



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2007-0436

OTTAWA, APRIL 2, 2009

PIERRE RICHARD

COMPLAINANT

AND

THE DEPUTY MINISTER OF CANADIAN HERITAGE

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	Complaint is dismissed
DECISION RENDERED BY	Kenneth Gibson, Member
LANGUAGE OF DECISION	English
INDEXED	<i>Richard v. Deputy Minister of Canadian Heritage et al.</i>
NEUTRAL CITATION	2009 PSST 0012

REASONS FOR DECISION

INTRODUCTION

[1] The complainant, Pierre Richard, alleges that the respondent abused its authority by failing to properly assess his qualifications, resulting in him being screened out of an appointment process for the position of Senior Compensation and Benefits Advisor (AS-05). He alleges that the respondent acted in bad faith and with personal favouritism. During the pre-hearing conference, the complainant withdrew an allegation of discrimination.

[2] The respondent, the Deputy Minister of Canadian Heritage, submits that its decision to screen the complainant out of the appointment process was reasonable and appropriate. According to the respondent, the complainant failed to demonstrate in his application that he had significant and recent operational experience and, thus, he did not meet one of the essential qualifications for the position.

BACKGROUND

[3] At the time of his application, the complainant was the Compensation and Human Resources Information Systems Administrator (AS-04) at the National Parole Board of Canada (NPB).

[4] On April 13, 2007, he was informed by the respondent that his application was eliminated from the appointment process for the Senior Compensation and Benefits Advisor position because he did not meet the following merit criterion: “Significant and recent experience in providing compensation and benefits services (operational and corporate) in the Federal Public Service.”

[5] A notice of appointment was issued on *Publiservice* on August 22, 2007, and the complainant filed his complaint with the Public Service Staffing Tribunal (the Tribunal) on September 6, 2007 pursuant to paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

ISSUE

[6] Did the respondent abuse its authority when it assessed the complainant and determined that he did not meet one of the essential qualifications for the position?

SUMMARY OF RELEVANT EVIDENCE

[7] The complainant testified that the respondent eliminated him from the appointment process because it did not find in his curriculum vitae (CV) that he met the essential qualification of significant and recent operational experience.

[8] He stated his CV demonstrated that he had over 25 years of experience in the administration and management of compensation programs.

[9] At the time of his application, he had been the Compensation and HRIS Administrator at the NPB for about three years. He testified that the NPB is a small organization and he is responsible for a staff of four employees. When members of his staff are away, he has to do their operational work.

[10] The complainant stated that recent and significant operational experience could be found in his CV. In particular, he referred to a portion of his CV that states that his position at the NPB "...requires experience at the Operational level..." Another portion of his CV states that he "(p)erforms evaluation of employee performance, recommends training programs and trains new employees." The CV also states that he has taken "all pay related courses."

[11] The complainant introduced job opportunity advertisements from three other appointment processes. He testified that the qualifications for those positions were similar to the qualifications for the position at the Department of Canadian Heritage (PCH), and, in each of those processes, he was screened in.

[12] The complainant also submitted the screening board report for the PCH appointment process. He said that the report shows that four candidates met the essential qualifications. It also shows that the successful candidate was the only one who met both asset qualifications. According to the complainant, the successful

candidate was the only one who was granted an interview and this meant that the respondent must have considered more than the essential qualifications in deciding who to screen in.

[13] The complainant testified that he met with the delegated manager, Luc Bégin, on October 18, 2007 for an informal discussion because he wanted to know why he was screened out. Mr. Bégin was the delegated manager responsible for staffing the position. According to the complainant, Mr. Bégin told him that from his CV, he looked more like a project manager than a manager of operations. Mr. Bégin told the complainant what he wanted was someone who could do “hands-on” operational work if one of the staff was away on leave.

[14] On cross-examination, the complainant acknowledged that the assessment board only had his CV when it assessed his application. He also acknowledged that he was aware that the *Job Opportunity Advertisement* for the position stated that candidates must clearly demonstrate on their application that they meet all of the essential qualifications and that failure to do so might result in the rejection of their application.

