



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

Files: 2013-0154/0155/0156/0179
Issued at: Ottawa, May 20, 2014

JORDAN RINEHART

Complainant

AND

DEPUTY MINISTER OF NATIONAL DEFENCE

Respondent

AND

OTHER PARTIES

Matter	Complaint of abuse of authority pursuant to s. 77(1)(a) of the <i>Public Service Employment Act</i>
Decision	Complaints are dismissed
Decision rendered by	Nathalie Daigle, Member
Language of Decision	English
Indexed	<i>Rinehart v. Deputy Minister of National Defence</i>
Neutral Citation	2014 PSST 8

Reasons for Decision

Introduction

1 Jordan Rinehart, the complainant, participated in an internal advertised appointment process to staff Deputy Platoon Chief firefighter positions, at the FR-02 group and level with the Department of National Defence (DND). He was found qualified and was placed in a pool of candidates who met the established essential qualifications. Three other individuals in the pool were appointed to positions but the complainant was not.

2 The complainant alleges that he was not appointed because the respondent, the Deputy Minister of DND, abused its authority by improperly administering the practical test and incorrectly marking his test, including by failing to consider relevant material. He also alleges that the respondent abused its authority in its approach to selecting who would be appointed from the process. The respondent denies these allegations.

3 The Public Service Commission (PSC) did not attend the hearing, but presented a written submission on PSC policies and guidelines related to the issues in this case. It took no position on the merits of the complaints.

4 For the reasons set out below, the complaints are dismissed. The Public Service Staffing Tribunal (the Tribunal) finds that the respondent did not abuse its authority in conducting the practical exercise, assessing the complainant, or in selecting who would be appointed from the process.

Background

5 On March 1, 2011, a Job Opportunity Advertisement (JOA) was posted on the *Publiservice* website to create a pool of qualified candidates for Deputy Platoon Chief positions at the FR-02 group and level.

6 The assessment board for this appointment process was comprised of Bernard Archambault, Base Fire Chief, Canadian Forces Base (CFB) Gagetown, who was the Board Chair, Kevin Feeney, Deputy Fire Chief, CFB Gagetown, and Josée Lamoureux, Staffing Officer at DND.

7 On April 9, 2013, the respondent posted three notices of *Information Regarding Acting Appointment* in relation to the acting appointments of three of the qualified candidates to positions of Deputy Platoon Chief.

8 On April 23, 2013, the respondent posted a *Notice of Appointment or Proposal of Appointment* (NAPA) regarding the indeterminate appointment of one of those three acting appointees to the position of Deputy Platoon Chief.

9 On April 16 and May 8, 2013, the complainant brought complaints of abuse of authority to the Tribunal in relation to all of these appointments, pursuant to s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (PSEA). The complaints were consolidated for the purposes of these proceedings, in accordance with s. 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116.

Issues

10 The Tribunal must determine whether the respondent abused its authority in this appointment process. To do so, the Tribunal will address the following issues:

- (i) Did the respondent incorrectly mark the complainant's practical test?
- (ii) Did the respondent fail to consider relevant information?
- (iii) Did the respondent improperly administer the practical test?
- (iv) Was the respondent's approach to selecting who would be appointed from the process improper?

Analysis

11 Section 77(1) of the PSEA provides that a person in the area of recourse may file a complaint with the Tribunal that he or she was not appointed or proposed for appointment because of an abuse of authority. As noted in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008 at para. 66, "[a]buse of authority will always include improper conduct, but the degree to which the conduct is improper may determine

whether or not it constitutes abuse of authority.” The complainant has the burden to prove, on a balance of probabilities, that there was an abuse of authority.

Issue I: Did the respondent incorrectly mark the complainant’s practical test?

12 The practical exercise was administered to assess the ability to supervise a platoon of firefighters in an emergency situation. At the beginning of the exercise, candidates were informed that a fire alarm had been received from the scene of a simulated fire. The candidates were instructed to replace the Platoon Chief, who was indisposed, and take appropriate action. The platoon consisted of five persons, namely three firefighters, a driver and the candidate as Platoon Chief.

