

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

TREASURY BOARD

Applicant

and

THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

RE: Designated Positions-  
Computer Systems Administration Group (CS)

*Before:* Yvon Tarte, Chairperson

*For the Applicant:* Ronald Snyder

*For the Respondent:* Steve Waller

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Heard at Ottawa,  
June 16 and 18, 1997

## DECISION

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This is an application made by the Treasury Board for an extension of time to submit 142 positions in the Department of National Defence to the designation review panel appointed to deal with the designation process for the Computer Systems Administration Group (CS).

In view of the short timeframes for the work of the designation review panel in this case and the desire of the parties to get on with collective bargaining for the CS group, both the applicant and respondent agreed that I would give oral reasons for decision immediately after the conclusion of the hearing in this matter. It was also agreed that my decision given at the hearing would be followed by a written version of those oral reasons and that is what follows.

This request for an extension of time to refer certain CS positions to the designation review panel arises out of a situation which to this day has not been completely explained. Suffice it to say that technology has its flaws and is not always what it is cracked up to be.

The evidence adduced shows that something in the nature of an accident occurred between 30 October and 29 November 1996 when diskette one and three were produced. Diskette one, containing the initial designation proposals for the CS group, did list the DND positions which the employer wanted designated pursuant to section 78.1. That diskette was provided to the Professional Institute of the Public Service of Canada on or about 30 October 1996.

Since the first diskette contained the DND positions and since the evidence shows the parties did not formally agree on any designations prior to the preparation of diskette three on 29 November 1996, it was not unreasonable, in the circumstances, for the employer to rely on its computers and their programs to reproduce correctly the information believed to be on file and which no one had voluntarily deleted. This is in fact the procedure followed by the employer which lead to the unexplained deletion from the final diskette of the 142 proposed DND positions.

In *Canada (Attorney General) v. P.S.C.A.C. (C.A.)*, [1989] 3 C.F. 585, Mr. Justice Iacobucci (then Chief Justice of the Federal Court of Appeal) commented on a prior decision of the Federal Court as follows (pages 590-591):

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*Mr. Justice Hugessen's comments in the Data Processing decision, from their context and from the underlying rationale of section 78 and related provisions of the Act, clearly mean that good cause relates to explaining the delay in late filing not to why relief should be given to the government from the consequences of its late filing. Although the statute in question, unlike many others that deal with time limits, does not mention the possibility of a proper case and good cause and although specific time limits should as a general matter be taken seriously, I do not think it does harm to statutory interpretation or Parliament's intent to acknowledge that such time limits can be treated as being legally met where an event or happening akin to an accident, force majeure or Act of God has intervened to prevent literal compliance with the time limit. It takes little imagination in our modern complex life to think of circumstances where, through no fault or shortcoming of the employer, the filing of the list was delayed. I believe this was behind Hugessen J.A.'s comments. Obviously one cannot generalize since each case depends on the statute in question and the words used amongst other factors. Accordingly I believe the PSSRB does have an implied but very limited jurisdiction to relieve the government-employer-of its default if it is persuaded by the reasons for the delay in what would likely be most unusual or extraordinary circumstances.*

It is important to note that the decision being reviewed by the Federal Court of Appeal dealt with sections of the *Public Service Staff Relations Act* which did not contain specific provisions for the extension of time limits as section 78.1 now does.

This is not a case of late filing as discussed in the jurisprudence tendered by the bargaining agent. I must say that in such cases today, I would find the jurisprudence presented to be applicable even under the new provisions.

As Lord Denning once said "even a fool is wise with hindsight". With hindsight one can certainly say it would have been preferable and even wise for the employer to double check its lists. In the circumstances, I do not find it was unreasonable not to do so. This decision is limited to the very special facts of this case where the positions in dispute were in fact proposed for designation to the bargaining agent in a timely manner.

With respect to the delay in making this application for extension of time, it appears from the evidence that Mr. Willis continued until late March and early April to

hope that the respondent would deal voluntarily with the disputed DND positions. Neither party established a firm line on this issue until early April 1997.

Although it would certainly have been preferable to bring this issue to a head early on, I believe both parties share some responsibility for not moving more quickly and with more firmness on this matter. I do not however find that the delay which occurred was sufficiently serious to justify a refusal of the request for extension of time.

An accident has occurred which can be corrected by the discretionary powers given to the Board to extend time limits under sections 78.1 and 78.2.

It goes without saying that the employer should be wiser now. This decision should not be interpreted to sanction blind reliance on technology when we now know that such serious and mysterious glitches can occur. Finally this decision should provide impetus to the parties to deal with similar situations in the future in a more expeditious manner.

This application for extension of time is allowed. The 142 DND positions, which are the subject matter of this application will be referred to the designation review panel to be dealt with along with other positions in dispute when it meets again on June 24, 1997.

**Yvon Tarte  
Chairperson**

OTTAWA, June 23, 1997