



Reasons for Decision

Brian Cadieux,

complainant,

and

Amalgamated Transit Union, Local 1415,

respondent,

and

Greyhound Canada Transportation ULC,

employer.

Board File: 28982-C

Neutral Citation: 2016 CIRB **809**

January 28, 2016

The Canada Industrial Relations Board (the Board) was composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Richard Brabander and Gaétan Ménard, Members. A hearing was held from September 10 to 12, 2014, from October 1 to 3, 2014, from March 3 to 5, 2015, and on May 11 and 12, 2015.

Appearances

Mr. Olivier Laurendeau, for the complainant;

Ms. Cynthia D. Watson, for the Amalgamated Transit Union, Local 1415; and

Mr. Mel Levandoski, for Greyhound Canada Transportation ULC.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I. Background

[1] On September 30, 2011, Mr. Brian Cadieux (the complainant) filed a breach of duty of fair representation complaint with the Board, alleging that his union, the Amalgamated Transit Union, Local 1415 (ATU or the union) had violated section 37 of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*). Basically, the complainant alleged that the union had failed to represent him in a fair and equitable manner in connection with his termination.

[2] On September 21, 2012, the Board issued a decision based on the documents on the record, that is, without holding an oral hearing, dismissing Mr. Cadieux's complaint (*Cadieux*, 2012 CIRB 656) (RD 656). The Board relied among other things on the material on file and a report produced by the investigating officer assigned by the Board to conduct an investigation pursuant to section 16(k) of the *Code*.

[3] On October 18, 2012, the complainant filed an application for reconsideration of RD 656 with the Board pursuant to section 18 of the *Code*. On February 27, 2013, the reconsideration panel dismissed the application for reconsideration, in *Cadieux*, 2013 CIRB 676 (RD 676), on the basis that the applicant (Mr. Cadieux) had not provided sufficient grounds to persuade it to reconsider the decision in RD 656.

[4] Mr. Cadieux filed two applications for judicial review of the Board's decisions with the Federal Court of Appeal (FCA). On March 10, 2014, the FCA allowed both applications for judicial review, set aside the Board's initial decision, RD 656, as well as its reconsideration decision (RD 676), and referred the matter back to the Board for reconsideration of the complaint filed by Mr. Cadieux (see *Cadieux v. Amalgamated Transit Union, Local 1415*, 2014 FCA 61). The FCA stated the following:

[51] I would therefore allow the two applications for judicial review with one set of costs for both applications, set aside the Board's initial decision and reconsideration decision, and refer the matter back to the Board for reconsideration of the complaint submitted by the applicant **in light of the reasons of this Court** by a panel consisting of members who did not participate in either of these decisions.

(emphasis added)

[5] In its judgment, the FCA reiterated the issues that the Board is required to examine when dealing with a complaint pursuant to section 37 of the *Code*, as follows:

[27] The law surrounding a union's duty of fair and equitable representation regarding a decision on whether to take a grievance to arbitration is very simple.

[28] Unless otherwise specified in the collective agreement, an employee generally does not have the right to take his or her grievance to arbitration without the union's consent, even for a termination. That is the case here. Given the exclusivity granted to a union for the representation of a bargaining unit, the union cannot therefore act in a manner that is arbitrary, discriminatory or in bad faith towards any of the employees in the unit who are exercising their rights under a collective agreement, including their right to a grievance and to arbitration. In determining whether a grievance should be filed, or whether a filed grievance should be taken to arbitration, a union's conduct is measured by its investigation of the circumstances surrounding the grievance and its assessment of the likelihood of success at arbitration.

[29] As a result, a union's conduct could be deemed arbitrary if the union only superficially considers the facts and or merits of the grievance, if it does not investigate to discover the circumstances surrounding the grievance, or if it fails to make a reasonable assessment of the likelihood of success of the grievance at arbitration.

(Cadieux v. Amalgamated Transit Union, Local 1415, supra)

[6] Having reviewed the arguments set out in the Board's initial decision (RD 656), in which it dismissed Mr. Cadieux's complaint, the FCA stated the following:

[33] Accordingly, when reviewing a complaint under section 37 of the Code, the Board must, at a minimum, examine the following issues (*Lamolinaire v. Communications, Energy and Paperworkers Union of Canada*, above, at paragraph 36):

(a) Did the union conduct a perfunctory or cursory inquiry, or a thorough one?

(b) Did the union gather sufficient information to arrive at a sound decision?

(c) Were there any personality conflicts or other bad relations that might have affected the soundness of the union's decision?

[34] In this case, however, the Board did not address these issues at all. It was content to find that the applicant had not attended the executive board meeting and Union members' meeting at which his termination grievance was discussed. In so doing, the Board believed that it was dispensed from having to examine any other issues, including, in particular, whether the Union's inquiry into the termination grievance was thorough and whether the Union had gathered sufficient information to make a sound decision with respect to the refusal to take the grievance to arbitration.

[35] Although an employee's participation in the investigative and decision-making process of his or her union is a factor that may be taken into account in the assessment of the union's conduct in the handling of a grievance, the mere fact that the employee did not fully participate in the process cannot, in and of itself, preclude the Board from finding that the union breached its duty of fair and equitable representation, particularly in a termination grievance.

[7] It is accordingly in light of the judgment of the FCA that Mr. Cadieux's complaint filed on September 30, 2011, is being reconsidered by the Board. A case management teleconference was held on June 16, 2014, the hearing got underway on September 10, 2014, and the matter was reserved on May 12, 2015.

[8] It should be noted that, during the hearing of the matter, after the testimony of Mr. Moe Al-Khafajy, the union decided to remove its counsel. Ms. Cynthia Watson took over for former counsel, concluding the presentation of the case.

II. Nature of Complaint

[9] The complainant worked as an operator for Greyhound Canada Transportation Corporation (the employer or Greyhound) from December 3, 2008, to April 20, 2011, when his employment was terminated. He worked out of the Greyhound station in Montréal.

[10] In August 2010, Mr. Cadieux was suspended for five days for failing to comply with minimum rest requirements during his assignment as an operator for the Royal Canadian Mounted Police (RCMP) at the G-20 Summit in Toronto. On September 6, 2010, the union filed a grievance against his suspension. In the grievance filed by Mr. Al-Khafajy, it is alleged that Mr. Cadieux and a co-worker had a direct order that "under no circumstances were they allowed leaving the RCMP officers stranded, without buses or drivers," and "Mr. Butler instructed the operators to be available and ready to move the buses at any time for 24 hours a day."

[11] A few months later, on April 20, 2011, Greyhound terminated Mr. Cadieux's employment on the ground that he was still not complying with the minimum rest requirements for operators and was not correctly recording his hours of work in his log. The union filed a grievance against the termination, but then refused to take the grievance to arbitration based on the results of a membership vote at meetings held in Toronto on June 14, 2011, in Ottawa on June 15, 2011, and in London on June 21, 2011. The results of the vote indicated that 17 members had voted against and 14 members had voted for sending the grievance to arbitration. The union subsequently withdrew the complainant's grievance.

[12] The grievance against Mr. Cadieux's five-day suspension was still active at the time of the membership vote on the termination grievance and was ultimately settled, on November 2, 2011, when the employer agreed to pay Mr. Cadieux an amount equivalent to the pay withheld for the five-day suspension. However, the latter refused to cash the cheque.

[13] Mr. Cadieux filed his complaint with the Board on September 30, 2011, primarily on the ground that the union had “not fulfilled its duty of fair and equitable representation in [his] termination case” (translation). According to the complainant, the union had failed to “assemble all of the evidence needed to properly represent the facts of [his] case” (translation). In his view, the union had acted in an arbitrary, sometimes discriminatory manner toward him and in bad faith.

III. Parties’ Written Submissions

[14] On August 12, 2014, shortly before the start of the hearings in this matter, counsel for the union sent counsel for the complainant a request to clarify the complainant’s allegations in support of his complaint. In a letter sent to the parties on August 28, 2014, counsel for the complainant explained the allegations against the union in relation to the two grievances covered by the complaint.

[15] The employer did not make any written submissions.

A. Complainant

[16] In regard to the termination of his employment, the complainant submits that the union knew full well that it was all based on vague and trivial allegations, in addition to being out of time. In his view, the withdrawal of the grievance in June 2011 was completely arbitrary. He further submits that his union never met with him to discuss the grievance after he received his termination letter.

[17] According to the complainant, the union failed to inquire into the matter and never raised the preliminary arguments that it should have raised in regard to the imprecise nature of the allegations made against him in the termination letter of April 20, 2011.

[18] The complainant also submits that the union failed to give him the opportunity to be heard at the meeting of the union’s executive board on June 1, 2011, during which the merits of his termination grievance were considered. He submits that the union therefore knowingly breached the basic principle of procedural fairness in his regard, contrary to article 7(b) of the union’s bylaws. The complainant adds that the union failed to take any action whatsoever to enable him to present his case at the meetings of the membership held in Ottawa, Toronto and London in June 2011, at which the members were to vote on whether or not his termination grievance should be referred to arbitration.

[19] The complainant states that, at the membership meeting held in Ottawa on June 15, 2011, Mr. Ian Laird recommended that the termination grievance be withdrawn on the basis of the complainant's disciplinary record, including the five-day suspension imposed in August 2010.

[20] In the complainant's view, the five-day suspension had been excessive and had in no way set a precedent that was fatal to his termination case. Further, the disciplinary action was itself the subject of a grievance that the membership at a meeting had voted to refer to arbitration; that grievance was still active at the time of the vote on June 15, 2011. Also in relation to the five-day suspension, the complainant adds that the union recognized that he had worked too many hours during the days of the G-20 Summit in Toronto, but that he had done so on the express and emphatic instructions of the employer's representative in charge, Mr. David Butler.

[21] According to the complainant, the union knew that his termination had been nothing more than retaliation by the employer for the vote by the union members in January 2011 to continue to pursue the suspension grievance, which raised questions about some of the employer's practices connected with exceeding permissible hours of service.

[22] The complainant submits that his union likely acted in collusion with the employer to cover up a certain practice of exceeding permissible hours of service. In his view, the union acted in bad faith and arbitrarily toward him.

