



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2007-0343

OTTAWA, DECEMBER 14, 2007

AUDREY COMEAU

COMPLAINANT

AND

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

RESPONDENT

AND

OTHER PARTIES

MATTER Motion to dismiss the complaint

DECISION The motion is granted and the complaint is dismissed

DECISION RENDERED BY Guy Giguère, Chairperson

LANGUAGE OF DECISION French

INDEXED *Comeau v. Deputy Head of Service Canada et al.*

NEUTRAL CITATION 2007 PSST 0047

REASONS FOR DECISION

INTRODUCTION

[1] The respondent requests that the complaint be dismissed on the ground that the cancellation of the complainant's tenure conversion from term to indeterminate cannot be the subject of a complaint before the Public Service Staffing Tribunal (the Tribunal). The respondent is the Deputy Head of Service Canada.

BACKGROUND

[2] Audrey Comeau, the complainant, was hired by the Department of Human Resources and Social Development on May 10, 2004. Since then, she has been rehired several times for several periods of term employment. The complainant was a term employee working as a Service Delivery Representative at the CR-05 group and level in Bathurst, New Brunswick.

[3] On May 14, 2007, the complainant accepted and signed a letter of offer for a Citizen Service Agent position at the PM-01 group and level. In fact, this position is the same one she previously held as the position number remains the same.

[4] In the letter of offer, the complainant was informed that she had accumulated three years of service within the Department of Human Resources and Social Development. The letter indicated that her status would be converted to indeterminate effective May 7, 2007, and that "this conversion does not constitute an appointment or deployment and, as a result, is not subject to a redress procedure" [Translation]. The Human Resources Advisor countersigned the letter of offer.

[5] On June 25, 2007, the Human Resources Advisor called the complainant into her office and informed her that the conversion had been cancelled. She said that the complainant's maternity leave had resulted in a break in service longer than 60 days in the three-year cumulative period.

[6] On July 26, 2007, the Director of the People and Culture Branch wrote to the complainant, explaining that a mistake had been made in the calculation of the

three-year period of consecutive employment needed for conversion from term to indeterminate status. The complainant had been on leave without pay from May 24, 2005 to May 19, 2006, which resulted in a break in service longer than 60 days. According to the Treasury Board of Canada Secretariat's *Term Employment Policy*, the period of leave without pay should not have been included in the calculation of the cumulative working period for conversion to indeterminate status.

[7] The complainant subsequently filed a complaint under section 74 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*) against the revocation of the PM-01 Citizen Service Agent position (process number 2007-CSD-CON-NB-EICC-BAT-097). She also claims that the revocation is discriminatory.

[8] On September 7, 2007, the respondent asked the Tribunal to dismiss her complaint filed on July 7, 2007.

ISSUE

[9] The Tribunal must decide the following issue:

(i) Does the Tribunal have jurisdiction to consider and dispose of the complaint regarding the cancellation of the complainant's tenure conversion from term to indeterminate?

ARGUMENTS OF THE PARTIES

A) RESPONDENT'S ARGUMENTS

[10] The respondent submits that the Tribunal does not have jurisdiction to consider and dispose of the complaint since the complaint does not relate to the revocation of an appointment, but rather, to the cancellation of a tenure conversion from term to indeterminate, which is not a ground for complaint to the Tribunal.

[11] The respondent submits that under section 74 of the *PSEA*, a person whose appointment is revoked by the Commission under subsection 67(1) or by the deputy

head under subsection 15(3) or 67(2) may file a complaint to the Tribunal that the revocation was unreasonable.

[12] The respondent argues that under subsection 59(2) of the *PSEA*, a conversion of tenure from term to indeterminate made pursuant to subsection 59(1) of the *PSEA* does not constitute an appointment. The respondent thus submits that the complaint does not meet the requirements for a right of recourse under section 74 of the *PSEA* since there was no appointment. Therefore, there could be no revocation of appointment. Cancelling a conversion made under section 59 is not a ground for complaint.

B) COMPLAINANT'S ARGUMENTS

[13] The complainant submits that the cancellation of her tenure conversion to indeterminate is unjustified since it is the result of the respondent's error. The complainant submits that she was misinformed by the employer before she took her maternity leave and that the cancellation has a serious economic and financial impact. In her complaint, she also alleges that the respondent's explanation for cancelling the conversion, namely, since she took maternity leave, is discriminatory. Finally, the complainant submits that the respondent's motion must be dismissed since it jeopardizes her right to be heard and her right of complaint under section 74.

ANALYSIS

[14] The complainant filed a complaint against the revocation of her tenure conversion from term to indeterminate. The complaint was made under section 74 of the *PSEA*, which deals with the revocation of appointments and which reads as follows:

74. A person whose appointment is revoked by the Commission under subsection 67(1) or by the deputy head under subsection 15(3) or 67(2) may, in the manner and within the period provided by the Tribunal's regulations, make a complaint to the Tribunal that the revocation was unreasonable.

[15] Thus, the right to complain provided for under section 74 is conditional on a prior appointment and on that appointment having been revoked under subsection 67(1) or (2) of the *PSEA*.

[16] Section 59 of the *PSEA* deals with conversions and the terms and conditions of conversions:

59. (1) Unless the employee requests otherwise of the deputy head, the period of employment of an employee who is employed for a specified term as a result of an appointment or deployment is converted to indeterminate in the employee's substantive position, at the end of the cumulative period of employment specified by the employer in circumstances prescribed by the employer.

(2) **A conversion under subsection (1) does not constitute an appointment** or a deployment or entitle any person to make a complaint under section 77.

[Emphasis added]

[17] It is therefore clear that under subsection 59(2) of the *PSEA*, a conversion of tenure from term to indeterminate does not constitute an appointment. As a result, there is no right to make a complaint on this conversion under section 77 since this right of recourse requires that an appointment or proposed appointment be made. See *Czarnecki v. Deputy Head of Service Canada et al.*, [2007] PSST 0001.

[18] Similarly, there is no right to complain under section 74 following the cancellation of this conversion since there was no appointment and, thus, there was no revocation of appointment. The complaint does not meet the requirements for a right of recourse under section 74 of the *PSEA*.

[19] In addition, under subsection 88(2) of the *PSEA*, the Tribunal's mandate is to "consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83." These provisions deal with, respectively, lay-offs, the revocation of appointments, internal appointments and the implementation of corrective action. The complaint at issue does not relate to any of those provisions of the *PSEA*.

[20] Since the complainant cannot file a complaint with the Tribunal under section 74 of the *PSEA* and the complaint does not relate to a lay-off, an internal appointment or the implementation of corrective action, the Tribunal does not have jurisdiction to consider and dispose of the complaint.

DECISION

[21] For all these reasons, the respondent's motion is granted. Accordingly, the complaint is dismissed.

Guy Giguère
Chairperson

PARTIES OF RECORD

Tribunal File:	2007-0343
Style of Cause:	<i>Audrey Comeau and the Deputy Head of Service Canada as part of the Department of Human Resources and Social Development et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	December 14, 2007