Date: 20240515

File: 566-02-41198

Citation: 2024 FPSLREB 68

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

ASIF MOHAMMED

Grievor

and

DEPUTY HEAD
(Department of the Environment)

Respondent

Indexed as
Mohammed v. Deputy Head (Department of the Environment)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Himself

For the Respondent: Karl Chemsi, counsel

Heard by videoconference,
August 23 to 25, 2023.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Asif Mohammed, is employed by the Treasury Board (TB or "the employer") at the Department of the Environment, also referred to as Environment and Climate Change Canada (ECCC), as an engineer classified at the Engineer (ENG) 4 (ENG-04) group and level at the ECCC's laboratory in Burlington, Ontario ("the Burlington lab").

[2] The facts that gave rise to the misconduct that led to the discipline that was grieved involved incidents that took place in November of 2017. By letter dated November 27, 2018, and signed by Veronica Ramrattan, Director General, Assets, Real Property and Security Directorate, Corporate Services and Finance Branch, ECCC, the grievor was given a three-day disciplinary suspension. The relevant portions of the letter state as follows:

> …
>
> *This letter follows the investigation report and the founded allegations of harassment lodged against you by* [Ms. A] *as well as the meeting held on November 13th, 2018, where you were afforded an opportunity to provide any clarifications and/or extenuating circumstances.*
>
> *I have carefully reviewed and considered the content and conclusions of the investigation report as well the information provided by you at the November 13th meeting. In doing so, I considered the mitigating factors including your years of service, your acknowledgement of your behaviour towards* [Ms. A] *and that you were experiencing a medical issue in the months leading up to your actions on November 3rd and 20th, 2017.*
>
> *However, I could not ignore certain aggravating factors including the fact that you were aware that* [Ms. A] *did not want you to contact her for personal reasons and that you are of the view that, as* [Ms. A] *did not expressly ask you to stop contacting her, that this implies that she consented to having a personal relationship. Further you stated that employees should be afforded "protection" when they have a personal relationship so that an eventual harassment complaint cannot be filed. These comments lead me to believe that you do not recognize the seriousness of your actions. Such behaviour constitutes an act of misconduct and is in breach of the Environment and Climate Change Canada Values and Ethics Code, specifically the value of Respect for People.*

> *Consequently, I have decided to suspend you without pay for three (3) days (22.5 hours). The dates of suspension will be November 28-30, 2018.…*
>
> …

[3] On December 6, 2018, the grievor grieved the disciplinary suspension; his grievance stated as follows:

> …
>
> *Grievance details …*
>
> *I grieve my 3-day suspension received on November 27, 2018.*
>
> …
>
> *Corrective action requested …*
>
> *That the 3-day suspension be revoked.*
>
> *That I be compensated for the 3-day suspension*
>
> *That any and all record of my suspension be removed from my personnel file or any other file. and*
>
> *Any other remedy required to be made whole*
>
> …

[4] The grievance was heard at the second and third levels of the grievance process. It was denied at the second level; however, on October 1, 2019, after a hearing on September 5, 2019, at the third level of the grievance process, the penalty was reduced from a three-day to a two-day suspension.

[5] On November 7, 2019, the grievor referred the grievance to the Federal Public Sector Labour Relations and Employment Board ("the Board") for adjudication. Until December 11, 2019, the grievor was represented by his bargaining agent, the Professional Institute of the Public Service of Canada ("the Institute" or "the union"). On that day, the union withdrew its representation of him.

[6] At the outset of the hearing, the grievor represented himself. He gave an opening statement and produced for the Board his briefs of documents. As this is a matter dealing with discipline, the employer led its evidence first. The two employer witnesses who testified were cross-examined by the grievor. When it was time for the grievor to present his case, he brought forward a gentleman whom he identified would be both a witness and his representative going forward. This gentleman was an elected official of the Institute, and after some discussions, it was clear that he was unaware

that the Institute had initially represented the grievor and had later withdrawn its representation. He asked for a brief adjournment so that he could consult the union. After the brief adjournment, he did not return, and the grievor advised that he would not be returning or representing the grievor.

II. Summary of the evidence

A. Background

[7] The grievor obtained his Bachelor of Civil Engineering degree in 1994 as well as his Master of Technology in Structural Engineering degree in 1998, both from universities in India. Since 2006, he has been a licensed engineer in Ontario. He joined ECCC in 2010 and has worked his entire career with it at the Burlington lab.

[8] The grievor was active in the union. He was a local president in the Burlington lab for his bargaining unit, the Architecture, Engineering and Land Survey (NR) group, from roughly 2011-2012 to 2017. He was also on its Ontario regional executive from 2014 to 2016. He moved to the union's national executive in 2017 and was a vice-president for the NR group and delegate coordination leader. He stated that he is currently still on the national executive as the communications coordinator. He stated that in 2012, he was a union steward, received the union's steward training, and represented other members at different levels in the grievance process.

[9] At the time of the facts that gave rise to the grievance, the following people were in these roles:

- Ryan Breivik was employed by the TB at the Burlington lab, and the grievor reported to him;
- Ms. A was employed by the TB at ECCC and was in a position two levels higher than that of the grievor, classified at the ENG-05 group and level. She did not work in the Burlington lab but in Ottawa, Ontario, at a facility at 335 River Road, referred to at the hearing as "River Road". Mr. Breivik reported to her. At the time of the hearing, she was still classified at the ENG-05 group and level but was in a different department; and
- Benoît Julien was the director of Real Property Management at ECCC. His office was in the National Capital Region but not at River Road. Ms. A reported to him.

[10] At the time of the hearing, Ms. Carol Najm was a vice-president and chief financial officer of CBC-Radio Canada. She joined ECCC in 2008, and in 2018, she was

the assistant deputy minister and chief financial officer of its Financial Branch. She heard the grievance at the third and final level.

[11] The evidence disclosed that during an unspecified period before November of 2017, the grievor's performance was identified as deficient. The exact and specific details of the deficiencies are not relevant to the issues that I must decide; suffice it to state that the deficiencies did not appear to be related to the technical aspects of his work but to his interpersonal skills when working with others. These identified deficiencies led to Ms. A being asked to provide coaching and mentoring assistance to the grievor, to which she agreed. She testified that there was not any fixed plan on how the coaching or mentoring would happen, although it was to consist of meeting with and talking to him.

[12] The evidence disclosed that in addition to traditional telephone and email communications, the part of ECCC that the grievor and Ms. A worked within had used an electronic communication system called "office communicator" or "communicator chat". The way that it was described to the hearing was that it appeared to be similar to the chat function that currently is in use by most federal public sector departments on the Microsoft (MS) Teams platform that can be accessed on computers, tablets, and smartphones. Its description also seemed similar to the text message function that people can use on their mobile phones and on Facebook Messenger. The precise details of how it worked and how many people could be involved in a specific chat was not explained. However, the way the function was described suggested that it did not retain the conversations or "chats" as they occurred; once they were sent and received, they were deleted.

[13] On Friday, November 3, 2017, a communicator chat meeting took place between the grievor and Ms. A ("the Nov. 3 communication"). In her testimony, Ms. A described what happened and stated that she also set out what happened in an email dated November 6, 2017, which she sent to Andreia Mota, in Labour Relations, as well as to Messrs. Julien and Breivik ("the Nov. 6 email"). Her testimony before me largely mirrored what was set out in the email, which stated as follows:

> …
>
> *Mr. Mohammed works out of the Burlington office and had been in Ottawa for union business in October. I had met with him at my office (335 River Road)* [River Road] *on October 3rd between 9:30*

and 11:00 a.m. and we had gone for lunch from about 12 to 1 p.m. the same day. The topic of conversation was the performance issues that have been raised with him, his action plan and his ongoing relationship with Ryan Breivik (his supervisor). I encouraged Asif to participate in the Office of Conflict Management program and told him about my personal experience working with that team. I also explained that we are genuinely interested in seeing a change in Asif's behaviour and that the purpose of the action plan and the feedback we have given him to date is to improve our ability to work collaboratively as a team and to be service oriented. Following this meeting Asif commented to me that meeting with me had made him feel much better about the process and that he was encouraged by what I had told him. He wanted me to attend a dinner with the union in November and was going to find out if I could attend with him or if we could meet again when he was in Ottawa for the meeting to talk. When he did provide me with the details a few weeks later I explained that I could not attend the dinner. He asked if he could meet me at River Road again and I said yes. I have [sic] *a French class on the 16th but I was available on the 15th.*

On Friday, November 3rd I had a communicator conversation with Asif Mohammed that started between 3 or 3:30 and ended at I think about quarter after 4. He said that he enjoyed talking to me and that it made him feel good. He [sic] *told him that he needed to develop some friendships in the Burlington office of people that he could joke around with. He said he did joke with people but that it wasn't the same. He told me that he was attracted to me but I thought he was using the wrong word. His English is not perfect and I thought that it was just a language thing. He asked if he could call me after work on a Friday. I said no but that maybe we could have like a 15 minute "coffee break" together to chat. I started booking that and he started saying that we should start off slow with coffee and then we could go to a movie together. He said he wanted to take me to India and that I was the friend that he had been waiting his whole life* [to] *meet. I replied that I would never go to a movie with him because we had a professional relationship. He apologized and said he had crossed the line, he asked if he had hurt me. I said that I wasn't hurt but that I wanted us to be on the same page about the 15 minute meetings. I then booked the meetings starting in November until the end of March. We discussed the 15th and he said he would bring samosas and sweet treats and asked if I wanted any for my family. I said that would be nice. I told him that I could not meet for longer than an hour and suggested that we discuss the* [work-related project]. *I then told him that I had a deadline I had to meet and needed to stop chatting. I did not send a booking for the November 15th meeting.*

