



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILES: 2007-0455, 2007-0458

OTTAWA, JANUARY 19, 2009

JUDY PRAUGHT AND CLAUDIO PELLICORE

COMPLAINANTS

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

RESPONDENT

AND

OTHER PARTIES

MATTER	Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the <i>Public Service Employment Act</i>
DECISION	Complaints are dismissed
DECISION RENDERED BY	Helen Barkley, Member
LANGUAGE OF DECISION	English
INDEXED	<i>Praught and Pellicore v. President of the Canada Border Services Agency et al.</i>
NEUTRAL CITATION	2009 PSST 0001

REASONS FOR DECISION

INTRODUCTION

[1] Judy Praught and Claudio Pellicore participated in an internal advertised appointment process for the position of Enforcement Supervisor (FB-05) with Canada Border Services Agency (CBSA) in Toronto (appointment process 07-BSF-IDA-GTA-GTEC-FB-001). Both candidates were unsuccessful in the Public Service Commission (PSC) Supervisory Simulation Exercise 428, a standardized test used to assess the ability to supervise. They filed complaints with the Public Service Staffing Tribunal (the Tribunal) under paragraph 77(1)(a) of the *Public Service Employment Act* (the *PSEA*) S.C. 2003, c.22, ss. 12 and 13. The complainants allege that they were not appointed by reason of abuse of authority in the application of merit.

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

PRELIMINARY MATTER

[3] The PSC stated that the use of one of its standardized tests, the Supervisor Simulation Exercise 428 (SSE 428), was being contested. Since the SSE 428 is widely used in the public service, the PSC is concerned about maintaining the confidentiality of certain documents. The PSC requested that the content of the assessment documents not be referred to in this decision, they be marked Protected, and remain separate from the rest of the file.

[4] The Tribunal agreed to this request in order to maintain the confidentiality of this standardized test.

BACKGROUND

[5] On May 4, 2007 an advertisement was posted for the position of Enforcement Supervisor. One of the conditions of employment read:

Candidates must have completed and passed Control and Defensive Tactics training (previously called Use of Force and PPCT) in order to be appointed. If certification has lapsed, candidates

must be re-certified prior to appointment. If certification has not been attained it must be attained prior to appointment. Some candidates appointed from this process may be required to carry a firearm and qualify in its use and safe handling. In addition to the above conditions of employment, these candidates will be required to successfully complete all related training and pre-requisite physical and other evaluations.

[6] On May 8, 2007 the advertisement was amended to read that the requirement for Control and Defensive Tactics (CDT) training was needed “for certain positions” (i.e. “Candidates, for certain positions, must have completed. . .”). The amended Statement of Merit Criteria and Conditions of Employment (SMC) also contained an additional statement under conditions of employment: “Willingness to rotate through various supervisory positions at the Greater Toronto Enforcement Centre.”

[7] The assessment board was composed of Reg Williams, Director, Immigration Enforcement, Greater Toronto Enforcement Centre (GTEC), Didi Gilker, Chief of Operations, GTEC and Antonella DiGirolamo, Human Resources Advisor from Regional Headquarters.

[8] The board screened candidates for experience and administered a knowledge examination. The board then administered the SSE 428 developed by the Personnel Psychology Centre (PPC) of the PSC to assess the ability to supervise. Both complainants were eliminated from the appointment process as they did not achieve the required score on the SSE 428.

ISSUES

[9] The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority by demonstrating bias against the complainants in the administration of the SSE 428?
- (ii) Did the respondent abuse its authority by changing one of the conditions of employment after the position was advertised?

SUMMARY OF RELEVANT EVIDENCE

[10] Judy Praught testified that she began her career with Citizenship and Immigration Canada (CIC) in 1989. She had been an immigration officer, a passport officer and then became an enforcement officer in 1997. In 1999, she worked with the Royal Canadian Mounted Police (RCMP) in the Visa Vetting Unit. She returned to GTEC in 2004. Reg Williams was Acting Director of GTEC.

[11] Mr. Williams instituted some significant changes at GTEC that affected employees' lives. He set up a mandatory dress code and instituted shift work. In response to these actions, group grievances were submitted by employees.

