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



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

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BETWEEN

**BRUCE REDMOND**

Grievor

and

**TREASURY BOARD  
(Canada Border Services Agency)**

Respondent

Indexed as

*Redmond v. Treasury Board (Canada Border Services Agency)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Daniel Fisher and Amelia Roth, Public Service Alliance of Canada

**For the Respondent:** Richard Fader, counsel

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Heard at Vancouver, British Columbia,  
August 20 to 23, 2024.

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**REASONS FOR DECISION**

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**I. Introduction**

[1] Bruce Redmond (“the grievor”) was employed by the Treasury Board (“the employer”) at the Canada Border Services Agency (CBSA) as a border services officer (BSO) at the FB-03 level for 16 years until his employment was terminated on January 18, 2018. The culminating incident (“the incident”) that led to his termination occurred when he was off duty and crossing the CBSA’s Boundary Bay Port of Entry (“the Port”) in Delta, British Columbia, where he was employed as a senior BSO at the time.

**A. The incident**

[2] During the early morning hours of Sunday, August 6, 2017, the grievor and his wife were passengers in a car returning to their home in Tsawwassen, British Columbia, after a day of drinking and celebrating at a music festival in the adjacent American border town of Point Roberts, Washington. They were stopped at the border crossing because it appeared to the BSO on duty that evening that the driver of the car was intoxicated. Eventually, the Point Roberts police arrested and charged the driver for failing to provide a breath sample.

[3] The grievor and his wife, who were also obviously intoxicated, were released and walked the short distance across the border to their home in Tsawwassen. The fourth occupant of the vehicle, who was the driver’s girlfriend, left the scene without permission shortly after she was seen talking to the grievor but before she was questioned by the two BSOs conducting the inspection of the car and arrest of the driver.

[4] It is a breach of the *Customs Act* (R.S.C., 1985, c. 1 (2nd Supp.)) for someone who has been detained at the border to leave CBSA premises without being officially released. It was learned later that the passenger spent the night at the grievor’s home, but he denied having any knowledge of that fact, along with several other key facts, such as the existence of open alcohol in the car.

[5] The incident was reported to CBSA management and was assigned to its Professional Standards Investigation (PSI) program for an investigation. The investigation was to determine if the grievor breached the CBSA’s *Code of Conduct* for BSOs (“the Code”) and to advise CBSA management of the findings. The investigation

concluded that on a balance of probabilities, the grievor committed the following four breaches of the Code: conflict of interest, discreditable conduct, off-duty abuse of authority, and a lack of candour.

[6] Before the CBSA imposed discipline on the grievor, he and his bargaining agent representative were provided a copy of the PSI report and an opportunity to respond to it. CBSA management confirmed that it took the grievor's comments into account, along with other mitigating factors, including his lengthy service of 16 years and his discipline record. However, considering all the circumstances, in particular the fact that a 15-day suspension was on his file at that time, also for a breach of the Code that had occurred just 2 months earlier, in June 2017, CBSA management concluded that the bond of trust had been irreparably broken and that the only disciplinary option open to it was to terminate his employment.

[7] With his bargaining agent's support, the grievor filed this grievance, challenging the termination of his employment. A second grievance alleging a breach of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) was also filed but was withdrawn prior to the hearing in this matter.

[8] At the hearing, the Public Service Alliance of Canada ("the bargaining agent") argued that all the findings of misconduct flowed from one bad decision — which was to get in the car with a driver who was inebriated. The bargaining agent conceded that what happened on that evening was serious misconduct but argued that the penalty should have been a lengthy suspension rather than the termination. Termination, the bargaining agent argued, is understood to be the capital punishment of discipline in labour relations.

[9] At the hearing, the grievor challenged the amount of discipline imposed and asked the Federal Public Sector Labour Relations and Employment Board ("the Board") to exercise its remedial authority and give him a second chance.

## **B. Issues raised at adjudication**

[10] In this adjudication, these three issues must be decided:

- 1) Did the grievor engage in culpable off-duty conduct that justified the employer imposing discipline up to the point of termination?

- 2) Considering the *de novo* nature of the hearing, are there sufficient mitigating circumstances to find that the employer's decision to terminate the grievor was excessive?
- 3) If it was excessive, what disciplinary measure should be substituted?

### **1. Decision on the issues**

[11] On the first issue, I have concluded that the grievor committed culpable off-duty conduct during the incident that justified imposing discipline.

[12] On the second issue, I have concluded that the off-duty incident and the grievor's behaviour after it gave the employer cause to conclude that terminating his employment was an appropriate and warranted disciplinary response.

[13] On the third issue, and taking into account the additional evidence that the bargaining agent introduced at the hearing and the *de novo* nature of the proceedings, I have concluded that there are insufficient mitigating factors to justify substituting a lesser form of discipline, such as a lengthy suspension, as the grievor requested.

[14] Accordingly, the grievance is denied.

### **II. Summary of the evidence**

[15] Approximately 2 months before the incident, the grievor received the 15-day suspension for an on-duty incident and Code violations related to his conduct in the investigation that followed it. It occurred when he left his post without authorization, fully armed and in an unmarked Port vehicle, to respond to a report that he received that someone might be attempting to break into his home.

[16] In the investigation that followed, CBSA management became aware that the grievor attempted to influence a BSO trainee's report of this incident, to suggest that the officer in charge at the time had given the grievor permission to take the employer's vehicle to respond to the threat.

[17] While it was a highly charged situation, it was gravely concerning to CBSA management that the grievor left his post without authorization in a Port vehicle while fully armed. In its view, his action demonstrated a significant lack of judgement. Based on the PSI report it also found that on a balance of probabilities, the grievor "... attempted to influence the report of the incident of a junior trainee who he was

trying to mentor”. The grievor’s actions were found in violation of the Code and the CBSA’s *Policy on Use of Force and Defensive Equipment*.

[18] The grievor received the 15-day suspension for that incident, which was on his file when the August 6, 2017, incident took place. The suspension letter contained the following warning:

...  
*In the future, you are expected to adhere to CBSA policies and procedures and conduct yourself in a manner consistent with the CBSA Code of Conduct. Any future instances of misconduct may result in more severe disciplinary action being imposed, up to and including termination of employment.*  
...

#### **A. The incident**

[19] On August 6, 2017, at approximately 1:50 a.m., the grievor was a passenger in a car with three other occupants. The driver was intoxicated, and open liquor was found in the vehicle when it attempted to cross the border at the Port. It is the same border crossing where the grievor worked when he was on duty. He was a senior officer there and was known to both BSOs Robin Hart and Alysia Scorey (Nagy), who were the junior officers on duty that evening.

[20] BSO Hart, who was the interviewing officer, became concerned that the driver might be impaired when he answered the question, “What brings you guys up tonight?” with the response, “Just coming in for lunch.” Very quickly, it became apparent to him that the driver was intoxicated and that he might have to arrest him.

[21] The driver, Alexander Range, is a large individual. He is approximately 6 feet, 3 inches, tall and weighs 260 to 275 pounds. Mr. Range was uncooperative and refused to give BSO Hart his keys or exit the vehicle and just continued to say, “its not a big deal”, and “We are coming in to drop them off.”

[22] BSO Hart stated that he then raised his presence and ordered the driver out of the vehicle and told him that if he did not exit, he would arrest him. At that point, the grievor, who was sitting in the back seat, leaned forward to make sure that BSO Hart could see that he was a passenger. BSO Hart continued to order the driver to come out of the car and said again that if he did not exit, he would arrest him. Before Mr. Range

responded, he heard the grievor from the back seat say to the driver, “Arrest you for what?” Hearing that, the driver then turned to BSO Hart and repeated the same statement, saying this: “Arrest me for what?” BSO Hart replied that he would arrest him for hindering.

[23] BSO Hart later stated that at that critical moment in the confrontation, he was taken aback when the grievor made the statement, “Arrest you for what?” It did not come across as a joke. And it gave the driver something to challenge BSO Hart’s authority, at a critical time in the questioning. He interpreted the statement as meaning this: “Hey, I don’t have to listen to this ‘cuz’ [sic] you don’t even know why you’re going to arrest me.” BSO Hart testified that he was surprised as to why the grievor would interfere and attempt to aid someone he really did not know.

