



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2010-0335
Issued at: Ottawa, December 29, 2011

SUSAN LIRETTE

Complainant

AND

THE DEPUTY MINISTER OF NATIONAL DEFENCE

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	Maurice Gohier, Member
Language of Decision	English
Indexed	<i>Lirette v. Deputy Minister of National Defence</i>
Neutral Citation	2011 PSST 0042

Reasons for Decision

Introduction

1 On June 9, 2010, Susan Lirette (the complainant) filed a complaint with the Public Service Staffing Tribunal (the Tribunal) alleging an abuse of authority in the decision to screen out her application for failing to demonstrate that she met two of the essential experience qualifications for an internal advertised appointment process. The complainant also alleges that the respondent failed to conduct an informal discussion within the spirit intended by the Public Service Commission's *Informal Discussion Policy*.

2 The Deputy Minister of National Defence (the respondent) replied that the complainant's application was screened out because she failed to provide concrete examples demonstrating how she met the two experience qualifications. The respondent asserts that no errors or oversights on its part were raised during the informal discussion that would cause the assessment board to alter its findings.

3 The Public Service Commission (the PSC) filed written submissions in which it referred to various legislative provisions, as well as the application of its policies on *Assessment* and *Informal Discussion*.

Background

4 The respondent published a *Job Opportunity Advertisement* (JOA) on *Publiservice* to fill the position of a Human Resources Assistant, at the CR-05 group and level, with the Civilian Human Resources Service Centre (Atlantic), CFB Gagetown, in Oromocto, New Brunswick.

5 The complainant submitted her application which included a one page covering letter and a two page résumé.

6 The assessment board (the board) was composed of seven individuals including Tricia Gallagher, Cathy Guillemette, and Erika Nahm.

7 When the board reviewed the 72 applications it received against the screening criteria, it concluded that several of the applicants had failed to demonstrate how they met one or more of the experience qualifications. In the complainant's case, the board concluded that she had failed to provide concrete examples of how she met the following two qualifications:

Experience in using MS Word and Excel applications (Exp-1)

Experience in using an electronic information management system (Exp-3)

8 On November 5, 2009, the complainant was informed by email that her application was being set aside for having failed to demonstrate the two experience qualifications listed above. On that same day, the complainant sent an email to two of the board members (Ms. Nahm and Ms. Guillemette) indicating that she did not understand the decision and would like to discuss the matter. A few minutes later, the complainant sent a follow-up email to the same board members in which she stated:

Also, just to confirm that you are aware the HRMS (Peoplesoft) system and the CCPS (Military Pay System) that I indicated that I have experience with are both Electronic Information Management Systems.

9 According to the complainant, on November 6, 2009, a short 30-second phone call took place between herself and Ms. Nahm, the Human Resources Officer in charge of the process. During the call, Ms. Nahm simply reiterated to her without any further explanation that her application had been screened out because she had failed to meet two qualifications. No additional follow-up was done by the respondent and the decision to screen out the complainant's application remained unchanged.

10 On June 1, 2010, the respondent issued a *Notice of Appointment or Proposal of Appointment* announcing the appointment of the successful candidate, Jacinthe Belliveau, to the position of Human Resources Assistant.

11 The complainant filed her complaint with the Tribunal on June 9, 2010, under s. 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA). The matter was heard by means of a paper hearing.

Issues

12 The Tribunal must answer the following questions:

- (i) Did the respondent abuse its authority when it screened out the complainant?
- (ii) Did the respondent fail to conduct an informal discussion in accordance with the applicable PSC policy and, if so, did this failure constitute an abuse of authority?

Relevant Evidence and Analysis

Issue I: Did the respondent abuse its authority when it screened out the complainant?

13 In screening out the complainant's application, the respondent determined that she had not demonstrated that she met the required experience criteria. The JOA contained two notices instructing candidates on how to present their qualifications. Under the heading *Essential Qualifications*, it stated:

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.