[12] In 2004, Ms. Praught had a conversation in the hallway at work with Mr. Williams, in which she raised concerns about another employee. During this conversation, Mr. Williams remarked: "Judy, we all have to get along. Remember, I brought you here." Ms. Praught replied: "I was an investigator when you were still an officer at the airport." Ms. Praught testified that after that exchange Mr. Williams did not speak to her. She was subsequently transferred to the Removals Screening Unit of CBSA, commonly known as a "punishment post". According to Ms. Praught, she was assigned to that unit because of her disagreement with Mr. Williams.

[13] In October 2004, Ms. Praught was a strike captain for the bargaining agent during the Public Service Alliance of Canada (PSAC) strike. Mr. Williams was upset over what was occurring on the picket line. One morning, Ms. Praught and Mr. Williams had an exchange in which Mr. Williams had stated: "You'd better be careful here. Things work both ways here." According to Ms. Praught, this was a career turning point.

[14] At the time, she presented her union representative, Janina Lebon, with a statutory declaration (dated October 18, 2004) outlining these events and stating that she was extremely concerned that Mr. Williams would take some type of retributive action against her in the future. Unfortunately, this document was misplaced during the strike. When she followed up with Ms. Lebon after the strike, she was told that things like this happen during a strike.

[15] Ms. Praught testified that since Mr. Williams took over GTEC all appointment processes were run by him, or those close to him. She stated that people who are union members, or who speak out against him, do not get promotions. Ms. Praught appealed a number of appointment processes under the former *PSEA*.

[16] Ms. Praught stated that this standardized test does not take into account the possible bias of the board members. Unlike other standardized tests, it is not marked by an independent third party, but is graded by the assessment board members. Ms. Praught testified that both Mr. Williams and Ms. Gilker, another board member, had no intention of qualifying her.

[17] Ms. Praught further testified that she worked for Ms. Gilker for a very short period of time. During a competition for Enforcement Supervisor in 2004/05, Ms. Gilker gave Ms. Praught a very negative assessment.

[18] After she was eliminated on the SSE 428, Ms. Praught had an informal discussion with Ms. Gilker and Ms. DiGirolamo. According to Ms. Praught, there were clear indications that the board was intent on assessing her just below the pass mark. Ms. Gilker was almost antagonistic during the discussion. She did not want to answer Ms. Praught's questions. When asked why one of Ms. Praught's answers was not accepted by the board, Ms. Gilker stated that "it was above your pay-grade to suggest that."

[19] Claudio Pellicore testified that he was an Inland Enforcement Officer at GTEC. He began his public service career as a customs inspector in 1986. During the 1990s he had worked as an immigration investigator. In February 2007 he was given a job description as an Inland Enforcement Officer; he disagreed with the job description. In April 2007 he was placed in the Removals Screening Unit, which he described as a "penalty post" and entry-level job. This had never been part of his job until February 2007. In this unit, he arranged for persons released from custody to leave the country. He arranged travel itineraries and travel documents.

[20] Mr. Pellicore first met Mr. Williams in 1998 when Mr. Pellicore was Vice-President of the local union. The GTEC was just being established and

Mr. Williams had his own interpretation of different policies and the collective agreements. This resulted in a number of grievances, which took several years to resolve. At one point, Mr. Pellicore asked Mr. Williams why he had not been promoted since coming to GTEC. Mr. Williams replied that Mr. Pellicore “had to choose between his career and his union activities.” In June 2005, Mr. Pellicore gave up his position as Vice-President of his local union.

[21] Mr. Pellicore referred to the work description for the Enforcement Supervisor, specifically “there is a requirement to use personal protection and the use of force techniques. . .” Mr. Pellicore maintains that this clearly points to the requirement to have CDT training for all Enforcement Supervisor positions. According to Mr. Pellicore, since you could be asked to do this job anywhere in Canada, it is necessary that all appointees have the CDT training.

[22] Supervisors are required under the respondent’s Use of Force Policy to determine if an appropriate use of force has taken place following an incident. The policy requires that supervisors maintain their skills in CDT techniques. According to Mr. Pellicore, this is an essential qualification for the position, as one of the conditions of employment is that Enforcement Supervisors are willing to rotate through other supervisory positions.

[23] Mr. Pellicore testified that one of the persons proposed for appointment was not qualified. Bukola Eshio kwu did not have CDT training.

[24] Mr. Pellicore was successful on other standardized tests such as the Middle Manager In-basket Exercises 810 and 820, which are marked by third parties. When Mr. Pellicore had his informal discussion, he realized that Mr. Williams had taken all the notes. There was not one good comment. He concluded that Mr. Williams was only looking for negative aspects in order to criticize his presentation.

