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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

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BETWEEN

**MICHEL CARON**

Grievor

and

**PARKS CANADA AGENCY**

Employer

Indexed as

*Caron v. Parks Canada Agency*

In the matter of an individual grievance referred to adjudication

**Before:** Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Leslie Robertson, Public Service Alliance of Canada

**For the Employer:** Noémie Lebel and David Perron, counsel

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Heard at Montréal, Québec,  
January 16 to 19, August 13 and 14, and October 2 and 3, 2024.  
(FPSLREB Translation)

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**REASONS FOR DECISION**

**(FPSLREB TRANSLATION)**

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**I. Overview**

[1] This grievance is about a disciplinary termination. The grievor, Michel Caron (“the grievor”) was terminated for harassing his subordinate. When he was terminated, he was a foreman at the EG-04 group and level, with the Parks Canada Agency (“the employer” or “the Agency”). His workplace was in Chambly, Quebec. He had about 32 years of service and a clean disciplinary record.

[2] He denies harassing the complainant, but admits that sometimes, he spoke directly to employees and raised his voice on occasion. He says that the circumstances of this case do not warrant a measure as severe as termination, even if the Federal Public Sector Labour Relations and Employment Board (“the Board”) were to find that he engaged in misconduct. The Agency believes that the termination was fully warranted given how severe and serious his alleged misconduct was and asks the Board to deny the grievance.

[3] In this case, the Board has to decide whether the Agency has shown on a balance of probabilities that the grievor harassed the complainant and, if he did, whether termination was an excessive response.

[4] After reviewing all the facts in the file, including the aggravating and mitigating factors, I find that the grievor harassed his subordinate (the person who made the harassment complaint), and that termination was not an excessive response. Therefore, I deny the grievance.

**II. Summary of the evidence**

[5] The employer named six witnesses, in the following order: Lauren Small, director; Tathiana Agudelo, manager, human resources; Juan Gomez, the complainant, who at the relevant time was the team leader, technical services, and reported directly to the grievor; Jorge Castillo, electrician; Sylvie Laurin, lock operator; and Pascal Fafard, maintenance worker.

[6] The grievor testified on his own behalf. He did not call any witnesses.

**A. The workplaces and the reporting structure**

[7] In Chambly, Agency employees work in the administrative office, located on boulevard de Périgny, and the Chambly Canal workshops, located on avenue Bourgogne. The administrative office and the workshops are about 800 metres apart. The grievor and complainant both worked in the workshops as maintenance workers and tradesmen. Conversely, administrative office employees are mainly managers and administrative support workers. Ms. Small and Ms. Agudelo both work there.

[8] The grievor began his career at the Agency in 1986. He had several positions before becoming foreman, a position that he had for 14 years until he was terminated.

[9] As foreman, he reported directly to a manager, technical support, at the EG-06 group and level. He directly supervised the trades (electricians, carpenters, mechanics, welders, and others). He also supervised the complainant, who was the team leader at the GL-MAN-06 (B2) group and level. The grievor's work description stated that he could assign, supervise, and evaluate the work of maintenance workers directly or through a team leader.

[10] On April 1, 2014, the complainant joined the Agency as a maintenance worker. In July 2015, he was appointed acting team leader. In September 2015, he became indeterminate in that position. As team leader, he managed and supervised maintenance workers at the GL-MAN-06 group and level and did follow-ups. He supervised five maintenance workers.

[11] According to his work description, he was responsible for assigning and allocating tasks to his employees, the maintenance workers, while making sure that they understood and completed the tasks that they were assigned.

[12] The complainant reported directly to the grievor. According to the complainant, things were going well between them until spring 2016, when he noticed that the grievor's instructions were contradictory, he was overtaking him to assign work to his subordinates, he had started to denigrate him in front of the team, and so on. However, they continued to work together.

**B. Harassment complaint**

[13] On December 1, 2017, a few months before making the harassment complaint, the complainant emailed the manager of the technical services division, Ana Claudia

Bittar de Oliveira, to report the grievor's behaviour toward him and the general work atmosphere in the workshop which the grievor had created. Ms. Bittar de Oliveira directly managed the grievor's manager, Kristof Ngongang. The complainant ended his email as follows:

[Translation]

...

*It has become difficult for me to take initiative when I am regularly reprimanded no matter what decision I make. I no longer know how to act because the directives and procedures change from one day to the next. The work atmosphere in the workshop, which Michel has created, goes against Parks Canada Agency values and is harmful to employees' mental health.*

[14] A few days later, on December 4, 2017, the complainant wrote to Mr. Ngongang about the situation. In summary, he informed him that the grievor's behaviour affected his mental and physical health, and his family life. He thought about making a harassment complaint against the grievor, but he hesitated because, from what he had seen, "[translation] the complainant always loses". He asked to be demoted to a maintenance worker position when it became available so that he could separate himself from any direct link with the grievor.

[15] He testified that he waited until March 2018 to make the harassment complaint because, although employees were leaving because of the grievor, no action had been taken against him. When Ms. Small arrived, he felt that things were changing and that he had support.

[16] He testified that in any case, he had nothing more to lose. The grievor's behaviour had made him anxious and nervous, and he did not know which way to turn. He woke up during the night; he did not sleep well. The atmosphere at work was one of dread, and it was unhealthy and toxic.

[17] On March 7, 2018, he made a harassment complaint against the grievor after a series of incidents that occurred involving a job that the grievor had assigned him (de-icing a spillway). He called it a culminating incident. After he made the complaint, Ms. Small informed him that she needed more information about his allegations against the grievor so that she could evaluate them. On March 18, 2018, he gave her that information ("the detailed harassment complaint").

[18] In the meantime, on March 12, 2018, Ms. Small informed the grievor of the harassment complaint against him. The next day, he made his own complaint against the complainant for false accusations. Given that the grievor's complaint accused the complainant of making false allegations, Ms. Small decided to hold off on dealing with it until the investigation into the complainant's harassment complaint was complete.

[19] The complainant's detailed harassment complaint contained several incidents. The oldest dated back to May 2016, and the most recent occurred in February 2018. That being said, only the incidents that occurred in the 12 months before the harassment complaint was made were considered for the investigation, as per the Agency's policy titled "Toward a Harassment Free Workplace" ("the policy").

[20] The incidents were grouped under the following four harassment allegations: (a) disrespecting, discrediting, and swearing; (b) obstructing the work and making light of someone's opinion; (c) assigning an insufficient workload, creating a sense of incompetence, isolating someone; and (d) deliberately obstructing someone's work, withholding necessary information, changing the rules, criticizing, discrediting, and shouting. I will review each of the incidents identified to support the allegations later in these reasons.

[21] The Agency hired an outside firm to investigate. On September 23, 2018, the employer received the final investigation report ("the investigation report"). The investigator found that the four allegations were founded. However, she noted that two of the incidents that the complainant identified did not meet the harassment definition. She suggested that the grievor be disciplined. She believed that it was neither possible nor desirable for the employer to reinstate him to his team.

[22] The Agency accepted the investigation report findings. Ms. Small called the grievor to a disciplinary meeting to give him a chance to comment on the report findings and, generally, to respond. According to Ms. Small and Ms. Agudelo, during the meeting, although the grievor admitted that the situation was difficult, he refused to take responsibility for the actions that he was accused of in the investigation report, and blamed others. According to him, the complainant was incompetent, the team was difficult, and no one listened to his instructions. In his opinion, the investigator had done a poor job. He did not express remorse. He did admit that sometimes, he

shouted, but it was because that was how he spoke. He viewed the whole thing as a personal conflict between him and the complainant.

[23] He testified that during that meeting, he explained that he had not harassed the complainant, although he may have been direct with him in the past, even raised his voice. It was part of his personality.

### **C. The grievor is terminated**

[24] After the disciplinary meeting, and after consulting human resources and other parties, Ms. Small decided to terminate the grievor on December 5, 2018. She based her decision on the investigation finding that the complainant's harassment allegations against him were founded, as well as his failure to recognize the impact that his actions had on the complainant and other team members. The relevant excerpt from the termination letter is as follows:

[Translation]

*All Parks Canada Agency employees must comply with the Agency's Values and Ethics Code, which clearly states that one of our core values is: How we work together. This means respect, engagement, excellence, and integrity, as the common framework for our actions as Parks Canada team members and our collaborative work to fulfill our mandate and our vision. Given the founded allegations against you and your failure to recognize the impact that your actions have had on other team members, I cannot in good conscience continue your employment with the Agency. Your misconduct is fully incompatible with what is expected of a Parks Canada employee, especially a supervisor.*

*Therefore, I cannot continue to have confidence in your ability to fulfill your duties.*

...

[25] In deciding to terminate the grievor, she also considered the nature and seriousness of the allegations, his supervisory position, as well as the lack of remorse. She testified that the trust relationship between the Agency and him had been broken.

[26] Although she considered disciplinary action other than termination, considering that he "[translation] is a field worker", there were no alternatives to termination. She said that she also had to protect employees from him potentially retaliating against those who testified against him. She never questioned his skills. She considered his

years of service, his clean disciplinary record, and that he found the entire situation difficult.

[27] Lastly, she did not want to send the wrong message to employees by keeping him employed at the Agency or assigning him to another position. She received emails and oral feedback from employees saying that the environment had greatly improved since he left.

[28] Although the employer entered into evidence the investigation report that it used as grounds for terminating the grievor, the investigator was not called to testify. At the hearing, the grievor argued that the statements attributed to him in the investigation report were inaccurate. In addition, some of the employer's witnesses said that some of their statements in the report were inaccurate, and they could not always confirm that the statements that the investigator attributed to them in the report were accurate. Later in my reasons, I will explain the weight that I gave to the investigation report content in analyzing the evidence.

#### **D. Summary of the evidence as to the incidents supporting the allegations**

[29] The employer cited the complainant, Mr. Castillo, Mr. Fafard, and Ms. Laurin to prove the grievor's alleged misconduct that led to his termination. What follows is a summary of the relevant evidence that the parties submitted about each of the incidents that the Agency considered for investigation.

##### **1. Allegation 1 - Disrespecting, discrediting, and swearing**

###### **a. The May 3, 2017, incident (clamp versus sling)**

[30] The incident is about the grievor's suggested work method. It occurred on May 3, 2017, in St-Ours. The grievor asked the complainant to collect the blocks used for the lock's stop logs and then load them on the boom truck. To do this work, the complainant chose to use a hoisting system with a sling, as he learned in employer-given training.

