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Citation: 2025 FPSLREB 62

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

THOM BARTLEMAN

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Bartleman v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Employer: Chris Hutchison, counsel

Heard by videoconference,
April 26 and May 7, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

A. Introduction

[1] Thom Bartleman ("the grievor") brought an antenna into his Canada Revenue Agency ("the employer" or CRA) workplace and connected it to a television in a boardroom on the sixth floor to enable employees to watch a World Cup soccer game ("the game") that was scheduled during working hours. He was found to have contravened the employer's *Code of Integrity and Professional Conduct* ("the Code" or "the code of conduct"), and he was given a three-day suspension, which he grieved on November 23, 2018. The suspension was subsequently reduced to one day.

[2] After his grievance was referred to adjudication, the one-day suspension was rescinded. The employer argued that the matter should not be heard, as it is moot and the parties no longer had a live controversy or tangible and credible dispute.

[3] The grievor argued that part of the grounds for discipline was the claim that he had been in the boardroom watching the game between 2:00 and 2:30 p.m. on the day in question and that when a supervisor directed him to return to work, he refused. He claimed that it was a lie and that management should not be able to avoid scrutiny by rescinding a disciplinary action at the last moment.

[4] The Federal Public Sector Labour Relations and Employment Board ("the Board") ruled that, in light of the employer's preliminary objection that the grievance is moot and the submissions of the parties, the grievor bore the onus of establishing that the parties still had a live controversy or tangible and credible dispute.

[5] The employer led evidence that it was unable to substantiate the allegation that the grievor was in the boardroom watching the game between 2:00 and 2:30 p.m. on the day in question and that that information was not included in the grounds for discipline.

[6] I rule that the grievance is moot, and I deny it for that reason.

B. Background

[7] On November 16, 2018, the employer advised the grievor that after an investigation was conducted, it had been concluded that he contravened the Code

when he attached the antenna to the television and tuned it to the game. It had also been concluded that he informed other employees about the televised game and that by doing so, he encouraged them to participate.

[8] As a consequence of his conduct, the employer suspended the grievor without pay for three days.

[9] On November 23, 2018, the grievor grieved the three-day suspension. As corrective action, he requested that the suspension be reversed, that he be paid the lost salary for the three days, that the employer's records pertaining to the suspension be destroyed, that it apologize for the vexation caused to him, and that he be made whole.

[10] On February 1, 2019, the employer replied to the grievance at the second level of the grievance procedure, stating in part the following:

> …
>
> *… As you admitted to installing an antenna on CRA equipment, then advising employees at the sporting event was being broadcast, it is clear misconduct occurred. Therefore, discipline is warranted. However, upon review of the aggravating and mitigating factors, I find that a 1 day suspension is appropriate in the circumstances.*
>
> *For the reasons noted above, your grievance is partially allowed insofar that the discipline rendered will be reduced to a 1 day suspension. No further corrective action will be granted.*
>
> …

[11] On January 4, 2021, the employer denied the grievance at the final level of the grievance procedure.

[12] On February 10, 2021, the grievor's bargaining agent referred the grievance to adjudication under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*), which is about disciplinary action resulting in termination, demotion, suspension, or financial penalty. In the referral, his bargaining agent noted that it was being done as a courtesy to its member and that it would not represent him any further in the matter, so he would represent himself.

[13] On December 20, 2023, the Board advised the parties that it had scheduled a hearing of Mr. Bartleman's grievance from May 7 to 9, 2024.

[14] On February 20, 2024, the employer advised the grievor in part as follows:

…

> *Following a further review of the corrective measures requested in your grievance … and the time that has elapsed since the occurrence of the events in question, I have decided to rescind the one-day suspension. In arriving at my decision, I have taken into consideration all the information before me, which includes the disciplinary process and the submissions made during the grievance process. Furthermore, I have taken note of the fact that you are now retired.*
>
> *Please consider this letter as confirmation that the 1-day suspension is rescinded, all records pertaining to the suspension will be removed from your personnel file and destroyed, and you will be paid for the lost salary associated with the suspension. There will be no further disciplinary actions related to this incident.*
>
> *Given that the disciplinary action at issue has been rescinded in its entirety, I trust that your grievance has been resolved to your satisfaction.*

…

[15] On March 12, 2024, counsel for the employer wrote to the Board, to request a case management conference. Counsel advised that the disciplinary action that was in place when the grievance was filed had since been rescinded and requested the conference to canvass what, if anything, remained at issue.