14 In addition, the last paragraph under the heading of *Other Information (Notes)* stated:

Candidates must clearly demonstrate in their cover letter how they meet the education and experience factors listed in the essential qualifications. Candidates must use the education/experience factors as a header and then write one or two paragraphs demonstrating how they meet them. Resumes will be used as a secondary source to validate the experience described in the cover letter. FAILURE TO CLEARLY DEMONSTRATE HOW YOU MEET THE SCREENING CRITERIA WILL RESULT IN THE REJECTION OF YOUR APPLICATION. CANDIDATES WILL NOT BE SOLICITED FOR INCOMPLETE OR POSSIBLE MISSING INFORMATION.

(Emphasis in the original)

15 The complainant contends that her covering letter and her accompanying résumé contain sufficient information for the board to conclude that she met the experience

qualifications listed in the JOA. More specifically, her covering letter contained a paragraph entitled “Education/ Experience Factors” which states:

I have worked at various positions within the DND and have gained a wealth of knowledge and experience in Human Resource Management, including administrative and financial support services, to military and civilian personnel. As the Admin O for the G1 Pers Section, I am responsible for initiating various types of staffing actions for civilian positions and I have created work descriptions for two new positions within our section. **I am experienced in using various computer applications, including, but not limited to, HRMS (Peoplesoft), MS Word, Excel, MS Outlook, PowerPoint and the CCPS (Military Pay System).** I have experience with providing client services as I am part of the team currently responsible for the administration of approximately 115 military personnel and 5 civilian personnel. In order to do this effectively, it is essential that I keep well versed on the policies and directives that govern our administrative and financial procedures. My ability to organize, prioritize, and communicate effectively, both orally and in writing, is an essential part of my job. I am a team player and have the effective interpersonal relationship, dependability, judgment, initiative and flexible qualities that you are looking for in an employee.

(Emphasis added)

16 In addition, the complainant provided a two-page résumé which contained, amongst other things, a detailed summary of her work experience and knowledge, as well as the following list of her “Computer Experience/Knowledge”:

Microsoft Outlook/Excel/PowerPoint/Word/Access	Peoplesoft	ClaimsX
CCPS Military Pay System	ACCPAC Plus	Monitor Mass

17 The complainant argues that it was an abuse of authority for the respondent to be willfully blind to the fact that she met the experience qualifications. In order to perform the tasks described in her covering letter, the complainant must use the tools available to her in the workplace, such as MS Word and Excel applications, and an electronic information management system.

18 Also, the complainant states that it was unfair for the respondent to limit an applicant to just one or two paragraphs in a covering letter to describe how she met the qualifications. The complainant complied with the respondent’s instructions when she prepared her application, however, such a restriction limited her to making only broad assertions that she possessed the necessary experience without elaborating on the details of her work experience.

19 Lastly, the complainant contends that the *PSC Assessment Policy* requires the deputy head to use methods that “effectively assess the essential qualifications and other merit criteria identified and are administered fairly.” The PSC issued a letter to Heads of Personnel (number 10-14) clarifying that each essential qualification must be assessed against its own established pass mark. In her written submissions, the complainant argues that no scoring grid or pass mark was established in this instance. Since a scoring grid was not used to assess the two experience qualifications, the assessment was strictly based on a pass/fail basis of the assessor’s judgment. In the complainant’s view, such action was not transparent and caused the respondent to rely solely on its own subjective assessment.

20 In its reply, the respondent notes that the JOA stated that “(c)andidates must clearly demonstrate in their covering letter how they meet the education and experience factors listed in the essential qualifications.”

21 When screening the applications against the essential experience qualifications, the board members were guided by a document entitled *Experience Screening Criteria* which explained how each qualification could be demonstrated. Those relevant to the case at hand are:

EXPERIENCE 1: Experience in using MS Word and Excel Applications

- Must specifically state either: MS Word AND Excel/MS Office Suite/MS applications/programs; **AND** how they were used (e.g. when, where, in what capacity, or give examples).
- Training/certification/having skills in MS Word/Excel or MS Office **WITH** a description or examples of how they were used will be accepted.
- * Experience may be from school, volunteer work, employment history, training, or coursework;
- * Stating “computer-literate” or stating “all computer programs”/“various software” or stating “ I have experience (or training) in MS Word and Excel” with no description/details/examples provided will **NOT** be accepted (too general, failure to **CLEARLY** demonstrate).

[...]

