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Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

DARRELL C. JONES

Grievor

and

FRONTEC CORPORATION

Employer

Before: Yvon Tarte, Chairperson

Decided without an oral hearing

[1] On January 15, 1999, Darrell C. Jones, an employee of Frontec Corporation (Frontec) at 15 Wing CFB Moose Jaw, completed a grievance form alleging that the employer's decision, which was conveyed to him in its letter of January 11, 1999, to terminate his employment for disciplinary reasons was both "unwarranted and unjustified". A representative of the Public Service Alliance of Canada (PSAC) presented this grievance to a representative of the Department of National Defence (DND), the grievor's previous employer, on February 2. On March 15, 1999, DND advised both the grievor and the PSAC in writing that, as the grievor was no longer employed by DND at the time of the termination of his employment, DND could not respond to the issues raised in his grievance. DND then suggested that Mr. Jones should raise the matter with Frontec Corporation, which had "an awareness of the situation".

[2] On August 30, 1999, the PSAC referred Mr. Jones' grievance to adjudication, apparently without its ever having been formally presented to Frontec. At the same time the PSAC requested "an extension of the time limits to refer this grievance under s. 63 of the PSSRB's rules and Regulations of Procedure". The Public Service Staff Relations Board (PSSRB), by letter dated September 3, 1999, advised both the Treasury Board and Frontec of Mr. Jones' grievance and its reference to adjudication, as well as the application for an extension of time.

[3] In a letter dated September 23, 1999, the Treasury Board advised the PSSRB that its position is that an adjudicator appointed under the *Public Service Staff Relations Act* (PSSRA) has no jurisdiction to hear and determine Mr. Jones' grievance as he was not an employee under the PSSRA at the time his employment was terminated. Furthermore, as neither DND nor the Treasury Board was the grievor's employer at the relevant time, they are not parties to his grievance. The Treasury Board also objected to the grievor's request for an extension of time on the ground that it was "unjustified".

[4] By letter dated September 27, 1999, counsel for Frontec set out its position in the following terms. The PSSRA has no application to this grievance and an adjudicator appointed thereunder has no jurisdiction to hear and determine it. The grievor is not an employee and Frontec is not a employer within the meaning of the PSSRA. Frontec is engaged in a private sector operation at 15 Wing CFB Moose Jaw. The work being carried out there by Frontec is not a portion of the public service

within the meaning of the PSSRA. In the alternative, even if the PSSRA does apply to this grievance and an adjudicator appointed under the PSSRA has jurisdiction to hear and determine it, the grievor has failed to follow the procedures under the PSSRA as he never submitted the grievance to Frontec, nor did he provide Frontec with an opportunity to reply thereto. In addition, Mr. Jones' grievance has not been submitted within the time periods stipulated under the PSSRA and no grounds have been shown which would merit an extension of time being granted. In the further alternative, Mr. Jones' misconduct justified Frontec's decision to terminate his employment.

[5] On November 25, 1999, the PSSRB advised the parties that a decision on the jurisdiction of an adjudicator appointed under the PSSRA to hear and determine Mr. Jones' grievance would be rendered on the basis of their written submissions and they were invited to forward their written arguments on this issue to the PSSRB.

Background

[6] The essential facts leading up to this jurisdictional objection are not in dispute. For many years civilian employees of DND at 15 Wing CFB Moose Jaw had been providing site support services for military pilot training carried out there. These employees were subject to the provisions of the PSSRA and were represented by the PSAC, which had been certified as their bargaining agent thereunder. As a result of an agreement between Bombardier Inc. (Bombardier) and the federal government, Bombardier took over the military pilot training program with a view to expanding it to provide as well for the training of pilots from other NATO member countries and other specified countries. The program proposed by Bombardier would be known as NATO Flying Training in Canada. Bombardier, in turn, subcontracted the site support services provided at 15 Wing CFB Moose Jaw to Frontec.

[7] As part of its contractual obligations, Frontec offered employment to some of the civilian employees of DND who had been previously providing these services. Mr. Jones was one such employee; he commenced working for Frontec as Supervisor, Facilities Operation and Maintenance, on June 1, 1998. It should be noted that, prior to the transfer of this work from the public service, notice to bargain had been given for all the relevant bargaining units thereby invoking the statutory freeze of the employees' terms and conditions of employment pursuant to section 52 of the PSSRA.