[16] The grievor replied on March 20, 2024, noting that the core question raised by the employer's request for a prehearing conference was whether it could render his request for adjudication moot by paying him one days' salary and by indicating that the discipline had been reversed.

[17] He argued that granting the request for a prehearing conference would confirm and embolden the employer to continue to make untenable decisions because it would know that it can avoid scrutiny by reversing a decision at the last moment. He asked that the May 7 to 9 adjudication hearing proceed as scheduled.

[18] A prehearing conference was held on April 11, 2024, following which the grievor was instructed to advise counsel for the employer of what additional remedy, if any, other than those that the employer had already accorded, he sought at the hearing scheduled for May 7 to 9. The employer was directed that if it was so advised, it could make further submissions to the Board following the grievor's instructions by Friday,

April 26. If the grievor wished to reply to the employer's submission, he was to do so by Friday, May 3, 2024.

[19] On April 18, 2024, the grievor advised the employer that the outstanding remedy that he sought was a public apology from the employer, to be published in a newspaper of his choice. The apology was to clearly articulate that at no time did the employer have just cause to discipline him and that it deeply regretted the actions that it took against him and the embarrassment that they caused him.

[20] On April 26, 2024, the employer filed in writing a preliminary objection to the hearing of the grievance, submitting that the grievance is moot and that it should not be heard. It argued that the reference to adjudication was with respect to a one-day suspension that had since been rescinded, that all records pertaining to the suspension had been removed from the grievor's personnel file and destroyed, and that no disciplinary action was at issue any longer.

[21] It also argued that the only corrective action that remained outstanding was the grievor's request that it apologize. It argued that it is settled law that the Board does not have the authority to order a party to apologize; as such, no issues to be adjudicated remained, and the grievance is moot.

[22] On May 3, 2024, the grievor responded, arguing in part that he did not commit the act of watching television somewhere between 2:00 and 2:30 p.m. on the date in question, of which he was accused, and that the employer wilfully chose to ignore the irrefutable proof that he was at his desk working when the supposed action occurred.

[23] The grievor argued as follows: "It seems pretty darn important that the employer learn that they can't discipline an employee for no reason." He argued that for whatever unknown reason, the employer did not perform its due diligence in the investigation. He submitted that the adjudication should proceed under all normal rules, with the employer going first, per the normal procedure for cases of this type.

[24] On May 6, 2024, the Board advised the parties that in light of the employer's preliminary objection that the grievance is moot, and the submissions of both parties, the grievor was to proceed first at the hearing scheduled for May 7, 2024, to establish that the parties still had a live controversy or tangible and credible dispute.

II. Summary of the evidence

A. For the grievor

[25] The grievor called two witnesses, Donna Much and himself.

1. Ms. Much's evidence

[26] Ms. Much was employed as a senior program officer at the employer's headquarters in Ottawa, Ontario, for 15 years and as of the hearing was retired.

[27] She testified that when there was a significant sporting event, the employer would often put a television in the boardroom, so that employees and members of management could pop in and out, to watch it.

[28] She referred specifically to Olympic hockey games involving Canada that occurred in February 2018. Management specifically sanctioned it, along with women's hockey games, and a couple of other occasions. There was no formal notice. Employees were advised by word of mouth that games were being broadcast in the boardroom and did not have to account for the time they spent watching a broadcast.

[29] Her opinion was that the employer's headquarters was much more flexible than were its regional offices.

2. The grievor's evidence

[30] Mr. Bartleman was employed as an SP-05 rulings officer at the employer's Kitchener-Waterloo, Ontario, office. He was so employed for 27 years and as of the hearing was retired.

[31] He testified that he did not do what he was accused of. He explained that on July 11, 2018, as he had previously decided, at noon, he brought the antenna into his workplace and took it to the boardroom. He attached it to the television and left it against a window. He turned on the television to make sure that it was working and left it on. He left the room at approximately 12:00 p.m. and went back to his office.

