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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

**GAVIN PETERSON**

Grievor

and

**TREASURY BOARD  
(Statistics Canada)**

Employer

Indexed as

*Peterson v. Treasury Board (Statistics Canada)*

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:** Juliana Saxberg, counsel

**For the Employer:** David Labelle, counsel

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Heard at North Bay, Ontario,  
January 28 to 31, March 24 and 25, and October 2 and 3, 2025.

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**REASONS FOR DECISION**

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**I. Overview**

[1] This grievance is about the termination of employment of Gavin Peterson (“the grievor”), a supervisor working in a Statistics Canada call centre. Statistics Canada terminated the grievor’s employment, alleging that he falsified reports of the monitoring that he was supposed to conduct of interviewers employed at the call centre.

[2] 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.

[3] I have concluded that the employer has demonstrated on the balance of probabilities that the grievor committed misconduct. The employer has proven that, rather than listen to interviewers’ calls and enter comments based on what he heard, the grievor made up comments — sometimes based on his knowledge of their work over the years, and sometimes based on nothing. The employer has demonstrated that he did so on 41 occasions over a roughly 4-month period, more even than the 38 times cited in his letter of termination. The grievor’s dishonesty was a form of misconduct justifying discipline.

[4] I have also concluded that the termination of employment was not excessive in the circumstances. The grievor’s repeated dishonesty in a fact-finding meeting and the hearing before me, coupled with his failure to recognize the importance of honesty and the gravity of being dishonest, are aggravating factors that far outweigh the other factors that mitigate against the termination of employment.

[5] The grievor raised issues concerning his health. I have concluded that the grievor has demonstrated that he has a disability. However, he has not demonstrated any link between his disability and the termination of his employment. While I considered his disability as a mitigating factor when assessing the appropriate disciplinary penalty, I concluded that it was outweighed by other factors in this case.

[6] Therefore, I have denied the grievance.

[7] My reasons are divided into nine parts, as follows:

- Part I: This overview;
- Part II: Introduction to the parties and their witnesses;
- Part III: Outline of my approach to credibility and reliability, and an overview of the credibility and reliability of the witnesses;
- Part IV: Description of the work of the call centre in Sturgeon Falls;
- Part V: The grievor's conduct;
- Part VI: The grievor's discussions with management about his struggles as a supervisor;
- Part VII: The grievor's health and its consequences in the hearing;
- Part VIII: The grievor's conduct amounted to misconduct warranting discipline;
- Part IX: The grievor's misconduct warranted termination, in light of the aggravating and mitigating factors;
- Part X: Discussion of other arguments raised by the grievor that do not fit under other headings; and
- Part XI: The order in this grievance.

## **II. The parties and their witnesses**

[8] The grievor was employed as a federal public servant from December 2010 until the termination of his employment on May 23, 2023. He was hired with Statistics Survey Operations, and his employment was transferred to Statistics Canada on July 7, 2021. He began his career as an interviewer and then, in 2012, was promoted to supervisor. He remained a supervisor until the termination of his employment. I will explain the duties of an interviewer and supervisor shortly.

[9] The employer called three witnesses in this grievance: Robert Stevenson (regional director), Cynthia Noel (currently a district manager, but a regional program manager in 2023), and Sylvie Beaudry (currently a regional program manager, but a data collection manager in 2023). In addition, Susan Masse (a regional program manager who acted as the district manager for a time in 2023) was mentioned several times during the testimony, although she did not testify. Put briefly, Ms. Beaudry discovered the grievor's misconduct and prepared a report about it, Ms. Noel conducted the fact-finding and then the disciplinary investigation into the misconduct and made the recommendation to terminate the grievor's employment, and Mr. Stevenson terminated the grievor's employment because he had the delegated authority to do so. Ms. Masse's involvement was more peripheral, and is described when necessary later in this decision.

### III. Credibility and reliability

[10] By the conclusion of the testimony in this case, there were few significant factual disputes. However, the essence of the misconduct alleged by the employer is dishonesty. Therefore, the reliability and credibility of the witnesses was important, to resolve the factual disputes that remained and to assess the suitability of the grievor for reinstatement to his employment.

[11] I use the terms credibility and reliability separately because they are different.

[12] Credibility is about the honesty, sincerity, or veracity of a witness. One of the leading decisions on assessing credibility is *Faryna v. Chorny*, [1952] 2 DLR 354 (BC CA), where the Court explained:

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

[13] Reliability is about other factors that influence the accuracy of testimony. Witnesses can sincerely believe that their evidence is true, but that does not mean that what they are saying is reliable, in particular when their recollection contains contradictions or is inconsistent with contemporaneous records.

[14] As the Ontario Court of Appeal has put it, “Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence ...” (see *R. v. H.C.*, 2009 ONCA 56 at para. 41).

[15] I may accept some, none, or all the evidence of a witness depending on their credibility and reliability on particular points of their evidence.

[16] I have assessed the reliability and credibility of the witnesses by following these factors, identified in *McPherson v. Global Growth Assets Inc.*, 2025 ONSC 5226 at para. 32:

[32] ...

- a. if the evidence makes sense by being logical or plausible;
- b. if there are inconsistencies or weaknesses in the evidence of the witness, such as internal inconsistencies, prior inconsistent statements, or inconsistencies with the evidence of other witnesses;
- c. if there is independent or documentary evidence to confirm or contradict the witness's evidence, or a lack of such evidence;
- d. the witness's demeanour, including their sincerity and use of language, although this must be considered with caution; and
- e. if the witness, particularly one that is a party in a case, may have a motive to fabricate.

[17] I will explain my credibility or reliability findings on specific points as I describe the evidence in this decision, especially when the testimonies of witnesses differed. However, I will briefly describe my overall impressions now.

[18] In general, the grievor was not a reliable witness about the events surrounding his conduct and his termination of employment. His testimony was often flatly contradicted by contemporaneous documents, and he forgot key events. To give one example, he testified that he could not recall the disciplinary meeting that took place, even after being shown the meeting invitation and hearing the testimony of Ms. Noel about that meeting. To give another, he testified that he was called into the fact-finding meeting the day after a strike concluded; in fact, the fact-finding meeting was held on March 10, 2023, the disciplinary meeting was held on March 28, the grievor's bargaining unit was on strike between April 19 and May 1, and he was terminated from his employment on May 23.

[19] The grievor was not always a credible witness either. In this decision, I will address some of the more important inconsistencies with the grievor's testimony, as well as times when he speculated about his misconduct instead of testifying solely about things that he remembered.

[20] I found Ms. Noel to be a credible and generally reliable witness. There was one notable error in her testimony (about whether supervisors could view the screens of

interviewers conducting business surveys), but otherwise, her testimony was consistent with the underlying documents, including her contemporaneous notes of discussions with the grievor.

[21] I did not find the evidence provided by Mr. Stevenson very helpful. He did not have firsthand knowledge of this situation, which is normal for a senior manager called in because he has the delegated authority to make the decision. He candidly testified that he did not remember the briefing that he was given about this case and that he did not remember the details of the case, aside from those set out in the termination letter. I also concluded that he exaggerated the harm done to the employer by the grievor's misconduct, as I will explain in greater detail later.

[22] Finally, I found Ms. Beaudry both credible and reliable. She was the only witness with no interest in the case one way or another because she did not make any recommendations about the grievor's continued employment. She was remarkably fair to the grievor, testifying about his strengths and weaknesses. She also knew the grievor the best out of all the witnesses; he helped trained her when she was starting as an interviewer, they were colleagues when she was promoted to supervisor, and she was his manager at the end of his employment. The grievor acknowledged that she was a dedicated and forthright employee, and he testified that she was the manager who understood and defended him when he was having other issues at work. Finally, her testimony was clear, straightforward, consistent with all the documents filed, and logically consistent.

#### **IV. The work of the call centre in Sturgeon Falls**

[23] The grievor spent his entire career in the federal public administration working at a call centre located in Sturgeon Falls, Ontario. Therefore, I will describe the work of that call centre and of the several positions that are relevant to this case.

[24] Statistical surveys used to be conducted by a separate employer known as Statistical Survey Operations (SSO). SSO employed the interviewers and senior interviewers, and the rest of the employees needed to run a call centre (including management) were employed by Statistics Canada in the core public administration. Employees of SSO were gradually rolled into the core public administration and the department of Statistics Canada; the senior interviewers were changed to data collection supervisors (classified at the CR-5 group and level) employed by Statistics

Canada on July 8, 2021, and the interviewers became data collection clerks (classified at the CR-3 group and level) on November 23, 2023. SSO was finally abolished by removing it from Schedule V of the *Financial Administration Act* (R.S.C., 1985, c. F-11) on September 20, 2024 (SOR/2024-182).

