



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2008-0430

Issued at: Ottawa, December 31, 2009

PAMELA ADDLEY

Complainant

AND

THE DEPUTY MINISTER OF HEALTH CANADA

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 J. Gibson, Member
Language of Decision	English
Indexed	<i>Addley v. Deputy Minister of Health Canada et al.</i>
NEUTRAL CITATION	2009 PSST 0036

Reasons for Decision

Introduction

1 This complaint relates to an allegation of abuse of authority in the appointment process for a Manager - Office Services, at the AS-02 group and level. The complainant, Pamela Addley, alleges that the respondent, the Deputy Minister, Health Canada, abused its authority under the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*) by permitting the eventual appointee to continue in the appointment process and by providing him with unfair advantages over the other candidates. The respondent maintains that there has not been an abuse of authority.

Background

2 On November 7, 2007, Health Canada advertised a one-year acting appointment for a Manager - Office Services (AS-02) in Sioux Lookout, Ontario.

3 Seven candidates applied for the position. The assessment process consisted of a screening process, a written test, interviews and references.

4 One candidate was screened out and the six remaining candidates were invited to a written test on March 4, 2008. Two candidates, including the eventual appointee, left before completion of the test. None of the candidates who wrote the test were successful.

5 The respondent revised the test and invited the six candidates to write the revised test on April 1, 2008. Two candidates, including the complainant, wrote the test on April 1, 2008. The eventual appointee, Bill John Melnichuk, wrote the test on April 11, 2008 and another candidate wrote the test on April 22, 2008.

6 On April 7, 2008, Mr. Melnichuk was appointed to act in the AS-02 position until the completion of the advertised appointment process for the one-year acting appointment.

7 A Notice of Appointment or Proposed Appointment of Mr. Melnichuk to act for one-year in the AS-02 position was emailed to the complainant on May 27, 2008. She filed her complaint on June 10, 2008.

Issue

8 The Tribunal must determine whether the respondent abused its authority by providing unfair advantages to the appointee.

Summary of Relevant Evidence

9 At the commencement of the hearing, the Tribunal clarified one outstanding question pertaining to the pre-hearing disclosure stage of the complaint process. The representative for the complainant explained that she did not provide any documents to the other parties by the pre-hearing disclosure date, because she had no documents to exchange. She stated that she did not plan to introduce any exhibits during the testimony of her witnesses.

10 The complainant testified that the eventual appointee, Mr. Melnichuk, left part way through the first written test on March 4, 2008. On the scheduled date of the revised test, April 1, 2008, he left a voicemail for the chair of the assessment board, Toni Mushquash, stating that he would not be attending. Based on this information, the complainant assumed that Mr. Melnichuk was no longer a candidate in the appointment process. Subsequently, she discovered that he was given another opportunity to write the test and an opportunity to act in the position before the test date. According to the complainant, this extra time to prepare for the test and the training provided by the acting opportunity gave Mr. Melnichuk an unfair advantage.

11 The complainant testified that all of the candidates for the AS-02 position were at the CR-04 group and level. She believes the respondent should have asked all of the candidates for their interest in the initial acting appointment before appointing Mr. Melnichuk. She stated that she had some knowledge of the job and

felt that she could contribute, if given the opportunity. Furthermore, she did not feel that Mr. Melnichuk was qualified. The decision to give Mr. Melnichuk the initial acting appointment left her feeling overlooked and believing that her professional development had been hampered.

12 The complainant also stated that when she asked management why Mr. Melnichuk was given the initial acting opportunity, the only reply she received was that “they had the right to do it.”

13 On cross-examination, the complainant conceded that she had no direct evidence that Mr. Melnichuk had withdrawn from the appointment process. She said that she had not spoken to him about it. She also did not hear the voicemail he left for Ms. Mushquash, stating that he would not be attending the second test on April 1, 2008. She overheard what another candidate, who had listened to the voicemail, passed on to the test administrator.

