that the policy was applied during the period of April 2010 to April 2011. He said that he did so despite this email because it had been tolerated in the past.

[146] Mr. Monti said that from April 2010 to April 2011, he did not advise his supervisor when conducting union business because they shared an intense dislike.

[147] In re-examination, Mr. Monti said that there were two entrances to the building's garage, which were a vehicle door and a pedestrian door. To enter, an employee had to contact the security guard, whose booth was inside. If the guard was not in the booth, the employee would sound the vehicle horn and give his or her name to the guard on

the 1st floor, who would open the door if the name was on a list. He was uncertain as to whether employees had to give their names when exiting the garage.

3. Mr. Pétion

[148] Mr. Pétion had been employed by CRA for 27 years and in 2010 was a senior auditor working in the Montreal TSO. He has known the grievor since 2004 both personally and through their union involvement. They worked on the same floor. Mr. Pétion is a vice-president with the Montreal AFS subgroup and was a steward for more than 10 years. In 2010, he was on the executive of the Montreal subgroup.

[149] In 2009 and 2010, the work environment at the Montreal TSO was difficult due to the RCMP and internal investigations. While Mr. Pétion was not involved with employees who were subject to investigation, his work as a steward involved committees such as those involving health and safety, employment equity, performance evaluations, and other routine work.

[150] Mr. Pétion was aware of the grievor's union activity in 2010. He said that the grievor was very knowledgeable of the investigation situation and that he was heavily involved in helping the employees and dealing with management. Management at large in the Montreal TSO was aware of their union activity, as they had meetings and discussions with management.

[151] Mr. Pétion stated that union meetings took place during regular work hours and that as part of the union executive, he did not necessarily have to seek authorization from management. He reported his time spent on union activity as paid time under code 6400. Approximately 25 to 30% of his time was spent on union activity. He was never questioned about his union activity time; there were no repercussions or consequences. During 2010, Mr. Pétion saw the grievor very often, almost every day.

[152] In cross-examination, Mr. Pétion said that he had never used code 9100 (leave without pay) for his union activities, including PIPSC conferences.

III. Summary of the arguments

A. For the employer

[153] The employer imposed a 30-day suspension on the grievor for four instances of misconduct as set out in the letter of discipline. They were his failure to report how he

used a significant number of hours between April 6 and December 10, 2010, failure to cooperate with an internal investigation, violation of the CRA's *Conflict of Interest Policy* by using CRA property to conduct private business, and misuse of the CRA's electronic networks to conduct union business.

[154] The Board must determine whether on a balance of probabilities the employer was justified in imposing discipline and if so, whether the discipline was appropriate. In so doing, it must assess witness credibility; see *Faryna v. Chorny*, [1952] 2 D.L.R. 354.

[155] The adjudication hearing before the Board is a *de novo* hearing; see *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (QL) (C.A.). Any procedural defects during or following the investigation process are cured by this hearing; see *Maas and Turner v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 123 at para. 118. The Board is not bound by the investigation report and may base its conclusion on the evidence. The employer submitted that the evidence allows the Board to draw the same conclusions as did the investigator and that any slight miscalculation of use of a number of hours on a specific day should not be fatal to its case.

[156] Employees have the duty to report to work and to remain at work during their regular shifts; see *Simon Fraser University v. A.U.C.E. Local 2*, [1990] B.C.C.A.A.A. No. 409 (QL) at paras. 17 and 18; and *Riche v. Treasury Board (Department of National Defence)*, 2013 PSLRB 35 at para. 117. A collective agreement can provide an exception to this duty, as set out in articles 27 to 30 of the collective agreement in this case. While the employer has an obligation not to interfere in union activities, it does not have a positive obligation to facilitate union activity except as stipulated in the collective agreement. For example, clause 27.01 requires the employer to provide bulletin board space for the union, and clause 27.02 stipulates that the employer must make locations on its premises available for union literature.

[157] Article 30 of the collective agreement deals with leave for union business, subject to operational requirements. Leave with pay is granted when an employee acting as a union representative conducts union activity within the employee's work area. Leave without pay is granted when the union activity occurs outside that area. Clause 29.04 sets out the requirement for a union representative to seek permission for leave from his or her immediate supervisor.

[158] On the issue of the evidence concerning management permission, the employer submitted that Mr. Monti testified that even though he might not have sought his supervisor's permission to meet with a member, he informed his supervisor on his return. Mr. Pétion, who spent 25 to 30% of his time on union business, said that there was a tolerance or general understanding that a union executive member did not have to seek permission in advance. Management tolerance might have occurred given the exceptional circumstances of the RCMP and internal investigations into the Montreal TSO. However, management tolerance in one situation should not be construed as common practice applying to all CRA management in Canada. The employer pointed out that both Mr. Monti and Mr. Pétion submitted time sheets that included time spent on union business. Other than what is stipulated in the collective agreement, nothing states when the employer will grant leave with pay for union business or requires it to grant leave with pay for other activities conducted for the union.

[159] During the period from April 6 to December 5, 2010, for which discipline was imposed, the grievor worked from the Montreal TSO while reporting to the ITRD's Ottawa headquarters. As set out in the offer letter, he was on a one-year term appointment to the ITRD. He was not authorized to telework from home.

[160] The grievor testified that he knew that he had to report time spent on union business or any other type of leave. When he accepted the offer, in an email on March 4, 2010, he told Mr. Adams that he would systematically withdraw from his union positions to focus on his rulings officer job. Mr. Hewlett did not know that the grievor was conducting union business and testified that he never received a request from the grievor for leave for union activities and never approved such leave. Management did not condone the grievor's union activity; nor did it liberate him to work full-time on it. He stopped submitting time sheets after June 30, 2010.

[161] With respect to the grievor's reference to the practice in the Montreal TSO concerning management permission for leave for union business, the employer submitted that such a practice would be contrary to the collective agreement and that during his term appointment, he reported to Ottawa, not Montreal.

[162] The grievor was given three files at the outset of his term at ITRD (Exhibit E-1, tabs 1 and 5, and Exhibit U-1, tabs 11, 17, and 32). The employer submitted that the

intent was not that they give him a flavour of the job but that they were real inquiries that required completion.

[163] The employer submitted that based on the investigation report, it concluded that the grievor had been absent and that he failed to report his absences on scheduled workdays for which there was no recorded Internet or email activity and no recorded access to the Montreal TSO. On certain days that he was at work, the log of his access card use indicated multiple absences on a specific day.

