



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2009-0090
Issued at: Ottawa, September 24, 2010

ROBERT CAMPBELL

Complainant

AND

THE DEPUTY MINISTER OF TRANSPORT CANADA

Respondent

AND

OTHER PARTIES

Matter Complaint of abuse of authority pursuant to s. 77(1)(a) of the
Public Service Employment Act

Decision Complaint is dismissed

Decision rendered by Joanne B. Archibald, Member

Language of Decision English

Indexed *Campbell v. Deputy Minister of Transport Canada*

Neutral Citation 2010 PSST 0014

Reasons for Decision

Introduction

1 The complainant, Robert Campbell, applied in an advertised internal appointment process for the position of Manager, Transportation Security (TI-07) with Transport Canada. He was not appointed and subsequently filed a complaint of abuse of authority pursuant to s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*). He alleges that the respondent, the Deputy Minister of Transport Canada, abused its authority, in that his assessment was influenced by bad faith. Specifically, he claims that Dean Fuller, who was then the acting Regional Director of Transportation Security and Emergency Preparedness, should not have been a member of the assessment board.

2 The respondent denies that there was an abuse of authority in the process or that Dean Fuller, as a member of the assessment board (the board), improperly influenced the outcome. The complainant was unsuccessful based on his failure to meet the essential qualifications for the position.

Background

3 The respondent posted an internal advertised appointment process together with a *Statement of Merit Criteria* (SMC) on *Publiservice* for the period of August 28 to September 10, 2008. Eleven applications were received.

4 Applications were screened for education and experience, and the eleven candidates were then invited to an examination to assess knowledge and the ability to communicate effectively in writing. This part of the assessment was conducted by Ross Munn, Regional Director, Transportation Security, who was at the time chairperson of the board and the hiring manager.

5 Mr. Munn left for training after completing these stages of the assessment. He was replaced in his position on an acting basis by Mr. Fuller. Mr. Fuller was drawn from an existing pool of individuals qualified for appointment to executive (EX) positions. The

complainant was also a candidate in this pool. The complainant and Mr. Fuller did not know one another at that time.

6 Mr. Fuller then became the chairperson of the board. Mr. Fuller was joined on the board by Joanna Manger and Jack Goodman, both Regional Directors, Transportation Security/Emergency Preparedness in Quebec and Ontario, respectively. Together, they completed the interviews and the assessment of the reference checks.

7 Two candidates were found qualified and *Notices of Appointment or Proposed Appointment* were posted. The complainant was not among those found qualified. In the board's view, he failed to meet the requirements for the essential qualifications of autonomy and effective interpersonal relationships.

Issues

8 The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority in the application of merit by reason of bad faith?
- (ii) Has the complainant established that there was bias or a reasonable apprehension of bias in the appointment process?

Summary of Relevant Evidence

9 During the hearing of this complaint, the parties extensively reviewed the board's questions and the responses given by the complainant as well as the steps in the appointment process. In addition to the background information above, the following relevant evidence was elicited during the hearing.

10 Mr. Fuller testified that he reviewed the board materials prior to the interview stage and discovered that the passing score was set at 50%. This score fell between "weak" and "good" in the rating guide. He considered this too low given that the position was for a manager. He discussed it with Human Resources (HR) and raised it to 60% or "good."

11 A copy of an email message from another candidate was entered into evidence. It shows that the candidate contacted HR in advance of his interview and asked for the meaning of autonomy. Autonomy was one of the essential qualifications in the SMC. He copied his inquiry to another candidate, indicating that they were both preparing for the interview. Mary Ann Jeffries, Senior HR Advisor, responded to the two candidates. She did not distribute her response to other candidates. In her reply, she stated: “I understand that the definition of ‘autonomy’ used for purposes of this selection process means the ‘ability to work with limited or no supervision’. It is linked to initiative and the ability to make decisions independently.”

12 The complainant testified that he had not asked for any similar information because, at the time, he considered he knew what autonomy meant.

13 The complainant, a Major in the military police of the Canadian Forces militia, testified that the board asked him about his upcoming return to Bosnia. Before the Tribunal, he expressed concern that this showed that the board was uncomfortable with his impending absence from the workplace.

14 Mr. Fuller stated that the board engaged candidates initially by talking to them informally for a few minutes. This was the explanation for the initial exchange about Bosnia. It was not part of the interview. When the formal interview started, the board advised candidates that it had begun.

