



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILES: 2007-0097, 0115 AND 0116

OTTAWA, APRIL 30, 2007

MICHELINE LARIVIÈRE, FRANCE MARCOUILLER AND CÉLINE McDUFF

COMPLAINANTS

AND

THE DEPUTY MINISTER, HEALTH CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER Request for extension of time

DECISION The request is denied

DECISION RENDERED BY Francine Cabana, Member

LANGUAGE OF DECISION French

INDEXED *Larivière et al. v. Deputy Minister, Health Canada et al.*

NEUTRAL CITATION 2007 PSST 0019

REASONS FOR DECISION

INTRODUCTION

[1] On March 5, 2007, the complainants, Micheline Larivière, France Marcouiller and Céline McDuff, requested an extension of time to file complaints with the Public Service Staffing Tribunal (the Tribunal) pursuant to section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*). The complaints concern five proposed indeterminate appointments to positions of administrative assistant, AS-01, at Health Canada (process number 06-NHW-MT-IA-015). The respondent is the Deputy Minister, Health Canada.

[2] On March 23, 2007, the respondent objected to the requests for an extension of time to file the complaints.

[3] In accordance with section 8 of the *Public Service Staffing Regulations*, SOR/2006-6, (the *PSST Regulations*), these three complaints were joined.

BACKGROUND

[4] On October 24, 2006, the complainants received, by email, a notification of proposed appointment informing them of the proposed appointments and of their right to recourse.

[5] The notification of proposed appointment does not give any specific deadline for filing a complaint. However, it is stated that the complaint to the Tribunal must be filed within “15 calendar days of this notification” [Translation].

[6] On January 12, 2007, the complainants filed a complaint with the Public Service Commission (the PSC) requesting that the appointment process at issue be investigated.

[7] On February 1, 2007, the PSC replied in writing to the complainants that it did not have jurisdiction regarding staffing in the case of an internal appointment process. The PSC informed the complainants that complaints concerning an internal appointment process had to be filed with the Tribunal.

[8] On February 28, 2007, the complainants therefore forwarded their complaints and their requests for extension to the Tribunal.

ISSUES

[9] The Tribunal must answer the following questions:

- (i) Were the complaints filed outside the time limit?
- (ii) Does filing complaints before the wrong forum suspend the time line under section 10 of the *PSST Regulations*?
- (iii) Should the Tribunal exercise its discretion under section 5 of the *PSST Regulations* to grant the request for extension to file the complaints?

SUBMISSIONS OF THE PARTIES

COMPLAINANTS' SUBMISSIONS

[10] The complainants submit that choosing to have recourse to the union to file a complaint with the Tribunal "is something to think twice about" [Translation] given the possible indirect consequences.

[11] Furthermore, filing a complaint requires a lot of energy. The complainants submit that they did not have the required energy at the time they learned they were not qualified. They were bitterly disappointed with the results, and remained silent for several days, even several weeks.

[12] The complainants also argue that they were confused between recourse to the PSC and recourse to the Tribunal.

RESPONDENT'S SUBMISSIONS

[13] The respondent objects to the request for extension of time, since the complainants have not provided reasons which would demonstrate exceptional circumstances. The complainants have not discharged their burden of proof to justify their untimeliness.

[14] The respondent also argues that ignorance of the *PSEA* or mistakes cannot be accepted to justify an extension of time.

[15] The respondent therefore asks the Tribunal to dismiss the complaint for lack of jurisdiction, since the complaints were filed after the time limit prescribed by the *PSST Regulations*.

ANALYSIS

Issue I: Were the complaints filed outside the time limit?

[16] 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.

[17] On October 24, 2006, notification of the proposed appointment was sent to the complainants by email. In *MacDonald v. Deputy Head of Service Canada et al.*, [2006] PSST 0002, the Tribunal clearly stated that the time limit to file a complaint is a strict limit under section 10 of the *PSST Regulations*. The Tribunal noted:

[6] As determined by the Federal Court of Appeal in *Allard v. Canada (Public Service Commission)*, [1982] 1 F.C. 432, and *Lalancette v. Canada (Public Service Commission Appeal Board)*, [1982] 1 F.C. 435, the time limit to file a complaint is a strict limit. (...) Nevertheless, according to the Federal Court in *Lalancette*, *supra*, it

would seem *fair* to consider that a complaint has been brought pursuant to section 10 of the *Regulations* as soon as the complaint is mailed, if the mailing date can be easily proven.

[18] In the present cases before the Tribunal, the complainants sent their complaints on February 28, 2007, using the Xpresspost postal service. The postmark proves that the complaints were sent on February 28, 2007.

[19] Consequently, the Tribunal finds that the complaints were filed on February 28, 2007, namely, outside the 15-day time limit provided for in section 10 of the *PSST Regulations*. The complaints were filed a little over four months after the deadline.

Issue II: Does filing complaints before the wrong forum suspend the time line under section 10 of the *PSST Regulations*?

[20] The notification of proposed appointment, which was sent to the complainants, clearly indicates that the *PSEA* grants the right to file a complaint ***with the Tribunal***. The information required for filing a complaint was also provided to the complainants. There is thus no confusion in the notification sent by the respondent.

[21] It should be noted that the complainants filed their complaints with the PSC on January 12, 2007, a number of months after October 24, 2006, the date on which the notification was sent to them. On February 1, 2007, the PSC informed the complainants that it did not have jurisdiction to investigate their complaints. Nonetheless, it was only on February 28, 2007 that they filed their complaints with the Tribunal.

[22] The Tribunal previously dealt with a similar issue in *Suàrez v. Deputy Minister of Human Resources and Social Development Canada et al.*, [2007] PSST 0008. The Tribunal found there was no indication in the *PSEA* that the application of time limits for filing complaints could be suspended in cases where a complaint was filed with the wrong forum, namely, the PSC. The Tribunal also

determined that filing a complaint outside the time limit or with the wrong forum could not be considered a defect in form or a technical irregularity.

[23] Consequently, since non compliance with the time limit for filing a complaint is not merely a defect in form or a technical irregularity that can be corrected under section 9 of the *PSST Regulations*, but is a strict time limit to which one must comply, the Tribunal finds that filing complaints with the PSC does not comply with the *PSST Regulations* and does not suspend the time limits set out in section 10 of the *PSST Regulations*.

Issue III: Should the Tribunal exercise its discretion under section 5 of the *PSST Regulations* to grant the request for extension to file the complaints?

[24] Section 5 of the *PSST Regulations* reads as follows:

5. The Tribunal may, in the interest of fairness, extend any time specified in these Regulations.

[25] As indicated in *MacDonald, supra*, the time limit to file a complaint, according to section 10 of the *PSST Regulations*, is a strict limit. The Tribunal may, however, extend this time limit pursuant to section 5 of the *PSST Regulations*. However, such an extension is not automatic, and the complainants must be able to prove that they have an exceptional reason to justify the delay. In *Casper v. Deputy Minister of Citizenship and Immigration Canada et al.*, [2006] PSST 0010, the Tribunal stated:

[22] It is important for the parties to know that the time limits are respected and adhered to in order for the process to function properly. In the interest of fairness, the Tribunal may extend the strict time limits for filing a complaint. The complainant has the onus of providing reasons for the request for extension. Unless there are exceptional circumstances to extend the time limits, the Tribunal will not grant an extension.

[26] The reasons given by the complainants to justify their requests for an extension may be summarized as follows. First, they submit that they were worried of the possible consequences if they filed complaints. Second, they submit that filing a complaint with the Tribunal required a lot of energy, which

they did not have at the time they learned that they were not qualified. Finally, they argue that there was confusion between recourse to the PSC and recourse to the Tribunal.

[27] The complainants offer no other reason to justify the significant amount of time that elapsed between October 24, 2006, the date on which the notification of proposed appointment was sent to them, and February 28, 2007, when they filed their complaints with the Tribunal.

[28] The Tribunal cannot accept the reasons given by the complainants for extending the time limit prescribed in section 10 of the *PSST Regulations*, since these reasons are not exceptional. The Tribunal will therefore not exercise its discretion to grant the request for an extension for filing the complaints.

DECISION

[29] For all these reasons, the Tribunal denies the request for extension of time. Consequently, the complaints are dismissed.

Francine Cabana
Member

PARTIES OF RECORD

Tribunal Files:	2007-0097, 2007-0115 and 2007-0116
Style of Cause:	<i>Larivière et al. and the Deputy Minister, Health Canada et al.</i>
Hearing:	Written request, decided without the appearance of the parties

Date of Reasons:	April 30, 2007
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