[15] The complainant was also asked a number of questions about his CV on cross-examination. In particular, the complainant was asked where it states on his CV that he replaces subordinates when they are away. The complainant replied that it is only common sense that if someone is away, the manager has to do the work. If one of his subordinates is not there, there is still a need to pay staff. The complainant testified that you cannot manage compensation, as well as evaluate and train employees, unless you know the job. The complainant stated that Mr. Bégin should have known this.

[16] The respondent also questioned the complainant on the relevance of the three other job opportunity advertisements he had submitted into evidence. The complainant acknowledged that the first advertisement did not specify recent and extensive “operational” experience. He also acknowledged that the wording for the essential qualifications on the second advertisement was not the same as the wording on the advertisement for the PCH position. With respect to the third job advertisement, the

complainant acknowledged that the requirement for “recent and extensive operational experience” was an asset qualification, not an essential qualification for that position.

[17] The respondent also asked the complainant whether, if someone had taken all of the pay related courses, that meant they could do the job. The complainant acknowledged that one also needed to have hands-on experience.

[18] Luc Bégin testified for the respondent. Mr. Bégin is the Director, Client Service Initiatives at PCH. At the time of the appointment process he was Director, Labour Relations, Compensation and Well Being, and responsible for the Senior Compensation and Benefits Advisor position through the Manager, Compensation and Benefits.

[19] Mr. Bégin testified that the Senior Compensation and Benefits Advisor is responsible for one AS-03 position in PCH and has functional responsibility for two AS-02 positions at the Canadian Radio-television and Telecommunications Commission (CRTC). The compensation and benefits function serves 2,200 employees at PCH and another 425 employees at the CRTC.

[20] Mr. Bégin explained that there was a three-person assessment board for this appointment process, namely the Manager, Compensation and Benefits at PCH, the Director General, Human Resources at the CRTC and himself. Mr. Bégin chaired the assessment board.

[21] The Statement of Merit Criteria (SMC) for the position was prepared by the Manager, Compensation and Benefits and Mr. Bégin. The essential qualification of “(s)ignificant and recent experience in providing compensation and benefits services (operational and corporate) in the Federal Public Service” was included because the position provides corporate services and is responsible for the day-to-day supervision of the AS-02s.

[22] Mr. Bégin further testified that the assessment board was looking for someone who had operational experience within the previous two years. The person selected had to be familiar with current collective agreements and be capable of immediately providing information directly to staff on pensions, leave without pay, long-term disability

and other programs, if one of the AS-02s was unavailable. In other words, the Senior Compensation Advisor had to be able to do AS-02 work.

[23] Mr. Bégin disagreed with the complainant's testimony that four candidates met the essential qualifications but only one was interviewed. He testified that, on the contrary, five candidates met the essential qualifications and that all five were invited to an interview.

[24] Mr. Bégin testified that the assessment board assessed 13 applications. Each board member did an independent assessment and then they met as a group to discuss their findings. The screening board report reflects the consensus of the assessment board.

[25] Mr. Bégin also explained that the assessment board was looking for evidence in the CVs that the applicants had performed an array of pay and benefit actions within the previous two years. While the board concluded that the complainant had a lot of experience in the field, he had not clearly demonstrated in his CV that he had significant, recent operational experience.

[26] According to Mr. Bégin, although the complainant is the manager or is responsible for the compensation function, this does not mean that he has recent hands-on experience. The assessment board considered the fact that the complainant does performance evaluations of his staff to mean that he meets another essential qualification, namely "(e)xperience in managing human resources." However, in Mr. Bégin's opinion, there is a difference between literacy in the field and the ability to do the work.

[27] Despite the statement in his CV that he had taken all of the related pay courses, the assessment board did not know, according to Mr. Bégin, if he had taken these courses recently or at the beginning of his career. While the assessment board did not doubt that the complainant had relevant experience, they could not determine if it was recent.

[28] According to Mr. Bégin, he said that he explained all of this to the complainant during the informal discussion.

[29] On cross-examination, Mr. Bégin said that when he read the complainant's CV, he had difficulty differentiating between what was experience and what was knowledge. He had a similar problem determining whether the knowledge or experience was recent.

[30] Mr. Bégin acknowledged that he knew that the complainant worked in a small organization; however, he could not conclude from this that the complainant's work unit was structured or worked in the same way as PCH.

