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

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

BETWEEN

MICHEL HUGO TOBAL

Complainant and Grievor

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Tobal v. Canada Revenue Agency

In the matter of complaints made under section 190 of the *Federal Public Sector Labour Relations Act* and an individual grievance referred to adjudication

Before: Steven B. Katkin, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant and Grievor: Jean-Michel Corbeil, counsel

For the Respondent: Andréanne Laurin, counsel

Heard by videoconference,
November 20 to 24, 2023, and February 20, 22, and 23 and April 3 and 4, 2024.
Written submissions filed May 10, 24, and 31, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. The matters before the Board

[1] Michel Tobal ("the complainant" or "the grievor") has been employed by the Canada Revenue Agency ("the employer") since 2000 as an information technology infrastructure support analyst classified at the CS-01 group and level. He also holds several positions with the Professional Institute of the Public Service of Canada ("the union"), namely local steward, an elected position that he has held since 2008 and CS group regional president, an elected position that he has held since September 2015. He was also a health-and-safety representative from 2019 to the end of 2022.

[2] On April 6 and on August 12, 2020, the complainant made unfair-labour-practice complaints against the employer under ss. 190(1)(g), 185, and 186(2) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c.22, s. 2; "the *Act*").

[3] The April 6, 2020, complaint consists of four unfair-labour-practice allegations. Two were not made in a timely manner, meaning within the 90 days set out in s. 190(1) of the *Act*, and the Board is without jurisdiction to adjudicate them.

[4] With respect to the remaining two timely allegations raised in the April 6, 2020, complaint and the two allegations raised in the August 12, 2020, complaint, I find that the employer did not commit any unfair labour practices. In each case, it just tried to get work done and did not discipline, intimidate, discriminate against or threaten to discipline the complainant for carrying out his union duties.

[5] On August 3, 2020, the grievor was suspended for two days: one day for his conduct at a May 14, 2020, team teleconference meeting and one day for accessing the workplace during the COVID-19 pandemic ("the pandemic") without authorization. On August 7, 2020, he grieved the two-day suspension. The grievance is allowed.

[6] The grievor's conduct at the May 14, 2020, meeting was regrettable, but he raised union concerns, and there was no evidence that his comments were deceptive, malicious, or knowingly or recklessly false. I find that in the circumstances, his conduct fell just barely inside the line that delineates the normal scope of union activity. Given the latitude accorded to union representatives with respect to how they carry out their union duties, I find that he is entitled to protection from discipline.

[7] As for accessing the worksite without authorization, the evidence did not demonstrate that it was misconduct.

II. Both unfair-labour-practice complaints are dismissed

[8] The complainant alleged that the employer committed unfair labour practices within the meaning of s. 185 of the *Act*, which reads as follows:

> ***185*** *In this Division,* **unfair labour practice** *means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*
>
> ***185*** *Dans la présente section,* **pratiques déloyales** *s'entend de tout ce qui est interdit par les paragraphes 186(1) et (2), les articles 187 et 188 et le paragraphe 189(1).*
>
> [Emphasis in the original]

[9] He alleged that the employer violated s. 185 of the *Act* by failing to recognize his union role in the workplace; acting in a manner that deterred, discouraged, or prevented him from fully performing his union duties; and retaliating against him, all of which constituted both interference in the union's affairs, contrary to s. 186(1)(a), and practices prohibited by s. 186(2)(a).

[10] Section 186(1) of the *Act* prohibits interference by an employer in the affairs of a union, as follows:

> ***186 (1)*** *No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*
>
> ***(a)*** *participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or*
>
> ***186 (1)*** *Il est interdit à l'employeur ainsi qu'au titulaire d'un poste de direction ou de confiance, à l'*officier*, au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada*, ou à la personne qui occupe un poste détenu par un tel officier, qu'ils agissent ou non pour le compte de l'employeur :*
>
> ***a)*** *de participer à la formation ou à l'administration d'une organisation syndicale ou d'intervenir dans l'une ou l'autre ou dans la représentation des fonctionnaires par celle-ci;*

(b) *discriminate against an employee organization.*	***b)*** *de faire des distinctions illicites à l'égard de toute organisation syndicale.*

[11] A complaint that an employer has violated s. 186(1)(a) of the *Act* can be made only by a union, not by an individual employee. Although the union represented the complainant and made submissions on its own behalf as well as his, the union did not make a complaint. Therefore, no complaint under s. 186(1)(a) is properly before the Board.

[12] Section 186(2) of the *Act* prohibits certain employer actions toward employees; therefore, an individual complainant may make a complaint under that section, which reads as follows:

186 (2) *No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall:*	***186 (2)*** *Il est interdit à l'employeur, à la personne qui agit pour le compte de celui-ci ainsi qu'au titulaire d'un poste de direction ou de confiance, à l'*officier*, au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada *ou à la personne qui occupe un poste détenu par un tel officier, qu'ils agissent ou non pour le compte de l'employeur :*
(a) *refuse to employ or to continue to employ, or suspend, lay off discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person*	***a)*** *de refuser d'employer ou de continuer à employer une personne donnée, ou encore de la suspendre, de la mettre en disponibilité, de la licencier par mesure d'économie ou d'efficacité à la Gendarmerie royale du Canada ou de faire à son égard des distinctions illicites en matière d'emploi, de salaire ou d'autres conditions d'emploi, de l'intimider, de la menacer ou de prendre d'autres mesures disciplinaires à son égard pour l'un ou l'autre des motifs suivants :*
(i) *is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or*	***(i)*** *elle adhère à une organisation syndicale ou en est un dirigeant ou représentant — ou se propose de le faire ou de le devenir, ou incite une autre personne à le faire ou à le devenir —, ou contribue à la*

administration of an employee organization,

formation, la promotion ou l'administration d'une telle organisation,

(ii) *has testified or otherwise participated, or may testify or otherwise participate, in a proceeding under this Part or Part 2 or 2.1,*

(ii) *elle a participé, à titre de témoin ou autrement, à toute procédure prévue par la présente partie ou les parties 2 ou 2.1, ou pourrait le faire,*

(iii) *has made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or*

(iii) *elle a soit présenté une demande ou déposé une plainte sous le régime de la présente partie ou de la section 1 de la partie 2.1, soit déposé un grief sous le régime de la partie 2 ou de la section 2 de la partie 2.1,*

(iv) *has exercised any right under this Part or Part 2 or 2.1;*

(iv) *elle a exercé tout droit prévu par la présente partie ou les parties 2 ou 2.1;*

