



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2007-0013

OTTAWA, MAY 14, 2007

MYLES NEUFELD

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 Failure to provide allegations

DECISION The complaint is considered withdrawn

DECISION RENDERED BY Guy Giguère, Chairperson

LANGUAGE OF DECISION English

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

NEUTRAL CITATION 2007 PSST 0022

REASONS FOR DECISION

INTRODUCTION

[1] The complainant, Myles Neufeld, has failed to provide allegations as required by the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*) and after being specifically directed by the Public Service Staffing Tribunal (the Tribunal) to do so. The Tribunal must decide whether the complaint should proceed.

BACKGROUND

[2] On January 9, 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 non-advertised appointment process for the position of Citizen Service Agent (PM-01) with the Department of Human Resources and Social Development - Service Canada (appointment process no. 2006-CSD-INA-MAN-4123-SC-I-0754). The respondent is the Deputy Head of Service Canada as part of the Department of Human Resources and Social Development Canada.

[3] Very little detail was provided in the complaint. The complainant indicated only that he believed that his "chances of advancement were prejudicially affected as the employer did not respect the staffing values of fairness, access and transparency."

[4] On January 29, 2007, as the complainant's representative was away from her office until February 12, 2007, the Tribunal Registry communicated with the complainant to ask him to send a copy of the Notice of Appointment or Proposed Appointment to which he referred in his complaint. He responded that he might be withdrawing his complaint. The Tribunal Registry requested that he either send a withdrawal notice or the Notice of Appointment. He did not comply.

[5] In order not to delay the processing of his complaint further, on February 8, 2007, the Tribunal sent a copy of his complaint to the respondent. The Tribunal also sent on the same date to both the complainant and respondent a time schedule detailing the next steps required. They were informed that the complainant and the respondent had until March 5, 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. Following that, the respondent would have 15 days to reply to the allegations.

[6] On March 1, 2007, the complainant's representative wrote to the Tribunal requesting an extension to the deadline for exchange of information to March 30, 2007 as she would be away from the region until March 19, 2007. By letter dated March 8, 2007 to the parties, the Tribunal granted this request for extension. The Tribunal informed the parties that the time schedule was amended accordingly.

[7] As the deadline for receipt of the complainant's allegations was April 9, 2007, the Tribunal registry sent an email to the complainant's representative on April 11, 2007 reminding her that the deadline for filing allegations had passed. The email further stated that if the complainant wished to continue with the complaint, it would be necessary to request an extension of time to file his allegations. The complainant's representative was also informed that if allegations were not filed, the Tribunal may deem the complaint to be withdrawn pursuant to subsection 22(3) of the *PSST Regulations*. No requests for an extension or allegations were filed in response.

[8] On April 17, 2007 a further letter of directives was sent by the Tribunal Registrar to the complainant's representative with a copy to the complainant. The letter directed the complainant, on behalf of the Tribunal, to submit his allegations, and request for an extension to file, no later than April 23, 2007. He was also informed again that a failure to submit his allegations may result in the

Tribunal considering his complaint withdrawn under subsection 22(3) of the *PSST Regulations*.

[9] On April 20, 2007, the Tribunal received a very brief email from the complainant's representative stating only that she was away from the Region and would respond on April 29, 2007. On April 23, 2007, the Tribunal forwarded the email to the respondent, informing the respondent that the Tribunal was treating this as a request for extension and asking for the respondent's comments.

[10] On April 23, 2007, the respondent's representative sent an email to the Tribunal, the complainant, and the complainant's representative objecting to the request for extension. The respondent explained that it contacted the complainant's representative on numerous occasions to complete the exchange of information on time but the complainant's representative was not available. The respondent has been waiting for the allegations since April 9, 2007, in order to proceed with the complaint process. Although the respondent understands that the complainant's representative was away for part of April, the allegations were due on April 9, 2007 and she would have been aware of the deadline since March 8, 2007.

[11] To date, the complainant has not filed his allegations.

ISSUE

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

ANALYSIS

[13] 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

happened here, the complaint as filed contains very little information about the nature of the complaint.

[14] 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.

[15] There is no question that the complainant has failed to comply with section 22 of the *PSST Regulations*. Accordingly, the Tribunal has the discretion to consider the complaint withdrawn under subsection 22(3) of the *PSST Regulations*.

[16] As the Tribunal held in *Anwar v. Deputy Minister of Fisheries and Oceans et al.*, [2007] PSST 0021, the Tribunal is required to exercise its discretion in accordance with common law principles.

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

[18] In *Anwar, supra*, the Tribunal further emphasized that fairness requires that a party responding to a complaint have sufficient information about the complaint to answer it.

[19] As the respondent submitted in its April 23, 2007 email correspondence, it has been waiting for the complainant's allegations since April 9, 2007 in order to proceed with the complaint process. 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.

[20] Pursuant to section 5 of the *PSST Regulations*, the Tribunal may extend the time for filing allegations if satisfied that it would be in the interest of fairness.

At the request of the complainant's representative, the Tribunal extended the time for exchange of information. Accordingly, the complainant was informed on March 8, 2007 that the deadline for filing allegations was revised to April 9, 2007.

[21] The complainant and his representative were given ample notice by the Tribunal that a consequence of failing to file allegations was that the complaint could be considered withdrawn. Despite informing the Tribunal that she would respond on April 29, the Tribunal has heard nothing further from either the complainant or his representative since the very brief email sent to the Tribunal by the complainant's representative on April 20.

[22] The respondent, on the other hand, has demonstrated its adherence to the Tribunal's procedures and shown a willingness to address this complaint on a timely basis. In *Anwar, supra*, at paragraph 18, the Tribunal held:

[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.

[23] Complaints should proceed as expeditiously as possible, and the *PSST Regulations* have been established to facilitate the timely handling of complaints. The complaint was filed on January 9, 2007. Timelines have already been adjusted at the request of the complainant's representative. The respondent has been waiting a considerable period of time to answer the complaint. The Tribunal finds that, in the circumstances of this case, any further delay would be unfair to the respondent. Following the Tribunal's directive, the complainant's representative requested an extension until April 29, 2007. However, the complainant's representative did not follow through and respond by April 29, 2007. The Tribunal therefore denies the request for an extension of the timeline to file the allegations. The Tribunal also considers that it would not be in the interest of fairness to grant any further request for an extension of time.

[24] The complainant had indicated that he might not want to proceed with his complaint. If that was his decision, he should have notified the Tribunal. A complaint of abuse of authority is a serious matter; it is only fair to the respondent and his or her representative that a complainant who decides to withdraw a complaint inform the Tribunal as soon as possible.

DECISION

[25] For these reasons, the Tribunal considers the complaint withdrawn.

Guy Giguère
Chairperson

PARTIES OF RECORD

Tribunal File:	2007-0013
Style of Cause:	<i>Myles Neufeld 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 parties
Date of Reasons:	May 14, 2007