[31] Mr. Bégin was asked if other candidates' stated in their CVs that they were involved in day-to-day operations. He replied that they may not have said so in those words; however, the assessment board was looking for words that indicated the candidates had an array of operational experience in the preceding two years. Those who were invited to an interview had demonstrated in their CVs that they had the required operational experience.

[32] Mr. Bégin acknowledged that he could have approached the complainant if he had questions about the experience described in his CV, but since the assessment board had used clear language in the *Job Opportunity Advertisement*, the onus was on the applicants to demonstrate that they had the required experience.

LEGISLATION

[33] The complaint was filed under paragraph 77(1)(a) of the *PSEA*:

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);

[...]

[34] Subsection 30(2) of the *PSEA* reads as follows:

30. (1) Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

(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.

[...]

[35] Section 36 of the *PSEA* is also relevant to this complaint:

36. In making an appointment, the Commission may use any assessment method, such as a review of past performance and accomplishments, interviews and examinations, that it considers appropriate to determine whether a person meets the qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i).

ARGUMENTS OF THE PARTIES

A) COMPLAINANT'S ARGUMENTS

[36] The complainant argues that pay and benefits is a very specialized field and anyone who is a manager of compensation and benefits must have had hands-on experience. Furthermore, it is normal to replace subordinates when they are on sick leave, maternity leave, etc., as employees of the organization must still be paid. The manager must step in, as needed, because the specialized nature of the work means it is not reasonable to assign the work to someone from outside the field.

[37] The complainant submits that the assessment board in this case acted unreasonably in screening him out of the appointment process. In support of his

position, he cited an appeal board decision under the former PSEA, *Richard v. the Department of National Defence*, 06-DND-00430. In that case, the appeal board found that the appellant was never given the opportunity to provide the screening board with additional information concerning his experience that could have changed the outcome of the screening process.

[38] The complainant also cited *Bell v. Deputy Head of Service Canada et al.*, [2008] PSST 0033. This is a case where the complainant alleged that the use of “recent” managerial experience as an essential qualification constituted an abuse of authority. In paragraph 37 of the decision, the Tribunal stated that qualifications should be described in sufficient detail so that candidates know the requirements they must meet.

[39] According to the complainant, merit could not have been applied in this case since he has the essential qualifications to do the work.

[40] In his written allegations, prior to the hearing, the complainant stated that he only discovered at the informal discussion with Mr. Bégin that the assessment board was screening candidates based on their experience doing operational work. According to the complainant, the work description for the position of Senior Compensation Advisor at PCH does not indicate a requirement to perform the work of Compensation Advisors reporting to it. Therefore, he alleged, applicants should not have been screened out of the appointment process for failing to meet this qualification. Furthermore, he stated: “This would favour other candidates who indicate in their résumés that they have experience at the AS-02 level as a Compensation Advisor.” In his final rebuttal argument, at the hearing, the complainant stated that the assessment board demonstrated personal favouritism towards the other candidates by acting unreasonably towards him and failing to perform its duties in a diligent manner when it assessed his qualifications.

[41] The complainant asked the Tribunal to find that the respondent abused its authority when it screened him out of the appointment process, and to order the respondent to assess him in the same manner as the other candidates who were screened in.

B) RESPONDENT'S ARGUMENTS

[42] The respondent submits that the issue to be decided is whether the respondent had the authority to ask for recent and significant operational experience.

[43] The respondent cited *Visca v. the Deputy Minister of Justice et al.* [2007] PSST 0024, at paragraph 42, in support of its contention that it has broad discretion to establish the qualifications necessary for a position.

[44] The respondent stated that the threshold to establish abuse of authority is high and for a complaint to succeed, the complainant must show a serious wrongdoing or flaw in the process that is more than a mere error or omission. The respondent cited *Portree v. Deputy Head of Service Canada et al.*, [2006] PSST 0014, paragraph 47, in support of this principle. The respondent also referred to *Visca and Oddie v. Deputy Minister of National Defence et al.*, [2007] PSST 0009.

[45] The *Job Opportunity Advertisement* for the position stated: "Applicants must clearly demonstrate on their application that they meet all the following essential criteria and are within the area of selection. Failure to do so may result in the rejection of your application" (emphasis added). The respondent submits that in the Oxford University Press dictionary, the word *demonstrate* means to "...describe and explain with the help of examples..."

