



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2010-0350
Issued at: Ottawa, December 12, 2011

KIM WALKER-MCTAGGART

Complainant

AND

THE CHIEF EXECUTIVE OFFICER OF PASSPORT CANADA

Respondent

AND

OTHER PARTIES

Matter	Complaint of abuse of authority pursuant to section 77(1) (a) of the <i>Public Service Employment Act</i>
Decision	The complaint is dismissed
Decision rendered by	Merri Beattie, Member
Language of Decision	English
Indexed	<i>Walker-McTaggart v. Chief Executive Officer of Passport Canada</i>
Neutral Citation	2011 PSST 0039

Reasons for Decision

Introduction

1 Kim Walker-McTaggart, the complainant, applied in an internal advertised appointment process to fill Investigator/Analyst positions at the PM-03 group and level, in Passport Canada. She alleges that the respondent was flexible when it assessed other candidates' essential experience qualifications, but was rigid when assessing hers. She submits that this resulted in an incorrect and unfair assessment of her experience, which constitutes an abuse of authority.

2 The respondent, the Chief Executive Officer, Passport Canada, asserts that, although the complainant disagrees with the results of her assessment, the delegated manager applied a consistent level of flexibility and discretion when he assessed candidates' experience. The respondent denies any abuse of authority.

3 The Public Service Commission did not attend the hearing, but filed written submissions in which it provided its analysis of its *Assessment Policy* and *Official Languages in the Appointment Process Policy*.

Background

4 On March 2, 2010, the complainant was informed in writing that, based on the information she had provided in her application, she did not meet either of the two experience qualifications that were essential for the PM-03 appointment process. She was eliminated from further consideration.

5 A *Notification of Appointment or Proposal of Appointment* of two persons was issued on June 2, 2010. On June 16, 2010, the complainant filed a complaint of abuse of authority under s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA), with the Public Service Staffing Tribunal (the Tribunal).

Issue

6 The Tribunal must determine whether the respondent abused its authority in assessing the complainant's experience.

Analysis

7 Abuse of authority is not defined in the PSEA; however, s. 2(4) of the PSEA provides that “a reference in the Act to abuse of authority shall be construed as including bad faith and personal favouritism”.

8 In *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, the Tribunal established that abuse of authority will always include improper conduct, but the degree to which the conduct is improper may determine whether or not it constitutes abuse of authority.

9 The following two essential experience qualifications were established for this appointment process:

Recent (within approximately the last three years) and significant (for a continuous and consistent period of a minimum of one year) experience in analyzing, interpreting, enforcing legislation, order, policies or procedures (Exp 1).

Significant (for a continuous and consistent period of a minimum of about one year) experience in conducting research, analyzing information and preparing documents in which recommendations are presented and justified (Exp 2).

(Exp 1 and Exp 2 added by the Tribunal)

10 The *Job Opportunity Advertisement* (JOA) includes the following instructions to applicants:

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

By providing concrete examples in their cover letter and resume, candidates must clearly demonstrate how they meet the education and experience listed in the essential qualifications.

11 The complainant asserts that the experience she described in her application exceeds the stated requirements and includes the necessary concrete examples. In support of her position that the respondent assessed her application more rigidly than others, the complainant tendered her application and the applications of two of the 22 candidates who were screened into the process. The identifying information had

been removed from the two screened-in applications and the identity of those applicants was not provided to the Tribunal.

12 The Tribunal has held in several decisions that its role is not to reassess candidates in an appointment process, but to examine how the assessment has been done and determine whether there has been an abuse of authority. See, for example, *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020.

13 Martin Dufault, Manager of the Intelligence Division, Passport Canada, conducted this appointment process with a colleague from another Division who had similar positions to staff. Mr. Dufault reviewed the candidates' applications to assess their experience.

14 Mr. Dufault testified that he examined the applications in their entirety, to search for the specific experience listed in the essential qualifications. He explained that there was no requirement for candidates to have experience within Passport Canada. He accepted, for example, candidates' experience analyzing, interpreting and enforcing any legislation, not just those related to the issue or cancellation of passports. Mr. Dufault stated that it was important that the experience described by candidates was transferrable to the positions to be staffed. It was also important that candidates clearly demonstrate what activities they themselves had performed.

15 The complainant testified that, in describing her experience as an Entitlement Officer and a Passport Examiner with Passport Canada, she provided concrete examples that address both experience qualifications. She also stated that her experience as Direct Care Youth Worker demonstrates her experience in presenting recommendations.

