Public Service Staffing Tribunal
Tribunal de la dotation de la fonction publique

Files: 2008-0236, 0244-0246, 0250-0256, 0258-0263, 0269, 0270, 0276, 0277, 0279, 0280, 0282, 0288, 0291, 0292, 0294, 0295, 0297, 0298, 0300-0320, 0322-0338, 0342-0344, 0346-0354, 0356-0360, 0370-0378, 0414

Issued at: Ottawa, June 28, 2011

MED VELASCO

Complainants

AND

THE DEPUTY MINISTER OF TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

Respondent

AND

OTHER PARTIES

Matter	Complaint of abuse of authority pursuant to sections 77(1)(*a*) and (*b*) of the *Public Service Employment Act*
Decision	The complaints are dismissed
Decision rendered by	Merri Beattie, Member
Language of Decision	English
Indexed	*Velasco v. Deputy Minister of Transport, Infrastructure and Communities*
Neutral Citation	2011 PSST 0017

Reasons for Decision

Introduction

1 In April 2008, 21 non-advertised, specified period (term) appointments were made to positions at the AO-CAI-03 group and level in five regional offices of the Civil Aviation Branch of the Department of Transport. Prior to their appointments, the 21 appointees occupied AO-CAI-02 positions that were identical to the positions occupied by 23 individuals who filed complaints with the Public Service Staffing Tribunal (Tribunal) concerning these appointments.

2 These complaints are identified collectively as *Med Velasco*. In addition to Mr. Velasco, the following individuals are complainants in this file: Robert Hewitt, Kenton McAffer, William Moyse, David Smith, Jeffrey Calvert, Calvin Winter, Roger LeBlanc, Shawn McIntyre, David Parkes, Paul Risk, Harry Wray, Lenora Crane, Edward Rinn, Kirk MacNeil, Clifford Miskey, Glen Blachford, Gordon Manuel, Joseph Gaudry, Richard Gagnon, Myles Cleaver, Shona Hirota and Normand Audet.

3 The complainants allege that no appointments were really made; that the respondent knew that these were reclassifications but made appointments under the *Public Service Employment Act*, S.C. 2003, c.22, ss. 12, 13 (the *PSEA*) to avoid the cost of reclassifying more positions. They contend that it was an abuse of authority to consider only one person for each appointment. They also allege that one of the essential experience qualifications was arbitrarily established since it has no relation to the Aircraft Operations (AO) classification standard.

4 The respondent in these complaints is the Deputy Minister, Transport, Infrastructure and Communities. The respondent denies that there was any abuse of authority in the choice to make non-advertised appointments or in the conduct of those appointments. The respondent asserts that the classification issues raised by the complainants are outside the scope of a complaint filed under s. 77 of the *PSEA*. The respondent also maintains that the essential experience qualification was not arbitrarily chosen; it was derived from the statement of work in the AO-CAI-03 work description.

5 The Public Service Commission (PSC) agrees with the respondent's position regarding classification matters. It submits that classification activities are governed by the *Financial Administration Act*, R.S.C. 1985, c. F-11 *(FAA*), whereas appointments and the mandate of the Tribunal to consider complaints of abuse of authority are governed by the *PSEA*. The PSC asserts that these authorities must be maintained as separate, each with its own recourse.

Background

6 Inspections of commercial air operators are performed across Canada by the Commercial and Business Aviation Division, Civil Aviation Branch. For many years, in the regional offices, these duties have been assigned to Regional Inspector positions at the AO-CAI-02 group and level (CAI-02s).

7 In 2003, two Regional Inspectors filed grievances concerning the content of their work descriptions. Based on the final outcome of the grievance process, which took several years, the respondent acknowledged that the grievors were responsible for inspecting large air operators and large aircraft and a new work description was written to reflect those duties. The duties were classified at the AO-CAI-03 group and level and were identified by the title Regional Commercial Business Aviation Inspector – Large Aircraft.

8 While the grievance process was ongoing, the National Organizational Transition Implementation Project (NOTIP) was initiated. The NOTIP, which was still underway at the time of this hearing, is a major review of the Civil Aviation Branch structure; new work descriptions will be written for all positions.

