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



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

BETWEEN

FERDINAND NKURUNZIZA

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as

Nkurunziza v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Katerina Cook, counsel

For the Employer: Daniel Côté-Finch, counsel

Heard at Montréal, Quebec,
July 15 to 18, 2025.
(FPSLREB Translation)

REASONS FOR DECISION

(FPSLREB TRANSLATION)

I. The grievance

[1] Ferdinand Nkurunziza (“the grievor”) held a tax auditor position with the Canada Revenue Agency (CRA or “the employer”). He was terminated on March 6, 2024, for, according to the employer, claiming a \$2000 payment under the Canada Emergency Response Benefit (CERB) while working for the CRA and not being entitled to receive such a benefit.

[2] On March 11, 2024, he grieved his termination. On June 20, 2024, the employer denied the grievance at the final level of the grievance process. On July 25, 2024, he referred his grievance to adjudication with help from his bargaining agent, the Professional Institute of the Public Service of Canada. The applicable collective agreement is the one between the employer and the bargaining agent for the Audit, Financial, and Scientific group expiring December 1, 2026 (“the collective agreement”).

II. Summary of the evidence

[3] The employer called as witnesses Leon Horne-Bourgoin, Patricia Fader, Maria Cornea, Maria Jeanveau, and Chantal Tourigny. When the facts relevant to the grievance occurred, Mr. Horne-Bourgoin was the assistant director of the CRA’s Internal Affairs Division, Ms. Fader was an analyst-investigator in the CRA’s Internal Services Division, Ms. Cornea was a manager at the Western Quebec Tax Services Office (TSO) in Montréal, Ms. Jeanveau was a team leader in the CRA’s Benefits and Individual Integrity Division, including the CERB in 2020, and Ms. Tourigny was the CRA’s assistant commissioner for the Atlantic region. The employer submitted 41 documents as evidence.

[4] The grievor testified. He also called his spouse, Lena Nkurunziza, as a witness. He submitted 15 documents as evidence.

[5] The grievor has academic training in accounting. In March 2017, the CRA hired him as an assessment processing officer at the Winnipeg TSO. When he was terminated on March 6, 2024, he held a tax auditor position at the AU-02 group and level at the Western Quebec TSO. His job was to audit the housing subsidies that businesses received as COVID-19 relief measures. He reported to Ms. Cornea, who testified that

she assessed his performance from September 1, 2022, to August 31, 2023. According to her, he met all of the employer's performance standards.

[6] His spouse testified that she was not working in August 2020. Therefore, she was eligible to receive the CERB that the Government of Canada paid to provide temporary emergency relief to people who had stopped working and were unemployed for reasons related to COVID-19. Initially, she applied for the CERB for the period from August 2 to 29, 2020, and her application was accepted. As the CERB application form submitted as evidence shows, CERB eligibility required applicants to reside in Canada, to be at least 15 years old, not to have quit their job, to have earned at least \$5000 in the last 12 months, and not to have received the CERB or employment insurance benefits for the eligibility period. Once those five conditions were met, the person had to select the situation that applied, namely: 1) whether it was an initial claim; 2) whether it was a subsequent claim; 3) what his or her employment insurance status was. Lastly, the person had to select the period for which he or she was requesting the CERB.

[7] The grievor's spouse testified that on August 31, 2020, she used the laptop that she and the grievor shared to apply for the CERB for the period beginning then. The couple had only one computer. She testified that very shortly after she applied, the grievor, who was at home on paternity leave, received an email from the CRA confirming that his CERB application had been received and that he would receive payment shortly. They assumed that it was a mistake owing to Google's auto-complete feature that sometimes automatically completed information that was entered, as their "[translation] usernames" in the CRA's My Account were quite similar. The first five letters of the grievor's username were the last five letters of his spouse's username, and the first four letters of her username were the last five letters of his username. She testified that at the time, accessing My Account was easy. You just had to enter the username and password, nothing more.

[8] She decided to log into her account again, to resubmit her CERB application. That time, her application was accepted, which according to her and the grievor, confirmed the earlier mistake. I note that he received the email confirming his application at 12:33 p.m., and confirmation of her application was received at 12:37 p.m. the same day.

[9] The confirmations that they received informed the recipient to call 1-800-959-8281 if he or she had not completed the application. The grievor's spouse testified that she called the CRA on August 31, but did not speak to anyone. She did not remember which number she called. She testified that she called back three weeks later and spoke to an agent about what happened. Then, in August 2020, her CERB file was blocked until November 2020. She testified that she could not get the records of the calls that she made because she had changed phone providers since, and the previous provider refused to give her the 2020 records.

[10] She testified that she sent a \$2000 cheque by regular mail to repay the CERB that her spouse mistakenly received. She supposedly wrote his social insurance number on the cheque and that it was to pay back the CERB received by mistake. He testified that she did not send one cheque, but rather two cheques for \$1000 in the same envelope. She testified that she did not know a way other than to mail a cheque to repay the CERB received by mistake. He testified that a taxpayer could not pay electronically for a mistake or a debt that was not recorded in My Account.

[11] In his testimony, the grievor confirmed what his spouse said about her mistake in applying for the CERB for him. He also gave the same version of events at the disciplinary meeting on December 7, 2023, which is confirmed in the meeting record that Ms. Cornea submitted as evidence. I will revisit that record's content later.

[12] Mr. Horne-Bourgoin testified that after the media reported that federal public servants had allegedly received the CERB while at work, the CRA decided to verify whether that had occurred at the CRA. A preliminary analysis showed that there may have been 450 possible fraud cases that needed to be investigated. Mr. Horne-Bourgoin testified that many investigations needed to be conducted in a short period, considering that his division typically conducted about 150 investigations yearly. The investigations began in July 2023 and continued for the rest of the year.

