

FILES: 2006-0121 AND 0125

OTTAWA, OCTOBER 24, 2006

JODI-LEAH CASPER

COMPLAINANT

AND

THE DEPUTY MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER Request for extension of time

DECISION The request is denied

DECISION RENDERED BY Francine Cabana, Member

LANGUAGE OF DECISION English

INDEXED *Casper v. Deputy Minister of Citizenship and Immigration Canada et al.*

NEUTRAL CITATION 2006 PSST 0010

REASONS FOR DECISION

INTRODUCTION

[1] On September 13, 2006, Jodi-Leah Casper, the complainant, filed two complaints with the Public Service Staffing Tribunal (the Tribunal) pursuant to subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). The complaints concerned two separate acting appointments made by the Department of Citizenship and Immigration (the respondent). The complainant has requested an extension of time for the filing of these two complaints.

BACKGROUND

[2] The first complaint concerns the Acting Appointment of Claudette Doering, resulting from a non-advertised appointment process for the position of Team Leader Acting PM-03 (selection process number 06-IMC-IA-CPCVG-1227). The Notice of Appointment or Proposed Appointment provided a closing date of September 11, 2006.

[3] The second complaint relates to the Acting Appointment of Shelley Thostenson, resulting from a non-advertised appointment process for the position of Team Leader, Acting PM-04 (selection process number 06-IMC-INA-CPCVG-1226). The Notice of Appointment or Proposed Appointment provided a closing date of September 9, 2006.

[4] In accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*), these two complaints were consolidated on October 6, 2006.

[5] On September 25, 2006, the respondent objected to the request for an extension of time to file the complaints.

ISSUES

[6] Two preliminary matters have been raised with respect to these complaints:

- (i) Is the past practice with respect to notification still in effect?
- (ii) Should the Tribunal grant the extension of time to file these complaints?

SUBMISSIONS

[7] The complainant submits that on April 12, 2006, during a Joint Consultation Committee meeting, Union and Management reached an agreement concerning posting staffing notifications. This agreement required Management to send an email to staff and place a notice in the Public Folders in Microsoft Outlook. A copy of minutes of the meeting reflecting this agreement was submitted by the complainant.

[8] The complainant also states that she made various attempts to find the Notice of Appointment or Proposed Appointments and did not find them until September 13, 2006.

[9] The complainant argues that since the respondent did not respect the agreement reached between the Union and Management on April 12, 2006, her request for extension of time for filing of a complaint should be granted.

[10] In addition, the complainant explains that after researching the Tribunal's *Procedural Guide*, she realized that the time limit for making a complaint is 15 calendar days, not business days.

[11] The respondent relies on section 10 of the *PSST Regulations* to object to the request for extension of time to file the complaints. Pursuant to section 10, a complaint must be filed within 15 days of the public notice of appointment.

[12] The respondent also submits that the Information Regarding Acting Appointment (selection process number 06-IMC-INA-CPCVG-1226) was posted on the Public Service Staffing Advertisement & Notifications page of the Publiservice Web site, providing a complaint period of 15 days from August 23 to September 7, 2006. The Information Regarding Acting Appointment (selection process number 06-IMC-IA-CPCVG-1227) was similarly posted, providing for a complaint period from August 25 to September 11, 2006. The complainant filed both of her complaints on September 13, 2006, which was six days after the complaint period closing date for the first complaint and two days after the complaint period closing date for the second complaint.

[13] In addition, the respondent submits that, although section 5 of the *PSST Regulations* states that the time limits can be set aside, the complainant has raised no reason, let alone exceptional circumstances, to warrant the granting of an extension.

[14] The respondent further submits that following a Joint Consultation Committee meeting of June 12, 2006, the complainant as well as all of the employees at the Vegreville Case Processing Center (CPCV) were advised by email on June 21, 2006 of the changes in the manner to be used to publish the notices of appointments or proposed appointments.

[15] The respondent submitted a copy of the email dated June 21, 2006 which indicates the change of procedure. The email reads in part: "Further to the JCC meeting of June 13, 2006, this is to clarify that CPC Vegreville's Internal and External Advertised processes will be posted on Publiservice. An email will not be sent to staff and a notice will not be placed in the Public Folders in Microsoft Outlook." The email proceeds to clarify what steps to take to ensure that everyone has access to the notifications.

ANALYSIS

Issue I: Is the past practice with respect to notification still in effect?

[16] The issue is whether the past practice was still in place at the time the complainant filed her complaint. The respondent produced an email dated June 21, 2006 sent to all user groups in Vegreville, informing all employees of the process for publishing the notices of appointments or proposed appointments for internal and external staffing actions.

[17] The principle of past practice is a well established one in labour law. The case law is clear on the subject. A simple notice from one party is sufficient to terminate the practice. This notice can be a unilateral one and does not require the other party to agree.

[18] The Tribunal is satisfied that the email of June 21, 2006 notified the complainant as it clarified the new process for all employees and this email put an end to the practice in place in April 2006.

Issue II: Should the Tribunal grant the extension of time to file these complaints?

[19] Section 10 of the *PSST Regulations* reads as follows:

10. A complaint by a person may be made to the Tribunal

(a) except where paragraph (b) applies, no later than 15 days after the day on which the person receives notice of the lay-off, revocation, appointment or proposed appointment to which the complaint relates; and

(b) if the notice of lay-off, revocation, appointment or proposed appointment to which the complaint relates is a public notice, no later than 15 days after the date of the notice.

[20] The *PSST Regulations* do not stipulate the manner in which an employee is to be notified of an appointment. In this case, the notices were posted on the Public Service Staffing Advertisement & Notifications page of the Publiservice

Web site and specified closing dates for filing of complaints. This procedure had been communicated to all employees in Vegreville on June 21, 2006 via the email referred to earlier in this decision.

[21] Section 5 of the *PSST Regulations* provides that the Tribunal has the power to extend time limits. Section 5 reads as follows:

5. The Tribunal may, in the interest of fairness, extend any time specified in these Regulations.

[22] It is important for the parties to know that the time limits are respected and adhered to in order for the process to function properly. In the interest of fairness, the Tribunal may extend the strict time limits for filing a complaint. The complainant has the onus of providing reasons for the request for extension. Unless there are exceptional circumstances to extend the time limits, the Tribunal will not grant an extension.

[23] The complainant has relied on the past practice of the respondent with respect to notification. The Tribunal has found that as of June 21, 2006 all employees, including the complainant, were informed of their responsibility of consulting the Public Service Staffing Advertisement & Notifications page of the Publiservice Web site for notification of staffing actions. The Tribunal cannot agree with the complainant's submission that it would be fair to hold the respondent to a past practice that no longer exists.

[24] Beside the past practice argument, the complainant only offered an explanation for why she filed out of time, namely, that after researching the Tribunal's *Procedural Guide* she realized that the time limit is 15 calendar days, not business days. The complainant stated that she only became aware of the Acting Appointments on or about September 13, 2006, the day on which she filed her complaints.

[25] All complainants have a responsibility to ensure that they are fully aware of the time limits and procedures applicable to the Tribunal's complaint process. A failure on the part of a complainant to be so apprised, especially in the face of the information available from the Tribunal, does not qualify as an exceptional circumstance to warrant the granting of an extension of time.

DECISION

[26] For the reasons set out above, the Tribunal denies the request for extension of time. Accordingly, the complaints are dismissed.

Francine Cabana
Member

PARTIES OF RECORD

Tribunal Files:	2006-0121 and 0125
Style of Cause:	<i>Jodi-Leah Casper and the Deputy Minister of Citizenship and Immigration Canada et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	October 24, 2006