



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2010-0785  
**Issued at:** Ottawa, October 21, 2011

**TANYA GALENZOSKI**

Complainant

AND

**THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to sections 77(1)(a) and (b) of the <i>Public Service Employment Act</i>
<b>Decision</b>	Complaint is dismissed
<b>Decision rendered by</b>	Kenneth J. Gibson, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Galenzoski v. Commissioner of the Royal Canadian Mounted Police</i>
<b>Neutral Citation</b>	2011 PSST 0032

# Reasons for Decision

## Introduction

1 A *Notification of Appointment or Proposal of Appointment* of Joanne Cox to an Administrative Support Clerk position at the CR-03 group and level was issued on December 15, 2010. The complainant, Tanya Galenzoski, filed a complaint regarding this appointment under ss. 77(1)(a) and (b) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (the PSEA) on December 30, 2010.

2 The complainant alleges that the respondent, the Commissioner, Royal Canadian Mounted Police, abused its authority in the appointment process. More specifically, the complainant alleges that the appointee does not have the experience required by the Statement of Merit Criteria for the position, that the appointment process was tainted by bias and favouritism, and that a promotional, non-advertised appointment is not permitted under the PSEA.

3 The respondent replies that the appointee was assessed and found to meet all of the essential qualifications established for appointment. It further states that the complainant has not submitted any facts to support the allegation that the assessment board exhibited bias or favouritism. Finally, the respondent states that the decision to use a non-advertised appointment process was consistent with the provisions of the PSEA and applicable policies, including the departmental policy on non-advertised appointments.

## Background

4 On March 31, 2011, the Notice of Hearing in this matter was issued to the parties. The hearing was scheduled for September 15-16, 2011 in Regina, Saskatchewan. The hearing was to begin promptly at 9:30 a.m.

5 At a pre-hearing teleconference held on July 28, 2011, the complainant's representative reported that he had not been able to contact the complainant for some time. She had not attended two scheduled mediation sessions. He believed that she was on leave from work. As a result, he could not respond to some of the issues that

came up for discussion at the pre-hearing teleconference. The representative was directed to continue his attempts to contact the complainant and to report back to the Tribunal and the other parties by August 10, 2011, indicating whether the complainant intended to attend the hearing scheduled for September 15-16, 2011, what redress she would be seeking in the event her complaint was upheld, and who she believes demonstrated bias against her and showed favouritism towards the appointee.

**6** On August 7, 2011, the complainant's representative wrote to the Tribunal that he had not been able to contact the complainant. He requested that the hearing be postponed to a later date.

**7** In a letter decision dated August 18, 2011, the Tribunal directed the respondent, pursuant to its authority under s. 99(1) of the PSEA, to provide contact information for the complainant. The Tribunal also directed the complainant to provide information to her representative and to the Tribunal as to where she could be reached both when she is at work and when she is not, so that she could be contacted in relation to future steps regarding the hearing and the complaint. The Tribunal also stated that under its *Policy for Mediation and Hearing Scheduling and Request for Postponements*, postponements are not automatically granted. Where a request for postponement is made more than 30 days after the Notice of Hearing has been issued, postponements may be granted when exceptional circumstances arise that prevent a party from proceeding with the hearing as scheduled. While the complainant's representative stated that the complainant was addressing some personal issues, the Tribunal determined that it did not have sufficient information to conclude that the complainant would be prevented from proceeding with the hearing as scheduled. Therefore, the Tribunal dismissed the motion to postpone the hearing.

**8** On August 22, 2011, the Tribunal received a receipt from Purolator courier, signed by the complainant, showing that she had received a copy of the letter decision dated August 18, 2011.

**9** At a second pre-hearing teleconference held on August 25, 2011, the complainant's representative said he had been in contact with the complainant.

He provided information on the redress the complainant was seeking if her complaint were upheld and the name of the person who she believed demonstrated bias against her and demonstrated favouritism. The complainant's representative stated that the complainant preferred that the hearing be postponed but if it was not, she would do her best to attend. He further stated that he had expected the complainant to attend the teleconference as an observer and he did not know why she was not in attendance.

**10** During the teleconference, the respondent opposed the request to postpone the hearing. It also expressed concern over the costs that would be incurred if its representatives travelled to Regina, Saskatchewan for the hearing and the complainant failed to appear.

**11** The Tribunal directed the complainant's representative at the pre-hearing teleconference to contact the complainant and confirm, by the end of the day on August 26, 2011, her attendance at the hearing scheduled for September 15-16, 2011, or to provide satisfactory evidence that she would not be able to attend the hearing for medical or other reasons to justify her postponement request.

**12** The complainant and the complainant's representative did not provide any further information by the end of the day on August 26, 2011.

**13** In a letter decision dated August 29, 2011, the Tribunal determined that since the complainant and the complainant's representative had not provided the Tribunal with any additional information to justify a postponement, the hearing would proceed on September 15-16 as scheduled. It further determined that if the complainant did not appear at the hearing, the hearing would proceed and the Tribunal would hear from the parties who were present.

**14** On August 31, 2011, the respondent wrote to the Tribunal. It submitted that given the procedural history of the complaint, the complainant should be required to undertake to attend the hearing, failing which the complaint should be dismissed. Furthermore, it submitted that the complainant should be informed that failure to attend the hearing will result in her complaint being dismissed without the need to hear any evidence from the respondent.

**15** On September 1, 2011, the complainant's representative sent an email to the Tribunal and the other parties stating that he had been in contact with the complainant following the pre-hearing teleconference of August 25, 2011, and that she had assured him that she would communicate with all of the parties concerning her attendance at the hearing or provide her reasons for requesting a postponement. He further stated she had said that she would be attending the hearing if it is not postponed.

