

June 17, 2004

Lyson Paquette  
Labour Relations Officer  
Union of Taxation Employees  
233 Gilmour Street - Suite 602  
Ottawa, ON K2P 0P2

Dear Sister Paquette:

**Re: Grievances :**  
**Canada Revenue Agency**  
**Article 58 - Employee Performance Review and Employee Files**  
**Subject: Appraisals**

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We have very carefully examined the file pertaining to the above-noted grievances. Unfortunately, we are unable to refer these grievances to adjudication.

As I understand the facts, the grievors are employed with the Canada Revenue Agency at the Saskatoon Tax Services Office. Each is classified in the CR or PM group. These grievances concern the inclusion of competencies in the Employee Performance Management Report received by each grievor. The grievances are identical:

"I grieve the "goals, expectations and target" provided to me by <name of supervisor and date> as they do not relate to my assigned tasks as per Article 58.01 of my collective agreement."

That my employer provide me with a current list of my assigned tasks and how these tasks relate to the statement of duties in my current work description."

The jurisprudence has firmly established that the Public Service Staff Relations Board is without jurisdiction to hear grievances against a performance appraisal. This conclusion has been reached in a number of cases including Ansari (166-2-14680), where the adjudicator found that a grievance against a performance appraisal is not adjudicable and rejected the argument that he had the authority to order the removal and destruction of the appraisal in question.

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As further demonstrated in the Ahad et al. decision (Board files 166-2-15840, 16038 & 16233), an adjudicator has no authority to review or amend the content of a performance review report. The language examined in this decision is identical to that of Articles 58.01 (a) and (b). The grievors argued that the unique language, which dealt specifically with the formal assessment and/or appraisal of an employee, conferred upon the adjudicator jurisdiction to hear the grievances. It was argued that the article stipulates that the employee must be assessed solely on how well he has performed his assigned tasks. Adjudicator Galipeault disagreed and dismissed the grievances for lack of jurisdiction.

"In the entire text of Article 20 there is nothing on which an employee who was dissatisfied with the assessment rating given by the employer, an employee who was dissatisfied with a decision rendered by a merit review board, or an employee who was dissatisfied with the contents of a performance evaluation report could base a reference under the provisions of paragraph 91(1)(a) of the Public Service Staff Relations Act, thereby obliging an adjudicator to hear and decide the merits of his grievance and hence the merits of the assessment."

Based on the jurisprudence, we are unable to recommend referral of these grievances to adjudication. An adjudicator is without jurisdiction to hear the grievances and to grant the corrective action requested. If you wish to discuss this matter further, please do not hesitate to contact me by no later than July 2, 2004. We are returning your files herewith.

In solidarity,

Nancy Milosevic  
Grievance & Adjudication Analyst  
Representation Section  
Collective Bargaining Branch

NM/mrp/AEU II  
encl.

cc: