



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2006-0258

OTTAWA, JUNE 11, 2007

EDWARD RINN

COMPLAINANT

AND

THE DEPUTY MINISTER OF TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

RESPONDENT

AND

OTHER PARTIES

MATTER Application to intervene

DECISION Application is denied

DECISION RENDERED BY Guy Giguère, Chairperson

LANGUAGE OF DECISION English

INDEXED *Rinn v. Deputy Minister of Transport, Infrastructure and Communities et al.*

NEUTRAL CITATION 2007 PSST 0027

REASONS FOR DECISION

INTRODUCTION

[1] The Public Service Alliance of Canada (the PSAC) has brought an application to intervene pursuant to section 19 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*) in a complaint to the Public Service Staffing Tribunal (the Tribunal).

BACKGROUND

[2] The complainant, Edward Rinn, filed a complaint with the Tribunal under subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*), on December 8, 2006 concerning an internal non-advertised appointment process (selection process no.: 06MOTAIWPG008453) for the position of Acting Regional Manager, System Safety, Civil Aviation, Prairie and Northern Region, Department of Transport (TI-08). The complainant's allegations were filed on March 5, 2007. The respondent, the Deputy Minister of Transport, Infrastructure and Communities, filed a reply to the allegations on March 21, 2007.

[3] The complainant is an employee of the Department of Transport working within the Aircraft Operations (AO) group as an AO-CAI-02 in Edmonton, Alberta. He is represented by the Canadian Federal Pilots Association (the CFPA), which is the certified bargaining agent for all employees in the Department of Transport within the AO group.

[4] In his allegations, the complainant claims abuse of authority in four areas: first, in the application of merit; secondly, in disregarding the essential qualifications of the position for acting purposes; in the choice of a non-advertised appointment process; and, lastly, in the failure to provide timely notification of the appointment.

[5] The position of Regional Manager, Aviation System Safety position (ACE-02944) was classified at the AO-CA1-05 level, and, therefore, required the person occupying this position to meet certain occupational certification requirements, including the possession of a valid Canadian pilot's licence. According to the complainant, the job description has been re-written and a shadow position has been created for acting purposes where all requirements related to pilot certification have been removed. Mr. Beaulne has been appointed to this position of Acting Regional Manager System Safety at the T1-08 group and level. The essence of the complaint is that the appointee does not meet one of the essential requirements of the substantive position, namely, a pilot's licence. This essential qualification was removed for the acting position to accommodate employees at the T1-08 group and level and this effectively denied the complainant an opportunity of being considered for the position. It is only employees in the AO group who possess the requisite qualifications to be considered for the substantive position of Regional Manager, Aviation System Safety.

[6] The respondent's reply states, among other things, that the appointee met all of the essential qualifications for the acting position, the choice of a non-advertised process was not done to purposefully exclude the complainant, and the notifications related to the acting appointment were timely. According to the respondent, the complainant simply disagrees with the classification of the acting position, which the Tribunal does not have jurisdiction to review.

[7] On April 20, 2007 the PSAC filed its application for intervenor status to the Tribunal in accordance with section 19 of the *PSST Regulations*. The respondent filed its reply to the application on April 25, 2007.

[8] On May 4, 2007 the Tribunal issued a letter of directives to Marc Beaulne, the person appointed to the position that is the subject of this complaint. The Tribunal asked Mr. Beaulne whether he intended to participate in the hearing of this complaint and, if so, if he was going to be represented. Mr. Beaulne

informed the Tribunal by email that he would participate at the hearing and that his representative was Mark Hockley. Mr. Hockley is a representative from the Union of Canadian Transportation Employees (the UCTE), a component of the PSAC.

ISSUE

[9] Should the PSAC be granted intervenor status and, if so, what are the directions regarding its role as an intervenor?

ARGUMENTS OF PARTIES

[10] The PSAC says that it is the bargaining agent for the TI group and the TI positions are currently the subject of an application by the Canadian Union of Public Employees (the CUPE) to the Public Service Labour Relations Board (the PSLRB) under section 58 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2, concerning a determination on a question of membership.

[11] The PSAC argues that what is at issue in this complaint are promotional opportunities for PSAC members and, as such, the interests of the PSAC are directly affected by the proceeding.

