Date: 20200804

Files: 566-34-5049 to 5052

Citation: 2020 FPSLREB 79

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

DRAGANA RISTIVOJEVIC

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Ristivojevic v. Canada Revenue Agency

In the matter of individual grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Pamela Sihota, Public Service Alliance of Canada

For the Employer: Katia Calix, counsel

Heard at Edmonton, Alberta,
December 6 to 8, 2017, and July 10 to 12, 2018.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Dragana Ristivojevic ("the grievor") is employed by the Canada Revenue Agency ("CRA"). She is part of the Program Delivery and Administrative Services Group. As of the hearing, her substantive position was classified at the SP-02 group and level. However, at the times relevant to the grievances, she was a support clerk classified at the CR-03 group and level working in the CRA's Revenue Collections Division ("RCD") of the Taxpayer Services and Debt Management Branch in its Tax Services Office ("TSO") in Edmonton, Alberta.

[2] On November 2, 2007, the grievor filed the following grievance, which became file 566-34-5049:

> *Grievance details:*
>
> *I grieve that I was not allowed to return to work in May of 2007. This has caused a great deal of stress and financial hardship to me.*
>
> *Corrective action requested:*
>
> *I request that I be made whole regarding this matter*

[3] On October 16, 2008, the grievor filed the following three grievances, which became files 566-34-5050, 5051, and 5052:

> [File 566-34-5050:]
>
> *Grievance details:*
>
> *I grieve that management of the Canada Revenue Agency in Edmonton TSO is discriminating against me contrary to Article 19.01 of the collective agreement, the Canada Revenue Agency's policies as well as any and all other related or applicable articles, acts and legislation.*
>
> *Corrective action requested:*
>
> *I request the following corrective actions:*
>
> *1) that all discrimination cease,*
>
> *2) that I receive a written apology from all parties to the discriminatory actions,*
>
> *3) that I receive copies of all my performance appraisals prepared since April 1, 2004,*
>
> *4) that I receive a current performance evaluation that is a fair and unbiased appraisal of my work,*

5) and that I be made whole.

[File 566-34-5051:]

Grievance details:

I grieve that management of the Canada Revenue Agency in Edmonton TSO has caused injury to me contrary to Article 22 of the collective agreement, the Canada Revenue Agency's policies as well as any and all other related or applicable articles, acts and legislation.

Corrective action requested:

I request the following corrective actions:

1) that all CRA managers receive enhanced training on their Occupational Health and Safety (OHS) responsibilities.

2) that senior managers more closely supervise their management staff to ensure that their OHS duties are carried out in a timely manner.

3) that I receive a full explanation on why my case was not resolved in a timely manner.

4) that I receive two weeks off with pay to be taken within one year of the decision being rendered, at a time of my choice, and

5) that I be made whole.

[File 566-34-5052:]

Grievance details:

I grieve that I have not been provided with a harassment-free work environment as is required by both Article 19.01 of the Agreement between the Canada Revenue Agency and the Public Service Alliance of Canada and the Canada Revenue Agency's policies.

Corrective action requested:

I request the following corrective actions:

1) that all harassment cease,

2) that I be moved back to my former team,

3) that the team leader be moved from that team,

4) that the manager be moved from my section, and

5) that I be made whole.

[4] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional

amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2: *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

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

A. Preliminary Matters

[6] The employer raised an objection with respect to the timeliness of grievance 566-34-05049.

[7] The grievor submitted that sections 63 and 95(2) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79) require that the employer raise an objection on timeliness at each level of the grievance process to be able to raise it at adjudication. In support of this position, the grievor referred me to *Shandera v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 21. As the employer did not raise timeliness at every level of the grievance process, it could not raise it at adjudication.

[8] While the employer objected to the timeliness of the grievance in its first-level grievance response, it did not do so at the subsequent levels. As set out at paragraph 26 in *Shandera* as follows:

> . . .
>
> *According to section 63 of the Regulations, a grievance may be rejected on the basis that it was presented late only if it was rejected at a lower level for the same reason. This point is reiterated at subsection 95(2), which provides that an objection as to the timeliness of a grievance's presentation may be raised only if the grievance was rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.*

. . .

[9] Therefore, the employer's timeliness objection is dismissed.

[10] As some of the information in documents entered in evidence was personal and not necessarily relevant to the matters I had to decide, the parties agreed that the grievor would supply redacted versions and the Board would replace the documents that were in issue. In addition, two employees' names came up in the evidence on a few occasions. Their identities are not relevant to the decision and as such have been identified simply as Ms. A and Mr. B.

II. Summary of the evidence

[11] At all material times, the grievor was represented by her bargaining agent, the Public Service Alliance of Canada ("the Alliance").

[12] During the periods for which the grievances were filed, her employment was governed in part by collective agreements entered into between the CRA and the Alliance for the Program Delivery and Administrative Services Group. The first one was signed on December 10, 2004, and expired on October 31, 2007, and the second was signed on December 3, 2007, and expired on October 31, 2010.

[13] The grievor alleged that the employer breached articles 19 and 22, which are the same in both collective agreements. They read as follows:

> ***ARTICLE 19***
>
> ***NO DISCRIMINATION***
>
> ***19.01*** *There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status, or a conviction for which a pardon has been granted.*
>
> . . .
>
> ***ARTICLE 22***
>
> ***HEALTH AND SAFTY***
>
> ***22.01*** *The parties recognize the Canada Labour Code (CLC), Part II, and all provisions and regulations flowing from the CLC as the authority governing occupational safety and health in the Canada Customs and Revenue Agency.*

> ***22.02*** *The Employer shall make reasonable provisions for the occupational safety and health of employees. The Employer will welcome suggestions on the subject from the Alliance, and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury.*

[14] Between 2002 and 2015, Robert Coté was the assistant director of the RCD at the Edmonton TSO. He was responsible for the management and delivery of taxpayer services in the Edmonton region. During that period, 6 or 7 programs reported to him, and he was responsible for between 350 and 425 people. As of the hearing, he had retired.

[15] Between 2002 and 2008, Sue Jamieson was a manager in the same RCD. She managed a number of teams responsible for delivering programs in the RCD. One was the non-filer and non-registrant ("NFNR") program. She reported directly to Mr. Coté. As of the hearing, she had retired.

[16] Between 2001 and 2011, Richard ("Rick") Lamarre was a team leader ("TL") in that NFNR program. He reported directly to Ms. Jamieson. At the times relevant to the grievances, the grievor reported directly to him. During the course of the hearing, he retired.

[17] At the times relevant to the grievances, Valerie Grundy was a collections officer classified at the SP-05 group and level and was a shop steward. She was a member of the Union of Taxation Employees ("UTE"), which is a component of the Alliance. As of the hearing, she had retired.

[18] The grievor started with the CRA in 1997 as a term employee, becoming full-time in December of 1998. According to Ms. Jamieson, the grievor came to the RCD in July of 2002 from the Client Services Division and was assigned to work in the general clerical team.

A. File 566-02-5049

[19] Ms. Jamieson testified that in early 2003, issues arose between the grievor and a co-worker on the general clerical team. She said that she was not advised of the other employee's identity and that the TL for the clerical team came to her to advise her that that employee had approached the TL. Ms. Jamieson said that at about the same time,

the grievor also approached her and told her that she was not fitting in with the team. She asked to be moved. Ms. Jamieson moved her to the NFNR section, and the grievor began reporting to Virginia Reynolds, a TL there.

[20] Ms. Jamieson stated that sometime after moving the grievor to Ms. Reynolds' team, an issue arose involving the grievor, Ms. Reynolds, and another employee on that team ("Ms. A"). According to the evidence, the grievor overheard a discussion between Ms. A and Ms. Reynolds, which the grievor interpreted as Ms. A being disrespectful to Ms. Reynolds.

[21] Ms. Jamieson arranged a meeting with all three of them, during which Ms. Reynolds and Ms. A advised Ms. Jamieson that there were no issues, that they were good friends, and that Ms. Reynolds had not taken offence at what Ms. A had said. According to Ms. Jamieson's evidence, the grievor did not accept the explanations and felt that Ms. A was somehow coercing Ms. Reynolds.

[22] Ms. Jamieson stated that she believed that the grievor had lost trust in both her and Ms. Reynolds. In October of 2003, the grievor requested to be moved to Mr. Lamarre's team. Ms. Jamieson acquiesced.

[23] On Wednesday May 31, 2006, the grievor was on her way to work via the Edmonton Transit Service when the bus she was riding in stopped suddenly. She testified that she hit the left side of her head on a pole. She said that she did continue into work, although she had no recollection of doing so, and that at some point that morning, a co-worker took her to a hospital. She said that she stayed there for the morning and that the doctor told her she would have a headache. She said that she did not return to work that day. When she was asked if she went back to work, she testified that she tried to but that she found it unbearable, stating that the computer screen's brightness intensified her headache and increased her pain. She believed that she went to work the next day but had no recollection of how long she remained there.

[24] Entered into evidence were the grievor's leave records. They indicate that she was on certified sick leave on May 31, June 1, and June 2, 2006, but not on Monday and Tuesday, June 5 and 6, 2006. However, they note that she was on sick leave for the balance of the month of June and all of July and August until September 5, 2006.

[25] When the grievor was asked how long she had been off work, she answered, "I was called in two times in July to input GST information into the data base [*sic*]. Rick Lamarre demanded I go into work. Rick Lamarre threatened me with Sue Jamieson." When asked for those dates, she stated they were on a form that she had kept hidden. Entered into evidence was a document identified as a "GST Lead" form ("the GST lead"), with the date of July 7, 2006, typed on the top right-hand corner. She had redacted some of it.

[26] The NFNR section locates taxpayers who have not filed income tax returns or who have not registered but should have (for example, to collect and remit GST). When one is located, with respect to GST, the section provides information by way of a referral to the GST registrations section. Data is entered into a computer system, and a document is produced (the GST lead). The specifics of the information and what is actually obtained, and how, which would set the path to a GST lead, were not disclosed to me.

[27] The GST lead that the grievor produced into evidence, while redacted in part, did contain some relevant information. It indicated that the taxpayer (whose identity was redacted) was registered with the GST section on June 23, 2006, and that it had been 16 days since the GST lead had been assigned. Part of what was redacted was the identity of the person in the GST registration section whom the GST lead had been assigned to, as well as the date on which it had been assigned.

[28] When it was put to Mr. Lamarre that the grievor had stated that he had called her in to work in July of 2006, he stated that he had not done so. In cross-examination, counsel for the employer had the following exchange with the grievor with respect to her attending work in July of 2006:

> Q: *On July 7, 2006 you reported to work at the request of Mr. Lamarre?*
>
> A: *Yes.*
>
> Q: *And on another day to complete reports?*
>
> A: *Yes.*
>
> Q: *We will call Mr. Lamarre and he will say he never called you at home to request you to come to work.*
>
> A: ***He never called me. I called him. He told me to come in.***
>
> [Emphasis added]

[29] When the grievor was asked what her day was like when she went in (sometime in July of 2006), she stated, "It was difficult. I cried. Light burned my eyes. Noise hurt my head. My jaw hurt. Later, I learned that my jaw was displaced. I was sick. I threw up when I got home."

[30] Entered into evidence was a note from the grievor's physician, Dr. Ho, dated September 20, 2006. It was on a printed form. It set out that the doctor saw her on that date and that she had not been able to attend work from May 31 to September 5, 2006. It stated "modified duties" and "2 hr/shift 2 shift/week". It also stated something that appears to specify no lifting of more than five pounds, an ergonomic assessment, no stresses, and minimal computer work.

[31] The grievor was asked if Dr. Ho was her family physician, which she affirmed but then qualified by stating that he would be because her family physician had moved out of the province.

[32] On the morning of December 5, 2006, Mr. Lamarre and Ms. Grundy exchanged the following emails:

> [Ms. Grundy to Mr. Lamarre at 9:02 a.m.:]
>
> *Would you be able to meet with Dragana and I at 3:00 tomorrow to discuss the problems that have arisen with her graduated return to work?*
>
> [Mr. Lamarre to Ms. Grundy at 9:03 a.m.:]
>
> *What problems?*
>
> [Ms. Grundy to Mr. Lamarre at 9:04 a.m.:]
>
> *That's what we need to discuss.*
>
> [Mr. Lamarre to Ms. Grundy at 9:26 a.m.:]
>
> *Is there anything I need to be aware of in advance of the meeting?*
>
> [Ms. Grundy to Mr. Lamarre at 9:39 a.m.:]
>
> *Please be prepared to advise of all the information that management wants to know regarding Dragana's health, ability to work, and return to work. Also, please be prepared to discuss implementation of the recommendations from the assessment of Dragana's workstation by Health Canada.*
>
> [Mr. Lamarre to Ms. Grundy at 9:48 a.m.:]
>
> *Not a problem. However, the assessment was only done last week and I have yet to hear from F&A. I'll see you tomorrow at three.*

> [Ms. Grundy to Mr. Lamarre at 10:00:]
>
> *I have booked the Sunburst Room for the meeting. It is the breakout room near* [name omitted] *office.*

[33] I was provided with no evidence about a graduated return to work for the grievor.