[8] On October 27, 1998, the PSAC applied to the Canada Industrial Relations Board (CIRB) under section 47.1 of the *Canada Labour Code* for a determination of successor rights insofar as these employees are concerned. On January 14, 2000, the CIRB rendered its decision: *Public Service Alliance of Canada and Bombardier Inc. and Frontec Corporation* (CIRB files 19046-C and 19048-C). In so doing, the CIRB stated the following at paragraph 102 thereof:

> *Once the requirements of sections 47(1) and 47.1(a) are met, they apply automatically where "notice to bargain collectively has been given in respect of a collective agreement," which is the case here. It is at section 47.1(c) that is found the requirement that an application be made during the "window period" for a Board determination as to the appropriateness of one or more bargaining units, and as to the trade union recognized as the bargaining agent for each such unit. It should be noted that such application may be made not only by a union but also by an employer, the ultimate purpose being to delineate the number of appropriate bargaining units and to identify their respective bargaining agents, and not as a precondition to the application of section 47. In the light of the above finding, the applicant's status as bargaining agent is continued; such status is not subject to a representation vote in the present matter.*

[9] The CIRB concluded that, as of May 15, 1998, the PSAC was the bargaining agent for the employees in the following bargaining unit:

> *All employees of Frontec engaged in the provision of support services to the Canadian military pilot training program pursuant to the 1998-2000 Site Support Contract at CFB 15 Wing Moose Jaw, save and except the Office Manager, Plant Manager, Manager of Finance and Administration, Supervisor of Human Resources and Accounting, Systems Administration Clerk and Receptionist/Works Control Clerk.*

Submissions of the parties on jurisdiction

Position of PSAC

[10] The decision of the CIRB and paragraphs 47.1(a) and (b) of the *Code* make it clear that only an adjudicator appointed under the PSSRA has the requisite jurisdiction to hear and determine Mr. Jones' grievance. More specifically, all the conditions for such an adjudicator to have jurisdiction as specified in paragraphs 47.1(a) and (b) of the *Code* have been met. The deletion or severance of a portion of the public service of Canada took place on June 1, 1998; that portion then became part of a corporation or

business subject to Part I of the *Code*, that is, Frontec. Notice to bargain had been given to Treasury Board, the former employer, prior to the deletion or severance of the portion of the public service of Canada with the result that, by virtue of section 52 of the PSSRA, as specified in paragraph 47.1(a) of the *Code*, the terms and conditions of employment contained in the Master Agreement between the Treasury Board and the PSAC signed May 17, 1989, continued in force after the deletion or severance.

[11] Furthermore, these terms and conditions of employment must be respected and observed by the new employer until the requirements of paragraphs 89(1)(a) to (d) of the *Code* have been met, unless the employer and the bargaining agent agree otherwise. In other words, in the absence of an agreement to the contrary by the PSAC and Frontec, these terms and conditions of employment continue to apply to these employees until the PSAC and Frontec have bargained to an impasse within the meaning of the *Code*. In addition, paragraph 47.1(b) of the *Code* specifies that the PSSRA "applies in all respects to the interpretation and application of any term or condition continued or resumed by paragraph (a)".

[12] Since neither of the conditions specified in paragraph 47.1(a) of the *Code* has been met, the terms and conditions of employment contained in the Master Agreement were in force at the time Frontec terminated the grievor's employment. Furthermore, they are still in force and must be observed by Frontec in respect of those of its employees, such as Mr. Jones, who continue to be represented by the PSAC. Indeed, in light of the decision of the CIRB rendered on January 14, 2000, which "continued" the PSAC's certification in relation to those employees, an adjudicator appointed under the PSSRA has the requisite jurisdiction to apply the preserved and continued terms of the Master Agreement which must be observed by Frontec in relation to them. It follows, therefore, that an adjudicator appointed under the PSSRA has jurisdiction to hear and determine Mr. Jones' grievance and, by necessary implication, has jurisdiction over Frontec, as employer, and Mr. Jones, as grievor, in so doing.