[31] While he was working, the grievor asked him a few times, in front of other employees, to use a clamp for the wood instead of a sling. He said that it was unsafe to push the rectangular logs onto a sling while kneeling on the ground. He also said that that method took much more time, caused greater fatigue, and risked back injuries. He also showed the complainant how to use the clamp.

[32] Aware that the complainant disregarded his instructions and continued to use the sling, the grievor insisted that he use the clamp, although he said that he was more comfortable working with the sling and considered it safer than the clamp. The grievor commented in front of other teammates that the complainant was not following his direction. He denied raising his voice to the complainant during the incident but admitted that he may have been direct with him.

[33] The complainant testified that one of his coworkers informed him that the grievor said that he was not listening, adding sarcastically that if he did not want to use the clamp, it would be removed from the boom truck. However, the coworker did not testify before the Board. The grievor did not deny that he said to the complainant's coworker that if the complainant did not want to use the clamp, he would remove it from the boom truck.

[34] That said, the complainant admitted that the grievor had the authority to tell him how to do the work, but only if it was safe.

[35] The complainant also testified that the grievor forced employees to operate the boom truck at maximum speed (“[translation] rabbit on the throttle”) at all times, no matter what the situation. If the work was not done at his desired speed, he demanded to change operators. He denied this. However, he admitted that he asked employees to operate the boom truck on “[translation] rabbit mode” when there was no load, so that the work would go more quickly.

**b. Incident involving the apologies in front of the team**

[36] This incident is about the apologies that the grievor had to make to the complainant in front of the whole team. It was in fall 2017. Specifically, the grievor's manager asked him to apologize to the complainant for disrespecting him and reprimanding him in front of the team at a meeting. He had to apologize in front of the whole team.

[37] Against his director's instructions, instead of apologizing to the complainant, he said in front of the team that he knew that he was strict sometimes, as he is a direct person, and that if there were sensitive people, he apologized. Later that day, his manager contacted the complainant to confirm that he had apologized. When he found out that he had not, he asked him to apologize again, as he had previously asked.

[38] Later in the day, the grievor called a team meeting to apologize again. This time, he apologized directly to the complainant for the way that he had spoken to him in a previous meeting. When he was done, he tossed an object on the table, declared the meeting over, and went to shut himself in his office. According to the complainant, the way that the grievor had gone about apologizing had created a chill within the team; his apologies were curt, made reluctantly, and lacked sincerity. About the grievor's apologies, one of the complainant's coworkers said the following: "[translation] Between that and a bat to the face, there is no difference."

[39] Mr. Castillo attended both meetings at which the grievor apologized. He called the apologies "[translation] cold". It was not until the second meeting that the team learned that the grievor was apologizing to the complainant. Once the apologies were made, Mr. Castillo saw him leave the meeting, red as a tomato, maybe because he was embarrassed, and heard him slam his office door shut. Mr. Castillo said that "[translation] [i]t was like a slap in the face."

[40] Mr. Fafard, who also attended both meetings, corroborated that account. He described the environment as less than ideal when the grievor apologized. He thought that the apology was insincere and perfunctory.

[41] According to the investigation report, Marc Desrochers, who did not testify before the Board, felt that the apology "[translation] was not really an apology", was "[translation] half-hearted", and was insincere. He said the following to the complainant: "[translation] Between that and a slap in the face, there is no difference".

[42] The grievor does not dispute that his manager asked him to apologize again. About the object that he tossed on the table after apologizing, he said that it was a plastic piece that he had in his hands before going to the meeting. He denies slamming the door and turning red.

## **2. Allegation 2 – Obstructing the work and making light of someone's opinion**

[43] According to the complainant, the grievor obstructed his work and prevented him from meeting his team leader objectives, namely, to supervise the maintenance workers and plan their work. To support this allegation, he testified that the grievor had refused to allow him to use the Agency's Maximo asset management system,

assigned work to maintenance staff without consulting him, and undid the planning that he had done.

**a. Incident involving refusing to let the complainant use Maximo**

[44] Maximo is an asset management system. There is a contradiction about when the Agency deployed the system. The complainant says that it was in 2016, while the grievor says that it was between 2012 and 2014. Maximo made it possible to track the time that employees spent completing their assigned work.

[45] The complainant had all the credentials (in other words, the username and password) needed to access Maximo. He had also completed a one-and-a-half-day training course on how the system works and, according to his performance assessment for November 9, 2015, to March 31, 2016, which the grievor prepared, his work objective was to “[translation] ensure that work orders are created in Maximo.” However, the grievor did not let him use the system.

[46] The grievor admitted that he asked employees, including the complainant, not to use the system because of operating issues. Specifically, the system produced problematic and incorrect information. It gave the same information two, three, and even four times for the same project. This caused confusion. The grievor’s manager reportedly asked that he be the only one to enter information in the system, to avoid inconsistencies. The Agency stopped using Maximo even before it was officially discontinued because of those issues. According to the grievor, they began before the complainant was appointed as team leader.

**b. Incidents involving planning and distributing work**

[47] The work description for the GL-MAN-06 (B2) team leader position states that the incumbent supervises and assigns tasks to subordinates (maintenance workers). According to the complainant, the grievor stopped him from doing this.

[48] Specifically, he testified that the grievor assigned tasks to the subordinates himself, before the work shift began or during team meetings, without consulting him. In addition, the grievor did not consider that he had already planned and allocated tasks for his team and often undid them. He testified that when the grievor did not return to work, he called and asked him to put his phone on the table, on speaker, so that he could assign work to employees, including the complainant’s subordinates. In

short, he said that the grievor stopped him from supervising his team and overtook him to assign work to his subordinates.

[49] He also said that the grievor refused to inform him in advance of the work that was to be done, which meant that he could not prepare the equipment needed for the task. He specified that the grievor said that he refused because employees would take sick days if they knew ahead of time which work would be assigned to them, if they did not like it. He added that the grievor did not inform him ahead of time when he planned to be away from work.

[50] He did not dispute that priorities could change at the last minute or that there were emergencies that meant having to review the tasks that he had assigned. However, when possible, the foreman and team leader should work together. He also agreed with the grievor's suggestion that the foreman can delegate tasks to maintenance workers, but only when their team leader is absent.

[51] Mr. Castillo corroborated that the grievor always assigned tasks to the complainant's subordinates before the complainant came to work. Mr. Castillo said that the grievor "[translation] put the guys in place before the complainant arrived at work". The complainant was lost as to what work was assigned to his subordinates. Sometimes, the grievor even changed the instructions that the complainant had given to his subordinates and undid his schedule. Things had to be done the way that the grievor wanted. Mr. Castillo said that he took great pleasure in "[translation] dispatching" the complainant's subordinates before he came to work. He never considered the complainant's decisions and made it known to the whole team. He undid the complainant's work schedule.

[52] As for the atmosphere in morning group meetings with the grievor, Mr. Castillo testified that it was like playing "[translation] Russian roulette, no one knew who would get the bullet". It was a mentally demanding game. The grievor tried to discredit and "[translation] corner" team members. Mr. Castillo was not at all comfortable expressing himself because the grievor had tried to catch him out, as he had with other team members. According to him, the team knew that there were problems between the grievor and the complainant.

[53] On cross-examination, he denied that workshop employees raised their voices to one another, adding that they had a lot of fun together and did not bicker. He did not

deny that employees might use swear words and share inappropriate stories, but it was done in jest.

[54] According to Ms. Laurin, the complainant was responsible for assigning tasks to his subordinates. She had noted that the grievor changed the work that the complainant assigned to his team. Often, in the morning, when the complainant got to work, the grievor had already assigned the work to his subordinates. As an example, she spoke about a situation in which the complainant had asked a subordinate to go work in St-Ours for the day. But when the grievor found out, he ordered the complainant to call that employee back to return to Chambly to empty the garbage bins.

[55] According to her, the complainant was always caught between his subordinates and the grievor. Employees who reported to him no longer knew who their “boss” was. This caused a lot of frustration within the team. The work environment was unhealthy.

[56] She corroborated the complainant’s testimony that the grievor did not want him to know ahead of time when he would be absent. He had expressly said to her not to inform the complainant and other employees that he was taking leave, so that they all thought that he was at work. According to her, this frustrated the complainant because he would have liked for the grievor to tell him himself.

[57] In response to the grievor’s suggestion that as foreman, he could assign work to the complainant’s subordinates as per his work description, she clarified one point. She said that if he had to modify the tasks of employees reporting to the complainant for unforeseen reasons, he was to speak to the complainant, to show respect and professional ethics.

[58] Mr. Fafard corroborated that every morning, the grievor assigned work to the complainant’s subordinates in the cafeteria. He did it without consulting the complainant or considering his opinion. According to Mr. Fafard, this way of working, day after day, “[translation] handicapped” people. Employees no longer knew where they were going. The grievor was the only “[translation] boss” who decided everything. He kept all the power.

[59] Mr. Fafard said that the grievor behaved the same way toward him when he was the team leader, before the complainant. It had made him take a demotion to maintenance worker so that he no longer had to report to the grievor.

[60] The grievor did not deny that he assigned work to the complainant's subordinates. He justified it by saying that he got to work early in the morning, before the complainant, and that he might have emails about urgent work (for example, a tree blocking a road or a water spill) that could not wait. Sometimes, he might have to change the work that the complainant had previously assigned to the maintenance workers. According to him, the complainant did not know that there was urgent work because he did not have access to his emails. However, he could not give concrete examples of urgent situations requiring changes to the work that the complainant had allocated.

[61] He went on to say that because the complainant did not get to work until 7:30 a.m., he did not have the time to distribute the work. He was to have planned the day before. The grievor added that he had assigned work to all employees, including the complainant's subordinates, for one week because the complainant wanted to work with only one person in particular.

[62] He gave another explanation as to why he assigned tasks to the complainant's subordinates. According to him, the complainant could not supervise or assign tasks to the maintenance workers because he had neither the skills nor the knowledge needed to be a team leader. He did not know his team members' strengths and weaknesses and therefore, could not properly assign work to them. According to the grievor, he even had problems doing maintenance worker tasks. Also, in his opinion, the team leader role (GL-MAN-06 (B2)) was never clearly defined.

[63] About the grievor's comment that the complainant did not have the skills needed to be a team leader, the employer's counsel confronted him on the fact that the complainant's performance assessments indicated no performance issues. He explained that he had not reported the performance issues because he did not usually put negative feedback in the performance assessments. He gave good performance assessments to keep good morale among employees. One of his managers, Brigitte Ayotte, taught him that. According to him, performance assessments should encourage

and motivate employees, as he was taught. If an employee had problems, he spoke with them to see how they reacted but did not put it in the performance assessment.