13 The complainant submits that his performance during the test warranted more marks than he received for several of the assessed criteria. He asserts that if he had obtained four more points, he would have been selected for an acting appointment.

14 The complainant explained that after being informed that the fire alarm had been received, he and his troop boarded the truck. He then radioed the words “Code 1” to the 911 Dispatcher and Alarm Room Attendant (Dispatcher), who was in the alarm room, to indicate that his team was responding to the incident and that they were investigating the alarm. The truck’s first stop was at a hydrant to connect the hoses. The second stop was at the house where the simulated fire had been created for the exercise. The driver parked the truck in front of the house.

15 The complainant testified that he walked around the house and then positioned himself in front of it to the right side to give his instructions to the other firefighters. He explained that he delegated the job of Deputy Platoon Chief to the most experienced firefighter assisting him. The Deputy Platoon Chief’s role was to provide a report from inside the house. While an actual fire had not been set, special equipment was used to generate real smoke that was billowing out. The complainant, as the Platoon Chief, received reports from the Deputy Platoon Chief and provided instructions to all involved in the exercise until the simulated fire was considered contained. He also provided progress reports to the Dispatcher. For example, on several occasions, he radioed

“PAR3” to indicate that the three firefighters inside the house were safe. Once the fire was considered extinguished, the Fire Chief took control of the situation.

16 Mr. Archambault was one of three board members who assessed the complainant during the practical exercise. He stood outside the house to monitor the process. He also listened to the complainant’s instructions on his portable radio or vehicle radio. Mr. Feeney, who accompanied the complainant during the exercise, was another assessor. He also had a portable radio. There was a third assessor who monitored the exercise from inside the house. He also followed the complainant’s instructions on his radio.

17 The three assessors used a checklist during the exercise, which listed the actions candidates were expected to take. Rather than write out a candidate’s actions in full, the board placed a check mark or a “yes” beside each expected action the candidate took. At the end of the exercise, the assessors evaluated the candidate’s performance.

18 The complainant is disputing the points he received for 10 of the 32 criteria tested during the exercise. The contested criteria are:

- A) *Confirm Call with Dispatch (verbally & on route)* (2 out of 3)
- B) *Initial Response Code* (0 out of 3)
- C) *Positioning of Resources at the Scene* (0 out of 1)
- D) *Assess Resources on Scene* (0 out of 1)
- E) *Designate Location for (1 for each): Triage Area, Staging Area, Tool Staging and Rehabilitation* (1 out of 4)
- F) *Initiate the following (1 for each): Cordon Area, Access Control Point and Evacuation / PIP* (2 out of 3)
- G) *Review, Revise & Implement Tactics* (0 out of 1)
- H) *After Benchmark* (3 out of 5)
- I) *Effective Scene Management* (4 out of 5)
- J) *Transfer Command* (4 out of 5)

19 There was one more criterion for which the complainant did not receive a perfect score. For that qualification, maintain effective communications, the complainant obtained a score of 8 out of 10. He is not contesting his score for this criterion.

20 In cases where complainants have challenged the mark or rating they have received, the Tribunal has consistently held that its role is not to re-assess the candidates. The Tribunal may, however, review an assessment to determine whether there has been an abuse of authority. See *Elazzouzi v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 11, aff'd 2012 FC 601 at paras. 42-46.

Item A) *Confirm call with Dispatch* and Item B) *Initial Response Code*

21 For Items A) *Confirm call with Dispatch* (2 out of 3) and B) *Initial Response Code* (0 out of 3), Mr. Feeney explained that the complainant did not obtain perfect scores because a Code 1 was not called once the complainant was “on route”. A Code 1 is used to confirm that the troop is responding to the incident. Mr. Feeney and Mr. Archambault both testified that candidates were expected to call a Code 1 once they were on route. This is consistent with the checklist, which shows that candidates were expected to call in a code in the alarm room (verbally) and again when they were on route to the fire.

