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Citation: 2002 PSSRB 110



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

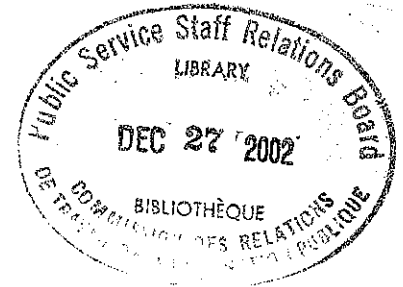
GALE IRENE GREEN-DAVIES

Grievor

and

**TREASURY BOARD
(Immigration and Refugee Board)**

Employer

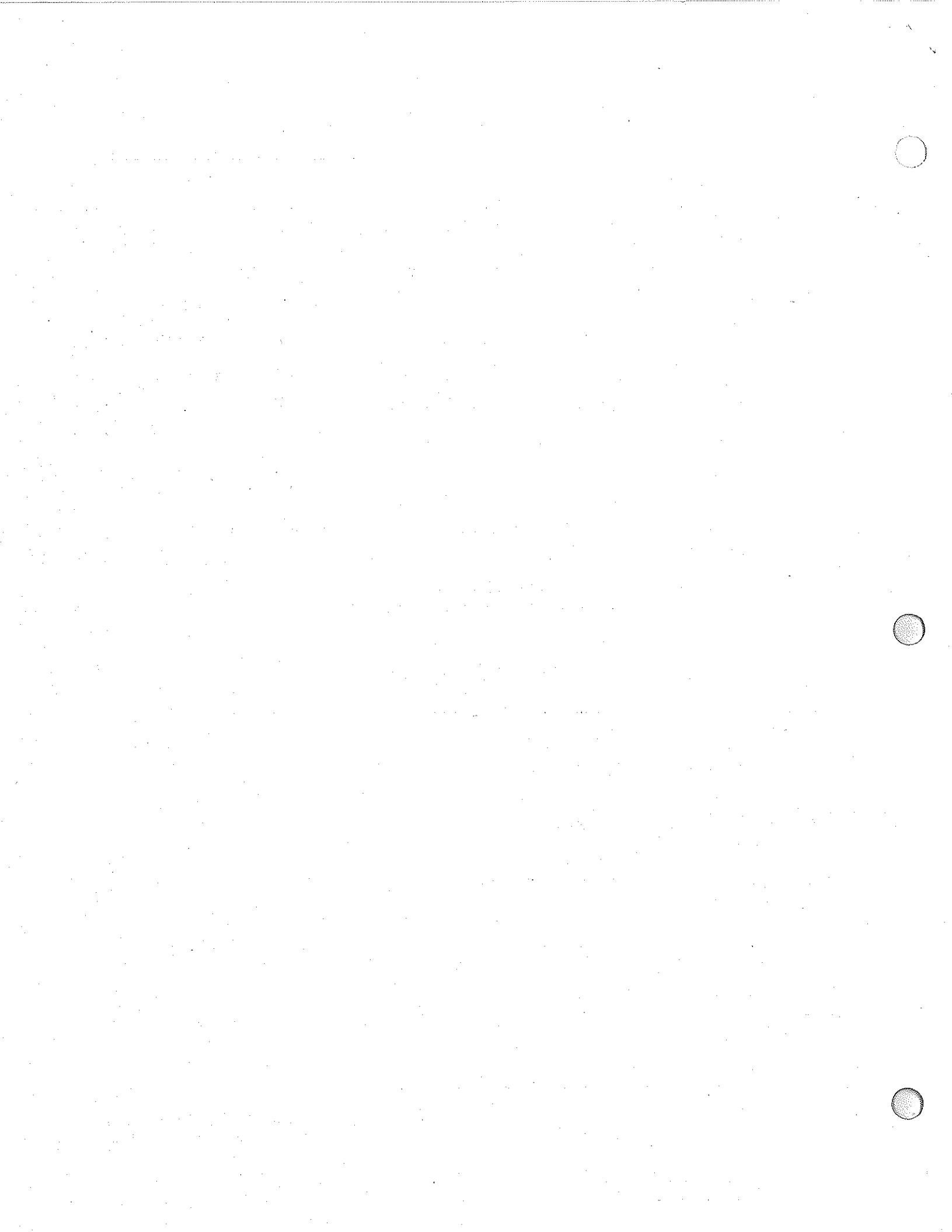


Before: Yvon Tarte, Chairperson

For the Grievor: Nathan Ganapathi, counsel

For the Employer: John Jaworski, counsel

Heard at Vancouver, British Columbia,
December 3 and 4, 2002.



DECISION

[1] In August 2001, Ms. Gale Green-Davies purported to refer to adjudication a grievance concerning her discharge from the Immigration and Refugee Board (IRB). She also alleged that her employer had breached her contract of employment by failing to provide her with a harassment-free workplace.

[2] The employer challenged the jurisdiction of an adjudicator appointed under the *Public Service Staff Relations Act* (PSSRA) to deal with this grievance either as a contract interpretation issue or as a disciplinary matter.

[3] Ms. Green-Davies, who is an unrepresented employee (excluded under section 2 of the PSSRA), is an employee of Veterans Affairs Canada. In October 1995, the grievor was seconded to the IRB for an initial period of six months. The secondment agreement was renewed regularly, the last renewal going from the 1st of March 2001 to the 31st of December 2001.

[4] All of the secondment agreements contained a termination clause whereby either party could terminate the agreement by giving the stipulated notice in writing to that effect.

[5] On the 7th of June 2001, the IRB advised Ms. Green-Davies in writing that it was terminating the agreement:

This letter is to serve notice that the Immigration and Refugee Board (IRB) will be terminating your secondment agreement earlier than previously indicated in our last agreement. As stipulated in your agreement, a ninety (90) day notice period from the date of this letter is therefore given to you. Consequently, your secondment with the IRB will end at the close of business on September 5, 2001, or earlier should you advise me otherwise.

For your information, your home department, Veterans Affairs Canada, has been notified accordingly.

[6] Having discussed this matter with the parties over a period of two days, I must conclude that an adjudicator appointed under the PSSRA is without jurisdiction to deal with this grievance.

[7] The reference of a contract interpretation matter to adjudication, pursuant to paragraph 92(1)(a) of the PSSRA, requires the existence of a provision of a collective agreement or arbitral award applicable to the grievor; pursuant to subsection 92(2) of

the PSSRA, it also requires the approval of the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.

[8] Ms. Green-Davies belongs to the PE group, for which there is no bargaining unit, no collective agreement or arbitral award and no bargaining agent. As an unrepresented employee covered by the PSSRA, Ms. Green-Davies cannot therefore refer a grievance under paragraph 92(1)(a) of the PSSRA to adjudication.

[9] The reference of a grievance to adjudication pursuant to paragraphs 92(1)(b) and (c) of the PSSRA requires the existence of either a disciplinary action resulting in suspension, financial penalty, termination of employment or termination or demotion for cause, pursuant to paragraphs 11(2)(f) or (g) of the *Financial Administration Act*.

[10] In this case, the IRB terminated the grievor's secondment pursuant to the terms of the secondment agreement. The employer's action in terminating the secondment agreement was administrative in nature and not disciplinary. It therefore follows that Ms. Green-Davies cannot refer her grievance to adjudication under paragraphs 92(1)(b) or (c) of the PSSRA.

[11] Given what precedes, an adjudicator appointed under the PSSRA is without jurisdiction to deal with the grievance referred to it by Ms. Green-Davies. Accordingly, for these reasons this grievance is dismissed.

**Yvon Tarte,
Chairperson**

Ottawa, December 23, 2002.