Date: 20241002

File: 566-02-42216

Citation: 2024 FPSLREB 135

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

DAVID BARTLETT

Grievor

and

DEPUTY HEAD
(Department of Fisheries and Oceans)

Respondent

Indexed as
Bartlett v. Deputy Head (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Zachary Rodgers, counsel

For the Respondent: Richard Fader, counsel

Heard at Halifax, Nova Scotia,
October 24 to 27, 2023,
and by videoconference,
December 18, 2023.

REASONS FOR DECISION

I. Overview and summary

[1] David Bartlett ("the grievor") was with the Department of Fisheries and Oceans ("the employer") from June 11, 1997, to August 16, 2019, when he was terminated. Throughout the period encompassed by this grievance, he held a leading deckhand/quartermaster position classified at the SC-DED-03 group and level.

[2] The grievor had been away from work on a period of sick leave early in 2018, and he returned with his crew for a tour of duty aboard the Canadian Coast Guard ("the Coast Guard") icebreaker *Louis St-Laurent* in July of 2018. The first sailing took place from July 5 to August 23, 2018. A second sailing took place with the same crew from October 4 to November 1, 2018. Both sailings took place in the Arctic Ocean.

[3] On October 25, 2018, Deck Officer Nicolas Houle reported to the ship's captain, Terry Frost, and the ship's health officer, Jo Anne Blomeley, on the second sailing that certain members of the crew had reported to him that over the course of the July 5 - August 23, 2018, sailing, and again during the sailing that began on October 4, the grievor was heard to utter the following (paraphrased) statements:

- "One night you'll come on board, and everybody will be fucking murdered."
- "I'd better take my pills before the fire axe comes out."
- "The mate reported me to the chief, for all things, hitting the ice; time to break out the fire axe."
- "I'll be on the officers' deck tonight with my fire axe."
- He stated that his superiors "would not live long after retirement as they've made many enemies."
- He suggested that the fire axe would be the solution to problems with colleagues.

[4] Deck Officer Houle also reported that he had heard the grievor make some of those statements.

[5] Upon receipt of that information, Captain Frost and Health Officer Blomeley immediately sought advice. Captain Frost telephoned the Coast Guard's Regional Fleet Director, Don Llewellyn, and Joan Evans, Superintendent, Marine Division. Health Officer Blomeley telephoned the doctor on call at the Qikiqtani Hospital in Iqaluit, Nunavut, who suggested that the grievor be removed from the *Louis St-Laurent* as quickly as possible. Captain Frost agreed with that course of action, as did his superiors. Since the vessel was then in open Arctic waters, Captain Frost set a course

for Iqaluit. Health Officer Blomeley contacted the Royal Canadian Mounted Police (RCMP) detachment there and made arrangements for the RCMP to arrive via helicopter and transport the grievor to the hospital for a medical assessment.

[6] The following day, October 26, 2018, two RCMP members arrived by helicopter, in which they escorted the grievor and Health Officer Blomeley to the hospital in Iqaluit.

[7] Later that same day, the grievor was examined by medical personnel and was declared fit to travel. Captain Frost did not want the grievor to return to the *Louis St-Laurent* and therefore made arrangements to have him flown home from Iqaluit.

[8] In a fact-finding meeting on November 6, 2018, the grievor admitted to uttering the phrases in question but stated that he had had no intention of harming anyone and was only being sarcastic.

[9] A Health Canada assessment was ordered on November 9, 2018, and disciplinary proceedings against the grievor were suspended pending the receipt of the assessment's findings. On January 9, 2019, Health Canada issued its findings, including the medical opinion that "… the behavior that resulted in Mr. Bartlett's removal from the ship was not a result of a medical condition, but may have been impacted by personal and professional stressors at the time."

[10] The employer sought clarification by way of a second Health Canada assessment, and with the grievor's consent, it requested one. On May 30, 2019, Health Canada repeated its earlier finding that "[t]he behavior that resulted in Mr. Bartlett's removal from the ship was not felt to be impacted by a medical condition."

[11] After the second assessment was received, disciplinary proceedings were resumed. On June 2018, the grievor was advised of his opportunity to make representations at a hearing on July 5, 2019. At that hearing, he once again admitted to uttering the phrases in question and restated the sources of stress and anxiety that he felt were behind his inappropriate behaviour. He expressed remorse.

[12] On August 16, 2019, the grievor was issued a letter terminating his employment.

[13] The grievor filed his grievance on August 27, 2019.

[14] This grievance was referred to adjudication under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and was heard in Halifax, Nova Scotia, from October 24 to 27, 2023. Counsel made their final submissions via the Zoom videoconference platform on Monday, December 18, 2023.

[15] For the reasons that follow, the grievance is denied. Given all the aggravating and mitigating factors, dismissal was the appropriate disciplinary measure.

II. Summary of the evidence, including the witnesses' testimonies

[16] The grievor joined the employer in June of 1997 when he was hired on as a deckhand. He became a permanent employee in 2007, at which time he served on the Coast Guard vessel *Terry Fox* then transferred to the *Louis St-Laurent*, where he remained until he was terminated.

[17] Throughout the period encompassed by this grievance, he held a leading deckhand/quartermaster position classified at the SC-DED-03 group and level aboard the *Louis St-Laurent*.

[18] Before he joined the Coast Guard, the grievor testified to a period of seven years' service in the Royal Canadian Navy. He described the navy lifestyle as challenging, especially when at sea. After a period at sea, he testified, tempers had a tendency to fray, and friction between crew members would occasionally result in verbal or physical confrontations. The language was coarse, and the humour was dark.

[19] In direct examination, the grievor was asked whether he had ever heard anyone utter death threats. He responded that he had heard crew members express frustration with computer equipment by threatening to throw it overboard and added that he had even heard a fellow navy crew member make the same comment about a person. The grievor testified that although he had heard such things in the navy, he did not hear anything like that in the Coast Guard.

[20] When he joined the Coast Guard in 1997, the grievor noticed many cultural similarities with life in the navy, especially with respect to life at sea. He testified to enjoying life at sea, which is why he applied for a position with the Coast Guard after he left the navy.

[21] The grievor testified that he had an enjoyable Coast Guard career. He learned the skills of accounting for provisions and began to assist with provisioning ships for their tours of duty at sea. He testified to his dedication and efficiency in ordering fresh fruits, vegetables, and certain food items that could be frozen. He testified that his provisioning models resulted in a more prudent use of public resources, for which he was recognized by being moved to the storemaster position, which he greatly enjoyed.

[22] The grievor testified to his difficulties addressing family related concerns while he was away at sea for several weeks or months at a time. He testified to those concerns in detail at the hearing, but for privacy reasons, they will be referred to only in general terms in this decision.

[23] The family related issues caused him a great deal of stress. In November of 2017, the grievor discussed the growing stress in his personal life with his captain. The grievor began to notice how his preoccupation with those issues gave rise to a lack of focus at work, which negatively impacted his performance.

[24] One incident in particular involved a fairly serious error in ordering provisions. As a result, the grievor was removed from his storemaster position, which he viewed as a demotion. He did not file a grievance because he had only been acting in the position, but he was upset at the decision to remove him since he enjoyed that position and felt that normally, he was quite good at it. The removal compounded his stress levels, he testified. In January of 2018, he went on a period of absence from work for stress-related medical reasons.

[25] The grievor testified to being very upset with the people who made the decision to remove him from the storemaster position, namely, his captain at the time, Captain James Chmiel, Logistics Officer Anthony Walters, and Chief Officer Don Whitty, none of whom testified at the hearing. The grievor said that he did not speak to any of them directly about his displeasure at having been removed from the storemaster position, but he testified to making his unhappiness known with other members of the crew. He testified that he was not shy about sharing his views about this or other issues.

[26] The grievor admitted to making the statements attributed to him about taking a fire axe to some of his colleagues and supervisors.

[27] When he was specifically asked in cross-examination about the superiors who "would not live long after retirement as they've made many enemies", the grievor admitted making this statement, or words to that effect, and added in his testimony that he had referred to Captain Chmiel, Logistics Officer Walters, and Chief Officer Whitty because of their involvement in the decision to remove him as the storemaster.

[28] The grievor also testified that he had had no intention of causing any harm to Captain Chmiel, Logistics Officer Walters, and Chief Officer Whitty. He merely vented his displeasure, he testified.

[29] In the spring of 2018, some of the sources of stress in the grievor's personal life subsided, permitting him to consider a return to work. He testified to also being concerned about his finances. These were compelling reasons to return to work. In correspondence dated June 13, 2018, Captain Chmiel related to Superintendent Evans and Deputy Marine Superintendent Anne Marie Noftall (who was facilitating the grievor's return to work) his concerns about the grievor returning to active duty aboard a Coast Guard vessel. Captain Chmiel wrote as follows:

> …
>
> *It is obvious that David Bartlett's performance has been affected by issues within his personal life. He spoke freely of these and the affect they have had on him. He also noted that he had taken advantage of the EAP program. As well, he will on his off-shift also avail of their services for other issues.*
>
> …
>
> *Therefore I fully support and recommend that alternate work be made available to David Bartlett from July 12 to October 04, 2018. I believe this will allow the employee time he needs to take care of his personal issues as well as provide him the opportunity to develop coping mechanisms to address his issues. I believe this time would be very valuable and beneficial to the employee. In regards to the vessel, the vessel will be at sea in the Arctic for this period. Given the safety critical nature of David's position (Leading Deckhand), it is imperative that he is focused at all times while on the bridge or at the wheel. Knowing the issues that he currently has in his life, I would think it would be very difficult for any employee to remain totally focused. However I believe that if he thought it would affect his work on the bridge, he would let his supervisor know. Also one must also consider the impact on David as well as the ship's operations if any of his issues deteriorates while in the Arctic.*
>
> …

[*Sic* throughout]

[30] The grievor testified both to his appreciation of the support that Captain Chmiel demonstrated and to his desire to return to active duty at sea. Elsewhere in this same packet of correspondence is an email of June 20, 2018, from Ms. Noftall to Superintendent Evans, reflecting a conversation that the grievor testified to having had with Ms. Noftall:

> …
>
> *… Mr. Bartlett is not requesting Alternate work at this time as his issues w/ personal life have improved. He is aware of the process to request this in the future if the need arises. He will be returning to work on the LSSL* [Louis St-Laurent] *July 12th. Please advise of any questions.*
>
> …

[31] Later that same day, Ms. Noftall wrote the following to Superintendent Evans: "I spoke with Cpt Chmiel this morning, he advised he has no concerns about safety, Cpt was aware he had some issues and his goal was to assist him in handling that, the employee indicated all is good and he is good to go to Arctic [*sic*]."