[13] Both the subject-matter of Mr. Jones' grievance and the application for an extension of time arise out of the continued and preserved terms and conditions of the Master Agreement. In particular, the PSAC referred to Article M-38 entitled Grievance Procedure which provides, among other things, that an employee may grieve his termination of employment for disciplinary reasons and may refer that grievance to adjudication under the PSSRA.

Position of Treasury Board

[14] Treasury Board stated that Mr. Jones should have submitted his grievance to Frontec and that both he and the PSAC were so advised by representatives of DND on March 15, 1999. The onus to pursue this matter was on Mr. Jones. The reference of Mr. Jones' grievance to adjudication and the application for an extension of time "should be dismissed without a hearing for lack of jurisdiction or untimeliness".

Position of Frontec

[15] Frontec reiterated the submissions which it made in its letter of September 27, 1999. The work being performed by Frontec at 15 Wing CFB Moose Jaw is not public service work within the meaning of the PSSRA. Frontec is not a public service employer. Rather, it is a private sector sub-contractor to Bombardier, which is also a private sector employer.

[16] Paragraphs 47.1(a) and (b) of the *Code* stipulate that, where a portion of the public service of Canada has been deleted or severed and notice to bargain has been given, then any collective agreement in place between the parties continues in force and the PSSRA should be referred to in interpreting and applying the terms and conditions of the collective agreement. Frontec submitted that the resort to the PSSRA is restricted to the interpretation and application of the terms and conditions of the collective agreement in place between the parties. However, the PSSRA no longer governs the dispute resolution process which should be followed when a disagreement arises as to a term or condition of employment.

[17] Frontec is not an employer and Mr. Jones is no longer an employee under the PSSRA. Therefore, it does not make sense that the adjudication provisions of the PSSRA should continue to apply. In light of the CIRB decision, any disputes arising under the collective agreement must be governed and resolved by arbitration under the *Code*. Once a deletion or severance of a portion of the public service of Canada occurred in this case, the jurisdiction of the PSSRB over these parties ceased to exist.

Reply of PSAC

[18] In its reply, the PSAC stated that this grievance has been referred to adjudication solely with respect to the termination of Mr. Jones' employment by Frontec. The PSAC agrees that Treasury Board was not his employer at the relevant

time. Furthermore, the grievance does not relate to any alleged violation of the provisions of the Work Force Adjustment Directive incorporated by reference into the relevant collective agreement between the Treasury Board and the PSAC. Finally, the PSAC is waiving any right it may have to hold Treasury Board responsible for any portion of the delay in submitting Mr. Jones' grievance to Frontec. In the result, the PSAC stated that the Treasury Board has no responsibility or necessary role in any further proceedings in this matter.

[19] Finally, the PSAC expressed its disagreement with Frontec's submission that, although the PSSRA applied to the interpretation and application of the terms and conditions of employment embodied in the collective agreement, the dispute resolution process which should be followed when a disagreement arises between the parties is arbitration under the *Code*. Rather, the dispute resolution process, that is, the grievance and adjudication procedure, is itself one of the terms and conditions of employment of the preserved and continued collective agreement and subject to interpretation by an adjudicator appointed under the PSSRA pursuant to paragraphs 47.1(a) and (b) of the *Code*.

[20] By way of further clarification, the PSAC stated that its application for an extension of time is with respect to:

(a) permitting the existing grievance to proceed on the issue of Mr. Jones' disciplinary discharge addressed to Frontec as employer, and

(b) in the alternative, permitting the filing of a new grievance regarding disciplinary discharge addressed to Frontec as employer.

Reasons for Decision on the Preliminary Objection to Jurisdiction

[21] Sections 50, 51, 52, 91, 92, 93 and 96 of the PSSRA provide:

> ***50.*** *(1) Where the Board has certified an employee organization as bargaining agent for a bargaining unit and the process for resolution of a dispute applicable to that bargaining unit has been specified as provided in subsection 37(1), the bargaining agent, on behalf of the employees in the bargaining unit, may require the employer or the employer may require the bargaining agent, by notice in writing given in accordance with subsection (2), to commence bargaining collectively, with a view to the conclusion of a collective agreement.*

(2) Notice to bargain collectively may be given

(a) where no collective agreement or arbitral award is in force and no request for arbitration has been made by either of the parties in accordance with this Act, at any time; and

(b) where a collective agreement or arbitral award is in force, within the three months before the agreement or award ceases to operate.