[164] The employer referenced two examples of the grievor providing an explanation for his absence. The first concerned his bicycle trip to Orford for a union regional council meeting. On Thursday and Friday, May 13 and 14, 2010, he was scheduled to work eight hours each day. On each day, there was no recorded Internet or email activity and no recorded access to the Montreal TSO on his part. In an email dated May 4, 2010, he indicated his interest in participating in a pension training course in Orford on May 14, 2010. In an email dated May 17, 2010, he recounted his bicycle journey to Orford. Due to the lack of activity on May 13 and 14, the investigator concluded that the grievor travelled to Orford on May 13, 2010, and thus had failed to report eight hours of annual leave for the bicycle trip and eight hours of leave without pay for union business. He did not answer questions concerning those days during the investigation.

[165] The second example concerned October 5, 2010, on which day the grievor was scheduled to work 7.5 hours. On that day, there was no recorded Internet or email activity by him and no record of his access to the Montreal TSO. In an email dated September 30, 2010, he requested that a meeting with a manager at the Laval TSO on October 5, 2010, be held at 3:00 p.m. The investigator considered 2.5 hours for travel and meeting time and concluded that the grievor had failed to report 5 hours of annual or other leave for the remainder of the day.

[166] The employer submitted that the issue is the amount of time the grievor was supposed to be at work. The investigation report determined that from April 6 to December 5, 2010, the employer paid him for more than 400 hours that he spent on union business or other activities unrelated to his work. There is strong evidence to conclude that on all the dates identified in the investigation report, he was not in his office and did not perform work for the employer. The partial explanations for some of

the dates, which he offered in his testimony, do not explain the absence of recorded Internet or email activity or accesses to the Montreal TSO. This is not a matter of one or two hours of absence but of hundreds. It was not sufficient for him to make general statements to raise doubt about the investigation's findings. To demonstrate that his version was more probable than the employer's, he had to present detailed and convincing evidence.

[167] There is no requirement in the collective agreement or otherwise that the employer must pay for time worked by a union executive on union activities. It was not up to the grievor to determine that the employer had liberated him to work full-time on union business. He violated the "hours of work" section of the *Code*. Failure to report an absence is just cause for discipline (see *Phillips v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 67 at para. 84).

[168] With respect to the grievor's failure to cooperate in an internal investigation, at his first interview on March 12, 2013, he refused to answer questions based on the advice of his union representative. An internal investigation is an administrative matter. The grievor's failure to cooperate impacted the investigation, as the investigator did not have the benefit of his explanations when preparing her analysis.

[169] With respect to the use of the CRA's cell phone number, Ms. Hawara testified that it was of concern for two reasons. The grievor did not disclose to management his involvement in the management of rental units, and the use of the CRA telephone number could have been perceived as the CRA condoning and supporting such activities. He contravened the conflict of interest policies that specify that CRA assets are to be used only for approved activities.

[170] The grievor contravened the *Code* and the *Monitoring of Electronic Networks Usage Policy* by using the CRA's electronic networks to conduct union business. Between November 2, 2009, and June 7, 2011, he sent or received more than 900 emails dealing with union business. His CRA computer hard drive contained 30 PIPSC finance files. He acknowledged receiving the email sent to all union representatives on July 9, 2009, concerning the use of the CRA's electronic networks. While Mr. Monti testified that he sent emails concerning union business on the CRA's networks, the fact that another union representative did so does not absolve the grievor of his violation of the policy or make it acceptable.

[171] In the employer's submission, it proved on a balance of probabilities the elements set out in the letter of discipline.

[172] With respect to the appropriateness of the penalty, the employer submitted that it reflected the gravity of the grievor's misconduct. The Board should not interfere with a penalty unless it is unreasonable or clearly wrong; see *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119 at para. 13; and *Mercer v. Deputy Head (Department of Human Resources and Skills Development)*, 2016 PSLREB 11 at para. 55. In the circumstances of this case, a 30-day suspension was not unreasonable or clearly wrong.

[173] Ms. Hawara testified to her decision-making process and consideration of mitigating and aggravating factors. She considered the grievor's failure to report his time as the most serious misconduct, and she considered his other misconduct as aggravating factors.

[174] The evidence showed that even when the grievor was on good terms with his supervisors in April and May 2010, he failed to report some absences, including leave for union business. He was offered several opportunities to explain his time use but refused to. He declined Mr. Adams' offer of assistance to reconstruct data in an email of February 9, 2011. Only at the disciplinary hearings did he provide some explanation, but he relied on the passage of time to say that he did not recall the reasons for his unexplained absences.

[175] The discipline was imposed on the grievor for the dates on which the employer had no indication that he was in the office and for the dates on which it had evidence that he was not in the office. The hours that he failed to report do not include hours for which the employer had evidence that he was in his office but carrying out union work.

[176] The employer referred to several decisions that it submitted were based on similar if not the same circumstances as the present matter. They are *Murdoch v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 21 at para. 112 (absences on 5 separate occasions; termination upheld); *Phillips* (5 failures to report absences; previous discipline of written reprimand, 2, 3, 10 and 20 day suspensions; termination upheld); *Grand and Toy Ltd. v. United Steelworkers of America, Local 9197*, [2000] O.L.A.A. No. 606 (QL) at paras. 86 and 89 (a 9-month suspension); and *Andrews v.*

Deputy Head (Department of Citizenship and Immigration), 2011 PSLRB 100 at para. 98 (a suspension of 1 year and 8 months).

[177] Ms. Hawara testified that based on her consideration of all the factors, a 30-day suspension was sufficient. The grievor acknowledged that in retrospect, he could have acted differently. The employer submitted that his acknowledgement demonstrates that as he had corrected his behaviour; the purpose of the discipline was achieved.

B. For the grievor

[178] The grievor's counsel began her submissions with a detailed review of the facts. I will not set out those facts that are uncontroversial, related to the conceded grievance, or otherwise unnecessary and will reference only those that are in dispute or otherwise necessary to summarize.

[179] The early days of the grievor's term appointment were outlined. He asserted Mr. Adams' awareness of his heavy involvement in union work, despite his statement to Mr. Adams shortly after he accepted the appointment that he intended to withdraw from it.