[64] However, on cross-examination, the complainant testified that unlike what the grievor claimed, in his performance assessment meetings, they discussed only the points and comments that were specified in the performance assessment.

[65] The grievor admitted that he did not want to inform the complainant ahead of time what work had to be done because he feared that employees would take leave to avoid doing unpleasant work.

[66] He did ask the complainant to put the phone on the table and put it on speaker because he was sick at home. But the construction work had to go on. He had to instruct employees on how he wanted the work to be prepared for the next day because a crane was needed at the construction site. It can be very costly to suspend work in progress. He does not believe that in his career, he has asked more than twice to put a phone on the table to assign work. If he had to do it again, he would, to avoid having the construction site close. Also, he had to give the instructions by phone because there were a lot of new people.

[67] About the atmosphere in the cafeteria in the morning, contrary to what the employer's witnesses said, the grievor said that it was good and friendly.

### **3. Allegation 3 – Assigning an insufficient workload, creating a sense of incompetence, and isolating someone**

#### **a. Incident involving installing the stop logs**

[68] This incident is about an operation in St-Ours that involved installing stop logs to drain the lock, in fall 2017. The complainant wanted to attend because, according to him, the operation is complex, specialized, and very interesting, professionally speaking. Also, it takes place only about every 15 years. This meant that it might not happen again in the rest of his career. To his knowledge, the operation last took place in the late 90s.

[69] However, instead of letting him go with the rest of the team, the grievor asked him and one of his subordinates to stay in Chambly to do other tasks (for example, install guard rails on the Federal Wharf). According to him, the work could have been done another day, as it was not urgent.

[70] He said that in fall 2016 or spring 2017, he had a chance to take part in removing the stop logs. However, he had not taken part in installing them, which was the most interesting and important operation.

[71] According to the grievor, he did ask the complainant and one of his subordinates to stay in Chambly to install guard rails because it was important work that had to be done. At least two people had to be there to do the work. Also, a tradesman (namely, a mechanic) had informed the grievor that he had never attended a stop log installation to drain the lock and he was interested in taking part to see how to signal a crane. Lastly, he said that the complainant had watched the operation in the past. He added that it was not a complex operation. In his opinion, the complainant was unhappy because he had left him in Chambly with another employee to install the enclosure.

**b. Incident involving refusing to appoint the complainant as a first responder**

[72] The complainant accused the grievor of refusing to appoint him as a first responder, which denied him the chance to work overtime. The first responder is an employee on standby, on call, who responds to emergencies outside regular work hours. When a first responder is called on to work while on standby, he is paid overtime.

[73] According to the complainant, the grievor refused to appoint him as a first responder because he lacked experience and did not have enough seniority, although he had worked at the Agency for four years. The grievor suggested that he take a course so that he could be appointed as a first responder, but he refused.

[74] The grievor said that he did not have the training needed to be appointed as a first responder. Specifically, first responders had trades training. They all had a trade.

[75] The grievor recalled receiving a call from his manager, asking him to put the complainant as a first responder. However, after explaining why he refused, the manager agreed with him. He did not object to appointing one of the complainant's subordinates as a first responder, but it was because he had a trade (electrical mechanic).

[76] About another employee who had been appointed as first responder, as the complainant suggested, the grievor explained that he had a carpentry diploma, had the

cards needed to work on construction sites — which requires many courses and solid experience — and had several years of service at the Agency. The grievor said that a cabinetmaking diploma, like the one that the complainant had, could not be considered equivalent to a carpentry diploma, as the skills differed. The grievor reiterated that his manager agreed with his decision not to appoint the complainant as a first responder.

**4. Allegation 4 – Deliberately obstructing someone’s work, withholding necessary information, changing the rules, criticizing, discrediting, and shouting**

**a. Incident involving de-icing the spillway on February 16, 2018**

[77] The incidents that follow are about de-icing the spillway. It was after these incidents that the complainant decided to make a harassment complaint against the grievor.

[78] The grievor asked the complainant and one of his subordinates to go de-ice one of the spillways because there was a lot of rain forecasted for the week of February 17, 2018. A spillway is a structure designed to drain excess water from a canal to prevent it from overflowing. On February 16, 2018, in the afternoon, the complainant and another employee from his team went to de-ice the spillway. It was the first time that the complainant had to de-ice the spillway. He did not know how to go about it and had not been trained. He asked the grievor what to do, to which he replied: “[translation] You take a sledgehammer or an axe, and you hit the ice.” The grievor did not dispute this.

[79] At the spillway, the complainant’s subordinate went down to break the ice; the complainant stayed above. Although there was little water on the ice (according to the complainant, there was two feet of water; according to the grievor, there was a quarter inch of water), the ice gave way under the subordinate’s feet. To be safe, they stopped the work and went back to the workshops.

[80] The complainant tried to contact the grievor to find out how to complete the work, but he did not reply. When he ran into the grievor later in the day, he said that they had not done the work because it was dangerous. They had no certified anchor point and nothing to attach themselves to. He said that the grievor was not happy. He said that the grievor did not explain to him how to de-ice the spillway, to make him feel incompetent and cause him to “[translation] slip up”.

[81] As for the grievor, although he did not dispute that it was the first time that the complainant had been asked to de-ice a spillway, he gave a different account of what happened when the complainant asked for information.

[82] First, he testified that he asked the complainant three times if he knew how to do the work, to which the complainant replied yes and added that he did not need to tell him how to do the work.

[83] Then, he testified that he had not instructed the complainant on safety measures because it was basic work. According to him, the risk associated with the work was a 3 on a scale of 10. There was only a quarter inch of water moving under the ice. He said that the only personal protection equipment needed were protective goggles for breaking the ice, a harness, and special footwear. They also needed a ladder. A helmet may have been needed, but there was little chance that something would fall on a person's head when breaking the ice. He added that if the work had been high risk, he would have been there. He denied having sent the complainant and his subordinate to de-ice the spillway without safety equipment as a punishment, as Ms. Small suggested.

[84] Lastly, he testified that he did not specify to the complainant how to de-ice the spillway because the technical services manager, Ms. Bittar de Oliveira, had cautioned him not to give too many details to employees on how to do their job, as it offended them. She reportedly said to him that he had to let employees learn from their mistakes. He found this unfortunate and was very disappointed. He did not call her as a corroborating witness.

**b. The complainant felt denigrated at the meeting on February 19, 2018**

[85] The complainant testified that on Monday morning, February 19, 2018, the grievor, who was in a bad mood, said sarcastically in front of everyone that he was going to brief them how to de-ice a spillway. He illustrated exactly what had happened on Friday, February 16. He drew small pictures on a pad of paper. During the briefing, which took place in front of the other team members, the complainant felt like the grievor was talking to him as though he were a child. He felt belittled and ridiculed by him during the meeting. He found it denigrating.

[86] The grievor denied having been in a bad mood during the meeting. He testified that some employees asked him what had happened the Friday before, with de-icing the spillway. He answered their questions. However, some employees did not understand his explanations, so he drew the spillway on a pad of paper and showed what needed to be done and how. He did not do it to be mean.

[87] When the employer's counsel asked if it would not have been more appropriate to brief them before the complainant and his subordinate went to de-ice the spillway, the grievor replied that he had tried but Ms. Bittar de Oliveira had previously reprimanded him for giving too much information to employees. She reportedly informed him not to give too much information to employees and to stop telling them how to do their job because it insulted them. She also reportedly informed him to let employees learn from their mistakes. Once again, he said that he was very disappointed by her directives.

[88] After the Monday morning meeting, he sent employees to de-ice the spillway with him there. The evidence is contradictory on how many employees were sent to do the work. According to the complainant, the grievor asked three maintenance workers and two electricians to do the work. Although the complainant was not asked to do the work on February 19, 2018, he went to observe how it was progressing.

[89] The grievor denied having sent five employees to de-ice the spillway. He went with two employees to see if everything was progressing as expected, but he was not there to supervise, as the complainant claimed. An electrician was also there, but not for de-icing, just to see if the ice had blocked a door's mechanism. Another electrician was there as well, but he had not come until later. The five employees that the complainant referred to included him as well.

[90] Mr. Fafard testified that he did not recall exactly what was said during the grievor's briefing on February 19, 2018. He could not confirm what he had said to the investigator, namely that during the meeting, the grievor: "[translation] ... belittled his team leader [the complainant] in front of his employees. This situation was frequent and typical ...". But he did remember the feeling.

**c. A heated exchange at the follow-up meeting on February 20, 2018**

[91] It was the day after the grievor's briefing. When he ran into the complainant, he asked what was wrong. The complainant replied that he felt like the briefing given at the morning meeting on February 19, 2018, was a direct attack against him. He informed the grievor that he would have preferred to discuss the matter privately.

[92] According to the complainant, the grievor became angry and shouted: "[translation] You have let me down three times now, this is the last time you will do that. You are going to lose that chair." He had pointed at the complainant's office, implying that he was going to lose his job. The complainant replied that it was the last time that it was going to happen, insinuating that he was going to take the next step, which was to officially complain against the grievor. The complainant had also raised his voice.

[93] The grievor said that it was the complainant, who was three feet from his office door, who pointed his finger and shouted. He replied the same way, speaking loudly. However, he regretted having done it. When he wanted to leave his office, the complainant tried to block him. He did not deny having said to the complainant that he was going to lose his chair. He admitted that he did not want the complainant in the team leader position because he was not qualified to be a team leader. But he regretted raising his voice.

[94] Mr. Fafard heard him shout at the complainant in the offices. Specifically, he recalled that he had shouted the following at the complainant: "[translation] You are going to lose that chair." But the complainant did not shout back. From what he could remember, the complainant had remained calm and collected while he shouted at him.

**d. The grievor ignored what had been agreed in the mediation meeting on February 21, 2018**

[95] On February 21, 2018, the day after the heated exchange, the complainant went to meet with the human resources manager and the grievor's manager to inform them of what had happened at the spillway. He also informed them that he could no longer put up with the work environment, which he called unhealthy. He agreed to the suggested mediation with the grievor, with the grievor's manager, Mr. Ngongang, helping.

[96] During mediation, the parties agreed that from then on, the complainant would be involved in weekly planning, a task that the grievor had not previously let him be part of. However, despite what had been agreed, the following Thursday, the grievor did his planning without consulting the complainant and undid three-quarters of the planning that the complainant had done.

[97] The grievor's manager took him to task. In an email on March 15, 2018, Mr. Ngongang reminded him that the complainant was responsible for managing the maintenance workers. Therefore, it was his job to assign workers based on needs.