[12] While the PSAC has suggested that it will likely limit its involvement at hearing to providing comments in relation to the parties' submissions, it seeks to reserve the right to fully participate, including tendering oral and/or documentary evidence.

[13] The respondent opposes the application and submits that the PSAC does not have a substantial interest in the proceeding with respect to an issue that is actually before the Tribunal. The issue of who is the bargaining agent for positions such as this one is not before the Tribunal; it is the PSLRB that is the proper forum and the Tribunal does not have the jurisdiction to hear either this issue, or the issue of the classification of a position. Matters under the *PSEA* are excluded from collective bargaining.

[14] The respondent also argues that the PSAC meets none of the factors that the Tribunal will consider in determining whether to grant intervenor status. First, the PSAC is not directly affected by the proceeding since the issue before the Tribunal is whether the decision not to appoint the complainant constitutes an abuse of authority; “promotional opportunities” for its members does not give the PSAC a direct interest.

[15] Secondly, the respondent submits that the PSAC’s position is already represented in the proceeding by the person appointed to the position as he is in the TI group. Thirdly, the respondent argues that there is no public interest or interest of justice at stake here since the “promotional opportunities” that the PSAC is seeking to protect cannot be collectively bargained for, nor are they something that is contemplated by the *PSEA*.

[16] Finally, the respondent submits that the involvement of the PSAC will not assist the Tribunal in deciding the matter properly before it, namely, whether not appointing the complainant constituted an abuse of authority. The respondent contends that the PSAC’s participation could unnecessarily delay and complicate the proceeding contrary to the requirements of subsection 98(1) of the *PSEA*, which requires the Tribunal to consider and dispose of the complaint as expeditiously as possible.

[17] Neither the complainant nor the PSC provided submissions on the application.

ANALYSIS

[18] The Tribunal set out its test for intervenor status in *Wardlaw v. President of the Public Service Human Resources Management Agency of Canada et al.*, [2007] PSST 0017, at paragraph 20:

Therefore, in deciding whether intervenor status should be granted under section 19 of the *PSST Regulations*, the Tribunal will apply a two pronged test. The first prong of the test, found under subsection 19(1), is that an applicant, while not a party, has a substantial interest in the proceeding. The second prong of the test, whether the

applicant's participation would be helpful for the consideration and disposition of the complaint, is applied when considering the factors listed under subsection 19(4).

[19] Given that the PSAC is the bargaining agent for the TI group, the acting position has been placed in the TI classification, and the complainant is alleging abuse of authority as outlined above, the Tribunal is satisfied that the PSAC has a substantial interest in the proceeding and meets the first prong of the test.

[20] In deciding whether an applicant meets the second prong of the test, it is important to emphasize that the onus rests with the applicant to demonstrate to the Tribunal how its participation would be useful, considering the factors listed in subsection 19(4) of the *PSST Regulations*.

[21] The content requirements of an application for intervenor status contained in the *PSST Regulations* highlights this responsibility. Importantly, paragraph 19(2) (e) of the *PSST Regulations* requires the applicant to set out "the grounds for intervention and the interest of the applicant in the matter." As well, paragraph 19(2) (f) requires the applicant to explain "the contribution that the applicant expects to make if allowed to intervene."

[22] The Tribunal is not satisfied that the applicant has met its onus. Mr. Beaulne has indicated that he intends to participate at the hearing and he will be represented by the UCTE, a component of the applicant. The applicant has not demonstrated to the Tribunal how its position would differ from the position of Mr. Beaulne. The PSAC has not explained in its submissions the contribution that it expects to make if allowed to intervene. An applicant for intervenor status is required in its application materials to fully explain the nature of its intended contribution at the hearing. It cannot be left to the Tribunal to speculate as to the nature of an applicant's contribution.

DECISION

[23] For these reasons, the PSAC's application for intervenor status is denied.

Guy Giguère
Chairperson

PARTIES OF RECORD

Tribunal File:	2006-0258
Style of Cause:	<i>Edward Rinn and the Deputy Minister of Transport, Infrastructure and Communities et al.</i>
Hearing:	Written request, decided without the appearance of parties
Date of Reasons:	June 11, 2007