22 The complainant asserts that he did call a Code 1 and he filed into evidence the Dispatcher’s notes to prove that he did. The Dispatcher was monitoring the radio while the complainant was doing the exercise. When the alarm was triggered at the beginning of the exercise, the complainant was in the alarm room with the Dispatcher. When the complainant left the alarm room, he sent his instructions by radio to the Dispatcher.

23 The complainant points out that the Dispatcher noted a “Code 1” beside the word “Responding” on his Red Dispatch Emergency Checklist. The assessors’ checklists do not include any note that a Code 1 was called on the radio by the complainant. The complainant submits that the assessors may not have heard him call the Code 1. He suspects that there may have been a drop in the signal strength of the radio while he was in transit.

24 The Tribunal is not persuaded that the complainant called in a Code 1 while on route. Other than his own personal belief, the complainant provided no evidence to support his assertion that the radio transmission failed. Mr. Feeney and

Mr. Archambault both described their radios as being of good quality and did not recall experiencing any transmission problems during the exercise.

25 Furthermore, none of the three assessors testified having heard the complainant register a Code 1 while on route. Although the Dispatcher registered a “Code 1” next to the word “Responding” on his checklist, this may equally reflect the Code 1 that the complainant communicated to the Dispatcher in person before leaving the alarm room. Mr. Feeney testified that the complainant called a Code 1 in the alarm room.

Item C) *Positioning of resources at the scene*

26 For Item C) *Positioning of resources at the scene* (0 out of 1), Mr. Feeney explained that the complainant did not get the available point because he did not instruct the driver where to park the truck. In addition, parking the truck right in front of the house was not ideal.

27 The complainant submits that the truck’s positioning was appropriate. He explained that he trusted the driver’s judgment and he was comfortable with the driver’s decision. It made it easier for the troop to bring the hoses into the house. He filed into evidence an extract from a handbook entitled “Pumping Apparatus Driver/Operator”. The two following statements were brought to the Tribunal’s attention:

There is no one set rule for positioning pumpers supplying attack lines on the fireground...

As in all fire situations, standard operating procedures and the judgment of the responsible officer or driver/operator should be the deciding factors when committing/positioning the apparatus.

28 Mr. Feeney and Mr. Archambault testified that since the complainant’s role was to act as the Platoon Chief during the exercise, he was required to tell the driver where to park the truck.

29 The Tribunal is satisfied that the score assigned to the complainant regarding this element was reasonable. While the complainant has provided evidence that the judgment of the driver/operator can be a deciding factor when positioning the apparatus, the extract from the handbook also mentions that the judgment of the responsible officer

may also be the deciding factor when positioning the apparatus. In this case, based on Mr. Feeney and Mr. Archambault's testimony, one point was to be awarded if the Platoon Chief instructed his driver where to park the truck. Since the complainant did not provide such instructions to his driver, the assessors could reasonably decide not to award him a point.

Item D) Assess resources on scene

30 In relation to item D) *Assess resources on scene* (0 out of 1), Mr. Feeney explained that after calling a Code 1 in the alarm room, the complainant radioed a Code 2 at 13:39. A Code 2 advises that the troop members will be able to handle the situation. Along with the Code 2, the complainant also requested a number of additional support resources. According to Mr. Feeney and Mr. Archambault, a Code 3 was the most appropriate code to call at that time given the nature of the fire. A Code 3 provides notice not only that the initial troop will need to remain on site for a prolonged period, but also automatically triggers a call for additional firefighters and equipment.

31 The complainant submits that he assessed the scene after he and his team arrived. Although he called a Code 2, he knew he needed more resources, which he specifically requested, including equipment and staff from the Oromocto Fire Department, fire inspectors, photo technicians, and emergency medical services. The complainant took notes during the exercise and they include a complete list of the additional resources he requested. The complainant alleges that there was not enough smoke coming out of the house to warrant a Code 3. In his view, a Code 2 was more appropriate than a Code 3.

32 The fact that the complainant disagrees with the assessors' judgement that a Code 3 was appropriate given the amount of smoke is not sufficient to establish that he was improperly assessed. Other than his own opinion that a Code 2 was sufficient, the complainant has not introduced any evidence to demonstrate that the assessors' rating for this element was erroneous or unreasonable.