(3) A party that has given a notice to bargain collectively shall send a copy of the notice to the Board.

51. *Where notice to bargain collectively has been given, the bargaining agent and the officers designated to represent the employer shall, without delay, but in any case within twenty days after the notice was given or within such further time as the parties may agree, meet and commence to bargain collectively in good faith and make every reasonable effort to conclude a collective agreement.*

52. *Where notice to bargain collectively has been given, any term or condition of employment applicable to the employees in the bargaining unit in respect of which the notice was given that may be embodied in a collective agreement and that was in force on the day the notice was given, shall remain in force and shall be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit, except as otherwise provided by any agreement that may be entered into by the employer and the bargaining agent, until such time as*

(a) in the case of a bargaining unit for which the process for resolution of a dispute is by the referral thereof to arbitration,

(i) a collective agreement has been entered into by the parties and no request for arbitration in respect of that term or condition of employment, or in respect of any term or condition of employment proposed to be substituted therefor, has been made in the manner and within the time prescribed therefor by this Act, or

(ii) a request for arbitration in respect of that term or condition of employment, or in respect of any term or condition of employment proposed to be substituted therefor, has been made in accordance with this Act and a collective agreement has been entered into or an arbitral award has been rendered in respect thereof; and

(b) in the case of a bargaining unit for which the process for resolution of a dispute is by the referral thereof to conciliation,

(i) a collective agreement has been entered into by the parties,

(ii) a conciliation board has been established, or a conciliation commissioner has been appointed, in accordance with this Act and seven days have elapsed from the receipt by the Chairperson of the report of the conciliation board or conciliation commissioner, or

(iii) the Chairperson has notified the parties pursuant to subsection 77(2) or 77.1(4) of the Chairperson's intention not to establish a conciliation board or appoint a conciliation commissioner and seven days have elapsed from the date of the notice.

...

***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, 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.

(2) An employee is not entitled to present any grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies, or any grievance relating to any action taken pursuant to an instruction, direction or regulation given or made as described in section 113.

(3) An employee who is not included in a bargaining unit for which an employee organization has been certified as bargaining agent may seek the assistance of and, if the

employee chooses, may be represented by any employee organization in the presentation or reference to adjudication of a grievance.

(4) No employee who is included in a bargaining unit for which an employee organization has been certified as bargaining agent may be represented by any employee organization, other than the employee organization certified as bargaining agent, in the presentation or reference to adjudication of a grievance.

***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.

> *(4) The Governor in Council may, by order, designate for the purposes of paragraph (1)(b) any portion of the public service of Canada specified in Part II of Schedule I.*
>
> ***93.** The Board shall assign such members as may be required to hear and adjudicate on grievances referred to adjudication under this Act.*
>
> . . .
>
> ***96.** (1) Subject to any regulation made by the Board under paragraph 100(1)(d), no grievance shall be referred to adjudication and no adjudicator shall hear or render a decision on a grievance until all procedures established for the presenting of the grievance up to and including the final level in the grievance process have been complied with.*
>
> *(2) No adjudicator shall, in respect of any grievance, render any decision thereon the effect of which would be to require the amendment of a collective agreement or an arbitral award.*
>
> *(3) Where a grievance has been presented up to and including the final level in the grievance process and it is not one that under section 92 may be referred to adjudication, the decision on the grievance taken at the final level in the grievance process is final and binding for all purposes of this Act and no further action under this Act may be taken thereon.*

[22] Section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* provides:

> ***63.** Notwithstanding anything in this Part, the times prescribed by this Part or provided for in a grievance procedure contained in a collective agreement or in an arbitral award for the doing of any act, the presentation of a grievance at any level or the providing or filing of any notice, reply or document may be extended, either before or after the expiration of those times*
>
> *(a) by agreement between the parties; or*
>
> *(b) by the Board, on the application of an employer, an employee or a bargaining agent, on such terms and conditions as the Board considers advisable.*

