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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

BONNIE BUTLIN

Grievor

and

TREASURY BOARD

(Department of Public Safety and Emergency Preparedness)

Employer

Indexed as

Butlin v. Treasury Board (Department of Public Safety and Emergency Preparedness)

In the matter of an individual grievance referred to adjudication

Before: James R. Knopp, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Herself

For the Employer: Kétia Calix, counsel

Heard by videoconference,
October 4 to 8, 2021, and April 4 to 8 and December 5 and 6, 2022.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Bonnie Butlin (“the grievor”) was hired as a full-time casual employee in the Emergency Management and Programs Branch of Public Safety and Emergency Preparedness Canada (“the employer”) on September 26, 2016. Before her term expired, on November 10, 2016, she was hired for a second term of full-time casual employment.

[2] While she was still a casual employee, on December 28, 2016, the grievor was offered a full-time indeterminate appointment to a PM-04 program advisor position. The appointment was effective as of January 3, 2017, and the agreement specified a one-year probation. She accepted the offer on December 28, 2016, and began her probation on January 3, 2017.

[3] The grievor performed her duties satisfactorily, but several times, she was in conflict with her supervisors and co-workers. She was frequently in conflict with her supervisor, Susan Howe, who supervised her from March 2017 to August 2017, and in July of 2017, she reported to management her intention to make a harassment complaint against that supervisor, who similarly reported her intentions to make one against the grievor. The supervisor ultimately left the workplace on sick leave in August 2017 and did not return.

[4] A second supervisor, Lee-Ann Salmaso, occasionally acted for Ms. Howe and experienced conflict with the grievor that occasionally made her cry. Ms. Salmaso left the workplace, citing conflict with the grievor as her primary reason for seeking employment elsewhere.

[5] National Audit Coordinator and Program Director Anika Boutin acted as the grievor’s third supervisor from August 2017 until the grievor’s last day of employment. The grievor made a harassment complaint against her as well.

[6] The grievor made a hazardous-workplace complaint because of the activities of a co-worker whose office was beside hers. Departmental security determined the complaint inconclusive.

[7] In a performance assessment meeting on September 28, 2017, Ms. Boutin expressed concern that the grievor was having difficulty working effectively with others and they felt incompetent when interacting with the grievor. The grievor told her supervisor that the stress those individuals were experiencing was most likely due to their inability to meet the requirements of their respective positions and that it had nothing to do with the grievor.

[8] The grievor's employment was terminated on December 14, 2017. The grievor filed her grievance on December 21, 2017.

[9] For the reasons that follow, I find that the employer terminated the grievor's employment while she was still on probation as she was not suitable for continued employment. She was frequently in conflict with her supervisors and co-workers, and was unable to work effectively with others. I found no evidence of sham, camouflage or disguised discipline on the part of the employer. The termination was administrative, not disciplinary, and the Federal Public Sector Labour Relations and Employment Board ("the Board") has no jurisdiction over it.

II. Summary of the evidence and testimonies

[10] Throughout the relevant period encompassed by the grievance, Ms. Boutin was the employer's national audit coordinator and program director and worked in its Ottawa, Ontario, office. When Lori Goodyear, the director general, left in August of 2017, Ms. Boutin acted as the director general.

[11] In her capacity as acting director general, Ms. Boutin oversaw the management of all the Emergency Management and Programs Branch, of which the grievor was part.

[12] Ms. Boutin entered into evidence certain documents pertaining to the grievor's hiring. She was initially hired into a casual EC-04 program officer position in the Emergency Management and Programs Branch on a term from September 26 to December 30, 2016.

[13] On November 10, 2016, before the term expired, the grievor was offered a second term as a casual employee in the same position and at the same group and level from January 3 to May 10, 2017. Before it started, on December 28, 2016, she was offered an indeterminate PM-04 program advisor position, which she accepted the same day.

[14] The letter of offer indicated a start date of January 3, 2017, and contained a paragraph on probation, as follows:

...

In accordance with section 61 of the Public Service Employment Act, employees appointed from outside the public service are subject to a 12 month probationary period, excluding any periods of leave without pay, full-time language training or leave with pay in excess of 30 consecutive days and any off-duty periods in the case of seasonal employees. Your probationary period will continue with any subsequent appointments or deployments until the probationary period has been completed.

...

A. Lee-Ann Salmaso's testimony

[15] Throughout the period encompassed by this grievance, Lee-Ann Salmaso was a PM-05 senior program officer. She acted in management positions on occasion, and in late November of 2016, she acted in Susan Howe's place as a manager.

[16] Ms. Salmaso testified to her reluctance to attend the hearing. In her words, she was "hounded" to attend and testify. She frequently cried on the witness stand. She stated that interactions with the grievor had traumatized her to such an extent that she "could not even speak the grievor's name for about a year" after she left in September of 2017 for work elsewhere. She testified that a primary reason for her departure was the stress caused by her interactions with the grievor.

[17] Ms. Salmaso testified to an incident with the grievor on the first day of one of her acting assignments, on November 28, 2016. The grievor was a casual employee at that time but was expected to be hired on an indeterminate basis. She met with Ms. Salmaso at her office, demanding her letter of offer of indeterminate employment. Ms. Salmaso was involved with preparing the necessary paperwork to transition the grievor from her casual-employee position to an indeterminate appointment.

[18] Ms. Salmaso testified that on the morning of November 28, 2016, she explained to the grievor that Human Resources' (HR) processes were not yet complete and that her letter of offer was forthcoming.

[19] Ms. Salmaso testified that at that point, the grievor flew into a rage and repeatedly interrupted her when she tried to explain to the grievor that her letter of

offer had not yet been finalized. Ms. Salmaso testified that the grievor said that Ms. Howe had told her to come sign her letter of offer. Ms. Salmaso testified that she tried to explain to the grievor that there must have been some misunderstanding because the letter of offer was not ready yet, but she was not able to complete a sentence because the grievor interrupted her and spoke loudly over her. When the grievor challenged Ms. Salmaso on this in cross-examination, Ms. Salmaso testified, “you were very, very angry. Your eyes were bulging, you were waving your hands around and speaking very loudly, in an aggressive tone of voice.”

[20] After this confrontation, which Ms. Salmaso said lasted several minutes, she went to the office of the director general, Ms. Goodyear, to relate the incident and to suggest that Ms. Goodyear speak with the grievor. Approximately three hours later, Ms. Salmaso met with Ms. Goodyear again. She testified that Ms. Goodyear told her that the grievor had met with her and had been “just fine” with her. Ms. Salmaso expressed misgivings to Ms. Goodyear about making an indeterminate appointment offer, given the grievor’s behaviour. Ms. Salmaso said that upper management told her to “make it happen at all costs” and to see that the grievor was hired before Christmas. Ms. Salmaso testified to writing a positive narrative for the grievor, against her better judgement. The letter of offer was finalized on December 28, 2016.

[21] Ms. Salmaso testified to acting for Ms. Howe as the grievor’s supervisor on another occasion, from February 1 to 21, 2017. In that period, Ms. Salmaso held meetings with the team, which included the grievor, to discuss the progress on their projects. She testified to the grievor being very defensive about being asked to explain her progress and stated that the grievor would become confrontational and aggressive.

[22] Ms. Salmaso testified that several times, the confrontations with the grievor would cause her to cry. She testified to feeling fearful of asking the grievor for updates because she would not know if the grievor’s response would be calm or explosive.

[23] Ms. Salmaso described herself as non-confrontational and said that she “did not have the tools to deal with this”. She did not make a formal complaint, but she did speak to colleagues, including Ms. Howe and a former French teacher from language training, about the conflict she was experiencing with the grievor and its impact upon her. Neither the French teacher nor Ms. Howe testified at the hearing.

[24] Ms. Salmaso testified to feeling, in her words, “utterly destroyed” because her interactions with the grievor would “spiral out of [her] control completely”. She said that when she acted for Ms. Howe, these events shattered her confidence to the point that she began to look for employment opportunities elsewhere.

[25] Ms. Salmaso left the acting position on February 21, 2017, for language training. By the time she returned on May 9, 2017, she was actively looking for work elsewhere.

[26] When asked whether incidents involving the grievor occurred after her return from language training on May 9, 2017, Ms. Salmaso said this: “I think so, but I have completely blocked them out of my memory”. She testified to being unable to provide any details of her interactions with the grievor and could provide only vague generalities, such as an outburst by the grievor at one meeting in particular involving Treasury Board (TB) personnel. Ms. Salmaso testified to being so traumatized by her interactions with the grievor that it had a profound effect on her psychologically. As a result, she said that her memories of that period, from May until her departure in September of 2017, are very vague.

[27] Ms. Salmaso testified to an inflammatory exchange that occurred at a group meeting on July 26, 2017, at which she, the grievor, Ms. Howe, and others were present, but she could provide no precise details about the meeting.

[28] When the grievor asked Ms. Salmaso, in cross-examination, to explain what she meant by the word “traumatized”, Ms. Salmaso broke down in tears. After a brief adjournment she testified that the grievor’s tendency to interrupt her and speak over her and to raise her voice and become defensive about her work and aggressive in her tone triggered Ms. Salmaso in losing confidence in herself. Ms. Salmaso stated that she wanted, in her words, “desperately to get out of there”.

[29] Four times in Ms. Salmaso’s direct examination, the grievor interrupted her testimony and said that Ms. Salmaso was lying. The first time, I ordered an adjournment to a private location, which the Zoom videoconference platform refers to as a breakout room. I had a private discussion with the grievor and counsel for the employer during which I explained to the grievor that she had to allow the witness to testify and that she could cross-examine the witness in due course as well as provide her version of events when she took the witness stand later in the hearing.

[30] Back in the hearing room, five minutes later, the grievor did the same thing. This time, I repeated my instructions to her in the hearing room. She later interrupted Ms. Salmaso two more times to say the same thing, and each time, I repeated my instructions to the grievor to let Ms. Salmaso complete her testimony.

[31] In cross-examination, the grievor asked Ms. Salmaso whether she remembered the time she left meetings in tears to retreat to her office, where the grievor followed her to ask whether the grievor was the cause. Ms. Salmaso said that she did not remember it.

[32] Also in cross-examination, the grievor asked Ms. Salmaso whether her anxiety at the meetings might have been due to low blood-sugar levels. Ms. Salmaso agreed that she can become upset and emotional when her blood-sugar levels are low but repeated her assertion that she reacted to the grievor's behaviour and it made her cry.

[33] At her exit interview on September 6, 2017, Ms. Salmaso testified that she told Ms. Boutin that she was looking forward to working at a new location but that she wanted Ms. Boutin to know that the primary reason she was leaving was the stress and anxiety she suffered from her interactions with the grievor.

[34] Ms. Boutin testified about that exit interview. Her meeting notes include her handwritten observations, as follows:

...

• Le-Ann informed that she is excited by the [Transport Canada] opportunity as it's more in line with what she wants to do, but she is particularly happy not to work with Bonnie anymore.