[46] Although the complainant contends that the respondent could have contacted him to obtain more information, the respondent submits that this is not its responsibility. The onus was on the complainant to "clearly demonstrate" that he met the essential qualifications for the position.

[47] The respondent referred to page 1 of the complainant's CV where he said: "Since the organization is small, I am responsible for Corporate Compensation as well as operations" (emphasis added). In the Oxford University Press dictionary, *responsible* means "...liable to be called to account (to a person or for a thing)." According to the respondent, being responsible for something does not mean that you have the necessary hands-on experience required to do it.

[48] The respondent cited *Charter v. Deputy Minister of National Defence et al.*, [2007] PSST 0048, paragraph 38, to argue that the complainant cannot make the assumption that the respondent will infer his qualifications from his application. Applicants were expected to demonstrate that they had the required experience.

[49] The respondent argues that the same principle applies with respect to the complainant's training. It was not clear from the CV if the complainant's training was "recent." It was also not clear whether the training demonstrated knowledge or experience. Just because the complainant has training, it does not necessarily mean that he has experience.

[50] The respondent submitted that in *Feeney v. Deputy Minister of National Defence et al.* [2008] PSST 0017, paragraph 47, the language in the *Job Opportunity Advertisement* was identical to that in the present case. In *Feeney*, the Tribunal found that applicants were aware that they could be screened out if they did not meet all of the essential screening criteria.

[51] With respect to the complainant's claim that he was screened in to other appointment processes with similar qualifications, the respondent stated that the Tribunal dealt with this in *Feeney*, where it found that deputy heads have broad discretion to establish different essential qualifications for different positions. The respondent argues that there is no evidence before the Tribunal with respect to what CV the complainant submitted to the other assessment boards for those positions. In short, there is no context in which to understand how those assessment boards assessed his application. In one of the complainant's examples, the need for significant and recent experience was an asset qualification, but there is no evidence on how this qualification was assessed. The respondent argues that different positions can have different qualifications, and it cannot be assumed that the qualifications used in other processes are the same as the qualifications for this position.

[52] The respondent also argues that the Appeal Board decision under the former *PSEA* cited by the complainant could not be used as a precedent in this case. That

decision took place under a different regime with a different process and approach. It is not relevant to this recourse process.

[53] In conclusion, the respondent stated that the complainant's case rests on personal opinion and no evidence has been presented that can lead to a finding of abuse of authority.

C) PUBLIC SERVICE COMMISSION'S ARGUMENTS

[54] The Public Service Commission (PSC) did not attend the hearing but submitted written arguments.

[55] According to the PSC, the complainant seems to be stating that the delegated manager improperly assessed the scope of his 25 years of relevant operational experience. The PSC submits that the Tribunal has, in many cases, confirmed the deputy head's discretion in setting the essential qualifications for a position.

[56] According to the PSC, the assessment methods used must effectively assess the identified essential qualifications and other merit criteria. They must be directly linked to the identified merit criteria and must be able to accurately measure the criteria. Fairness in the administration of an appointment process requires that individuals have an opportunity to demonstrate their merit for the position.

ANALYSIS

[57] Under the heading "Essential Qualifications", the *Job Opportunity Advertisement* for the position of Senior Compensation and Benefits Advisor at PCH states:

Applicants must clearly demonstrate on their application that they meet all the following essential criteria and are within the area of selection. Failure to do so may result in the rejection of your application.

[58] One of the six essential qualifications listed under the above statement is: "Significant and recent experience in providing compensation and benefits services (operational and corporate) in the Federal Public Service."

[59] The complainant has alleged that the assessment board's failure to properly assess his qualifications constitutes bad faith.

[60] The Tribunal has found that bad faith can be established by direct or circumstantial evidence and that serious carelessness and/or recklessness in an appointment process can also constitute bad faith. See, for example: *Cameron and Maheux v. Deputy Head of Service Canada et al.*, [2008] PSST 0016; and, *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration et al.*, [2008] PSST 0024.

