



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

Files: 2013-2698, 2013-2699 &
2013-2700

Issued at: Ottawa, December 23, 2013

GREG SWANNIE

Complainant

AND

THE CHIEF COMMISSIONER OF THE CANADIAN GRAIN COMMISSION

Respondent

AND

OTHER PARTIES

Matter	Motion to dismiss the complaints
Decision	Complaints are dismissed
Decision rendered by	Guy Giguère, Chairperson
Language of Decision	English
Indexed	<i>Swannie v. Chief Commissioner of the Canadian Grain Commission</i>
Neutral Citation	2013 PSST 36

Reasons for Decision

Introduction

1 On November 7, 2013, the Tribunal received three complaints from the complainant under s. 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA). The complaints relate to three appointments to the position of Grain Inspector (PI-03) resulting from an internal advertised appointment process (12-CGC-HQ-IA-IS-1585) at the Canadian Grain Commission (CGC).

2 On November 21, 2013, the respondent filed motions to dismiss all three complaints on the ground that they were filed late.

Summary of Relevant Facts

3 On October 15, 2013, the Notices of Appointment or Proposal of Appointment (NAPAs) regarding the three appointments were posted on Publiservice. As indicated on the NAPAs, the closing date to file complaints regarding these appointments was on October 30, 2013. The Tribunal, however, received the complaints by fax on November 7, 2013. The complaints were accompanied by a cover letter in which the complainant indicated that he had originally faxed his complaints on October 30, 2013, and would endeavour to send the Tribunal a confirmation of this fax transmission.

4 On November 12, 2013, the Tribunal directed the complainant to provide written evidence of his failed attempt to fax his complaints on October 30, 2013. The complainant replied on November 13, 2013, that he faxed the complaints to the Tribunal on October 30, 2013, and saw a confirmation number “926” on the fax machine’s screen. He therefore believed at the time that the complaints had been successfully sent to the Tribunal. He did not provide any explanation of what the “926” message may have meant. On November 7, 2013, he asked his union representative why he had not received any confirmation from the Tribunal about the filing of the complaints. The representative contacted the Tribunal and learned that no documents had been received from the complainant. The complainant immediately went to a different fax machine and successfully faxed the complaints to the Tribunal, which were received on November 7, 2013.

5 The complainant also explained that his first attempt at faxing the documents was made at his office's fax machine, which only keeps a record of prior fax transmissions for a "couple of days." He did not indicate whether the machine printed out of a fax transmission sheet or slip after his first attempt at sending the complaints.

6 On November 28, 2013, the complainant's representative filed submissions in response to the motion to dismiss, in which she reiterated the facts outlined in the complainant's submissions. She added, however, that the complainant's first attempt at faxing the complaint was made after he had first checked the Tribunal's website and found that it "appeared to be inoperational (*sic*)."

Analysis

7 Section 10(1) of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116, (PSST Regulations), states that a complaint must be received by the Tribunal no later than 15 days after notice of an appointment, which in the case of public notices like NAPAs posted on Publiservice, is the date specified in the notice. With respect to the present complaints, the date of notice was October 15, 2013, and the closing date for complaints was October 30, 2013. According to s. 10(2) of the PSST Regulations, a complaint sent by electronic means, such as a fax transmission, is considered to have been received by the Tribunal on the day on which it is sent. The Tribunal finds that while the complainant may have believed that he faxed the complaints on October 30, 2013, the transmission was unsuccessful and, thus, he did not in fact send them until November 7, 2013.

8 Section 5 of the PSST Regulations nonetheless gives the Tribunal the authority, in the interest of fairness, to extend the time within which a complaint may be made. The Tribunal has previously ruled that when filing a complaint, the time limit set out in s. 10 of the PSST Regulations is strict. The Tribunal may extend it, but such an extension is discretionary, not automatic. The complainant must show exceptional circumstances. See, for example, *Richard v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0002; *Poulin v. Deputy Minister of Justice*,

2008 PSST 0018; *Casper v. Deputy Minister of Citizenship and Immigration Canada*, 2006 PSST 0010.

9 When a complaint is not received by the Tribunal within the required timeline, a complainant can provide some record that a complaint was sent or delivered to establish the date that this was done. In *MacDonald v. Deputy Head of Service Canada*, 2006 PSST 0002, for example, the Tribunal granted an extension request, even though the complaint had been received by regular mail after the closing date, because the envelope containing the complaint had a postage meter marking indicating that it had been sent well before the deadline. Similarly, fax machines can provide printouts confirming whether a document has been successfully transmitted.

10 The Tribunal finds that the complainant has not established exceptional circumstances to justify an extension of the filing date for these complaints. The only reason provided for not filing the complaints by the closing date is that the complainant erroneously believed that he had successfully sent them. There is no indication, however, that he made an effort to verify if they had in fact been transmitted to the Tribunal before the expiry of the 15-day filing period. He seemingly did not obtain any written confirmation of transmission from the fax machine at the time, nor did he immediately contact the Tribunal to see if the complaints had been received. Either action would have allowed him to learn that his complaints had not been filed properly, following which he could have tried to send them again within the required timeline.

11 A complainant sending a complaint by fax should print and retain a transmission receipt in order to establish the fact that the complaint was successfully sent, the number to which it was sent, and the date it was transmitted. As was noted by the Immigration Refugee Board – Immigration Appeal Division (IAD) in determining whether an appellant had faxed his notice of appeal to the IAD on time: “[I]t would be normal practice for any prudent individual to have printed and saved the successful fax transmission receipt at the time it was sent.” (*Sidat v. Canada (Citizenship and Immigration)*, 2012 CanLII 61926 (IRB) at para. 18)

12 The complainant's representative states that before attempting to fax his complaints, the complainant had first checked the Tribunal's website and found that it "appeared to be inoperational (*sic*)". The complainant did not make any similar allegations in his submissions to the Tribunal, nor did his representative provide any information as to the manner in which it was "inoperational." The Tribunal notes that the complainant filed another complaint on October 7, 2013 (2013-0364), regarding the same appointment process. In that case, the complainant had stated that he could not file his complaint electronically from the Tribunal's website and therefore had to print hard copies, which he faxed to the Tribunal from a Staples store five days after the closing date. The Tribunal granted an extension for that complaint because evidence was presented from the CGC's Information Technology section confirming that the organization was having difficulty at the time communicating with the Tribunal's website. In contrast, the complainant has presented no similar evidence regarding the present complaints and there is no information before the Tribunal that there were any technical problems preventing him from filing the complaints online.

13 For these reasons, the Tribunal finds that the complainant did not file his complaints within the required time and that the reasons given for their late filing do not constitute exceptional circumstances that would justify granting an extension.

Decision

14 Having found that the complaints are untimely and that the complainant has failed to demonstrate exceptional circumstances, the Tribunal grants the respondent's motion and dismisses the complaints.

Guy Giguère
Chairperson

Parties of Record

Tribunal Files	2013-2698, 2013-2699 & 2013-2700
Style of Cause	<i>Greg Swannie and the Chief Commissioner of the Canadian Grain Commission</i>
Hearing	Written request, decided without the appearance of parties
Date of Reasons	December 23, 2013