[32] The grievor testified to being unaware at that time of other options that would have delayed him returning to active duty. The stressful situations within his family had in fact subsided somewhat, he testified, but he was concerned about a loss of income, so he chose to return to active duty. He sailed on the *Louis St-Laurent* on July 12, 2018.

A. Events during the July 12 to October 4, 2018, sailing

[33] During the July 12 to October 4, 2018, sailing, the grievor made occasional comments about using the ship's fire axe on colleagues who he felt had wronged him. Deck Officer Xenia Wiens testified that during the voyage, this particular train of discourse was "… frequent enough that I warned him if the talk continued I would report him to a superior or the nurse." Deck Officer Wiens wrote this in a note prepared soon after the grievor had been removed from the ship on October 25, 2018. She had been tasked, along with others who were privy to such comments, to document them. Her notes, plus her transcriptions of notes she received from Deck Officer Houle, Leading Seaman David Pike, and Leading Seaman Taylor Marsh were collected and retained by Deck Officer Wiens, who submitted them in due course as

the investigation progressed. Referring to her notes, she said that what she wrote then was the truth.

[34] The grievor denied that Deck Officer Wiens told him that she would report him if he did not stop making such comments. He testified that she was being untruthful on that point. Had she told him to stop, he testified, he would have stopped, but she did not tell him to stop.

[35] Deck Officer Houle also testified about the grievor's fire-axe-related comments during the July 12 to October 4, 2018, sailing and testified to the truth of the notes he had written, which were transcribed by Deck Officer Wiens and entered into evidence. On the July 12 to October 4, 2018, sailing, Deck Officer Houle's notes read as follows:

> …
>
> - [The grievor] *stated his desire to use the fire axe on certain crew members, especially on C/O James Chmiel. I witnessed these statements on multiple occasions.*
> - *One day as I came up to the bridge I took a label off the fire axe that was saying* [*sic*] *"Dave's Axe".*
>
> …

[36] One other crew member, Leading Seaman Marsh, testified about events on the July 12 to October 4, 2018, sailing. He testified that the notes that he had been asked to prepare were true. With respect to the July 12 to October 4, 2018, sailing, the only note that appears is the following: "[The grievor] got the label maker out and made a label saying 'Dave's Axe' and stuck it on the fire axe by the bridge door."

[37] However, on the witness stand, when he was asked about the "Dave's Axe" label, Leading Seaman Marsh stated that he did not actually see the grievor affix it to the axe but testified as follows: "I saw the label on the fire axe, and I told Nick [referring to Deck Officer Houle] about it". Leading Seaman Marsh testified to complaining to Deck Officer Houle, "What is going on here? This is a bit much for the workplace if you ask me."

[38] In fact, no witness testified to actually seeing the grievor affix a label to a fire axe. The grievor was not asked whether he did affix such a label and did not volunteer the information. Leading Seaman Marsh and Deck Officer Houle testified to seeing the label on the axe. They both testified to their understanding that the label served to

further the grievor's running commentary about using the fire axe on members of the crew. They both testified to finding nothing funny about any of it.

[39] Although Deck Officer Houle's notes indicate that he removed the label, and although he testified to being the one who removed it, Leading Seaman Marsh also testified to being the one who removed it. He testified as follows: "I was the one who peeled the label off the fire axe, because I did not like it. There was nothing funny about it at all. I peeled it off and threw it out. [The grievor] was not there when I did that, I don't think anyone was there when I did that."

[40] Although the *Louis St-Laurent* remained at sea, the crew was changed. All the witnesses, including the grievor, left the ship on approximately August 23, 2018, at which time they were relieved by a new set of crew members. They returned to the ship on October 4, 2018. For the October 4, 2018, sailing, Captain Frost had taken over on an interim basis from Captain Chmiel.

B. Events during the October 4 to 25, 2018, sailing

[41] Captain Frost, Superintendent Evans, Denise Veber, Acting Senior Director, Atlantic Region Fleet, and Assistant Commissioner -– Atlantic Region, Gary Ivany, all testified about how they came to be aware of the grievor's comments on the July 12 to October 4, 2018, sailing. They all stated that the decisions to remove him from the ship and ultimately to terminate his employment were based on the events during the sailing that began on October 4, 2018. They acknowledged that the earlier sailing's events were related but maintained that their attention was focussed on the events of October 4 to 25, 2018.

[42] Deck Officer Houle testified to the grievor's increasing tendency to make fire-axe comments on the second sailing. He heard the grievor state, almost daily, his desire to use the fire axe on the ship's personnel. Most mornings, testified Deck Officer Houle, the grievor would make some kind of comment at some point along the lines of this: "Gotta go take my pills before I take out the fire axe." Once, the grievor said this to him: "One night you'll come on watch and everybody on the bridge will be fucking murdered!" Leading Seaman Marsh testified to hearing the grievor make this comment as well but did not specifically recall if Deck Officer Houle was present when the grievor said it.

[43] At one point, and on a date that he could not specifically identify, Deck Officer Houle told the grievor something like, “enough with the fire-axe comments today”. He also testified that that was not sufficient to stop the grievor from making such comments. He might stop making them for a while, testified Deck Officer Houle, but the next day, he would make the comments again.

[44] The grievor denied hearing Deck Officer Houle tell him anything of the sort because had he been told, he testified, he would have stopped. He testified that Deck Officer Houle was being untruthful about this particular point.

[45] Deck Officer Wiens testified to her impression that the grievor’s fire-axe comments became more and more frequent on the October 4, 2018, sailing. She testified to one incident in particular, on approximately October 23, 2018. She was at the helm on the bridge while the grievor steered the ship. Despite her instructions to avoid it, the grievor struck a pan of ice, and she told him not to do it again. She said that he laughed. The grievor recalled the incident as well, and he testified to having thought at the time, “Well, this is an icebreaker, isn’t it?” He did not recall saying that aloud to Deck Officer Wiens.

[46] Deck Officer Wiens testified that ice pans are to be avoided whenever possible because, although the *Louis St-Laurent* is an icebreaker, there is always the possibility of damage if the pan is struck obliquely rather than directly head-on. It is always a better practice to just avoid the ice whenever possible. Deck Officer Wiens advised the grievor that she would report the incident.

[47] Leading Seaman Pike testified to coming on watch on the afternoon of October 23, 2018, and as the grievor was leaving his watch and exiting the bridge, the grievor said to him, in passing, “the mate reported me to the Chief, for all things, hitting the ice; time to break out the fire axe.”

[48] The following day, on October 24, 2018, Leading Seaman Pike testified that when he arrived to take his place on watch, the grievor complained to him that all the Officers on board were deliberately trying to make him look bad and were out to get him, no matter what he did. As the watch changed, Leading Seaman Pike testified that the grievor said the following to him: “I’ll be on the Officer’s [*sic*] deck with my fire axe tonight.” Leading Seaman Pike reported this utterance to Deck Officer Houle.

[49] According to Deck Officer Houle, these recent events were the tipping point for him. The next morning, October 25, 2018, he went to see Health Officer Blomeley, because he wanted to ask her whether the grievor was on any kind of medication. Deck Officer Houle testified to a suspicion that the grievor might have been, in his words, "off his meds", which might have explained his constant utterances about taking a fire axe to other members of the crew.

[50] Health Officer Blomeley testified that she happened to be in a meeting with Captain Frost at 8:30 a.m. on October 25, 2018, when Deck Officer Houle came by her dispensary and asked about any mental health medications a particular crew member might be taking. She told him that she could not provide such information and asked what it was about, at which point Deck Officer Houle told both Health Officer Blomeley and Captain Frost all that he had heard from members of the crew regarding the grievor's comments about using the fire axe on certain crew members. Deck Officer Houle also told them that he had personally heard some of the comments.

[51] Health Officer Blomeley and Captain Frost both testified to being shocked and deeply concerned, and both testified that they each sought independent advice about what to do. Health Officer Blomeley contacted the medical doctor on call at the Qikiqtani Hospital in Iqaluit (referred to at the hearing as a "Praxes MD"), who agreed that the best course of action would be to remove the grievor from the ship and transport him to the hospital for evaluation. Health Officer Blomeley said as much to Captain Frost, who agreed. Captain Frost testified that a little while later that same morning, he called Mr. Llewellyn, the regional fleet director. Superintendent Evans happened to be with Mr. Llewellyn and was a party to the call.

[52] Everyone on the call agreed that removing the grievor from the ship was the best course of action. In the interests of the entire crew's safety, it should be done as soon as possible. One complication, testified Captain Frost, was that the *Louis St-Laurent* happened to be in open Arctic waters at that point and not near a port, so he decided to change course immediately for Iqaluit. Health Officer Blomeley spoke to a member of the Iqaluit RCMP detachment, who told her that he would arrange for helicopter transportation the following morning to land on the *Louis St-Laurent* and remove the grievor from the ship, to take him for a medical examination in Iqaluit.

[53] On the evening of October 25, 2018, Captain Frost testified to advising the two watchkeepers, one of whom was Deck Officer Wiens, about the plans to remove the grievor the following morning.

[54] Deck Officer Wiens did not speak to Captain Frost about locking her door, but she did tell Deck Officer Houle that she locked her door at night because the grievor made her feel uncomfortable. Captain Frost testified to his understanding that some crew members, including Deck Officer Wiens and one of the ship's cooks, had taken to locking their cabin doors at night.

[55] Captain Frost testified to the common and accepted practice of never locking doors when a ship is at sea, for safety reasons. If an emergency or any urgent situation should arise in which a crew member has to be met with, a locked door would create a complicating delay and perhaps a safety hazard. No one was supposed to sleep with their cabin door locked. However, on the night at issue and for the first (and only) time in over 40 years at sea, Captain Frost testified to locking his door because he was troubled about what he had heard earlier that day.

[56] Captain Frost testified to discussing with his ship's officers and his superiors all the options as to how to proceed. He testified that there was no so-called "brig" or any kind of holding cell on board that ship. He testified to a general knowledge about his powers of arrest in an emergency while his ship is at sea, but he was convinced that any form of intervention with the grievor would likely only escalate matters, so his orders to the crew consisted of informing the night watch of what had happened and of what was being planned for the following morning and to refrain from mentioning anything to the grievor.