(b) *impose, or propose the imposition of, any condition on an appointment, or in an employee's terms and conditions of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2 or 2.1; or*

b) *d'imposer — ou de proposer d'imposer —, à l'occasion d'une nomination ou relativement aux conditions d'emploi, une condition visant à empêcher le fonctionnaire ou la personne cherchant un emploi d'adhérer à une organisation syndicale ou d'exercer tout droit que lui accorde la présente partie ou les parties 2 ou 2.1;*

(c) *seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from*

c) *de chercher, notamment par intimidation, par menace de congédiement ou par l'imposition de sanctions pécuniaires ou autres, à obliger une personne soit à s'abstenir ou à cesser d'adhérer à une organisation syndicale ou d'occuper un poste de dirigeant ou de représentant syndical, soit à s'abstenir :*

(i) *testifying or otherwise participating in a proceeding under this Part or Part 2 or 2.1,*

(i) *de participer, à titre de témoin ou autrement, à une procédure prévue par la présente partie ou les parties 2 ou 2.1,*

(ii) *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2 or 2.1, or*

(ii) *de révéler des renseignements qu'elle peut être requise de communiquer dans le cadre d'une*

	procédure prévue par la présente partie ou les parties 2 ou 2.1,
(iii) *making an application or filing a complaint under this Part or Division 1 of Part 2.1 or presenting a grievance under Part 2 or Division 2 of Part 2.1.*	***(iii)*** *de présenter une demande ou de déposer une plainte sous le régime de la présente partie ou de la section 1 de la partie 2.1 ou de déposer un grief sous le régime de la partie 2 ou de la section 2 de la partie 2.1.*

[13] At s. 191(3), the *Act* imposes a reverse onus for a complaint made under s. 186(2), as follows:

191 (3) *If a complaint is made in writing under subsection 190(1) in respect of an alleged failure by the employer or any person acting on behalf of the employer to comply with subsection 186(2), the written complaint is itself evidence that the failure actually occurred and, if any party to the complaint proceedings alleges that the failure did not occur, the burden of proving that it did not is on that party.*	***191 (3)*** *La présentation par écrit, au titre du paragraphe 190(1), de toute plainte faisant état d'une contravention, par l'employeur ou la personne agissant pour son compte, du paragraphe 186(2), constitue une preuve de la contravention; il incombe dès lors à la partie qui nie celle-ci de prouver le contraire.*

[14] The Board's jurisprudence has established that an unfair-labour-practice complaint can be dismissed if, on its face, it does not set out a reasonable link to the prohibitions in the *Act*; that is, if there is no arguable case. An arguable case is a precondition to the Board having jurisdiction to hear a complaint under s. 186(2). For complaints made under s. 186(2), there must be an arguable case for the reverse burden of proof under s. 191(3) to come into play.

[15] The complainant alleged the following facts: Two members of management, Mr. Lussier and Mr. Junior Pierre, shouted at him in two different meetings, denigrated him, and ordered him to stop talking because he was raising union issues. He was suspended for raising union concerns at the second meeting. Mr. Lussier tried to control his union schedule, and he was later summonsed to a disciplinary hearing for speaking out against this action. Finally, the employer failed, in general, to recognize his union role and failed, in particular, to provide frequent enough union-management meetings to discuss union issues.

[16] To determine if the complainant has made out an arguable case, I must take the alleged facts as true and not consider any defence that the employer might put forward to counter them. I find that these allegations, with one exception, could constitute violations of ss. 186(2)(a)(i) or (iv). Therefore, the reverse onus applies to those allegations, and the burden of proving that they did not constitute unfair labour practices falls on the employer, per s. 191(3). The employer met that burden and those complaints are dismissed.

[17] The one exception is the allegation that the employer failed to recognize the complainant's union role, in general, and failed, in particular, to provide frequent enough union-management meetings. However, no facts were alleged that, if proven true, could constitute violations of s. 186(2), therefore, the complainant failed to make out an arguable case with respect to this complaint and it is dismissed.

III. The April 6, 2020, unfair-labour-practice complaint — four allegations

[18] This complaint consisted of four unfair labour practice allegations, the first two of which were untimely. The complainant alleged that:

1) On September 26, 2019, Frédéric Lussier, acting team leader, denigrated him for objecting to the circulation of unilingual information.

2) On October 1, 2019, Sacha Gilbert, IT director, gave him a letter of expected behaviour.

3) On January 15, 2020, Mr. Lussier denigrated him for raising union issues during the presentation of the new Ma Prestation tool.

4) On February 10, 2020, Mr. Lussier tried to control the complainant's union schedule, and Mr. Gilbert summoned him to a disciplinary hearing when the complainant took issue with it.

A. The September 26 and October 1, 2019, allegations were untimely

[19] On September 25, 2019, the employer circulated an information guide to employees about the implementation of new software. The complainant testified that the application was a significant change from a tool that was used every day and that the IT employees would have to provide technical support for it. Employees had brought to his attention that the information had been circulated only in English.

[20] The complainant raised that concern with Mr. Lussier, whom, he said, was dismissive of the issue and disrespectful toward him. He tried to impress upon Mr. Lussier the importance of respecting the official-languages rules, but Mr. Lussier maintained that the guide was not an official document but only a draft and that another department's employee had sent it. Therefore, management was not responsible for translating it.

[21] Mr. Lussier felt that by insisting on discussing the matter in a relentless and harassing manner, the complainant had been insubordinate. The discussion took place mostly by email, with one brief oral conversation. It continued throughout the day on September 25, 2020, and into the morning of September 26. It ended as follows with Mr. Lussier's final words on the subject: "[Translation] I will repeat it for the last time. It was not a communiqué or a formal procedure. It is a non-event. There is nothing to add. I am asking you to stop. And I ask that you not be arrogant with me anymore when you speak to me."

[22] The complainant submitted that regardless of who was right or wrong about the official-languages rules, Mr. Lussier's statement denigrated him in retaliation for him trying to raise a concern of the members he represented and that had Mr. Lussier wanted to definitively end the conversation, he could easily have done so politely and courteously.

[23] On October 1, 2019, the complainant met with Mr. Gilbert about a September 13, 2019, health-and-safety incident.

[24] An employee had cut his finger. The complainant was the union's health-and-safety representative for the workplace. He had received training for it in March 2019, but this was the first time he had to apply it in the context of a workplace accident. Based on his training, he believed that he, Mr. Lussier, and the employee should complete a certain form and that to do it, they had to first inspect the accident site. Neither the employee nor Mr. Lussier was available that day, so it was agreed that they would do the inspection on September 16, 2019.