[24] At that point, a momentary standoff took place, until the driver’s girlfriend, who was sitting in the front passenger seat, said, “Listen to him, just get out of the car.” The driver agreed and then exited the vehicle. At that point, BSO Hart noticed that a bottle of alcohol was beside the front seat, in the console.

[25] BSO Scorey, who was the supporting officer on duty that night, had heard some of the conversations. She then brought the approved alcohol screening device (ASD), but BSO Hart asked her to go with him to another area, to help him with the driver as he administered the breathalyzer. In the end, the driver was cooperative, but he refused to give a breath sample. Eventually, BSO Hart called the Point Roberts police, who later came to the Port and arrested and charged the driver for refusing to give a breath sample.

[26] When BSO Hart returned to the vehicle, none of the passengers were where he had left them in the car. The driver’s girlfriend had left the Port entirely, without being interviewed or released. The grievor and his wife had remained but were sitting on a bench in the secondary inspection area, smoking cigarettes.

[27] When BSO Hart examined the vehicle, he noted that the alcohol bottle that he had seen on the console in front had been moved. He found it underneath the rear passenger footwell, tucked a bit under the seat. The grievor had been seated there before he exited the vehicle. BSO Hart moved the bottle of alcohol, which was a half-empty bottle of Crown Royal whiskey, back to the front console, where he saw it

initially, so that when the Point Roberts police arrived, he could advise them that the evidence in the car, as he had found it, had not been tampered with.

[28] BSOs Hart and Scorey questioned the grievor and his wife about where the other passenger had gone and whether they had told her to go. Their answers indicated some initial confusion about where she had gone, and at one point, they even challenged if a third person had been present. Eventually, either the grievor or his wife said, “Oh ... she left”.

[29] In his official written report and his testimony, BSO Hart confirmed that when the grievor was asked that night if he had told the other passenger to leave, he answered, “Yes.”. But in the investigation that followed, he denied that he told BSO Hart that he had told the passenger that she could leave. He also denied having any knowledge of several other important facts, such as that alcohol was in the car, that there had been drinking in the car on the drive to the border, or that the passenger who left during the incident ended up staying overnight at his house that very night.

[30] BSO Scorey testified that when she moved the vehicle out of the lane to where the Point Roberts police had access, it had an obvious and strong smell of alcohol and in fact smelled like a bar. She did a quick search and found the Crown Royal bottle, some open and closed beer cans, and a bottle of wine.

[31] BSO Scorey, who had just recently completed her probation, testified that after the incident ended, she felt very overwhelmed. She said that she knew that it was very serious. She said that all the BSOs know that any person stopped at the border is not supposed to leave until they are released. It’s called “running the port”, and it attracts a minimum \$1000 fine for the first offence. Yet, the passenger in the vehicle that they had stopped did exactly that, apparently on the grievor’s advice. He was a senior off-duty BSO and had been a passenger in the vehicle.

[32] Before the Port Roberts police took the driver, BSO Scorey told the driver to let his girlfriend know that she should come into the Point Roberts border crossing for questioning as soon as possible. They had questions for her because she did not have authority to leave the Port, and a fine could have been associated with it.

**B. The events after the incident**

[33] The grievor and his wife walked home from the border crossing, as they lived only a short distance away. Although it was initially denied, Ms. Rutledge, who left the scene without being questioned or released, also walked to the grievor's house in Canada, and she spent the night there.

[34] During the subsequent investigations, the grievor maintained that he was completely unaware that Ms. Rutledge had spent the night at his home. He stated that he passed out when he got home and that he had no idea if anyone had stayed overnight.

[35] On August 8, his first day back at work after the incident, the grievor provided a written statement, as did BSO Hart and BSO Scorey. In his report, the grievor stated the following:

...

*When we arrived at the Canada Border we approached PIL Booth 1 and I gave our Identification to the driver for presentation. The Driver presented our identification to the PIL officer and he immediately started an impaired driving investigation. At first I thought he was joking around because he recognized me. It became apparent that he was not joking and he removed the driver from the car. I was both shocked and embarrassed at the situation and confused as to what was going on as I did not believe the driver to be impaired. We remained in the car until the Officers removed the driver from the secondary area. At that time we exited the vehicle and took a seat in the secondary area. While in the secondary area Rutledge stated she wanted to go home and asked for the address to call a cab. I told her the address of the Port. At some point Rutledge left the area and I believe headed South back to Point Roberts as that is where she lives. I do not recall her departure. After waiting for a while my wife went in and asked if we were free to leave. Officer Nagy told her to wait outside and she would be with her in a minute. Officer Hart came to secondary and completed his primary questions and returned our identification and released us. We walked home and went to bed. I have not seen or spoken to either of the individuals since.*

[36] While the grievor might not have seen or spoken to either Mr. Range or Ms. Rutledge in the days following the incident, the same cannot be said about his wife. Within days, she communicated with Ms. Rutledge on Facebook and asked to meet with her, privately. Ms. Rutledge agreed, and they met in a Point Roberts bar on

one of the following days during the next week: Tuesday, August 8; Wednesday, August 9; or Thursday, August 10.

[37] During their meeting, the grievor's wife stated that his job was on the line, that an investigation into the incident would be launched, and that she would be interviewed as part of that investigation. She told Ms. Rutledge that CBSA management believed that the grievor had told Ms. Rutledge that she could leave the Port, which is not supposed to happen without authorization. It was suggested that the best story to stick with was that she had been intoxicated and panicked, so she left, but nobody told her to leave, and to avoid saying that she had stayed at the residence of the grievor and his wife that evening.

[38] On Saturday, August 12, Ms. Rutledge crossed the Port again with her boyfriend, Mr. Range. BSO Scorey recognized her. BSO Scorey alerted her acting superintendent on duty, who took the opportunity to question Ms. Rutledge about the incident and her leaving without being released. Ms. Rutledge stated that she had consumed a lot of alcohol that night and that she had panicked because she could not find her identification. She ended up walking into Canada for a short distance down a pathway that runs parallel to the border road and then ,... called a cab to take her back into Point Roberts." She said that she was extremely intoxicated that night and apologized for her actions. She was asked if anyone had instructed her to leave the Port, and she stated that no one had. She denied having any drugs or other contraband in her purse that night but said that she had just panicked and left.

[39] Ms. Rutledge maintained the story, which she and the grievor's wife had discussed over drinks in the Point Roberts bar, until the PSI investigators questioned her during their investigation in September.

### **C. Evidence from the PSI investigation - September 2017**

[40] During the PSI investigation in September, Ms. Rutledge initially responded to the investigator's questions by repeatedly stating that she had been intoxicated and that "it's all fuzzy to [her]". She said that she had been drunk and that she had panicked and run from the Port.

[41] The PSI investigators did not believe her and felt that she had been coached. They decided to confront her and showed her video footage that confirmed that she

had not panicked at all during the incident but had spent several minutes talking to the grievor who, at the end of their conversation, pointed to the Canadian border. Immediately after that she left, walking in that direction.

[42] At that point, Ms. Rutledge began to change her story. She maintained that she could still not remember if the grievor told her to leave but admitted that the video confirmed that right after talking with him, she left in the direction that he pointed to.

[43] She also stated that just after she left the Port that night, she received a Facebook message from the grievor's spouse, asking her to come to their house, which was within easy walking distance of the Port. When she arrived, she said that they had drinks and talked about what was going on with Mr. Range and what would happen to him. She said that she was upset and that ultimately, she left in a cab and did not stay overnight.

[44] During this part of the interview, she admitted that earlier, she had tried to protect the grievor and his spouse. At the end, she was asked if there was anything else that she had not previously told the investigating officers. At that point, she volunteered that she knew in advance that an investigation would be launched and told the investigators about the meeting at the Point Roberts bar, when the grievor's wife asked to meet her for a drink because her husband's job was on the line. At that meeting, the grievor's wife asked or in Ms. Rutledge's words "strongly suggested" that she stick with the story that she was drunk, that she panicked, and that no one told her to leave. She was also not to mention that she had been to or had stayed at the grievor's house that night.