B. Union

[23] According to the union, it is not the Board's role to determine the merits of Mr. Cadieux's grievances. The union submits that disciplinary action was taken against Mr. Cadieux several times, including the following:

- Disciplinary warning for reporting to work without a valid passport, on December 17, 2009;
- Disciplinary warning for failing to report to the dispatch office after arriving at the duty station, on December 21, 2009;
- Five-day suspension without pay for failing to produce an accident report within 24 hours in regard to an avoidable accident in which he had been involved on December 23, 2009; and
- Final warning dated February 28, 2011, for failing to follow established procedure regarding travel vouchers.

[24] The union also submits that, in July 2009, it received complaints from co-workers of the complainant that the latter had caused problems at the Montréal bus station as a result of his failure to adhere to policies and practices for operators.

[25] According to the union, the complainant breached the rules relating to the logging of hours of service and rest periods on several occasions. Such breaches can jeopardize the employer's registration rights and result in fines.

[26] The union further indicates that all operators, like Mr. Cadieux, receive eight weeks of preliminary training before taking up their duties, and the training includes training on the statutes and the *Commercial Vehicle Drivers Hours of Service Regulations*, SOR/2005-313. The union explains that, in addition to his very comprehensive initial training, Mr. Cadieux was given additional training on keeping his logs, in September and December 2009.

[27] With regard to the complainant's five-day suspension, the union submits that Mr. Cadieux had failed to abide by the hours of rest requirements under the Department of Transport's *Commercial Vehicle Drivers Hours of Service Regulations* and had thus incorrectly completed his logs for the period from June 23 to 27, 2010.

[28] The union adds that Mr. Cadieux was given the opportunity to state his position at the meetings with the employer on July 29 and August 12, 2010, which were attended by the union representatives.

[29] The union further indicates that it approached the other operators who had worked at the G-20 Summit and, contrary to what Mr. Cadieux was maintaining, they indicated that they had not received any instructions from the employer to work in violation of the safety regulations.

[30] With regard to the termination of the complainant's employment, the union submits that the employer met with the complainant on April 15, 2011, to question him about other instances where he had failed to properly record hours in his logs, and that Mr. Moe Al-Khafajy accompanied Mr. Cadieux to that meeting.

[31] The union submits that it filed a grievance against the termination of the complainant's employment, at the complainant's request. It indicates that it contacted its counsel to discuss the merits of the complainant's dismissal grievance and the manner in which it should proceed with its investigation. According to the union, it was following that discussion with its counsel

that it contacted the complainant to ask him for the statement from his cellular service provider and the list of the telephone calls he had made or received during the G-20 Summit.

[32] The union indicates that the union's executive board reviewed the complainant's grievances in Toronto on June 1, 2011, and that it had emailed the complainant in advance of the meeting, on May 31, 2011, to invite him to attend, in order to present his case. The union adds that it even tried to reach the complainant by telephone during the meeting, to give him the opportunity to present his case. It submits that the complainant did not attend the meeting of the executive board, provide written submissions, or take part in the meeting by telephone.

[33] The union points out that its bylaws allow the members at a meeting to vote on a motion recommending that individual grievances be referred or not be referred to arbitration. The union indicates that the complainant was advised of a meeting of the union membership in June 2011, but did not attend.

[34] The union submits that it made a detailed, objective presentation of Mr. Cadieux's situation to the members at the meetings in June 2011 and that 17 of 31 members voted against referring the dismissal grievance to arbitration.

[35] The union considers that it conducted an earnest, thorough and proactive investigation into Mr. Cadieux's case. It also considers that it gave the complainant every opportunity to present his case in order to convince it to take his termination grievance to arbitration.

IV. Oral Evidence

[36] Counsel for the complainant called five witnesses: Mr. Brian Cadieux, the complainant; Mr. Alessandro di Giuseppe, computer and information security specialist; Mr. Denis Cadieux, operator; Mr. Régent Cadieux, operator; and Mr. Glen Lawson, former operator for Greyhound.

[37] Counsel for the union called four witnesses: Mr. Moe Al-Khafajy, President, ATU; Mr. Ian Laird, former president, ATU; Mr. Jeff Glover, former president, ATU; and Mr. David Butler, Regional Vice-President, Eastern Canada, Greyhound.

[38] The employer did not present any oral evidence. Mr. David Butler testified as a union witness. The oral evidence considered relevant by the Board in this matter is summarized below.

[39] Before the hearing of the oral evidence got underway, counsel for the union raised a preliminary objection to the effect that Mr. Cadieux's complaint had been filed with the Board two days after the 90-day time limit provided for in section 97(2) of the *Code*. The Board deferred its ruling on the preliminary objection and decided to hear the oral evidence.

A. For the Complainant

1. Mr. Brian Cadieux

[40] Mr. Cadieux started work with Greyhound in December 2008. Prior to that time, he had worked as a credit counsellor at a bank for 15 years. This change of career came about in part because his father had been an operator for Voyageur Colonial before it had been bought by Greyhound. His two brothers, Messrs. Denis and Régent Cadieux, have also worked as operators for the employer for several years.

[41] Mr. Cadieux started his job with an eight-week training session. He began working as an operator on February 14, 2009. He made trips between Montréal and Ottawa and sometimes Toronto and New York.

[42] Mr. Cadieux described the *Commercial Vehicle Drivers Hours of Service Regulations*. He explained that, under the regulations, a driver may not exceed 14 hours of service per day. In exceptional circumstances, if the day is broken up with a mandatory period of rest, the maximum number of hours of service is 16 hours per day.

[43] On June 19, 2010, Mr. Cadieux, who at that point had been working as an operator for a year and a half, received instructions from the employer's dispatcher to drive his bus to Toronto, where he would coordinate his schedule with the dispatchers and other company operators to provide transportation for a group of RCMP officers in connection with the G-20 Summit. He was given responsibility for transporting a group of Francophone RCMP officers according to need during the entire period of the G-20 Summit. The RCMP officers in question were part of several police corps providing security for the event sites in Huntsville and Toronto.

[44] According to Mr. Cadieux, once he was in Toronto, he was assigned to be either available or on duty, depending on need, on a night shift, without or very nearly without a rest period, right from the start. When he realized what he was being asked to do, that is, to be available for the group of RCMP officers 24 hours a day, he contacted the company dispatcher several times, seeking exact instructions. The dispatcher apparently told him to contact Mr. David Butler,

Greyhound's Regional Vice-President for Eastern Canada. Mr. Cadieux stated that he had also entered into contact with his brothers and his union, during the day on June 24, 2010, to relate his concerns about exceeding the allowable hours of service under the regulations. According to the witness, Mr. Al-Khafajy, the union representative, had given him a vague or cryptic answer to the effect that he should do the work and complain later.

[45] Mr. Cadieux indicated that he had finally spoken with Mr. Butler over the telephone on June 24, 2010, and the latter had instructed him to be available around the clock to meet the needs of the group to which he had been assigned, for the entire duration of the assignment. In Mr. Cadieux's view, he had accordingly been obliged to exceed the maximum allowable number of hours of service per day, that is, 14 hours, and so that is what he had logged for the period of the G-20 Summit.

[46] Mr. Cadieux stated that, when his G-20 Summit assignment had come to an end, he had tried to obtain more information from the pay service and from Mr. Butler about how he would be paid for the hours he had been available and on duty. He indicated that, since he had been unable to get an answer, he had claimed payment for 24 hours a day for the period in question, carefully indicating in his logs that this had been a special arrangement approved or requested by Mr. Butler.

[47] When questioned about his logs in connection with the G-20 Summit, Mr. Cadieux indicated that he had added a note, "special assignment by Mr. Buttler (*sic*)," to avoid having the time sheets rejected by the pay service, though he had known that he was far exceeding the safety rules.

[48] According to Mr. Cadieux, the pay service had subsequently informed him that it could not pay him for all the hours he had claimed without instructions from the employer to that effect. On July 20, 2010, Mr. Cadieux had been informed by a dispatcher that he had been suspended with pay pending an investigation, with no further information.

[49] Mr. Cadieux indicated that the union had suggested that he try to obtain the recording of his telephone conversations with Mr. Butler during the G-20 Summit. He stated that he had contacted his cellular service provider, FIDO, and the RCMP, but had been told that he would have to get a court order to allow them to release the information sought. As a result, no recording had been obtained.

[50] Mr. Cadieux stated that he had nonetheless managed to obtain from the RCMP a detailed description of the presence of the group of officers to which he had been assigned and their activities in connection with the G-20 Summit. According to Mr. Cadieux, he had forwarded that information to his union.

[51] According to Mr. Cadieux, the employer had subsequently called him to two meetings, on July 29 and August 12, 2010. The complainant stated that Mr. Ian Laird, the union president at the time, Mr. Al-Khafajy, a shop steward; and the vice-president of the union, Mr. Jeff Glover, had accompanied him to the first meeting with the employer on July 29, 2010. According to Mr. Cadieux, they had felt that it would be difficult to get Mr. Butler to admit that he had been required to work 24 hours a day during the G-20 Summit.

[52] Mr. Cadieux explained that Messrs. Wayne Binda and Dave Hickey, representatives of the employer, had shown him the logs in which he had recorded the hours of service he had put in at the G-20 Summit. He stated that he had tried to provide all the necessary explanations but that Mr. Binda had interrupted him constantly. Mr. Binda had asked him why he had logged all his hours when the maximum allowable under the law was 14 hours a day; Mr. Cadieux had allegedly answered that he was used to logging all his hours. At the meeting, the complainant had reminded Mr. Butler—who had been taking part in the meeting by telephone—that he had ordered him to remain available for the RCMP group 24 hours a day and had told him that he would be paid in due course.

[53] Mr. Cadieux had been suspended from August 12 to 16, 2010. According to the witness, Mr. Binda had not sent him the suspension letter until August 26, 2010.