9 Once the grievance process concluded, the respondent conducted a review of the inspection work in all regions and identified 19 other Regional Inspectors who were performing inspections of large air operators and large aircraft. The respondent established 21 AO-CAI-03 positions as new positions (CAI-03s) and appointed the 21 identified Regional Inspectors by non-advertised appointment processes. These are the appointments at issue in these complaints.

10 Because the NOTIP was still ongoing, the respondent decided to establish the CAI-03s as term positions, pending its outcome. The 21 term appointments were for the period from April 1, 2008 to March 31, 2010. The respondent protected the indeterminate status and related rights and benefits of the appointees. The respondent also took administrative action to compensate the appointees retroactively for the CAI-03 work they had performed prior to these appointments.

11 The 23 complainants are all CAI-02 Regional Inspectors who were not appointed or proposed for appointment at the CAI-03 level. Each complainant filed multiple complaints with the Tribunal in response to the various *Notifications of Appointment or Proposal of Appointment* (*Notices*) that were issued regarding the 21 non-advertised appointments. All are complaints of abuse of authority filed under s. 77 of the *PSEA*. By letter decision dated June 17, 2008, the Tribunal consolidated 96 complaints in this matter, in accordance with s. 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6.

Issues

12 The Tribunal must determine the following issues:

(i) Did the respondent abuse its authority by making appointments under the *PSEA*?

(ii) Did the respondent abuse its authority in choosing to use non-advertised appointment processes?

(iii) Did the respondent abuse its authority in establishing one of the essential qualifications?

Relevant legislative provisions

13 Section 88(2) of the *PSEA* sets out the mandate of the Tribunal and, in particular, its mandate to hear complaints of abuse of authority made under s. 77 of the *PSEA*: “The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83.”

14 These complaints were filed under s. 77(1)(*a*) and (*b*) of the *PSEA* which establishes the circumstances and the grounds for making a complaint regarding an internal appointment process and refers to the criteria for making an appointment on the basis of merit under s. 30(2) of the *PSEA*. These provisions should be read together.

> **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);
>
> (*b*) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; (…)
>
> **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; (…)

15 Section 31 places a condition on the qualifications established under s. 30(2) that is relevant to these complaints.

> **31.** (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service.
>
> (2) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i) must meet or exceed any applicable qualification standards established by the employer under subsection (1).

Analysis

16 These complaints largely concern two classification-related decisions. The first is the respondent's decision that the CAI-03 positions are new rather than reclassifications of existing positions. The second concerns the content of the CAI-03 work description, specifically the respondent's determination of what distinguishes CAI-03 positions from CAI-02 positions. The complainants did not provide an explanation of concepts that are integral to their arguments, namely, reclassification and new position.

17 The provisions of the *PSEA* clearly authorize the Tribunal to consider complaints concerning the conduct of an appointment process and the resulting appointments. The Tribunal's mandate does not include the consideration and disposal of classification matters, which are undertaken pursuant to s. 11.1(*b*) of the *FAA*. See *Rinn v. Deputy Minister of Transport, Infrastructure and Communities*, 2007 PSST 0044 (*Rinn*).

18 The fact that the Tribunal does not have jurisdiction over classification matters, however, does not preclude it from examining classification-related evidence to the extent that such evidence relates to abuse of authority in an appointment process In *Rinn*, the Tribunal examined a complaint pertaining to an acting appointment to a temporary position created for acting purposes (shadow position). In that case the complainant challenged the classification of the shadow position and argued that the qualifications used in the appointment process did not respect the classification standard. The Tribunal stated that whether the respondent respected the classification standard is not an issue that can be determined by the Tribunal. It provided its framework for examining an essential qualification based on ss. 30(2) and 31(2) of the *PSEA*. More recently, in *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 0035 (*Beyak*), the Tribunal examined classification-related evidence as it pertained to an allegation of personal favouritism.

19 In *Kilbray and Wersch v. Attorney General of Canada and the Public Service Commission of Canada*, 2009 FC 390 (*Kilbray)*, at paragraph 55, the Federal Court positively considered the approach taken by the Tribunal in *Rinn*, and noted that neither the Tribunal nor that Court, on judicial review, should determine whether a position is properly classified.

20 Accordingly, it is not the Tribunal's mandate to determine whether classification has been properly conducted, but it must consider evidence that is relevant to the complaint made under s. 77 of the *PSEA*.

