



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2009-0549
Issued at: Ottawa, February 29, 2012

LISE MORRISSETTE

Complainant

AND

**THE DEPUTY MINISTER OF TRANSPORT, INFRASTRUCTURE AND
COMMUNITIES**

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 *Morrisette v. Deputy Minister of Transport, Infrastructure and Communities*

Neutral Citation 2012 PSST 0005

Reasons for Decision

Introduction

1 Lise Morrissette (the complainant) applied on an internal advertised appointment process conducted by the Department of Transport, Infrastructure and Communities to fill the position of Manager, Resources, Planning and Special Projects, at the AS-06 group and level, in the Transportation of Dangerous Goods (TDG) Directorate in Ottawa, Ontario (the position). The complainant alleges that the respondent, the Deputy Minister of Transport, Infrastructure and Communities, abused its authority because the person appointed did not possess one of the essential qualifications.

2 The respondent maintains that it did not abuse its authority when it decided that the person appointed met the essential qualifications for the position.

3 The Public Service Commission (PSC) presented written submissions in which it states that if the person appointed does not meet the essential qualifications, the resulting appointment would not be based on merit. In such circumstances, revocation of the appointment would be the proper remedy.

Background

4 On May 22, 2009, the respondent posted a *Job Opportunity Advertisement* (JOA) to fill the position. The area of selection was open to “[e]mployees of Transport Canada in the National Capital Region” and the closing date for the submission of applications was May 29, 2009.

5 The JOA contained the following requirement under the heading “Essential Qualifications”:

Candidates must clearly demonstrate how they meet the essential education and experience factors listed IN THEIR COVERING LETTER. Candidates should use the experience and education factors as a header and then write concrete examples demonstrating how they meet the experience and education required. Resumes will be used to validate the experience and education listed in the cover letter. Failure to provide sufficient information may result in the candidate being screened out.

(emphasis in original)

6 Applications were reviewed and assessed against the essential experience and education qualifications. The complainant's application was screened out for failing to meet two of the experience qualifications. She was advised of this result by letter dated June 10, 2009.

7 A *Notification of Appointment or Proposal of Appointment* was issued with a complaint period closing date of August 28, 2009. Christiane Lamoureux was appointed to the position.

8 On August 26, 2009, 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

9 The Tribunal must determine if the respondent abused its authority in the application of merit when it appointed Ms. Lamoureux (the appointee) to the position.

Summary of Relevant Evidence

10 The essential qualification that the complainant claims the appointee did not possess is as follows:

Extensive experience* in the planning and management of service delivery mechanisms and provision of services relating to the administrative, financial, human resources, contract management, purchasing and graphic design functions of a directorate.

(...)

* Extensive experience is defined as having performed a broad range of related activities, which could normally be acquired over a period of 3 years.

11 The complainant submits that the qualification contained two parts, each of which must be met by the candidates. The first part related to the "planning and management of service delivery mechanisms", whereas the second part involved the "provision of services relating to" various functions in support of the directorate. It is the second part of this qualification that the complainant alleges that the appointee fails to meet. In her view, the appointee embellished her résumé by adding work that was performed

by other persons within the TDG Directorate. Since the closing date for submitting an application was May 2009, meeting the requirement for three years of extensive experience would mean that the appointee should have been performing such duties since about May 2006.

12 The complainant has been working in various positions within the TDG Directorate for the past 18 years, including in the areas of publication, graphics, contracts and finance. She testified that she personally observed the appointee start performing finance related work in early 2008, when the former Director General, John Read, left his position. The complainant had never witnessed the appointee doing any work related to graphic design.

13 Mr. Read testified that he was Director General of the TDG Directorate until January 2008. He began supervising the appointee in November 2004 after the departure of another manager. From May 2006 until January 2008, Mr. Read authorized her acting appointment to an AS-05 position. He explained that this was required because the appointee was not performing the broad range of duties normally associated with the AS-06 position. Mr. Read stated that from May 2006 until his departure in January 2008, he personally had performed the duties related to the TDG Directorate's finances. In addition, the graphics design duties required the use of a MacIntosh computer and the application of specialized software. The appointee did not possess the knowledge or abilities to perform these duties.

