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

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

BETWEEN

YVES LAMOTHE

Grievor

and

DEPUTY HEAD
(Department of Canadian Heritage)

Respondent

Indexed as
Lamothe v. Deputy Head (Department of Canadian Heritage)

In the matter of individual grievances referred to adjudication

Before: Paul Fauteux, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Respondent: Pierre Marc Champagne, Legal Services, Justice Canada

Heard at Ottawa, Ontario,
July 22 to 26, 2019.
(FPSLREB Translation)

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REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Case summary

[1] Yves Lamothe (“the grievor”) was a research analyst at the EC-05 group and level in the Strategic Policy and Economic Analysis Directorate of the Department of Canadian Heritage (“the department”) as of the events in question. Over a period of two years, a personality conflict between the grievor and his supervisor, Mohamed Moussa, led to an increasing number of disciplinary measures and to the employer declaring that the grievor had abandoned his position.

[2] The abandonment declaration was the outcome of an extended period of conflict and growing concerns about the grievor’s attitude and behaviour, which led to a series of disciplinary sanctions that progressively became more severe as well as a workplace violence investigation that was conducted after two complaints were made alleging verbal abuse by the grievor. He was on leave pending the outcome. The investigation concluded that the complaints were founded. That led the employer to impose another disciplinary sanction on the grievor and to evaluate his fitness for work, which showed that he was fit to work, without restrictions.

[3] The employer then sought to reintegrate the grievor into the workplace in a new position with a new supervisor, but the grievor refused to come to work. He raised unspecified concerns about his safety despite several warnings that his absence could lead to a declaration that he had abandoned his job. The warnings did not dissuade him, and he continued to refuse to attend his new workplace. On May 9, 2016, after not hearing from him, despite him receiving several letters that it had sent, the employer declared that the grievor had abandoned his position.

[4] The evidence showed that the employer rightly found that the grievor had multiple problems at work. It pointed to his reluctance or inability to deliver work on time and his refusal to respect Mr. Moussa’s authority, and accordingly, it took disciplinary action against him. It also spoke to him about his aggressive tone toward his colleagues and supervisor and informed him many times that he had to improve his interpersonal relationships with them. The employer was also concerned that the grievor was away from his desk too often and for too long and that he did not follow the absence procedure in place.

[5] The grievor largely denied the allegations against him as of the events and alleged that it was a plot. He did the same at the hearing. He testified about his explanations for some of his problems and stated that the period in question was turbulent in his family life, which will be described in more detail later. However, he did not submit any evidence to dispute the majority of the employer's evidence about his disciplinary problems and the facts that resulted in the abandonment declaration.

[6] For the reasons that follow, I conclude that the employer justified its disciplinary measures and that the grievor did not convince me that the abandonment declaration constituted disguised discipline or that it was unreasonable or made in bad faith. Therefore, the grievances are dismissed.

II. The grievor represented himself

[7] Although the grievor's bargaining agent participated in the case during the disciplinary process and was told that the employer intended to declare that he abandoned his position, it did not represent him at the hearing. Therefore, he represented himself. He alleged that the employer and his bargaining agent plotted against him, but I am not seized of that matter. Furthermore, I was not presented with any evidence of the employer and the bargaining agent's alleged plot. Therefore, I am seized only of the grievances filed to dispute the discipline and the position abandonment.

[8] The grievor's self-representation raised several questions over the course of the hearing, largely due to his admitted inability to prepare adequately, combined with the emphasis he placed on his problems with the employer rather than focusing his efforts on the matters of discipline and position abandonment, as I recommended. For example, he testified that he began working in the public service in 2007, and he accused the employer of delaying offering him proper training. His choices did not help his case.

[9] He also asked many questions about procedure during the hearing. He often spent a long time searching his papers, had difficulty formulating questions for witnesses, was not precise about the documents to which he referred when questioning witnesses, and repeatedly contravened the rule stated in *Browne v. Dunn*, 1893 CanLII 65 (FOREP), despite repeated explanations and warnings. He questioned witnesses without providing them with proper documentary evidence, tried to file

more than 4000 pages of photocopies without a proper basis, and sometimes mispresented the evidence to the witnesses.

[10] When the hearing began, he stated that he would present the evidence supporting his arguments in the context of his line of argument. I explained to him that that approach contravened the rules in effect. At another point, when he was supposed to cross-examine Ms. Bujold, Director General (DG) of Broadcasting and Digital Communications Strategic Policy, he suddenly asked to call Mr. Moussa back to testify on cross-examination, so I had to explain the repercussions of ending Ms. Bujold's cross-examination. Nevertheless, I granted his request, after which he spent his time questioning Mr. Moussa about performance issues rather than disciplinary matters and the position abandonment of which I am seized. The grievor also expressed surprise that the employer did not call the workplace violence investigators to testify, despite the fact that no such assurance had been requested or given, and he did not request to call them to testify.

[11] The employer expressed frustration about this situation many times, stating in the second half of the five-day hearing that it and the Board did everything they could for three days to help orient the grievor but that at some point, he could no longer claim that he did not know.

[12] The grievor does not have a limited intellect. His CV states that he has a master's degree in economics, with a specialization in econometrics. Therefore, he was capable of properly preparing for the hearing of his grievances and did not request any accommodation.

[13] Before me, the grievor filed jurisprudence and legal texts about the rights of unrepresented people, and I made sure that none of his rights were infringed. The employer and I provided all the support we could at the hearing, given our respective roles. I am satisfied that the grievor had the opportunity to make his arguments in accordance with the rules of natural justice and that I fully complied with my obligations toward him. At one point during the hearing, he stated that he thought that the forum would allow him to share his story and expressed his disappointment when he learned of the limitations of the hearing. Although I explained it to him many times, he often did not follow my instructions and continued largely to focus on the quality of his work rather than the grievances before me.

III. Summary of the grievances before me, and my jurisdiction to consider them

[14] In total, the grievor referred seven grievances to adjudication, as follows:

- grievance 13686 - filed against his 2-day suspension;
- grievance 13687 - filed against his 1-day suspension;
- grievance 13688 - filed against his 4-day suspension;
- grievance 13689 - filed against his 10-day suspension;
- grievance 13690 - filed against the loss of salary between June and August 2015;
- grievance 13691 - alleging a violation of article 16 of the collective agreement (harassment and discrimination); and
- grievance 13692 - filed against the abandonment declaration.

[15] In some of the suspension grievances, the grievor also disputed the employer's actions to recover what it then considered hours not worked, as it believed that he had taken unauthorized leave. The employer argued that I did not have jurisdiction to hear and consider any leave-related issues included in the disciplinary grievances, given that the grievor was not represented by his bargaining agent and that those grievances were referred to adjudication as disciplinary grievances, not grievances about the interpretation and application of the collective agreement that would require his bargaining agent's approval, which he did not have. The employer also argued that I did not have jurisdiction to hear and consider the first two grievances, alleging that they were not within the Board's jurisdiction.

[16] The employer referred me to paragraphs 22 to 27 of the Board's decision in *Cavanagh v. Canada Revenue Agency*, 2014 PSLRB 21, in which it reiterated that while grievances about the interpretation or application of a collective agreement are among those that may be referred to adjudication under the terms of the *Public Service Labour Relations Act* (*PSLRA*), s. 209(2) requires an employee to have the "… approval of his or her bargaining agent to represent him or her in the adjudication proceedings" before such a grievance can be referred to adjudication. However, although initially, the union agreed to support the grievor, the support no longer existed. As in *Cavanagh*, this grievance could be heard only with bargaining agent representation. Therefore, the file must be closed.

[17] I conclude that grievance 13691 is not within my jurisdiction for the reasons stated earlier. Moreover, although the grievor alleged discrimination under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*), and although in its correspondence with him, the Board informed him of his obligation to give notice to

the Canadian Human Rights Commission ("CHRC"), he did not give any such notice. He also failed to present any evidence to support his discrimination allegation and therefore did not discharge his legal burden to present *prima facie* evidence. Also for those reasons, grievance 13691 is not within my jurisdiction.

