

Date: 20180612

Files: EMP-2014-9246 and EMP-2014-9462

Citation: 2018 FPSLREB 51

*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

JEAN-PASTEUR MUGABARABONA

Complainant

and

COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE

Respondent

and

OTHER PARTIES

Indexed as

Mugabarabona v. Commissioner of the Royal Canadian Mounted Police

In the matter of a complaint of abuse of authority - paragraph 77(1)(a) of the
Public Service Employment Act

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

For the Complainant: Himself

For the Respondent: Kevin Dulude, counsel

For the Public Service Commission: Louise Bard (written submissions)

Heard at Ottawa, Ontario,
May 16, 2018.
(FPSLREB Translation)

I. Introduction

[1] Jean-Pasteur Mugabarabona, the complainant, filed two complaints of abuse of authority against the respondent, the Commissioner of the Royal Canadian Mounted Police. He alleged that two acting appointments, in August and September 2014 for financial manager and senior financial analyst positions at the FI-03 group and level, were not made based on merit. In his allegations, he contended that there was discrimination, personal favouritism, and inequity.

[2] The respondent denied that abuse of authority occurred and stated that the persons appointed to act had been fully assessed and that they had satisfied the essential and asset qualifications. It also stated that the appointments were made in accordance with all applicable policies and statutes.

[3] The Public Service Commission (PSC) did not appear at the hearing, but it filed written submissions on its policies and applicable guidelines. It did not take a position on the merits of the complaints.

[4] The Board held a hearing on May 16, 2018, at 9:30 a.m. Only the respondent attended. At the start, it made a motion alleging that the complaints had to be dismissed for abandonment reasons. It requested in the alternative that they be dismissed because the complainant had not discharged his burden of proving that abuse of authority occurred in the acting appointments.

[5] The respondent's motion is granted for the reasons set out in the following paragraphs.

Legislative background

[6] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365, came into force, creating the Public Service Labour Relations and Employment Board, which replaced the Public Service Staffing Tribunal and the Public Service Labour Relations Board (PSLRB) and was responsible for dealing with complaints filed under the *Public Service Employment Act* (S.C. 2003, c. 22, s. 12, 13; *PSEA*).

[7] 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 *Federal Public Sector Labour Relations and Employment Board Act* and *Public Service Employment Act*

name of the Public Service Labour Relations and Employment Board to the Federal Public Sector Labour Relations and Employment Board (“the Board”). Accordingly, the Board rendered this decision.

II. Background

A. Events before the hearing

[8] The complainant filed the complaint numbered EMP-2014-9246 in August 2014 and the complaint numbered EMP-2014-9462 in December 2014.

[9] The hearing for both files was first scheduled for March 22 and 23, 2016, but it was postponed.

[10] The hearing was scheduled a second time, for September 7 and 8, 2016. On July 28, 2016, the Board Member assigned to the file conducted a pre-hearing conference in anticipation of the hearing. At that conference, the complainant’s representative asked that the hearing be postponed because the complainant was ill and sent a medical note to the Board that indicated that the complainant was unable to participate in the hearing. The Board agreed to postpone it. It was also agreed that the complainant’s representative would send the Board potential dates for a hearing on or before September 15, 2016.

[11] On September 15, 2016, the complainant’s representative advised the Board that he had not been able to reach his client and that therefore, his client was not ready to proceed with the hearing. The complainant was then on extended sick leave.

[12] The hearing was scheduled a third time, for April 24 and 25, 2017. On March 31, 2017, the Board Member assigned to the file conducted a pre-hearing conference in anticipation of the hearing. After hearing the parties, the Board Member issued directions requiring the complainant to send to the parties his clarified allegations and requested corrective action on or before May 15, 2017. Under the circumstances, the hearing scheduled for April 24 and 25 was cancelled.

[13] On May 11, 2017, the complainant requested an extension to May 23, 2017, to provide his clarified allegations. It was granted.

[14] The complainant filed a second request for an extension of time to submit his clarified allegations. On May 25, 2017, the Board granted him an extension of time

until June 2, 2017.