[25] The witnesses in this matter referred to the data collection clerks as “interviewers” and to the person in a data collection supervisor position as a “supervisor”, so I will do the same in this decision.

[26] The duties of interviewers and supervisors are what someone would expect from their job titles: interviewers call people, and supervisors supervise them. Statistics Canada has approximately 30 statistical surveys that it conducts at different times during the year. The surveys are largely divided into 2 main categories: business and social. Interviewers are assigned to a survey for a number of weeks. Interviewers work variable hours because business surveys are typically conducted between 9 a.m. and 5 p.m., when businesses are open to answer questions, while social surveys are conducted more in the evening, when individuals are more likely to be home. Interviewers have a script to follow for each survey, to obtain data that Statistics Canada needs to produce its reports.

[27] Supervisors are responsible for a team of approximately 15 to 20 interviewers. Supervisors are responsible for training new interviewers, training interviewers when they move between surveys, and providing ongoing coaching to interviewers. Supervisors track the interviewers’ hours of work, enter their leave claims, and prepare their performance evaluations. While supervisors are assigned a team of interviewers working on a particular survey, they can be called by interviewers on other teams with questions about other surveys that the supervisors are familiar with.

[28] Supervisors are also responsible for monitoring the performance of interviewers. Since Statistics Canada terminated the grievor for falsifying monitoring reports, the witnesses spent some time describing how supervisors monitor the performance of interviewers.

[29] The witnesses referred to two types of monitoring: Quality Control Feedback System (QCFS) monitoring, and supervisory monitoring. This case is about QCFS monitoring.

[30] Supervisors are assigned to conduct QCFS monitoring for a given day, typically their entire 7.5-hour shift. Before the COVID-19 pandemic, all the interviewers and supervisors worked in the same building in Sturgeon Falls. Therefore, a supervisor assigned to conduct QCFS monitoring would physically move to a different area of the floor from the interviewers they were monitoring. They would dial into an interviewer's extension and listen in on their calls. They could also view the screen used by an interviewer, so they could watch the interviewer scroll down through the script during the call. Each monitoring session was expected to last approximately 20 minutes and could not last less than 15 minutes. Supervisors were expected to complete between 8 to 12 monitoring sessions each day they were assigned that duty. During a monitoring session, the supervisor would enter comments in the QCFS form. If the interviewer made an error, the supervisor would note the error. There were 4 categories of errors, ranging from minor errors that would be addressed during monthly feedback to critical errors that required the supervisor to intervene during the interview.

[31] When assigned monitoring, supervisors are instructed not to do anything else other than monitoring. They are not available to answer questions, and they are instructed to close their email so that they can concentrate on the interview calls. Between the approximately 20 minutes spent listening to the call and then completing the QCFS form, each monitoring action takes approximately 30 minutes.

[32] Interviewers are graded based on the number and severity of errors that they commit. If an interviewer makes more errors, they are monitored more frequently. If the interviewer continues to struggle, then supervisors conduct supervisory monitoring. Supervisory monitoring is conducted the same way (by listening in on calls), but it is not tracked using the QCFS form. This means that when supervisors report more errors in QCFS monitoring, they end up creating more QCFS and then more supervisory monitoring for themselves to do.

[33] As a result of the COVID-19 pandemic, in 2020 the interviewers and supervisors were sent home. Statistics Canada purchased a virtual call centre (VCC) shortly before the pandemic and deployed it so that its interviewers could work from home. Monitoring was initially put on hold in 2020 while the VCC was rolled out, but in December 2020 or January 2021, supervisors were assigned monitoring again. In addition, supervisors could no longer see the screens of interviewers when they were conducting social surveys. The grievor testified that he could still see the screens of

interviewers conducting business surveys, and while Ms. Noel testified that they could not, the employer conceded during closing submissions that the grievor's recollection was correct.

[34] When a supervisor was doing monitoring after the roll out of the VCC, they were able to see when the interviewer whom they were monitoring had connected to a call. They could then connect to the same call using the VCC and listen in. The VCC could track every call that was made and could identify when supervisors were listening in.

[35] Monitoring became a lot more frequent than it had been pre-pandemic. The grievor testified that before 2020, he would have had one or two monitoring shifts each month; Ms. Noel's evidence was similar, and she testified that supervisors had approximately three monitoring shifts each month.

[36] The grievor testified that after the VCC's implementation in late 2020 or early 2021, he had at least three monitoring shifts a week. Ms. Noel testified that she did not know how many monitoring shifts the grievor had but that it could have been two to three a week. The monitoring report of the grievor's monitoring activities (which I will be saying much more about later) runs from November 8, 2022, to February 23, 2023. According to the monitoring report, he was conducting QCFS monitoring on November 8, 15, 19, 24, and 27, 2022. There was then a gap for the month of December, with no monitoring shifts. The report then identifies monitoring shifts on January 6 and 15 and February 19 and 23, 2023.

[37] During the period covered by the monitoring report, the grievor never had three QCFS monitoring shifts in a week; however, he had more than the one to three shifts per month that the witnesses stated were common before 2020. This also does not include supervisory monitoring; when the grievor testified about the volume of monitoring that he had to do, he did not expressly distinguish between QCFS and supervisory monitoring.

[38] For context behind the increase in monitoring, in 2020 and 2021, Statistics Canada was responsible for contact tracing for COVID-19. Ms. Noel testified that Statistics Canada hired a large number of new interviewers to conduct contact tracing and that it hired five new supervisors to supervise them; while new supervisors were being trained, other supervisors would have had more monitoring to do. Additionally, the grievor testified that he used to supervise his interviewers in person by walking

around and listening to them or speaking with them in person about issues. Since the interviewers were working from home, it is logical that monitoring became more important because it was the only way to supervise an interviewer's job performance.

[39] The grievor testified that supervisors do not like monitoring. However, he never testified about any discussions he had with other supervisors to confirm that they do not like monitoring. He explained that he does not like monitoring because he had to just listen to calls (and, sometimes, listen to static while waiting for a respondent to answer an interviewer) all day, without being able to intervene immediately to fix whatever problem he heard. He also testified that at least three supervisors did nothing but monitoring, but he said that they were miserable people in general. Ms. Noel testified that she did not recall any supervisor complaining about having to do monitoring, but she did admit that it was not supervisors' preferred task, and one of the reasons was that monitoring involved giving difficult or critical feedback, which is one of the reasons not to like it. I am satisfied that the evidence indicates that most supervisors do not like monitoring. However, I am not satisfied that monitoring is an onerous or demeaning task.

[40] The grievor testified that monitoring is unimportant and that "nobody took it seriously." He later testified that some supervisors took it seriously but that others napped during their monitoring sessions. He never reported them to management because he said that supervisors do not do that to each other. Ms. Noel did not testify directly about the importance of monitoring (and the allegation that other supervisors napped during monitoring was not put to her in cross-examination), but she did testify that the most important job of a supervisor is to coach interviewers. However, the grievor's evidence about the unimportance of monitoring is contradicted by the instructions for how to complete it. As I said earlier, supervisors are instructed to focus solely on monitoring and to turn off their email so that they can focus on what the interviewers are saying. This does not suggest that the task of monitoring is unimportant.

[41] To provide the final bit of context to this workplace, supervisors report to a data collections manager. The supervisors are divided into groups that report to a data collections manager for administrative purposes; however, the managers collectively manage the work of all the supervisors. Despite their title, they are unionized employees. The grievor reported administratively to Ms. Beaudry as his data collections

manager at the time of his termination of employment. She in turn reported to Ms. Noel, who held the title of Regional Program Manager at the time of the grievor's termination. That was a relatively recent phenomenon, as in 2022 and part of 2023, Ms. Beaudry reported to Ms. Masse (a different regional program director). Both Ms. Beaudry and Ms. Noel were promoted after the events that led to the grievor's termination of employment; Ms. Beaudry is now a regional program manager, and Ms. Noel is now the district manager.