I feel that his interaction with me was disrespectful because I am a married woman and he is a married man and I am his manager. I am trying to support him in making behavioural changes to benefit our organization. I feel disrespected by his belief that it

> *would be acceptable for him to say these things to me and to think that that was an acceptable way to behave even on Communicator. This afternoon after discussing the issue with my management team (Ryan Breivik, Adam Kurz and Martin St-Jean) I cancelled my series of 15 minute coffee breaks with Asif explaining that based on our conversation on Friday I did not feel comfortable having these with him and I sent him a note explaining that based on the conversation that we had on Friday I did not feel comfortable meeting him on November 15th and asked him not to come to River Road. I mentioned that we might look at setting up an open discussion forum for all staff in the future if there was interest.…*
>
> *Given that Asif Mohammed is currently following an Action Plan I think that the November 3rd Communicator conversation should be recorded as an example of disrespectful behaviour.*
>
> …

[14] Also on November 6, 2017, at 14:08, Ms. A emailed the grievor, stating as follows:

> …
>
> *I am going to cancel these meetings as I am not comfortable continuing them based on the conversation we had on Friday. I may look into trying to set something up that would be open to more people to attend at a later date if staff indicate an interest in having sort of an open forum.…*
>
> …

[15] Ms. A testified that Mr. Julien told her that he would meet with the grievor and tell him not to contact, meet with, or see her. Entered into evidence was an email dated November 9, 2017, from Mr. Julien to the grievor, with the subject, "Follow-up to our discussion". It states as follows:

> …
>
> *As discussed, it was brought to my attention that on Friday, November 3, 2017, you had a conversation with your manager* [Ms. A] *via Office Communicator. During that conversation you initiated an inappropriate dialogue which included statements to the effect that you were attracted to* [Ms. A]*, you asked if you could call her after work hours, that you would like to go to a movie together, and to take her to India. You also indicated to* [Ms. A] *that she was the friend that you had been waiting your whole life to meet.* [Ms. A]*'s response to you was that your relationship is strictly professional and that she was not comfortable with the nature of the conversation.*

> [Ms. A] *has expressed her concerns to me over this conversation. While it is recognized that you apologized for your conduct, I must reiterate that*
>
> ***this type of behavior is unacceptable and I expect that in the future, you will conduct yourself in a professional manner with your manager and any other person you come into contact with as part of your duties at ECCC.***
>
> *Federal employees need to feel comfortable going to work. They need to know that their colleagues respect them for who they are and that their gender, sexual orientation, personal religious beliefs, and cultural heritage have no bearing on that respect.*
>
> *I am trying to create a team environment where staff work together collaboratively with each other, are service oriented, and where innovation is encouraged. In order to do this, we need staff in our organization to work respectfully with each other, their supervisors, managers, clients, and colleagues in other service departments. This is of utmost importance. Communicating with others effectively and being respectful helps to build professional relationships that assist us in being efficient and effective at work. These are work skills that are needed and are of real value to the organization.*
>
> *You can find more information on Respect for People in the ECCC Values and Ethics Code which is located in the link below.*
>
> …
>
> [Emphasis in the original]

[16] On Monday, November 20, 2017, at 13:29, the grievor sent an email to Ms. A, which led to a series of emails being sent that day. They are as follows:

> [The grievor to Ms. A, at 13:29:]
>
> *Hi* [Ms. A]*, I hope you are doing well. Please see attached new pay revisions per the signing of CA.*
>
> *These salary tables are not made public yet as PIPSC is still checking on accuracy and entire CA will be posted on TBS website and PIPSC soon.*
>
> …
>
> [*Sic* throughout]
>
> [Ms. A to the grievor, at 13:39:]
>
> *Thanks Asif. That's nice to see!*
>
> …
>
> [The grievor to Ms. A, at 14:05:]

Sure and good to see :-)

I have heard about the thinking on guidance…. Lets [*sic*] *plan to meet in person maybe on Nov 30 @ RR* [River Road] *if it works for you maybe* [*sic*] *nearby place!! .*

[Ms. A to the grievor, at 14:23:]

…

Asif, I do not wish to meet with you at River Road on the 30th. Please do not come.

…

[The grievor to Ms. A, at 14:37:]

Ok [Ms. A] *I will not visit RR, just thought that since I am in town I could meet in person. I would like to move forward and I am putting an effort on my part to communicate and resolve things and as such asked for a meeting to ensure professional relationships are maintained.*

Thanks for CC Benoit as well.

…

[Mr. Julien to the grievor, at 17:02:]

…

As per my email of Thursday, November 9, 2017, I had caution [*sic*] *you about how to approach colleagues and supervisors. Furthermore, I had mentioned that* [Ms. A] *had concerns with the nature of the conversation you had. I requested that you conduct yourself in a professional manner with your manager and any other person you come into contact with as part of your duties at ECCC.*

During our phone conversation of Tuesday, November 14, 2017 and our meeting of Friday, November 17, 2017, I reinforced the need to have professional relationships with [Ms. A] *and that future communications should be professional in nature, including any future coaching or mentoring that someone such as* [Ms. A] *could decide to offer.*

Today's attempt at having a face-to-face meeting outside of the office space is of great concern to me. I would like that any discussions between you and the Manager of Technical Services be initiated by the Manager from now on. If you require raising something with management, it would be appropriate to raise it with your supervisor. You could always raise sensitive concerns to me, if required.

…

[17] The email timestamped November 20, 2017, at 14:05, from the grievor to Ms. A shall be referred to as "the Nov. 20 communication".

[18] On Tuesday, November 21, 2017, Ms. A completed a harassment complaint against the grievor. The portion of the complaint relevant to this grievance is set out in section 4.1 of the complaint under the title, "Briefly state the allegation(s) which form the basis of your complaint." Set out in the complaint are largely the same facts that have already been set out in these facts, in this decision.

[19] On November 29, 2017, the grievor was advised in writing of the harassment complaint made against him by Ms. A. She and the grievor were given an opportunity to engage in an informal resolution process before the complaint was investigated; however, this process was not engaged, and an independent third-party investigator was hired to conduct an investigation into the complaint. The investigator interviewed the grievor, Ms. A, and Messrs. Julien and Breivik.

[20] By letter dated July 4, 2018, a preliminary harassment investigation report dated May 31, 2018 ("the preliminary report"), was sent to the grievor. The letter forwarding it stated as follows:

> …
>
> *In order to ensure all information directly relevant to the specific allegations under review has been received and correctly recorded prior to findings being made, you are provided 14 days to review and respond to this Report.…*
>
> …

[21] On July 19, 2018, at 13:35, the grievor emailed the investigator his comments on the preliminary report.

[22] On September 24, 2018, the investigator issued her final harassment investigation report ("the final report"). It was released to the grievor on October 18, 2018. In that report, the investigator set out in the section related to the grievor's version of events the facts as the grievor had conveyed them to her. Those that are relevant for the purposes of this grievance were the same in both the preliminary and final reports and are as follows:

- the grievor declared that he was emotionally and intellectually attached to Ms. A but not physically;

- the grievor confirmed he communicated with Ms. A through office communicator and that in the past, he had used that tool to communicate with her;

- the grievor said that he did not recall exactly what he said to Ms. A but did confirm that he recalled mentioning going to a movie with her and inviting her to go to India with him. He said that he did not find anything inappropriate with these invitations because he had heard that some of his Burlington lab colleagues had travelled together to Jamaica and had overheard them discussing that travel, and hence, travel with colleagues seemed to be the practice in the Burlington lab;

- the grievor confirmed that on November 3, 2017, he received the message that Ms. A was not interested in meeting with him and was not happy with what happened on that day and that on November 6, 2017, she cancelled all their upcoming meetings;

- the grievor confirmed that on November 9, 2017, Mr. Julien spoke with him by telephone ("the Nov. 9 meeting"). During this call, Mr. Julien expressed to him that he had to be respectful in his communications with supervisors and managers. He asked Mr. Julien to schedule a meeting for him, Mr. Julien, and Ms. A, as he wanted clarification as to what had happened on November 3, 2017, because he felt that the meeting had ended positively. Mr. Julien advised the grievor that he would speak to Ms. A, to see if she would be willing to meet;

- the grievor said that Mr. Julien told him that he could still approach Ms. A as his manager;

- the grievor said that Mr. Julien informed him that inviting Ms. A to the movies and to travel with him to India was of concern to her and that she did not feel comfortable meeting with or speaking to him;

- the grievor acknowledged that Mr. Julien recognized that the grievor had apologized about the Nov. 3 communication and that Ms. A had accepted his apology;

- the grievor stated that on November 14, 2017, he called Mr. Julien about his requested meeting with Ms. A and Mr. Julien, and that Mr. Julien advised the grievor that he had spoken with her and that she would get back to him as to whether she was willing to meet with him and the grievor to discuss the Nov. 3 communication;

- the grievor stated that on November 14, 2017, he and Mr. Julien agreed to meet on November 17, 2017, in Mr. Julien's office in the National Capital Region. At that meeting, the grievor again asked Mr. Julien about setting up a meeting with Ms. A, and Mr. Julien told him that Ms. A was thinking about it and that he should not approach her anymore and should let her decide. He

said that Mr. Julien told him not to go to River Road and to stay away from her until further notice; and

- the grievor said that on November 20, 2017, he sent Ms. A an email about new pay scales and that she replied, thanking him. He further indicated to her in emails that he was planning to come to Ottawa and suggested that they could meet on November 30, 2017, at River Road. The purpose of the email was to "move forward".