[32] The game was scheduled to be televised at 1:45 p.m. A sign stating that the room was occupied was placed on the boardroom door.

[33] The grievor conducted an interview. When it concluded at approximately 3:00 p.m., he went to the boardroom. No one was there, and the television was off.

[34] He turned the television on. One or two minutes later, the assistant director came into the room and began to admonish him and told him to take the equipment and go back to work.

[35] The assistant director called another team leader, to advise what had happened.

[36] After that, an investigation began. During the first investigation meeting conducted by the manager of the section that the grievor worked for, the grievor offered all the information as to what had happened. His manager informed him that another CRA employee had provided information that the grievor had been in the boardroom from 2:15 to 2:30 p.m. and that he had been asked to return to work and had refused. He stated that that was an outright lie.

[37] He stated that he pointed out that notes existed in the CRA's systems for the file that he had been working on that would show that he was conducting an interview when he had supposedly been watching television. He specifically pointed out that the CRA's systems track whenever a file is altered and that notes that he made about July 11, 2018, were made on July 11, 2018. He stated that it was impossible for him to have done what an unknown employee had alleged that he had done.

[38] When he was questioned about why he was of the view that he was allowed to set up the television to receive the game, he referred to two employer documents, the first being its electronic-network policy guide, in particular the scope of personal use. Nowhere did the word "pre-authorization" appear.

[39] The grievor stated that he was not aware that management took any steps to confirm that he was conducting an interview by telephone and computer when he was alleged to have been watching television.

[40] On October 31, 2018, his manager met with the grievor and delivered a copy of management's investigation report ("the report"), dated October 29, 2018. The grievor expressed surprise at what he called the report's shoddy nature. He specifically asked the manager what specific action he had done and what rule he had broken, in a clear and precise matter. He asked to be shown in writing the exact rule that he supposedly had contravened. He was specific that he did not want a generic explanation followed by an Internet lead to the employer's discipline directive and its code of conduct. He felt it necessary to remind the manager that they worked for the CRA and that in

hundreds of Tax Court cases, he had personally ensured that what the taxpayer had done was clearly explained in the first five to eight paragraphs of his report.

3. The grievor's cross-examination

[41] The grievor was asked to confirm that on July 11, 2018, he brought the antenna to his workplace and attached it to the boardroom television. He was asked to confirm that the purpose was to show the game. He was asked to confirm that he told colleagues about it and to acknowledge that it was done not for any CRA purpose and that he did not obtain permission. He confirmed those facts.

[42] He was asked to confirm that sometime after 2:50 p.m. on that date, the boardroom was empty, that he went there and turned on the television, and that the game was in an intermission. He agreed.

[43] He was asked to confirm that one or two minutes later, an assistant director entered, admonished him, and told him to take his equipment and go back to work. He agreed that that took place.

[44] He was referred to the report. He was asked to confirm that the assistant director observed him watching television and in particular that he was observed watching the game at 3:00 p.m. He agreed.

[45] He was asked if he was familiar with the Code. He stated that he was aware that it exists.

[46] He was referred to the section in the report that states that the Code states that employees may use federal-government-owned, or leased, property, assets, valuables, and equipment only for official purposes, unless preauthorization is obtained in advance for personal use. In addition, the Code states that employees must conduct themselves professionally while at work. The grievor stated that he saw the statement outlining the Code. He disagreed and stated that it was not correct. He stated that the network policy was not referenced. He stated that his conduct did not breach the network policy.

[47] He was referred again to the report, which outlined the information and stated that he had determined that he had contravened the Code.

[48] He was referred to the Code. He was asked whether CRA employees were required to follow the Code. He replied, “Yes.”

[49] He was referred to page 6 of the Code, in particular of the section titled “CRA and Government of Canada property, assets, valuables, and equipment”. It reads in part as follows: “You may only use government owned or leased property, assets, valuables, and equipment for official purposes, unless you have pre-authorization for personal use.”

[50] He was asked to confirm that when he put the game on the television, it was not for federal government use. He agreed. He was asked to confirm that he was not preauthorized to use the facility for personal use. He agreed.