### **5. Testimonies about the grievor's behaviour toward the complainant and the work environment**

[98] Ms. Laurin often observed the grievor shouting at the complainant and denigrating him in front of others. He always spoke to the complainant in an aggressive and accusing tone. If he disagreed with a decision that the complainant made, it could lead to conflict and tension; he could "[translation] lose his temper". His face could turn red for no reason.

[99] She often heard him say the following to employees, referring to the complainant: "[translation] What an idiot!". He said it behind the complainant's back. He was always on the complainant's case, and the team suffered for it. According to her, the complainant did not deserve it.

[100] According to her, the grievor had no problem denigrating employees when other employees were present. She often heard him call another employee an idiot. She said that it was common for him to shout and point fingers, and to fly into a rage, whether at the complainant or other employees.

[101] She noted that since he left, the environment at the canal had changed. She admitted that employees swore among themselves, but not at each other. She could not confirm whether employees raised their voices in the workshops. They did not do it in front of her.

[102] Mr. Castillo agreed. He observed the grievor shouting at the complainant and other employees. There was verbal aggression. He had created an unhealthy work environment. Employees did not know who his next target would be. Every week, he chose an employee to "[translation] pick on". Initially, he targeted Mr. Fafard. Later, it

was the complainant. People who dealt directly with him, like the complainant who was his right hand, “[translation] got the worst of it”. He wanted to corner people while criticizing them.

[103] He said that the workshop employees did not raise their voices at one another or argue. They had a lot of fun together. He admitted that the employees joked around and even told inappropriate stories. He added that the problem was not that the grievor asked them questions, but rather the way that he did it.

[104] He testified that the work environment greatly improved after the grievor left. The team worked well and it was enjoyable to be a part of it. He testified that if the grievor were to be reinstated, he would not compromise and would leave his job to work elsewhere as an electrician.

[105] Mr. Fafard testified that the grievor always made derogatory remarks and belittled the people around him. He noted that the relationship between the grievor and complainant began to deteriorate four or five months after the complainant became the team leader. He confirmed that he informed the investigator that the grievor had not gone easy on the complainant. He treated him with contempt, ignored him, and avoided making eye contact with him, as though he did not exist.

[106] Mr. Fafard asked to be demoted so that he would no longer report to the grievor, who was aggressive, strict, and always negative toward him. It was almost a dictatorship. He stepped down as team leader to protect his health. He confirmed that before asking to be demoted, he had spoken to the grievor about the stress that his behaviour caused, to no avail. It was impossible to make his feelings clear to the grievor.

[107] He said that looking back, he should have reported the grievor for what he put him through and the way that he treated him. He felt like a pawn in the grievor’s eyes. Reinstating the grievor to his position would have a negative and destabilizing impact on the workplace. According to him, the grievor’s behaviour was incompatible with the Values and Ethics Code. Since the grievor left, the atmosphere in the workshops had greatly improved.

[108] The complainant testified that since the grievor left, there had been a 180-degree change. People were allowed to speak and share their ideas. The atmosphere at

work was positive. He observed a positive change in the work dynamic and atmosphere when the grievor was transferred to the Chambly office, after he made the harassment complaint. He said that he would leave his job at the Agency if the grievor came back to work.

[109] In stark contrast to the previous statements, the grievor said that no one informed him that the work environment was poor. As far as he knew, it was good. Not a single employee complained about it. Although he admitted to being direct, he described himself as an honest person who avoids putting employees in uncomfortable situations. He was not mean to the other employees. Lastly, the work environment was good, according to him.

[110] About the grievor's last statement, the employer's counsel referred him to his performance assessments for fiscal years 2014-2015 and 2015-2016 that Brigitte Ayotte prepared, and the performance assessment for fiscal year 2016-2017 that Ms. Bittar de Oliveira prepared.

[111] First, the employer's counsel referred him to the comment in the performance assessment for fiscal year 2014-2015. It reads as follows:

[Translation]

...

*Avoid all situations that could be compromising when tensions are running high. If a customer is dissatisfied or overly insistent, refer them to the administrative office, thanking them for their concern about our facilities, for example, so as not to get personally involved.*

*The same applies to employees or other parties: avoid all comments that could discredit all their excellent work. If the situation is intolerable, take a break to keep your cool. Avoid letting your emotions get the better of you. Then get back to the person, explaining the situation and your position, while clearly explaining the issue and the duty to comply.*

*If the situation seems impossible to resolve, go to your manager to find a solution.*

...

[112] When he was asked why that comment was made, he replied that it was more a team matter than a personal one.

[113] About the feedback that he should not discredit an employee's work, he said that it was about an employee who was unhappy. The employee wanted to change an electrical panel, but he had not allowed him to because of budget cuts. He was frustrated by the employee's insistence on changing the panel. According to him, his manager's comment was based on that single, isolated incident.

[114] The employer's counsel asked why similar comments were in the performance assessment for fiscal year 2015-2016. He replied that it was just a copy of the previous assessment, used as a reminder only, no more. When he was referred to the following comment: "[translation] Pay close attention to how your choice of words affects others and their sensitivity", he did not know what the manager was referring to.

[115] He also could not explain why, in his learning and development plan for fiscal year 2015-2016, his manager had indicated that he had to complete a communication course called *Improved communications*. Without admitting anything, he replied that the need for this training could be linked to the comment about affecting others and their sensitivity, as the employer suggested.

[116] About the performance assessment for fiscal year 2016-2017, the employer referred him to the following comment: "[translation] Although he has made efforts to improve the work environment, during these meetings, Michel must step back and try to better understand how he can improve the work environment within his team." When he was asked what this comment referred to, he replied that Ms. Bittar de Oliveira had included it in the performance assessment because she had seen a similar comment in his previous performance assessments that Ms. Ayotte prepared.

[117] Ms. Bittar de Oliveira had put the following comment in the performance assessment:

[Translation]

...

*Suggested improvement: apply the technical services values charter, take a step back when your communication style is not working, and involve your manager and employees (team leaders and skilled tradespeople) in seeking improvement. Make appointments with your manager to get advice and help when difficulties arise in your working relationships.*

...

[118] The grievor said that he did not know what she was referring to. Although he signed the performance assessment, he said that he had not had the chance to discuss that comment with his manager.

[119] In the “[translation] other comments” section of the performance assessment, the grievor wrote the following: “[translation] The comment about the work environment is unfounded, as it is based on an event that was not explained to me. I have spoken individually with each member of my team, and they all feel that the environment is good.”

[120] In short, he did not understand why she had included that comment in his performance assessment.

[121] I was surprised to note that although the employer’s witnesses all described a toxic work environment caused by the grievor’s behaviour, he insisted during the hearing that the environment was good and that employees enjoyed working there.

### **III. Analysis and reasons**

[122] The Agency terminated the grievor because of his misconduct toward the complainant. Specifically, it accepted the investigator’s finding that he had harassed the complainant. It found that the misconduct was fully incompatible with what is expected of an Agency employee, as per the Values and Ethics Code, especially a supervisor. It lost confidence in his ability to fulfill his duties.

[123] In its decision to terminate him, it also considered certain aggravating factors, in particular his position (foreman), the lack of remorse, and how serious the misconduct was. As mitigating factors, Ms. Small considered his years of service and his clean disciplinary record.

[124] That being said, I want to start by noting that I am not bound by the investigator’s or the Agency’s findings on the merits of the decision to terminate him. This means that the Agency had to show his alleged misconduct on a balance of probabilities, as it set out in the termination letter (in other words, the harassment against the complainant), and explain why, considering all the circumstances of the case, the termination was not excessive (see *Klouvi v. Canada (Attorney General)*, 2024 FCA 80 at paras. 3 and 4).

**A. Issues**

[125] Considering that this grievance is about a disciplinary action, I have to answer the following questions:

1. Has the Agency shown on a balance of probabilities that the grievor harassed the complainant and therefore engaged in misconduct?
2. If the answer is yes, is the Agency's decision to terminate the grievor an excessive response in all the relevant facts of the case?
3. If the answer is yes, what alternative measures should be substituted as just and equitable?  
(see *William Scott & Company Ltd. v. C.F.A.W., Local P-162*, 1976 CarswellBC 518 ("Wm. Scott"); *Bastien v. Treasury Board (Canada Border Services Agency) and Deputy Head (Canada Border Services Agency)*, 2023 FPSLREB 34 at para. 71; and *Basra v. Canada (Attorney General)*, 2010 FCA 24 at para. 24).

[126] The parties cited many decisions to support their arguments. I have read and analyzed all of them. In these reasons, I will refer only to those that I consider the most relevant in applying the criteria set out in *Wm. Scott*.

**B. Investigation report**

[127] As I said earlier, the investigation report was entered into evidence. However, it is not very useful. It shows that the Agency hired a third party to investigate the harassment allegations against the grievor, and it found that the complainant's harassment complaint was founded. I note that I am not bound by the investigator's findings.

[128] I give little weight to the employee statements in the report that were not specifically endorsed or otherwise corroborated by the witnesses who testified before me. Here is why.

[129] The investigator did not testify before the Board. The employer entered into evidence the investigation report by the manager who terminated the grievor. But that manager did not prepare the report.

[130] Moreover, the grievor testified that the investigator had not reliably reflected his statements or had not made his suggested corrections. Some of the employer's witnesses who appeared before me also corrected their statements in the report or could not confirm that they were accurate.

[131] The employer did not enter into evidence the witnesses' signed statements, including the grievor's, confirming that the interview notes were accurate, although those statements were given to the investigator. It also did not enter into evidence all the witnesses' written comments to the investigator about their statements in the preliminary report. These statements and comments would have helped the Board better assess the reliability of the employee statements in the final investigation report.

[132] Although the Board can admit and consider hearsay evidence, like the investigation report in this case, the weight that it gives to that evidence generally depends on how reliable it is. Let me explain.

[133] The Board is generally reluctant to rely on hearsay evidence to establish misconduct, particularly when the misconduct is serious and the penalty being considered is severe (for example, termination). When the employee's professional career is at stake, the Board generally expects the employer to present direct or reliable evidence to establish the misconduct justifying the disciplinary measure imposed. In the absence of corroboration or serious indications of reliability, extrajudicial statements may prove insufficient to establish, on a balance of probabilities, the alleged misconduct. This is because it is difficult, if not impossible, to fully assess the truth and credibility of extrajudicial or third-party statements, since the person who made them cannot be cross-examined (see *Hassard v. Treasury Board (Correctional Service of Canada)*, 2014 PSLRB 32 at paras. 209 and 210; and *Canadian Labour Arbitration*, 5th edition, at paragraph 3:61).