[57] At 5:30 a.m. on October 25, 2018, Captain Frost reported to the Coast Guard Regional Command the plan to escort the grievor from the ship. At 10:15 a.m., a Coast Guard helicopter landed on the *Louis St-Laurent* with two RCMP members on board. Captain Frost summoned the grievor to the captain's cabin and read from a statement that he had prepared for the grievor, which was reproduced in his notes as follows:

…

> *The Officers (RCMP) are here for both our & your protection.*
>
> *It's been reported that you've been making comments about using a fire axe to harm people.*

> *Whether the comments are serious or not, it is unacceptable to make these kinds of comments in this day and age.*
>
> *It makes people uncomfortable with you in their presence, which can be considered a form of harassment.*
>
> *We can't have this situation onboard a ship working in a remote area like this.*
>
> *The doctor has recommended that you go ashore to be assessed.*
>
> *So, due diligence doesn't give me any choice, but to have you leave the vessel and be assessed.*
>
> *Coast Guard will make arrangements for your care and travel.*
>
> …

[58] The grievor testified to feeling shocked by the turn of events, and he said that he had been just joking and that he had not meant anyone any harm. He testified to apologizing for his actions at that time but later added that he did not have a specific recollection of apologizing. No other witness testified to hearing an apology from him at that point.

[59] The grievor testified that regardless of what he might or might not have said when he was confronted on the morning of October 25, 2018, he was truly sorry for the reactions that his comments stirred in people. He testified to realizing for the first time at the meeting held that day that his comments were not being taken as a joke. He testified to feeling that he was in serious trouble.

[60] The RCMP members removed the grievor from the ship. No arrest was made. Health Officer Blomeley accompanied them all to the Qikiqtani Hospital in Iqaluit, where an attending physician took over. She then returned to the *Louis St-Laurent*.

[61] Both Captain Frost and Health Officer Blomeley testified to receiving word from the attending physician in fairly short order to the effect that the grievor had been cleared to travel. Since Captain Frost did not want the grievor back on board, arrangements were made to fly him to his home from Iqaluit at the first available opportunity. The grievor was flown home later that day and has never returned to the *Louis St-Laurent*.

[62] On November 1, 2018, Deputy Marine Superintendent Noftall advised the grievor by email about a fact-finding meeting that was to look into the events on board the *Louis St-Laurent*. She would be present, along with Senior Labour Relations Advisor

Steve Hammond. The grievor was informed that he could invite a third party, such as a union representative or other individual, to the meeting.

[63] On November 6, 2018, the grievor attended the fact-finding meeting and advised that he wanted to proceed without a representative present. Ms. Noftall referred to notes that Mr. Hammond entered into evidence; he did not testify. She said that the notes were an accurate account of what was said at the meeting. At one point, the notes reflect the following:

> …
>
> [Ms. Noftall]*: Some of the example of the comments which are you alleged to have made included:*
>
> • *"one night you'll come on watch and everybody will be f-ing murdered"*
>
> • *"I better take my pills before the fire axe comes out"*
>
> • *"the mate reported me to the Chief, for all things hitting the ice; time to break out the axe"*
>
> • *"I'll be on the Officers deck with my fire axe tonight"*
>
> • *Suggesting that superiors "would not live long after retirement as they've made many enemies"*
>
> • *Suggesting that the fire axe would be the solution to problems with colleagues.*
>
> …
>
> [*Sic* throughout]

[64] The grievor was asked at the meeting whether he had made those or similar comments about harming his co-workers. He "[i]ndicated that he had made comments similar to those outlined above."

[65] At the meeting, Ms. Noftall asked the grievor whether he felt that outside factors such as a medical condition or other personal circumstances might have affected his behaviour on board. He replied that he "… feels that may be the case."

[66] Notes were made of the grievor's comments about the turmoil in his personal life; he testified to their veracity. They are a matter of record in these proceedings, but they will not be reproduced, as they involve personal information about the health of the grievor's father. The anxiety brought on by the personal issues caused him to seek

the assistance of the Employee Assistance Program (EAP) and to engage a counsellor's services.

[67] At the meeting, the grievor agreed to a Health Canada assessment of his fitness to work (FTW). One was requested on November 9, 2018.

[68] Superintendent Evans, Ms. Veber, and Assistant Commissioner Ivany all testified to an immediate suspension of the disciplinary process to await the results of the FTW assessment.

[69] On January 9, 2019, the employer received a report from a nurse practitioner that read, in part, as follows:

> …
>
> *We are presently awaiting information from his treating clinician, and will advise you further once the reports have been received. In the interim, Mr. Bartlett is considered medically fit to work full-time hours as a Leading Deckhand/ Quartermaster onboard ship. He requires no accommodation, nor has any limitations at this time. It is my opinion that the behavior that resulted in Mr. Bartlett's removal from the ship was not a result of a medical condition, but may have been impacted by personal and professional stressors at the time.*
>
> …

[70] Ms. Veber, Superintendent Evans, and Assistant Commissioner Ivany all testified to their concern about the crew of the *Louis St-Laurent*, who might have been affected by the grievor's behaviour, and arranged to have Captain Chmiel, who, as of January of 2019, had once again resumed his command of the vessel, conduct an information session and offer employee assistance to any member of the crew who wanted it. It took place on January 11, 2019.

[71] On January 18, 2019, Superintendent Evans wrote back to Health Canada, stating this in part:

> …
>
> *Given the seriousness of Mr. Bartlett's behavior, along with the* [fact that] *the above noted assessment results were provided on the same day as Mr. Bartlett's assessment and that additional medical information from the treating physician is still outstanding, I would like to ensure that a fulsome assessment of Mr. Bartlett's fitness to work has been completed.*

> *To that end, I would like to take this opportunity to provide some additional information and context regarding the incident which resulted in Mr. Bartlett's removal from the vessel. I ask that this information be considered when evaluating Mr. Bartlett's fitness to work.…*
>
> …

[72] Superintendent Evans testified to including in the reassessment request a description of the grievance's utterances and her observation that his behaviour "… has resulted in fear amongst some employees on the vessel to the extent that some individuals feel the need to lock their cabin door to ensure their safety even though this is against the safety procedure on the vessel."

[73] Superintendent Evans and the grievor both testified to an email chain pertaining to his consent to undergo an additional FTW assessment. On January 31, 2019, he provided his consent. The chain contains a message as follows that he testified to sending to Ms. Noftall (who did not testify), dated January 28, 2019:

> *Ms. Noftall,.I said these things believing that I was saying them in a safe and trusting environment . The fact is many found my comments amusing as they were intended and had anyone notified me that they found it offensive I would have ceased immediately.*
>
> *The statement I recieved was that it made people uncomfortable,not that they were locking there doors out of fear,so where did that come from why was it not in the original statement?I never threatened anyone at anytime, I spoke to many members of the crew and no one indicated to me that they were fearful of me .I do not agree to the submission of this letter in it's present form.*
>
> *I have done everything you have asked me to in regards to this matter,I have been deemed fit to work by Health Canada and you have been informed that the behavior was a result of Personal and professional stress that I was experiencing at the time.Given the opportunity,i would sincerely apologize to those who were affected by my insensitivity.I have been working hard to eliminate the issues that caused this to occur and dealing forthrightly with those that persist during my time off and I am confident I can still be a valuable asset to the Coast Guard given the opportunity*
>
> …
>
> [*Sic* throughout]

[74] Superintendent Evans testified to receiving the following letter dated May 30, 2019, from Health Canada:

…

> *As you are aware, Mr. Bartlett was seen in our clinic for a Fitness to Work Evaluation and routine periodic medical (CAT III) on January 9th, 2019. He was then seen for reassessment 27 March 2019 and subsequently sent for an independent medical examination.*
>
> *I have now received all the reports, and am able to finalize Mr. Bartlett's medical. He is considered medically fit and safe to work full-time hours as a Leading Deckhand/ Quartermaster onboard ship and in isolation. He requires no accommodation, nor has any limitations at this time. The behavior that resulted in Mr. Bartlett's removal from the ship was not felt to be impacted by a medical condition*

…

[75] Superintendent Evans and Ms. Veber testified to the May 30, 2019, Health Canada letter as a "green light" to resume the disciplinary aspect of the matter. Regardless of his FTW status, as indicated in the Health Canada letter, questions remained about the suitability of returning the grievor to his position, given the potential disciplinary implications.

[76] Ms. Veber wrote to the grievor on June 21, 2019, about a pre-disciplinary hearing to be held on July 5, 2019, at the Canadian Coast Guard Building in Dartmouth, N.S. She advised him as follows:

…

> *Before making any determination as to what corrective/disciplinary measures are appropriate in this matter, you are invited to a pre-disciplinary hearing, which is a final opportunity to respond to the allegations against you, as well as your opportunity to present any extenuating or mitigating circumstances for me to consider in this matter.…*

…

[77] The grievor testified to being represented at the July 5, 2019, pre-disciplinary hearing by Shane Rideout, who did not testify at the hearing. The grievor testified to having Mr. Rideout answer questions for him at the pre-disciplinary hearing. One of the attendees was Wade Stagg, who did not testify at the hearing, but his handwritten notes were adduced. In his testimony, the grievor confirmed that he said the following, which was recorded in Mr. Stagg's notes:

…

> *I realize things I said are inappropriate.*
> *I am sorry.*
> *I wish I could apologize to people I have hurt.*
> *Home issues affected Judgement.*
> *Very difficult time.*
>
> …

[78] The grievor also testified to confirming at the pre-disciplinary hearing that he uttered the phrases recorded at the November 6, 2018, fact-finding meeting. He repeated his earlier testimony that he said all those things sarcastically and that he did not deliver the words in a serious tone.

[79] At one point in his testimony, the grievor asked if he could demonstrate the tone of voice he often used to make these sarcastic comments, saying that at the time, he was doing his best to imitate the voice of a cartoon character named Yogi Bear. He then repeated some of the phrases that he had uttered on board, using the Yogi Bear voice.

[80] On July 31, 2019, Ms. Veber sent the following letter to the grievor:

> …
>
> *This is further to the the* [*sic*] *fact-finding meeting of November 6, 2018 regarding allegations that between October 4 and 25, 2018, you made threatening statements that left* [*sic*] *a number of employees to feel unsafe; as well as, the meeting of July 5, 2019 with you and your union representative, where you were given an opportunity to present information in support of your position in this matter.*
>
> *The investigation has been concluded, and, after careful consideration of all the information available, a decision has been made. Therefore, I would like to meet with you on Friday, August 16, 2019 at 11:15 am at the Canadian Coast Guard Building ….*
>
> …

[81] Assistant Commissioner Ivany testified to reading the letter dated August 16, 2019, to the grievor. The letter states, in part:

> *Dear David Bartlett,*
>
> *Further to the fact-finding meeting of November 6, 2018 and the disciplinary hearing held on July 5, 2019, I find that you have breached the* Values and Ethics Code for the Public Sector,

specifically the Value of Respect for People, by making threatening statements between October 4 and 25, 2018, that left a number of employees to feel unsafe. These comments were consistent with the following:

- *"one night you'll come on watch and everybody will be f-ing murdered"*
- *"I better take my pills before the fire axe comes out"*
- *"the mate reported me to the Chief, for all things hitting the ice; time to break out the axe"*
- *"I'll be on the Officers deck with my fire axe tonight"*
- *Suggesting that superiors "would not live long after retirement as they've made many enemies"*
- *Suggesting that the fire axe would be the solution to problems with colleagues.*

You confirmed at both the fact-finding meeting of November 6, 2018 and the disciplinary hearing held on July 5, 2019 that you made statements consistent with those above.