Issue I: Did the respondent abuse its authority by making appointments under the *PSEA*?

21 The complainants argue that it is an abuse of authority to use the appointment provisions in the *PSEA* for a purpose other than the one intended by the legislation. They submit that, in this case, the respondent misused the appointment provisions of the *PSEA* by making appointments instead of reclassifying the CAI-02 positions to the CAI-03 level. The complainants argue that no appointments were required and that none were really made, since these were not new positions with new duties.

22 The respondent submits that the complainants' argument is based on a misconception that reclassification can take the place of an appointment. It argues that whether a position is reclassified or new, an appointment under the *PSEA* is required. The respondent argues that the Tribunal has no jurisdiction to determine classification matters, including whether a position is new or the reclassification of an existing position.

23 The PSC agrees with the respondent's position that reclassification is not a substitute for an appointment and, therefore, an appointment process cannot be used to avoid a reclassification. The PSC submits that nothing in the *PSEA*, the *Public Service Employment Regulations*, SOR/2005-334, or PSC policy requires the creation of a new position before making an appointment.

24 In the *PSEA* there is no mention of reclassification. Reclassification is a term associated with the system of classifying positions in the public service (classification system). The classification system is governed by the Treasury Board's Policy on Classification System and Delegation of Authority (Classification Policy), which authorizes deputy heads to classify positions in their organizations in accordance with Treasury Board policy and guidelines issued by the Treasury Board Secretariat (TBS). See *Rinn*.

25 The TBS's guidelines on reclassification define reclassification as occurring when the evaluation of a position's work description results in a change to either or both its

occupational group and level due to a significant change in the work assigned to it. The guidelines direct managers to either establish a new position or assign the work to existing positions, if appropriate, and take the appropriate staffing action.

26 Reclassification relates only to positions and is not an appointment or a substitute for an appointment of a person under the *PSEA*. Whether a position is new or reclassified, an appointment under the *PSEA* is required if the position is to be filled or the group and level of the incumbent is to be changed.

27 The TBS's guidelines on reclassification govern situations such as this one, where several positions are covered by the same work description. The guidelines direct delegates to identify whether the change in the work applies to all or only some of the positions, and stipulate that, when the change applies only to some, reclassification is not possible and new positions must be established in lieu of reclassifying the existing ones. Accordingly, the Tribunal concludes that, if the respondent had determined that the CAI-03 duties applied to all the CAI-02 positions, it would have been possible to reclassify all the CAI-02 positions.

28 Therefore, the Tribunal concludes that the significance of the complainants' argument that these were reclassifications is that, if the appointees' positions had been reclassified, all the CAI-02 positions would have been reclassified to the CAI-03 level. The complainants make no claim on the 21 positions that were staffed. They submit that their positions should have been reclassified to the CAI-03 level in addition to, not instead of, the appointees' positions. In light of the fact that reclassified positions require appointments under the *PSEA*, the complainants are essentially arguing that they should also have been appointed to the CAI-03 level.

29 This argument is significantly different than the one reviewed by the Federal Court of Appeal in *Kane v. Attorney General of Canada and Public Service Commission*, 2011 FCA 19 (application for leave to appeal before the Supreme Court of Canada pending). In reviewing the Tribunal's decision in *Kane*, the Federal Court of

Appeal found that the Tribunal failed to consider the complainant's argument that he was denied an appointment because someone else had been appointed instead of him to his reclassified position.

30 The Tribunal's mandate is to examine appointments that have been made or proposed. Despite the complainants' submission that the 21 appointments should be

revoked, none of the appointments that were made is really at issue. Under the complainants' proposed scenario of reclassification, the 21 appointments would stand and the complainants could have been appointed as well as, not instead of, the appointees.

31 The evidence in this case demonstrates that two work description grievances resulted in a new CAI-03 work description that applied to the two grievors. Subsequently, the respondent reviewed the work of all Regional Inspectors and found that the new work description applied to some, but not all of them. This situation is specifically provided for in the TBS's guidelines on reclassification.

32 The complainants argue that the respondent manipulated the classification system to avoid reclassifying all the CAI-02 positions. In support of their argument, the complainants entered into evidence an email dated June 19, 2007, written by Robert Sincennes, Director of Management Services, Civil Aviation. They specifically referred the Tribunal to two statements in the email which they submit demonstrate that the respondent wanted to limit the number of CAI-03 positions and appointments.