[180] The grievor outlined the files assigned to him by Mr. Adams and Mr. Hewlett and maintained that those assigned by the former were practice files merely meant to give him a flavour of the work performed in the section. He also asserted that he performed work on the assigned files over the next few weeks after receiving them and that he had discussions with both Mr. Hewlett and Mr. Adams about them. Although for the first two months of his term appointment, he could not record his time allocation in WebCIMS as he had not yet received training on it, and because the files he was assigned were not on that system, the grievor argued that he had discussed his time allocation with Mr. Hewlett before he went to Ottawa for training at the end of June 2010.

[181] The grievor alleged that he continued to work on the assigned files after his training and that he kept notes of his time use. He argued that until June 16, 2010, he worked on the assigned files and maintained regular contact with both Mr. Adams and Mr. Hewlett. His receipt in June of the email referenced earlier, advising him that his term appointment would be terminated early, came as a shock to him. At this point, his relationship with the employer soured. The June 16, 2010, email was his last

communication with Mr. Adams for several months. As for Mr. Hewlett, the grievor spoke with him about his time use and submitted the two files that Mr. Hewlett had assigned. When no further work arrived, he immersed himself in his union work and spent all working hours on it at the Montreal TSO. He alleged that management was aware of this and condoned it and that his understanding was that AFS members were liberated for union business.

[182] The grievor then reviewed the investigation process. He began with the fact that the investigation was launched without his knowledge. He also referred to Mr. Adams' statement to the investigator that the three files Mr. Adams had assigned were "hypothetical (international) real questions", that Mr. Adams had spoken often with him, that Mr. Adams had approved his submitted time sheets that indicated union activity, and that Mr. Adams was aware that he was part of the union. Finally, he pointed out that Mr. Adams had told the investigator that he had had difficulty communicating with the grievor only twice.

[183] The grievor then raised the issue of having been made aware of the investigation only on March 7, 2013, two years after its inception. He also reiterated the allegation he had made since he was advised of the investigation and stated that he did not need to answer any questions, given its disciplinary nature. He also pointed out that Ms. Leduc failed to interview anyone at the Montreal TSO.

[184] With respect to the investigation report, the grievor pointed out that it was not issued until three years after the investigation had been launched and that he disagreed with all its conclusions, with the exception of his use of the CRA's cell phone.

[185] Referring to the evidence, the grievor argued that an absence of electronic activity was not proof that he was not in the office; he could possibly have been working outside it, perhaps in the library, and did not necessarily need to connect to the Internet. He also referred to the testimonies of his witnesses who had testified to seeing him in the office regularly. Finally, on this issue, he pointed to his testimony concerning errors with respect to several dates on which the employer claimed he had been absent.

[186] The grievor then turned his attention to Ms. Hawara's disciplinary meetings. He pointed out that he had apologized for using his CRA cell phone number for personal

use but that it had not cost the employer anything. He also admitted to using the CRA's electronic networks and, similarly to his use of the cell phone, argued that he had not sent any controversial emails. He apologized to the employer, denied that he had any intention to steal from it or give it a bad name, and admitted that he had been headstrong and that he should have been more conciliatory.

[187] With respect to Ms. Hawara's decision on the disciplinary penalty, the grievor pointed out that she had not interviewed anyone at the Montreal TSO and that he had been treated much differently than Mr. Monti had been; he had not been disciplined. Also, he reproached the fact that she had not considered the timeliness issue and the prejudice to him that resulted from it. He also alleged that she had believed him when he said that he understood that he was liberated to do union work but that she had found that belief irresponsible.

[188] Lastly, on the facts, the grievor pointed out that since the events in question, he has been a good employee, without any issues.

[189] The grievor next turned his attention to the legal issues. First, he acknowledged that there had been mild misconduct in that he could have responded to the request for time sheets but that practically speaking, nothing would have changed, as he would have been entitled to leave for union business and had no assigned work. He argued that just as in *Pronovost v. Canada Revenue Agency*, 2017 PSLREB 43, it was impossible to quantify the number of absences, and he argued that the number of them had been grossly exaggerated. He repeated the fact that while he had stored union documents on the CRA's electronic networks, no harm had been caused, and that he had been forthcoming about his use of the cell phone, which had cost the CRA nothing.

[190] The issue of delay was then addressed, along with the resulting prejudice to the grievor. He argued that he had no inkling that time reporting was an issue until February of 2011, once he had been placed on leave without pay. He also raised the issue of having been made aware of the investigation only in March 2013 and the fact that the report was not issued until nearly a year later. Thus, he had been deprived of making a fair comment, and therefore, the discipline should have been void from the outset. He also argued that the discipline was disproportionate to the misconduct.

[191] The grievor also submitted that the employer had condoned his behaviour, citing both Brown and Beatty, *Canadian Labour Arbitration*, at 7:4410 (*Brown and*

Beatty), and *Chopra v. Deputy Head (Department of Health)*, 2016 PSLREB 89, to argue that he had been lulled into a false sense of security. He argued that before July 2010, the employer had approved his time sheets, which indicated that he had been performing union work, that the employer had not communicated with him at all between July 2010 and February 2011, and that it had been abundantly clear that he was working full-time on union business. He pointed out the discrepancy with how other stewards were treated and noted that in accordance with *Pronovost*, he should have been warned, had the employer truly been concerned.

[192] As a result, the grievor was severely prejudiced by the delay. He argued that this condonation was also related to the employer's failure to apply progressive discipline and that it had relied implicitly on previous discipline that was subject to a clause in the collective agreement that provides for removal of discipline from an employee's record after a specified period of time ("sunset clause").

[193] The grievor argued that he had great rehabilitative potential, pointing out that no further issues had occurred and that the risk of recidivism was low. He also submitted that he was a long-service employee with a clean disciplinary record and that his actions had not endangered the employer. He regretted his actions, and the penalty was so disproportionate that the no-discrimination provision of the collective agreement was engaged, as the disproportionality could be explained only by anti-union animus.

[194] Finally, on the issue of the penalty, the grievor submitted that the discipline should be voided or that a written reprimand should be substituted for it.

C. Employer's rebuttal

[195] Referring to decisions that the grievor relied on, the employer submitted that *Babineau v. Treasury Board (Correctional Service of Canada)*, 2004 PSSRB 145, was issued before the Federal Court's judgment in *Canada (Attorney General) v. Frazee*, 2007 FC 1176, which established the test to determine whether an employer's decision was disciplinary in nature. In *Babineau*, there was no analysis of the employer's intention.