[34] An email dated December 7, 2006, at 10:29 a.m., from Mr. Lamarre to the grievor was entered into evidence. It stated as follows:

> ***Subject:*** *Disability Insurance Application*
>
> *I have some documentation that I have to complete for Compensation with respect to your disability insurance application. They need the information as soon as possible. I can't complete it without a letter from your doctor that outlines:*
>
> *- the types of duties you can perform*
>
> *- the duration for which you can perform each duty*
>
> *- if possible, an estimation of when your hours may increase or alternatively, an estimation as to when you will be re-evaluated by your doctor as it relates to your gradual increase in hours.*
>
> *I would also like to apologise [sic] that I missed our meeting yesterday but I was away ill. I expect to be here all next week so we can reschedule at your convenience. From what I understand from Val, the meeting is to deal with what we need from your doctor so it would be helpful if we met ASAP, then you can get the letter and we can get the information to Compensation without undue delay to your disability application.*
>
> *Rick*

[35] Based on an email dated December 12, 2006, at 10:03 a.m., from Mr. Lamarre to the grievor and copied to Ms. Grundy, it appears that the meeting originally scheduled for December 6 took place on December 11. Mr. Lamarre testified that he believed that he met with the grievor and Ms. Grundy. Ms. Grundy provided no evidence about this meeting. The email stated as follows:

> *As we discussed at our meeting yesterday afternoon, I have an obligation as a supervisor to ensure the health and safety of staff. Given your current medical situation, I need to ensure that I don't assign any tasks to you that may complicate your condition or set back your recovery. To that end, I need a note from your doctor*

> *that provides a little more detail than the current one that says no heavy lifting and limited keyboarding.*
>
> *As we agreed, I will provide you with a copy of your job description and once available, the Health Canada ergonomic assessment. We'll review the job description and provide additional details as to tasks specific to the NF/NR area. With this information, I hope your doctor can provide some more detail as to your current limitations. If your doctor is in a position to provide detail as to when you [sic] hours can increase, that would be helpful. If not, some sort of timeframe [sic] as to when your condition will be re-evaluated will suffice.*
>
> *I recognize you're not going to feel the same every day and on some days, you may need to focus more on certain tasks and less on others. I have no concerns about that. I just want to ensure we're not assigning duties that will impair your recovery.*
>
> *Please let me know if you have any questions or concerns. Thanks.*

[36] The grievor was cross-examined on those emails, and it was put to her that as of the December meeting, Mr. Lamarre asked for additional information and had been asking for it since October of 2006. The grievor answered by stating, "Yes, I advised him. The doctor would not answer any questions in writing."

1. Workstation keys

[37] I heard evidence from the grievor, Ms. Grundy, and Mr. Lamarre about the grievor's workstation keys. Ms. Grundy stated that she believed that this was the first time the grievor had asked her to become involved in the grievor's interactions with management.

[38] Mr. Lamarre's testimony was similar to the contents of a letter he signed that was dated July 24, 2007 ("the Lamarre July 24 letter"), with respect to a fitness-to-work evaluation ("FTWE") that the employer had requested for the grievor. With respect to the workstation keys, the letter states as follows:

> . . .
>
> *In January 2007, I requested her workstation keys given the fact she was only working 4 hours a week and we may have need to access office supplies, statistical data, etc. Rather than supplying me with the keys, she took all the office supplies she had stored and relocated them to another area of the office. I sent a follow up Email stating I still wanted the keys, as I may need to access the workstation in her absence. She did not comply and shortly thereafter, she stopped showing up for her shifts. Each morning,*

> *she would leave me a voice mail [sic] stating she would not be in. No reason was ever given.*
>
> . . .

[39] An email exchange between the grievor and Mr. Lamarre was entered into evidence. It was about the workstation keys and read as follows:

> [Mr. Lamarre to the grievor January 18, 2007 at 9:26 a.m.:]
>
> ***Subject:*** *Keys*
>
> *While you are on reduced hours, we need to have access to the file cabinets that contain supplies, inter office envelopes etc. Please provide me with the keys and we'll work out who will hold them or where we'll hide them. Thanks*
>
> [Mr. Lamarre to the grievor, January 24, 2007, at 7:59 a.m.:]
>
> ***Subject:*** *FW: Keys*
>
> *Can I get the keys please.*
>
> [The grievor to Mr. Lamarre, January 24, 2007, at 3:19 p.m.:]
>
> ***Subject: RE:*** *Keys*
>
> *I have no more stock in file cabinets.*
>
> *Dragana*
>
> [Mr. Lamarre to the grievor, January 24, 2007, at 3:20 p.m.:]
>
> ***Subject: RE:*** *Keys*
>
> *I assume the stock was locked up for a reason. What's changed?i [sic]*
>
> [The grievor to Mr. Lamarre, January 24, 2007, at 3:24 p.m.:]
>
> ***Subject: RE:*** *Keys*
>
> *I did not order any more supplies, I simply replenished the business centre from my file cabinets. I had put in 72 pens on a Monday night at 5:00 and when I came back on Wednesday @ 3:00 all pens were gone. So I replenished the business center again with the last of my pens. That also applies to the other supplies.*
>
> . . .

[40] That email exchange was put to the grievor in her examination-in-chief. She was asked why Mr. Lamarre needed the keys. She replied that he would not have needed them. When she was asked if the keys were given to him, she stated, "No, because he had a set himself. I did have notes in there, my documentation, that disappeared." She was then asked when she discovered the documentation was missing. She replied that

she could not remember and then stated, “When I went to look, I cried because everything was gone.”

[41] I was not provided with any information as to the missing notes; nor was I provided with any information as to what else was allegedly missing.

[42] Ms. Grundy spoke about the keys in her examination-in-chief after she was asked when she first became involved with the grievor. A summary of Ms. Grundy’s testimony on this point is as follows:

- The grievor first spoke to her by phone while she was off work due to the bus accident.
- When she was asked why the grievor had called her, Ms. Grundy stated that the grievor told her that Mr. Lamarre was phoning her and demanding that she bring in the keys to her overhead bin and desk.
- When questioned about the issue, Ms. Grundy stated that Mr. Lamarre needed files that were on a floppy disk, which both he and the grievor had told her.
- When she was asked about her role, Ms. Grundy stated that she acted as a mediator. She obtained the keys from the grievor and was present when they were used to open the cabinet, the desk, and the overhead bin.
- When asked if the issue had been resolved, Ms. Grundy affirmed that it had been.

[43] Mr. Lamarre stated that in January of 2007, the grievor was still working only four hours per week, and he wanted to have her keys, in case her workstation needed to be accessed. He said that it was impractical to wait for the narrow period when she was at work to access material that might be locked in her office. He stated that he asked her for them several times, that she did not give him the keys, and that he did not understand why she would not give them to him as in his view, it had been a simple request. He stated that shortly after the exchange over the keys, the grievor stopped coming to work (approximately January 24, 2007).

2. February 14, 2007, phone call

[44] Mr. Lamarre testified that after the grievor stopped coming to work, she would call and leave messages on his voicemail stating that she would not be in. On February 14, 2007, he happened to be in his office when she called. He stated that he remembered the exchange because her answers to his questions were very cryptic. He said that he asked her why she would not be in; she replied that he should ask himself that question. He said that he asked her when she would return to work; she replied, “That depends.” He stated that she then started to scream at him, told him to stop

harassing her, and hung up. He said he reported this to Ms. Jamieson. He referred to this occurrence in the Lamarre July 24 letter as follows:

> . . .
>
> *On the morning of February 14 2007, I happened to be at my desk when Dragana called to advise she would not be in. When I enquired as to the reason for her absence, she stated I should be asking myself that question. I then asked when she might be returning to work and she replied, "That depends." I also asked about the location of some work related information at which point she became agitated, yelled at me to quit harassing her and hung up on me.*
>
> . . .

[45] Mr. Lamarre was not cross-examined on his evidence about that call or his summary of it in the Lamarre July 24 letter.

[46] In her examination-in-chief, the grievor was brought to the Lamarre July 24 letter and was asked about what had happened. She stated that she called that morning and that she expected that Mr. Lamarre would not be there. She said that he yelled at her, that she could not understand what he was saying, that he tried to ask a question about a "DD 3", and that he spoke about CDs. She then explained what the DD 3 was and stated that the CDs had taxpayer information on them. She stated that her jaw began to hurt, so she told him to stop harassing her and hung up.

[47] When the grievor was brought to the paragraph referencing the call in the Lamarre July 24 letter and was told that Mr. Lamarre would state that what was set out in the letter was accurate, she responded that it was false.

[48] Entered into evidence was a copy of a note from Dr. Ho on a prescription pad dated February 28, 2007, which stated simply, "Unable to work due to medical illness Jan 29-March 19/07". There is no evidence as to when it was provided to the employer.

[49] Ms. Jamieson signed a letter dated February 28, 2007, which was sent to the grievor by registered mail and stated as follows:

> . . .
>
> *The doctor's note we have on file with respect to your injury expired on September 5, 2006. We have accommodated your doctor's recommendations including your reduced hours schedule*

> *and the implementation of all recommendations from the Health Canada ergonomic assessment.*
>
> *We have made several requests for a new doctor's note and those requests culminated with a meeting between you, your union representative and Rick Lamarre on December 11, 2006. An Email outlining the meeting was sent to you and your union representative on December 12, 2006. To date, a new doctor's letter has not been received.*
>
> *Since we have no current medical information and you have not attended work since January 24, 2007, we are not in a position to permit you to undertake your duties, as we don't know if the duties we assign will aggravate your current medical condition or impair your recovery. Before you can return to duty, we require medical certification from your doctor that you are fit to attend work and if applicable, under what conditions or restrictions. In that regard, we would like you to agree to a Health Canada referral for the purpose of a fitness to work medical evaluation. Health Canada will provide guidance if any work place [sic] accommodation is required. They may need to contact your physician(s) and it will be necessary for you to authorize such contact. Health Canada referrals can take a few months to complete. Therefore, you may use your own physician for the fitness to work medical evaluation provided he or she has knowledge of your medical history. Should you elect this option, we will require your authorization to communicate with the physician regarding workplace accommodation. In the meantime, your time away from work will be coded to sick leave. As you have no available sick leave credits, the leave will be without pay.*
>
> *We look forward to working in partnership with you and Health Canada or your physician to ensure an effective recovery and return to normal duties. If you have any questions, please feel free to contact me.*
>
> . . .

[50] Entered into evidence was a copy of a note from Dr. Ho that stated that the grievor was seen at the clinic where he worked on March 14, 2007. It simply stated that she was not able to attend work from March 19 to April 23, 2007.

[51] Another similar note on a prescription pad from Dr. Ho was entered into evidence. It was dated April 18, 2007, and stated simply, "Unable to work due to medical illness April 23-May 30/07 [*sic*] May work earlier if issues resolved".

[52] After her representative put Dr. Ho's three notes covering January 29 to May 30, 2007, to the grievor, her representative asked her when she tried to return to

work. She replied, "I can't recall. I was juggling medical appointments. I was juggling discovery for my personal injury claim. I needed the money."

[53] After the grievor had been examined in chief, cross-examined, and re-examined by her representative and counsel for the employer, from documents produced and from some of the answers, it was apparent to me that she had retained legal counsel to address the injuries she sustained in the bus accident. I asked her about her claim. She confirmed that she received a monetary settlement.

[54] She also confirmed that she had seen a number of medical specialists about her injuries, including a neurologist, a jaw specialist, and a psychologist (for pain management). She also said that she had undergone physiotherapy for her neck, head, and jaw. She stated that those specialists issued medical reports and provided them to the legal counsel handling her claim. However, she confirmed that she never advised the employer of any of those reports. None of them was produced in evidence before me.

[55] On April 19, 2007, after receiving Dr. Ho's note stating that the grievor was unable to work from April 23 to May 30, 2007, Ms. Jamieson wrote to him on April 24, 2007, stating as follows:

. . .

> *We are in receipt of a note you prepared advising Dragana is unable to attend work until May 30, 2007. A copy of the note is attached for your reference. You also noted that she might be able to return to work earlier if issues are resolved. We would appreciate if you would clarify what issues need to be resolved so we can make suitable arrangements to facilitate Dragana's return to normal duties.*
>
> *Thank you for your cooperation in this regard. We look forward to your reply.*

. . .

[56] On April 25, 2007, Ms. Jamieson received a letter dated April 23, 2007, from George Somkuti, the legal counsel acting for the grievor in her personal injury claim. He enclosed a letter from Dr. Ho dated April 19, 2007 and addressed to "To Whom it May Concern". Mr. Somkuti's letter stated as follows:

. . .

> ***Re: Our Client – Dragana Ristivojevic***
>
> ***Motor Vehicle Accident – May 31, 2006***
>
> *Further to our letter dated April 16, 2007, please find enclosed the following:*
>
> 1. *Certificate of Fitness – Ms. Dragana Ristivojevic, dated April 19, 2007, by Dr. Duncan Ho.*
>
> *Trusting the above to be in order, we look forward to hearing from you in relation to Ms. Ristivojevic's immediate return to work, as outlined by Dr. Ho.*
>
> . . .

[57] I was not provided with any letter dated April 16, 2007, from Mr. Somkuti.