[134] For all these reasons, although I have admitted the investigation report into evidence, I give little weight to the statements that it contains that were not endorsed or otherwise corroborated by the witnesses heard before me.

### **C. Harassment definition**

[135] The policy defines harassment, gives examples, and sets out the responsibilities of employees, supervisors, and managers in preventing it and dealing with complaints.

[136] Specifically, harassment is defined as any act, comment, or behaviour that demeans, belittles, humiliates, or embarrasses an employee. It includes any act of psychological violence, bullying, or threats. A serious isolated incident may be

insufficient to conclude that there was harassment. That said, harassment usually refers to repeated incidents or a pattern of behaviour. Harassment is defined as follows in the policy:

[Translation]

...

*Any unwelcome and offensive behaviour toward one or more other persons displayed by a person inside or outside the workplace who knew or reasonably should have known that his or her behaviour could be offensive or hurtful. Harassment usually involves repeated incidents or a pattern of behaviour, but it could be an isolated incident. It connotes any act, comment, or conduct that demeans, belittles, or causes personal humiliation or embarrassment to an employee, or any act of psychological violence, bullying, or threats. It includes harassment within the meaning of the Canadian Human Rights Act. Harassment may be intentional or not.*

...

[137] The parties agree that harassment must be assessed not only from the subjective viewpoint of the person who feels harassed, but also according to an objective standard, namely, the view of a reasonable person (see *Joss v. Treasury Board (Agriculture and Agri-Food Canada)*, 2001 PSSRB 27 at para. 59; and *Cara Operations Ltd. and Teamsters Chemical*, 141 L.A.C. (4th) at paras. 19 and 20).

[138] In other words, the victim's perception remains relevant, as it sheds light on the impact felt, but it must be confirmed from a reasonable person's view. This objective test acts as a safeguard.

#### **D. The Agency showed that the grievor harassed the complainant**

[139] As stated earlier, the complainant alleged several incidents supporting his harassment complaint. The employer retained for investigation only those that met the harassment definition and had occurred in the 12 months before the complaint was made, as the policy states. It accepted the investigator's finding that the grievor had harassed the complainant. As a result, it determined that the grievor had engaged in misconduct because, by harassing the complainant, he had breached the Values and Ethics Code. After considering the aggravating and mitigating factors, the Agency terminated the grievor's employment.

[140] For reasons that I have already given, I am not bound by the investigator's or the employer's finding that the grievor harassed the complainant. As the hearing before the Board is a *de novo* proceeding, first I have to determine whether the employer has shown the grievor's misconduct (that is, harassing the complainant), on a balance of probabilities.

[141] The parties presented testimonial and documentary evidence. I have summarized the relevant evidence on each of the alleged incidents that the employer retained and submitted to the investigator for investigation. In the paragraphs that follow, I will analyze that evidence, establish the facts, and determine whether the grievor's alleged gestures, comments, or behaviour demeaned, belittled, humiliated, or embarrassed the complainant, or whether they amounted to psychological violence, bullying, or threats.

### **1. The May 3, 2017, incident (clamp versus sling)**

[142] This incident occurred in St-Ours and is about the choice of work tool. The relevant facts are not in dispute. Essentially, the grievor asked the complainant, on several occasions and in front of other employees, to use the clamp rather than a sling to load the rectangular logs onto the boom truck.

[143] I accept the grievor's explanation that his request was for safety and efficiency reasons. He does not dispute that he may have been direct with the complainant. I also note from the evidence that he showed the complainant how to use the clamp. The complainant admitted that the grievor had the authority to instruct employees on which tools to use for the work, as long as the tool was safe.

[144] When the complainant refused to use the clamp, the grievor said in front of other employees that he was not following his instructions. He also remarked to one of the complainant's colleagues that if the complainant did not want to use the clamp, they would take it out of the boom truck. However, the evidence does not support the complainant's claim that the remark was sarcastic. Let me explain.

[145] The employee who informed the complainant that the grievor had made that remark sarcastically did not testify before the Board. His comments could not be tested for reliability. No other witnesses corroborated the employee's observations.

Therefore, I prefer the direct evidence from the grievor that the remark was not made sarcastically.

[146] In analyzing the facts of this incident, I cannot conclude that objectively, the grievor's requests, or the way that they were presented, fall within the gestures, comments, or behaviours targeted by the harassment definition.

[147] In my opinion, the grievor, in his role as foreman, had the right to ask the complainant to use the clamp to do the work. Moreover, the complainant did not deny this. Nothing in the employer's evidence would allow me to reject the grievor's explanation that the clamp made it possible to perform the work in question more safely and efficiently. In short, management has the right to assign employees the work they need to do and recommend the tools they should use to do it. Of course, these requests must be legitimate (that is, comply with the job description, collective agreement, applicable legislation, and so on). Nothing in this case leads me to conclude that the request, although made directly, was illegitimate.

[148] Lastly, apart from the complainant's opinion, no objective, independent evidence was presented to me to show that using a clamp to load the rectangular logs onto the boom truck was unsafe. After all, the boom truck and clamp were work tools supplied by the Agency. It is reasonable to assume until proven otherwise that they were safe.

[149] The evidence presented on the allegation that the grievor forced employees to operate the boom truck at maximum speed ("[translation] rabbit on the throttle") at all times, no matter what the situation, was flimsy, vague, and contradictory. I do not know exactly when the grievor allegedly asked the complainant to operate the boom truck at maximum speed, under what circumstances, or how often. He admitted that he asked employees to be in "[translation] rabbit mode" when there was no load to carry, to speed up the progress of the work.

[150] In summary, the facts of this incident do not support the conclusion that the grievor engaged in behaviour that could be defined as harassment.

## **2. Incident involving apologies in front of the team**

[151] This incident is about the way that the grievor apologized to the complainant, in front of the team, for gestures and comments that he had made at an earlier meeting.

The grievor did not deny that his manager had made him apologize to the complainant.

[152] He also did not deny that contrary to what his manager had asked, he had not apologized to the complainant at the first meeting arranged for that reason. Instead, he made a general statement to the team that he was aware that sometimes he was harsh because he was a straightforward person, and that if there were sensitive people, he would apologize. When he testified, he did not explain why he had not apologized to the complainant, as he should have done.

[153] He also did not deny that when his manager learned that he had not apologized to the complainant, he asked him to apologize again in front of the team. For that reason, the grievor called a second meeting later that day. At that meeting, he promptly apologized to the complainant for the way that he had spoken to him, threw a piece of plastic on the table, and quickly left the meeting to go to his office.

[154] According to the employer's witnesses, the way that the grievor apologized created a chill within the team. In their opinion, the apology was cold, insincere, and formal.

[155] According to Mr. Castillo, "[translation] it was like a slap in the face", referring to the grievor's apology to the complainant.

[156] Mr. Fafard testified that the atmosphere was "[translation] less than ideal" when the grievor apologized. He felt that the apology was insincere and formal.

[157] According to the complainant, the apology was insincere, dry, and made unwillingly.

[158] According to the investigation report, Mr. Desrochers felt that the apology "[translation] was not really an apology", was "[translation] half-hearted", and was insincere. He said to the complainant: "[translation] Between that and a slap in the face, there is no difference." He did not testify before the Board, and this statement is hearsay. However, as stated earlier, the Board may accept hearsay evidence. That said, the weight that it will give to an extrajudicial statement varies depending on how reliable it is.

[159] First, I note that this extrajudicial statement by Mr. Desrochers is consistent with what the other witnesses testified before the Board. Moreover, the complainant testified that Mr. Desrochers had said that there was no difference between the grievor's apology and a slap in the face. The grievor did not attack that testimony and did not present any evidence or argument that would allow me to question the reliability of Mr. Desrochers' statement. Therefore, I conclude that his statement is reliable, and I give it weight.

[160] I note that the grievor also did not dispute the testimony of the employer's witnesses that his apology to the complainant was insincere and created unease within the team.

[161] The facts of this incident lead me first to conclude that the grievor tried to avoid apologizing to the complainant. When his manager made him apologize, he did it in a way that was offensive or hurtful to the complainant; the way that he apologized created unease within the team. The evidence shows that he apologized unwillingly, hastily, and insincerely, and because he was forced. This is based not only on the complainant's subjective feelings, but also on observations made by other witnesses.

[162] In my opinion, the way that the grievor apologized to the complainant was disrespectful and had the effect of diminishing and discrediting him in the eyes of other employees, including his subordinates, to whom he was supposed to inspire authority and respect. Given his supervisory experience and seniority, the grievor reasonably should have known that the way that he apologized in front of the other employees could have been offensive and hurtful to the complainant within the meaning of the harassment definition.

### **3. Incident involving refusing to let the complainant use Maximo**

[163] The complainant accused the grievor of denying him access to the Maximo asset management system, although he had the credentials needed to access it and had been trained on it. In addition, according to one of the work objectives in his performance assessment for November 9, 2015, to March 31, 2016, he had to "[translation] ensure that work orders are created in Maximo".

[164] That said, Maximo was defective. Specifically, it produced problematic and incorrect information. It gave the same information two, three, and even four times for

the same project. This caused confusion. That is why the grievor asked employees, including the complainant, not to use it. This evidence was not contradicted. The Agency stopped using Maximo even before it was officially discontinued because of the problems identified.

[165] I find that the grievor asked employees, including the complainant, not to use the system because it did not work properly. Objectively, this reason is legitimate. In these circumstances, not allowing the complainant to use Maximo does not amount to offensive or hurtful behaviour within the meaning of the harassment definition.

#### **4. Incidents involving planning and distributing work**

[166] The complainant was the GL-MAN-06 (B2) team leader. According to his job description, he could supervise up to five maintenance workers. His responsibilities included overseeing and supervising his subordinates' work, and "[translation] assigning and allocating tasks" to them. At all relevant times, the complainant was supervising five maintenance workers. The relevant excerpt from his job description reads as follows:

...

***Supervision***

...

***Degree: B2 (1 to 5 personnel supervised)***

***B3 (6 - 20 personnel supervised)***

***B - Oversees and supervises the work of staff/work crews; assigns and allocates tasks; ensures staff/work crews understand and accomplish assigned tasks; demonstrates work methods and techniques and provides detailed explanations or instructions to meet work goals; ensures the progress of work; motivates staff/work crews to meet established quality and quantity standards; and appraises employee performance.***

[Emphasis in the original]

[167] According to the employer's witnesses, the grievor did not allow the complainant to assign work to his subordinates. He also undid the complainant's efforts to distribute the work. Specifically, several witnesses explained to the Board that he assigned tasks to the complainant's subordinates before the shift began or at the team meeting, without consulting the complainant. In addition, according to the witnesses, he did not consider the tasks that the complainant had already planned and

assigned to his team and regularly undid his efforts. He ignored the complainant's instructions to his subordinates and disregarded his opinion in front of the other team members.

