



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2009-0453
Issued at: Ottawa, January 16, 2012

JO-ANN KERR

Complainant

AND

THE CHIEF STATISTICIAN OF CANADA OF STATISTICS CANADA

Respondent

AND

OTHER PARTIES

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

Decision Complaint is dismissed

Decision rendered by Kenneth J. Gibson, Member

Language of Decision English

Indexed *Kerr v. Chief Statistician of Canada of Statistics Canada*

Neutral Citation 2012 PSST 0001

Reasons for Decision

Introduction

1 A *Notification of Appointment or Proposal of Appointment* of Joanne Boisjoli to a Senior Laboratory Coordinator position at the EG-05 group and level was issued on June 23, 2009. The complainant, Jo-Ann Kerr, filed a complaint regarding this appointment under s. 77(1) (a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (the PSEA) on July 7, 2009.

2 The complainant alleges that the respondent, the Chief Statistician of Canada, abused its authority in the appointment process. More specifically, the complainant alleges that the assessment board failed to properly assess two essential knowledge qualifications during an oral interview, that her manager deliberately withheld information that she needed to be able to answer one of these questions, and that she had been harassed by two managers.

3 The respondent replies that the complainant was eliminated from the appointment process because she failed two essential knowledge qualifications during the interview. The assessment board determined that her responses did not meet the pre-determined assessment criteria for these two qualifications. In response to the complainant's allegation that information was withheld from her, the respondent submits that the information necessary to address the assessment criteria was publicly available. It also submits that the Tribunal does not have jurisdiction to hear harassment complaints.

Background

4 On July 7, 2011, the notice of hearing in this matter was issued to the parties. The hearing was scheduled for December 13 and 14, 2011, in Ottawa, Ontario. The hearing was to begin promptly at 9:30 a.m.

5 A notice of a pre-hearing teleconference was sent to the parties on July 12, 2011. The teleconference was scheduled for October 14, 2011. The teleconference was postponed because neither the complainant nor her representative was in attendance.

6 The Tribunal sent a notice to the parties on October 14, 2011, stating that the teleconference was being rescheduled to October 18, 2011.

7 On October 17, 2011, the complainant's representative sent an email to the Tribunal and the parties stating that despite repeated efforts, he had not been able to contact the complainant for over a year. He stated that without information from the complainant, he was not able to address the issues on the pre-hearing teleconference agenda. Based on this information the Tribunal cancelled the pre - hearing teleconference scheduled for October 18, 2011.

8 On October 18, 2011, the Tribunal directed the respondent, pursuant to s. 99(1)(e) of the PSEA, to provide it with the most current contact information for the complainant, so it could contact her.

9 On October 20, 2011, the Tribunal sent, by registered mail, a letter of direction and the notice of hearing to the complainant at the address provided by the respondent. It also sent the letter of direction to her at two email addresses the Tribunal had on file. The letter directed the complainant to provide the Tribunal by October 31, 2011, with a statement regarding her intention to withdraw or proceed with the complaint as well as her contact information where the Tribunal could reach her during the complaint process.

10 The Tribunal sent an email on November 10, 2011, informing the parties that the complainant had not complied with the letter of direction. The email also stated that the hearing would proceed on December 13 and 14, 2011, as scheduled.

11 On December 9, 2011, the Public Service Commission made written submissions concerning the complaint and stated that it would not be attending the hearing.

12 The hearing commenced at 9:30 a.m. on December 13, 2011. Only the respondent appeared before the Tribunal. The Tribunal delayed proceeding further with the hearing while staff from the Tribunal's registry office contacted the complainant's representative. The registry officer reached the representative who confirmed that he would not be attending the hearing.

13 The Tribunal then proceeded with the hearing pursuant to s. 29 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116 (the *Regulations*), which 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)

14 The Tribunal was satisfied that the notice of hearing had been sent to the complainant and her representative.

Respondent's Submissions

15 The respondent argues that the complainant has shown a complete disregard for the complaint process and the Tribunal's directives. Her allegations were very broad and she did not reply to requests for particulars. The complainant also failed to appear at the pre-hearing teleconference. The respondent believes that the complainant's behaviour amounts to an abuse of process.

16 The respondent states that it tried without success on numerous occasions to get clarification of the allegations. It notes that under the Tribunal's *Regulations*, the complainant must provide a detailed description of the allegations and full particulars of the relevant facts. It did obtain a recording related to one of the allegations but the poor quality of the recording made it inaudible. Having failed to respond to the respondent's requests for clarification of the allegations, the respondent does not know the case to be met. It argues that it would be unfair to expect it to reply to a case that it does not fully understand.

17 According to the respondent, the Tribunal's letter of direction dated October 20, 2011, made the complainant aware of the consequences of continued inaction on her part. It submits that the complainant has the burden of proof in cases before the Tribunal and that she has failed to provide any evidence to meet the burden

in this case. The respondent cited a number of Tribunal decisions in support of its position that the complaint should be dismissed.

Analysis

18 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.

19 In *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020, the Tribunal found at para. 50:

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.

20 In *Sharma v. Chief Public Health Officer of the Public Health Agency of Canada*, 2011 PSST 0027, and in *Huot v. President of the Economic Development Agency of Canada for the Regions of Quebec*, 2011 PSST 0029, the Tribunal dismissed the complaints because the complainants had failed to present any evidence in support of their allegations.

21 In the present case, the complainant has submitted allegations, but she has not tendered any evidence to support them. Consequently, the Tribunal finds that the complainant has failed to establish any abuse of authority in this case.

22 In closing, the Tribunal must note that the complainant's behaviour is unacceptable. A significant amount of time and expense went into organizing the hearing. If the complainant did not intend to pursue her complaint, she should have notified the Tribunal in a timely manner. The complainant's actions in this matter show a serious lack of regard for the Tribunal and the other parties.

Decision

23 For all these reasons, the complaint is dismissed.

Kenneth J. Gibson
Member

Parties of Record

Tribunal File	2009-0453
Style of Cause	<i>Jo-Ann Kerr and the Chief Statistician of Canada of Statistics Canada</i>
Hearing	December 13, 2011 Ottawa, Ontario
Date of Reasons	January 16, 2012
APPEARANCES:	
For the complainant	Did not attend hearing
For the respondent	Aleksandra Czyzowska
For the Public Service Commission	Kimberley J. Lewis (written submissions)