[25] On that day, the complainant learned that the employee had completed and submitted the form without waiting for the site inspection and without incorporating his or Mr. Lussier's comments. The complainant testified that he discussed it with the employee, who "[translation] reacted badly" and was "[translation] aggressive" with

him. Mr. Gilbert also testified that he heard that an "[translation] escalation" occurred between the complainant and the employee.

[26] The complainant testified that he wrote to Mr. Gilbert, to address the situation, as he believed that the proper occupational health-and-safety process had not been followed. He wanted to ensure that the proper process would be respected in the future, and to assure it, he felt that it was important that Mr. Gilbert talk to the employee and "[translation] fix the situation".

[27] Mr. Gilbert scheduled a meeting for October 1, 2019, which the complainant assumed was to further discuss the events surrounding the work accident. Instead, Mr. Gilbert said that the complainant did not understand his union duties and responsibilities, had exceeded his rights as a union representative, had behaved inappropriately, and had contributed to "[translation] poisoning" the workplace.

[28] He presented the complainant with a letter that set out the expected workplace behaviour that read, in part, as follows, "[translation] … you must refrain from overstepping your duties as a local occupational health-and-safety representative and carry out those duties courteously." The letter further advised that any behaviour that might undermine management's authority would not be tolerated.

[29] The complainant alleged that the letter was a reprisal against him for his union activities.

[30] The employer objected to the Board hearing these two allegations, as they were untimely.

[31] Section 190(2) of the *Act* states as follows:

190 (2) *Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in of the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*	***190 (2)*** *Sous réserve des paragraphes (3) et (4), les plaintes prévues au paragraphe (1) doivent être présentées dans les quatre-vingt-dix jours qui suivent la date à laquelle le plaignant a eu — ou, selon la Commission, aurait dû avoir — connaissance des mesures ou des circonstances y ayant donné lieu.*

[32] The Board's jurisprudence is clear that the 90-day time limit is mandatory and that the Board has no discretion to extend it. However, it can determine when the time limit began because it determines when the complainant knew, or ought to have known, of the action or circumstances giving rise to the complaint.

[33] In the complaint form, the complainant stated that he knew of the action or circumstance giving rise to the complaint on January 15, 2020 (the day on which the Ma Prestation tool was presented).

[34] However, he submitted that it was only once that later incident arose that he recognized a pattern in the employer's behaviour and realize that the earlier incidents of September 26 and October 1, 2019, were also part of a series of its actions that constituted interference with his union duties. He argued that when an employee believes that several incidents are part of a course of action, it should not be necessary to make a complaint after each one, as it would not promote harmonious labour relations or economy of resources for the parties, the Board, or the broader judicial system.

[35] Section 190(2) requires that a complaint be made within 90 days of when the complainant knew, or ought to have known, of the action or circumstances giving rise to it. The action or circumstances that gave rise to the first two allegations were clearly known to the complainant when they happened.

[36] He knew that the first action or circumstance arose on September 26, 2019. That was the day that Mr. Lussier, in a manner that the complainant felt was denigrating to his union role, put an end to the all-day email discussion that had taken place the day before.

[37] He also knew that the second action or circumstance arose on October 1, 2019, the day that Mr. Gilbert handed him the letter of expected behaviour that specifically referred to how he carried out his union role.

[38] It is irrelevant that months later, the complainant retrospectively perceived those events as part of a series of employer actions. The complaint was made on April 6, 2020, well beyond 90 days from September 26 and October 1, 2019. Those allegations were out of time, and the Board is without jurisdiction to hear them.

B. The January 15, 2020, allegation with respect to Mr. Lussier's conduct

[39] As the new Ma Prestation tool was soon to be introduced to the workplace, management scheduled Christian Tremblay, acting team leader and union representative, based in Shawinigan, Quebec, to present it to the employees.

[40] The complainant felt that the new tool would significantly impact the work and potentially the employees' performance evaluations. In the weeks that led to the January 15 presentation, he had these three concerns, which were informed by discussions with other union representatives and bargaining unit members who would be affected by the tool's introduction:

1) that the employees would require comprehensive training;

2) that documentation for the tool would have to be in both official languages; and

3) that using the tool could increase the workload for the CS-02 coordinators.

[41] Before the presentation, the complainant had several preliminary meetings with management. He met with Mr. Gilbert on December 6, 2019, who assured him that another training session would be held in addition to the January 15 presentation, that the documentation would be in both official languages, and that steps would be taken to ensure that the CS-02s' workload would not increase.

[42] He also met with Mr. Lussier on December 18, 2019, and again on January 13, 2020, two days before the presentation. According to the complainant, he told Mr. Lussier that if the information conveyed to the employees at the presentation was different from what Mr. Gilbert had told him, he intended, as a union representative, to intervene and correct it. He said that Mr. Lussier reacted badly and said that the complainant did not have the right to interrupt the meeting that way. The complainant maintained that he would intervene, but only if necessary; that is, if the information presented was not consistent with what Mr. Gilbert had told him.

[43] The complainant said that he did feel called upon to intervene at the presentation when Mr. Tremblay confirmed that the CS-02s at each site would be responsible for assuring that quality work was done, which the complainant felt would necessarily increase their workload. He also had to intervene when Mr. Tremblay said that no other training for the tool would be offered, apart from the presentation he

was giving at that moment. As those two points differed from what he had understood Mr. Gilbert to say, the complainant intervened, to try to ask questions and address the situation.

[44] However, shortly after he intervened, Mr. Lussier interrupted him, denigrated him in front of everyone present, accused him of wasting the employees' time, and shouted that he did not have the right to address the meeting as a steward, as he was there only as an employee. Although seated at the start, Mr. Lussier soon stood up, with flushed face and raised voice, and began shouting and pounding on the table in front of him. Mathieu Morin, the assistant director, did not intervene while Mr. Lussier spoke and shouted. However, when he stopped, Mr. Morin asked him to leave the room and called for a 15-to-20-minute break, after which the presentation resumed.

[45] While he was the only one who said that Mr. Morin asked Mr. Lussier to leave the room, the complainant said that his version of events should be preferred, as the other witnesses simply said that they did not recall that happening. He noted that they had joined the meeting remotely with audio only and that they could not hear what was happening in the room if the room microphone was muted.

[46] Guy Plante, a CS-02 employee, emailed the complainant after the meeting, expressing strong concern about Mr. Lussier's conduct. The complainant submitted that although Mr. Plante did not testify, the very fact that he sent such an email supports concluding that a significant incident involving Mr. Lussier's behaviour occurred at the meeting.