33 Mr. Sincennes did not appear before the Tribunal. Jennifer Taylor, Director of National Operations, Civil Aviation, was called to testify by the respondent. She explained that Mr. Sincennes was assigned to manage the national implementation of the grievance decision as a project. The June 19 email is an update on the project for Merlin Preuss, Director General, Civil Aviation.

34 The Tribunal cannot agree with the complainant's assertion that statements in the email demonstrate an improper motivation or any misuse of the classification system. Following an introduction, Mr. Sincennes' email contains eight points that are replicated below. The two statements raised by the complainants are marked for emphasis.

> 1. CAI classification (large aircraft) issue revisited as a result of grievance by 2 CAIs in Pacific region
>
> 2. Result of grievance - 2 CAI-02s demonstrated to be performing CAI-03 duties (…)
>
> 3. Solution - new CAI-03 position description developed by HQ for regional use for these individuals

4. **Given generic nature of CAI jobs reclassification is not practical nor possible given national implication**.

5. Grievance resolution process also provides criteria to address other similar issues across the country

6. Decision to identify these individuals rather than go through grievance process is agreed to between HR and Civil Aviation

7. **HR support sought to develop best possible implementation strategy (i.e.: solution having lowest risk)**

8. 2 step approach developed (using grievance decisions as benchmark):

   - 1-identify affected individuals

   - 2-determine length of time in position (unbroken service)

(Numbers added and emphasis added to identify statements identified by complainants)

35 Points one to three, five, six and eight are factual statements that are consistent with the testimony of Rawan El-Komos, Chief of Corporate Staffing and Development Programs, who was called as a witness by the respondent. The complainants do not contest these points.

36 As already stated, the TBS's guidelines on reclassification govern situations such as this one where several positions are covered by the same work description and the work changes for only some of them. The guidelines stipulate that, in those circumstances, reclassification is not possible and new positions must be established in lieu of reclassifying existing ones. Mr. Sincennes' statement in point 4 does not demonstrate that the respondent wanted to avoid reclassification. Given the circumstances, reclassification was prohibited and the Tribunal finds that the statement merely reflects that.

37 The complainants submit that the low-risk solution mentioned in point 7 demonstrates that the respondent wanted to avoid the expense of reclassifying all the CAI-02s.

38 Even in the absence of a specific explanation of this statement from the respondent, the Tribunal finds that this argument is merely an assertion by the complainants, without evidence. First, the complainants have not established that the respondent wanted to limit the number of CAI-03 positions or that it would be improper

to do so. Secondly, Mr. Sincennes' statement does not refer to cost and, even if it did, the complainants have failed to establish that cost management is inappropriate.

39 The Tribunal finds that the respondent did not misuse the appointment provisions of the *PSEA*. Whether the CAI-03s were new or reclassified positions, appointments under the *PSEA* were required. The Tribunal finds that the evidence before it does not demonstrate any misuse or disregard of the classification system that is relevant to the appointments that were made. The complainants have failed to demonstrate that the respondent abused its authority by making these appointments under the *PSEA*.

Issue II: Did the respondent abuse its authority in choosing to use non-advertised appointment processes?

40 Section 77(1)(*b*) of the *PSEA* provides that a complaint may be made that the respondent abused its authority in choosing between an advertised and a non-advertised appointment process. The complainants did not present this argument. The complainants argue that it was an abuse to make non-advertised appointments instead of reclassifications. This has already been addressed in these reasons.

41 Nevertheless, in his testimony, Mr. Rinn stated that the choice to use non-advertised processes denied him an opportunity to be considered for appointment to the CAI-03 level. However, under the *PSEA*, the very nature of a non-advertised appointment process is that it does not present an opportunity for people to apply. Therefore, without more, this single statement in the complainants' case does not establish abuse of authority. See *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046.

42 The complainants submit that, in choosing to make non-advertised appointments, the respondent abused its authority in two ways: the respondent was not transparent and it adopted an inflexible policy to consider only one person for each of these appointments.

43 With respect to transparency, the complainants submit that the respondent concealed the reason for making these appointments which, according to them, was to

avoid reclassifications. They argue that this was concealed in a communications plan the respondent developed, in the rationales it prepared for each appointment, and in the reply to the complainants' allegations it filed with the Tribunal.