15 The complainant did not score well on a question relating to the definition of autonomy. According to the board’s rating guide, candidates were asked to define autonomy and to describe a situation where they had displayed it. The rating guide provided the definition of autonomy as “the ability to work with limited or no supervision.” The notes taken by the three board members during the complainant’s interview record his definition of autonomy as follows:

Mr. Fuller: Autonomy – impartiality.

Mr. Goodman: Autonomy – impartiality.

Ms. Manger: Autonomy is impartiality.

16 Mr. Fuller described the complainant's response as an example of acting impartially when brokering an agreement among various stakeholders with competing interests, some of whom initially assumed he was biased. Mr. Fuller testified that the board did not agree that impartiality was the equivalent of autonomy and gave the complainant a score of 1/10 to reflect the quality of the response relative to the qualification.

17 The essential merit criteria of effective interpersonal relationships was defined by the board as:

Sensitive to the impact of one's own behaviour on others; is open and listens to others, readily accepts differences and diversity by giving consideration to their ideas, opinions, needs and interests, seeks solutions that are acceptable to everyone; uses tact and maintains composure in difficult situations; resolves conflicts in an open and constructive fashion.

18 Two questions were asked to assess this qualification. The complainant challenged the treatment of his response to one of them. This question was: "Tell us about a time when you were required to adapt your style in order to work effectively with those who were different from you."

19 The complainant described a situation where he had required employees to work unpaid overtime. One employee later protested to a manager. The manager addressed it with the complainant who then had to change his approach. The board awarded the complainant a score of 2/10. It noted that the "criteria was not met; style was adapted after being mandated by manager." Mr. Fuller testified that the board's view was that the complainant changed because he was directed to do so. The example did not reflect the definition used by the board or demonstrate that the complainant himself sought a compromise or solution that was acceptable to everyone.

20 After the interview, the process of reference checking was undertaken. Candidates were asked to provide two references. In response to an email request from Ms. Jeffries on November 18, 2008, the complainant initially provided the names of Mr. Munn and Ivan Rice. Mr. Rice was the complainant's acting supervisor. He was also a candidate in this process.

21 Mr. Fuller testified that he became aware that several candidates had named Mr. Rice as a reference. He considered it a potential problem. The board decided that it would not accept the names of other candidates in the appointment process as references. Ms. Jeffries then asked the complainant to provide the name of another reference. The complainant testified that he provided a different reference but considered that he was disadvantaged by the requirement to alter his references because he preferred to give a reference from within the hiring department, Transport Canada. However, as he had limited work experience with the respondent, he had no other options and he chose John Kirschner, a person with whom he had worked in the military.

22 Information from referees was gathered on behalf of the board by Carol McLellan. She was described by Mr. Fuller as a former departmental employee, recently retired, with extensive experience in HR. She was contracted to contact the referees, ask them a series of set questions, and submit the responses to the board for assessment. An email exchange between Mr. Fuller and Ms. Jeffries indicates the intention to send the reference form to referees in advance. When questioned during the hearing, Mr. Fuller reiterated that this was his instruction and he had no reason to believe that it was not followed.

23 The form used to record references provided definitions of the qualifications being assessed and permitted the referee to provide a rating of the candidate on a 10 point scale in addition to their narrative comments. Mr. Fuller testified that the referee's rating was excluded from the board's deliberation. It was considered inappropriate to take it into consideration as only the board was mandated to assess candidates.

24 Mr. Kirschner testified about the reference he provided for the complainant. He stated that he did not recall whether Ms. McLellan contacted him by telephone or email or whether he received a preparatory document or definitions of the qualifications to be assessed. He reviewed the reference document prepared by Ms. McLellan and stated that his recorded responses were factual but not complete. He did not elaborate. He

said that if he had been a member of the board, he would have scored the reference differently and awarded a higher mark.

25 Mr. Munn, the second of the complainant's referees, testified that he completed the reference form and emailed it to Ms. McLellan.

