



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

Files: 2010-0702, 2011-0089, 2011-0237
Issued at: Ottawa, February 27, 2012

DONNA BONIA

Complainant

AND

THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE

Respondent

AND

OTHER PARTIES

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

Decision Complaints are dismissed

Decision rendered by Joanne B. Archibald, Member

Language of Decision English

Indexed *Bonia v. Commissioner of the Royal Canadian Mounted Police*

Neutral Citation 2012 PSST 0004

Reasons for Decision

Introduction

1 Donna Bonia, the complainant, filed three complaints of abuse of authority under s. 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (PSEA). The complaints address three consecutive appointment processes that were conducted to staff the position of Commanding Officer's Executive Assistant (the AS-02 position) with "B" Division of the Royal Canadian Mounted Police (RCMP) in St. John's, Newfoundland. The first process was an advertised internal process (the first process), followed by a non-advertised acting appointment (the second process), and finally another advertised internal appointment process (the third process).

2 It is the complainant's view that the Commissioner of the RCMP, the respondent, abused its authority in the first process by proposing for appointment a person who did not meet the essential qualifications. Secondly, she believes that the respondent abused its authority in choosing a non-advertised process for the second process. Thirdly, she asserts that the respondent abused its authority by tailoring the Statement of Merit Criteria (SMC) used for the second and third processes to favour the appointed person.

3 The respondent denies that an abuse of authority occurred. It states that after proposing Madonna Mercer (the appointee) for appointment from the first process, it identified a number of errors affecting the process. As a result, no appointment was made. The second process was an intermediate measure taken to continue the performance of the duties of the AS-02 position until a review of the first process could be concluded. It then continued until the third process was concluded. After the first process, changes were made to the SMC to improve it and enlarge the pool of potential candidates, and not to personally favour the appointee.

4 The Public Service Commission (PSC) did not appear at the hearing, but did present a written submission in which it discussed relevant PSC policies and guidelines concerning choice of appointment process, assessment and selection, among others. It took no position on the merits of the complaints.

Relevant Legislation

5 The legislative provisions relevant to this matter are found in s. 30(1) and s. 77(1)(a) and (b) of the PSEA. They are set out below:

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; and
 - (b) the Commission has regard to
 - (i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,
 - (ii) any current or future operational requirements of the organization that may be identified by the deputy head, and
 - (iii) any current or future needs of the organization that may be identified by the deputy head.

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; ...

Issues

6 The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority in the first process by proposing for appointment a person who did not meet the essential qualifications for the AS-02 position?
- (ii) Did the respondent abuse its authority in choosing a non-advertised process for the second process?
- (iii) Did the respondent abuse its authority in the second and third processes by altering the essential qualifications to favour the appointee?

Analysis

Issue I: Did the respondent abuse its authority in the first process by proposing for appointment a person who did not meet the essential qualifications for the AS-02 position?

7 In July 2010, the first process was advertised through a Job Opportunity Advertisement (JOA) that was posted on the federal *Publiservice* website. The JOA included a list of the essential qualifications drawn from the SMC, one of which was “Experience in the monitoring of a budget, including significant experience using TEAM” (the experience qualification). Significant experience was defined as at least two years within the last four years. TEAM is the internal RCMP financial information system.

8 Seven applications were received in response to the JOA. At the conclusion of the first process, three candidates, including the complainant, were determined to be qualified.

9 In her application document of July 24, 2010, the appointee addressed the experience qualification as follows: “I have more than twenty-five years of experience in financial systems ... as well as experience with tracking and generating these reports via TEAM...”

10 The complainant testified that the appointee was acting in the AS-02 position at the time of the first appointment process. She asserted that the appointee told her before applying in the first process that she did not possess the requisite TEAM experience. When the complainant saw a Notice of Appointment or Proposal of Appointment posted on November 8, 2010, to indicate the selection of the appointee for appointment, she and several other candidates approached Chief Superintendent Oona Enright (C/Supt Enright) to express the concern that the appointee was not qualified for the appointment. C/Supt Enright was responsible for public service staffing in “B” Division.

11 C/Supt Enright testified that she had no role in the assessment of candidates in the first process. She recalled that she was approached about the first process by her administrative assistant after the results were known. She later met with the

complainant and others and became aware of their concern about whether the appointee met the experience qualification.