[54] Mr. Cadieux indicated that, in March 2011, a company dispatcher had asked him to submit his logs for the previous six months of work, and then for the last 12 months. Once he had handed over his logs, Mr. Cadieux had been called by the employer to a meeting in Montréal on April 15, 2011. Messrs. Butler, Davidson and Binda had represented the employer at that meeting, while Mr. Al-Khafajy had accompanied Mr. Cadieux. According to Mr. Cadieux, Mr. Al-Khafajy had allegedly told him that the employer wanted that meeting to put pressure on the union to drop the grievance against the five-day suspension. Mr. Al-Khafajy had also allegedly told him that, despite the employer's insistence, the union was refusing to drop the grievance as it had been combined with other grievances by employees in Toronto.

[55] Mr. Cadieux submitted that during this meeting, the employer had pored over his logs and questioned him about specific anomalies.

[56] A second meeting had been held on April 20, 2011, at which Mr. Cadieux's employment had been terminated. At that short meeting, the employer had pointed out to him several entries made in his logs that did not comply with the rules and procedures and had then handed him a termination letter.

[57] On cross-examination, Mr. Cadieux was questioned about the anomalies noted in his logs, his five-day suspension, and the reason he had claimed 24 hours a day during the G-20 Summit. When asked whether he had contacted his union during the G-20 Summit to clear up the confusion about Mr. Butler's instructions, Mr. Cadieux indicated that he had contacted Mr. Al-Khafajy, among others, and had been told to do the work requested and that a grievance would be filed later if there was a problem.

[58] Mr. Cadieux admitted that he had not abided by the rules on logging hours of service while on assignment at the G-20 Summit, but added that he had followed the instructions he had been given by Mr. Butler, who had asked him to be available 24 hours a day.

[59] Mr. Cadieux was also questioned at length by counsel for the union about the warnings he had received from the employer regarding the logging of hours and about the different training he had been required to take during his employment over and above the eight weeks provided prior to his starting his duties as an operator.

[60] In regard to the meeting of April 15, 2011, with the employer's representatives, which had been attended by Mr. Al-Khafajy in particular, Mr. Cadieux indicated that the employer had shown him the irregularities in his log books, but he had provided all the necessary explanations regarding those irregularities.

[61] In regard to the notification the union had allegedly sent him on May 31, 2011, to invite him to the meeting of the union's executive board in Toronto the next day in regard to his termination grievance, Mr. Cadieux stated that he had never received that notification and could not recall any telephone call from the union on June 1, 2011.

[62] In regard to the meeting of the membership held on June 15, 2011, in Ottawa, which had dealt with Mr. Cadieux's termination grievance, among other things, Mr. Cadieux maintained that only members had been invited and that, on the day before the meeting, Mr. Al-Khafajy had

told him that, since he was no longer a member of the union, he had not been invited and Mr. Laird strongly objected to his attending.

[63] In regard to the notification from the union dated May 31, 2011, inviting him to present his position at the executive committee meeting the next day. Mr. Cadieux submitted that the union had used the wrong email address, explaining that his email address is COOL Brian (frexxxxx@hotmail.com) and not janiceo.norma.n@gmail.com. Mr. Cadieux stated that he did not know where the email address used by the union had come from and that, after doing some checking, he had been told that his account had been “phished.”

[64] When questioned about his knowledge of the grievance procedure, Mr. Cadieux stated that he had not been aware of the procedure and that his union had never mentioned the possibility of making oral or written submissions to the union’s executive board. Mr. Cadieux also indicated that the union and he had not discussed the possibility of appealing the executive board’s decision to the international union.

[65] On re-direct examination, Mr. Cadieux stated that he had not known of the existence of the process for appealing a decision made by the executive board to the international union.

2. Mr. Alessandro di Giuseppe

[66] Mr. di Giuseppe is a self-taught IT security specialist. He has several training certificates and experience with major Canadian corporations in the area of computer incident response, file recovery and IT investigations. While Mr. di Giuseppe was not an expert witness per se, his professional qualifications and experience were recognized by the Board for purposes of his testimony.

[67] Mr. di Giuseppe indicated that it was difficult to provide a clear explanation for the problems connected to Mr. Cadieux’s email address. However, he recognized that phishing problems are very common with free email services such as the one used by the complainant. He stated that it is a widespread problem in the industry.

[68] Mr. di Giuseppe stated that, based on the data, he had determined that spam had been sent to several of the complainant’s contacts and that Mr. Al-Khafajy himself had received some. He had also been able to determine that the complainant’s email account had likely been hacked into from July 2010 to around June 2011.

[69] On cross-examination, Mr. di Giuseppe agreed that it was not impossible that Mr. Cadieux had himself orchestrated the problems related to his email address. He pointed out, however, that Mr. Cadieux had warned some of his contacts, including Mr. Al-Khafajy, as early as April 13, 2011, that he was not receiving replies to his emails. Mr. di Giuseppe also stated that it was possible that Mr. Cadieux had not noticed that there were problems with his email address.

[70] Mr. di Giuseppe added that it was possible that Mr. Laird had replied to the emails sent by Mr. Cadieux without noticing that they were not reaching Mr. Cadieux but were going elsewhere. Mr. di Giuseppe submitted that free email services could not be counted on for important correspondence, which often requires short reply times.

[71] Finally, Mr. di Giuseppe indicated that Mr. Cadieux had received help from Microsoft to clean up his computer in the summer of 2011, when Mr. Al-Khafajy had advised him that his email address had been hacked into.

3. Mr. Denis Cadieux

[72] Mr. Denis Cadieux is the complainant's brother. He has worked as an operator since 1992, first with Voyageur and then with Greyhound starting in 1999. He testified that, at the time of the G-20 Summit, the employer had had a shortage of operators and had not known how to manage the situation. According to the witness, it had been an unprecedented situation.

[73] Mr. Cadieux indicated that the members gathered at the meeting had voted in favour of referring the suspension grievance to arbitration despite the fact that the executive board had not recommended its referral. He added that Mr. Al-Khafajy had told him that it had been when the employer had found out that the complainant's suspension grievance would be going to arbitration that it had asked that all of the complainant's log books be handed in, as it had not wanted the suspension grievance to be taken to arbitration.

[74] In regard to the meeting of the union membership held in Ottawa on June 15, 2011, in relation to the complainant's termination grievance, among other things, Mr. Cadieux indicated that the meeting had been chaired by Mr. Laird, and that Mr. Al-Khafajy had informed Mr. Laird that he had spoken to the complainant the day before and had told him that "he had to be here" (translation). On noting the complainant's absence, Mr. Glen Lawson had apparently said to get "him [Brian] on the hands-free telephone" (translation). Mr. Cadieux had then contacted the complainant and placed the call in hands-free mode. However, according to the witness, the complainant had not been able to hear the conversation because of a poor connection.

[75] On cross examination, Mr. Cadieux maintained that Mr. Laird had recommended to the membership that the suspension grievance not be referred to arbitration given what he considered its slim chance of success. Mr. Laird had then apparently given his reasons for not recommending that the suspension grievance go to arbitration, including in particular the seriousness of the allegations relating to the complainant's logging errors and the fact that some operators would testify against the complainant. Mr. Cadieux indicated that Mr. Laird had given the members an opportunity to ask questions and that, after the vote, the members had decided to proceed with the grievance at arbitration despite Mr. Laird's opinion.

4. Mr. Régent Cadieux

[76] Mr. Régent Cadieux is also the complainant's brother. He has worked as an operator for Greyhound for a number of years. Mr. Cadieux stated that, during the G-20 Summit in Toronto, the complainant had contacted him to tell him that he was trying to reach Mr. Butler and that the dispatchers had told him that he was obliged to log the hours he was putting in.

[77] When questioned about the meeting of the union membership on June 15, 2011, Mr. Cadieux stated that Mr. Al-Khafajy had told him that he had recommended to the complainant that he attend the meeting but had also pointed out that he could run into problems if he did. He added that, during the meeting, Mr. Al-Khafajy had read out all the allegations against the complainant in regard to his logs. He indicated that about 14 members had attended the meeting.

[78] Mr. Cadieux also indicated that, following the meeting at which the membership had voted to refer the suspension grievance to arbitration, Mr. Al-Khafajy had told him that the employer had asked for the complainant's logs for the month of May as a form of retaliation, as it had not wanted the grievance to be dealt with at arbitration.

5. Mr. Glen Lawson

[79] Mr. Lawson worked as an operator for Greyhound for a number of years. He has been retired since July 2014. He attended the meeting of June 15, 2011, at which 14 members were present. He stated that the complainant's logs had been discussed and that the Ottawa members had voted in favour of referring the termination grievance to arbitration.

B. Union's Evidence

1. Mr. Moe Al-Khafajy

[80] Mr. Al-Khafajy has been an operator for Greyhound since April 2000. He has also been the union president since July 2014 and a union business agent since July 1, 2011. Prior to that, he was a member of the union's executive board, from 2006 to 2011. He is responsible for two bargaining units, that is, the Greyhound operator unit (some 400 members) and the unit for operators and mechanics in the employ of another employer, the Barrie City Bus. Co (some 150 members). He serves members in the Peterborough, Kingston, Ottawa and Montréal areas.

[81] Mr. Al-Khafajy explained that only the president and secretary are paid full-time employees of the union. The vice-president holds a part-time position, and the other members of the executive board hold unpaid positions.

[82] Mr. Al-Khafajy began his testimony by stating that the complainant's five-day suspension had been the result of violations of the logging rules. According to the witness, he had informed the employer that the suspension grievance would be proceeding in March 2011. He indicated that, when a grievance is escalated to the highest step, that is, step 3, the union's executive board will assess the grievance then put it before the membership at a meeting, for a vote as to whether or not the grievance will be referred to arbitration.

[83] Mr. Al-Khafajy stated that, at the membership meetings, a grievance is generally presented by one of the members of the union's executive board, and the only test that is used is whether the grievance has any chance of success if taken to arbitration. He indicated that members then vote and, in the event of a tie, the executive board president decides the issue.

[84] Mr. Al-Khafajy stated that, at the meeting of the membership concerning the complainant's grievance against his five-day suspension, the members had voted in favour of referring the grievance to arbitration despite the recommendation of the union's executive board against doing so.

