



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILES: 2006-0145 AND 0146

OTTAWA, JANUARY 17, 2007

STACY CZARNECKI

COMPLAINANT

AND

**THE DEPUTY HEAD OF SERVICE CANADA AS PART OF THE DEPARTMENT OF
HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA**

RESPONDENT

AND

OTHER PARTIES

MATTER Determination of jurisdiction

DECISION The complaints are dismissed

DECISION RENDERED BY Sonia Gaal, Vice-Chair

LANGUAGE OF DECISION English

INDEXED *Czarnecki v. Deputy Head of Service Canada et al.*

NEUTRAL CITATION 2007 PSST 001

REASONS FOR DECISION

INTRODUCTION

[1] By letter dated December 21, 2006, the Public Service Staffing Tribunal (the Tribunal) informed the parties that Ms. Stacy Czarnecki's two separate complaints in files 2006-0145 and 2006-0146 were dismissed as they were premature, with reasons to follow.

[2] In accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*), the Tribunal has consolidated the complainant's two files and issues the following reasons for decision.

FACTS

[3] In file 2006-0145, Ms. Czarnecki applied for the Service Delivery Manager PM-05 position in Manitoba for Service Canada, selection process number 2006 -CSD-1A-MAN-4038-SC-1-0514.

[4] She was eliminated from the selection process and filed a complaint with the Tribunal on September 20, 2006 under section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). She alleges that the screening board abused its authority and discriminated against her in the process.

[5] The respondent advised the Tribunal on November 24, 2006 that the process was still ongoing. The respondent asked the Tribunal to hold the complaint in abeyance until the notification of appointment was issued.

[6] On September 27, 2006, Ms. Czarnecki filed a second complaint, file 2006-0146. She applied for the Team Leader SCC PM-03 position in Manitoba for Service Canada, selection process number 2006-CSD-1A-MAN-4209-SC-1-0496.

[7] The complainant was advised on September 19, 2006 that she did not receive a passing mark for the written portion of the selection process. Therefore, she could not be considered further for this position.

[8] Her complaint filed under section 77 of the *PSEA* alleges that the selection board minimized her total mark in this area as the answers she provided met the required answer “at least at a good level.”

[9] On November 9, 2006, the respondent asked the Tribunal to dismiss the complaint as there was no proposal for appointment or appointment made and, therefore, no notification issued for those who may wish to complain about the appointment process.

[10] On November 24, 2006, the Tribunal asked the complainant to provide her submissions by November 29, 2006 in answer to the respondent’s request to have the first complaint (file 2006-0145) held in abeyance. On November 29, 2006, the Tribunal wrote to the complainant to provide her submissions by December 4, 2006 on the respondent’s request to dismiss the second complaint (file 2006-0146). The Tribunal did not receive her submissions.

ISSUE

[11] The Tribunal must decide whether it has jurisdiction to consider either or both of these complaints.

ANALYSIS

[12] A person’s right to file a complaint concerning an internal appointment process is governed by subsection 77(1) of the *PSEA*:

77. (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Tribunal’s regulations — make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or

(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).

(emphasis added)

[13] Subsection 15(1) of the *PSEA* provides for the delegation by the Public Service Commission (the PSC) of the appointment authority to Deputy Heads. The appointment authority has been delegated to the Deputy Head of Service Canada.

[14] The Tribunal finds that a complainant’s right to file a complaint pursuant to section 77 of the *PSEA* is subject to the preliminary condition that there must be an appointment or proposed appointment in an internal appointment process and, subsequently, “that he or she was not appointed or proposed for appointment.” Logically, a person cannot complain that he or she was not appointed or proposed for appointment if this has not taken place yet.

[15] The Tribunal’s jurisdiction is found in subsection 88(2) of the *PSEA*:

88. (...)

(2) The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83.

[16] The interpretation of subsection 77(1), requiring an appointment or proposed appointment to be made prior to the filing of a complaint, is consistent with the wording used in other sections of the *PSEA* where an action is required before a complaint can be made to the Tribunal. In subsection 65(1), “any

employee selected for lay-off may make a complaint to the Tribunal.” Section 74 provides that “a person whose appointment is revoked” may make a complaint to the Tribunal and finally, in section 83, a complaint may be made by a person where the PSC or Deputy Head “has made or proposed an appointment as a result of the implementation of corrective action ordered” by the Tribunal. (emphasis added).

[17] The proper approach to statutory interpretation has been recently confirmed by the Supreme Court of Canada in *R. v. Clark*, [2005] 1 S.C.R. 6, at para. 43 as follows:

It is now well established that “the words of an *Act* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, and the intention of Parliament”: *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 S.C.C. 42, at para. 26 quoting from E.A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87.

[18] As can be seen from a reading of each of the four sections referenced above, namely, subsection 65(1), and sections 74, 77 and 83, the past tense is used to demonstrate that the action giving rise to the complaint, the appointment or proposed appointment, has taken place. By using the past tense, Parliament clearly indicated its intention that an appointment must have been made or proposed prior to the filing of a complaint to the Tribunal: *Edmonton Liquid Gas Ltd. v. Canada*, [1984] F.C.J. No. 829 (C.A.)(QL). None of these sections can be interpreted as providing that an employee may file a complaint in anticipation of an appointment or proposed appointment. On the contrary, grammatically, it only makes sense that the appointment or proposed appointment must precede the filing of a complaint.

[19] If an employee’s complaint is conditional upon an appointment or proposed appointment being made, consequently, the Tribunal does not have jurisdiction to deal with a complaint filed when there has been no appointment or

proposed appointment. The Tribunal's jurisdiction requires that the complaint meets the conditions of section 77 of the *PSEA*.

[20] Despite the respondent's request to hold file 2006-0145 in abeyance, this would not confer jurisdiction to the Tribunal as the complaint was filed before the appointment or proposed appointment.

[21] Since both complaints were filed prior to the selection process being completed and there has been no appointment or proposed appointment in either process, the Tribunal has no jurisdiction to deal with them.

DECISION

[22] Both complaints are therefore dismissed.

Sonia Gaal
Vice-Chair

PARTIES OF RECORD

Tribunal File:	2006-0145 and 0146
Style of Cause:	<i>Stacy Czarnecki and the Deputy Head of Service Canada as part of the Department of Human Resources and Social Development Canada et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	January 17, 2007