[51] He was referred to the employer’s second-level grievance reply. He was asked to confirm that he received a copy of it on or about February 1, 2019, in which he was advised that upon a review of the aggravating and mitigating factors, the director found that a one-day suspension was appropriate in the circumstances and that his grievance was allowed in part. The grievor replied that that was correct.

[52] He was referred to a letter dated February 20, 2024, and signed by the acting director of the CRA’s Northern Ontario Tax Services Office. The grievor was asked whether he received a copy of it, in which he was advised that his one-day suspension was rescinded, that all records pertaining to the suspension would be removed from his personal file and destroyed, that he would be paid for the lost salary associated with the suspension, and that there would be no further disciplinary action taken related to the incident. The grievor agreed.

B. For the employer

[53] The employer called one witness, Angie Murdy.

1. Ms. Murdy’s evidence

[54] Ms. Murdy had been the manager of the CRA’s Canada Pension Plan (CPP) E1 Rulings Program (“the program”) for 7 years as of the hearing, or since 2018, and had been employed by the employer for 21.5 years.

[55] She was referred to the Code and was asked to identify it. She did so and stated that it is a framework that all CRA employees are expected to follow. They are made

aware of the Code and are provided with a copy of it on their first day of employment. They are required to refamiliarize themselves with it annually.

[56] She was asked when she first met the grievor. She did not recall. She stated that she came to the program in 2012 and that at that time, they were on different teams. In 2017 or thereabouts, she was appointed to a management position. She supervised a team, of which he was a member. He reported ultimately to her. He was a rulings officer. He reported to a team leader, who in turn reported to her.

[57] Ms. Murdy was referred to a document entitled “Notes from the meeting re: the decision to render discipline or not” and dated July 26, 2018. She identified it and stated that it was a summary of notes taken during a fact-finding meeting. Someone who will be referred to as “LB” took the notes. Ms. Murdy was asked if she reviewed the notes and whether they reflected her recollection of the meeting. She stated that they captured the conversation.

[58] The purpose of the meeting was fact finding. Doing so is part of the investigation process. If there is a concern that an employee has engaged in misconduct, the employer convenes a fact-finding meeting, to determine whether misconduct occurred.

[59] When Ms. Murdy returned from vacation, she was made aware of a situation that occurred during her absence. An apparent breach of the Code had occurred, and there was a need to go further.

[60] It was alleged that Mr. Bartleman had attached the antenna to the boardroom television and had tuned it to the game. Ms. Murdy was advised that an assistant director had gone into the boardroom and had asked him to stop the activity. The matter was then passed to her, to determine whether she should take any action, as the grievor reported to her.

[61] At the fact-finding meeting, Ms. Murdy discussed the reasons for convening it and described how she had been made aware of the circumstances that had led to it.

[62] She asked the grievor to provide information. He provided details about what he had done with the antenna and when he was present in the room.

[63] She asked questions about when a third party was in the room.

[64] The grievor told Ms. Murdy that he brought the antenna into the boardroom on his lunch break, attached it to the television, tuned the television to the game channel, and then returned to his desk. He did not return until close to 3:00 p.m.

[65] He was asked whether other individuals had been advised of the game. The grievor stated that he had told them about it.

[66] He was very focused with respect to the assistant director's approach. He insisted that he was in the boardroom for only two short occasions.

[67] He was asked if he understood that it was not okay to bring the antenna and attach it to the television. The grievor stated that he did not have permission to attach it.

[68] Ms. Murdy was asked if a decision had been made about possible discipline at that time. She replied that none had been made and that she had just been determining the course of events.

[69] She was referred to a document which she identified as a series of emails between her and the assistant director. When she was first made aware of the events at issue, a statement had been made that a team leader had seen the grievor and another employee in the boardroom at a different time of day. The communication reflects that she tried to substantiate that information.

[70] She was not able to confirm that the grievor was seen in the boardroom at a different time of day. She stated that because she was unable to substantiate that information, it was not part of the grounds for discipline. Had it been part of them, it would have engaged another part of the code of conduct and could have involved further discipline, for insubordination. However, it was not taken into account.

[71] Ms. Murdy was referred to a document which she identified as an email she sent to the assistant director about whether the CRA's Internal Affairs Division should be involved in the file. She was asked about the relevance, given the facts, to that division.