[168] According to witnesses, this was par for the course for the grievor. It frustrated and confused the team and created an unhealthy environment. Employees who reported to the complainant no longer knew who their "boss" was. Witnesses said that they did not know where they were going, and the complainant seemed lost.

[169] The grievor also prevented the complainant from fulfilling his responsibility to prepare the equipment needed for a given job by refusing to say ahead of time what work would be done. Lastly, he refused to inform the complainant when he planned to be absent, which frustrated the complainant.

[170] The grievor did not deny that he assigned tasks directly to the complainant's employees without consulting him, although it was his responsibility, or that he refused to inform him ahead of time of the work to be carried out. He gave several justifications for this course of action. However, they lack credibility and do not stand up to in-depth analysis. Let me explain.

[171] First, he explained that sometimes, he had to undo work that the complainant had prepared because of urgent work to be done that was emailed to him that morning before the complainant arrived. Other than this general statement, he could not provide concrete examples of urgent work that would have justified him assigning tasks to the complainant's subordinates or undoing his planning. He merely said in general terms that it could be a fallen tree blocking a road or a water spill.

[172] Other than his testimony, he presented no evidence (for example, emails) that there were any actual recurring emergencies that occurred daily or regularly, requiring him to assign tasks to the complainant's employees or modify tasks. However, if those emails existed, they would have been readily available to him during the investigation, while he still worked for the Agency. Also, he did not explain how these alleged emergencies required all employees reporting to the complainant to be involved, meaning that he had to assign or reassign tasks to all of the complainant's employees.

[173] Although I accept that emergencies can happen from time to time, it does not explain why the grievor assigned work to the complainant's subordinates regularly,

even daily, and regularly undid the planning that he had done. Furthermore, the grievor did not explain why he did not inform the complainant of these alleged emergencies, so that he could reassign his employees' work himself, or at least consult the complainant to get it done, considering that it was his responsibility to assign work to the maintenance workers. He presented no evidence that the complainant had attendance problems, or that starting work at 7:30 a.m. prevented him from properly assigning work to his subordinates or responding to urgent requests.

[174] For these reasons, I find that his explanations lack credibility.

[175] However, his justifications do not stop there. He gave another reason for assigning work directly to the complainant's subordinates: he believed that the complainant had neither the skills nor the knowledge needed to be team leader. According to him, the complainant did not know his team members' strengths and competencies and as a result, could not supervise them or properly assign them work. In his opinion, the complainant even had problems performing maintenance worker tasks. From the outset, I would like to make clear that these assertions directly contradict the documentary evidence before the Board.

[176] The complainant's performance assessments, which the grievor prepared, do not indicate any problems with the complainant's skills or performance as a team leader. On the contrary. For the period from November 9, 2015, to March 31, 2016, the grievor gave him an overall performance rating of "meets expectations". In his first comment in section "C" of the performance assessment entitled Results Achieved, the grievor indicated the following:

[Translation]

...

*[The complainant] has demonstrated that he possesses very good skill in the position by applying his experience and knowledge in carrying out the work assigned to him.*

...

[177] In the performance assessment for fiscal year 2016-2017, he gave the complainant a performance rating of "succeeded plus". In section "B" of the performance assessment, he said that the complainant "[translation] possesses good

skill in the position by applying his knowledge in carrying out the work assigned to him”.

[178] He went on to note the following:

[Translation]

...

[The complainant] *has very good communications with his team, trades, other departments, and external people. He regularly submits a daily report to his supervisor to communicate the progress of work, completed or not, at the end of the day, which is appreciated.*

...

[179] Lastly, in the same section, he said the following about the complainant: “[translation] ... demonstrates good leadership in managing his team. He has to work at showing a positive attitude and presenting positive ideas when faced with a difficult task to encourage his team to succeed in any challenge.” He did not produce any documentation (an email, letter, or other) indicating that the complainant had any performance issues as a team leader.

[180] These performance assessments contrast with his testimony that the complainant lacked the skills needed to be a team leader and as a result, could not properly assign work to his subordinates. In his testimony, the grievor tried to downplay the positive comments that he had noted in the complainant’s performance assessments.

[181] Specifically, he testified that he did not usually include negative comments in an employee’s performance assessment or point out their difficulties. He gave good performance assessments to keep employee morale high. One of his managers, Ms. Ayotte, taught him to do this. In general, if an employee had a problem, he would speak with them to see how they reacted.

[182] Not only is this explanation highly concerning, but it is also simply not credible. Let me explain.

[183] It is implausible that the grievor, who was a supervisor for several years, did not know the importance of writing down an employee’s performance issues or specific issues that need to be highlighted in a performance assessment. I note that the

performance assessment form for fiscal year 2016-2017 specifically asks the supervisor to identify an employee's "needs for improvement" (see section "B" - Year-End Assessment). I do not accept that the grievor did not know. Claiming as he did before the Board that he did not record performance issues in the performance assessment to keep morale high is not only implausible, but also irresponsible.

[184] His explanation that his former supervisor, Ms. Ayotte, said not to include negative comments in employee performance assessments is hard to reconcile with the fact that in his performance assessment, she included areas that he needed to improve, particularly involving his communication with third parties. He did not call her as a witness to corroborate his explanation.

[185] In short, his testimony that the complainant did not have the skills needed to be a team leader fully contradicts the comments and assessment rating that he gave him in the performance assessments. The performance assessments that he prepared unequivocally suggest that the complainant had all the qualifications needed to adequately fulfill his responsibilities as team leader.

[186] As a result, I find that the grievor did not indicate in the performance assessment that the complainant lacked the skills to be a team leader or had performance issues, simply because it was not true. This is also consistent with the complainant's testimony that during the assessments, he and the grievor did not discuss any events not written down in them.

[187] Lastly, I reject the grievor's argument that the Agency could not fault him for assigning work directly to the complainant's employees or changing the way that the complainant distributed the work because his job description allowed him to. The relevant excerpt from the grievor's job description (Technical Services Officer, EG-04) reads as follows:

...

***Supervision***

*There is a requirement to assign, supervise and evaluate the work of technical/maintenance staff directly or through subordinate supervisor (s).*

...

[Emphasis in the original]

[188] The grievor's and complainant's job descriptions must be read together, not separately. The clause that gives the grievor the power to assign work to maintenance workers cannot logically be understood as allowing him to take away one of the team leader's main responsibilities, namely, assigning work to maintenance workers, a task that is clearly indicated in his job description.

[189] In my opinion, the clause in the grievor's job description authorizing him to assign work to maintenance workers has no substantive effect. It enables the foreman (EG-04) to intervene when the team leader is absent, there is an overload of work, or there is a real emergency. It does not allow him to systematically take away, without a valid reason, an essential responsibility that the Agency has explicitly given to the team leader.

[190] Given his supervisory experience, he reasonably should have known that his behaviour could undermine the complainant's authority and credibility to his subordinates, diminish him, question his skills as a team leader, and obstruct his daily work (see *Teck Coal Limited (Fording River Operation) v. United Steelworkers, Local Union 7884*, 2021 CanLII 122339 (BC LA) at para. 29). Nothing in the facts justifies his behaviour toward the complainant.

[191] His approach confused and frustrated the team, which negatively affected employee morale, as the employer's witnesses confirmed.

[192] The relevant facts, as well as the lack of credibility of the grievor's explanations, lead me to conclude that he prevented the complainant from assigning work to his subordinates to maintain power and control over them, no matter what repercussions his actions might have had on the complainant and, more generally, on the team as a whole.

[193] He knew or reasonably should have known that his actions could be offensive or hurtful to the complainant. The repetitive nature of his behaviour toward the complainant, and the effects that this had on him, amounts to harassment as defined in the policy.

## **5. Incident involving installing the stop logs**

[194] This incident is about an operation in St-Ours that involved installing stop logs to dry the lock, in fall 2017. The complainant accused the grievor of assigning him and

another employee work in Chambly (to install guardrails on the Federal Wharf), rather than allowing him to go to St-Ours with the rest of the team to observe the operation. According to the complainant, the operation was complex, specialized, and very interesting, professionally speaking.

[195] The complainant said that the work in Chambly could have been done another day, as it was not urgent. In contrast, the grievor said that installing the guardrails in Chambly was an important job that had to be done. He said that at least two people had to be present to carry out the work.

[196] I understand that the complainant would have preferred to go with the rest of the team to St-Ours to observe the stop logs being installed to dry out the lock. However, there was also work to be done in Chambly. He did not claim that the work that the grievor assigned to him and another employee in Chambly fell outside his job description. Whether this work could have been carried out on a day other than the one on which the St-Ours operation took place is a decision for the employer, not the Board.

[197] Objectively, the fact that the grievor asked the complainant and another employee to stay in Chambly to install guardrails is not an offensive or hurtful behaviour or incident within the meaning of the harassment definition. I can understand that the grievor's decision to assign the complainant to work in Chambly, instead of allowing him to go to St-Ours, might have been disappointing and irritating. However, it is not enough to conclude that the act could amount to harassment. Moreover, according to the policy, distributing the workload generally does not amount to harassment. I find that in general, it is management's right to assign tasks.

## **6. Incident involving refusing to appoint the complainant as a first responder**

[198] The complainant accused the grievor of refusing to appoint him as a first responder. It denied him the opportunity to work overtime. The first responder is an employee who is on standby outside regular working hours. The employee responds to urgent calls and receives overtime pay when called to work during standby periods.

[199] The grievor did not appoint the complainant as a first responder because, in his opinion, he did not have the required training. According to him, all first responders had trades training. The complainant's subordinate who the grievor had appointed as a

first responder had training in a trade (electrical mechanic). Another employee who had been appointed as a first responder had a diploma in carpentry, held the cards required to work on construction sites — which requires many courses and solid experience — and had several years of service with the Agency. According to the grievor, a diploma in cabinetmaking, such as the one that the complainant had, could not be considered equivalent to a diploma in carpentry because the skills differed.

[200] Lastly, the grievor's manager affirmed the decision not to appoint the complainant as a first responder.

[201] Although the grievor suggested that the complainant complete training so that he could be appointed as a first responder, he was not interested.