[61] In support of his case, the complainant cited *Bell*, where the Tribunal stated the importance of clarity and transparency in the SMC, so that candidates know the requirements they must meet. It needs to be noted that in *Bell*, the Tribunal did not find abuse of authority. In that case, the complainant was screened out of the appointment process because he did not meet the requirement for "recent" managerial experience. In paragraph 37, the Tribunal stated: "By his own admission, the complainant's management experience was acquired at least ten years prior to this appointment process. By any definition of "recent", he would not have met this essential qualification."

[62] Nevertheless, the complainant is correct in pointing out that the term "recent" was not defined in the *Job Opportunity Advertisement* or in the SMC. The statement in *Bell* was a reiteration of the Tribunal's earlier comment in *Neil v. Deputy Minister of Environment Canada et al.*, [2008] PSST 0004, which reads as follows:

[50] The Tribunal wishes to emphasize that, while it is not mandatory to inform candidates of complete details of how a particular qualification will be assessed, it is in everyone's interest to be as clear and transparent as possible in an appointment process. This will ensure that all those who do, in fact, meet a qualification can demonstrate this and proceed to the next step of the process. Therefore, it would have been preferable for the respondent to provide candidates with greater details on the Statement of Merit Criteria concerning how "significant experience" was to be assessed by the board. This approach is recommended in the Public Service Commission's Guidance Series – Assessment, Selection and Appointment as follows:

In order to assist in the screening of applicants, it is important for the manager to develop a definition of certain words; **for example, what is meant by a requirement for "recent" or "significant" experience.** Once such a definition has been established, the manager or the assessment board, if requested by the manager, should be prepared to respond to inquiries and convey this information to applicants or to prospective

applicants (...) Definitions are developed based on the requirements of the position, and not on the experience of qualifications persons have. Therefore, the definitions should be established prior to the review of applications or qualifications of the person being considered.

- **Example** - The advertisement for a particular position indicated that persons require "Significant experience in developing policy." The manager should define the word "significant" and it could be communicated in the advertisement (...).

[51] However, failure to inform candidates of a specific definition related to a merit criterion does not, in and of itself, amount to abuse of authority. The qualification established by the managers and against which candidates would be assessed was set out in the Statement of Merit Criteria. The Tribunal finds that the qualification itself was sufficiently detailed so that candidates knew what they had to demonstrate.

(Emphasis added)

[63] The above comments from *Neil* and *Bell* are equally applicable to this case. It would have been preferable if the respondent had explained in more detail what it meant by "(s)ignificant and recent experience..." The provision of additional information might have averted this complaint. However, as in *Neil* and *Bell*, the absence of this information does not, in and of itself, amount to abuse of authority.

[64] On cross-examination, the complainant admitted that he was aware that he needed to clearly demonstrate in his application that he possessed the essential qualifications. The substance of the complainant's case is that there was enough information in his CV for the assessment board to determine that he met the essential qualifications for the position. If the assessment board was unclear about his experience, it should have contacted him for clarification.

[65] In particular, the complainant highlighted the following statements from his CV:

25 years of experience

This requires experience at the Operational level....

Performs evaluation of employee performance, recommends training program and trains new employees.

Conducts performance appraisals for staff.

Since the organization is small, I am responsible for Corporate Compensation as well as Operations.

Courses: All pay related courses.

[66] The respondent conceded that it was satisfied that the complainant had a lot of knowledge and experience in the field. However, it argued that the complainant's CV did not "clearly demonstrate" that the complainant had the required "significant and recent" operational experience.

[67] The complainant argues that given his responsibilities, experience and training, the chair of the assessment board should have known that he was capable of functioning at the operational level. A similar argument was raised in *Charter v. Deputy Minister of National Defence et al.*, [2007] PSST 0048. In *Charter*, at paragraph 37, the Tribunal stated as follows:

[37] In order for a candidate to be appointed to a position, he must demonstrate through the chosen assessment process, that he meets the essential qualifications for the position. In this case, the assessment board used a common assessment method to evaluate education and experience, that is, asking the candidates to submit an application outlining how they meet those qualifications.

[68] In *Charter*, the complainant made the assumption that the assessment board would infer from other statements in his application that he had the experience the board was seeking. However, as the Tribunal confirmed in *Charter*, there is no obligation to infer qualifications when the *Job Opportunity Advertisement* states that it is up to applicants to "clearly demonstrate" them on their application.

