

FILE: 2006-0134

OTTAWA, FEBRUARY 19, 2007

CHRISTINE EVANS

COMPLAINANT

AND

THE DEPUTY MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

RESPONDENT

AND

OTHER PARTIES

MATTER Determination of jurisdiction

DECISION The complaint is dismissed

DECISION RENDERED BY Merri Beattie, Member

LANGUAGE OF DECISION English

INDEXED *Evans v. Deputy Minister of Indian Affairs and
Northern Development*

NEUTRAL CITATION 2007 PSST 0004

REASONS FOR DECISION

INTRODUCTION

[1] The respondent requests that the Public Service Staffing Tribunal (the Tribunal) dismiss a complaint filed pursuant to subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

BACKGROUND

[2] On June 16, 2006, Christine Evans, the complainant, filed a complaint with the Tribunal pursuant to subsection 77(1) of the *PSEA* concerning a non-advertised appointment to a CR-04 Clerical Assistant position. Pursuant to subsection 11(c) of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, the complainant informed the Tribunal that an authorized representative would act on her behalf for the purposes of the complaint.

[3] On January 3, 2007, the Tribunal was informed by the complainant's representative that the content of the initial complaint will serve as the complainant's allegations.

[4] On January 12, 2007 a reply to the allegations was provided on behalf of the Deputy Minister of Indian and Northern Affairs Canada, the respondent. In its reply, the respondent requested that the Tribunal dismiss the complaint for the following reasons: the complainant has no standing to file a complaint in this matter; the complaint is frivolous in that no factually-based allegations have been made; and, the complaint is a vexatious attack on the appointee.

[5] On January 17, 2007, the complainant's representative informed the Tribunal that no submissions on this matter would be provided, and requested that the Tribunal proceed based on the documents filed to date. The complainant's representative further stated that the complainant has been absent

from the workplace since shortly after filing her complaint and that contact with her has been non-existent. The complainant authorized her representative to act on her behalf, which includes acting for her in relation to the respondent's motion to dismiss the complaint.

ISSUES

[6] The Tribunal must answer the following questions:

- (i) Does the Tribunal have jurisdiction to consider this complaint?
- (ii) If so, is the complaint frivolous or vexatious?

SUBMISSIONS OF PARTIES

[7] The respondent submits that the complainant appears to be submitting a complaint on behalf of other employees, specifically CR-03 level employees and term employees. The subject appointment is at the CR-04 level. The respondent states that the complainant is an indeterminate AS-02 level employee. The respondent submits that a complainant does not have standing to speak on behalf of other potential complainants.

[8] In response to the respondent's motion, the complainant's representative asks the Tribunal to consider the documents filed to date.

ANALYSIS

Issue I: Does the Tribunal have jurisdiction to consider this complaint?

[9] The Tribunal's jurisdiction is found in subsection 88(2) of the *PSEA* which reads as follows:

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

[10] The complainant has filed her complaint under subsection 77(1) of the *PSEA*. Paragraph 77(1)(a) of the *PSEA* reads as follows:

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).

(emphasis added)

[11] The Tribunal's decision in *Visca v. Deputy Minister of Justice et al.*, [2006] PSST 0016, addresses the requirement for a personal interest in the appointment. As stated in *Visca, supra*:

[24] In subsection 77(1) of the *PSEA*, the words “*a complaint to the Tribunal that he or she was not appointed or proposed for appointment*” clearly stipulate that a complaint must be personal to the complainant. A person can only complain “that he or she was not appointed” and cannot complain that other persons were not appointed. The complaint cannot be about how other unsuccessful candidates were treated (...).

[12] 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 the complainant must have a personal interest in the appointment.

[13] The complainant has not provided any evidence or submissions to counter the respondent's submissions concerning her lack of personal interest in being appointed to this CR-04 position. As requested by the complainant's representative, the Tribunal has reviewed the complaint and other documentation submitted by the complainant.

[14] In her complaint, the complainant states her position title and classification to be Entitlement Officer, PM-03, whereas the respondent states that she is an indeterminate AS-02 level employee. Both parties may be accurate, given the possibility of an acting situation. What is important is that either of those levels is significantly higher than that of the CR-04 position.

[15] More importantly, there is absolutely nothing in the complaint which would indicate any expressed personal interest in an appointment to the CR-04 position. On the contrary, the complainant writes in her complaint: "...this CR4 position should have been open to others to try for. (T)here were others who have not got an indeterminate and others who are currently CR3's who may have liked the chance to try for this job." There is no indication anywhere in the complaint that she wanted, and was denied, an opportunity to be appointed to the CR-04 position.

[16] The complaint was submitted to the Tribunal under a covering letter. In the covering letter the complainant writes that she wishes to "...complain regarding an appointment of someone from term to indeterminate employment status." She signed the covering letter as National Spokesperson for the Committee for the Advancement of Native Employment.

[17] As stated, the Tribunal has determined that a personal interest must exist for a person to have standing to file a complaint to the Tribunal. The complainant has provided no submission or evidence to support a finding that she had a personal interest in an appointment to the CR-04 Clerical Assistant position. On the contrary, her complaint and the accompanying covering letter support a finding that this is an intervention on behalf of others.

[18] Given the above, the Tribunal finds that the complainant had no standing and therefore no right to file a complaint to the Tribunal pursuant to section 77 of the *PSEA*.

Issue II: Is the complaint frivolous or vexatious?

[19] Having determined that the complainant had no right to file a complaint to the Tribunal pursuant to section 77 of the *PSEA*, it is not necessary that the Tribunal address this second issue raised by the respondent.

DECISION

[20] The Tribunal does not have jurisdiction to consider and dispose of this complaint. The request to dismiss is granted.

Merri Beattie
Member

PARTIES OF RECORD

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| Tribunal File: | 2006-0134 |
| Style of Cause: | <i>Christine Evans and the Deputy Minister of Indian Affairs and Northern Development</i> |
| Hearing: | Written request decided without the appearance of the parties |
| Date of Reasons: | February 19, 2007 |