[58] Dr. Ho's letter stated as follows:

> . . .
>
> *Certificate of Fitness – Ms. Dragana Ristivojevic*
>
> *DOB:* [omitted]
>
> *Thank you for your request for a certificate of fitness on Ms. Dragana Ristivojevic. I am a fully licensed family physician, certified by the College of Family Physicians of Canada. I have been her primary attending family physician for the injuries sustained in the motor vehicle accident on May 31, 2006.*
>
> *Since I am not trained as a rehabilitation or disability specialist, it is difficult to precisely determine the patient's fitness to work. She may benefit from a formal assessment of her work capability. In my opinion, I agree with the patient's assertion that all the ergonomic recommendations to her workstation be implemented before we can accurately determine her work capability. Once her station has been corrected, she likely can begin working two hours per shift with two shifts per week and then be re-assessed [sic] in two weeks. The lighting situation around her work station [sic] is important as well as her work stress and environment. It is very important to reduce her work stress since the stress also affects her mental and physical conditions. She is unable to do any heavy lifting. After the initial two weeks, changes may need to be made in her workstation and if she is doing well, she can slowly increase her hours and shifts per week depending on her condition. This would have to be closely monitored by all parties and adjusted on a weekly or biweekly basis. If things go well, the patient hopefully can return to full work capability in three to six months.*
>
> *If there are any questions or concerns, I can be contacted at the above address or phone number.*
>
> . . .

[59] Dr. Ho did not respond to Ms. Jamieson's letter of April 24, 2007.

[60] I was not provided with any evidence as to whether Dr. Ho was aware that his letter was sent to the employer. Dr. Ho did not testify.

[61] On May 25, 2007, Ms. Jamieson wrote to Mr. Somkuti, stating as follows:

> . . .
>
> *Thank you for your letter of April 23, 2007, and a copy of Dr. Ho's Certificate of Fitness. In order to address the fitness to work issues raised by Dr. Ho; namely ergonomic issues and workplace stress, we respectfully request that Dragana undergo a Health Canada Fitness to Work Evaluation.*
>
> *We have enclosed the necessary authorization forms as well as information relating to the evaluation process. Upon receipt of the completed authorizations, we will make arrangements for the evaluation and advise Dragana of the date and time.*
>
> *It is our hope that in partnership with Health Canada and Dr. Ho, we can facilitate Dragana's return to regular duties. Please feel free to contact me if you have any questions.*
>
> . . .

[62] On June 26, 2007, Ms. Jamieson wrote to the grievor, copying Mr. Somkuti and stating the following:

> . . .
>
> *Further to your meeting with Mr. Cote on June 15, 2007, a number of issues were raised and I would like to take this opportunity to address them. In Dr. Ho's letter of April 19, the fitness to work concerns he raised were ergonomic issues and workplace stress. To that end, we have requested your authorization for a Health Canada fitness to work evaluation so these concerns can be addressed. Upon receipt of the authorization, we will make the necessary arrangements.*
>
> *With respect to the ergonomic assessment of your workstation, all recommendations made by Health Canada have been implemented. If there is a particular issue you feel has not been addressed, please provide us with the details so corrective action can be taken if required.*
>
> . . .

[63] None of Mr. Coté, the grievor, or Ms. Grundy testified about the meeting on June 15, 2007. Ms. Jamieson attended it. She stated that while she did not recall everything that the grievor said at the meeting, she did recall her asking about the FTWE. Ms. Jamieson said that she and Mr. Coté both explained to the grievor the

concerns about the reference in Dr. Ho's notes to workplace stress, that they (Ms. Jamieson and Mr. Coté) had concerns about behaviour that the grievor had exhibited in the office in the past, and that they felt that Health Canada (HC) could help identify the underlying causes of stress or behaviour.

[64] When Ms. Jamieson was asked for the grievor's response to that line of questioning, she stated that the grievor was not very happy about them wanting to pursue that route and stated that she would get back to them. Ms. Jamieson was not cross-examined on these points.

[65] On June 28, 2007, the grievor signed a consent to undergo an FTWE, which was witnessed by Ms. Grundy. The first paragraph of the consent stated as follows:

> *I, Dragana Ristivojevic, agree to undergo a Fitness to Work Evaluation (FTWE) which will be conducted by the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada. The purpose of the evaluation is to determine my fitness to work. The reasons I have been referred to WHPSP to undergo the Evaluation have been fully explained to me by S. Jamieson, Manager, Revenue Collections Division, and provided to me in writing by him/her.*

[66] The grievor's representative showed her that consent and referred to the first paragraph, which mentions Ms. Jamieson explaining the reasons for the FTWE to her and asked her if Ms. Jamieson told her the reasons for it. The grievor answered, "I can't recall." She was then asked for the reasons for being referred to the FTWE. She stated, "You know I can't remember."

[67] On July 5, 2007, a meeting took place involving the grievor, Mr. Lamarre, and Ms. Grundy. After it ended and on that same day, at 2:01 p.m., Mr. Lamarre emailed a summary of the meeting to both Mses. Jamieson and Grundy, which stated as follows:

> *I just wanted to confirm the items we discussed at our meeting this afternoon. With respect to duties, Val noted Dragana is ok with the duties and workstation.*
>
> *1. Dragana's concerns regarding training.*
>
> *Training on whatever system(s) Dragana will be expected to use will be provided. Dragana requested a PM01 resource person (buddy). She requested* [four names set out and omitted] *as she feels most comfortable with these individuals. I will discuss with*

> [name omitted] *as she's the only one of the four on my team. The issue of not being trained by a particular individual was brought up. I advised there are no immediate plans for Dragana to have to work with another person on a particular project. However, things change and there's no guarantee that will be the case forever.*
>
> *2. Time Sheets*
>
> *Val conveyed that Dragana wanted copies of her time sheets for the period January 1 to June 30. I will request these from Maggie and provide them to Val.*
>
> *3. Return to Work*
>
> *Val conveyed Dragana's desire to return on a reduced hour basis prior to the Health Canada assessment. Sue advised we won't allow that as we want the assessment to address all issues raised by the doctor. We will endeavour to get the referral to Health Canada as quickly as possible but with HR involvement and summer vacations, there is a possibility of some delays.*
>
> *4. Other Ergonomic Issues*
>
> *We will ensure a floor mat is installed in the new station and properly fits prior to Dragana's return. As soon as practical after Dragana's return, we will request another ergonomic assessment based on the new station. Rick will determine additional duties that allow Dragana to get away from keyboarding at her workstation. At a minimum, the screening activities should have a printing element to allow Dragana to get up from time to time. Additional duties may be hard to determine until we have the assessment and a better idea of Dragana's capabilities.*
>
> *I think I have the major points but please let me know if I missed anything.*

[68] Neither the grievor nor Ms. Grundy testified about this meeting. However, Mr. Lamarre did, albeit largely about the training issues. Ms. Jamieson also testified about it. She said that they discussed the grievor's duties because the grievor was concerned about them. With respect to point 3 in the email, when she was asked about the return-to-work issue, Ms. Jamieson said that the grievor wanted to return to work before the FTWE, but the employer was concerned about not addressing issues raised by Dr. Ho and about being accused of ignoring them. She stated that it wanted to ensure that the FTWE would take place and that it would have answers.

[69] The Lamarre July 24 letter, and one that Ms. Jamieson wrote on that same day, read as follows:

> [The Lamarre July 24 letter:]

Dragana was involved in a motor vehicle accident on May 31, 2006 and missed a number of months due to the injuries she sustained. On September 20, 2006, Dragana supplied a note from her physician advising her duties should be limited to two shifts per week of two hours each. He also recommended no lifting over five pounds, an ergonomic assessment, minimal keyboarding and no stresses. The medical note covered the period May to September 2006. All the recommendations were implemented.

Between October and December, I made several verbal requests of Dragana to provide an updated medial note. In December 2006, I met with Dragana and her union representative and again explained I need the medical note so we have up to date information and don't assign any duties that may aggravate her condition or set back her recovery.

In January 2007, I requested her workstation keys given the fact she was only working 4 hours a week and we may have need to access office supplies, statistical data, etc. Rather than supplying me with the keys, she took all the office supplies she had stored and relocated them to another area of the office. I sent a follow up Email stating I still wanted the keys, as I may need to access the workstation in her absence. She did not comply and shortly thereafter, she stopped showing up for her shifts. Each morning, she would leave me a voice mail stating she would not be in. No reason was ever given.

On the morning of February 14 2007, I happened to be at my desk when Dragana called to advise she would not be in. When I enquired as to the reason for her absence, she stated I should be asking myself that question. I then asked when she might be returning to work and she replied, "That depends." I also asked about the location of some work related information at which point she became agitated, yelled at me to quit harassing her and hung up on me.

On or about March 14, we received another medical certificate that Dragana was unable to attend work from March 19 to April 23. This was followed by another note that stated she was unable to work from April 23 to May 30. The latter note also stated she may be able to return earlier if issues resolved. We sent a letter to the doctor on April 24 requesting clarification so we could make arrangements to accommodate and we received no reply. We received another note May 30 advising she was unable to work for the period May to June 30, 2007. This note again made reference to issues being resolved but provided no details.

The only other correspondence we received from Dragana's physician was a certificate of fitness dated April 19, 2007. It stated Dragana may benefit from a formal assessment of her fitness to work and addressed a number of ergonomic and environmental issues that need to be addressed. It went on to state, "It is very important to reduce her work stress since the stress also affects her mental and physical conditions." No elaboration as to the cause(s) of the stress was provided.

Based on the foregoing, we require a Fitness to Work Evaluation to address both the physical and mental issues raised by Dragana's physician to ensure her well-being, ability to perform her duties in a team environment and facilitate a return to normal duties. If there is a medical condition that is causing or contributing to Dragana's behaviour, this must be addressed.

. . .

[Ms. Jamieson's letter:]

Dragana's family physician (Dr. Ho) stated in various notes or letters to us that 'work stress' or 'other issues' needed to be resolved before she could return to work. Ergonomic recommendations to address physical conditions have been or will be implemented upon her return. Administrative-type issues of concern that have been identified by Dragana (e.g.: defined roles and responsibilities, training, performance expectations) have been addressed or will be, again upon her return to the workplace, as some require her attendance/participation to complete. (e.g.: Performance Expectations, Learning Plan). There are some areas that are not covered by the aforementioned areas that may be contributing to some of the 'work stress' alluded to by Dr. Ho, and are of concern to us, and it is hoped that a FTWE will help address these areas.

Dragana has a history of having disputes with individuals in her work area and thus, eventually, not being able to work with those individuals. Around July 2002, Dragana came to the Revenue Collections Division (RCD), because of a dispute between her and a co-worker in her previous work unit in the Client Services Division. In the RCD, she first worked in the general clerical unit along with 12-15 other clerks. A dispute ensued between Dragana and another clerk in the unit, and after efforts to resolve the dispute were not successful, Dragana was moved to work in the Non-filler/Non-Registrant (NF/NR) section, where she currently works. (I believe the move occurred around January or February 2003). The NF/NR area is supported by two clerks, Dragana and [Ms. A], *with the general clerical unit providing residual support.*

Recently, I was advised that Dragana has requested to not have to work with [Ms. A] *or have any dealings with her because she still feels that* [Ms. A] is *after her job and that* [Ms. A] *has purposely misinformed her in the past to make her look bad. This matter has been on going since 2004:*

- despite efforts to resolve the situation through meetings and dispute resolution,

- despite the fact she's been told that [Ms. A] *has no control or strong influence over decisions regarding "Dragana's job',*

- despite the fact [Ms. A] has worked elsewhere (pursued other work assignments) in the last three years, I feel, supporting the fact she's not after Dragana's job, and

- despite the fact that after 3 years Dragana still has 'her job' and that their duties have been separate and segregated from each other's responsibilities as much as possible for the last 3 years.

CRA does not need to know details of any medical condition, however, we do need to know if a medical condition exists, and any suggested accommodation. We have posed a few questions and would appreciate any further information over and above these specific questions.

Q. Is there some medical condition that is preventing Dragana from accepting or viewing the above facts as rational explanations to her concerns, thus possibly allowing this matter to finally be resolved for all concerned?

To put some context to the aforementioned concerns, it should be noted that Dragana is a General Duty Clerk and thus, ***along with other clerks,*** *is expected to carry out a variety of duties in support of the area she works, which is currently in the Non-filer/Non-Registrant (NF/NR) section in the Revenue Collections Division (RCD). The nature of the work in the RCD and NF/NR section involves frequent change and shifting priorities. To accommodate this, the clerks' duties usually overlap or there is cross training in the duties to allow tasks to be completed by any clerk, in the event a particular clerk is away on leave.*

Q. Does Dragana have the ability to interact and work closely with others, in a team environment, sharing duties and responsibilities when necessary? If not, is there a medical reason for this and what, if any, accommodation should be put in place to accommodate the medical condition?