44 The Tribunal has already established that whether the positions were new or reclassified, appointments were required. The determination that these were new positions was made on behalf of the Treasury Board as the employer, in accordance with its policy and guidelines issued by the TBS on the employer's behalf. The complainants have failed to establish that the employer avoided reclassification of the CAI-02 positions or that it had an improper reason for doing so. The Tribunal will examine whether the respondent was transparent with respect to its choice for making non-advertised appointments.

45 The uncontested evidence that was presented at the hearing establishes that these appointments were the final steps taken by the respondent after work description grievances were upheld. The evidence demonstrates that two CAI-02 Regional Inspectors filed grievances and were successful in establishing that they were performing inspections of large air operators and large aircraft (large aircraft duties). Consequently, the respondent wrote a new work description, which was reviewed and classified at the AO-CAI-03 group and level. The respondent then examined the inspection work across all regions and identified 19 other Regional Inspectors who were performing large aircraft duties. New Regional Commercial Business Aviation Inspector positions (CAI-03s) were created and each of the 21 identified Inspectors was appointed through a non-advertised process.

46 In its reply to the complainants' allegations in these complaints, the respondent linked the new CAI-03s to the NOTIP. However, the respondent's witnesses acknowledged that the new positions and subsequent appointments were not related to the NOTIP, but were a direct result of the grievances. The respondent's reply to the complainants' allegations is somewhat troubling. It is, at the very least, inaccurate. Nevertheless, the Tribunal is satisfied that the respondent was transparent about its reasons for making these non-advertised appointments prior to and at the time they were made.

47 A sample of one rationale was introduced into evidence through the testimony of Ms. El-Komos. She testified that the sample rationale is representative of all 21 that were completed.

48 Regional managers were provided a template to prepare a rationale for each of the non-advertised appointments that was made under their authority. Ms. El-Komos explained that the template lists the various criteria that have been established for using non-advertised appointment processes in Transport Canada. She testified that the criteria that applied to these appointments were identified by Civil Aviation management with advice from Human Resources. According to the rationale, these non-advertised appointments were made because the AO-CAI is a shortage group and appointments to the group require highly specialized skills. Ms. El-Komos stated that shortage refers to labour market availability or problems recruiting and retaining people. She also stated that aircraft inspection work is highly specialized, particularly work associated with specific aircraft.

49 The Tribunal accepts the respondent's characterization of the AO-CAI group as one that requires highly specialized skills that are scarce in the labour market. However those criteria in the rationale do not reflect the actual reason for making these non-advertised appointments which was to reconcile the appointees' level following a grievance decision. Although only two of the appointees filed work description grievances, all 21 appointments were made when the grievance decision was applied to identical circumstances nationally. Nevertheless, the rationale, as a whole, is informative and accurate.

50 The rationale states that information about these appointments had been communicated to all employees of Civil Aviation Branch; however, Mr. Rinn testified that he only became aware of the appointments when the *Notices* were issued in early May 2008. Ms. El-Komos stated that she could not testify about what other people knew or when they obtained that knowledge. She was not in attendance at any meetings of regional employees. However, she testified that she had provided information to managers, had seen the information that was shared among managers and had

received updates about staff briefings from managers, in accordance with the communications plan.

51 The plan for communicating the respondent's decisions about the new CAI-03's was presented to the Tribunal on consent of the parties. The stated objective of the communications plan was to provide information about the background that led to the creation and implementation of the new work descriptions. The information was for regional managers, the Inspectors in Commercial and Business Aviation and the bargaining agent, the Canadian Federal Pilots Association (CFPA). The plan states that regional directors and managers were to communicate the background information to the Inspectors under their management and that the CFPA had been briefed. Mr. Holbrook, Chairperson of the CFPA, confirmed in his testimony that he was briefed on March 6, 2008. He stated that the information he was given at the meeting was the same as that in the communications plan, which he received shortly thereafter.

52 Both the communications plan and the rationale cover the sequence of events following the grievances that led to the appointments. Both refer to the respondent's recognition of the regional employees who were performing large aircraft duties but do not mention the grievances that gave rise to that recognition.