[23] Sections 47, 47.1 and paragraphs 89(1)(a) to (d) of the *Code* specify:

> ***47.** (1) Where the name of any portion of the public service of Canada specified from time to time in Part I or II of Schedule I to the Public Service Staff Relations Act is deleted and that portion of the public service of Canada is established as or*

becomes a part of a corporation or business to which this Part applies, or where a portion of the public service of Canada included in a portion of the public service of Canada so specified in Part I or II of Schedule I to that Act is severed from the portion in which it was included and established as or becomes a part of such a corporation or business,

(a) a collective agreement or arbitral award that applies to any employees in that portion of the public service of Canada and that is in force at the time the portion of the public service of Canada is established as or becomes a part of such a corporation or business continues in force, subject to subsections (3) to (7), until its term expires; and

(b) the Public Service Staff Relations Act applies in all respects to the interpretation and application of the collective agreement or arbitral award.

(2) A trade union may apply to the Board for certification as the bargaining agent for the employees affected by a collective agreement or arbitral award referred to in subsection (1), but may so apply only during a period in which an application for certification of a trade union is authorized to be made under section 24.

(3) Where the employees in a portion of the public service of Canada that is established as or becomes a part of a corporation or business to which this Part applies are bound by a collective agreement or arbitral award, the corporation or business, as employer of the employees, or any bargaining agent affected by the change in employment, may, during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date on which the portion of the public service of Canada is established as or becomes a part of the corporation or business, apply to the Board for an order determining the matters referred to in subsection (4).

(4) Where an application is made under subsection (3) by a corporation or business or bargaining agent, the Board, by order, shall

(a) determine whether the employees of the corporation or business who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;

(b) determine which trade union shall be the bargaining agent for the employees in each such unit; and

(c) in respect of each collective agreement or arbitral award that applies to employees of the corporation or business,

(i) determine whether the collective agreement or arbitral award shall remain in force, and

(ii) if the collective agreement or arbitral award is to remain in force, determine whether it shall remain in force until the expiration of its term or expire on such earlier date as the Board may fix.

(5) Where the Board determines, pursuant to paragraph (4)(c), that a collective agreement or arbitral award shall remain in force, either party to the collective agreement or arbitral award may, not later than sixty days after the date the Board makes its determination, apply to the Board for an order granting leave to serve on the other party a notice to bargain collectively.

(6) Where no application for an order is made pursuant to subsection (3) within the period specified in that subsection, the corporation or business, as employer of the employees, or any bargaining agent bound by a collective agreement or arbitral award that, by subsection (1), is continued in force, may, during the period commencing on the one hundred and fifty-first day and ending on the two hundred and tenth day after the date the portion of the public service of Canada is established as or becomes a part of the corporation or business, apply to the Board for an order granting leave to serve on the other party a notice to bargain collectively.

(7) Where the Board has made an order pursuant to paragraph (4)(c), this Part applies to the interpretation and application of any collective agreement or arbitral award affected thereby.

(8) An arbitral award that is continued in force by virtue of subsection (1) is deemed to be

(a) part of the collective agreement for the bargaining unit to which the award relates, or

(b) where there is no collective agreement for the bargaining unit, a collective agreement for the bargaining unit to which the award relates for the purposes of section 49, and this Part, other than section 80, applies in respect of the renewal or revision of the collective agreement or entering into a new collective agreement.