[85] Mr. Al-Khafajy also explained that, when an employee is terminated, the union continues to represent the employee until all avenues of recourse have been exhausted. He stated that terminated employees are entitled to attend membership meetings but not to vote, as they no longer pay union dues.

[86] Mr. Al-Khafajy stated that, prior to the investigative meeting held with the union and the employer on July 29, 2010, Mr. Cadieux had told him that he had recorded a telephone conversation that he had had with Mr. Butler, in which the latter had indicated that he would be paid for all the hours claimed during the G-20 Summit. Mr. Al-Khafajy had passed the information on to the union president at the time in question. Mr. Al-Khafajy pointed out that the complainant had not supplied the recording, adding that it would have been useful to ensure the success of the grievance at arbitration.

[87] According to the witness, it was during the summer of 2011, after the membership vote on the complainant's dismissal, that Mr. Laird had advised the employer that the termination grievance would not be referred to arbitration. Mr. Al-Khafajy added that, on that same day, the employer had informed the union that it would compensate the complainant for the lost wages in connection with his five-day suspension since there was no longer any reason to pursue that grievance, given the complainant's termination.

[88] Mr. Al-Khafajy stated that he had been involved in the complainant's case from the moment the employer had sought to obtain the complainant's logs. He was the one who had advised the complainant that he had to comply with the employer's instructions even if the employer already had the logs in its possession.

[89] Mr. Al-Khafajy explained that operators have to record anything that may come up during an assignment in their logs. He also confirmed that there are strict rules respecting rest periods and hours of work. That is why an operator exceeding his allowable hours of service might have to travel as a passenger (deadhead) and have another operator take over for him. Mr. Al-Khafajy indicated that spare operators have no specific routes; they are paid based on distance travelled and are on available status. Mr. Al-Khafajy also described the rules concerning maximum allowable hours of operation and the proper keeping of a log. He testified that every operator is responsible for his own log.

[90] With regard to the complainant's termination grievance, Mr. Al-Khafajy maintained that he had filed the grievance and managed the different steps related to the grievance procedure. He added that Mr. Jeff Glover had been the one to present the complainant's termination grievance at the monthly meeting of the union's executive board. Mr. Al-Khafajy indicated that a discussion had been held and a vote had followed. According to Mr. Al-Khafajy, seven members had voted against taking the grievance to arbitration. He indicated that he and Mr. Laird had not voted, and that Mr. Cadieux had not been in attendance. He stated that Mr. Laird had tried, in vain, to

contact Mr. Cadieux by telephone because he had known that the latter had been having technical problems with his email.

[91] Mr. Al-Khafajy indicated that he had been in charge of the complainant's termination grievance up to the third step, at which point Mr. Laird had taken over.

[92] Mr. Al-Khafajy indicated that he had spoken with the complainant the day before the meeting of the membership on June 15, 2011, which had been held in part to determine whether Mr. Cadieux's termination grievance would be sent to arbitration. He had asked the complainant to attend the meeting to provide explanations and answer questions, in particular because the union's executive board was not recommending advancing the grievance to arbitration. Mr. Al-Khafajy indicated that Mr. Cadieux had promised to attend. However, before the meeting started, Mr. Al-Khafajy had been informed by the complainant's brothers that the complainant would not be attending.

[93] Mr. Al-Khafajy stated that the meeting had started with a presentation on the union's financial situation. Two grievances, including the complainant's, had then been put before the membership. Discussions had ensued, questions had been asked, and the vote had been held. According to Mr. Al-Khafajy, the final tally of the votes held in Ottawa, Toronto and London had been 17 against and 14 in favour of referring the grievance to arbitration. The complainant had allegedly been advised by the union of the outcome of the vote.

[94] On cross-examination, Mr. Al-Khafajy indicated that the employer had conducted an investigation because of compilation errors in the complainant's logs during the G-20 Summit, and it had subsequently suspended the complainant for five days. According to Mr. Al-Khafajy, the errors cited by the employer had had nothing to do with the way in which the complainant had completed his logs. Rather, they had related to the fact that the complainant had logged too many hours.

[95] Mr. Al-Khafajy stated that he had conducted his own investigation in regard to the G-20 Summit, had spoken with the complainant and checked some information with Mrs. Caya, one of the complainant's co-workers and also a coach operator at the G-20 Summit. According to Mr. Al-Khafajy, Mrs. Caya had told him that two operators had left the G-20 Summit before she and the complainant had arrived and so she and the complainant had had to do the work of four people.

[96] Mr. Al-Khafajy indicated that the employer had instructed the complainant to turn in his logs after it had received the notice that the suspension grievance would be taken to arbitration. According to Mr. Al-Khafajy, the employer had asked for Mr. Cadieux's logs in retaliation for the challenge of the suspension imposed after the events at the G-20 Summit. Mr. Al-Khafajy stated that he had not had the opportunity to examine the complainant's logs prior to the meeting of April 16, 2011, with the employer, explaining that the union does not request details from the employer in advance of such meetings.

[97] Mr. Al-Khafajy stated that, even though the union asks for complete disclosure of the evidence, the employer systematically holds back on the basis that the evidence will be provided at a later stage. He indicated that the union attends the meetings at the different steps of the grievance process to hear the employer's conclusions. Mr. Al-Khafajy maintained that the union's executive board had not given him any explanation for its decision not to recommend that the suspension grievance be sent to arbitration.

[98] According to the witness, 30 minutes had been spent on the complainant's termination grievance at the meeting of the union's executive board, and Mr. Jeff Glover and he had been the ones to present the case. Mr. Al-Khafajy stated that the entire executive board had recommended not proceeding to arbitration as it felt that there was little chance of success given the serious violations of the law and the numerous errors in the complainant's logs. Mr. Al-Khafajy indicated that the union had not obtained any legal advice in regard to the termination grievance. He stated that, at the meeting, he had tried to call the complainant, but could not recall having managed to speak to him. He added that he had known that Mr. Cadieux had been having technical problems related to his email, hence the telephone call.

2. Mr. Ian Laird

[99] Mr. Laird has been a coach operator for 27 years. He was a union representative from 1988 to 1990; a member of the union's executive board, representing the operators, from 1990 to 1999; and the union's president from 2005 to July 2014.

[100] Mr. Laird stated that five other operators had been terminated by the employer in the past for a first violation of the rules pertaining to logs. He indicated that the union had not proceeded to arbitration in any of those cases because of the serious nature of the violations. He stated that, when an operator is the subject of disciplinary action for logging violations, the union

investigates. According to Mr. Laird, any violations of logging rules are taken seriously as public safety is involved.

[101] Mr. Laird stated that he had attended the first investigative meeting held by the employer in Montréal, which had dealt with the complainant's violations in connection with the G-20 Summit. He indicated that he had gone over the information in the complainant's logs and had noted that Mr. Cadieux had indicated being on duty 24 hours a day. He stated that he had also noted other violations in the complainant's logs and had advised the complainant of them. Mr. Laird had allegedly provided the complainant with explanations on completing his logs, as the way in which he had completed them was not permissible under the regulations. According to Mr. Laird, the complainant's logs in connection with the G-20 Summit had contained numerous errors.

[102] According to Mr. Laird, after the meeting with the employer in Montréal, Mr. Cadieux had told him that he had recorded the telephone conversation with Mr. Butler during the G-20 Summit in which Mr. Butler had indicated that the complainant would be paid for the hours he worked during the G-20 Summit. Mr. Laird stated that he had asked Mr. Cadieux to give him the recording in question, but that the latter had referred him to the RCMP. Mr. Cadieux had subsequently told Mr. Laird that he would have to apply to the Federal Court to obtain the recordings, as it was impossible to get them directly from the RCMP.

[103] According to Mr. Laird, he had filed a grievance against the five-day suspension as Mr. Cadieux had promised to produce the recording of the conversation with Mr. Butler in which the latter had given him permission to claim 24 hours of work a day during the G-20 Summit. Mr. Laird indicated that he had not obtained the recording.

[104] Mr. Laird stated that he had reviewed the logs and the complainant's entire employee record. He submitted that Mr. Cadieux, who had been in the employer's employ for two years, had had a terrible employee record. Mr. Laird maintained that he had carefully reviewed the record and discussed it with union counsel, and while counsel had shared his opinion, a grievance had nonetheless been filed on behalf of the complainant.

[105] Mr. Laird maintained that the union had taken Mr. Cadieux's case seriously. It had invited Mr. Cadieux to the meeting of the union's executive board on June 1, 2011, but the complainant had not attended. He added that he had asked Mr. Al-Khafajy to call Mr. Cadieux during the meeting, to no avail.

[106] Also in regard to Mr. Cadieux's termination, Mr. Laird described the meeting of the union membership held in Ottawa on June 15, 2011. According to Mr. Laird, he and Mr. Al-Khafajy had laid out the facts and the relevant factors relied on by the union's executive board to decide against recommending that the grievance be taken to arbitration. Mr. Laird submitted that the information presented at the meeting had dealt with Mr. Cadieux's conduct in his two years of service, his disciplinary record, primarily related to his logs, the warnings that Mr. Cadieux had received, Mr. Laird's conversations with Mr. Cadieux in regard to the logging errors, and the complainant's five-day suspension. Mr. Laird indicated that the discussions concerning Mr. Cadieux's termination case had taken between 60 and 90 minutes.

[107] Mr. Laird testified that Mr. Cadieux had not attended the meeting of the membership at which the vote on his termination grievance had been held. However, Mr. Cadieux's brothers had been in attendance. Mr. Laird indicated that the members at the meeting had voted against referring the termination grievance to arbitration.

[108] Mr. Laird further indicated that Mr. Cadieux had not sought redress through the union's internal appeal mechanisms to challenge the decision of the membership or of the union's executive board. The union had contacted Mr. Cadieux to advise him that his termination grievance would not be pursued at arbitration and the employer had later sent him a cheque to cover the five days of suspension imposed on him.

[109] On cross-examination, Mr. Laird indicated that the union does not receive copies of the employees' logs, but that the employer receives them on a daily basis.

