



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**DECISION: I-06-0062-001**

**FILES: 2006-0062 AND -0063**

**OTTAWA, AUGUST 23, 2006**

**PHYLLIS PARSONS AND MARILYN CAREY**

**COMPLAINANTS**

**AND**

**THE DEPUTY HEAD OF SERVICE CANADA**

**RESPONDENT**

**AND**

**OTHER PARTIES**

<b>MATTER</b>	Determination of jurisdiction
<b>DECISION</b>	Complaints dismissed for want of jurisdiction
<b>DECISION RENDERED BY</b>	Helen Barkley, Member
<b>INDEXED</b>	<i>Parsons and Carey v. Deputy Head of Service Canada et al.</i>
<b>NEUTRAL CITATION</b>	2006 PSST 0004

## REASONS FOR DECISION

### BACKGROUND

[1] On July 12, 2006, Phyllis Parsons and Marilyn Carey filed 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, s. 12, 13 (the *PSEA*) concerning acting appointments made following an advertised developmental opportunity as Agent II (PM-02) within Service Canada. As both complaints deal with the same subject matter, I have consolidated them in accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, which provides for joining of cases to ensure the expeditious resolution of complaints.

[2] Information filed with the complaints included a copy of an email from Betti Elliott, Manager, Employment Insurance Services, indicating that the Agent II adjudication capacity was strained and that the department would be running a process to identify a pool of qualified candidates to perform the adjudicative function. In the interim, in order to meet short term operational requirements, a training session would be held in early May 2006. The developmental opportunity would consist of classroom training and an acting assignment from the start of the training to approximately August 31, 2006. Those interested were asked to notify Ms. Elliott by April 5, 2006. The complainants did so, but state that they were never told why they were not selected, nor were they told who had been appointed.

[3] On July 24, 2006, the deputy head's representative filed a document indicating that Doreen Harty, Mary Rice, Guy Goldsworthy and Faye Leighton were appointed on an acting basis to positions of Universal Agent (PM-02) from May 1, 2006 to August 31, 2006. He submitted that the Tribunal did not have jurisdiction over the subject matter of the complaints, as the acting appointments were made for a period of less than four months.

## SUBMISSIONS ON JURISDICTION

[4] The respondent submits that, in accordance with subsection 14(1) of the *Public Service Employment Regulations*, SOR/2005-334 (the *PSER*), the four acting appointments made in this case were for a period of less than four months, and therefore, are excluded from the application of sections 30 (merit) and 77 (recourse) of the *PSEA*. In support, the deputy head's representative filed with the Tribunal four documents entitled "Subject - Initial Acting". Those documents indicate that Doreen Harty, Mary Rice, Guy Goldsworthy and Faye Leighton were each appointed "Acting May 1, 2006 – August 31, 2006". Each document also states: "Approved by Betti Elliott, Manager, CPU, Gander, May 16, 2006".

[5] The complainants and other parties were requested to provide submissions in response to the jurisdictional issue by August 8, 2006. No submissions were received from the complainants.

[6] The Public Service Commission did file submissions, stating that the information provided appears to support Service Canada's contention that all four appointments were for a period of no more than four months and, as a result, the Tribunal does not have jurisdiction to consider the complaints.

## ANALYSIS

[7] Subsection 14(1) of the *PSER* reads as follows:

**14.** (1) An acting appointment of less than four months, provided it does not extend the cumulative period of the acting appointment of a person in a position to four months or more, is excluded from the application of sections 30 and 77 of the Act.

[8] Based on the evidence of the respondent on this matter, and no evidence to the contrary by the complainants, I conclude that four acting appointments were made for the period from May 1 to August 31, 2006. The issue I must decide is whether this period is “less than four months”.

[9] The term “month” is not defined in either the *PSEA* nor in the *PSER*. However s. 35 of the *Interpretation Act*, R.S., 1985, c. I-21 (*an Act respecting the interpretation of statutes and regulations*), defines month as follows:

“month” means a calendar month

The *Dictionary of Canadian Law*, 3<sup>rd</sup> ed., p. 151 defines calendar month as follows:

Calendar month may refer to an actual month or to a period from a day in one month to the same day in the next month.

Calendar month is defined by the *Canadian Oxford Dictionary*, 2<sup>nd</sup> ed., p. 1004 as

“a period of time between the same dates in successive calendar months”

[10] Applying these definitions to the subject acting appointments, I find that an acting appointment of four months would be one from May 1, 2006 to September 1, 2006. Therefore, the appointments of Doreen Harty, Mary Rice, Guy Goldsworthy and Faye Leighton for the period from May 1, 2006 to August 31, 2006 are acting appointments of less than four months.

[11] Section 14 of the *PSER* specifically excludes acting appointments of less than four months from the application of section 77 of the *PSEA*, the section which sets out the right to complain to the Tribunal. Therefore, I find that the Tribunal has no jurisdiction to consider these complaints.

## CONCLUSION

[12] The complaints of Phyllis Parsons and Marilyn Carey are dismissed for want of jurisdiction.

Helen Barkley  
Member

## PARTIES OF RECORD

Tribunal Files:	2006-0062 and 0063
Style of Cause:	Phyllis Parsons and Marilyn Carey and the Deputy Head of Service Canada <i>et als.</i>
Hearing:	Written request decided without the appearance of the parties
Date of Reasons:	August 23, 2006