In 2003, the team leader she first reported to in NF/NR was Virginia. Initially, their working relationship was good, but that later changed. From discussions with Dragana, I understand their working relationship deteriorated because Dragana felt Virginia 'took [Ms. A]*'s side' when the dispute between Dragana and* [Ms. A] *was investigated and the conclusion was that there was no wrong-doing on* [Ms. A]*'s part. Dragana stated she felt she could no longer trust Virginia, and I have been told she also feels the same way towards me because I also supported the findings. So, in September 2003, at her request and on the recommendation of her doctor (Dr. Webb), Dragana starting reporting to Rick Lamarre, another team leader in the NF/NR section*

From the attached letter from Rick Lamarre [the Lamarre July 24 letter], *certain behaviours of Dragana now tend to suggest their working relationship is also strained and that there is a lack of trust on Dragana's part when it comes to Rick's actions. Her union representative has also advised that Dragana does not trust Rick or me. It is unknown why she feels this way towards Rick, but it is evident that we have seen similar behaviour in the past.*

Q. Is there any medical explanation for this type of behaviour and the alleged pattern or similarities in behaviour outlined in

> **the previously described events? If so, what accommodation, if any, is recommended to accommodate the medical condition?**
>
> **Q. If Dragana is not fit to work her regular scheduled hours and requires reduced hours, what hours can she work and how long should she be on the reduced schedule?**
>
> . . .
>
> [Emphasis in the original]
>
> [*Sic* throughout]

[70] On July 25, 2007, at 7:57 a.m., Mr. Lamarre emailed Ms. Grundy, copying Ms. Jamieson and stating as follows:

> *Good morning Val. I wanted to thank you for your input yesterday on the Health Canada referral documents. I expect HR will have a cover letter done today and they'll be walking it up there. Once I have a copy of their cover letter, I'll let you know and provide you with a copy of the entire package.*
>
> . . .

[71] On October 10, 2007, Dr. Ho signed a note on a prescription pad, which stated as follows: "Patient is able to work on modified basis since May 2007 (as per previous letters). Patient is absent based on employer request for Health Canada assessment/report."

[72] The FTWE dated November 1, 2007, is shown to have been received by the employer's human resources ("HR") division on November 6, 2007. However, it would appear that a copy was received as early as November 2, 2007, as Mr. Lamarre sent an email on that day stating he had received a copy.

[73] The FTWE stated that the grievor was fit to return to work but it recommended the following: "No heavy lifting", although "heavy lifting" was not defined, and: "No prolonged sitting. Allow to stand as needed." It also proposed a gradual return-to-work schedule with the grievor working 2 hours per day, 2 days per week for the first 2 weeks; 4 hours per day, 3 days per week for the next 2 weeks; 5 hours per day, 4 days per week for the next 2 weeks; 6 hours per day, 5 days per week for 1 week; and finally, in the 8th week after returning to work, 7.5 hours per day, 5 days per week.

[74] The FTWE also stated as follows:

. . .

> *With regards to accommodation, I recommend that Management sit down with Ms. Dragana Ristivojevic to discuss the ergonomic recommendations, administrative type issues, and other workplace issues of concern. Since the work restrictions that I recommended are considered to be temporary restrictions, I would be happy to reassess Ms. Ristivojevic to determine how she is progressing and to determine when the work restrictions can be removed, after she has been released to perform full duties at work with no restrictions by her treating physician*[.]

. . .

[75] On November 2, 2007, Mr. Lamarre emailed the person responsible for carrying out ergonomic assessments, as well as Ms. Jamieson and Ms. Grundy, indicating that a new ergonomic assessment needed to be done and that the grievor would return to work on a graduated schedule.

[76] On November 2, 2007, Ms. Grundy emailed Ms. Jamieson, copying Messrs. Coté and Lamarre. The relevant portion reads as follows:

. . .

> *Rob asked me to speak to Rick Lamarre if he was here. As he is here, I gave him a copy of the letter to share with you on Monday. Dragana has asked to work from 12:00 to 2:00 on Tuesday and Thursday next week. Rick has confirmed that the workstation is still available and that she will be doing the duties that we agreed to previously. As we discussed, a new ergonomic assessment will be needed and I have left that in Rick's hands.*

. . .

[77] It appears that the ergonomic assessment of the grievor's workstation took place on or about January 7, 2008, and that on January 8, 2008, Mr. Lamarre emailed those involved in that assessment, including the grievor and Ms. Grundy. The email stated as follows:

> *Hi guys. We have received/reviewed the Health Canada assessment on Dragana's work station and I need some stuff.*
>
> 1. *We need an adjustable sit/stand computer table. There's one available in workstation 4536A that could be moved to Dragana's station (4523C0.*
> 2. *Also need a chair that provides more upper back support. She tried* [name omitted]*'s chair and that seemed to the trick.*

> 3. *The plastic floor mat in Dragana's work station does not cover the whole area and Health Canada strongly recommends against taping them together. If we can't order a large enough mat through our usual supplier, [name omitted] in Accommodation has information on custom mats.*
> 4. *We need a flat keyboard tray that doesn't have the protrusion for the mouse.*
> 5. *We need a hands free telephone head set.*
>
> *Let me know if you have any questions.*
>
> . . .
>
> [*Sic* throughout]

[78] In her examination-in-chief, when the grievor identified Dr. Ho's note of September 20, 2006, she was asked about the ergonomic assessment. She said that one was carried out, that she did not recall when it took place, and that she had been present for it. When she was asked about the effect of its implementation, she answered that it consisted of the following: "Bigger floor mat."

[79] When asked again about recommendations, she intimated that someone (perhaps Mr. Lamarre) had suggested taping two smaller mats together. She then stated that she had two computers and therefore needed a big floor mat, which would have cost too much. When asked whether there was anything else, she stated that the desk was supposed to have been raised. It was to be a standing-sitting desk, which she stated she never received.

[80] No copy of the ergonomic assessment was entered into evidence.

[81] At the first level of the grievance process, the employer determined that a 14-day delay arose in providing information to HR from the date on which the grievor signed the consent. As such, based on her graduated return to work of two hours per day, two days per week, the employer determined that she had lost four days, which equated to four hours of work. This decision was upheld at all the later levels in the grievance process.

B. File 566-02-5051

[82] In January of 2008, after the grievor had returned to work, and pursuant to the ergonomic assessment, a particular type of chair was supposed to be ordered for her. This was set out in Mr. Lamarre's email of January 8, 2008. In the interim, she received

a loaner chair that satisfied her needs. The evidence disclosed that a "Mr. B", who is now deceased, was responsible for ordering the appropriate chair.

[83] On May 6, 2008, the grievor emailed Mr. B, copying Mr. Lamarre, Ms. Jamieson, and another person. She stated that the loaner chair had been removed from her workstation on March 13, 2008. She asked when her new chair would arrive.

[84] There is no evidence that suggested that before May 6, 2008, the grievor had alerted anyone to the fact that the loaner chair had been removed, or by whom, although in an email to Mr. Lamarre dated May 16, 2008, she refers to Mr. B picking it up.

[85] The evidence disclosed that as of May 6, 2008, Mr. B had not ordered the new chair; it was not ordered until May 16, 2008, after the intervention of Mr. Lamarre and perhaps of Ms. Jamieson (the evidence on this was not clear).

[86] According to the grievor, at some point after the loaner chair was removed but before the new chair arrived, she began using another chair, which led to a back strain. According to her testimony, she used a broken chair. The evidence was not clear if it had always been broken or if it broke while she was using it. According to the documentary evidence, it appears that she saw Dr. Ho about this injury on or about May 30, 2008.

[87] The evidence of Messrs. Coté and Lamarre and Ms. Jamieson was that there were many unused, properly functioning chairs in the Edmonton TSO that the grievor could have used.

[88] The evidence disclosed that Dr. Ho filled out a Workers Compensation Board ("WCB") of Alberta "Physician's Invoice and Report" on May 30, 2008, which, according to the grievor, she provided to Mr. Lamarre on that same day. It stated that the injury occurred on May 28, 2008, and only that her back was strained or sprained. It recommended that she carry out modified light work duties and that she lift no more than 10 pounds.

[89] According to documentation provided from the WCB, an employer is required to fill out and file forms with respect to work-related injuries.

[90] On July 14, 2008, the grievor emailed Mr. Lamarre, stating as follows:

. . .

I have photocopied another copy of the Physician's Invoice & Report (WCB) dated 2008/05/30. This copy is in a sealed envelope & is in your mailbox. I have also placed a copy of the doctor's note with "modified duties" dated July 11/08 in the same sealed envelope.

Please acknowledge me via email that you have received this.

. . .

[91] In an email on July 18, 2008, Mr. Lamarre acknowledged receiving the documents.

[92] Mr. Lamarre testified that the grievor did not advise him of the injury; nor did she provide him with any materials on May 30, 2008. He stated that the first he heard of both the injury and the forms was when he received them in July of 2008.

[93] Between July 23 and 29, 2008, the grievor had the following email exchanges involving Mr. Lamarre, Ms. Jamieson, and Ms. Grundy:

[The grievor to Mr. Lamarre on July 23, 2008:]

. . .

As per our discussion on Wednesday July 09, 2008, were you able to locate the WCB forms? If so, have they been completed and submitted?

. . .

[Mr. Lamarre to the grievor on July 24, 2008:]

The form you recently provided me (dated May 30, 2008) is a WCB Physician's Report that indicates you strained your back on May 28 and you shouldn't do any heavy lifting. I see nothing on the form to suggest I have to fill out an incident report. I had no idea you strained your back on May 28 until you recently gave me a copy of the form so I'm at a loss as to what I would be reporting.

[The grievor to Ms. Jamieson, copied to Mr. Coté and Ms. Grundy, on July 28, 2008:]

. . .

Can one of you deal with this.

. . .

[Ms. Jamieson to the grievor, copied to Mr. Coté and Ms. Grundy, on July 29, 2008:]

> *Rick started completing the report last week but, I believe, needed some additional info from you and HR to complete it. The report should be finalized in the next day or two if it hasn't been already.*
>
> . . .

[94] On July 28, 2008, Mr. Lamarre emailed the grievor, stating that he had spoken to HR and had obtained the form, which he would complete that day.

[95] Entered into evidence was an "Employer's Report of Injury or Occupational Disease" from the WCB, which Mr. Lamarre filled in with respect to the grievor and signed. It is dated July 28, 2008. In the section that addresses the details of the injury, he stated that the date of the injury was May 28, 2008, according to the physician's report, and that he had been alerted to it on July 9, 2008.

[96] According to the evidence of the grievor and of the WCB, she suffered no loss of time from work, of pay, or of benefits.

[97] The employer's final grievance reply, issued on June 29, 2010, stated as follows:

> . . .
>
> *. . . I am satisfied that management has not violated the Collective Agreement or the Agency's policies. Notwithstanding this, management has determined, at previous levels of the grievance process, that the delay in providing you with an ergonomic chair was unreasonable, and that the necessary documentation was not submitted to the Worker's Compensation Board in a timely manner. In light of this, your previous team leader has undergone additional Occupational Health and Safety training and you were credited 75 hours (i.e. two weeks) of vacation leave.*
>
> *In consideration of the aforementioned, I find that you [sic] grievances have been adequately addressed, and further corrective action is not warranted. Accordingly, your grievances are partially allowed to the extent of the corrective actions taken at previous levels in the grievance process.*

C. Files 566-02-5050 and 5052

[98] With respect to the grievance in file 566-02-5050, which alleged discrimination, the grievor requested copies of all her performance appraisals since April 1, 2004, and a current performance appraisal.

[99] The only evidence I heard from any witnesses with respect to the grievor's performance was when Mr. Lamarre was asked in his examination-in-chief about it. He stated, "Good worker. Finished tasks. Satisfactory at all times. No issues with her work." Mr. Lamarre was not cross-examined on her performance.

[100] None of the grievor's performance appraisals was entered into evidence.

1. The picture

[101] The grievor entered into evidence a black-and-white photocopy of what was purportedly a picture of Jesus Christ giving a two-thumbs-up sign, with Mr. Lamarre's face superimposed on its face. She indicated that the original was in colour.

[102] The grievor stated that Mr. Lamarre had pinned it up outside her workstation. She stated that he referred to himself as God and that he told her that "he was God to me." She testified that she found it offensive. When she was asked about a comment he made to her, she said it was the following: "Remember, I am always God to you." She stated that other people had heard him say it.

[103] Her representative asked her where exactly it had been affixed. The grievor replied that it had been posted on the exterior wall of her workstation and then stated that Mr. Lamarre's workstation had been immediately adjacent to hers. She said that it had been affixed on the left-hand side when entering her workstation.

[104] Her representative asked her when she saw the picture. The grievor said it had been before the bus accident. The grievor was asked if she had asked Mr. Lamarre to take it down. She replied that she had done so and that she asked him to do it right away. She said that his response was to brag about it and other pictures in his workstation. The picture did not bother him.

[105] The grievor was asked about when it was taken down. She replied that she had to do it. She said that when she asked Ms. Jamieson to have it removed, her response was that there was nothing wrong with it. When she was asked if she had explained why she wanted it removed, she replied that she told Ms. Jamieson that Mr. Lamarre was not her god. She stated that Ms. Jamieson replied that it was just for fun.

[106] The grievor's representative asked her if she was a religious person, to which she responded that she was spiritual.

[107] Ms. Grundy was not asked any questions about the picture; nor did she volunteer any evidence about it.