16 Mr. Dufault stated that the complainant's application spoke of her knowledge of, for example, the Canadian Passport Order and relevant legislation. He found that she demonstrated some experience interpreting legislation, but she did not demonstrate that this was part of her regular, ongoing duties. Mr. Dufault also found that, although the complainant referred to information and case analysis, she did not demonstrate that

she had experience analyzing legislation. Mr. Dufault testified that the complainant demonstrated her experience conducting research and analyzing information; however, she did not demonstrate that she had any experience preparing written recommendations with justifications.

17 The complainant challenged whether the two screened-in applicants met the requirement for continuous and consistent experience which, in her view, must be obtained through one job. Mr. Dufault explained that candidates had to show that they performed the required activities regularly in their daily work to meet the requirement of continuous and consistent experience. He did not, however, require candidates to have acquired the experience in one position. For Exp 2, Mr. Dufault accepted regular, daily experience of more than eight months duration, as was done in previous PM-03 appointment processes.

18 According to the complainant, the only acceptable experience is that obtained through a paid position. She pointed out that one of the screened-in applications she tendered included experience gained through university study.

19 Mr. Dufault testified that he accepted experience acquired in a paid job, in a volunteer position or in academic work, provided it was relevant and transferrable to the positions to be staffed. He explained that Passport Canada participates actively in student hiring programs and accepts relevant experience gained through academic work to provide access to former students. This approach also increases the number of potential candidates for positions that have a high rate of turnover.

20 The complainant believes that she has the experience required to perform the PM-03 duties and she assumed that she had demonstrated it in her application. In her testimony, she provided more detail about her experience and she stated that, as a manager in Passport Canada, Mr. Dufault should have known her work, or could have obtained that information by researching her work description.

21 The Tribunal has held in several decisions that it is a candidate's responsibility to clearly demonstrate in their application that they meet all the essential qualifications. See, for example, *Edwards v. Deputy Minister of Indian and Northern Affairs Canada*,

2011 PSST 0010. The instructions to candidates in this case were clear. The JOA explicitly cautioned candidates that failure to demonstrate their qualifications in their applications could result in their elimination from the appointment process.

22 The Tribunal finds that Mr. Dufault established a rational, reasonable approach to assessing candidates' experience qualifications. Moreover, in his testimony, he provided a detailed explanation of his assessment of the complainant's application and the two other applications put before the Tribunal. Throughout his testimony, he was clear in explaining the decisions he made, and his reasoning was consistent with his stated approach to assessing the essential experience qualifications.

23 There is no evidence that the respondent assessed the complainant's application improperly, or subjected it to a standard that differed from the one used for other applications. The instructions to applicants were clear; they were responsible for providing sufficient detail to demonstrate that they had the required experience when they applied. The complainant failed to do so.

24 The complainant also alleged that Mr. Dufault is not sufficiently proficient in English to assess her application. Mr. Dufault was questioned on this matter; however, the complainant did not pursue this allegation in her arguments. Mr. Dufault gave detailed testimony, in English, concerning his assessment of the complainant's application. His testimony that he has exemptions from further English language testing, the highest level possible, was uncontested. Based on the evidence before the Tribunal, there is no factual foundation for this allegation.

25 The complainant and Mr. Dufault both testified about the unsatisfactory informal discussion they had following her elimination from this process. The Tribunal has held in numerous decisions that informal discussion is not a reassessment. See, for example, *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046, at paragraph 76.

26 Informal discussion is a means of communication, to discuss the reasons for a candidate's elimination from a process. If an informal discussion reveals that an error has been made in an assessment, the mistake can be corrected; however, that is not

the case here. The evidence presented at the hearing does not demonstrate that an error was made in the assessment of the complainant's application. It is clear that the communication during this informal discussion was ineffective. However, the outcome of this complaint does not turn on the failure of informal discussion.

27 The complainant also raised an issue about the wording of the letter she received, informing her that she had been eliminated from further consideration in the appointment process. The respondent agreed that improvements could be made to the letter. This matter, however, has no bearing on the outcome of the complaint.

28 As the Tribunal has confirmed in numerous decisions, the onus lies with the complainant to prove abuse of authority. She has failed to do so here. Mr. Dufault provided a rational explanation of his decision to eliminate the complainant from this appointment process.

29 Based on the evidence before it, the Tribunal concludes that the respondent did not abuse its authority in assessing the complainant's experience.

Decision

30 For all these reasons, the complaint is dismissed.

Merri Beattie
Member

Parties of Record

Tribunal Files	2010-0350
Style of Cause	<i>Kim Walker-McTaggart and the Chief Executive Officer of Passport Canada</i>
Hearing	June 21 and 22, 2011 Ottawa, Ontario
Date of Reasons	December 12, 2011
APPEARANCES:	
For the complainant	Jean Pierre Ouellette
For the respondent	Maureen Crocker
For the Public Service Commission	Trish Heffernan (written submissions)