[23] In both the preliminary and final reports, the investigator set out the following findings of fact about the information that Mr. Julien provided to her. Those that are relevant to the grievance are as follows:

- Mr. Julien spoke to the grievor and informed him that the workplace was not the appropriate place to make advances (to proposition Ms. A). He told the grievor that he had to be professional and respectful in his communications with supervisors and managers;

- Mr. Julien told the grievor that inviting Ms. A to a movie and to travel with him to India was of concern to her and that she did not feel comfortable meeting with or speaking to him;

- Mr. Julien told the grievor that he recognized that the grievor had apologized to Ms. A and that she had accepted his apology;

- Mr. Julien said that on November 14, 2017, the grievor told him that he wanted to apologize again to Ms. A and that he wanted to know how they could move forward. Mr. Julien said that he told the grievor that Ms. A was not interested in a further apology as he had already apologized and she had accepted it. Mr. Julien told the grievor that he had spoken to Ms. A and that she would get back to him on whether she would meet with him and the grievor to discuss the Nov. 3 communication; and

- Mr. Julien said that on November 17, 2017, the grievor asked him again if he could meet with Ms. A and that Mr. Julien responded by stating that she was thinking about it and that the grievor should not approach her, not go to River Road, and stay away from her until further notice from him.

[24] The final report made a finding that the allegations of harassment against the grievor made by Ms. A were founded in these ways:

- there were concerns about the grievor's behaviour at work, which led to Ms. A becoming a mentor and coach to him;

- the grievor made romantic advances to Ms. A;

- the grievor had seriously misread Ms. A's efforts of helping him overcome his behavioural shortcomings;

- the grievor admitted to liking her and to telling her that he was attached to her, and he invited her to go to the movies and to travel with him to India and stated that she was the friend he had been waiting all his life to meet;

- the grievor's remarks with respect being attached to her and inviting her to the movies and to travel to India with him clearly demonstrated his feelings and intentions toward Ms. A. The invitation to travel to India with him was inappropriate; he was her subordinate and she was his supervisor's supervisor, and the comments were made during a coaching and mentoring session;

- the grievor said that he found nothing inappropriate with his invitation to Ms. A to travel with him to India because he had heard that some Burlington lab colleagues had travelled together to Jamaica;

- Ms. A told the grievor that she would never go to the movies with him as they had a professional relationship, and he apologized to her and told her that he "had crossed the line";

- the grievor told the investigator that as far as he was concerned, he had not "crossed the line";

- the grievor did get the message that Ms. A was not interested in meeting with him and that she was not happy with the Nov. 3 communication when on November 6, 2017, she cancelled all their meetings and did not answer his calls;

- the investigator found that on November 6, 2017, both Mr. Julien and Ms. A made it clear that Ms. A was not interested in communicating with the grievor;

- the grievor continued to want to meet with and apologize again to Ms. A, and on November 17, Mr. Julien told him not to approach her, not to go to River Road, to stay away from her, and to let her decide;

- the grievor disobeyed Mr. Julien's order and emailed Ms. A about him coming to Ottawa and perhaps that they could meet either at River Road or elsewhere; the stated purpose of the email was "to move forward". Ms. A replied, telling the grievor that she did not wish to meet and not to come. The grievor replied to that and advised that since he was coming to town, they "could meet in person" so that they could maintain a professional relationship, that he wanted to "move forward", and that he was making the "… effort on his part to communicate and resolve things …";

- the investigator found the grievor's view of the situation revealing. The grievor insisted on wanting to meet with Ms. A, despite being told by Mr. Julien that his remarks (the Nov. 3 communication) were inappropriate and that Ms. A was uncomfortable with their nature;

- the investigator found that the evidence revealed that even after Mr. Julien's instructions on November 17, 2017, the grievor still did not realize how inappropriate his remarks had been;

- in the Nov. 20 communication, the grievor unambiguously ignored Ms. A's message not to contact her and Mr. Julien's instructions and again indicated to Ms. A that he wanted to meet with her, despite her clear message of not wanting to meet with him and Mr. Julien's clear instruction to stay away until further notice; and

- the investigator found that the grievor's invitation in the Nov. 20 communication to meet with Ms. A on November 30, 2017, constituted harassment as defined by the Treasury Board's policy.

[25] In his evidence before me, the grievor agreed to the following:

- that the coaching he was receiving from Ms. A was to help him in the workplace;

- that he received notice of the harassment complaint;

- that he was to be contacted by an investigator with respect to a harassment investigation;

- that he was interviewed by the investigator conducting the harassment investigation;

- that he received a copy of the preliminary report on July 4, 2018;

- that he read the preliminary report;

- that he was given an opportunity to provide comments on the preliminary report;

- that he did provide comments on the preliminary report on July 18, 2018;

- that he received a copy of the final report;

- that he read the final report;

- that he had been advised that he could grieve the final report;

- that he did not grieve the final report;

- that on November 8, 2018, he was invited to a disciplinary hearing scheduled for November 13, 2018, before the director general, Ms. Ramrattan; and

- that he attended the disciplinary hearing.

[26] In his testimony-in-chief, the grievor did not speak at all about the November 14 or November 17, 2017, meetings.

[27] During cross-examination, the grievor was brought to the final report and specifically to the section that the investigator set out as the version of events that the

grievor had conveyed to her, specifically between paragraphs 54 and 83. When it was put to him that it accurately reflected his version of events, the grievor made an overarching statement that while it was generally correct, it was not completely accurate. It was then put to him that he had been given the preliminary report and an opportunity to review it and to provide comments on what he wanted to, to which he agreed. The grievor, however, would not agree that the final report that set out his version was accurate. He stated that it contained many opinions of the investigator. When asked if he had commented on those opinions, he said that he had not. When it was again brought to his attention that he had received the preliminary report and that he had had an opportunity to comment on what was in it, the grievor then stated that there had not been sufficient time.

[28] When counsel for the employer asked the grievor to confirm if he was saying that the portion that is set out as his version (at paragraphs 54 to 83) was not accurate, the grievor said that some of that portion that is set out as his version was inaccurate. Counsel then brought the grievor to the preliminary report and the grievor's written response to it. At this point, the grievor stated that his version was accurate but not "fully accurate". Counsel then put it to the grievor that he did not provide any details to fill in the gaps of the not-fully-accurate versions even though he had the chance, to which the grievor said that he was considering them and was hoping to have a discussion.

[29] When the grievor was pressed by counsel for the employer again, the grievor admitted to all of receiving the preliminary report, having an opportunity to review it and comment on it, and providing his comments to the investigator. When he agreed to all this and was then asked to provide the particulars of what was not accurate or missing, his answer was that he would have to read the report.

[30] Counsel for the employer went further and brought the grievor to a specific paragraph of the preliminary report, which sets out his account of what he recalled of the Nov. 3 communication. He was then brought to his email to the investigator commenting on the preliminary report, and counsel put to the grievor that he had accepted what was in the preliminary report as accurate, or he would have included comments in his email about the preliminary report. The grievor's response was that his version in the preliminary report was accurate but not "fully accurate". He then said that he never provided any details as to the "gaps" in the report.

[31] Counsel for the employer brought the grievor to the section where the investigator set out the facts obtained from Mr. Julien, which is paragraphs 84 through 92 of the both the preliminary and final reports. When the grievor was brought to this section, counsel pointed out that the grievor did not make any comments on the evidence provided by Mr. Julien to the investigator, to which he agreed that he did not. He then said this: "Maybe I was not taking into a lot of consideration and not thinking this could be used against me."

[32] Counsel for the employer asked the grievor when he was aware that all the facts were not accurate, and he said it was May 25, 2018. When asked by counsel what he did to ensure that accurate facts were captured, he said that he had been hoping to meet with the investigator. When it was put to him that he did not write to the investigator to ask for another meeting, the grievor said that he thought that he did and that her response was "No, it is over now." He later suggested that he spoke to the investigator on the telephone.

[33] Counsel for the employer put it to the grievor that despite receiving the final report and believing it to be inaccurate, he took no steps to contest it, to which the grievor said that he did not do that because it would have taken a lot of time and because of his health.

