

FILE: 2006-0250

OTTAWA, JANUARY 24, 2007

JOSIANNE RICHARD

COMPLAINANT

AND

THE DEPUTY MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER Request for a determination on the issue of timeliness

DECISION The complaint is dismissed

DECISION RENDERED BY Sonia Gaal, Vice-Chair

LANGUAGE OF DECISION French

INDEXED *Richard v. Deputy Minister of Public Works and
Government Services et al.*

NEUTRAL CITATION 2007 PSST 0002

REASONS FOR DECISION

INTRODUCTION

[1] On December 11, 2006, the Public Service Staffing Tribunal (the Tribunal) received a complaint from Ms. Josianne Richard, dated November 28, 2006, under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*). The complaint involves an acting appointment made by the Deputy Minister of Public Works and Government Services Canada (the respondent). The respondent submits that the complaint was made out of time. The complaint is dismissed.

BACKGROUND

[2] The complainant participated in selection process number 2006–SVC–IA–HQ-92647, to qualify for a position of Translator/Language Advisor (Succession Program) within the Department of Public Works and Government Services.

[3] On October 31, 2006, the complainant received an email from Ms. Gaétane Morin, Recruitment Coordinator, informing her that her application in the appointment process had been rejected.

[4] On November 1, 2006, the complainant received an email from Ms. Agathe Paquette, informing her that the interviews would take place from November 8 to 15. On November 6, Ms. Paquette sent her a second email, apologizing for the fact that she was sent the November 1 email, since she had been eliminated from consideration.

[5] On November 22, 2006, the complainant received an email from Ms. Morin, informing her of the list of qualified candidates; the complainant was not on the list. The email indicated that the time limit for filing a complaint with the Tribunal was December 7, 2006. The complainant sent in her complaint from Montreal on December 6 by means of the government's internal mail.

SUBMISSIONS OF THE PARTIES

[6] On December 20, 2006, the complainant explained in an email to the Tribunal that she had been awaiting news about the recruitment in order to obtain clarifications. She had sent her complaint on December 6, thinking that the time limit for filing her complaint was December 7.

[7] On January 5, 2007, the respondent informed the Tribunal that the complaint had been filed out of time, since it was dated December 11, 2006, and the time limit for filing the complaint was December 7.

ISSUES

[8] The Tribunal must rule on the following issues:

- (i) Was the complaint filed out of time?
- (ii) Should the Tribunal exercise its discretion under section 5 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *Regulations*), and extend the time limit for filing the complaint?

ANALYSIS

Issue I: Was the complaint filed out of time?

[9] Section 10 of the *Regulations*, available on the Tribunal's Web site, clearly indicates that a complaint must be made within 15 days of the appointment notice:

10. (1) 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 the 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.

[10] The *Procedural Guide* (the Guide), also available on the Tribunal's Web site, explains in detail in Chapter 5, entitled "Filing a complaint," under the subheading "Information concerning the filing of the complaint," that a complaint may be sent to the Tribunal in a number of ways:

The complainant must ensure that the complaint is filed within the prescribed time period of 15 calendar days.

The complaint may be sent by Email, fax, courier or mail, or may be delivered by hand. When a complaint is sent by fax or by Email, a copy must also be mailed to the Executive Director.

Complaints sent by fax or Email will be considered received on the date on which they are sent. Complaints sent by courier or delivered by hand will be considered to be received on the day of their delivery.

To ensure proof of delivery, it is suggested that complaints be sent by registered mail.

[11] It is therefore important to use a proper method of transmission to ensure that the Tribunal receives the complaint within the prescribed time period. Email and fax are of course the fastest means, since the complaint is received on the same day it is sent. The complainant must then send in the signed original, but the date used for the purposes of the 15-day time period is the day on which the complaint was faxed or emailed.

[12] In cases where the complaint is mailed, it must be filed within the time period set out in section 10 of the *Regulations*. There should be a postmark or a postage meter impression so that the mailing date can be determined with certainty. This is useful if it is argued that the complaint was filed out of time. However, the onus is on the complainant to prove that the complaint was mailed within the prescribed time period.