[25] Mr. Pellicore has undertaken the SSE 428 on three different occasions. Each time it was administered differently and there was no oversight from the PSC. This time, Mr. Pellicore was given instructions to limit his summary to four pages, which had not happened on the other two occasions. During disclosure, the respondent informed him

that none of the board members had specific training on this standardized test, although the PSC website referred to board members being trained to administer the test.

[26] Mr. Williams testified on behalf of the respondent. He stated that he had been the Director of GTEC since 2006. From June 2004 to 2006 he was Acting Director of Operations.

[27] In developing this advertised appointment process, Mr. Williams wanted to broaden the area of selection as much as possible. The process was open to employees of CBSA, as well as employees of CIC. According to Mr. Williams, while significant experience was usually defined as five years, in this case, he only required one year of experience in order to attract as many candidates as possible.

[28] In terms of the condition of employment to have successfully completed CDT training, he discussed this requirement with the Human Resources Advisor and decided to issue an amendment to the advertisement to indicate that CDT training was needed "for certain positions." The purpose of this amendment, according to Mr. Williams, was to attract more candidates. Some supervisors did not supervise enforcement officers, such as the Enforcement Supervisor for Records and Mailroom. If a supervisor were to move into a position where they supervised enforcement officers, then they would be required to do the CDT training. In addition to attracting more candidates, Mr. Williams was hoping to avoid complaints from those who did not have the training. Willingness to rotate through various supervisory positions was added as a condition of employment as well. While this was implied, Mr. Williams wanted to be clear that he could assign employees to different locations.

[29] Ms. Gilker was given the task of administering the SSE 428. Candidates were given simulation materials and asked to write a summary. The following day each candidate made a presentation to the three board members. It was decided that Mr. Williams would give the introduction and all board members would take notes during the presentation. After the interview, each board member read their own notes and the candidate's summary in conjunction with the criteria set out in the assessor's guide, and came up with a tentative score. Then the board discussed and reached consensus on

the final rating. Mr. Williams was given the task of writing the notes of these consensus discussions. This was done at the time of rating the candidates.

[30] Mr. Williams stated that he had used the simulation exercise a number of times and found it to be a rich tool. Although it took more effort on the part of the assessment board and the candidate, he felt it was one of the better tools.

[31] Mr. Williams testified that he had not heard about any issue surrounding the strike until he read Ms. Praught's allegations, which stated that he had harassed her during the strike and that she had submitted a harassment complaint. He had never seen a harassment complaint. He was familiar with Ms. Praught as they both had worked at Pearson International Airport in the past. She had never reported to Mr. Williams. Mr. Williams testified that the marks awarded to her were an accurate reflection of the competencies she demonstrated during the simulation exercise.

[32] Mr. Williams testified that Enforcement Officers in the Removals Screening Unit were not in entry level positions, nor were these positions punishment posts. Officers in this area were responsible for the triage of files, which requires good working knowledge of enforcement processes. When persons are being detained, they must be removed quickly and this decision required an experienced officer. Enforcement involves both investigations and removals; Mr. Williams tried to balance experience with need.

[33] Mr. Williams confirmed that appointee Ms. Eshiooku had not completed the CDT training; however, she supervises the staff in Records and Mailroom, whose positions do not require the use of force techniques.

[34] Ms. Gilker also testified on behalf of the respondent. She stated that she had worked in the immigration field for most of her 35 year career as a public servant. She retired in 2007 from the position of Chief of Operations, GTEC. She was asked by Mr. Williams to participate on the assessment board after the position had been advertised. She was not involved in the amendment to the job advertisement.

[35] Ms. Gilker testified that she had administered the SSE 428 in selection processes in 2001, 2003 and 2005. She had received training from the PPC before administering the test for the first time. In her role as administrator of the exercise, she provided the candidates with materials and supervised the writing of the summary on the first day, as well as arranging the scheduling of each candidate's presentation on the second day.

[36] Ms. Gilker confirmed that all three board members took notes during each candidate's presentation. Candidates were evaluated by the board members by reviewing the rating guide, and their notes, and then discussing the presentation until consensus was reached. As his writing was clear, Mr. Williams took the consensus notes.