[47] The complainant said that Mr. Morin asked him to remain after the meeting, that they spoke for an hour or an hour-and-a-half, that Mr. Morin acknowledged that Mr. Lussier's conduct had not been appropriate, and that he should have intervened. He said that he intended to discuss it with Mr. Lussier. The employer did not challenge that testimony.

[48] The complainant also emailed Mr. Morin two days later and met with him on January 24, 2020, to further discuss what he felt had been Mr. Lussier's unacceptable behaviour toward him on January 15 and his failure to apologize since then.

[49] The complainant acknowledged that it is quite possible to have differences of opinion as to whether it was appropriate to put his union hat on and intervene at the

January 15 presentation when he felt that erroneous information was being conveyed. However, the type of admonition he received from Mr. Lussier in front of everyone was unacceptable in a labour relations context. That kind of public invective undermined his credibility and that of the union in the employees' eyes and had the inevitable effect of dissuading them from raising union issues.

[50] Mr. Lussier testified that he had met with the complainant before the presentation, to discuss it and to remind him that the purpose of the presentation was to present the tool. He sought to reach an understanding that any union-related questions would be discussed after the presentation, and he believed that the complainant had agreed to that. He did not recall the complainant saying he would intervene if the information presented differed from what Mr. Gilbert had told him.

[51] Mr. Lussier said that the complainant did not respect his request to hold any union concerns until the end of the presentation and that his tone was intemperate, demanding, and aggressive. He tried to intervene calmly, but the complainant would not comply with his requests to stop interrupting the presentation. Mr. Lussier denied that Mr. Morin asked him to leave the room.

[52] Mr. Tremblay, the presenter, was an acting team leader and a union representative. He testified that he felt attacked by the complainant, whose interventions were inappropriate and prevented him from properly giving his presentation which undermined the usefulness of the new tool for the employees.

[53] Cédric Vallières, a CS-02 employee and bargaining unit member, testified that the presentation delivery was choppy due to the complainant's repeated interventions, that Mr. Lussier asked the complainant several times to stop, and that the complainant continued to intervene. He described Mr. Lussier's demeanour and tone as normal.

[54] Jean-Pierre Lamothe, a CS-01 employee and bargaining unit member, said that the complainant raised many objections and Mr. Lussier asked him several times to stop but he did not. He described Mr. Lussier's tone and demeanour as strict.

[55] None of those witnesses recalled Mr. Morin asking Mr. Lussier to leave the room.

[56] The employer noted that the evidence on these two points was contradictory but submitted that the balance of probabilities favoured the version that Mr. Lussier had remained calm, and that Mr. Morin had not intervened, because four witnesses

testified to that, and only the complainant told a contrary version. It further argued that no weight should be given to Mr. Plante's version of events, as it was simply hearsay presented by way of an email to the complainant. Neither Mr. Morin nor Mr. Plante testified. The employer submitted that the Board should rely on the version of events relayed by the witnesses who were at the presentation and who testified at the hearing, namely, Messrs. Lussier, Tremblay, Vallières, Lamothe, and Tobal.

[57] According to the employer, the evidence showed that Mr. Lussier did not denigrate the complainant but rather intervened so that the presentation could resume its normal course. The employer did not prevent the complainant from raising his union concerns; it simply attempted to frame the times in which to raise them. It had an agreement with the union that its representatives were to get authorization ahead of any team meeting in which they wished to raise union concerns. The complainant did not do so for the meeting; he confirmed in his testimony that he knew that he was supposed to seek prior authorization.

No unfair labour practice

[58] The purpose of the presentation was to present a new tool and to explain how it worked to the employees. Before January 15, 2020, the complainant had already met with Mr. Gilbert on December 6, 2019, and with Mr. Lussier, on December 18 and on January 13, two days before the presentation.

[59] The evidence about events prior to the meeting was contradictory. The complainant said that he told Mr. Lussier he would intervene if any information was conveyed that was different from what Mr. Gilbert had told him. He said that Mr. Lussier reacted badly to that warning but that he had maintained his position that that was what he would do. Mr. Lussier did not recall that. He said he told the complainant that the presentation would be about how the tool worked, that it would not be the time to discuss union concerns, and that the complainant had agreed.

[60] Whatever the parties did or did not agree to in advance, what really matters is what happened at the presentation, which is that the complainant rudely and aggressively interrupted Mr. Tremblay's presentation a number of times. Mr. Lussier told him that he could ask questions about how the tool worked but repeatedly asked him to stop interrupting and to hold his union questions until the end of the presentation. It was a reasonable request.

[61] The employees were there to learn about the new tool, and it is not surprising that Mr. Lussier said that the complainant was wasting their time. The testimonies of witnesses who were in the bargaining unit made it clear that they did not appreciate their representative disrupting the presentation for that purpose.

[62] Mr. Tremblay testified that the complainant's actions prevented him from delivering his presentation properly and undermined the usefulness of the tool for the employees. Messrs. Vallières and Lamothe, both bargaining unit members, felt the same, that the presentation was choppy and could not be delivered well, due to the complainant's interruptions.

[63] The evidence was contradictory about Mr. Lussier's behaviour. It is clear that he expected disruptive behaviour from the complainant, tried to avoid it by meeting with him twice, including two days before the presentation, and reacted very quickly, as soon as the complainant began intervening. If the employer felt that Mr. Lussier's response was out of line when he was confronted with the complainant's interruptions, it could have been a disciplinary issue for the employer to deal with, or not, as it chose. But it would not necessarily equate to an unfair labour practice.

[64] Management had already met with the complainant three times about his and the union's concerns. If the information conveyed at the presentation was different from what he had been assured in those meetings, he could have waited until the end to ask questions or make comments to that effect. He could have done so strongly and assertively. But by rudely interrupting and obstructing the presentation of the new tool, he unnecessarily interfered with the employer's operations.

[65] The employer did not intimidate or discriminate against the complainant by asking him to stop interrupting and to wait until after the presentation to raise union-related questions or comments. It did not set out to intimidate or discriminate against him because he was a union representative (s. 186(2)(a)(i)) or because he was exercising a right under Part 1 of the *Act*, as a union representative (s. 186 (2)(a)(iv)). Rather, the complainant impeded the employer's legitimate work activity, and, not surprisingly, the manager reacted negatively.

[66] I find that the employer did not commit an unfair labour practice by simply attempting to frame the time at which union issues could be raised. Providing the union representative with several meetings with management before the presentation

and then simply asking him to hold his questions and comments until after the presentation ended was not an intimidation tactic, discriminatory measure or threat because he had raised union concerns. To the contrary, it appears that the complainant had an extraordinary amount of access to management, to discuss any concerns that he or the union had about the new tool's introduction.