[18] I conclude that I am seized only of the disciplinary aspects of the noted grievances. I do not have jurisdiction to consider any arguments that the employer did not allow the grievor to take different types of leave for the periods during which he did not work because he was not represented by his bargaining agent, and the grievances were referred to adjudication as disciplinary grievances, not grievances about the interpretation or application of the collective agreement. Also, I believe that the actions taken to recover the hours not worked were administrative, not disciplinary. Therefore, they are not within my jurisdiction.

[19] Finally, for grievance 13690, which alleges a loss of salary between June and August 2015, during which time the grievor was on leave pending the outcome of the workplace violence investigation, the evidence showed that eventually, he was paid for that time, and that in the end, he did not lose any salary. Therefore, this grievance is dismissed.

[20] Consequently, the sole matters before me are the disciplinary issues in grievances 13686, 13687, 13688, and 13689, as well as grievance 13692 filed against the abandonment declaration.

IV. Summary of the evidence

A. The Christmas incident

[21] The grievor began working in the public service in 2007 and for the department in 2010. The events before me occurred for the first time in late 2012 or early 2013 and continued until the abandonment declaration in 2016. The grievor and his supervisor both stated that their conflict began with an incident during the holiday period in late 2012. That incident is described as follows.

[22] The grievor told the investigators that his problems with Mr. Moussa began around Christmas in 2012, just before Mr. Moussa became his supervisor in early 2013. That December, Mr. Moussa asked the grievor to go to the office's Christmas lunch with him and to go to the seventh floor first to pick up a colleague so that the three of

them could go to the restaurant together. The grievor interpreted that request as an inappropriate order and replied to Mr. Moussa that he was not his son. According to Mr. Moussa's version to the investigators, he apologized to the grievor when he realized that the grievor was offended, but the incident meant that their relationship started off on the wrong foot.

[23] Mr. Moussa confirmed that interaction when he testified that at that time, the grievor accused Mr. Moussa of showing him a lack of respect. Mr. Moussa stated that he explained to the grievor that he made the request so that the grievor and his colleague would not have to wait in the cold. He also testified that the grievor said that he considered the matter closed, but that was not true. In an email on September 24, 2014, the grievor accused Mr. Moussa of harassment and stated that Mr. Moussa had behaved that way since December 2012, confirming that for the grievor, the source of the conflict could be traced back to the Christmas incident.

[24] The fact that the grievor felt so offended by Mr. Moussa's request gives some indication of what would happen. The events that followed and that are central to the abandonment declaration were largely due to the grievor's tendency to take offence quickly and to resist anything that he interpreted as an order from Mr. Moussa.

B. The events of 2013

[25] The evidence shows that in April 2013, a few months after Mr. Moussa became the grievor's supervisor, he already began writing down his dissatisfaction with the grievor's behaviour. In a note dated April 2013, Mr. Moussa assigned the grievor work with a deadline. The grievor responded that the deadline was not realistic because he needed a week just to find examples on which to base the required work. Mr. Moussa replied that he was tired of the grievor's accusations every time he gave him a deadline and informed the grievor that he would start to write down his observations about the grievor's performance and his interpersonal relationships with his colleagues. In an email reply, the grievor denied making any accusations.

[26] In July 2013, a problem arose when the grievor refused to meet with Mr. Moussa. That led Human Resources (HR) to write to the grievor's superiors about the reasons that an employee can refuse to work. The evidence showed that the grievor objected to the work that was assigned to him and that consequently, he wanted to speak to the DG, to complain. The DG was on leave at that time, and it appears that he

did not make a formal complaint. However, he asked the employer to investigate his situation, and he refused to work until the investigation was complete. According to HR's note, the grievor's reasons for refusing to work did not meet any of the recognized criteria. The note also stated that the grievor refused the employer's offer of informal conflict resolution.

[27] Mr. Moussa continued to be upset by the grievor's behaviour. After meeting with the grievor in December 2013, he emailed and accused the grievor of entering his office, speaking aggressively, and demanding that he change the date on a document.

C. The events of early 2014, and the first expectations letter

[28] In early 2014, the employer became increasingly concerned about the situation with the grievor. On February 17, 2014, he attended a meeting with the employer, during which they discussed his behaviour with his colleagues and the absence reporting procedure. According to the employer's written summary of the meeting, it clearly told him that his work hours were 7.5 hours per day, from 8:00 a.m. to 4:00 p.m., minus breaks and lunch. Since the employer believed that he was away from his desk too often, he had to email Mr. Moussa when he arrived in the morning and again in the afternoon 5 minutes before leaving. He was also told that he had to inform his supervisor of any absence of longer than 15 minutes. For family related leave, sick leave, or early departures, he was informed that he first had to request approval and was instructed on how to inform his superior of any late arrivals. He was also informed that disciplinary action could be taken against him if he did not correct his behaviour.

[29] That same day, Mr. Moussa sent the grievor his annual performance review, which noted, among other things, his frequent absences from his workstation and a letter about the employer's expectations. They included complying with his work hours and notifying of his absences, sick leave, and late arrivals and a warning that he had to be less aggressive in his interactions with colleagues. It was the first expectations letter; he received others over the course of the year that followed.

[30] On March 12, 2014, the grievor held a regular bilateral meeting with Mr. Moussa so that Mr. Moussa could give him feedback on the work that he had done. Mr. Moussa left while the meeting was under way, stating that he had no choice but to leave. He said that the grievor was not receptive, that he was aggressive, that he interrupted Mr. Moussa, that he questioned what had already been explained, and that he

responded to Mr. Moussa with contempt or arrogance. Later, the grievor emailed his supervisor. It was entitled, "[translation] Left me alone in the room". It began with, "[translation] You'll excuse me, Mohamed, for considering what you say to be hypocritical. You lied." Mr. Moussa replied that he left because the meeting was not constructive as the grievor was argumentative and arrogant, which violated the expectations letter that he received the month before. Following the meeting, Mr. Moussa asked Ms. Bujold to attend his other meetings with the grievor because the grievor acted differently when she attended. Mr. Moussa also said that nevertheless, he was prepared to try mediation.

[31] At one point, the grievor agreed to seek assistance from the department's ombudsman to try to resolve the situation, and a meeting with the ombudsman was scheduled. On March 19, 2014, Mr. Moussa emailed the grievor to summarize the discussion during that meeting. It indicated that the parties resolved their conflict and that the employer would modify the first expectations letter to remove the requirement for the grievor to email his supervisor on arriving at and before leaving work. There was no evidence supporting that concern, as Mr. Moussa admitted at the meeting that he did not record the grievor's arrivals and departures. Finally, the email stated that the employer would meet regularly with the grievor to give him feedback. The grievor replied to Mr. Moussa by email that the summary accurately reflected the agreement.

D. Summer 2014

[32] Although the parties agreed before the ombudsman that they resolved their conflict, the situation continued to deteriorate. According to the evidence, the employer remained concerned about why the grievor continued to behave inappropriately, and in July 2014, it asked him to undergo a fitness-to-work evaluation. He replied that one was not necessary. Both while he was employed by the department and at the hearing before me, he firmly denied any behavioural issues and maintained that his problems all arose from his employer, which plotted in bad faith against him.

E. September and October 2014, and the oral reprimand

[33] The employer believes that the grievor's problems continued until October 2014, when it decided to initiate the disciplinary process. He testified that he was surprised to learn that the situation was not resolved in September 2014. In his

submissions, he reiterated that he did not really understand the situation. His testimony in that respect was supported by his email to the employer on September 11, 2014, stating that the meeting with Mr. Moussa and Ms. Bujold about work-related issues constituted bullying.