26 The references given by Messrs. Kirschner and Munn were introduced into evidence. They differed insofar as Mr. Munn's reference document was the complete reference document, including the instructions and definitions of the qualifications being assessed. The text of Mr. Munn's reference contained a number of observations or reflections that were written in the first person, such as "Rob was assigned to me," "I discussed with Rob," and "I have seen Rob." Mr. Kirschner's document did not contain the instructions or definitions. It was written in the third person and contained expressions such as: "Mr. Kirschner was a subordinate," "Mr. Kirschner hasn't heard," and "Mr. Kirschner indicated."

27 The board's rating of these references shows that the complainant received a score of 8/10 for the question on autonomy. For the two questions addressing effective interpersonal relationships, he received 7/10 and 7/10.

28 After learning that he was unsuccessful, the complainant participated in informal discussion with Mr. Fuller. Documentary and oral evidence received during the hearing indicated that he asked for documents before attending the informal discussion. Mr. Fuller advised him that while he could not give copies, the "board's notes, questions and evaluations" would be available to the complainant if they met in person. Monique Mazerolle, HR Advisor with the respondent, testified that she had told Mr. Fuller that the questions and answers were re-used in other processes. As such, they could be made available during informal discussion but could not be released to the complainant.

29 The complainant testified that he chose to participate in informal discussion by telephone with Mr. Fuller without seeing the documents. He stated that he needed the documents beforehand to prepare and when that was not possible, he considered they were "irrelevant" to him. Based on information exchanged during informal discussion, he

was under the impression that he had failed to meet only the requirement of the essential merit criterion of autonomy.

30 On January 1, 2009, the complainant then made a submission to further address autonomy and to request that his answer be re-assessed. The submission contained his recollection that he had defined autonomy as impartiality and independence and revisited the situation he described to the board at his interview. It also contained a number of sources to support his answer.

31 Mr. Fuller testified that when the board met to consider the complainant's submission, it agreed that during the interview the complainant had defined autonomy as impartiality. The submission was considered to enlarge on that answer by adding the concept of independence. The board decided it would not consider information that added to the original answer.

32 The complainant was later advised that the board had reconvened to consider his submission, and their decision had not changed.

33 The complainant testified that in preparing for this hearing, he discovered that he had also failed the essential merit criterion of effective interpersonal relationships. He considered that by withholding this information, Mr. Fuller misled him about the reasons he had not been successful.

Arguments of the parties

A) Complainant's arguments

34 The complainant argues that bias was present in this process through the presence of Mr. Fuller as the board chairperson. He raises several issues in relation to this argument.

35 He argues that it was not ethical for Mr. Fuller to be on the board due to his position in an EX pool with the complainant and given his short time working with the respondent. In the complainant's view, Mr. Fuller had much to gain by failing the

complainant in this appointment process. Specifically, if he were shown not to meet the essential merit criteria for the TI-07, it would reflect negatively on his EX candidacy.

36 In the matter of autonomy, the complainant argues that it is unfair that he did not receive the email in which autonomy was addressed by Ms. Jeffries.

37 The complainant refers to the board's question about his impending deployment to Bosnia as an indicator of bias.

38 He argues further that the examples he gave in his responses, including effective interpersonal relationships, ought to have been validated by confirming them with third parties, as this may have influenced the assessment.

39 The complainant argues that there were a number of incidents of bias related to his references, namely the selection of referees, the process of gathering the references and the evaluation of the reference material. To illustrate, he raises the board's refusal to accept a reference from Mr. Rice as a concern. He also asserts that the board failed to ensure a fair process as it did not validate whether Ms. McLellan followed the procedure set out for her to gather references. It merely assumed that she had the knowledge to carry out her instructions. Further, the board had no written record of its deliberation while assessing the references and it failed to validate the examples it was given by the referees. If it had, the result might have been different. Moreover, there were no notes taken to reflect the board's deliberation in arriving at the assessment.

40 The complainant's arguments conclude with the assertion that his assessment reflected an improper result based on an unreasonable assessment.

B) Respondent's arguments

41 The respondent argues that the complainant has not discharged the burden of proving abuse of authority in this appointment process. The respondent addresses the specific incidents raised by the complainant.

42 The respondent disputes the complainant's argument that Mr. Fuller ought not to have been on the board. The respondent notes that while Mr. Fuller had been with the respondent for only a short time when he became the chairperson, he was not asked to assess knowledge. This was earlier completed by Mr. Munn. Mr. Fuller was charged with the assessment of abilities and personal suitability through the interview and references. Additionally, the other members of the board had a longer work history with the respondent and were regional directors.