[108] Mr. Lamarre testified that three pictures were pinned to his inside office walls and that all three had his face superimposed on the faces of the persons in the pictures. The three pictures were the following:

- the one the grievor produced at the hearing, which he identified as a character from the movie *Dogma*;
- a picture of Superman; and
- a picture of Clark Gable from *Gone with the Wind*.

[109] The employer's counsel asked Mr. Lamarre if the grievor ever asked him to remove the picture. He replied that she never did. He said that the only way she could have obtained a copy of it would have been to enter his office when he was away, remove it, photocopy it, and return it.

[110] When the employer's counsel put to him that the grievor stated that he had said to her, "Remember, I am always God to you", Mr. Lamarre stated he definitely did not say that to her.

[111] Mr. Lamarre was not asked any questions about the picture by the grievor's representative; nor was he asked about her statement on him commenting to her about being God.

[112] Ms. Jamieson was shown a copy of the picture by counsel for the employer and was asked if she had ever seen it before. She replied that she had seen it in Mr. Lamarre's cubicle. She was asked if the grievor ever raised any issue about the picture with her and asked her to have it removed. Ms. Jamieson replied that grievor never did. When it was suggested to her that the grievor had spoken to her about it and had said that Ms. Jamieson had said it was only for fun, her response was that she did not believe that had ever happened. Ms. Jamieson was not cross-examined about the picture.

2. Use of the term "petrochick"

[113] The evidence disclosed that in or about either late 2007 or early 2008, part of Mr. Lamarre's NFNR team was tasked with addressing NFNRs in the oil and gas sector. He stated that over the life of the project, four to six members of his team worked in

this specific area, and at one point, the grievor was part of that team. As all the team members who worked on that project were women, he nicknamed the team "the petrochicks". According to the evidence of Mr. Lamarre and Ms. Jamieson, he used this term from the start of the project.

[114] Mr. Lamarre stated that it was a term of affection and that it was used to promote team building. According to him, the team members used it themselves, and he stated that one former member still refers to herself as a "petrochick".

[115] The documentary evidence disclosed that Mr. Lamarre had used this term in emails sent to the team, including the grievor, and to others he emailed about work on the NFNRs in the oil and gas sector, starting at least as early as March of 2008.

[116] On October 8, 2008, when responding to an email in a chain started the day before, Mr. Lamarre emailed his oil and gas NFNR team members, including the grievor, as follows:

> *Hey PetroChicks and Art. This is for information purposes only and a heads up Sue wants to meet with us later in the month.*
>
> *Red Deer chicks - Not sure if you want to attend but I'll keep you in the loop.*
>
> . . .

[117] Mr. Lamarre testified that the phrase "Red Deer chicks" referred to some women in the Red Deer, Alberta, TSO who had joined the oil and gas NFNR project.

[118] In response, the grievor emailed the following to Mr. Lamarre, copying Ms. Jamieson and Ms. Grundy: "I have told you before, that I object to the term of Petrochick as I find it demeaning. I am again requesting that you quit using the term of Petrochik(s) [*sic*]."

[119] On October 9, 2008, Mr. Lamarre replied, stating, "Alright."

[120] In her evidence, the grievor stated that she had told Mr. Lamarre earlier that she did not wish to be referred to as a petrochick. He stated that her email was the first time she had asked him to stop using the term; he stated that he did so as of then.

[121] Entered into evidence were photocopies of two cards, for two members of the oil and gas NFNR project. One was a get-well-soon card, and the other was a birthday

card. Neither is dated, but the birthday card photocopy had "I signed this on Oct 16/08" handwritten on it, which the grievor said she had written. The other card did not appear to have her signature on it. Mr. Lamarre signed both cards and referred to each recipient as a petrochick. On the get-well-soon card, he wrote, "Hurry Back Petrochick [name omitted]", and on the birthday card, he wrote, "Happy Birthday Petrochick".

[122] In her examination-in-chief, when the grievor was asked about other instances of harassment, she stated that Mr. Lamarre called women "petrochick" and men by their given names. When she was asked how often he used the term, she responded that it was quite often. When she was asked how it made her feel, she stated, "Uncomfortable, because it was only towards women and not men."

[123] When she was asked if she expressed to him that she found it offensive, the grievor said that she did so in an email to him, which was then introduced into evidence. However, it was part of an email chain between a number of people, including both him and her dated July 3 and 4, 2008. In one of the emails, he did use "petrochicks"; however, nowhere in the chain did she object to it or even mention its use.

[124] The grievor was asked what she did next. She said that she and Ms. Grundy raised it with Ms. Jamieson. When the grievor was asked about Ms. Jamieson's response, she stated that Ms. Jamieson's body language said, "Here we go again." When she was asked if Mr. Lamarre kept using the term, she replied that he did. Her representative then asked her if she brought it up with Mr. Lamarre, to which she replied that she brought it up to Ms. Jamieson and asked her to ask him to stop. At this point, entered into evidence was the October 8, 2008, email in which she asked Mr. Lamarre to stop using the term.

[125] The grievor's representative asked Ms. Grundy no questions about the meeting that the grievor said that she and Ms. Grundy had with Ms. Jamieson on the use of petrochick.

[126] Ms. Jamieson testified that she learned that Mr. Lamarre was using the term before the grievor raised it as an issue. She recalled suggesting to him that using it might not be wise. She said that he said that the group did not mind him using it and that in fact they liked it because it promoted their work.

[127] Ms. Jamieson said that sometime later, she recalled a meeting with the grievor and Ms. Grundy at which the use of the term was discussed, after which she had a further discussion with Mr. Lamarre and told him to stop using it, which she said he did. When she was asked when she met with the grievor and Ms. Grundy, Ms. Jamieson said she thought it was in September of 2008. She was not cross-examined on the meeting.

[128] Counsel for the employer asked Ms. Jamieson if anyone else objected to the use of the term. She replied that no one else had objected. She stated that she asked four women on Mr. Lamarre's oil and gas NFNR project about it and that none of them found it offensive. She stated that some of them found it cute.

3. Other allegations

a. November 2008 awards ceremony

[129] The grievor testified that in November of 2008, the members of the oil and gas NFNR team received an award of some type from the CRA. A ceremony was held, and the grievor was the only member of the team who went up to receive the award. She said although two other members of the team attended the ceremony, neither went up to accept the award. When the team was called to receive it, she stated that when she went to the podium, the crowd laughed at her.

[130] The grievor's representative asked her about what happened when she arrived at the event. She replied that the other two team members were laughing. She stated that she was humiliated. Those two team members were not identified.

[131] Mr. Lamarre did not attend the ceremony.

[132] Ms. Jamieson stated that while she had attended, she left before the oil and gas NFNR team's award was given out.

[133] Mr. Coté testified that he had attended. He recalled that the oil and gas NFNR team did win an award, although he was not certain that it received a certificate at the ceremony. He said that he did not recall how the crowd reacted; nor did he recall people laughing. He did state that awards ceremonies were informal standing-room events that had no seating and a small podium and that they were very noisy.

[134] Ms. Grundy was asked if she had attended. She replied that she did not recall but that she had heard about it from her team members. She did not state what she had heard from them, and specifically, she did not state that she had heard anything from the grievor. When the grievor's representative asked her what she had heard, she did not respond with what she had heard but said, "In an enclosed workspace, comments fly. The comment was that it was strange that rest of team did not show up, especially the team leader."

b. Yelling

[135] Whenever the grievor was asked during her examination-in-chief if she had had a discussion with Mr. Lamarre about a particular issue, she often answered that he had yelled at her. The first time was when she was talking about the bus accident. Her representative asked her if she had seen a doctor, to which she answered, "I recall calling Rick Lamarre and said I wasn't going to be in, and he began yelling at me."

[136] The grievor's representative asked her if Mr. Lamarre ever yelled at anyone else. She replied that he had and stated that she ". . . was taking minutes, and a woman raised a point, and he screamed at her, and everyone laughed." Counsel for the employer put that point to him. He stated that he did recall an incident occurring but only within the last 18 months. He said that the employee, a friend of the grievor's, who was on a work-improvement plan and for whom Mr. Lamarre was acting as the TL was in his work cubicle, became agitated, and began yelling at him. He stated that he did raise his voice such that she could hear him tell the employee to leave his cubicle. Mr. Lamarre was not cross-examined on this point.

[137] The grievor stated that Mr. Lamarre would yell at her over the phone and would follow her and scare her.

[138] Responding to a question about whether she had seen a copy of the ergonomic assessment after her return to work in September of 2006, the grievor stated, "I am not sure. I don't know. I went and got what he wanted. He would yell at me."

[139] The grievor's representative asked her if she had been on a modified schedule until December of 2006. She answered, "It was very difficult; he was yelling at me. Every time I go to the doctor there is a charge for that." Her representative asked if a particular incident occurred. The grievor responded with, "He intimidates by yelling."

[140] When the grievor's representative asked her how long she continued to work after she returned in September of 2006, the grievor replied, "Rick Lamarre pushed me out the door. He made me cry all the time."

[141] The grievor's representative asked the grievor if she recalled the issue that initially led to Ms. Grundy becoming involved. The grievor did not answer. Her representative then asked the question slightly differently, and the grievor responded that her personal injury lawyer wanted her to do certain things. I then asked the grievor if she recalled the issue. She answered by stating, "Rick kept yelling at me, so Val was my voice."

[142] The employer's counsel asked Mr. Lamarre if, other than the event he described that occurred in the past 18 months, he had ever yelled at the grievor or at any other employee. He stated he had never done so.

[143] Mr. Lamarre was not cross-examined on the yelling allegations.

[144] Mr. Lamarre testified that the grievor rarely spoke to him, which made managing her work difficult.

[145] Ms. Jamieson was asked if she had ever heard Mr. Lamarre yell at anyone. She stated she had never heard him do so. She stated that no one ever told her that he had yelled at them; not even the grievor.

c. Allegations about Ms. Jamieson

[146] The grievor testified that at some unspecified time, Mr. Lamarre stated that Ms. Jamieson was stupid and that he could get her fired. He testified that he had no authority to fire anyone and that he had never said those things. The employer's counsel put the allegation to Ms. Jamieson. She responded that Mr. Lamarre had no authority to fire her and that she doubted that he had said that she was stupid. She stated that the grievor never raised these allegations with her. Neither allegation was put to Mr. Lamarre or Ms. Jamieson on cross-examination.

[147] The grievor stated that at some unspecified time, Ms. Reynolds and Ms. A tried to get her to break up Ms. Jamieson's marriage. She suggested that she had had documentation about it but that it had disappeared. She also alluded to this being why

she moved from Ms. Reynolds' team. When counsel for the employer put this to Ms. Jamieson, she replied that it was news to her. She was not cross-examined on it.

[148] The grievor stated that: "Sue Jamieson made it very clear that she did not like me." When her representative asked her how Ms. Jamieson had made it clear, the grievor said that Ms. Jamieson had said the following to her: "You know how those Europeans are like." The grievor alluded to Ms. Jamieson's husband being European. Ms. Jamieson testified that her husband was not European. The grievor's representative did not ask Ms. Jamieson the following:

- if she disliked the grievor;
- if she had made a comment about Europeans; or
- anything about her husband.

d. Other allegations against Mr. Lamarre

[149] The grievor indicated that at some unspecified point, she introduced Mr. Lamarre to her boyfriend of the time. In his testimony, Mr. Lamarre confirmed it and stated that it happened at a cafe or restaurant. The grievor stated that her work relationship with Mr. Lamarre had been good before this meeting but that it then turned bad. Mr. Lamarre categorically denied that his attitude towards her ever changed. He was not cross-examined on this issue.

[150] The grievor also referenced a book sale of some type, again at an unspecified time, at which she said she showed Mr. Lamarre a cookbook. He responded that he "... was looking for a girl who could cook." When the employer's representative asked him about making this or any sort of similar comment, he replied that he did not make one. He was not cross-examined on this issue.

[151] The grievor also stated that every time she was required to obtain a note from her doctor for her absences, Mr. Lamarre's response was to yell, and Ms. Jamieson's response was, "So!" Both Mr. Lamarre and Ms. Jamieson denied responding to her in this fashion.

[152] Although Ms. Grundy was the grievor's representative with respect to these grievances, she provided no insight as to what was put forward at the different levels of the grievance process. The grievor also did not provide any information as to what,

if any, specifics she provided during the grievance process of the alleged discrimination or harassment.