## **V. Conduct by the grievor**

[42] In addition to being the grievor's data collections manager for administrative purposes, in late 2022, Ms. Beaudry was assigned to train a batch of supervisors who had either just been promoted from interviewer positions or were returning from leave. After concluding that training, she felt that there was not enough follow-up with the new supervisors to find out how they were doing with monitoring. Therefore, she looked into the QCFS, to see the feedback that the new supervisors were giving and to make sure that it was timely and personalized to the interviewer.

[43] Using the QCFS in this way was new, and Ms. Beaudry testified that she thought that it was "cool" that she could see what the supervisors were doing. Therefore, she started to look at the monitoring sessions of more experienced supervisors as well. After trying this out for a week or two, she got to the grievor. She noticed that some of the comments that the grievor left the interviewers did not make sense, given the nature of the interviewers' calls. For example, he would leave a comment about the interviewer such as "leaves proper voicemail when warranted", when the interviewer's call summary indicated that they reached an individual and interviewed them during that call. Ms. Beaudry suspected that the grievor was not actually monitoring calls. She reported her concern to Ms. Masse, who asked her to look into it further. While she did not recall the precise date that she did this, she testified that she found out about the grievor's conduct and reported it shortly after February 23, 2023.

[44] Ms. Beaudry went through the grievor's monitoring sessions on November 8, 15, 19, 24, and 27, 2022, and January 6 and 15 and February 19 and 23, 2023. She prepared a summary of her findings in a Microsoft Word document in which she cut-and-pasted entries from the QCFS. She also went into the records of the VCC and noticed that, on most occasions, the grievor had not signed into the VCC and so could not have been listening to the calls that he said he monitored. She also noticed what

she called “discrepancies” between the grievor’s comments and the information about the calls that took place. I gave one example earlier, i.e., complimenting an interviewer for leaving a voicemail when the length of the call indicated that the interviewer spoke to a person. He left comments about calls for times when interviewers had not been on the telephone. In one case, he left positive monitoring comments about an interviewer who was absent from work.

[45] In total, Ms. Beaudry examined 51 monitoring samples for those dates. She noted that this was a well-below-average rate of monitoring, given that supervisors should be completing at least 8 monitoring sessions each day and the grievor was usually carrying out between 5 and 7 sessions. He was also not sending an end-of-shift report as required. These were minor issues and did not form the basis of his termination of employment.

[46] Much more importantly, of those 51 QCFS monitoring entries, the grievor was connected to the VCC for only 9 of them. Three of those sessions are the 3 sessions he completed on November 8. Otherwise, he was connected to the VCC for only 2 of 5 sessions on November 15, 2 of 5 sessions on November 19, 1 session on November 24, and 1 session on November 27. Even the session on November 27 is suspect because the grievor wrote as a comment that the interviewer “[r]eads scripts as worded and probes for best answer”, but the interviewer’s call log for the 28-minute period of monitoring indicates that he did not speak to anyone and that he either hung up or left a voicemail for the person he was trying to interview.

[47] Ms. Beaudry prepared this monitoring report and gave it to Ms. Noel, who became involved at that stage. She discussed it with Ms. Noel and explained her findings. Ms. Beaudry had no further involvement with this case.

[48] Ms. Noel consulted Labour Relations for advice and then held a fact-finding meeting with the grievor. She provided the grievor with a copy of this monitoring report on March 7, 2023. She also provided a letter to the grievor, informing him that the purpose of the fact-finding meeting was to obtain his explanation. The letter warned the grievor that disciplinary action might be taken as a result of the fact-finding exercise and invited him to bring a union representative or another person of his choice.

[49] The fact-finding meeting was held on March 10, 2023. The grievor attended alone, as he chose not to invite a union representative despite being invited to. Ms. Noel attended along with Jean Boulanger, a labour relations advisor. She prepared a summary of the meeting and shared it with the grievor.

[50] Ms. Noel testified (and her notes confirm) that the grievor had very little to say to explain his actions and that when he did have something to say, his story was inconsistent with the nature of the calls being made by interviewers. The grievor said that he would logon to a call only when he saw that the interviewer was actually on the call. Otherwise, he would input what he called a “generic comment” based on his knowledge of those interviewers’ regular performance. When Ms. Noel pointed out that during several of his monitoring sessions the interviewers were on calls that he could have logged in to, the grievor had no explanation. She reports that the grievor theorized that the discrepancies in the monitoring report might have been because he was using a voice over internet protocol (VOIP) provider instead of a cellphone; however, the evidence was that the VCC worked the same way regardless of how a person accessed it, whether with cell phone or a phone using VOIP. According to Ms. Noel, the grievor also stated in response to examples of him leaving comments that could not have been true (such as “good complete” for a call that was not completed during his observation period) that he listened to the call before opening up the QCFS form. However, when it was pointed out to him that he never logged into the VCC at all that day and so could not have listened to a call, the grievor had no explanation.

[51] After the fact-finding meeting, Ms. Noel concluded that the grievor did not actively monitor interviewers, despite making entries for their work. She held a disciplinary meeting with the grievor on March 28, 2023. She provided a summary of the fact-finding to the grievor before the meeting, so that he had the opportunity to review it. Again, the grievor was told that he had the right to a union representative; again, the grievor decided not to bring one. Ms. Noel testified that the meeting was very short; she read the summary of the fact-finding to the grievor and asked him whether he had anything to add. He said “No”, and the meeting ended.

[52] In his examination-in-chief, the grievor acknowledged attending the fact-finding meeting but provided no information about it. He testified that he was “blown away” by the number of entries; he testified that he knew that he had “made mistakes” but

that the “sheer amount was unbelievable.” He recalls mentioning that he should be retrained.

[53] In cross-examination, the grievor added to his testimony about the fact-finding meeting. He said that he told Ms. Noel that he was overburdened with work and that the policies about QCFS monitoring had changed so much that he was not comfortable with it anymore. Then, a few minutes later, he testified that he never offered an explanation for why he falsified his QCFS monitoring entries. Further, in both examination-in-chief and cross-examination, the grievor stated that he did not recall attending the disciplinary meeting. I do not know whether the grievor was simply confusing what he said at the disciplinary meeting and the fact-finding meeting, whether he does not firmly recall either meeting, or whether he was projecting his current explanations backwards onto those meetings.

[54] I prefer the evidence of Ms. Noel about the fact-finding and disciplinary meetings. Her testimony was consistent with her contemporaneous notes about the fact-finding meeting, and her recollection was more precise. The grievor, by contrast, gave contradictory accounts of the fact-finding meeting and could not remember the disciplinary meeting, and his testimony was inconsistent with Ms. Noel’s contemporaneous notes.

[55] At the hearing of this grievance, the grievor testified in chief that he could see the screens of the interviewers who were conducting business surveys and that he would base his comments on what he saw on their screens despite not listening to their calls. However, in cross-examination, he was taken to a number of examples of these comments that could not have been made based on what was on the interviewer’s screen. Here are four examples of comments about interviewers conducting business surveys that cannot have been based on watching a screen:

- February 23, 9:21 a.m.: “Reads script as worded. Probes for best answer.”
- February 19, 3:35 p.m.: “Leaves proper voicemail messages.”
- January 6, 2:03 p.m.: “Leaves proper voicemail messages... Sticks to the script.”
- January 6, 10:51 a.m.: “Reads questions and probes well.”

[56] None of those comments could be based on simply watching someone’s screen.

[57] Additionally, the grievor's use of screens cannot explain how he left comments about interviewers who were conducting social surveys because he acknowledged that he could not see their screens.

[58] The grievor added other explanations during his testimony that fell apart on cross-examination.

[59] He testified that he felt overwhelmed because he went on leave in January 2023 and that when he returned, all his work remained there to be completed. He testified that the entries from February 23 were a "bad day" for him because he had just come back from leave to a lot of work, and he was upset that nobody did this work for him during his leave. However, the medical notes that he provided state that he was fit to return to work on January 30. The false entries predated his leave and continued weeks after his return from leave.

[60] During cross-examination, the grievor repeated his explanation that he was leaving generic comments because he knew the interviewers and knew their work. However, he was taken to his monitoring sessions on January 15, 2023, all of which were with recent hires whom the grievor had never monitored before or even met.

[61] Additionally, after the grievor testified that he was leaving these generic comments, he testified that he had done so only four to five times. Counsel for the employer then took him through the monitoring sessions from between January 6 and February 23, showing the grievor that they were all what the grievor was calling generic comments. The grievor then admitted that it was more than four to five times but still not the majority of the time. So, counsel for the employer took the grievor through the rest of the monitoring report, which clearly showed that the grievor left what he calls generic comments on almost every entry. Even then, the grievor would admit only that he did so "many" times, not the majority of times.