This behaviour is unacceptable and can be neither condoned nor tolerated. I expect you, as a public servant, to comply with the Values and Ethics Code for the Public Service, *which include the principles by which we carry out our roles and responsibilities and are part of the Terms and Conditions of your employment in the Public Service.*

Therefore, in accordance with the authorities delegated to me under Section 12 (1) (c) of the Financial Administration Act, *I am terminating your employment at Fisheries and Oceans Canada, effective close of business August 16, 2019.*

In determining this disciplinary sanction, I have carefully considered the information presented by you and your union representative at the disciplinary hearing. In addition, I considered your disciplinary free record, length of service, the fact that you admitted to the statements and have shown remorse, as well as the stressors in your personal life that shared with management. Despite these mitigating factors, your statements significantly breached the trust of the employer and clearly demonstrates a lack of respect for others. Such statements cannot be tolerated as they are serious threats against the safety and security of others. I have also considered that you were evaluated by Health Canada and the results of the evaluation were that "the behaviour that resulted in Mr. Bartlett's removal from the ship was not felt to be impacted by a medical condition." In light of the aggravating factors, I could not consider a lesser quantum of discipline. A lengthy suspension would not have reestablished the department's trust in you.

…

[*Sic* throughout]

[82] On August 26, 2019, the grievor submitted his grievance.

III. Summary of the arguments

A. For the employer

[83] The employer cited the case of *William Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, 1976 CarswellBC 518 at paras. 11 and 12 ("*Scott*"), for the analytical framework in a typical dismissal grievance. First, was the discipline warranted? Second, was the decision to dismiss the employee excessive? If so, what alternative measure is just and equitable?

[84] The employer argued that there is no question that discipline was warranted for the death threats that the grievor uttered and that this is as clear a case for termination as can be found. The statements were explicit and specific, and they continued over time, despite requests to stop making them.

[85] The grievor explicitly challenged the testimonies of both Deck Officers Wiens and Houle on the issue of whether they ever told him to stop making the comments at issue. They both testified very clearly that they did, submitted the employer.

[86] The employer referred to the case of *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BC CA), (but did not cite it) on assessing witness credibility. In the present case, argued the employer, Deck Officer Wiens made contemporaneous notes about telling the grievor to stop making these types of comments, or she would report him. Her testimony, argued the employer, was clear on this point and should be preferred over his; he simply said that she lied about telling him to stop.

[87] Similarly, Deck Officer Houle testified clearly and convincingly that more than once, he told the grievor that he had had enough of the fire-axe comments. He said that the grievor would often then stop but that the next day, he would simply pick up with his comments where he left off.

[88] Both witnesses supplied evidence that was in keeping with the preponderance of probabilities under the circumstances, argued the employer. And under the *Faryna* analysis, their testimonies are to be preferred over that of the grievor, who simply claimed that they both lied.

[89] Another point of departure, submitted the employer, is the grievor's contention that his tone of voice should have betrayed the fact that he was only joking. Each of the employer's witnesses who heard him utter the comments, namely, Deck Officers Wiens and Houle and Leading Seamen Pike and Marsh, was questioned directly on this point, and none of them testified about the comments being delivered in a sarcastic or joking manner.

[90] When asked directly about the tone-of-voice issue, Deck Officer Wiens said she felt anger and intimidation were behind the grievor's words, which made her feel uncomfortable. Deck Officer Houle said that the statements were direct and that they were being made more frequently, which is why he reported the matter. Leading Seaman Pike testified that the statements were made in a "flat/deadpan" way and not in a joking tone. Leading Seaman Marsh testified that the statements were made in a "serious" tone, which made him "uncomfortable for sure".

[91] Not one witness other than the grievor characterized the comments as a joke, argued the employer. At the hearing, the employer's counsel offered his personal opinion that the grievor's rendition of the Yogi Bear voice on the witness stand was a pretty good imitation of the cartoon bear, but there was certainly no indication from any other witness that he had used the Yogi Bear voice.

[92] The grievor's fire-axe comments raised concerns with the crew. Two of them told him to stop, but he did not. Captain Frost testified to locking his cabin door that night, contrary to ship's policy, for the first (and only) time in his 40 years at sea.

[93] Once management became aware of the comments, immediate action was taken, argued the employer. Within a day of receiving the report, Captain Frost made the necessary arrangements and had the grievor removed from the ship and taken for a medical evaluation. Once the grievor was deemed fit to travel, Captain Frost had him medivac'd out of Iqaluit back to his home.

[94] The grievor adduced no medical evidence at the hearing, submitted the employer. He cannot rely on a medical defence to exonerate himself.

[95] The employer submitted that the grievor has not demonstrated true remorse. He continues to dismiss his actions as a joke and to state that he meant no one any harm. This, argued the employer, is not remorse.

[96] The employer cited the case of *Western Star Trucks Inc. v. International Assn. of Machinists and Aerospace Workers, Lodge 2710*, [1998] B.C.C.A.A.A. No. 395 (QL) ("*Western Star Trucks*"), in which an employee was terminated for uttering threats against fellow employees. At paragraph 15, the decision notes that the employee agreed "… that he had gestured to indicate random shooting and suicide."

[97] At paragraph 26, the decision maker held as follows:

> *26 The incident of April 25, 1996 was extremely serious. The conduct threatened by Mr. Walker was the most heinous that one could imagine occurring at a workplace. Mr. Walker went out of his way to let it be known that he was a person capable of the most irrational evil. The mere expression of the idea of killing one's fellow employees and then killing oneself is a matter which a reasonable man could not expect a listener to take lightly, even if expressed in a jocular manner which was not the case here. If it was Mr. Walker's intent to make a joke, albeit a most perverse one, that was not expressed nor was it supported by the evidence. This could be no joke. This was intimidation. The discharge was not excessive. The grievance is dismissed.*

[98] The employer also cited the case of *Ontario Hydro Services Co. v. Power Workers' Union*, 1999 CarswellOnt 2571 ("*Ontario Hydro*"), involving the dismissal of an employee for making death threats. It notes at paragraph 6 that the employee in question told a co-worker, "You're lucky you don't have a bullet in your head." In the following paragraph, the evidence is that the employee said this: "… I was ready to take a shotgun down to his house".

[99] At paragraph 17, the decision maker held as follows:

> *17 Physical violence and threats of physical violence are among the most serious of disciplinary offences in the workplace. While a certain degree of personal conflict among employees is inevitable, the way individuals deal with such conflicts is critical to maintaining a safe and orderly workplace. No supervisor or employee should ever be made to fear for their personal safety, or that of their family. The repeated uttering of death threats, particularly in circumstances that cannot be excused as a momentary outburst, obviously calls into question the offending individual's very employment relationship. An employer made aware of such extreme misconduct has little alternative but to take all disciplinary steps, up to and including discharge, to protect its staff from acts tantamount to workplace terrorism.*

[100] The employer also cited the case of *College Printers Ltd. v. G.C.I.U.*, 2001 CarswellBC 3373 ("*College Printers*"). At paragraph 32, the decision quotes the disciplinary letter to the employee, which states as follows:

> *32 …*
>
> *Recently you have made reference to causing deadly violence to other employees and to yourself. You have indicated that you may purchase a gun and bring it to work and murder your co-workers and then kill yourself. You have referred to the recent shootings at workplaces in Honolulu and Seattle, and indicated that you may follow a similar course of deadly action.*
>
> *…*

[101] In finding that termination rather than suspension was the appropriate sanction, the decision maker referred to *Savin Canada Inc. v. Office and Technical Employees Union, Local 378* (unreported, January 5, 1996, 1996 CarswellBC 3273; "*Savin*"). At paragraph 77, the decision maker in *College Printers* quotes *Savin* as follows:

> *77 …*
>
> *In my view, suspension of an employee is not a fitting resolution of the matter in the circumstance revealed here. While a Company may be willing to take the risk - and I doubt that - how will its other employees feel with regard to the decision to maintain such an employee in the workforce? In my view, it would merely delay the execution of the threat and place the Company and its employees under a strain that, in my opinion, there is no reason for them to endure.*

[102] The employer also cited the case of *McCain Foods (Canada) v. U.F.C.W., Local 114P3*, 2002 CarswellOnt 4147 ("*McCain Foods*"), which involved an employee whose termination resulted from him uttering (paragraph 15): "If something happens to me and my job, I'll shoot him, you know." The decision maker denied the grievance and upheld the employer's decision to terminate the grievor. It found at paragraph 65 as follows:

> *65 Having accepted the evidence of Messrs. Domingo and Anton that the grievor made a life-threatening statement, it is reasonable that anyone hearing the grievor's statement would take it seriously. If his statement had been made in a jocular fashion the evidence does not support that being the case.…*

[103] The employer also cited the case of *Canadian National Railway v. C.A.W.*, 2004 CarswellNat 5682 ("*Canadian National Railway*"), which involved the termination of an employee who was found to have uttered, as noted at paragraph 1, "… words to the effect that he wished he had a gun and enough bullets to shoot everyone at work and a bullet for himself." On denying the grievance, the decision maker held as follows at paragraph 5:

> *5 When, as in the case at hand, an employer is faced with an employee who threatens to kill other employees, and utters those words on more than one occasion, causing obvious disturbance to persons in the workplace, it must take the threat seriously and deal with it without delay. No employer has the luxury to wait out events to see whether the threatening words are coupled with an actual serious intent. Nor are employees or supervisors who suffer such threats to be left to worry and await the test of whether the employee demonstrates that he or she had a serious intent. There is, very simply, no room for such threats in any workplace. It is no defence on the part of the individual who makes them to say, after the fact, that the threats uttered were not seriously intended, absent compelling medical or psychiatric evidence in mitigation. There is no such evidence in the case at hand.*

[104] The employer also cited the case of *Toronto Transit Commission v. A.T.U., Local 113*, 2005 CarswellOnt 8287 ("*Toronto Transit Commission*"), which is about the dismissal of an employee who, as noted at paragraph 3, "… made certain remarks on May 6, 2002 that included a threat to bring a gun to the workplace and shoot people." At paragraph 154, the decision maker found as follows:

> *154 The grievor's lengthy service stands to his credit. Under other circumstances it might have resulted in his reinstatement subject to a suspension. Concerns for the safety of others, however, would have required reasonable assurances that his presence in the workplace would not pose a danger to others. As detailed above, the grievor wrote that he was mentally unstable. He advised a superintendent that he was stressed because other employees were working too slowly. He also told the superintendent that it was not like he was going to go postal and that he had only held a gun once. A short time later he told employees that he was going to get a shotgun and go postal. Given the nature and pattern of the grievor's comments, before considering his possible reinstatement I would have required an assurance from a physician familiar with his conduct, and qualified to give such an assurance, that should he again feel stressed at work it would be highly unlikely that he would harm, or threaten to harm, others in the workplace. I did*

> *not receive such an assurance. Accordingly I am not prepared to direct his reinstatement.*

[105] The employer compared this to the present matter, in which the grievor presented no medical evidence as a mitigating factor. He should not be reinstated.