14 During cross-examination, Mr. Read was asked about two documents that had been presented in support of requests to extend the appointee's acting appointment as Manager, Resources, Planning and Special Projects. The first document was an *Acknowledgement of Performance* covering the period of April 2006 to March 2007 that attested that the appointee had demonstrated a fully satisfactory performance during the stated review period. The second document was an *Assessment Report*, dated March 1, 2007, evaluating the appointee against the qualifications for her acting position and which contained the following paragraph describing her experience:

Criteria	Does Not Meet	Meets	Exceeds	Remarks
Experience in the provision of the full range of management and corporate services including managing financial and human resources operations.		X		In her functions of Special Projects Officer, Human Resources for the TDG Directorate, the candidate has efficiently provided the full range of management and corporate services required. (emphasis added)

15 When questioned by the respondent, Mr. Read could not recall having prepared this *Assessment Report* and he suggested that someone else may have done so on his behalf.

16 Marie-France Dagenais testified that she replaced Mr. Read as the Director General, TDG Directorate. There was a two-month overlap between her arrival and Mr. Read's departure in January 2008. On her arrival, one of the key performance objectives assigned to her was to reduce the number of acting situations in the TDG Directorate.

17 Ms. Dagenais initiated the internal advertised appointment process in May 2009 to staff the position of Manager, Resources, Planning and Special Projects. She testified having drafted the original version of the Statement of Merit Criteria (SMC) in French with the assistance of Human Resources. The final version of the SMC was subsequently presented to Ms. Dagenais' management team for their confirmation. The *Job Opportunity Advertisement* (JOA) emphasized her requirement that candidates be experienced in the planning and management of service delivery mechanisms and not the hands-on "delivery of the service" itself.

18 A total of seven applications were received. Five of them were screened out because they were not from candidates within the area of selection. The remaining two applications were then reviewed and assessed against the experience and education screening criteria by Ms. Dagenais and Geoffrey Oliver, the Director of Research, Evaluation and Systems. They separately examined the applications,

then met, compared their results and found that they had reached the same conclusions. The complainant's application was screened out for failing to meet two of the experience qualifications. The sole remaining candidate, the appointee, was found to meet the essential qualifications outlined in the SMC and was appointed to the position.

19 Ms. Dagenais stated that her review of the appointee's application combined with her personal knowledge convinced her that the appointee met all of the essential qualifications. Ms. Dagenais relied greatly on the appointee's knowledge and experience to get the work of her office done, particularly given her own lack of experience with the TDG Directorate. Although such experience could normally be acquired over a period of three years, Ms. Dagenais explained that it could also be acquired over a lesser period of time and through experience acquired in several different jobs. The appointee's résumé indicated that she acquired the necessary experience, in part, while serving as the HR Special Projects Officer during the period 2000 to 2005. More specifically, she had supervised and coordinated the work of others who, in turn, performed functions in areas such as finance and graphic design. Ms. Dagenais stated that she had no reason to think that the appointee exaggerated the extent of her experience in her application.

Analysis

20 Section 77(1)(a) of the PSEA provides that a person in the area of recourse may make a complaint to the Tribunal that he or she was not appointed or proposed for appointment because the PSC or the deputy head abused its authority in the appointment process.

21 As explained in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, at para. 50, the complainant bears the burden of proving, on the balance of probabilities, a complaint of abuse of authority:

In this case, the complainant is alleging under paragraph 77(1)(a) of the PSEA that she was not appointed by reason of abuse of authority when the deputy head exercised his or her authority under subsection 30(2) in the appointment of Ms. Pennington. If the onus was with the respondent to prove that there was no abuse of authority, this would lead to a presumption of abuse of authority in all appointments, which without a doubt is not what

Parliament intended. The general rule in civil matters should be followed and the onus rests with the complainant in proceedings before the Tribunal to prove the allegation of abuse of authority.