[153] The employer responded to the grievances in files 566-02-5050 and 5052 at the second level with the same reply, which set out information about the allegations. The relevant portions of the reply are as follows:

> *I have carefully reviewed the circumstances surrounding your grievances and have considered the information provided by your union representative, as well as the information from the fact finding interviews and the additional printed material provided.*
>
> . . .
>
> *The objective of the fact finding was to ascertain the facts regarding your allegations of harassment and discrimination. The responsibility to determine whether harassment has occurred has been delegated to my level. I considered all your allegations in making my decision, and will speak directly to some of your concerns in this reply.*
>
> *The worker's compensation issues have been addressed in the reply to the grievance 70049980* [file 566-34-5051] *and therefore will not be addressed in this reply.*
>
> *I note that when you e-mailed [sic] your Team Leader on October 8, 2008 to express your concern with his use of the term "Petrochicks", he stopped. Previously, he had used that term on occasion over an extended period of time, and he was not aware that any of his team members took offense. He admits that he did use the term once more after October 8, 2008 in a birthday card to another co-worker, and regrets that he did not realize that a third party reading the card might find that offensive. His manager also relayed your concerns to him. I am satisfied that this matter has been addressed appropriately, and I do not conclude that his actions in this regard constitute harassment or discrimination.*
>
> . . .
>
> *You raised a concern that at the 2008 TSO Recognition ceremony (November 26, 2008), you were the only person to step forward to accept a team award even though others were also called. Statements from both the Manager and your Team Leader provided their perspectives on this situation, and while I may question their judgement concerning their lack of presence and/or involvement at this event, I cannot conclude that this contravened the harassment policy. I acknowledge and regret if this situation was awkward for you.*
>
> *The agency recognizes and acknowledges that conflict occurs within the workplace. Conflict can be the result of personality differences, a lack of communication, misunderstandings or basic differences in viewpoint. My review of the interactions with your*

> *Team Leader and manager indicates such conflict. Notwithstanding, there is no evidence to support the allegations of harassment and discrimination. . . .*
>
> . . .

[154] Although the employer's second-level responses to both grievances referred to a fact-finding exercise, no evidence was presented about one.

III. Summary of the arguments

A. For the grievor

[155] All four grievances were filed after the grievor suffered an injury in a bus accident on May 31, 2006.

1. The employer's timeliness objection

[156] The employer raised an objection with respect to the timeliness of the grievances.

[157] Sections 63 and 95(2) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79) require that the employer raise timeliness at each level of the grievance process to be able to raise it at adjudication. In support of this position, the grievor referred me to *Shandera v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 21.

[158] As the employer did not raise timeliness at every level of the grievance process, it could not raise it at adjudication.

2. File 566-34-5049

[159] The employer refused to allow the grievor to return to work following the bus accident, which was unreasonable.

[160] There are limitations on what kind of information the employer can obtain; it must be balanced by the employee's privacy rights. In this respect, the grievor referred me to *Canada (Attorney General) v. Grover*, 2007 FC 28, and *Public Service Employee Relations Commission v. British Columbia Government & Services Employees' Union*, [1998] B.C.C.A.A.A. No. 435 (QL) ("*Teixeira*"), for the proposition that employees have a strong right to privacy.

[161] *Grover* held that an employer cannot automatically demand that an employee undergo a medical examination. To balance the employee's right to privacy, the employer must explore options to obtain the necessary information. If it is unsatisfied with the options, it must explain this to the employee or state why a medical certificate is insufficient. This respects the employee's right to privacy and allows him or her to assess the employer's objections and produce other information as needed.

[162] In *Teixeira*, an employer refused to allow an employee to return to work until he was evaluated by a psychiatrist, as the employer felt that he was having difficulties getting along with supervisors. The Adjudicator suggested that after the employee had obtained an opinion from his doctor, the employer could have cleared up any confusion by putting its questions about the supervisors to the treating physician.

[163] The grievor's position is that the employer did not follow the process outlined in *Grover* and *Teixeira*; it did not use the least obtrusive means to obtain the information it sought. Dr. Ho had written on April 19, 2007; if the employer had questions about the grievor's mental health, it should have addressed them to Dr. Ho.

[164] In her evidence, the grievor stated that when she consented to the FTWE, she understood that the employer required clarification on her physical limitations. Only when the Lamarre July 24 letter and Ms. Jamieson's letter of that day were written did she realize the questions they were interested in and that they were concerned about her mental health. She stated that she did not know what they were concerned about. She signed the consent on June 28, 2007, and the letters were not produced until July 24, 2007.

3. File 566-34-5051

[165] The employer failed to provide the grievor with the correct ergonomic chair, which caused her an injury.

[166] The facts disclosed that after an ergonomic assessment, the grievor was given a loaner chair. However, it was taken away from her on March 13, 2008. Mr. B, who was responsible for ordering the new chair, had not ordered it when he should have and provided no reasonable explanation for not doing so.

[167] Mr. Lamarre did not follow up with the grievor until May 6, 2008. In his evidence, he stated that perhaps he should have followed up with her earlier. She injured herself and then made a WCB claim.

[168] The grievor seeks a declaration that the employer breached the collective agreement.

4. Files 566-34-5050 and 5052

[169] The grievor submitted that the term "petrochick" is discriminatory to women; it is offensive as it infantilizes them and labels them as cute and harmless. It could be offensive to some.

[170] The evidence disclosed that Ms. Jamieson had had concerns before the grievor complained. She stated that when she asked Mr. Lamarre about whether using the term was a good idea, his answer was that everyone on the team was fine with it.

[171] The grievor maintained that she had asked Mr. Lamarre to stop using the term before emailing him and asking on October 8, 2008. He stated that she had not asked him to stop before then.

[172] Ms. Jamieson stated that in September of 2008, she met with the grievor and Ms. Grundy. The term was discussed. According to Ms. Jamieson, she recalled discussing with the grievor the term being used one Friday as the grievor was leaving for the day. She stated that she mentioned to Mr. Lamarre that he had to stop using it, but she did not think it had registered with him. He stated that he did not recall such a conversation. He continued to use the term, despite the grievor finding it offensive.

[173] The grievor was discriminated against due to the employer's belief that she suffered from a mental health issue or mental disability. When he was asked in cross-examination if he thought that the grievor had mental health issues, Mr. Lamarre stated that he did think she had some. He stated that the questions sent to HC were indicative of his concerns of some alleged inabilities of the grievor to get along with her co-workers.

[174] Because of this perception that the employer had of the grievor, it treated her dismissively. The incidents of discrimination include when Mr. Lamarre asked her to

come in to work on the GST leads when she was off work between May and September of 2006.

[175] Ms. Jamieson stated that she had seen the grievor in the office but that she had not asked her why she was there, stating that she believed the grievor had come in for financial reasons. The grievor stated that she had gone in because she had been required to come in and produce the GST lead dated July 7, 2007, as proof. Mr. Lamarre had called her in; he had had little concern for her injury.

[176] The delays completing the WCB form and ordering the ergonomic chair, both of which Mr. Lamarre was responsible for, were further examples of discrimination and harassment.

[177] The grievor was concerned about the picture that had Mr. Lamarre's face digitally applied to it, which he had ignored. This was another example of his dismissive attitude towards her.

B. For the employer

[178] The employer reviewed the evidence. It indicated that difficulties had arisen between the grievor and a number of her co-workers, which necessitated her being moved between work divisions or sections.

[179] Mr. Lamarre testified that the grievor believed there was a conspiracy of sorts involving Ms. A, the other clerk in the NFNR team, with whom the grievor had had a previous dispute.

[180] Mr. Lamarre stated that the grievor rarely spoke to him, which made managing her work difficult. She would require him to either email her or speak through Ms. Grundy.

1. File 566-34-5049

[181] The grievor went on extended leave after the bus accident, from June until September of 2006. While she stated that Mr. Lamarre had called her in to work, he stated that he had not done so, although both he and Ms. Jamieson testified that they did see her at work at some point in the summer of 2006 and that both had wondered why she had come in.

[182] After the grievor returned to work in September of 2006, Mr. Lamarre stated that he attempted to obtain further information from her with respect to her work limitations, to avoid aggravating her condition. He also stated that he met with her and Ms. Grundy and that he followed up with them with respect to the additional information he needed to complete the disability forms. The evidence disclosed that he completed them despite not receiving the required information from the grievor.

[183] In January of 2007, the grievor stopped reporting for work. The evidence showed that she would call in and leave messages. On one occasion, Mr. Lamarre happened to be at his desk when she called. He said that she yelled at him and told him to stop harassing her.

[184] On February 28, 2007, Ms. Jamieson wrote to the grievor, informing her that the employer had no current medical information on file and asking for a new note with medical restrictions or that she consent to a FTWE. The employer did receive two medical notes from the grievor's treating physician, Dr. Ho, dated March 19 and April 18, 2007, respectively. They provided little information, stating in essence that she could not work and that she should be off work until May 30, 2007, but that she could work earlier if "issues resolved." The notes did not explain the issues.

[185] On April 24, 2007, after receiving Dr. Ho's second note, Ms. Jamieson wrote to him, asking for clarification. On April 25, 2007, she received from the grievor's personal injury lawyer a medical note dated April 19, 2007, written by Dr. Ho. After receiving that note and no further information from Dr. Ho, the employer decided to refer the grievor to HC for a FTWE.

[186] The employer's position is that the information from Dr. Ho was vague and that it had an obligation to ensure that the grievor could return to work safely. Ms. Jamieson wrote to the grievor's personal injury lawyer with respect to the FTWE and to obtain the grievor's consent. She set out the reasons for the FTWE request. She also testified that she explained those reasons to the grievor.

[187] The employer admitted that some delays arose in getting the FTWE organized. It attributed them to the fact that it took place in the summer vacation period. It stated that it took the delays into account and that it partially compensated the grievor for them.

[188] The FTWE was completed. Its report is dated November 1, 2007. The employer received it on November 6, 2007.

[189] The employer maintained that the grievance was untimely. However, it conceded that a delay occurred in arranging the FTWE between June 28 and July 24, 2007. The employer relied on *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), in stating that any remedy could cover only the 20-day period before the grievor filed her grievance.

[190] The employer also relied on *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.), and *Boudreau v. Canada (Attorney General)*, 2011 FC 868, in stating that the grievor changed the nature of her grievance at the hearing. When she filed it, she did not suggest that there was a breach of article 19 of the collective agreement or that discrimination had occurred; nor did she seek any damages under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

[191] While Mr. Lamarre did state that he had concerns about the grievor's state of mental health, he also stated that he was not a doctor. The employer's evidence on her state of health was short on specifics; she had been away for an extended period with no evidence as to why.

[192] The employer referred me to *Re Thompson General Hospital* , [1991] M.G.A.D. No. 57 (QL), *Donaldson v. Western Grain By-Products Storage Ltd.*, 2015 FCA 62, *Capital Health Authority (Royal Alexandra) v. United Nurses of Alberta, Local 33*, [2006] *A.G.A.A. No. 60 (QL)*, *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4, *McLaughlin v. Canada Revenue Agency*, 2015 PSLREB 83, *Gagnon v. Canada (Attorney General)*, 2017 FC 373, *Joss v. Treasury Board (Agriculture & Agri-Food Canada)*, 2001 PSSRB 27, and *Paquette v. Treasury Board (Parole Board of Canada)*, 2016 PSLREB 25.

2. File 566-34-5051

[193] Mr. Lamarre testified that after the FTWE report was received, he took the necessary steps to arrange for an ergonomic assessment of the grievor's workstation. As part of that assessment, she was to receive a chair. He also stated that he brought the need to obtain the chair to Mr. Coté's attention.

[194] The grievor was injured using a broken chair. There was no reason for her to use a broken one. She never told Mr. Lamarre or anyone between the time the loaner chair was taken away and the May 6, 2008, email copied to Mr. Lamarre that she did not have the appropriate chair or that she was using a broken one.

[195] The grievor often emailed her bargaining agent representative, Ms. Grundy, about the issues, and there is no evidence that she contacted Ms. Grundy about sitting on a broken chair.

[196] The evidence of Mr. Coté and Ms. Jamieson was that there were a number of spare chairs in the Edmonton TSO that the grievor could have used and that she did not have to use a broken one. Once the grievor raised the issue of the broken chair, Mr. Lamarre and Ms. Jamieson saw to it that the new chair was ordered.

[197] As part of the grievance process, the employer admitted its error, expressed regret, and awarded the grievor two weeks of vacation leave.

[198] The employer submitted that article 22 of the collective agreement is a consultative clause that does not give rise to individual employee rights. In this respect, it referred me to *Spacek v. Canada Revenue Agency*, 2006 PSLRB 104.

3. Files 566-34-5050 and 5052

a. Use of the term "petrochick"

[199] Mr. Lamarre explained his use of "petrochick". It was an affectionate term used for team-building purposes.

[200] Mr. Lamarre testified that the term was used for months and that no one took issue with it, including the grievor. The evidence disclosed that she was aware that it was being used in March of 2008 and in an email exchange in early July of 2008. She did not take issue with the use of the term until October of 2008. While she stated that she told Mr. Lamarre that she had asked him earlier to stop using it, he did not believe that she had done so. When she asked him to stop using it, he did.

[201] Mr. Lamarre admitted to using the term in two cards for other members of the oil and gas NFNR project team, stating that they were personal messages to those people, neither of whom had any difficulty with the use of the term. His evidence was

that a former member of the oil and gas NFNR project team who is now a TL still refers to herself as a petrochick.

b. Other allegations

[202] In her evidence, the grievor suggested that Mr. Lamarre commented to her at some point about wanting a girlfriend who could cook. He denied ever saying it and was not cross-examined on this point.

[203] In her evidence, the grievor suggested that Mr. Lamarre had yelled at her all the time. He denied yelling at her or at anyone, and Ms. Jamieson testified that she has never heard him yell at anyone; nor did she receive any complaints about him yelling at anyone.