43 The respondent submits that the conversation about the complainant's impending deployment to Bosnia occurred before the formal start of his interview. It was done in the introductory remarks and was intended to put him at ease.

44 The respondent states that it was under no duty to provide the meaning of the essential qualification of autonomy to every candidate. It was given as a response to candidates who made a specific inquiry.

45 With respect to the complainant's answer during the interview, the respondent stated that the complainant incorrectly defined autonomy as impartiality. This was recorded in the interview notes taken by each of the three board members. The respondent noted that the complainant's submission after informal discussion reflected independence. The board did not find independence in his original answer and considered the submission to be an expansion beyond the answer that was originally provided. The respondent argued that informal discussion was not an opportunity for a candidate to re-answer questions asked at the interview. Consequently, there was no change in its assessment.

46 With respect to the reference gathering process, the respondent submits that the evidence does not suggest any inconsistency in the material that was available to the referees. The difference in form between the Munn and Kirschner references was attributable to one having been submitted by the referee, the other having been given by telephone to the person who recorded it. The respondent argues that no evidence was adduced to suggest that the referees were treated differently or that the process of checking references was inconsistently applied.

47 The respondent also refers to the choice of references. It argues that the board was not obliged to use the references selected by the candidate. It notes that the complainant was one of a group of candidates who were required to provide another name to avoid using another candidate as a referee. The board exercised its broad discretion in this regard. Furthermore, the board assessed the references without relying on the mark awarded by the referee. Those scores were irrelevant to the board's deliberation.

C) Public Service Commission's arguments

48 The Public Service Commission (PSC) did not appear at the hearing of this complaint but did provide a written submission. The PSC stated that its policies had not been contravened.

Analysis

49 This complaint was filed under s. 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);

(...)

50 Section 30(2) of the *PSEA* defines a merit-based appointment and 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. a
ny 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. a
ny current or future operational requirements of the organization that may be identified by the deputy head, and
- iii. a
ny current or future needs of the organization that may be identified by the deputy head.

51 There are two aspects of abuse of authority that the Tribunal must address in this case, namely the allegation of bad faith and whether there was a reasonable apprehension of bias.

(i) Did the respondent abuse its authority in the application of merit by reason of bad faith?

52 The position of the complainant was that the treatment of his candidacy in this appointment process was tainted by bad faith. In *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17, the Supreme Court confirmed that it is not necessary to show intentional fault in order to establish bad faith, and that the latter should be interpreted more broadly to include serious carelessness or recklessness. The Supreme Court held as follows, at paragraph 39:

39. These difficulties nevertheless show that the concept of bad faith can and must be given a broader meaning that encompasses serious carelessness or recklessness. Bad faith certainly includes intentional fault, a classic example of which is found in the conduct of the Attorney General of Quebec that was examined in *Roncarelli v. Duplessis*, [1959] S.C.R. 121. Such conduct is an abuse of power for which the State, or sometimes a public servant, may be held liable. However, recklessness implies a fundamental breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed. The act, in terms of how it is performed, is then inexplicable and incomprehensible, to the point that it can be regarded as an actual abuse of power, having regard to the purposes for which it is meant to be exercised (*Dussault and Borgeat, supra*, vol. 4, at p. 343). [...]

53 In endeavouring to establish that there was bad faith in this process, the complainant places significant weight on the fact that he and Mr. Fuller are both members of a pool of candidates qualified for appointment to EX positions. He believes that Mr. Fuller cannot properly discharge his role on the board because of this fact. The complainant speculates that Mr. Fuller might benefit by not qualifying the candidate in this process and thereby cast aspersions on his qualifications as an EX candidate.

54 The complainant raises many concerns about Mr. Fuller's participation and the process conducted by the board: Mr. Fuller increased the pass mark to 60%; information on the meaning of autonomy was shared with some but not all candidates; the board posed a question to the complainant about Bosnia; Mr. Fuller required the selection of a different reference; referees may not have been given the same preparatory information; the references were not validated by checking; the complainant's interview and further submission were not properly marked. Each of the concerns raised by the complainant is addressed below.