[110] With respect to the events during the G-20 Summit, Mr. Laird indicated that Mr. Cadieux had informed him that he had had time management problems. He further stated that Mr. Cadieux had also told him that he would send him the recording of the telephone conversation in which Mr. Butler had given him permission to claim all his hours. According to Mr. Laird, Mr. Butler had denied giving Mr. Cadieux permission to work 24 hours a day during the G-20 Summit.

[111] Counsel for the complainant asked Mr. Laird how he would explain the fact that the employer had paid the complainant for 16 hours per day for six consecutive days during the G-20 Summit, when the rules allowed for only 14 hours of work. Mr. Laird replied that he had no explanation, adding that several operators had worked at the G-20 Summit, but no others had logged 24 hours.

[112] In regard to the technical problems related to Mr. Cadieux's email address, Mr. Laird confirmed that he had discussed the matter with Mr. Al-Khafajy.

[113] According to Mr. Laird, while the union had filed a grievance against Mr. Cadieux's termination, the violations of the rules that had given rise to his termination had been major, recurrent and constant.

[114] Mr. Laird maintained that he doubted that Mr. Butler had given the complainant permission to claim 24 hours of work a day during the G-20 Summit, and Mr. Cadieux had never provided him with the recording of the telephone conversation with Mr. Butler to prove otherwise.

3. Mr. Jeff Glover

[115] Mr. Glover is also a coach operator with more than 29 years of service. He was a union representative for six years and is currently vice-president of the union.

[116] Mr. Glover testified that Mr. Cadieux's case had been brought to the attention of the union's executive board by Mr. Al-Khafajy, but stated that he did not know how the latter had investigated the events that had led to the five-day suspension.

[117] Mr. Glover stated that Mr. Cadieux's case, including his logs, had been reviewed at the meeting of the union's executive board held on June 1, 2011, and he had noted that the logs contained several anomalies. According to Mr. Glover, the union's executive board had decided that the employer had been right in terminating the complainant. Mr. Glover stated that the union had to weigh a grievance's chances of success. He stated that he had had the opportunity to be involved in some 60 arbitration sessions. Mr. Glover indicated that the union's success rate at arbitration had been around 90 percent. He maintained that arbitration is costly and requires a great deal of time and effort, and added that the union has to consider a grievance's chances of success before deciding whether or not to refer it to arbitration, as the union's members are the ones who have to bear the cost.

[118] On cross-examination, Mr. Glover admitted that he had only been apprised of Mr. Cadieux's problems in July 2010. He stated that he, like Mr. Cadieux, had worked as an operator at the G-20 Summit, and he had noticed that several other operators had put in too many hours of service.

[119] Mr. Glover indicated that, at the meeting with the employer on July 29, 2010, Mr. Cadieux had admitted that he had not abided by the rules in completing his logs, but had maintained that he had done so based on Mr. Butler instructions.

[120] Mr. Glover stated that, at the meeting of the union's executive board on June 1, 2011, the complainant had not presented his case either orally or in writing. He added that Mr. Al-Khafajy had tried to reach Mr. Cadieux to invite him to take part in the discussion with the union's executive board and explain his position to help the union understand the situation. According to Mr. Glover, the union had not blindly accepted the employer's position in Mr. Cadieux's case; besides, the fact that Mr. Cadieux had not taken part in the meeting of the union's executive board showed that he had had nothing helpful to add.

4. Mr. David Butler

[121] Mr. Butler is a manager with Greyhound, with more than 20 years of experience in its employ.

[122] Mr. Butler started by stressing the importance of the operators' logs; he stated that they must be completed in accordance with the regulations. He emphasized that there are both daily and weekly limits to the hours that operators are allowed to work. According to Mr. Butler, keeping logs and doing so in compliance with regulations is meant to ensure public safety.

[123] Mr. Butler indicated that operators are provided with log books from their very first day in the position of operator. He stressed that Mr. Cadieux had been given the same training on keeping logs as every other operator. He indicated that additional training is provided as necessary.

[124] Mr. Butler stated that a large number of violations had been noted in Mr. Cadieux's logs and that Mr. Cadieux had been given special training sessions and annual reminders concerning the keeping of logs. Mr. Butler indicated that, in his two years with Greyhound, Mr. Cadieux had been the operator to receive the most training.

[125] Mr. Butler indicated that Mr. Cadieux's record contained a number of warnings and disciplinary actions in relation to different violations of the rules in place for Greyhound operators. He added that Mr. Cadieux had violated the rules much more frequently than the other operators. He indicated that Mr. Cadieux had been suspended for 13 days over a period

of two years because of disciplinary issues. He stated that a five-day suspension was very serious and could lead to termination.

[126] Mr. Butler stated that all of Mr. Cadieux's problems and other violations while with Greyhound had involved monetary claims. He maintained that Mr. Cadieux's logs for the period of the G-20 Summit showed that he had violated the allowable hours of work by claiming payment for a period of 24 consecutive hours. According to the witness, the complainant's conduct at the G-20 Summit had been driven by a desire for monetary gain.

[127] Mr. Butler testified that the operators assigned to the G-20 Summit had been instructed to remain available, to provide service on demand and in the event of any emergency. According to the witness, Mr. Cadieux had interpreted those instructions as meaning that he had to be on duty 24 hours a day. Mr. Butler stated that no other operator had interpreted those instructions in that manner. Mr. Butler argued that there was a difference between being available and being on duty, explaining that operators are not paid wages for being available.

[128] Mr. Butler recalled having received at least two calls from the complainant during the G-20 Summit. He recalled having instructed him to remain on standby and available in case of need. Mr. Butler added that he could not have told Mr. Cadieux that he would be paid for a 24-hour period; he had, rather, told him that he would be paid the maximum allowable under the collective agreement. Mr. Butler indicated that the complainant had acted contrary to the instructions he had been given and had the same obligation as all operators to comply with the rules pertaining to rest periods.

[129] Mr. Butler maintained that the union had learned of the matter when Mr. Cadieux had sought its assistance in his continued attempts to get paid based on the hours he had logged.

[130] According to Mr. Butler, disciplinary action had been taken against the complainant as a result of the errors found in his logs. He added that violating the rules respecting minimum rest periods had placed the RCMP personnel, the public and Mr. Cadieux's own life at risk.

[131] Mr. Butler also indicated that other violations had been identified in the complainant's logs in 2011. He stated that the logs indicated that the complainant had been on duty when he had not been supposed to be. Mr. Butler stated that he had also noted that the complainant had falsified some logs.

[132] Mr. Butler stated that he had conducted an investigation into the complainants' logs over a period of 12 months in 2010, after Mr. Cadieux had received training. To this end, a two-hour meeting had been held with Mr. Cadieux and Mr. Al-Khafajy at the Montréal bus station. According to Mr. Butler, at that meeting he had asked Mr. Cadieux for explanations regarding his logs, as they contained serious errors and violated the regulations.

[133] Mr. Butler emphasized that, at the start of his employment as an operator, the complainant had completed his logs correctly. He believed that the training that Mr. Cadieux had received had been adequate. According to Mr. Butler, Mr. Cadieux knew how to properly complete his logs, and his violations had been deliberate. Mr. Butler stated that the most flagrant violations had been the ones where the complainant had indicated that he had been on duty when he had not been; in Mr. Butler's view, this had enabled Mr. Cadieux to claim more work.

[134] Mr. Butler submitted that Mr. Cadieux's work history, which included 13 days of suspension, had caused a breakdown in the relationship of trust, which had justified the complainant's termination.

[135] Mr. Butler stated that the decision to terminate the complainant had been made jointly by the members of the employer's management and that the union's filing of grievances had not influenced their decision.

[136] Mr. Butler maintained that Mr. Cadieux had had the opportunity to explain all the incidents held against him but had never done so in a satisfactory manner.

[137] In regard to Mr. Cadieux's grievance against the five-day suspension, Mr. Butler indicated that the decision to settle the grievance with the union had been made a few months after Mr. Cadieux's termination.

[138] On cross-examination, Mr. Butler described the different rules pertaining to operators' logs, also explaining those relating to the status of an operator while on duty or available. With respect to the G-20 Summit, Mr. Butler insisted that when Mr. Cadieux had not been on duty, he had remained available during certain periods, but no wages had been paid for said periods. Mr. Butler maintained that Mr. Cadieux had never been on active duty and paid for periods of 24 consecutive hours.

[139] According to Mr. Butler, Mr. Cadieux had been treated in the same way as the other operators assigned to the G-20 Summit. The operators had worked as a team and in shifts;

when not carrying out transportation duties, an operator would park his vehicle. The operator could only provide transportation on demand when he was available. According to Mr. Butler, all of the operators except Mr. Cadieux had followed the rules. He pointed out that the most hours an operator could claim was 16, and an operator could not be paid wages for a period of 24 hours in a single day.

[140] Mr. Butler maintained that he had given Mr. Cadieux a second chance after the incidents connected with the G-20 Summit and had provided him with additional training, yet Mr. Cadieux had continued to log his hours incorrectly, all for monetary gain. According to Mr. Butler, some entries might have been made by error, but others had been made deliberately.

5. Examination of Mr. Al-Khafajy by new counsel for the union

[141] At the hearing before the Board, Ms. Cynthia Watson took over for Mr. G. James Fyshe as counsel for the union. Ms. Cynthia Watson requested that Mr. Al-Khafajy be called as a witness a second time so that she could ask him a few additional questions. The Board acquiesced to her request.

[142] Mr. Al-Khafajy stated that he does not review operators' logs as he has confidence in the operators and reviewing logs is management's job. He added, by way of explanation, that he did not recall reviewing Mr. Cadieux's logs. He did, however, recall telling Mr. Cadieux that he should always comply with the provisions of the collective agreement, the regulations and the Act.

[143] Mr. Al-Khafajy indicated that he had been Mr. Cadieux's representative at the April 2010 meeting with the employer relating to the review of the complainant's logs. He stated that Mr. Cadieux's original logs had not been available at that meeting, but photocopies of the logs may have been, along with other documents.

