

OTTAWA, AUGUST 23, 2007

ROXANE CYR

COMPLAINANT

AND

THE CHAIRPERSON OF THE IMMIGRATION AND REFUGEE BOARD OF CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER Motion to deny new or amended allegations

DECISION Motion granted

DECISION RENDERED BY Francine Cabana, Member

LANGUAGE OF DECISION French

INDEXED *Cyr v. Chairperson of the Immigration and Refugee Board of Canada et al.*

NEUTRAL CITATION 2007 PSST 0037

REASONS FOR DECISION

INTRODUCTION

[1] On September 11, 2006, the complainant filed a complaint with the Public Service Staffing Tribunal (the Tribunal) concerning an advertised internal appointment process (No. 06-IRB-IA-11688) under section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*). The complainant included her allegations to the complaint. She subsequently amended her allegations, and added a new allegation. The respondent, the Chairperson of the Immigration and Refugee Board of Canada, has asked the Tribunal to refuse to permit the new or amended allegations.

[2] Under subsection 99(3) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*), the Tribunal has decided on the respondent's motion without holding an oral hearing.

BACKGROUND

[3] On July 12, 2007, the complainant sent an e-mail to the Tribunal, informing it that she was amending her allegations by adding a new allegation. More specifically, she wished to add the following paragraph:

19) Moreover, during the informal discussion stage, Mr. Laredo did not show receptiveness to my arguments. Throughout the telephone conversation and exchange of e-mails on July 28 and 31, 2006, I explained to him that I knew the steps followed in project management, having thoroughly prepared myself the weekend before the interview. The question designed to determine whether I had that knowledge had simply not been put to me. He dismissed my arguments to the effect that his question had been poorly formulated. During the informal discussion, Mr. Laredo did not demonstrate the openness of mind required of him, thereby diminishing his capacity to consider my case in a fair and equitable manner. He consequently could not have in his possession all the necessary factors to make an informed decision.

[Translation]

[4] On July 16, 2007, the respondent notified the Tribunal that it was opposed to the filing of these amended allegations, or new allegations.

ISSUE

[5] The issue before the Tribunal is as follows:

(i) Do the new allegations meet the criteria of section 23 of the *PSST Regulations*?

ARGUMENTS OF THE PARTIES

[6] The respondent argues that the amended allegations or new allegations do not meet the test of section 23 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*). The respondent contends that the allegation in the e-mail of July 12, 2007 does not result from information obtained that could not reasonably have been obtained before the complainant submitted her original allegations. The informal discussion referred to in this allegation took place on July 27, 2006, well before the submission of allegations.

[7] To date, the complainant has not responded to the respondent's objection.

ANALYSIS

[8] The conditions that apply to a request to amend an allegation or provide a new allegation are found in section 23 of the *PSST Regulations*. Subsection 23(1) specifies that the amendment or new allegation must result from information obtained that could not reasonably have been obtained before the complainant submitted her original allegations.

[9] Section 23 of the *PSST Regulations* reads:

23. (1) The Tribunal may, on request, permit the complainant to amend an allegation or provide a new allegation if the amendment or new allegation results from information obtained that could not reasonably have been obtained before the complainant submitted his or her original allegations.

(2) The request must be in writing and must include

(a) the name, address, telephone number, fax number and electronic mail address of the complainant;

(b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;

(c) the Tribunal's file number for the complaint;

(d) a detailed explanation as to why the complainant did not include the allegation with his or her original allegations or as to why the complainant needs to amend his or her allegations, as the case may be;

(e) the new or amended allegation;

(f) the signature of the complainant or the complainant's authorized representative; and

(g) the date of the request.

[10] In this case, the complainant assumed that an amendment or addition to her allegations could be made without the submission of a request in advance and its approval by the Tribunal. However, there is a clear procedure for such a request, and the complainant was required to explain in detail why she did not include the new allegation at the outset. Accordingly, the complainant's e-mail of July 12 does not meet the criteria set out in section 23 of the *PSST Regulations*.

[11] The Tribunal appreciates that parties may not be familiar with the procedure for requesting the Tribunal to permit new or amended allegations. However, in order for the Tribunal to be able to consider a request to amend the initial allegations, a complainant must provide a detailed explanation in support of the request.

DECISION

[12] For all these reasons, the respondent's motion is granted. Accordingly, the Tribunal will not permit the complainant to amend her allegations as requested.

Francine Cabana
Member

PARTIES OF RECORD

Tribunal File:	2006-0115
Style of Cause:	<i>Roxane Cyr and the Chairperson of the Immigration and Refugee Board of Canada et al.</i>
Hearing:	Written request; decided without the appearance of parties
Date of Reasons:	August 23, 2007