55 With respect to raising the pass mark to 60%, the Tribunal finds that the explanation given by Mr. Fuller is reasonable. As the Tribunal held in *Visca v. Deputy Minister of Justice*, 2007 PSST 0024 at para. 43, "Weighting the merit criteria and using cut-off scores based on the performance of the candidates are methods that fall within the broad discretion given to managers under the *PSEA*." Consistent with this finding, the Tribunal finds that the change made by Mr. Fuller was within that discretion accorded to him as the hiring manager.

56 In the matter of not providing the meaning of autonomy to all candidates, the Tribunal finds no evidence of bad faith. Two candidates requested HR to provide them with the additional information and they received it. The complainant did not provide evidence to show that he asked for the same information. He did not show any basis on which the respondent ought to have shared it with all candidates. For example, he did not suggest that the response was a clarification of imprecise or ambiguous information. In such a case, it might have become necessary to send the information to the entire candidate body. The Tribunal finds that the information provided to these candidates was merely a response to an ordinary inquiry. There was no error or omission in sharing the information only with the candidates who requested it. Of note, the *PSC Guidance Series – Advertisements in the Appointment Process* which informs the *PSC Policy on Advertisements in the Appointment Process* includes the following direction:

Deputy heads and their sub-delegates should be able to respond in a timely manner to any requests for additional information from potential candidates. This measure is intended to support adherence to the guiding values of fairness, transparency, access and representativeness.

57 The complainant expressed concern that the board asked him about his upcoming deployment to Bosnia. The Tribunal finds the explanation provided by the respondent to be reasonable. The evidence shows that the discussion at the beginning of the interview was informal and there is no evidence to suggest that it influenced the board's assessment of merit criteria. The evidence does not suggest that the deployment was a topic of concern in the workplace, or that the respondent perceived it negatively. While the complainant expressed his uneasiness, he has not brought forward persuasive evidence to show a reasonable foundation for his assertion.

58 With respect to the board's treatment of the complainant's interview responses for autonomy and effective interpersonal relationships, it has not been shown that the board applied irrelevant or incoherent considerations in the assessment of either of these essential qualifications. The complainant argues that the board ought to have validated his answers, but provided no reasons or evidence for the board to take this action. The Tribunal is not persuaded that an error was made.

59 In the matter of selecting references, the Tribunal finds no error in the requirement to choose a referee who was not a candidate. The rationale was provided by the respondent and it was to avoid a potential conflict of interest. The respondent stated that the complainant and others were in the same position and all were required to select a different referee. The Tribunal finds that the respondent has provided a reasoned foundation for the position it took and it has not been demonstrated that this was an unwarranted decision.

60 With regard to the complainant's argument that the references are filled out differently, the Tribunal finds that he has not produced evidence of how the quality of the references was affected or varied. Viewing the documents objectively, it is evident that Mr. Munn's reference is a first person record and he recalls emailing it to the respondent. Mr. Kirschner cannot recall specific events surrounding his reference nor say whether he received preparatory information before giving his reference. He does not recall the means by which he gave the reference. It is expressed in the third person and it does not contain instructions and definitions. These factors suggest that his account is related on the document as told to a third party. In evidence, he stated that it

was factual but not complete. However, he did not state how it was incomplete or what may have been missing.

61 In his testimony, Mr. Kirschner was unable to recall events and did not elaborate on how the manner in which the references were conducted affected the content of the reference he gave. The Tribunal does not find evidence that the means of collecting the references influenced their substantive content. In any event, the Tribunal notes that the complainant received scores for his references that exceeded the board's minimum requirement.

62 In *Jolin v. Deputy Head of Service Canada*, 2007 PSST 0011, at para. 43, the Tribunal held that: "It is not sufficient to file allegations and to argue that the respondent abused his authority in applying the merit principle. The complainant must produce convincing evidence of the abuse of authority that she is alleging."

63 Other than the appearance of one referee writing his reference and one dictating it, the Tribunal is unable to find that the evidence shows that the references were treated differently. The Tribunal finds that the burden of proof has not been discharged and will not intervene in the matter of the reference checks.

64 In the matter of marking the references, the Tribunal finds that the board exercised the discretion given to it when it elected to exclude the referees' scores from its deliberation. The board was entitled to assess the material that was before it without relying on the score that the referees would have awarded if they had been charged with assessing candidates. The decision to exclude the referees' scores was consistently applied to each candidate and there is no evidence to show why the scores themselves would have been necessary to the board's deliberation.