[15] The complainant filed a third request for an extension of time to submit his clarified allegations. On June 20, 2017, the Board granted him an additional extension of time, until June 30, 2017.

[16] On July 18, 2017, the Association of Canadian Financial Officers informed the Board and the parties that it no longer represented the complainant in these files.

[17] On July 20, 2017, the respondent informed the Board that it had not received the complainant's clarified allegations.

[18] The Board scheduled a teleconference with the parties for July 27, 2017.

[19] On July 27, 2017, one hour before the teleconference began, the complainant emailed the Board and the parties to advise them that he could not participate in the teleconference.

[20] On August 29, 2017, the Board scheduled a teleconference for September 19, 2017, the notice of which was sent to the complainant and the parties.

[21] The complainant did not attend the teleconference on September 19, 2017. At the teleconference, the respondent informed the Board that it wished to proceed with the hearing without his clarified allegations.

[22] A Registry Officer emailed the complainant on September 19, 2017, to verify whether he could attend the pre-hearing conference. He asked the complainant to contact the Board. The complainant called the Registry Officer and informed him that he wanted to talk to his union before deciding whether to move forward with his complaints. He also confirmed his contact information so that the Board could reach him.

[23] On September 21, 2017, the respondent confirmed in writing to the Board that it wanted to proceed with the hearing without the complainant's clarified allegations.

[24] On September 22, 2017, the complainant asked the Board to add his personal email address and a new telephone number to his contact information. This was the last communication that the Board received from him in these files.

[25] On September 25, 2017, a Registry Officer emailed the complainant to verify whether he would authorize the Board to send his new contact information to the parties involved in the complaint. The Officer did not receive a reply.

[26] On October 23, 2017, the Registry Officer noted in the files that he had called the complainant on the same day at his phone numbers at work and at home and that he had left him voicemails asking him to contact the Board about the fact that he had not responded to the September 25, 2017, email.

[27] On October 24, 2017, the Board asked the parties when they would be available for a hearing. The complainant did not respond.

[28] The hearing was scheduled a fourth time, for May 16 and 17, 2018. The notice of hearing was sent to the parties on November 28, 2017. It was sent to the complainant's two email addresses, which were his professional and personal addresses. The notice of hearing reminded the parties that the Board could proceed with a hearing even if a party was absent.

[29] On January 16, 2018, the Board issued a pre-hearing conference notice for April 6, 2018, and asked the parties to confirm their attendance at it. The notice was sent to the complainant's two email addresses, which were his professional and personal addresses. He did not respond.

[30] On April 6, 2018, the complainant did not attend the pre-hearing conference, so it was adjourned. On April 10, the Board issued directions to the parties, which emphasized the following:

[Translation]

...

A pre-hearing conference call about the complaints filed by Mr. Mugabarabona, the complainant, against the Commissioner of the Royal Canadian Mounted Police, the respondent, in PSLREB files 2014-9246/2014-9462, was scheduled for April 6, 2018.

The complainant was advised at least twice of this pre-hearing conference, but he did not participate. Nor did he advise the Board that he would not participate. This was not the first time he was absent from a pre-hearing conference. Therefore, his approach is a trend that has

emerged over time.

Nevertheless, the hearing in these files will take place on May 16 and 17, 2018. The teleconference was held to prepare for the hearing and to ensure that the proceedings would proceed smoothly. It is easier to hold a hearing when all the parties know what to expect, i.e., when they know ahead of time the issues that will be raised, the witnesses who will be called to appear, and the documents that will be filed.

Therefore, on April 6, the pre-hearing conference could not be held because the complainant was absent, but the Board advised the parties on the line, i.e., the respondent and the Public Service Commission (PSC), that directions would be forwarded to the parties so that the May 16 and 17 hearing could take place.