[62] After hours of being cross-examined, the grievor finally admitted that for one of his entries (one of the November 27, 2022, entries) he could no longer call his falsified comments "generic", and he had to admit that he had just not monitored the interviewer. Shortly after that, in response to a question about his response to being terminated, the grievor admitted that he lied by submitting these falsified monitoring entries.

[63] This may be unnecessary for me to say in light of the grievor eventually conceding the point in cross-examination, but I have concluded that the grievor falsified the monitoring reports by providing comments without listening to the interviewers' interviews.

[64] In the letter of termination, the employer stated that the grievor "... conducted a total of 38 monitoring sessions for which important discrepancies could not be explained." During the course of the hearing, the employer demonstrated that the grievor submitted false monitoring sessions 41 times: 3 on November 15, 2022 (out of 5 monitoring sessions that day), 2 on November 19 (out of 5 monitoring sessions that day), 6 on November 24 (out of 7 monitoring sessions that day), 4 on November 27 (out of 5 monitoring sessions), 7 on January 6, 2023 (all of them), 5 on January 15 (all of them), 6 on February 19 (all of them), and 8 on February 23 (all of them).

[65] The single monitoring session on November 24 that was not falsified was because the grievor did not leave any comments for that interviewer but, instead, just filed the report for the session with a note stating the survey that the interviewer was conducting. He did not listen to that interviewer that day, but he did not submit a falsified report either.

[66] I have already given some examples of the false monitoring comments, and I will give other examples at different points of my decision. Many of the false monitoring comments are spectacularly wrong. In the following, I provide the most extreme examples:

- On February 23, the grievor completed a monitoring sample at 3:01 p.m. for 20 minutes, where the interviewer finished their last call at 2:58 p.m. and did not make any outgoing calls until 3:36 p.m.
- On February 23, the grievor completed a monitoring sample for an interviewer who was away that day.
- On January 15, the grievor completed another monitoring sample for an interviewer who was not working that day.
- On January 15, the grievor completed a monitoring sample at 4:44 p.m. that stated that the interviewer "leaves voicemail if needed" and, "Went on break." The interviewer placed 11 calls between 4:48 and 5:13 p.m. and never left a voicemail, according to his notes of each call. He was also never on break during that time.
- On January 6, the grievor completed a monitoring sample starting at 12:13 p.m. that lasted for 29 minutes. In fact, the interviewer ended a call at 12:07 p.m. and did not make another call until 12:51 p.m.
- On November 19, the grievor completed a monitoring sample for an interviewer who called his personal cellphone number 8 times in the 22-

minute period during which the grievor said that he was being monitored. That interviewer was later caught and terminated for entering fraudulent data.

## **VI. Discussion with management about struggles as a supervisor**

[67] The grievor testified about a discussion that he had with Ms. Masse in October 2022. Some of his arguments in this grievance flow from that discussion; therefore, I will set out the grievor's evidence about it separately from the narrative.

[68] The grievor testified that he spoke with Ms. Masse by telephone around October 2022. He testified that he said that being a supervisor was probably not for him and that he was upset because he felt that his subordinates were belittling him. Finally, he testified that Ms. Masse reassured him, which helped.

[69] Ms. Masse did not testify. Therefore, the only evidence that I have about it is the grievor's uncontested testimony.

[70] However, the grievor's testimony about this conversation is still unreliable, in two ways. First, he contradicted himself when testifying about it. He initially said that he told Ms. Masse that he wanted to move down, to be an interviewer. A few minutes later, he testified that he did not say that he wanted to be an interviewer but was just saying that being a supervisor was not for him. Second, he could not provide any examples of interviewers who were belittling him or did not respect him. He testified that interviewers belittled him and (later, in cross-examination) that they were rude to him. However, he could not give a single example of a belittling or rude remark made by an interviewer or identify any of these interviewers by name. Ms. Beaudry was asked on cross-examination whether she knew about the grievor's trouble with interviewers, and she testified that she did not. She testified that if the grievor's representative had names, it might jog her memory, but his representative moved on without naming any interviewers.

[71] In conclusion, I am satisfied that the grievor spoke with Ms. Masse about being uncomfortable with his job and that Ms. Masse tried to reassure him. I cannot conclude that he asked to be demoted to an interviewer position. I also cannot conclude that any of the interviewers he supervised were actually rude or belittling toward him. He might have felt that way, but there is no evidence that they actually were.

[72] Finally, I cannot make any findings about when this conversation took place. The grievor's evidence was rife with mistakes about the dates of several events. He forgot the date that he was terminated (testifying that it was in March instead of May), he forgot when he was on strike (testifying that it was February instead of April), he got the year of his separation from his second common-law spouse wrong (he testified that he separated in August 2023 and had to correct it to August 2022), he testified that he was on leave in October 2022 (he was on leave from August 14 to September 11, 2022), and he testified that he went on leave throughout the fall of 2022 and that when he came back to work in January, he had work saved or piled up (even though he was at work after September 11, 2022, until some unknown date between January 15 and 29, 2023, when he took leave until January 30). The grievor was simply not a reliable witness when it came to dates.

## VII. The grievor's health challenges

[73] The majority of the grievor's examination-in-chief was spent outlining his personal and professional history. I will address some aspects of his history when addressing the aggravating and mitigating factors. However, I wanted to address the grievor's mental health as a standalone section of this decision.

[74] The grievor testified that he has suffered from anxiety for his entire life. During his teens and early adulthood, he dealt with his anxiety in part by smoking marijuana. He described that he generally managed his anxiety by keeping a routine. However, in 2017, his first marriage ended, and he suffered an anxiety attack over Christmas that year. He was prescribed medication that he still takes as of the date of the hearing.

[75] The parties provided copies of the medical notes that the grievor provided the employer for his absences. Those absences from work, along with the grievor's explanations for them, were as follows:

Absence from work	Reason
November 23 to 28, 2017	Panic attack, prescribed medication by emergency room doctor.
December 21, 2017, to January 23, 2018	Anxiety or depression. The note from the emergency room doctor said that the grievor looked depressed. The notes from his family doctor for January 11 say that he is suffering from chronic anxiety and social phobia and that the diagnosis is chronic anxiety and

	depression. For part of this period, he felt sick due to the side effects of the medication.
June 19 to August 1, 2018	<p>The grievor was feeling stress as a result of a custody dispute with his ex-spouse. His family doctor's notes say only that he "[n]eeds [time] off work note for stress leave ...".</p> <p>Notably, the grievor was working a second job at this time with Canada Post. He continued to work at Canada Post through this period.</p>
October 21, 2018	He left work early that day due to stress and got a note from an emergency room doctor.
June 13 to 16, 2019	The sick note has no explanation, and the grievor did not testify about this absence. However, he had had other short absences and was directed on June 11, 2019, to provide a doctor's note to certify all his health-related absences going forward.
September 18 and 19, 2019	The note from the emergency room has no explanation, and the grievor did not testify about this absence.
October 10 to November 4, 2019	The grievor did not testify about the medical reasons that he took this time off, stating only that he was upset because he was living in a small apartment and felt regret that he was not a manager with the employer. He saw his family doctor, whose notes do not list any ailment and say, "no sx [symptoms] of depression".
December 27, 2019, to January 14, 2020	The grievor did not testify about this absence specifically. His doctor's notes refer to gastroenteritis and state that the grievor was not able to take his medication for a time. The notes again say, "no sx [symptoms] of depression elicited".
October 13 to 26, 2020	The grievor testified that he could not remember why he went on this leave but that it had something to do with stress. His medical note is from an emergency room doctor and has no details.
December 1 to 14, 2021	The grievor testified that he took this leave because he was asked to do monitoring and disliked doing it, which meant that he was stressed at work. He saw his family doctor, whose notes do not set out any illness causing that absence. The notes say "no sx [symptoms] of depression" but also say that the grievor reported that his medication "has helped a lot for anxiety".

August 14 to September 11, 2022	The grievor could not recall this absence specifically and thought that it was in October 2022. He explained that he had split up with his live-in girlfriend (with whom he had a child). He saw his family doctor, whose notes say, "cant [sic] focus on work ... needs time to reorganize his life ... no sx [symptoms] of depression".
January 29 and 30, 2023	The grievor was unable to pin down the precise dates of this absence, which ended on January 30, 2023. He got a note from the emergency room on January 29, 2023, that does not provide any information. The grievor testified about this absence at the same time as the October absence (that had in fact been in August and September).

