



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2012-0905

Issued at: Ottawa, June 6, 2013

MUHAMMAD AKHTAR

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 <i>Public Service Employment Act</i>
Decision	Complaint is dismissed
Decision rendered by	Joanne B. Archibald, Member
Language of Decision	English
Indexed	<i>Akhtar v. the Deputy Minister of Transport, Infrastructure and Communities</i>
Neutral Citation	2013 PSST 0019

Reasons for Decision

Introduction

1 The complainant, Muhammad Akhtar, was an unsuccessful candidate in an internal advertised appointment process for the EX-02 position of Director, Design, Equipment and Boat Safety (the EX-02 position) with Transport Canada (TC). The complainant's view is that an abuse of authority occurred as he and the appointee, Julie Gascon, were improperly assessed.

2 The respondent, the Deputy Minister of Transport, Infrastructure and Communities, denies it abused its authority. The respondent states that the complainant was eliminated as he failed to meet two essential qualifications for the position. The respondent submits that neither the complainant nor the appointee was improperly assessed for the EX-02 position.

3 The Public Service Commission (PSC) did not attend the hearing, but provided a written submission in which it discussed PSC policies that pertain to the complaint. The PSC did not take a position on the merits of the complaint.

4 For the reasons that follow, the complaint is dismissed. It has not been shown that either the complainant or the appointee was improperly assessed.

Background

5 In December 2011, TC issued a Job Opportunity Advertisement for the EX-02 position. The complainant and the appointee both applied and were screened into the appointment process. They were among eleven candidates interviewed for the position in March 2012. References were obtained subsequent to the interviews. They were used as an assessment tool to confirm information obtained in the interview on the essential qualifications of action management, people management, financial management, engagement, and values and ethics.

6 Candidates were asked to provide the names of their referees at the time of the interview. The complainant included the name of Donald Roussel, Director General of Marine Safety and Security at TC, who had been his direct supervisor for the period of 2006-2008. By the time of the interview, the complainant reported to the

Executive Director of Regulation who, in turn, reported to Mr. Roussel. Mr. Roussel was also the chairperson of the assessment board and the hiring manager for the EX-02 position.

7 For The appointee, the assessment board used references from an earlier appointment process. When the appointee submitted her application on December 10, 2011, she advised TC that she had recently participated and been found qualified for an EX-02 position at the Transportation Safety Board (TSB). She stated that the references for the TSB appointment process were obtained in August 2011. The assessment board later determined that it would use these references and it did not contact any additional referees for the appointee.

8 At the conclusion of the process, four candidates were determined to be qualified. From among them, the appointee was appointed on the basis that she was the right fit for the EX-02 position. The assessment board found that the complainant was not qualified as he did not meet the key leadership competencies of people management, and values and ethics. The complainant was advised of this result on May 11, 2012.

9 On May 17, 2012, a Notification of Appointment or Proposal of Appointment of Ms. Gascon was issued. On May 30, 2012, the complainant filed his complaint with the Public Service Staffing Tribunal (the Tribunal), under s. 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (PSEA).

Issues

10 The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority in the assessment of the complainant?
- (ii) Did the respondent abuse its authority in the assessment of the appointee?
- (iii) Did the respondent abuse its authority in the method it used to assess candidate interviews?

Analysis

Issue I: Did the respondent abuse its authority in the assessment of the complainant?

11 The complainant alleges that his assessment was flawed in several ways. Firstly, he alleges that Mr. Roussel improperly told the assessment board that the investigation of the employee complaints was concluded when it was, in his submission, ongoing investigation of complaints against the complainant. Secondly, he alleges that Mr. Roussel's reference was flawed. Thirdly, he alleges that Mr. Roussel was biased against him.

The investigation

12 The complainant alleges that Mr. Roussel should not have told the assessment board in April 2012 that the investigation had ended because it was actually ongoing. Therefore, according to the complainant, Mr. Roussel improperly told the assessment board about the conclusion of the investigation.