[72] She stated that when there is misconduct, if it falls under a particular category, there is a need to refer the matter to that division, to determine whether it or management should lead the investigation. In the end, it was not necessary for that division to take over the file.

[73] She was referred to the report. Ms. Murdy stated that she and the CRA's Labour Relations section prepared it. It was a synopsis of the first meeting, which was held on July 20. Such reports are used to proceed to disciplinary action. This one was a summary of their findings. It was provided to the grievor, to give him an opportunity to review it before the employer imposed discipline on him.

[74] The report reflected that the grievor admitted that he brought the antenna to work and connected it to the television to watch the game and that he had been observed doing so. It also stated that he acknowledged that he had advised other employees that the game was available for viewing.

[75] The report referred to the Code, which stated that employees could use federal-government-owned, or leased, property, assets, valuables, and equipment only for official purposes, unless preauthorization was obtained in advance for personal use. It added that the Code stated that employees must conduct themselves professionally while at work.

[76] The report concluded that based on the information gathered, it had been determined that the grievor contravened the Code when he used federal government property for personal reasons without authorization and encouraged other employees to participate in the activity.

[77] Ms. Murdy was referred to a document which she identified as notes of a disciplinary hearing dated October 31, 2018, with respect to the grievor. Present were the witness, the grievor, a bargaining agent representative, and a labour relations advisor, who took the notes.

[78] Ms. Murdy recalled the grievor advising them that the report contained many errors. He was given an opportunity to provide further information. He decided that he wanted to move forward without providing any additional information.

[79] She advised him of the part of the code of conduct that he had contravened, namely, the unauthorized use of CRA property. She did not have the entire Code with her and said that she would send it to him after the meeting.

[80] As of the meeting, no decision had been made with respect to discipline.

[81] The grievor was given the opportunity to present any mitigating factors before she proceeded with her decision.

[82] She and Labour Relations looked at all the factors and then determined the appropriate discipline, in accordance with a disciplinary chart.

[83] Ms. Murdy was referred to a document which she identified as notes of the disciplinary meeting dated November 16, 2018. A labour relations advisor had taken them. She was asked what was discussed at the meeting.

[84] A notice of disciplinary action had been prepared. She read the notice out loud, to advise the grievor that he was suspended without pay for three days, from November 19 to 21, 2018, inclusively. He was asked if he had any questions. He responded, "No." The suspension was to begin immediately. He was advised that he should gather his belongings and that he had to leave the building.

[85] Based on the CRA's confidential nature, all workplaces are secure. When an employee is discharged or suspended, the employee is not allowed to be in an authorized area.

[86] Ms. Murdy was referred to a document entitled, "Notice of Disciplinary Action". It set out the basis for the discipline. The employer has a directive on discipline. When it determines discipline to impose, it chooses from several categories, each of which has a scale. There are also provisions for aggravating or mitigating circumstances.

[87] The grievor's conduct was considered a "Level 3" offence, as he had engaged in the unauthorized use of federal government property and had encouraged other employees to watch the game. Those actions would have constituted a "Level 2" offence. In addition, he took no responsibility for his actions and showed no remorse which led to it being considered a "Level 3" offence.

[88] The Code requires employees to protect CRA property and assets and its reputation. In the grievor's case, the employer considered his failure to foster a healthy work environment. Consequently, it was determined that he had committed a Level 3 offence, which warranted a disciplinary suspension ranging from 1 to 20 days. In the circumstances, management felt that a 3-day suspension was warranted.

[89] Ms. Murdy was asked whether lesser discipline was contemplated. She replied, "No, not on the facts." Imposing less than the minimum penalty requires exceptional circumstances.

[90] Ms. Murdy had no involvement in any of the subsequent decisions to reduce the discipline.

2. Ms. Murdy's cross-examination

[91] Ms. Murdy was referred to an email chain. In particular, she was referred to an email dated July 31, 2018, which stated that she was attempting to obtain information as to which team leader stated that the grievor had been seen in the boardroom.

[92] She was asked if she was advised that the grievor was observed watching the game between 2:15 and 2:30 p.m. She stated that she was advised that someone had witnessed him in the room during that time. She was asked to confirm that when she advised him of it, he stated that it was incorrect. More particularly, she was asked to confirm his reaction and what he said during the first interview, when he was told that he had been observed watching television between 2:00 and 2:30 p.m.; namely, he said that it was an outright lie. She agreed.