[13] The grievor was one of the employees who was investigated. According to the investigation reported submitted as evidence and Ms. Fader's testimony, he received a \$2000 CERB payment for the period from August 30 to September 26, 2020, although he was not eligible. The report also says that he was temporarily struck off strength from July 27 to September 10, 2020, because he was on parental leave. On his 2020 tax return, he declared that he had received the \$2000 CERB payment. The report also says

that on March 2, 2023, the CRA notified him that he owed it \$1000 because he received employment insurance benefits for part of the period for which he received the CERB. The amount that he owed the CRA was deducted from the tax refund that he was supposed to receive for 2022.

[14] According to the investigation report and certain documents submitted as evidence, on August 16, 2023, the CRA asked him to provide documents supporting his 2020 CERB application. He allegedly did not provide those documents. Then, on October 18, 2023, the CRA electronically sent him a notice informing him that he was not eligible for the CERB in 2020 and that he had to reimburse the CRA. According to the investigation report, he had not yet viewed that notice when the report was released on December 5, 2023.

[15] At the end of the investigation report, Mr. Horne concluded that the grievor violated the *Code of Integrity and Professional Conduct* (“the *Integrity Code*”) and committed fraud as defined in the *Internal Fraud Control Directive* (“the *Fraud Directive*”). Both documents were submitted as evidence. Lastly, Mr. Horne-Bourgoin said that the investigator had not met with the grievor, who allegedly had a chance to respond to the investigation findings later. He also said that because so many investigations were being conducted, no meetings were held with any of the 450 public servants being investigated.

[16] In addition to the calls that the grievor’s spouse said that she made to report that his CERB application was a mistake, he testified that he called the CRA several times to report the mistake. He submitted phone records of 3 calls to 1-833-966-2099 on October 5, 2020, lasting 1 to 11 minutes each; 4 calls to 1-800-808-6352 on October 13, 2020, lasting 1 to 4 minutes each; 5 calls to 1-800-808-6352 on October 19, 2020, lasting 2 to 9 minutes each; 3 calls to 1-800-206-7218 on October 21, 2020, lasting 3 to 5 minutes each; and 1 call to 1-800-959-2019 on November 13, 2020, lasting 5 minutes. According to the documents in evidence, 1-833-966-2099 is a number that taxpayers can call to return or reimburse a CERB payment; 1-800-808-6352 and 1-800-206-7218 are Service Canada numbers for information about CERB applications made to Service Canada.

[17] Ms. Jeanveau testified that agents who speak to taxpayers leave notes on what they talked about. She found no trace of calls from the grievor or his spouse. However,

she testified that she could not access Service Canada notes on the CERB. During the CERB payment period, she worked at the call centre that gave information to taxpayers. She said that fewer than 100 people worked at the centre, and it was very chaotic. They received call after call without interruption and sometimes, wait times on the line were quite long. Taxpayers could call 1-833-325-0555, and she said that the conversations were documented.

[18] She confirmed certain information in the investigation report. On August 16, 2023, the CRA asked the grievor to provide documents supporting his 2020 CERB application. When it received nothing from him, a CRA agent called him on September 29, 2023, to ask him to provide the requested documents. According to the notes in the file, he allegedly replied that he would submit them. Then, on October 16, 2023, another agent tried but could not reach him. The agent submitted as evidence a phone record from October 2023. According to it, the call from the CRA on October 16, 2023, appears to have been made from a private number. The grievor testified that that is most likely why he did not answer.

[19] On March 2, 2023, the grievor received a notice of redetermination from the CRA. It indicated that he had previously received a \$2000 CERB payment, eligibility for that payment had been revised to \$1000, the CRA had already received \$1000, and the grievor's balance was \$0. The evidence shows that the \$1000 that the CRA received was deducted from the tax refund that the CRA owed the grievor. Then, on October 26, 2023, a new notice of redetermination was sent electronically to the grievor. It said that he still owed the CRA \$1000 for a CERB overpayment. He testified that he did not open it then. According to the evidence, he repaid on December 6, 2023.

[20] On December 5, 2023, at 1:56 p.m., Ms. Cornea summoned the grievor to a disciplinary meeting on MS Teams, to be held on December 7, 2023, at 2:00 p.m. She attached to her email the *Fraud Directive* investigation report. She said that the disciplinary meeting was being held after evidence was received showing that the grievor had violated the *Integrity Code* and committed fraud. A labour relations advisor took part in the meeting with Ms. Cornea. The grievor had two union representatives with him.

[21] During the disciplinary meeting, the grievor admitted that he received a \$2000 CERB payment on September 1, 2020. The report said that he explained that he and his

spouse had one computer that they both used. He said that he could automatically get into her My Account without knowing. At the time, she was receiving the CERB. She unknowingly went into his account and applied for the CERB. Then, he received an email saying that his own CERB application had been accepted. He knew that he was not eligible for the CERB. Right away he informed her that there had been a mistake. So she went into her own account, applied, and was accepted. Later, they tried but could not reach the CRA. Then, he sent two \$1000 cheques dated September 2, 2020, and September 4, 2020, in the same envelope to the Winnipeg tax centre address, because he was in Winnipeg then. At the disciplinary meeting, he said that his spouse signed the cheques because he did not have a chequing account then. However, there was a note on the cheque that it was a CERB payment with his name and social insurance number. Later, he realized that the cheques had not been cashed. At the disciplinary meeting, he also explained that in 2020, once you entered your username and password, you were directly connected to My Account. According to him, a verification code was added in 2020, so that now you also have to enter the code that is sent to your phone.

