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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

LOUIS CALLAGHAN

Grievor

and

**DEPUTY HEAD
(Department of Fisheries and Oceans)**

Respondent

Indexed as

Callaghan v. Deputy Head (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Samantha Lamb, counsel

For the Respondent: Mathieu Cloutier, counsel

Heard at Charlottetown, Prince Edward Island,
October 28 and 29, 2025,
and at Ottawa, Ontario,
December 4 and 5, 2025.

REASONS FOR DECISION

I. Overview

[1] On May 13, 2024, the vessel *Knot a Chance* ran aground in Malpeque Harbour, Prince Edward Island. Another vessel tried to help and sent a distress call, commonly called a MAYDAY call. Louis Callaghan (“the grievor”) was the captain of the Canadian Coast Guard Ship (CCGS) *S. Dudka* on that day. The *CCGS S. Dudka* was approximately 6.3 nautical miles north by northwest of the entrance to Malpeque Harbour when the MAYDAY call went out. Instead of rendering assistance, the grievor piloted the *CCGS S. Dudka* past Malpeque Harbour for between 13 and 17 minutes. Then he called to ask whether he should help and was told that he should; he stopped, waited over 5 minutes to be told to help a second time, turned around, and proceeded to Malpeque Harbour. Before he got there, the 5 occupants of the *Knot a Chance* had been rescued. He was stood down, turned around, and continued on his voyage.

[2] This grievance is about whether the grievor should have been terminated for not responding to that distress call during that period.

[3] The grievor says that he committed no wrongdoing because Coast Guard vessels should wait to be tasked before responding to a distress call. He is wrong; all captains have a legal duty to respond to a distress call on receiving that call, and the Coast Guard’s policies affirm this duty. Further, I have concluded that he does not sincerely hold that belief. He never proposed that belief at any stage of the Coast Guard’s investigation or disciplinary process, his actions that day are inconsistent with that belief, and that belief would require him to take the absurd position (which he tried to do in his evidence) that a Coast Guard vessel should sail past a vessel that it sees is in distress solely because it has not been formally tasked to render assistance.

[4] I have concluded that the seriousness of the grievor’s misconduct, along with his refusal to say that he would do things differently the next time, outweigh his lengthy and otherwise distinguished service. I must deny this grievance and uphold his termination of employment.

[5] My detailed reasons follow.

II. Facts leading to the termination of employment

[6] This grievance is about events that occurred during the period between 08:26 and 08:55 on May 13, 2024, on the *CCGS S. Dudka*. There were four people on board the *CCGS S. Dudka* that day: the captain, Louis Callaghan; the engineer, Siméon Ouellet; the regular deckhand, Patrick O'Brien; and a temporary deckhand, Michael Gsell. Each of them had different recollections about exactly what happened during that period. They also had different recollections about what happened on May 21, 2024, after the three crew members reported the grievor and had an argument with him about it.

[7] Normally, I would go through each of their testimonies in detail to resolve the differences between them after assessing their credibility and reliability as witnesses. However, I have decided that it is unnecessary for me to do so in this case. With one exception that I will explain later (namely, whether the grievor first heard the distress call at 08:26 or 08:33), I am prepared to accept the grievor's version of events because — even on his version of events — the employer has justified terminating his employment.

[8] I will begin by describing the *CCGS S. Dudka*, its mission, and its crew that day. I will then describe what happened after 08:26 on May 13, 2024. Finally, I will describe the grievor's explanation for what happened that day.

A. The *CCGS S. Dudka*

[9] The *CCGS S. Dudka* was launched and entered into Coast Guard service in 2013. It is an aluminum boat, measuring 14.6 meters in length and 5.1 meters in breadth. It has only 0.8 meters of draft (i.e., the amount the boat is in the water or how deep it sits in the water). It cruises at roughly 20 knots. Its specifications state that its maximum speed is 32 knots, although the grievor testified that he could push it to 33 knots.

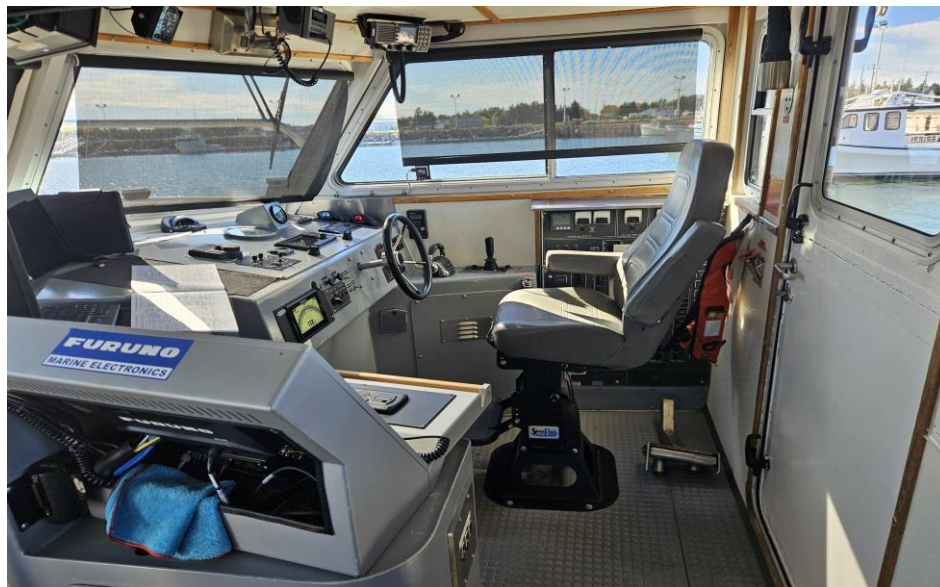
[10] For ease of reference, a knot is 1 nautical mile per hour. A nautical mile is different from a regular mile; it is 1 minute of latitude at the equator, or 1852 meters. Therefore, 1 knot is approximately 1.852 kilometers per hour.

[11] The parties provided a picture of the *CCGS S. Dudka* and some photographs of its interior. I have reproduced those photographs in this decision, as they help explain some of what happened on May 13, 2024.

[12] The *CCGS S. Dudka* looks like this:



[13] The crew of the *CCGS S. Dudka* spent almost all of their time during the 17 minutes in question inside the cabin. The grievor, as captain, sat on the front right (starboard) of the cabin in the captain's chair.



[14] The engineer's station is to the front left (port) of the cabin:



[15] The deckhands sat at the back of the cabin:



B. The mission of the *CCGS S. Dudka*

[16] The *CCGS S. Dudka* is a conservation and protection vessel and a secondary search and rescue (SAR) vessel.

[17] Its primary mission is the conservation and protection of marine life. It spends most of its days with a fishery officer on board, along with its crew. On those days, the *CCGS S. Dudka* travels along stretches of water around P.E.I., inspecting lobster traps,

crab traps, fishing lines, and other similar items. The fishery officer decides where to send the *CCGS S. Dudka* on those days. On the days when a fishery officer is not there, the crew either stays in port to catch up on paperwork and maintenance or goes out on the water for training. This is seasonal work during fishing seasons, typically between April and October each year, although the grievor testified that he had to transit the *CCGS S. Dudka* to Nova Scotia twice during the off-season.

[18] Being a secondary SAR means that the *CCGS S. Dudka* is equipped to perform SAR duties, but that is not its primary function. It has some SAR equipment on board, but not the full panoply of equipment on a primary SAR vessel.

[19] The *CCGS S. Dudka* is based out of Alberton, P.E.I.

[20] There are two other parts of the Coast Guard that are helpful to understand now for context: the Joint Rescue Coordination Centre (JRCC) and the Marine Communications and Traffic Services Centre (MCTS) in Sydney, Nova Scotia. The JRCC is responsible for coordinating SAR operations within its designated region. The MCTS provides marine radio communications and monitors vessel traffic to ensure safe and efficient navigation in the surrounding coastal region.

C. Crew of the *CCGS S. Dudka*

[21] Normally, the *CCGS S. Dudka* has a crew of three: a captain (sometimes called the commanding officer or, colloquially, the skipper), an engineer, and a deckhand. They work on a schedule of two weeks on, then home for two weeks, during the seasons that they work. This situation was not a full two-weeks on (as in this case, they worked Monday, May 13, 2024, through the following Wednesday, May 21, 2024) but an approximate amount.