[202] For that reason, I am not convinced that the grievor's decision not to appoint the complainant as a first responder was a behaviour that could amount to harassment under the objective standard. The employees appointed as first responders had the employer-required training and experience.

[203] In short, it is up to the employer, by virtue of its management rights, to determine the minimum professional requirements needed for a job, such as a first responder. Moreover, the policy specifies that exclusion from employment based on the job requirements needed for its safe and effective performance generally does not constitute harassment. The grievor's decision not to appoint the complainant as a first responder because he lacked the required experience and training falls into this category.

## **7. Incident involving de-icing the spillway on February 16, 2018**

[204] This incident is about work to de-ice a spillway. Specifically, the grievor asked the complainant and another employee to de-ice the spillway to prevent a possible overflow of water. It was the first time that the complainant had to do this type of work. He did not know how and was not trained. He asked the grievor for advice on how to carry out the work. It was not denied that the grievor replied to him as follows: “[translation] You take a sledgehammer or an axe, and you hit the ice.”

[205] Once at the spillway, the complainant's subordinate went down to break the ice, while the complainant remained above. The ice gave way under the subordinate's feet. For safety reasons, they stopped the work and returned to the workshops. They

informed the grievor that they had not completed the work. This incident occurred in the afternoon on Friday, February 16, 2018.

[206] Testimonies are contradictory about the request for advice on how to de-ice the spillway. The complainant said that he had directly asked the grievor how to do the work because he had never done it before and had not been shown how to do it.

[207] The grievor admitted that he informed the complainant to take a sledgehammer or an axe and to hit the ice to de-ice a reservoir. However, he gave several reasons for not giving him the information that he asked for. In my opinion, these explanations contradict one another and are not credible.

[208] First, he claimed before the Board that he had asked the complainant three times if he knew how to do the work, to which the complainant allegedly replied yes, and even added that the grievor did not need to tell him how to do the work. That is the first explanation.

[209] The second explanation contradicts the first. Later in his testimony, the grievor explained that he had not given the complainant any instructions on safety measures because the work was basic. According to him, the risk associated with the work was a 3 on a scale of 10. Only a quarter inch of water flowed under the ice.

[210] Lastly, the third explanation contradicts the first two. This time, the grievor clarified that he had not explained to the complainant how to de-ice the spillway because the technical services manager, Ms. Bittar de Oliveira, had cautioned him not to give detailed explanations to employees about how to do their jobs because it offended them.

[211] On cross-examination, when the employer's counsel asked him whether it would have been more appropriate to demonstrate how to de-ice the spillway before the complainant went there, he replied that he had wanted to, but did not want Ms. Bittar de Oliveira to reprimand him for giving employees too much information. She said to let employees learn from their mistakes. He added that he found this instruction regrettable and disappointing.

[212] His explanations are contradictory and lack credibility. They are also not in line with the credibility test set out in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), which reads as follows:

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

...

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

...

[213] The grievor's first explanation for not giving the complainant the instructions that he asked for is inconsistent with the rest of the evidence. Let me explain.

[214] It was not denied that this was the first time that the complainant had to de-ice the spillway and that he had not been trained to do it. In these circumstances, it is entirely plausible and logical that the complainant asked the grievor, who had many years of experience, to explain how to de-ice a spillway.

[215] However, it seems unlikely that the complainant, who had never done this work and received no training on de-icing a spillway, would have refused to let the grievor explain how to do the work, as he claimed. It is even more unlikely that in these circumstances, the complainant would first tell him that he did not need his advice on how to de-ice the spillway, and then, in the context of a harassment complaint, accuse him of not providing that same advice. Lastly, why would the grievor have said to take a sledgehammer or an axe and hit the ice if the complainant had said to him that he already knew how to de-ice the reservoir and did not need any instructions? It makes no sense.

[216] Furthermore, the grievor's testimony that he asked the complainant three times if he wanted him to explain how to do the work, to which the complainant allegedly replied that he did not need instructions, contradicts his subsequent statement that the work was basic, so it was not necessary to give the complainant safety instructions. This testimony is also contradicted by another of the grievor's statements, according to which he did not explain to the complainant how to de-ice a spillway because his manager, Ms. Bittar de Oliveira, had cautioned him not to give employees too many details about how to do their job, for fear that it would offend them. He said that his

manager had also said that employees had to learn from their mistakes. He added that he had not explained in detail to the complainant how to de-ice the spillway, as he feared that Ms. Bittar de Oliveira would reprimand him for giving too much information.

[217] It is unlikely that a manager would ask a supervisor not to give employees the information that they need to do their work so that they do not feel offended. This is illogical. It is hard to understand how an employee could feel offended by being given information that he or she specifically asked for. With that in mind, the grievor's explanation that he had not given the complainant the information in question for fear of being reprimanded by the manager is also unlikely.

[218] Based on my analysis of the evidence, I have no doubt that the complainant did ask the grievor how to de-ice the spillway. This is logical and reasonable, since he had to do this work for the first time and did not know how to go about it. He received the following response: “[translation] You take a sledgehammer or an axe, and you hit the ice.” I reiterate that this fact is not in dispute.

[219] I do not understand why the grievor, who was the complainant's supervisor, did not explain to him how to do the work, especially knowing that it was the first time that he had to do it. Was it to set him up for failure, as he claimed? Regardless, the fact is that the grievor made a conscious decision not to explain to him how to de-ice the spillway, as he had asked.

[220] I find that the grievor knew or at least reasonably should have known that his refusal to give the complainant the information that he needed to do the work in question was unwelcome and offensive behaviour within the meaning of the harassment definition. I also note that according to the policy, withholding necessary information may be considered bullying, again within the meaning of the harassment definition (see Appendix A of the policy).

## **8. The complainant felt denigrated at the meeting on February 19, 2018**

[221] The evidence presented with respect to this incident is not convincing as to the harassment allegation.

[222] Specifically, the fact that the grievor used a briefing to explain to the team how to de-ice a spillway — even if it did reflect what had happened during the de-icing that

the complainant carried out — is not enough to conclude that it had the effect of denigrating the complainant. More is needed.

[223] I understand that from the complainant’s subjective viewpoint, he felt belittled and ridiculed by the briefing and the way that it was carried out. However, from an objective viewpoint, the evidence does not allow me to conclude that the exercise in question denigrated the complainant. The grievor did not make any uncalled for, belittling, or humiliating comments about the complainant, and did not behave in a way or make any gestures that were objectively offensive to the complainant during the briefing.

[224] Mr. Fafard, who testified before the Board, was not prepared to confirm the accuracy of his statement that the grievor denigrated the complainant during the meeting in question, as the investigator reported. Before the Board, he merely said that he remembered the “[translation] feeling”, without giving more details. It would be inappropriate for me to speculate as to what this means exactly.

[225] In short, the little evidence presented with respect to this incident does not allow me to determine that the grievor denigrated the complainant during the briefing in question.

### **9. A heated exchange at the follow-up meeting on February 20, 2018**

[226] At the follow-up meeting, the grievor asked the complainant what was wrong. He replied that he felt that the briefing the day before was a direct attack on him, and that he would have preferred that it be given in private. He testified that in response to his comment, the grievor started shouting at him. Specifically, he said: “[translation] You have let me down three times now, this is the last time you will do that. You are going to lose that chair.” He pointed to the complainant’s office. The complainant took it as a threat that he would lose his job.

[227] Mr. Fafard corroborated the complainant’s testimony. He heard the grievor shouting at the complainant in the offices. He remembered the grievor shouting at the complainant, specifically: “[translation] You are going to lose that chair.”

[228] The grievor did not deny raising his voice at the complainant but said that it was because he was pointing at him and speaking loudly. He responded in kind. Before the Board, he did not deny that he said to the complainant that he was going to lose

his chair. He testified that he did not want the complainant in the team leader position. In his opinion, he did not have the skills needed to be a team leader. I have already determined that this contradicts the complainant's performance assessments that the grievor prepared.

[229] The grievor's comments toward the complainant, and the tone in which they were made, clearly fall into the category of unwelcome and offensive or hurtful behaviour within the meaning of the harassment definition. Specifically, being shouted at by his superior that he is going to lose his chair, in the context described, is bullying and threatening. The grievor threatened his livelihood and professional stability. He bullied him. Under the circumstances, there is no explanation for the grievor's misbehaviour toward him. This type of threat does not belong in the workplace and must be dealt with at the earliest opportunity.

[230] There is not a single doubt that the grievor knew or at least reasonably should have known that shouting at the complainant that he was going to lose his chair, alluding that he was going to lose his position as team leader, could be bullying and threatening to the complainant. He reasonably should have known that these comments would scare him.

[231] These comments are so serious that I have determined that they fall within what is considered harassment under the policy.

#### **10. The grievor ignored what had been agreed in the mediation meeting on February 21, 2018**

[232] The day after the follow-up meeting on February 20, 2018, the complainant met with the human resources manager and the grievor's manager. He informed them of the incident involving de-icing the spillway. He also said that he could no longer tolerate what he described as an unhealthy work environment.

[233] He agreed to the suggested mediation with the grievor, with the grievor's manager, Mr. Ngongang, helping.

[234] During mediation, it was agreed that the complainant would participate in the weekly planning process. However, just a few days after the mediation, the grievor disregarded what had been agreed. Specifically, he did the planning without consulting the complainant and undid almost all the planning that he had done. The grievor did

not dispute this. However, he explained it by saying that if he received emails for urgent work to be completed (for example, a tree that had fallen and was blocking a road or a bike path), last-minute changes might need to be made to the schedule.

[235] Although he testified that several emergencies occurred that week, he could not give a single specific example of one that allegedly forced him to re-allocate the work that the complainant had done. He also did not enter into evidence any emails showing that during the week in question, urgent work had needed to be done that allegedly required him to change the complainant's plan. As I said earlier, he could have easily provided emails containing urgent requests for the week in question when the 2018 investigation was under way. The absence of those emails or other independent evidence makes me question whether his explanation is true. But there is more. This explanation is incompatible with the probabilities surrounding the facts of this incident (see *Faryna*). Let me explain.

[236] If urgent work had to be done during the week in question, as the grievor claimed, and it had meant reorganizing the complainant's plan, I would have expected him to inform the complainant and explain why he had undone his plan. This is what a reasonable and responsible supervisor should have done in the circumstances. The failure to do that seriously undermines the credibility of this explanation.

[237] For all these reasons, including that there is no independent evidence corroborating the grievor's explanations, I conclude that his testimony as to why he undid the complainant's weekly plan is not credible.