[45] The PSI investigators interviewed everyone involved in the incident, which included the grievor and his wife, BSO Hart, BSO Scorey, Ms. Rutledge, and Mr. Range. They reviewed video footage of the events of the incident. Some of the PSI investigators' key findings from the report relating to other witnesses are as follows:

...

*18. Officer REDMOND's answers at various times and for various issues during the course of the interview can only be best described as somewhat evasive, elusive and evolving. Officer REDMOND clearly attempted to discredit the abilities of Officer HART....*

...

20 ... Although Officer REDMOND pleaded ignorance and that he was not aware RUTTLEDGE ended up back at their house and that he did not know about the meeting between his spouse and RUTTLEDGE, this is not believable. Rather, a rational thinking individual could reasonably conclude that in the Balance of Probability, it is more likely than less likely that he conversed with his spouse about this event...

...

23. As previously mentioned, there is dialogue that occurred between RUTTLEDGE and Officer REDMOND in secondary. Consequently, a rational thinking individual could reasonably conclude that Officer REDMOND had 'some' involvement regarding RUTTLEDGE's unauthorized departure from the port, in whatever form that may have been. Officer REDMOND was not on duty and therefore, he did not have the authority to release RUTTLEDGE. Furthermore, even though he did not have peace officer status as he was off-duty, he could have at minimal notified Officer HART and/or Officer SKOREY that RUTTLEDGE was leaving; however, he was neglectful to do this....

...

u) When shown the portion of the video where Officer REDMOND is pointing in the direction of Canada, he 'attempted' to suggest that he may have been flicking his cigarette ashes. Both SI ZBITNOFF and the Writer dismissed this theory with Officer REDMOND.

v) Officer REDMOND claimed that the direction he was pointing was not in the direction of Tsawwassen/ Canada and attempted to cloud the direction he was pointing and then began to theorize that he may have been pointing across the street for the address for the cab

...

q) Officer REDMOND claimed to not have seen or known that there was any alcohol in the vehicle (yet Officer HART claims alcohol was moved in the vehicle after he removed RANGE - he noticed it moved when he returned to the vehicle later).

...

13. When advised that Officer HART informed A/Supt HILDEBRAND that Officer REDMOND had released RUTTLEDGE [that night], Officer REDMOND stated words to the effect, [he put that in his report] "... to cover up for his fuck up that night!"

...

28. Furthermore, Officer REDMOND claimed that he had no idea that RUTTLEDGE ended back up his residence and that he had no idea about the meeting between his spouse and RUTTLEDGE later on that week following the incident. RUTTLEDGE knew that Officer REDMOND was under investigation from his spouse. The only way that his spouse would know this is if Officer REDMOND told her. To

*have Officer REDMOND steadfastly maintain that he had no idea about either of these issues is not believable.*

...

[Sic throughout]

[46] The PSI investigators concluded that the grievor's actions during the incident and during the investigation breached the parts of the Code relating to conflict of interest, discreditable conduct, off-duty abuse of authority, and a lack of candour.

[47] On January 18, 2018, the employer terminated the grievor's employment, after taking into account the PSI report and findings, the responses of the grievor and his bargaining agent representative to that report, the previous 15-day suspension on his record from June for attempting to influence its investigation into those earlier events, together with his long service and previous unblemished record before the incident. The employer concluded that the bond of trust that it required to maintain the employment relationship had been irreparably broken and that termination was the only disciplinary option open to it.

### **III. Testimony at the hearing**

#### **A. BSO Hart**

[48] BSO Hart was a credible witness who recounted the events of the incident in an accurate and a believable manner by relying on contemporaneous notes. He was a junior BSO at the time and appreciated that the driver, who was obviously intoxicated, was a very large fellow, who could handle himself. He was quite surprised to see the grievor lean forward from the backseat. It was a tense situation, and he felt that the grievor's comments to the driver of "Arrest you for what?" added fuel to the fire when he was trying to de-escalate the situation.

[49] Only when the driver's girlfriend intervened and advised him to cooperate was BSO Hart able to proceed with his efforts to administer the breathalyzer and subsequently arrest the driver and call the Point Roberts police when the driver refused to provide a breath sample.

[50] BSO Hart stated that he felt that it was important to deal with the driver first, and he fully expected all the passengers to be in the car when he returned. It was the first time that he had had to deal with a situation in which a driver refused to provide a breath sample. But after he called the police, he returned to the car and saw that the

passengers had left and that the alcohol that he had noticed earlier had been moved to a different place inside the vehicle.

[51] He noticed the grievor and his wife standing in front of the office having a cigarette, and he asked them about the driver's partner and where she had gone. BSO Hart was clear that after some initial confusion, either the grievor or his wife told him that she "had to have gone back to the United States." He was also very clear in his testimony about the report that he filed about the incident. He stated that he specifically asked the grievor if he told the driver's partner to leave and that the grievor had responded with, "Yes." The following is the relevant excerpt from his report made on Monday, August 7:

...

*I then returned to the vehicle to finish processing the travellers who were travelling with RANGE.*

*The vehicle was empty and I noted two pedestrians sitting in our parking lot on one of the benches.*

*The pedestrians were known to me as: REDMOND, Stanley Bruce, and his spouse MCCLELLAND, Mercedes Rae. I am aware they are both Canadian Citizens and I asked them what happened to the other female traveller. They stated that she had walked back to the US. I asked REDMOND if he had told her to do that and he stated, "Yes." I noted that both travellers appeared to be intoxicated. I asked them if they had anything they were bringing back with them, and they stated they did not. I then handed them back their identification....*

...

[52] When he examined the car, he noted that the bottle of Crown Royal had been moved to the rear passenger footwell where the grievor had been sitting. He could smell alcohol on the grievor, who was obviously intoxicated. He stated that a couple of full and a couple of empty beers were in the car, along with some red cups and a bottle of white wine.

[53] BSO Hart was interviewed as part of the subsequent PSI investigation. He was advised that the grievor had specifically disagreed with some of the statements in his report and had stated the following during the investigation:

- The grievor did not say or recall saying, "Arrest you for what?" during BSO Hart's initial questioning of the driver.

- The passenger, Ms. Rutledge, asked him for the Port's address, so she could call a taxi and go home. He gave it to her.
- He did not notice any booze, open or not, in the car.
- He did not tell Ms. Rutledge that she could leave.
- He did not direct anybody to leave.
- He and his partner walked home, and he went to bed.
- Based on the grievor's experience and training, BSO Hart did a "shitty job" that evening and did not instruct the passengers to stay or go when he took the driver away.

[54] In his testimony at the hearing, BSO Hart was asked if he would be willing to work with the grievor again, were the grievor reinstated. His answer was this: "No. He is not the kind of person I would want to work with him [*sic*] again especially because of how he spoke about me doing my job."

## **B. BSO Scorey**

[55] BSO Scorey testified that she had just completed her probation shortly before the incident and that she was working as the secondary support officer. She said that the evening at issue was a civil holiday, and there was heightened awareness of alcohol consumption.

[56] Normally, no one comes through the Port in the middle of the night. She was not directly involved in questioning the driver but was close enough to hear what took place. She overheard BSO Hart advise the driver in a loud voice that he would arrest the driver for hindering. At that point, she grabbed the ASD screening advice and stood in the doorway.

[57] She said that she recognized the driver because he was a Point Roberts resident, and he came through frequently. The Port is a unique border crossing of less than 5 km. Many dual citizens and frequent nexus travellers live, work, and travel regularly between Tsawwassen and Point Roberts.

[58] BSO Scorey eventually moved the vehicle after the driver was arrested and testified that the car smelled like a bar. She identified from photographs taken by the Delta Police that in the car were a glass with hard liquor, an open bottle of Crown Royal, three unopened Bud Light beer cans, some red plastic cups, and a bottle of wine that appeared unopened, together with at least one open Rolling Rock beer can. She confirmed that the glass of hard liquor was found in the rear passenger foot well of the seat where the grievor had been sitting.