[31] In its directions, the Board clarified the issues in both files. It also submitted a schedule for filing witness lists and exchanging documents and jurisprudence. Each party had until April 18, 2018, to submit to the Board and to the other parties the list of witnesses that it would call to appear at the hearing. In their lists, the parties had to identify their witnesses and the objective and duration of the testimony. In addition, each party had to send to the other parties a copy of the documents that it would file at the hearing and its jurisprudence list, no later than May 2, 2018.

[32] On April 18, 2018, the respondent sent the Board and the parties its witness list. At the same time, it informed the Board that the complainant was away from the office until May 1, 2018.

[33] The complainant did not forward his list of witnesses to the Board or to the parties on April 18, 2018. On April 20, 2018, the Registry Officer called him and left a message in his personal voicemail asking him to call him back. He did not respond.

[34] On April 23, 2018, the Registry Officer sent the following communication to the other parties and to the complainant at his two email addresses:

[Translation]

Mr. Mugabarabona,

The Member assigned to this file has asked me to ask you a few questions in view of the hearing scheduled for May 16 and 17, 2018:

1- Do you plan to testify at the hearing scheduled on

May 16 and 17, 2018? Do you plan to call other witnesses at the hearing?

2- Do you plan to file supporting documents when you testify at the hearing or when your witnesses testify? If so, you must send them to the parties involved in this file by May 2, 2018.

3- Given the fact that the respondent's witnesses are anglophone, they will testify in English. Will you be able to ask your questions in English, or would you prefer to ask them in French? If so, interpreter services will be required, and we want to ensure that the parties will use the interpretation services given the high cost involved;

4- In your allegations dated October 18, 2014, you do not specify the corrective measures that you request. What corrective measures will you ask for at the hearing?

*Please send your answers to these questions to the FPSLREB and the parties by **May 2**.*

[Emphasis in the original]

[35] On May 2, 2018, the complainant did not send his answers to those questions to the Board or the parties.

[36] On May 3, 2018, the Board sent the parties a notice that identified the location of the May 16 and 17, 2018, hearing. It was sent to the complainant's two email addresses.

[37] On May 9, 2018, the respondent informed the Board that on April 30, 2018, the complainant had communicated with it to apply for extended leave until January 2019. However, he had not informed the Board or the PSC of his application.

[38] On May 11, 2018, the Registry Officer sent the parties the following message:

[Translation]

The Member assigned to this file has asked me to send you this message. Unless there are exceptional circumstances, the hearing will take place on May 16-17, 2018. There have already been two postponements of the hearing, i.e., in 2016 and in 2017, as well as a significant number of postponements of pre-hearing conferences because the complainant failed to appear. The complaints, which involve two extensions of acting appointments, were filed in 2014. The parties have the right to a timely hearing without undue delay.

[39] The Board has not received any communication from the complainant since September 22, 2017. The Registry continued to communicate with him via known email addresses, but in vain. Since September 22, 2017, he has not informed the Board of any change to his contact information.

B. The hearing

[40] The hearing began at the scheduled time on May 16, 2018, at 9:30 a.m. Only the respondent attended, even though the complainant had been duly informed of the hearing. The Registry did not receive any communication from him indicating that he was unable to attend or requesting a postponement of the hearing.

[41] Satisfied that the notice of hearing had been sent to the complainant, the Board proceeded with the hearing in accordance with s. 29 of the *Public Service Staffing Complaints Regulations* (SOR/2006-6; “the *Regulations*”).

[42] At the start of the hearing, the respondent made a motion to dismiss the complaints. It argued that the Board should consider them abandoned, given the absence of communication from the complainant with the Registry and the Board.

[43] The respondent submitted in the alternative that the complainant had to show that abuse of authority had occurred. By not attending the hearing, he did not file any evidence in support of his allegations, and accordingly, he did not meet his burden of proof.

III. Reasons

[44] Section 29 of the *Regulations* provides that if a party does not appear at a hearing and the Board is satisfied that the notice of hearing was sent to that party, then it may proceed with the complaint, without further notice.