13 In 2011, the complainant was the Manager, Compliance, Enforcement and Appeals in TC headquarters. As noted above, he reported to the Executive Director, Regulation, and through him to Mr. Roussel.

14 Mr. Roussel testified that on April 29, 2011, in his capacity as Director General, he received complaints about the complainant from several of the complainant's subordinate employees (employee complaints). In May 2011, after the employees formalized their complaints in writing, Mr. Roussel forwarded them to Gerard McDonald, Assistant Deputy Minister, Safety and Security, at TC. Mr. McDonald retained a consultant to conduct an investigation. Mr. Roussel did not participate in the investigative process.

15 On April 4, 2012, Mr. Roussel provided a reference for the complainant to the assessment board, as requested. Mr. Roussel testified that prior to giving the reference, he asked Mr. McDonald about the outcome of the investigation of employee complaints. Mr. McDonald told him that the investigation was complete and some allegations were

founded or partially founded. Mr. McDonald indicated that the parties were discussing disciplinary action.

16 Mr. Roussel stated that he felt an obligation to share this information with the assessment board, which he did, but not before the interviews were completed and assessed.

17 This was confirmed by the evidence of Michel Viau, Executive Resourcing Advisor for TC and a member of the assessment board. Mr. Viau testified that he first learned in April 2012 that the complainant was the subject of an investigation concerning employee complaints. He confirmed that Mr. Roussel told the assessment board about the outcome of the investigation, and stated that he felt obliged to tell them because the information was relevant to the qualifications being assessed.

18 The complainant claims, however, that the investigation was still ongoing at the time and contends that Mr. Roussel should not have told the assessment board that it had been completed.

19 The question of whether the investigation was final was addressed by a number of documents entered in evidence. On February 10, 2012, the complainant received a letter from Mr. McDonald. The letter stated that following the consultant's investigation, several of the employee complaints were determined to be founded or partially founded, and some were unfounded. A document described as "the final investigation report" was attached. The letter advised the complainant that he and Mr. McDonald would meet shortly "to gather additional and pertinent information not presented in the ... report that I (Mr. McDonald) need to take into consideration in deciding what corrective measures are deemed appropriate."

20 The complainant produced an email he wrote to Mr. McDonald on April 5, 2012. It included attached messages sent during 2011 that address the timing and conduct of the investigation. Nothing in the email addressed the finality of the investigation.

21 The complainant corresponded in May 2012 with Sean Boileau, a TC employee, concerning an access to information and privacy request. Mr. Boileau responded by

clarifying the status of two investigations, a TC investigation and a consultant's investigation. Mr. Boileau stated that according to information received from a labour relations advisor, the consultant's investigation was complete and the TC investigation was ongoing.

22 With respect to the timing of Mr. Roussel's comments to the assessment board on the outcome of the investigation of employee complaints, the Tribunal finds that Mr. McDonald's letter of February 2012 clearly states that the investigation report is final and this is consistent with the information given to the complainant telling him to prepare for a discussion of corrective measures.

23 The Tribunal does not find that Mr. Boileau's email exchange with the complainant supports a different interpretation. Mr. Boileau stated clearly that the consultant's investigation was complete. As the investigation of employee complaints was conducted on behalf of Mr. McDonald by a consultant, the emails do not support the complainant's assertion that the investigation was continuing at that time. The fact that appropriate disciplinary measures had yet to be determined is not relevant to this question.

24 As it has not been shown that the investigation of employee complaints was ongoing on April 4, 2012, when Mr. Roussel gave his reference, the Tribunal finds that it was not improper for Mr. Roussel to refer to the conclusions of the investigation when providing the reference.

The reference from Mr. Roussel

25 In addition to advising the assessment board of the conclusions of the investigation, Mr. Roussel provided a reference. The complainant alleges that the reference included information that should not have been disclosed.