Item E) *Designate Location for: Triage Area, Staging Area, Tool Staging and Rehabilitation*

33 For item E) *Designate Location for: Triage Area, Staging Area, Tool Staging and Rehabilitation* (1 out of 4), Mr. Feeney and Mr. Archambault explained that the complainant told his team members where he needed them and thereby set a staging area, for which he obtained a point. However, he did not designate an area for the triage of patients, the placement of tools, and the rehabilitation of firefighters.

34 The complainant considers his actions acceptable and submits that the designation of these areas was not necessary. In his view, certain places served by default as the triage area, the tool area, and the rehabilitation area. For example, he asked the driver of the truck to take a patient to the ambulance. Thus, in his view, the ambulance was the triage area. He explained that he did not ask anyone to take the tools out of the truck because of a lack of time and resources. He submits that, in the circumstances, he should not be penalized for not designating this area. Finally, in his view, there was no need to have a rehabilitation area given that there was only water in the truck. He would have designated a rehabilitation area if food had been available.

35 The Tribunal is satisfied that the respondent has provided a valid explanation for the score it awarded the complainant for this element as he only designated one of the four areas. There is no evidence that the assessors failed to fully take into account the complainant's actions or that they reached unreasonable conclusions regarding this element.

Item F) *Initiate...Cordon Area, Access Control Point and Evacuation / PIP*

36 Regarding item F) *Initiate the following: Cordon Area, Access Control Point and Evacuation / PIP* (2 out of 3), Mr. Feeney and Mr. Archambault explained that the complainant obtained two points for the first two items: Cordon Area and Access Control Point, but no point for Evacuation / PIP (protecting property) because he did not turn his mind to evacuating the surrounding buildings and protecting them from damage. The complainant disagrees with the assessors, arguing that an evacuation was not necessary.

37 The Tribunal finds that while the complainant may disagree with the assessors' opinion as to the need to evacuate, there is no evidence that he considered and explained why it was not required during the exercise. He has not established that there was any impropriety in the assessors' expectations on this issue or their assessment of him.

Item G) *Review, Revise and Implement Tactics*

38 In relation to Item G) *Review, Revise & Implement Tactics* (0 out of 1), Mr. Feeney and Mr. Archambault explained that there are a few reasons why the complainant did not obtain the available point for this element. For instance, given the intensity of the smoke, the complainant should at least have upgraded the Code 2 to a Code 3 during the exercise. Mr. Feeney also explained that since he never upgraded to a Code 3, he did not have latitude afterwards to review and revise his tactics.

39 The complainant referred to the notes that he took during the exercise, which he submits show that he reviewed and re-assessed the situation. He argues that, in any event, there was no need to revise his tactics during the exercise given that the scenario was straightforward.

40 The Tribunal finds that there is no compelling evidence to justify substituting the complainant's opinion for that of the three assessors. He did not demonstrate that the assessors failed to consider all of his actions, or reached an unreasonable conclusion for this element.

Item H) *After Benchmark*

41 Item H) *After Benchmark* (3 out of 5) is a criterion that relates to the responsibility for the crew at an incident scene. A textbook entitled *Fire Command* filed into evidence mentions that accounting for the crew is an important part of the process, requiring persons in charge to know what and where troops are on the scene. It also involves being able to control their positions, functions, and welfare. According to the textbook, the accountability benchmarks are called PARs – Personnel Accountability Reports. A

PAR report means that the crew is intact and that its members are fine and at their assigned locations.

42 Mr. Feeney and Mr. Archambault explained that the assessors evaluated how the complainant accounted for his personnel. The troop was composed of five persons, including the complainant. The Deputy Platoon Chief, who provided a report from inside the burning house, was responsible for reporting on the three firefighters inside the house. Once the three of them stopped the progression of the simulated fire inside the house at 13:49, the Deputy Platoon Chief reported it to the complainant, who in turn radioed the notice "PAR3/Under control". At 14:00, when the search of the building was completed, the complainant called a "PAR3/All clear".