[34] Counsel for the employer brought the grievor to a series of emails he produced as part of the disclosure for the hearing. The following are the email exchanges between the grievor and the investigator between May 17 and 24, 2018, which appear to deal with a summary of the information that the grievor had provided to the investigator:

> [The investigator to the grievor; May 17 at 13:56:]
>
> …
>
> *I have edited the summary to better reflect what you were trying to convey. You will note that I have added some dates and made reference to Mr. Julien's email to complete the description of what had occurred. I also deleted some repetitions as they were not needed to understand your version of the incidents.*
>
> *I would appreciate if you could approve the summary by next Tuesday, May 22.*
>
> …
>
> [The grievor to the investigator; May 18 at 09:43:]

> *Hi Muriel, I think we have captured all information so you can make this document final.*
>
> …
>
> [The investigator to the grievor; May 18 at 11:35:]
>
> *So I assume you approve it.*
>
> …
>
> [The grievor to the investigator; May 23 at 13:09:]
>
> *Hi Muriel, sorry I could not get back to you earlier … I think in our next revision if you could please add "without prejudice" on top of the statements.*
>
> *Since my union has not looked at the case so* [*sic*] *it was left with management to make a decision. Please let me know what is the next step is there a final report that includes all parties statements. I think you did a good job in capturing all the information and linking them* [*sic*] *together.*
>
> …
>
> [The investigator to the grievor; May 24 at 10:06:]
>
> …
>
> *Further to your email hereunder, the next step is the Preliminary Report Summary of Facts. Following receipt of the Preliminary Report, you will be afforded the opportunity to provide comments on the facts gathered. The Preliminary Report does not have any conclusions and recommendations. Upon receipt of the parties' comments, a final Investigation Report will be prepared. It is the final Investigation Report that will provide the analysis of the evidence, conclusions and recommendations.*
>
> *I trust the above answers your query on the following steps.*
>
> …

[35] When he was shown the email exchange, and after reading it, the grievor said this: "I should have reviewed everything, and I didn't."

[36] In his testimony-in-chief, the grievor largely spoke about how he interpreted the discussions he had with Ms. A before the Nov. 3 communication and how he characterized their relationship. His evidence was an attempt to suggest that they had something that was more than just professional because when they spoke, either by phone, in person, or in the communicator chat, they discussed things other than work. He provided examples of topics of discussion, such as food and film genres.

[37] When he testified in-chief, when talking about the Nov. 3 communication, the grievor said that he did not believe that he wrote “attracted” but instead “attached”. He said that the reply from Ms. A was, “Are you sure you are saying this?” He then said that he was sorry and that she accepted his apology.

[38] The grievor also testified in-chief that on the Tuesday after the Nov. 3 communication (which would have been November 7, 2017), he received an email from Mr. Julien’s assistant, asking for a meeting. He said that there was a meeting between him and Mr. Julien in which he said that Mr. Julien said to him that the grievor had propositioned Ms. A, to which he replied that he denied it.

[39] In his testimony-in-chief, the grievor also said that he was invited to Mr. Julien’s office on November 17, 2017, and that Mr. Julien said that he would bring Ms. A. He said that he went to the meeting and that Mr. Julien told him that she was not willing to meet. He said that Mr. Julien said to him that there was no need to discuss the Nov. 3 communication again and that there was no need for him to apologize again. He said that Mr. Julien told him that she was not interested in meeting with him and that he was not to go to River Road. The grievor said that he asked Mr. Julien about the status of the coaching, to which he said that Mr. Julien said that he would speak to Ms. A. He said that Mr. Julien said that he could continue to work with her professionally and that he was never told to cease all communication with her.

[40] The grievor stated in his testimony-in-chief that he wrote the email to Ms. A on November 20, 2017, asking her to meet him at River Road or somewhere near there. He said that he told her that he wanted to move forward on a professional basis. He said that his intent was to restore the professional relationship.

[41] In his testimony-in-chief, the grievor produced an email dated August 21, 2018, from Élayne Prince, who at that time was the acting director of Real Property Management at ECCC. The email stated as follows:

…

> *For the next four months, I will be the Acting Director, RPMD.*
>
> *Regarding the email sent to you by Benoit Julien on November 20, 2017, I would ask that you refrain from contacting the Manager, Technical Services directly. If you have items to bring to management’s attention, please to do so via your supervisor, Ryan Breivik. You can also raise sensitive concerns to me, if required.*

…

[42] In cross-examination, the grievor was brought back to the August 21, 2018, email from Ms. Prince and was shown an email he sent to Ms. A dated August 14, 2018, and it was put to him that he knew that he was not supposed to contact Ms. A, to which his answer was, "Theoretically." When asked why he sent Ms. A the August 14, 2018, email, he said that it was because she was still a manager.

B. The medical notes

[43] From the evidence produced, it appeared that at his disciplinary hearing, the grievor provided three medical notes. In cross-examination, he was not clear as to whether he produced them to the disciplinary hearing separately and apart from providing them to his supervisor. The notes are as follows:

- dated August 8, 2017, from Dr. Mehul Patel of the Medica One Clinic ("the Aug. 8 note");
- dated August 23, 2017, from Dr. Asif Eqbal Ashraf of the Medica One Clinic ("the Aug. 23 note"); and
- dated January 29, 2018, from Dr. Hussam Taha of the MediCorner Clinic ("the Jan. 29, 2018, note").

[44] The Aug. 8 and 23 notes predate the Nov. 3 communication by more than two months, and the Jan. 29, 2018, note postdates it by more than two months.

[45] The Aug. 8 note does not disclose a specific illness and states that the grievor was seen on that date for what was identified as an "acute medical illness". The note also states that the grievor requested medical leave due to a "mental health related illness". It further states that the grievor was advised to follow up with his doctor.

[46] The Aug. 23 note indicates that the grievor was seen that day, which was a Wednesday, and then states that he was totally disabled as of the following Saturday, August 26, 2017, and would remain so until Sunday, September 3, 2017. It further states that he would be able to return to work on Monday, September 4, 2017.

[47] The Jan. 29, 2018, note merely advises that the grievor's condition (which is not specified) is improving slightly, that medications (again not specified) were adjusted, that he would benefit medically from being on leave from February 5 through March 19, 2018, and that he would be reassessed before March 19.

[48] In cross-examination, the grievor was asked if he provided these to the investigator, to which he said that he recalled mentioning them. He stated that he provided the notes to his supervisor. He was asked if these notes were provided to explain or justify the Nov. 3 communication, to which he said that they were provided to justify his medical condition. Counsel for the employer put it to the grievor that this was contrary to what he had said in his testimony-in-chief about what he had written in the Nov. 3 communication (which was that Ms. A misunderstood what he said) and asked if he said what he said because he had been ill. To this, the grievor said that counsel was correct and that at the time of the Nov. 3 communication, he was in depression. He said that his medical condition had caused his behaviour.

[49] Counsel for the employer asked the grievor to clarify that he was saying that due to his medical issues, which he said involved depression, he could not control his emotions. The grievor confirmed this and said that he was on medication that reduced his cognitive function by 20%; he had headaches and a lack of thinking capabilities, and his emotions were not under control.

[50] When it was suggested to him that he was saying that therefore, the inappropriate behaviour was caused by a medical condition, the grievor then said that he was not satisfied that his behaviour was inappropriate. When he was asked if he was saying that he did not misconduct himself and that Ms. A misunderstood everything, the grievor stated the following:

> • *Maybe I didn't use proper wording.*
> • *Maybe I didn't think.*
> • *There may have been some slippage in how I wrote, I didn't think.*
> • *I just sent it.*
> • *The message on the receiving end wasn't received.*
> • *The wording of the message might have changed.*

[51] The grievor produced in his brief of documents for the hearing a three-page assessment report from a Dr. Erin Warriner, who the document indicates is a clinical psychologist. It is dated July 18, 2022 ("the Warriner letter").

[52] Dr. Warriner did not testify.

[53] In his testimony-in-chief, all the grievor said about the Warriner letter was that he produced it through the hearing process but that he had not produced it to his employer at his workplace. The Warriner letter is identified as a supplement to a functional abilities form (FAF). The grievor also produced in his brief of documents a written request by Mr. Breivik to Dr. Taha, dated December 20, 2018, for a functional abilities assessment as a result of a note written by Dr. Taha dated November 30, 2018 ("the Nov. 30, 2018 note"), which suggested that the grievor would benefit from working from home three days a week.

[54] The grievor also produced for the hearing the following:

- a FAF, which appears to have been completed and signed by Dr. Taha on January 11, 2019 ("the Jan. 2019 FAF");
- a note from Dr. Taha dated May 28, 2019 ("the May 2019 note"); and
- written notes from Dr. Taha dated July 18, 2019 ("the July 18, 2019, notes"), in response to questions sent to Dr. Taha from Ms. Peris in a letter to the doctor dated June 26, 2019.

[55] The Warriner letter, the Nov. 30, 2018, note, the Jan. 2019 FAF, the May 2019 note, and the July 18, 2019, notes deal with the grievor's functional abilities and do not address his health in November of 2017.

[56] No doctors testified.

[57] No clinical records or notes of the doctors identified in this decision were produced. No test results, if any tests were conducted, were produced.

[58] The hearing was not made privy to any details as to what medication or medications the grievor might have been taking and when he took them.