[196] In *Pronovost*, the evidence and misconduct differed from that in the present matter. In that case, there was negligence in time reporting, not a failure to report

time. The employee in that case provided a detailed explanation, and the evidence could not lead the adjudicator to conclude that the hours that the employee had been paid had not been worked. In this case, the grievor worked on union business full-time and did not report his time. As there was no indication that he was in the workplace, the employer concluded on a balance of probabilities that he was absent.

[197] With respect to the delay in the investigative process, the employer submitted that it was attributable to the grievor's absence on sick leave for an extended period, during which he could not be interviewed. Furthermore, the investigator decided to hold the investigation in abeyance pending the outcome of the mediation process. The remainder of the delays were considered a mitigating factor by Ms. Hawara. The employer added that an investigation delay was also considered a mitigating factor in *Pronovost*.

[198] Concerning the grievor's argument that the delay in the investigative process was prejudicial to his ability to recollect events, the employer submitted that as early as February 9, 2011, Mr. Adams offered him assistance to reconstruct the events. The grievor did not accept this, and only during the disciplinary hearings did he provide some explanation. He could have immediately told the employer that he had been working only on union business and had no work assigned to him. While he did tell Mr. Adams that he would withdraw from his union activities, instead, he increased his union involvement.

[199] The nature of the grievor's misconduct was serious, and the principles of progressive discipline do not apply to such misconduct.

IV. Analysis

[200] The grievor has been disciplined for fraudulent time reporting, conflict of interest, repeated misuse of CRA networks, and failing to cooperate in the investigation process. I will deal with each of these grounds.

[201] In assessing this matter, according to the appropriate test for adjudicating issues of discipline, I must answer the following questions: Was there reasonable cause for discipline? If so, was the penalty imposed excessive? If so, what disciplinary measure should be substituted as just and equitable? (See *Wm. Scott & Co. v. Canadian*

Food and Allied Workers, Local P-162, [1977] 1 Can. L.R.B.R. 1.; *Basra v. Canada (Attorney General)*, 2010 FCA 24, at para. 24).

A. Fraudulent time reporting

[202] The allegation of fraudulent time reporting has several elements. Firstly, the employer accuses the grievor of not submitting time sheets as required. It also accuses him that he was not in the Montreal TSO every day, as required, and alleges that he absented himself on numerous occasions without first seeking the proper leave. Finally, and given these factors, it accuses him of intentionally receiving pay for time not worked.

1. Time sheets

[203] On the issue of the submission of time sheets, the evidence disclosed that all employees were required to regularly account for their use of time through submitting time sheets.

[204] The evidence reveals that on May 19, 2010, three weeks after the grievor had begun his term appointment, Mr. Adams emailed him and asked him to advise Mr. Hewlett as to how he was spending his time. The following day, Mr. Hewlett twice emailed him, asking him to send him a note about his time use and advising him that a daily log, as opposed to formal time sheets, would suffice, given that he had not yet received training on the formal timekeeping system. No response from the grievor was tendered; nor did he testify to one.

[205] The next piece of documentation on this issue is dated July 7, 2010, and is an email from Mr. Hewlett to the grievor asking him to call to discuss his use of time. Apparently, the grievor returned the call, as on July 8, 2010, Mr. Hewlett emailed him and advised that he had received the grievor's voicemail but that he had been unable to return the call. He asked the grievor to contact him with respect to his request for leave to conduct union activities on June 22, 2010. The evidence indicates that the grievor did not respond. It seems that until December 2010, the employer made no further requests, and the grievor admitted that he submitted no time sheets after June 30, 2010.

[206] The investigation report indicates that Mr. Adams told the investigator that he "did not hear from" the grievor during the summer of 2010. However, I note that

neither did he tell the investigator that he had tried to contact the grievor during that summer. He did tell the investigator that he had called the grievor and had asked him to account for his time, but no details as to the dates of such calls were offered either in the investigation report or at the hearing. The investigation report states that the grievor's email account revealed "several emails" from Mr. Adams requesting an accounting of his time, which went unanswered. But again, the emails in question were not detailed or included in the report. The documentary evidence indicates that the issue of time sheet submission was raised anew by the employer with the grievor only when he was placed on leave without pay in December 2010 and again several times in February 2011. Between February 4 and 21, 2011, the grievor exchanged several emails with the employer in which clear requests for an accounting of his time were made.

[207] I find that the evidence reveals that management was less than diligent in its follow-up on the issue of time sheet submission. The employer was seemingly more concerned about the grievor's failure to submit work on his files, and when the working relationship soured in late June of 2010, it appears that he simply fell off management's radar. He was only too happy to take advantage of that turn of events, given his feelings on how he had been treated and on how his term appointment had ended.

[208] The grievor defended his failure to submit the requested documentation by arguing that while he began to report to Mr. Hewlett in late April 2010, only two months later did he receive WebCIMS orientation. While this might explain his failure to submit formal time sheets in WebCIMS before his training, it does not explain why he failed to submit them after June 30, 2010, even after he was placed on leave without pay in December of that year. He did not argue that he was somehow unable to; even had he argued as much, if he was at a loss as to how to report his time use in response to the employer's repeated requests that he comply, the proper response was to raise the issue of his inability to report it.

[209] The grievor also sought to defend his failure to submit time sheets by testifying that his failure was an oversight, a mistake, and the result of him being hard-headed. None of these excuses provides a valid reason for failing to do as requested and required. He also testified that acceding to the request would have caused him to be "entrapped", which excuse I also reject, as he did not explain how this would have prevented him filing time sheets.

[210] The picture of the circumstances at issue painted by the grievor is set against the backdrop of a serious and stressful time for him in the Montreal TSO as a result of the RCMP and internal investigations of several of his union members. This situation was only compounded by his responsibilities of caring for a sick parent. He further described feeling like a fish out of water and his disappointment with his new position as a rulings officer, as he did not receive training or research tools until two months into it.

[211] This disappointment then turned to self-described hard-headedness when, on June 16, 2010, and out of the blue, he received what he viewed as a harshly worded email from Mr. Adams, unfairly terminating his term appointment. Just two weeks later, he essentially ceased communicating with the employer on the issue of his time allocation. As of June 30, 2010, and by his own admission, he ceased submitting time sheets. He had submitted his work on one file to Mr. Hewlett, and the other had been reassigned. As for the three files assigned by Mr. Adams, he explained that he deemed them hypothetical and not requiring any response, despite being requested to submit answers to them. Given this and the fact that the employer assigned him no new work and did not contact him for some time, he felt that he was free to use his time on union work.