V. Arguments

a. Complainant

[144] Mr. Laurendeau, counsel for the complainant, recognizes that the burden of proof in a complaint of breach of duty of fair representation lies with the complainant. Counsel invites the Board to consider the allegations against the union in regard to both the grievance against the complainant's termination on April 20, 2011, and the grievance against the five-day suspension.

[145] According to counsel, these entire proceedings relate to events that took place during the G-20 Summit. He submits that the key argument in support of the union's decision not to recommend that the termination grievance be taken to arbitration at the meetings of the membership held in Ottawa, Montréal and London, revolved around the fact that Mr. Cadieux had already been given a five-day suspension in connection with the events at the G-20 Summit. Counsel submits that the question, then, is whether the union conducted a thorough investigation into the events related to the G-20 Summit.

[146] Counsel submits that the three members of the union's executive board who testified on the subject all admitted to knowing little about what had actually transpired during the G-20 Summit. According to counsel, the union instead relied on what Mr. Butler had recounted in this regard and so it was not surprising that Mr. Butler had been one of the union's key witnesses.

[147] Counsel submits that the complainant has consistently given a clear and detailed account of what transpired at the G-20 Summit; however, the union chose to adopt the employer's version of the facts. Counsel adds that the evidence has established that, at the G-20 Summit, two teams were formed to provide round-the-clock service but that, when Mr. Cadieux arrived, the day team left. Counsel also submits that the complainant gave his account of what had been said during his conversation with Mr. Butler, who had asked him to be on duty 24 hours a day. Yet the union failed to take any steps to obtain the recording of that conversation.

[148] Counsel submits that the union acted arbitrarily toward the complainant when its president, Mr. Laird, indicated at the meeting of the membership that Mr. Cadieux's five-day suspension was what bothered him the most in the termination case, when the union had botched its investigation into the events at the G-20 Summit, and the complainant's suspension had been challenged and the grievance sent to arbitration.

[149] Counsel further submits that the complainant's termination letter contained a procedural defect that the union should have challenged, as it provided no explanation of the allegations against the complainant, contrary to what is provided for in the collective agreement.

[150] According to counsel, the evidence shows that the union did not have the complainant's logs when it reviewed his termination case on June 1, 2011. It therefore could not recommend to the membership that the grievance not be sent to arbitration. According to counsel, the union was unable to properly weigh the substance of the employer's allegations against the

complainant. He accordingly submits that the union failed to conduct a thorough investigation into the errors alleged against the complainant, to ensure a full and complete defence. Counsel submits that what was raised at the meeting of the membership in regard to the complainant's termination was nothing more than a series of generalities, which lacked any detail.

[151] According to counsel, another point related to the union's arbitrary conduct relates to its communications with the complainant. The union never attempted to contact the complainant to obtain his side of the story in regard to the alleged log errors. Subsequently, communication errors prevented the complainant from taking part in the meeting of the union's executive board at which the termination grievance was discussed; the email sent by Mr. Laird was sent to an unknown address and, in any event, provided the complainant with only 24 hours' notice to make arrangements to attend a meeting that was, after all, crucial.

[152] Counsel for the complainant submits that all of the foregoing shows that the union treated the complainant's grievances perfunctorily and failed in its duty to communicate with the complainant, contrary to its duty of fair representation.

b. Union

[153] Counsel for the union, Ms. Cynthia Watson, calls today's union a professional union, which has worked hard to have rules governing the status of its operators implemented. She stresses in particular that the former president, Mr. Laird, has some 20 years of experience and understands the importance of logs.

[154] She further submits that, in this matter, the union consulted its counsel, Mr. Fyshe, who was of the opinion that the termination grievance was bound to fail. The union relied on that opinion.

[155] According to counsel, the evidence showed that Mr. Laird had met with the employer about Mr. Cadieux's case, had reviewed the complainant's logs, and had concluded that the complainant's repeated errors were unacceptable. Counsel submits that, when Mr. Laird raised the matter of Mr. Cadieux's five-day suspension at the meeting of the membership on the termination grievance, he wanted to show that Mr. Cadieux should have learned from his mistakes. She submits that Mr. Laird had already warned Mr. Cadieux to pay careful attention to his entries in his logs, yet, despite that, Mr. Cadieux had been unable to learn from his mistakes.

[156] According to counsel, the union could not afford to send the termination grievance to arbitration as it was bound to fail and that would cause prejudice to its members. Counsel also emphasizes that the evidence showed that logs are central to an operator's work life. Mr. Laird in fact testified that five members had already lost their employment because of logging errors and the union had not challenged those terminations at arbitration.

[157] In addition, counsel submits that the complainant was actually a terrible employee. She adds that he had a substantial disciplinary record for an employee with only two years of service. She also submits that, according to the evidence, some of the errors in the complainant's logs were contrived by the complainant for the purpose of obtaining more work at the expense of his co-workers. Counsel submits that the complainant was an employee with no respect for the rules of procedure or for his co-workers.

[158] Counsel for the union adds that the complainant's story changed along the way, in that he had told his union that he had a recording of his conversation with Mr. Butler, when in truth he had no such thing. She questions whether it was up to the union to take steps to approach the courts in order to acquire the said recording. In her view, no union would have taken such steps. Mr. Laird has known Mr. Butler for over 20 years and does not believe that the latter would have told Mr. Cadieux to work around the clock. Counsel submits that Mr. Butler's testimony was open and honest in this regard.

[159] Finally, counsel for the union questions Mr. Cadieux's conduct and his failure to attend the different union meetings. In regard to the meeting of the union's executive board on June 1, 2011, she submits that the union cannot be blamed for having sent Mr. Laird's invitation to the complainant to attend the meeting to the wrong email address. She adds that the complainant, however, can be blamed for not attending the meeting of the membership, at which he could have made his case.

[160] Counsel submits that the union had a duty to take all the information in the complainant's record into account, that is, the errors in his logs and his disciplinary record, in making a decision, which is what it did.

[161] Ms. Watson concludes by stressing that the complaint was filed outside the time limit under the *Code* as Mr. Cadieux knew or ought to have known as of June 21, 2011, or at the latest June 28, 2011, that the union would not be sending his termination grievance to arbitration.

[162] Counsel submits that, in this matter, the union provided the complainant with outstanding representation, which went even beyond expectations; it was not perfect, but very nearly so. She submits that allowing Mr. Cadieux's complaint would in no way promote sound labour relations.

c. Reply of counsel for complainant

[163] Counsel for the complainant submits that the issue of the time limit was addressed in the Board's first decision.

[164] He also submits that, after the meeting of April 20, 2011, the union advised the complainant to take a break and assured him that it would deal with his case. Counsel submits that the complainant was given only 24 hours' notice of the meeting of the union's executive board, and stresses that the union failed to inform him of the outcome of that meeting.

[165] With regard to the recording of the call between the complainant and Mr. Butler at the time of the G-20 Summit, counsel for the complainant indicates that Mr. Cadieux actually told the union that the conversation had been recorded, not that he had the recording in question.

[166] As regards the legal opinion that counsel for the union alleged Mr. Fyshe gave Mr. Laird, Mr. Laurendeau stresses that no evidence was provided in this regard.

VI. Analysis and Decision

A. Timeliness of Complaint

[167] The union raised an objection to the effect that the complaint was untimely as it had been filed with the Board more than 90 days after the date on which the complainant had known or ought to have known of the circumstances giving rise to his complaint. According to the union, the union president, Mr. Laird, informed the complainant of the outcome of the membership vote on June 23, 2011, in an email sent to Mr. Cadieux at the address janiceo.norma.n@gmail.com, that is, an email address that Mr. Cadieux indicated he did not recognize. Mr. Cadieux's complaint was filed on September 30, 2011. Mr. Laird's email reads as follows:

Hi Brian The vote for arbitration about your termination was turned down in the set of meetings just completed the count being 17 against 14 in favour of proceeding. I will send a formal letter by next week by mail if the strike is settled or by courier. We will still proceed with your other arbitration. Ian

[168] The evidence has shown that the email address used by Mr. Laird on June 23, 2011, was not the complainant's and, in fact, according to Mr. di Giuseppe, may have been created by someone else, as maintained by Mr. Cadieux.

[169] In addition, even if the complainant may have unofficially been informed of the outcome of the vote by co-workers or his brothers, who are Greyhound employees, the Board considers that, given the context and circumstances surrounding the unknown email address that Mr. Laird used for Mr. Cadieux on June 23, 2011, the date that must be retained as the start date for the 90-day time limit set out in the *Code* for filing a section 37 complaint is July 5, the date on which the complainant alleges he received the official letter from the union, which was dated June 28, 2011.

[170] Mr. Cadieux's complaint was filed on September 30, 2011, within the 90-day time limit, and is therefore timely.

B. Merits of Complaint

[171] The union's duty of fair representation is set out in section 37 of the *Code*:

37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[172] The general principles that govern the duty of fair representation were set out by the Supreme Court of Canada in *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509 (*Gagnon*), as follows:

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.
4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.

5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.

(page 527)

[173] In accordance with these criteria, the Board analyses the union's conduct in managing employees' grievances. It is not the Board's role to consider on appeal the union's decision not to refer a grievance to arbitration. Rather, its role is to consider how the union handled the grievance. In short, the Board rules on the union's decision-making process and not the merits of the complainant's grievance (see *Coulombe*, 1999 CIRB 25). That being said, while the Board does not rule on the merits of an employee's grievance, it may review the facts in order to determine whether the union's investigation reflected the worthiness and seriousness of the employee's case (see *Pinel*, 1999 CIRB 19).

[174] In *Schiller*, 2009 CIRB 435, the Board considered the investigation carried out by the union:

[33] A union also cannot act arbitrarily by only superficially considering the facts or merits of a case. It would be arbitrary not to investigate and discover the circumstances surrounding the grievance or to fail to make a reasonable assessment of the case.

[34] Union officials can make honest mistakes in the sense that they may wrongly assess a grievance but still not act arbitrarily. As the Board stated at paragraph 37 in *Virginia McRaeJackson et al.*, *supra*:

[37] Accordingly, the Board will normally find that the union has fulfilled its duty of fair representation responsibility if: a) it investigated the grievance, obtained full details of the case, including the employee's side of the story; b) it put its mind to the merits of the claim; c) it made a reasoned judgment about the outcome of the grievance, and d) it advised the employee of the reasons for its decision not to pursue the grievance or refer it to arbitration.