C. The penalty reduction from a three-day to a two-day suspension

[59] Ms. Najm testified that she was the delegated decision maker at the third level of the grievance process. In her examination-in-chief, she recalled that the grievor acknowledged to her the findings in the final report and acknowledged that his behaviour had been inappropriate. She said that she found that the grievor was remorseful for his behaviour and that he said that it would not be repeated. She said that he said to her that he understood that the Nov. 3 communication was offensive and that he did not dispute that his actions were inappropriate. She said that based on

the submissions made at the third-level grievance hearing, she believed that he was remorseful for his behaviour and that he had learned from what had happened. She in turn reduced the penalty from a three-day to a two-day suspension.

[60] Ms. Najm was asked about the grievor's health, and she said that she appreciated his health situation but that she did not see any correlation between it and his behaviour. When asked by counsel for the employer if the grievor provided her with any details of the health issue, she said that he did not and added that he said only that his medical situation accounted for his behaviour; however, she did not see any correlation.

[61] In cross-examination, the grievor asked Ms. Najm why she thought that the allegations in the final report were true and correct and not frivolous. Ms. Najm responded that she felt that this was an inappropriate question. The grievor also asked Ms. Najm if she was aware that he had been suffering from depression at the time, to which she said that she was not aware and that that was not communicated to her. When the grievor pushed Ms. Najm on the question of his depression, she stated that the medical information in her possession at the time did not go into that much detail.

[62] The grievor asked Ms. Najm why she thought that the discipline she rendered was more appropriate than a written reprimand. She stated that it was a function of the severity of the misconduct.

[63] In re-examination, Ms. Najm was asked if at any time the grievor questioned the validity of the final report, to which she said that at the time of the third-level hearing, he said that he accepted the final report and that he understood that his behaviour had been inappropriate.

III. Summary of the arguments

A. For the employer

[64] The employer referred me to *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BC CA), *Wm. Scott & Co. v. C.F.A.W., Local P-162*, 1976 CarswellBC 518, [1977] 1 Can. L.R.B.R. 1, *McCaskill v. Canada (Treasury Board - Indian & Northern Affairs)*, PSSRB File No. 166-02-19524 (19900320), 1990 CarswellNat 1609, *Bisaillon v. The Canadian Food Inspection Agency*, 2002 PSSRB 16, *Albert v. Canada Customs and Revenue Agency*, 2005 PSSRB 7, *Basra v. Attorney General of Canada*, 2010 FCA 24, *Cooper v. Deputy*

Head (Correctional Service of Canada), 2013 PSLRB 119, *Szmukier v. Deputy Head (Correctional Service of Canada)*, 2015 PSLREB 37, *Stene v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 36, *Joe v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 95, and *Pelchat v. Deputy Head (Statistics Canada)*, 2019 FPSLREB 105.

[65] The employer submitted that first, the Board is to determine if there was misconduct, and that if it determines that there was misconduct, it is then to assess if the discipline imposed was appropriate. If it is determined that it was excessive, the question becomes that of what would be reasonable in the circumstances.

[66] The employer submitted that much of the grievor's testimony was contradictory and referred me to the test set out in *Faryna*.

[67] The employer submitted that the final report should be given high probative value, even though it was a separate process. The final report not only corroborates the evidence of Ms. A but also was not contested by the grievor, who has experience as a union representative and steward. In addition, during the harassment investigation, the investigator gave the grievor opportunities to comment on it, and he told her that it had all the elements of his version of events.

[68] The employer stated that despite having had the opportunity to review and comment on the draft report, the grievor was adamant in his testimony that the report did not capture everything. In addition, he stated that he did not have enough time to comment, that he could not present his version, or that his version was not captured. He wrote to the investigator in May of 2018 and said that not only had she captured all the relevant information but also that she had done a good job. The grievor provided his comments to the investigator by an email dated July 19, 2018.

[69] In addition to the opportunity to provide comments before the final report was issued, after it was issued and provided to him, he was given the opportunity to grieve it; he did not.

[70] In his disciplinary hearing, the grievor said that he understood that his actions were inappropriate and that he would not repeat his actions. Ms. Najm, who heard the grievance at the final level, testified, and her notes of that hearing were entered into evidence. Those notes state that the grievor said these things, yet in his opening

statement, his testimony-in-chief, and his cross-examination, the grievor blamed Ms. A for misunderstanding. While in Ms. Njam's notes she indicates that he is remorseful, there was no indication during the hearing before the Board of any remorse by the grievor for his actions.

[71] The evidence clearly disclosed that the grievor, on November 3, 2017, made comments to Ms. A that he was attracted to her, that they should start out slow, that they could go to a movie together, that he could take her to India, and that she was the friend he had been waiting for his whole life. Ms. A stated that these comments came out of nowhere and that they scared her. The grievor knew that she was married and had children. She testified that the comments made her uncomfortable and that she ended the conversation. November 3 was a Friday, and the conversation took place at the end of the day. The first thing the following Monday, she reported the incident to Mr. Julien.

[72] Mr. Julien spoke with the grievor and followed up with an email to him. It was made clear to him that his behaviour with respect to the Nov. 3 communication was inappropriate and unacceptable and that there was no ambiguity that Ms. A was not interested in having any further contact with him. The grievor testified that he met with Mr. Julien on November 17, 2017, and that he thought that Ms. A would be there; she was not. He wanted to apologize to her and was told that he already had done so and that she had accepted his apology. Mr. Julien twice told the grievor that Ms. A did not want to meet with him. The evidence was clear and unambiguous that Ms. A did not want to meet with the grievor.

[73] Despite this, on November 20, 2017, the grievor wrote an email with respect to pay revisions in a new collective agreement, in reply to which Ms. A thanked him for the information. Then, the grievor suggested that they meet in person at River Road or elsewhere. It is at this point that Ms. A made the harassment complaint.

[74] The grievor's admissions in the final report indicated that he did tell her that he would like to take her to a movie and to India, that he understood that he had crossed a line, and that he had apologized to her. He also confirmed that Mr. Julien told him that Ms. A was not comfortable talking to him or meeting with him and that he was told not to approach her and was to stay away from her until further notice. This is his version of events. Therefore, there is no doubt about the misconduct.

[75] The employer submitted that the amount of the penalty, a two-day suspension, was appropriate and not excessive in the circumstances. The grievor has failed to understand that what he did was wrong, and he spent the entire hearing trying to justify what he did and to place the blame elsewhere.

[76] A clear example of the grievor's continued behaviour that he did not learn was an exchange during cross-examination on an email exchange from Ms. Prince, which he said was very clear and unambiguous about not contacting Ms. A in August of 2018. He suggested that Mr. Julien's earlier instructions were not clear. The gist of the exchange showed that the grievor disregarded Ms. Prince's instruction as well and that he contacted Ms. A. His behaviour during the hearing of putting forward only one part of the email exchange and not the second part demonstrated that he misled the Board and yet again repeated the misconduct that resulted in the two-day suspension.

[77] With respect to the medical documents produced, none of them are relevant.

[78] The employer submitted that the grievance should be denied.

B. For the grievor

[79] The grievor also referred me to *Joe* as well as to *Cwikowski v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 7, and *Joss v. Treasury Board (Agriculture & Agri-Food Canada)*, 2001 PSSRB 27.

[80] The grievor submitted that harassment is offensive.

[81] He said that the Nov. 3 communication was an informal meeting that dealt with both work-related and personal matters. He said that the comments he made were misinterpreted by Ms. A. He said that she was friendly to him and that they had informal conversations. While work was discussed, other personal matters were also discussed. He said that because she was helping him navigate through some issues, he would have made it known that she was "attached to" him, and nothing else. He submitted that she said that he said "attracted". He said that he did not mean that, and he apologized.

[82] He said that he felt that he should take responsibility for the comments. He said that they were cultural and then stated that they were not directed at Ms. A. He reiterated that the interpretation by Ms. A was incorrect.

[83] The grievor admitted to writing the Nov. 20 communication and that its purpose was to move forward. He stated that Mr. Julien instructed him to maintain a professional relationship but that Mr. Julien did not expressly put a cease-and-desist order on him; he said that he was just told to be professional. The grievor submitted that Mr. Julien should have told him to cease all communications. He stated that perhaps Ms. A asked Mr. Julien to do that; however, when Mr. Julien instructed him, Mr. Julien only said to work professionally. He said that Mr. Julien did not say to stop; if Mr. Julien had stated it, the grievor stated that he would have stopped.

[84] The grievor submitted that part of the Nov. 3 communication was personal and not work-related. He said that it did not matter where the meeting he had suggested in the Nov. 20 communication would have taken place because in either event, it would have been work-related, and therefore, the meeting's location would have been in a workplace. He stated that when he asked Ms. A in cross-examination how she found his behaviour harassing, he said that she replied that she thought that his request was personal; however, he submitted that he was trying to restore the professional relationship. It was not personal, and there was nothing written in the Nov. 20 communication to suggest that it was to restart the relationship personally.

[85] The grievor submitted that he and Ms. A attended an Institute dinner and spoke of how he had purchased a gift for her in India when he had been there and had given it to her. He submitted that she agreed that they spoke about matters that were of a personal nature, such as food, travel, and film genres.

[86] The grievor submitted that any reasonable person would think that the meeting request set out in the Nov. 20 communication was appropriate and not harassment or unprofessional. He submitted that it was a lack of clarity in what he was told to do. He stated that he should have been given clear instructions.