• She said that when she has been acting in past, Bonnie made her feel like she was not competent. She said she was not an expert in security but she did her best. Outlined Bonnie made her cry at multiple occasion and she would not share all information with her. Asked her why? She said I don't know, I was always good with her. I asked if it had been reported before. Le-Ann said she just wanted to leave and didn't wanted any trouble.

[Sic throughout]

[35] The grievor submitted as evidence an email exchange with Ms. Salmaso, which was cordial in tone. In it, Ms. Salmaso sought some information, and the grievor testified to providing it immediately.

B. Emanuel Thibault's testimony

[36] Emanuel Thibault spoke of regular interactions with the grievor, both at and outside team meetings. He is presently a security analyst at Global Affairs Canada. He testified that in May or June of 2017, he joined the grievor's team at the employer. He testified to being involved with the technical side of the team's projects.

[37] Mr. Thibault testified to one team meeting in particular that took place in the summer of 2017 and at which the grievor, Ms. Salmaso, and Ms. Howe were also present. He said he could not remember much of what happened or why because he was new to the team then, but he said that the grievor raised her voice when discussing something with Ms. Howe. There appeared to be tension between them over a document that was to be produced. Mr. Thibault described Ms. Howe as being "engaged with intensity, but not necessarily with a raised voice". After voices were raised, the grievor left the meeting.

[38] Mr. Thibault did not raise this issue or talk with anyone about it because he did not know what it was about since he was new to the team.

[39] He testified to having a good working relationship with the grievor, whom he characterized as having good knowledge of security issues.

[40] Mr. Thibault testified to taking time away from work on stress leave beginning in August of 2017 because of the tension in the office over issues that he was not involved with. When asked in direct examination whether he discussed with anyone his reasons for needing the time off, Mr. Thibault said that he spoke to Ms. Boutin briefly, but he could not recall the details of the conversation.

[41] Ms. Boutin testified to Mr. Thibault coming to her with a doctor's note soon after the July 26, 2017, meeting at which voices were raised. She testified that he told her that "raised voices are not appropriate" and that he needed time away from the stressful environment. His stress leave was due to expire on September 5, 2017, at which time he was expected to return, but he provided a doctor's note that extended it to September 25, 2017.

[42] Before Mr. Thibault's return, on September 15, 2017, Ms. Boutin met with him, to discuss workplace issues. She testified to making notes of their discussion, which included the following:

...

- *Concern for the toxic environment before his departure. Felt really stressed by the meeting incident. Said he is not used to that kind of behavior in the workplace.*

...

- *He said he felt Bonnie didn't made distinction between physical and mental disability and she didn't tough he could do the work.*
- *Asked him if there something specific I could do in terms of accommodation. He said no. Said he would try to educate his co-worker (Bonnie) on his disability.*

...

[Sic throughout]

[43] Mr. Thibault testified that he could not remember the discussion with Ms. Boutin, that it might have happened, but that his memory was cloudy.

[44] Almost immediately upon his return to the workplace, Mr. Thibault was the subject of the grievor's workplace-safety complaint. Ms. Boutin testified to a meeting on September 26, 2017, with the grievor at which the grievor told her that Mr. Thibault's behaviour had changed, and the grievor complained that he had run after her in the hallway, making sounds like "getcha getcha".

[45] The grievor complained to Ms. Boutin about Mr. Thibault. The grievor documented her concerns in a summary she provided to Ms. Boutin on September 26, 2017, which includes the following observations:

...

He regularly brings equipment into the office that is not work related, in one or more duffle bags... Yesterday, he had a piece of equipment out on his desk on top of his papers ... it was pistol-shaped....

...

From conversations with him in the past and from his social media use: he may have access to firearms; he has claimed to have a restricted firearms license [sic]... and has posted pictures of himself dressed up in fatigue-like clothing, camouflage face paint, and fake dog tags....

... on at least two occasions, loud hitting and slamming noises have been heard by myself coming from his office....

...

Yesterday he chased me down the hallway to my office while making unusual noises - something to the effect of "getcha - getcha". I shut my office door and considered if this could be part of his disability (the nature and full extent of which is not known to me)

...

[46] In her direct testimony, the grievor said that September 25, 2017, was Mr. Thibault's first day back in the office. She said that she was standing at the photocopier when he saw her. She testified that "he put his hands down, tried to grab my buttocks, saying 'getcha getcha getcha'".

[47] In her direct testimony, the grievor stated she was fearful that Mr. Thibault would bring a firearm into the workplace and use what she referred to as a pyrometer to detect heat sources behind walls.

[48] Ms. Boutin testified to receiving the grievor's complaint about Mr. Thibault and to contacting corporate security that same day to relate the grievor's concerns. Ms. Boutin testified to having a look around Mr. Thibault's office that same day and to finding nothing out of the ordinary other than that it was, in her words, "a bit messy". In an open duffle bag, Ms. Boutin found a small portable handheld vacuum cleaner and a change of clothes. Ms. Boutin felt that Mr. Thibault was typically friendly and outgoing and that he was not a threat to anyone.

[49] Ms. Boutin received the investigators' report of the workplace-safety complaint on Friday of that week, September 29, 2017. According to her, the investigators said that they also looked through Mr. Thibault's office and found nothing unusual, and they closed their file.

[50] Ms. Boutin testified to speaking to Mr. Thibault on the following Monday, which would have been October 2, 2017, at which time he told her that as a result of his disability, he is a messy eater and can drool or drop crumbs sometimes, so he keeps a small handheld vacuum and a change of clothes in his duffle bag. Ms. Boutin did not disclose the existence of the grievor's workplace-safety complaint to Mr. Thibault.

[51] Ms. Boutin advised the grievor that the workplace-safety investigation was inconclusive and stated that if it made her feel better, the grievor could work from home when she felt it was necessary, which she did.

[52] Mr. Thibault testified that he had been very keen to try out for the Canadian Paralympics competitive target shooting team that was to go to the Rio de Janeiro Olympics in 2016 and that he probably let people know that he had recently tried out for the team and that he had used air rifles.

[53] Mr. Thibault's testimony was characterized by him stating that he did not recall much of what took place during his time in the office when the grievor was present. He did not have any recollection of an incident near the photocopier in which the grievor said that he approached her, saying "getcha getcha".

[54] The grievor's cross-examination of Mr. Thibault was very limited due to his lack of recollection.

C. Ms. Boutin's testimony

[55] Ms. Boutin testified to Ms. Howe's position as the program manager and the grievor's supervisor at the outset of the grievor's appointment to an indeterminate position on January 3, 2017. Ms. Howe went on language training from time to time, which is why Ms. Salmaso stepped in as the acting manager in February of 2017. Ms. Howe resumed her role as the grievor's immediate supervisor from March until August 14, 2017, when she left the workplace to go on medical leave, never to return.

[56] Ms. Howe did not testify at the hearing because she has passed away.

[57] When Ms. Howe left the workplace on medical leave on August 14, 2017, Ms. Goodyear took over from her as the grievor's supervisor. When, on August 24, 2017, Ms. Goodyear announced her departure, she designated Ms. Boutin as the manager and the grievor's immediate supervisor. Ms. Boutin remained in this role until the grievor's termination in December of 2017.

[58] The grievor challenged Ms. Boutin's authority to act. She stated that Ms. Boutin was in the Audit Division and that the work the grievor's team was engaged in was outside Ms. Boutin's realm of expertise.

[59] Ms. Boutin was acting for Ms. Goodyear on July 26, 2017, because Ms. Goodyear was out of the office. Ms. Boutin testified to working in her office that morning, which is situated near the boardroom. She could hear loud voices coming from there, and soon after that, people began coming out of it. Ms. Salmaso and Ms. Howe stayed there

while the grievor went to Ms. Boutin's office to tell her what had happened. Ms. Boutin made notes of what the grievor said. The grievor appeared very upset and said that she intended to make a complaint against Ms. Howe for harassment, which the grievor said had been ongoing since September of 2016. Ms. Boutin allowed the grievor to telework for a few days, to defuse the situation and to allow for some investigation.

[60] Ms. Boutin met with Ms. Howe later that same day, and her handwritten meeting notes were also entered into evidence. Ms. Boutin testified that Ms. Howe was in tears over the confrontation with the grievor at the morning meeting. Ms. Boutin testified that Ms. Howe told her that she and the grievor had been discussing the action that had to be taken on a certain file and that the grievor disagreed with Ms. Howe and began to argue with her, raising her voice. Ms. Boutin testified that Ms. Howe also told her that the grievor had been verbally abusive to both her and Ms. Salmaso and that the grievor made them both cry after confrontational meetings. Ms. Boutin testified that Ms. Howe told her that she felt harassed by the grievor and that she intended to make a formal complaint.

[61] Ms. Boutin's handwritten notes of those meetings were entered into evidence. The date marked at the top of each set of notes is "2017-07-25". Ms. Boutin testified that she wrote that date incorrectly and that she made the notes near the time of the meetings, which occurred in the afternoon of July 26, 2017. She also testified that the grievor made an access-to-information and privacy (ATIP) request seeking, among many other things, copies of the handwritten notes. When disclosing the notes per the ATIP request, she noticed that she had written the date incorrectly, so she corrected it on the copies of the notes she provided pursuant to the request.

[62] In cross-examination, the grievor accused Ms. Boutin of deliberately tampering with evidence and of preparing the notes well after the fact and not on the day in question. Ms. Boutin denied the accusations and repeated her explanation. She stated that she just wrote the date incorrectly on July 26, 2017, but that she corrected it when the ATIP request arrived. Ms. Boutin admitted that she probably should not have changed the date, but she had had no ulterior motive.

[63] Two days later, on July 28, 2017, Ms. Boutin phoned the grievor to discuss the situation further. Ms. Boutin suggested using the informal dispute resolution process,

but the grievor said that it was too late, and she wanted nothing to do with Ms. Howe any longer. Ms. Boutin asked her to prepare her complaint and put it into writing.

[64] On August 10, 2017, Ms. Boutin emailed this to the grievor:

Hi Bonnie,

Tomorrow is my last day acting and as such I want to make a follow-up. On July 26th, following a team meeting you made serious allegations against your manager. Given the fact you seemed upset and the nature of the allegation that you brought to me, I gave you the opportunity to work from home for the remainder of the week. I thought that this would give you some time and distance to discuss with your union as you expressed it was your intention.

I offered to meet with you and the union to discuss your allegations but you have declined it. To ensure that I had a clear understanding of your allegations, so I could take proper action, I also asked that you to identify in writing your allegations. To this date, I have not received anything from you regarding this matter. At this point, given the lack of information in regard to your allegation, I will have to consider this situation closed and no further measures will be taken.

Next Monday, August 14th 2017, Lori will be back from her holidays. If there was to be any developments or other incidents, I encourage you to discuss it with her.

...

[Sic throughout]

[65] The grievor responded the same day with the following email: "Please note that I have not abandoned the issues, rather the matter is still in process through union representation at this time".

[66] Ms. Boutin testified that to her knowledge, no joint meeting under the informal conflict resolution process ever took place, and Ms. Howe never made a formal harassment complaint. The grievor made one against Ms. Howe after her termination; that is, on January 4, 2018. She also made one against Ms. Boutin at the same time.