[76] In preparation for this hearing, the grievor's representative requested that the grievor's family doctor prepare a medical report, asking specifically whether he suffered from a condition that could have contributed to, or caused, the conduct set out in his termination letter. The family doctor's report is short and reads as follows:

...

*Last seen 17/08/2022 - note this was a walk in presentation requesting off work note - asked to follow up after the visit. Find enclosed the encounter note.*

*As well enclosed is a record of his attendance.*

*Previous last visit was again a same day for a work off note in 14/01/2020.*

*11/01/2018 again same day visit for a work off note.*

*All to say he has not been seen on a regular basis for his so called underlying depression/anxiety treated with medication [name of medication redacted] which according to the patient made a significant difference in his symptoms.*

*As a result of the very sparse data on reviewing my notes I am not able or qualified to answer some of the questions asked*

...

*2/ wether [sic] his condition contributed to alleged misconduct - no data on the matter and would need psychological testing.*

...

*Note that out of 5 visits since 2016 4 of these were same day requesting time off note.*

...

[77] The grievor's family doctor did not testify.

[78] The grievor submits three things as a result of this evidence.

[79] First, he submits that this demonstrates that he has a disability. He acknowledges that there is no medical evidence of his disability, but he submits that his testimony is sufficient and that medical evidence is not required to establish a disability. He then submits that the employer had a duty to accommodate his disability, either in October 2022 or at the time of his termination.

[80] I agree that medical evidence is not always a necessary condition to prove that a grievor has a disability. The Canadian Human Rights Tribunal recently summarized the legal rules in *White v. Canadian Nuclear Laboratories Ltd.*, 2025 CHRT 67 at paras. 63 and 64, as follows:

*[63] A disability does not have to be permanent, and it is not only the most serious or most severe mental disabilities that are entitled to the protection of the Act. However, sufficient evidence still needs to be presented to support the existence of a disability (Mellon v. Canada (Human Resources Development), 2006 CHRT 3, at para. 88)...*

*[64] Parties are not required to adduce any particular type of evidence in order to prove they have experienced discrimination (Chisholm v. Halifax Employers Association, 2021 CHRT 14 at para 87). Expert medical evidence by a physician is not required to prove the existence of a disability in the human rights context (Marshall v Membertou First Nation, 2021 CHRT 36 at para 125). A disability may exist even without proof of physical limitations or the presence of an ailment but there needs to be more than just a bare statement that one suffers from a disability to meet the test. There has to be evidence that the disability is there. This evidence can be drawn from the medical information and from the context in which the impugned act occurred (Mellon at para 82).*

[81] In this case, there is no medical diagnosis of the grievor's condition. I am also particularly concerned about the family doctor's medical report referring to his "**so called** underlying depression/anxiety" [emphasis added]. The family doctor did not testify to explain what he meant by "so called", but it seems in context that the grievor's family doctor doubts whether the grievor has a medical condition.

[82] In terms of the contextual evidence, we have the grievor's testimony about the symptoms that he suffers from his anxiety, his history of medical absences that resulted from those symptoms, and the fact that he takes prescription medication to

deal with his anxiety. In light of that contextual evidence, I conclude that the grievor has shown, on the balance of probabilities, that he experiences anxiety.

[83] However, that is not the end of the inquiry. The parties agree that the burden rests on the grievor to prove a *prima facie* case of discrimination, which requires that he satisfy three things: that he has a characteristic protected from discrimination (in this case, a disability), that he was subjected to adverse treatment or a disadvantage, and that his protected characteristic was a factor, but not necessarily the only or primary factor, in the adverse treatment or disadvantage; see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33. Only then does the burden shift to the employer to show that it did, or could not, accommodate the grievor's disability.

[84] I have concluded that the grievor has not demonstrated that his anxiety was a factor in his termination of employment.

[85] In assessing whether the grievor's anxiety was a factor in his termination, I followed the analytic approach set out in *Turner v. Canada Border Services Agency*, 2020 CHRT 1 at para. 54. While that case was about discrimination in the hiring process, its discussion of how to assess evidence is also relevant to a termination of employment (as was the case in *Sahadeo v. Deputy Head (Canada Border Services Agency)*, 2024 FPSLR 12 at para. 477):

*54. Discrimination need [sic] only one factor in the respondent's decision not to hire or promote for a complainant to be successful under the Act. The Tribunal is tasked with discerning whether discrimination was a factor in [sic] failure to hire. To do so the Tribunal must consider all of the circumstantial evidence, make findings of fact and determine whether the inference that may be drawn from the facts support a finding of discrimination on the balance of probabilities. However, there has to be a nexus between the conduct under scrutiny and a prohibited ground of discrimination. The nexus can be inferred through the circumstantial evidence, but the inference of discrimination must be more probable than other possible inferences. In making the inference, the fact at issue must be proved by other facts. Each piece of evidence need not alone lead to the conclusion. The pieces of evidence, each by themselves insufficient, are combined to provide a basis for the inference that the fact at issue exists. The finding of discrimination by the Tribunal can be based upon circumstantial evidence as well as direct, anecdotal and statistical evidence....*

[86] As I set out earlier, the conduct at issue was falsifying monitoring reports. His anxiety did not prevent him from monitoring employees, as shown by the examples of proper monitoring that took place on November 15, 2023, alongside other, falsified, monitoring reports that day. The grievor was also asked several times during his examination-in-chief whether he required accommodation at the time or if he was reinstated, and he testified that the only accommodation that he required was scheduling for when he had custody of his children. The grievor could not identify a functional limitation flowing from his anxiety that was linked to the conduct that I described earlier. During closing argument, I pressed his representative on this point, asking how the employer was supposed to accommodate the grievor. His representative could not answer my question, stating instead that the employer could not ignore the difficulties that the grievor was having in the workplace.

[87] I found it particularly noteworthy that the grievor did not testify that his actions were caused by his anxiety. He had a number of other explanations, but he never attributed his actions to anxiety. The only time he mentioned his anxiety in the context of falsifying monitoring reports was when he was testifying about a single monitoring entry on January 15, 2023 (the one for 6:30 p.m.), during cross-examination. The interviewer whom he said he was monitoring was absent from work that day. When he was taken to this entry, he first said that he must have been looking at the screen of another user. When it was pointed out to him that this was a social survey and so he had no screens to view, he changed his answer and said that it was a generic comment based on his knowledge of the interviewer. When it was pointed out to him that this was a new interviewer whom he had never monitored before, he changed his answer again and stated that it was possible that his anxiety got the better of him.

[88] Even if I accepted this third answer as true (unlike the first two, which were lies), it does not explain the other falsified monitoring activity on that day or the eight other days he falsified monitoring sessions.

[89] In conclusion, the grievor provided no direct evidence to substantiate a nexus between his anxiety and falsifying monitoring reports. The circumstantial evidence also does not lead me to draw an inference that his anxiety was a factor in falsifying the monitoring reports. The fact that he has anxiety and that he was absent from work for some periods as a result is not enough for me to draw an inference that his anxiety was a factor in him falsifying monitoring reports. On the contrary, such an assumption

would, in my opinion, have to rest on stigma and stereotype that people with mental illnesses are less truthful than others. I do not accept that people with anxiety are less truthful than others.

[90] I also want to note that while the grievor's representative raised the so-called "duty to inquire" in her opening statement, she said in her closing argument that the duty to inquire was not the right way to approach this case. Therefore, I will not consider the duty to inquire further.

[91] Second, the grievor submits that his termination of employment was tainted by discrimination on the basis of disability. He argues that he told Ms. Masse that he was struggling as a supervisor. He argues that when Ms. Masse directed Ms. Beaudry to provide a report of her findings, this decision was tainted by discrimination because of that earlier conversation — that she knew that his struggles were related to a disability and that her actions after that conversation were tainted by that knowledge.