[87] The grievor submitted that any reasonable person would not find chatting about personal matters, such as food, harassment. He said that despite this, he was still remorseful and apologized, and it was left there. The grievor said that Ms. A was still his supervisor and that she oversaw some of his files. He said that she attended a group meeting; the work did not stop.

[88] The grievor also submitted that he had mental health issues in August of 2017. He made submissions about a staffing issue in 2015 and about having been in a

qualified pool and not receiving an opportunity. In this vein, he referred to being micromanaged by Mr. Breivik and to this ruining his performance and to him being placed on a performance management plan. He submitted that his work environment was toxic. He further submitted that when the discipline was imposed, he was suffering a relapse of his mental health condition, and he took time off work.

[89] He submitted that the discipline was implemented in an improper manner and that he was distressed and humiliated by the discipline. He said that there is an onus on management to impose discipline in a process.

[90] He submitted that Ms. A was his direct supervisor from 2019 until 2022.

[91] He submitted that he was psychologically harmed.

[92] He submitted that there might have been a misinterpretation, for which he took responsibility and was remorseful.

[93] He submitted that he took anger-management courses to control his emotions.

[94] He submitted that the discipline was excessive for the interpretation of the messages that he sent.

[95] He submitted that he was not provided any promotional opportunities and that his performance led to depression and led him to go on medical leave. All this should be taken into account.

[96] The grievor submitted that the discipline should be mitigated, due to his health, and that it should be taken into account that this was an isolated incident and that he rehabilitated himself by having his medical condition assessed, to better understand his condition and how it relates to his workplace.

[97] The grievor asked the Board to set aside the discipline, and if that is done, he asked to be reimbursed the two days of pay he lost due to the disciplinary suspension as well as out-of-pocket expenses of $1650.00. In the alternative, he submitted that if the Board feels that harassment has taken place, he asked that the Board reduce the discipline to a one-day suspension, based on the mitigating circumstances and his health condition.

C. The employer's reply

[98] The employer submitted that the grievor has not demonstrated any monetary loss above and beyond his two days of pay. He also has not established any evidence of a medical issue that had any bearing on the incidents in the fall of 2017.

IV. Reasons

A. The merits of the grievance

[99] Adjudication hearings with respect to discipline under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) are hearings *de novo*, and the burden of proof is on the employer.

[100] The usual basis for adjudicating discipline issues is by considering the following three questions (see *Wm. Scott*): Was there misconduct by the grievor? If so, was the discipline imposed by the employer excessive in the circumstances? If it was excessive, what alternate penalty is just and equitable in the circumstances?

1. Was there misconduct by the grievor?

[101] The employer alleged that the grievor was culpable of misconduct because of his harassment of Ms. A after he had been instructed not to contact her.

[102] The facts are largely not in dispute. What appears to be at issue is the interpretation of those facts.

[103] The facts disclose that in the Nov. 3 communication, the grievor said some things that offended Ms. A, who testified that he said the following to her during the Nov. 3 communication:

- that they could start out slow, referencing going for coffee and then going to a movie together;
- that he was attracted to her;
- that he wanted to take her to India; and
- that she was the friend he had been waiting his whole life to meet.

[104] At least two of the things stated were admitted by the grievor: first, he wanted them to attend a movie together, and second, he wanted her to travel to India with him.

[105] He denied stating that he said that he was attracted to her, instead suggesting that he said “attached”, and that somehow, it came out on the communicator chat as “attracted”. The grievor characterized the comments as having been misunderstood.

[106] A main issue of contention for the grievor was that Ms. A had stated that in the Nov. 3 communication, he had said to Ms. A that he was attracted to her. He testified that he did not say that but that he said that he was “attached”. He suggested that the communicator chat changed the word “attached” to “attracted”.

[107] It is common and well known that when typing on a mobile device (a smartphone or tablet), depending on what settings the device has and is set to, functions could be enabled that assist in typing a message. One is an autocorrect function in which an incorrectly typed word is corrected for spelling. Some devices and programs have a program or ability to correct for meaning, for example, choosing between words that sound the same but have different meanings, such as to, two, and too, or there, their, and they’re. Further, some devices have what is called “predictive text”. This is when you are typing a message and the application provides a word suggestion or several word suggestions, depending on the letters being typed.

[108] The two words at issue, “attracted” and “attached”, are spelled similarly, and I have no doubt that if one typed the letters “att” on a smartphone or device that has a predictive text function (or similar function), both the words “attracted” and “attached” could come up as suggestions if the predictive text function is enabled. However, also from what is commonly known, when these suggestions come up, the user has to take a positive step to choose the suggested word. It is not automatically inputted. If you don’t take that positive step and keep typing, then the typed word goes into the text message or email. Now, if you misspell a word, the autocorrect function (again, if enabled) may correct the spelling, and you don’t notice it. For example, if you intend to type the word “attached” but forget the “c” and type instead “attahed”, then the autocorrect function will correct the spelling, and you may not notice it.

[109] There was no actual evidence that the communicator chat had any of these functions, let alone that they were enabled. The grievor merely suggested that it must have happened. This is insufficient to stand as proof on a balance of probabilities that it did happen. The version of the facts as testified by Ms. A was also contained in an

email to Mr. Julien. In that email, written first thing on Monday, November 6, 2017, relaying to him the events of the Nov. 3 communication, Ms. A stated that not only had the grievor said that he was attracted to her but also that he had said that they "should start off slow with coffee" and that she was the "… friend that he had been waiting his whole life to meet."

[110] The grievor also suggested that his suggestion that he and Ms. A attend a movie and that she accompany him to India were misunderstood. He said that attending movies or travelling with co-workers was perfectly fine as colleagues in the Burlington lab had done this.

[111] Ms. A found the grievor's dialogue and suggestions in the Nov. 3 communication inappropriate. The evidence disclosed that after he made the comments and suggestions and Ms. A indicated that she challenged him on them, he apologized.

[112] On Monday, November 6, 2017, Ms. A brought the Nov. 3 communication to the attention to her supervisor, Mr. Julien, by sending him a detailed email that day. He in turn arranged a telephone meeting with the grievor on November 9, 2017, which they took part in. That same day and after that meeting, Mr. Julien sent the grievor an email.

[113] According to the grievor's account set out in the preliminary and final reports, he confirmed that on November 9, 2017, he met with Mr. Julien and that Mr. Julien told him that he had to be respectful in all his communications with supervisors and managers. He said that Mr. Julien told him that he could still approach Ms. A as a manager. He said that he asked Mr. Julien to schedule or arrange a meeting with Ms. A (and with Mr. Julien present) as he wanted to clarify what had happened on November 3. He said that Mr. Julien told him that inviting Ms. A to go to the movies and to India with him was inappropriate. The grievor reiterated this version of events to me in his testimony-in-chief.

[114] Mr. Julien did not testify; however, his account of what happened at the Nov. 9 meeting, set out in both the preliminary and final reports, states that he told the grievor that the workplace was not the place to make advances (to proposition Ms. A), that the grievor's invitation to Ms. A to take her to a movie and India was of concern, and that Ms. A did not feel comfortable meeting with or speaking to the grievor. Mr. Julien's account also reflected that the grievor had asked him to try to arrange a

meeting for Ms. A, the grievor, and himself, which he told the grievor he would canvass with Ms. A.

[115] Ms. A testified that she understood that Mr. Julien had told the grievor not to approach her.

[116] According to the testimony of the grievor and his account set out in both the preliminary and final reports, as well as Mr. Julien's account in both the preliminary and final reports, the grievor spoke to Mr. Julien on November 14, 2017, stating that he wanted to apologize to Ms. A again, and he canvassed with Mr. Julien the arranging of a meeting with Ms. A. According to the testimony of the grievor as well as the accounts of both the grievor and Mr. Julien in both the preliminary and final reports, Mr. Julien confirmed to the grievor that he had inquired of Ms. A about a meeting and that she had indicated that she would get back to Mr. Julien. During this discussion, the grievor and Mr. Julien set out that they were to speak again on November 17, 2017.

[117] Again, in the grievor's testimony and his account set out in both the preliminary and final reports, as well as Mr. Julien's account in both the preliminary and final reports, the grievor again spoke with Mr. Julien, on November 17, 2017. During that discussion, the grievor again asked Mr. Julien about arranging a meeting with Ms. A. Again, according to the grievor's testimony and both the accounts attributed to him and Mr. Julien in the preliminary and final reports, Mr. Julien told him that he had spoken to Ms. A about a meeting, that she would get back to him (Mr. Julien), and that in the meantime, the grievor was not to approach her and was to let her decide. The grievor was also told not to go to River Road and to stay away from her until further notice.

[118] What happened next was the Nov. 20 communication. The first email in the chain that day was a straightforward email from the grievor to Ms. A referring to the new pay revisions that had been negotiated by the union. It was an innocuous enough email, and the grievor was a member of the union executive. Ms. A thanked the grievor for the information. This email did not appear to be of a personal nature and was work-related, given that it spoke of salary or pay revisions. The email also stated that the salary tables were not public yet. Given the grievor's position in the union, it could potentially be seen as a communication with respect to union business, since Ms. A was also a member of the bargaining unit.