[34] An oral reprimand was issued on October 27, 2014, after an incident that occurred late in the afternoon of September 12, 2014, when Mr. Moussa approached the grievor to remind him of a meeting that they had scheduled together. The grievor informed Mr. Moussa that he was leaving, as he had started early that day. He told Mr. Moussa that his bus had arrived at 7:36 a.m. that morning, that he had started work early, and that he was entitled to leave. Mr. Moussa reminded him that he had to abide by his set work hours, regardless of when the bus dropped him off at the office. He replied that it was not his fault, that it was the bus's schedule, and that he would ask for a change to his work hours on Monday, when he returned to work, but that he was leaving right then because he did not want to miss his bus. Mr. Moussa then warned him again that he must not leave early. He replied that he considered Mr. Moussa's statement a threat. One of the grievor's colleagues, whose office was nearby, overheard the conversation and emailed Mr. Moussa a confirmation of the events of the earlier exchange. Before me, the grievor did not deny that sequence of events.

[35] Two days later, a note dated September 14, 2014, was placed in the grievor's file, reminding him of his obligations for his absences. At that point, Ms. Bujold began to play a more active role in managing the grievor's file. On September 16, 2014, she emailed him to inform him that his refusal to meet with his supervisor could be considered an act that could lead to discipline. She also accused him of acting aggressively in bilateral meetings with Mr. Moussa, an accusation that the grievor denied then and that he continued to deny at the hearing. Finally, Ms. Bujold suggested again that mediation could resolve these issues.

[36] In October 2014, Mr. Moussa and the grievor exchanged emails in the course of which Mr. Moussa accused him of not submitting his work plan on time. Mr. Moussa informed Ms. Bujold of the situation and of the grievor's lack of response to his emails. Ms. Bujold met with the grievor, who stated that he had not seen his supervisor's emails. That led Ms. Bujold to reply in writing that he was obligated to read and respond to emails from his superior. She explained to him the repercussions of his failure to submit his work plan when she attended a meeting with his superiors. The

grievor defended himself in an email, stating that he had difficulty finding the document on the G drive and that he did not see the emails from Mr. Moussa asking him to submit the document before the deadline.

F. The new expectations letter

[37] The grievor's problems led the employer to issue him a new expectations letter dated October 23, 2014, after a meeting with him on September 23, 2014. The letter reminded him to behave as expected under the Values and Ethics Code when dealing with his supervisor and colleagues, informed him that he had to work within the given deadlines, and reminded him of his work hours, his obligation to report any absences of longer than 15 minutes, and the procedure for late arrivals and leave requests. The grievor signed that letter to indicate that he was informed of its content.

G. November and December 2014

[38] In November 2014, the employer emailed the grievor, accusing him of not answering emails, of not submitting his work plan on time, of refusing to print a work document even though his supervisor asked him to, of refusing to place the document in his supervisor's inbox, and of refusing to sign his performance review. A **disciplinary** meeting was held on November 24 to discuss these issues, and on December 15, 2014, a meeting was held with him, with a bargaining agent representative present, to give him the employer's decision.

[39] However, the grievor apparently had other plans that day, and he left the meeting early. When Mr. Moussa emailed him to ask about it, the grievor offered to reimburse the employer for the 20 minutes that he had not worked. The file contains an email that he sent to the employer earlier that day to say that he would leave 20 minutes early that day. According to a document written by Marianne Bourque, Senior Labour Relations Advisor, the grievor justified it by stating that he did not take his breaks that day. The accusations mentioned earlier, as well as the grievor's behaviour when he left the disciplinary meeting early on December 15, 2014, led to disciplinary action being imposed in February 2015.

H. The written reprimand

[40] After the December meeting, the employer used the disciplinary process again on February 5, 2015, to issue a written reprimand letter. The letter reprimanded the grievor for leaving early on December 15, 2014, for failing to sign his performance

review report (PRR) before noon on December 16, 2014 (in his testimony, he admitted that he signed it after the deadline), and for failing to reply to his supervisor's emails on January 12 and 14, 2015. The letter also indicated that in a meeting on January 22, 2015, he not provide satisfactory explanations for the acts mentioned earlier, and that the employer could conclude only that his behaviour was wilful and that misconduct was established. Since he had already received an oral reprimand, a written reprimand was issued, and the employer imposed administrative measures to recover the 20 minutes that he did not work.

I. January 2015

[41] In 2015, the employer became increasingly frustrated with the grievor's attendance problems and began to question what it considered frequent and extended absences from his workstation, which violated the version of the expectations letter then in effect. Before me, Mr. Moussa testified that often, he did not know where the grievor was. On January 26, 2015, he emailed the grievor to inform him that he noticed the grievor's absence when he passed the grievor's workstation at 10:00 a.m., and he asked the grievor to email him when he returned. The grievor replied an hour later, at 11:35 a.m. He informed Mr. Moussa that he was not required to comply with the expectations letter because the employer had not placed it in his personnel file. Mr. Moussa then emailed the grievor, stating that the grievor informed him that he did not reply to Mr. Moussa's email until 11:35 a.m. because he had a personal telephone call after his 10:00 a.m. break.

[42] When Mr. Moussa again asked the grievor to inform him of his absences ahead of time, the grievor suggested that he provide information about his breaks. The evidence showed that sometimes, the grievor used breaks to justify his absences from the workplace when Mr. Moussa or Ms. Bujold questioned him. It seems that at one point, Mr. Moussa believed that the discussions between them about breaks had gone too far on the grievor's part, so Mr. Moussa emailed him to request that he stop sharing information with Mr. Moussa about what happened during those breaks.

J. February 2015

[43] On February 11, 2015, the employer met with the grievor to go over expectations and informed him that he still had to improve. He was reminded that he had to report all absences of longer than 15 minutes and his 1-hour absence the day

before the meeting. He then stated that the absence was due to a break followed by a call about a family medical emergency. The grievor was informed that he had to deal with his family issues in his free time or by requesting leave. During the meeting, he stated that he considered that the employer was harassing him and abusing its authority. He was then told of the official process for dealing with harassment issues if he wished to pursue it.

[44] Mr. Moussa continued to monitor the grievor's attendance at work. On February 9, 2015, he emailed the grievor at 9:45 a.m. to state that he noticed that the grievor had been absent since 9:20 a.m. The grievor replied that he took his break between 9:50 and 10:06 a.m. and that he might have been on a break during the noted absence.

[45] Two other email exchanges about the grievor's work hours occurred on February 23, 2015. In one, the grievor informed Mr. Moussa that he left early on the 18th because he turned off his computer to answer an urgent call and to catch his bus at 3:40 p.m., as he had to take a family member to Montreal for treatment on February 24. He also informed Mr. Moussa that he would submit a leave request for February 25 to 27 because he had to stay in Montreal. Also on February 23, the grievor emailed Mr. Moussa again, copying Ms. Bujold, to state that he might be absent that morning because he was trying to have his father admitted to the hospital and would do so in a quiet space on the 7th floor. A half-hour later, Ms. Bujold emailed Mr. Moussa to state that she had just seen the grievor in an open space on the 2nd floor; he was reading a newspaper. The grievor did not dispute Ms. Bujold's email in writing or at the hearing.

[46] Also on February 23, 2015, Mr. Moussa met with the grievor at 1:30 p.m. to discuss work. During the meeting, apparently, the grievor became loud and agitated; he called Mr. Moussa a liar and accused Mr. Moussa of trying to defame him. The conversation became so loud and heated that a colleague left his office to see what was happening and, after the meeting, emailed Mr. Moussa a description of what he had seen and heard. According to that email, Mr. Moussa remained calm, but the grievor was aggressive, and when Mr. Moussa ended the meeting, the grievor used a mocking tone, as if he felt that he had "[translation] won" the discussion in some way. In his email, the colleague used the following terms: "[translation] unusual behaviour", "[translation] signs of aggression", "[translation] rough and aggressive behaviour",

"[translation] arrogant", and "[translation] disrespectful". He also expressed concern for his and others' safety. A second colleague also emailed Mr. Moussa to express concerns about the meeting, describing the grievor's behaviour as follows: "[translation] … all ramblings, full of fallacies and inaccuracies, then calling you a liar …".