26 Mr. Roussel testified concerning his responses to some of the reference questions. The reference, which was tendered in evidence, shows that he was asked whether the complainant had integrated values and ethics, built and promoted a safe and healthy workplace, and practiced fairness and transparency in the workplace.

Mr. Roussel stated that his responses were based on his discussions with employees who had raised their concerns directly with him, his review of information sent to him by the complainant concerning problems in the work unit, and his personal observations and interactions in the complainant's work unit while managing the situation subsequent to the receipt of the employee complaints.

27 After completing the assessment of candidates, the assessment board prepared an Integration Report for Appointment Process (IR) in which it summarized the results of the assessments. The IR states that although the complainant had a good interview, the reference obtained from Mr. Roussel revealed significant issues that resulted in his failure to qualify with respect to people management, and values and ethics.

28 Section 36 of the PSEA confers authority for the establishment of assessment methods on the PSC, or the respondent as its delegate. The complainant supplied Mr. Roussel's name to the assessment board as a referee. Mr. Roussel was the Director General of the branch in which the complainant worked, and the complainant has not suggested that his knowledge was inadequate to give a reference. As the Tribunal has previously held, it is important that a referee is sufficiently familiar with the work of a candidate to provide adequate information. (See *Dionne v. Deputy Minister of National Defense*, 2008 PSST 0011, at para. 55.)

29 The complainant has not demonstrated that the content of Mr. Roussel's reference was inadequate for the evaluation of the qualifications being assessed or included information that should not have been disclosed. While Mr. Roussel did not provide details of specific transactions or occurrences, the Tribunal is satisfied that the reference summarized his perspective with adequate particulars of his observations and interaction with both the complainant and his work unit.

Bias

30 The complainant alleged that Mr. Roussel should not have participated as a board member or as a reference because he was biased against the complainant based on his awareness of the employee complaints.

31 As noted above, Mr. Roussel was the hiring manager and the chairperson of the assessment board. The complainant provided his name as a referee to the assessment board.

32 Where bias is alleged, direct evidence of actual bias may be difficult to establish, but the evidence may support a finding that a reasonable apprehension of bias is present. Conduct that gives rise to a reasonable apprehension of bias constitutes an abuse of authority. See (*Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 0010, at para. 71.)

33 The Tribunal finds no evidence of actual bias in the participation of Mr. Roussel on the assessment board or the provision of a reference for the complainant. The Tribunal must, therefore, determine whether the evidence is sufficient to support a finding of reasonable apprehension of bias.

34 In *Denny v. Deputy Minister of National Defence*, 2009 PSST 0029, at para. 125, the Tribunal referred to *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, [1976] S.C.J. No. 118 (QL), which sets out the test for reasonable apprehension of bias at p. 394 (S.C.R.):

[T]he apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information....[T]hat test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

35 The Tribunal in *Denny* also referred to the more recent articulation of the test set out in *Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623, [1992] S.C.J. No. 21 (QL), at para. 22 (QL), and applied it to the circumstances of that complaint. Based on the jurisprudence, the test for reasonable apprehension of bias in a staffing complaint can be formulated as follows: *Would a reasonably informed bystander looking at the process reasonably perceive bias on the part of one or more of the persons involved in the assessment of the complainant?*

36 Applying the test to the circumstances of the present case, the Tribunal notes that the complainant did not object to Mr. Roussel's participation in the interview, and, indeed, supplied Mr. Roussel's name as a reference. It would be reasonable to think that Mr. Roussel, as the Director General with responsibility for the complainant's work unit, would be aware of the employee complaints and would have made his own observations of the work unit. The mere fact that Mr. Roussel knew of negative information concerning the complainant did not mean that he could not serve as a referee or, indeed, as an assessment board member. See (*Robertson v. Deputy Minister of National Defence*, 2010 PSST 0011, at para. 55.) As the Tribunal explained in *Dionne*, at para. 50, "(w)hile candidates can offer as referees those supervisors or co-workers who they believe will provide positive information, the purpose of conducting a reference check is to obtain accurate and relevant information about a candidate, whether positive or negative."