[22] The grievor was the captain of the *CCGS S. Dudka* during these events. He grew up in Prince Edward Island and started working in the marine industry in the early 1980s. He worked a variety of jobs on small crafts, car ferries, and an ocean barge. He also obtained a fishing licence and fished lobster and then oysters, which he continued to do up to this hearing. The grievor joined the Coast Guard in 2006 as a casual employee. He worked for roughly three seasons in SAR based out of Summerside, P.E.I., and worked some winter months in what the witnesses call the “big fleet” (e.g., icebreakers and buoy boats). In 2009, the grievor got a job working in Alberton as a

deckhand on a vessel there. The *CCGS S. Dudka* replaced that vessel in 2013, and the grievor worked on that vessel as a deckhand. In approximately 2014, he was promoted to engineer, and in 2017 he was appointed to be the commanding officer of the *CCGS S. Dudka*. He held that position until the termination of his employment in 2024.

[23] During the events of May 13, 2024, he was seated in the captain's chair (the first photo) during the most relevant times.

[24] The engineer of the *CCGS S. Dudka* that shift was Mr. Ouellet. He was a member of the Canadian Armed Forces from 2014 to 2023 and then joined the Coast Guard on March 7, 2024. Mr. Ouellet has spent most of his career on the big fleet because he gets seasick, and being on the big fleet is easier for him than working on small vessels like the *CCGS S. Dudka*. Mr. Ouellet was not the regular engineer on the *CCGS S. Dudka*. He had worked one shift on the *CCGS S. Dudka* before the shift that began on May 13, 2024. The engineer is responsible for maintaining the engine of a vessel. However, another duty of the engineer on the *CCGS S. Dudka* was operating the fishing equipment (mainly, cranes for lifting lobster traps out of the water); Mr. Ouellet testified that he "wasn't interested" in operating that equipment, so the Coast Guard assigned a second deckhand to the boat to cover those duties.

[25] His post is in the front left chair (the second photo). However, because of his seasickness, he is sometimes seated in the back (the third photo).

[26] The captain and engineer are considered the officers of the vessel, as opposed to the deckhands, who are not.

[27] The permanent deckhand on the *CCGS S. Dudka* was Mr. O'Brien. Mr. O'Brien joined the Coast Guard in 2017 and was posted as the deckhand on the *CCGS S. Dudka* his entire career, up to the events in question. While testifying, Mr. O'Brien struck me as a taciturn person; the other crew members also described him as quiet or mellow. Therefore, Mr. O'Brien did not expand much about his personal background and experience. His post is in one of the back chairs, which is where he stayed until he was asked to take the wheel when entering Malpeque Bay, meaning that he could not hear everything going on in the front of the vessel.

[28] The temporary deckhand on the *CCGS S. Dudka* was Mr. Gsell. Mr. Gsell is not a taciturn person, so I learned a lot more about him. He immigrated to Canada from

Switzerland in 2019. He was self-employed in construction for 14 years in Switzerland. In addition, he was in the Swiss Army as a rescue soldier. When he moved to P.E.I. in 2019, he worked odd jobs, including construction, lobster fisher, and volunteer firefighter. He joined the Coast Guard in 2023. His main job was working in SAR, most commonly as a lead deckhand in what he called a lifeboat. He had just finished a three-week course in rescue specialist training in December 2023. He was assigned to the *CCGS S. Dudka* for the shift starting on May 13, 2024, to help with the crane to pull up lobster traps. Mr. Gsell had never met any of the other crew members before this shift. His post is also in one of the back chairs, but during May 13, he was moving around a fair amount, including in the cabin and outside on the aft deck, to look at the equipment that might be used during a rescue.

D. The voyage of the *CCGS S. Dudka*, May 13, 2024

[29] As I said earlier, the *CCGS S. Dudka* was berthed in Alberton. The crew's first day together was supposed to be to sail to North Rustico, P.E.I. (which the witnesses referred to as simply "Rustico"), to pick up a fishery officer and then conduct its normal conservation duties. The *CCGS S. Dudka* would then dock in Souris, P.E.I., for the rest of the shift, sailing out to conduct conservation duties each day.

[30] On May 13, 2024, the *CCGS S. Dudka* started to sail in the morning. Mr. Callaghan testified that they started to sail at about 08:00, and Mr. O'Brien testified they left at about 07:30. However, Mr. Callaghan's logbook states that they left at 06:00, and given the distance between their location at 08:30 and Alberton, and the speed of the *CCGS S. Dudka*, they cannot have left at 08:00. Nothing turns on the time of day that they left, so I need not resolve this issue. Regardless of the time they left, they were sailing from Alberton to Rustico, travelling at approximately 20 knots.

[31] Mr. Callaghan testified that there were radio problems that day. The *CCGS S. Dudka* has two radios. One of the radios was broken, and Mr. Callaghan submitted a work order for it that morning. Mr. Callaghan also testified that when he starts sailing each day, he conducts a radio check with MCTS in Sydney, Nova Scotia. He testified that the first radio check did not work, but he started to sail anyway, and that a second radio check worked. In addition to the two radios, he also communicates with MCTS by cell phone, as will be described later.

[32] At 08:26, the fishing vessel *Net Income* made a MAYDAY call on behalf of the fishing vessel *Knot a Chance*, which was taking on water at the entrance of what the parties' agreed statement of facts calls Malpeque Harbour but some of the witnesses called Malpeque Bay, so I will use that name going forward. This MAYDAY call was recorded, and several witnesses listened to it during the hearing. The MAYDAY call starts with the call "MAYDAY MAYDAY MAYDAY", and it indicates that the *Knot a Chance* was run aground at the entrance to Malpeque Bay. The broadcast from the vessel making the MAYDAY call lasts for about three minutes, including its back-and-forth with the Coast Guard.

[33] At 08:33, a second message was broadcast, this time by MCTS. The crew members all called this a "MAYDAY Relay" call. This call was also recorded, and so I listened to it, along with several witnesses. In essence, it relayed the information that there was a MAYDAY involving the *Knot a Chance*. It gave the general location (Malpeque Bay) as well as the specific coordinates of the *Knot a Chance*.

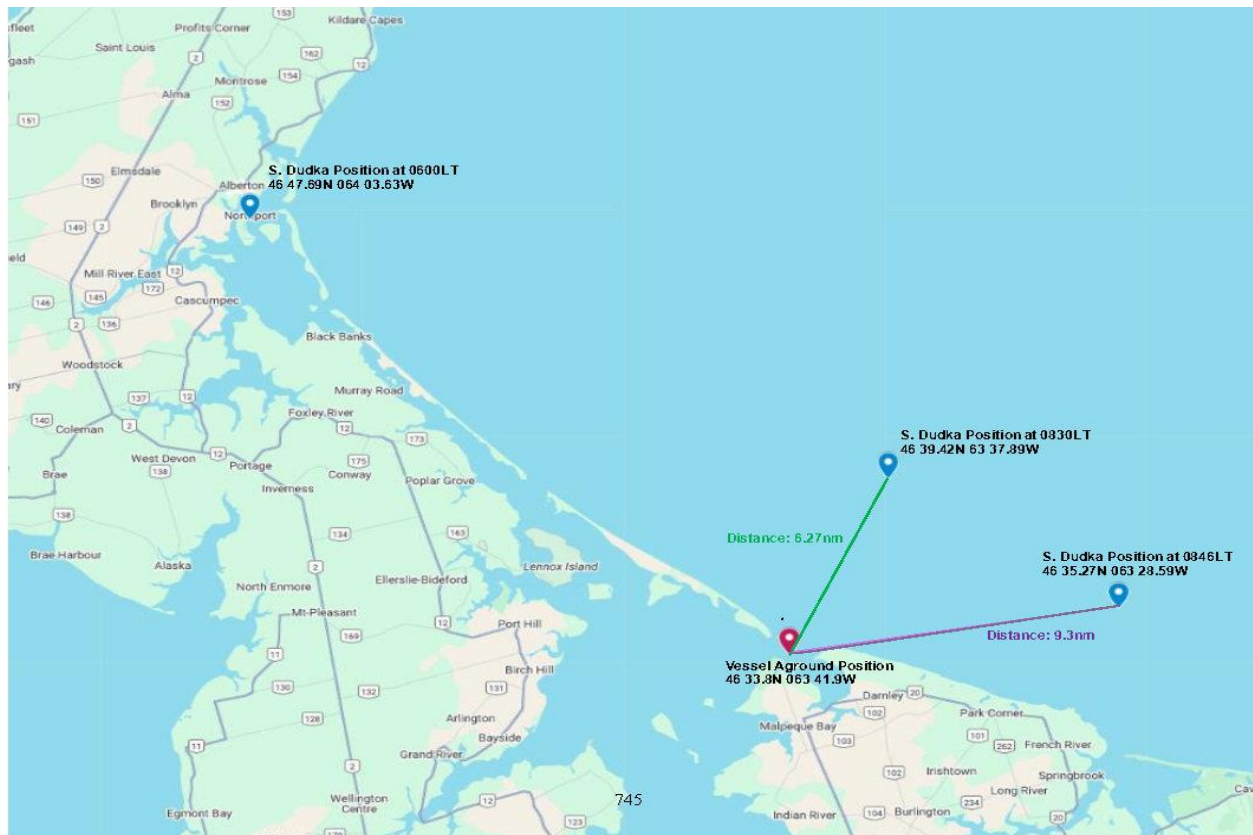
[34] When Mr. Callaghan listened to the first MAYDAY call during the hearing, he said that he did not recognize it, and he denied having heard it on May 13, 2024. All three other crew members testified that they heard the first MAYDAY call and that Mr. Callaghan did too. I accept their evidence and not his because of Mr. Callaghan's more contemporaneous recollection to the contrary.

[35] To explain, after the events that I will describe, the Coast Guard investigated. Mr. Callaghan was given several opportunities to provide a statement. He testified that when preparing his statements, he did not have access to the audio logs of the MAYDAY call or the MAYDAY Relay. His statement on May 29, 2024, included the information that "... the boat calling couldn't get in there [to Malpeque Bay] it was too shallow and the swells were too big." The information about other boats and the swells was part of the first MAYDAY call, but it was not part of the MAYDAY Relay. Therefore, the only way that Mr. Callaghan could have known about the other boats and swells would be if he had heard the MAYDAY call and not just the MAYDAY Relay. For this reason, I have concluded that Mr. Callaghan heard the MAYDAY call that began at 08:26.

[36] The *CCGS S. Dudka* did not render assistance at that time.

[37] Mr. Callaghan made a log entry at 08:30, showing the location of the *CCGS S. Dudka*. It was approximately 6.27 nautical miles from the entrance to Malpeque Bay.

[38] The *CCGS S. Dudka* continued sailing until sometime between 08:43 and 08:46, at which point it had sailed past the entrance to Malpeque Bay and was now approximately 9.3 nautical miles away. A map with these coordinates was entered into evidence:



[39] At 08:43, Mr. Callaghan called MCTS on the radio. That conversation lasted almost four minutes. MCTS spoke to the JRCC, which tasked the *CCGS S. Dudka* to assist with the MAYDAY at 08:54. At some point between 08:43 and 08:46, the *CCGS S. Dudka* stopped; at some time between stopping and 08:55, it turned around and headed toward Malpeque Bay. Shortly, I will describe the different versions of when it stopped and headed back. At 09:33, the *CCGS S. Dudka* was stood down from assisting with this MAYDAY call, turned around, and went back on its way.

[40] The local fire department ended up rescuing the people on the *Knot a Chance*, and nobody was hurt that day.

[41] There are some differences between the crew members about what happened between 08:26 and 08:43 that morning. As I said earlier, I do not need to resolve all those differences. Aside from concluding that Mr. Callaghan was mistaken in his evidence when he testified that he did not hear the first MAYDAY call, I am prepared to accept his version of events because, even on his version, his conduct justifies terminating his employment.

[42] The two key facts are this. First, Mr. Callaghan was the captain of the *CCGS S. Dudka*, and therefore, in his own words while he was testifying, he was the one who made the decision not to proceed to the MAYDAY after hearing it. Second, he continued sailing on the same course and speed until he called MCTS at 08:43.

[43] Mr. Callaghan testified that he heard that a vessel was run aground at Malpeque Bay. He testified that he did not hear the coordinates of the vessel that ran aground. He testified that he asked Mr. Gsell to write down the coordinates, but he did not hear them either. I note that Mr. Gsell testified that he tried to write down the coordinates on his own initiative; nothing turns on the question of whether he was asked to or not. The entire crew agree that they could not hear all the coordinates but that they could hear that it was at the entrance to Malpeque Bay.

[44] Mr. Gsell testified that Mr. Callaghan either turned off the radio or turned down its volume so he would not have to listen to the MAYDAY call. Mr. Callaghan did not testify about this in examination-in-chief. He was asked about it in cross-examination. He gave three different answers: he said that one could not get rid of a MAYDAY alarm by pushing on the volume of the radio, he said that he turned it down a bit and that the other crew members misunderstood and thought that he had turned it off, and then he said that he pushed in the volume button, stating: "I guess to silence the alarm". Regardless of which of Mr. Callaghan's answers I believe, he did something to reduce the volume of the MAYDAY call in the middle of a MAYDAY situation.

[45] The other crew members testified that Mr. O'Brien asked Mr. Callaghan whether they were going to respond to the MAYDAY call and that he said "No," because the water is shallow, and they would probably get stood down anyway. Mr. Callaghan denied saying that. He testified that Mr. O'Brien said something to him but that he could not hear it. Mr. Callaghan denied telling Mr. O'Brien that they would get stood down anyway. Instead, he stated that he said that to the fishery officer when he called

him after being tasked to respond to the MAYDAY, to let the fishery officer know why they would be late picking him up.

[46] Mr. Gsell testified that in addition to Mr. O'Brien, he also asked Mr. Callaghan why they were not responding to the MAYDAY call, and he said that someone else would pick them up and that it was also too shallow there. The other crew members did not hear this discussion, and Mr. Callaghan denies that it occurred. Mr. Gsell also testified that somebody from JRCC called Mr. Callaghan between the MAYDAY call and the time the *CCGS S. Dudka* stopped, but the other crew members did not recall any such call, Mr. Callaghan denies it happened, and there is no record of such a call from JRCC or MCTS. I have concluded that the employer has not proven that this call took place.

[47] Mr. Callaghan testified that he stopped the vessel and then made the call to MCTS at 08:43. I note that during the call he said that he was coming up on a buoy (implying that the vessel was still moving when he started the call), but the *CCGS S. Dudka* stopped at some point during the call with MCTS. It is more likely than not that the *CCGS S. Dudka* came to a stop during the call at approximately 08:46, when Mr. Callaghan gave his position, not before it. The parties provided me with an audio recording of this call. In essence, Mr. Callaghan called MCTS at 08:43 to ask whether everything was under control. MCTS provided the coordinates of the *Knot a Chance*. Mr. Callaghan asked whether he should assist. MCTS said, "if you're able to assist that would be great." Then they put him on hold for about a minute. When they spoke with him again, Mr. Callaghan provided the coordinates of the *CCGS S. Dudka*. MCTS then said that it would call JRCC and call him back. That call took approximately four minutes, so it ended at approximately 08:47.

[48] The JRCC logs state that the *CCGS S. Dudka* called MCTS at 08:47 and that JRCC told MCTS to task them to respond to the MAYDAY call. The MCTS log then says that it called Mr. Callaghan at 08:51 to task it to proceed, in a call that ended at 08:55. The *CCGS S. Dudka* then proceeded towards Malpeque Bay at roughly 25 knots, which was faster than her normal cruising speed but less than her top speed.

[49] At the fairway buoy at the entrance to Malpeque Bay, Mr. Callaghan asked Mr. O'Brien to take the wheel, to take the *CCGS S. Dudka* into Malpeque Bay. While some of the crew members inferred from this that Mr. Callaghan was not comfortable piloting

the *CCGS S. Dudka* in Malpeque Bay, the employer did not ask me to draw any particular inference from this fact, and I have not drawn any conclusion or inference from it. Mr. O'Brien testified that they got about three-quarters of the way into Malpeque Bay when they were stood down.

[50] The five sailors aboard the *Knot a Chance* were rescued by the local fire department at approximately 09:13 (according to the JRCC and MCTS logs). There was a broadcast message to that effect at approximately 09:18; however, all four crew members agree that they did not hear that message. There is also an answering machine message on Mr. Callaghan's phone indicating that MCTS tried to reach him at 09:19, to tell him to stand down, but he did not hear the call. Ultimately, at 09:33, MCTS reached Mr. Callaghan by radio, and then he called them on his cell phone. On that call, they told him to stand down from responding to the MAYDAY call.

[51] In short, there was a MAYDAY call at 08:26 made approximately 6.27 nautical miles from the *CCGS S. Dudka*. While the crew did not hear the precise coordinates of the vessel in distress, it knew its general whereabouts. Rather than turn and render assistance, Mr. Callaghan kept the *CCGS S. Dudka* on its present course, sailing past the vessel in distress, for 17 minutes until he called to ask whether to respond to the MAYDAY at 08:43. At some point during that call, he stopped the *CCGS S. Dudka*. He was asked to render aid by MCTS at approximately 08:44 (one minute into the call). He did not do so immediately. MCTS called JRCC, which tasked him to proceed. At some point between 08:51 and 08:55, that tasking was communicated to him, and he proceeded to Malpeque Bay.

[52] By that time, Mr. Callaghan told MCTS that he was about 1 hour away, without travelling at his top speed. However, he also mistakenly thought that he was 27 nautical miles away, when his coordinates stipulate that he was only 9.3 nautical miles away. Regardless, the crew all testified that Mr. O'Brien took the wheel at the fairway buoy to Malpeque Bay, and Mr. O'Brien testified that they got three-quarters of the way into the bay when they got stood down at 09:33, which was a little under 40 minutes after they started.

[53] As I said earlier, the local fire department rescued the sailors at approximately 09:13, without the help of the Coast Guard. The crew of the *CCGS S. Dudka* were also not certain whether they would have been able to help; Mr. Callaghan testified that

there was not very much that the *CCGS S. Dudka* could have done because the *Knot a Chance* had run aground, while the other crew members gave some other examples of things that they could have done that Mr. Callaghan described as impractical. I am ill-equipped to decide whether the *CCGS S. Dudka* could have helped with that rescue. I agree with Mr. O'Brien's evidence that at the very least, they could have pulled the occupants out of the open-air boat sent to rescue them and kept them in the warmer cabin of the *CCGS S. Dudka*; whether they could have done much more is beyond my knowledge and is not relevant to this grievance.

[54] If they got most of the way there in just under 40 minutes and were 9.3 nautical miles away, had they headed toward Malpeque Bay as soon as the MAYDAY call finished at 08:30 (i.e., even giving them a few minutes' grace), they would have arrived in time to render assistance. They might not have been able to help, but they would have been there.

E. Grievor's explanation for why he waited to respond to the MAYDAY call

[55] Mr. Callaghan testified about the events on May 13, 2024. After hearing his testimony, I am still at a loss to understand why he waited before responding to the MAYDAY call.

[56] At the third-level grievance hearing before the adjudication, his position was that he did not respond because his crew was inexperienced, the *CCGS S. Dudka* had steering issues, and there were radio issues as well. He was asked about that during cross-examination, and he said that he did not make a decision based on those factors.

[57] This was the only time I heard about steering issues with the *CCGS S. Dudka*. I have no evidence about what those steering issues were or why they would have prevented the *CCGS S. Dudka* from assisting with the rescue.

[58] In terms of his crew's alleged inexperience, he was cross-examined about that point at length. He could not explain why Mr. O'Brien could serve as his deckhand for seven years and still be inexperienced. Additionally, he could not explain why he asked Mr. O'Brien to pilot the *CCGS S. Dudka* at the entrance to Malpeque Bay if Mr. O'Brien was too inexperienced to assist with a SAR. His testimony was that Mr. O'Brien "came off the farm [and] fishing and marine is new to him." After seven years in the Coast Guard, surely he had enough experience to assist with a SAR. Mr. Callaghan had not

worked extensively with the other two crew members (who were also experienced), so maybe his opinion about them was based on ignorance of their capabilities, but I cannot understand or accept his opinion that Mr. O'Brien was inexperienced.

[59] I have already described the issues with the radio, and I agree that there was some problem with the one operational radio. However, that problem did not stop Mr. Callaghan from taking the *CCGS S. Dudka* out that day or for the rest of the days of his shift. I also cannot understand why he turned down the volume (according to him) on his one operational radio during a MAYDAY situation.

[60] His position in this adjudication is that he should not go to render assistance on a MAYDAY call until he is specifically tasked to do so by JRCC or MCTS. He testified that he would not have gone to this MAYDAY call without first being tasked because they might have had a number of vessels going to help and he might have been in the way. He testified that as a general rule, you "don't self-task". Instead, you wait for a call from JRCC or MCTS or from someone else in the Coast Guard, who will task you to do something.

F. Reporting and investigation of the events of May 13, 2024

[61] The other three crew members of the *CCGS S. Dudka* reported the grievor's behaviour on May 21, 2024, the day before the end of their scheduled shift together. All four crew members testified about an argument that ensued after the grievor learned that he had been reported. I have concluded that this argument (including how heated it got) is not relevant to this grievance. The crew did not sail that day.

[62] The Coast Guard interviewed all four crew members. All four were emailed copies of the notes of those interviews, except for Mr. Ouellet, who had already prepared a lengthy written statement and was just interviewed about other ancillary matters. All four were given the chance to review their statements and correct them. The grievor corrected his during a second interview.

[63] The Coast Guard suspended the grievor without pay on June 5, 2024.

[64] The Coast Guard held a disciplinary hearing with the grievor on June 11, 2024. It called this a "pre-disciplinary hearing", but it was in practice a disciplinary hearing, and I will call it that going forward. The parties presented me with notes of that meeting.

[65] On July 4, 2024, the Coast Guard terminated the grievor's employment and backdated the termination to June 5, 2024, to coincide with the first day of his suspension without pay.

III. Whether the grievor wilfully disregarded a distress call

[66] The grievor's letter of termination states that the reason that the employer terminated his employment was for "... wilfully disregarding a distress call ... for approximately 17 minutes on May 13, 2024." The 17 minutes referred to is the period between the start of the MAYDAY call at 08:26 and his phone call to MCTS at 08:43.

[67] As should be clear from my recitation of the facts, I have concluded that the employer has demonstrated that Mr. Callaghan wilfully disregarded the MAYDAY call. For the reasons that I set out earlier, I did not believe Mr. Callaghan's testimony that he did not hear the 08:26 MAYDAY call. He took no steps to respond to that MAYDAY call until he called MCTS at 08:43. He acknowledged during cross-examination that "it's my decision to respond [to a MAYDAY call]. That's the way it works."

IV. Is wilfully disregarding a distress call for 17 minutes misconduct?

[68] The parties agree that I should follow the classic approach to discipline set out in *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1. This approach requires me to decide three questions: whether the employer has proven misconduct that justifies some level of discipline; if so, was termination of employment excessive in light of all the circumstances of the case; and finally, if so, what is the appropriate level of discipline.

[69] This means that the first question that I must answer is whether wilfully disregarding a distress call for 17 minutes constitutes misconduct. The grievor's position is that it is not misconduct because he was supposed to wait to be tasked to respond to the distress call. I have decided that this requires me to answer three questions. First, is that true? Second, if it is not true, does he sincerely believe it? Third, if it is untrue but he sincerely believes it, is it still misconduct?

A. Must a Coast Guard vessel wait to be tasked to respond to a distress call?

[70] As a layperson who does not have any experience in maritime matters, I would have thought that the answer to this was obviously "no" because Coast Guard vessels

should help mariners in distress without being asked. I am relieved to have learned that this is the case.

