



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**FILE: 2007-0009**

**OTTAWA, FEBRUARY 22, 2007**

**IRENE TENNANT**

**COMPLAINANT**

**AND**

**THE PRESIDENT OF THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Request for extension of time

**DECISION** The request is denied

**DECISION RENDERED BY** Guy Giguère, Chairperson

**LANGUAGE OF DECISION** English

**INDEXED** *Tennant v. President of the Canadian International Development Agency et al.*

**NEUTRAL CITATION** 2007 PSST 0006

## REASONS FOR DECISION

### BACKGROUND

[1] The complainant, Irene Tennant, participated in an internal advertised appointment process (selection process number 06-IDA/IA/DM-00610) with the Canadian International Development Agency for a position of Senior Contracting Officer (PG-5), Human Resources and Corporate Services Branch – Contracting Management Division.

[2] The complainant was informed on July 27, 2006 that she was unsuccessful and had been screened out of the selection process. The complainant filed a complaint with the Public Service Staffing Tribunal (the Tribunal) on September 18, 2006 prior to any notification of the results of the appointment process. A few weeks later, on October 2, 2006 she received the Notice of Consideration. The complainant filed a second complaint on October 4, 2006 (file 2006-0155), indicating that the selection process had been completed as she had received a notice of consideration which she attached. The Notice of Appointment was posted on *Publiservice* on October 11, 2006. The complainant informed the Tribunal that she had taken a new position with another department commencing October 16, 2006. On October 19, 2006, she withdrew her first complaint.

[3] During December, 2006, the complainant had discussions with the Tribunal Registry concerning the status of her second complaint. Having been informed that her second complaint had been filed prior to the Notification of Appointment, the complainant indicated that she would withdraw this complaint, file a third complaint and request an extension of time to file. On January 18, 2007 the complainant withdrew her second complaint. On January 20, 2007, the complainant filed a third complaint dated January 19, 2007 (file 2007-0009) specifying that she had not received the Notice of Appointment and requesting an extension of time for making her complaint.

[4] The President of the Canadian International Development Agency (the respondent) filed his reply on February 5, 2007, and asked the Tribunal to deny the complainant's request for extension.

#### ISSUE

[5] Should the Tribunal grant the complainant's request for extension of time to file her complaint?

#### SUBMISSIONS OF PARTIES

[6] The complainant's submission can be found in both complaint file 2006-0155 and file 2007-0009. She submits that she filed a complaint on October 4, 2006 following receipt of the Notice of Consideration, but understood that under the new *PSEA*, she should have filed her complaint after receiving the Notice of Appointment. She therefore withdrew the complaint of October 4, 2006 and filed a complaint on January 20, 2007. She submits that an extension of time to file her complaint is appropriate in the circumstances since she had been informed by the Tribunal Registry only recently that her complaint had been filed prior to the Notice of Appointment.

[7] The respondent submits that the complainant was provided with notice of the appointment on October 11, 2006, both by email sent directly to her work address and through publication on *Publiservice*. The respondent further submits that the complainant was made aware of her right to make a complaint to the Tribunal, the deadline to do so and the information required when submitting a complaint. The respondent further submits that the complainant has failed to demonstrate that it would be in the interest of fairness to extend the time for making her complaint, nor has she shown any exceptional circumstances that prevented her from making a complaint on a timely basis.

## ANALYSIS

[8] The Tribunal's jurisdiction is delineated by its enabling statute, the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). Subsection 77(1) of the *PSEA* stipulates that an appointment must have been made or proposed for a complaint to be filed with the Tribunal. Subsection 77(1) 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

(...)

(emphasis added)

[9] As the Tribunal found in *Czarnecki v. Deputy Head of Service Canada et al.*, [2007] PSST 0001, an employee's right to file a complaint is conditional on an appointment or proposed appointment having been made and complaints cannot be held in abeyance pending the completion of the appointment process. The complainant's attempts to file a complaint on September 18, 2006 and, again, on October 4, 2006 concerning this staffing action were premature as there had been no appointment or proposed appointment at that time and, therefore, there was no right of recourse to the Tribunal prior to October 11, 2006. Thus, it was proper for the complainant to have withdrawn these complaints.

[10] The complainant was provided with Notice of Consideration dated October 2, 2006. The complainant has not informed the Tribunal of the exact date that she received this notice. However, the Tribunal is satisfied that the complainant must have received this notice no later than October 4, 2006, the date that she filed her second complaint (file 2006-0155), since she included a copy of the notice with this second complaint.

[11] The Notice of Consideration specified that Francine Beauparlant was being considered for appointment and after a waiting period of six working days, the complainant would be informed of the person appointed or proposed for appointment and of her right to make a complaint to the Tribunal. The notice further stipulated that she could informally discuss why she was not being considered for this appointment. The notice provided complete contact information for the complainant to engage in informal discussion if she wished.

