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Date: 20030207

Files: 166-2-30803  
166-2-30804

Citation: 2003 PSSRB 10



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**HUGH LINDOR**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General - Correctional Service Canada)**

Employer

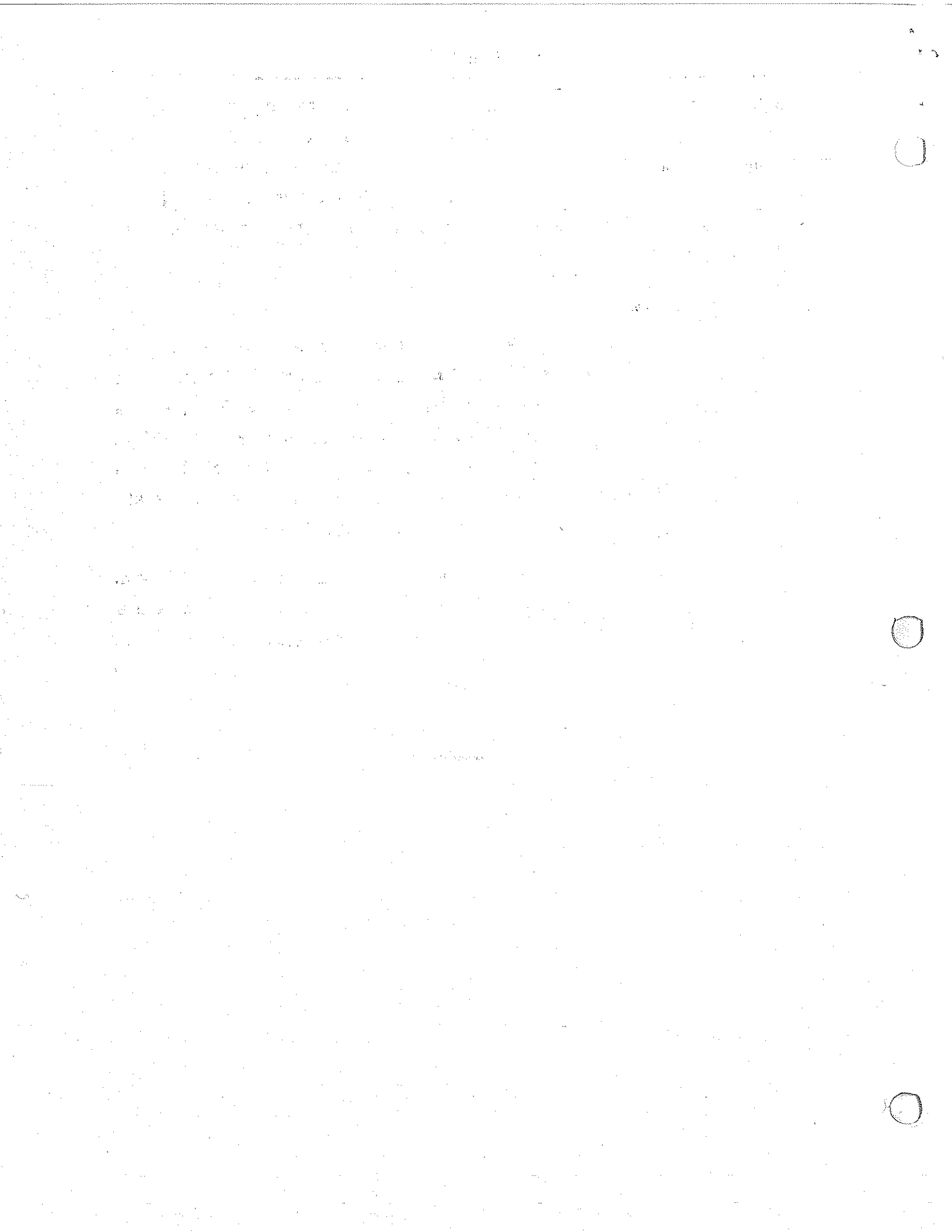
**Before:** Ian R. Mackenzie, Board Member

**For the Grievor:** Himself

**For the Employer:** Harvey Newman, Counsel, and Maureen Hines, Regional Chief  
of Staff Relations and Compensation

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Heard at Vancouver, B.C.,  
January 28, 2003.



## DECISION

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[1] Hugh Lindor was a correctional officer (CX-COF-2) with Correctional Service Canada at the Mission Institution in British Columbia. He grieved his suspension without pay pending an investigation and also grieved a subsequent 20-day suspension, effective from January 18 to February 14, 1999, inclusive. The employer made a preliminary motion that the grievances should be dismissed because the Board lacked jurisdiction.

### BACKGROUND

[2] Mr. Lindor's bargaining agent, UCCO-SACC-CSN, referred the grievances to adjudication on August 6, 2001, on behalf of Mr. Lindor. A notice of hearing was issued by the Public Service Staff Relations Board on December 28, 2001, setting February 11 to 13, 2002 for a hearing. By joint letter, dated February 1, 2002, Mr. Lindor's bargaining agent and the employer requested that the dates scheduled for the hearing be used for mediation. The Board appointed Evelyne Henry to mediate. The mediation was subsequently rescheduled to March 11 and 12, 2002.