37 Although the reference given by Mr. Roussel was not favourable to the complainant, the evidence does not demonstrate a reasonable apprehension of bias. There was no evidence that the reference he provided was inaccurate or irrelevant to the qualifications being assessed.

38 The Tribunal concludes that the complainant has not established that the respondent abused its authority in its assessment of his candidacy.

Issue II: Did the respondent abuse its authority in the assessment of the appointee?

39 The complainant's position is that the assessment board improperly assessed the appointee. Firstly, it incorrectly marked her answer to interview question 2. Secondly, it showed preferential treatment of her by using the references provided to the TSB in an earlier EX-02 process. Thirdly, it embellished her interview performance because, although she had merely passed the interview according to the Rating Guide, in the IR the assessment board described it as an excellent interview. Finally, the complainant states that the appointee did not meet the right fit criteria for appointment to the EX-02 position.

Interview Question 2

40 Question 2 of the interview asked candidates to identify key trends and issues in marine transportation safety. The expected answer for the question listed three main criteria, namely economic, social and environmental issues. The complainant alleges that these elements do not appear in the assessment board members' notes of the appointee's interview and if she did not provide the expected answer, she should not have been found qualified.

41 Mr. Roussel provided a review of his notes of the appointee's interview, highlighting areas where she addressed the three criteria. He testified that the appointee spoke of globalization, knowledge of industry, safety and environmental stewardship, technological challenges, the social challenge of labour shortage, the challenges of the Deficit Reduction Action Plan for TC as an organization, the requirement for a long term strategy for stability, engagement with stakeholders, and a full team approach. In his view, she addressed all three elements at a high level. The complainant did not challenge Mr. Roussel's testimony in this regard.

42 The Tribunal has held in numerous decisions that its role is to determine whether there has been an abuse of authority, and 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 at para. 54.)

43 The Tribunal finds that Mr. Roussel provided a coherent and reasonably comprehensive explanation of the marking of question 2. While the complainant may disagree with it, he has not presented evidence to support his contention that the three main criteria were omitted from the appointee's answer.

44 Accordingly, the Tribunal does not find an abuse of authority in the marking of the appointee's answer to question 2.

The use of the TSB references

45 As noted above, the assessment board did not obtain new references for the appointee. It used her references from an EX-02 process conducted at the TSB in

August 2011. These references were given by two superiors, one subordinate and one client. The complainant takes the position that it was unfair and showed preferential treatment to use the appointee's TSB references, particularly as there was no peer reference, as requested of the other candidates in this EX-02 process. The complainant did not contest the relevance or applicability of the content of the TSB references.

46 The complainant testified that during informal discussion, which took place after he was notified of the results of the EX-02 process, he requested that the assessment board substitute his 2008 references from a Career Assignment Program (CAP) assessment for the ones it had gathered. His request was denied and he asserts that this decision further demonstrated preferential treatment of the appointee.

47 Mr. Roussel confirmed that the assessment board assessed the appointee's references from the TSB appointment process. He stated that they treated the TSB client reference as a peer reference. He considered that using the TSB references represented a flexible, cost-saving approach to obtaining information to assess a candidate.

48 Mr. Roussel testified that he provided a reference for the complainant's 2008 CAP application, but the circumstances he relied on then had changed based on the complainant's issues that became apparent in 2011.

49 Mr. Viau testified that it is common in EX resourcing to use references from a different EX process, provided they are not more than 1.5 years old, as it saves time and money. Mr. Viau stated that he reviewed the content of the TSB references and found that it provided information pertinent to all of the qualifications assessed by references in this appointment process. In consultation with his supervisor, he determined that the client reference for the appointee would be accepted as the equivalent of a peer reference.

50 Mr. Viau participated in informal discussion with the complainant. He recalled that the complainant asked to substitute CAP references from 2008 for the ones that were used. In particular, they included a positive reference from Mr. Roussel.

