

Date: 20051028

File: 166-2-31792

Citation: 2005 PSLRB 152



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

DANIEL ISRAEL ASSH

Grievor

and

**TREASURY BOARD
(Department of Veterans Affairs)**

Employer

Indexed as

Assh v. Treasury Board (Department of Veterans Affairs)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: [Francine Chad Smith, Q.C., adjudicator](#)

(Decided without an oral hearing.)

REASONS FOR DECISION

Grievance referred to adjudication

[1] This decision concerns a grievance filed by Daniel Assh under section 92 of the *Public Service Staff Relations Act*. The grievor had alleged that the employer prohibited the grievor from accepting a bequest by a former client, and that this action was disciplinary in nature and resulted in a financial penalty.

[2] In a decision rendered on August 11, 2004 (2004 PSSRB 111), I allowed the grievance.

[3] An application to review and set aside the decision was made to the Federal Court. On May 24, 2005 (2005 FC 734), the Federal Court set aside the decision of August 11, 2004. In its Analysis, the Court concluded that the grievance did not come within the scope of section 92 of the *Public Service Staff Relations Act* and, accordingly, that an adjudicator was without jurisdiction to hear the grievance. The Court concluded at paragraph 17 of its decision as follows:

I will therefore order that the decision of the arbitrator of August 11, 2004 be quashed and the matter remitted back to the adjudicator for reconsideration in accordance with these reasons.

[4] It should be noted that on April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, the reconsideration of the reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

Reasons

[5] In light of the decision of the Federal Court, on reconsideration of the reference to adjudication, I am without jurisdiction to hear the grievance.

[6] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[7] The grievance is dismissed.

October 28, 2005.

**Francine Chad Smith, Q.C.,
adjudicator**