

FILE: 2007-0177

OTTAWA, JUNE 25, 2007

**KERRY-LYNN SMITH**

**COMPLAINANT**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Determination of jurisdiction

**DECISION** The complaint is dismissed

**DECISION RENDERED BY** Guy Giguère, Chairperson

**LANGUAGE OF DECISION** English

**INDEXED** *Smith v. President of the Canada Border Services Agency et al.*

**NEUTRAL CITATION** 2007 PSST 0029

## REASONS FOR DECISION

### INTRODUCTION

[1] The respondent, the President of the Canada Border Services Agency, filed a motion to dismiss the complaint on the grounds that a deployment does not constitute an appointment and therefore no appointment or proposed appointment was made to the position which is the subject of this complaint.

### BACKGROUND

[2] On April 13, 2007, the complainant filed a complaint under section 77 of the *PSEA*, alleging that the responsible manager had abused her authority by not being transparent and fair in two deployments to Inland Enforcement Officer positions, PM-03/FB-03 (process numbers 07-IN-BSF-ATL-EID-PM-03-270 and 07-IN-BSF-ATL-EID-FB-03-356).

[3] The deployment letters were signed by the delegated manager and the employees involved. According to these letters, the involved employees were deployed to the Inland Enforcement Officer positions effective April 1 and April 30, 2007.

[4] Both letters indicate that “if you have been deployed without your consent, you may refer a grievance for adjudication to the Public Service Labour Relations Board”.

### ISSUES

[5] The Tribunal must answer the following question:

(i) Does the Tribunal have jurisdiction to consider and dispose of a complaint on deployment?

## SUBMISSIONS

### A) RESPONDENT'S SUBMISSIONS

[6] The respondent argues that a deployment is not an appointment and therefore, the Tribunal does not have jurisdiction to consider the complaint. The respondent submits that section 51 of the *PSEA* provides the deputy head with the authority to deploy employees to or within the deputy head's organization. Moreover, the respondent points out that subsection 53(1) of the *PSEA* states specifically that a deployment is not an appointment within the meaning of the *PSEA*.

### B) COMPLAINANT'S SUBMISSIONS

[7] The complainant has not responded to the respondent's arguments.

## ANALYSIS

[8] The Tribunal's jurisdiction is determined by its enabling statute, the *PSEA*. As the Tribunal found in *Czarnecki v. Deputy Head of Service Canada et al.*, [2007] PSST 001 and *Tennant v. President of the Canadian International Development Agency et al.*, [2007] PSST 0006, an appointment must have been made or proposed in order to make a complaint of abuse of authority under section 77. Subsection 77(1) 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 that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or

(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).

[9] A deployment is defined at subsection 2(1) of the *PSEA* as “the transfer of a person from one position to another in accordance with Part 3” which comprises sections 51 to 53 of the *PSEA*. Subsection 53(1) of the *PSEA* specifically provides that “a deployment is not an appointment within the meaning of this Act.” Therefore, a complaint cannot be filed against a deployment under section 77 of the *PSEA*, as a deployment is not an appointment.

[10] Nor can a complaint be filed to the Tribunal under other provisions of the *PSEA*, since it is not within the Tribunal’s mandate as outlined at section 88(2) of the *PSEA*: “The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83”. The Tribunal has authority to consider and dispose of complaints related to a lay-off, under subsection 65(1), a revocation of an appointment under section 74, an internal appointment under section 77 and an appointment as a result of a corrective measure under section 83. These sections do not include a deployment and therefore, it is not in the Tribunal’s mandate to hear a complaint against a deployment.

[11] As a deployment and an internal appointment are clearly different staffing actions, and the *PSEA* does not provide recourse to the Tribunal where there has been a deployment, the Tribunal finds it lacks jurisdiction to consider and dispose of this complaint.

#### DECISION

[12] For all these reasons, the motion is granted. Consequently, the complaint is dismissed.

Guy Giguère  
Chairperson

PARTIES OF RECORD

Tribunal File:	2007-0177
Style of Cause:	<i>Kerry-Lynn Smith and the President of the Canada Border Services Agency et al.</i>
Hearing:	Written request, decided without the appearance of parties
Date of Reasons:	June 25, 2007