[119] What then happened was that the grievor emailed Ms. A at 14:05, as follows:

> *Sure and good to see :-)*
>
> *I have heard about the thinking on guidance…. Lets* [*sic*] *plan to meet in person maybe on Nov 30 @ RR* [River Road] *if it works for you maybe* [*sic*] *nearby place!! .*

[120] It is clear to me that the grievor's email communication on November 20, 2017, at 14:05, was the type of contact or communication that he was clearly told not to engage in with Ms. A.

[121] The grievor stated that his Nov. 20 communication was not improper and suggested that the instructions given to him by Mr. Julien did not forbid him from communicating with Ms. A. He stated that if he was to not contact Ms. A, Mr. Julien should have told him so in no uncertain terms. He stated that when they first discussed the Nov. 3 communication, Mr. Julien told him that he had to be respectful in his dealings with supervisors and managers and that he could still approach Ms. A as a manager. He said that he could have been given a cease-and-desist-type instruction or order but was not and that he was told that he could still contact her but in a professional manner, with respect to work.

[122] I find that the grievor's position is not in line with the test for credibility set out in *Faryna*, which the Board has cited and followed for decades. In *Faryna*, the Court stated as follows:

> …
>
> *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.…*
>
> …

[123] The grievor, in both his testimony before me and in his submissions, stated that the part of the Nov. 20 communication where he suggests to Ms. A that they meet either at River Road or another location was not improper and not harassing because

he was authorized by Mr. Julien to speak to Ms. A as long as it was work-related and respectful.

[124] The grievor's testimony and submission in this respect do not withstand the test articulated in *Faryna*. On three occasions, November 9, 14, and 17, 2017, the grievor asked Mr. Julien to arrange a meeting with Ms. A, and on those three occasions, the grievor was told by Mr. Julien that he (Mr. Julien) would either canvass the idea with Ms. A. or follow up with her. It is clear to me that the grievor was well aware and understood the instruction of Mr. Julien, no matter in what manner it was conveyed to him, and that the clear instruction was to leave Ms. A alone. I find this to be the case, given the grievor's behaviour in this respect.

[125] On November 9, 2017, the grievor was spoken to by Mr. Julien about Ms. A's complaint about the Nov. 3 communication. At that time, he asked Mr. Julien to find out if Ms. A would meet with him, and he was told by Mr. Julien that Mr. Julien would approach Ms. A and canvass the idea with her. If, at the time of the Nov. 9 meeting, the grievor had understood that he could just speak with her or try to meet with her, he would not have asked Mr. Julien to try to arrange a meeting. If there was any doubt in his mind as to whether he should approach or contact Ms. A, it would have been put to rest at the Nov. 9 meeting after he asked Mr. Julien about arranging a meeting and Mr. Julien responded that he would contact Ms. A. It indicates to me a clear understanding of the lay of the land at that time, and it is clear that the grievor understood that he was to steer clear of Ms. A.

[126] It is also clear that the grievor knew full well that he was to stay away from and not contact Ms. A because a scant two working days later, on November 14, 2017, the grievor followed up with Mr. Julien, again asking about his proposed meeting. Mr. Julien told the grievor that he would follow up with Ms. A. Again, if the grievor had thought that there was not an instruction with respect to contacting Ms. A, he would not have raised it with Mr. Julien. Finally, a third meeting and discussion took place between the grievor and Mr. Julien, this time on Friday, November 17, 2017, and again, for a third time, and just three days after the previous discussion, he asked Mr. Julien about meeting with Ms. A. Again, like the two previous times, Mr. Julien told the grievor that he would follow up on the request.

[127] In addition, November 17, 2017, was a Friday. According to the preliminary and final reports, both Mr. Julien and the grievor recounted their recollection of that discussion that is relevant to this grievance, which was this:

- the grievor met with Mr. Julien that Friday afternoon in Mr. Julien's office;
- during the discussion that day, the grievor again asked Mr. Julien about meeting with Ms. A; and
- Mr. Julien told the grievor that Ms. A was thinking about the suggested meeting and that the grievor was not to go to River Road and was to stay away from Ms. A.

[128] Yet, despite being told this, on the next working day, Monday, November 20, 2017, the grievor disobeyed this clear instruction, approached Ms. A, and suggested a meeting first at River Road and then elsewhere.

[129] In his testimony-in-chief, the grievor did not speak at all about the November 14 or November 17, 2017, meetings. In cross-examination, counsel for the employer brought the grievor to the preliminary and final reports and the facts set out in them that were attributed to him as well as to Mr. Julien. During his cross-examination, the grievor made an overarching statement that while they were generally correct, the reports did not set out specific details. When he was pressed, the grievor admitted to receiving the preliminary report, having an opportunity to review it and comment on it, and providing his comments to the investigator. When he agreed to all this and was then asked to provide particulars, his answer was that he would have to read the report.

[130] Counsel for the employer went further and brought the grievor to a specific paragraph of the preliminary report that sets out his account of what he recalled of the Nov. 3 communication. He was then brought to his email to the investigator commenting on the preliminary report, and counsel put to the grievor that he had accepted what was in the preliminary report as accurate, or he would have included comments in his email on the preliminary report. The grievor's response was that his version in the preliminary report was accurate but not "fully accurate". He then said that he never provided any details as to the "gaps" in the report. Indeed, at the hearing before me, the grievor did not provide any further information as to the "gaps", albeit he admitted to counsel that he knew about the "gaps" as far back as May 25, 2018.

[131] Counsel then asked the grievor that given his view of the preliminary report as of May of 2018, what was his view or analysis? To this, the grievor said that he could not say what he was not in agreement with. He then stated that at the time of reviewing and writing his comments on the preliminary report, it would have taken significant time to come up with his rebuttals, because he was suffering. The grievor later made a statement that he was suffering from depression and that he had anxiety.

[132] It is clear to me that the grievor knew that he was not to approach Ms. A. Between November 9 and 17, 2017, a mere five working days, the grievor asked three times for Mr. Julien to set up a meeting with her. On those three occasions, Mr. Julien indicated either that he would speak with Ms. A and see if she would agree to a meeting or that he would follow up with her about the request, as it had already been made. I also note that on the last occasion, Friday, November 17, according to the grievor's account given during the harassment investigation and as recorded in both the preliminary and final reports, Mr. Julien explicitly told the grievor not to approach Ms. A and to let her decide about meeting with him. Despite this explicit instruction, the grievor approached Ms. A and suggested that they meet.

[133] While I was provided with some notes written by a medical professional at times either months before the November 2017 communications, which led to the discipline, or months or even years after them, nothing in those documents provided any evidence or nexus to explain the grievor's behaviour.

[134] The grievor's position with respect to the Nov. 3 and Nov. 20 communications with Ms. A was two-fold: first, it was that he had done nothing wrong and that Ms. A misunderstood them, and second, assuming that he did something wrong, he was not responsible because he had been depressed and could not control his emotions. In short, he suggested a medical defence for his actions or, without explicitly saying so, that he was discriminated against.

[135] A medical defence or discrimination claim would have required the grievor to provide some evidence that disclosed a nexus between the behaviour and the medical condition or that a disability was a factor in the discipline imposed on him. The fact that a person may suffer from depression, without more, does not exonerate misconduct or establish it as a factor in the subsequent discipline. There was no evidence provided by any medical professional or even the grievor explaining how it is

that his depression was a factor on November 20, 2017, in communicating with Ms. A. While there was some documentation provided with respect to some assessments that were done, they took place significantly after the events at issue, were with respect to his fitness to work, and did not address his behaviour or mental health in any manner in or about the time of the events (November of 2017) in any way to allow any assessment that a medical condition or disability was a factor in his behaviour or discipline.

2. Was the discipline excessive in the circumstances?

[136] As the employer proved the allegation of misconduct, I now turn to whether the penalty, the two-day suspension, was excessive. For the reasons that follow, I am satisfied that it was not excessive, and I decline to set it aside.

[137] The assessment of the penalty in discipline matters in the federal public sector was set out at paragraphs 179 and 180 of *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62, where the former PSLRB stated as follows:

> ***179*** *Brown and Beatty,* Canadian Labour Arbitration, 4th ed.*, discusses the arbitrator's role in assessing the fairness of a particular penalty imposed as follows:*
>
> …
>
> The purpose of their review is to determine for themselves that a sanction is just and reasonable in all the circumstances — that the penalty "fits the crime" (page 7-129)
>
> …
>
> It is now understood that testing the reasonableness of a disciplinary sanction involves a wide-ranging review of a broad set of circumstances concerning the employee, the employer and the incident itself. (page 7-144)
>
> …
>
> Consideration is invariably given to the nature of the misconduct, the personnel circumstances of the employee, the way in which the employer has managed the situation or a combination of all three. The employment context and the employee's occupational and professional status often play important roles as well.
>
> In an effort to give employers and employees a better sense of the analytic framework they employ, arbitrators have provided checklists of the most important factors that

typically organize their deliberations. In an early and often-quoted award, one arbitrator summarized in the following terms those factors that, other things being equal, can offset the gravity of the misconduct:

> It has been held, however, that where an arbitration board has the power to mitigate the penalty imposed on the grievor, the board should take into considerations in arriving at its decision the following factors:
>
> 1. The previous record of the grievor
> 2. The long service of the grievor
> 3. Whether or not the offence was an isolated incident in the employment history of the grievor
> 4. Provocation
> 5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated
> 6. Whether the penalty imposed has created a special economic hardship for the grievor in light of his particular circumstances
> 7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination
> 8. Circumstances negativing intent, e.g., likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it
> 9. The seriousness of the offence in terms of company policy and company obligations
> 10. Any other circumstances which the board should properly take into consideration (page 7-153)

…

180 *Discussing rehabilitative potential and the corrective approach, Brown and Beatty write as follows:*

> The critical question for arbitrators using a corrective approach is the grievor's capacity to conform to acceptable standards of behaviour in the future. To answer this question requires an assessment of the grievor's ability and willingness to reform and rehabilitate himself or herself so that a satisfactory employment relationship can be re-established. In a word, an arbitrator must decide whether the person is "redeemable". On this view, as one arbitrator pointed out, the checklist of mitigating factors are but general circumstances of general considerations which bear upon the employee's future prospects for acceptable behaviour, which is the essence of the whole corrective approach to discipline.