[71] Trevor Hodgson testified about this for the employer. He was the manager responsible for terminating the grievor's employment. He has spent his entire career in the Coast Guard since he entered the Coast Guard college program in 2002. He was the acting senior director of the Atlantic fleet in 2024 and became the permanent senior director in 2025.

[72] He testified clearly that every mariner is expected to do everything they can, as soon as possible, to resolve a MAYDAY call.

[73] He also explained the basis for that rule. Canada is a signatory to the *International Convention for the Safety of Life at Sea (SOLAS)*. Chapter V, Regulation 10 of SOLAS reads as follows:

Regulation 10

Distress messages - obligations and procedures

(a) The master of a ship at sea, on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so. If he is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress.

(b) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress.

(c) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation when he learns that one or more ships other than his own have been requisitioned and are complying with the requisition.

(d) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation, and, if his ship has been requisitioned, from the obligation imposed by paragraph (b) of this Regulation, if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer necessary.

(e) The provisions of this Regulation do not prejudice the International Convention for the unification of certain rules of law relating to Assistance and Salvage at Sea, signed at Brussels on 23 September 1910, particularly the obligation to render assistance imposed by Article 11 of that Convention.

[74] Canada has codified this obligation in s. 131 of the *Canada Shipping Act, 2001* (S.C. 2001, c. 26; “the Act”), which reads as follows:

Answering distress signal

131 (1) *Subject to this section, the master of a vessel in Canadian waters and every qualified person who is the master of a vessel in any waters, on receiving a signal from any source that a person, a vessel or an aircraft is in distress, shall proceed with all speed to render assistance and shall, if possible, inform the persons in distress or the sender of the signal.*

Distress signal — no assistance

(2) *If the master is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to the assistance of a person, a vessel or an aircraft in distress, the master is not required to proceed to their assistance and is to enter the reason in the official log book of the vessel.*

Ships requisitioned

(3) *The master of any vessel in distress may requisition one or more of any vessels that answer the distress call to render assistance. The master of a requisitioned vessel in Canadian waters and every qualified person who is the master of a requisitioned vessel in any waters shall continue to proceed*

Réponse à un signal de détresse

131 (1) *Sous réserve des autres dispositions du présent article, le capitaine de tout bâtiment dans les eaux canadiennes et la personne qualifiée qui est le capitaine d'un bâtiment, où qu'il soit, dès qu'ils reçoivent, d'une source quelconque, un signal indiquant qu'une personne, un bâtiment ou un aéronef est en détresse, doivent se porter à toute vitesse à leur secours et, si possible, en informer les personnes en détresse et la source du signal.*

Circonstances spéciales

(2) *Si le capitaine est incapable de se porter au secours de la personne, du bâtiment ou de l'aéronef en détresse ou si, en raison de circonstances spéciales, il juge la chose déraisonnable ou inutile, il inscrit au journal de bord réglementaire de son bâtiment la raison pour laquelle il a omis de le faire.*

Réquisition de bâtiments

(3) *Le capitaine d'un bâtiment en détresse peut réquisitionner pour lui porter secours un ou plusieurs des bâtiments qui ont répondu à son signal de détresse; le capitaine du bâtiment réquisitionné en eaux canadiennes et la personne qualifiée qui est le capitaine d'un bâtiment réquisitionné où qu'il soit*

with all speed to render assistance to the vessel in distress.

doit continuer à se rendre à toute vitesse au secours du bâtiment en détresse.

Release from obligation

Libération de l'obligation

(4) *The master of a vessel shall be released from the obligation imposed by subsection (1) when the master learns that another vessel is complying with a requisition referred to in subsection (3).*

(4) *Le capitaine d'un bâtiment non réquisitionné est dégagé de l'obligation imposée par le paragraphe (1) dès qu'il apprend qu'un autre bâtiment a été réquisitionné et se conforme à la réquisition.*

Further release

Autre libération

(5) *The master of a vessel shall be released from an obligation imposed by subsection (1) or (3) if the master is informed by the persons in distress or by the master of another vessel that has reached those persons that assistance is no longer necessary*

(5) *Le capitaine d'un bâtiment est dégagé de l'obligation imposée par les paragraphes (1) ou (3) si les personnes en détresse ou le capitaine d'un autre bâtiment ayant atteint ces personnes l'informent que le secours n'est plus nécessaire.*

[75] Both *SOLAS* and the *Canada Shipping Act, 2001* are remarkably clear in their meaning. If you hear a distress call, you have to "... proceed with all speed to render assistance ..." unless the captain deems it "... unreasonable or unnecessary to proceed to the assistance ...", in which case the captain must enter the reason in their logbook. The failure to do so is an offence punishable on summary conviction by a fine of up to \$1 000 000 or a term of imprisonment of up to 18 months, or to both (see s. 137(2) of the *Canada Shipping Act, 2001*), indicating the seriousness of this obligation.

[76] The Coast Guard has written this requirement into its *Fleet Safety Manual*. Section 5.0, subsection 2.1(c), reads as follows:

c) Under the Canada Shipping Act, 2001, as the master of a Canadian vessel, the commanding officer is obligated and responsible for the safe conduct of all vessel operations and activities. This includes but is not limited to compliance with all appropriate regulatory authorities pertaining to:

...

vii. the obligation to assist vessels in distress, report collisions, and stay with a vessel after a collision.

[77] This is further set out in section 7.D.1, subsection 2.1A:

2.1 Commanding officer

A. The commanding officer, or their delegate, is responsible for ensuring:

- i. SAR operations are conducted in compliance with the policies and procedures contained in CCG/5449 - Canadian Aeronautical and Maritime Search and Rescue (CAMSAR) Manual and the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual Volume III*
- ii. vessel and crew are maintained at an appropriate state of readiness to conduct SAR Operations when assigned to primary or secondary SAR, as described in CCG/5449 - CAMSAR Manual*
- iii. when participating in SAR operations, they are familiar with the roles and responsibilities defined in the Canada Shipping Act, 2001, Part 5 - Navigation Services, Search and Rescue.*

[78] Mr. Hodgson also testified about tasking. He said that Coast Guard vessels do not need to be tasked to respond to a distress call. There are other, less imminent threats that do not involve a distress call, such as a disabled vessel needing a tow. He explained that on those occasions, Coast Guard vessels are expected to wait to be tasked so that they do not interfere with commercial towing operations. However, the Coast Guard pushes to resolve distress calls as fast as possible.

[79] Mr. Hodgson was not cross-examined on any of these points. He was cross-examined on different points (largely about the discipline process), but not on these critical points.

[80] The grievor argues that he needed to wait to be tasked by JRCC before responding to the MAYDAY call. He advances four arguments on that point.

[81] First, the grievor argues that Mr. Hodgson has misinterpreted the *Canada Shipping Act, 2001*. The grievor relies on ss. 130(1) and 130(2)(b) of the *Canada Shipping Act, 2001*, which read:

Designation — search and rescue mission coordinators

130 (1) The Minister may designate persons as search and rescue mission coordinators to organize search and rescue operations.

Désignation de coordonnateurs de mission de recherche et de sauvetage

130 (1) Le ministre peut désigner des coordonnateurs de mission de recherche et de sauvetage chargés des opérations de recherche et de sauvetage.

Powers — search and rescue mission coordinators

(2) On being informed that a person, a vessel or an aircraft is in distress or is missing in Canadian waters, in the exclusive economic zone of Canada or on the high seas off any of the coasts of Canada under circumstances that indicate that they may be in distress, a search and rescue mission coordinator may

...

(b) direct any vessel to take part in a search for that person, vessel or aircraft or to otherwise render assistance

Autorité des coordonnateurs de mission de recherche et de sauvetage

(2) Dès qu'il est informé qu'une personne, un bâtiment ou un aéronef sont en détresse ou manquent à l'appel dans les eaux canadiennes, dans les eaux de la zone économique exclusive du Canada ou en haute mer au large du littoral du Canada dans des circonstances indiquant que la personne, le bâtiment ou l'aéronef peuvent être en détresse, le coordonnateur de mission de recherche et de sauvetage peut :

[...]

b) ordonner à tout bâtiment de participer à la recherche de la personne, du bâtiment ou de l'aéronef ou de leur porter secours d'une autre façon;

[82] There is no dispute that JRCC is the designated SAR mission coordinator mentioned in s. 130 of the *Canada Shipping Act, 2001*. The grievor argues that the obligation in s. 131 is subordinate to s. 130(2)(b), such that the obligation to proceed to a distress call is triggered only after JRCC makes a direction under s. 130(2)(b). The grievor argues that the reference to the “[s]ubject to this section” in s. 131(1) includes s. 130.