[67] After Ms. Goodyear's departure, Ms. Boutin became the grievor's supervisor and began preparations for a performance evaluation in September of 2017. She testified to the evaluation's two distinct parts, the first of which consists of the work objectives, pertaining to how goals are set and work is carried out. The second part details the competencies and expected behaviours.

[68] Ms. Boutin testified that there were no issues with the grievor's technical ability to meet her work objectives. She worked at her level, and her work was satisfactory. Ms. Boutin did have serious concerns about the grievor's ability to work with others, given the conflicts with Ms. Howe, Ms. Salmaso, and Mr. Thibault.

[69] In preparation for the meeting, on September 6, 2017, Ms. Boutin emailed Bobby Matheson, the director general, stating this:

...

I am currently preparing to do Bonnie Perform. I have some notes left from Lori G and Susan H which I will base my comments and rating on.

I expect to do it toward end of next week. Just giving you heads-up as it likely be a difficult discussion with aftermath repercussion as she currently doesn't meet some objectives and some of the competencies.

[Sic throughout]

[70] The grievor and Ms. Boutin met at a performance management meeting on September 29, 2017. They discussed the performance management agreement (PMA) that was entered as an exhibit. Ms. Boutin testified that she opened the PMA that Ms. Howe used on April 28, 2017, as the basis for the September PMA with the grievor.

[71] At the meeting, Ms. Boutin addressed the grievor's concerns for her safety in the workplace. Ms. Boutin then told her that there were no issues with her technical abilities. She was capable and very passionate about her work. Ms. Boutin then told the grievor that she appeared to have difficulty working with others and creating a positive work environment.

[72] Ms. Boutin testified that the grievor did not take it well. The grievor disagreed with her and told her she was not the problem and was not responsible for the workplace dysfunction. She told Ms. Boutin that she had no communication shortfalls. The grievor felt that her teammates did not possess the same degree of experience and competence and that in her words, she was "carrying the load for the whole team".

[73] Ms. Boutin testified that the grievor refused to acknowledge the issue of not getting along with her co-workers. Ms. Boutin testified that the grievor told her at the September 29, 2017, meeting that she felt that the criticisms of her were a joke, that it

was not her fault if her manager was incompetent, and that she should not have to pay the price for it.

[74] In her testimony, the grievor denied ever calling anyone incompetent.

[75] Ms. Boutin pointed out the issues that had arisen with her co-workers, including Mr. Thibault going on stress leave after the July 26, 2017, team meeting, and Ms. Salmaso and Mr. Thibault informing Ms. Boutin that they felt incompetent when interacting with the grievor. Ms. Boutin raised the issue that both Ms. Salmaso and Ms. Howe told her they cried after stressful encounters with the grievor.

[76] Ms. Boutin suggested that the grievor take an active listening course as she felt that it would help the grievor with her co-worker issues. She testified that the grievor's reaction was to ask whether there would be consequences if she did not take it. Ms. Boutin responded that she could take another course as long as the objective was met. The grievor refused.

[77] Initially, testified Ms. Boutin, it was a calm meeting, but after the issue of her co-workers was raised, the grievor became argumentative and began interrupting her and not letting her finish her sentences. The grievor began to speak more loudly. She was confrontational rather than cooperative, and she increased her verbal assault on her colleagues. After 90 minutes, Ms. Boutin testified, she felt that the meeting was no longer productive because the grievor would not let her speak, so she simply called off the meeting and said that they could resume once the grievor had calmed down.

[78] Ms. Boutin prepared a written summary of the meeting, which was entered into evidence.

[79] The grievor did not take the active listening course but did enrol in a two-year course through Georgetown University, which she said had a communications component. She testified that she felt that it was sufficient.

[80] The grievor discussed the PMA meeting with representatives of her bargaining agent, and on October 2, 2017, she sent Ms. Boutin the following email:

*Good morning Anika,
Following discussion with my departmental and national union
representatives, I am requesting a second meeting with you to
conclude the discussion of your input into my PMA, as much of the*

content was not discussed in the first meeting. Following completion of the discussion of the contents with you upon my return from vacation on the 19th of October, I would then be able to sign off as per the collective agreement.

...

[81] Ms. Boutin replied the next day, as follows:

Good afternoon Bonnie,

I will organize a follow-up PMA discussion upon your return of vacation as I agree that we didn't get a chance to finalize the discussion. When I ended the meeting, you seemed upset and your attitude and tone was not appropriate or acceptable. I understand that this was not an easy conversation for you and that you might need some time to process it, hence why I offered to resume it later. I would also like to remain you that you can access EAP anytime.

It's really important for me to maintain a positive and respectful workplace as such I will be expecting a respectful and constructive exchange for our next meeting. I will be in Victoria when you return from vacations, but I will be scheduling one hour on October 23rd. I want you to know that I remain committed to work with you to achieve a positive outcome in regard to your year-end PMA.

...

[Sic throughout]

[82] Ms. Boutin prepared a second, mid-year PMA that she wanted to discuss with the grievor when they met again. However, they did not meet again. Immediately before the meeting, which was scheduled for October 25, 2017, the grievor experienced an unfortunate family related emergency and was obliged to take some time off.

[83] Ms. Boutin testified to unsuccessful attempts to schedule the PMA meeting, but the grievor testified that a subsequent meeting did occur. In any case, the grievor never did sign her PMA.

[84] On October 15, 2017, Ms. Boutin emailed Ms. Howe, seeking information on her interactions with the grievor, and on October 16, 2017, she received the following response from Ms. Howe's husband:

...

I am Susan Howe's husband and she has told me of your email request for support with an employee evaluation.

First off, I am surprised you would send a request for assistance when Susan is on medical leave.

Secondly and more importantly, as the employee is challenging your assessment it is fair to assume she will be challenging any input from anyone else. As such, for Susan to respond at this time, while on medical leave, is inviting continued responsibility for involvement in this administrative matter.

While I appreciate you are in a difficult situation, please appreciate that one of the reasons Susan is on medical leave is due to work-related stress, in large part due to the situation with this employee.

I would ask that you please respect her medical leave and hold this matter until she returns to work.

...

[85] Ms. Boutin testified to reporting the situation with the grievor to the Labour Relations unit. On December 4, 2017, she emailed Ms. Goodyear, stating, in part, “Given the deterioration of the situation between Bonnie and other members of her team, we have decided to move on rejection based on probation.”

D. Patrick Tanguay’s testimony

[86] As of the events that gave rise to this grievance, Patrick Tanguay was the assistant deputy minister, Emergency Management and Programs Branch, at the employer. He was the delegated authority for the termination process, and he signed the letter of termination of employment during probation (“the termination letter”).

[87] Mr. Tanguay testified to meeting with Ms. Boutin as well as with Mr. Matheson, Director General, Programs, to discuss the grievor’s issues with her co-workers and supervisors. Mr. Tanguay testified that Mr. Matheson told him about Ms. Howe’s difficulties managing the grievor and the stress that Ms. Howe felt as a result. Mr. Tanguay learned from Mr. Matheson that it was one of the key reasons that Ms. Howe went on sick leave.

[88] Mr. Matheson did not testify at the hearing.

[89] Mr. Tanguay testified to holding a number of discussions about the grievor with Labour Relations personnel.

[90] Mr. Tanguay entered a report into evidence, which summarized the results of inquiries into the grievor’s relationships with her supervisors and co-workers.

[91] Mr. Tanguay concluded that the grievor's employment had to be terminated before her probationary period was completed. He issued the termination letter to her, dated December 14, 2017, which reads in part as follow:

...

As indicated in your letter of offer, your appointment to the Public Service on January 3, 2017 would be subject to a twelve (12) month probationary period.

You have been counseled on several occasions throughout your employment with Public Safety Canada regarding required standards of performance and appropriate conduct and, in particular, you have been notified that failure to demonstrate employment suitability and/or meet the requirements of your position could result in your employment being terminated during your probationary period. You were offered and refused various measures to improve the core competency of working effectively with others such as coaching, training, tools and feedback to accomplish your work successfully. Unfortunately, there has not been a sufficient degree of improvement in your interactions with colleagues and managers [sic]. More specifically, I have found you to be unsuitable based on your failure to work well with others, including management and colleagues.

Therefore, in accordance with the authority delegated to me by the Deputy Minister, and pursuant to section 62(1) of the Public Service Employment Act (PSEA), you are hereby notified of my decision to end your employment during the probationary period. Effective immediately, you are relieved of all duties, are to vacate your work unit, and are not to report to the office from this date onward. In accordance with section 62(2) of the PSEA, you will be paid for one month starting from the date this notice is delivered to you.

You are required to immediately return your work I.D. and security access cards and any and all property belonging to Public Safety Canada.

Although it is regrettable that this action must be taken, I wish you all the best in your future employment endeavours.

Under section 208 of the Public Service Labour Relations Act, you have the right to grieve this decision should you deem the action taken is unwarranted. A copy of this letter will be placed on your personnel file.

I would like to take this opportunity to remind you that the Employee Assistance Program will continue to be available to you for three (3) months following the end of your employment with the Public Service. This is a confidential service available 24 hours a day, 7 days a week and can be reached toll-free

...

[92] The grievor put several documents to Mr. Tanguay on her unit's structure and composition. He acknowledged that a restructuring was afoot at the time, which involved moving some positions. He testified that the grievor's termination on probation had everything to do with an inability to work with others and nothing to do with restructuring.

E. The grievor's testimony

[93] Throughout the hearing, the grievor attempted to introduce documents into evidence that had no bearing on the case. Her many ATIP requests yielded pages upon pages of documents, numbering in the tens of thousands. The thrust of her argument for wanting them entered as exhibits was to demonstrate the employer's bad faith in the ATIP process.

[94] Objections raised with respect to relevance were sustained, and it was explained many times that the grievor's dissatisfaction with the employer's obligations with respect to ATIP requests was not relevant to the proceedings. Despite the repeated explanations, she continually attempted to introduce the ATIP documents as evidence.

[95] The grievor testified that she was not on probation when her employment was terminated on December 14, 2017, because her start date with the employer had been in September of 2016. She said that she was promoted into the indeterminate position.

[96] The grievor maintained that irregularities with Ms. Boutin's acting appointments meant that she lacked managerial authority. She added that Ms. Boutin was wrong when she said that there was no follow-up PMA meeting because it occurred on October 25, 2017. The grievor testified to having viewed many different versions of the PMA and to her impression that some of them had been tampered with. She put these questions to Ms. Boutin in cross-examination, who said that she had indeed accessed the electronic file many times and that every time she opened the file, a new electronic version of it was created, which was why so many different versions were apparent.

[97] The grievor testified that Ms. Salmaso was not truthful in her testimony because the grievor has never raised her voice or lost her temper in the workplace. She stated there was no conflict with Ms. Salmaso and that the reason Ms. Salmaso had been upset was that she was not comfortable in her acting manager role since she did not have the required training or experience. The grievor stated that Ms. Salmaso "was a

layperson acting in a PM-06 position”. The grievor testified to seeing Ms. Salmaso shaky and emotional but stated that it was probably due to blood-sugar levels.