[106] The employer also cited the case of *A.T.U., Local 1587 v. GO Transit*, 2005 CarswellOnt 8412, involving the termination of a transit employee who had served a 6-day suspension for insubordination and then, only 25 shifts after his return to work, found garbage in the bus he was assigned to that the previous driver had not cleaned up at the end of her shift. He wrote her a note (paragraph 8): "If you **EVER** leave me a bus in the same state as today' (FRI.) again, I'll see you live to regret it" [emphasis in the original].

[107] Discussing the employee's medical history, at paragraph 24, the decision maker found as follows:

> *24 In this case all I know about the grievor's psychiatric background is that in the Union's opening I was told that he had a history of depression for a long time. I was also advised in the opening that he had been in psychotherapy for a long time. However no medical evidence as to his present mental health was led therefore I have no way of knowing whether a further psychiatric evaluation would do any good. It was certainly open for the Union to lead evidence from his treating psychiatrist or physician as to the grievor's likelihood of future threatening behavior, however no such evidence was led. I am therefore unable to, as requested by the Union, take into account his apparent medical background in assessing whether he would make a good candidate for reinstatement.…*

[108] The decision maker denied the grievance, finding at paragraph 32 that "… termination was not an excessive response to the grievor's misconduct."

[109] The employer also cited the case of *Canadian National Railway v. C.A.W., Local 100*, 2013 CarswellNat 3274 ("*CNR and CAW Local 100*"), involving the termination of an employee who had threatened a co-worker with physical harm. The findings of fact are summarized as follows at paragraph 31:

> *31 After careful review of the evidence of Bushell, the grievor and the surrounding circumstances, and there being no reason to doubt the credibility or reliability of Bushell's evidence, I am satisfied that Bushell's account of what the grievor said is reliable*

> *and truthful… Further, the reliability of Bushell's account of what the grievor said ("get a gun and lay him out in the parking lot") is strengthened because it is consistent with or similar to the statement the grievor gave to the CN police officer ("just shoot somebody") and the statement he admits making ("bodies on the ground") ….*

[110] The decision maker in that case denied the grievance and upheld the employee's termination.

[111] The employer also cited the case of *OPSEU v. Ontario (Liquor Control Board of Ontario)*, 2018 CarswellOnt 25453 ("*OPSEU*"), the facts of which are summarized at paragraph 91 as follows:

> *91 There is no dispute that Ms. Ceresato engaged in serious misconduct in the workplace on April 29 and May 1, 2014. She immediately became upset on April 29 upon reading the transfer letter and in a loud voice she blamed Mr. Pitre for the transfer as she waved the letter in his face. On April 29 and May 1 she became very angry while in the warehouse. As she was blaming Mr. Pitre, she was loudly swearing and cursing while in a very angry state and she made threats of violence against Mr. Pitre. On April 29 she stated, "I want to slit his throat right now". On both April 29 and May 1 she stated, "If I had a gun right now I would shoot him" and on May 1 she added to that statement by saying, "Maybe I should just use it on myself".…*

[112] On denying the grievance and upholding the employee's termination, the decision maker held as follows at paragraph 93:

> *93 On the one hand the Union concedes that Ms. Ceresato engaged in serious misconduct and indicated that it did not intend to minimize that conduct. On the other hand, Union counsel argued that the seriousness of Ms. Ceresato's comments must be considered in light of certain factors. These factors are as follows: Ms. Ceresato made the objectionable comments to co-workers and not directly to Mr. Pitre; she did not intend to cause harm to Mr. Pitre or to cause anyone to be fearful; and, she did not act upon the threats and no physical violence resulted. I agree with Employer counsel's submission that the recent Ontario arbitration decisions and some of the earlier decisions find that these factors are not particularly relevant when assessing the seriousness of this kind of offence. The essential nature of an offence involving threats of violence is determined by the nature of the threatening words that are used and an assessment of their likely impact on employees in the workplace.…*

[113] The final case that the employer cited to support its contention that the appropriate sanction in cases involving threatening workplace behaviour is dismissal was the case of *Wepruk v. Deputy Head (Department of Health)*, 2021 FPSLREB 75 ("*Wepruk*"). The grievor in that case had been denied leave, and she sent an email that led to her termination. The following contents of her email are reproduced, in part, at paragraph 58:

> *[58] …*
>
> …
>
> We need to have [D.S.] removed as my supervisor/leave approver as soon as possible. He is not conducive to my occupational health nor safety. I'm tired of the constant workplace violence. One day soon I will snap, bring one of my guns in to work, and shoot the bastard.
>
> …

[114] On denying the grievance and upholding the employer's decision to terminate the grievor, the decision maker found as follows at paragraph 274:

> *[274] I accept that the grievor likely had no intent to harm Mr. Shelley. However, it was not possible for the employer (or the police) to assess her intent at the time of the threat. Intent may be a consideration in the criminal law context but is not a significant factor in the workplace context.*

[115] In the context of a person's state of health as a mitigating factor, the decision maker found as follows at paragraph 302:

> *[302] The grievor relied on her state of mind when she made the threat as a mitigating factor. In* Rahmani v. Deputy Head (Department of Transport)*, 2016 PSLREB 10, a grievance involving workplace violence, the Board considered as a factor the state of health of the grievor in that case when it reduced the disciplinary penalty. However, in that case, the Board accepted extensive evidence from the grievor's treating physician as a partial explanation for his behaviour. In this case, there is no such evidence.*

[116] Similarly, argued the employer, there is no medical evidence in the present matter that would provide any support for reinstating the grievor.

[117] For these reasons, argued the employer, the decision to terminate the grievor's employment was reasonable and should not be disturbed. The case law is clear that

death threats in the workplace cannot be tolerated and that dismissal is entirely justified.

B. For the grievor

[118] The main theory in the grievor's case is that his comments were uttered sarcastically in a spirit of jocularity. His comments were not taken seriously by the people who heard them. Certainly, he was not serious about using a fire axe on anybody. But he was never told to stop making the comments, which is why he did not stop. His behaviour was condoned until he was suddenly removed from the ship and ultimately from his job.

[119] The grievor argued that these three unique factors set this case apart from any of the cases cited by either party:

- The supervisors' delayed response suggested that the statements were not taken seriously and that they were tolerable for some time.
- None of the witnesses aboard the *Louis St-Laurent* testified that they were fearful or that they took any significant steps to protect themselves or others before October 25, 2018.
- The managers relied on Health Officer Blomeley's report, which was excluded from the evidence, to arrive at the opinion that the crew was afraid of the grievor.

[120] The grievor pointed out that Ms. Veber, Assistant Commissioner Ivany, and Superintendent Evans did not speak directly to any of the first-hand witnesses; rather, they relied on a report prepared by Health Officer Blomeley to substantiate their assertion that the crew was afraid of the grievor. This report was not entered into evidence and contains unreliable hearsay. The witnesses also discounted the medical assessments indicating that the grievor was safe to return to work.

[121] All management's witnesses admitted to varying degrees that the only possible mitigating factor that would have changed their decision to dismiss the grievor would have been an underlying medical condition.

[122] The grievor argued that Health Officer Blomeley's report was highly prejudicial and replete with hearsay, yet management relied upon it when it made crucial decisions. Every subsequent medical assessment described the grievor as not being a danger to himself or others.

[123] The grievor referred to Deck Officer Wiens's testimony, who said that at most, the grievor's statements "gave her a 'sense of unease'". She did not testify to locking her cabin door at night. She also testified that she did not want to report the grievor's comments because she was new to the crew.

[124] The grievor also argued that Deck Officer Houle's testimony made it clear that he did not take the grievor's comments seriously at first. His testimony that he told the grievor to stop making the comments was so vague as to be unreliable.

[125] Therefore, grievor received no indication from the crew that his comments upset them in any way.

[126] The grievor also pointed to conflicting testimony about the "Dave's Axe" label, which had been affixed to a fire axe on the ship's bridge. In direct examination, Leading Seaman Marsh stated that when he saw the label, he showed it to Deck Officer Houle, but he later changed his evidence, stating that he discussed the label with First Officer Houle only around October 24, 2018.

[127] Leading Seaman Pike candidly admitted that he was not afraid of the grievor and that he knew about the grievor's "fire-axe routine" before he actually heard the grievor make any such comment. He said that he found the comments annoying and that he felt that the rest of the crew were of the same opinion.

[128] The grievor submitted that he provided honest and credible testimony about his perception that his fire-axe comments were not being taken seriously. Had he been told to stop making them, he would most certainly have stopped. From the moment he was confronted, on October 26, 2018, he has felt remorse and has expressed it several times.

[129] The grievor also testified to seeking and receiving continuing medical care and counselling since the incidents at issue occurred. He has been diagnosed with post-traumatic stress disorder (PTSD) and has successfully developed better coping mechanisms for emotionally challenging circumstances. He expressed a clear desire to return to his Coast Guard duties.

[130] The grievor submitted that the single most striking feature of this case, which distinguishes it from all the authorities that both parties relied upon, is the delay in taking action. When a person hears a death threat, they take steps to protect

themselves and others, and that is certainly not what happened before October 25, 2018.

[131] The grievor argued that the tone he used to deliver the fire-axe comments was not necessarily a credibility issue. None of the witnesses clearly recalled the comments, and they all refreshed their memories using the notes that Deck Officer Wiens was instructed to prepare. It is possible that the grievor's recollection of the tone he used was distorted toward ridiculousness while the other witnesses' recollections were distorted toward serious. This would make sense, argued the grievor, since the crew fixed the events in their minds after seeing the RCMP removing him from the ship. None of the employer's first-hand witnesses denied that he used a tone to convey sarcasm, and Deck Officer Wiens even volunteered that people might have laughed.