[22] Ms. Cornea testified that the grievor cooperated during the disciplinary meeting, but that what he said did not convince her that he was telling the truth. There was a phone number that he could have called to report that he was not eligible for the CERB, but he did not provide any evidence that he called that number. On February 9, 2024, his spouse gave him a letter saying that she was the one who mistakenly applied for the CERB for him. She thought that she was in her own account and did not realize that she was in his. She gave her phone number in case anyone had questions. He gave the letter to Ms. Cornea. She testified that she did not call his spouse. She also testified that she had no way to go back three years to confirm the steps required to access My Account in 2020.

[23] She testified that the grievor's work involved assessing taxpayers' eligibility for payments from the federal government. He had to enforce the law. This type of behaviour by CRA employees undermines the CRA's credibility and erodes public confidence.

[24] She completed a form about the aggravating and mitigating factors that had to be considered before deciding how the grievor should be disciplined. As mitigating factors, she noted that he had four-and-a-half years of service, his misconduct was an

isolated incident, and he had given additional information including phone records and his and his spouse's My Account credentials. As aggravating factors, she noted that he was a tax auditor who had to enforce the CRA's laws and regulations. But he did not admit his mistake and did not apologize. It took him years to pay back the amounts that he was not entitled to. She said that that is incompatible with the notion of setting an example for taxpayers and the CRA's mission. Public confidence in the CRA is undermined and its reputation damaged. His misconduct casts doubt on the public's confidence in the country's tax authority.

[25] The grievor was summoned to a meeting about disciplinary action on March 6, 2024. During it, Ms. Corneau read the notice of disciplinary action, which listed some of the aggravating and mitigating factors. The disciplinary notice said that the grievor contravened the CRA's *Integrity Code* and *Fraud Directive*. About the disciplinary action imposed on him, it read as follows:

[Translation]

...

*Given that the bond of trust has been irrevocably broken, and in accordance with the authority delegated to me by the Commissioner under section 51(1)(f) of the Canada Revenue Agency Act, I hereby terminate your employment with the CRA for reasons of misconduct, effective **immediately**...*

...

[Emphasis in the original]

[26] During the meeting, the grievor said that he thought that the situation was unfair.

[27] Ms. Tourigny testified that the *Integrity Code* applies to all CRA employees. Compliance with the *Integrity Code* is imperative. Employees know about it, and it is an integral part of their training. They receive a reminder every year as well. Ms. Tourigny also testified that taxpayers must avoid sharing their username and password with anyone. According to her, the grievor should have informed his manager as soon as he realized that his spouse had made a mistake in applying for the CERB. She also referred to the following sections of the *Integrity Code*:

[Translation]

...

Fraud is defined as any intentional act, or intentional omission, by an employee for personal enrichment, or for the enrichment of a third party, through the deliberate misuse or misapplication of CRA resources, revenues, information, assets, or authority.

...

Some examples of fraudulent activities include:

...

- failure to report any violation or fraud under the Financial Administration Act and its regulations, or any other act administered by the CRA.*

...

[28] She testified that the grievor's mistake was serious. He applied for the CERB when he was ineligible, he did not inform management, and he took a long time to repay it. His first repayment was deducted from his tax return, and the second was made the day before the disciplinary meeting. According to her, it was fraud subject to disciplinary action under group 5 of the CRA's *Directive on Discipline*, up to and including termination. That directive was submitted as evidence.

[29] On cross-examination, she read section 5.2.1.3.1 of the Procedures for addressing employee misconduct. It says that before investigating, "[translation] ... the manager must assess the risk of the employee continuing to carry out his or her duties during the investigation ...". Ms. Cornea testified that there was no risk assessment between the time that she received the report from the Internal Affairs Division in November 2023 and when the grievor was terminated on March 6, 2024. However, the grievor submitted as evidence a letter dated March 8, 2024, that was signed by an officer of the CRA's Security Branch. It reads as follows:

[Translation]

...

On December 18, 2023, you received a letter and documents informing you that the Security Risk Assessment Unit had been made aware of unfavourable information about you, namely, the Internal Affairs Division's investigation report no. 15478. This information indicated that you committed fraud by receiving a \$2000 Canadian Emergency Response Benefit payment that you were not eligible to receive, raising concerns that you failed to protect the Agency's integrity and interests.

On December 20, 2023, you took part in a preventive interview as part of the review for cause of your reliability status with the Agency. During that interview, you were given a chance to

respond to the unfavourable information at issue, and you provided additional information that was examined as part of a comprehensive review of all the information about the situation.

The security risks stemming from the unfavourable information as well as the additional information provided during the preventive interview were assessed and deemed sufficiently mitigated.

It was decided to maintain your reliability status. However, as you are no longer employed by the Agency, we have revoked your reliability status for administrative reasons. This action is taken any time that an employee leaves the Agency, no matter what the reason.

...

[30] The employer also submitted as evidence documents titled “Conducting Internal Investigations Procedures” and “Internal Investigations into Alleged or Suspected Employee Misconduct Directive”. The grievor submitted these documents as evidence as well. I will revisit them as needed.

[31] The grievor testified that his duties and responsibilities did not change after the December 7, 2023, disciplinary meeting; they remained the same until he was terminated on March 6, 2024.

[32] He testified that being terminated greatly affected him. He struggled to talk about it, as he was very emotional. In the beginning, he kept it to himself and found it hard to hide it from his children and spouse. He was ashamed to admit what happened. He even consulted a doctor. Then, in April 2024, he found work at an accounting firm, but he could not work correctly. His contract ended in June 2024 and was not renewed. During the same period, he cancelled his 2024 chartered professional accountant exam because he felt unable to attend.