EXPERIENCE 3: Experience in using an electronic information management system

- Must specifically state the name of the system used (eg. MS Access, PeopleSoft, HRMS, FMAS, MIMS, CMS, etc.) **AND** how it were used (e.g. when, where, in what capacity, or give examples). (sic)

- Training/certification/having skills in the system **WITH** a description or examples of how they were used will be accepted.
- * Experience may be from school, volunteer work, employment history, training, or coursework;
- * Stating “I have experience using an electronic information management system” with no description/details/examples provided will **NOT** be accepted (too general, failure to **CLEARLY** demonstrate).

(Emphasis in the original)

22 The respondent submits that the board applied these criteria consistently to all candidates when it screened the applications.

23 In its submissions, the PSC points out that its *Assessment Policy* allows for the assessment of a person’s qualifications on a meets/does not meet basis against the criteria identified by the manager for screening purposes - for example, in the case of education, experience and occupational certification. The PSC is of the view that candidates were informed that they had to clearly explain “how” they met each essential experience qualification, as evidenced by the text of the JOA. The PSC states that it is not for the Tribunal to substitute its assessment of a candidate’s qualifications for that of the respondent.

24 The complainant objects to the introduction of the document entitled *Experience Screening Criteria* since the respondent had never provided the complainant with a copy of the document nor discussed it with her prior to presenting its written submissions. This objection is denied, and although the Tribunal recognizes that this document was not shared or discussed with the complainant on a timely basis, for reasons that will be explained later in this decision, the respondent’s failure to disclose and explain this document does not alter the fundamental question at hand, which remains: did the complainant clearly demonstrate that she met the two experience qualifications?

25 The obligation of candidates to clearly demonstrate that they meet an experience qualification has been the subject of several Tribunal decisions. See, for example, *Charter v. Deputy Minister of National Defence*, 2007 PSST 0048, and *Edwards v. Deputy Minister of Indian and Northern Affairs Canada*, 2011 PSST 0010.

As the Tribunal noted in *Edwards*, at para. 36:

The Tribunal is satisfied that the experience requirements were clearly stated on the JOA and that candidates knew what they had to demonstrate. **Candidates could not simply list the positions they had occupied and state that they had the required experience.** They had to clearly explain how they met each essential qualification. This is supported by the screening guide, which details the type of experience sought.

(Emphasis added)

26 In the present case, the Tribunal is satisfied that the experience qualifications were clearly stated on the JOA. The JOA explicitly instructed candidates that they had to clearly demonstrate how they meet the education and experience factors. The *Canadian Oxford Dictionary*, second edition (2004), defines the word “demonstrate” as meaning to “describe and explain with the help of examples, experiments, practical use, etc.”

27 A review of the complainant’s covering letter and résumé shows that she only made general statements to the effect that she possessed the necessary experience without providing any description, details or examples that would clearly demonstrate how she met each of the two qualifications. In one instance, she made a short statement saying that she possessed the necessary experience, and in the other she simply provided a list of the systems she had used. Nothing in the evidence presented, namely the complainant’s covering letter and her résumé, contradicts the conclusions reached by the board. The Tribunal finds that it was not unreasonable for the board to conclude that the complainant had failed to demonstrate that she met the two experience qualifications in question.

28 The complainant alludes to confusion arising from conflicting language contained in the JOA which noted under the heading of *Essential Qualifications* that a failure to clearly demonstrate “may” result in the rejection of a candidate’s application, whereas in another instance, under the heading of *Other Information (Notes)*, it stated that such a failure “will” result in the rejection of the application. The Tribunal finds that nothing turns on this difference in wording; the important point is that candidates were amply warned that a failure to clearly demonstrate that they meet the essential qualifications could be detrimental to their candidacy.

29 For these reasons, the Tribunal finds that the complainant has not proven that the respondent abused its authority when it concluded that she had failed to demonstrate she met the essential experience qualifications.

30 While there has not been an abuse of authority, the Tribunal notes that the language in the JOA should be unambiguous to avoid the potential occurrence of similar misunderstandings in the future.

Issue II: Did the respondent fail to conduct an informal discussion in accordance with the applicable PSC policy and, if so, did this failure constitute an abuse of authority?

31 The complainant alleges that the respondent abused its authority within the meaning of s. 77(1)(a) of the PSEA when it failed to conduct an informal discussion in accordance with the requirements of the PSC *Informal Discussion Policy*.