[98] The grievor testified to a strained environment in the workplace due to staff turnover and change, which disrupted continuity and was very stressful. Positions were eliminated and not backfilled, which put added strain on the team.

[99] With respect to the July 26, 2017, team meeting, the grievor testified that it was about a project of Mr. Thibault concerning business continuity management guidelines. The purpose of the meeting was to find a way to quickly complete the project. The grievor testified to her impression that Ms. Howe seemed perturbed about the state of the document and insinuated that it was the grievor’s fault that it was in such poor shape. The grievor testified that Ms. Howe became quite loud, and the grievor recused herself.

[100] The grievor testified that Ms. Howe always pushed her very hard on projects and that once, she stood at the grievor’s desk and shouted at her. This was why, on June 9, 2017, the grievor requested that she be moved from Ms. Howe’s supervision.

[101] The grievor testified that Mr. Thibault would stand and stare at her while she worked and then would return to his office and slam the door.

[102] The grievor produced an email that Ms. Howe sent to HR on August 10, 2017, inquiring about the grievor’s start date for the probationary period. The grievor testified that the timing of Ms. Howe’s curiosity about her probationary period coincided with her refusal to drop the harassment complaint against Ms. Howe.

[103] The grievor testified to being shocked at the September 29, 2017, PMA meeting when Ms. Boutin told her that she was not meeting core competencies, in particular “Working effectively with others” and “Actively contributing to workplace wellbeing”. It was the first time anyone had ever given her this feedback.

[104] The grievor testified that she did not behave disrespectfully or unprofessionally at the September 29, 2017, PMA meeting.

[105] The grievor testified to receiving, via ATIP requests, many different versions of her assessment and the several documents that had been forwarded through channels to Mr. Tanguay, who ultimately was the decision maker with respect to terminating her

employment. She was upset that she had been offered no opportunity to rebut the documents' contents. Had positive documents been provided, such as the narratives that Ms. Goodyear and Ms. Salmaso made, they would have offset Ms. Boutin's negative comments.

[106] The grievor testified to her conviction that part of the rationale for her termination was a perceived failure to participate in a team-building exercise when she had been authorized to work from home on the day it was held.

[107] She also testified to her conviction that part of the animosity toward her was due to a perception that she was absent from the workplace without authorization. She produced documentation pertaining to leave for routine medical appointments, family-related leave, or approved leave to participate in work-related speaking engagements.

[108] The grievor testified with emotion about the termination meeting on December 15, 2017, and at one point, broke down in tears. It was the worst day of her life, occurring as it did just 10 days before Christmas. She testified to its profound professional and financial impact on her.

[109] The grievor testified that she was not given notice or payment in lieu of notice but later admitted that she did receive payment past her termination date that was, in her words, "clawed back". The payment became inextricably entwined in her other pay issues, some of which were due to the Phoenix pay system malfunction. At the time of the hearing, she was still in conflict with the employer over amounts owed her.

III. Summary of the arguments

A. For the employer

[110] The employer submitted that the grievor was hired as a casual worker on September 26, 2016. The offer of indeterminate employment was accepted on December 28, 2016, and specified a one-year probation, beginning on January 3, 2017. Therefore, her probation was due to end on January 2, 2018, but she was terminated before that date, on December 14, 2017.

[111] The employer referred to s. 50 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), which deals with casual employment. The provisions of the *PSEA* do not apply to casual workers. Casual workers are not subject to probation.

[112] The employer referred to *Morin v. Treasury Board (Fisheries and Oceans Canada)*, 2004 PSSRB 168, with respect to errors in the letter of offer. Even if a letter of offer has errors, it will not affect the probation.

[113] The employer submitted that the *Regulations Establishing Periods of Probation and Periods of Notice of Termination of Employment During Probation* (SOR/2005-375) specify a one-year probation, which was reflected in the letter of offer.

[114] The employer submitted that the grievor was rejected on probation for an employment-related reason; namely, she could not work effectively with others. The evidence clearly demonstrated repeated conflicts with Ms. Howe, Ms. Salmaso, Mr. Thibault, and Ms. Boutin.

[115] The employer cited *Jacmain v. Attorney General (Canada)*, [1978] 2 S.C.R. 15 for the proposition that the employer's right to reject an employee on probation is very broad. The Board lacks jurisdiction to hear rejection-on-probation matters unless the employer's reasons for the rejection were tainted by bad faith.

[116] The Federal Court of Appeal, in *Canada (Attorney General) v. Penner*, [1989] 3 FC 429 (C.A.), reinforces the findings in *Jacmain* as follows:

...

... As was said by Heald J. [[1977] 1 F.C. 91 (C.A.), *sub. nom. Attorney General of Canada v. Public Service Staff Relations Board*, at page 100], and approved by de Grandpré J. in his reasons in *Jacmain* (at page 37) "the whole intent of section 28 is to give the employer an opportunity to assess an employee's suitability for a position. If, at any time during that period, the employer concludes that the employee is not suitable, then the employer can reject him without the employee having the adjudication avenue of redress. To hold that a probationary employee acquires vested rights to adjudication during his period of probation is to completely ignore the plain meaning of the words used in section 28 of the Public Service Employment Act and section 91 of the Public Service Staff Relations Act." Neither the function ... of a probationary period nor the structure of the legislation can be reconciled with the proposition that disciplinary discharge and rejection for cause are not mutually exclusive concepts. One is the ultimate sanction imposed by management for serious misbehaviour, the other is a termination of employment based on a bona fide dissatisfaction with suitability. It may be that this dissatisfaction with suitability arose from misconduct or misbehaviour by the employee, but that does not render the

dissatisfaction any less real and legitimate nor does it permit us to confuse the rejection with a disciplinary sanction.

...

[117] The employer argued that *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529, makes it clear that the burden is on the grievor to establish a sham or camouflage. The Federal Court stated this at paragraph 45:

[45] However, as I see it, the adjudicator required only that the employer demonstrate the rejection was for an employment-related reason, i.e. a dissatisfaction with the suitability of the employee and, as such, was acting in accordance with the provisions of the PSEA. He stated at page 11:

*To summarize, in my view it is incumbent upon the employer to demonstrate that section 28 of the PSEA, respecting rejection on probation for cause, has application. **Upon discharging that initial burden, the burden of proof then shifts to the grievor to demonstrate that the employer's actions are in fact a sham or a camouflage, and therefore not in accordance with section 28 of the PSEA.** It is only upon the discharge of that burden that the adjudicator can take jurisdiction under section 92 of the PSSRA and consider the grievance on its merits.*

[Emphasis in the original]

[118] The employer submitted *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, to reinforce the jurisdictional issue as well as the burden of proof. It particularly referred to paragraph 112, which reads as follows:

112 As I have concluded earlier in this decision, the provisions of the new PSEA have changed the burden of proof for cases involving the termination of employment of probationary employees. The deputy head no longer has the burden of proving a legitimate employment-related reason for the termination of employment, apart from providing the letter of termination which sets out the reason for its decision. The burden is on the grievor to show the deputy head's contrived reliance on the new PSEA or that the rejection on probation was a sham or a camouflage. A termination of employment not based on a bona fide dissatisfaction as to suitability (or for no legitimate "employment-related reason") would be a contrived reliance on the PSEA, a sham or a camouflage.

[119] The case of *Warman v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 103, provides a similar reinforcement of these points at paragraphs 58 and 59.

[120] The employer argued that the evidence failed to disclose any element of bad faith or of a sham or camouflage and that it disclosed that the reason for the grievor's rejection on probation was entirely work-related because it pertained to a core competency, namely, the ability to work effectively with others. The grievor's repeated conflicts with co-workers, as demonstrated by the evidence of Mr. Thibault, Ms. Boutin, and Ms. Salmaso, amply demonstrated the grievor's failure to meet that core competency. She continually refused to accept Ms. Boutin's authority to supervise her. She was frequently in conflict with Ms. Salmaso when Ms. Salmaso acted as her supervisor. It argued that there is ample evidence of the grievor's inability to work effectively with others, which was the work-related reason for which her probation was terminated.

[121] Disciplinary action was never a consideration in this matter, argued the employer. Even if the grievor's actions warranted discipline, the doctrine of disguised discipline was not triggered. *D'Aoust v. Deputy Head (Department of Public Works and Government Services)*, 2015 PSLREB 94 at para. 133, states as follows:

[133] I find, based on the grievor's own written statements and his testimony, that the employer had grounds on which it could have disciplined the grievor but chose not to. This does not, however, transform his release on probation into disguised discipline or establish that the employer acted in bad faith (Ricard v. Deputy Head (Canada Border Services Agency), 2014 PSLRB 72. Just because an employee could be disciplined for culpable behaviour does not mean that the employer cannot choose to reject that employee on probation rather than impose discipline.

[122] The employer referred to the grievor's repeated observations on the witness stand and during her submissions to the effect that she was never provided with notice of her perceived shortcomings or a reasonable opportunity to correct them. On the contrary, it submitted, Ms. Boutin clearly brought these issues to the grievor's attention at the September 29, 2017, PMA meeting. Even if no notice was given, the Federal Court, in *Kagimbi v. Attorney General of Canada (Deputy Head - Correctional Service of Canada)*, 2014 FC 400, provided that even if employees are not informed of their shortcomings, they can still be rejected on probation as long as the reasons are legitimate. That decision states as follows at paragraphs 30 to 33:

[30] In this case, the evidence before the adjudicator clearly showed that the employer had reasons for the applicant's employment-related dismissal. The rejection on probation letter

listed shortcomings with respect to mastering security equipment and security posts, the ability to learn and the ability to react to a critical incident. A number of public servants testified before the adjudicator referring to these shortcomings.

[31] In light of this evidence, the adjudicator could only conclude that the employer had discharged its burden of proof. The applicant then attempted to show the employer's bad faith based on the unfair treatment she received because the employer and its representatives had not confronted her or informed her of the shortcomings in her work prior to the day of her dismissal.

[32] In this regard, the adjudicator determined that "[his] role is not to decide whether the employer acted fairly toward Ms. Kagimbi in how it managed the alleged shortcomings in her work or whether the management practices of the correctional supervisors were appropriate".

[33] Certainly, the employer could have shown the reports to the applicant so that she could improve her weaknesses, but **that is not a criterion required** to reject an employee on probation. As the adjudicator properly stated in his decision at para 77:

... in a rejection on probation, the employer must demonstrate good faith in its decision to terminate employment during probation. It cannot use a rejection on probation to camouflage another form of dismissal. However, it does not mean that the employer is required to be transparent with the employee during his or her probation and to inform the employee of shortcomings in his or her work, to give the employee a chance to correct them. Common sense and good management practices would dictate doing so, but the law does not require it.

He therefore concluded that the decision to dismiss the applicant was a decision made in good faith, i.e. that it was based on dissatisfaction as to the employee's abilities to do the work in question.