[212] I conclude that the grievor's failure to submit time sheets was not an oversight but a deliberate act of hard-headedness and, as he admits, a mistake. It also constitutes misconduct deserving of discipline.

[213] The evidence also disclosed that while, as conceded by the grievor, his relationship with the employer turned sour following his receipt of the June 16, 2010, email, his resistance to accounting for his time began shortly after the start of his term appointment. The evidence contains his email exchange with Mr. Hewlett on May 20, 2010, in which the latter requested that the grievor send him an accounting of his time in an informal manner, pending his receipt of training. He replied that he would maintain a log of his time and that he would enter the data once he received the training. Mr. Hewlett then responded by advising him that nonetheless, management wished to receive a simple note detailing his time spent working on files. The grievor did not respond in the appropriate manner by submitting the requested documentation.

[214] Despite the grievor testifying to having kept a log of his time, he never submitted one or referred to one during the investigation, and no explanation for what became of it was proffered. He maintained that the delay in the investigation made it impossible for him to reconstruct past events, yet when the employer offered its resources in this respect to assist him, he refused. I find that the employer has proven this act of misconduct on the grievor's part. He ignored several legitimate employer requests without offering a valid reason, which constitutes misconduct.

[215] In argument, the grievor addressed the issue of his failure to account for his time, together with his explanation for not having remitted work and the poor quality of what he did remit. He blamed his performance issues on the employer for not providing him with formal training and instead providing him with the needed research tools only two months into his term appointment. Such an omission on the employer's part does nothing to excuse his failure to report his absences and to account for his time. This case does not involve the grievor's performance, and the employer's failure to provide him with technical training on the ITRD's work does not excuse his failure to respond to legitimate requests that he account for his time.

[216] The grievor also sought to excuse his failure to remit time sheets by arguing that management was aware that he was busy with his union obligations. However, at the hearing, he also acknowledged that he had been obliged to submit such documentation even if his time was occupied with union activity. He was not disciplined for conducting union business on employer time. Indeed, the employer's evidence disclosed that it would have been disposed to grant him any such leave that he required but that he never requested it. Instead, he was disciplined for his failure to account for his time. The evidence disclosed that he indeed failed to both before and after June 30, 2010.

[217] Given the evidence and the grievor's admission, I conclude that the employer has proven that he ignored his obligation to file time sheets to account for his time and that he ignored several requests from the employer over a lengthy span to provide them.

[218] The grievor submitted that his misconduct was tempered by the employer's failure to follow up on its requests, which he argued amounts to condonation. He also argued that the delay raising this issue made it impossible for him to defend himself. I

will address these arguments later in this decision, in determining the penalty that is warranted as a result of his misconduct.

2. Attendance at the Montreal TSO and receiving pay without performing work

[219] The *Code* requires that employees adhere to their hours of work and to leave processes, and it states that receiving remuneration for time not worked violates it. The employer alleges that the grievor did not respect his obligation to attend work daily at its Montreal office. It tendered evidence that specifically called into question 72 days during the period in question in which it alleges that he was not at work. In support of its allegation, it submitted detailed documentation on his use of leave, his access card, the Internet, and his Outlook calendar and email account, all of which leads to the reasonable conclusion that on a balance of probabilities, he did not attend the Montreal TSO on a daily basis.

[220] The grievor testified that in spite of the evidence gathered by the employer, he did in fact attend work as required every day, and he tried to discredit the employer's submitted evidence in several ways.

[221] During the investigation and the disciplinary process, the grievor stated that he did not always need to use his access card to enter the office and that his email and Internet usage were not necessarily conclusive. At the hearing, he reiterated this explanation and provided reasons that the data did not show his use of his access card. While I accept that it may explain why not each day disclosed swipe card or Internet access or email activity, such an explanation may apply to short spans of time but would not account for the totality of the incidents that were revealed in the investigation. It stretches the imagination to believe that on so many of the days at issue, the grievor was at the office despite a complete lack of electronic evidence of his presence. At a minimum, the employer raised sufficient evidence to meet its burden of proof on the issue of the grievor's lack of attendance at work to shift the onus of explaining to him.

[222] While the grievor tried to cast doubt on the conclusions to be drawn from the employer's evidence and testified that he was at the office every day, on a balance of probabilities, I conclude that this was not the case. The evidence gathered over a lengthy span, covering multiple days and using four indicators, strongly indicates that he was not at work every day as required, and his evidence has not convinced me that

this conclusion should be placed in doubt. In his submissions, he did not address the issue of why the documentation on his use of his access card, email, the Internet, and his Outlook calendar all indicated that he was not in the office on so many days in question.

[223] During the investigation process, the grievor also attempted to cast doubt on the employer's allegation by saying that he often worked from home. The evidence disclosed that no permission to work from home had been sought by or granted to him and that no remote access had been set up for him. In fact, the evidence contains his email to Mr. Hewlett asking that remote access be set up for him and the latter's response that he would look into it. However, during the hearing, the grievor did not testify to having worked from home and instead maintained that he had always worked from the office.

[224] The most serious time reporting allegation levelled against the grievor is that he intentionally received pay despite not performing work. It is trite to state that employees are required to either perform work during working hours or receive leave that allows them to be absent. The *Code* clearly enshrines this basic obligation.

[225] The grievor admits that he performed no work after June 30, 2010, but defends himself by pointing out that no work was assigned except for the initial three files from Mr. Adams in early February and the two files from Mr. Hewlett. This evidence is uncontradicted.

[226] With respect to the latter two files, which were assigned between April 26 and May 7, 2010, the grievor points out that he did perform work on one file (before Mr. Hewlett decided to complete it himself) and that the second was reassigned to another employee before he began to work on it. While this is true, it is also true that the files were completed by Mr. Hewlett or reassigned as a result of the employer's frustration with the grievor's lack of progress and the difficulties it experienced communicating with him about these issues. Mr. Hewlett testified that a new employee would on average take between 15 and 20 hours to complete each file. He stated that he decided to complete one file himself, given the number of required rewrites, that he never received any work on the second, and that he was compelled to reassign it. The evidence shows that he followed up on the two files via email on May 3 and then again on May 5, 2010. His May 5 email refers to a voicemail he had left with the grievor,

which had not been returned. The grievor responded on May 7, 11, and 12, 2010, about the first file. Mr. Hewlett then requested a rewrite of it on May 21, advising the grievor that he had processed the first file, and he requested an update on the second. The evidence disclosed that the grievor never responded to this request.