[59] After the driver was arrested, BSO Scorey returned to the secondary area with BSO Hart, where the grievor and his wife were sitting and smoking cigarettes. When the BSOs asked about the fourth passenger, things became confused. Four identifications were handed in at the beginning of the incident, but when BSO Scorey went to return them to the passengers, it was noticed that two identifications were for the same individual, and that there was none for the fourth passenger. At one point, it seemed as if the grievor and his wife even questioned as to whether there was a fourth passenger.

[60] However, eventually, either the grievor or his wife said, “Oh ... she left.” BSO Scorey was surprised that a co-worker would tell someone to leave because, in her words, “We all know not to leave, and it is a very serious offence to leave without authorization.” BSO Scorey added this: “For the grievor and his wife, it should not have been so confusing. Did she go into Canada or not? She left, and I don’t know why she left, but she did leave.”

[61] When asked about her willingness to work with the grievor again, BSO Scorey testified that she had given considerable thought to the situation before she testified because she knew that she would be asked this question. She had concluded that based on the totality of this situation, it would be a liability if she had to work with him in the future. She testified, “The whole situation speaks to a very poor judgement call, including being in a vehicle with open alcohol in the first place.”

### **C. Dan Bubas, Chief of Operations**

[62] Dan Bubas testified that he has been employed with the CBSA since April 1997, became an acting supervisor in 2003, and became a chief of operations in 2015. He was assigned to the Port. In that role, he supervised the team of superintendents and was involved in the investigation and events that led to the grievor’s 15-day suspension in June of 2017.

[63] The grievor was disciplined because he left the Port without authorization, fully armed and in an unmarked Port vehicle to go to his personal residence, to address a potential concern that his wife had raised about a possible intruder in the house. However, Chief Bubas testified that a significant part of the reason that CBSA management decided to impose the 15-day suspension was because the grievor attempted to influence a junior BSO trainee’s report about the incident. Specifically, it

was found that the grievor attempted to influence the trainee to report that another BSO in charge had authorized him to take the vehicle and to include that information in his report, even though it was not true.

[64] That behaviour constituted a breach of the Code and was the reason that the letter contained the following warning:

...

*In the future, you are expected to adhere to CBSA policies and procedures and conduct yourself in a manner consistent with the CBSA Code of Conduct. Any future instances of misconduct may result in more severe disciplinary action being imposed, up to and including termination of employment.*

...

[65] Chief Bubas also testified about a pre-disciplinary meeting that took place after the PSI report had been completed but before CBSA management imposed discipline. Testifying from notes that were made contemporaneous with that meeting, Chief Bubas spoke about portions of the meeting during which he felt that the grievor had not been forthright and truthful. The notes go on for 14 pages, but the following portion summarizes the discussion about alcohol in the car at issue:

...

*Union Steward Laurie said the report mentions that there was open alcohol in the vehicle.*

*Chief Bubas stated that there are two issues - open alcohol in the vehicle, which is illegal, and then the alcohol was moved as well.*

*Union Steward Laurie said there were three people in the car once the subject was removed. BSO Hart did not see anyone move the alcohol.*

*Chief Bubas asked BSO Redmond if he moved the alcohol.*

*BSO Redmond said he did not.*

*Chief Bubas said or did you not move it or do you not remember?*

*BSO Redmond said that no, he was unaware that there was any alcohol in the vehicle.*

*Chief Bubas suggested that by that rationale he must not have seen anyone move it either.*

*BSO Redmond said correct. He did not see anyone move it.*

*Union Steward Laurie said that this item should not be included in the report. To say it was plausible is not the same as saying it is*

*based on the balance of probability. The balance of probability is 51%. Plausible is more like 10% - 20%.*

*Chief Bubas said this is part of the problem with having a witness who does not remember what he said or did.*

...

*BSO Redmond said that he asked his wife about the alcohol in the vehicle. She told him that Ms. Rutledge handed her the alcohol, and his wife put it in the back seat.*

*Chief Bubas asked BSO Redmond when she told him this.*

*BSO Redmond said that he asked her after he got the report - this past weekend.*

*Chief Bubas said that from an outsider's point of view, BSO Redmond's wife is taking a lot of actions which directly benefit BSO Redmond without his knowledge. Chief Bubas cited moving the alcohol, not telling BSO Redmond that Ms. Rutledge visited their house, and then later speaking with Ms. Rutledge about the investigation as examples of key information of which BSO Redmond claims to have no knowledge.*

*BSO Redmond said that in the context of alcohol in the vehicle, it was a very fluid situation. He was not sure that Ms. Rutledge and his wife even thought about it as hiding something.*

*Union Steward Laurie said it was kind of a childish way to hide something - under the front seat.*

*BSO Redmond said that moving the bottle around in the vehicle benefits the driver - not him. This could be why she moved it. The bottle had nothing to do with him.*

*Chief Bubas asked BSO Redmond if he was drinking in the car. He noted that other alcohol was apparently present - a tumbler and beer.*

*BSO Redmond said no. He drank before he left.*

*Union Steward Laurie said he does not think there was any elaborate reason to move the alcohol. This was not an attempt to foil an investigation.*

...

[Sic throughout]

#### **D. Ms. Rutledge - the passenger**

[66] Ms. Rutledge testified by videoconference at the hearing about the incident. She was shown screenshots of photos of the alcohol that was found in the car in the rear passenger seat on the floor, together with a glass that had some alcohol in it. She was then asked about the drinking in the car and gave the following testimony in chief:

*Q: Was there drinking in the car as you headed to the border?*

*A: I believe there must have been yes.*

*Q: Who was drinking?*

*A: Everyone.*

[67] In cross-examination, she was asked and answered these questions:

*Q: Do you have a distinct recollection of Redmond drinking?*

*A: A distinct recollection no.*

*Q: On the drinking you answered there was drinking?*

*A: Yes there was drinking in the car but as I said the whole night is fuzzy for me.*

[68] Ms. Rutledge also testified about her communications with the grievor's wife first on the evening of the event, inviting her to their house, and second a few days later, when she reached out for a meeting to discuss the pending investigation. Ms. Rutledge also confirmed in her testimony that in their second meeting a few days later, the grievor's wife was "hinting" for her to say during the investigation that the grievor did **not** tell her to leave the Port that evening and **not** to tell anyone that she had been at their house that evening, after Mr. Range had been arrested.

#### **E. Roslyn MacVicar**

[69] Roslyn MacVicar was the CBSA's regional director general, pacific region, and the decision maker in this matter. The parties agreed to admit her reports and other related documentation on consent. It was further agreed that there would be no negative inference for not calling her to testify personally to the matters in the reports and correspondence, in particular with respect to the termination letter of January 18, 2018.

#### **F. The grievor**

[70] The grievor testified that he started as a BSO in 1999 and that he took up his position at the Port in 2001. As background context to the issues raised in his earlier 15-day suspension, the grievor testified that at some point around 2010, an incident occurred in which he was involved in arresting a Point Roberts resident. It led to driving under the influence (DUI), assault, and criminal charges being filed against the resident. Apparently, the individual was mentally unstable. At some point, the individual made threats against the grievor and his family.

[71] The grievor's earlier 15-day suspension was imposed when he left the Port suddenly and without authorization, believing that his family was in danger from that individual, who had recently been released from prison.

### **1. The grievor's testimony about the incident**

[72] The grievor testified that on August 6, he and his wife took a Canadian taxi to the Point Roberts music festival because they knew they would be drinking, dancing, and partying. Around midnight, they were ready to leave and asked the bartender to call them a cab. There was no cell service, so they could not make the call themselves. After about an hour-and-a-half, he and his wife were still sitting on the side of the road waiting for the taxi when Mr. Range and his girlfriend, Ms. Rutledge, drove up and asked them if they wanted a ride home. They accepted the offer because otherwise, it would have taken them approximately 40 minutes to walk home.