[92] This argument is not supported by the evidence in this case. I set out the grievor's discussion with Ms. Masse earlier. The grievor never said that he was suffering from anxiety; he said only that he was struggling with being a supervisor because he thought that the interviewers were belittling him. This conversation would not have led Ms. Masse to perceive that the grievor had a disability. Further, Ms. Masse had very little to do with his termination of employment. The conduct was discovered by Ms. Beaudry. Ms. Beaudry reported it to Ms. Masse, who instructed her to prepare a report. From that point on, Ms. Noel took over and was the person who conducted the fact-finding and disciplinary meetings and who recommended that the grievor's employment be terminated. Ms. Noel testified on cross-examination that Ms. Masse was not involved in the decision to terminate the grievor's employment. There is simply no evidence that Ms. Masse knew about, or perceived, the grievor's disability and certainly no evidence that her actions played any role in the termination of his employment.

[93] Third, he argues that his disability is a mitigating factor when assessing the appropriate penalty in this case. I agree, and I will address that point in more detail later.

**VIII. The conduct amounts to misconduct**

[94] I concluded earlier that the grievor falsified his monitoring sessions by entering comments for the interviewers whom he was supposed to be monitoring without listening to their calls. I also conclude that this constitutes misconduct worthy of discipline.

[95] The grievor's actions were dishonest. At the risk of saying something trite, being dishonest with an employer is a form of misconduct. As stated in Brown and Beatty, *Canadian Labour Arbitration*, 5th ed. at chapter 7.28:

*An employee's trustworthiness can be called into question by any act of dishonesty that is antithetical to the core values of an employer's operation and an employee's vocation even if it does not involve the misappropriation of property or result in financial loss.*

[96] Honesty is one of the core values of Statistics Canada's operations. Its *Code of Conduct* states, "Trust is the defining characteristic of an effective and useful statistical system... All employees must act in such a manner as to enhance the trust and confidence of Canadians, respondents and their agency colleagues."

[97] The grievor argued that the case law holds that when an employer accuses an employee of fraud or time theft, it must prove that the employee had a dishonest intent. The grievor cited no authority for this proposition, and none of the cases that he provided discuss this point. I did not research the point further on my own because the employer did not terminate the grievor for fraud or time theft; nor did it allege those things. The employer terminated him for dishonesty in falsifying monitoring reports. That is neither fraud nor time theft, but it is still misconduct.

**IX. Whether termination of employment was the appropriate penalty**

[98] The final stage of this matter is to determine whether the termination of employment was the appropriate consequence of the grievor's misconduct. This requires me to examine the complete context of the misconduct. I will do so by answering three questions. First, was the misconduct of a nature that it was capable of justifying termination? Second, if so, what are the mitigating and aggravating factors in respect of the penalty in this case? These mitigating and aggravating factors are assessed by examining the employee's circumstances and the employer's

circumstances. Finally, in light of those mitigating and aggravating factors, was termination the appropriate response?

#### **A. Nature of the misconduct**

[99] To begin with examining the misconduct, I already explained that the core of this misconduct was dishonesty. Dishonesty is misconduct of sufficient severity that it can, depending on the context, constitute cause for termination of employment. The Supreme Court of Canada in *McKinley v. BC Tel*, 2001 SCC 38, went through the legal history of this question and found cases standing for the proposition that dishonesty is automatically cause for termination. The Supreme Court rejected that line of authority, concluding instead that decision makers must consider the nature and seriousness of the dishonesty in context. That decision still makes it clear that dishonesty is a category of misconduct capable of constituting cause for termination, depending on its nature and the surrounding context.

[100] Therefore, I turn to the nature of the dishonesty in this case.

[101] The employer argued that the dishonesty was akin or analogous to falsifying statistical data, which is a severe offence warranting termination and, sometimes, prosecution (see *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70 at para. 157). I disagree. While I understand that the ultimate purpose behind monitoring is to ensure the accuracy of the data collected, it does not directly impact the accuracy of the data. The relevant policy states that an interviewer is monitored on seven skill sets and their components, most of which have nothing to do with the accuracy of data; instead, they are monitored on things like whether they have a professional voice, how they deal with reluctant responders, and how they leave voicemails when a respondent does not answer. Everything Statistics Canada does is linked to obtaining accurate data; that does not mean that all misconduct is tantamount to falsifying data.

[102] The employer also argued (and Mr. Stevenson testified) that the dishonesty was severe because of its consequences, because an interviewer whom the grievor was supposed to be monitoring was calling on his personal cellphone and entering data as if it were obtained from real respondents. As I said earlier, this interviewer was eventually caught and terminated for this fraud. The employer suggested that the grievor could have caught this interviewer by actually listening to his calls instead of falsifying the monitoring report.

[103] I have not treated this as a factor impacting the nature of the dishonesty in this case. The misconduct was the dishonest act of falsifying a monitoring report, not the failure to monitor itself. Ms. Noel was clear in her evidence that she would have preferred it if the grievor had just not done the monitoring and told her that he did not like it, instead of preparing false reports. Therefore, the misconduct is not as directly linked to the validity of statistical data as it is for an interviewer who enters false data.

[104] With that said, the dishonesty in this case was not mild. The employer has proven that the grievor prepared falsified monitoring reports 41 times. In addition, the impact of this type of dishonesty is not trivial. Employees rely on their supervisors to provide honest feedback about their performance. Inventing feedback — even positive feedback — about a subordinate demeans their work. Finally, the grievor’s dishonesty was self-interested. This is not a case where he told a white lie to protect someone; he submitted false monitoring reports to save himself the effort of completing real ones. This was not a case of what is termed “time theft” because he was working on other tasks during the times he says that he was monitoring, but falsifying the reports was still done to serve his personal interests.

[105] In light of this, I have concluded that the nature of this dishonesty is capable of justifying termination. It was repeated, long-standing, self-interested, and it negatively impacted the employer’s operations.

## **B. Mitigating factors**

[106] I will start with some obvious mitigating factors.

### **1. Length of service**

[107] The grievor had over 12 years of service with the employer, which is a relatively lengthy period.

### **2. Clean discipline record**

[108] The grievor had a clean disciplinary record. There was one day in 2020 when he called in sick while he was actually at a computer gaming competition, but this was treated as a performance issue, and he was not even reprimanded for it. It also falls outside the two-year sunset clause for discipline in his collective agreement, so I would

not have considered it even if the employer had treated that event as a disciplinary matter.

### **3. The grievor's special economic hardship**

[109] Arbitrators and adjudicators have treated special economic hardship for a grievor in light of their particular circumstances as a mitigating factor; see, for example, *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62 at para. 179, and Brown and Beatty, at chapter 7.74. The grievor testified about his trouble finding new work. He had found new work a short period before the hearing commenced, but he was let go in February 2025 for non-disciplinary reasons. The grievor has children who live with their mothers, and he testified about the financial strain he is under to support his children. He had to move in with his own mother to make ends meet and had moved to take the job that he was let go from in February. Finally, he testified that the call centre was one of the best jobs available in Sturgeon Falls, which is a small community without a lot of other job prospects for someone in the grievor's circumstances.

[110] These are factors that mitigate against a termination of employment.

### **4. The grievor's health challenges**

[111] The grievor submitted that his health challenges are also a mitigating factor. While I concluded earlier that there was no nexus between his misconduct and his health challenges, those health challenges are still a mitigating factor.

[112] The Federal Public Sector Labour Relations and Employment Board ("the Board") considered a grievor's health challenges as a mitigating factor in *Besirovic v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 33 at para. 134, despite finding that "... the evidence is weak on any underlying medical issue that might have explained the grievor's inattentiveness on both shifts." The Board also listed a grievor's medical issues as a mitigating factor in *Menzies v. Deputy Head (Canada Border Services Agency)*, 2022 FPSLREB 94 at para. 103, despite refusing to admit the grievor's medical records into evidence. I am satisfied that I am permitted to consider the grievor's health challenges as a mitigating factor when assessing the penalty, even though I was not convinced that his health contributed to his termination of employment.

[113] This is not a case where a termination of employment interrupted an employee's health coverage: the grievor has never been in therapy, and he continued to take medication after the termination of his employment. However, I accept that his health makes it more difficult for him to find new work. The grievor testified that it took him roughly 1.5 years to find new work in part because of his health challenges, and he was not cross-examined on that point. I considered this to be part of the mitigating factors in this case.

#### **5. Issues surrounding the grievor's ex-wife**

[114] The grievor argued that issues surrounding his ex-wife are a mitigating factor. I disagree.