[132] The grievor explicitly denied being told to stop, contrary to the testimonies of Deck Officer Wiens and Deck Officer Houle. The grievor argued that the preponderance of the probabilities indicates that his is the more likely version of the events. Specifically, he argued as follows:

> *Deck Officer Wiens told the grievor to stop hitting the ice, and she immediately acted on her threat to report him. She most certainly did not act immediately upon hearing the fire axe comments.*
>
> *Deck Officer Wiens made two other statements at the time that were not forcefully maintained under oath, namely, her fear of being alone with the grievor at night. She acknowledged that there was no risk of this happening since they worked different shifts. Nor did she confirm that she locked her cabin door at night, which is important because the employer relied on door-locking as a key indicator of employee fear.*

[133] The grievor did not adduce medical evidence, but it does not mean that there is an absence of it. Three different times, once from the Iqaluit hospital and in the two medical assessments, it was indicated that the grievor posed no risk to the safety of others.

[134] The grievor cited the case of *Communications, Energy and Paperworkers Union of Canada, Local 1178 v. Hood Packaging Corporation*, 2013 CanLII 35534 (ON LA) ("*Hood Packaging*"), in which a labour arbitrator reinstated an employee who had been dismissed for telling a co-worker he would do this to them: "… stab you in the back and rip you to the top". The arbitrator stressed that termination of employment is

appropriate only when no other penalty can address the behaviour. This analysis includes, at pages 18 and 19, considering the following factors:

> *Who was threatened or attacked?*
> *Was this a momentary flare-up or a premeditated act?*
> *How serious was the threat or attack?*
> *Was there a weapon involved?*
> *Was there provocation?*
> *What is the grievor's length of service?*
> *What are the economic consequences of discharge on the grievor?*
> *Is there genuine remorse?*
> *Has a sincere apology been made?*

[135] The grievor again referred to the employer's significant delay taking action as an important factor when assessing the seriousness of the comments. The fact that those who failed to report the supposed death threats were never disciplined for what they acknowledged was a clear dereliction of duty indicates that the employer did not consider the threats serious and that it took the statements out of context when it decided to terminate his employment.

[136] The present case, argued the grievor, is similar to *Shoppers Drug Mart Store No. 222 v. U.F.C.W, Local 1518*, 2008 Carswell BC 3880 ("*Shoppers*"), and *Galco Food Products Ltd. v. Amalgamated Meat Cutters & Butchers Workmen of North America, Local P-1105*, 1974 CarswellOnt 1456 ("*Galco*"), which featured employees who had been dismissed for uttering threats. In *Shoppers*, the decision maker found at paragraph 61 that "… the threat in this case was not in the nature of horseplay. It was a serious threat intended at the time that it was made to arouse fear in the minds of the managers." At paragraph 62, the decision maker stated this: "I find that the threat in this case justifies some discipline but that discharge is excessive." In *Galco*, it was determined that there was never any intention to harm anyone. The employees involved were reinstated.

[137] The grievor in the present matter argued that likewise, he should be reinstated, because he never intended to harm anyone.

[138] In *National Steel Car Ltd. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local*

7135, [2011] O.L.A.A. No. 574 (QL) ("*National Steel*"), a worker who had been dismissed for a threat to the effect of "Next time I'll bring my ammo", was reinstated. That case states this at paragraph 42: "While every instance of workplace violence must be taken seriously, this was not an especially grave manifestation."

[139] The grievor cited the case of *Saint John Shipbuilding Ltd. v. Marine and Shipbuilding Workers, Loc.3*, [1992] N.B.L.A.A No. 4 (QL) ("*Saint John Shipbuilding*"), in which an employee was dismissed for telling a supervisor who had given him a bad evaluation, "… 'keep off my back', 'I'll get a gun and take you out'." The employee was reinstated because he no longer posed a threat. The decision states this at paragraph 52:

> ***52*** *… At the time the company was unable to determine whether the threat was genuine, that it represented a real danger to Mr. Hudson or any other employee. There was no choice for the employer but to keep the grievor away from work, at least until it was safe for him to return to work.…*

[140] Similarly, argued the grievor, the medical assessments found him safe to return to work, and he should return.

[141] The grievor cited the case of *Vale Canada Ltd. v. USWA, Local 6500*, 2012 CarswellOnt 16372 ("*Vale*"), involving an employee who said this to other employees about one colleague: "I should have brought a gun to shoot her". Paragraph 44 reads as follows:

> *44 In the* Clemente case*, the court said the test for determining whether or not a particular comment constitutes a threat must be looked at objectively, that is, as it would be by the "ordinary reasonable person". However, the court also pointed out that the comment must be viewed in light of the circumstances in which they were uttered, the manner in which they were spoken and the person to whom they were addressed. The latter assessment brings into play a certain amount of subjectivity as it requires a close look at the context surrounding the utterance of the remark.…*
>
> [*Sic* throughout]

[142] On finding that there was no intention to threaten violence, the decision maker reinstated the employee, stating this at paragraph 58: "After having carefully considered this matter, I have determined that the employer in this case has just cause to discipline the grievor but that discharge is too severe a response."

[143] In *Husband Food Ventures Ltd. v. UFCW, Local 1518*, 2013 CarswellBC 107 ("*Husband Food Ventures*"), an employee who had applied for a management position told her colleagues that if she did not get placed into the position, she would shoot herself, or better yet, someone else. Her employment was terminated. Her colleagues testified they did not believe that she would carry out the threat. In reinstating the employee, the decision maker found the context of the situation critical and stated this at paragraphs 58 to 61:

> *58 In this case, two critical contextual issues are the societal values and legal standards that govern this particular workplace. Can it be said that an employee who speaks of an intention to shoot herself or someone else if a promotion is not granted is entitled to be returned to the workplace after serving an appropriate disciplinary response and subject to suitable conditions, as the union has proposed? Alternatively, is the threat so disturbing that the trust binding together the community of workers and management in the particular store has been irretrievably broken, as the employer submits?*
>
> *59 In my view, the union view prevails in the unusual and particular circumstances of this case. Ascribing precise meaning to spoken words is always a difficult and somewhat subjective matter. In this situation, due to the nature of the words used and the fact they were spoken in a workplace, the context becomes crucial. The issue is whether the raw and emotive nature of the words can be reconciled with the need to maintain a safe measure of harmony and responsibility in this particular workplace.*
>
> *60 Let me be clear. It is incredibly stupid and thoughtless for any employee to say to a coworker that she will shoot herself or someone else, if she does not get the promotion she has been seeking. Insisting she meant her comment as a joke does not lessen the impact on others of her words. Sadly, guns and shootings are all around us, as we are daily reminded by the media; that is the present reality by which employees and employers must live and work together. In an employment relationship, the employer has the duty to respond to threats made by, or directed towards, employees in a responsible manner because the law requires the employer to ensure a safe workplace.*
>
> *61 As I have said, discharge is not and should not be the only possible arbitral response to every stupid and impulsive remark made by an employee, particularly if it was directed at no one in particular and was uttered by an employee with no obvious capacity to carry out a threat directed at the world at large. I do not minimize how reckless the grievor was; my point is that the words were stated with no apparent reality, plan or intention behind them.*

[144] By the same token, argued the grievor, reinstatement should occur in his case.

[145] In *Chopra v. Canada (Attorney General)*, 2014 FC 246 ("*Chopra*") at paras. 109 and 110, the Federal Court held as follows:

> *[109] … Briefly stated, the principle of condonation requires an employer to decide whether or not to discipline an employee when it becomes aware of undesirable employee behaviour. The failure of the employer to do so in a timely manner can constitute condonation of the employee misconduct.*
>
> *[110] That is, a long delay in imposing discipline may entitle an employee to assume that their conduct has been condoned by their employer where no other warning or notice is given. Once behaviour has been condoned, the employer may not then rely on that same conduct to justify discipline. Allowing employees to believe that their behaviour has been tolerated, thereby lulling them into a false sense of security, only to punish them later is unfair to employees ….*

[146] *Chopra* was affirmed by the FCA in *Chopra v. Canada (Attorney General),* 2015 FCA 205, and *Chopra v. Canada (Attorney General)*, 2015 FCA 206.

[147] The factors pertinent to the analysis of the appropriateness of dismissal in workplace violence cases were discussed in *Brampton (City) v. CUPE, Local 831*, 2019 CarswellOnt 21155 ("*Brampton (City)*"). It states this at paragraph 61:

> *61 The analysis, since the amendment to the Occupational Health and Safety Act, R.S.O. 1990, Chapter 0.1, Part III.O.1, that was intended to prevent workplace violence, must include consideration of the obligation upon an Employer to ensure that the workplace will be safe for all employees. The likelihood of reoccurrence, and the Employer's ability to maintain a safe workplace, is a critical factor to be considered in any case in which the reason for the discipline is an act of workplace violence, as in this case. The employment relationship will not be considered reparable if the offending employee is likely to render the employer incapable of fulfilling its obligation to provide a safe workplace.*

[148] An application for judicial reviews was refused in *Corporation of the City of Brampton v. Canadian Union of Public Employees, Local 831*, 2021 ONSC 466 (CanLII).

[149] There is no question of recurrence, argued the grievor. He will never do anything like this again. His acceptance of responsibility for his actions and his expressions of regret and remorse buttress his assertions that he will never repeat this misconduct. Therefore, the employment relationship is most certainly capable of repair, he argued.

[150] The issue of delay in reporting misconduct was a central point in the case of *Stanley v. Ontario (Ministry of the Solicitor General)*, 2022 CarswellOnt 16603, which states this at paragraphs 23 to 26:

> *23 In considering whether discipline should be voided for reasons of undue delay, there are three (3) key criteria, none of which are necessarily determinative:*
>
> *a. The length of the delay;*
>
> *b. The reasons for the delay; and*
>
> *c. The prejudicial effect of the delay.*
>
> *24 Whether delay will void discipline will depend on the facts in each case. The mere passage of time, will not necessarily void discipline. It is important to consider the reasons for the delay because the delay may be reasonable in the circumstances. Some investigations naturally take longer than others. The nature of the conduct in question and the kind of workplace involved are relevant factors. Arbitrators have allowed employers to take a reasonable amount of time to investigate a situation and assure themselves that the employee has done something that warrants discipline. It is generally inappropriate to count any period before the employer knew or ought reasonably to have known about the misconduct.…*
>
> *25 For an adjudicator to void discipline for delay, prejudice to the employee arising from the delay must be shown. However, the prejudice may be actual or inherent in the circumstances. This most often arises when the ability to defend against the allegations is compromised by the delay.…*
>
> *26 Prejudice to the employee may also arise if the employer is found to have condoned the behaviour. The test is whether the employee was reasonably led to conclude that their conduct had been forgiven or condoned.…*

[151] In the present circumstances, argued the grievor, he had every reason to believe that his fire-axe comments were condoned. He had made them repeatedly since the summer voyage. Nothing was done about them. Discipline should not be voided entirely as a result, offered the grievor, but certainly, it should be reduced from the dismissal, which was the harshest possible sanction.