[73] The grievor testified that he did not notice any alcohol in the car and that he did not know that drinking occurred in the car on the drive from Point Roberts to the Port. He stated that he advised the driver that he could stop before the border so that they could walk home, but the driver insisted that he would drive them home. He drove into the primary area, where BSO Hart commenced his initial questioning and screening. The grievor subsequently reported that initially, he thought that BSO Hart was joking, but then realized that he was actually conducting a DUI investigation.

[74] At the hearing, the grievor agreed that the question that he suggested the driver ask BSO Hart, which was "Arrest him for what?", during BSO Hart's DUI interrogation of the driver of Mr. Range, was "absolutely out of line". In the PSI investigation, he stated that he did not recall making that statement. At the hearing, he further testified that the fact that he was a senior BSO made that statement much more inappropriate. He also testified that thinking back on it, getting out of the car after the driver was taken away was not the best decision, but added, "It just seemed like we were left in the car for an awfully long time, but it was still poor judgement."

[75] On the key question about how or why Ms. Rutledge came to leave the border crossing after they left the car, the grievor stated that he recalled her saying that she did not have her identification and that she wanted to go home, and he recalled giving her the address so that she could call a cab. He testified that he had no recollection of telling her that she could leave or of giving her any directions. He testified that he

could not remember because he had consumed a large amount of alcohol during the day — approximately 10 beers and possibly a shot of hard liquor before and another one after the festival. He stated after they were stopped at the border, they all realized that they were much more intoxicated than they realized. He did recall Ms. Rutledge asking for a cab and how to go home and recalled giving her the Port's address so that she could tell the cab driver where to pick her up because she did not know the address.

[76] In the days after the incident, the grievor maintained that he had no knowledge that Ms. Rutledge had stayed at his house that evening. He testified that he went home and passed out. In addition, he testified that he had no knowledge that his wife visited Ms. Rutledge a few days later at the Point Roberts bar and alerted her to the fact that an investigation would be launched and that his job would be on the line or that his wife made certain suggestions to Ms. Rutledge, saying that she should answer questions by saying that she had been really drunk, could not recall very much at all, and had panicked and just left, but nobody had told her that she could leave.

[77] The grievor testified that his wife kept all that information from him, to “protect him”. And he further testified that he had no knowledge that his wife did it on his behalf.

[78] In cross-examination, he was questioned about the discrepancy between BSO Hart's account of how it came to be that Ms. Rutledge left and his reported account of that evidence. The relevant questions and answers are as follows:

*Q: At page 3 of Hart's report you agree that you told him “yes” when he asked you if you had told Rutledge she could leave?*

*A: I don't recall telling her to leave. I don't recall having those conversations. I'm trying to distinguish here between recollection and a lack of memory.*

*Q: You have no reason today to question if Officer Hart's report is accurate do you?*

*A: I have no recollection of saying that. Rutledge stated that I **didn't**.*

*Q: No sir Rutledge testified that she didn't remember.*

*A: I was very drunk it is more than possible. I have no reason to suggest that BSO Hart would lie.*

*Q: If you did release her would you agree that this would be extremely serious because you had no authority to release her?*

A: Yes.

[Emphasis added]

#### **IV. Summary of the arguments**

##### **A. The employer's position**

[79] The employer submitted that BSOs are key public service employees who, as peace officers, are responsible for maintaining integrated border services that support national security and facilitate the free flow of the public and goods across the borders. In this respect, a public service employee in the grievor's position must bear the scrutiny of the public that he or she serves, and as a peace officer, he or she is held to a higher standard of integrity and conduct (see *Stokaluk v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 24).

[80] As of the incident, the grievor had just been suspended for 15 days, which the employer submitted was very significant discipline. It was effectively a last-chance penalty, through which the grievor should have received the message about the importance of acting with the highest standards of integrity, especially with respect to investigations into Code matters.

[81] While the incident that gave rise to the discipline occurred when the grievor was off duty, it was an extremely serious situation that involved his less experienced co-workers. Uniquely in this case, all the off-duty conduct actually occurred at his workplace but when he was not at work. By his actions, instead of supporting his co-workers, he challenged them by leaning forward so that BSO Hart could see his face at a critical moment in the questioning.

[82] The employer and the PSI investigators concluded that the grievor did not tell the truth throughout the investigation. In argument, the employer's counsel submitted that "lying during an investigation process" and the grievor's "failure to take responsibility for his actions and attempting to mislead investigators" were serious aggravating factors that justified the termination.

[83] As examples of the grievor's lack of forthrightness or outright dishonesty, which led to breaking the bond of trust, counsel for the employer pointed to the following:

- 1) In the PSI interview and at the pre-disciplinary meeting, the grievor stated that he had not been aware of alcohol in the vehicle. BSO Scorey testified that when she opened the vehicle door, it smelled like a bar. Alcohol was present in the vehicle, and open liquor was in the very spot where the grievor had been sitting. Clearly, he had to have been aware that there was liquor, including open liquor, in the vehicle.
- 2) On the question of who told Ms. Rutledge to leave the scene, during the PSI interview, he was adamant that he absolutely did not direct her to go back south. And then, when questioned about why BSO Hart in his report wrote that the grievor had directed her to leave, he responded to the PSI investigators with this: "BSO Hart screwed up and so he was trying to make himself look good."
- 3) At the hearing, the grievor's testimony on that important point was that he did not recall telling Ms. Rutledge that she could leave the Port. Then, as noted earlier, in cross-examination, he testified as follows:

*A: I have no recollection of saying that. Rutledge stated that I **didn't**.*

*Q: No sir Rutledge testified that she didn't remember.*

*A: I was very drunk it is more than possible. I have no reason to suggest that BSO Hart would lie.*

[Emphasis added]
- 4) The employer submitted that it simply defies credibility to suggest that Ms. Rutledge went to the grievor's house after the incident at the Port but that he was unaware of it until he met with PSI investigators over a month later. It was uncontested that his wife spent hours that night drinking with Ms. Rutledge and that he spoke with his wife the next morning about the incident generally.
- 5) Likewise, the employer submitted that it is inconceivable that the grievor was unaware that his wife arranged to meet with Ms. Rutledge later that week to hint to her that she should not admit that she was at their house that evening or that the grievor had told her that she could leave the Port, because he was under investigation, and his job was on the line.

[84] The employer submitted that the grievor was deliberately not truthful throughout the process, and he admitted at the hearing that he did not show remorse during the investigation or the pre-disciplinary meeting. The first time he expressed remorse was during his testimony at the hearing, when he broke down in tears, saying that he had lost the only job that had made him feel proud of who he was individually and as a member of the community. Throughout the incident and the investigations, the grievor took on an argumentative and defensive posture. He did so again at the pre-disciplinary meeting, and he even called into question BSO Hart's motivation.

[85] As part of the assessment as to whether there was just cause for the termination on the facts of this case, the employer submitted that it was too late to “come clean” before the Board at the hearing. The grievor’s failure to take responsibility for his actions and his deliberate attempt to mislead the investigators were serious aggravating factors that justified the employer’s decision to terminate his employment.

[86] The employer submitted that the bond of trust between it and the grievor had been irreparably broken.

[87] The employer further submitted that the grievor’s conduct breached the Code, which establishes the terms and conditions of employment for the important BSO position. Breaching those conditions in all the circumstances of this case warranted the termination of the grievor’s employment, independent of any analysis done under *Millhaven Fibres Ltd. v. Oil, Chemical & Atomic Workers International Union, Local 9-670*, [1967] O.L.A.A. No. 4 (QL), about whether the off-duty conduct warranted discipline or termination.

[88] Despite that submission, and in the alternative, the employer submitted that the criteria for disciplining an employee for off-duty conduct set out in *Millhaven* have been met in this case.

[89] Relying on the former Board’s analysis of that decision in *Casey v. Treasury Board (Public Works and Government Services Canada)*, 2005 PSLRB 46 at para. 152, the employer submitted that it was not necessary for it to prove that all five of the *Millhaven* tests have been met. Proof of only one of them is sufficient to justify imposing disciplinary measures for off-duty conduct. The employer’s submission was that the grievor violated the following emphasized sections of the *Millhaven* test:

...

