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*Federal Public Sector Labour Relations
and Employment Board Act and
Public Service Employment Act*



Before a panel of the
Federal Public Sector Labour
Relations and Employment Board

BETWEEN

LUC CHAMPAGNE

Complainant

and

DEPUTY MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES

Respondent

and

OTHER PARTIES

Indexed as

Champagne v. Deputy Minister of Public Works and Government Services

In the matter of a complaint of abuse of authority - section 77 of the *Public Service Employment Act*

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Luc Champagne

For the Respondent: Andréanne Laurin

For the Public Service Commission: Louise Bard

Heard at Ottawa, Ontario,
May 10 and 11, 2017.
(FPSLREB Translation)

I. Introduction

[1] Luc Champagne, the complainant, applied for an evaluation project leader position classified at the EC-06 group and level with Public Works and Government Services Canada (PWGSC or “the respondent”). His application was denied at the written examination stage. He claimed that an abuse of authority occurred because the operating system of the computer made available to him during the written exam was in English, even though he had chosen to do the exam in French. As a result, he had computer problems. He also alleged that two exam questions had been incorrectly translated from English to French. Finally, he challenged the language proficiency of those who corrected the exams.

[2] The respondent denied that it abused its authority during the appointment process.

[3] The Public Service Commission (PSC) was not present at the hearing, but it submitted written representations on its applicable policies and guidelines. It did not take a position on the merits of the complaint.

[4] For the reasons that follow, the complaint is dismissed. The complainant did not establish that the respondent abused its authority during the appointment process.

A. Background

[5] On November 13, 2014, the respondent began an advertised internal appointment process to fill several EC-06 evaluation project leader positions. The complainant applied.

[6] The assessment board included Crystal Quarrington, acting director of the Evaluation Directorate, and Christine Noël, a human resources consultant at the relevant time. Two other respondent representatives supported Mses. Quarrington and Noël at the interview stage.

[7] The selection process involved four steps: screening candidates for essential qualifications, a written exam, an interview, and a reference check.

[8] The assessment board found that the complainant did not receive a passing mark for the essential qualification of knowledge of the Treasury Board’s assessment

standards. Therefore, his candidacy was eliminated from the process.

[9] On May 14, 2015, a notification of appointment or proposal for appointment was published for the position.

[10] On May 22, 2015, the complainant made a complaint to the Public Service Labour Relations and Employment Board under s. 77 of the *Public Service Employment Act (PSEA)*.

[11] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board to the Federal Public Sector Labour Relations and Employment Board (“the Board”).

B. Issues

[12] At the hearing, the complainant argued that an abuse of authority occurred in the merit-based assessment under s. 77(1)(a) of the *PSEA*. He did not allege that the respondent had failed to assess him in the official language of his choice, in accordance with s. 77(1)(c).

[13] Thus, I must determine the following issues:

- Whether the respondent abused its authority during the merit-based assessment on the following grounds:
 - (a) the complainant encountered computer problems during the exam due to how the respondent had configured the computer;
 - (b) two exam questions were translated incorrectly from English to French; or
 - (c) those who corrected the exams lacked the required linguistic competency.

II. Analysis

[14] Subsection 77(1) of the *PSEA* specifies that a person in the area of recourse may make a complaint to the Board that he or she was not appointed or proposed for

appointment due to an abuse of authority. As noted in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paragraph 66, "... abuse 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 bears the burden of establishing on a balance of probabilities that an abuse of authority occurred.

[15] At the hearing, the complainant testified in support of his position. The respondent called as witnesses Ms. Noël and Linda Anglin, executive chief, Office of Audit and Evaluation. Ms. Anglin was the delegated manager for this appointment process.

[16] When he filed his complaint in May 2015, the complainant was an evaluator at PWGSC classified at the EC-05 group and level. Since October 17, 2016, he has held a senior evaluator position classified at the EC-06 group and level at Shared Services Canada. He admitted that he is no longer interested in the position covered by this complaint. However, when he filed his complaint in May 2015, he had a personal interest in it. He pointed out that he did not obtain the position in question because the selection process was flawed and that as a result, the appointments that resulted from the process should be revoked.

(a) Was there abuse of authority on the ground that the complainant encountered computer problems during the exam due to how the respondent had configured the computer?