[152] For all the above reasons, argued the grievor, this grievance should be allowed. A period of suspension should be substituted for the dismissal, and he should be reinstated to his substantive position.

IV. Decision and reasons

[153] The grievor admitted to making the comments attributed to him many times, including at the November 6, 2018, fact-finding meeting and the July 5, 2019, pre-disciplinary hearing. He also admitted to it in his testimony at the hearing.

[154] For clarity and certainty, I find as a matter of fact that the grievor uttered the following (paraphrased) statements:

- "One night you'll come on board, and everybody will be fucking murdered."
- "I'd better take my pills before the fire axe comes out."
- "The mate reported me to the chief, for all things hitting the ice; time to break out the fire axe."
- "I'll be on the officers' deck tonight with my fire axe."
- He stated that his superiors "would not live long after retirement as they've made many enemies."
- He suggested that the fire axe would be the solution to problems with colleagues.

[155] Deck Officers Houle and Wiens, as well as Leading Seaman Marsh, testified to hearing the grievor say things along those lines very regularly, almost every day. This evidence was unchallenged. His comments were a frequent occurrence on board the *Louis St-Laurent* while it was deployed in Arctic waters.

[156] The first issue to be resolved is whether the grievor was ever told to stop making the comments. He contends that Deck Officers Wiens and Houle lied when they testified that they both told him to stop. This is a credibility issue, and *Faryna* was referred to, although it was not cited.

[157] The case is properly cited as *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.). The British Columbia Court of Appeal set out the following test at page 357:

> …
>
> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.…*

[158] Nothing in any witness's demeanour suggested to me that they did not tell the truth. Deck Officers Wiens and Houle, along with the grievor, testified in a forthright manner, readily and directly answering questions put to them in direct and cross-examination. However, at the end of the day, there is an obvious point of departure upon which I must make a ruling: the grievor maintained that both deck officers were untruthful when they testified that they told him to stop making fire-axe comments.

[159] This is a serious accusation. It is one thing to suggest that memories fade over time or that a witness is perhaps confused. It is another thing entirely to suggest that a witness was deliberately untruthful on the witness stand. Perjury is a very serious criminal offence. I had to assess whether either Deck Officer Wiens or Houle was motivated to lie about that aspect of their testimonies, and I simply could not find any such motivation on their parts.

[160] They were both quite candid when they admitted that they should have reported the death threats as soon as they heard the grievor make them, going back to the earlier summer voyage of the *Louis St-Laurent*, and admitted that they were derelict in their duty by not reporting them. This willingness to admit to less-than-flattering aspects of their behaviour speaks volumes about their overall credibility as witnesses. Neither had a motive to lie about whether they told the grievor to stop making his fire-axe comments.

[161] Therefore, I find that the testimonies of Deck Officers Wiens and Houle are to be preferred over that of the grievor on this point. Deck Officer Wiens's credibility is enhanced by the inclusion in her notes that she told the grievor to stop, or she would report him. She was unshaken in her testimony in this respect. Deck Officer Houle reported that he told the grievor to "cut it out", which the grievor did, but only temporarily, because he went right back at it the next day. The reason I believe Deck Officer Houle on this point is that ultimately, he reported the grievor. The repetitive nature of the grievor's actions, along with the fact that no witness other than him testified to finding anything the least bit funny about the comments make the suggestion that "no one at all, at any time, ever told [him] to stop making them" unlikely, indeed. Telling him to cut it out was in "… 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" (see *Faryna*). When Deck Officer

Houle testified that he had finally had enough of the comments, he finally did report them, on October 24, 2018.

[162] That the grievor was told to stop but did not is related to another issue of credibility, namely, the tone of voice he used when delivering the offensive comments.

[163] At one memorable juncture in his testimony, the grievor sought permission to demonstrate his Yogi Bear voice. If I had no idea who Yogi Bear was, I might have refused him the opportunity, but my childhood recollections remain quite clear of the fictitious Jellystone National Park resident with a fondness for “pic-a-nic baskets”.

[164] Counsel for the employer offered a limited but rave review during the hearing, which I can now formally endorse. The grievor pulled off a near-perfect voice impersonation of Yogi Bear. The problem with his credibility on this point is that not one of the people who really mattered had the opportunity to make the same evaluation.

[165] The Yogi Bear voice is quite distinctive; it is neither high- nor low-pitched and has a sing-song cadence. The voice is so far removed from a normal speaking tone that no one would be able to deny that the person using that cartoon voice was making some kind of a joke. This is especially true if the listener knew what the cartoon bear sounds like in the first place, but here is my point: no one was asked this question; nor was the Yogi Bear imitation demonstrated for any witness.

[166] The witnesses were asked if the grievor uttered his death threats in a joking or sarcastic manner, and every witness who was asked this question answered very similarly by stating that there was nothing joking about his tone, which was variously described as flat, deadpan, monotone, or serious. The grievor submitted that the tone of voice was not a credibility issue, but I find that it is, and it carries important consequences. His fire-axe comments were not made in a joking or sarcastic tone. They were not, as he contends, made using a Yogi Bear voice, not even occasionally. If they had, someone would surely have remembered as much when asked.

[167] The grievor candidly testified about his animosity toward the senior officers responsible for the decision to relieve him of his storekeeper’s duties. He shared with other crew members his displeasure at having been removed from a position that he enjoyed and in which he had demonstrated proficiency. This makes the threats

directed at them more ominous. I refer in particular to his comment to the effect that certain superiors "would not live long after retirement as they've made many enemies".

[168] The grievor's reaction to Deck Officer Wiens admonishing him for hitting the ice was the same. He very clearly told Leading Seaman Pike, "the mate reported me to the Chief, for all things hitting the ice; time to break out the axe." This is about as obvious as a death threat can be.

[169] These facts are sufficient to satisfy the first of the *Scott* criteria. The death threats that the grievor uttered against his fellow crew members constituted serious misconduct that deserved a sanction.

[170] On that basis, the case of *Katchin v. Canadian Food Inspection Agency*, 2003 PSSRB 24, which the grievor cited but never specifically argued, has nothing in common with this case. Dr. Katchin was reinstated because misconduct was not established.

[171] The second stage of the *Scott* analysis involves considering the aggravating and mitigating factors, to help determine the appropriate sanction. The grievor referred to challenging personal circumstances that gave rise to a considerable amount of stress, for which he was receiving counselling and whatever was available to him under the EAP. I find that those are mitigating circumstances. Life at sea on an extended tour in the isolation of the Arctic can be difficult enough on its own, but the grievor's circumstances were compounded by stresses in his family life back home.

[172] I have read the decisions that both the employer and the grievor cited on the issue of health factors in mitigation. The cases that resonate with me, given the present circumstances, are *Canadian National Railway*, *Toronto Transit Commission*, *A.T.U. Local 1587*, and *Wepruk*. Their common thread is the recognition of the presence of stressors and how they may affect a person's judgement. However, there must be clear medical evidence that exonerates, or at least explains to some extent, the individual's behaviour. There was no such evidence in those cases, and there was no medical evidence in the present case. That is not to say that I disbelieved the grievor when he testified about the sources of stress in his life. I believe that they existed and that they did affect him.

[173] No attempt was made to link the types of stressors that the grievor was experiencing to the nature of the misconduct at issue, but I do accept that in general terms, the stressors might have affected his judgement to a certain degree. This is a mitigating factor, but a minor one, because I find that the stressors' impact upon him does not outweigh the gravity of his misconduct.

[174] The absence in this case of medical evidence linking misconduct to an underlying medical condition clearly distinguishes this case from *Saint John Shipbuilding*, in which reinstatement occurred because, as that case states at paragraph 45, "… the evidence leads to the conclusion that the threat uttered by the grievor to Mr. Hudson was so intimately connected and intertwined with the grievor's mental illness that the two are inseparable. The threat was due to his illness."

[175] In the present matter, the two medical assessments both held that the grievor's on-board behaviour was not due to an underlying medical condition.

[176] The other mitigating factors that the grievor argued are his length of service and clean disciplinary record. I acknowledge that these factors can be inconsistently weighed from case to case. The adjudicator in *Hood Packaging* reinstated an employee who made a face-to-face threat to stab a supervisor in the back and slit him to the top, showed no remorse, and continued to deny having made the statement. Reinstatement seems largely to have been on the basis of his length of service. At page 21:

> *… the grievor should be reinstated without back pay. In reaching this conclusion I have considered the viciousness of the grievor's comment and that it was calculated to intimidate a co-worker who he knew had been stabbed before. The comment constituted a threat under the OHSA. I have further considered that the grievor denied making the threat when confronted by Mr. Fox and then by his employer. He continued to deny it throughout the arbitration process. I, therefore, have nothing before me from the grievor promising that it will not happen again. I find that the grievor should, nevertheless, be reinstated because he has had many years of service without any record of prior threats, violence or harassment. That service or "trust equity" must be weighed against the seriousness of the comment and the lack of remorse.…*

[177] I can easily see how *Hood Packaging* could have been decided differently. The flip side of the long-service argument is that experienced, seasoned employees should know better and that more can be expected of them. Similarly, employers have a right

to expect good conduct in the workplace. In this sense, a clean disciplinary record is the absence of an aggravating factor, not the presence of a mitigating factor.

[178] The *Shoppers* case, which the grievor cited but did not specifically argue, can be distinguished from the present matter because the nature of the threats uttered in it, which were along the lines of "I'll be back" and "I'll get you", were found to justify some discipline, but dismissal was found to be excessive. The threats in the present matter were much more explicit and graphic and much more serious than those uttered in *Shoppers*.

[179] Similarly, the case of *National Steel* is easily distinguished from the present set of facts. The threats in that case were vague, and dismissal was found excessive. There was nothing vague at all about saying that one intends to take a fire axe and murder other members of the crew.

[180] I appreciate the grievor's citation of the *Vale* case to demonstrate the viability of reinstatement in certain circumstances, but I must add that *Vale* might very easily have been decided differently. It is difficult to imagine how a statement like, "I should have brought a gun to shoot her", could result in a finding that (at paragraph 58), the individual "… did not intend to threaten violence and that his comments did not have that effect …".