[37] At informal discussion, Ms. Gilker outlined the problems that the two complainants had with the presentation, but she was bound to protect the integrity of the standardized test. Therefore, there were limitations on what she could divulge to the candidates.

[38] According to Ms. Gilker, the complainants clearly failed to demonstrate that they met the criteria in the SSE 428.

[39] Dr. David Forster, Senior Psychologist, PPC was qualified as an expert witness in standardized test development and assessment.

[40] He testified that the use of the SSE 428 was approved by the PPC as appropriate for this position. Dr. Forster explained that this tool allows an assessment board to observe and assess candidates in a simulated setting.

[41] Dr. Forster stated that one could never completely eliminate the possibility of bias or bad faith in the use of an assessment tool, where there is an element of subjectivity or human judgement required. However, there were measures taken to minimize the possibility of bias influencing the assessment. In his opinion, the potential for bias to influence the SSE 428 is much lower than in a more subjective exercise such as a locally-developed, unstructured interview. The measures to reduce subjectivity include

having clearly articulated assessment criteria in the assessor's manual, and having specific behaviour indicators articulated for each of the competencies assessed.

[42] He also stated that the consensus-based approach to rating candidates recommended in the assessor manual, and followed by this assessment board, would guard against the risk of any one board member's personal views or bias having an undue influence on an individual candidate's ratings.

[43] Dr. Forster reviewed the notes taken by all board members, as well as the consensus notes. In his opinion, the consensus notes taken by Mr. Williams were more detailed than most assessment boards write. There were specific comments concerning candidates' behaviours and decisions made.

[44] Dr. Forster had reviewed the complainants' test notes and written summaries, as well as the notes of each assessment board member. In his opinion, there was nothing improper about the manner in which the complainants had been assessed in the exercise. Dr. Forster did not find anything in his review to support a claim that the assessment board had incorrectly scored the complainants. He is of the opinion that the board had properly administered the SSE 428.

[45] Dr. Forster stated further that there were no particular qualifications needed by assessment board members with respect to either the administration or marking of the test. The exercise was designed for use by managers and human resources professionals. Although training is not mandatory, it is very rare that a board administers the exercise without training. Typically those administering the exercise for the first time would have a teleconference with a psychologist who takes them through the material, and discusses principles of behavioural observation and note-taking. In his opinion, the assessment board was fully capable of administering the SSE 428 as two of the board members, Ms. Gilker and Mr. Williams, had been previously trained on, and had conducted, the simulation before.

[46] According to Dr. Forster, there is no inconsistency in a candidate having received good results in the 810 or 820 and failing to qualify on the SSE 428, as the two types of test are fundamentally different. For the 810 and 820 the candidates respond entirely in

writing and are scored at the PPC against a series of expected answers. The SSE 428 involves the observation of the candidate in a simulated setting and the noting of specific behaviours resulting in a global rating based on behavioural evidence.

[47] On cross-examination, Dr. Forster stated that whenever there is an element of judgement in an assessment, there is no way to ensure that the assessment is completely bias-free.

ARGUMENTS OF THE PARTIES

A) COMPLAINANTS' ARGUMENTS

[48] The complainants submit that there is uncontested evidence that Mr. Williams was biased against them due to their union activities.

[49] In terms of the SSE 428, the complainants submit that Dr. Forster was unable to verify the content of the exercise with respect to the two complainants. Moreover, the complainants maintain that the exercise allows sufficient discretion for the board members to act with improper intention and eliminate the complainants because of their union activities. It was simply a vehicle for the manager to act in bad faith.

[50] According to the complainants, the entire evaluation was based on the notes taken by the assessment board members. While the notes may reflect what was said by the candidates, they may not. The complainants argue that Dr. Forster acknowledged that there was sufficient discretion built into the administration of the test to allow a biased individual to manipulate the test results.

[51] The complainants also submit that Mr. Williams' explanation for why he amended the requirement for CDT is not credible. The position of Enforcement Supervisor supervises Inland Enforcement Officers who use enforcement techniques. In amending the advertisement, the respondent had opened up the process to persons who were not qualified in this area.

[52] According to the complainants, the most plausible explanation for the amendment was that Mr. Williams had received feedback from an employee who did

not have the CDT training. Mr. Williams then amended the requirements in order to favour a particular candidate or candidates. However, the work description for the position clearly demonstrates that the position requires the use of personal protection and the use of force techniques. By allowing those without CDT training to be appointed, the respondent was appointing unqualified persons. This demonstrated that Mr. Williams exercised his discretion with improper intention.