**16** The Tribunal notes that it did not receive any direct communication from the complainant following her representative's email of September 1, 2011.

**17** On September 6, 2011, the Tribunal issued a letter decision stating that it was satisfied that the complainant had received proper notice of the hearing and it expected her to appear at the hearing. It further noted that based on the information available, the complainant intended to attend the hearing.

**18** Regarding the respondent's submission that the complaint should be dismissed without hearing any evidence from the respondent if the complainant failed to appear, the Tribunal determined that this motion was premature. The Tribunal stated that s. 29 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116 (the *Regulations*) provides:

29. If a party, an intervenor or the Canadian Human Rights Commission, if it is a participant, does not appear at the hearing of a complaint or at any continuance of the hearing and the Tribunal is satisfied that notice of the hearing was sent to that party, intervenor or participant, the Tribunal **may proceed with the hearing and dispose of the complaint without further notice.** (emphasis added)

**19** The Tribunal dismissed the respondent's motions.

**20** At the commencement of the hearing on September 15, 2011, the complainant's representative stated that he had not been in contact with the complainant for about two weeks. He had expected her to appear at the hearing but she was not present. He had tried to call her at home but she had not answered.

**21** The Tribunal gave the complainant's representative another opportunity to call the complainant. He tried without success. The Tribunal's registry office then attempted to contact the complainant by email and telephone, using the contact information it had

available. This was also unsuccessful. A messaging response at the telephone number indicated that the number belonged to someone other than the complainant.

**22** The Tribunal reminded the complainant's representative that in its letter decision of August 18, 2011, the complainant was directed to provide the Tribunal and her representative with information as to where she could be reached both when she is at work and when she is not, so that she could be contacted in relation to future steps regarding the hearing and the complaint. The Tribunal also stated that it was satisfied, based on the record before it, that the complainant had received notice of the hearing, and it reminded the parties that in its letter decisions of August 29, 2011 and September 6, 2011, the Tribunal had directed that the hearing would proceed if the complainant did not appear.

**23** The complainant's representative stated that the complainant was his only witness and that in her absence, he had no evidence to present to the Tribunal.

**24** The respondent stated that it would not be calling any evidence in reply to the complainant's allegations. It submitted that the allegations alone were not evidence and, therefore, there was no evidence before the Tribunal to support them. It argued that there was no case to which it could respond. The respondent also made submissions concerning the propriety of the Tribunal considering only documents on file, in arriving at a decision on a complaint. The respondent submitted that the Tribunal should declare that the complaint has been abandoned.

### **Analysis**

**25** It is the respondent's contention that since the complainant did not appear at the hearing to produce any evidence, it has no case to respond to and the Tribunal should declare that the complaint has been abandoned. As the Tribunal noted in its letter decision dated September 6, 2011, s. 29 of the *Regulations* provides that where the Tribunal is satisfied that the notice of the hearing was sent to a party, the Tribunal may proceed with the hearing and dispose of the complaint without further notice.

**26** The Tribunal interpreted s. 29 of the *Regulations* in *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020:

[24] The Tribunal is of the opinion that the word “hearing” should be given its ordinary meaning, that is, either an oral hearing or a paper hearing. Furthermore, the words “dispose of the complaint without further notice” in section 29 of the *PSST Regulations* indicate that it refers to the portion of the complaint process where the Tribunal will make a decision on the complaint.

[...]

[32] Furthermore, if Parliament had intended as a consequence of a complainant’s failure to appear at a hearing that the complaint be treated as abandoned or withdrawn, it would have clearly stated this. There is nothing in the *PSEA* to support this interpretation. Of note, subsection 22(3) of the *PSST Regulations* specifically addresses that the Tribunal may consider a complaint withdrawn “if the complainant fails to provide allegations.”

[33] Since the complainant provided allegations, the wording of section 29 of the *PSST Regulations* applies and clearly specifies that the Tribunal may proceed with the hearing without further notice and dispose of the complaint.

**27** Based on the foregoing, the Tribunal will not treat the complaint as abandoned and will proceed to dispose of the complaint on the basis of the available information.

**28** In *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, the Tribunal determined that it is the complainant who bears the burden of proof in hearings before the Tribunal (see paras. 49, 50 and 55). In order for the complainant to meet this burden, it is necessary for her to present sufficient evidence for the Tribunal to determine, on a balance of probabilities, whether a finding of abuse of authority is warranted.

**29** In *Broughton*, the Tribunal found at para. 50 that: “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.”

**30** In the present case, the complainant has submitted allegations but she has not tendered any evidence in support of these allegations. Therefore, the Tribunal finds that the complainant has not substantiated her complaint.

**31** In the absence of any documents on file to support the complainant's allegations, it is not necessary to address the respondent's submissions concerning the propriety of the Tribunal reviewing such documents.

**32** In closing, the Tribunal admonishes the complainant for her lack of courtesy towards all of the participants involved in this complaint process. The record demonstrates that she has consistently failed to meet deadlines and to keep the Tribunal and her own representative apprised of how to contact her. In so doing, she has compelled everyone involved to expend significant time and effort unnecessarily, and at considerable cost to the taxpayers who ultimately finance much of this dispute resolution process.

### **Decision**

**33** For all these reasons, the complaint is dismissed.

Kenneth J. Gibson  
Member

### **Parties of Record**

<b>Tribunal File</b>	2010-0785
<b>Style of Cause</b>	<i>Tanya Galenzoski and the Commissioner of the Royal Canadian Mounted Police</i>
<b>Hearing</b>	September 15, 2011 Regina, Saskatchewan
<b>Date of Reasons</b>	October 21, 2011
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Satinder Bains
<b>For the respondent</b>	Lesa Brown
<b>For the Public Service Commission</b>	John Unrau (written submissions)