47.1 *Where, before the deletion or severance referred to in subsection 47(1), notice to bargain collectively has been given in respect of a collective agreement or arbitral award binding on employees of a corporation or business who, immediately before the deletion or severance, were part of the public service of Canada,*

(a) the terms and conditions of employment contained in a collective agreement or arbitral award that, by virtue of section 52 of the Public Service Staff Relations Act, are continued in force immediately before the date of the deletion or severance or that were last continued in force before that date, in respect of those employees shall continue or resume in force on and after that date and shall be observed by the corporation or business, as employer, the bargaining agent for those employees and those employees until the requirements of paragraphs 89(1)(a) to (d) have been met, unless the employer and the bargaining agent agree otherwise;

(b) the Public Service Staff Relations Act applies in all respects to the interpretation and application of any term or condition continued or resumed by paragraph (a);

(c) on application by the corporation or business, as employer, or the bargaining agent for those employees, made during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date of the deletion or severance, the Board shall make an order determining

(i) whether the employees of the corporation or business who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and

(ii) which trade union shall be the bargaining agent for the employees in each such unit;

(d) where the Board makes the determinations under paragraph (c), the corporation or business, as employer, or the bargaining agent may, by notice, require the other to commence collective bargaining under this Act for the purpose of entering into a collective agreement; and

(e) this Part, other than section 80, applies in respect of a notice given under paragraph (d).

. . .

89. (1) *No employer shall declare or cause a lockout and no trade union shall declare or authorize a strike unless*

(a) the employer or trade union has given notice to bargain collectively under this Part;

(b) the employer and the trade union

(i) have failed to bargain collectively within the period specified in paragraph 50(a), or

(ii) have bargained collectively in accordance with section 50 but have failed to enter into or revise a collective agreement;

(c) the Minister has

(i) received a notice, given under section 71 by either party to the dispute, informing the Minister of the failure of the parties to enter into or revise a collective agreement, or

(ii) taken action under subsection 72(2);

(d) twenty-one days have elapsed after the date on which the Minister

(i) notified the parties of the intention not to appoint a conciliation officer or conciliation commissioner, or to establish a conciliation board under subsection 72(1),

(ii) notified the parties that a conciliation officer appointed under subsection 72(1) has reported,

(iii) released a copy of the report to the parties to the dispute pursuant to paragraph 77(a), or

(iv) is deemed to have been reported to pursuant to subsection 75(2) or to have received the report pursuant to subsection 75(3);

[24] **Article M-38 of the Master Agreement provides:**

M-38.01 In cases of alleged misinterpretation or misapplication arising out of agreements concluded by the National Joint Council of the Public Service on items which may be included in a collective agreement and which the parties to this Agreement have endorsed, the grievance procedure will be in accordance with Section 7.0 of the NJC By-Laws.

M-38.02 Subject to and as provided in Section 90 of the Public Service Staff Relations Act, an employee who feels that he or she has been treated unjustly or considers himself or herself aggrieved by any action or lack of action by the Employer in matters other than those arising from the classification process is entitled to present a grievance in the manner prescribed in clause M-38.05 except that,

(a) where there is another administrative procedure provided by or under any Act of Parliament to deal with the employee's specific complaint, such procedure must be followed,

and

(b) where the grievance relates to the interpretation or application of this Collective Agreement, the relevant Group Specific Agreement or an Arbitral Award, the employee is not entitled to present the grievance unless he or she has the approval of and is represented by the Alliance.

M-38.03 Except as otherwise provided in this Agreement, a grievance shall be processed by recourse to the following levels:

(a) Level 1 - first level of management;

(b) Levels 2 and 3 - intermediate level(s) where such level or levels are established in departments or agencies;

(c) Final level - Deputy Head or Deputy Head's authorized representative.

Whenever there are four levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.

M-38.04 The Employer shall designate a representative at each level in the grievance procedure and shall inform each employee to whom the procedure applies of the name or title of the person so designated together with the name or title and address of the immediate supervisor or local officer-in-charge to whom a grievance is to be presented. This information shall be communicated to employees by means of notices posted by the Employer in places where such notices are most likely to come to the attention of the employees to whom the grievance procedure applies, or otherwise as determined by agreement between the Employer and the Alliance.

M-38.05 An employee who wishes to present a grievance at a prescribed level in the grievance procedure shall transmit this grievance to his or her immediate supervisor or local officer-in-charge who shall forthwith:

(a) forward the grievance to the representative of the Employer authorized to deal with grievances at the appropriate level,

and

(b) provide the employee with a receipt stating the date on which the grievance was received by him or her.