[93] She was asked whether she tried to determine who had advised that the grievor had been seen in the boardroom between 2:00 and 2:30 p.m. Ms. Murdy stated that that allegation was not taken into account in the decision to discipline him.

[94] She recalled that there was activity on the file that the grievor stated that he had been working on.

[95] She confirmed that the grievor had been forthright in providing her with the information that he had brought the antenna into work and had connected it to the boardroom television.

[96] She was asked when she found out that the grievor was not in the boardroom between 2:00 and 2:30 p.m.

[97] She replied that she was told that two people had been in the boardroom. When an assistant director went there, the grievor was the only person there.

[98] The grievor referred Ms. Murdy to the report. The opening paragraph refers to a manager advising an assistant director that individuals in the boardroom were watching the game on the television. He asked her if her point was that him being there and watching the game was not taken into account in disciplining him, then why was the first sentence so poorly written so as to convey the fact that he might have been there? She replied that the paragraph did not indicate that he was in the boardroom between 2:00 and 2:30 p.m. However, he was there at 3:00 p.m. watching the game, which had been clearly established at their meeting.

[99] Ms. Murdy was referred to her comment that the grievor showed no remorse. She replied that he felt that he had not done anything wrong. She was asked whether she provided him with the particulars of the specific rule that he had breached. She stated that she explained to him both the code of conduct and the unauthorized use of CRA property.

III. Summary of the arguments

A. For the grievor

[100] The Code was introduced at the hearing, in particular the section following the title “We Protect Our Assets and Property” at pages 6 to 9. The word “pre-authorization” does appear, at page 6. It should be also noted that the document is dated in 2015. The printed version may not be the current version. An Internet link demonstrated that the word “pre-authorization” is not in the Code’s current version.

[101] The issue is why was the Code, which supposedly required preauthorization for the personal use of assets and equipment and likely referred to electronic equipment, laptops, and printers, as stated in the electronics network policy, was amended by taking out the word “pre-authorization”, as indicated in *Pronovost v. Canada Revenue Agency*, 2017 PSLREB 43.

[102] In that case, the grievor filed a grievance against her employer’s decision to impose a disciplinary penalty of an eight-day suspension after a departmental investigation was held. The employer argued that it had established misconduct that justified imposing the discipline. It maintained that among other things, the evidence demonstrated that she had inappropriately used the employer’s electronic network and property. The Board found that the grievor had used the employer’s electronic network for purposes other than its work. Nevertheless, the Board allowed the

grievance in part, as the penalty that was imposed on the grievor was excessive, and a letter of reprimand would have been appropriate. The Board stated the following at paragraph 85:

> *[85] As for using email to communicate with her students or the UQAM's administration, the* Code of Ethics and Conduct *in fact distinguishes between personal use (allowed to a limited extent) and private use (prohibited). No definition or explanation is given to distinguish them. Among the "[translation] unacceptable activities" is found "[translation] use of electronic networks for private or political activities". The list also includes "[translation] sending abusive, sexist, or racist messages" and distributing trivial documents, such as chain letters. Among the examples of permitted personal use is "[translation] using a portable computer provided to you by the CRA to write a letter to the parents' committee of your child's school …". In short, the distinction made between "private" and "personal" communication is not very clear. I agree that an employee cannot use the employer's tools for remuneration ends. However, communicating with individuals, such as students or the UQAM's administration, falls under personal communication, which is unpaid, occasional, and necessary from a social interaction perspective. The employer is free to prohibit it. Still, that prohibition must be clear.*

[103] The grievor in this case argued as follows:

> *The Code of Ethics and Conduct was created by the employer. Even if the document was in error, I cannot be punished for it. The requirement for preauthorization does this apply? It is off the books. It has not been shown that I committed a transgression.*
>
> *What is left on the table is that during the lunch. I connected an aerial to a television and watched the television for five minutes to see if it was working. I returned at 3 PM and turned the television on. It was intermission.*
>
> *The electronic network policy said it was an acceptable use. I did not act in bad faith.*
>
> *Management rejected all signs of a lack of remorse.*
>
> *What management did was perp walk me out of the facility in front of my peers.*
>
> [*Sic* throughout]

B. For the employer

[104] The grievor referred to the Code of Ethics and Conduct and suggested that the current version does not contain the word "pre-authorization". The version in place at

the time at issue contained that word. There was no suggestion in the evidence that that word was not in the Code. Ms. Murdy was not cross-examined on the content of the version in place at the relevant time.