[47] The documentary evidence contains emails about the grievor's concerns from the meeting with Mr. Moussa in his closed office, and the parties reached an agreement about where those meetings would be held in the future. In his testimony, Mr. Moussa said that he also had concerns about private meetings with the grievor and that like his other employees, he feared the grievor.

K. The March 2015 absences

[48] After the grievor was absent from work on March 5 and 6, 2015, and Mr. Moussa emailed him to request a medical certificate for that absence, the grievor replied that his union representative had advised him to take leave.

[49] On March 10, 2015, Mr. Moussa emailed the grievor to inform him that as of then, he had been absent from work without notice since the morning of March 9. At the hearing, the grievor admitted that it was true and explained that he had been stressed because he was dealing with a family medical crisis. Mr. Moussa reminded the grievor that he had to call before 8:00 a.m. on the day he would be absent. He replied that he was in Montreal to see his doctor, who gave him a note for one more week of sick leave that stated that he would be back to work on March 17, 2015.

L. The one-day suspension

[50] On March 19, 2015, the employer used the disciplinary process again by sending a letter to impose a one-day suspension. The letter stated that the disciplinary meeting was held on March 4, 2015, and referred to the following events:

1) the grievor's early departure on February 18;
2) his absences on February 19, 20, and 25 to 27;
3) his absence of longer than 15 minutes on February 23;
4) his behaviour at the February 23 meeting with Mr. Moussa;
5) his failure to meet a work deadline; and
6) his absence on February 24.

[51] Just like the earlier written reprimand letter of February 2015, this letter concluded that the grievor's behaviour was wilful and that Ms. Bujold imposed a one-day suspension as a result.

[52] The grievor did not deny that he left early on February 18, and the employer imposed another administrative measure to recover the 20 minutes that he did not work.

[53] With respect to the grievor's absences lasting several days, the employer accused him of not requesting leave or waiting for leave to be approved and of not checking whether his personal situation met the collective agreement requirements for granting family related leave. Once again, the employer imposed an administrative measure to recover the 37.5 hours that the grievor did not work.

[54] As for his absence of longer than 15 minutes on February 23 between 9:50 and 10:20 a.m., he did not suggest any measures to make up the time, even though he informed the employer of his absence. Therefore, the employer decided to recover only the additional 16 minutes.

[55] On the matter of the grievor's behaviour in his meeting with Mr. Moussa, the employer referred to the email from one of the colleagues mentioned earlier as evidence of that behaviour.

[56] With respect to the allegation that the grievor failed to meet a work deadline, the employer referred to the fact that he did not submit his signed PRR to Mr. Moussa in mid-March. The evidence includes copies of the email asking him to submit the document on time.

[57] Finally, with respect to the grievor's absence on February 24, the employer testified that he did not request approval to be absent ahead of time and did not submit a leave form when he returned to the office and that the reason for the leave did not meet the collective agreement requirements, which led it to recover the 7.5 hours that he did not work.

[58] Mr. Moussa testified that during the disciplinary hearing on March 4, 2015, the grievor denied the problems mentioned earlier or did not explain them coherently, expressed no remorse, and took no responsibility for any of the acts of which he was accused. Ms. Bujold testified that at that time, the employer had been trying to remedy

the situation for over a year. She explained the employer's decision to recover the hours not worked, as no leave had been authorized. On April 20, 2015, the grievor grieved the suspension and the administrative measures to recover the 37.5 hours and the 7.5 hours for which his request for family related leave was denied.

M. The new expectations letter

[59] Further to the disciplinary action mentioned earlier, the employer modified the grievor's expectations letter again and gave him a copy of it. In the new version, the employer reinstated his obligation to email his supervisor on arriving at and before leaving work, as well as when he took breaks and meals, and when he was absent longer than 15 minutes. That letter, dated March 23, 2015, also stated the following five points:

1) The grievor had to adopt the specific behaviours described in the letter, such as collaboration, tact, and respect.
2) He had to deliver his work on time or inform his supervisor of delays, to solve any issues, and by the end of the workday, he had to acknowledge that he received emails.
3) His leave had to be approved ahead of time.
4) If he was ill, he had to report it by no later than 8:00 a.m. and had to submit a leave request.
5) He had to respect his work hours.

[60] The letter ended with a warning that aggression and threats would not be tolerated.

[61] On March 23, 2015, Mr. Moussa emailed the grievor to inform the grievor that he changed his comments about the grievor's behaviour in the relevant section of the PRR and asked the grievor to sign the document. The grievor refused, stating that his signature would indicate that he agreed with what was written. On April 7, 2015, Mr. Moussa emailed him again. Mr. Moussa once more asked him to sign his PRR and stated that the signature indicated only that he had read Mr. Moussa's comments and had the opportunity to discuss them, not that he agreed with the contents.

N. April 8, 2015

[62] On April 8, 2015, Mr. Moussa emailed the grievor to inform him that he could not skip his breaks to leave before the end of his scheduled workday. Mr. Moussa reminded him again that he could not unilaterally change his work hours. That day, Mr. Moussa had a second email exchange with the grievor about his work hours, after

the grievor took the position that with respect to his work hours, he should be considered "[translation] at work" when he arrives at the office, and that he should not be responsible for the time it takes him to connect to the system and to get ready to start work. He repeated that belief in his testimony before me. Mr. Moussa informed him that in his view, the workday began when the grievor was ready to work, not when he arrived at the office. The grievor testified that the employer told him that his workday did not begin until he sent his first email, but the evidence showed that the employer said that it began when he was ready to work.

O. The two-day suspension

[63] The next day, April 9, 2015, the employer suspended the grievor for two days, further to a disciplinary meeting held on March 19, 2015, the same day that it suspended him for one day. The letter stated that he failed to meet the expectations expressed to him and pointed to his absences on March 9 and 10, 2015. In his submissions before me, the grievor agreed that the allegation was true.

[64] In the letter, the employer acknowledged that he was dealing with a difficult personal situation, as members of his family were seriously ill, but went on to state the behaviour of which he was accused. First, he did not call before 8:00 a.m. on March 9 to state that his doctor had extended his medical certificate to March 16, 2015. In fact, he did not contact the employer until he replied to Mr. Moussa's March 10 email that asked him where he had been for the last two days. The letter also stated that he did not express remorse or regret in his email reply to the employer or at the disciplinary hearing. The employer concluded that there was misconduct and imposed the two-day suspension mentioned earlier, referring to the March expectations letter.

[65] In his testimony, Mr. Moussa confirmed that the grievor did not give any explanation for not calling and did not express any remorse for failing to comply with the expectations letter. He grieved the two-day suspension on April 20, 2015, the same day on which he grieved the one-day suspension.

[66] Mr. Moussa emailed the grievor the same day to summarize the meeting held the day before about hours of work and the grievor's refusal to submit work. In the email, Mr. Moussa reiterated that the grievor's work hours began when he began working, not when he turned on the computer. The grievor replied that he was not responsible for the employer's updates. On the accusation of failing to submit work,

Mr. Moussa stated that he asked the grievor to complete a specific task dealing with copies of updated documents, which according to Mr. Moussa would take about two to three hours of work. According to the documentary evidence, the grievor informed him that he had other updates to do, that he would not be able to complete the task requested by his supervisor, and that he could not say when he would be able to complete it. The grievor ended his reply by asking Mr. Moussa to hold a disciplinary hearing about the matter, as that approach had become a habit.

[67] The grievor testified about the events of 2015 in general terms and did not provide any documentary evidence to support his allegations of illness in his family. He stated that when his father and father-in-law both fell ill, he panicked and insisted that he also had to be screened for cancer, which explained part of his absences. He said that it was a turbulent period, that his union representative advised him to take a few days of sick leave, and that he acted based on what he was told during a telephone call with Allô Cancer. The grievor emailed Mr. Moussa to state that he "[translation] will take" the next two days of leave at his representative's request and that he was hurt that the office did not recognize his circumstances, as he had not received a card or flowers.