[12] The Notice of Consideration clearly stipulates that the person is being considered for the appointment, but has yet to be appointed. There is a waiting period of six working days before being informed of the name of the person being appointed or proposed for appointment and of the right to make a complaint to the Tribunal.

[13] The Notice of Consideration was consistent with the requirements of the *PSEA*. Subsection 48(2) of the *PSEA* specifies that a waiting period must be fixed between the Notice of Consideration and the Notice of Appointment and no appointment may be made during the waiting period. Subsection 48(3) of the *PSEA* stipulates that a person may be appointed at the end of the waiting period “whether or not that person is the one previously considered.” Thus, the Notice of Consideration provides employees with notice that a person is being considered for appointment; it does not mean that this person will be appointed.

[14] The respondent claims that the complainant was provided with notice of the appointment on October 11, 2006, both by email sent directly to her work address and through publication on *Publiservice*. In her complaint filed January 20, 2007, the complainant states that she does not have a copy of the Notice of Appointment and “[t]o the best of my recollection I have not received a Notice of Appointment.”

[15] Given that the complainant has stated that she began work at a new department on October 16, 2006 it is possible that she may not have received the Notice of Appointment by email. However, the complainant did receive the

Notice of Consideration advising that after a six-day period, an appointment would be made and providing her contact information. Even if she did not receive the Notice of Appointment by email because she changed jobs, she could have easily followed up with the contact or consulted *Publiservice* where the Notice of Appointment was posted on October 11, 2006. The Notice of Appointment, as posted on *Publiservice*, stated that Francine Beauparlant was being appointed and set out the information required for making a complaint to the Tribunal. It provided information concerning: the name of the person appointed; who may complain; the grounds for complaint; how to file a complaint; and, the time period for making a complaint to the Tribunal.

[16] The Tribunal finds that the Notice of Appointment posted on *Publiservice* was accurate, thorough and in compliance with the notice requirements of the *PSEA* and the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*).

[17] The time limit for making a complaint to the Tribunal is set out in the *PSST Regulations*. Section 10 of the *PSST Regulations* reads as follows:

**10.** 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.

[18] Since the Notice of Appointment was posted on *Publiservice*, it was a public notice and paragraph 10(b) of the *PSST Regulations* governs. The Tribunal finds that the respondent provided proper notice of the appointment and it was incumbent on the complainant to file her complaint within the time limits prescribed by paragraph 10(b) of the *PSST Regulations*. It is clearly not the responsibility of either the respondent or the Tribunal Registry to contact complainants to ensure that they file their complaints within the required time limit. The complainant had 15 days from

October 11, 2006 to make a complaint to the Tribunal. The Tribunal found in *MacDonald v. Deputy Head of Service Canada et al.*, [2006] PSST 0002 that the time for filing is a strict time limit. The complainant had until October 26, 2006 to make a complaint to the Tribunal. Without question, the complainant is out of time for filing her complaint.

[19] The Tribunal may extend the time for filing a complaint if it is in the interest of fairness. Section 5 of the *PSST Regulations* reads: "The Tribunal may, in the interest of fairness, extend any time specified in these Regulations." The complainant has requested an extension of the time limit to file the complaint. She explains in her request that she had been informed by the Tribunal Registry only recently that her complaint had been filed prior to the Notice of Appointment. As mentioned, she submits that she never received the Notice of Appointment.

[20] In this case, the complaint is filed almost three months after the expiry of the time limit for filing a complaint. The Tribunal has found that proper notification of the appointment has been given by publication on *Publiservice* and, therefore, it was the responsibility of the complainant to file her complaint within the required time limits. As the Tribunal found in *Casper v. Deputy Minister of Citizenship and Immigration Canada*, [2006] PSST 0010, at para. 25, complainants are responsible "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."

[21] Even if the Tribunal were to accept that there were exceptional circumstances for failing to file her complaint on time, which it does not, the complainant was informed in December, 2006 of the need to file a new complaint and she still waited until January 20, 2007 to do so and request an extension.

[22] The complainant has to demonstrate to the satisfaction of the Tribunal that it is in the interest of fairness to extend the time for filing. The complainant has not provided the Tribunal with any reasons to justify such a long extension. The Tribunal is not satisfied that it would be in the interest of fairness to grant the request for extension.

#### DECISION

[23] The complainant's request for an extension to file her complaint is denied and, accordingly, the complaint is dismissed.

Guy Giguère  
Chairperson

#### PARTIES OF RECORD

Tribunal File:	2007-0009
Style of Cause:	<i>Irene Tennant and the President of the Canadian International Development Agency et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	February 22, 2007