C. The February 10, 2020, allegation about a work release for union duties

[67] On February 10, 2020, Mr. Lussier responded to Julie Richer, assistant director, based in Laval, who had asked if he could release the complainant from his work duties to attend a meeting to represent a bargaining unit member. The complainant found it unacceptable that Mr. Lussier told Ms. Richer that he could release him for that purpose, without first consulting with him as to his availability,

[68] He complained to Mr. Lussier who, he said, gesticulated with a raised voice, asked him to stop talking several times, and accused him of insubordination. Mr. Lussier agreed that he told the complainant to stop talking and that he was insubordinate but said that the complainant had raised his voice first and had said he had no business talking to Ms. Richer prior to speaking with him.

[69] The complainant also raised the issue with Ms. Richer. He emailed her, saying that management was not to manage a union representative's availability to perform their union duties and that Mr. Lussier should have consulted him first about his work duties and availability.

[70] In his unfair labour practice complaint, the complainant described this event as follows: "[Translation] On February 10, 2020, at about 16:45, Mr. Lussier verbally confirmed to me that **he could** assign my tasks to someone else **if I wanted** to take on union duties" [emphasis added].

[71] Ms. Richer's email to the bargaining unit member who required representation stated this:

> [Translation]
>
> …
>
> *I spoke with Michel's team leader, and he confirmed to me that he can release Michel from his duties so that he can attend tomorrow's meeting…* ***If Michel has any unforeseen***

> ***impediments with his leader, you can be represented by another IT union representative onsite or by phone.***
>
> …
>
> [Emphasis added]

[72] On March 11, 2020, after the complainant's discussions with Mr. Lussier and Ms. Richer, Mr. Gilbert called him to a disciplinary hearing, but like many other such meetings that were to be held at the start of the pandemic, it was postponed. The employer later reassessed whether the disciplinary hearing should be rescheduled, but it never was. Regardless, the complainant alleged that although he was never disciplined, the summons itself, and the threat of discipline alone, constituted retaliation against him for trying to assert control over his union activities.

No unfair labour practice

[73] This is an unusual complaint that the employer interfered with the complainant's union role by agreeing to release him from his work duties, to represent a bargaining unit member. Typically, a complaint is made when a release from work to attend to union duties is denied. Nevertheless, if the employer did try to control the complainant's union schedule, and did threaten to discipline him for expressing his disapproval, as alleged, then it could constitute an unfair labour practice under ss. 186(2)(a)(i) or (iv). However, there was no evidence of this.

[74] The evidence demonstrated only that Ms. Richer asked Mr. Lussier if he could release the complainant to represent the bargaining unit member, and Mr. Lussier said that he could. The complainant's description of the event in his complaint and Ms. Richer's email to the bargaining unit member both make it clear that Mr. Lussier simply agreed to make it possible for the complainant to undertake that union duty. He did not direct him to do so. There was no evidence of any attempt by management to control his union schedule.

[75] As for the disciplinary summons, I agree with the complainant that even though no disciplinary hearing or action ever took place, just receiving such a summons could constitute an unfair labour practice, if the threatened discipline was for engaging in union activity. He suggested that the threatened discipline was retaliation against him for trying to assert control over his union activities.

[76] I find that the employer did not commit an unfair labour practice when one manager advised another that he could release the complainant to attend to union duties. As for the disciplinary summons, there was no evidence of the basis on which the employer issued it.

IV. The August 12, 2020, unfair-labour-practice complaint — two allegations

[77] This complaint consists of these two allegations:

1) The conduct of Ernst Junior Pierre, acting assistant director, toward the complainant at a team teleconference meeting on May 14, 2020; and

2) management's failure to properly recognize his union role and to provide frequent enough union-management meetings.

A. The May 14, 2020, allegation about Mr. Junior Pierre's conduct

[78] The August 12, 2020 complaint is based in part on Mr. Junior Pierre's alleged conduct toward the complainant at the May 14, 2020, meeting. Mr. Tobal's grievance is also based, in part, on the May 14 events, as one day of his two-day suspension was for his alleged conduct toward Mr. Junior Pierre at the same meeting. As such, the evidence and submissions about what took place at the meeting will be set out only once, to avoid duplication. Mr. Tobal is both the complainant and grievor with respect to this meeting and may be referred to as either, or by name, depending on the context.

[79] The complainant alleged that the employer was guilty of an unfair labour practice due to Mr. Junior Pierre's conduct on a teleconference held to discuss operational challenges posed by the pandemic. He alleged that Mr. Junior Pierre's attitude toward him on the teleconference was unfair, derogatory, humiliating and resulted in a loss of credibility in the eyes of the members he was supposed to represent. He saw it as a continuation of the employer's attempts, through its managers, to dissuade or prevent him from performing his union duties in an energetic, zealous, and effective manner.

[80] The complainant said it was important to put the meeting in context. It took place at the start of the pandemic, when everyone involved was in an unprecedented situation, experiencing a great deal of stress, tension, and uncertainty. As Mr. Junior

Pierre said in his invitation, that was the very reason for the teleconference, to discuss the challenges they had faced and would be facing, as follows:

> [Translation]
>
> *I hope all is well during this unique period in which we live. I'd like to take some time to discuss with you about our operations and the challenges we've overcome and those that lie ahead.*

[81] As Mr. Junior Pierre had said that he wanted to discuss pandemic-related challenges, the complainant took that to mean that employee challenges would be part of the discussion. The word "discuss" suggested that the meeting was not a one-way street and that the employees would be able to participate. It implied an opportunity for everyone, including him, to ask questions, provide information, and put forward a point of view. Therefore, it was not unreasonable for him to consider it an opportunity to convey information from his union counterparts to the bargaining unit members and to raise questions about the employees' working conditions. It was in that context that the exchanges heard in the audio recordings took place.

[82] While he realized that Mr. Junior Pierre found his interventions disruptive and saw some of them as reproaches of management, the complainant submitted that when a manager invites employees to discuss challenges, especially in the unprecedented context of a pandemic, they cannot reasonably expect all questions and interventions to be laudatory. Although there were heated exchanges, with he and Mr. Junior Pierre repeatedly interrupting each other, and while it was clear that he wanted to hold his ground and communicate important information to the employees, it could not be said that he was any ruder to Mr. Junior Pierre than Mr. Junior Pierre was to him.