[34] In my opinion, that conclusion was reasonable. The jurisprudence shows that the statute is drafted such that the employer has a great deal of flexibility during the probation period, precisely so that it can evaluate the skills of a potential employee.

[Emphasis in the original]

[123] The employer then referred to some of the discrepancies between the grievor's testimony and the testimonies of the employer's witnesses on the issue of whether she was in conflict with her co-workers. The witness credibility test outlined in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BC CA), was noted. The employer submitted that when Ms. Boutin and Ms. Salmaso testified, the grievor interrupted them, spoke over them, did not allow them to speak, and raised her voice. It is difficult to ignore that that was the

same behaviour that the witnesses had noticed in the workplace. The testimonies of Ms. Salmaso and Ms. Boutin, argued the employer, were consistent and in harmony not only with each other but also with the documentary evidence.

[124] The employer submitted that the grievor's testimony about her approach to the conflicts with Mr. Thibault, Ms. Boutin, Ms. Howe, and Ms. Salmaso reinforced the credibility of those witnesses and detracted from the grievor's credibility. The employer offered the grievor's testimony to the effect that any unease or insecurity that Mr. Thibault and Ms. Salmaso experienced was due to their inability to cope with the demands of their respective positions as an indication of the grievor's inability to work effectively with others.

[125] The employer also submitted that the grievor's continuing challenge to the authority of both Ms. Salmaso and Ms. Boutin to act as her supervisor constituted additional evidence of the grievor's inability to work effectively with others.

[126] The employer addressed the grievor's contention that the elimination of positions in the workplace supports the theory that her dismissal was merely a sham or camouflage. Her theory seems to be that it was a convenient way of cutting a position. The employer maintained that Mr. Tanguay's evidence made it clear that discussions took place about reducing workload but not about cutting positions. Resources are reallocated all the time. There is no evidence, submitted the employer, of a sham or camouflage to justify cutting positions.

[127] In summary, the employer submitted that the evidence clearly demonstrated that during her probationary period, the grievor could not work effectively with others, which is purely an employment-related reason for termination. The action was administrative, and the Board lacks jurisdiction over it.

B. For the grievor

[128] The grievor confirmed that she was hired as a casual employee into a term position on September 16, 2016, that a second term as a casual employee was accepted, but that before the second term expired, she was hired on an indeterminate basis. The grievor claimed this was a promotion.

[129] The grievor submitted she was converted from a Class 5 to a Class 6 employee per the TB's table. Class 5 pertains to "[e]mployees whose appointment is made for a

specified period of 1 year or less”. Class 6 pertains to “[e]mployees who are recruited into a position and who are not described in items 1 to 4 and whose appointment is for a period of more than 1 year”.

[130] The grievor submitted that she was promoted into her indeterminate position, which implied that it was a continuation of her initial hiring. In the same manner as continuous service is calculated, her probation must be considered to have begun on the date she was hired, namely, September 16, 2016. She submitted that she was not on probation when she was terminated on December 14, 2017.

[131] The grievor submitted that Ms. Boutin’s notes, which the employer entered into evidence, were fabricated well after the fact. According to the grievor, the fact that Ms. Boutin changed the dates on the set of notes purporting to document the September 2017 PMA meeting is clear proof that they were not made contemporaneously with the meeting but well after the fact, to bolster the dismissal case. The grievor also submitted that Ms. Boutin did not have the proper authority to act in the capacity of her supervisor.

[132] The grievor feels that Ms. Boutin was the driving force behind her dismissal. Ms. Boutin disliked the grievor and wanted to get rid of her, so she was willing to do whatever it took to make things look as though the grievor was unsuitable. On the contrary, submitted the grievor, her experience and credentials were an asset to the unit.

[133] The move to dismiss the grievor began in earnest, she submitted, when she refused to drop her harassment complaint against Ms. Howe. She pointed to several documents to show the likelihood that her theory was true. At 3:39 p.m. on August 10, 2017, she wrote this to Ms. Boutin: “Please note that I have not abandoned the issues ...”. Within half an hour, questions were being raised about the start date of her probation.

[134] The grievor claimed that Ms. Boutin supplied false information about the grievor’s mental health, which was factored into the decision to terminate her probation.

[135] The grievor referred to organization charts showing the personnel changes that took place under Mr. Tanguay and posited that her termination was, in reality, just a convenient way of eliminating a position.

[136] The grievor insisted she never yelled in the office. She referred to emails that she sent requesting a change in the reporting structure because of the harassment she was experiencing at the hands of Ms. Howe.

[137] The grievor referred to the many different versions of the chronological summary of her interactions with supervisors that made their way to Mr. Tanguay, claiming that the various inaccuracies they contained were deliberately conceived to portray her in a negative light. A more balanced approach would have been to also submit for Mr. Tanguay's consideration the narrative assessment Ms. Salmaso provided a year earlier, when the grievor was hired into the indeterminate position, as well as the letter of recommendation that Ms. Goodyear provided. Nothing positive, only negative, was submitted for Mr. Tanguay's consideration. He was also incorrectly advised that the TB had been consulted on the decision to terminate her probation.

[138] The entirety of this misinformation, submitted the grievor, was unfair and was a clear indication of bad faith in the process that led to her termination.

[139] The grievor repeated her convictions about the workplace-safety complaint involving Mr. Thibault and claimed that Ms. Boutin undermined its legitimacy. She questioned whether any form of investigation actually took place.

[140] The grievor questioned the veracity of each employer witness and maintained that Ms. Salmaso and Ms. Boutin both lied when they testified that the grievor had yelled in the workplace.

[141] The inconsistencies in Ms. Salmaso's testimony, argued the grievor, due to her inability to recall details of their interactions, weakened Ms. Salmaso's credibility to the point that her testimony should not be relied upon at all.

[142] The grievor submitted that she was never counselled about her ability to work effectively with others, other than in the September 29, 2017, PMA meeting with Ms. Boutin. She was given no opportunity to improve that aspect of her performance, and therefore, the termination was done in bad faith.

[143] The grievor maintained her conviction that any ill will that others might have felt toward her in the workplace had more to do with their insecurities than anything else. She was never directed to take a training course on effective communication but felt that she did not need to because the Georgetown University course in which she was enrolled had a communications component to it, which was sufficient.

[144] The grievor maintained that she was not given notice as of her termination or payment in lieu of notice.

[145] The grievor referred to many cases on the issue of the analytical framework for terminations on probation, including *D'Aoust*, *Jacmain*, and *Tello*, which the employer referred to, as well as *Kot v. Deputy Head (Royal Canadian Mounted Police)*, 2020 FPSLRB 29.

[146] The grievor referred to *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109, on the issue of family related leave. It states as follows at paragraphs 91 and 92:

[91] In the case at hand, the grievor's competence, capabilities and conduct were not at issue. He was ranked second after completing his CORE training and elected Valedictorian, thereby indicating that his peers thought highly of him. There were no allegations made by the employer of insubordination, rudeness or misconduct. The sole reason for the rejection on probation was because of his use of sick leave and family-related leave.

[92] Prior to making and rendering a decision, it is incumbent on the decision-maker to seek out and know the facts. It is my belief that the Warden based his decision on honesty of intention; however, it was not based on all of the relevant facts.

[147] The grievor felt that the *Dhaliwal* case is similar to hers because a misperception arose as to her use of family related leave in October of 2017 when she had to accompany her spouse to a hospital. She maintained that Mr. Tanguay did not base his decision to terminate her employment on all the relevant facts.

[148] The grievor felt that the case of *Yeo v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLRB 119, was instructive on the issue of rehabilitation. It states as follows at paragraph 82:

[82] ... The swiftness with which the warning letters were provided to the grievor was punitive and disheartening. How could she

possibly recover and show improvement when two weeks later, she was given another warning letter? It was clear that from the beginning, the employer intended to terminate her

[149] The grievor reiterated that she was not given time to correct perceived deficiencies in the core competency that was cited as a reason for her termination: the ability to work effectively with others. Thus, she argued, her termination was done in bad faith. *Yeo* states this at para. 89:

[89] Bad faith must be established on the facts of the case (see Hamilton Public Library v. CUPE, Local 392 (2013), 238 L.A.C. (4th) 116). The onus is on the grievor to show that the employer was motivated by hostility, malice, ill will, or dishonesty or that it had an improper motivation. The essence of bad faith is dishonesty of purpose.

[150] The grievor referred to *Jacmain* for the proposition that the employer's reasons for termination "cannot be frivolous". Many references were made to frivolous and inconsequential factors in the testimonies of the employer's witnesses, including to how the grievor sat during meetings or that she kept her door closed. These were frivolous, argued the grievor, and could not be used as the basis for the termination.

[151] The grievor submitted that Ms. Boutin interfered with her performance evaluations in bad faith by making dozens of changes to them. She referred to paragraph 223 of *Kubinski v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 87, for this quotation: "In my view, if a decision is a [*sic*] not made in good faith using the guidelines in the Treasury Board's own policy, the result is a decision made in bad faith."

[152] The grievor cited the decision in *Raymond v. Treasury Board*, 2010 PSLRB 23 at para. 131, which found that when determining if an employer acted reasonably when it decided to terminate someone, one of the factors is whether the supervisor who assessed the employee's performance was involved in a bad-faith exercise. The grievor submitted that Ms. Boutin's fabrication of her handwritten notes, channeling inaccurate information to Mr. Tanguay, and lack of objectivity in preferring the versions of events as related to her by Ms. Salmaso, Mr. Thibault, and Ms. Howe all point to a single-minded determination to get rid of the grievor at all costs. The grievor submitted that that was an obvious display of bad faith.

[153] In support of her arguments of bad-faith dealings, the grievor also submitted and referred to the following cases:

- *Leonarduzzi*;
- *Sved v. Deputy Head (National Parole Board)*, 2012 PSLRB 16 at paras. 100, 107, 108, and 124, for the proposition that a termination cannot be a ruse or a disguise. The grievor submitted that she was terminated for making harassment and workplace-violence complaints, which are not work-related reasons for a termination;
- *Bergeron v. Canadian Security Intelligence Service*, 2014 PSLRB 81 at para. 93;
- *Sousa-Dias v. Treasury Board (Canada Border Services Agency)*, 2017 PSLREB 62 at para. 128;
- *Premakanthan v. Deputy Head (Treasury Board)*, 2012 PSLRB 67 at para. 48, for the proposition that an employer can rely on observations and assessments if it does not author them, which the grievor claimed Ms. Boutin did;
- *Rahman v. Deputy Head (Department of Indian Affairs and Northern Development)*, 2013 PSLRB 6 at para. 64, for the proposition that serious allegations must be supported by clear, cogent, and compelling evidence; and
- *Rinaldi v. Treasury Board (Canadian Space Agency)*, PSSRB File Nos. 166-02-26927, 26928, and 27383 (19981005) at 42, on the issue of attacking the reputation of an employee who is being terminated.

