

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

GARRY STEPHEN WILSON

Grievor

and

**TREASURY BOARD
(Citizenship and Immigration Canada)**

Employer

Before: Yvon Tarte, Vice-Chairperson

For the Grievor: No one appearing

For the Employer: Robert Jaworski, Counsel

Heard at Toronto, Ontario,
May 30, 1996.

DECISION

Mr. Wilson has grieved his "dismissal from employment" as a term Information Management Clerk at the Toronto Central Canada Immigration Centre.

On 21 May 1996, the employer objected to the reference of Mr. Wilson's grievance in the following terms:

It is submitted that the Adjudicator lacks jurisdiction to hear this grievance by reason of subsections 91.(1) and 92.(3) of the Public Service Staff Relations Act. We respectfully request that this grievance be dismissed without the necessity of a hearing.

The Facts

I am advised, that Garry Wilson was hired as a support clerk with the Toronto Central Canada Immigration Centre on a term basis. His last re-appointment expired on March 31, 1994. Attached to this letter, as Appendix "A", is a copy of his Specified Period Employment Agreement.

In March 1994, the employer assessed Mr. Wilson, together with twenty-six (26) other term employees, to determine which twelve (12) would be re-appointed from April through June, 1994. Mr. Wilson was not re-appointed.

Mr. Wilson appealed against the selections to the Appeals Directorate of the Public Service Commission of Canada pursuant to section 21 of the Public Service Employment Act. Attached to this letter, as Appendix "B", is a copy of the Appeal Directorate's decision of June 24, 1994, allowing his appeal.

Mr. Wilson's candidacy for re-appointment was re-assessed. Again, he was not successful. Again, he appealed against the selections pursuant to section 21 of the Public Service Employment Act. Attached to this letter, as Appendix "C", is a copy of the Appeal Directorate's decision of January 3, 1995, dismissing his appeal.

The Law

Section 21 of the Public Service Employment Act provides:

21. (1) Where a person is appointed or is about to be appointed under this Act and the selection of the person for appointment was made by closed competition, every unsuccessful candidate may, within the period provided for by the regulations of the Commission, appeal against the appointment to a board established by the Commission to conduct an inquiry at which the person appealing and the

deputy head concerned, or their representatives, shall be given an opportunity to be heard.

(1.1) Where a person is appointed or about to be appointed under this Act and the selection of the person for appointment was made from within the Public Service by a process of personnel selection, other than a competition, any person who, at the time of the selection, meets the criteria established pursuant to subsection 13(1) for the process may, within the period provided for by the regulations of the Commission, appeal against the appointment to a board established by the Commission to conduct an inquiry at which the person appealing and the deputy head concerned, or their representatives, shall be given an opportunity to be heard.

(2) Subject to subsection (3), the Commission, on being notified of the decision of a board established under subsection (1) or (1.1), shall, in accordance with the decision,
(a) if the appointment has been made, confirm or revoke the appointment; or
(b) if the appointment has not been made, make or not make the appointment.

(2.1) Where the appointment of a person is revoked pursuant to subsection (2), the Commission may appoint that person to a position within the Public Service that in the opinion of the Commission is commensurate with the qualifications of that person.

(3) Where a board established under subsection (1) or (1.1) determines that there was a defect in the process for the selection of a person for appointment under this Act, the Commission may take such measures as it considers necessary to remedy the defect.

(4) Where a person is appointed or is about to be appointed under this Act as a result of measures taken under subsection (3), an appeal may be taken under subsection (1) or (1.1) against that appointment only on the ground that the measures so taken did not result in a selection for appointment according to merit.

R.S., 1985, c. P-33, s. 21; 1992, c. 54, s.16.

Section 25 of the Public Service Employment Act provides:

25. An employee who is appointed for a specified period ceases to be an employee at the expiration of that period.

R.S., c. P-32, s. 25.

Section 91.(1) of the Public Service Staff Relations Act provides that:

91. (1) Where any employee feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute, or of a regulation, by-law, direction or other instrument made or issued by the employer, dealing with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award, or

(b) as a result of any occurrence or matter affecting the terms and conditions of employment of the employee, other than a provision described in subparagraph (a)(i) or (ii);

in respect of which no administrative procedure for redress is provided in or under an Act of Parliament [emphasis mine], the employee is entitled, subject to subsection (2), to present the grievance at each of the levels, up to and including the final level, in the grievance process provided for by this Act.

Section 92 of the Public Service Staff Relations Act provides that:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),

(i) disciplinary action resulting in suspension or a financial penalty, or

(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or

(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty,

and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.

(2) Where a grievance that may be presented by an employee to adjudication is a grievance described in paragraph (1)(a), the employee is not entitled to refer the grievance to adjudication unless the bargaining agent for the bargaining unit, to which the collective agreement or arbitral award

referred to in that paragraph applies, signifies in the prescribed manner its approval of the reference of the grievance to adjudication and its willingness to represent the employee in the adjudication proceedings.

(3) Nothing in subsection (1) shall be construed or applied as permitting the referral to adjudication of a grievance with respect to any termination of employment under the Public Service Employment Act [emphasis mine].

Argument

Mr. Wilson grieves his "dismissal" from employment at Toronto Central CIC. He seeks reinstatement without loss of pay and benefits.

Treasury Board submits that Mr. Wilson was not dismissed. His contract of employment expired, and he simply ceased to be an employee of Toronto Central CIC as per section 25 of the Public Service Employment Act. These facts are evident from the decisions in Appendices "B" and "C". Therefore, this matter is not referable to adjudication by reason of subsection 92.(3) of the PSSRA.

Similarly, in *Chopra v. Treasury Board* (Court File No.: T-813-94, decision dated August 31, 1995), the Federal Court confirmed that where an applicant had redress under the Canadian Human Rights Act, an adjudicator was without jurisdiction to hear a grievance based on the master agreement between Treasury Board and the applicant's professional association by reason of section 91(1) of the PSSRA. Indeed, the Court acknowledged that the precursor to section 91(1) was intended to prevent duplicate proceedings under the PSSRA and the Public Service Employment Act.

The decisions at Appendices "B" and "C" indicate that Mr. Wilson had redress for his loss of employment pursuant to section 21 of the Public Service Employment Act, and indeed, exercised the same on two occasions. Therefore, with respect, the Adjudicator is without jurisdiction to hear this grievance by reason of section 91.(1) of the PSSRA.

For these reasons, and such further and other grounds as counsel may advise, and the adjudicator may except, it is submitted that this matter should be dismissed without the need for a hearing.

DECISION

Mr. Wilson did not appear at the time and place set for the hearing of this matter. I reached him by telephone at his place of work and he confirmed that he would not be appearing to pursue his grievance.

Mr. Wilson advised me that he was prepared to accept my decision in the matter involving Cecilia Hanna (Board file 166-2-26983). This latter case is concerned with identical issues.

In keeping with my decision in the Hanna case (supra), I must conclude that I have no jurisdiction to hear this matter.

**Yvon Tarte,
Vice-Chairperson.**

OTTAWA, June 24, 1996.