[115] The grievor spent a significant length of time testifying about his personal relationships. Shortly after starting work at Statistics Canada, he started dating and then married another interviewer. They had two children together. They separated in 2017. His ex-wife took it badly. She was on leave until 2019, at which time the employer put arrangements in place to separate the grievor and his ex-wife in the workplace. The grievor testified that, during his ex-wife's leave of absence, she told interviewers at work that he was a bad person. He gave three examples of that. The first one involves private and sensitive issues and so I will not discuss it further, aside from noting my conclusion that the grievor's testimony satisfied me that her allegation was severe and damaging. The other two were much less damaging. The second one was about the grievor trying to date another interviewer. That interviewer spoke to his ex-wife and then no longer wanted to date the grievor. This was particularly unimportant to me because the grievor had a relationship, and a child, with another interviewer shortly after this event, showing that his ex-wife did not poison his relationship with everyone he wanted to date at the call centre. The third one was about a shirt that an interviewer wore. The grievor's ex-wife thought that it was the grievor's shirt and so confronted the interviewer for sleeping with her ex-husband. The grievor approached that interviewer later that day about this issue, and the interviewer reported the grievor for approaching her about personal matters while at work.

[116] The grievor argues that his bad relationship with his ex-wife poisoned the work environment, that the employer did not deal adequately with the problem, and that this is a mitigating factor in this case. I disagree, for two reasons.

[117] First, the grievor testified that the employer arranged that he would not work with or supervise his ex-wife. He also testified that he never asked the employer for anything else to deal with the friction between him and his ex-wife and went further and testified that he could not think of anything that the employer could have done in addition to what it had done. I agree.

[118] Second, the grievor submits that part of why he was dishonest was that he was being belittled by interviewers because they had spoken with his ex-wife. I have already discussed my concerns about the veracity of this evidence; namely, the grievor was unable to name specific interviewers or recall their specific comments. Even without those concerns, I would not accept that this is relevant. I fail to see the logical connection between the grievor's dishonesty and a claim that some interviewers did not respect him.

[119] Frankly, I would have rejected this entire subject out of hand but for Ms. Beaudry's testimony. When the grievor's representative started to ask her about these issues, Ms. Beaudry immediately broke down, and the hearing had to be paused for over 20 minutes, so that she could collect herself. When she returned and answered questions, she was guarded in her answers and was very careful to say that she did not listen to rumours. I was left with the distinct impression that she was trying to be very careful not to be seen as taking sides between the grievor and his ex-wife. Her demeanour and testimony convinced me that there was something going on in the workplace involving the grievor and his ex-wife.

[120] However, I still cannot see any reason that this "workplace drama" (to borrow the phrase used by the grievor's representative) is a mitigating factor. I cannot see any link between these events and his misconduct. Additionally, the grievor is asking to be reinstated, even though his ex-wife still works there. If this workplace drama was truly toxic, he would not ask the Board to put him back into it.

## **6. Working from home**

[121] The grievor submitted that he was struggling with working from home because of the COVID-19 pandemic and that these struggles are a mitigating factor. I disagree.

[122] The grievor gave contradictory evidence on this point. He testified that he was not comfortable working from home. However, he also testified that he worked from

the office for a period and that he felt uncomfortable at the office as well because the office was largely empty, as many interviewers worked from home. He previously enjoyed walking around the floor to listen to interviewers but could not do that any longer. He was also upset that another supervisor, who lived 45 minutes to 1 hour away, did not have to come into the office. He also complained that other supervisors were less helpful to interviewers while they were working from home. Later in his testimony, the grievor suggested that it was impossible to return to the office because there were so many new interviewers hired from across the country. He also testified that the job was fun “until [his] divorce” in 2017 — not that it was fun until he had to work from home. In light of these contradictions, I cannot conclude that having to work from home played a meaningful part in the grievor’s actions, especially as he had the right to work from the office.

#### **7. No acquiescence by the employer**

[123] Finally, the grievor argued that he was led to believe that this type of misconduct was not inappropriate. On August 1, 2017, the grievor was given ad hoc performance feedback stating that he had gone through three months of monitoring without noting any errors by interviewers. He met with his manager at the time about this issue. The grievor testified that he explained that he tried to find the positive when monitoring and that he wrote that down. The grievor testified that a different manager spoke to him at some other time about his comments being too positive on another occasion. Both times, nothing came of the issue.

[124] The grievor argues that this means that he was led to believe that it was acceptable to leave generic comments and that this mitigates his wrongdoing in this case. I disagree. There is a difference between leaving generic comments and leaving comments that you made up because you never listened to the interview. The grievor used the phrase “generic comments” throughout his testimony as a synonym for the comments that he invented. However, a generic comment is not necessarily an invented one. The employer did not signal that it approved of dishonesty simply because it did not punish the grievor earlier for leaving generic and positive comments.

### C. Aggravating factors

[125] I have already set out that the misconduct was serious (although not as serious as the employer submitted), repeated, and long-standing. These are typically factors that aggravate misconduct.

[126] The grievor's actions during the investigation and hearing, along with his reaction to being terminated, are much more important. The grievor was dishonest during the employer's investigation, dishonest during the hearing, and has no recognition of the gravity of his dishonesty.

#### 1. Not a managerial employee

[127] The employer submitted that the nature of the grievor's position is an aggravating factor. The employer submits that as a supervisor, he was in a position of significant trust and authority, and it relies on cases involving dishonesty by managers or other senior employees, such as *Viner v. Deputy Head (Department of Health)*, 2022 FPSLRB 74 (involving a manager who was also a physician), and *Brazeau* (involving a director responsible for contracts totalling \$35 million).

[128] While the grievor had the title of Supervisor, he was neither a manager nor a particularly senior-level employee. The most analogous job title for his duties is a lead hand. He had no power to hire and fire, he could not discipline employees, and he did not have a significant degree of independent judgment or discretion when performing his duties. His position is not an aggravating factor.

#### 2. Dishonesty during the fact-finding process

[129] Dishonesty during an investigation or disciplinary hearing is an aggravating factor when assessing the appropriate degree of discipline; see *Rossin-Arthiat v. Deputy Head (Canada Border Services Agency)*, 2025 FPSLRB 53 at para. 237, and *Touchette v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 72 at para. 78.

[130] The grievor was dishonest during the fact-finding meeting held on March 10, 2023. When he was asked about one of his false monitoring sessions on February 23, which was done for an interviewer who was not at work, he told Ms. Noel that he must have just chosen the wrong interviewer. When it was pointed out to him that he did not use the VCC that day, he invented another excuse that the problem was that he

was using a VOIP provider. Then, when it was pointed out to him that using VOIP made no difference, he just went silent. I also note that the grievor's VOIP excuse is inconsistent with the monitoring sessions on November 15, 2022, when he connected to the VCC for two of the five monitoring sessions he recorded that day. He was clearly able to connect to the VCC using VOIP.

[131] To give another example, during the fact-finding meeting, the grievor was taken to another monitoring sample for February 23, in which he gave a comment of "good complete" for an interviewer who did not complete an interview. The grievor said that he logged into and listened to the interviewer complete the interview before starting his QCFS form. This was untruthful, as the log of the VCC shows that he did not listen to any interviews that day. When Ms. Noel pointed this out to him, he just went silent again.

[132] The grievor had every opportunity during the fact-finding meeting or the disciplinary meeting a few weeks later to just admit that he did not listen to the interviewers and that he had falsified his monitoring sessions. Instead, he invented explanations for the discrepancies in the monitoring sessions.

### **3. Dishonesty during the hearing**

[133] Dishonesty during a hearing is also an aggravating factor. The grievor was dishonest during his examination-in-chief when discussing his misconduct.

[134] He testified that he did not realize that he needed to listen actively to monitor interviewers; in cross-examination, he admitted that he knew that he needed to.

[135] He testified that, in looking at the monitoring report now, the allegations of discrepancies cannot be founded because many of them involve business surveys, so he could have seen the interviewer's screens; in cross-examination, he admitted that the comments that he left could refer only to verbal interactions that he could not have seen on a screen.

[136] He testified that he thought that the day he said that he monitored someone who was absent on February 24, 2023, was a mis-click by him and that he meant to write comments for someone else; in cross-examination, he admitted that he made a conscious decision not to login to any interview that day.

[137] He testified that he remembered the day of February 24, 2023, and that his comments made in monitoring sessions were accurate that day; in cross-examination, he testified that he could not remember specifics of any of the days at issue and admitted that his comments that day were falsified because they would have required him to listen to their interviews, which he did not do.

[138] He testified that he confessed to wrongdoing during the fact-finding meeting; in cross-examination, he admitted that he did not confess everything, and he attributed that to there being someone from labour relations at the meeting instead of just Ms. Noel.