[181] The *Husband Food Ventures* case can be distinguished from the present set of facts on the basis of the specificity of the grievor's threats. The decision maker in that case found at paragraph 61 that the threat to shoot someone "… was directed at no one in particular and was uttered by an employee with no obvious capacity to carry out a threat directed at the world at large." I find that the grievor in the present matter was specific about using a fire axe on people he named, whom he felt had done him wrong. There are two sets of people — first, those who participated in the decision to remove the grievor from his acting storemaster position, namely, Captain Chmiel (his captain at the time), Logistics Officer Walters, and Chief Officer Whitty. The second set contains only one person, namely, Deck Officer Wiens, whom the grievor threatened with the fire axe because she had reported him for having struck an ice pan.

[182] Another point of distinction between the present set of facts and the *Husband Food Ventures* case is that here, the grievor had easy access to the weapon he threatened to use, namely, a fire axe hung conspicuously on the wall in the bridge.

[183] While I accept the Federal Court's findings in *Chopra*, at para. 110, to the effect that "[a]llowing employees to believe that their behaviour has been tolerated, thereby lulling them into a false sense of security, only to punish them later is unfair to employees …", I find in the present matter that the grievor's misconduct was not tolerated or condoned by Deck Officers Houle and Wiens, who told him to cut it out. Nor was the grievor's conduct tolerated by anyone with the authority to take appropriate disciplinary action. The misconduct might not have been reported when it should have been, but as soon as management learned about the fire-axe comments, immediate and decisive action was taken. This does not amount to condonation or toleration.

[184] The grievor claimed that his state of mind is a mitigating factor. He insisted that he had no intention whatsoever of carrying out multiple axe murders aboard the *Louis St-Laurent*. It is often said that hindsight is 20/20, and the truth of the matter is that he never did kill anyone with an axe. Since I had the benefit of seeing him testify at length at the hearing and heard of his significant efforts to address how he is now able to deal with the stressors in his life, I can state that I believe him when he said that he never intended to kill anyone. He seems now, and seems always to have been, a person of essentially good character. However, the fact that he lacked the specific intent to murder his crew mates with a fire axe does not carry the day. He had to be accountable for the impact of his threats on those around him.

[185] This is why it is difficult to accept his lack of intent as a powerful mitigating factor. No one else on board at the time knew whether or not he would go berserk with a fire axe. Several witnesses, including Deck Officer Houle, who heard the grievor make the death threats, as well as Superintendent Evans and Ms. Veber, who did not hear them directly, testified to other historical workplace murders, and in their testimony they used well-known euphemisms such as "going OC Transpo" or "going postal". Several witnesses referred to interviews that they had seen on television in the aftermath of such events, in which the murderer was described as "such a quiet person, I never thought he was capable of murder".

[186] I completely understand how the crew of the *Louis St-Laurent* must have felt; they simply had no idea whether the grievor would actually carry out his threats. Therefore, it is difficult to accept his lack of specific intent to kill anyone as a powerful mitigating factor.

[187] Another important mitigating factor is the grievor's remorse. He expressed no apology at the time, even when he was being removed from the ship, but several times, including at the hearing, he offered what I consider were sincere expressions of remorse for his actions.

[188] On many occasions after his removal from the ship, the grievor stated his comments had been made in jest and were not to be taken seriously. If this were true, it could be considered a mitigating factor, but I have stated elsewhere in this decision my finding that there was nothing jocular in his tone of voice, so the person hearing the comments would have had to decide for themselves whether or not they were a joke. There is no evidence of anyone other than the grievor finding anything funny at all about the death threats.

[189] Some things can never be joked about. The classic limit to free speech is shouting "Fire!" in a crowded movie theatre when there is no fire. It is simply not a funny statement and cannot under any circumstances be construed as a joke. Try offering up a few one-liners about bombs in suitcases when lining up for airport security screening, and just see how funny people think it is. I repeat, some things can simply never be joked about. The grievor's comments fall into this category.

[190] There is only one aggravating factor, but it is significant. As noted in *Husband Food Ventures*, at para. 54, the determination of whether certain words constitute a threat is both an objective and a contextual exercise. It is necessary to scrutinize both the words used and the context of their use.

[191] I find that a very important aspect of the context in which these threats were made was the location and the timing. The *Louis St-Laurent* was deployed in isolated Arctic waters. Ms. Veber and Superintendent Evans both offered an analogy of hearing threats uttered in a downtown office building, where one can theoretically use a fire escape or a window to escape the threat, and then jump in a cab and call the police. On board a ship at sea, there is simply nowhere to run and nowhere to hide. This is a very powerful aggravating factor because it offers some insight into some aspects of the testimony of the witnesses, including Deck Officers Wiens and Houle, as well as Leading Seamen Marsh and Pike. Their inclination was to try to ignore the grievor when he said those things because no one wanted to attract his attention and be "added to his list". No one wanted to exacerbate the situation or provoke the grievor while at sea,

where there was nowhere to run and nowhere to hide. Making such comments on a ship in isolated Arctic waters is a serious aggravating factor.

[192] An additional contextual factor is the accessibility of the weapon. A fire axe is meant to be used in an emergency and cannot be removed from the workplace. It is always right there, on the wall, and easy to access. This contrasts with cases like *Western Star Trucks*, *College Printers*, *McCain Foods*, *Canadian National Railway*, *Toronto Transit Commission*, *CNR and CAW Local 100*, *OPSEU*, and *Wepruk*. In those cases, the weapon was not already in the workplace and was not easily accessible, and termination still resulted.

[193] Also, unlike the grievor in *Husband Food Ventures*, the grievor in this case did have (as per paragraph 61) "obvious capacity to carry out [the] threat". The axe was within easy reach. For a while, it even had his name on it. This was so offensive to both Leading Seaman Pike or Deck Officer Wiens that one of them (it really does not matter who) removed the label reading "Dave's Axe".

[194] I also accept the crew members' sentiments as a partial explanation for why it took so long for someone to come forward and formally report the grievor. I disagree completely with the grievor's contention that no one reported him earlier because no one really cared, since everyone condoned his behaviour. Isolation was a serious factor. The grievor had a captive audience. The crew's reluctance to report him under those conditions is understandable. No one liked or appreciated his death threats, but no one wanted to provoke him, especially when their total avenues of escape numbered absolutely zero.

[195] It is noteworthy that Deck Officer Houle was not even looking for the captain on October 24, 2018, but for the ship's health officer, and it is serendipitous that she happened to be in a meeting with Captain Frost when Deck Officer Houle finally made the report. It is extremely important to note that once people in authority learned about how the grievor was behaving, drastic and immediate action was taken. Management did not condone or accept his behaviour in the least.

[196] Captain Frost's approach mirrored that of the crew in that the primary consideration was to avoid exacerbating an unpredictable situation, given their isolation in Arctic waters. Like the crew members on both the summer and fall sailings, Captain Frost did not want to provoke the grievor, because given the graphic and

specific nature of the threats, no one really knew what he was capable of doing if provoked. As a result, the captain immediately undertook a prudent course of action in altering the ship's course immediately for Iqaluit, and arranging with onshore authorities for the grievor's removal from the ship for a medical evaluation. He deliberately took steps to ensure that the grievor was not confronted prematurely.

[197] There was a brief discussion with Captain Frost during his testimony about his powers of arrest and detention while at sea and whether there was a brig or holding cell on board. He was unequivocal in his desire to avoid premature confrontation with the grievor at all costs, and he did not even consider a more aggressive form of intervention. He made his move only once all the pieces were in place. I find this to have been a very reasonable and sensible course of action.

[198] I agree with the grievor that a program of positive and progressive discipline is a vital component of workplace relations, as articulated in many of his cited cases. Although he uttered the threats many times, the grievor was disciplined for them only once, so I agree with him that he did not have the benefit of a program of positive and progressive discipline. However, I also agree with the employer that some forms of misconduct are so serious that termination can result from a single occurrence on an otherwise unblemished disciplinary record (see Brown and Beatty, *Canadian Labour Arbitration*, Chapter 7 — Rehabilitative Potential, 5th edition, at paragraph 7:72). This is such a case.

[199] There was no discussion at the hearing of the principles of general or specific deterrence, though the employer's book of authorities offered four references that touched on this point. They are relevant considerations. As to specific deterrence, I hold little doubt about the grievor's propensity to engage in similar behaviour in the future. He most likely will not. This entire process has brought the consequences of his behaviour painfully to light, and it has likely deterred him from ever engaging in similar misconduct in the future. If a sanction short of dismissal were imposed, the principle of specific deterrence would be met.

[200] But equally important is the principle of general deterrence. This case must stand as a clear signal to anyone contemplating similar behaviour that it will be dealt with harshly. Death threats cannot be tolerated in the workplace. They cannot be characterized as a joke after the fact.

[201] Under the circumstances of this case, given all the aggravating and mitigating factors, dismissal was without question the appropriate sanction.

[202] I accept that per the analysis at paragraph 63 of *Brampton (City)*, it comes down to the question of whether this employment relationship is capable of repair. The grievor's comments, which were made repeatedly while at sea in open Arctic waters, with no means of escape available to those who heard them and were disturbed by them, were so wildly irresponsible that I find that the employment relationship is incapable of repair. Regardless of whether the grievor will ever make such comments again, every employee must know that they will be safe from this kind of behaviour while at sea, with no means of escape. This decision must stand as a general deterrent to this kind of behaviour.

[203] The cases that both parties cited are clear on one point, which is that death threats in the workplace must attract a disciplinary sanction, but there is some divergence when it comes to dismissal.

[204] These observations of the decision maker in *Western Star Trucks*, at para. 25, resonate: "The mere expression of the idea of killing one's fellow employees … is a matter which a reasonable man could not expect a listener to take lightly, even if expressed in a jocular manner which was not the case here." The same is true in *Ontario Hydro*, *College Printers*, *McCain Foods*, *Canadian National Railway*, *OPSEU*, and *Toronto Transit Commission*.

[205] Even when physical harm short of murder is threatened, as in *CNR and CAW Local 100* and *A.T.U. Local 1587*, dismissal was held as warranted. I agree that dismissal was not an excessively harsh sanction under such circumstances.

[206] Much was made of the crew's failure to react dramatically to the threats, including locking themselves in their cabins at night. There is a real issue over the extent to which this took place, and I agree with the grievor that much of that evidence is unreliable hearsay. Captain Frost, however, was unequivocal in his testimony. The one and only time in his many years at sea that he locked his cabin door at night was on October 24, 2018. To me, this is a significant indication of the unsettling impact of the grievor's threats. Any reasonable person would have done the same under the circumstances.

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

(The Order appears on the next page)

V. Order

[208] The grievance is denied.

October 2, 2024.

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