... *The five Millhaven tests are the following:*

the conduct of the grievor **harms the Company’s reputation** or product

the grievor’s behaviour **renders the employee unable to perform his duties satisfactorily**

the grievor’s behaviour **leads to refusal, reluctance or inability of the other employees to work with him**

the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees **places difficulty in the way of the Company properly carrying out its functions of efficiently managing its works and efficiently directing its working forces.**

...

[Emphasis in the original]

[90] Despite the grievor's 16 years of discipline-free employment before his termination, the employer submitted that his discipline record that in part listed Code violations, followed by his off-duty conduct of interfering in BSO Hart's DUI inspection at the Port during the incident, coupled with his lack of honesty and deception about those events and his deliberate attempts to mislead and influence the PSI investigation and the employer about the incident establish that the employer met its onus and established just cause for the termination.

[91] The employer submitted that the grievance should be denied.

#### **B. The bargaining agent's position**

[92] Counsel for the bargaining agent proposed a different way of examining the incident and the PSI's findings that followed. It was acknowledged that the grievor's misconduct on the night in question was serious and that it violated the Code. However, his counsel submitted that the employer exaggerated the extent of his misconduct, as he did not, four separate times, commit four separate Code infractions, as the PSI report appears to conclude. Rather, all the events that the employer relied on were based on one extremely bad decision that the grievor made while in an inebriated state; namely, as the bargaining agent's counsel stated, "He got into a car with a driver who was also inebriated!"

[93] Counsel for the bargaining agent submitted that the central issue in this grievance is the appropriateness of the penalty imposed and that the employer's decision to impose the termination penalty went too far and was excessive. Considering all the circumstances at the relevant time, the bargaining agent submitted that the employer's interests would have been better served had it imposed a lengthy suspension rather than the termination on the grievor.

[94] Counsel for the bargaining agent also submitted that because this adjudication had a *de novo* hearing, the Board is obliged not only to consider and evaluate whether the employer met its onus to establish just cause for imposing discipline to the point of termination in the first place, but also to consider and take into account the bargaining agent's evidence and arguments advanced at the hearing about the additional mitigating factors, to assess the grievor's rehabilitative potential and determine if termination was the appropriate discipline to impose, in all the circumstances.

### **C. The mitigating factors**

[95] At the hearing, to demonstrate his loyalty and dedication to his BSO job and his commitment to the CBSA and the federal government, the grievor abandoned any claim in his grievance for retroactive salary compensation and damages.

[96] As a remedy, the grievor confirmed at the hearing that he asks only for an order that he be reinstated with credit for his past service but without any back pay. In his view, this demonstrated his commitment and loyalty to the CBSA. At the same time, he acknowledged that he had successfully mitigated most of his employment losses through other sources of income over the years since his termination.

[97] Counsel for the grievor submitted that the grievor deserves another chance because of the following mitigating factors:

- 1) It was clear that when he broke down at the hearing and apologized to the employer, his family, and his co-workers for the impact that his actions had on them, he acknowledged the inappropriateness of his actions and demonstrated his remorse, which could lead to the re-establishment of the bond of trust that he broke.
- 2) As of the incident, he had a good discipline record as a 16-year employee. It was discipline-free until June of 2017, which was just a few months before incident.
- 3) The core incident occurred when he was inebriated and off duty, and it was not in any way premeditated.
- 4) He admitted that at that time, he had an unhealthy relationship with alcohol, which he has since worked on and resolved.
- 5) The employer cherry picked certain parts of the narrative in the PSI report and exaggerated the scope of his misconduct by claiming that he was guilty of four different Code violations.

- 6) The employer did not prove all the allegations, in particular the claim that he directed Ms. Rutledge to leave the Port prematurely.
- 7) The PSI's investigation focussed unduly on proving that he acted dishonestly or tried to manipulate the investigation rather than assessing the seriousness of the incident, which occurred when he was off duty and that everyone acknowledged was caused because he had been extremely inebriated.
- 8) The purpose of discipline is corrective, not punitive, and counsel submitted that the grievor has learned from his mistakes and should be given a second chance and that at the hearing, he was begging for another chance to prove to his employer that he is worthy of its trust.
- 9) Counsel challenged the employer's assertion that the grievor lied during the investigation and submitted that while there might have been some inconsistencies, they were not sufficient to prove dishonesty.

[98] The bargaining agent submitted that the termination, which is "capital punishment" in labour relations, was not the appropriate quantum of discipline in this case, considering all the circumstances and mitigating factors that were introduced at the hearing. There was no dispute about the seriousness of the conduct in question, but the grievor was a 16-year employee with a discipline-free record until the earlier 15-day suspension was imposed. For 16 years, the grievor took real pride in his role and identity in the job, and he expressed genuine remorse at the hearing about losing it, which gave him a sense of identity in the small, unique community and border crossing between Tsawwassen and Point Roberts.

## **V. Analysis and reasons**

[99] I turn now to an analysis of the issues raised in this grievance. For convenience, I will restate them, as follows:

- 1) Did the grievor engage in culpable off-duty conduct that justified the employer imposing discipline up to the point of termination?
- 2) Considering the *de novo* nature of the hearing, are there sufficient mitigating circumstances to find that the employer's decision to terminate the grievor was excessive?
- 3) If it was excessive, what disciplinary measure should be substituted?

## A. The approach

[100] In *Mirabelli v. Deputy Head (Department of Employment and Social Development)*, 2025 FPSLREB 48, Board Member Caroline Engmann succinctly summarized the approach that the Board has adopted and applied to disciplinary grievances, including termination grievances filed under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2). At paragraph 94 of that decision, she set out the approach as follows:

*[94] Arbitral jurisprudence has long established that an adjudicator in a disciplinary grievance case must pose three distinct questions. First, has the employee given just and reasonable cause for some form of discipline by the employer? If so, was the employer's disciplinary action an excessive response in all the circumstances of the case? Finally, if the adjudicator does consider the disciplinary action excessive, what alternative measure should be substituted as just and equitable? This is known as the "Wm. Scott" test. The Board has adopted and applied it consistently (see Basra, at paras. 24 to 29, and Wm. Scott, at para. 13).*

[101] When assessing whether an employer's disciplinary action was excessive, an adjudicator must consider several factors, including the following (from *William Scott & Co v. Canadian Food and Allied Workers Union, Local P-162*, [1976] B.C.L.R.B.D. No. 98 (QL) at para. 14):

...

*(i) How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?*

*(ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?*

*(iii) Does the employee have a record of long service with the employer in which he proved an able worker and enjoyed a relatively free disciplinary history?*

*(iv) [H]as the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?*

*(v) Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which*

*seems to arise particularly in cases of discipline for wildcat strikes)?*

[102] When assessing off-duty conduct, the following factors, set out in *Millhaven*, must also be considered, to determine if there was disciplinable off-duty conduct:

...

*... the conduct of the grievor harms the Company's reputation or product*

*... the grievor's behaviour renders the employee unable to perform his duties satisfactorily*

*... the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him*

*... the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees*

*... places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces.*

[103] The employer's counsel submitted that the grievor's off-duty conduct warranted discipline in accordance with a traditional *Millhaven* analysis but also submitted that in *Tobin v. Canada (Attorney General)*, 2009 FCA 254 at paras. 1, 15, 53, 54, 56, 57, and 60 to 62, the Federal Court of Appeal confirmed that when code-of-conduct violations are established in relation to off-duty conduct, they constitute a separate breach of the employment relationship, independent of the *Millhaven* criteria.

[104] Applying those principles to the facts in this case, it is also important to remember that as a BSO, the grievor was a peace officer in a position of authority and trust. Accordingly, he was held to a higher standard of conduct and integrity in the performance of his duties (see *Stokaluk*, at paras. 155 to 166).

## **B. Analysis**

[105] Factually, this is a very unique off-duty conduct case. While technically, the grievor's conduct occurred when he was off duty, the incident happened at his workplace and involved junior co-workers whom he had recently trained or mentored. It also involved members of the travelling public whom he had interacted with previously in his official role as a BSO.

[106] Counsel for the grievor acknowledged that the grievor's conduct was serious and that it warranted some discipline but argued that termination was excessive and that the PSI investigators exaggerated the claims or cherry-picked incidents, to make the grievor look bad.