12 Lynn Ludlow, Public Service Human Resources Manager with the RCMP in St. John's, was a member of the assessment board for the first process. She stated that when the board became aware of the complainant's concern, it sought verification of the appointee's experience. Ms. Ludlow contacted Leigh Desroches and confirmed that he provided day-to-day supervision of the appointee. She advised him that the assessment board was seeking validation of the appointee's experience and supplied him with her application document as well as the experience qualification and the definition of "significant." He responded that he had supervised the appointee for eight years and that she had acted in the position of his assistant from time to time. He provided details of the work she had done and expressed his support for the experience she described in her application document. Ms. Ludlow stated that the assessment board was satisfied by Mr. Desroches's statement that the appointee met the TEAM experience qualification.

13 On November 23, 2010, the complainant filed her complaint concerning the proposed appointment.

14 C/Supt Enright said that at the time of the first process, the RCMP was undergoing a staffing audit by the PSC. Because of the audit, there was heightened diligence about staffing and when the RCMP received the complaint, it delayed the appointment. At the direction of Assistant Commissioner Dan Dubeau, she undertook an internal review of the appointment process. A number of irregularities were found including errors in the area of selection, the failure to consider priority candidates, and an overall lack of notation on the file.

15 On February 22, 2011, C/Supt Enright advised Assistant Commissioner Dubeau that based on the review, she had decided to cancel the first process and re-advertise the position. The appointment was never offered to the appointee. Ms. Ludlow sent an email to all of the applicants notifying them of this decision.

16 In matters of assessment of candidates in an appointment process, the Tribunal has held in numerous decisions that its role is to determine whether there has been an abuse of authority, not to reassess candidates or redo the appointment process (See, for example, *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020).

17 The Tribunal finds that, aside from the complainant's account of a conversation when the appointee indicated her personal assessment of her qualifications, the complainant has presented no evidence of the appointee's lack of experience using TEAM. When a question arose about the appointee's experience, the assessment board prudently sought and obtained verification from her supervisor.

18 The Tribunal finds that it has not been shown that the respondent proposed for appointment a person who did not meet the essential qualifications for the AS-02 position. When the matter of the appointee's experience arose as an issue, the assessment board prudently took steps to verify it with a third party. Other than reporting that the appointee doubted that her qualifications would satisfy the experience qualification, the complainant has presented no evidence to the Tribunal that would show that the proposed appointment contravened the merit provisions of s. 30 of the PSEA.

19 Accordingly, the Tribunal finds no abuse of authority in the first process.

Issue II: Did the respondent abuse its authority in choosing a non-advertised process for the second process?

20 The appointee initially began acting in the AS-02 position when the previous incumbent retired in September 2010. After the cancellation of the first process, the respondent elected to keep the appointee in the AS-02 position until a subsequent advertised process could be held. This appointment was done through a non-advertised appointment process. Notice of the acting appointment was posted on the *Publiservice* website. It indicated the appointment of the appointee for the period of January 12, 2011 to March 31, 2011. On February 22, 2011, the complaint was received. The complainant expressed her concern for the choice of a non-advertised appointment process.

21 The rationale for choosing a non-advertised appointment process was completed by Assistant Commissioner W.A. Smith in January 2011, prior to the outcome of the respondent's investigation into the first process. He wrote that the position was crucial to the functions of the office of the Commanding Officer (CO). He indicated the need to continue the acting appointment on a non-advertised basis to maintain stability and expertise in the position pending the completion of the review of the first process. The complainant presented no evidence to challenge the rationale for the choice of process.

22 The Tribunal finds no evidence of an abuse of authority in the choice to use a non-advertised appointment process. The rationale explained the need to fill the position, the requirement for continuity and expertise, as well as the anticipated short duration of the appointment. The Tribunal finds that the rationale adequately addresses the decision to choose a non-advertised appointment process.

Issue III: Did the respondent abuse its authority in the second and third processes by altering the essential qualifications to favour the appointee?

23 As noted above, C/Supt Enright testified that she had no role in the first process other than conducting a review of it. She oversaw the second and third processes and assumed the responsibility to develop the SMCs using her knowledge of the management of the CO's office. In the SMC for the second process, she removed the need for experience with TEAM and shortened the qualification to "experience in the monitoring and reporting on a budget." She stated that until the review of the first process was complete, she did not want to rely on a qualification that had been called into question.