51 Mr. Viau testified that the assessment board considered that the complainant's references in the EX-02 process completely addressed the qualifications for the position and it saw no reason to obtain more information. In his opinion, a threshold consideration for using references from other appointment processes was that they were from an EX appointment process and therefore addressed the level of competence required for the Executive group. Mr. Viau added that he reviewed the qualifications assessed in the complainant's CAP references and compared them to the EX qualifications. He found that while they had points of similarity, the CAP references did not address competencies at the EX-02 level. Mr. Viau's evidence was not challenged.

52 In the IR, the assessment board referred to the use of the appointee's references from the TSB process and stated:

Although the format of those references differed slightly ... the key leadership competencies assessed during the interview were entirely supported by the referees. These were very strong and convincing and indicated that some of her strengths were strategic thinking (analysis and ideas) combined with management excellence (action and people management) and engagement.

53 The TSB reference documents bear handwritten notations indicating where the TC assessment board extracted relevant information bearing on the competencies of action management, people management, financial management, engagement, and values and ethics.

54 The essence of the complainant's argument is that it was unfair and showed preferential treatment to use the appointee's TSB references and yet refuse to use his CAP references. As the Tribunal found in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, at para. 50, the complainant bears the burden of proof with respect to a complaint of abuse of authority under s. 77 of the PSEA.

55 The respondent has provided an explanation for using the appointee's TSB references. The references were current and for another EX-02 position. The information given by the TSB referees, one of whom was the chairperson of the TC assessment board, was relevant. It sufficiently addressed the qualifications at the

level expected of the subject EX-02 position to allow the assessment board to assess for this EX-02 process.

56 This is not a case where the assessment board merely adopted the TSB assessment of the appointee. The Tribunal notes, as the assessment board did, that the questions asked of the TSB referees were not identical. Notwithstanding the different format, as indicated in the evidence of Mr. Viau and supported by the notations made on the TSB references, the assessment board looked to the substance of the references and determined that they contained relevant information that could be used in conjunction with the information obtained during the interviews, consistent with the requirements of the Rating Guide.

57 As to any difference in the wording of the reference questions used by TSB, in *Hughes v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 0016, the Tribunal considered a similar issue. In *Hughes*, eight of twenty-five qualified candidates were assessed and found to meet certain qualifications based on their results in an earlier appointment process for the same position. As such, they were excused from writing an examination that was administered to other candidates. The complainant alleged that the respondent had abused its authority on the basis that the two tests were not comparable because the number of questions and the marking schemes were different. In finding that the respondent did not abuse its authority, the Tribunal held that although the first test was different, there was no evidence that it did not effectively assess the essential qualifications that were being assessed in the second appointment process.

58 Similarly, in the present case, although the questions asked of TSB referees were different, based on Mr. Viau's evidence the assessment board analyzed the content of the referees' answers and found that they provided appropriate information at the correct level of competence to allow the assessment board to rely on the TSB references in this EX-02 process.

59 The additional factors of saving time and expense were reasonable considerations. While the complainant has questioned whether a peer and a client

reference were equivalent, the evidence does not show that the respondent erred in deeming the client reference to be the equivalent of a peer reference.

60 Using the TSB references in these circumstances demonstrated the flexibility that is inherent in the PSEA. While the references were not presented in an identical format, they yielded information that the assessment board could reasonably apply in the EX-02 assessment.

61 As for the complainant's 2008 CAP references, Mr. Viau's evidence is that they were reviewed and found to address qualifications that were different and not at the EX-02 level. Moreover, the complainant's references were four years old at the time of the assessment and, according to Mr. Roussel, who was a referee in both 2008 and 2012, the 2008 reference did not reflect his current views. As such, the content of the CAP references would not have served to assess the qualifications for the EX-02 position.