IV. Decision and reasons

[154] I read all the cases that the parties submitted and examined them for relevance to the issues that arose at the hearing. Many of the grievor's cases pertained to reprisal complaints after a refusal to work was made under the *Canada Labour Code* (R.S.C. 1985, c. L-2) and are not relevant to these proceedings, except to the extent that they mention bad-faith dealings on the part of the employer, which seems to be a cornerstone of her case. Many of the cases repeated the same point. I will refer only to those cases that support my reasoning.

[155] Under s. 211 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*), the Board has no jurisdiction to hear a grievance concerning a rejection on probation. However, the Board can examine the circumstances of the case to ensure that the termination of employment does not constitute a contrivance, sham, camouflage or disguised discipline. With regards to rejection on probation cases, the Board has consistently applied the analysis layed out in *Tello*. The employer has the initial burden to establish the following:

- The grievor was on probation;
- The probationary period was still in effect at the time of termination;

- The letter of termination sets out the reason for the decision to terminate the employment;
- Notice or pay in lieu has been provided.

A. Was the grievor on probation when her employment was terminated?

[156] Whether the grievor was on probation at her termination is the threshold issue in this case, and as will be seen, much depends on the answer to this question. It is uncontested that she was initially hired as a casual employee on September 26, 2016, for at term until December 30, 2016.

[157] On November 10, 2016, before the term expired, the grievor was offered a second term as a casual employee in the same position and at the same group and level that was to run from January 3 to May 10, 2017. Before it started, on December 28, 2016, she was offered an indeterminate PM-04 program advisor position, which she accepted that day. Her letter of offer clearly stipulated a 12-month probationary period.

[158] Section 50(3) of the *PSEA* states: “The provisions of this Act, other than this section, do not apply to casual workers.” No probation applies to casual employment.

[159] The grievor argued that her probation period commenced on September 16, 2016, and not on January 3, 2017. She referred to TB guidelines on probation, which confirm that her probationary period was 12 months.

[160] I find that she was not, as she claims, “converted” from a Class 5 to a Class 6 employee. Her casual employment was not subject to any probationary period. The *PSEA* does not provide that a casual, term employee can be on probation.

[161] Regardless of what the grievor’s “Pay Action Request Form” indicates, she was not promoted from one indeterminate position to another within the public service. That is not to say that she did not receive a pay increase or an expansion of her role and responsibilities when she transitioned from casual to indeterminate employment because she most likely did, but the indeterminate employment letter of offer constituted an appointment from outside the public service.

[162] The grievor referred to the TB’s “Questions and Answers” document, which undermined her argument. It contains the following passages, among others:

- “The position to which the person is appointed **from outside the Public Service** is determinative of the period of probation ...” [emphasis in the original].
- “Section 61(1) of the *PSEA* only imposes a probation on those appointed from **outside the Public Service**. There is only one probationary period when appointed from outside” [emphasis in the original].
- “The new *PSEA* clearly states that probation is served only upon appointment from outside the public service, which includes persons not appointed under the *PSEA* (for example, persons appointed as casuals).”

[163] The grievor produced a TB document entitled, “Directive on Terms and Conditions of Employment” (“the directive”), which, among many other things, defines and discusses continuous service and continuous employment. However, the directive is silent on probation. The grievor asserted in her submissions that it applies to probation as well and that once she was appointed, she was entitled to “reach back”, as she put it, and extrapolate a probationary period that began on September 16, 2016. I disagree. She produced no authority for this proposal. I have already mentioned that attaching a probationary period to a casual work term is not provided by the *PSEA*. If probationary periods could possibly be extrapolated in such a fashion, this important fact would most assuredly have deserved special mention in the directive or the *PSEA*.

[164] On the issue of the start of the grievor’s probationary period, I attach no weight to Ms. Howe’s mistaken entry on the grievor’s April 28, 2017, PMA. On August 10, 2017, Ms. Howe sought and received clarification on this issue and received the following response from HR: “[A]s mentioned before, the probationary period does not include periods that individuals work as casuals. So therefore, her probation would have started on January 4, [2017] once she was appointed indeterminately.”

[165] I find as a matter of fact that the grievor’s probationary period ran from January 3, 2017, to January 2, 2018. Her termination letter was dated December 14, 2017, and it was provided to her at a termination meeting held on December 15, 2017.

[166] The reason this is such an important threshold is that it changes the analysis of the circumstances of the grievor’s termination. Indeterminate employees may be terminated only for cause. Probationary employees may be terminated for unsuitability for continued employment. Once an employee’s probation ends, the termination of the employee’s employment becomes much more difficult and complicated, which is why probationary periods are imposed. Probationary periods are an essential mechanism in the efficient management of resources.

B. Was the probationary period still in effect at the time of termination?

[167] For the above reasons I have already outlined, I find that the grievor's probationary period was still in effect at the time of the termination of her employment.

C. Did the letter of termination set out the reason for the decision to terminate the employment?

[168] The grievor received a letter of termination outlining the reason for the decision to terminate her employment. The grievor's termination letter contains this sentence:

...

You have been counseled on several occasions throughout your employment tenure with Public Safety Canada regarding required standards of performance and appropriate conduct and, in particular, you have been notified that failure to demonstrate employment suitability and/or meet the requirements of your position could result in your employment being terminated during your probationary period....

...

[169] At the September 29, 2017, PMA meeting, Ms. Boutin cautioned the grievor that failing to meet the work-related competency of working effectively with others while she was on probation could have serious consequences. In an email to the grievor dated October 3, 2017, she stated as follows: "It's really important for me to maintain a positive and respectful workplace as such I will be expecting a respectful and constructive exchange for our next meeting." Later, on October 24, 2017, Ms. Boutin repeated the following:

...

I also would like to remind you that PMA discussions are an honest exchange between an employee and his manager which implies openness to learn, trust and constructive feedback....

... any disrespectful behavior toward me or any staff member during or after our follow-up meeting could lead to disciplinary measures....

...

[170] I find as a matter of fact that the grievor was counseled more than once, but I am not sure that this counts as counseling on "several" occasions as stated in the termination letter.

[171] The termination letter goes on to state the following:

...

... You were offered and refused various measures to improve the core competency of working effectively with others such as coaching, training, tools and feedback to accomplish your work successfully. Unfortunately, there has not been a sufficient degree of improvement in your interactions with colleagues and managers [sic]. More specifically, I have found you to be unsuitable based on your failure to work well with others, including management and colleagues.

...

[172] In the September 29, 2017, PMA meeting, Ms. Boutin offered the grievor a program of regular feedback sessions as well as a listening skills course. She indicated that the grievor's response to her raising the issue of an inability to work effectively with others was that the grievor should not be made to pay for others' incompetence. The grievor testified to her conviction that those who felt anxiety in their dealings with her were in fact suffering from insecurity due to their inability to competently fulfil their responsibilities.

[173] The termination letter attempts to give the impression that extensive counseling and strategies for improvement were employed in an effort to help the grievor. It would have been difficult, given that the situation with her co-workers only became apparent to Ms. Boutin in August of 2017. Ms. Boutin brought them to the grievor's attention in her PMA in late September of 2017.

[174] Quite rightly, the grievor referred to cases involving terminations of indeterminate employees who required as much as 18 months to improve and have a smoother workplace. The grievor openly questioned how that could possibly have happened in her case in just a couple of weeks.

[175] Employees' behaviours cannot be expected to simply correct themselves in just a couple of weeks, especially if the deficiencies are serious. Hence, the importance of a period for improvement for indeterminate employees. For probationary employees, this is not necessary.

[176] No questions were raised as to the grievor's performance, qualifications, experience, or expertise. The only core competency that the employer felt she lacked was an ability to work effectively with others. The employer had good reason to question her ability in that respect. The red flag seems to have gone up in July and

August of 2017, and by the PMA meeting on September 29, 2017, there was no doubt in the employer's mind about the grievor's inability to work effectively with others. The employer had grounds to terminate her probationary period in August or September of 2017, but matters continued to limp along for several more months.

[177] The grievor argued that the employer's decision to terminate her employment was made in bad faith. I find that the employer did not demonstrate any indication of bad faith in its decision to terminate the grievor's employment. But I do find that it was overly cautious in its approach to the circumstances under which a probationary employee could be terminated. There seems to have been a great deal of back-and-forth between Ms. Boutin and HR on the correct way to deal with a probationary employee. Ms. Boutin, for reasons that are still not clear to me, returned to the PMA document over 20 times to change some of its entries, in anticipation of a second in-depth discussion with the grievor about her performance issues. The chronology of interactions between the grievor and management was written and rewritten, as was Ms. Boutin's script for the termination meeting on December 15, 2017. That all indicates to me that the employer was less than certain about how to go about terminating an employee it was certain it wanted to terminate.

[178] The employer's handwringing it is not indicative of bad faith but of bad advice, perhaps, pertaining to terminating probationary employees.

[179] My findings of fact hinge on witness credibility. Both parties correctly referred to *Faryna*. The Court set out the following test at page 357:

...

The credibility of interested witnesses, 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....

[180] The parties did not refer to two other cases that I find helpful for assessing witness credibility. The first is *Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. HC); [1926] O.J. No. 212 (QL), which states this at page 203:

... the credibility of a witness in the proper sense does not depend solely upon his honesty in expressing his views. It depends also upon his opportunity for exact observation, his capacity to observe accurately, the firmness of his memory to carry in his mind the facts as observed ... his ability to resist the influence, frequently unconscious, of interest to modify his recollection, his ability to reproduce in the witness-box the facts observed, the capacity to express clearly what is in his mind - all these are to be considered in determining what effect to give to the evidence of any witness.

[181] The second case is *MacDermid v. Rice*, (1939), 45 Rev. de Jur. 208; [1939] C.C.S. No. 941 (QL), which states as follows at page 210:

When the evidence of an important fact is contradictory, the Court must weigh the motives of the witnesses, their relationship or friendship with the parties, their attitude and demeanour in the witness box, the way in which they give evidence, the probability of the facts sworn to, and come to a conclusion regarding the version which should be taken as the true one....

[182] I referred the parties to the Supreme Court of Canada's case, *F.H. v. McDougall*, 2008 SCC 53, on the issue of witness credibility. It states this at paragraph 86:

[86] ... in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case....

[183] It states this at paragraph 100:

*[100] An unsuccessful party may well be dissatisfied with the reasons of a trial judge, especially where he or she was not believed. Where findings of credibility must be made, it must be recognized that it may be very difficult for the trial judge to put into words the process by which the decision is arrived at (see Gagnon). But that does not make the reasons inadequate. In *R. v. R.E.M.*, [2008] 3 S.C.R. 3, 2008 SCC 51, released at the same time as this decision, McLachlin C.J. has explained that credibility findings may involve factors that are difficult to verbalize:*

While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the

exercise may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge in saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence in convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization....

Nor are reasons inadequate because in hindsight, it may be possible to say that the reasons were not as clear and comprehensive as they might have been.

[184] Many times while Ms. Boutin and Ms. Salmaso were on the witness stand, the grievor accused them of fabricating evidence, which was a very serious accusation. Therefore, I will engage in a rigorous analysis of how the testimonies provided by the grievor and those two witnesses differed, to pronounce upon the issue of credibility.