[17] The complainant explained that he had confirmed in advance his exam attendance and his choice to write it in French. When he arrived at the exam, he noticed that the Windows operating system of the computer made available to him was in English. However, since he was not "unfamiliar" with using an operating system in English, he chose to write the exam all the same. He changed the keyboard configuration from English to French. He also added that he was more familiar with Microsoft Office 2007, although the 2013 version was installed on the computer he used. As a result, he needed 15 minutes to save his exam after completing it. He explained that dealing with all these issues was disruptive.

[18] The complainant pointed out that candidates writing the exam in French were at a disadvantage and that they did not have the same advantages as the other candidates, which resulted in the inequitable treatment of the candidates. For those

reasons, he alleged that the respondent committed an abuse of authority.

[19] In cross-examination, the complainant admitted that Statement 6, which was at the beginning of the exam in the instructions and general information section, had been read to him aloud. It read as follows: “[Translation] Please inform the exam invigilator of any conditions or circumstances that may prevent you from completing the exam.”

[20] The complainant conceded that he did not report any computer problems to the invigilators during his exam.

[21] At the hearing, Ms. Noël affirmed that she and a human resources advisor were in the room while the candidates wrote their exams. A technician was also present to provide technical support in case of difficulty. One candidate did use the technician’s services during the exam, but that person was not the complainant.

[22] The complainant did not submit arguments on this matter at the hearing.

[23] The respondent pointed out that the complainant did not raise any technical concerns during the exam and therefore could not allege that the respondent had abused its authority on the ground that he believed that he had experienced problems of that nature.

[24] Section 37 of the *PSEA* deals with the language of examination and provides for the following:

Language of examination

37(1) An examination or interview, when conducted for the purpose of assessing qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i), other than language proficiency, shall be conducted in English or French or both at the option of the candidate.

...

[25] The complainant chose to write his exam in French.

[26] As noted, the complainant did not make his complaint under s. 77(1)(c) of the *PSEA*; i.e., he did not complain that he was not assessed in the official language of his choice. In this case, he claimed instead that francophone and anglophone candidates were not treated equitably during the exam. Francophone candidates did not have

access to computers with French operating systems, while anglophones had access to computers with English operating systems. In fact, all the computers had English operating systems; consequently, he experienced computer problems.

[27] However, the respondent demonstrated that it had taken appropriate steps to quickly address any computer or technical problems the candidates raised. However, the complainant did not inform the respondent about his computer problems or concerns or about his preference for a computer with a French operating system.

[28] With respect to staffing, the person alleging the abuse of authority bears the burden of proof. The complainant in this case had to discharge that burden if he wished to convince the Board to allow his complaint. *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11 at para. 43, notes as follows: “It is not sufficient to file allegations and to argue that the respondent abused his authority in applying the merit principle. The complainant must produce convincing evidence of the abuse of authority that she is alleging.”

[29] In this case, I find that the complainant failed to provide convincing evidence that the respondent was responsible for the computer problems that he encountered. In fact, he failed to take the initiative to inform the respondent that he had encountered such problems. Had he done so, the on-site technician would have helped him.

[30] Thus, I am not convinced that the respondent abused its authority on the ground that the computer made available to the complainant for his exam was deficient and that consequently, he had computer problems.

(b) Was there abuse of authority on the ground that two exam questions were translated incorrectly from English to French?

[31] According to the complainant, two exam questions were translated incorrectly from English to French.

[32] Question 2(a) of the exam read as follows in French: “*Veillez donner une courte définition des deux expressions suivantes : « allocation optimale des ressources » et « efficience opérationnelle ».*” ([Translation] “Provide short definitions for the following two expressions: ‘optimal allocation of resources’ and ‘operational efficiency’.”)

[33] The complainant pointed out that that translation was incorrect. Specifically, he submitted that the expression “*allocation optimale des ressources*” (optimal allocation of resources) was incorrect and that instead it should have been “*efficience allocative*” (allocative efficiency). He submitted a document entitled *Examiner l'utilisation des ressources des programmes dans le cadre de l'évaluation des programmes fédéraux* (in English: *Assessing Program Resource Utilization When Evaluating Federal Programs*) to support his position. In it, the expressions “*efficience allocative*” (allocative efficiency) and “*efficience opérationnelle*” (operational efficiency) are grouped in “*l'axe prioritaire de l'analyse*” (focus of analysis).

