



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2010-0154
Issued at: Ottawa, October 4, 2011

STEVE SHARMA

Complainant

AND

**THE CHIEF PUBLIC HEALTH OFFICER OF THE PUBLIC HEALTH AGENCY OF
CANADA**

Respondent

AND

OTHER PARTIES

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

Decision The complaint is dismissed

Decision rendered by Maurice Gohier, Member

Language of Decision English

Indexed *Sharma v. Chief Public Health Officer of the Public Health Agency of Canada*

Neutral Citation 2011 PSST 0027

Reasons for Decision

Introduction

1 Steve Sharma (the complainant) made a complaint to the Public Service Staffing Tribunal (the Tribunal) on March 17, 2010, in response to the *Notice of Appointment or Proposal of Appointment* of five persons to Information Management Analyst positions, at the Public Health Agency of Canada. The complainant alleges that the marks awarded to him by the assessment board (the board) were unfair and inaccurate and that he was evaluated differently from other candidates. He also alleges that the board altered the method of assessment after the appointment process was started, and that some of the candidates received preferential treatment.

2 The Chief Public Health Officer (the respondent) replied that there was no abuse of authority in either its evaluation of the complainant or the decision not to appoint the complainant. It stated that the decision to modify the method of assessment was reasonable given the circumstances, and that there was no favouritism in the appointment process.

3 Although The Public Service Commission did not attend the hearing. It filed written submissions.

Background

4 The Tribunal issued a *Notice of Hearing* to the parties on May 10, 2011, informing the parties that the hearing into the complaint would take place on July 20 - 21, 2011, beginning at 9:30 a.m. in Ottawa, Ontario. On June 6, 2011, the Tribunal sent a *Notice of Venue* to the parties confirming the date and time of the hearing, as well as its specific location.

5 On July 20, 2011, the morning that the hearing was scheduled to begin, the complainant sent an email in which he informed the Tribunal and the parties that he would not be attending the hearing. The hearing was adjourned while the complainant was contacted by a Tribunal Registry Officer to determine his intentions with respect to his complaint. The complainant reiterated to the Tribunal's Registry Officer that he

would not be attending the hearing. The complainant was advised, by email, that the hearing in this matter would proceed in his absence.

Issue

6 The Tribunal must decide how it should deal with the complainant's decision not to attend the hearing.

Respondent's Argument

7 The respondent argued that the Tribunal should consider that the complaint has been abandoned by the complainant. In the alternative, the respondent indicated that it would not present any witnesses or evidence at the hearing.

8 Concerning the question of abandonment, the respondent presented several references in support of its position.

9 The respondent submits that it is the complainant who bears the burden of demonstrating on the balance of probabilities that an abuse of authority has occurred. By not attending the hearing, the complainant has not presented any evidence in support of his allegations and therefore the respondent could not respond.

Analysis

10 As was noted in *Vani v. Chief Statistician of Canada*, 2008 PSST 0029, at paras. 24 and 25, the jurisprudence is clear that the Tribunal is an administrative tribunal that is master of its own proceedings. As such, section 99(1)(d) of the PSEA empowers the Tribunal to "accept any evidence, whether admissible in a court of law or not." In addition, s. 29 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116 (the *PSST Regulations*), provides that when a party fails to appear at a hearing, and the Tribunal is satisfied that the Notice of Hearing was sent to that party, then the Tribunal may proceed with the hearing and dispose of the complaint without further notice.

11 In the case at hand, there is no dispute that the complainant was provided with proper notice of the date, time and location of the hearing. Section 29 of

the *PSST Regulations* gives the Tribunal the authority to proceed with the hearing even when one of the parties fails to attend.

12 It is a long-held principle that “he who alleges must prove.” It follows that it is the complainant who bears the burden of proving, on a balance of probabilities, the allegations of abuse of authority he raises. (See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, at paras. 49 and 50). To meet this burden, proper documentary and testimonial evidence must be presented in support of the allegations. In *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020, the Tribunal stated as follows at para. 50: “It is not sufficient for a complainant to make bold statements in the complaint and allegations claiming abuse of authority without supporting these allegations with evidence from witnesses, facts and/or documents.”

13 Given that the complainant has failed to present any evidence in support of his allegations, the complaint cannot be substantiated.

14 On a final note, the Tribunal admonishes the complainant’s conduct in this matter. Significant time and resources are expended by those involved in arranging and preparing for oral hearings where they are deemed appropriate. It is the responsibility of each of the parties to inform the Tribunal in a timely manner if they are not going to exercise their right to be heard following the receipt of a *Notice of Hearing*. To decide to do so on the morning of the date on which the hearing has been scheduled to begin is unacceptable.

Decision

15 For these reasons, the complaint is dismissed.

Maurice Gohier
Member

Parties of Record

Tribunal File	2010-0154
Style of Cause	<i>Steve Sharma and the Chief Public Health Officer of the Public Health Agency of Canada</i>
Hearing	July 20, 2011 Ottawa, Ontario
Date of Reasons	October 4, 2011
APPEARANCES:	
For the complainant	Did not attend hearing
For the respondent	Joshua Alcock
For the Public Service Commission	Trish Heffernan