[83] I disagree. The obligation to proceed to a distress call is set out in s. 131, which says that the obligation is “[s]ubject to this section”. “[T]his section” means s. 131 (i.e., the same section of the *Act*). This rule is set out in s. 41(2) of the *Interpretation Act* (R.S.C., 1985, c. I-21), which reads, “A reference in an enactment to a part, division, section, schedule, appendix or form shall be read as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs”, so a reference in s. 131 to “this section” means s. 131. Section 130 of the *Act* is in the same Part of the *Act*, but that does not make it the same section.

[84] Second, he relies on the conduct of the MCTS call. He argues that the fact that MCTS did not tell him right away to head toward the distress call shows that he was

right to wait to be tasked. I disagree for two reasons. First, as I said earlier, MCTS did tell him to proceed immediately. At 0:55 of that call, Mr. Callaghan asks, “would you like us to proceed to that location?”. MCTS says, “if you’re able to assist, that would be great.” Only after issuing that direction did MCTS contact JRCC for more information. Second, the grievor put it to Mr. Hodgson in cross-examination (incorrectly) that the audio logs show that MCTS did not tell Mr. Callaghan definitively to go to the distress call. He said that that would not surprise him because MCTS is just a person relaying information, a middleman between a commanding officer and JRCC. The grievor led no evidence to contradict that MCTS is just a middleman. Even if it had not told him to proceed immediately, it was just performing its job as a relay between the grievor and JRCC.

[85] Third, the grievor argues that his view is backed up by Mr. O’Brien’s testimony. The grievor argues that Mr. O’Brien also believed that they had to be tasked before going to the distress call. I disagree with that characterization of Mr. O’Brien’s evidence. First, Mr. O’Brien turned and asked Mr. Callaghan why they were not proceeding to the distress call immediately. While Mr. Callaghan denies hearing the question at the time, he does not dispute that Mr. O’Brien asked it. This question is inconsistent with someone believing that they have to wait to be tasked before responding to a distress call. Second, Mr. O’Brien testified that he was shocked that they were not responding to the distress call and said that it is their duty to respond. He said that they should start proceeding toward the distress call after getting all the information they can from that distress call. That is not the same thing as needing to wait to be tasked; it is just stating the obvious that you find out where to go before heading there. The grievor suggests that Mr. O’Brien’s understanding is the same as his; to be blunt, it is not. Third, Mr. O’Brien testified that he heard other Coast Guard employees and other fishing vessels talking about the *CCGS S. Dudka* sailing past a distress call after the fact, and they were upset about it. This is another indication in Mr. O’Brien’s testimony that Coast Guard vessels are not expected to be tasked before proceeding to a distress call.

[86] I note that Mr. Gsell also testified that you can “self-task” to respond to a distress call and that you do not need to wait for JRCC. Mr. Ouellet did not testify on this point one way or the other, although he did say that he felt that something was wrong with not responding to the distress call.

[87] Fourth, the grievor asked me to draw an adverse inference from the fact that nobody from JRCC testified to say that captains are expected to respond to distress calls without being tasked. However, Mr. Hodgson testified about that issue. Before becoming the senior director, he was responsible for the Coast Guard's regional operations centre in the Atlantic region, which tasks vessels, so he would know about tasking. I decline to draw an adverse inference from the absence of a witness who currently works in JRCC; Mr. Hodgson's evidence is sufficient to "throw light on a matter" (to quote from Brown & Beatty, *Canadian Labour Arbitration*, 5th ed. at chapter 3:86) so that there is no reason to draw an adverse inference.

[88] I have concluded that a captain of a Coast Guard vessel is required to respond to a distress call and is not expected to wait until they are tasked to do so. This is consistent with the statute, the employer's policies, and the evidence of every witness except Mr. Callaghan.

B. Does the grievor sincerely believe that he does not need to respond to a distress call until tasked to do so?

[89] The grievor argued, in the alternative, that if I agree with the employer that a Coast Guard captain is expected to respond to a distress call without being tasked, then this is a training issue and not a disciplinary one. To reach that conclusion, I would have to be satisfied that Mr. Callaghan sincerely believes that the captain of a Coast Guard vessel does not need to respond to a distress call until tasked to do so.

[90] I am not satisfied that Mr. Callaghan sincerely believes that to be true. That belief is inconsistent with his actions and statements on May 13 and after.

[91] First, that belief is inconsistent with him calling MCTS at 08:43. His stated belief is that he needs to wait to be tasked before responding. His evidence was that he was not contacted before he made that call. This begs the question: if he was supposed to wait to be tasked, why did he place the call? In cross-examination, he was asked whether he decided to call MCTS because he knew that there was a MAYDAY call, and he was in close proximity to it. He did not respond directly. Instead, he said that he knew that something was happening but that he did not know the particulars. Then he was asked why he maintained course away from the MAYDAY call, and he said that JRCC knew his vessel's position because they track vessels, and so they could have

called him. He never explained why he called MCTS if he believed that he was supposed to wait to be tasked.

[92] Second, that belief is inconsistent with his decision to turn down the volume on the radio. If he believed that he needed to be tasked to respond to a MAYDAY call, it would make sense to turn up the volume on the radio, so he could hear that tasking, instead of turning down its volume.

[93] Third, that belief is not what he said during the fact-finding and disciplinary proceedings leading to his termination.

[94] The rest of the crew reported these events on May 21, 2024. There was a fact-finding investigation. Mr. Callaghan was interviewed twice (once to give his version of events, and a second time to review and correct it) and then sent a copy of the investigator's notes of his interviews. His version of events was as follows:

...

On May 13, 2024, while we were getting the vessel ready, I called Sydney to put in our sail plan. We were going from Alberton to Rustico to pick up the Fisheries Officer and we were going to complete Conservation and Protection tasks from Rustico to Souris, PEI. I've been having intermittent issues with the radio (previous ticket submitted) but I called Charlottetown Techs again that morning to let them know we were still having problems with the VHF with hopes they could meet us in Souris to do repairs.

While transiting near Malpeque Bay we were all in the wheelhouse when we heard a Mayday Mayday on the VHF, but the call was static. The Mayday said that there was a boat aground, and it required assistance, but the boat calling couldn't get in there it was too shallow and the swells were too big.

As I listened, I asked Michael Gsell (Supernumerary Deckhand) to write down the coordinates. He had gotten a bit of it but not all of it. I stopped the vessel and even though Sydney could have called me directly to task this mission as they had our sail plan and knew where we were located, I called Sydney directly using our cell phone and they gave us the proper coordinates of the vessel. I asked Sydney if they wanted us to assist. They told me that boats were standing by in the area but maybe we should respond anyway and assist. So we put the coordinates in and headed back towards Malpeque Bay. The time between the Mayday and us turning around to head to the incident was approximately 10 minutes.

...

[95] He never says that he continued sailing because he believed that he should have been tasked before responding. In fact, he says that he stopped the vessel and called for instructions. I will return to that and other passages in his statement later in this decision. What I note at this point is that he never said that he kept sailing because he believed that he needed to wait to be tasked before responding to the MAYDAY.

[96] Then the Coast Guard held a disciplinary hearing with the grievor. He was asked how he felt his behaviour might affect the reputation of the department. He responded: "I don't think I did anything wrong, when I got the coordinate [sic], I put them in the electronic charts and immediately went to that position." This is not true: MCTS gave him the coordinates when he called at 08:43, and while he testified that he stopped the vessel at that time, he also testified in cross-examination that he did not leave for Malpeque Bay until he was tasked to do so by JRCC about four minutes after the end of that call.

[97] Importantly, in the disciplinary hearing, he never said anything about needing to wait to be tasked to respond. The closest he came to doing that was when he was asked whether he had anything else to add, and he started with this:

...