M-38.06 Where it is necessary to present a grievance by mail, the grievance shall be deemed to have been presented on the

day on which it is postmarked and it shall be deemed to have been received by the Employer on the date it is delivered to the appropriate office of the department or agency concerned. Similarly the Employer shall be deemed to have delivered a reply at any level on the date on which the letter containing the reply is postmarked, but the time limit within which the grievor may present his or her grievance at the next higher level shall be calculated from the date on which the Employer's reply was delivered to the address shown on the grievance form.

M-38.07 A grievance of an employee shall not be deemed to be invalid by reason only that it is not in accordance with the form supplied by the Employer.

M-38.08 An employee may be assisted and/or represented by the Alliance when presenting a grievance at any level.

M-38.09 The Alliance shall have the right to consult with the Employer with respect to a grievance at each level of the grievance procedure. Where consultation is with the deputy head, the deputy head shall render the decision.

M-38.10 An employee may present a grievance to the First Level of the procedure in the manner prescribed in clause M-38.05 not later than the twenty-fifth (25th) day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to grievance.

M-38.11 The Employer shall normally reply to an employee's grievance, at any level in the grievance procedure, except the final level, within ten (10) days after the date the grievance is presented at that level. Where such decision or settlement is not satisfactory to the employee, he or she may submit a grievance at the next higher level in the grievance procedure within ten (10) days after that decision or settlement has been conveyed to him or her in writing.

M-38.12 If the Employer does not reply within fifteen (15) days from the date that a grievance is presented at any level, except the final level, the employee may, within the next ten (10) days, submit the grievance at the next higher level of the grievance procedure.

M-38.13 The Employer shall normally reply to an employee's grievance at the final level of the grievance procedure within thirty (30) days after the grievance is presented at that level.

M-38.14 Where an employee has been represented by the Alliance in the presentation of his or her grievance, the Employer will provide the appropriate representative of the Alliance with a copy of the Employer's decision at each level

of the grievance procedure at the same time that the Employer's decision is conveyed to the employee.

M-38.15 The decision given by the Employer at the Final Level in the grievance procedure shall be final and binding upon the employee unless the grievance is a class of grievance that may be referred to adjudication.

M-38.16 In determining the time within which any action is to be taken as prescribed in this procedure, Saturdays, Sundays and designated paid holidays shall be excluded.

M-38.17 The time limits stipulated in this procedure may be extended by mutual agreement between the Employer and the employee and, where appropriate, the Alliance representative.

M-38.18 Where it appears that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels, except the final level, may be eliminated by agreement of the Employer and the employee, and, where applicable, the Alliance.

M-38.19 Where the Employer discharges an employee, the grievance procedure set forth in this Agreement shall apply except that the grievance shall be presented at the final level only.

M-38.20 An employee may abandon a grievance by written notice to his or her immediate supervisor or officer-in-charge.

M-38.21 An employee who fails to present a grievance to the next higher level within the prescribed time limits shall be deemed to have abandoned the grievance, unless the employee was unable to comply with the prescribed time limits due to circumstances beyond his or her control.

M-38.22 No person who is employed in a managerial or confidential capacity shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause an employee to abandon his or her grievance or refrain from exercising his or her right to present a grievance as provided in this Collective Agreement.

M-38.23 Where an employee has presented a grievance up to and including the Final Level in the grievance procedure with respect to:

(a) the interpretation or application in respect of him or her of a provision of this Collective Agreement or a related arbitral award,

or

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

and the employee's grievance has not been dealt with to his or her satisfaction, he or she may refer the grievance to adjudication in accordance with the provisions of the Public Service Staff Relations Act and Regulations.

M-38.24 Where a grievance that may be presented by an employee to adjudication is a grievance relating to the interpretation or application in respect of him or her of a provision of a Collective Agreement or an arbitral award, the employee is not entitled to refer the grievance to adjudication unless the bargaining agent for the bargaining unit to which the Collective Agreement applies signifies in prescribed manner:

(a) its approval of the reference of the grievance to adjudication,

and

(b) its willingness to represent the employee in the adjudication proceedings.