14 The complainant acknowledged that she failed the revised written test, but by only a few points. She could not recall the specific area she failed. She contends that if she had had more time to study and the opportunity to work in the position, as did Mr. Melnichuk, the result might have been different.

15 The complainant also stated that she has had the opportunity to act in higher level positions once or twice since the appointment process at issue. She indicated that she is currently acting in a CR-05 position, and that she has no evidence that she will not be considered for other opportunities. However, she was interested in the AS-02 position in order to acquire supervisory experience and she has not had opportunities to act at that level.

16 Diana Couett testified on behalf of the complainant. She was the other candidate who wrote the revised test on April 1, 2008. She stated that she waited with the complainant and Rayanne Waboose (the test monitor) for 15-20 minutes for the other candidates to arrive. When no one else arrived, she thought that

someone might have left a message on the voicemail of Ms. Mushquash, who was away that day. She testified that she went to check and found a voicemail from Mr. Melnichuk stating that he would not be attending the test. She did not recall his exact words, but she did recall that he did not give any reason for his absence. She interpreted the message to mean that he was withdrawing from the test.

17 Ms. Couett testified that she would have liked to have had the same opportunities as Mr. Melnichuk to prepare for the test and to act in the position. She believes that those opportunities gave Mr. Melnichuk an unfair advantage over the other candidates. Ms. Couett stated that she was not asked if she was interested in the initial acting opportunity.

18 Ms. Mushquash testified on behalf of the respondent. She is the Executive Assistant to the Zone Director, Health Canada. Ms. Mushquash stated that at the time of the assessment process, she was the acting Zone Administrator and chair of the three-member assessment board. According to Ms. Mushquash, the one-year acting appointment was to replace an employee going on maternity leave.

19 Ms. Mushquash testified that she developed the Statement of Merit Criteria (SMC) for the position in consultation with Human Resources. In her testimony, she went through each essential qualification on the SMC and described how each one was assessed. The assessment process consisted of an initial screening, a written test, interviews and references. The candidates' applications were used to assess the education and experience qualifications. The purpose of the written test was to assess the essential knowledge qualifications and to further assess one of the experience qualifications, namely, experience using databases and spreadsheets. The inclusion of this experience qualification on the written test was to ensure that the candidates in fact had the experience that they claimed to have on their applications.

20 Initially, there were seven candidates but one was eliminated from the process at the screening stage. The remaining six candidates were invited to take the written test on March 4, 2008 and five candidates actually did so.

21 Ms. Mushquash supervised the test held on March 4, 2008. It was scheduled for two hours. Mr. Melnichuk and another candidate left without completing the test. When they left, they both told Ms. Mushquash that question 1 was too difficult. One said he “couldn’t get his head around it” and the other said it concerned databases that were different from what they normally use. The remaining three candidates, including the complainant, completed the test.

22 The assessment board determined that all five candidates failed the test, largely due to question 1. Feedback from candidates indicated that two hours was not long enough and question 1 took too much time. Human Resources advised Ms. Mushquash to develop a new test and, in order to be fair, to invite all six candidates who were invited to the first test to write the second test. The second test was scheduled for April 1, 2008.

23 Four of the six candidates wrote the second test. The complainant and Ms. Couett wrote the test on April 1, 2008. Ms. Mushquash explained that another candidate had indicated in advance of the second test date that she would be on vacation on April 1, so she was rescheduled to write the test on April 11. That candidate was sick on April 11 and was subsequently rescheduled to April 22.

24 Ms. Mushquash testified that when she discovered the voicemail from Mr. Melnichuk stating that he would not be attending the test on April 1, she consulted Human Resources. She was advised to contact Mr. Melnichuk to ask him why he did not attend the test. She did so and was informed by Mr. Melnichuk that he was sick on that day. She then rescheduled him to write the test on April 11. Mr. Melnichuk wrote the test on that date.

25 According to Ms. Mushquash, the complainant was assessed a score of 2 on question K2 – Knowledge of Treasury Board Accommodations Policy on the written test. This was an essential qualification and she needed a score of 3.5 to pass. As a result, she was eliminated from the appointment process.