B) RESPONDENT'S ARGUMENTS

[53] In terms of the allegations of bias, the respondent states that the complainants have the burden of proving one or more of the assessment board members was biased. It submits that the complainants' testimony was not credible, and was based on speculation. The respondent relies on the Tribunal decision in *Portree v. Deputy Head of Service Canada et al.*, [2006] PSST 0014, where the Tribunal stated that establishing abuse of authority is more than stating a perceived injustice. Clear and cogent evidence has to be produced.

[54] According to the respondent, with respect to Ms. Praught's union activities in 2004, she may have perceived Mr. Williams' comments as negative, but this was her own subjective view. She did not file a harassment complaint, and the situation was not brought to Mr. Williams' attention until he read the allegations for this staffing complaint.

[55] Dr. Forster gave evidence that, before allowing a department to use the simulation exercise, the PPC examines the request and the SMC to decide if the test is appropriate for the position to be staffed. The simulation exercise has been proven to be valid to test the ability to supervise, and was approved by the PSC for this process. Dr. Forster also testified that the exercise in this case was administered in accordance with the instructions, and the notes taken were more rigorous than in many cases. Dr. Forster also testified that there were a number of safeguards in the SSE 428 to reduce the likelihood of bias, such as clearly articulated assessment criteria, behaviour indicators, documentary rationale for the rating, and consensus rating by the board. The respondent submits that the complainants have failed to demonstrate that the

assessment board was biased in its application of the SSE 428 to assess their candidacies for the position.

[56] In terms of the allegations pertaining to the amended job advertisement, the respondent submits that Mr. Williams was faced with a reclassification of positions, and the need to staff a number of supervisory positions. He consulted with Human Resources, and an advertisement was issued. He decided to amend the job advertisement the next day to clarify the intentions of management, after he consulted once again with Human Resources. The process was open to employees in both CBSA and CIC, and he wanted to broaden the pool as much as possible. The respondent submits that these actions do not amount to an abuse of authority.

C) PUBLIC SERVICE COMMISSION'S ARGUMENTS

[57] The PSC contends that the SSE 428 was properly administered in this assessment process. There was no evidence that errors were committed. Dr. Forster, the PSC's expert witness from the PPC, testified that the simulation exercise was structured in such a way as to minimize the possibility of bias entering into the assessment.

[58] Dr. Forster reviewed the complainants' test notes and summaries, as well as the notes of the assessment board members. In his opinion, there was nothing incorrect about the manner in which the complainants had been assessed in the exercise. He was of the opinion that the board had properly administered the SSE 428.

[59] The PSC further submits that, even if the Tribunal finds that errors were committed, this would not automatically amount to abuse of authority. In its view, to find abuse of authority, the Tribunal would have to be satisfied that the error was the result of such serious carelessness or recklessness that bad faith can be implied, as described in *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17.

ANALYSIS

Issue I: Did the respondent abuse its authority by demonstrating bias against the complainants in the administration of the SSE 428?

[60] In *Tibbs v. Deputy Minister of National Defence et al.*, [2006] PSST 0008, the Tribunal held that complainants have the burden of proof with respect to complaints of abuse of authority before the Tribunal. They must prove their case on the balance of probabilities.

[61] The complainants have alleged that the respondent abused its authority in that the chairperson of the assessment board, Mr. Williams, was biased against them due to their union activities, and he intentionally eliminated them from the assessment process during their respective SSE 428 performances. Ms Praught also alleges that Ms. Gilker was biased against her.

[62] Ms. Gilker gave credible, detailed evidence on how she administered the SSE 428 and how the board reached consensus on candidates' evaluations. Mr. Williams explained his choice of the SSE 428 and how candidates were assessed using a consensus approach.

[63] Dr. Forster testified as to the safeguards inherent in this test to minimize the effects of subjectivity on the part of the assessors. In addition, Dr. Forster examined the notes taken by the board members and the information provided by the complainants and concluded that the SSE 428 was properly carried out.