[227] As for the three files initially assigned to him by Mr. Adams, the grievor alleged that he thought that they were merely hypothetical files and that he was not aware that he was to complete them. However, the investigation report stated that he had said to Mr. Adams that he knew what to do on the files when they were assigned to him. Even more telling, the employer's evidence refutes the grievor's claim, as it submitted several emails in which both Mr. Adams and Mr. Hewlett made it clear that he was expected to submit his work on them.

[228] The evidence also reveals that the employer was not disposed to assigning more work to the grievor while he had yet to remit work that was long outstanding or of poor quality, given the difficulty it had communicating with him. On May 12, 2010, Mr. Hewlett emailed the grievor, stating that he wanted to receive responses on the three assigned files before he would assign the grievor more. He repeated this sentiment in an email dated February 21, 2011. I accept the employer's explanation for its reluctance to assign new files to the grievor.

[229] While employees cannot be faulted for not working when no work has been assigned to them, this is not so in this case, in which the grievor simply ceased to perform work and stymied the employer's repeated attempts at communication in which it inquired about his lack of progress and his time allocation. While to say the least, the employer was not diligent and timely in its attempts to reach the grievor and insist that he account for his time and remit the work assigned to him, this issue will be addressed later in this decision. Suffice to say that the employer has proven on a balance of probabilities that the grievor could not have been under any misapprehension about his obligation to attend work, perform the work assigned to him, or obtain the appropriate leave if he was unable to.

[230] In his defence, the grievor alleged that he was working on union business during the period in question, with the employer's knowledge. He defended his failure to submit leave forms (excluding for June 22, 2010) by submitting that doing so was common practice in the Montreal TSO and that the employer's related allegations are

tinged with anti-union animus, as other union representatives were not treated in the same manner.

[231] The jurisprudence has established that good faith must be presumed, and I find that the grievor entered no evidence of such anti-union animus that would rebut this presumption. Mr. Hewlett testified to his own involvement in union affairs in the past and his support of the union's rights, as he had several employees under his supervision with union duties. He testified that had a request for union leave been made, he would have approved it. Furthermore, the fact that Mr. Monti was not treated the same does not indicate a violation of the clause in the collective agreement forbidding discrimination on the basis of union activity and instead goes to the issue of a possibly uneven application of the disciplinary policy.

[232] I also find that while Mr. Hewlett and Mr. Adams might have been aware of the grievor's union involvement, this alone did not absolve him of his obligation to seek the appropriate leave for such work. He argued that while he could have sought leave, nothing would have changed, but such a conclusion is not for an employee to make. While the Montreal TSO might or might not have had a practice of liberating members of the AFS executive, the grievor no longer reported there and was required to deal with his new supervisors on such matters, which he failed to do. The investigation report states that on starting his term appointment, he submitted a few time sheets for union leave he had already taken, which indicated that he was aware that Ottawa and not Montreal was responsible for leave approval.

[233] Furthermore, management inquired into the grievor's allegations with respect to the practice in the Montreal TSO for such matters and was advised that that TSO's management applied the collective agreement provisions. The onus then shifted to him to rebut this evidence, which I find he did not do. In addition, his email history indicates regular use of the union leave provisions, demonstrating that he was aware of his obligation to seek leave for such business. While the evidence shows that Mr. Adams was aware of the grievor's union involvement, it does not confirm management's agreement that he spend 100% of his time on union business. Mr. Adams' email to the grievor on April 8, 2010 indicates that management expected him to work on files and that it was planning to provide him with training in and exposure to a variety of different files.

[234] In sum, I conclude on the balance of probabilities that the grievor was not in the office every day and that he received pay despite not performing work.

B. Conflict of interest

[235] The employer alleges that the grievor is guilty of conflict of interest from using his CRA cell phone number as the contact for his personal business in real estate advertisements and in an advertisement for the sale of a snowblower and that he used the CRA's electronic networks for union business.

1. Use of the CRA's cell phone

[236] Faced with the advertisements in question, the grievor admitted that it was the case. He sought to deflect this allegation by saying that he forwarded the calls from his CRA cell phone number displayed in the advertisement to his personal cell phone, that he used that number because his CRA number was easier to recall than his personal number, that his use of his CRA number was inadvertent, that how he had used the phone had saved the CRA money, and that he did not see anything wrong with what he had done. Irrespective of his opinion on the matter and whether his actions actually saved the employer money, he admitted that he used his CRA cell phone for personal business and that such actions were in clear violation of employer policy.

2. Misuse of the CRA's electronic networks

[237] The allegation about the grievor's misuse of the employer's networks has been proven on a balance of probabilities. The evidence disclosed that in 2009, he was investigated for using the employer's networks for union business. Following the first investigation, the employer sent a memorandum to union representatives on July 9, 2009, about this matter, in which it clearly outlined that it required observance of the *Code*, its network usage policy, and the provisions in the collective agreement. The investigation disclosed that despite the memorandum, he continued to use the CRA's network for union business. He did not deny that he had done so but sought to defend himself by saying that he had interpreted the July email as specifying that while he could not email union members on the networks, he could use it for union business.

[238] The employer's policy on networks usage for personal purposes is clear. Despite being an experienced union representative, the grievor violated it repeatedly. The evidence shows that he continued to use the employer's email system for union affairs

regularly and that he had many union finance documents stored on his computer. The fact that this usage did not create problems for or embarrass the employer does not excuse the fact that he was in clear violation of his obligations and only goes to the mitigation of the penalty, which I will canvass later in this decision.

[239] The grievor also alleged that seeking the employer's permission for union use of the CRA's network would have violated member confidentiality. Given that the employer has the right to monitor employee usage of the networks and therefore had access to the emails and documents on its system, I find this explanation illogical and unacceptable. The employer did not seek to violate member confidentiality as it made it clear that without prior approval, the networks were not to be used for union business. I find that the employer has proven the grievor's continuing breach of its clear policies on such matters.