[68] On April 10, 2015, the grievor exchanged emails with Ms. Bujold, copies of which were filed as evidence. He emailed her at 12:10 p.m. to state that he was back at his workstation after a work meeting. When she did not receive another email from him informing her that he was leaving for his lunch break, she followed up at 1:18 p.m., stating that he had been absent from his office for some time. He replied 2 minutes later that he had been on a break. One minute later, he emailed to say that he would take his lunch at 1:23 p.m. At 3:07 p.m. that day, Ms. Bujold reminded him that his lunch hour was from noon to 1:00 p.m. and that any changes had to be approved ahead of time. In another email, sent at 3:03 p.m., Ms. Bujold noted that he had been away from his office for longer than 15 minutes, and she reminded him of the employer's expectations. She also reminded him that he was obligated to inform her when he returned to work, but the evidence does not contain a reply from him.

P. The four-day suspension

[69] Just over a month after the two-day suspension, the grievor was disciplined again, this time with a four-day suspension. The disciplinary meeting was held on

April 22, 2015, and the suspension was imposed in a letter dated May 5, 2015. In that letter, the employer accused the grievor of the following:

> 1) that he left work early on April 9, 2015;
> 2) that he did not submit the work as expected on April 9;
> 3) that he did not sign his PRR before the April 10 deadline;
> 4) that he failed to respect meal breaks;
> 5) that he was absent for more than 15 minutes on April 10 without notice; and
> 6) that he behaved inappropriately in meetings on April 13 and 14, 2015.

[70] With respect to leaving early on April 9, the employer stated that the grievor left work at 3:35 p.m., that he started work that day five minutes late, and that as a result, it would recover five minutes from his pay.

[71] On the matter of not submitting a document on time, the employer alleged that the grievor did not contact Mr. Moussa, in accordance with the letter of expectations, to tell him that the work would be late and to find a solution. According to the employer, the grievor justified his failure by stating that he could not submit the work on time because he had to meet with the Office of Values and Ethics about filing a complaint.

[72] As for signing his PRR, the employer alleged that the grievor had several opportunities to add comments to the document and to contact his union.

[73] As for not respecting meal breaks, the letter noted that the grievor left for lunch at 1:23 p.m. on April 10 and at 12:57 p.m. on April 9 without asking for permission.

[74] As for the accusation that the grievor was away from his office for more than 15 minutes on April 10, the letter stated that he was absent from 12:50 p.m. to 1:18 p.m. without telling his manager and informed him that the 28 minutes would be recovered from his pay.

[75] Finally, on the matter of his behaviour in the April 13 and 14 meetings, the letter stated that the grievor spoke aggressively and behaved inappropriately toward Mr. Moussa and that the file documented his behaviour, supported by an email that a colleague sent to Mr. Moussa.

[76] Before me, the grievor did not explicitly deny his tone or behaviour that day, but at the hearing, he generally denied that his tone or behaviour was aggressive or inappropriate. However, Mr. Moussa testified very specifically and credibly about the

grievor's tone and behaviour, and I have no reason to question the contents of the employer's letter of May 5, 2015, in this or any other respect.

[77] As in the earlier disciplinary letters, the employer noted that the grievor did not express regret or remorse and referenced the expectations letter.

[78] Mr. Moussa testified about the grievor's refusal to admit that there was a problem with submitting incomplete work, even though the grievor declined the help that was offered, as indicated in the second allegation in the letter. He also confirmed that the grievor refused to sign his PRR.

[79] I asked the employer about the first allegation that the grievor was 5 minutes late. Mr. Moussa acknowledged that the allegation raised eyebrows but explained that it was a matter of context. The grievor did not contest the allegation that he left work early on April 9, 2015, when cross-examining Mr. Moussa or in his own examination-in-chief. He challenged that discipline by filing a grievance on May 21, 2015, in which he challenged the suspension and the 2 administrative measures to recover the 5- and 28-minute periods for which the employer alleged that he did not work.

[80] On April 22, 2015, Mr. Moussa met with the grievor and told him that he had been away from his office for too long. He told Mr. Moussa that he had taken just a 15-minute break, from 10:23 a.m. to 10:38 a.m. A colleague emailed Mr. Moussa to state that he overheard a conversation and told Mr. Moussa that in his opinion, the grievor had been rude and disrespectful.

Q. The workplace violence investigation

[81] In May 2015, the situation involving the grievor became even more tense when the employer received complaints about the grievor's verbal abuse, aggression, and inappropriate behaviour. Thus, on May 14, 2015, the employer informed him that it had decided to investigate the safety and violence issues, that in the meantime he was suspended indefinitely, and that the investigation's outcome could lead to administrative measures or a disciplinary sanction.

[82] The investigation into the allegations of verbal abuse, aggression, and inappropriate workplace behaviour took place in the summer of 2015. On

July 15, 2015, the grievor received a copy of the report and was informed that a meeting would be held on July 20 so that he could comment on it.

[83] The report noted that the investigation was motivated by complaints received from Mr. Moussa and one of the grievor's colleagues. She complained that she felt that the grievor was following her and accused him of moving items on her desk. The report described the allegations against him that he allegedly shouted, swore, spoke aggressively, pointed his finger, made accusations, and was agitated and unstable, causing fear and anxiety among his colleagues and creating what was described as a toxic work environment. He was described as lacking respect for Mr. Moussa, being continually defiant and blatantly disrespectful, not taking orders, and not recognizing authority. The witnesses expressed concern that he would target them if they spoke out against him, and some also expressed concern that continuing the disciplinary process would only make things worse with the grievor.

[84] The report noted that the grievor received several expectations letters in 2014 and 2015 and that he declined a Health Canada assessment in July 2014. Before me, Mr. Moussa testified that the grievor thanked the employer for its concerns about his health but stated that an assessment was not necessary. The report also pointed out that the employer was willing to return to mediation to try to resolve the situation but that it decided to withdraw that option since the meeting with the ombudsman was not successful and the grievor's behaviour had in fact escalated afterwards.

[85] The report noted that nine witnesses confirmed hearing incidents of verbal abuse by the grievor and included statements from these witnesses in its appendices. A colleague complained to the employer that he felt unsafe because of the grievor's unusual and aggressive behaviour. He also complained that the grievor looked at him intimidatingly over the walls of their office space.

[86] According to another statement, the grievor's colleagues were so concerned for their safety that they agreed that two people would always be in the office when he was present. Before me, Mr. Moussa confirmed that employees had reported the grievor's unstable behaviour and the fact that he was no longer speaking to them but that they did not know why. A colleague also made a statement to the employer confirming the grievor's aggressive and disrespectful behaviour and the toxic workplace, and she stated that she feared for Mr. Moussa's safety. Although she was

once the grievor's friend, he no longer spoke to her. The grievor confirmed that he cut ties with his colleagues to protect himself emotionally.

[87] The report also pointed to the grievor's behaviour at the March 4, 2015, disciplinary meeting held to discuss the events that led to his one-day suspension, when he refused to speak to Mr. Moussa and turned his chair when Mr. Moussa entered the room. It noted that the grievor saw nothing wrong with his behaviour.

[88] The report also noted that the grievor said that he felt trapped, that he feared for his safety, and that he felt that everyone was plotting against him.

[89] The report concluded that the allegations against the grievor were founded and that given the circumstances, it recommended that he be assessed by a specialist, that he complete training, and that he be assigned to a new workplace.

[90] The grievor testified in general terms about the workplace violence report, stating that the investigators were either incompetent or complicit in the employer's plot. He then spoke about the FBI's profiling of dangerous personalities and said that he would write a book on how to protect your brain from harassment. He also said that he had sought help from the Aylmer police, which he said agreed to investigate, and referred to a report that was not in the evidence before me. Finally, he denied all the allegations against him.