[34] Question 5 of the exam read as follows in the French, and is translated to English:

Selon la Politique sur la structure de la gestion, des ressources et des résultats (SGRR), les administrateurs généraux doivent élaborer une Architecture d'harmonisation des programmes (AHP) pour leur ministère ainsi qu'un cadre de mesure du rendement (CMR) correspondant.

Veuillez indiquer l'objectif de l'AHP et du CMR et décrire leur utilisation par la fonction d'évaluation.

[Translation]

According to the policy on the Management, Resources and Results Structure (MRRS), deputy heads must specify a Program Alignment Architecture (PAA) for their departments along with a corresponding Performance Measurement Framework (PMF).

Specify the objectives of the PAA and the PMF, and describe how they are used in an evaluation function.

[35] The complainant pointed out that this question had been incorrectly translated because the expression “*Architecture d'harmonisation des programmes*” (Program Harmonization Architecture, PHA) and the acronym *AHP* were incorrect and should have instead read “*Architecture d'alignement des programmes*” (Program Alignment Architecture, PAA) and *AAP*. He relied on the *Politique sur la structure de la gestion, des ressources et des résultats (SGRR)* (in English, the “Management, Resources and Results Structure” (MRRS)) and pointed out that it uses the expression and the acronym “*Architecture d'alignement des programmes*” and *AAP* and not “*Architecture d'harmonisation des programmes*” and *AHP*.

[36] The complainant recognized that PWGSC's *2014-2015 Report on Plans and Priorities* (in its French version) uses the expression "*Architecture d'harmonisation des programmes*" and the acronym *AHP*. However, he stated that PWGSC's *2013-2014 Report on Plans and Priorities* and its earlier reports (in French) instead use the expression "*Architecture d'alignement des programmes*" and the acronym *AAP*.

[37] The complainant affirmed that the incorrect translations caught him off guard during the exam. He maintained once again that the candidates taking the exam in French did not experience the same conditions as the other candidates and that they were disadvantaged because those two questions had been incorrectly translated. Therefore, the candidates were not treated equitably. He alleged that for that reason, the respondent committed an abuse of authority.

[38] When he was cross-examined, the complainant conceded that Statement 4 had been read aloud to him; it was at the beginning of the exam, in the instructions and general information section. It read as follows:

[Translation]

*The examination questions should be sufficiently clear. However, if you feel that you need to make certain assumptions to be able to answer a question, please indicate your assumptions **at the beginning** of your answer.*

[Emphasis in the original]

[39] The complainant admitted that he did not report any translation problems to the invigilator during the exam. He also admitted that he had indicated his assumptions at the beginning of his exam answers.

[40] For her part, Ms. Noël specified that the complainant correctly answered questions 2(a) and 5 on the exam. He obtained a mark of 4/4 on question 2(a) and 4/6 on question 5. The exam questions that he answered incorrectly are not at issue in this case.

[41] As for Ms. England, she specified that the Translation Bureau translated the exam from English to French. She affirmed that both questions had been translated correctly. She also specified that her staff had validated the exam questions to ensure the translation's quality.

[42] Ms. Anglin also added that the Translation Bureau recognizes the expressions “*allocation optimale des ressources*” and “*efficience allocutive*” as acceptable translations of the English expression “allocative efficiency”. She also stated that the Translation Bureau’s mandate includes reviewing and standardizing the terminology used in the federal public service.

[43] Ms. Anglin adduced into evidence an extract from TERMIUM Plus®, the federal government’s terminology and linguistic database. In the extract dated January 17, 2014, the five recommended translations for the English expression “allocative efficiency” are (i) “*allocation optimale des ressources*”; (ii) “*répartition efficiente des ressources*”; (iii) “*allocation efficiente des ressources*”; (iv) “*efficacité de la répartition des ressources*”; and (v) “*efficience de la répartition des ressources*”. According to that excerpt, “*efficience allocative*”, the translation that the complainant suggested, should be avoided.

[44] Ms. Anglin also specified that the expressions “*Architecture d’harmonisation des programmes*” and “*Architecture d’alignement des programmes*” were used interchangeably in auditing and that they are synonymous. She introduced into evidence the French version of PWGSC’s 2014-2015 *Report on Plans and Priorities*, which notes that both expressions, “*Architecture d’harmonisation des programmes*” and “*Architecture d’alignement des programmes*”, are interchangeable.