24 C/Supt Enright testified concerning her knowledge of the expectations of the AS - 02 position. She knew that the incumbent was expected to manage the CO's office, for example, to provide administrative support to the CO, to deal with all aspects of communication, and to attend meetings as required. The person in the AS-02 position was the "face" of the CO's office to internal and external clients. For financial expertise, the CO relied on a financial analyst who managed the entire budget for the

chain of command. The AS-02 had access to the financial analyst and accordingly, did not personally have to retrieve information from TEAM, the financial information system.

25 The appointee was assessed against the SMC for the second process and found to meet the qualifications.

26 The RCMP then posted a JOA for the third process, an internal advertised appointment process. The initial posting was removed after one day. C/Supt Enright indicated that it was her error to post the first JOA as it contained requirements for recent and extensive experience working with senior management. Her concern was that this was narrow and few employees within the area of selection could meet those requirements. She viewed them as unnecessary restrictions on the potential field of applicants.

27 C/Supt Enright compared the SMC for the first process with the SMC for the third process. She considered the first to be very exclusionary and specific relative to the area of selection of all public service RCMP employees in "B" Division Headquarters in St. John's. She referred to the requirement for experience with the specific internal system TEAM in the first process. TEAM was not generally used by employees and could be taught. She considered that candidates could be attuned to many systems and should be able to transfer relevant skills from one workplace to another. Therefore, the SMC and the corresponding JOA were amended to remove requirements for recent or extensive experience and reposted with the intent of attracting a larger pool of applicants. There was no specific experience requirement for monitoring or reporting on a budget.

28 At the conclusion of the third process, the appointee was found qualified and appointed indeterminately to the AS-02 position.

29 The complaint of personal favouritism is a serious one and where it is found, it constitutes an abuse of authority (See PSEA, s. 2(4)). When a complainant alleges that there has been personal favouritism, they must prove on a balance of probabilities that the appointment occurred for reasons other than merit (See *Carlson-Needham and Borden v. Deputy Minister of National Defence*, 2007 PSST 0038, at para. 52-54).

To illustrate further, in *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 0007, the Tribunal stated that personal favouritism may include the selection of a person solely based on a personal relationship, as a personal favour, or to gain personal favour with someone else.

30 It is the complainant's assertion that removing the requirement for TEAM experience was done to personally favour the appointee. However, the Tribunal has already determined that the assessment board committed no error when it found that that appointee met the TEAM experience requirement. As such, eliminating it from the second and third processes could not have served to personally favour her. Nonetheless, an assessment of the evidence concerning the modification is in order.

31 Section 30(2) of the PSEA assigns the authority to establish qualifications to the PSC or the deputy head, as the case may be. C/Supt Enright performed that role for the second and third processes. She testified that she removed the TEAM experience qualification from the second process because it had been raised as a concern in the first process and it was under review. She eliminated the TEAM experience requirement from the third process on the basis that it was an unnecessary restriction on the field of potential candidates. Her explanations were not challenged.

32 The Tribunal finds that the evidence taken as a whole does not lead to a finding that the appointee was personally favoured in the second and third appointment processes. The differences in the SMCs used for the second and third processes are reflective of C/Supt Enright's knowledge of the requirements of the AS-02 position and the flexibility inherent in the PSEA. She set experience qualifications for both the second and third processes that differed from the first process. However, there is nothing in the evidence to show that this was anything but the reasonable exercise of the authority that is given under s. 30(2) to establish the qualifications for a position. As the Tribunal found in *Visca v. Deputy Minister of Justice*, 2007 PSST 0024, at para. 42, the PSEA gives managers broad discretion to establish the necessary qualifications for the position to be staffed.

33 There is no evidence that the appointee was personally favoured in the establishment of the qualifications. Accordingly, the Tribunal finds no abuse of authority in the establishment of the qualifications for the second and third processes.

Decision

34 The complaints are dismissed.

Joanne B. Archibald
Member

Parties of Record

Tribunal File	2010-0702, 2011-0089, 2011-0237
Style of Cause	<i>Donna Bonia and the Commissioner of the Royal Canadian Mounted Police</i>
Hearing	December 13 and 14, 2011 St-John's, Newfoundland
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APPEARANCES:	
For the complainant	Stan Stapleton
For the respondent	Pierre Marc Champagne
For the Public Service Commission	Marc Séguin (written submissions)