53 According to the PSC's *Appointment Policy*, transparency is achieved when information about strategies, policies, practices and decisions is communicated in an open and timely manner. The Tribunal has stated that, in the context of a non-advertised appointment process, notification of the appointment decision to employees, the opportunity to discuss the reasons for the decision informally, and an examination of the process through recourse to the Tribunal are measures that contribute to transparency. See for example, *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 0024.

54 The Tribunal finds that the respondent took appropriate measures to ensure transparency in these appointment processes. By their very nature, non-advertised appointment processes are not advertised to employees prior to the appointment decision. The respondent issued notifications to ensure that employees were informed

of the appointment decision. In addition, the circumstances of these appointments indicated that special measures should be taken to communicate with employees and the respondent did so. The respondent also informed the CFPA in advance of the appointments. Although the respondent could have specifically mentioned the two grievances in the communication plan and the rationales, in the Tribunal's view, the evidence shows that there was sufficient transparency in the appointment processes.

55 According to s. 33 of the *PSEA*, the respondent could choose to conduct either advertised or non-advertised appointment processes to fill the new CAI-03 positions. Furthermore, according to s. 30(4), the respondent was not required to consider more than one person, for each appointment to be made on the basis of merit.

56 The complainants do not dispute the fact that the 21 appointees had been performing the CAI-03 duties for a significant period of time. In the circumstances, the respondent had not identified a need to fill CAI-03 positions; it was not offering opportunities for appointment at that level. The respondent was performing the final step in applying a grievance decision pertaining to a work description.

57 The Tribunal is satisfied that, in these circumstances, consideration of only one person for each appointment was reasonable and appropriate.

58 The Tribunal finds that the respondent did not abuse its authority in choosing to use non-advertised processes, including the decision to consider only one person for each appointment. The Tribunal also finds that the respondent was transparent about its decision and the reason for it.

Issue III: Did the respondent abuse its authority in establishing one of the essential qualifications?

59 The essential qualifications were identical for all 21 appointments. The complainants argue that one of the essential experience qualifications is artificial and arbitrary and that the respondent established it to exclude any potential candidates.

60 The complainants argue that the essential qualification is arbitrary and artificial because it has no relation to the AO group classification standard.

61 These complaints were filed under s. 77 of the *PSEA*, which refers to the authorities exercised under s. 30(2) of the *PSEA*. Section 30(1) of the *PSEA* clearly states that appointments shall be made on the basis of merit. Section 30(2), in turn, establishes that, for an appointment to be based on merit, the person must meet the qualifications that the deputy head has determined are essential "for the work to be performed" (the essential qualifications).

62 Section 31(2) of the *PSEA* stipulates that the essential qualifications established by the deputy head to be used in making an appointment based on merit, must meet or exceed the **qualification standards** established by the employer. Section 31 reads as follows:

> 31. (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service.
>
> (2) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i) must meet or exceed any applicable qualification standards established by the employer under subsection (1).

63 Thus, in a complaint under s. 77 of the *PSEA*, the Tribunal has jurisdiction to examine an allegation that an essential qualification does not meet or exceed the applicable **qualification standard** established by the employer. As stated in the Tribunal's decision in *Rinn*, whether the respondent has respected the employer's classification standards is not an issue that can be determined by the Tribunal.

64 The essential experience qualification at issue is:

> Experience as Principal Operations Inspector for Commercial and Business Air Operators with aircraft **over 35,000 lbs. maximum gross take-off weight for turbine jet-powered** aircraft and **exceed 100,000 lbs**. **for all other aircraft** or experience as an inspector involved in evaluating the technical and personnel competency of the companies as it pertains to these aircraft.
>
> (Emphasis added)

65 The respondent submitted the AO group **qualification standard** into evidence. Ms. El-Komos confirmed that this standard does not contain a minimum experience

qualification. Accordingly, the Tribunal finds that the essential qualification in this case exceeds the qualification standard and, therefore, complies with s. 31(2) of the *PSEA*.

66 The new CAI-03 work description was also introduced at the hearing. It contains language in the following client service results statement that is identical to the essential qualification:

> Safety compliance inspection, audit and assessment services, and validation of technical and personnel competency of Commercial and Business air Operators with aircraft **over 35,000 lbs. maximum gross take-off weight for turbine jet-powered aircraft** and **exceed 100,000 lbs. for all other aircraft**.
>
> (Emphasis added)

67 The essential qualification at issue is derived directly from the CAI-03 work description; the wording is identical. On its face, therefore, the qualification is not arbitrary.