[33] His spouse testified that he said very little after the disciplinary meeting, he was unwell, and he had headaches. He was worried and did not know what to expect.

III. Summary of the arguments

A. For the employer

[34] According to the employer, the grievor acted dishonestly, made a serious mistake, and betrayed the employer’s trust. His action was deliberate. He knew that he was not eligible to receive the CERB and was negligent in correcting the situation. He chose to do nothing and let things go.

[35] He was on parental leave when he applied for the CERB. He was receiving employment insurance benefits as well as an employer top-up. He tried to get \$2000 that he was not eligible to receive. On August 31, 2020, his spouse allegedly, according to him, applied for the CERB for him by mistake. At 12:33 p.m., he received an email saying that his CERB application had been received, and his spouse received an acknowledgement of receipt at 12:37 p.m. Both applications were allegedly made on the same computer. His spouse cannot have made both applications in four minutes. That is impossible. It is a cover story that the grievor made up. His story is not credible.

[36] He made no serious efforts to correct the situation. He went back to work two weeks later. He did not call the dedicated CERB line to report the so-called mistake. He testified that he could not produce phone records from 2020 for his spouse's phone because she had changed service providers and the previous provider did not want to help. He also testified that his own provider did not list unanswered calls on phone records. His explanations are inconsistent. He expressed no remorse. He should have known how to reimburse the CERB that he received. His ignorance, if that is what it was, is certainly not a valid defence.

[37] He testified that he sent two \$1000 cheques in the same envelope to repay the CERB. But his spouse testified that a single \$2000 cheque was sent. He submitted no evidence of the cheques that were mailed.

[38] The employer was justified in imposing the disciplinary action. There was misconduct and dishonesty when the grievor applied for the CERB. Furthermore, the misconduct was prolonged because he did not repay the amounts that he received until 2023, when he no longer had a choice. The bond of trust was broken and his conduct is incompatible with the CRA's values and a tax auditor's role. His failure to admit his mistake means that the bond of trust cannot be rebuilt. The situation cannot be reversed or repaired. He could have discussed it with management, but he did not.

[39] In the circumstances, the only acceptable discipline is termination. The grievor was supposed to enforce the law, but he broke it himself. His negligence in not paying back the amounts that he owed is not just negligence. Rather, it is a deliberate failure that amounts to fraud.

[40] In presenting its case, the employer referred me to the *COVID-19 Emergency Response Act* (S.C. 2020, c. 5), the *Income Support Payment (Excluded Nominal Income) Regulations* (SOR/2020-90), and the *Canada Revenue Agency Act* (S.C. 1999, c. 17). It also referred me to the following decisions: *Klouvi v. Canada (Attorney General)*, 2024 FCA 80; *Murphy v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLREB 64; *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8; *Canada (Citizenship and Immigration) v. Mahendran*, 2025 FC 62; *Klouvi v. Deputy Head (Department of Employment and Social Development)*, 2023 FPSLREB 88; *Nehmé v. Deputy Head (Department of Public Works and Government Services)*, 2017 PSLREB 14; *N.L. v. Treasury Board (Department of National Defence)*, 2023 FPSLREB 119; *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121; *Horne v. Parks Canada Agency*, 2014 PSLRB 30; *Stiller v. Canada Revenue Agency*, 2022 FPSLREB 25; *Basra v. Canada (Attorney General)*, 2010 FCA 24; *Abdulaziz v. Treasury Board (Department of Employment and Social Development)*, 2025 FPSLREB 82; *Shandera v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 26; *Pagé v. Deputy Head (Service Canada)*, 2009 PSLRB 26; *Chatfield v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 2; *Lacroix v. Deputy Head (Shared Services Canada)*, 2018 FPSLREB 75; *Mangatal v. Deputy Head (Department of Natural Resources)*, 2016 PSLREB 43; and *Byrne v. Deputy Head (Department of Employment and Social Development)*, 2025 FPSLREB 11.

B. For the grievor

[41] The grievor asked me to allow the grievance and overturn the termination. He also asked for \$10 000 in damages and interest. There was no fraud. At most, he was negligent and should be orally reprimanded or suspended for a short period.

[42] Several mitigating factors must be considered. He had no disciplinary record, it was an isolated incident, he cooperated with the employer's investigation, accessing the CRA's phone lines was chaotic, and the employer was acting under media pressure.

[43] He did not intend to defraud. His spouse submitted a single CERB application by mistake. She contacted the CRA to report the mistake three weeks later. Then, her own CERB account was blocked for three months.

[44] He declared the \$2000 CERB payment on his income tax return. He did not hide it. Both he and his spouse testified that they tried to repay the CERB by cheque. It is

unsurprising that the cheques were not cashed because it was total chaos at the CRA at the time.

[45] In March 2023, the CRA sent a redetermination notice indicating that he owed it nothing, as his balance was \$0. Then, on October 26, 2023, it sent him a new invoice indicating that he owed \$1000. He did not see that notice until December 2023, and he repaid what he owed then.

[46] The bond of trust between the employer and the grievor was not broken. After the December 2023 security investigation, it was decided to keep his security clearance. After the December 2023 disciplinary meeting, he continued to work for three months, with the same duties. He was not suspended during the investigation. The employer thought that there was no risk that he would reoffend.