[105] The grievor admitted that he brought the antenna into the boardroom and that he attached it to CRA equipment, i.e., the television, without prior authorization. He admitted that it was for the purpose of watching the game. He admitted that it was not for any CRA purpose. He acknowledged advising his colleagues that the game was available to be watched in the boardroom. Those admissions were unequivocal and constituted a breach of the Code.

[106] The grievor focused on the CRA's electronic-network policy even though the report makes no mention of it. It was never suggested that he breached it. Both the report and the notice of disciplinary action clearly set out that he was found to have breached the code of conduct.

[107] Even if that fact were not clear or were alleged to be somehow procedurally unfair, it is well established that any issues of procedural fairness are remedied via the hearing *de novo* before the Board; see *Pelchat v. Deputy Head (Statistics Canada)*, 2019 FPSLREB 105.

[108] As far as it relates to CRA and Government of Canada property, assets, valuables, and equipment, the code of conduct provides that employees may use federal-government-owned, or leased, property, assets, valuables, and equipment only for official purposes, unless they have preauthorization for personal use.

[109] The grievor committed a breach of the Code and engaged in misconduct that warranted discipline. In addition, he invited his colleagues to join him. He maintained that he did nothing wrong. He still maintains that he did not do anything wrong. There was no lack of remorse, which management rightly treated as an aggravating factor.

[110] He continues to focus on the electronic policy, which was not the basis of the discipline.

[111] Even after Ms. Murdy testified that she was not able to substantiate that the grievor was in the boardroom between 2:00 and 3:00 p.m. on July 11, 2018, he continued to question her about it and to focus on it.

[112] Before the grievance was referred to adjudication, the three-day suspension was reduced to a one-day suspension. It is submitted that his conduct warranted a one-day suspension. Even if the one-day suspension had not been rescinded, his grievance ought to be dismissed. But it was rescinded. No disciplinary action remains in place. There is no basis upon which the Board could hear the grievance, which was referred to adjudication under s. 209(1)(b) of the *FPSLRA*.

[113] The grievance is moot. There is no ongoing dispute between the parties; nor is there any reason for the Board to exercise its discretion to hear the grievance, despite it being moot.

[114] The grievor led no evidence as to what potential remedy remains outstanding; nor is there any authority standing for the proposition that the Board has jurisdiction to provide an apology.

[115] If the Board is not satisfied that the grievance is moot, the evidence clearly demonstrated that the grievor engaged in misconduct that warranted discipline and that a one-day suspension was reasonable in all the circumstances.

IV. Reasons

A. Does the Board have the authority to order an apology?

[116] Before the hearing, the employer provided the following submissions on this issue, to which the grievor did not respond: "The Supreme Court of Canada has addressed the question of whether an administrative tribunal can coerce an expression of opinion, such as an apology." The Court decided that an administrative tribunal cannot coerce such an expression; see *National Bank of Canada v. Retail Clerks' International Union*, 1984 CanLII 2 (SCC).

[117] The Board's predecessor, the Public Sector Labour Relations Board, concluded similarly that it did not have the authority to order an apology in *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 124 at para. 38.

[118] The Federal Court in *Canada (Attorney General) v. Stevenson*, 2003 FCT 341 has also dealt with the question of administrative tribunals' authority to order apologies. In so doing, it emphasized that tribunals are creatures of statute that must find their authority in their enabling legislation. There is no provision in the FPSLREB's enabling

legislation that gives it the authority to order an apology. The law is clear that this Board does not have the authority to order an employer to issue an apology.

B. Is the grievance moot?

[119] As noted, on May 6, 2024, the Board advised the parties that the grievor was to proceed first at the hearing scheduled for May 7 and that he was to bear the burden of establishing that the parties still had a live controversy or tangible and credible dispute.