43 The complainant submits that his two notices of "PAR3" to the Dispatcher should have been accepted. According to him, the *Fire Command* textbook does not require that the word PAR be followed by a number. Thus, he submits that the fact he radioed PAR3 instead of PAR5 is not a reason to give him a score of 3 out of 5.

44 Mr. Feeney, however, testified that the word PAR must be followed by a number and that the complainant should have, at some point, called a PAR5 to announce that all five firefighters on the scene were accounted for (the three inside the building and the two outside the building). The complainant instead called a PAR3 twice. According to Mr. Feeney, only accounting for three of the firefighters was not sufficient. His testimony is consistent with the other assessors' notes.

45 The Tribunal finds that while the complainant may disagree with the assessors' opinion on what information to include in PAR notices, he has not established that their approach was erroneous or unreasonable.

Item I) *Effective Scene Management* and Item J) *Transfer Command*

46 In relation to Item I) *Effective scene management* (4 out of 5), Mr. Feeney and Mr. Archambault explained that the complainant's failure to upgrade to the proper code and to account for all his team members, as previously discussed, resulted in him not getting a perfect score for this element.

47 With respect to item J) *Transfer Command* (4 out of 5), Mr. Feeney explained that the evaluation of how well the complainant transferred command to the Base Fire Chief was influenced by how he described his actions and the safety considerations to the Fire Chief. More details should have been provided. His previous mistakes also impacted on the turnover.

48 The complainant stated that Mr. Feeney wrote on his checklist “good use control zones.” He submits that he properly briefed Mr. Archambault when he took over command as Fire Chief.

49 There is no basis for a finding that the assessors reached an unreasonable conclusion in determining that marks of 4 out of 5 were warranted. Mr. Feeney and Mr. Archambault testified that the complainant covered some elements for these two items, but did not address them in sufficient depth.

50 In conclusion, with respect to the marking of the practical test, the complainant has not presented evidence that proves, on a balance of probabilities, that the respondent committed any serious errors or acted unreasonably in assessing him. There is no evidence of any impropriety in the complainant’s assessment. The complainant has therefore not established that the respondent abused its authority in the marking of his practical exercise.

Issue II: Did the respondent fail to consider relevant information?

51 The complainant submits that the assessors should have considered the Dispatcher’s notes when they evaluated him. These notes set out the instructions given by the complainant and the time these instructions were given. There were 21 occurrences noted by the Dispatcher, the first five entries and the last one being, for example:

1336 ALARMS AT L-21

1336 TOWER ADVISED

1338 O/S [on site] SMOKE VISIBLE

1339 ADVISE OFD [Oromocto Fire Department] & BFC [Base Fire Chief]

1339 UPGRADE CODE #2

... ..

1410 RED CHIEF IN CONTROL

52 The same information was also noted on a second page by the Dispatcher, but in a different format.

53 The complainant submits that the respondent was unable to truly assess his abilities because the assessors did not look at the Dispatcher's notes before awarding him his scores. He is also concerned with the fact that the assessors' notes did not reflect all of his actions. The complainant further submits that his actions were not assessed against a rating guide.

54 Once the complainant finished the exercise, the three assessors met and went through their checklists together. They discussed the complainant's performance step by step and, according to Mr. Feeney, ensured that he got full grades for every right action he took.

55 The Dispatcher was not an assessor during the exercise. The Dispatcher's role was to receive the instructions given by the candidates during the simulated emergency. The three delegated assessors did not deem it necessary to obtain a copy of the Dispatcher's notes before awarding the complainant his scores because they did not have any questions for him.

56 The Tribunal is satisfied that the assessors' notes were sufficient to assess the complainant. The assessors were in attendance in person or by radio throughout the complainant's exercise and they completed his assessment immediately afterwards. They could have consulted the Dispatcher if they felt it necessary but they were not obliged to do so. Moreover, there are no notable discrepancies between the board's notes and the notes of the Dispatcher.