32 According to the complainant, she was never provided with a detailed explanation as to why her application was screened out of the appointment process. Aside from a short 30-second phone conversation, Ms. Nahm simply reiterated to the complainant that she had failed the two qualifications without providing any explanation as to why or how this decision was reached. No other follow up was done by the respondent. The complainant also submits that the board's actions are contrary to the delegation agreement which requires that the deputy head, and by extension his or her delegates, respect all PSC appointment related policies.

33 In its reply, the respondent notes that the purpose of the informal discussion is not to reassess candidates or to allow them to supplement their written applications. Rather, it is to allow candidates to either correct errors or clarify what is already written in their applications. The respondent submits that there is not much to correct in an informal discussion when the candidate's application was clearly insufficient, as it was in this case.

34 Finally, with respect to the delegation agreement, the respondent submits that the Tribunal does not have the authority to either monitor or enforce the delegation

agreement and that, in any event, the complainant had not demonstrated that she was unfairly assessed.

35 Section 47 of the PSEA states that when a candidate is eliminated from consideration, the respondent may informally discuss its decision with that person. If an informal discussion takes place, the PSC *Informal Discussion Policy* states that its objectives are to ensure transparency and communication throughout the appointment process, which helps foster a healthy workplace, and to correct any errors or oversights which may have occurred. Informal discussion is intended as a means of communication for a candidate to discuss the reasons for elimination from a process. While it provides a manager with an opportunity to correct a mistake, it is not an opportunity to request that the assessment board reassess a candidate's qualifications. See, for example, *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046, at para. 76.

36 As noted by the PSC, although deputy heads are subject to PSC policies (s. 16, PSEA), when a policy is not followed it is problematic but not necessarily indicative of an abuse of authority. Whether or not there is a breach of PSC policy is one factor amongst others for the Tribunal to consider in determining whether or not there is an abuse of authority.

37 In the case at hand, the person contacted by the complainant (Ms. Nahm) was in fact a member of the board that reviewed the complainant's application against the screening criteria. The complainant's characterization of the phone call as short was not contested by the respondent. It is not realistically possible for the board member to have provided a detailed explanation within a phone call of such limited duration. Ms. Nahm would most probably only have had time to verbally restate the board's conclusion that the complainant had not met two of the experience qualifications, but not sufficient time to provide the board's reasoning or address the complainant's concerns.

38 It is uncontested that the *Experience Screening Criteria* document was not shared with the complainant during either her phone call with Ms. Nahm or the exchange of information period during the complaint process. Since the document

guided the board in its screening process, it was central to the decision to screen out the complainant's application and, as noted by the PSC, should therefore have been shared with the complainant and explained to her in detail. By not providing a copy of this document on a timely basis and failing to discuss the specifics of the reasons why it reached its conclusions, the respondent failed to satisfy the PSC *Informal Discussion Policy* requirement that persons eliminated from consideration who request an informal discussion have access to sufficient information concerning themselves to understand and discuss the decision. See, for example, *Ammirante v. Deputy Minister of Citizenship and Immigration*, 2010 PSST 0003, at para. 126.

39 However, the Tribunal finds that this omission alone does not establish that the respondent abused its authority in the assessment of merit in this process, within the meaning of s. 77(1)(a) of the PSEA. The respondent's failure to properly conduct an informal discussion after the complainant was screened out had no bearing on the outcome with respect to her candidacy. As the Tribunal determined earlier in this decision, the complainant failed to clearly demonstrate that she met the essential experience qualifications in her application. There were no errors or oversights in the assessment process that could have been corrected had a proper informal discussion been conducted.

40 That said, the Tribunal believes that the respondent should have engaged in better communication at the informal discussion stage with the complainant as it generally ensures greater transparency in staffing processes and may have resolved the staffing issues in this case, thereby avoiding the necessity for her having to file a complaint in the first place.

Decision

41 For these reasons, the complaint is dismissed.

Parties of Record

Tribunal File	2010-0335
Style of Cause	<i>Susan Lirette and the Deputy Minister of National Defence</i>
Hearing	Paper Hearing
Date of Reasons	December 29, 2011
Representatives:	
For the complainant	Louis Bisson
For the respondent	Josh Alcock
For the Public Service Commission	Trish Heffernan