26 Mr. Melnichuk was the only candidate to pass the second test. He proceeded to the interview and reference stages, was found qualified and was offered the position.

27 Ms. Mushquash explained why Mr. Melnichuk was given the initial acting appointment. She testified that she had planned to complete the one-year acting appointment process before the AS-02 incumbent went on leave, but the process took longer than expected. They were working with deadlines related to the end of the fiscal year and the incumbent was given medical advice to work reduced hours. Human Resources recommended that Ms. Mushquash have someone act in the position until the one-year acting appointment process was completed.

28 Ms. Mushquash stated that she tried to minimize the impact on operations when making the initial acting appointment. Two of the candidates for the one-year acting appointment were working in the finance area, which was understaffed by two people and she could not afford to take someone from there at fiscal year end. One of these two candidates was already doing the work of two positions, and the other had just started a new position on April 1, 2008.

29 Ms. Mushquash testified that Mr. Melnichuk was working in the Zone Nursing Office and had a term employee assisting him until March 31, 2008. Ms. Mushquash and Mr. Melnichuk's manager agreed to extend the term employee, thereby freeing Mr. Melnichuk to work in the AS-02 position.

30 On cross-examination, Ms. Mushquash testified that she did not know if it was normal procedure to call a candidate who failed to attend a test. That was why

she asked Human Resources for advice before she made the call to determine why Mr. Melnichuk was absent on April 1, 2008.

31 Ms. Mushquash acknowledged that she did not contact the complainant's manager to determine if the complainant could be made available for the initial acting appointment. Her discussions with the managers were limited to whether or not they were short-staffed. She contacted Mr. Melnichuk's manager about his availability because she knew they had someone to cover his position. She added that if they had appointed anyone other than Mr. Melnichuk, it would have created another vacancy. She stated that she obtained advice from Human Resources on how to proceed, but acknowledged that it was her decision to appoint Mr. Melnichuk to the initial acting position until the advertised appointment process was completed.

Arguments of the parties

A) Complainant's Arguments

32 The complainant argues that all of the candidates had expressed an interest in acting in the AS-02 position by virtue of their applications for the one-year acting appointment. Ms. Mushquash made the decision to appoint Mr. Melnichuk to act in the position without talking to the managers of the other candidates about their availability. In doing so, the complainant believes that she took a "lot of power onto herself." According to the complainant, if Ms. Mushquash had discussed who should get the initial acting opportunity with the other managers it might have produced a fairer solution.

33 The complainant also submits that she has never heard of a candidate being called to ask why they did not show up for an exam.

B) Respondent's Arguments

34 The respondent cites *Tibbs v. Deputy Minister of National Defence et al.*, [2006] PSST 0008, paragraphs 54 and 55, to argue that the burden of proof with respect to a complaint before the Tribunal rests with the complainant. It also cites *Portree v. Deputy Head of Service Canada et al.*, [2006] PSST 0014, paragraphs 43, 45-49 and 47-50 in support of this principle. The respondent submits that the complainant has not met the necessary burden of proof.

35 According to the respondent, there is no precise evidence that anything unfair took place in this appointment process. The complainant's witnesses testified that they "felt" the process was unfair and that they "think" there was an injustice, but these are just impressions, not serious facts, errors, omissions or wrongdoing that could constitute abuse of authority.

36 The respondent disputes the complainant's allegation that giving some candidates more time to prepare for the written test constituted an unfair advantage. The respondent notes that one candidate took the test three weeks after the complainant and she still did not pass.

37 The respondent also disputes the complainant's allegation that Mr. Melnichuk's opportunity to act in the position before the test gave him an unfair advantage. The respondent cites *Carlson-Needham and Borden v. Deputy Minister of National Defence et al.*, [2007] PSST 0038, paragraphs 56-58 and 60, to argue that the fact that someone acts in a position is not a guarantee that they will pass a written test.