22 According to s. 30(2) of the PSEA, an appointment is made on the basis of merit when the Commission, or the deputy head as the case may be, 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. If the person appointed does not meet the essential qualifications, then it is not an appointment based on merit. See, for example, *Rinn v. Deputy Minister of Transport, Infrastructure and Communities*, 2007 PSST 0044, at para. 38, and *Tibbs* at para. 74.

23 The complainant asserts that the experience qualification should be read as requiring the successful candidate to have hands-on experience in the direct delivery of each of the listed services. Ms. Dagenais testified, however, that she wanted to emphasize her requirement that candidates be experienced in the planning and management of such services, but not the actual hands-on 'delivery of the service' itself.

24 For the reasons that follow, the Tribunal finds that the respondent's interpretation and application of the essential experience qualification is appropriately supported by the evidence and consistent with the general context presented by the parties.

25 The French and English versions of the essential experience qualification that is at issue read as follows:

Expérience approfondie* dans **la planification et la gestion de mécanismes de prestation de services liés** aux fonctions administratives, financières, ressources humaines, gestion des contrats et conception graphique pour la direction générale.

Extensive experience* in the planning and management of service delivery mechanisms and provision of services relating to the administrative, financial, human resources, contract management, purchasing and graphic design functions of a directorate.

(emphasis added)

26 During her testimony, Ms. Dagenais confirmed that she had drafted the SMC originally in French and that the document was translated to English afterwards. Given this sequence of events, the Tribunal finds that the French version of the

qualification would most likely be an accurate representation of her intent. The manner in which the French version is formulated reflects precisely Ms. Dagenais' expectation. The French version of the essential experience qualification does not suggest that actual hands-on delivery of the service itself is required, only that the candidates be experienced in the planning and management of such services.

27 Such an interpretation is also consistent with the content of the generic work description for the position of Manager, Resources, Planning and Special Projects, which states, among several other key activities, that the incumbent of the position:

Manages the work of five staff engaged in the delivery of administrative, financial, human resources, contract management and graphics design services and support for the Directorate and leads/manages teams in managing special projects and initiatives.

(emphasis added)

28 While the appointee may not have personally performed each of the services listed in the SMC, the Tribunal notes that it was neither the requirement set out by Ms. Dagenais, nor what the position requires according to the work description.

29 The notation in the appointee's résumé that she acquired the necessary planning and management experience while performing her duties as HR Special Projects Officer from 2000 to 2005 is supported by and consistent with the *Assessment Report* that was prepared in 2007 and presented by Mr. Read with his request that her appointment as acting Manager, Resources, Planning and Special Projects be extended. The documentary evidence demonstrates that the appointment was approved on the basis of this supporting documentation. It is also consistent with several organizational charts presented by the complainant that are dated June, July and September 2007, which show that the employees performing these kinds of functions reported to the appointee in her capacity as acting Manager, Resources, Planning and Special Projects.

30 The Tribunal notes that the ambiguity appearing in the English description of the experience qualification in the SMC left it open to being interpreted in different ways. As a result, the careful use of precise wording in both official languages could perhaps have avoided the presentation of a complaint such as this one.

31 Viewing the evidence as a whole, the Tribunal finds that the complainant has not demonstrated, on a balance of probabilities, that the respondent abused its authority when it concluded that the appointee met the required experience qualification listed in the SMC, that its members ought to have doubted the experience claimed by the appointee, or, indeed, that the experience claimed by the appointee was in any way exaggerated.

Decision

32 For these reasons, the complaint is dismissed.

Maurice Gohier
Member

Parties of Record

Tribunal File	2009-0549
Style of Cause	<i>Lise Morrissette and the Deputy Minister of Transport, Infrastructure and Communities</i>
Hearing	January 20, 2011 Ottawa, Ontario
Date of Reasons	February 29, 2012
APPEARANCES:	
For the complainant	Larry Teslyk
For the respondent	Michel Girard
For the Public Service Commission	Lili Ste-Marie (written submissions)