[47] His spouse knew all the CERB eligibility criteria when she applied for the CERB in late August 2020. She had previously applied the month before. Despite what the employer says, she was able to apply twice in four minutes. As to whether there were one or two cheques in the envelope that they sent to repay the CERB, it is normal to have this type of discrepancy between the two testimonies or not to recall certain details.

[48] The discipline imposed on the grievor is much too severe. From the beginning, the Internal Affairs Division concluded that there was fraud without fully investigating. It never heard the grievor. Ms. Cornea, who conducted the disciplinary meeting, did not investigate the new facts that the grievor raised. The employer did not follow its own disciplinary procedure. As a result, it did not check whether there was an intent to defraud. Instead, it assumed the grievor's bad faith.

[49] The questions that the CRA was asked during a House of Commons committee session led to hundreds of investigations. Later, the CRA disciplined several public servants to make itself look good.

[50] The grievor should be awarded moral damages. The way that the employer treated him significantly affected him, his mood, his ability to focus, and caused him sleep issues. According to recent Board caselaw, medical proof is not required to receive those damages.

[51] The grievor's case is the very example of the "[translation] shoemaker's children going barefoot". Auditors cannot always be expected to be as thorough in managing their personal affairs as they are at work. The employer cannot require its employees to be perfect outside the workplace.

[52] In presenting his case, the grievor referred me to the following decisions: *Byrne; Mirabelli v. Deputy Head (Department of Employment and Social Development)*, 2025 FPSLREB 48; *Pelletier v. Canada Revenue Agency*, 2019 FPSLREB 117; *Jassar v. Canada Revenue Agency*, 2019 FPSLREB 54; *Heyser v. Deputy Head (Department of Employment and Social Development)*, 2015 PSLREB 70; *Association des chauffeurs de Les promenades de l'Estrie v. Les promenades de l'Estrie*, 2025 CanLII 47497 (QC SAT); *Forget v. Procureur général du Québec - Ministère du Conseil exécutif*, 2021 QCCS 610; *Ransome v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 138; and *Kline v. Deputy Head (Canada Border Services Agency)*, 2024 FPSLREB 115.

IV. Reasons

[53] The grievor held a tax auditor position with the CRA. He was terminated for applying for a \$2000 CERB payment in August 2020, although he worked for the CRA and was not eligible.

[54] According to the employer, he acted dishonestly, which is fraud. He made a serious mistake. He knew that he was not eligible to receive the CERB, and he was negligent in choosing to do nothing and to let things to. The employer says that it was justified in terminating him for misconduct. According to it, the bond of trust was broken beyond repair. His failure to admit his mistake means that the bond of trust cannot be rebuilt.

[55] He believes that the discipline is much too severe. At worst, the employer could have suspended him for a short period. He argues that he did not commit fraud. His only mistake may be that he was negligent in repaying the amounts that he was not eligible to receive. He says that the bond of trust with the employer was not broken. As evidence, it continued to employ him after erroneously concluding that he had committed fraud.

[56] First, based on the evidence, I will determine whether the grievor made a mistake, and if he did, what the nature of the mistake is. Second, I will decide, if applicable, the most appropriate discipline.

A. Did the grievor make a mistake? If he did, what is the nature of the mistake?

[57] The grievor gave the same version of events at the disciplinary meeting and when he testified at the hearing. His spouse corroborated what he said when she testified and in a letter that she signed on February 9, 2024. According to this version, before August 2020, she received CERB payments that she was eligible to receive. On August 31, 2020, she used the couple's only computer to apply for the CERB. But she made a mistake and used his account to apply. At 12:33 p.m., he received an email confirming that his CERB application had been accepted. They were together at home at the time. He informed her what he had just received. They assumed that the mistake was caused by Google's auto-complete feature, as their My Account usernames were similar. So, she went into her own account and submitted her CERB application, which was accepted. She received confirmation at 12:37 p.m. According to this version, the grievor's CERB application was submitted by mistake, with no intent to defraud.

[58] According to the employer, this version of events lacks credibility. First, it is of the opinion that the grievor could not have had his CERB application accepted at 12:33 p.m., then informed his spouse, who then submitted her own application, and received acceptance at 12:37 p.m., all that being done in four minutes.

[59] I disagree with the employer's belief that the grievor's account is impossible. Could he and his spouse have only one computer at home? Certainly. At the very least, I received nothing that would cause me to question that part of their story. Could it be that in four minutes the grievor received acceptance of his CERB application, informed his spouse, and she submitted her own application and received acceptance? It is not impossible at all. It was not his spouse's first CERB application. She knew the form because she had previously completed it. She simply had to check five boxes, then check the box that applied to her situation, and select the period corresponding to the application.

[60] In fact, the employer's disbelief of the grievor's story does not necessarily mean that it is false. Furthermore, nothing in the evidence leads me to question it, especially if I find that he and his spouse are credible witnesses.

[61] On the witness-credibility issue, the employer rightly referred me to *Murphy*, which sites the following from *Faryna v. Chorny*, [1952] D.L.R. 354:

...

... 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....

...

[62] The spouses' story falls squarely within the test to determine their credibility as witnesses. It is reasonable to believe that the grievor's spouse made a mistake, not realizing that she was in his CRA account instead of her own, and that she applied for the CERB in his name by mistake, without realizing it. I found their testimonies sincere. Their explanations were consistent and credible.

[63] I will add that nothing in the employer's evidence leads me to question the truthfulness of the spouses' story. Ms. Cornea testified that she had no way to go back three years to check what the steps were to access My Account. I am of the opinion that the employer could have verified with its internal security resources whether in 2020, accessing My Account was as easy as entering a username and password. I am also of the opinion that the employer could have verified with those same resources whether Google's auto-complete feature mixed up two usernames that were similar. However, it did not verify those things. Doing so could have confirmed or refuted the spouses' story.

