



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

FILES: 2006-0259 TO 2006-0275

OTTAWA, JUNE 19, 2007

**LYNE BENOIT ET AL.**

**COMPLAINANTS**

**AND**

**THE DEPUTY HEAD OF SERVICE CANADA, AS PART OF THE DEPARTMENT OF HUMAN  
RESOURCES AND SOCIAL DEVELOPMENT**

**RESPONDENT**

**AND**

**OTHER PARTIES**

<b>MATTER</b>	Preliminary objection
<b>DECISION</b>	The objection is dismissed
<b>DECISION RENDERED BY</b>	Guy Giguère, Chair
<b>LANGUAGE OF DECISION</b>	French
<b>INDEXED</b>	<i>Benoit et al. v. Deputy Head of Service Canada et al.</i>
<b>NEUTRAL CITATION</b>	2007 PSST 0028

## REASONS FOR DECISION

### INTRODUCTION

[1] On March 29, 2007, the Public Service Commission (the PSC) raised a preliminary issue, stating that the complaints had not been filed within the prescribed time period to the Public Service Staffing Tribunal (the Tribunal). The PSC also asked that complaints 2006-0259 to 2006-0275 be consolidated for the purposes of the hearing.

[2] In accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, (the *PSST Regulations*), the complaints are consolidated.

[3] Under subsection 99(3) of the *Public Service Employment Act*, S.C. 2003, c. 22, sections 12 and 13 (the *PSEA*), the Tribunal ruled on the PSC's request without holding a hearing.

### BACKGROUND

[4] On November 6, 2006, the Service Canada Centre Manager sent an e-mail to all her staff to inform them that, as a result of a secondment agreement, Jany Gilbert would occupy the position of Public Liaison Officer (PM-02) at the Service Canada Centre in Saint-Georges-de-Beauce. It was indicated that she would fill the position until the incumbent returned or until an appointment could be made through an advertised process.

[5] On December 13, 2006, the complainants filed their complaints under section 77 of the *PSEA* further to this acting assignment to the position of Public Liaison Officer (PM-02) at Service Canada. They stated that the delay in filing their complaints was due to steps they were taking to try to rectify the situation. They also indicated that only an e-mail had been sent to the employees by way of notice of appointment.

[6] On January 29, 2007, the respondent, the Deputy Head of Service Canada, raised a preliminary objection regarding the Tribunal's jurisdiction on the ground that an assignment is not an appointment within the meaning of the *PSEA*. This matter was the subject of jurisprudence under the former Act, but the Tribunal has yet to make a ruling on this matter since the coming into force of the *PSEA*. The Tribunal took note of the preliminary objection, but has not enough information at this preliminary stage to render a decision. It was thus determined that the matter would be addressed following a hearing on the merits of the complaints. For the purposes of this decision, the Tribunal refers to an "appointment" without making a determination on the matter of jurisdiction.

[7] On March 29, 2007, the PSC raised a preliminary issue regarding the prescribed period for filing complaints.

#### ISSUES

[8] The Tribunal must answer the following questions:

- (i) When did the Tribunal receive the complaints?
- (ii) Did the PSC object to the delay in filing the complaints within the prescribed time limits in the *PSST Regulations*?

#### SUBMISSIONS OF PARTIES

##### A) PUBLIC SERVICE COMMISSION'S SUBMISSIONS

[9] The PSC argues that the *PSST Regulations* set out the time period for filing complaints. The e-mail announcing the acting assignment was dated November 6, 2006. However, the Tribunal did not receive the complaints dated December 13, 2006 until January 8, 2007, namely, over a month after the time period indicated in section 10 of the *PSST Regulations*.

B) COMPLAINANTS' SUBMISSIONS

[10] The complainants submit that the complaints were sent by fax to the Tribunal on December 13, 2006, and not on January 8, 2007. The complainants justify the delay by the fact that discussions were held between November 8 and December 13, 2006 to try to resolve the situation without having to file a complaint.

C) RESPONDENT'S SUBMISSIONS

[11] In response to the preliminary issue raised by the PSC, the respondent argues that there was no appointment within the meaning of the *PSEA*. For that reason, the respondent did not issue a notice of appointment, and the employees were informed only by e-mail.

ANALYSIS

**Issue I:** When did the Tribunal receive the complaints?

[12] The PSC alleges that the Tribunal did not receive the complaints until January 8, 2007. However, the documents on file do not reflect this. On the contrary, the complaints were sent by fax and received by the Tribunal on December 13, 2006. The Tribunal therefore finds that the complaints sent by fax are considered to have been received on the date they were sent, namely, December 13, 2006.

**Issue II:** Did the PSC object to the delay in filing the complaints within the prescribed time limits in the *PSST Regulations*?

[13] Subsections 21(1) and 16(2) of the *PSST Regulations* require that timeliness objections must be made no later than 25 days after the date of the letter by which the Executive Director acknowledges receipt of the complaint. These subsections read as follows:

21. (1) If the deputy head or the Commission or a person appointed or proposed for appointment wishes to object that the complaint was not made within the period required by section 10, they must do so before the end of the period for exchanging information.

(...)

16. (...)

(2) The exchange of information must be completed no later than 25 days after the date of the letter by which the Executive Director acknowledges receipt of the complaint.

[14] In this case, the Tribunal acknowledged receipt of the complaints on January 8, 2007. The time period for exchanging information began on that date and ended on February 12, 2007. On March 29, 2007, the PSC raised an objection to the filing of the complaints. However, according to subsection 21(1) of the *PSST Regulations*, the PSC had until February 12, 2007 to raise its objection. The Tribunal finds that the objection to the complaints was not made in a timely manner. Thus, the PSC cannot raise an objection at such a late date.

[15] It should be noted that section 10 of the *PSST Regulations* states that a complaint must be made **no later than** 15 days after the **notice of appointment**. This section 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.

(Emphasis added)

[16] However, as the respondent indicated, no notice of appointment was issued indicating the right to make a complaint to the Tribunal or the time period for doing so. In fact, as the Tribunal determined in *Sherif v. Deputy Minister of Agriculture and Agri-Food Canada et al.*, [2006] PSST 0003, an e-mail omitting these two requirements does not constitute a notice of appointment. Since the notice of appointment is incomplete, the Tribunal does not find the complaint to have been made outside the time limits.

[17] The respondent claims that it did not send a notice of appointment because it had proceeded with a secondment agreement. The Tribunal will have to determine, after the hearing on the merits of these complaints, whether there was an appointment within the meaning of the *PSEA*. However, it is clear that the complaints were not received after the time period set out in section 10 of the *PSST Regulations*.

DECISION

[18] For all these reasons, the preliminary objection is dismissed.

Guy Giguère  
Chair

PARTIES OF RECORD

Tribunal Files:	2006-0259 to 2006-0275
Style of Cause:	<i>Lyne Benoit et al. and the Deputy Head of Service Canada, as part of the Department of Human Resources and Social Development et al.</i>
Hearing:	Written preliminary objection; decided without the appearance of parties
Date of Reasons:	June 19, 2007