62 By contrast, the appointee's references were provided in August 2011 for an EX-02 position. This was approximately eight months prior to the assessment. According to Mr. Viau's evidence, the references addressed the same qualifications. Mr. Roussel served as a reference in the TSB appointment process and he gave no indication that his opinions had changed by the time of the present process.

63 The Tribunal finds that the complainant has not established that the use of the TSB references or the refusal to use his CAP references constituted preferential treatment toward the appointee. The appointee's references were recent and the content addressed the same qualifications. The complainant's CAP references were four years old, they were not for an EX-02 position and did not adequately address the essential qualifications, and, according to Mr. Roussel who was a referee for the complainant for both CAP and the EX-02, were no longer an accurate reflection of his view of the complainant.

The Rating Guide and the Integration Report

64 The complainant noted a difference in the rating of the appointee as it was recorded in two assessment documents, the Rating Guide and the IR. The Rating Guide showed that the appointee had merely passed each assessed qualification, and the IR described her interview as “excellent.” Based on this difference, he challenged whether she had been properly assessed.

65 Mr. Viau testified about the differences between the Rating Guide and the IR by referring to the rating scale used by the assessment board. He noted that the rating scale provided five categories to assess candidates’ performance. The three highest categories were indicated as “greatly exceeds expectations,” “exceeds expectations,” and “meets expectations,” and each of these phrases was followed by the word “pass.” The categories of “slightly below the level” and “clearly below the level” were both shown as “fail.”

66 Mr. Viau explained that to complete the table that constituted the Rating Guide, the candidate ratings were recorded only as pass or fail as they related to the categories of the rating scale. The IR, on the other hand, described the performance in a narrative format that was intended to capture the nuance of each interview. Hence, the description of the appointee’s interview as excellent.

67 Mr. Roussel testified that the IR was prepared jointly by the members of the assessment board. It accurately reflected the consensus of the assessment board members that the appointee’s interview was excellent.

68 The evidence does not support a finding of abuse of authority. The five levels of the rating scale and the manner of reflecting them in both the Rating Guide and the IR has been cogently explained in evidence and the explanation has not been contradicted. In any event, both the Rating Guide and the IR show that the appointee is qualified. The different descriptors correspond to the format of the documents. The tabular Rating Guide is a basic summary and the narrative IR permits a more complete, qualitative explanation.

Right Fit

69 The right fit rationale for the appointment of the appointee referred to the assessment of four asset qualifications. In *Visca v. Deputy Minister of Justice*, 2007 PSST 0024, at para. 42, the Tribunal held that broad discretion is given to managers to choose the individual who meets the essential qualifications. This principle applies as well when choosing asset qualifications such as the four asset qualifications, to determine the right fit for the position in the present case.

70 The complainant challenges whether the appointee meets two of the asset qualifications. The first asset qualification is experience providing technical advice, authority and support to regions on matters related to marine regulations and enforcement or legal investigations. The complainant states that the activities of compliance and enforcement fell under his area of responsibility and as he was the manager, he knows that the appointee has no enforcement experience.

71 Mr. Roussel testified that as the Director, Domestic Vessel Regulatory Oversight and earlier as the Director, Quality Assurance, the appointee provided functional direction to a large number of inspectors and managers throughout Canada. From 2008 onward, her responsibilities included domestic regulatory oversight and matters related to marine regulation under the *Canada Shipping Act*, S.C. 2001, c. 26. Mr. Roussel stated that the inspectors conducting this work reported to her on issues of non-conformity. She was also responsible for a compliance and enforcement strategy, and the verification of work provided by non-governmental organizations delivering quality assurance programs on behalf of TC. This work included legal investigations in matters related to marine regulation and providing functional direction on the delivery of inspection and investigation programs, legal investigations and enforcement.

72 The complainant also challenges whether the appointee had line authority within a regional organization in the delivery of transportation safety programs. He notes that her position was in headquarters and not in a region. He believes that the appointee was given “latitude” to allow her to meet the right fit criteria.