[45] In this case, I am sure that the complainant received appropriate notice of the date, the time, and the location of the hearing and that he did not attend. He was also informed of the consequences of not attending. In light of that, the hearing took place, and I heard the respondent’s motion to have the complaints dismissed based on abandonment or because the complainant did not discharge his burden of proving that abuse of authority occurred in the appointment processes.

[46] In support of its motion to have the complaints dismissed for abandonment, the

respondent called to my attention a decision I made recently, *Patwell v. Deputy Minister of Employment and Social Development*, 2018 FPSLRB 37, and two earlier PSLRB decisions.

[47] In *Patwell*, even though the Board had made several unsuccessful attempts to contact the complainant between August 9 and December 19, 2017, he did not respond or acknowledge those communications. He also failed to attend both a pre-hearing conference held on August 16, 2017, and the hearing held on January 19, 2018. Accordingly, I found that he had displayed all the hallmarks of abandoning his case. His failure to communicate with the Registry, the Board, and the respondent, and his failure to inform the Board of any changes to his contact information were sufficient to indicate that he had abandoned his complaint. The public interest and the efficient administration of justice also were in favour of finding that the complaint had been abandoned.

[48] In *Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*, 2011 PSLRB 143, the PSLRB stated that a party's failure to communicate demonstrates a lack of interest in its case. Similarly, in *Smid v. Deputy Head (Courts Administration Service)*, 2014 PSLRB 24, the PSLRB held that a party has to act reasonably to keep informed about the proceeding that the party has commenced and that it must inform the Board of any change to its contact information.

[49] In this case, the complainant informed the Board of changes to his contact information. However, after that, he did not respond to any of its communications and did not act reasonably to keep informed on the proceedings that he had initiated. In fact, neither the Board nor its Registry has received any communication from him since September 22, 2017.

[50] The complainant clearly indicated a lack of interest to advance his files. The Board also made a sufficient number of attempts to communicate with him, but he did not respond. He also failed to attend the pre-hearing conferences held in anticipation of the hearing and the hearing itself.

[51] As in *Patwell*, I note that the Board can operate only based on the contact information that complainants provide. In this case, its Registry called the complainant and sent him many electronic communications. Yet, he did not respond and did not take reasonable measures to be informed on the status of his complaints. However, he

had the Board's mailing address, phone number, and email address, and in the past, he had communicated with it by email.

[52] Accordingly, I find that like in *Patwell*, the complainant has displayed all the hallmarks of abandoning his case. His failure to communicate with the Board, as demonstrated by the events before the hearing, as well as his failure to appear at the pre-hearing conferences and the hearing, are sufficient to indicate that he has abandoned his complaints. The public interest and the efficient administration of justice also are in favour of finding that he has abandoned his complaints.

[53] For those reasons, I find that the complainant has abandoned his complaints.

[54] Additionally, as in *Patwell*, I note that there is another reason to dismiss the complainant's complaints.

[55] In a staffing complaint, the complainant must establish on a balance of probabilities his or her abuse of authority allegations (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 49 and 50). In that case, the complainant made allegations but did not file any evidence to support them.

[56] Complainants cannot rely only on the statements made in their complaints or allegations to establish abuse of authority. The arguments must be supported by testimony, facts, or documents (see *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 20 at para. 50). The absence of evidence supporting the allegations can result in the complaint being dismissed (see *Kerr v. Chief Statistician of Canada of Statistics Canada*, 2012 PSST 1, and *Sharma v. Chief Public Health Officer of the Public Health Agency of Canada*, 2011 PSST 27).

[57] Since the complainant did not file evidence in support of his allegations, his complaints must be dismissed because he has not established that an abuse of authority occurred.

[58] To conclude, I wish to inform the complainant that the individuals involved in these files used their time and resources. If he did not intend to pursue his complaints, he should have so advised the Board in a timely manner. His actions show a lack of consideration for the Board and the parties involved.

[59] Considering the foregoing, I allow the respondent's motion, and I dismiss the

complaints on the grounds of abandonment and lack of evidence.

[60] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IV. Order

[61] The complaints are dismissed.

June 12, 2018.

FPSLREB Translation

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