[83] He also submitted that it could be heard on the audio recording that while he did not wait until the very end of the meeting to ask questions, he did wait for appropriate pauses in Mr. Junior Pierre's speaking, took advantage of times that Mr. Junior Pierre asked if there were any questions, and a few times even asked if it was a good time to ask questions. However, Mr. Junior Pierre cut him off several times, would not let him finish asking a question, and threatened to end the call if he did not stop talking.

[84] He denied that Mr. Junior Pierre gave clear instructions to participants to send their questions in advance and argued that he had simply invited them to do so. In any event, he had forwarded his questions in advance to Brigitte Monette, a union representative, who had included them in her email to Mr. Junior Pierre.

[85] The complainant had not yet received his suspension when the unfair-labour-practice complaint was made, but he argued that it should be considered in the context of the complaint, as it stemmed from the same events and was retaliation.

[86] The employer submitted that Mr. Junior Pierre asked the employees to send him their questions in advance so that he could get answers. He received some questions from Ms. Monette but none from the complainant. In any event, Mr. Junior Pierre explained that it was not the questions that the complainant asked that were problematic but rather how he asked them, by cutting Mr. Junior Pierre off, not waiting for the question period at the end as he was asked to do, and insinuating that management had no answers. Mr. Junior Pierre testified that the complainant questioned his decisions, criticized management's approach, insisted on making his points, undermined his authority, and, above all, did so in an aggressive, sharp, direct, and intimidating tone. He could be heard on the audio recordings repeatedly interrupting the meeting and reproaching and criticizing management.

[87] As well as Mr. Junior Pierre, four other witnesses, Louis-Philippe Poitras, a team leader, and Messrs. Lussier, Vallières, and Lamothe all described the complainant's tone as loud, aggressive, and intimidating. Mr. Lussier testified that by his comments, it was clear that the complainant wanted to blame management. Mr. Poitras said that the complainant's interventions sought to undermine management's credibility; he questioned the knowledge and information that was conveyed. Mr. Vallières said that the complainant's interventions were detrimental to the smooth running of the meeting and that his behaviour did not correspond to the employer's code of integrity and conduct. Mr. Lamothe said that the complainant disrespected Mr. Junior Pierre.

[88] Messrs. Vallières and Lamothe, both bargaining unit members, emailed Mr. Junior Pierre after the meeting, to express their support and their discomfort with the complainant's conduct during the meeting. At 16:33, Mr. Vallières wrote this:

> *Good Job Ernst*

> [Translation] *Man … That is something; he did the same thing during the Ma Prestation presentation call …*

[89] At 18:05, Mr. Lamothe wrote this:

> *Hello Ernst,*
>
> *I do not know how you kept your cool but I and others commend you.*
>
> *And we apologize for the attitude. You don't deserve that from anyone.*
>
> *He volunteered, he wasn't forced to work.*
>
> *The issue with signing-in* [*sic*]*, is you would know when he comes in the office and leaves.*
>
> *How can you answer questions when the decision is not yours to make. And how did you get the other questions, because the normal people voiced their concerns via email beforehand !*
>
> *Whatever the union says needs the approval from the employer first before you can discuss it with the employees. I know that, maybe he needs to be reminded of it.*
>
> *The way he spoke to you, the way he cut you off and the tone he used is unacceptable.*
>
> *And the threat that if you don't let him finish, he will go over your head to the director. He needs to follow hierarchy.*
>
> *I am truly sorry, that is why I reminded him that everyone is replaceable.*
>
> *…*
>
> *I know it's your battle but I had to voice the opinions of the team.*
>
> *Thank you for the great job that your* [*sic*] *doing ….*
>
> *…*

[90] The employer noted that the complainant had acknowledged that to pass on a union message during a team meeting, he had to ask for authorization beforehand. As he did not, he did not legitimately exercise his union duties during this teleconference. He should have raised any points of disagreement at the union level during his union-management meetings with the director.

[91] The employer did not act in a manner that was unfair, derogatory, or humiliating toward the complainant. To the contrary, Mr. Junior Pierre reminded him several times, that he was present as an employee and to hold any questions until the question period, or to take note of his points and email them so that he could follow-

up. But the complainant continued to repeatedly make his points and insist on answers.

[92] The employer found the complainant's behaviour to be unacceptable and felt that it had a duty to address it. That he was a union steward did not factor into its decision. He was invited to the meeting as an employee, not as a union steward, and he was disciplined in that capacity. It was an all-employee team meeting, not a union-management meeting, where perhaps more animated or emotional discussions could be expected.

[93] The employer suspended him for one day for his insubordinate behaviour because it was concerned with maintaining a healthy workplace with civil and respectful interactions.

No unfair labour practice

[94] The complainant parsed the words of Mr. Junior Pierre's brief meeting invitation to justify his actions, arguing that Mr. Junior Pierre had said that it was a meeting to discuss things; therefore, there should have been an opportunity to ask questions, to disagree, and to advance one's point of view.

[95] However, the complainant had plenty of opportunities as a union steward to discuss with the employer any operational issues during the pandemic. Before the May 14 meeting, he met with or had discussions with management on March 16, 17, 18, 19, 20, 23, 24, and 25, April 9, 14, and 28, and May 5, 2020. There was no evidence that anyone tried to prevent him from carrying out his duties in that respect. To the contrary, he seemed to have had an extraordinary degree of access to several members of management, to discuss issues.

[96] The complainant said that he considered the May 14 teleconference an opportunity to convey information to the bargaining unit members. As a union representative, he could have met with them at any time, to convey information and to hear their concerns about operational challenges during the pandemic. Instead, he chose to use a team meeting as an opportunity to aggressively reproach management.

[97] Like all employees, he had been asked to send his questions ahead of time. He could have sent a comprehensive list of everything he wanted to discuss, which would

have given Mr. Junior Pierre the opportunity to find answers ahead of time, as he had said he hoped to do.

[98] In addition to the opportunity to send questions ahead of time, and the multiple meetings with management during which he could have raised his issues, the complainant still had the opportunity to ask questions at the meeting itself. As Mr. Junior Pierre put it, it was not the questions that were problematic but rather his aggressive and disruptive way of asking them.

[99] As at the January 15 presentation, the complainant appeared to take advantage of the May 14 teleconference to verbally attack Mr. Junior Pierre. It is noted that two bargaining unit members sent Mr. Junior Pierre apologetic and supportive emails after the teleconference.