[107] The grievor's counsel was correct to point out that all the grievor's behaviours originated with one bad decision, which he made while in an inebriated state; namely, "He got into a car with a driver who was also inebriated!" In general, of course, there is no prohibition against an employee becoming inebriated while off duty.

[108] However, the grievor was not terminated because he was found in the back seat of a car at the Port with open alcohol and with an inebriated driver. He was terminated because of his conduct that evening, which interfered with and undermined his junior co-workers' important DUI assessment, and, more importantly, because of his subsequent lack of forthrightness about those events and his attempts to influence the PSI investigation that followed the incident.

[109] It is difficult to assess now what the employer's disciplinary response would have been had the grievor simply cooperated from the beginning during the incident and in all parts of the investigation following the incident. His actions in leaning forward in the car and interjecting, "Arrest me for what?" on that evening, and even his admission that he made a mistake when he let the passenger leave for whatever reason, might very well not have attracted significant discipline or been serious enough to justify the termination of his employment.

[110] The conduct that was the most egregious and that went to the heart of the bond of trust and loyalty between the employer and the grievor was the extent of his lack of forthrightness, his evasiveness, and his deliberate denials, made to influence the outcome of the investigation for his benefit, together with his attempts, through his wife's agency, to influence and interfere with the testimony of a key witness.

### **C. The dishonesty about Ms. Rutledge's disappearance**

[111] The most serious part of the grievor's off-duty conduct during the incident relates to the disappearance of the passenger, Ms. Rutledge, and his inability to put forward a believable explanation as to what role he played in her disappearance.

[112] BSO Hart testified from notes made on the evening in question that he asked the grievor if he had told her that she could leave, and on that evening, his answer to BSO Hart was “Yes.” When confronted with that information during the PSI investigation, he adamantly denied making that statement and said that BSO Hart put that in his report to cover up his “shitty job” on the investigation that evening. Significantly, the grievor never changed his story on that point until his cross-examination at the hearing.

[113] I also find it disingenuous that throughout all the events, the grievor repeatedly referred to the fact that he was intoxicated on the evening at issue as his excuse for not recalling key aspects of the more culpable of the events that occurred, while he did remember other aspects. Even during his testimony at the hearing, he continued his main defence that he had been too intoxicated to remember anything about how the passenger came to leave the Port but finally conceded that because he had been so intoxicated, it was “more than possible” that he might have been involved in Ms. Rutledge’s decision to leave.

[114] I find that it is significant to note how he made that important concession under oath to one of the most serious of the accusations that arose from the incident. He first continued with his claims of debilitating intoxication, which allowed him to say this, under oath: “I don’t recall having those conversations”, but when he was faced in cross examination with the obvious fact that BSO Hart would have had no reason to lie, he finally conceded.

*A: I don’t recall telling her to leave. I don’t recall having those conversations. I’m trying to distinguish here between recollection and a lack of memory.*

*Q: You have no reason today to question if Officer Hart’s report is accurate do you?*

*A: I have no recollection of saying that. Rutledge stated that I **didn’t**.*

*Q: No sir Rutledge testified that she didn’t remember.*

*A: I was very drunk it is more than possible. I have no reason to suggest that BSO Hart would lie.*

*Q: If you did release her would you agree that this would be extremely serious because you had no authority to release her?*

*A: Yes.*

[Emphasis in the original]

[115] I find that during the investigation or at any time before his cross-examination, the grievor's refusal to admit that it was "more than possible" that he told Ms. Rutledge to leave, despite BSO Hart's notes to the contrary, establishes that on a balance of probabilities, he deliberately lied throughout the investigation about his role in the incident. He attempted to deflect his responsibility and blame BSO Hart because he knew that regardless of his level of intoxication, it would be a very serious offence if he admitted that he released her when he had no authority to do so. In short, he lied, to prevent the investigators from making findings of his wrongdoing. That was the exact opposite of being forthright and taking responsibility for his actions in the incident.

[116] Similarly, I find that the grievor deliberately took steps, with his wife's assistance, to influence Ms. Rutledge's testimony. She was the key witness. This finding is particularly troubling because it was the second time in two months that separate PSI investigators concluded that the grievor attempted to influence or interfere with the testimony of a witness in a Code investigation, for his benefit.

[117] The grievor would have everyone believe that his wife's actions to meet with Ms. Rutledge and to coach her on how she should answer in the PSI investigation were taken solely by her, without his knowledge, to protect him. The PSI investigators concluded that on a balance of probabilities, this was not true. They concluded first that it was very unlikely that his wife would have taken it upon herself to meet with Ms. Rutledge without the grievor's knowledge. Second, she would not even have known that an investigation was to happen unless he told her.

[118] Based on all the evidence, including that of the grievor, I agree with the PSI investigators that it is simply not believable that his wife took it upon herself, without talking to him, to contact Ms. Rutledge and offer suggestions on how she could respond to the investigators' questions.

[119] Had Ms. Rutledge not broken down during the PSI investigation, no one would ever have known that the grievor's wife had arranged a clandestine meeting with her, to warn her about the investigation and to coach her on what to say. It was a very significant event. Obviously, it involved the grievor, but he steadfastly denied having any knowledge of it until after the PSI investigators found out about it. Yet, between him and his wife, surely, he was the only one with real knowledge about how Ms.

Rutledge's testimony could have been harmful to him in a subsequent investigation into his role in the incident.

[120] On a balance of probabilities I simply do not believe the grievor's story that he passed out and that he was completely unaware that Ms. Rutledge had walked to his house and stayed overnight after the incident and that his wife never spoke to him about any of the interactions, including the clandestine meeting with Ms. Rutledge, until after the PSI investigation in September.

[121] During the investigation, even when the PSI investigators confronted him with video evidence showing him talking for several minutes with Ms. Rutledge that night and then pointing in the direction of Canada, he continued to refuse to admit to any wrongdoing and tried to explain it by telling the investigators that he did not point to Canada; he was just "flicking his cigarette". This self-serving and quickly changing explanation demonstrates that whenever the grievor was confronted with evidence that challenged his version of events, he did not admit it but rather looked to deny or twist it in his favour.

[122] In her testimony, BSO Scorey summed up as follows quite simply how the grievor's story just did not make sense:

*Every BSO knows that a traveller is not supposed to leave the port of entry without authorization and yet that's what just happened and Senior BSO Redmond was there and if he didn't tell her to leave he didn't do anything to stop her or even report to myself or BSO Hart that she was leaving.*

#### **D. Further examples of a lack of honesty**

[123] Overall, I find that the grievor's intentional approach to the investigation was to look for a way to avoid admitting wrongdoing and limit the investigators' ability to find any wrongdoing, sometimes by outright denying matters that he had to have known were true. Another example occurred in his initial interview, when he unequivocally told the investigators this: "I did not say 'arresting you for what?'" But then, shortly after, he modified his statement this way: "I do not recall making the statement 'Arrest you for what'."

[124] At the hearing, his testimony was completely different. He acknowledged fully that he leaned forward in the car and made the comment, "Arrest you for what", and

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

that it was “absolutely out of line”, especially given his senior BSO position. He admitted that it was inappropriate for anyone, let alone a senior BSO, to make such a remark, as it undermined BSO Hart’s authority during a critical moment of the inspection.

[125] It begs the question as to how the grievor seemed to have no difficulty remembering making the statement almost seven years after the incident, but in September 2017, only a month after it, he absolutely denied or said that he did not recall making it.

[126] I find that the grievor’s lack of honesty and forthrightness throughout the investigation process, and his persistent denial of any knowledge or involvement surrounding Ms. Rutledge’s disappearance is serious misconduct that compounded and elevated his off-duty conduct on the night in question to the point that the employer was warranted to consider terminating his employment as an appropriate disciplinary response.

#### **E. The grievor’s disciplinary record**

[127] As of the incident, the grievor had the recent 15-day suspension on his file.