[238] Apart from the preceding, the grievor offered no explanation as to why he did not allow the complainant to participate in the weekly planning, as agreed at mediation. Later, the grievor's manager reminded him that it was the complainant's job to assign work to his employees according to the needs of a given project (see the March 15, 2018, email).

[239] After analyzing the relevant facts, I find that the grievor deliberately removed the complainant from the weekly planning process — and even undid a large part of the work already done — to take this responsibility away from him and retain exclusive control over organizing the work, despite what was agreed in mediation. The grievor's explanation that he undid the complainant's planning because of emergencies

is not credible. Lastly, excluding the complainant from weekly planning seems to have been motivated by a desire to marginalize him.

[240] By acting as he did, the grievor obstructed the complainant's work and discredited him. Not only did he take away the complainant's responsibilities, but he also undid the complainant's planning. He knew or reasonably should have known that his behaviour could be offensive or hurtful to the complainant within the meaning of the harassment definition. Knowingly obstructing someone's work, taking away responsibilities for no reason, and demeaning an employee are all acts, comments, or behaviours that fall within the harassment definition.

## **11. Conclusion**

[241] In conclusion, the employer showed on a balance of probabilities that the grievor harassed the complainant. The analysis of the facts surrounding the following incidents leads me to conclude that the grievor engaged in repeated behaviour toward the complainant that he knew or reasonably should have known could be unwelcome and offensive or hurtful within the meaning of the harassment definition: a) the apology in front of the team; b) the work allocation and planning; c) the spillway de-icing on February 16, 2018; d) the heated exchange at the follow-up meeting on February 20, 2018; and e) the weekly planning after the February 21, 2018, mediation. As I said earlier, the incident in which the grievor threatened the complainant with losing his position as team leader was serious enough to be considered harassment in itself.

[242] By harassing the complainant, the grievor violated the values and principles of the Values and Ethics Code, specifically respect for people and commitment. This behaviour is misconduct that warrants disciplinary action.

### **E. The termination was not excessive**

[243] With respect to the disciplinary action taken, first it should be noted that the Board intervenes only when it considers that the action is excessive, in light of the proven misconduct. In other words, the Board will not intervene solely because a lesser measure could reasonably have been imposed to punish the misconduct (see *Rossin-Arthiat v. Deputy Head (Canada Border Services Agency)*, 2025 FPSLREB 53 at para. 125).

[244] To determine whether a disciplinary action is excessive, I must consider the context, the seriousness of the misconduct, as well as the aggravating and mitigating factors. After analyzing the relevant facts and factors, I conclude that the Agency's decision to terminate the grievor was not excessive. Let me explain.

[245] The grievor demonstrated serious misconduct toward the complainant. He harassed him. I reject his argument that his possibly inappropriate behaviour is limited to the direct way that he speaks to people, sometimes raising his voice. This suggestion, which makes his inappropriate behaviour toward the complainant seem less serious, is not supported by the evidence.

[246] The analysis of the facts shows that the grievor repeatedly behaved in a way that diminished, belittled, bullied, and marginalized the complainant, often when other employees were present. He threatened the complainant directly, shouting that the complainant was going to lose his job, and knowingly interfered with some of the responsibilities set out in his job description. In short, all the evidence leads me to conclude that through his actions, words, and behaviour, the grievor harassed the complainant within the meaning of the harassment definition in the policy.

[247] Workplace harassment is serious misconduct that cannot be tolerated. It not only compromises the dignity, integrity, and psychological safety of the person being harassed, but also undermines the confidence needed for any organization to run smoothly. When it is tolerated or not punished severely enough, it can have harmful effects on the whole team by creating a climate of fear, mistrust, or withdrawal. It undermines group cohesion and leads to demotivation. Moreover, tolerating harassment sends a message of impunity that is incompatible with the employer's prevention obligations and its duty to maintain a safe, healthy, and respectful work environment (see *Provonost v. Canada (Revenue Agency)*, 2017 FC 1077 at para. 21).

[248] The fact that the harassment originates from a supervisor toward one of his subordinates is an aggravating factor. Because of the reporting relationship, the subordinate is in a more vulnerable position, which may limit his ability to defend himself, report the situation, or avoid abusive behaviour. The supervisor's power, when misused to dominate, bully, or exclude, is an abuse of authority that is incompatible with management responsibilities. This type of conduct not only undermines individual trust but also sends a harmful message to all employees about the

organizational culture that is tolerated which can have systemic repercussions on the work environment.

[249] As a supervisor, the grievor knew or reasonably should have known that he had to follow the policy according to the Agency's human resources values and operating principles. Specifically, under the policy, he had to "[translation] set an example by behaving fairly and respectfully", "[translation] create and maintain a respectful work environment conducive to open, honest communication", and "[translation] act promptly to resolve conflict or stop any form of harassment that comes to his attention".

[250] The policy also specifies that managers who know about or witness harassment but refuse to intervene or fail to take the necessary actions to stop it are in serious breach of the policy and may be disciplined. The policy section titled *Rights and responsibilities of complainants, respondents, and witnesses* also states that an employee who engages in harassment violates the policy and may be disciplined, up to termination.

[251] The grievor's refusal to acknowledge the offensive, hurtful nature of his behaviour and its consequences for the complainant, as well as his lack of remorse, are aggravating factors. Even after hearing the employer's witnesses describe his repeated behaviour toward the complainant and other employees as denigrating and offensive, he insisted that the atmosphere in the team was good, people were happy, and everything was going well. He also tried to downplay, even deny, the comments that his manager made in his performance assessments about how he communicated with others.

[252] Throughout his testimony and in his closing arguments, the grievor continued to downplay the seriousness of his behaviour and its impact on the complainant and the team. He also tried to blame other people for his inappropriate behaviour.

[253] As an example only, about de-icing the spillway, he said that he refused to give the complainant the information that he asked for because his manager had informed him not to say too much to employees because they might take offence. As for the fact that he prevented the complainant from assigning work to his subordinates or that he undid the complainant's work assignments, he explained that the complainant did not

have the skills needed for the team leader position, although his performance assessments contradicted this.

[254] Lastly, on the fact that he did not report that the complainant had performance issues in his performance assessments, he stated that his manager asked him not to, for team morale.

[255] Each of these explanations is as unlikely as the next, as my analysis of the evidence shows. I find in the circumstances of this case, the grievor's lack of candour during the hearing, coupled with his tendency to systematically blame others for the way he allegedly acted, raises serious doubts about his ability to correct his behaviour, undertake a genuine process of rehabilitation, and restore trust (see *Rossin-Arthiat*, at para. 237; *Viner v. Deputy Head (Department of Health)*, 2022 FPSLRB 74 at paras. 372 to 374; and *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43 at para. 103, judicial review application dismissed by the Federal Court in *Oliver v. Canada (Customs and Revenue Agency)*, 2004 FC 1462).

[256] At the hearing, the grievor said that he regretted shouting at the complainant during the follow-up meeting on February 20, 2018. However, he expressed no regret for saying that the complainant was going to lose his chair. Throughout the hearing, he maintained that the complainant was not qualified to be a team leader, despite performance assessments to the contrary.

[257] His regret for shouting at the complainant comes some six years after the incident. Without question, it would have carried more weight had it been expressed when the incident occurred. An admission made at the last minute, at the hearing, may seem opportunistic and lose its value as a mitigating factor (see *Rossin-Arthiat*, at para. 220).

[258] As mitigating factors, I note that the grievor had a clean disciplinary record, 32 years of service, and several years as a foreman. That being said, I am of the opinion that his offensive, hurtful behaviour toward his subordinate, his refusal to take responsibility for it and recognize its effects on the complainant, as well as his lack of remorse are incompatible with the responsibilities that he had as a foreman and, consequently, with maintaining the employment relationship (see *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121 at paras. 78 and 83; and *Komarnisky and Strategic Aviation Systems Inc, Re*, 2015 CarswellNat 7396 at para. 24).

Overall, I conclude that the aggravating factors clearly outweigh the mitigating ones. For this reason, I find that the termination was not excessive, given the seriousness of the grievor's misconduct and the aggravating factors. Therefore, the Board must not intervene.

[259] The grievor submitted several decisions, in particular to support his argument that in the circumstances of this case, the termination was an excessive response that should be replaced by a less severe action. I have examined this jurisprudence.

[260] Harassment is a context-specific concept that must be assessed against the facts of each case. This analysis is tailored to each individual case and based on all the circumstances, including the nature, the frequency, the impact of the alleged behaviours, as well as the aggravating and mitigating factors (see *Seager and Treasury Board (Solicitor General Canada - Correctional Service)*, FPSLREB Decision 166-2-28549 (1999-01-15) at 15; and *Health Sciences Association of Alberta v. Alberta Health Services*, 2023 CanLII 37831 (AB GAA) at para. 56). It follows that the jurisprudence that the grievor referred to is not determinative of the action to be taken in assessing whether, in the circumstances of this case, the termination was excessive. For the reasons given earlier, I find that given the facts of the case before me, the termination was not excessive. As a result, there is no need to address the third issue, namely, whether measures should be substituted for the termination as just and equitable.

#### **F. The grievor knew the misconduct that he was accused of**

[261] Lastly, the grievor argued that the termination letter was unclear as to why his employment had been terminated, namely, the misconduct that he was accused of. To support his argument, he referred me to the decision *Touchette v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLREB 72 at paras. 63, and 70 to 74. I recognize that the termination letter could have been more detailed. That said, the letter specifies why the employment relationship was severed, unlike in *Touchette*. The relevant excerpt from the termination letter reads as follows:

[Translation]

*All Parks Canada Agency employees must comply with the Agency's Values and Ethics Code, which clearly states that one of our core values is: How we work together. This means respect, engagement, excellence, and integrity, as the common framework for our actions as Parks Canada team members and our collaborative work to fulfill our mandate and our vision. Given the*

*founded allegations against you and your failure to recognize the impact that your actions have had on other team members, I cannot in good conscience continue your employment with the Agency. Your misconduct is fully incompatible with what is expected of a Parks Canada employee, especially a supervisor.*

*Therefore, I cannot continue to have confidence in your ability to fulfill your duties.*

...

[262] The grievor knew precisely what the allegations against him were and that they were founded. He also knew the specific facts and behaviours supporting each of the allegations against him that were in the harassment complaint. Therefore, he cannot claim not to have known the misconduct that the Agency accused him of and for which his employment was terminated. During the hearing, it was clear that he knew exactly what behaviours he was accused of.

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

*(The Order appears on the next page)*

**IV. Order**

[264] The grievance is denied.

September 15, 2025.

FPSLREB Translation

**Adrian Bieniasiewicz,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**