[204] The grievor also testified about the awards ceremony and being the only team member to accept the award and being laughed at when she went to accept it. Ms. Jamieson had left before the award was presented. Mr. Lamarre stated that he did not attend and that he never attended awards ceremonies, even when he received an award. Mr. Coté attended but saw no evidence of anyone laughing at the grievor.

[205] The employer submitted that these grievances should be dismissed as there is no evidence of either discrimination or harassment.

IV. Reasons

[206] The events related to these grievances and the evidence I heard can be broken down into roughly the following four time frames:

1. before the May 31, 2006, bus accident;
2. between May 31, 2006, and the grievor's return to work on a graduated basis on November 2, 2007;
3. between November 2, 2007, and October 16, 2008 (the date on which the grievances in files 566-34-5050, 5051, and 5052 were filed); and
4. after October 16, 2008.

[207] Issues of credibility are dealt with by the test articulated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, in which the British Columbia Court of Appeal stated as follows:

> . . .
>
> *If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice*

> *would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility . . . A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*
>
> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. . . .*
>
> . . .

[208] For the reasons that follow, I found that much of the grievor's evidence did not meet the test in *Faryna.*

[209] Many of the things that were alleged to have taken place occurred up to 12 years ago, and much of the grievor's evidence was not supplemented by documents, witnesses, or any other corroborative evidence. As I set out in *Boiko v. National Research Council of Canada*, 2018 FPSLREB 11, delay is not conducive to the memories of witnesses. Of the five witnesses I heard evidence from, only the grievor has remained with the employer. By the time she testified, Ms. Jamieson had been retired from the CRA for more than seven-and-a-half years, and Mr. B had passed away. He had been responsible for ordering the grievor's chair in the spring of 2008.

[210] In her evidence, and often when responding to a question put to her by her representative, rather than answering it, the grievor would make a statement about how Mr. Lamarre treated her. I have set out several such replies in my recitation of the evidence.

[211] The first one, very early in the course of the evidence, occurred when the grievor's representative asked her how long she had been off work (referring to the bus accident). In her response, rather than answering directly, the grievor said, "I was called in two times in July to input GST information into the database. Rick Lamarre demanded I go into work. Rick Lamarre threatened me with Sue Jamieson." Not only did she not answer the question, but also, she said that Mr. Lamarre twice called her in to work. Later, in cross-examination, she changed her story, stating that in fact Mr. Lamarre had not called her in to work but that she called him, at which point he demanded that she come in.

[212] The grievor stated that she was called into work in July of 2006, yet the leave documentation disclosed that she was off all of June, July, and August of 2006 save for two days, June 5 and 6. Those dates coincide with her oral testimony, in which she stated that she had tried to go to work after the accident but could not remember specifically when. She stated that it was unbearable and that the brightness of the computer screen intensified her headache and increased her pain. Given her recollection of returning to work shortly after the accident and the leave records, I believe that she likely returned to work on June 5 and 6, 2006, the Monday and Tuesday after the accident.

[213] The grievor maintained that she worked two days in July of 2006. The leave records state otherwise. As evidence of her attendance at work that month, she produced the GST lead. On it is handwritten "July 7, 2006". The difficulty I have is that the GST lead contains other information that indicates that the taxpayer, who had not been registered with the GST but should have been, was registered as of June 23, 2006. While the name of the person in the GST section to whom the GST lead was referred was redacted, the document did state that it had been 16 days since the lead had been assigned to that person. While the exact date on which the GST lead information was provided to the person in the GST section is unknown, it is known that it was at least 16 days before June 23, 2006, which was a Friday.

[214] While it is not known if the 16 days meant 16 working or calendar days, and it is not known if they included June 23, 16 calendar days would have been to either June 7 or 8, 2006. Sixteen working days would have been to either June 1 or 2, 2006. As the grievor's leave summary disclosed that she was away on June 1 and 2, 2006, therefore, it is highly likely that the information that led to the GST lead and that had then been

acted upon had been entered into the system on or about June 5 or 6, 2006, which are the two days on which the leave summary states she was at work. This is if I accept that the grievor was the employee who entered the information into the system that led to the GST lead.

[215] While the grievor stated that she wrote "July 7, 2006" on the form, the GST lead itself suggests that the work would have been done before this date. She stated that she wrote it on the form to show that the work was done on that date. However, that makes no sense, as the purpose of the NFNR section is to find NFNRs and to provide their information to the appropriate section (in this case, GST) for registration. This took place before June 23, 2006.

[216] According to the grievor's evidence, Mr. Lamarre's actions and behaviour were so bad that Ms. Grundy was, as the grievor described, "her voice". Ms. Grundy believed that her first involvement on the grievor's behalf was with respect to the issue of the grievor's workstation keys (between January 18 and 24, 2007); however, that is incorrect. Ms. Grundy had originally begun acting on the grievor's behalf at least as early as December 5, 2006, at 9:02 a.m., when she emailed Mr. Lamarre about the grievor and what Ms. Grundy described as the grievor's "graduated return to work".

[217] The evidence disclosed that Ms. Grundy was involved on the grievor's behalf at different points between at least December 5, 2006, and the grievances being filed in September and October of 2008. This included being kept apprised of the events related to her participation in the FTWE, of which she witnessed the grievor's signature on June 25, 2007; the receipt of the FTWE, which she had forwarded to Mr. Lamarre on November 2, 2007; the issues around providing the ergonomic chair in May of 2008; the WCB forms being filled out in June and July of 2008; and according to the grievor, a meeting with Ms. Grundy and Ms. Jamieson in the fall of 2008 with respect to the use of the term "petrochick".

[218] Based on the evidence before me, the grievor engaged Ms. Grundy's assistance early into her foray of returning to work in late 2006, and Ms. Grundy remained actively engaged from then up to at least October 16, 2008, when she signed the grievances. Despite Ms. Grundy's active involvement in the grievor's work issues over this extended period, she did not testify about, and there was no email to or from her that refers to Mr. Lamarre having done any of the following:

- yelling at the grievor;
- causing her to cry; or
- following her and scaring her.

[219] Surely, if there was evidence of Mr. Lamarre yelling at employees, Ms. Grundy, as the Alliance steward whose responsibilities included representing members in the RDC at the Edmonton TSO, would have heard about it. She was asked no questions about it and volunteered no evidence that it had occurred. The evidence disclosed that the workplace consisted of cubicles and as such if the yelling occurred, someone surely would have heard it and could also have reported it to management or the union, or, testified about it.

[220] The grievor said that Mr. Lamarre followed her and scared her, yet she provided no example or detail of it. There is no evidence that it happened other than the grievor's statement that it did.

[221] After the grievor had been examined-in-chief, cross-examined, and re-examined, from documents produced and the answers given, it was apparent to me that she had retained legal counsel to address the injuries she sustained in the bus accident. I asked her about her claim. She confirmed that she received a monetary settlement. She also confirmed that she had seen a number of medical specialists about her injuries who issued medical reports and provided them to her legal counsel handling her claim.

A. File 566-34-5049

[222] In this grievance, the grievor grieved that she was not allowed to return to work in May of 2007, which has caused her a great deal of stress and financial hardship. The corrective action she requested was to be made whole.

[223] The facts disclosed that the grievor was injured in an accident unrelated to her work while commuting on May 31, 2006. She was off work for a significant period, from June until September of 2006, and returned to work in September on a very limited basis. The documentary evidence disclosed that she worked two hours the first week of September and then four hours per week for the balance of the month, up to and including October 18, 2006.

[224] Entered into evidence was a note from the grievor's physician, Dr. Ho, dated September 20, 2006, which indicated that he saw her on that date and stating that she had not been able to attend work from May 31 to September 5, 2006. It then stated,

"modified duties", "2 hr/shift 2 shift/week", no lifting of more than five pounds, an ergonomic assessment, no stresses, and minimal computer work.

[225] That note provided the employer with very little information. It did not provide any information on what the grievor could or could not do, except not to lift more than five pounds. Given the information I received at the hearing and the grievor's injuries, at least as much as she explained them to me, I have no understanding of the basis of the limitation on lifting. Yet, she was not placed on a graduated return to work (despite what Ms. Grundy might have intimated in her December 5, 2006, email to Mr. Lamarre), as she was permitted to work only four hours per week. There was no indication of when she could increase her hours or what she could do.

[226] It is clear from the evidence that the grievor pursued a personal injury claim against the City of Edmonton and that as part of it, she had a number of appointments with medical specialists, who provided reports. I do not doubt that these reports could have shed some light on her injuries, their effect on her ability to return to work, their effect on the tasks required of her in her position, and what if any accommodation measures might have been considered. She chose not to share this information with her employer and not to provide it at the hearing.

[227] While the grievor returned to work in early September of 2006, she worked the equivalent of 9.5 days between then and December 31, 2006. While she did continue to go to work in January of 2007, again it was at 4 hours per week, and she left abruptly sometime around the week of January 22. She worked either 12 or 16 hours that month.

[228] The grievor's reasons for leaving work are not clear. From the date she returned to work, September 5, 2006, to her absence in January of 2007, of the 103 working days covered by that period, she was at work for the equivalent of 10.5 days or roughly 10% of working time. Simply put, she was rarely there. There is no evidence that during that time, she was on any form of graduated return to work; nor was there an indication that she would return to full-time work. Nor did the grievor, her doctor, or the Alliance indicate the extent of the required accommodation, and if so, what kind. I am left to assume that she was still suffering continuing symptoms due to her injuries from the bus accident, and as such at this time she was very limited in what she could do as the note from Dr. Ho provided little guidance.

[229] Ms. Jamieson wrote to the grievor on February 28, 2007, indicating that the last medical note the employer had on file was the one from Dr. Ho dated September 5, 2006, and that she had been absent from work since January 24, 2007, without explanation. At this juncture, Ms. Jamieson told the grievor that she would not be permitted to resume her duties as the employer was not in a position of knowing whether resuming them would or could aggravate her medical condition.

[230] Given that the grievor had been away from work for such an extended period, it was not unreasonable for the employer to ask her to have her physician provide medical certification that she was fit to work, failing which the employer wanted her to participate in the FTWE.

[231] While the grievor did provide further medical notes from Dr. Ho after Ms. Jamieson's letter, they were not helpful; nor did they certify that she could return to work. Dr. Ho's February 28, 2007, note simply stated the phrase "unable to work due to medical illness January 29 - March 19/07". Quite frankly, I am suspicious of a note dated more than a month after the grievor left work.

[232] Dr. Ho's March 14, 2007, note simply stated that the grievor was unable to attend work from March 19 to April 23, 2007, and his April 18, 2007, note only stated that she was unable to work due to illness from April 23 to May 30, 2007; however, she could have worked earlier if the issues were resolved.

[233] An employer is entitled to satisfy itself as to why an employee is not at work. At times, this just requires a note from a physician who, by writing it, attests to the employee having an illness or injury that prevents him or her from carrying out his or her duties. Difficulties arise when employees are cryptic about their absences and when the medical notes they provide are equally cryptic.

[234] It is clear that Dr. Ho's April 18, 2007, note was unhelpful. By then, since her accident, the grievor had worked the equivalent of only 12.5 out of a possible 220 working days (bearing in mind that a full working year for her was 250 days). That note merely stated that she was unfit to work due to illness but that she might have returned to work earlier if the issues were resolved. These issues were not set out.

[235] After that note, Ms. Jamieson wrote to Dr. Ho and asked for more specifics.

[236] The employer sought information from Dr. Ho, which was not forthcoming. While Dr. Ho might have written a letter to "whom it may concern" and might have forwarded it to the grievor's personal injury lawyer, it certainly was not addressed to the employer; nor did it answer the employer's questions. Dr. Ho did not respond to the employer's correspondence of April 24, 2007.

[237] It was only as of late April and early May of 2007, that the employer received any significant information from Dr. Ho with respect to the grievor's medical situation which started the accommodation process. The evidence disclosed that prior to this point in time the employer was attempting to get information from the grievor and Dr. Ho, however, was being met with silence. In fact, the letter they did receive under Dr. Ho's name came from the grievor's personal injury lawyer and not Dr. Ho directly.

[238] I heard no evidence of financial hardship and in fact the grievor testified that she had settled her claim with respect to the bus accident. It is common that personal injury claims contain claims for loss of income. This was information that was exclusively within the knowledge of the grievor. She chose not to share this information with the hearing.

[239] I find that the evidence does not disclose that the employer was in breach of the collective agreement in acting in the manner it did by setting into motion the accommodation process and not bringing the grievor back to work in May of 2007. It started the accommodation process and followed through once it received appropriate information.

B. File 566-34-5051

[240] The grievor testified that she injured herself in late May of 2008 because the chair she was supposed to receive due to an ergonomic assessment had not been provided. The evidence disclosed that from early in 2008 until sometime in March, she used a loaned chair and that when it was taken away, she used another one, which she said was broken and caused her to strain her back.

[241] The grievor saw her doctor, who filled out WCB forms, which she provided to Mr. Lamarre. According to her, Mr. Lamarre did not fill out the forms he was supposed to in a timely manner. While there is a dispute as to whether he received them from her on or about the date on which she saw her doctor in late May of 2008 and to

whether she told Mr. Lamarre of the injury when it occurred, at the end of the day, the allegation in the grievance is that the employer breached article 22 of the collective agreement.