65 The Tribunal accepts the respondent's argument that the complainant's submission to the board after informal discussion enlarged significantly on the answer he provided originally. This subsequent submission added the concept of independence which is not found in the record of his interview. It was an aspect of the expected answer and there is no corroborating evidence that the complainant mentioned it during his interview.

66 The Tribunal finds that the board was entitled to assess the complainant based on his performance during the interview and to disregard any expansion to the original answer that was contained in his written submission after informal discussion. As the Tribunal discussed in *Rozka. v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046 at paras. 75 and 76, informal discussion provides an opportunity for discussion and correction of mistakes. It is not an opportunity to request that the board reassess a candidate's qualifications.

67 From the evidence, it appears that informal discussion focused only on the question of autonomy and the complainant was not aware that he had also failed to attain a pass mark for effective interpersonal relationships. The respondent ought to have been more forthcoming. Given the purpose of informal discussion, the respondent should then have given the complainant the more complete picture of his candidacy that it later provided in its response to his allegations. Nonetheless, the Tribunal considers that the omission has been corrected, that the failure to disclose both of the failed merit criteria did not impact the result of the process, and that the respondent's actions do not support a finding that it acted in bad faith.

68 To conclude, the Tribunal having reviewed all of the evidence finds that the complainant has not established that the respondent acted with serious carelessness or recklessness or in any way constituting bad faith.

(ii) Has the complainant established that there was bias or a reasonable apprehension of bias in the appointment process?

69 In asserting bad faith, the complainant urges that Mr. Fuller must have been biased or improperly motivated against his success. In the Tribunal's view, there is no direct evidence of bias. It then falls to the Tribunal to consider whether the evidence discloses a reasonable apprehension of bias that is discoverable in the circumstances presented in evidence.

70 In *Denny v. Deputy Minister of National Defence*, 2009 PSST 0029 at para. 125, the Tribunal referred to *Committee for Justice and Liberty v. Canada (National Energy*

Board), [1978] 1 S.C.R. 369, which sets out the test for reasonable apprehension of bias at p. 394 (S.C.R.):

[T]he apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information....[T]hat test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

71 The Tribunal in *Denny* also referred to the more recent expression of the test set out in *Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (S.C.C.), [1992] 1 S.C.R. 623: Would a reasonably informed bystander looking at the process reasonably perceive bias on the part of one or more of the persons involved in the assessment of the complainant?

72 Applying this test to this case, a reasonably informed bystander would consider the events that have been placed in issue: increasing the pass mark to 60%, providing the meaning of autonomy to some candidates only, talking about Bosnia at the beginning of the interview, scoring the complainant’s responses for autonomy and effective interpersonal relationships, requiring a different reference, gathering and assessing references, and evaluating the submission made after informal discussion. The reasonably informed bystander would determine that these do not give rise to an apprehension of bias on the part of the board members.

73 Earlier in this decision, the Tribunal considered each of these events and found the evidence to provide reasoned explanations of the actions taken by the board and Mr. Fuller in the discharge of their function.

74 Similarly, the informed bystander would find a coherent body of evidence to explain the appointment process, the actions taken, and the conclusions reached.

75 As the Tribunal stated in *Denny*, at para. 124, the test for reasonable apprehension of bias is well established. Suspicions or speculation are not enough. It is a fact that the complainant and Mr. Fuller were members in the same EX pool, but that coincidence has not been shown to have had a discernable influence on this process.

The Tribunal finds no evidence whatsoever to demonstrate why Mr. Fuller would be personally motivated to eliminate the complainant from the process.

76 An objective assessment of the evidence presented in this case reveals reasonable explanations for the events that were placed in issue. The Tribunal finds that the evidence does not satisfy the test for a reasonable apprehension of bias.

Conclusion

77 Accordingly, the Tribunal concludes that the complainant has not proven on the balance of probabilities that there was an abuse of authority in the application of merit in this appointment process.

Decision

78 For all of these reasons, the complaint is dismissed.

Joanne B. Archibald
Member

Parties of Record

Tribunal File	2009-0090
Style of Cause	<i>Robert Campbell and the Deputy Minister of Transport Canada</i>
Hearing	June 1-2, 2010 Halifax, Nova Scotia
Date of Reasons	September 24, 2010
APPEARANCES:	
For the complainant	John Fox
For the respondent	Anne-Marie Duquette