68 This allegation is essentially that the new CAI-03 work description is artificial and arbitrary because it is inconsistent with the AO classification standard. That classification standard contains a work description that is representative of an AO-CAI-03 position. The weight threshold for large aircraft in that description is lower than the weight threshold in the new CAI-03 work description developed by the respondent.

69 In her testimony, Ms. El-Komos stated that work descriptions are not written based on classification standards; classification standards are applied after a work description is written, to evaluate the work and determine the classification of the position.

70 The Tribunal finds that this testimony is consistent with the Treasury Board Classification Policy. This policy defines a work description as a document approved by the respective manager that describes the work requirements and contains all the information needed to apply the appropriate classification standard to evaluate the work description in order to establish the level of a position. The Classification Policy states that the TBS shall develop and issue guidelines for work description writing and evaluation, as well as related matters pertaining to classification.

71 This is significant because the Classification Policy clearly includes work description writing under the Treasury Board's authority. The Tribunal does not have jurisdiction to determine whether the respondent was required to apply the AO classification standard when it wrote the CAI-03 work description, or whether it applied the classification standard properly. These are classification-related activities that are performed on behalf of the Treasury Board as the employer and are governed by Treasury Board policy and guidelines issued by the TBS.

72 This situation is different from the one that the Tribunal examined in *Beyak*, where a work description did not accurately reflect the work performed by the appointee and was one of several items of evidence that established personal favouritism. The facts in this case are different. All the evidence here, including the complainants', shows that the appointees were performing the CAI-03 work before and after the appointments. There is no allegation of personal favouritism toward any of the appointees, and an allegation of bias was not raised by the complainants.

73 Also, the respondent called a witness who explained the weight criteria that were used for the essential qualification. This evidence was uncontested by the complainants. Ms. Taylor testified that the weight criteria used to differentiate large aircraft from others represent more than simply the size of the aircraft. She explained that small air operators typically offer shorter, repetitive flights on smaller planes. Their personnel have narrow expertise because their destinations would have an established base of operations. On the other hand, large air operators typically use larger aircraft to fly longer distances, including overseas. Their personnel have to have broader expertise because they fly to places with limited base support. Inspectors audit the airline operators and assess their equipment, procedures and personnel. The weight criteria that were used represent the fact that the inspection work for large operators with large aircraft is more complex because their operation is more complex.

74 These are term positions which were described and established in the context of a decision from a grievance process conducted outside the provisions of the *PSEA*. The evidence shows that the work description is an accurate reflection of the actual work performed by the 21 appointees. A work description is one source of determining

qualifications that are essential for the work to be performed, as required by s. 30(2) of the *PSEA*. The Tribunal is satisfied that the essential experience qualification is not arbitrary; it explicitly describes the work that had been and was to be performed by the appointees.

75 As already mentioned, in the circumstances that led to these appointments, the respondent did not intend to create opportunities for appointments at the CAI-03 level. The respondent wanted to appoint those to whom the grievance decision applied, those who had been and would continue to perform the large aircraft duties. Accordingly, the respondent established a requirement for experience performing the large aircraft duties. Under these circumstances, the Tribunal is satisfied that this requirement is reasonable.

76 The complainants have failed to demonstrate that the respondent abused its authority in establishing the essential experience qualification in these appointment processes.

Decision

77 For all these reasons, the complaints are dismissed.

Merri Beattie
Member

Parties of Record

Tribunal Files	2008-0236, 0244-0246, 0250-0256, 0258-0263, 0269, 0270, 0276, 0277, 0279, 0280, 0282, 0288, 0291, 0292, 0294, 0295, 0297, 0298, 0300-0320, 0322-0338, 0342-0344, 0346-0354, 0356-0360, 0370-0378, 0414
Style of Cause	*Med Velasco and the Deputy Minister Transport, Infrastructure and Communities*
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Date of Reasons	June 28, 2011
APPEARANCES:	
For the complainants	Phillip Hunt
For the respondent	Martin Desmeules
For the Public Service Commission	Lili Ste-Marie