[64] Based on the foregoing, I find that the grievor and his spouse spoke the truth, meaning that the grievor's August 31, 2020, CERB application was submitted by his spouse by mistake, without ill intent. I completely disagree with the employer's position that it was a fraudulent action by the grievor. Fraud implies intent, and there is no evidence suggesting that he intended to wrongfully accept a \$2000 benefit that he was not eligible to receive.

[65] On the issue of fraud, the employer referred me to *Bruno Appliance and Furniture, Inc., Mahendran, and Klouvi* (2023 FPSLREB 88). In those decisions, fraud involves a false representation or an intentional or careless action, or an omission intended to mislead to obtain an advantage. However, the grievor did not make a false representation, or act with intention, or want to mislead the CERB program. Rather, this situation resulted from a simple mistake.

[66] That said, it remains to be seen whether the grievor made a mistake by not repaying or not taking the necessary actions to promptly repay the \$2000 CERB payment that he knew that he was not eligible to receive. According to the evidence presented, the first \$1000 of the \$2000 that he received was deducted from his March 2, 2023, tax refund. The adjustment was made by the CRA, which had determined that the grievor was eligible to receive just half of the CERB amount that he received, as he was receiving employment insurance for part of the applicable period. The grievor repaid the other \$1000 on December 6, 2023, the day before the disciplinary meeting. This means that he repaid the first \$1000 of the CERB in early September 2020, 30 months after receiving it, and the second \$1000, 39 months after receiving it.

[67] The CRA never cashed the 2 cheques for \$1000 that were supposedly sent in September 2020. The grievor does not appear to have followed up on what happened to those cheques. His spouse testified that she made a few calls to the CRA and allegedly spoke to an agent 3 weeks after she applied for the CERB for the grievor by mistake. That call did not result in a CERB overpayment for him but rather stopped her CERB payments. According to the phone records that the grievor submitted as evidence, he allegedly made 3 calls to 1-833-966-2099 on October 5, 2020, lasting 1 to 11 minutes each; 4 calls to 1-800-808-6352 on October 13, 2020, lasting 1 to 4 minutes each; 5 calls to 1-800-808-6352 on October 19, 2020, lasting 2 to 9 minutes each; 3 calls to 1-800-206-7218 on October 21, 2020, lasting 3 to 5 minutes each; and 1 call to 1-800-959-2019 on November 13, 2020, lasting 5 minutes. According to a document submitted as evidence, these are numbers that taxpayers can call if they have questions about the CERB.

[68] Even if I gave the grievor the benefit of the doubt as to the purpose of those calls, namely, to report that he had received a CERB payment that he was not eligible to receive, common sense suggests that he did not speak to anyone during those multiple

calls. Why call 16 times in just over a month if he spoke to an agent? At most, he may have spoken to an agent during his last five-minute call on November 13, 2023, which I doubt. In any case, all indications are that neither that call nor the ones before it resulted in the mistaken CERB payment being reported, as it was not until March 2023 that the CRA asked him to repay part of the CERB. In addition, the amount was not repaid after the grievor made a call, but rather after the CRA audited and found that he had received the CERB and employment insurance at the same time.

[69] After the two cheques were supposedly sent, the calls from the grievor's spouse, and all the calls in October and November 2020 during which, in my opinion, the grievor spoke to no one, the grievor made no efforts to report to the CRA that he had received a \$2000 CERB payment in September 2020. It was not until 30 months later that repayment came up again, not because the grievor reported the payment received by mistake, but for other reasons. It was not until the day before the disciplinary meeting and after the CRA's Internal Affairs Division completed its investigation that the grievor repaid the rest of what he owed.

[70] In summary, the grievor appears to have tried to report the mistaken CERB payment in the few weeks after he received it. After, he did nothing. Then, he repaid it when he no longer had a choice.

[71] I conclude that the grievor was grossly negligent. He knew that he was not entitled to the CERB, never raised the issue with his managers, did not make reasonable and effective efforts to report the issue to the CRA, and repaid it only when he had no choice. I do not know what led him to act or not act as he did. In any case, his behaviour in this case is serious misconduct for a public servant, especially one who is a tax auditor.

B. Was the imposed disciplinary action excessive?

[72] To assess the disciplinary action that the employer imposed, I have to answer the following questions: 1) did the employee's conduct warrant imposing disciplinary action? 2) if so, was the imposed disciplinary action excessive? and 3) if the disciplinary action was excessive, what action should be substituted? (see *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1).

[73] The employer referred me to its *Directive on Discipline*, which contains 5 groups of infractions. The 5th group contains the most serious infractions or misconduct and provides for imposing penalties, from 20 days' suspension without pay to terminating the employment. Although I am not bound by that directive, I am of the opinion that the grievor's misconduct falls under the 5th group and that the appropriate penalty is a long suspension or a termination.

[74] The employer referred me to *Byrne* and *Abdulaziz*, which to date are the only two Board decisions involving a grievor who received the CERB although not eligible. In *Byrne*, the grievor was a Service Canada benefits officer. She received \$14 000 in CERB payments while working full-time for Service Canada. She said that she applied for the CERB because she thought that she was eligible, as the income that she received from self-employment had been reduced to zero because of COVID-19. Her employer revoked her reliability status and terminated her employment. The Board found that her employer was justified in revoking her reliability status. In *Abdulaziz*, the grievor, a passport officer, also had his reliability status revoked. He received \$8000 in CERB payments after he provided false information. In that case, the Board determined that the grievor's explanations were not credible and maintained the employer's decision to revoke his reliability status.