[175] In *McRaeJackson*, 2004 CIRB 290, the Board clearly described arbitrariness on the part of the union, noting its particular import when an employee's termination is involved:

[26] There is no exhaustive list of items that a union must consider in deciding whether or not to take a grievance to arbitration. However, a few general principles apply.

...

[29] A union must not act arbitrarily. Arbitrariness refers to actions of the union that have no objective or reasonable explanation, that put blind trust in the employer's arguments or that fail to determine whether the issues raised by its members have a factual or legal basis (see *John Presseault*, *supra*, but see *Orna Monica Sheobaran*, [1999] CIRB no. 10, that upheld a complaint where the union referred an employee to the employer rather than assist the

employee; and *Clive Winston Henderson, supra*, where the union's decision jeopardized an employee's seniority).

[30] It is arbitrary to only superficially consider the facts or merits of a case. It is arbitrary to decide without concern for the employee's legitimate interests. It is arbitrary not to investigate and discover the circumstances surrounding the grievance. Failure to make a reasonable assessment of the case may amount to arbitrary conduct by the union (see *Nicholas Mikedis* (1995), 98 di 72 (CLRB no. 1126), appeal to F.C.A. dismissed in *Seafarers' International Union of Canada v. Nicholas Mikedis et al.*, judgment rendered from the bench, no. A-461-95, January 11, 1996 (F.C.A.)). A non-caring attitude towards the employee's interests may be considered arbitrary conduct (see *Vergel Bugay et al., supra*) as may be gross negligence and reckless disregard for the employee's interests (see *William Campbell*, [1999] CIRB no. 8).

[31] The union's duty in this regard is open to greater scrutiny when a matter involves an employee's termination, serious discipline that affects gainful employment or a disability that requires accommodation...

[176] While a significant portion of the evidence has dealt with the entries in Mr. Cadieux's logs and allegations regarding logging errors, which in the employer's eyes justified the five-day suspension and, subsequently, the termination of the complainant, these are issues to be determined by a grievance arbitrator.

[177] In light of the case law cited above and the FCA's judgment in *Cadieux v. Amalgamated Transit Union, Local 1415, supra*, the Board must, based on the evidence adduced, consider the following questions regarding the investigation carried out by the union in this matter:

- 1) Did the union conduct a perfunctory or a thorough investigation into the complainant's suspension and termination grievances?
- 2) Did the union gather sufficient information to arrive at an informed decision concerning the complainant's termination?

a. Investigation into suspension and termination grievances

[178] The events during the G-20 Summit that led to Mr. Cadieux's suspension are at the heart of this matter and form part of the timeline of events that led to Mr. Cadieux's termination. The Board consequently considers it necessary to review the union's conduct in connection with both grievances.

[179] The union's investigation into the events that led to Mr. Cadieux's termination does not satisfy the Board that it took the complainant's explanations seriously. In the Board's view, the union's investigation was perfunctory and badly carried out.

[180] The members of the union's executive board, on which Mr. Al-Khafajy was also the union representative for the bargaining unit of which Mr. Cadieux was a member, knew that there had been scheduling and operator availability issues during the G-20 Summit. The allegations made against the complainant in the disciplinary letter sent in August 2010 related to events during the G-20 Summit and dealt strictly with the fact that Mr. Cadieux had logged 24 hours of work a day and claimed pay for the hours done. The disciplinary letter indicated the following:

The company does random log audits to ensure Greyhound operators are in compliance with the DOT laws, company policies and procedures.

While doing an audit of your logs, the company detected log violations which needed to be addressed immediately and resulted in you being pulled from service with pay on July 20, 2010 pending an investigation.

Two hearings were conducted to review the events concerning log violations for the month of June 2010 and it was established that you knowingly violated the legal hours of service while on duty.

In attendance for the July 29th investigation hearing were I. Laird, J. Glover, M. Sadighi, D. Hickie, you and the undersigned.

In attendance for the August 12th investigation hearing were M. Al-Khafajy, E. Lajoie, you and the undersigned.

At both hearings, you indicated that you understood the hours of service and that you were clear that an operator needs 8 hours core rest in a 24 hour work day.

After reviewing your June 2010 logs, it was determined that you did not have 8 hours core rest for June 23, 24, 25, 26 and 27, 2010.

You indicated that you deliberately worked over the legal hours of service without taking proper core rest because you felt obligated to serve the RCMP group, during their work at the G-8 Summit, to accommodate their scheduled and/or free time activities.

At no time, would an official of the company allow an operator to violate the DOT regulations and/or Highway Traffic Act.

You were hired/trained as an operator, put in a position of trust and many times unsupervised. It's your responsibility to make decisions which will protect the best interest of the company and ensure you are operating within the law.

Your actions could have resulted in liability in case of an accident or traffic violation. You could have jeopardized the health and safety of the passengers and yourself. The company's reputation would also be jeopardized.

Greyhound Canada promotes safety as a very important component of its business. This is the reason that we have 6-8 week training modules before you are hired as a full time operator and IP training session(s) during your employment.

Failure to adhere to company policy and procedures is subject to progressive discipline.

You violated the following in the Operators' Rule Book:

...

Therefore, you were suspended for five days without pay, Suspension was served on August 12, 13, 14,15,16 (day of re-train without pay). August 17, 2010 you were given a second day of retraining with pay.

It's very important that you follow the Canadian and US DOT regulations, the Company's Policies and Procedures and all refresher training provided by the Company. The Company had given you the tools and knowledge to be a professional motor coach operator.

In conclusion, the five day suspension represents the final step of the disciplinary process. Any further performance violations will result in your termination.

Drive Safe

(sic)

[181] The evidence also shows that the two meetings held on July 29 and August 12, 2010, which were attended by the union representatives, Mr. Cadieux and the employer, also related to the events at the G-20 Summit. At least that is what is also suggested in the suspension letter sent to the complainant in late August 2010. In that letter, the employer criticizes the complainant for working 24 hours a day, contrary to the safety rules, and denies that a company official gave him permission to breach the regulations and Act in regard to safety measures. At the July 29, 2010, meeting, Mr. Cadieux explained that Mr. Butler had ordered him to remain available to cover the needs of the RCMP group 24 hours a day and had told him that he would be paid in due course. In his testimony, Mr. Butler did not deny that he had spoken with Mr. Cadieux during the G-20 Summit but maintained that he had instructed him to remain on standby and available in case he was needed; he denied telling Mr. Cadieux that he would be paid for 24 hours a day.

[182] The grievance against the five-day suspension, filed by Mr. Al-Khafajy on September 6, 2010, reads as follows:

On August 26, 2010 Wayne Binda District Manager issued a disciplinary letter to Operator Brian Cadieux regarding Log Violation.

...

Mr. Binda mentioned in his letter that **Mr. Cadieux knowingly violated the legal hours of service while on duty**. Mr. Cadieux was simply following his supervisor's instructions.

Mr. Cadieux and Mrs. Caya had a direct order from the OPS that "under no circumstances were they allowed leaving the RCMP officers stranded without buses or drivers".

Mr. Binda also mentioned in his letter that **"At no time, would an official of the company allow an operator to violate the DOT regulations and / or the Highway Traffic Act"** where, in fact **Mr. Butler instructed the operators to be available and ready to move the buses at any time for 24 hours a day**, hoping that the RCMB would not require services for more than the legal hours per day.

Mr. Cadieux was trained to follow his supervisor's instruction and not to be insubordinate to protect the company's interest.

...

I am grieving the five days suspension...

(sic)

[183] As may be seen, the grievance contains the following allegations: "Mr. Cadieux and Mrs. Caya had a direct order from the OPS that 'under no circumstances were they allowed leaving the RCMP officers stranded, without buses or drivers,'" and "Mr. Butler instructed the operators to be available and ready to move the buses at any time for 24 hours a day..."

[184] Mr. Al-Khafajy's testimony confirmed the wording of the grievance that he had filed against the complainant's suspension. He stated that the errors cited by the employer in regard to Mr. Cadieux's logs in June 2010 had had nothing to do with the way in which the complainant had completed the logs; rather, they had related to the fact that the complainant had logged too many hours. It was thus a matter of one person's word against another's. Did Mr. Butler actually tell Mr. Cadieux that he would be paid for 24 hours a day?

[185] Mr. Laird, the union president at the time in question, stated that the suspension grievance had been filed because Mr. Cadieux had promised to produce a recording of the telephone conversation he had had with Mr. Butler during the G-20 Summit. He criticized Mr. Cadieux for not having produced the recording, stating that because he had not, the grievance against

Mr. Cadieux's suspension had no longer stood up. The union's executive board had accordingly not recommended to the members at the membership meeting that the suspension grievance be taken to arbitration, though the members had voted in favour of arbitration.

[186] In his testimony, Mr. Cadieux stated that he had approached his cellular service provider, FIDO, to obtain transcripts of his conversations with Mr. Butler at the time of the G-20 Summit, to no avail, and had then approached the RCMP, but the RCMP had told him that he would have to obtain a court order. Mr. Cadieux was nonetheless successful in obtaining from the RCMP a description of the presence of the group of agents to which he had been assigned and their activities during the G-20 Summit, which he passed on to his union.

[187] In the Board's view, the union's conduct in relation to the G-20 Summit events shows that it acted arbitrarily in blindly accepting the employer's version of the facts and ignoring the evidence it already had at its disposal. The evidence showed that the union had been aware of the special circumstances surrounding the G-20 Summit and had known that the bilingual operators assigned to an RCMP group had been overloaded. In fact, Mr. Al-Khafajy had been told by Mrs. Caya that two operators had left the G-20 Summit before she and Mr. Cadieux had arrived and that they had had to do the work of four people.

[188] The Board considers that the circumstances surrounding the G-20 Summit were so unusual that the union should have paid special attention to the dilemma faced by Mr. Cadieux, who had understood, perhaps erroneously, that he was expected to be on duty around the clock and would be paid accordingly. Yet the union concluded that, without the recording of the conversation between Mr. Cadieux and Mr. Butler at the time of the G-20 Summit, the grievance had no chance of succeeding, failing to take into account the other evidence at its disposal.