[25] There is no dispute that notice to bargain within the meaning of section 50 of the PSSRA had been given prior to the transfer to Frontec of the site support services at 15 Wing CFB Moose Jaw, previously performed by employees in the federal public service. Pursuant to section 52 of the PSSRA, the notice to bargain then brought into effect the statutory freeze of "any term or condition of employment applicable to the employees in the bargaining unit in respect of which the notice was given that may be embodied in a collective agreement and that was in force on the day the notice was given" until the employer and the bargaining agent have bargained to an impasse within the meaning of the PSSRA.

[26] The CIRB decision of January 14, 2000, establishes that the PSAC's status as bargaining agent for these former federal public servants was continued by virtue of the provisions of section 47.1 of the *Code* and that, effective the date of the transfer of the site support services at 15 Wing CFB Moose Jaw from the federal public service to Frontec, that is, May 15, 1998, the PSAC was the certified bargaining agent for all employees of Frontec who had formerly been performing this work in the federal public service. This included Mr. Jones who commenced working for Frontec on

June 1, 1998, and whose employment was terminated by Frontec for disciplinary reasons on January 11, 1999.

[27] After the severance of a portion of the federal public service and its transfer to the private sector, paragraph 47.1(a) of the *Code* provides, for the continuation in respect of the affected employees of "the terms and conditions of employment contained in a collective agreement or arbitral award that, by virtue of section 52 of the *Public Service Staff Relations Act*, [were] continued in force immediately before the date of the deletion or severance". Paragraph 47.1(a) also specifies that the bargaining agent and the new private sector employer must observe these continued terms and conditions of employment until the parties have bargained to an impasse within the meaning of the *Code*. The Master Agreement between the PSAC and Treasury Board contains such continued terms and conditions of employment, including those relating to the Grievance Procedure set out in Article M-38. Clause M-38.23 provides that an employee who has presented a grievance to the employer against the termination of his employment for disciplinary reasons and who is not satisfied with the employer's reply at the final level of the grievance procedure may refer the grievance to adjudication.

[28] Frontec maintains that, nonetheless, any grievance arising out of these continued terms and conditions of employment must be determined pursuant to the process delineated in the *Code* and an adjudicator appointed under the PSSRA has no jurisdiction to hear and determine it. I cannot accept this position as it fails to take into account the effect of paragraph 47.1(b) of the *Code* which states that the PSSRA applies "in all respects" to the interpretation and application of a continued term or condition of employment. Surely these words must encompass the provisions of the PSSRA and the *P.S.S.R.B. Regulations and Rules and Procedure* relating to the hearing and determination of grievances. Therefore, until the parties have bargained to an impasse under the *Code*, only an adjudicator appointed under the PSSRA has the jurisdiction to hear and determine a grievance arising out of these continued terms and conditions of employment.

[29] I am reinforced in this conclusion by the fact that there is a significant difference between sections 47 and 47.1 of the *Code*. Section 47.1 does not contain a provision similar to subsection 47(7) which specifies that, where the CIRB has made an order pursuant to paragraph 47(4)(c) of the *Code*, "this Part applies to the

interpretation and application of any collective agreement or arbitral award affected thereby". The absence of such a provision in section 47.1, in relation to an order rendered by the CIRB under paragraph 47.1(c), indicates Parliament's intention that the PSSRA continues to apply to the interpretation and application of any continued term or condition of employment until the parties have bargained to an impasse under the *Code*.

[30] Therefore, I conclude that an adjudicator appointed under the PSSRA has the jurisdiction to hear and determine Mr. Jones' grievance against the termination of his employment for disciplinary reasons by Frontec on January 11, 1999.

[31] This does not dispose of the matter, however, as Frontec has raised some procedural objections to Mr. Jones' grievance. To be more specific, Frontec submits that the grievance in question was never presented to it, as employer, and therefore it had no opportunity to reply thereto. In addition, Frontec maintains that the grievance is untimely. In response to these objections, the PSAC, on Mr. Jones' behalf, has applied for an extension of time.

[32] The parties are directed to contact the PSSRB's Assistant Secretary, Operations, with a view to scheduling a hearing on the application for an extension of time: Board file 149-2-220.

Yvon Tarte,
Chairperson

OTTAWA, April 4, 2000.