

Date: 20190211

Files: EMP-2017-10984 to 10986 and 11151

Citation: 2019 FPSLREB 18

*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

PETER TATICEK

Complainant

and

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

and

OTHER PARTIES

Indexed as

Taticek v. President of the Canada Border Services Agency

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

Before: Catherine Ebbs, Chantal Homier-Nehmé, and Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Jean Ouellette

For the Respondent: Martin Desmeules, counsel

For the Public Service Commission: Claude Zaor

Decided on the basis of the record.

I. Complaints before the Board

[1] On February 22, 2017, the complainant, Peter Taticek, filed three complaints (file numbers EMP-2017-10984 to 10986) with the Public Service Labour Relations and Employment Board, as it was then known. The three complaints were consolidated into one file (the first proceeding). On April 24, 2017, the complainant filed a fourth complaint (file number EMP-2017-11151, the second proceeding). All four complaints related to the same selection process, and in each one, he alleged an abuse of authority by the respondent, the President of the Canada Border Services Agency, in the application of merit related to the same selection process. In the first proceeding, the complainant also alleged an abuse of authority by the respondent in the choice of process.

[2] 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 and the title of the *Public Service Labour Relations and Employment Board Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”) and the *Federal Public Sector Labour Relations and Employment Board Act*.

[3] In a previous decision, *Taticek v. President of the Canada Border Services Agency*, 2018 FPSLREB 44 (Taticek #1), the Board consolidated the first and second proceedings. As set out in Taticek #1, the complainant had requested that the matter be dealt with on the basis of the record, and the Board granted that request. This decision will consider the merits of the consolidated complaints.

II. The record before the Board

[4] In light of the fact that the complainant asked the Board to proceed directly to a decision on the basis of the record, there was no hearing. The record consists of the complaints, administrative correspondence with the parties, the complainant’s allegations, motions to request extensions of time, and the Board’s decisions on those motions. For the reasons set out in Taticek #1, there is no reply from the respondent to the allegations on the record.

A. The first proceeding

[5] In file EMP-2017-10984, the complainant set out the following on the complaint form:

I am a successful candidate in the above mentioned 2013 staffing process by CBSA and I am a member of the pool established from this process. I am in Stream 1: Team Leader. I had noticed that there were appointments being made from this stream of the pool and I had not been interviewed for the following appointment: 13-BSF-AI-IND-HQ-IST-CS-2670 Notificaiion [sic] of Appointment (Alina Golinescu).

As the hiring process was now in the Notification of Appointment phase, CBSA Staffing indicated in an email to me that if I wanted an informal discussion at this point I would have to file a complaint with the PSLREB. Please see a copy of the email below I have filed this complaint and I feel that there has been an abuse of authority in the application of merit concerning the choice of the required assets and concerning the assessment method.

...

[6] That text is followed by a copy of an email from “Staffing HQ-ISTB” that advises the complainant that a formal complaint must be submitted and that sets out the possible grounds for the complaint.

[7] In addition to the information provided in file EMP-017-10984, in files EMP-2017-10985 and EMP-2017-10986, the complainant provided the following text on the complaint form:

The information that I was able to gather from the hiring manager during the informal discussion process in February 2017 as to the reasons my name was not produced from the pool as a “right-fit” candidate and included on the list of names sent to the hiring manager on this appointment has led me to file this complaint as I feel that there has been an abuse of authority in the application of merit concerning the choice of the required assets and concerning the assessment method.

[8] The complainant filed his allegations with respect to this first proceeding, alleging that 1) the linguistic requirements for the appointment should have been bilingual imperative CBC, as per CBSA policy; and 2) the asset qualifications used in the selection process of the appointee were improperly, unfairly, and preferentially set and identified.

B. The second proceeding

[9] In the second proceeding, the complainant provided the following description

on the complaint form of the events giving rise to the complaint:

I became aware of this acting CS-03 appointment on April 20, 2017 when I saw the posting of the notification of appointment on the PSC website. When perusing the notification I noticed that the acting began on 2016-08-29 and ended on 2017-02-16 prior to this appointment notification being posted.

I am a member of the pool that this acting appointment was made from and therefore in the area of selection for this appointment. I am not aware of being considered for this acting appointment. I feel that I meet the required qualifications for this position.

After reviewing this notification of appointment and other information, I feel that there has been an abuse of authority in the application of merit concerning the choice of the required assets and concerning the assessment method used for this acting appointment and so have chosen to file this complaint.

[10] The complainant subsequently filed his allegations, which were as follows:

- 1) the initial appointment (under 4 months) was not required to comply with the language profile of the position;
- 2) the selection decision document for the initial appointment seems to be a copy of the information used for the permanent appointment;
- 3) the appointment was posted only after it had expired;
- 4) the complainant met the required qualifications but, unjustly and unfairly, was not considered for the appointments; and
- 5) there was an abuse of authority concerning the choice of the required assets and the method used for the appointments.

III. Reasons

[11] In *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8, the Public Service Staffing Tribunal (PSST) determined that it is the complainant who bears the burden of proof with respect to complaints of abuse of authority (see paras. 49, 50 and 55). In order for the complainant to meet this burden, it is necessary for him or her to present sufficient evidence for this Board to determine, on a balance of probabilities, whether a finding of abuse of authority is warranted.

[12] As set out above, the complainant requested that the Board proceed directly to a decision on the basis of the record. He consequently decided to not present evidence at a hearing. The description of the complaint on each complaint form and the corresponding allegations on file for each proceeding are the basis of the abuse-of-authority complaints. However, the complaint descriptions and the allegations on record do not constitute evidence before the Board, which may come before it by way of, for example, affidavits or testimony at a hearing. A simple assertion is not sufficient; there must be some evidence to support it (see *Drozdowski v. Deputy Head (Department of Public Works and Government Services)*, 2016 PSLREB 33).

[13] Without evidence, the Board has no basis to make a finding as to the validity of the complaints. For this reason, the complaints must be dismissed.

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

(The Order appears on the next page)

IV. Order

[15] The complaints are dismissed.

February 11, 2019.

**Catherine Ebbs, Chantal Homier-Nehmé, and Nathalie Daigle,
a panel of the Federal Public Sector
Labour Relations and Employment Board**