[64] The complainants did not provide any evidence to demonstrate any flaws in the administration of the SSE 428. Their evidence of alleged bias relates to incidents in the past. With respect to Ms. Praught, there were two encounters between her and Mr. Williams in 2004. In one case, she contradicted him when he stated he had brought her to GTEC. The second incident, during a PSAC strike, involved Mr. Williams' comment to her to be careful, that things work both ways. Mr. Williams has no memory of either of these incidents. The evidence of Mr. Pellicore is that Mr. Williams advised him to choose between his union involvement and his career at CBSA in 2005.

[65] Ms. Praught also alleged that Ms. Gilker was biased against her. Her evidence was that Ms. Gilker had given her a negative assessment in a selection process in 2004/05.

[66] The Tribunal finds that, while Mr. Williams has no memory of them, these incidents likely occurred in 2004 and 2005. What is in dispute is the significance of the comments made and whether there is any link between them and the current appointment process. These incidents have led the complainants to perceive that Mr. Williams was biased against them. However, these events occurred several years ago and there have been no recent situations that would link these incidents to this appointment process. The events by themselves are not sufficient evidence for the Tribunal to find that there has been bias in this appointment process. Similarly, the fact that Ms. Gilker gave Ms. Praught a negative assessment in 2004/05 is not sufficient for the Tribunal to conclude that Ms. Gilker was biased against Ms. Praught in this appointment process.

[67] The complainants also referred to being required to work in the Removals Screening Unit as a “punishment post”. Mr. Williams explained that the work of that unit required experienced enforcement officers and that he tried to balance experience with need. While the complainants’ perception is that being placed in the unit is done for reasons of punishment, they have not provided a sufficient evidentiary basis for the Tribunal to come to this conclusion.

[68] The Tribunal finds that the complainants have failed to prove, on a balance of probabilities, that there was bias in the administration and resulting SSE 428 assessments of the complainants. Therefore, this allegation of abuse of authority is not substantiated.

Issue II: Did the respondent abuse its authority by changing one of the conditions of employment after the position was advertised?

[69] These complaints were filed under paragraph 77(1)(a) of the *PSEA*, which provides employees with a right to make a complaint to the Tribunal on the grounds of “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).” Subsection 30(2) reads as follows:

30. (2) An appointment is made on the basis of merit when

(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and

(b) the Commission has regard to

(i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,

(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and

(iii) any current or future needs of the organization that may be identified by the deputy head.

[70] In *Hammond et al. v. Deputy Head of Service Canada et al.*, [2008] PSST 0008, the Tribunal stated as follows:

[24] Under subsection 30(2) deputy heads can establish qualifications. The PSC or the deputy head, when delegated, is authorized to determine whether a person is qualified; in other words, to assess people. Practically speaking, these authorities are exercised by managers and assessment board members. Accordingly, an allegation of abuse of authority under paragraph 77(1)(a) is limited to those exercising the authority to establish qualifications and assess candidates.

[71] Thus, the Tribunal has jurisdiction to determine if there has been an abuse of authority in the establishment and/or assessment of essential and asset qualifications, operational requirements and organizational needs.

[72] The parties referred to the successful completion of CDT as an essential qualification throughout the hearing. However, on both SMCs (one issued on May 4 and the other issued on May 8, 2007) this requirement was listed under the heading “Conditions of Employment.”

[73] The establishment of conditions of employment in the public service is a general management authority derived from the *Financial Administration Act*, R.S. 1985, c. F-11. Paragraph 11.1(1)(j) states:

In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may

...

(j) provide for other matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resource management in the public service.

[74] Under the *PSEA*, Treasury Board is the “employer” in relation to the CBSA. Managers are delegated certain management authorities from Treasury Board, such as

the authority to determine terms and conditions of employment, as set out above. The Tribunal concludes that Mr. Williams was not exercising authority under subsection 30(2) of the *PSEA* when he decided to amend the condition of employment relating to CDT. Thus, this amendment is not subject to a complaint of abuse of authority under section 77 of the *PSEA* and the Tribunal has no jurisdiction in this matter.

DECISION

[75] For the above reasons, these complaints are dismissed.

Helen Barkley
Member

PARTIES OF RECORD

Tribunal Files:	2007-0455, 2007-0458
Style of Cause:	<i>Judy Praught and Claudio Pellicore and President of the Canada Border Services Agency et al.</i>
Hearing:	April 1, 2 and 4, 2008 Toronto, ON
Date of Reasons:	January 19, 2009
APPEARANCES:	
Laurel Randle	For the complainants
Amita Chandra	For the respondent
John Unrau	For the Public Service Commission