[69] The Tribunal finds that there is no evidence of bad faith in the application of merit as the complainant failed to demonstrate that he met the essential qualification at issue when the assessment board assessed this qualification.

[70] The complainant also submits that he was screened in to three other appointment processes demanding similar qualifications. However, in the first appointment process relied on by the complainant, the operational experience criterion was not an essential qualification. In the second appointment process, "significant and recent" operational experience was not a qualification. In the third appointment process,

one of the essential qualifications is similar, but not identical, to the qualification at issue in the present case. Moreover, in each of those appointment processes, there is no evidence before the Tribunal as to whether the complainant submitted an identical CV to the one submitted here or any explanation of how the assessment boards assessed his application in those processes. In summary, the fact that the complainant may have been screened in to these other appointment processes does not provide any useful information in determining the present case.

[71] The complainant also submitted a decision under the former *PSEA* in which his appeal was upheld and he was permitted to submit additional information regarding his experience. However, in that case, the appeal was upheld because the complainant, unlike other candidates, had not been given an opportunity to submit additional information to the screening board. In this case, there is no evidence that the complainant was treated differently from other candidates at the screening stage.

[72] The complainant also alleges abuse of authority based on “favouritism.” At the hearing, the complainant did not introduce any evidence to support this allegation. In fact, there was no mention of the word “favouritism” at the hearing until the complainant’s final rebuttal argument when he stated that the assessment board was unreasonable in assessing his qualifications, thus demonstrating personal favouritism towards other candidates.

[73] In his written allegations, the complainant stated that the requirement to replace the compensation advisors (AS-02) was not part of the work description for the Senior Compensation and Benefits Advisor, and, therefore, could not be an essential qualification. According to the complainant, this constitutes an abuse of authority because it favours candidates who indicated in their CVs that they had experience as compensation advisors at the AS-02 level. However, the complainant did not introduce the work description or any other evidence to support his allegation that the essential qualification in question was not related to the position being filled.

[74] The Tribunal has established that it is personal favouritism that constitutes an abuse of authority and has addressed this in *Glasgow v. Deputy Minister of Public Works and Government Services Canada et al.*, [2008] PSST 0007:

[39] [...] Parliament referred specifically to bad faith and personal favouritism to make certain that there would be no argument that these improper conducts constitute abuse of authority. It is noteworthy that the word **personal** precedes the word **favouritism**, emphasizing Parliament's intention that both words be read together, and that it is **personal favouritism**, not other types of favouritism, that constitutes abuse of authority.

[...]

[41] Where there is a choice among qualified candidates, paragraph 30(2)(b) of the *PSEA* indicates that the selection may be made on the basis of additional asset qualifications, operational requirements and organisational needs. The selection should never be for reasons of personal favouritism. Undue personal interests, such as a personal relationship between the person selecting and the appointee should never be the reason for appointing a person. Similarly, the selection of a person as a personal favour, or to gain personal favour with someone else, would be another example of personal favouritism.

[Bold in original]

[75] The complainant did not present any evidence to support his allegation that the respondent engaged in personal favouritism. The Tribunal is left with unsubstantiated allegations on this issue.

[76] The Tribunal has already stated that it would have been preferable for the respondent to define what it meant by “significant” and “recent” operational and corporate experience. However, there is no evidence before the Tribunal that these qualifications are not required to carry out the duties of the position. In fact, the respondent's witness described in detail, at the hearing, the reasons why this experience was necessary.

[77] In conclusion, the Tribunal finds that the complainant has not proven on a balance of probabilities that the respondent abused its authority when it assessed the complainant and determined that he did not meet the essential qualification of “significant and recent experience in providing compensation and benefits services (operational and corporate) in the Federal Public Service.”

DECISION

[78] For all these reasons, the complaint is dismissed.

Kenneth Gibson
Member

PARTIES OF RECORD

Tribunal File:	2007-0436
Style of Cause:	<i>Pierre Richard and the Deputy Minister of Canadian Heritage et al.</i>
Hearing:	January 22, 2009 Ottawa, ON
Date of Reasons:	April 2, 2009
APPEARANCES:	
Pierre Richard	For the complainant
Dora Benbaruk and Caroline Proulx	For the respondent