73 Mr. Roussel testified that the assessment board relied on the appointee's experience as a Chief Officer/Commanding Officer which was acquired working within a regional organization and not in headquarters. In this capacity, she had line authority over crews on Canadian Coast Guard vessels delivering buoy tending programs, lighthouse re-supply programs, search and rescue, fisheries enforcement, and scientific research.

74 As noted above, the Tribunal's role is to determine whether an abuse of authority has occurred and not to reassess candidates. (See *Broughton*.) Mr. Roussel supported the assessment board's conclusions by referring to his personal knowledge and the appointee's application. The evidence demonstrates that she had experience providing technical advice, authority and support to the regions in the requisite programs. This is distinct from the activities of the complainant's work unit in executing an enforcement program.

75 As for providing line authority within a regional organization in the delivery of transportation safety programs, the respondent has pointed to the appointee's experience as Chief Officer/Commanding Officer. Other than the complainant's opinion, no evidence has been presented to contradict the assessment board's determination that the appointee met the asset qualifications for this position.

76 The Tribunal finds no abuse of authority in the determination of right fit in the EX-02 appointment process.

Issue III: Did the respondent abuse its authority in the method it used to assess candidate interviews?

77 The complainant alleges that the assessment board abused its authority by using a consensus-based method of assessing candidates' interviews. He notes that the PSC guide entitled *Structured Interviewing: How to design and conduct structured interviews for an appointment process* contains a recommendation that assessment board members should independently rate candidates at the conclusion of every interview. In his submission, by assessing candidates by consensus and not independently forming their own conclusions, the assessment board members'

conclusions may have been improperly influenced by bias, political influence or favouritism.

78 The Tribunal has already reached a conclusion with respect to bias. In addition, pursuant to s. 77(3) of the PSEA, the Tribunal is precluded from considering an allegation that an appointment or proposed appointment was not free from political influence. Finally, the complainant did not present any evidence to support his allegation that the assessment board's decision to use a consensus-based marking approach constituted favouritism toward any of the candidates in the appointment process. Nonetheless, it is his position that as the assessment board did not conduct the evaluation in conformity with the PSC guide, the assessment was not properly conducted.

79 Mr. Viau testified that the assessment board marked candidates on a consensus basis. The members of the assessment board met to consider the performance of candidates and together arrived at a rating of the individual candidates.

80 The IR, which reported the final results of the assessment process, specifically stated that each of the assessment board members approved its content by email.

81 Section 29(3) of the PSEA states that the PSC may establish policies respecting the manner of making appointments. Pursuant to s. 16 of the PSEA, deputy heads are subject to those policies and therefore bound to comply with them in exercising the authority that is delegated to them. (See *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 0024, at para. 69.) The PSC Appointment Policy is an example of one such policy.

82 The PSC also issues documents that are instructive, but do not constitute policies within the meaning of s. 29. The guide in evidence here is one such example. It is of note that on page 2, it states that it is intended to provide "advice to help hiring managers and Human Resources specialists get the most out of structured interviews." PSC guides such as this one are not policies that bind a deputy head. They are tools to assist in the conduct of appointment processes.

83 Thus, the decision of the assessment board to use a consensus-based marking approach for candidates, rather than follow the PSC recommendation, does not itself render the assessment tools unfair or otherwise constitute an abuse of authority. (See, for example, *Sproule v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 0034, at para. 33.) Moreover, the IR confirms that consensus was reached on the assessment of the candidates. Accordingly, in the circumstances of this case, the evidence does not establish an abuse of authority in the assessment board's use of consensus as a method to assess candidates.

Decision

84 For these reasons, the complaint is dismissed.

Joanne B. Archibald
Member

Parties of Record

Tribunal File	2012-0905
Style of Cause	<i>Muhammad Akhtar and the Deputy Minister of Transport, Infrastructure and Communities</i>
Hearing	February 5-6, 2013 Ottawa, Ontario
Date of Reasons	June 6, 2013
APPEARANCES:	
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