[185] To begin with, the grievor testified and maintained in her submissions that she has never raised her voice in the workplace, which was contrary to the testimonies of Ms. Salmaso, Ms. Boutin, and Mr. Thibault.

[186] I begin with Mr. Thibault, who testified that at what he could only have meant was the July 26, 2017, meeting, the grievor raised her voice when discussing something with Ms. Howe. He testified that they appeared to have tension over a document that was to be produced. He described Ms. Howe as being “engaged with intensity, but not necessarily with a raised voice”. Mr. Thibault clearly distinguished between Ms. Howe’s behaviour and the grievor’s behaviour.

[187] Mr. Thibault was a unique witness in my experience as a decision-maker. He suffers from a disability, and one of the manifestations of this affliction, in his case, is slurred speech and a tendency to produce a great deal of saliva when he speaks, which made it impossible for me to understand him at times. It became apparent as soon as he started to testify. The videoconference format exacerbated the situation. I convened a private session with the parties to discuss possible approaches to accepting Mr. Thibault’s testimony as part of the record. Since we were in a videoconference, with the assistance of the Zoom facilitator, adjustments were made to Mr. Thibault’s audio settings but these adjustments did not appreciably enhance my ability to understand him.

[188] I convened another private caucus with the parties, during which they agreed with my suggestion that I advise Mr. Thibault that I would receive a sentence or two from him, then pause the proceedings to summarize what I understood him to have said. He could then confirm that my understanding was correct or repeat himself as many times as necessary to ensure that he got his point across.

[189] Back in the hearing room, Mr. Thibault appeared genuinely pleased with my suggestion. He said that people often feel uncomfortable because of his affliction and that they will pretend to understand him when really, they do not understand what he has said. I am satisfied that I was thus able to accurately receive his testimony.

[190] Mr. Thibault was clearly not comfortable testifying about the activities of a former colleague. He claimed that his recollection of many events was not clear. However, he was clear about the level of distress that the workplace caused him. He does not find raised voices in the workplace to be acceptable, which is why he went on extended sick leave after the July 26, 2017, meeting.

[191] Mr. Thibault's reaction to the July 26, 2017, meeting is documented in an email from Ms. Boutin to her director sent at 5:13 p.m. that day, which reads as follows:

I met with Susan. She was crying. From what I can see they will be no easy resolution on that one. Susan is also contemplating talking to her union. Emmanuel is also pretty upset by the whole situation as he was in Susan office when I came back from Sorem.

...

[Sic throughout]

[192] Ms. Boutin spoke to Mr. Thibault a couple of weeks before his return to the workplace in an attempt to learn more from him, and she made notes of their discussion.

[193] I will, in due course, address the grievor's blanket assertion that Ms. Boutin's notes were all fabricated and that the meetings she held with Mr. Thibault, Ms. Howe, and Ms. Salmaso never took place.

[194] Ms. Boutin's notes fill in the blanks left by Mr. Thibault, who testified he could not remember the meeting. She noted, "Concern for the toxic environment before his departure", and, "Felt really stressed by the meeting incident. Said he is not used to that kind of behavior in the workplace." She wrote, "He said he felt Bonnie didn't made

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[sic] distinction between physical or mental disability or she didn't tough [sic] he could do the work."

[195] The contents of Ms. Boutin's notes are consistent with the substance of Mr. Thibault's testimony. I find that on the basis of Mr. Thibault's forthright demeanour on the stand as well as the harmony of his partial recollections with the notes Ms. Boutin made of her discussion with him, he was a credible witness on this point. I give more weight to his testimony over that of the grievor on the issue of whether she ever raised her voice in the workplace.

[196] With respect to Ms. Salmaso, on the issue of whether the grievor ever raised her voice in the workplace, I must first acknowledge that there was never any doubt about Ms. Salmaso's discomfort at appearing on the witness stand to testify against her former co-worker. She said that she did not want to be there and several times refused to accept a summons to testify. She said that she was "hounded" to appear.

[197] The grievor urged that Ms. Salmaso's entire testimony be discarded on that basis. On the contrary, I appreciated Ms. Salmaso's candour and honesty when she said that she did not want to be retraumatized by revisiting the events of 2017. She was clearly not happy about being on the witness stand and broke down in tears several times. I can appreciate how difficult it must have been for her.

[198] Ms. Salmaso briefly acted as the grievor's supervisor. Before the grievor was hired indeterminately, in late November of 2016, when Ms. Salmaso was preparing the documentation necessary to support the grievor's hiring, a meeting was held on November 28, 2016, which Ms. Salmaso said was the first day of her acting assignment. The grievor appeared at her door, first thing in the morning, and inquired in a very demanding way about her letter of offer. Ms. Salmaso's testimony was very clear about the grievor's anger and raised voice.

[199] The grievor testified that Ms. Salmaso lied about this event and that such an exchange never took place. It could not have taken place, submitted the grievor, because email exchanges on Friday, November 25, 2016, which refer to the letter of offer as a work in progress, make it highly unlikely that she would have raised the issue on the Monday morning, because, to paraphrase her, "How could it be possible to complete the letter over the weekend?" That is not the issue. The issue is whether she raised her voice in the exchange with Ms. Salmaso, which I find she did.

[200] Ms. Salmaso said that she was so upset after their exchange that she went to see Ms. Goodyear. The grievor said that that could not possibly have taken place because, again, to paraphrase, “Lori Goodyear does not take walk-ins.” I can appreciate the busy schedule of a Director General, but I do not find the grievor’s point to be conclusive.

[201] I find as a matter of fact, on the basis of Ms. Salmaso’s testimony, that the grievor did raise her voice on occasion in the workplace.

[202] The exchange on November 28, 2016, occurred before the grievor’s probation and I do not take it into account as part of the employer’s assessment during the probation period. But its importance lies in the fact that it laid the foundation for a very unpleasant period in February 2017, when Ms. Salmaso found herself acting for Ms. Howe once again and supervising the grievor. This exchange adds credibility to what would transpire later during 2017.

[203] On the issue of whether the grievor ever raised her voice in the workplace, Ms. Boutin testified in detail to the September 29, 2017, PMA meeting at which the grievor raised her voice and began arguing with Ms. Boutin when the issue was raised about the grievor’s perceived inability to work effectively with others.

[204] Ms. Boutin’s testimony was very clear. The grievor interrupted her, began speaking over her, and in her words, “would not let [her] get a word in edgewise”. Ms. Boutin was also very clear about the grievor raising her voice at their meeting.

[205] Ms. Boutin made notes of the PMA meeting, which contain this sentence: “[translation] As Bonnie would not let me speak, constantly interrupted me, and raised her voice ...”.

[206] The weight of three witnesses against one on this singular issue of whether the grievor raised her voice is not determinative. This is not a numbers game; each witness must stand on his or her own. However, in each case, on this one issue of the raised voice, I give more weight to the testimonies of the employer’s witnesses than to the grievor’s testimony.

[207] With respect to the exchange with Ms. Salmaso on November 28, 2016, the grievor correctly pointed out that incidents that occurred outside the probation could not form the grounds for rejection on probation (which seemed in contradiction with her argument claiming that she was on a one-year probation beginning in September of

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2016). I do accept this argument, but I wish to make it clear that I am not weighing the November 28, 2016, incident for any reason other than to assess witness credibility. I find that the events of the morning of November 28, 2016, occurred as Ms. Salmaso described them in her testimony and, most importantly, contrary to the grievor's assertion that Ms. Salmaso lied about the grievor's having raised her voice.

[208] The grievor's credibility suffered greatly as a result of the unrelenting vitriol she directed at the employer at almost every turn. She was disrespectful to witnesses and objected to Ms. Salmaso's appearance at the hearing on the basis that Ms. Salmaso's memory was so impaired that her testimony would be useless. The grievor tried to introduce photographs obtained via social media of the interior of Ms. Boutin's residence as evidence of personal favouritism in a hiring process, which was a repeated avenue of argument that I rejected many times as irrelevant to the proceedings. She interrupted Ms. Salmaso on the witness stand several times, accusing Ms. Salmaso of lying, despite my repeated admonishments to simply let the witness testify and wait her turn.

[209] The grievor saved her most scathing attacks for Ms. Boutin, accusing her of obstruction of justice, forgery, and lying on the witness stand. She continued to assert until the last day of the hearing that Ms. Boutin lacked the authority to manage her or to act in the supervisor position. She accused Ms. Boutin of lying about having met with Mr. Thibault, Ms. Howe, and Ms. Salmaso and of fabricating a set of handwritten notes well after the fact to lend a false impression that the meetings actually took place.

[210] Again, these accusations are as serious as one can make before any tribunal or court. I accept Ms. Boutin's explanation for the wrong date on the July 26, 2017, meeting notes.

[211] The notes are an aide-memoire; a summary of Ms. Boutin's recollections. After the grievor began making ATIP requests and Ms. Boutin noticed that the "2017-07-25" date was wrong, she corrected it. To her credit, she admitted on the witness stand that in hindsight, it might not have been the proper thing to do, but, "What's done is done", as she testified.

[212] I find that Ms. Boutin was honest and forthright on the witness stand. She did not, as the grievor claims, fabricate handwritten notes to give a false impression that

meetings with Mr. Thibault, Ms. Howe, and Ms. Salmaso occurred. I find that on the basis of the testimonies of Ms. Salmaso, Ms. Boutin, and Mr. Thibault, the meetings did occur, and the notes are Ms. Boutin's recollection of what each of these individuals said in their respective meetings with her.

[213] Ms. Salmaso testified to a meeting with Ms. Boutin about her reasons for leaving the employer. The notes that Ms. Boutin made of the meeting match Ms. Salmaso's testimony. The notes are not even necessary because Ms. Boutin's oral testimony is a true reflection of Ms. Salmaso's testimony that the primary reason that Ms. Salmaso left the workplace was the stress that interacting with the grievor was causing her.

[214] This brings about the next aspect of the testimony on which the grievor's accounts diverge from those of the employer's witnesses, namely, whether she worked effectively with others.

[215] The grievor submitted examples of glowing praise for her ability to work with others and to readily provide updates to management on the statuses of her projects. I am referring to the narrative assessment that Ms. Salmaso prepared, in her words, "against her own better judgement". I refer as well to the referral note.

[216] Ms. Salmaso broke down in tears on the witness stand when she recalled the times she cried after meetings with the grievor about her unwillingness to cooperate in providing updates on her work. Ms. Salmaso testified to seeking solace in Ms. Howe's office at times and from a teacher with whom she was on good terms for how she felt completely inadequate as a supervisor when interacting with the grievor. Meetings with the grievor would spiral out of control, she testified, which shattered her confidence.

[217] In a further display of disrespect for this witness, the grievor suggested that the reason Ms. Salmaso was upset after their encounters was that she truly was unqualified; hence, her feelings of inadequacy.

[218] The grievor, in her cross-examination of Ms. Salmaso, tried to make her recall once incident when Ms. Salmaso left a meeting in tears and retreated to her office. The grievor asked her whether she recalled the grievor following her into the office to ask her whether the grievor was to blame. According to her, Ms. Salmaso told her that time that she was not to blame. When Ms. Salmaso was asked about it, she stated that she did not recall it.

