



**Public Service Staff  
Relations Act**

**Before the Public Service  
Staff Relations Board**

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**BETWEEN**

**WILLIAM J. MURRAY AND BRIAN A. SHAVER**

**Applicants**

**and**

**TREASURY BOARD  
(Transport Canada)**

**Respondent**

**Re: Application for Review under Section 27 of the  
Public Service Staff Relations Act**

**For the Applicants:** Phillip G. Hunt, Counsel,  
Canadian Association of Professional Radio Operators

**For the Respondent:** Roger R. Lafrenière, Counsel



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**Decided without an oral hearing**

## DECISION

This matter arises from a decision of adjudicator Marguerite-Marie Galipeau dated March 1, 1996 pertaining to the interpretation of a collective agreement (Board files 166-2-26588 to 26592). These grievances were denied on March 1, 1996. The grievors have applied to the Federal Court of Canada for judicial review of the adjudicator's decision (Court File No. T-755-96).

The subject matter of this decision is an application to the Board pursuant to section 27 of the *Public Service Staff Relations Act* (the Act) seeking a review of adjudicator Galipeau's decision. The application alleges misapprehensions of fact and errors in the interpretation application of the provisions of the collective agreement. The application is dated March 29, 1996. In its reply of March 30, 1996 the respondent contends that section 27 is not available to the applicants to seek review of an adjudicator's decision as section 27 relates to powers vested in the *Board*, an entity distinct from an *adjudicator* under the Act. The respondent requests that the matter be dismissed summarily without an oral hearing pursuant to the *PSSRB Regulations and Rules of Procedure*. The applicants have not objected to this manner of proceeding.

On April 19, 1996 the applicants responded to the respondent's submissions. They conceded that the Board does not have jurisdiction to review the decision of an adjudicator. They submitted however, that the adjudicator has the power to review her own decision by virtue of section 96.1 of the Act. Thus the applicants sought to amend their application to the Board so as to constitute an application to adjudicator Galipeau by virtue of sections 27 and 96.1 of the Act.

Sections 96.1 and 27 read as follows:

96.1 *An adjudicator has, in relation to the adjudication, all the powers, rights and privileges of the Board, other than the power to make regulations under section 22.*

27. (1) *Subject to subsection (2), the Board may review, rescind, amend, alter or vary any decision or order made by it, or may re-hear any application before making an order in respect thereof.*

(2) *Any rights acquired by virtue of any decision or order that is reviewed, rescinded, amended, altered or varied pursuant to subsection (1) shall not be altered or extinguished with effect from a day earlier than the day on which the*

*review, rescission, amendment, alteration or variation is made.*

In its reply dated May 1, 1996 the respondent objected to the amendment sought. The respondent also maintained that the application was not an application for review but is a challenge to the decision of the adjudicator, which is more appropriate in the context of a judicial review application. The respondent also maintained that section 96.1 does not create a substantive right to seek a review of a decision by an adjudicator. The power conferred to an adjudicator is restricted to matters "in relation to the adjudication". Once a decision has been rendered, an adjudicator is *functus officio*. To accept the applicants' argument would lead to the absurd result of allowing adjudicators to deal with all powers of the Board including the power to deal with complaints under section 23. It would also lead to the conclusion that section 27 provides to adjudicators the power to make orders of enforcement of decisions. That power clearly belongs only to the Board by virtue of subsection 97(6) and section 23 of the Act. The applicants were invited to respond to the employer's representations but did not provide further submissions.

#### Determination

The initial application the applicants now seek to amend, was made to the Board. As such, the Board must respond to it. The Board may refer to an adjudicator a reference to adjudication as set out in section 95 of the Act. This present application is not a reference to adjudication. It is quite clear, and the applicants so concede, that the Board does not have the power to review the decision of an adjudicator by virtue of section 27 of the Act: *Doyon v. Public Service Staff Relations Board et al.*, [1979] 2 F.C. 190 (F.C.A.); *Beirnes v. Canada (Treasury Board)* (1993), 67 F.T.R. 226.

The Board is of the view that it does not possess the power to rule on the breadth of an adjudicator's jurisdiction once a matter has been referred to the adjudicator by virtue of section 95. Nevertheless, the Board would find it astonishing that an adjudicator could avail himself or herself of the power to review an adjudication decision by virtue of 96.1.

Section 96.1 was added to the Act in June 1993 along with section 95.1 which confers upon an adjudicator the powers of the Board in proceedings before it. See: *Public Service Reform Act*, S.C. 1992, c. 54. In the Board's view neither section 96.1, section 95.1, nor their combined effect are intended to alter the fundamental role of an adjudicator under the Act, that is, to dispose of grievances in a timely manner in a process meant to be final and conclusive. The Board agrees with the submissions of the respondent in this regard and would add that the French version of section 96.1 makes it abundantly clear that the adjudicator's powers, however broadened by section 96.1, are nonetheless limited to the matter with which he or she is seized. The adjudicator is no longer seized of the matter once a decision is rendered. Section 96.1 reads as follows:

*96.1 L'arbitre de grief a, dans le cadre de l'affaire dont il est saisi, tous les droits et pouvoirs de la Commission, sauf le pouvoir réglementaire prévu à l'article 22.*  
(my emphasis)

I might add that even if adjudicators were vested with the power to review adjudication decisions, it would be quite surprising that such powers would be exercised in a case such as the present one where it appears the applicants are simply rearguing the merits of the case.

Thus, for the reasons stated above this application is denied.

**Yvon Tarte,  
Vice-Chairperson.**

OTTAWA, May 31, 1996.