R. The 10-day suspension

[91] The report mentioned earlier resulted in the grievor's 10-day suspension. In the suspension letter, the employer referred to the investigation's outcome and the finding that the grievor violated the department's Values and Ethics Code because his behaviour did not promote a respectful workplace. The employer held a meeting on July 20 to gather the grievor's comments on the report. The investigators questioned him on June 4, 2015. He stated that that was the first time that he was told that his behaviour was unacceptable, even though the employer had disciplined him for it. Another meeting was held, on August 26, 2015, to provide the grievor with the employer's decision to impose the 10-day suspension. The suspension letter was signed by Director General H. Kennedy. In his testimony, the grievor disputed all the allegations against him in the letter.

S. The Health Canada assessment

[92] The letter also requested that the grievor consent to a Health Canada assessment and that he be put on leave without pay pending the assessment. The employer testified that it made that request to avoid attributing ill intent to the grievor's behaviour. He signed the assessment request the same day, and on October 27, 2015, he was referred to a specialist. On November 30, 2015, the employer was informed that he was fit to work, without restrictions. It then started to look for a new position for him, as returning to Mr. Moussa's supervision was no longer an option. Ms. Bujold testified that the bond of trust between the grievor and his supervisor had been irreparably broken. Ms. Bourque testified that he agreed with the assessment and that he did not wish to return to his previous work location.

[93] In July 2015, the grievor made a harassment complaint with the department, even though the workplace violence investigation report found that no harassment had occurred.

T. Acting assignment denied, and the post-abandonment letter

[94] In the spring of 2016, the employer found an acting assignment for the grievor and told him to report to work in April. His new supervisor, Sylvie Ringuet, testified that she met with him for the first time on April 21, 2016, with his bargaining agent, about joining the team. She also testified that she described the project that he would work on and her expectations and that she felt that the meeting went well. Afterwards, she wrote to him and repeated her expectations about his hours, attendance, and behaviour that she had described to him earlier.

[95] Mr. Lamothe called Ms. Ringuet on Friday, April 22, 2016, to inform her that he did not agree to the conditions, as doing so would mean that he agreed with the workplace violence investigation report. She testified that she assured him that the past was the past. He also told her that he wanted a permanent position. He emailed her on April 25, 2016, to confirm that he refused the offer of an acting assignment in her section.

[96] Ms. Ringuet responded that his refusal could have consequences, which he interpreted as a threat. He said that he did not feel safe and that Ms. Ringuet's threat only reinforced that feeling in him, leaving him with no choice but to refuse to report to work. In his email, for the first time, the grievor raised allegations that the 10-day

suspension was related to his race, ethnic origin, and language. He asked the employer to guarantee that he would not be falsely accused again.

[97] The employer emailed the grievor on April 25, 2016, to ask if he had any medical reasons for not reporting to work. He never provided the employer any documentation on this matter; nor did he present any at the hearing, at which he merely made a vague allegation that he chose to protect his mental health. The employer's email indicated that on the same day, the grievor wrote to decline the offer of a position in Ms. Ringuet's unit and all other offers within the department, and informed him that his absence from work could be considered abandoning his position.

[98] The employer followed up on April 26 and 27 and May 3, stating that it had not heard from the grievor and reminding him of his obligations and that he could be considered as abandoning his position. On Friday, May 6, 2016, the employer's representatives working on the grievor's file exchanged emails about what to do. One email indicated that the grievor's union had been informed of the employer's approach, that he did not respond to the letters that the employer sent to him, and that Ms. Ringuet had asked that the abandonment letter be sent to him the following Monday. In accordance with that request, the letter in question was sent to him on Monday, May 9, 2016.

V. Summary of the arguments

A. For the employer

1. Grievance 13691 - grievance alleging a violation of article 16 of the collective agreement (harassment and discrimination)

[99] Recalling that I upheld its objection based on the lack of notice to the CHRC about the harassment, the employer argued that before me, the grievor presented no evidence of discriminatory behaviour.

[100] However, the Supreme Court of Canada found as follows in *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4 at para. 49:

> *… It is not enough to impugn an employer's conduct on the basis that what was done had a negative impact on an individual in a protected group. Such membership alone does not, without more,*

> *guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of a remedy. And it is the claimant who bears this threshold burden.*

[101] The grievor did not discharge his burden of proof in this case. Furthermore, there is nothing in either his or the employer's evidence to suggest that even in a single instance, any of the witnesses made a decision about the grievor with discriminatory intent. As the Board ruled as follow in *Reid-Moncrieffe v. Deputy Head (Department of Citizenship and Immigration)*, 2014 PSLRB 25 at para. 44:

> *… the grievor has not presented a shred of evidence to support her allegation that her race … was relied on by the respondent in its disciplinary decisions. All I have in support of that allegation are the bald assertions of the grievor … which are manifestly insufficient to transfer an onus onto the respondent.*

[102] Moreover, as the Board stated as follows in its decision in *Onah v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLREB 11 at para. 33:

> *Even had the discrimination issue been alleged in the grievance presentation, the Board could not hear it because it does not have jurisdiction over the grievance. For me to be able to hear a discrimination allegation, a grievance first has to be properly before the Board, because the* Act *does not include a stand-alone grievance concerning a violation of the* CHRA.

[103] In *Okrent v. Deputy Head (Department of Public Works and Government Services)*, 2013 PSLRB 65, the Board was faced with a similar case in that throughout the hearing, a grievor repeatedly attempted to introduce evidence of incidents relating to issues that had nothing to do with her termination. As it explained at paragraphs 17 to 22 of its decision, the Board refused to accept the evidence, since the grievor could not explain why the evidence was relevant to her termination of employment, and explained to her many times that she should focus on the reasons that led the employer to terminate her employment and on evidence that could convince the Board that the employer did not meet its burden of proving that the termination was justified. As in this case, and as the Board found at paragraph 37 of its decision, the grievor did not provide any serious evidence.

[104] The Board explained well at paragraph 189 of its decision in *Stene v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 36, as follows:

…

> *The usual basis for adjudicating issues of discipline is by considering the following three questions (see* Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P -162*, [1977] 1 CLRBR 1): Was there misconduct by the grievor? If there was misconduct, was the discipline imposed by the employer an appropriate penalty in the circumstances? If the discipline imposed was not appropriate, what alternate penalty is just and equitable in the circumstances?*
>
> …

[105] The Board stated as follows at paragraph 191 of that decision:

> *Credibility is at the forefront of this matter. Issues of credibility are dealt with by the test articulated in* Faryna*, 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 witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour 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.…

[106] The employer presented a series of clear and structured testimonies that with the supporting documents, made a clear and coherent whole. In contrast, the grievor's

testimony reflected his view of things but demonstrated a different perception of reality and sometimes oversimplified the facts because he put together factual items that he thought were related but that in fact were not, as shown logically.

[107] The employer was open to dialogue, but the grievor did not take advantage of the many opportunities it provided him. He never apologized or accepted responsibility but always brushed it off with the back of his hand. Bearing in mind the last paragraph from *Faryna*, when considering his testimony and how it fits into the facts of the case, it does not fit the evidence presented to me.

[108] At paragraph 192 of its decision in *Stene*, the Board concluded as follows:

> *The rule in* Browne and Dunn *requires that a party that is going to challenge the credibility of a witness by putting forward contradictory evidence must put that contradictory evidence to that witness. This is to allow the witness whose evidence they are trying to contradict an opportunity to explain. If the rule in* Browne and Dunn *is not followed, the court or tribunal will not allow that party to rely on the contradictory evidence.*

[109] The employer reiterated that this rule was explained to the grievor many times but that he failed to comply with it, so it asked me to apply that paragraph.

2. The merits

[110] Recalling the criteria for deciding disciplinary matters that the Board established in *Stene* and that was cited at paragraph 104, the employer argued that the grievor's misconduct was amply demonstrated and that all the discipline that it imposed was appropriate in the circumstances. It pointed out that the evidence demonstrated both that successive expectations letters were issued and that although their contents were intended for the grievor, they applied to all employees.