[189] At the meeting of the union membership concerning the complainant's suspension grievance, the members voted in favour of referring the suspension grievance to arbitration, contrary to the recommendation of the union's executive board. Shortly thereafter, the employer started reviewing the complainant's logs and decided to terminate his employment.

[190] With regard to his termination, the complainant essentially alleges that his union did not meet with him or discuss the termination grievance after he received his termination letter on April 20, 2011, and did not give him the opportunity to be heard at the meeting of the union's executive board on June 1, 2011. He also criticizes the union for recommending withdrawal of his termination grievance at the meeting of the membership in Ottawa on June 15, 2011, citing

his disciplinary record, that is, his five-day suspension on August 26, 2010, in connection with the G-20 Summit events.

[191] Mr. Cadieux was called to a meeting with the employer on April 15, 2011, to review his logs for the past year, which a dispatcher had asked him to produce ahead of time. Mr. Al-Khafajy accompanied Mr. Cadieux to the meeting, but he admitted that he had not had the opportunity to look at the complainant's logs prior to the meeting, pointing out that the union does not generally ask the employer for details prior to a meeting. Mr. Cadieux's employment was terminated on April 20, 2011. The employer basically cited violation of rules relating to the keeping of his logs. The termination letter makes mention of, among other things, his five-day suspension in August 2010, which, as already mentioned, related to the G-20 Summit events.

[192] On April 23, 2011, the union filed a grievance against Mr. Cadieux's termination. His union did not subsequently contact him or meet with him to discuss the termination grievance.

[193] Even more surprising is the fact that the union never met with the complainant between April 20, 2011, when he was terminated, and June 1, 2011, when the union's executive board meeting was held, to go over what the employer was alleging and obtain his side of the story. Yet the evidence shows that, at the disciplinary meetings with the employer prior to the complainant's termination, the union had not had the complainant's logs on which the employer had relied to terminate his employment even though he had been accused of, among other things, having falsified his logs for monetary gain.

[194] According to Mr. Glover's testimony, at its meeting of June 1, 2011, the union's executive board had Mr. Cadieux's record before it and decided that the employer had been right to terminate Mr. Cadieux's employment. Mr. Glover nevertheless admitted that he had never himself reviewed the complainant's logs. On June 1, 2011, the union's executive board did not recommend taking the complainant's termination grievance to arbitration. Yet there is nothing in the evidence to indicate what documents the union's executive board relied on to arrive at its decision.

[195] For the foregoing reasons, the Board finds that the union conducted a perfunctory investigation of the events that had led to the complainant's suspension and termination, and failed to take into account the complainant's side of the story.

b. Union's decision-making process in regard to termination grievance

[196] The union criticizes Mr. Cadieux for not attending the meeting of its executive board on June 1, 2011, at which the termination grievance was discussed. However, Mr. Laird, the union's president at the time, emailed Mr. Cadieux about the meeting only the day before the said meeting, on May 31, 2011, at around 11 a.m. The notification reads as follows:

From: "ATU1415President" <president@atulocal1415.ca>
To: <janiceo.norma.n@gmail.com>
Sent: May 31, 2011 10:52 AM
Subject: Re: Procedures how to get copy of calls

Hi Brian We are having an executive board meeting tomorrow to discuss your termination. Will you be available by phone around 11:00am if the board has questions? Your arbitration will be voted on the next round of meetings which will take place June 14th in Toronto, June 16th in Ottawa and London on the 23rd. Ian

(sic)

[197] As may be seen, he was asked in the email, "[w]ill you be available by phone around 11:00am if the board has questions?"

[198] According to the evidence, when on April 13, 2011, the employer called Mr. Cadieux to the meeting of April 15, 2011, Mr. Cadieux advised Mr. Al-Khafajy by email that he should be careful to check the email address being used to see if it was the right one as there might have been a problem with his email account. In that email message, Mr. Cadieux reminded him of his email address. The complainant stated that he had never received Mr. Laird's email or any call from the members of the executive board on June 1, 2011, or the day before.

[199] The email address used by Mr. Laird was not the one usually used by Mr. Cadieux. The evidence showed that Mr. Cadieux's email address may have been compromised, that is, hacked. Mr. di Giuseppe indicated that phishing problems are very common with email services such as the one used by the complainant.

[200] Articles 7(b) and 7(c) of the union's bylaws read as follows:

7. GRIEVANCES

...

b. At the last step of the grievance procedure and prior to the membership voting on arbitration, the member will present his case to the Executive Board, orally or in writing, at their regular meeting. Should the member not make the presentation to the Executive Board, the Executive Board will render its recommendation based on the evidence on file.

c. The membership will vote by secret ballot at the general meetings as to whether to proceed to arbitration on any grievance involving the interest of an individual member. A simple majority will rule. Arbitration votes will be held only in the cities of Toronto, London and Ottawa for the Greyhound bargaining unit. ... Only members of the bargaining unit affected may vote on the arbitration.

[201] Even if Mr. Laird's email had been sent to the complainant's proper email address and even if, as implied by Messrs. Laird, Glover and Al-Khafajy, a member of the executive board had tried, unsuccessfully, to reach the complainant on June 1, 2011, during the meeting of the union's executive board, notice of barely 24 hours raises some doubt as to the union's procedural fairness toward the complainant, who was being asked to present his case in regard to his termination. It is at that important meeting that the union's executive board had to decide whether or not to recommend arbitration to the members at the meeting of the membership. The union's executive board ultimately decided against recommending arbitration of the termination grievance, based in particular on the five-day suspension in connection with the G-20 Summit events.

[202] Further, the decision of the executive board was not conveyed to the complainant. In accordance with the union bylaws, the membership was asked to vote on whether or not to send the grievance to arbitration. As the evidence has shown, the meetings in this regard were held on June 14, 15 and 21 respectively in Toronto, Ottawa and London.

[203] The union also criticizes the complainant for not attending the meeting of June 15 in Ottawa even though Mr. Al-Khafajy invited him to attend the day before.

[204] According to witness Lawson and witness Denis Cadieux, the complainant's brother, the members at the Ottawa meeting, who numbered about 14, voted in favour of sending the termination grievance to arbitration despite the union's recommendation to the contrary, on the basis that logging errors were common for all operators. However, the final outcome of the vote was in favour of the recommendation not to take the grievance to arbitration. Mr. Laird informed Mr. Cadieux accordingly on June 28, 2011:

Re: Arbitration vote

Dear Brian, as you are aware the voting for your arbitration was voted on in Toronto on June 14, in Ottawa June 15, and in London on 21st. The results were 17 – 14 against taking this issue to arbitration.

Faternally,

Ian Laird, President
Amalgamated Transit Union, Local 1415

(sic)

[205] The Board finds that the fact that Mr. Cadieux did not attend the meeting of the membership in Ottawa is a factor worthy of consideration in assessing the union's conduct in this matter. However, the complainant's attendance at the meeting would have had little impact on the overall result, as members in Ottawa voted in favour of referring the grievance to arbitration. In any event, as indicated by Mr. Al-Khafajy in his testimony, employees who are terminated have the right to attend meetings, but not to vote. Furthermore, there is nothing to indicate, based on the union's bylaws, that Mr. Cadieux would have had the opportunity to present his case. At least, article 7(c) of the union bylaws makes no mention of it, as opposed to article 7(b), which provides that "the member will present his case to the Executive Board."

[206] Mr. Laird stated that the executive board had recommended not to refer the termination grievance to arbitration, based in particular on the complainant's disciplinary record, that is, his five-day suspension in connection with the events during the G-20 Summit. However, of note is that the complainant's grievance against the suspension related to the G-20 Summit events had been referred to arbitration despite the union's recommendation against it. Yet the union made no attempt to consider the connection between the suspension grievance and the termination grievance or to explain it to the membership.

[207] The Board finds that the union's executive board acted arbitrarily in relying on the complainant's five-day suspension to justify its decision not to refer the termination grievance to arbitration. The union misled the members at the meeting by drawing their attention to the five-day suspension, which was to be the subject of arbitration and had not as yet been settled.

[208] As the Board very clearly stated in *McRaeJackson, supra*, "[30] [i]t is arbitrary to only superficially consider the facts or merits of a case. It is arbitrary to decide without concern for the employee's legitimate interests."

[209] The Board finds, based on the evidence before it, that the union conducted a perfunctory investigation and failed to assess or even obtain sufficient information to arrive at an informed decision in its investigation respecting both the suspension and the termination.

[210] In this matter, the Board accordingly finds that the union acted in an arbitrary manner and breached section 37 of the *Code*. It therefore allows Mr. Cadieux's complaint.

VII. Remedial Considerations

[211] Pursuant to section 99(1)(b) of the *Code*, the Board has the power to order redress commensurate with assisting an employee to take and carry on such action or proceeding as the Board considers that the union ought to have taken and carried on the employee's behalf or ought to have assisted the employee to take and carry on.

[212] Pursuant to section 99(2) of the *Code*, the Board has the power, in addition to or in lieu of any other order that it is authorized to make under section 99(1), to order the trade union to do anything that is equitable in order to remedy or counteract any consequence of the contravention of the *Code*.

[213] However, before exercising the powers vested in it, the Board refers the matter to Mr. Jean-Daniel Tardif, Regional Director and Registrar of the Eastern Region of Canada and Industrial Relations Officer, in order that he may assist the parties in finding a common ground for redress.

[214] Given that the employers are interested parties in matters of redress under section 37 of the *Code*, notice is to be served on the employers inviting their attendance on this issue.

[215] The parties have 30 days from the date of these reasons to come to a settlement. Should the parties be unable to reach a settlement, the Board will reopen the matter and, as was agreed with the parties at the start of the hearings, decide on an appropriate redress after hearing the parties' submissions.

[216] This is a unanimous decision of the Board.

Louise Fecteau
Vice-Chairperson

Richard Brabander
Member

Gaétan Ménard
Member