38 The respondent argues that there is no evidence that it failed to observe Health Canada's policy or engaged in any other act of improper conduct or personal favouritism when it appointed Mr. Melnichuk to act in the position before he wrote the test. According to the respondent, Ms. Mushquash gave a good explanation for her decision. She analyzed the situation and made the choice that

had the least overall impact on operations. Mr. Melnichuk only began acting four days before the test. There is no clear evidence that this provided him with an advantage. All that is before the Tribunal are the complainant's "feelings" that it was an advantage and that Mr. Melnichuk was not qualified.

39 Furthermore, the respondent argues that there is not even circumstantial evidence of personal favouritism in this case. It cited *Glasgow v. Deputy Minister of Public Works and Government Services Canada et al.*, [2008] PSST 0007, paragraphs 52-54, and *Morris v. Commissioner of Correctional Service of Canada et al.*, [2009] PSST 0009, paragraphs 102 – 105 and 110, concerning the level of evidence necessary to support an allegation of personal favouritism.

40 The respondent concedes that Mr. Melnichuk left before completing the first test, but it argues that the problem was with the test. After everyone failed the first test, the respondent revised the test and invited all the candidates to write it again. The respondent also argues that Mr. Melnichuk's voicemail that he would not be attending the second test cannot be interpreted as a withdrawal from the appointment process. The respondent treated all of the candidates the same. Anyone who sought accommodation to write the test was accommodated. The respondent also notes that there was no allegation that another candidate was given an unfair advantage although she had three weeks more to prepare for the test than did the complainant. The respondent cited *Oddie v. Deputy Minister of National Defence et al.*, [2007] PSST 0030, paragraphs 88-89, in support of its position that even if some things could be done differently, that does not mean that there was abuse of authority. In this case, it is argued, the process was fair and unbiased.

41 The respondent notes that the complainant has acted in higher level positions since the appointment process giving rise to the complaint, so she should not feel that her professional development has been hampered.

C) Public Service Commission's Arguments

42 The Public Service Commission (PSC) did not attend the hearing but filed written submissions concerning abuse of authority under the *PSEA*.

43 The PSC states that it is unclear how the essential qualifications of “experience in organizing and coordinating the activities of an office” and “successful completion of a secondary school diploma or an acceptable combination of education, experience and/or training” were assessed. If these qualifications were assessed at the screening phase of the process by utilizing the candidates’ *curriculum vitae*, this information should have appeared on the job advertisement. Instead, the job advertisement merely indicates that official language proficiency will be used to screen out candidates.

44 The PSC submits that its document, *Guidance Series – Assessment, Selection and Appointment*, states that it is important that any criteria that will be used for screening purposes be clearly identified in the advertisements, so that candidates are aware of what information must be provided to demonstrate that they meet those criteria. It appears possible that the advertisement used in this process may have been incomplete with respect to clearly identifying which essential qualifications would be assessed at the screening stage on a meets/not meets basis.

45 In addition, the PSC submits that the written test question purporting to assess the essential qualification “experience using databases and spreadsheets” appears to actually have been assessing the “ability” to use databases and spreadsheets. It is therefore unclear to the PSC how this essential qualification was assessed. While it submits that it is possible that the candidates’ *curriculum vitae* were utilized to screen against this essential qualification, it is unclear from the available information whether this was the case. If this was the case, it was acceptable to determine their depth of experience by requesting that they prepare

a spreadsheet. The PSC's *Assessment Policy* requires that deputy heads ensure that persons appointed meet all of the essential qualifications.

46 The PSC included its *Assessment Policy* and a document entitled *Guidance Series – Assessment, Selection and Appointment* with its submissions.

Respondent's Reply to the PSC's Arguments

47 The respondent referred to the testimony of its witness who explained that "successful completion of a secondary school diploma or an acceptable combination of education, experience and/or training," and "experience in organizing and coordinating the activities of an office," were assessed by examining the candidates' applications. The witness also explained that "experience using databases and spreadsheets," was assessed based on the applications and the written test. According to the respondent, the test required candidates to demonstrate that they actually possessed the experience they claimed.