[219] Thus, on her own, the grievor solidified Ms. Salmaso's claim that Ms. Salmaso left meetings in tears. Ms. Salmaso claimed that the grievor was the cause of her crying. The grievor has a different opinion.

[220] There was much that Ms. Salmaso did not recall, and she offered a warning at the outset of her testimony that that would be the case. After she left for her period of language training in the spring of 2017, she began to search for employment elsewhere because interacting with the grievor was having such a profoundly negative effect on her. She testified that in fact, the next three months or so (June, July, and August) were a blur. She testified to actively trying to suppress the memory of her interactions with the grievor after she returned from language training in May of 2017.

[221] There are many reasons that witnesses fail to have crystal-clear recollections of events. The passage of time is one, and it does not escape my notice that these events occurred five years before Ms. Salmaso was called upon to testify about them. I am also very familiar with the behaviour of witnesses who are called upon to testify about an event they found was very unpleasant. The details are often blurry. Ms. Salmaso's inability to recall precise details of events involving the grievor, including the events of the July 26, 2017, meeting, did not damage her credibility.

[222] At one point, Ms. Salmaso stated that she could not even speak the grievor's name for about a year after leaving because she was still so upset. To counter this assertion, the grievor produced an email that Ms. Salmaso sent her soon after her departure that was cordial. When the grievor asked Ms. Salmaso about the email, she said that she had just been kind. She had been instructed to write the email.

[223] The grievor submitted that the email detracts from Ms. Salmaso's credibility and that they were actually on cordial terms. I do not find that Ms. Salmaso's credibility suffered from interacting by email at a safe distance from the grievor on September 28, 2017, which was less than a month after Ms. Salmaso's departure.

[224] Ms. Salmaso testified to telling Ms. Howe about the difficulty she was having with the grievor. Ms. Boutin testified to a meeting with Ms. Howe in which Ms. Howe confirmed this aspect of Ms. Salmaso's testimony.

[225] I acknowledge the difficulty associated with hearsay evidence. That being said, the Board has the power to accept any evidence, whether admissible in a court of law

or not, pursuant to s. 20(e) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365).

[226] The rule on hearsay in *R. v. Khan*, [1990] 2 S.C.R. 531 and *R. v. Smith*, [1992] 2 S.C.R. 915 requires that two questions be answered, whether the reception of the hearsay evidence is reasonably necessary and whether the evidence is reliable.

[227] Ms. Salmaso speaking to Ms. Howe, who in turn speaks to Ms. Boutin is an example of double hearsay, but necessity dictates receiving it since Ms. Howe is deceased and could not testify. Despite the double hearsay, I find as a matter of fact that Ms. Salmaso told Ms. Howe about her difficulties with the grievor and that Ms. Howe related the discussion to Ms. Boutin. I also find that the information to be reliable given that it is confirmed by both Ms. Salmaso and Ms. Boutin, whom I have found to be credible witnesses. There is some corroboration.

[228] A similar double-hearsay issue exists with respect to Mr. Howe's email to Ms. Boutin. Mr. Howe is Ms. Howe's spouse, and he stated in his email that one reason for Ms. Howe's medical leave on work-related stress was "... in large part due to the situation with [the grievor]." Mr. Howe did not testify and so could not be cross-examined on what he wrote. Therefore, I can attach minimal weight to the content of his email.

[229] Ms. Boutin's notes and her testimony about what Ms. Howe told her, namely, the grievor triggered both (Ms. Howe and Ms. Salmaso) in crying often, support that I give more weight to Ms. Salmaso's testimony and Ms. Howe's comments than the grievor's testimony. I find reasonable the employer's assertion that the grievor was unable to work effectively with Ms. Salmaso and Ms. Howe.

[230] The grievor constantly challenged Ms. Boutin on her authority to act as a manager or supervisor. The grievor repeatedly maintained that Ms. Boutin, coming as she did from the Audit Division, had insufficient experience to qualify her to supervise the grievor's work. This measure of disrespect is a further demonstration of her inability to work effectively with others.

[231] The grievor maintained that she acted professionally and appropriately at the September 29, 2017, meeting and said as much in an email she wrote on October 4,

2017, at 10:15 a.m. Ms. Boutin said otherwise in her testimony and her emails about the meeting.

[232] I must again assess the credibility of both Ms. Boutin and the grievor to make a finding of fact on the tone and content of their discussion on September 29, 2017. Ms. Boutin's forthright testimony was bolstered by her documentation of the meeting in her communications with others. Had the grievor truly "... behaved at all times professionally and respectfully", Ms. Boutin would have had no reason to state, in her email dated October 24, 2017, whose recipients included the Director General as well as the grievor, as follows: "... any disrespectful behavior toward me or any staff member during or after our follow-up meeting could lead to disciplinary measures. I expect our exchange to be calm, productive and professional." I find that Ms. Boutin wrote this because the September 29, 2017, PMA meeting was not calm, productive, and professional, as the grievor claimed it was.

[233] I give more weight to Ms. Boutin's testimony on this point and find that the September 29, 2017, PMA meeting went as she described it. I find that the grievor raised her voice and questioned the competence of her co-workers at the meeting, which is an indication of an inability to work effectively with others. Ms. Boutin's perception was correct.

[234] Mr. Thibault claimed not to remember much of what happened while the grievor was on his team, but his presence as a witness at these proceedings was important for establishing whether she was able to work effectively with him. The witness with the clearest recollection of what actually happened at the fateful July 26, 2017, team meeting is the grievor herself.

[235] The grievor complained about Mr. Thibault's behaviour in the office, characterizing it as an unsafe-workplace complaint. The grievor's "Summary of Physical Safety Concerns Discussed - 26 September 2017" includes this sentence: "Yesterday he chased me down the hallway to my office while making unusual noises - something to the effect of 'getcha-getcha'. I shut my office door and considered if this could be part of his disability ...". However, on the witness stand, the grievor testified that Mr. Thibault grabbed her buttocks by the photocopier. It is astonishing to me that she would not have mentioned this in her summary, which she wrote almost

contemporaneously with the events, because it is a much more serious allegation. This makes me question whether the grabbing incident happened at all.

[236] I make this finding of fact for the sole purpose of assessing witness credibility. I give more weight to Mr. Thibault's testimony to that of the grievor.

[237] Ms. Boutin testified to departmental security's finding that the grievor's workplace-safety complaint was not substantiated. It is not incumbent upon me to pronounce upon the validity of the grievor's safety complaint.

[238] Similarly, it is not incumbent upon me to pronounce upon the validity of the grievor's harassment complaints against Ms. Howe or Ms. Boutin.

[239] The grievor suggested that the employer's claim that she was unable to work effectively with others was fabricated and that the rejection on probation was a sham and a camouflage for a departmental restructuring exercise. She presented documentary evidence that indicated that a restructuring and a significant cut to the unit's budget took place after her departure. Mr. Tanguay testified that a restructuring took place but that no cuts happened while he was at the helm. Restructuring exercises take place all the time in the public service. I find insufficient proof of the grievor's argument, and do not give any weight to it.

[240] The grievor did not directly accuse Mr. Tanguay of orchestrating a sham or camouflage to disguise the true reason that she was dismissed. Were this truly an important component of the grievor's case, I would have expected Mr. Tanguay to at least have been asked a direct question about it under cross-examination, but he was not.

[241] The grievor claimed that Mr. Tanguay based his decision to terminate her on misinformation or irrelevant details. On the contrary, I find that he made an informed decision on the basis of the information provided to him and that he clearly articulated the reason for her rejection on probation in the termination letter. In one of the cases that the grievor cited, *Sved*, at paras. 128 and 129, the adjudicator commented as follows on that very issue:

[128] In addition, the employer did not do what the grievor alleges it did. In providing concrete examples of her shortcomings in all three areas which were set out in the letter of termination, the employer did nothing more than what was required of it. If the

grievor's argument is accepted, the employer's evidence would be limited to a simple recitation of the three reasons for rejection on probation, devoid of any concrete examples. In presenting its case, the employer did not introduce any new grounds, it merely lead [sic] evidence regarding its stated reasons for rejecting the grievor on probation. The grievor argued that the employer's evidence was contrary to the reasons given for her termination. I find that the employer's examples served as concrete illustrations of the grievor's conduct to buttress the reasons given for her termination.

[129] I also take the view that, contrary to what the grievor argued, the manager who signs the letter of termination is not required to have personally witnessed the incidents or conduct that led to the grievor's termination. What is required is that the manager makes an informed decision, citing the reasons for the termination, whether they are his or her own observations or those of others. The fact that the manager in this case considered documents that he did not author does not make them hearsay. It is common for a probationary employee to have more than one supervisor. To find that the employer was unfair or that it acted in bad faith in its treatment of a probationary employee due to the mere fact that the person who signed the letter of termination did not personally witness the deficient skills or unsuitable conduct is unreasonable and unrealistic. In this case, the employer adduced substantial evidence through the grievor's two supervisors of the reasons for terminating her employment....

[242] The grievor also characterized her termination as disguised discipline. I find no indication of this at all in any of the evidence presented. Her behaviour toward her supervisors and her colleagues attracted no disciplinary measures. Rather, it was characterized as an inability to work effectively with others, which rendered her unsuitable for continued employment.

D. Was the grievor provided with notice or payment in lieu of notice?

[243] The termination letter states, "In accordance with section 62(2) of the PSEA, you will be paid for one month starting from the date this notice is delivered to you." Mr. Tanguay testified to his knowledge that this payment took place.

[244] The grievor testified that she did, in fact, receive payment past the date of her termination but that it was, in her words, "clawed back" and became inextricably entwined in her other pay issues, some of which were due to the Phoenix pay system's malfunction. She is still in conflict with the employer over amounts owing after her termination.

[245] The employer and the grievor both agreed that the issue of payment in lieu of notice was the subject of a different grievance, which has been withdrawn.

[246] The grievor referred to a record of employment, which indicates a final pay-period ending date of December 27, 2017. There is no proof that she was not paid. Rather, the grievor's own testimony makes reference to payment-in-lieu having been made but subsequently clawed back as it was inextricably entwined with Phoenix pay system issues. I therefore find it is more likely than not that the grievor was provided payment in lieu of notice.

V. Conclusion

[247] Considering all the evidence, I find the grievor was on probation and the probationary period was still in effect at the time of the termination. Pay in lieu of notice was provided. The letter of rejection on probation outlined the reason for the rejection, namely the failure to work well with others. This was the reason the employer found the grievor unsuitable for continued employment. The grievor did not meet the burden of establishing that the employer's reason for rejecting her on probation were sham, camouflage or disguised discipline. Therefore, I do not have jurisdiction over the grievance.

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

(The Order appears on the next page)

V. Order

[249] I declare that the Board has no jurisdiction over this grievance.

[250] I order the closure of this file.

July 17, 2023.

James R. Knopp,
a panel of the Federal Public Sector
Labour Relations and Employment Board