[139] He testified that he was allowed to go over only two examples of monitoring during the fact-finding meeting; he admitted in cross-examination that the notes of the fact-finding meeting were accurate, which disclose that he went through at least seven examples in the monitoring report.

[140] I have outlined other areas where the grievor contradicted himself earlier in this decision. He contradicted himself in other areas of his testimony as well that were less central to the grievance.

[141] I acknowledge that he was examined in chief between March 24 and 25, 2025, and that he was cross-examined on October 2. A six-month gap may, in some cases, explain some variances in the details provided in examination-in-chief and cross-examination. However, the passage of time between examination-in-chief and cross-examination cannot explain why he flatly contradicted himself on these crucial points.

#### **4. No recognition of the gravity of dishonest conduct**

[142] Finally, the grievor still has no recognition about the gravity of what he did. As the Board put it in *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43 at para. 103:

*[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.*

...

[143] The grievor has stated throughout this process that he knows that he made a mistake. However, he never acknowledged his dishonesty until he was cross-examined. Even after admitting his dishonesty, he minimized it.

[144] The day on which he was terminated from his employment, the grievor wrote a letter to the employer. In that letter, he wrote:

...

*I feel ashamed for my performance working as a Supervisor since the COVID pandemic. I have been a Supervisor for more than 10 years and worked well in an office environment but since we have started working remotely, the job has changed and I am not suited for it.*

*During my last performance review, my DCM and I discussed how I was not performing as my usual self lately and I agreed, then we said we would try and work on a plan of action and keep in touch.*

*I have not been performing my duties effectively, but since the review I have had no contact with any management, have never had any negative performance slips to my knowledge and have never had any disciplinary action for the 13 years I have worked for Statistics Canada.*

...

[145] In this letter, the grievor never acknowledges or recognizes that he was dishonest. He acknowledges only that he has not been performing his duties as well as he could and then turns around and blames management for that because it did not supervise his performance more carefully.

[146] In his examination-in-chief, he testified that when he entered these false reports, he did not feel like he was doing anything wrong. He testified that he knows that he “messed up” but then said that how he messed up was that he should have been more vocal with management about how unhappy he was doing monitoring. He was also asked in examination-in-chief about what would happen if he were reinstated. He said that he would expect to be trained on how to use the VCC, that he would work in the office to avoid distractions, and that he would stay single, to avoid having to manage issues in his personal life. The grievor blamed Ms. Noel for his termination of employment, suggesting either that there was some breakdown in their relationship or, bizarrely, that she needed to terminate him to get promoted.

[147] The grievor's lack of self-awareness about his dishonesty is exemplified in two pieces of testimony. First, when he was asked at the end of his examination-in-chief about whether the employer would trust him if he were reinstated, he spoke about his relationship with Ms. Noel and Ms. Beaudry. I have already outlined his bizarre theory about Ms. Noel needing to terminate him to get promoted. However, when it came to Ms. Beaudry, he testified that she is one of his favourite people and that he thinks that they can still trust each other.

[148] Earlier, the grievor's representative had asked Ms. Beaudry (before the grievor's examination-in-chief, and in the grievor's presence) whether it was possible for the grievor to return to work as a supervisor or interviewer. Ms. Beaudry was visibly uncomfortable answering that question and started by saying that it was not her decision and that she would comply with any order that she was given. However, when she was asked specifically whether the grievor could be successful in his job with the right supports, she said that she did not know because she was disappointed with the grievor and does "not know how he maintains his standards and ethics."

[149] That was a very polite way for Ms. Beaudry to say that she cannot trust the grievor. It is possible that her testimony was too oblique for the grievor to pick up on, or perhaps the grievor chose to ignore it because he did not want to believe it. Either way, the grievor's belief that he can be trusted shows that he has no awareness of the gravity of his dishonesty.

[150] Second, during cross-examination, and after he admitted that he was being dishonest in the monitoring sessions, he was asked some follow-up questions. He was asked whether lying on monitoring reports impacted the integrity of the job. His answer was this: "I know it does, but I want to say no as well [because] the job is so much more than this [monitoring]. I'm not sure how to answer that." He answered some additional questions and then was asked about the letter that he wrote on May 23, 2023. He was asked why he wrote that he was ashamed in that letter. He said that he was ashamed because he was not able to give his full attention to the job at the time. He was then asked whether he understood the point of view of someone with difficulty trusting him going forward. He first said that that is what probation is for and then said that he does not accept that it would be hard to trust him going forward "because of this monitoring thing."

[151] The grievor's testimony leads me to conclude that he does not accept that dishonesty is wrong. The grievor understands that his actions were improper, but he continues to minimize his misconduct by characterizing it as an issue that can be corrected through training. The grievor's lack of recognition of the gravity of dishonesty, coupled with his lack of honesty throughout this process, leads me to conclude that it is more likely than not that the trust that the employer is entitled to have in him cannot be re-established.

[152] As the Saskatchewan Court of Appeal has stated, "The root question in determining whether a termination of employment is warranted in the context of acts of dishonesty is whether the trust crucial to the employment relationship can be restored" (see *Retail, Wholesale Department Store Union v. Yorkton Cooperative Association*, 2017 SKCA 107 at para. 26). I have concluded that it cannot. Therefore, I must conclude that termination was the appropriate consequence of the misconduct in this case.

#### **X. Other arguments by the grievor**

[153] The grievor made three other arguments that do not fit neatly within the other sections of this decision, and so I will address them now.

[154] The grievor argued that Mr. Stevenson did not have the authority to terminate the grievor's employment because, as the delegated manager, he had no independent recollection of the case, which means that the employer cannot prove that it considered all the relevant mitigating factors. Similarly, the grievor argued that the employer's decision is void because it could not show that it considered all the mitigating factors that I set out earlier. Finally, the grievor argued that the investigation into his misconduct was biased and flawed.

[155] These arguments are flatly contradicted by the Board's case law. The grievor is confusing judicial review with adjudication. Adjudication is a hearing *de novo* (from the beginning). As the Board stated recently in *Mirabelli v. Deputy Head (Department of Employment and Social Development)*, 2025 FPSLRB 48 at para. 96:

*[96] ... the adjudication of a disciplinary grievance under s. 209(1)(b) of the Act is a hearing de novo; it is not a reasonableness review of the employer's decision on all aspects of its decision, including the amount of discipline. The employer has the burden*

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*of proving all aspects of its disciplinary decision, on a balance of probabilities.*

[156] This means that I do not review whether the manager had the delegated authority to terminate the grievor; nor do I review whether his decision is reasonable in the sense of whether he considered all relevant factors. As the Board said in *Pajic*, when it dismissed a similar argument:

...

*[131] I dismiss that argument for the following reasons. My duty as an adjudicator is to determine, based on the evidence presented at the hearing, whether the employer had just cause to terminate the grievor's employment. In carrying out that duty, I have no authority to rule on the employer's internal procedures with respect to its authority to take disciplinary action.*

...

[157] Any unfairness in the investigation is relevant only at the remedy stage of the case, as in *Kline v. Deputy Head (Canada Border Services Agency)*, 2024 FPSLRB 115, where the failure to investigate and the lack of procedural fairness formed the basis of an award of aggravated and punitive damages.

[158] For the sake of completeness, there was no evidence that the investigation into the grievor's misconduct was flawed. The grievor submitted that he was targeted. He was not; Ms. Beaudry was clear that she discovered the grievor's misconduct while looking at the monitoring performed by supervisors more generally. The grievor argued that the investigation was a "four-month long sting operation." It was not. Ms. Beaudry discovered the misconduct shortly after the last entry in her report on February 23, 2023, then she prepared the monitoring report, and the grievor was invited to his fact-finding meeting on March 7, 2023. While the witnesses could not pin down the precise date that Ms. Beaudry started and finished her report, she certainly started it after February 23 and finished it before March 7 when it was provided to the grievor. In the circumstances, this was a timely investigation and certainly neither a sting operation nor a four-month investigation.

[159] Finally, the grievor requested some form of confidentiality order during this hearing. I invited the grievor to specify what information needed to be kept confidential, and why, by providing written submissions within three weeks of the

close of this hearing. He did not provide any written submissions, so I have not considered his request any further.

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

*(The Order appears on the next page)*

**XI. Order**

[161] The grievance is denied.

January 13, 2026.

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