> In assessing whether a viable employment relationship can be re-established, arbitrators put great weight on whether the employee has tendered a sincere apology and/or expressed real remorse. The assumption is that employees who do so recognized the impropriety of their behaviour and are likely to be able to meet the employer's legitimate expectations.
>
> [*Sic* throughout]

[138] The grievor did not have any discipline on his record, which is a factor in his favour. However, at the time of the misconduct and discipline, he was not a long-service employee. He joined ECCC only in 2010, so he had only seven years of service as of the Nov. 3 communication.

[139] The action of the grievor does not appear to have been caused by any sort of provocation.

[140] The offence was not an isolated incident. It was a continuation of unwanted contact with Ms. A. While Ms. A accepted the grievor's apology for the Nov. 3 communication, it had been made clear to the grievor that Ms. A did not want to be contacted by him, and he had been instructed to leave her alone. He had asked for a meeting and had been clearly told that Ms. A was considering the request. Rather than let the matter be, the grievor not only contacted Ms. A and suggested they that meet, when she told him not to, but also, he continued to persist. It is clear that the grievor had not learned from the steps taken as a result of the Nov. 3 communication.

[141] It did not appear to be a spur-of-the-moment or momentary aberration either, as he had asked Mr. Julien on more than one occasion about arranging a meeting with Ms. A, and the clear and unequivocal response was that it was to be left to Ms. A if she wished to have further contact with him.

[142] There was no evidence of the following:

- that the loss of two days of salary created any special economic hardship; and
- that the rules of conduct, either unwritten or written, had not been uniformly enforced, thus constituting a form of discrimination.

[143] As set out in the section immediately before this one, in which I went through my analysis on whether the grievor's behaviour amounted to misconduct and I went

through the grievor's actions and position, which was clearly one of denying that he had acted in an inappropriate manner, I concluded that the grievor did not misunderstand the nature of the instruction, and as such, this is not a factor to be considered to reduce the penalty.

[144] The Nov. 3 communication was an unwanted action by the grievor toward Ms. A. She told him so. This was a clear indication from her that his advance was unwanted. He was then spoken to by Ms. A's supervisor, someone who was three levels senior to him, and was told not to approach her. He ignored that instruction. Despite those clear and undisputed facts, the grievor still submitted to me that he did not act inappropriately and that it was Ms. A who misunderstood things. It is clear to me that as of the time of the hearing before me, the grievor still did not understand the seriousness of his actions.

[145] Throughout the hearing, the grievor seemed to insinuate that he should not be held accountable for his behaviour because his discussions with Ms. A were of a personal nature and were about things that suggested that somehow, there was a personal relationship, and that the discussions he had with her were such that they absolved him of both any scrutiny and any wrongdoing.

[146] Whatever the grievor thought the relationship was, or whatever he thought it should have been or might have been, was put to rest after the Nov. 3 communication, when Ms. A clearly disabused him of what he might have thought. On November 3, 2017, she clearly indicated that his Nov. 3 communication was inappropriate and unwanted. If that was not enough, it was also made clear that this was the case when he was summoned to the meeting on November 9, 2017, with Mr. Julien, a manager three levels above his position. A discussion took place, and Mr. Julien made it clear.

[147] Also, for the reasons just articulated in the previous paragraphs, I do not believe that the grievor feels any remorse. It is difficult to show or feel remorse for something you do not believe you did or cannot understand was wrong.

[148] The grievor submitted that the discipline was implemented in an improper manner and that he was distressed and humiliated by the discipline. While the grievor did provide some testimony about how the discipline process occurred, there was nothing untoward about it. While the grievor might have found it distressing and humiliating, the disciplinary process, especially when it results in a disciplinary

sanction, is rarely something that can be looked upon as a pleasant process. He suggested that there was an onus on management to impose discipline in a process. It did that.

[149] The grievor submitted that Ms. A was his direct supervisor from 2019 until 2022. The fact that Ms. A became his direct supervisor some two to five years after the grievor conducted himself in an inappropriate manner toward her does not somehow vitiate his inappropriate behaviour and accord with a reason to reduce the penalty. It was not some form of condonation.

[150] The grievor submitted that he was psychologically harmed; how was not clear, as he did not elaborate. The grievor brought forward several documents related to his health. These documents related to issues that had nothing to do with his behaviour in November of 2017. No medical professional who treated the grievor testified; nor were any of their clinical records provided. Most of the health-related material dealt with his functional abilities. There is nothing in the health-related documents to suggest a nexus between the discipline and his health, let alone that he was psychologically harmed.

[151] The grievor made submissions about taking an anger-management course for controlling his emotions. The facts as set out and the behaviour involved had nothing to do with him acting in a manner that would suggest that he had an anger-management problem. It is unclear what or how this has anything to do with this matter.

[152] Finally, as outlined and addressed previously, the grievor made submissions about not being provided promotional opportunities and that this affected his performance and led to depression, which led to him being on medical leave. Again, there has been no nexus established between any of these submissions and the November 2017 behaviour that led to his discipline or to the discipline itself.

[153] Having assessed the disciplinary penalty against the various factors concerning the grievor, the employer and the incident itself, I am satisfied that the grievor's two-day suspension was not excessive.

B. Sealing order

[154] In *Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120 at paras. 9 to 11, the Public Service Labour Relations Board (PSLRB) stated as follows:

> ***9*** *The sealing of documents and records filed in judicial and quasi-judicial hearings is inconsistent with the fundamental principle enshrined in our system of justice that hearings are public and accessible. The Supreme Court of Canada has ruled that public access to exhibits and other documents filed in legal proceedings is a constitutionally protected right under the "freedom of expression" provisions of the* Canadian Charter of Rights and Freedoms*; for example, see* Canadian Broadcasting Corp. v. New Brunswick (Attorney General), *[1996] 3 S.C.R. 480;* Dagenais v. Canadian Broadcasting Corp., *[1994] 3 S.C.R. 835;* R. v. Mentuck, *2001 SCC 76,* Sierra Club of Canada v. Canada (Minister of Finance), *2002 SCC 41 (CanLII).*
>
> ***10*** *However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against other important rights, including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as* Dagenais *and* Mentuck*. These decisions gave rise to what is now known as the* Dagenais/Mentuck *test.*
>
> ***11*** *The* Dagenais/Mentuck *test was developed in the context of requests for publication bans in criminal proceedings. In* Sierra Club of Canada*, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:*
>
> …
>
> *1. such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
>
> *2. the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*
>
> …

[155] The Supreme Court of Canada reformulated the applicable legal analysis in *Sherman Estate v. Donovan*, 2021 SCC 25, at paragraph 38, so as to require the party seeking a confidentiality order to establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[156] The grievor submitted some letters and documents from health care professionals. While some of them did not disclose any specific information, four of them went into some detail and contained personal health information about him; they are as follows:

- the Jan. 2019 FAF;
- the May 2019 note;
- the July 18, 2019, notes, in response to questions sent to Dr. Taha in a letter to the doctor dated June 26, 2019; and
- the Warriner letter.

[157] The information in these documents contains significant personal information about the grievor's medical condition. In *Sherman Estate*, the Supreme Court recognized that privacy can be an important public interest, especially when information reveals something intimate or sensitive about an individual. The risk to this interest in this case is that, ultimately, I did not find these documents and the medical information they contain relevant to the issues I had to decide, nonetheless, they were submitted into evidence and form part of the public record. In terms of understanding this decision and the open court principle, there is no reason or benefit to making this information available to persons consulting the record. Based on the test in *Basic* and *Sherman Estate*, I find that it is appropriate to seal these documents.

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

(The Order appears on the next page)

V. Order

[159] The grievance is denied.

[160] The following documents are ordered sealed:

- The functional abilities form, which appears to have been completed and signed by Dr. Taha January 11, 2019 ("the Jan. 2019 FAF").
- The note from Dr. Taha dated May 28, 2019 ("the May 2019 note").
- The written notes from Dr. Taha dated July 18, 2019 ("the July 18, 2019, note"), in response to questions sent to Dr. Taha in a letter to the doctor dated June 26, 2019.
- The letter from Dr. Warriner, dated July 18, 2022 ("the Warriner letter").

May 15, 2024.

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