[3] On February 25, 2002, the Board was advised by Mr. Lindor's bargaining agent representative, Robert Deschambault, that the bargaining agent was no longer representing Mr. Lindor and that the grievor had chosen to seek his own representation. Mr. Lindor's representative, Peter Leask, Q.C., contacted the Board on February 27, 2002.

[4] After the completion of the mediation session, the Board sent the following letter to Mr. Leask on March 14, 2002:

*I was informed by Mrs. Henry, the mediator in the above-cited matters, that the parties reached a settlement during the mediation session of March 11 and 12, 2002 in Vancouver.*

*It is understood that you will inform the Board when the terms of the settlement are finalized so that we may close our files.*

[5] The Board sent a follow-up letter to Mr. Leask on September 13, 2002, advising that "failure to inform the Board that the settlement has been finalized and that the grievances are withdrawn by no later than September 27, 2002 will result in these matters being scheduled for hearing". The Board subsequently wrote to Mr. Leask and

to the Treasury Board, on October 8, 2002, informing the parties that the grievances were tentatively scheduled for January 28 to 31, 2003.

[6] Counsel for the employer, John Jaworski, wrote to Mr. Leask on October 28, 2002, and on November 6, 2002, and copied the Board on his correspondence. In his letter of October 28, Mr. Jaworski stated that it was his understanding that the grievances were settled at mediation and that the employer had fulfilled its obligations under the Memorandum of Agreement. In both letters, he requested that Mr. Leask take the appropriate steps to withdraw the grievances.

[7] On November 29, 2002, Michelle Bizier, a registry officer of the Board, wrote to Mr. Leask:

*This is to confirm our telephone conversation of November 22, 2002, whereby I had requested an update of the status of the above-cited matters as a follow-up to my letters of September 13 and October 8 and to Mr. Jaworski's letters of October 28 and November 6, 2002, which are unanswered to this date.*

*During our telephone conversation you informed me that you would communicate with Mr. Lindor on November 25, 2002 upon your return from holidays and that you would get back to me on this date.*

*On November 22, 2002, I had also communicated with Mr. Lindor who returned my call on November 25. I informed him of our conversation and advised him that you would be communicating with him very shortly.*

*Unless the above-mentioned grievances are withdrawn, they will proceed to hearing on January 28, 2003.*

[8] A notice of hearing was issued on January 14, 2003, and was sent to Mr. Leask as well as to Mr. Lindor.

[9] At the hearing on January 28, 2003, Mr. Lindor advised that he was no longer represented by Mr. Leask and was representing himself.

## ARGUMENTS

### For the Employer

[10] It was submitted by Mr. Newman that there was a signed settlement agreement, a release signed by Mr. Lindor, as well as a signed letter of retirement, dated

March 12, 2002, which was witnessed by the grievor's counsel, Mr. Leask. He stated that the employer had met its obligations under the settlement agreement.

[11] It was the employer's position that a valid and binding settlement is a complete bar to proceeding to adjudication. Furthermore, it was not open to the Board to supervise the implementation of a settlement. As soon as there is evidence that a settlement has been reached, the adjudicator is without jurisdiction. Mr. Newman relied on a decision of this Board relating to a signed mediation agreement: *Skandharajah and Treasury Board (Employment and Immigration Canada)*, 2000 PSSRB 114 (166-2-24127).

#### For the Grievor

[12] Mr. Lindor indicated that he had been in contact with Mr. Leask, although Mr. Leask was no longer his counsel. Mr. Lindor said that Mr. Leask had advised him that the employer would likely be raising this preliminary objection.

[13] Mr. Lindor did not dispute that there was a valid settlement of these grievances or that the employer had met its obligations under the agreement. He expressed his frustration with the events that led to the filing of the grievances and stated that he did not feel that he had been dealt with fairly by the employer.

[14] He stated that he was not willing to withdraw his grievances.

#### REASONS FOR DECISION

[15] Mr. Lindor agreed at the hearing that there was a valid and binding agreement between him and the employer. He did not dispute that the employer had met its obligations under that agreement. Although he was not happy with the settlement, he did not argue that the agreement was unconscionable or that he was coerced into signing. It is important to note as well that Mr. Lindor was represented during the mediation process and that his legal counsel witnessed his signature to the agreement.

[16] It has been long established by this Board that a valid settlement agreement is a complete bar to its jurisdiction: *Bhatia* (Board file 166-2-17829); *Skandharajah* (*supra*) and *Déom* (Board file 148-2-107). It is in the interests of certainty in labour relations that legitimate settlement agreements be final and binding on all parties.

[17] Mr. Lindor adduced no evidence to show that the settlement agreement was not a valid one. In fact, he seemed resigned to the fact that there was a binding settlement. Although I understand that he is not happy with the outcome of the settlement, there is no basis for his refusal to withdraw his grievances.

[18] Since the parties have settled these grievances, the Board has no jurisdiction to proceed with a hearing. Accordingly, the grievances are dismissed.

**Ian R. Mackenzie,  
Board Member**

OTTAWA, February 7, 2003.