[75] This case does not involve revoking the grievor's reliability status. On the contrary, the evidence shows that his reliability status would have been maintained, had his employment not ended. Furthermore, the employer considered him still "[translation] reliable" after receiving the report from the Internal Affairs Division that accused him of fraud and after the December 7, 2023, disciplinary meeting. This case also differs from *Byrne* and *Abdulaziz* in that the grievor did not apply for the CERB. Rather, his spouse did by mistake. In addition, the amount involved is \$2000, whereas it was \$14 000 and \$8000 in those two cases.

[76] In *N.L.*, the grievor was terminated for stealing and reselling material belonging to the employer, namely, copper scraps. He admitted what he did but said that he did not know that recovering and selling scrap for personal reasons was prohibited by the employer. The Board upheld the termination, stating among other things that ignorance is no excuse for misconduct. The same principle is stated in *Rahim*. In that case, the grievor had been terminated for providing false information to his employer to get relocation allowances that he was not entitled to. In this case, the grievor never

claimed not to know whether he was entitled to receive the CERB. From the beginning, he admitted that he was not entitled to receive it. In *Horne*, the grievor was terminated for being dishonest by authorizing the purchase and payment of four tires by his employer, then installing them on his personal vehicle. In *Stiller*, the grievor was terminated for being dishonest on multiple occasions. In this case, the grievor was not dishonest. Rather, he was knowingly negligent by not repaying amounts owed to the CRA.

[77] The employer also referred me to some other decisions in which the Board decided that termination was the appropriate disciplinary action. In *Shandera*, the grievor, a correctional officer, allegedly stole \$1000 from the institution's vault. In *Pagé*, the grievor authorized Canada Pension Plan payments to her sister-in-law, knowing that she was not eligible to receive them. In *Chatfield*, the grievor falsely informed her employer that her father had died, so that she could get leave with pay to go on vacation to Mexico. In *Lacroix*, the grievor, a telecommunications technician, shared her passwords and a cellphone from her employer with her spouse for personal use, which allowed an unauthorized person to spend public funds. In *Mangatal*, the grievor claimed or incurred travel expenses that he was not entitled to. In most of those cases, the grievors did not cooperate with the employer's investigations. In them, the Board also accepted the employer's position that the trust needed to maintain the employment relationship was broken beyond repair.

[78] As I previously said, I find that the grievor did not defraud his employer. Rather, he neglected to repay the \$2000 in CERB that he knew he was not eligible to receive.

[79] Not surprisingly, the grievor referred me to decisions in which the Board overturned the termination.

[80] In *Mirabelli*, the termination was substituted with a 30-day suspension. The grievor accessed her family members' Employment and Social Development Canada accounts without authorization. According to the Board, the employer failed to properly consider the mitigating factors such as the grievor's years of service, her clean disciplinary record, her honesty, and her remorse. She also gained no personal benefit from her actions, and the employer suffered no losses.

[81] In *Pelletier*, the Board overturned the termination because the employer failed to submit sufficient evidence that the grievor made the mistakes that he was accused of.

[82] In *Jassar*, the grievor, an information technology analyst at the CRA, was suspended for 10 days for connecting a wireless router to the CRA's network. Then, 3 months later, he was suspended for 20 days for providing false information to obtain sick leave and medical appointment leave. A month after he came back from the 20-day suspension, the CRA revoked his reliability status and terminated him. The Board overturned the 10-day suspension, the 20-day suspension, the revocation of the reliability status, and the termination.

[83] In *Dallaire v. Canada Revenue Agency*, 2015 PSLREB 82, the grievors were spouses. The employer suspended them for 20 days for knowingly hiding that they were temporary employees in an employment confirmation to obtain a bank loan. In the end, the loan was denied. The Board overturned the suspensions, saying that the disciplinary action was excessive, the grievors had clean disciplinary records, it was an isolated incident, the grievors admitted what they had done, and they expressed remorse.

[84] In *Heyser*, the grievor's reliability status was revoked because she falsified a medical document to extend an existing telework agreement. The Board overturned the employer's decision, saying that it knew a year before revoking her reliability status that she had falsified the medical document, but had kept her in her position anyway. The employer also failed to consider the grievor's lengthy service, free of discipline, and that the medical document was not falsified for any financial gain, but rather to accommodate her family situation.

[85] In *Association des chauffeurs de Les promenades de l'Estrie*, the arbitrator overturned a bus driver's termination. It found the lack of administrative suspension to be a mitigating factor. In *Ransome*, the Board pointed out the contradiction between the employer's position to continue to employ a grievor for several weeks after learning of the infractions that he committed, then to argue that the bond of trust had been broken.

[86] The grievor also referred me to *Forget* and *Kline* on the damages that the Board should award him. I will revisit those decisions as needed.

[87] Earlier I found that the grievor did not intend to commit a fraudulent act. However, it took him close to three years to repay the \$2000 CERB payment claimed by mistake. I also found that he was grossly negligent, never raised the issue with his

managers, did not make reasonable and effective efforts to report the issue to the CRA, and repaid the amount only when he had no choice. His behaviour was serious misconduct for a public servant, especially one who is a tax auditor.

[88] His actions or inactions warrant imposing severe discipline. They show a lack of judgment and a nonchalant attitude that are unacceptable for a public servant, especially one who is a tax auditor. He knew that he had had repay the CERB that he received by mistake, and he was not diligent in taking steps to repay it. These are aggravating factors.