57 The Tribunal finds that the complainant's allegation that the respondent abused its authority because the assessors' notes do not reflect all of the actions he took during the exercise is unsubstantiated. There is nothing irregular in placing a check mark or a

“yes” beside each expected action that the complainant took. In the present case, the complainant has not demonstrated that the assessors failed to consider some of his actions. The Tribunal is satisfied that he simply received fewer than full points when his actions did not fully match the expected actions set out in the checklist.

58 With respect to the allegation that there was no rating guide for the assessment of the practical test, the Tribunal has reviewed the checklist and is satisfied that it can be considered a rating guide. It contains the expected actions and the maximum marks allotted for the performance of those actions.

59 The Tribunal therefore finds that the complainant has not established that the respondent failed to consider relevant information in assessing him.

Issue III: Did the respondent improperly administer the practical test?

60 The complainant alleges that the respondent committed serious errors in administering the practical test. He submits that the present situation is similar to the case in *Denny v. Deputy Minister of National Defence*, 2009 PSST 0029.

61 In *Denny*, the Tribunal found that the practical test was improperly administered and was not a fair test of the complainant’s abilities. It was intended to test the ability to perform functions, such as disassemble, assemble, repair, modify and refurbish ammunition stores, packaging and associated components. Because the test was set up on short notice, only some of the tools the candidates required were present, and they had to “pretend” that other tools were available. The Tribunal found in that case that the respondent had not provided sufficient clarification to the complainant as to when he was, or was not, required to pretend. This constituted, in the Tribunal’s view, a serious flaw in the administration of the practical test.

62 In the present case, the complainant argues that the practical test only assessed his ability to guess what he was supposed to do, rather than test his ability to perform the tasks requested of him. He explained that since he had not obtained a list of the 32 items that were to be evaluated, he had to guess as to what steps he had to cover. Many avenues were available to him as the Platoon Chief responding to an emergency.

What was important, in his view, was that he, as the responder, acted reasonably in commanding and supervising his troop and remained responsible for its overall safety while extinguishing the fire.

63 The complainant added that the checklist for the exercise was based on one used in a course offered at the Fire Academy at CFB Borden. However, in the field, no such list is used. Thus, there was no way for him to know in advance what steps he had to cover.

64 The Tribunal finds that the complainant has not demonstrated that the test carried out in the present case contains comparable flaws to those found in *Denny*. In the present case, the scenario was clear and all necessary resources were provided to candidates. Candidates did not have to pretend to use equipment. As Platoon Chief, candidates were expected to perform a number of tasks while leading the emergency operations. Giving candidates the list of expected actions on the checklist would have amounted to giving them the correct responses to the test. This would have defeated the purpose of this part of the assessment.

65 For all of the above reasons, the Tribunal finds that the complainant has not established that the practical test contained flaws similar to those identified in *Denny*.

66 The complainant's second reason for submitting that the test was flawed is because the assessors did not have the discretion to award points for actions taken that differed from the procedure outlined in the checklist. He essentially claims that the checklist was inadequate and that other acceptable actions warranted marks.

67 In *Jolin v. Deputy Head of Service Canada*, 2007 PSST 0011 at paras. 26 to 28, the Tribunal discussed the discretion granted to delegated managers in the choice of assessment methods and tools under s. 36 of the PSEA. For the Tribunal to find that there was an abuse of authority on this basis, the complainant must show that the tools and methods used were unreasonable and could not assess the qualifications listed in the statement of merit criteria, that they had no connection to those criteria, or that they were discriminatory.

68 The choice of the practical exercise and the use of a checklist was an acceptable exercise of managerial discretion under s. 36 of the PSEA. It has not been shown that the practical test was an unreasonable method of assessing a candidate's ability to supervise a platoon of fire fighters in an emergency situation. The decision whether to accept answers not found in the checklist also falls within the broad discretion accorded to managers under s. 36 of the PSEA. Moreover, the complainant has not demonstrated that the checklist was unreasonable or incorrect, or that any of his responses warranted being added or substituted for those set out in the checklist.

69 Consequently, the Tribunal finds that the complainant has not proven that the respondent abused its authority in the choice or use of the assessment method.

70 Finally, the complainant raised the possibility that the radios were defective. However, as previously discussed, there is no factual basis to support this particular claim raised by the complainant.