... I want to say that the Canada Shipping Act 131 and 132 states that if there's a vessel already at the scene that it might not be deemed necessary for JRCC nor Sydney to task the vessel... which is not my decision I would ask them and they said they wanted me to assist which I did. Anytime in between was Mike trying to get the coordinate and then a bit of time for me to put in the coordinate in the electronic charts, it's important not to sail in the wrong direction. Better to have due diligence. Other than that, the 5 miles mentioned by the deckhands, they would have no way of knowing that distance, what they are referring to is a repeater, I have the cursor in front of me and as I told Sydney it was 27 NM.

...

[Sic throughout]

[98] Even that is not suggestive of a theory that he needs to be tasked before responding to a distress call.

[99] Mr. Callaghan's employment was terminated, and he grieved. The parties provided me with a copy of the notes of his third-level grievance hearing and agreed

that they should be admitted into evidence. The submissions made at that third-level hearing included the following:

...

When there's a mayday call, it boils down to one simple thing: take immediate action if in a position to assist, it remains the Commanding Officer's decision to render assistance or not.

Factors: Malpeque Bay is very vast area: no small bay, very different areas you can go to. Can take hours. Limited by the same factor that prevented the vessel who called in for the other vessel. S S. Dudka not very different than a fishing vessel. May have a lower draft. Restricts access. S S. Dudka had a lot of steering issues. Tide are strong according to the record in the logs.

Previous SAR calls were tasking, there weren't any rescue done recently, and in the opinion of Callaghan, his crew was inexperienced to handle such a situation. Another consideration was the vessels condition, vessel had steering issues and radio issues, ample records. When tasked, he executed the tasking knowing full well he couldn't do much due to shallow water. Regardless of what the new deckhand said.

...

[Sic throughout]

[100] The grievor's case at the third level of the grievance process was not that he needed to be tasked to respond to the distress call. On the contrary, his representative at that hearing said that it was his decision whether to go, and that the decision not to go immediately was justified because the *CCGS S. Dudka* could not have helped because of its size, steering issues, and an inexperienced crew. Most importantly, his representative stated that a captain has a duty to take immediate action if they are in a position to assist. At this hearing, the grievor argued that these passages are no different from what he said at the hearing, as they are just about what does "immediate action" mean. I disagree. The case at the third level was that he was justified not going to the distress call — not that he was supposed to wait to be tasked to do so.

[101] Fourth, he has stubbornly maintained this position (which, as I have just stated, he articulated for the first time at this hearing) in the face of it leading to nonsensical results. During cross-examination, after saying again that he should not self-task to answer a distress call, he was asked (somewhat rhetorically): "so if you see a ship in distress, you do not assist, but you wait to be tasked?" When I heard that question, I

expected an answer along the lines of “well obviously if you see a vessel in distress you help it without waiting for orders, but this situation was different and you should wait to be tasked in situations like this.” Instead, Mr. Callaghan doubled down on his theory, testifying, “I would make a call to them [MCTS] and make them aware of the situation and they probably would send me if I was in close proximity.” In other words, he is saying that he would sail past a vessel in distress because he needs to call it in and be tasked before rendering assistance.

[102] He has put me in the difficult position of either believing that he has callous disregard for other mariners, or that he does not sincerely believe what he is saying but feels that he must maintain the position, no matter how absurd its results. I choose the later, in light of the other evidence I have described.

[103] At the very end of his cross-examination, the employer’s counsel put it to Mr. Callaghan that he decided not to respond to the distress call but had a change of heart when he called at 08:43. He denied it but then said that if he was not tasked to respond to the distress call, he would have another decision to make. At that point, the employer’s counsel asked whether that meant that he could self-task. He said that that would be a last resort. His admission is not dispositive. However, rather than admit that the requirement to be tasked is not all-encompassing from the beginning, he waited until the very end of his cross-examination to admit that. This is still another indication that he does not sincerely believe that he needs to wait to be tasked to respond to a distress call.

[104] I have concluded that Mr. Callaghan does not sincerely believe that he needs to be tasked before responding to a distress call. This alleged belief is inconsistent with his actions that day of turning down the volume on the radio and calling MCTS after sailing away from the distress call, it is inconsistent with what he said during the investigation, it is inconsistent with what his representative said during the grievance hearing, and it is inconsistent with common sense.

[105] Since I have concluded that the grievor does not sincerely believe that he is required to be tasked to respond to a distress call, I do not need to assess whether such a belief would still constitute wilful misconduct.

V. Whether termination is justified in the circumstances

[106] The next and final stage of the *Wm. Scott* analysis is for me to decide whether the termination of the grievor's employment was the appropriate consequence for this misconduct. This requires me to examine three things. First, is the misconduct of a nature that could justify termination? Second, if so, what are the mitigating and aggravating factors in this case? Finally, in light of the nature of the misconduct and those mitigating and aggravating factors, was termination appropriate?

A. Nature of the misconduct

[107] Some misconduct is too trivial, in and of itself, to justify a termination of employment. This is not that type of misconduct.

[108] The employer candidly admitted that there is not much case law about this type of misconduct because this type of case does not often arise. The grievor also provided no cases one way or another, which also indicates that this type of misconduct is rare.

[109] However, the employer did provide me with *Spears v. Treasury Board (Transport Canada)*, 1987 CarswellNat 2405 (Board file no. 166-02-16381 (19870421)). That case involved a radio operator who received a MAYDAY call on Lake Erie in the Detroit River Channel because a boat had lost power. The radio operator decided that vessel was not in distress and ordered it to switch to a non-emergency channel, then told it to cast an anchor and call for a commercial tow. The vessel made 4 more MAYDAY calls 10 minutes later, which the radio operator did not respond to. He was terminated. The Public Service Staff Relations Board ("the Board") upheld the termination, stating:

...

... The term "MAYDAY" is the internationally recognized code word for alerting others to a situation of distress. This was the word used by the PLAYMATE in seeking help. I find, therefore, that the priority attached to the situation by the person in charge of the PLAYMATE was one of distress and that a Radio Operator in the Canadian Coast Guard receiving and responding to such a call was obliged to treat it as such.

I further find that Spears was without authority to respond to this distress call in any lesser order of priority or to make the determination, by himself, that he had the discretion to do so. To accept the grievor's interpretation of the Operations Standards Manual is, to my mind, to give a very selective reading to the procedures and definitions therein, and to disregard the clear, overall thrust of the document which is oriented to safety on the

*water, and the preservation of life. The response mechanisms and procedures set out are geared to providing help in emergencies at the highest level unless it is absolutely clear that a lesser effort will suffice. In unclear situations a Radio Operator must elicit as much information as possible in order to make a decision how to proceed. **When in doubt he is to assume the worst until advised otherwise.***

...

*There is the further matter of the four subsequent MAYDAY calls which went unanswered. Spears maintains that he did not hear them, yet they were clearly audible on a tape recording of that night's message traffic played back on a portable cassette player during the course of this hearing. Spears' excuse that he might have been in the washroom or the kitchen is not very plausible because, in fact, he heard other messages while in these locations. **It is my belief that a prudent Radio Operator would not have absented himself from his position, in any event, so soon after the original distress call had come in.** Not, at least, without first having tried to contact and follow-up on the condition of the vessel in question.*

...

I conclude, therefore, that the allegations as outlined by the employer in the letter of discipline and discharge have been fully substantiated. I conclude, also, that such misconduct would normally warrant a penalty of discharge....

...

[Emphasis added]

[110] The grievor correctly points out that *Spears* is not directly like this case, in that there was a lot more evidence in *Spears* about the appropriate radio procedures to deal with a distress call. However, that case does serve to emphasize the importance of a MAYDAY call and stands for the proposition that dealing with a MAYDAY call inappropriately is the type of misconduct that can justify a termination of employment. In addition, like in *Spears*, in which a prudent radio operator would not have gone to the kitchen during a MAYDAY, a prudent Coast Guard captain would not have turned down his radio's volume during a MAYDAY.

[111] Mr. Hodgson testified that he considered three factors when considering the gravity of this misconduct: the risk of future lives at stake, the reputation of the Coast Guard, and the general trust of the public. I agree that those are relevant factors, and they favour termination in this case.

