

FILE: 2007-0092

OTTAWA, MAY 8, 2007

**BAKHTIAR ANWAR**

**COMPLAINANT**

**AND**

**THE DEPUTY MINISTER OF FISHERIES AND OCEANS**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Failure to provide allegations

**DECISION** The complaint is considered withdrawn

**DECISION RENDERED BY** Guy Giguère, Chairperson

**LANGUAGE OF DECISION** English

**INDEXED** *Anwar v. Deputy Minister of Fisheries and Oceans et al.*

**NEUTRAL CITATION** 2007 PSST 0021

## REASONS FOR DECISION

### INTRODUCTION

[1] The complainant, Bakhtiar Anwar, has failed to provide allegations as required by the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*). The Public Service Staffing Tribunal (the Tribunal) must decide whether the complaint should proceed.

### BACKGROUND

[2] On March 1, 2007 the complainant filed a complaint with the Tribunal under section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*) concerning an internal appointment process for an Economist position (ES-04) with the Department of Fisheries and Oceans (selection process no.: 2006-DFO-NCR-AI-916038). The respondent is the Deputy Minister of Fisheries and Oceans.

[3] In his complaint, the complainant simply states that he was “not given opportunity for early intervention for corrective measures” and that “detail will be provided during discussion.”

[4] On March 13, 2007 the Tribunal sent an email to all parties involved in this complaint providing them with a time schedule detailing the next steps and actions required. They were informed that the complainant and the deputy head had until April 2, 2007 to exchange the information relevant to the complaint. The complainant would then have 10 days to provide to the Tribunal and other parties his complete allegations, which would have to be filed by April 12, 2007. Following that, the respondent would have 15 days to reply to the allegations, which would have to be filed by April 27, 2007.

[5] As the deadline for receipt of the complainant's allegations was April 12, 2007. The Tribunal registry sent an email to the complainant on April 13, 2007, reminding him that the deadline for filing his allegations had passed. The complainant was also informed that if he did not file his allegations, the Tribunal may deem the complaint to be withdrawn pursuant to subsection 22(3) of the *PSST Regulations*. The email further stated that if he wished to continue with his complaint, it would be necessary to request an extension of time to file his allegations.

[6] On April 23, 2007 a further letter of directives was sent by the Tribunal Registrar to the complainant directing him, on behalf of the Tribunal, to submit his allegations, and request for an extension to file, by April 30, 2007. He was also informed that a failure to submit his allegations may result in the Tribunal considering his complaint withdrawn under subsection 22(3) of the *PSST Regulations*.

[7] To date, the complainant has not filed his allegations, nor has he requested an extension of time to file.

[8] As there are no allegations, the respondent has not provided its reply pursuant to section 24 of the *PSST Regulations*.

#### ISSUE

[9] Is it appropriate for the Tribunal to consider the complaint withdrawn?

#### ANALYSIS

[10] Section 16 of the *PSST Regulations* states that the exchange of information must be completed no later than 25 days after the complaint is acknowledged by the Tribunal. The complainant and respondent were informed by the Tribunal on March 13, 2007 that the exchange of information would have to be completed by April 2, 2007.

[11] Pursuant to subsection 22(1) and paragraph 22(2)(d) of the *PSST Regulations*, a complainant is required to provide, no later than 10 days after the end of the period for exchanging information, “a detailed description of the allegations on which the complainant intends to rely and full particulars of the relevant facts.” Detailed allegations are especially important where, as has happened in this case, the complaint as filed contains very little information about the nature of the complaint.

[12] Subsection 22(3) of the *PSST Regulations* reads as follows:

**22.** (3) If the complainant fails to provide allegations, the Tribunal may consider the complaint withdrawn.

[13] There is no question that the complainant has failed to provide his allegations and therefore has not complied with section 22 of the *PSST Regulations*. Accordingly, the Tribunal has the discretion to consider the complaint withdrawn.

[14] The Tribunal is required to exercise its discretion in accordance with common law principles. In *Canadian Transit Co. v. Canada (Public Service Staff Relations Board)*, (1989) 99 N.R. 330, at 334, [1989] 3 F.C. 611 (Q.L.), at paragraph 16, the Federal Court of Appeal stated: “Probably no principle is more fundamental to administrative law at common law than that of *audi alteram partem*, a rule of natural justice that parties be given adequate notice and opportunity to be heard (...)”

[15] The Tribunal is satisfied that the complainant was provided with proper and sufficient notice that his failure to file allegations could result in the complaint being considered withdrawn pursuant to subsection 22(3) of the *PSST Regulations*.

[16] Section 24 of the *PSST Regulations* stipulates that the respondent is required to file a reply within 15 days **after** receiving the complainant’s allegations.

[17] Fairness requires that a party responding to a complaint have sufficient information about the complaint to answer it. As the Supreme Court of Canada held in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, at 402, [1992] S.C.J. No. 13 (Q.L.), at paragraph 31: “Generally speaking, fairness requires that a party must have an adequate opportunity of knowing the case that must be met, of answering it and putting forward the party’s own position.”

[18] The complainant has chosen not to provide any information which would permit the respondent to know the case it has to meet to answer the complaint and to put forward its own position. Accordingly, fairness dictates that the complaint be considered withdrawn.

#### DECISION

[19] For these reasons, the complaint is considered withdrawn.

Guy Giguère  
Chairperson

#### PARTIES OF RECORD

Tribunal File:	2007-0092
Style of Cause:	<i>Bakhtiar Anwar and the Deputy Minister of Fisheries and Oceans et al.</i>
Hearing:	Written request, decided without the appearance of parties
Date of Reasons:	May 8, 2007