[13] In *MacDonald v. Deputy Head of Service Canada et al.*, [2006] PSST 0002, the Tribunal considered a request to extend the time limit for filing the complaint, which was sent by mail and received after the time periods prescribed in the *Regulations*. The Tribunal made these comments:

[6] As determined by the Federal Court of Appeal in *Allard v. Canada (Public Service Commission)*, [1982] 1 F.C. 432, and *Lalancette v. Canada (Public Service Commission Appeal Board)*, [1982] 1 F.C. 435, the time limit to file a complaint is a strict limit. (...) Nevertheless, according to the Federal Court in *Lalancette, supra*, it would seem *fair* to consider that a complaint has been brought pursuant to section 10 of the *Regulations* as soon as the complaint is mailed, if the mailing date can be easily proven.

[7] The right to complain to the Tribunal is exercised by persons anywhere in Canada and sometimes even outside it. The complainant explained in writing that she mailed her complaint from Nova Scotia on June 16, 2006, which was four days prior to the closing date for filing a complaint. This is confirmed by the postage meter marking on the envelope. No explanation was provided by the complainant as to why it took 11 days for the complaint to reach the Tribunal. It could have been misdirected or delayed in mail processing. Fortunately, the postage meter marking stamped June 16, 2006 appears on the envelope. Had there been no postage meter marking or had it not been legible, the complainant may not have had any additional evidence to substantiate her claim that she mailed the complaint on June 16, 2006 in which case the Tribunal may have reached a different decision.

(emphasis added)

[14] In the case before us, the complainant chose to send in her complaint on December 6, 2006 using the government's internal mail. However, this service does not make use of postmarks or postage meter impressions, which would have provided proof of the mailing date with certainty.

[15] On the other hand, the Tribunal has on file a stamp indicating the date the complaint was received by the Tribunal, namely, December 11, 2006.

[16] Consequently, the complaint was filed out of time, since it was received after December 7, 2006, the time limit for filing the complaint.

Issue II: Should the Tribunal exercise its discretion under section 5 of the *Regulations* and extend the time period for filing the complaint?

[17] The complainant did not explicitly ask for an extension of the time limit; however, she explained to the Tribunal the reason for the delay in filing her complaint. That type of information is normally included in a request to extend the time limit, as explained in the Tribunal's *Guide*.

[18] In accordance with section 9 of the *Regulations*, the Tribunal considers this to be a defect in form that does not invalidate the request for extension. The Tribunal will therefore consider the request.

[19] When it comes to filing a complaint, the time limit set out in section 10 of the *Regulations* is a strict limit, as indicated in *MacDonald, supra*, but the Tribunal may extend it. Nevertheless, this extension is not automatic, and the complainant must be able to show exceptional circumstances to justify the delay. This issue was dealt with in *Casper v. Deputy Minister of Citizenship and Immigration Canada et al.*, [2006] PSST 0010:

[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.

[20] The claimant tried to justify the delay by explaining that she believed she had until December 7, 2006 to send her complaint to the Tribunal: "(...) I realize that December 7 was the date the Tribunal had to have my file. I honestly believed that the time limit for sending the file was December 7, which is why I sent it on December 6 "[translation].

[21] The Tribunal cannot accept a party's ignorance or error as justification for extending the time limits. The Tribunal addressed this matter in *Casper, supra*:

[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.

All the information is easily accessible on the Tribunal's Web site. In addition, there is a toll-free telephone number that parties can use to contact the employees at the Tribunal Registry if they have any questions or require clarifications.

[22] The *Guide* specifies when complaints will be considered to have been received, and suggests that complaints that are mailed in be sent by registered mail to ensure proof of delivery. It should also be noted that email and fax are the fastest means of sending in a complaint to the Tribunal, especially when the time limit for making a complaint is approaching. The complainant could have sent in her complaint on December 6, 2006 by email or fax. The complaint would then have been received by the Tribunal on December 6, within the prescribed time period.

[23] Although the Tribunal has the authority to extend the time limit, there are no exceptional circumstances warranting such an extension.

DECISION

[24] For all these reasons, the Tribunal dismisses the complaint, since it was filed out of time.

Sonia Gaal
Vice-Chair

PARTIES OF RECORD

Tribunal File:	2006-0250
Style of Cause:	<i>Josianne Richard and the Deputy Minister of Public Works and Government Services et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	January 24, 2007