Legislation

48 This complaint was filed under paragraph 77(1)(a) of the *PSEA* which 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);

[...]

49 Abuse of authority is not defined in the *PSEA* but is described in subsection 2(4): “For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.”

Analysis

50 As the Tribunal’s jurisprudence has established, the complainant has the burden to prove, on a balance of probabilities, that there was abuse of authority in the appointment process. (See for example, *Tibbs* at paras 49 and 55 and *Glasgow* at para 65.)

51 In this case, the Tribunal must determine whether the respondent abused its authority by providing unfair advantages to the appointee. The complainant alleges that the following decisions during the appointment process were unfair advantages: a) the decision to allow the eventual appointee to continue in the appointment process; b) the decision to provide the eventual appointee with more time than the complainant to prepare for the second written test; and c) the decision to give the eventual appointee an opportunity to act in the AS-02 position before he wrote the second written test.

a) The decision to allow the eventual appointee to continue in the appointment process

52 The complainant argues that Mr. Melnichuk should not have been given another opportunity to write the revised or second test because he left part way through the first test on March 4, 2008 and he left a voicemail for Ms. Mushquash stating that he would not be attending the second test, originally scheduled for April 1, 2008. According to the complainant, these actions were tantamount to a withdrawal from the appointment process.

53 The Tribunal does not agree. The evidence shows that Mr. Melnichuk, and another candidate left without completing the first test on March 4, 2008. When they left, these candidates informed Ms. Mushquash that they were leaving

because they found question 1 too difficult. All of the candidates who wrote the first test failed and the respondent concluded that the test was flawed, particularly question 1. Ms. Mushquash discussed the test with Human Resources. They advised her to revise the test and, in the interest of fairness, to invite everyone who wrote the original test to write the revised test. The complainant, Mr. Melnichuk and the four other candidates who were invited to write the first test on March 4, 2008, were invited to write the revised test on April 1, 2008.

54 Mr. Melnichuk did not attend the test scheduled for April 1, 2008. The voicemail he left for Ms. Mushquash did not provide an explanation for his absence. Ms. Mushquash consulted Human Resources and they advised her to contact Mr. Melnichuk to seek an explanation for his absence. When she did so, Mr. Melnichuk explained that he was sick on that day.

55 The complainant and Ms. Couett believe that his absence from the test on April 1, 2008 implied a withdrawal from the process, but they have no evidence to support this belief. As the Tribunal has noted in previous decisions, belief is not proof (See *Carnegie v. Deputy Minister of Citizenship and Immigration et al.*, [2009] PSST 0006, para 89; and *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration et al.*, [2008] PSST 0024, at para 83).

56 Ms. Couett heard the voicemail Mr. Melnichuk left for Ms. Mushquash. She acknowledged that he provided no reason for his absence. The complainant acknowledged that she had no direct evidence that Mr. Melnichuk withdrew or wished to withdraw from the process. The evidence indicates that the only reason Mr. Melnichuk failed to attend the test on April 1, 2008 was because he was sick.

57 The Tribunal finds that there is no factual evidence that Mr. Melnichuk withdrew or wished to withdraw from the appointment process. Accordingly, the Tribunal finds that the respondent did not abuse its authority by permitting Mr. Melnichuk to continue in the appointment process.

- b)** The decision to provide the eventual appointee with more time than the complainant to prepare for the second written test

58 Because Mr. Melnichuk was ill on April 1, 2008, he wrote the second test on April 11, 2008, ten days after the complainant. The complainant contends that the extra ten days available to Mr. Melnichuk, in and of itself, constitutes an unfair advantage because he had more time than the complainant to study for the test.