[89] On the other hand, he never denied his mistakes. He admitted that he received the CERB although he was not entitled. He cooperated with the disciplinary investigation and was a good employee with good performance. He had previously been promoted, he had six years of service, and he had a clean disciplinary record. These are important mitigating factors that the employer says that it considered, but they do not appear to have been given due consideration.

[90] In the cases that the employer referred me to, the Board upheld the termination. However, all of them involved fraud, even a theft. Intent to defraud was clearly shown. In the two cases involving the CERB, the employer revoked the grievors' reliability status and terminated them as a result. I note that in those cases, the CERB was paid four times in one case and seven times in the other, and the applications were made intentionally, which is not the case here.

[91] On the issue of whether or not to uphold a termination, the Board said the following at paragraphs 102 and 103 of *Mirabelli*. I share its statement in its entirety:

[102] Having established misconduct, I must now assess whether the disciplinary measure imposed was excessive in the circumstances. This exercise entails a wide-ranging review of the employee's circumstances, the employer, and the nature of the misconduct (see Brown and Beatty, Canadian Labour Arbitration, 5th Edition, at paragraphs 7:62 and 7:68).

[103] In McKinley v. BC Tel, 2001 SCC 38, the Supreme Court of Canada instructed that decision makers must strike an effective balance between the severity of the employee's misconduct and the sanction imposed. The Court explained as follows:

...

53 ...An effective balance must be struck between the severity of an employee's misconduct and the sanction

imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment, a concept that was explored in *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, where Dickson C.J. (writing in dissent) stated at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

This passage was subsequently cited with approval by this Court in *Machtinger v. HOJ Industries Ltd.*, 1992 CanLII 102 (SCC), [1992] 1 S.C.R. 986, at p. 1002, and in *Wallace, supra*, at para. 95. In *Wallace*, the majority added to this notion by stating that not only is work itself fundamental to an individual's identity, but "the manner in which employment can be terminated is equally important".

54 Given this recognition of the integral nature of work to the lives and identities of individuals in our society, care must be taken in fashioning rules and principles of law which would enable the employment relationship to be terminated without notice. The importance of this is underscored by the power imbalance that this Court has recognized as ingrained in most facets of the employment relationship. In *Wallace*, both the majority and dissenting opinions recognized that such relationships are typically characterized by unequal bargaining power, which places employees in a vulnerable position vis-à-vis their employers. It was further acknowledged that such vulnerability remains in place, and becomes especially acute, at the time of dismissal.

...

[Emphasis in the original]

[92] Considering the facts in evidence, my analysis, the mistakes analyzed in their context, and the caselaw including the previous citation from *McKinley*, I substitute the termination with a one-year suspension ending March 6, 2025.

[93] According to the employer, the bond of trust was broken beyond repair. I did not hear in evidence an explanation supporting that conclusion. It is all very well to say that the bond of trust is broken, but I would need at least some evidence of that. In reality, the conduct of the employer and its representatives are at odds with what it said. The grievor was still trustworthy, even after the December 7, 2023, disciplinary

meeting. After that meeting, the employer had to implicitly or explicitly assess the risk that the grievor posed. It found that he posed no risk and was reliable enough to remain employed with all his duties, otherwise it would have suspended him on December 7, 2023, and transferred him to other duties. Added to that was the Security Branch's investigation between December 2023 and March 2024, following which it decided to maintain the grievor's reliability status. In its view, the bond of trust had certainly not been broken.

[94] A one-year suspension means a gross salary loss of approximately \$85 000 according to the collective agreement pay scale. This equates to a penalty of just over \$2000 for each of the 39 weeks between the time that the grievor received the \$2000 CERB benefit in early September 2020 and when it was fully repaid in early December 2023. I find this penalty sufficient to impose on the grievor for his negligence and inaction.

[95] Once he is reinstated, the grievor will have to prove himself again, which I am sure he knows. He appeared to me to be a very honest man. He made some errors in judgment by not being more diligent, and he will pay dearly for those errors with the one-year suspension. He will have to rebuild his reputation with the employer and will carry the effects of his suspension. He made a serious mistake and will have to suffer the consequences. However, he was a skilled auditor. The performance evaluation that Ms. Cornea completed proves it. Apart from a refresher, he will no doubt be ready to resume his duties shortly after being reinstated.

[96] He questioned the way that the employer investigated, specifically, the Internal Affairs Division's investigation during which it did not interview him, and the investigation by Ms. Cornea, who did not check the information that he provided. Although he had a point, it matters little because when the Board is seized of a grievance, it is handled *de novo*, meaning that any irregularities are remedied at the hearing before it.

[97] The grievor asked for damages to be awarded to him. He based his request on the negative impacts that his termination had on him. I am sure that it did negatively impact him, but the evidence that he presented does not make his case any different from those of other grievors who were terminated or whose employer imposed severe disciplinary actions on them. Actions such as these significantly impact every human

being who faces them, but this is not enough to justify awarding damages. The grievor referred me to *Forget* and *Kline* on the issue of damages. However, in those cases, the employer's conduct was particularly reprehensible, which is not the case here. In this case, the employer acted in good faith and made what it believed was the right decision in the circumstances.

(The Order appears on the next page)

V. Order

[98] The grievance is allowed in part.

[99] The termination is overturned and substituted with a one-year suspension without pay, ending March 6, 2025.

[100] The employer should reinstate the grievor in the Greater Montréal area to a position at the same group and level as the one that he held when he was terminated.

[101] The employer must pay him his full compensation retroactive to March 6, 2025, including the salary and benefits that he would have received had the employer employed him from that date.

[102] The Board remains seized of this matter for 90 days, in case the parties have any difficulties implementing this order.

September 24, 2025

FPSLREB Translation

**Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment
Board**