[242] I agree with the employer's submissions and the reasoning in Spacek that article 22 is consultative and that it requires the employer to consult with the bargaining agent about health and safety issues. As set out in *Spacek*, the employer's obligation is to the bargaining agent and not to an individual grievor.

[243] The evidence disclosed that the grievor did not lose any time at work. In addition, in the grievance process, the employer admitted to a delay obtaining the requisite chair, and so it credited her with 75 hours of leave. In addition, it sent Mr. Lamarre on occupational health and safety training.

[244] As I have found that the article in question is merely consultative in nature and I heard no evidence that directly relates to it, there was no breach of the collective agreement, and as such this grievance is dismissed.

C. Files 566-34-5050 and 5052

[245] For the reasons that follow, these grievances are dismissed.

[246] The two grievances, in files 566-34-5050 and 5052, were filed on October 16, 2008, and are worded very similarly. In file 566-34-5050, the grievor alleged that CRA management at the Edmonton TSO discriminated against her, contrary to clause 19.01 of the collective agreement, the CRA's policies, and other applicable articles, Acts, and legislation. In file 566-34-5052, she alleged that that management had not provided her with a harassment-free workplace as required by clause 19.01 and the CRA's policies.

[247] The grievor referenced several events that occurred over the course of the time, up to the point in time that she filed the grievances. The details most of them were scant, and the time frames were not clear. It is also unclear if she considered them discrimination or harassment. It became obvious as she presented more of her evidence that the subject of her ire was Mr. Lamarre.

1. The picture

[248] It was unclear from the grievor's evidence if she found that the picture upon which Mr. Lamarre had superimposed his face on a character that he identified was from the movie *Dogma* was harassing, discriminatory, or both.

[249] The evidence was that the grievor copied it and reported that she found it offensive before her bus accident. I was given no other indication as to when it was hanging on the wall. Mr. Lamarre stated that it was one of the three in his office.

[250] According to the grievor, the picture was hanging on the outer wall of her cubicle. Mr. Lamarre said that it had been hung only in his office. He did not identify it as an image depicting Jesus Christ or God. He also did not indicate that it had ever gone missing. Ms. Jamieson had seen the pictures in his office and had not seen anything wrong with them.

[251] The grievor stated that Mr. Lamarre also said to her something to the effect of, "Remember, I am your God." I heard no submissions from her on this allegation.

[252] I heard no evidence from the grievor as to why she felt the picture was discriminatory or harassing. In her closing submissions, when she had made no mention of it, I asked if she wished to make any, to which she indicated that her issues with the picture were that it was just another concern ignored by Mr. Lamarre and an example of the dismissive attitude to her concerns.

[253] While it is certainly a breach of the *Canadian Human Rights Act*, the collective agreement, and the employer's policies to discriminate against someone on religious grounds, the grievor did not even indicate to me her religion. I assume based on the fact that she appeared to object to the picture that she is of a Christian faith. That said, when her representative asked her if she was religious, her reply was that she was more spiritual.

[254] The evidence also disclosed that while before and just after the bus accident, the grievor's work cubicle was adjacent to Mr. Lamarre's, at some point that is unclear, she was moved. After the bus accident, she was away from the workplace for a significant period. From May 31, 2006, until November 7, 2007, she worked 12.4 out of a possible 563 working days and then returned to work on a graduated basis.

[255] I am not satisfied that the evidence presented supports a finding that the picture was discriminatory or harassing.

2. Use of the term "petrochick"

[256] The evidence disclosed that Mr. Lamarre used the term "petrochick" to refer to members of his oil and gas NFNR project team, which consisted of between four and six female employees, including the grievor.

[257] While the evidence did not disclose exactly when Mr. Lamarre started to use the term when referring to the members of that team (it could have been as early as the fall of 2007), it was clearly being used by the spring of 2008. The grievor indicated that she joined the NFNR oil and gas project team in or about March of 2008. Entered into evidence was an email that disclosed that the term was being used in the grievor's presence at that time.

[258] The grievor said that she found the term offensive. While she did not testify why, in argument she submitted that it is discriminatory to women as it infantilizes them by referring to them as cute and harmless.

[259] The first written documented evidence of the grievor asking Mr. Lamarre to stop using this term was on October 8, 2008. On October 9, Mr. Lamarre said that he would stop, and except for the references found in the two greeting cards (which I shall address later in the decision), there was no evidence of him using it after October 9, 2008.

[260] I took from Ms. Jamieson's evidence that she questioned Mr. Lamarre's judgement in using the term. However, the fact that she did not tell him not to use it and accepted his assurance that no team member had a problem with it indicates to me that she certainly did not seem to find it discriminatory or offensive. In addition, she stated that she spoke to four members of the project team, who she stated did not have a problem with the term being used to identify them, and that one member found it cute. Mr. Lamarre testified that one former member still referred to herself as a "petrochick."

[261] Some words and phrases once used and accepted in the everyday lexicon of the English language have become seen over time as pejorative and unacceptable. Some

words may not be offensive in and of themselves but have fallen out of favour for a variety of reasons.

[262] This does not mean that the use of the term "chick" to refer to a girl or woman is not offensive, discriminatory, or harassing. I agree with and accept the grievor's submission that it certainly can be seen as offensive, discriminatory, and harassing. I also accept that at some point, she did not wish to be referred to by it and that she made this known to the employer.

[263] In the greeting cards, Mr. Lamarre used the term to refer specifically to the recipient of each card. The grievor signed one of the cards. On one card, she wrote that she saw it on October 16, 2008.

[264] Mr. Lamarre admitted to signing the greeting cards. However, that does not make them discriminatory or harassing. I am not prepared to accept that by signing them, he was being either discriminatory or harassing towards the grievor.

[265] The grievor did not sign one card. I was provided with absolutely no evidence as to when its recipient was off sick and when it was circulated or signed.

[266] Written on the second card is that the grievor saw it on October 16, 2008. If this is true, again, I have no idea when it was circulated and when Mr. Lamarre signed it. Given the proximity of October 9 and 16, 2008 (both Thursdays), and October 13 having been Thanksgiving and a statutory holiday, there were only three working days between those two Thursdays. As such, it is certainly possible that the card was circulated and signed before Mr. Lamarre's October 9 email stating that he would stop using the term.

[267] In addition, neither card was meant for the grievor. I am not prepared to accept the suggestion that somehow Mr. Lamarre's use of the term in a card not directed at the grievor was purposely meant to harass her or to be discriminatory towards her or that it somehow was directed towards her in an offensive manner.

[268] On a balance of probabilities, the best evidence indicates that the grievor found the terms "petrochick" and "petrochicks" offensive and that she made her views known to the employer and management likely on or about October 8 or 9, 2008. Mr. Lamarre stated that when she asked him to stop using the term, he did so. The only evidence that perhaps it was used after October 8 or 9 were the two greeting

cards, given that she wrote “October 16, 2008” on one of them. Whether he actually wrote “petrochick” on the cards before or after October 9, 2008, is unknown. Other than the two greeting cards, I have no evidence that he ever used the term after October 9, 2008, except that the grievor said that he used it verbally.

[269] In her evidence before me, the grievor stated that after seeing the card, she raised her concerns, but that Mr. Lamarre continued to use the term. When she was asked how often he used it, she said, “All the time.” When her representative asked her in what context, she replied, “Same as always: verbally.” Yet, the evidence before me was that he used the term in writing and that when the grievor objected to its use, she meant in writing. In fact, while she stated that he continued to use the term orally, I find that difficult to accept, given that she filed the grievance on October 16, 2008, the same date she stated that she saw the birthday card, which again had the term in writing. She said that she had already met with Ms. Jamieson with Ms. Grundy about the use of the term. If that had been so, I find it difficult to believe that after she saw the birthday card on October 16, 2008, which was the same date on which she filed her grievance with Ms. Jamieson, Mr. Lamarre would have continued to use it.

[270] Based on the very limited and meagre evidence on this topic, on a balance of probabilities, I find that the grievor has not met her burden of proof to establish that the use of the term “petrochick” was harassment or discriminatory and as such is not a breach of the collective agreement.

3. Other allegations

a. November 2008 awards ceremony

[271] The grievor alleged that at a CRA awards ceremony in November of 2008, she was the only team member to go up to the podium to receive the award and that when she did so, the assembled crowd around the stage laughed at her. She testified that two other members of the NFNR team were there; however, they did not go up to the podium.

[272] The evidence disclosed that Mr. Lamarre was not at the ceremony and that Ms. Jamieson had left by the time the NFNR team received its award. Mr. Coté recalled being there but was not certain that the NFNR team received a certificate or that anyone laughed.

[273] Other than the grievor's oral testimony, there is no other evidence about people laughing at her at the ceremony. She did not suggest that Mr. Lamarre or Ms. Jamieson were there or that they laughed at her.

[274] She stated that when she arrived at the event, one of the other team members was laughing. When her representative asked her about it, the grievor then stated that the other two members were laughing when she arrived and that she had never been so humiliated.

[275] The grievor's evidence with respect to this is not in harmony with the test set out in *Faryna*. The context in which she gave her evidence does not make sense. She suggests that people laughed three times. First, when she went to the podium, everyone around it was laughing at her. Second, when she arrived at the ceremony, a fellow team member was laughing. And third and finally, when she arrived at the ceremony, the other two team members there were laughing. In her evidence, she did not state that her fellow team members were laughing at her, just that they were laughing when she arrived.

[276] The ceremony took place after the grievor had filed four grievances, one of which alleged that she had been harassed but identified no one by name. I heard no details of what if anything was alleged at the time the initial grievances were filed. No email was brought forward that the grievor sent to anyone either conveying to them or complaining that she had been harassed.

[277] Since the grievor went to such lengths as to file a harassment grievance, I would have expected that at a bare minimum, there would have been some email, letter, or memo to someone about it, even if it was to Ms. Grundy. There was none.

[278] Ms. Grundy was asked if she attended the ceremony. She replied that she did not recall but that she had heard about it from her team members. She did not state what they had told her, and specifically, she did not state that she heard anything from the grievor. When the grievor's representative asked her what she had heard, she did not respond with what she had heard but said, "In an enclosed workspace, comments fly. The comment was that it was strange that rest of team did not show up, especially the team leader."

[279] Ms. Grundy's evidence did not corroborate the grievor's allegation that people at the ceremony laughed at her. Ms. Grundy did not recall being at the ceremony, and her evidence was that she had heard that no one else from the grievor's team had attended. On the other hand, the grievor stated that two other members of her team had attended. In this vein, she did not actually state that those team members laughed at her, just that they had laughed. She did not state that she stood with them, spoke to them, or heard what they were talking about, just that they were laughing. This is not evidence of harassment.

[280] In addition, the grievor's evidence was that the people around the podium laughed at her. She did not identify any of them. She stated that the Master of Ceremonies asked her where the other team members were. If none were present, I do not see how asking the question could be seen as harassment. It was a legitimate question.

[281] Without anything more than the grievor's testimony that she believed that the people around the podium laughed at her, this certainly does not meet the test of satisfying a burden of proof that this was harassment by the employer.

[282] Without more detail and facts, there is insufficient evidence to find that anything that happened at the awards ceremony was harassment and as such would constitute a breach of the collective agreement.

b. Yelling

[283] The grievor's evidence on this was generic, scant, and insufficient to meet the burden of proof that Mr. Lamarre acted in this manner. In her evidence, she was often asked a question about something, for example, about being off work after the bus accident. Rather than answering, she would state that she called the office and that Mr. Lamarre yelled at her. When she was asked about whether she saw a copy of an ergonomic assessment, she stated, "I am not sure. I don't know. I went and got what he wanted. He would yell at me [referring to Mr. Lamarre]." When she was asked if she was on a modified schedule until December of 2006, she responded, "It was very difficult; he was yelling at me. Every time I go to the doctor there is a charge for that." When the grievor was asked if a particular incident occurred, she responded that Mr. Lamarre intimidates by yelling.

[284] In her evidence, the grievor suggested that Mr. Lamarre's yelling led to Ms. Grundy becoming involved. She said, "Rick kept yelling at me, so Val was my voice." Ms. Grundy's evidence was that she became involved over the issue of the keys and materials in the grievor's cubicle. Ms. Grundy provided no evidence about Mr. Lamarre yelling; nor is there a reference to it in any documentation.

[285] Mr. Lamarre denied yelling but stated that he did raise his voice when he dealt with a situation within the 18 months preceding his testimony. The grievor's representative never cross-examined him about yelling.

[286] Ms. Jamieson testified that she never heard Mr. Lamarre yell; nor has anyone ever complained to her about him doing so, including the grievor.

[287] No document was entered into evidence that showed the grievor complaining as follows:

- to Mr. Lamarre about him yelling or raising his voice;
- to Ms. Jamieson about Mr. Lamarre yelling or raising his voice;
- to Ms. Grundy about Mr. Lamarre yelling or raising his voice; or
- to anyone about Mr. Lamarre yelling or raising his voice.

[288] Based on the evidence, I am not prepared to accept that Mr. Lamarre yelled at or raised his voice to the grievor, which would constitute harassment under the collective agreement.

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

(The Order appears on the next page)

V. Order

[290] The grievances are dismissed.

August 4, 2020.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board