71 For all these reasons, the complainant has not satisfied the Tribunal, on a balance of probabilities, that the respondent abused its authority in the administration of the practical test.

Issue IV: Was the respondent's approach to selecting who would be appointed from the process improper?

72 As the Tribunal explained in *Marcil v. Deputy Minister of Transport, Infrastructure, and Communities*, 2011 PSST 0031 at para. 48:

The term "right fit" is not a term found in the PSEA. It is a term used in the human resources community to describe the basis for deciding who will be appointed from among qualified candidates in an appointment process. The merit and other criteria used to select someone for appointment are recorded in a written right fit rationale. The Tribunal has also used this term to illustrate the manager's discretion to choose among qualified candidates the person who, in his or her opinion, is the right fit.

73 Ms. Lamoureux and Mr. Archambault both explained that the assessment board determined which of the qualified candidates would be a right fit for the position based on: (1) the ability to supervise a platoon of fire fighters in an emergency situation; (2) initiative; (3) judgment; and, (4) reliability. Mr. Archambault testified that he chose these

criteria because a Deputy Platoon Chief must have these qualities to be able to lead a platoon of firefighters.

74 Mr. Feeney confirmed that it was Mr. Archambault who selected the four criteria. He recalled having a discussion to this effect with Mr. Archambault. The right fit rationales prepared for each appointee were entered into evidence and show that these four criteria were used to determine the right fit.

75 Mr. Archambault testified that once the assessments were completed, he asked Ms. Lamoureux to provide him with the names of the three candidates who obtained the highest scores for these four criteria. The three individuals with the highest scores were then appointed on an acting basis. The individual who had obtained the highest score in the process was later appointed indeterminately.

76 Louis Bisson, Union Services Officer, Union of National Defence Employees (UNDE), who represented the complainant in these proceedings, testified at the hearing and produced notes that he took during a telephone conversation held during the exchange of information. According to him, the telephone conversation occurred on May 14, 2013, with Ms. Lamoureux, who informed him that the main criterion used to determine the right fit was the ability to supervise a platoon of fire fighters in an emergency situation, which was assessed by the practical exercise. He recalls her saying that the other criteria were less important. Mr. Bisson's notes read: "The first cut was the test for ability to supervise, then the rest was more or so [*sic*] important." It was therefore his understanding that the respondent did not use the above-mentioned four criteria to determine which of the qualified candidates would be a right fit, as maintained by the respondent's witnesses.

77 Ms. Lamoureux testified that she provided advice to the managers and was also a member of the assessment board. She explained that after Mr. Archambault selected the four right fit criteria, she reviewed the candidates' scores at his request and provided him with a list of the candidates who had obtained the respective highest scores. She pointed out that she did not have the authority to make the right fit decision.

78 With regard to her telephone conversation with Mr. Bisson on May 14, 2013, Ms. Lamoureux testified that she could not recall exactly what was said. She does not believe, however, that she would have said that ability to supervise was the main criterion used to determine the right fit because she knew that the three other qualifications were also to be considered.

79 There is a dispute between the parties with regard to what was said during the exchange of information meeting concerning the criteria used to determine the right fit. This matter, however, has no bearing on the outcome of the complaints. The table listing all of the candidates' final marks, which was entered as evidence, shows that the complainant obtained lower marks than the three appointees in all four of the criteria in question. Thus, whether one or all four criteria were used, the complainant would not have been chosen for appointment.

80 The complainant has not demonstrated that there was an abuse of authority in the selection of the candidates based on right fit.

Decision

81 For all these reasons, the complaints are dismissed.

Nathalie Daigle
Member

Parties of Record

Tribunal Files	2013-0154/0155/0156/0179
Style of Cause	<i>Jordan Rinehart and Deputy Minister of National Defence</i>
Hearing	January 23-24, 2014 Fredericton, N.B.
Date of Reasons	May 20, 2014
APPEARANCES:	
For the complainant	Louis Bisson
For the respondent	Léa Bou Karam
For the Public Service Commission	Louise Bard (written representations)