[128] Before that incident, the grievor had a clean record of 16 years of service. On that incident, the employer acknowledged and expressed some sympathy for his personal circumstances, which caused him to leave his post armed and in an unmarked Port vehicle. But the Code breach that occurred when he attempted to influence a PSI investigation for his benefit was the most significant factor in CBSA management’s assessment of the penalty.

[129] The concept of progressive discipline permits an employer to impose penalties of increasing severity, up to termination, particularly when the employment offences are similar. In this case, the employment offences were similar and were only months apart. The PSI investigation into the incident found that the grievor’s actions that evening were actually a more serious breach of the Code than the events in June. The investigation concluded that the grievor’s actions breached four different sections of the Code; namely, conflict of interest, discreditable conduct, off-duty abuse of authority, and a lack of candour.

[130] Based on the findings in the PSI report, CBSA management concluded that the grievor was not forthright about his role in the incident, had not accepted any responsibility for it or acknowledged any wrongdoing on his part, and had not shown any remorse. As a BSO, he was in a position of trust and authority. And his actions and behaviour surrounding the off-duty events at issue and his conduct in the earlier PSI investigation that gave rise to the 15-day suspension, which was on his file, had irreparably broken the bond of trust necessary for his continued employment.

[131] Taking into account all the circumstances, I have concluded that the grievor committed culpable off-duty conduct during the incident on the evening of August 6, 2017, which justified imposing discipline to the point of termination — either on the basis of the *Millhaven* criteria or based on the findings of the PSI investigators as to his breaches of the Code.

[132] The previous 15-day suspension on his file, and the timing of the incident, together with his subsequent behaviour of attempting to influence the outcome of the investigation and his lack of remorse or acknowledgement of any wrongdoing, compounded the situation to such a degree that the termination of his employment was an appropriate disciplinary response for the employer to consider, even with his 16 years of a discipline-free record.

#### **F. The mitigating factors**

[133] Considering the *de novo* nature of the hearing, are there sufficient mitigating circumstances to find that the disciplinary measure was excessive?

[134] In *Rossin-Arthiat v. Deputy Head (Canada Border Services Agency)*, 2025 FPSLRB 53, a recent Board decision involving the termination of a BSO for off-duty conduct, Board Member Amélie Lavictoire stated the following:

...

*[210] A balancing of the mitigating and aggravating factors forms part of the Board's assessment of whether an employer's disciplinary measure was excessive in the circumstances. That assessment requires the Board to determine whether the grievor demonstrated rehabilitative potential sufficient to conclude that the bond of trust between him and the respondent is not irreparably broken.*

...

[135] To support his submission that he deserves a second chance, in his testimony at the hearing, the grievor expressed his remorse and broke into tears. He apologized to everyone involved in this matter for his conduct. At the hearing, he stated this:

*I have now learned from what happened and my decision and that my actions not only impact me but all of those associated with me in this case it's all of my colleagues and everybody here. I've learned from my mistake. I have no ill- feeling about the CBSA it was my doing that caused the investigation. At that time I had an unhealthy relationship with alcohol but I have since corrected that through counselling. I know that whether I am on duty or off duty I am held to the highest ethical standard and I am sorry that I let my employer down. I know now I have to make better decisions and be aware of the consequences of my decisions.*

[136] When asked why he seeks reinstatement after all the circumstances and time that has passed, he said this:

*I am asking to be reinstated because being a border services officer was my identity for 16 years. I was proud to represent the CBSA in my community and my role as a Border Services Officer provided me with a real sense of fulfilment that I have never been able to find anywhere else.*

[137] In cross-examination, he admitted that during the entire PSI investigation, he demonstrated no remorse and at one point even tried to pass the blame to his colleague BSO Hart for the disappearance of the passenger, Ms. Rutledge, by saying that BSO Hart was covering up because he had done a “shitty job”.

### **G. Analysis of the law**

[138] Genuine feelings of remorse, recognition of wrongdoing, apologizing, and accepting responsibility for one's actions are at the heart of an adjudicator's assessment of an employee's rehabilitative potential when that employee is guilty of misconduct. However, when those expressions are made after an unrepentant pattern of attempting to influence an investigation into the misconduct, with continued denials up to the hearing, then it is legitimate to call into question the grievor's sincerity in coming clean and making those expressions at the hearing.

[139] In *Rossin-Arthiat*, Board Member Lavictoire stated the following about expressions of remorse that are acknowledged at the last moment:

*[220] Recognizing misconduct is part and parcel of taking responsibility for one's actions. However, when misconduct is acknowledged at the last possible moment, i.e., at the hearing, it may appear self-serving, and the significance of that acknowledgement as a mitigating factor is diminished.*

...

*[250] For the recognition of misconduct to constitute a mitigating factor that attracts significant weight, it must be more than [sic] a simple acknowledgement. It must be accompanied by a demonstrated understanding by the grievor of the nature of his misconduct, how he breached his duties and obligations, and the nature and gravity of the potential consequences for him, his employer, and the broader public that flowed from that misconduct.*

*[251] In the absence of such a demonstrated understanding, the employee's return to the workplace could be seen to constitute a genuine risk (see Stokaluk, at para. 172).*

...

[140] A lack of cooperation and dishonesty during an investigation or at a hearing can constitute aggravating factors to consider when assessing the disciplinary measure that was imposed. Both are external considerations from whether misconduct occurred but can influence the determination of the severity of the penalty that should apply to the misconduct at issue (see *Touchette v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 72 at para. 78).

[141] In another former Board decision involving a Code investigation, *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43, Board Member Ian Mackenzie made the following comments on how failing to cooperate or to be forthright in an investigation can impact the penalty:

...

*[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.*

...

**H. Assessing the grievor's rehabilitative potential**

[142] I acknowledge that at the hearing, the grievor presented himself as an employee who expressed remorse and accepted responsibility for his off-duty conduct during the incident. However, even at the hearing, he did not seem to understand that the true seriousness included his conduct during the investigation and his lack of forthrightness in response to the PSI investigators' questioning of him.

[143] On all the evidence, I find that the grievor intentionally tried to influence the outcome of the investigation into his wrongdoing rather than cooperate and work to assist the investigation. Had he done the latter, he might have been able to demonstrate to his employer that he could be trusted and be honest and forthright in accordance with his duty and oath as a BSO. Definitely, the off-duty events of the incident warranted an investigation, but his subsequent actions and responses of trying to control the investigation's outcome led to the more serious findings that the Code had been breached.

[144] Honesty and acceptance of responsibility are foundational to the bond of loyalty and trust required to create and maintain a positive employment relationship. This should have been evident to the grievor, especially in a situation in which he was being questioned by PSI investigators who were conducting a Code investigation into whether he had breached the foundational and ethical standards and integrity required to do his job.

[145] Both of the grievor's co-workers testified that they would not want to work with him in the future. Given what the grievor said about how BSO Hart had done his job and the totality of the situation, they testified that it would be a liability to work with him again.

[146] At the hearing, the grievor presented a different picture of himself as an apologetic, tearful employee who was eager for reinstatement and a second chance. The growth in his personal awareness is to be commended and encouraged; however, I find that it is not sufficient to convince me that the bond of trust and loyalty that was broken could be repaired or restored were he reinstated.

[147] The grievor's disingenuous conduct during the investigation cuts to the heart of the bond of loyalty and trust that is essential to maintain an employment relationship.

In the end, truly, his actions during the PSI investigation into the incident caused the bond of loyalty and trust upon which the employment relationship is based to become irreparably broken.

[148] Whether the grievor's conduct is treated as off-duty conduct and analyzed under the *Millhaven* criteria or analyzed as a breach of the Code, in both approaches, taking into account the mitigating evidence and his testimony that was led *de novo* at the hearing, I find that the employer's decision to impose the disciplinary penalty of termination remains appropriate and is not excessive.

[149] The grievor's expression of remorse at the hearing, together with his apology and acknowledgement of how his actions impacted everyone in this case, are not sufficient mitigating factors to repair the trust and loyalty upon which the employment relationship is founded. Therefore, there is no basis to substitute the penalty in these circumstances.

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

*(The Order appears on the next page)*

**VI. Order**

[151] The grievance is denied.

December 31, 2025.

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