[100] Just as the complainant's first unfair-labour-practice complaint focussed on Mr. Lussier's conduct at the January 15 presentation, so did his second unfair-labour-practice complaint criticize Mr. Junior Pierre's conduct at the May 14 teleconference. The complainant testified that he and Mr. Junior Pierre had heated exchanges but that he was no ruder to Mr. Junior Pierre than Mr. Junior Pierre was to him. The evidence shows otherwise as captured in the first line of Mr. Lamothe's email to Mr. Junior Pierre: "I do not know how you kept your cool but I and others commend you." Further, the audio recordings reveal that Mr. Junior Pierre did not respond in kind and did not intimidate or threaten the complainant during the meeting contrary to s. 186(2)(a)(i) or (iv).

[101] The employer did not intimidate, discriminate or threaten the complainant for carrying out legitimate union activities; rather, he was impeding the employer in its operations. Nor was this conduct unprecedented. As Mr. Vallières noted in his email to Mr. Junior Pierre, "[translation] … he did the same thing during the Ma Prestation presentation call …".

[102] I find that the employer did not suspend him for raising union matters but rather for repeatedly disrupting a team meeting and not complying with the manager's request that he hold his questions to the end.

B. The alleged lack of recognition of his union representative role and union-management meetings

[103] The complainant alleged that the employer did not properly recognize his union role and that union-management meetings were infrequent and hard to get. That made it difficult for him to properly serve his members' interests and to maintain good relations with management.

[104] Mr. Lussier testified that the employer routinely authorized the complainant to be absent as required, to carry out his union duties. He did not dispute that testimony. It also held multiple formal and informal union-management meetings with him at the director level, as his position with the union dictated. Those meetings took place with Mr. Morin, the assistant director, on February 10 and 26, 2020, and with Mr. Gilbert on February 26, March 16, 17, 18, 19, 20, 23, 24, and 25, April 9, 14, and 28, and May 5 and 22, 2020. Those meetings were the ones recorded in writing, but Mr. Gilbert testified that there were also unscheduled calls, many emails, and times when the employer sought the complainant's input on several matters. The complainant did not deny this.

[105] In the employer's view, the complainant tends to want things to happen his way, but there are established and agreed-to procedures; the parties have adopted a philosophy that governs their relationship. Not all meetings are conducive to discussing union business, and day to day, the employer must be able to hold uninterrupted meetings with its employees, to convey information. The complainant acknowledged that he was to obtain prior authorization to share union information during a team meeting.

[106] The employer also submitted that there is a way to address one's work colleagues and management. In his interactions with management at team meetings, the complainant used a strong, aggressive, insistent, intimidating, disrespectful, and angry tone, to use the adjectives that the employer's witnesses employed.

[107] The employer said that it met regularly with the complainant, answered his questions and concerns, and, at times, solicited his input. That he was not always satisfied with the answers he received did not mean that the employer did not recognize his union representative role. To the contrary, by the nature of the employer-union relationship, it is quite normal that the parties may not always agree.

No unfair labour practice

[108] I found earlier in this decision that the complainant failed to make out an arguable case with respect to this complaint and dismissed it on that basis.

[109] As an aside, even if an arguable case had been made out, I note that the complainant presented no evidence that could support an alleged lack of recognition of his steward role. Nor was there any evidence of infrequent or hard to get union-management meetings. To the contrary, he appears to have enjoyed an extraordinary degree of access to management, to discuss union concerns.

V. The grievance is allowed

[110] The employer felt that a two-day suspension was justified — one day for the grievor's conduct during the May 14, 2020, teleconference, and one day for him accessing the workplace without authorization on May 19, 2020. It viewed both incidents as insubordination and the second one as also breaching workplace rules. It had the onus of demonstrating that the grievor engaged in misconduct that warranted discipline and that the discipline imposed was not excessive.

[111] To establish that his conduct amounted to insubordination, the employer had to demonstrate the following:

1) that he received a clearly communicated order;

2) that the person giving the order had authority to give it; and

3) that the grievor did not obey the order.

[112] As well, intimidating, insolent, or contemptuous behaviour manifested as opposition to, or provocation of, the employer's authority may also be considered insubordination, with or without a refusal to comply with an order.

[113] The employer relied on several case authorities, including *Szmukier v. Deputy Head (Correctional Service of Canada)*, 2015 PSLREB 37, *Knihniski v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 72, and *Joe v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 95, each of which had some factual similarities with this case in that they involved insubordination or lack of respect toward colleagues or managers. Based on the range of one-to-three-day suspensions in those cases, the employer submitted that the two-day suspension in this case was appropriate.

A. The grievor is entitled to enhanced latitude for his May 14, 2020, conduct

[114] The evidence showed that the grievor ignored several clearly communicated orders issued by someone with the authority to issue them. His team leader asked him to wait to ask questions, to stop talking, to stop intervening, and to stop disrupting the meeting. He demonstrated extreme disrespect and contemptuous behaviour toward management and his colleagues by continuing to disrupt the meeting.

[115] Four witnesses gave credible testimony about the incident. Their testimonies were reflected in the emails that two of them sent to Mr. Junior Pierre after the meeting. They were both bargaining unit members. The grievor did not deny the conduct that could be plainly heard on the audio recordings but tried to put it in a context that would justify it. His argument that he was no ruder to Mr. Junior Pierre than Mr. Junior Pierre was to him was not supported by the evidence.

[116] The grievor argued that he had the right and obligation to raise issues as a union representative and that he was entitled to the enhanced latitude that must be accorded to union representatives in their interactions with management. He noted that the Board's jurisprudence has stated that that principle of latitude must apply not just in formal labour-management meetings and that in any event, the May 14 meeting was neither a formal labour-management meeting nor a normal operational meeting. He argued that given his union obligation to raise the issues, and the latitude that must be accorded to him, there would have to be clear and convincing evidence of serious insubordination to justify disciplinary action in the circumstances.

[117] I agree. This is a borderline case in that the grievor's actions came very close to the line that delineates the normal scope of union powers. However, I find that his conduct fell within that scope and that he is, therefore, entitled to the protection afforded by the important principle of latitude for union representatives.