[111] The facts of this case are similar to those that the Board described in *Phillips v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 67 at para. 84, as follows:

> *There is no doubt in my mind that the grievor's five failures to report his absences in January 2012 as per the protocol constitute misconduct and just and reasonable cause to impose discipline. As stated in* Riche *or in* Luscar Ltd.*, it is reasonable for an employer to set rules to report absences, and failing to respect those rules gives the employer cause to impose discipline. In this case, the rules were simple; the grievor had to verbally report his absences to his manager by phoning between 08:00 and 09:00.*

[112] At paragraph 93 of the same decision, the Board ruled that "… even though the grievor admitted his wrong doings [*sic*], the fact remains that he is culpable of misconduct." In this case, the grievor did not admit his wrongdoings but is nevertheless culpable of misconduct. By imposing progressive discipline, the employer tried to see if the grievor would realize that there was a problem. It did not happen.

[113] At the hearing, the grievor claimed that he corrected his insubordination and that it was a thing of the past, but Mr. Moussa testified that it was not. Even if the grievor admitted today that he was insubordinate, doing so would not make it disappear.

[114] The Board addressed absenteeism at paragraphs 117 to 119 of its decision in *Riche v. Treasury Board (Department of National Defence)*, 2013 PSLRB 35, and stated, at paragraph 118, "An employee who wants to avoid [discipline] must establish that they were absent for a non-culpable reason …". However, in this case, not only did the grievor not realize the problem, he also did not establish that he was absent for a non-culpable reason and therefore that he was not culpable of absenteeism.

[115] The grievor told Mr. Moussa that he had no medical condition that would explain his behaviour. Health Canada found him fit for work, without restrictions. He does not have any condition that would prevent him from understanding and following the rules. He just lacks the will, probably because he disagrees with them, considers them unnecessary, and interprets them in a way that does not match the reality.

[116] Again, the facts in this case are similar to those that the Board described as follows in *Riche*, at para. 127:

> *The reporting conditions made it clear to the grievor that the employer needed him to comply with what is, after all, a basic obligation of any employee - to show up for work on time or to explain why that is not possible. They made it clear that the employer took that obligation seriously and that it was prepared to impose discipline if it were not done.*

[117] Therefore, as in that case, nothing about this case is unusual.

[118] Paragraph 133 of *Riche* also applies in this case, due to this:

> *The medical evidence stated that the grievor was fit for work without restriction. Vague references in some of the medical reports to "medical issues" in the past did not establish that those issues, whatever they were, were disabling. Nor did they establish that the grievor was unable to give timely notice that he would be late or absent.*

[119] Finally, the same applies to paragraph 136, in which the Board found this:

> *The imposed discipline was progressive, moving from one to two to three days of suspension. It was imposed in the context of a larger history of warnings, meetings and other discipline, one of which the employer in fact rescinded once the grievor presented supporting medical information. In my opinion, none of the three penalties was excessive.*

[120] With respect to the employer's desire to control the grievor's comings and goings and his hours of work, in *Reid-Moncrieffe*, at para. 55, the Board established that the basic rule is to obey the requirements first and then challenge them by way of a grievance. However, none of the grievor's grievances challenged any of the expectations letters that he received.

[121] In this case and as the Board found in *Reid-Moncrieffe*, at para. 60, "… the respondent was at liberty, in the interests of managing its workforce, to require that it be made aware, in a timely fashion, of employees' inability to report for work as scheduled."

[122] Finally, as the Board stated as follows at paragraph 65 of the same case:

> *… According to the principle of progressive discipline, an employer is justified in escalating the sanctions it imposes on an employee for successive disciplinary infractions. If the employer discharges the employee, the validity of the discharge depends on the employee's entire disciplinary record and not just on the gravity of the culminating offence.…*

[123] In *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61 at para. 90, the Board demonstrated that there is no domino effect on the level of discipline if one act is dropped from a series of acts of misconduct.

[124] Tabs 28 to 47 of the employer's book of documents demonstrate the grievor's multiple acts of misconduct, with supporting evidence. He did not establish that those things did not occur, and therefore, the facts are not in dispute.

[125] As for abandoning a position, the employer first drew my attention to the Board's decision in *Navikevicius v. Deputy Head (Department of Employment and Social Development)*, 2015 PSLREB 34 at para. 84, in which the Board cited as follows paragraph 7:3100 of *Canadian Labour Arbitration*, 4th edition, by Donald Brown and David Beatty ("Brown and Beatty"):

…

> 7:3100 Attendance at Work
>
> Punctuality and regular attendance are essential attributes of all employment relationships. Employees who are unable or unwilling to report for work on time and as scheduled risk being disciplined by their employers. Arbitrators have consistently held that so long as an employer does not discriminate or waive its rights, it may suspend, demote and, where the problem persists, even discharge an employee who is absent from work without permission or a legitimate reason.

[126] After summarizing the employer's jurisprudence at paragraph 86 to 95 of that decision, the Board began its reasons at paragraph 123 by stating this outright:

> *It is well accepted in labour jurisprudence that when an employee fails to show up for work without being on some form of authorized leave, that employee has for all intents and purposes abandoned their job, which is cause within the meaning of paragraph 12(1)*(e) *and subsection 12(3) of the* FAA. *(See, e.g.,* Lindsay, Okrent, Weiten*, and* Latchford*).*

[127] The employer then recalled the sequence of events described at paragraphs 94 to 98 and concluded that "[translation] if that is not the abandonment of a position, I don't know what is."

[128] For those reasons, the employer invited me to dismiss the four disciplinary grievances and the termination grievance. It also pointed out that the discrimination grievance could not be presented to me for lack of evidence and that the grievance about salary during the suspension was moot since the grievor received the amounts that were initially withheld. Since the union was not present at the hearing, the employer invited me to dismiss the latter grievance for lack of jurisdiction or because it was unfounded.

B. For the grievor

[129] The grievor did not present me with any legal arguments to support his claims but devoted his argument to the course of events from his perspective. He stated that many of his alleged offences were "[translation] a lie", "[translation] a fabrication", or a "[translation] false allegation", that "[translation] the [workplace violence] report is false", and that he forgave the employer's witnesses, who he said lied about him. However, he admitted this: "[translation] I don't know how to get it together to show evidence that it's a fabrication". Specifically addressing the four-day suspension, he admitted this: "[translation] I could not provide enough evidence to show that that grievance is founded."

[130] Generally speaking, the grievor's argument was a series of general statements about being unfairly treated. He stated this: "[translation] I said in my **resignation letter** that the important thing is to protect existence" [emphasis added].

[131] Apparently in an attempt to justify his behaviour, his arguments repeatedly referred to a person whom he did not name but described as "[translation] my mentor", who allegedly advised him to refuse to sign his PRR, in addition to giving him other advice.

C. The employer's response

[132] The employer responded that the grievor's argument was the same as the other and that the evidence before me contradicted it.

[133] Again, the employer drew my attention to the Board's decision in *Phillips*, this time to paragraph 73, in which it cited the Federal Court of Appeal in *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.)(QL), to support the principle that the adjudication hearing to determine whether the employer had just cause to impose discipline is a *de novo* hearing, as follows:

…

> Assuming that there was procedural unfairness in obtaining the statements taken from the Applicant by his superiors (an assumption upon which we have considerable doubt) that unfairness was wholly cured by the hearing de novo before the Adjudicator at which the Applicant had full notice of the allegations against him and full opportunity to respond to them. In particular, it was no error of law for the Adjudicator to give

> such weight as he thought right to statements which were, in our view, properly admitted in evidence by him.…
>
> …

[134] The employer concluded that it wished that the grievor had listened to it more than to his mentor. Had he, he would probably still have a job in the public service.