[120] At the hearing, the employer renewed its argument that the grievance is moot.

[121] The application of the mootness doctrine involves a two-step analysis. The first requires assessing whether the parties' tangible and concrete dispute has disappeared or, in other words, whether there remains a so-called "live controversy". A mere jurisprudential interest fails to satisfy the need for a concrete and tangible controversy.

[122] If there is no longer a live controversy, the matter is moot. The second step of the analysis then requires the decision maker to determine whether they should nevertheless exercise their discretion to hear the case. See *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC) at 353; and *Canadian Union of Public Employees (Air Canada Component) v. Air Canada*, 2021 FCA 67 at para. 7.

[123] Whether a decision maker should exercise its discretion to hear a matter, even where there is no live controversy, involves considering the following:

> 1) the absence or presence of an adversarial context;
> 2) whether there is any practical utility in deciding the matter, or whether it would be a waste of judicial resources; and
> 3) whether the court would be exceeding its proper role by making law in the abstract, which is a task reserved for Parliament. See *Jama v. Canada (Attorney General)*, 2022 FC 37 at paras. 29 and 32.

[124] The employer argued that there was no longer any live issue or tangible and concrete dispute between the parties, as the disciplinary action at issue had been rescinded.

[125] Before the hearing, the employer submitted that in the alternative, if the Board determines that a hearing is required, the grievor lead his evidence first and bear the burden of establishing that the parties still have a live controversy or tangible and

credible dispute. It relied on the Board's decision in *Smith v. Deputy Head (Department of National Defence)*, 2019 FPSLREB 116.

[126] The grievor in that case grieved his eight-day suspension. Before the adjudication hearing, the suspension was rescinded. The employer objected to the Board's jurisdiction, arguing that the parties no longer had a live dispute. The grievor acknowledged that he had received the pay for his lost eight days but alleged that among other matters, the employer had not granted other aspects of his desired remedy.

[127] The Board ruled that as the grievance had not in fact been dealt with to the grievor's satisfaction under s. 209(1)(b) of the *FPSLRA*, a live dispute remained between the parties, but the grievor had the onus to proceed first at the hearing, to present evidence to support his allegations.

[128] On that basis, I ruled that the grievor had the onus of establishing that the parties still had a live controversy or tangible and credible dispute.

[129] The grievor in this case alleged that he did not commit the act of watching television somewhere between 2:00 and 2:30 p.m., of which he was accused, and that the employer wilfully chose to ignore the irrefutable proof that he was at his desk, working, when the supposed action occurred.

[130] The grievor argued, "It seems pretty darn important that the employer learn that they can't discipline an employee for no reason." He argued that for whatever unknown reason, the employer did not perform its due diligence in the investigation.

[131] As noted, the grievor called evidence to substantiate his allegation that the employer did not have cause to discipline him. He testified that during the first investigation meeting with his manager, he was informed that another CRA employee had provided information that he was in the boardroom from 2:00 to 2:30 p.m. on July 11, 2018, that he had been asked to return to work, and that he had refused to. He testified that it was an outright lie.

[132] Ms. Murty testified that when she was first made aware of the events at issue, a statement had been made that a team leader had seen the grievor and another employee in the boardroom at a different time of day. She tried to substantiate that information. She was not able to, so it was not made part of the grounds for discipline.

Had it been part of those grounds, it would have engaged another part of the code of conduct and could have involved further discipline, for insubordination. However, the allegation was not taken into account.

[133] I have no hesitation accepting Ms. Murty's testimony that she was not able to substantiate that allegation and that it was not taken into account when determining the grounds for discipline.

[134] Accordingly, I conclude that the grievor did not establish that the parties still have a live controversy or tangible and credible dispute. I determine that the grievance is moot. Even if the grievor's purpose in pursuing the grievance is to obtain the outstanding corrective measure of an apology, I cannot order it. While I have the discretion to hear the grievance despite its mootness, the grievor has provided no basis for such a decision. I decline to exercise my discretion.

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

(The Order appears on the next page)

V. Order

[136] The grievance is denied on the basis that it is moot.

May 20, 2025.

David Olsen,
a panel of the Federal Public Sector
Labour Relations and Employment Board