[118] In *Shaw v. Deputy Head (Department of Human Resources and Skills Development)*, 2006 PSLRB 125, the Board's predecessor heard a grievance and an unfair-labour-practice complaint that arose from a 10-day disciplinary suspension imposed on a union representative for making highly critical public comments about his employer. The Board allowed the grievance, holding that a union representative should not be disciplined for making openly critical statements about their employer unless the statements were malicious or knowingly or recklessly false, as follows:

…

> *[40] … I have concluded that the appropriate standard to apply is that represented by the line of cases put forward by counsel for the grievor, which suggest that representatives should not be subject to discipline unless they make statements that are malicious or knowingly or recklessly false.*
>
> *[41] The value of this standard is that it makes it possible to take into account the realities of collective bargaining relationships. It is fundamental to such a relationship that those who speak for the bargaining agent chosen by employees to represent them must be able to raise questions about decisions made by the employer that affect the terms and conditions under which those employees work and must be able to challenge the wisdom or legitimacy of those decisions.* ***The responsibility that an officer has to represent employees forcefully and candidly may sit uneasily with the duty of obedience and fidelity such an officer, like other employees, owes to the employer. This makes it necessary to articulate a standard of conduct that does not unfairly expose the officer to discipline for on occasion placing his duties towards the employees he represents ahead of deference to the employer.*** *On the other hand, this standard makes it clear that no officer is shielded from the disciplinary consequences for making statements that are false or malicious.*
>
> …
>
> [Emphasis added]

[119] The union representative in *Shaw* had made some very strong, critical comments about management, but nevertheless, the former Board concluded that he was protected by that principle and that he should given broad latitude even if his comments were likely to be "hurtful and distressing" to employer representatives.

[120] In *Joe v. Marshall*, 2021 FPSLREB 27 the Board also stressed the importance of the principle of latitude to be given to union representatives, to be able to challenge management without fear of discipline, as follows:

…

> *[120] Being an elected union official carries with it a set of heightened obligations and responsibilities. This is why there is legislation that protects lawful union activity. Among other things, the Board must ensure that the union freedoms set out in the* Act *can be exercised with impunity.* ***As the PSLRB determined in* Quadrini*, it is fundamental to the integrity of the labour relations system that persons who exercise rights accorded to them under those laws do so, and can continue to, without fear of reprisal. Were it otherwise, given the possibility of the misuse of authority in the relationship between individual persons and***

> ***employers, "…the chilling effect of reprisal action on the exercise of vested statutory rights could undermine the effective force of those rights." (*Quadrini *at para. 45) Union officials must be able to exercise their lawful activities without fear of reprimand, interference, or intimidation from the employer.***
>
> *[121] Because collective bargaining is adversarial in nature, arbitrators and adjudicators have generally accorded union officials latitude in how they carry out their duties and how they challenge management, without fear of being disciplined.* ***Even if a union official performs his or her duties in a dishonest and manipulative way, it cannot provide grounds for discipline unless it is done maliciously, knowingly or recklessly falsely, or in a manner that threatens or intimidates or publicly attacks the employer or a member of management.****…*
>
> …
>
> [Emphasis added]

[121] The Board in *Joe* also qualified the principle by noting that representatives who perform union functions in the workplace remain employees and that the "… protection would not extend to conduct that falls outside the normal scope … of union responsibilities …".

[122] Applying Board jurisprudence to this assessment, I note that there was no evidence that the complainant's interventions were made maliciously or deceptively or that his statements were knowingly or recklessly false. However, his conduct at the May 14 meeting was uncalled for and would certainly have warranted discipline were it not for the importance of the principle that wide latitude must be accorded union representatives with respect to how they carry out their union duties. As regrettable as his conduct was, he was raising union concerns, and in the absence of evidence that his conduct was malicious or deceptive, I find that he was entitled to the protection from discipline accorded by his union position.

[123] The grievance against the one-day suspension for the grievor's conduct at the May 14 meeting is allowed.

B. The grievor's May 19, 2020, entry to the workplace was not misconduct

[124] On May 19, 2020, the grievor entered the workplace without prior authorization when entry was restricted due to pandemic protocols.

[125] Mr. Poitras testified that he had a lengthy conversation with the grievor and that he told him to send the information about the work that he had to do onsite. With that information, Mr. Poitras could apply for the grievor's authorization to access the office, but he also told the grievor that there was insufficient time to be so authorized for Tuesday, May 19, 2020.

[126] The grievor denied that Mr. Poitras said that he could not be authorized for Tuesday, May 19. His understanding was that he just had to email his workload information, and then Mr. Poitras could secure the authorization. Further, Mr. Poitras' response to receiving the information was "[translation] thank you, excellent", which the grievor took to mean that everything was fine and that he was, or would be, authorized to enter the workplace.

[127] However, Mr. Poitras said that it was just an acknowledgement of receipt; he had already advised that there would not be enough time to be authorized for access on the Tuesday. Further, the grievor sent the information after 17:00 on the Friday for access on the Tuesday, and the Monday was a statutory holiday. The grievor acknowledged that he might have misinterpreted Mr. Poitras' seemingly positive response but argued that if so, his understanding was not unreasonable.

[128] The employer noted that on May 15, the grievor asked Mr. Plante to ask Mr. Junior Pierre for authorization, pointing out that this would not have been necessary if he thought that he already had authorization from Mr. Poitras. However, the grievor countered that he and Mr. Plante just wanted to confirm physical access; their concern was not with authorization, which he believed they already had. The grievor also said that Mr. Plante told him that he had received verbal authorization from Mr. Junior Pierre who, however, said the opposite — that he had not given Mr. Plante such authorization.

[129] The grievor noted that he spent 15 minutes after the end of his workday on Friday to email Mr. Poitras, which he would have had no reason to do unless he thought that accessing the workplace on the Tuesday was possible. He argued that the employer's belief that he had understood that he was not allowed to report to the office and that he simply decided to ignore it was implausible. There was no personal or other interest for him to insist on reporting to the office if he knew that the employer forbade him from entering it.

[130] The grievor said that either Mr. Poitras never told him that he was not authorized to report to the office on May 19 or he had misunderstood and wrongly believed that he was authorized to report. Either way, the employer did not demonstrate that he received a clearly communicated order to not report to the office.

[131] I agree. There was no credible evidence that the grievor deliberately accessed the worksite when he knew he was not authorized to. There seems to have been a number of miscommunications and misunderstandings, but none of it constitutes evidence of insubordination or of deliberately breaking workplace rules.

[132] The grievance against the one-day suspension for the grievor's May 19 unauthorized workplace entry is allowed.

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

(The Order appears on the next page)

VI. Order

[134] The unfair-labour-practice complaint made on April 6, 2020, is dismissed (Board file no. 561-34-41706).

[135] The unfair-labour-practice complaint made on August 12, 2020, is dismissed (Board file no. 561-34-41984).

[136] The grievance filed on August 7, 2020, is allowed (Board file no. 566-34-42900).

[137] The employer is ordered to pay the grievor two days' salary plus any associated benefits or premiums.

April 24, 2025.

FPSLREB Translation

Steven B. Katkin,
a panel of the Federal Public Sector
Labour Relations and Employment Board