3. Failure to cooperate in investigation

[240] The evidence clearly substantiates the employer's allegation that the grievor refused to cooperate with the investigation, particularly with respect to the allegations concerning his time allocation. He met with the investigator twice. The first time, he outright refused to answer questions. The second time, he was more forthcoming. Following the first meeting, the union wrote to the employer and alleged that the grievor was not required to cooperate as the meetings were disciplinary in nature and because he had filed a grievance challenging the employer's decision to impose leave without pay until he had accounted for his time. I find that the grievor did not substantiate his position in any fashion by either citing jurisprudence or by referring to any employer policies that would support such a stance.

[241] The grievor's submissions make no reference to the allegation of his failure to cooperate in the investigation. While undoubtedly, he was able to grieve the issue of being placed on leave without pay, this did not absolve him of his obligation to cooperate with an investigation. As well, in response to the union's objection to the disciplinary nature of the investigation and the grievor's grievance, in an email to Ms. Tougas of May 15, 2013, Josée Labelle, Director of Internal Affairs and Fraud Control Division, pointed out that the dates for which he was being investigated preceded the dates involved in the grievance about being placed on leave without pay. This Board and its predecessors have on many occasions confirmed that an employee has an obligation to cooperate during an investigation; see *Rose v. Treasury Board*

(Correctional Service of Canada), 2006 PSLRB 17; *Way v. Canada Revenue Agency*, 2008 PSLRB 39; *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43; *Hughes v. Parks Canada Agency*, 2015 PSLREB 75; and *Puccini v. Deputy Head (Parole Board of Canada)*, 2018 FPSLREB 88.

[242] When the union objected to the investigation process and alleged that it was disciplinary rather than administrative, Ms. Labelle's May 15, 2013, letter outlined that the obligation to cooperate was set out in the *Code* as well as in the employer's disciplinary and investigations policies. The letter also reminded the grievor that he could be subject to discipline if he failed to cooperate.

[243] I further note that Ms. Hawara testified to the fact that she considered the grievor's even partial cooperation in the disciplinary hearing process a mitigating factor in deciding a penalty, despite her testimony that she was aware that he had refused to participate in the first interview with the investigator and that he had continued to refuse to cooperate on the time sheets issue during the second interview.

[244] I find that the employer has proven that the grievor failed to cooperate with the investigation, in violation of his obligations as an employee, and further find nothing improper in the employer's including it as a factor in deciding a disciplinary penalty.

4. The delay

[245] The grievor argued that the employer's disciplinary action is vitiated by the delay incurred in imposing a penalty. While the investigation covered several issues that allegedly occurred over a span of several months, it took the employer nearly three years to complete the process and to issue its investigation report.

[246] Based on the evidence, the chronology of the investigative process may be summarized as follows. Mr. Adams first contacted the IAFPD on March 14, 2011; the grievor was on sick leave from May 12, 2011, until his return to work on May 11, 2012; Ms. Leduc began working on the investigation in June 2011, and Mr. Adams and Mr. Hewlett were interviewed on June 7, 2011; she did not recall when she was informed of the grievor's return to work following his sick leave, which ended on May 11, 2012; he was not contacted in June or July 2012; sometime in August 2012, Labour Relations informed Ms. Leduc that the grievor was engaged in a mediation process, and she held the investigation in abeyance until that process concluded on

August 28, 2012; she did not contact the grievor in September or October 2012; and he was on sick leave in November and December 2012 and returned to work sometime in January 2013, of which Ms. Leduc was aware. However, due to her vacation and an all-staff meeting, only on March 7, 2013, did she email the grievor about an interview.

[247] A delay can indeed vitiate the employer's right to discipline an employee; the jurisprudence indicates that the factors to consider are the length of the delay, the reasons for it, and whether it caused any prejudice to the grievor (see, for example, *Chopra*). In some cases, a delay makes mounting a defence difficult or impossible, while in others, a grievor can view the delay as condonation of the employee's actions, making subsequent disciplinary actions unfair. Sometimes, the sheer length of the delay alone will void any discipline.

[248] As the grievor submitted, one reason for the rule on delays is that the passage of time can make it difficult or even impossible for grievors to defend themselves against accusations concerning events of the distant past. In this case, he initially pointed this out, but during the investigation, and again at the hearing, he admitted that with respect to the time reporting allegations, he had ceased to perform any work for the employer. I find that in this matter and given this admission, the employer's delay proceeding with the investigation had no negative impact on the grievor's ability to defend himself with respect to the time reporting allegations after June 2010.

[249] The same can be said for the allegations concerning the grievor's misuse of the employer's electronic networks. He was twice investigated and in July 2009 was reminded of the employer's policy on the use of the networks for union business. He recalled the personal use he had made of the networks when confronted with the evidence and did not claim that the delay had made it impossible for him to defend himself. He did not claim that he had received permission for such use. Instead, he sought to minimize his actions and cast his use of the employer's cell phone as a memory issue. The delay issuing the investigation report had no negative impact on his ability to defend himself on this issue.

[250] Although the grievor maintained the ability to defend himself on those issues, nevertheless, I am troubled by the overall length of the investigative process in this matter. Although Ms. Hawara testified that she considered timeliness as a mitigating

factor, she also stated that the delays were due to circumstances beyond the investigator's responsibility, without specifying the nature of those circumstances.

[251] While understandably, the employer did not seek to interview the grievor during his absence on sick leave, there were other opportunities. He returned from sick leave on May 11, 2012, and was not contacted by the investigator during that month or in June or July 2012. The employer provided no explanation for that lack of contact.

[252] While Ms. Leduc held the investigation in abeyance in August 2012 because of the grievor's mediation process, he was not contacted in September or October 2012. While she stated that during that period, she was on vacation and attended an all-staff meeting, she did not specify the duration of either of those events. If she was not available, nothing indicates that the employer was prevented from having another investigator interview the grievor. Indeed, the notes of the interviews of Mr. Hewlett and Mr. Adams confirm that an investigator other than Ms. Leduc conducted them.

[253] I find that the delay in the investigative process is in part imputable to the employer's unexplained failure to follow up with the grievor in a timely manner during the periods he was at work. These unexplained and unwarranted delays will be considered later in this decision.

[254] Ms. Hawara set out in detail her thought process when she considered all the factual findings as well as the employer's disciplinary policy and the aggravating and mitigating circumstances.

[255] In his submissions, the grievor alleged that the employer did not apply the principle of progressive discipline. In his argument on this issue, he simply quoted a passage from *Brown and Beatty*, at 7:4422, outlining the reasons for the theory, and he raised the issue of the sunset clause in the collective agreement for disciplinary measures.