[112] The grievor argued that the timeline of events is critical. I agree, but only to some extent.

[113] The grievor's position is that he sincerely believes that he needs to wait to be tasked before responding to a distress call. If that were true (or if he sincerely believed it), the timeline is not very relevant: the issue would be whether he dodged that responsibility by ignoring phone calls from MCTS or JRCC (something other crew members accused him of doing, but that I have decided is not relevant to this grievance). In essence, if he sincerely believes that he needed to be tasked (which I have concluded he does not) and that sincere belief justified his actions (which I do not need to decide), it would not matter when he called or stopped; the only thing that would matter is whether he ignored being tasked. On the grievor's theory of the case, he could have sailed straight on to Rustico without ever calling MCTS and not done anything wrong.

[114] The grievor submitted that the central issue is when the clock starts running. I agree with that. On the grievor's theory of the case, the clock started to run only after JRCC tasked him to respond. If that theory were correct, it would not matter whether he waited 10 or 13 or 17 minutes to call MCTS. However, I disagree with the grievor about when the clock started to run: it started to run at 08:26, when the MAYDAY call came in.

[115] The timeline is relevant only in light of the grievor's theory of the case insofar as the delay calling MCTS is non-trivial. As I said earlier, I have concluded that the grievor heard the first MAYDAY call, which ran from 08:26 to 08:30. He called MCTS at 08:43. That is a more-than-trivial delay dealing with a distress call.

[116] I have concluded that the misconduct is of a nature that could justify the termination of employment.

B. Mitigating factors

[117] The grievor had approximately 18 years of service at the time of his termination. This is a lengthy period of service that serves as a mitigating factor. He also had a clean disciplinary record, which is also a mitigating factor.

[118] Otherwise, the grievor did not submit that there were any mitigating factors in this case. I also could not find any after reviewing the evidence.

[119] I also agree with the employer that the fact that no lives were lost is not a mitigating factor in this case; nor is the fact that the *CCGS S. Dudka* might not have been able to help, even had it arrived in time. Everyone got lucky; that does not excuse the misconduct.

C. Aggravating factors

[120] The employer submitted that there were two main aggravating factors: a lack of accountability, and a lack of candour.

[121] I agree with the employer that the grievor has not taken accountability for his actions. This is different from not expressing remorse. His position is that he did nothing wrong. In light of that position, I am not looking for remorse. However, I am looking for accountability and a willingness to change, not remorse. There is none.

[122] The employer asked Mr. Callaghan in cross-examination whether, with the benefit of hindsight, he should have called MCTS sooner than 10 to 20 minutes after hearing the distress call. Instead of answering the question, he argued with the employer's counsel over whether he waited 10 or 20 minutes to call MCTS, stating that it was only 10 minutes. He was terminated because he did not respond to the distress call. He heard Mr. Hodgson testify that he should have responded to the distress call. He heard all 3 members of his crew testify that he should have responded to the distress call. His own union representative at the third-level of the grievance process said that a captain is supposed to take immediate action if they are in a position to assist. Despite this, he stubbornly maintains that he is right and that everyone else is wrong. He refused to say that he would have acted differently with hindsight, even after being terminated for his actions.

[123] During the grievor's examination-in-chief, he made an offhand comment about the men on the *Knot a Chance*, something to the effect that since they had run aground, they could have gotten off the boat and walked to the beach. The employer's counsel put that back to the grievor in cross-examination and asked him about it. The grievor repeated that they would have been on the beach on low tide. For context, it was 2 degrees Celsius that day, and the wind was roughly 15 knots (according to the grievor's own log). I agree with the employer that that shows a lack of acknowledgement of the importance of a distress call. In addition, his lack of empathy for the crew of the *Knot a Chance* is inconsistent with his testimony in examination-in-

chief that he wants to be reinstated because even being secondary SAR is important, and he feels like he can contribute.

[124] Finally, there is his statement during the disciplinary hearing. After going over the evidence, he was asked whether he had anything to add. He started with the passage that I already quoted. Then he talked about the speed that he was travelling before receiving the MAYDAY call, suggesting that he was travelling at 25 knots instead of 18 to 20 (and I note that at this hearing, he reverted to 20 knots). Then, he moved on to a series of allegations against the crew. He said that he was "... taken aback that he [Mr. Gsell] backstabbed me", that "I think Pat is looking for my job and Mike is looking for his job and I think they got together", that "[i]t's obvious they were all together on this", and that "[t]he engineer didn't want to work just wanted to give engineer duty." The grievor's representative emphasized that she was not advancing a conspiracy theory and that the grievor's statement was just a reflection of his disagreement with the other crew members' statements. However, when Mr. Callaghan was asked about this during his cross-examination, he doubled down on it and said that this is what it looked like to him and that he was right because Mr. O'Brien unsuccessfully applied for his job after he was terminated. Mr. Callaghan then decided to take a parting shot at Mr. O'Brien and said that he did not get the job because he was not mature enough, apparently.

[125] This statement in the disciplinary hearing, along with his testimony during the hearing, is inconsistent with an employee who takes accountability for his actions and is prepared to act differently next time.

[126] The employer argues that the grievor was not truthful in the disciplinary investigation.

[127] The employer's main contention is that Mr. Callaghan told them that he stopped immediately when he heard the MAYDAY call. I do not agree with that characterization of Mr. Callaghan's statement to the investigator or during the disciplinary hearing.

[128] This is what he told the investigator:

...

As I listened, I asked Michael Gsell (Supernumerary Deckhand) to write down the coordinates. He had gotten a bit of it but not all of it. I stopped the vessel and even though Sydney could have called

me directly to task this mission as they had our sail plan and knew where we were located, I called Sydney directly using our cell phone and they gave us the proper coordinates of the vessel. I asked Sydney if they wanted us to assist....

...

[129] He does not say that he stopped the vessel immediately. His statement could be read the same way he described it in the adjudication hearing; namely, he stopped the vessel when he called MCTS. At most he implied that he stopped, but I am not prepared to conclude that he was dishonest because of this possible implication.

[130] During the disciplinary hearing, he was asked about the delay between the first MAYDAY and his call to MCTS, the implication being that he originally said that he stopped immediately, when he did not. His response was this: "I asked the deckhand Mike to see if he could get the coordinate [sic], he got partial. Stopped the boat, and put it in neutral and got the proper coordinate [sic] and asked if they wanted us to assist."

[131] Again, he does not say that he stopped the vessel immediately. Therefore, I am not prepared to find that he lied during the investigation by suggesting that he stopped immediately because that is not the only meaning that his statement could bear.

[132] Therefore, I am not prepared to conclude that he was dishonest in that way during the investigation or disciplinary hearing into this matter.

[133] However, for the reasons that I set out earlier, I have concluded that he was dishonest in this hearing because he does not sincerely believe that he needs to be tasked to respond to a distress call.

[134] As the Board put it in *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43 at para. 103 (application for judicial review dismissed, *Oliver v. Canada (Customs and Revenue Agency)*, 2004 FC 1462):

[103] The recognition of culpability or some responsibility for his or her actions is a critical factor in assessing the appropriateness of the discipline. This is because the rehabilitative potential of the grievor is built on a foundation of trust, and trust starts with the truth. If a grievor has misled his employer, failed to cooperate with the legitimate investigation of allegations of conflict of interest, and refuses to admit any responsibility in the face of evidence

showing wrongdoing, then re-establishing the trust necessary for an employment relationship is impossible.

...

[Emphasis added]

[135] The grievor's failure to take accountability for his actions and indicate that he would respond differently to a distress call in the future is a significant aggravating factor in this case, along with his lack of candour during this hearing.

[136] In total, after balancing the nature of the misconduct against the mitigating and aggravating factors, I have concluded that the employer has justified terminating the grievor's employment. His misconduct was significant, both in terms of the reputation of the Coast Guard and the consequences for public safety. While he has lengthy and distinguished service, that is outweighed by the seriousness of the misconduct, coupled with his refusal to acknowledge that he should do things differently and his lack of sincerity during this hearing.

[137] For all of the above reasons, the I make the following order:

(The Order appears on the next page)

VI. Order

[138] The grievance is denied.

January 30, 2026.

**Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board**