[45] Finally, Ms. Anglin adduced into evidence another extract from TERMIUM Plus®. In this one, from May 4, 2015, the two correct translations proposed for the English expression “program alignment architecture” are (i) “*architecture d’harmonisation de programmes*” and (ii) “*architecture d’alignement des programmes*”.

[46] So, the respondent pointed out that the Translation Bureau correctly translated the expressions in question and that no abuse of authority occurred in this case. It also added that nothing demonstrated that the translations had misled the complainant.

[47] I note that the complainant answered both questions correctly. Thus, he failed to show how the translation adversely affected his candidacy.

[48] I also note that had the complainant thought the expressions unclear, he could have sought clarification from people in the room. In addition, the instructions were clear: in case of uncertainty, candidates were to include their assumptions at the

beginning of their answers, which he did.

[49] Finally, I note that TERMIUM Plus® recommended using the expressions that appeared in the exam.

[50] Thus, I find that the complainant did not demonstrate that the translations of those questions amounted to an abuse of authority on the grounds that they were incorrect.

(c) Was there abuse of authority on the ground that those who corrected the exams lacked the required linguistic competency?

[51] The complainant maintained that both members of the assessment board who corrected the exams, Mses. Noël and Quarrington, did not have the necessary language proficiency to correct them. He affirmed that he could not prove that they were not bilingual. However, he insisted on expressing his personal opinion that they were not true Francophones and that as a result, candidates who wrote their exams in French had experienced a possible detrimental effect.

[52] Ms. Noël adduced in evidence her results from the PSC's second-language test administered in September and October 2015. She obtained level "C" three times, which is the highest result of the levels "A" to "C".

[53] Ms. Noël specified that her language exams took place in 2015. She affirmed that those results confirmed her level of fluency in French during the complainant's evaluation.

[54] Ms. Noël also specified that the selection committee's French linguistic competency had been very good.

[55] As for Ms. Anglin, she specified that Ms. Quarrington, like all senior managers, must satisfy the requirement that she obtain the "CBC" level in her second language. She added that Ms. Quarrington reports directly to her. Finally, she noted that in the past she had seen Ms. Quarrington interact with her employees in French numerous times.

[56] Ms. Quarrington's results on her second-language tests, administered by the PSC, were introduced into evidence. She obtained the "EBC" levels in her second-language evaluation, i.e., an exemption for written comprehension, an intermediate

skill level for written expression, and the highest level of “A” to “C” for oral ability.

[57] As noted earlier, the complainant did not allege that the respondent failed to assess him in the language of his choice, i.e., French, but rather that Mses. Noël and Quarrington lacked the necessary mastery of French to adequately evaluate his answers.

[58] The respondent pointed out that the former Public Service Staffing Tribunal had decided a similar matter in *Jalal v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 38. It was found that the complainant in that case failed to establish that the person who had assessed him had not sufficiently mastered English to assess him.

[59] The respondent also pointed out that in this case, those who corrected the exams held the necessary linguistic competency.

[60] The PSC pointed out that the *Assessment Policy* stipulates that deputy heads must ensure that those responsible for carrying out evaluations have the required linguistic competency to permit effective communication with those being assessed, in the official language or languages they choose, to assess their qualifications fairly.

[61] The PSC also pointed out that one of the requirements of the *Policy on Official Languages in the Appointment Process* is that deputy heads must ensure that each person responsible for evaluating those participating in an appointment process has the required linguistic competency in either or both official languages to enable their qualifications to be equitably assessed.

[62] As for the *Guide to Implementing the Policy on Official Languages in the Appointment Process*, it specifies that those responsible for carrying out evaluations do not always have to hold a superior competency level in both official languages. The level of competency in official languages required of each person responsible for carrying out evaluations depends on the nature of the qualifications assessed, the complexity of the interactions, and the communications with those participating in the process.

[63] Finally, the complainant did not submit any evidence to substantiate his assertion that Mses. Noël and Quarrington did not have the required linguistic competency to adequately correct his exam.

[64] Therefore, I find that the complainant did not demonstrate that the respondent abused its authority when correcting his exam answers.

III. Decision

[65] After reviewing the complainant's evidence as a whole, I find that on a balance of probabilities, he did not demonstrate an abuse of authority in this appointment process. For all of these reasons, I make the following order:

(The Order appears on the next page)

IV. Order

[66] The complaint is dismissed.

September 29, 2017.

FPSLREB Translation

**Nathalie Daigle,
a panel of the Federal Public Sector Labour
Relations and Employment Board**