[256] Ms. Hawara testified as to how the employer treated several acts of misconduct at once, supporting her decision to impose major discipline in this case.

[257] With respect to the sunset clause and the grievor's allegation that the employer had improperly considered prior discipline with respect to his use of its network, I find that the reminder note of July 9, 2009, is not evidence that he was disciplined. No written disciplinary note or letter was entered into evidence to prove that he was ever

disciplined for his prior conduct, even if Ms. Hawara referred to him having been "warned and reprimanded" in the past. However, the evidence does disclose that he had been reminded of the employer's policy yet then breached it many times over a lengthy period. That behaviour is an aggravating factor. While Ms. Hawara seems to have been under the impression that the grievor had a prior (minor) disciplinary history on this issue and no such history has been proven, I find that this discrepancy alone does not render unreasonable her assessment of the overall situation.

[258] The grievor also argued that the employer did not give sufficient weight to his proven rehabilitative potential but did not elaborate any further. Ms. Hawara testified that in fact she considered this issue but that the grievor never asked her to quantify the weight she had given it.

[259] While the grievor also submitted that the discipline imposed was so disproportionate as to have engaged the no-discrimination clause of the collective agreement, he went no further in his submissions. As stated earlier in this decision, I find no support for the allegation that the disciplinary process or penalty was tinged by anti-union animus.

[260] With respect to his failure to submit time sheets to account for his time and to him ignoring several requests from the employer over a lengthy period that he submit them, the grievor argued that his misconduct is tempered by the employer's failure to follow up on its requests. I find that there is some merit to this argument.

[261] I have already determined that management was less than diligent in following up on the issue of the time sheet submission and that it was untimely in its attempts to reach the grievor and insist that he account for his time.

[262] Ms. Hawara testified that she considered as the grievor's most serious misconduct his failure to report his time use, with his other misconduct being aggravating factors. His failure to submit time sheets was alleged to be fraudulent, as he intentionally received pay for time not worked.

[263] However, the employer's actions did not convey to the grievor the seriousness of his failure to submit time sheets to the level of gravity that Ms. Hawara later considered when imposing discipline.

[264] The grievor stopped accounting for his time on June 30, 2010. Between July 8 and December 2010, the employer made no further requests to him about the use of his time. How then was he to be aware of the employer's view of the seriousness of this misconduct? It would appear that the employer's lack of urgency in failing to follow up with him during this period of several months led to his complacency in this respect. In my view, this constitutes a mitigating factor that the employer should have considered.

[265] As I have indicated, the grievor's conduct gave reasonable cause for discipline. However, in my view, the unexplained delay in the investigative process and the employer's failure to contact the grievor concerning the submission of time sheets between July and December 2010 are factors that the employer should have taken into account in its determination of a disciplinary measure, which rendered it unreasonable and excessive in the circumstances.

[266] The Board's jurisprudence has consistently stated that determining an appropriate disciplinary measure is an art, not a science (see, for example, *Noel v. Treasury Board (Human Resources Development Canada)*, 2002 PSSRB 26; *Cooper*; and *Charinos v. Deputy Head (Statistics Canada)*, 2016 PSLREB 74).

[267] In determining an appropriate disciplinary measure, I consider that despite certain failures by the employer, the grievor's several acts of misconduct were of a nature to attract sufficiently severe discipline to impress upon him the seriousness of his actions. I conclude that in the circumstances of this case taken as a whole, a 20-day suspension is a just and equitable disciplinary measure.

V. Sealing order

[268] As I mentioned earlier in this decision, the employer assigned several technical interpretation files to the grievor in April and May 2010. Copies of these files were entered into evidence. They contain the names of the taxpayers involved as well as some details of their financial situations. During the hearing, the parties jointly asked that I not disclose any personal information about those taxpayers and their files, and that the exhibits be sealed.

[269] As noted in *Iammarrone v. Canada Revenue Agency*, 2016 PSLREB 20 at paras. 12-14, hearings of quasi-judicial tribunals like this Board are usually public, and so are

the documents on file, including exhibits that the parties adduce. However, under certain circumstances, the tribunal may impose access restrictions on exhibits adduced as evidence if it is determined that the need to protect another important right must take precedence over the open court principle. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53, the Supreme Court of Canada reformulated the *Dagenais/Mentuck* test (in reference to *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 and *R. v. Mentuck*, 2001 SCC 76), stating that such restrictions may be put in place where:

> *(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
>
> *(b) the salutary effects of the … order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*

[270] Thus, as was pointed out in *Fong v. Canada Revenue Agency*, 2017 PSLREB 45 at paras. 243-244, the test requires that I consider carefully whether the interest of the public in the transparency of the proceedings conducted by a body whose authority derives from a public statute is outweighed by a competing interest – in this case the confidentiality of taxpayer information. As in *Fong*, I find that the taxpayers' interest outweighs the value the exposure of this information would contribute to the open court principle. The exhibits that would be covered by the sealing order contain their tax information. They were produced to show the type of assignments given to the grievor. I was not called upon to assess the substance and contents of the documents themselves, and removing the tax information from public scrutiny does not affect the comprehensibility or effect of my decision.

[271] Protecting information that could identify taxpayers is an important interest for Canadian society: maintaining the public trust in the integrity of Canada's tax system and ensuring tax compliance on behalf of governments across Canada, to contribute to Canadians' economic and social well-being (*Iammarone*, at para. 15). The salutary effects of an order to seal that information outweigh the deleterious effects to open and accessible quasi-judicial proceedings. Accordingly, the following evidence containing personal and confidential information about Canadian taxpayers who are

not parties to this dispute and that identifies them is sealed: Exhibit E-1, tab 2; Exhibit U-1, tabs 7, 8, 9, 10, 12, 14, 16 and 17.

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

(The Order appears on the next page)

VI. Order

[273] The grievance is allowed in part.

[274] The 30-day suspension is set aside and is replaced by a 20-day suspension without pay.

[275] The employer shall pay the grievor 10 days' pay and any related benefits, subject to the usual deductions.

[276] Exhibits E-1, tab 2 and U-1, tabs 7, 8, 9, 10, 12, 14, 16 and 17 shall be sealed.

June 12, 2020.

Steven B. Katkin,
a panel of the Federal Public Sector
Labour Relations and Employment Board