59 The Tribunal finds that the fact that the candidates did not write the test on the same date is not, in and of itself, evidence of wrongdoing constituting abuse of authority. For a complaint of abuse of authority to succeed, it is necessary for the complainant to do more than simply allege that the extra time provided to Mr. Melnichuk constituted an unfair advantage. The complainant must demonstrate that there was abuse of authority behind the decision to give Mr. Melnichuk the additional time. (See, for example, *Tibbs*, para 49.)

60 The evidence shows that when Ms. Mushquash heard Mr. Melnichuk's voicemail that he would not be attending the test on April 1, 2008, she contacted Human Resources for advice. Human Resources advised her to contact Mr. Melnichuk to find out why he did not attend the test. Once she found out that he was sick on the day of the test, she rescheduled his test for April 11, 2008. She did the same for another candidate, whom she knew in advance would be on leave and unavailable to write the test on April 1, 2008. When that candidate subsequently became ill and was unable to write the test on April 11, 2008, Ms. Mushquash rescheduled her test to April 22, 2008.

61 The Tribunal finds that Mr. Melnichuk and another candidate were tested on a later date solely because they were either sick or on vacation on April 1, 2008. There is no evidence that the delay was intended to provide them with an unfair

advantage over the other candidates. Moreover, there is no evidence that the extra time actually provided them with any advantage. The candidate who had the longest period of time to prepare for the test did not pass the test.

62 The complainant did not specifically allege that Mr. Melnichuk benefited from personal favouritism. Nevertheless, the complainant may be drawing an inference that there was personal favouritism by alleging that there was an unfair advantage. The Tribunal notes that the respondent submitted a defence against such an allegation. The Tribunal will examine this argument.

63 In *Glasgow*, the Tribunal examined a situation where the successful candidate in a staffing process was given an opportunity for training that was not extended to others. It addressed whether this gave an advantage in the written test to the successful candidate and whether this constituted personal favouritism. The Tribunal stated the following at paragraph 39, of *Glasgow*:

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. (Bold in text.)

64 In this case, there is no evidence whatsoever before the Tribunal that Ms. Mushquash had anything other than a professional relationship with Mr. Melnichuk. The Tribunal finds that there is no evidence of personal favouritism.

65 The Tribunal finds that the complainant has not met her burden to prove, on the balance of probabilities, that providing the successful candidate with more time to prepare for the written test gave him an unfair advantage.

c) The decision to give the eventual appointee an opportunity to act in the AS-02 position before he wrote the second written test

66 The evidence demonstrates that the successful candidate commenced acting in the AS-02 position four days before he wrote the test. Ms. Mushquash testified that it had not been her intention to put someone in the AS-02 position

before the advertised appointment process was completed. When the appointment process took longer than expected, operational needs required that she put someone in the position until the advertised process was completed.

67 The complainant has not taken issue with the need to put someone in the AS-02 position prior to the completion of the advertised appointment process. Rather, she objects to Mr. Melnichuk being given this opportunity, which she described as training, before he completed the written test. Furthermore, she feels that she and others were better qualified for this initial acting appointment than Mr. Melnichuk. The complainant would have preferred that Ms. Mushquash had asked the other candidates if they were interested in the initial acting appointment.

68 The Tribunal does not accept the complainant's argument that there is abuse of authority in the respondent's decision to choose Mr. Melnichuk for the initial acting appointment, notwithstanding the complainant's assertion concerning the relative qualifications of other candidates. It is important to note that the former system of mandatory relative merit no longer exists. (*See Clout v. Deputy Minister of Public Safety and Emergency Preparedness et al.*, [2008] PSST 0022 at paras 30, 32). The respondent has considerable discretion when it comes to staffing matters.

69 The Tribunal has established that merely choosing to conduct a non-advertised process is not an abuse of authority. A complainant must establish, on a balance of probabilities, that the respondent abused its authority in making the decision to choose a non-advertised appointment process. See, for example: *Robbins v. Deputy Head of Service Canada et al.*, [2006] PSST 0017 at para 36. Moreover, considering only one person, as was done in this case, is also discretionary and specifically authorized by subsection 30(4) of the *PSEA*.