VI. Analysis and reasons for decision

[135] The employer called to testify six HR managers and employees who were involved in managing the grievor's file, including Mr. Moussa. I found that they all testified honestly and credibly, with no bad faith toward the grievor. Mr. Moussa showed emotion in his testimony, particularly when he described the grievor's behaviour that he witnessed and its impact on him, but I find that he too was credible. For the most part, the employer's witnesses simply described their involvement in the case, supported by the documentary evidence, and their testimonies accurately reflected what was recorded in the many notes to file, emails, expectations letters, and disciplinary letters, as well as the letters sent to the grievor that resulted in the abandonment declaration. The grievor did not question their testimonies on cross-examination.

[136] Although the grievor denied that he behaved aggressively or inappropriately at any time, I find that the employer established that he did so many times. Although he alleged that he feared that Mr. Moussa would stab him, there was no evidence that that fear was reasonable, and applying *Faryna*, I find that Mr. Moussa's testimony about his behaviour toward the grievor should be preferred.

[137] The employer suspended the grievor for the first time in March 2015 for six events that occurred in the previous month. First, it accused him of leaving work early without permission on February 18, which the grievor did not deny at the hearing, and he confirmed that he emailed the employer to explain. In that email, he said that he turned off his computer early to answer an urgent personal call and to leave at 3:40 p.m. to catch his bus because he needed to transport a family member to Montreal for medical treatment. The employer determined that he left work early without permission, which clearly violated the expectations letter. In my view, his actions that day were precisely the type of behaviour that the employer had made clear to him was unacceptable.

[138] The second accusation was about the grievor's absences on February 19 and 20 and February 25 to 27, specifically that he did not obtain authorization in advance for the leave, which he did not dispute before me. Again, the employer established that he did not obtain permission for his absences ahead of time, which clearly violated the expectations letter then in effect.

[139] Third, the employer accused the grievor of being absent for more than 15 minutes without permission in advance on February 23. Again, he did not deny it, and stated that he had been trying to get his father admitted to the hospital, even though the employer made it clear that it was a personal matter that had to be dealt with on his own time or after he was granted leave.

[140] Fourth, the employer disciplined the grievor for his behaviour at a meeting with Mr. Moussa, also on February 23, which the employer established through testimonies and accounts from his colleagues.

[141] Documents and testimony were used to establish that the grievor failed to meet a work deadline, and the grievor did not dispute it.

[142] As for his absence on February 24, the evidence before me was unclear and did not allow me to take a position on the merits of the employer's accusation against him.

[143] Nevertheless, I find that his early departure on February 18 would, in itself, justify a one-day suspension in the circumstances. The employer established that he left work early without prior permission that day, that he was absent without prior permission for several days after that early exit, that he was away from his office for more than 15 minutes without prior permission, and that he behaved inappropriately at a meeting on February 23. He had been warned that such behaviour was unacceptable, but he continued to behave in the way that he had been warned about.

[144] In its recent decision, *Mackey v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 115 at para. 58, the Board found that the employer does not have to establish all the allegations underlying a disciplinary measure to support it, as unfounded allegations do not outweigh the disciplinary measure imposed. I find that as did the Board in that case, the employer established in this case that the grievor's misconduct was sufficient to warrant a one-day suspension.

[145] As for the two-day suspension, the employer accused the grievor of an act in early March 2014, including his absences on March 9 and 10, which violated the expectations letter then in effect. In his arguments before me, he admitted that he was absent and that he failed to comply with his obligations under the expectations letter. I accept the employer's testimony that the grievor did not call to notify of his absence and that he did not tell Mr. Moussa where he was until Mr. Moussa emailed and asked him. I also accept the employer's allegation that the grievor never expressed remorse or regret for his actions. He did not express those feelings at the hearing, despite admitting that he acted in the alleged manner. Therefore, I find that this ground of misconduct was established and that the employer was justified imposing a two-day suspension as progressive discipline.

[146] With respect to the four-day suspension, the employer grouped several alleged incidents that occurred in April 2015, as follows:

1. that the grievor left work early on April 9, 2015;
2. that he did not submit the work as expected on April 9;
3. that he did not sign his PRR before the April 10 deadline;
4. that he failed to respect meal breaks;
5. that he was absent for more than 15 minutes on April 10 without notice; and
6. that he behaved inappropriately in meetings on April 13 and 14, 2015.

[147] I find that the employer established the first four allegations and the last. Returning to the early departure on April 9, 2015, it accused the grievor of leaving five minutes early, which again he did not dispute in the disciplinary process or at the hearing. I asked Mr. Moussa whether that accusation might seem excessive, and he replied that it was important to keep in mind the general context of the situation he faced. I accept his testimony on that matter, and I find no ill intent in the employer's choice to strictly enforce the rules for an employee who knowingly and repeatedly disregarded them and consistently challenged management's authority.

[148] Mr. Moussa also testified that the grievor did not submit the work as requested and that he did not sign his PRR before the deadline. The grievor did not deny or explain his shortcomings, in what became his pattern at the hearing.

[149] The employer also established that he again failed to abide by his hours of work when he left late for lunch on April 9 and 10 (at 1:23 p.m. and 12:57 p.m., respectively). The grievor did not deny it.

[150] As for the final allegation about his behaviour in the February 13 and 14 meetings, the employer established this allegation through testimony and documentation.

[151] While the 5th allegation, about a 15-minute absence, is less clear to me, again I find that the employer more than established sufficient misconduct on the other four allegations to fully support its decision to increase the discipline to four days.

[152] The workplace violence investigation led to the 10-day suspension. I find that when the investigation began, the employer faced two written complaints of workplace violence, and that it was aware of the general concern that the grievor's other colleagues had expressed to it and their fear for their safety. The employer had a serious and legitimate reason to conduct the workplace violence investigation and to require a medical assessment from Health Canada before reinstating the grievor.

[153] There was no bad faith in conducting the investigation or in imposing discipline as a result of its outcome. The grievor did not present me with any evidence about matters relating to how the investigation was conducted. He merely denied any aggressive tone or inappropriate behaviour, to challenge the investigation's outcome or to question the employer's decision to reimpose discipline for the issues that had been repeatedly brought to its attention. I find that the employer proved the grounds for imposing the 10-day suspension.

[154] The grievor had to establish either that the abandonment declaration was disguised discipline or that it was unreasonable because it was unfair or issued in bad faith, which he was unable to do. I find that the facts in this case are similar to those in *Okrent* and *Navikevicius*, which support the employer's discretion in situations such as this, to find that an employee has abandoned his or her position. The grievor did not convince me that in his case, this statement was anything other than an exercise of the employer's discretion, as he presented no evidence from which I could conclude that it was in fact of a disciplinary nature.

[155] The grievor also did not convince me that as he alleged, the entire matter was the employer's plot. In his argument, he even admitted that he could not provide me with any evidence that the employer planned and fabricated the situation. He said that he forgave the employer's witnesses who he believed had lied about him but repeated that he agreed that he was unable to establish that a plot existed.

[156] The grievor did not acknowledge that he caused the incidents and that the employer simply reacted legally and predictably to his repeated defiance. I find that the situation could not have been a plot, since the grievor was the author of his own misfortune, and that the employer acted in good faith throughout the process, despite the grievor's allegations to the contrary at the hearing.

[157] The employer simply exercised its authority when the grievor failed to report to work as required. Although he alleged that he protected his mental health, he did not provide me with any medical evidence to support it.

[158] The grievor never claimed that the proposed acting assignment was doomed to fail; nor did he claim that the proposed work was below his level. In fact, he never objected to the position in any way, and the only excuse he offered for not reporting to work was that he objected to the results of the workplace violence investigation and that he mistakenly believed that accepting the position would endorse them.

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

(The Order appears on the next page)

VII. Order

[160] These grievances are denied: 566-02-13686, 13687, 13688, 13689, 13690, and 13692.

[161] I order closed grievance file 13691.

November 22, 2021.

FPSLREB Translation

Paul Fauteux,
a panel of the Federal Public Sector
Labour Relations and Employment Board