70 The evidence clearly shows that Ms. Mushquash made the initial non-advertised appointment of Mr. Melnichuk to the AS-02 position in response to operational requirements. The uncontested evidence of Ms. Mushquash is that she

assessed the workload and staffing situation in her operation. In the case of Mr. Melnichuk, a term employee was available to continue his work while he acted in the AS-02 position. She concluded that Mr. Melnichuk was the only person she could put in the AS-02 position without creating a vacancy somewhere else. For these reasons, Ms. Mushquash did not consider the complainant, or anyone other than Mr. Melnichuk, for the initial acting appointment.

71 The Tribunal finds that the consultations and decisions taken by Ms. Mushquash to put Mr. Melnichuk in the AS-02 position until the advertised process was completed are consistent with her responsibility to staff, manage and lead her personnel to achieve results for Canadians (see *Tibbs*, paras 62 and 63). The Tribunal further notes that there is no evidence whatsoever to suggest that four days of acting gave Mr. Melnichuk any measurable advantage over the other candidates in completing the test (see *Glasgow*, paras 52, 54). Furthermore, there is no evidence that Mr. Melnichuk was unqualified for the initial acting appointment.

72 The respondent cited *Carlson-Needham* to argue that acting in a position is not a guarantee that a candidate will be successful in a written test. The Tribunal notes that *Carlson-Needham* is factually different from the present case. In that case, the acting position was for a considerably longer period of time, and one of the candidates who had not acted in the position had also passed the standardized test. The Tribunal emphasizes that *Carlson-Needham* does not support the principle that an acting opportunity can never be an advantage, or that it cannot result from personal favouritism. It merely states that in that case the acting opportunity did not establish personal favouritism or an advantage. As stated above, there is also no evidence in this case that Mr. Melnichuk's opportunity to act in the position for four days before he wrote the second test provided him with an unfair advantage.

73 In conclusion, the Tribunal does not find convincing evidence that Mr. Melnichuk's opportunity to act in the position for four days before he wrote the revised test provided him with an unfair advantage amounting to abuse of authority.

74 The Tribunal also considered concerns raised by the PSC to determine if unfair advantages were provided to the appointee. In particular, the PSC raised concerns regarding the assessment of the essential qualifications. Ms. Mushquash testified that the essential qualification "Experience using databases and spreadsheets" was assessed by examining candidate applications and through the written test. The Tribunal notes that the PSC stated that it was acceptable to determine the candidates' depth of experience by requesting that they prepare a spreadsheet. This was, in fact, what was requested by question 1 on the written test.

75 The Tribunal agrees with the PSC that it would have been preferable if all of the criteria used for screening purposes had been clearly identified in the job advertisement for the AS-02 position. The Job Opportunity Advertisement identifies only official language proficiency as a screening criterion. However, according to the evidence of Ms. Mushquash, candidates' applications were also used to assess education and experience. Nevertheless, there is no evidence that this error or omission had an impact on the outcome of the appointment process and it does not, in the view of the Tribunal, constitute abuse of authority in this case. It is clear from the preamble and the whole scheme of the *PSEA* that Parliament intended that much more is required than mere errors and omissions to constitute abuse of authority. (See *Tibbs* at para 65. See also *Neil v. Deputy Minister of Environment Canada et al.*, [2008] PSST 0004, paras 50 and 51)

76 The Tribunal has also assessed the evidence from a global perspective and considered the series of events that led to this complaint in their entirety. There is

no evidence to suggest that these events, considered in their entirety, constitute abuse of authority.

Decision

77 For the above reasons, the complaint is dismissed.

Kenneth J. Gibson

Member

Parties of Record

Tribunal File	2008-0430
Style of Cause	<i>Pamela Addley and the Deputy Minister of Health Canada et al.</i>
Hearing	August 25, 2009 Sioux Lookout, ON
Date of Reasons	December 31, 2009
APPEARANCES:	
For the complainant	Yvonne Morriss
For the respondent	Pierre Marc Champagne