Date: 20190704

File: EMP-2016-10601

Citation: 2019 FPSLREB 65

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

LISA CHEN-WALKER

Complainant

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

and

OTHER PARTIES

Indexed as
Chen-Walker v. Director of Public Prosecutions

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

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Ken Boone, representative

For the Respondent: Spencer Shaw, counsel

For the Public Service Commission: Danielle Dubé, written submissions

Heard at Toronto, Ontario,

April 30 and May 1, 2019.

REASONS FOR DECISION

I. Summary

[1] The complainant, Lisa Chen-Walker, applied for a paralegal position located where she is employed at the Public Prosecution Service of Canada (PPSC). The appointment process had a closing date for applications of November 30, 2015. She was one of 25 applicants in the process. She was found qualified and was placed in a pool of qualified candidates along with one other person, who was eventually appointed to the position.

[2] The complainant then filed this complaint alleging that an abuse of authority occurred in the application of merit in the way the respondent, the Director of the Public Prosecution Service of Canada, conducted her reference. She also alleged that one aspect of the successful appointee's assessment was marked erroneously and that the appointee was improperly given an opportunity to augment a written component of her application. Finally, she alleged that the respondent was biased against her.

[3] For the reasons explained later in this decision, I conclude that the complainant did not meet her burden of proof of establishing on a balance of probabilities that an abuse of authority occurred and I dismiss the complaint.

[4] The complaint was filed with the Public Service Labour Relations and Employment Board, as it was then called. 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 its name to the Federal Public Sector Labour Relations and Employment Board ("the Board").

II. Facts

[5] The complainant had several years of experience working as a legal assistant supporting a team of five lawyers and three paralegals at the respondent's office in Mississauga, Ontario. The office was special in that it was locked, secured, and unmarked. It was established to conduct the complex prosecution of a terrorist organization. The complainant was the sole support person on staff. In that office, no

one other than the staff assigned there could even enter without being greeted and having the door opened for them.

[6] She applied to an advertised process for a paralegal position (classified EC-03, process number 13-PPSC-TOR-IA-89580) in the Mississauga office of the PPSC's Anti-Organized Crime Unit.

[7] Several Crown attorneys staffed that unit. They were responsible for the oversight of many high-level and complex investigations, prosecutions of members of organized crime, and international conspiracy and terrorism-related matters that often relied upon confidential informants, multiple law-enforcement agencies, and multiple cooperating jurisdictions.

III. Analysis

[8] Section 77(1)(a) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *Act*") provides that an unsuccessful candidate in the area of selection for an internal appointment process may make a complaint to the Board that he or she was not appointed or proposed for appointment because of an abuse of authority in the application of merit.

[9] The complainant has the burden of proving that on a balance of probabilities, the respondent abused its authority (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 49 and 55).

[10] Section 30(1) of the *Act* states that appointments to or from within the public service must be made on the basis of merit, and s. 30(2)(a) states that an appointment is made on the basis of merit when the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head.

[11] "Abuse of authority" is not defined in the *Act*; however, s. 2(4) offers the following guidance: "For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism."

[12] As Chairperson Ebbs of the Board noted in *Ross v. Commissioner of the Correctional Service of Canada*, 2017 PSLREB 48 at para. 14, the Board has established

that s. 2(4) of the *Act* must be interpreted broadly. That means that the term "abuse of authority" must not be limited to bad faith and personal favouritism.

[13] In *Canada (Attorney General) v. Lahlali*, 2012 FC 601 at paras. 21 and 38, the Federal Court confirmed that the definition of "abuse of authority" in s. 2(4) of the *Act* is not exhaustive and that it can include other forms of inappropriate behaviour.

[14] As noted in *Tibbs* at paras. 66 and 71, and restated more recently in *Agnew v. Deputy Minister of Fisheries and Oceans*, 2018 FPSLREB 2 at para. 95, an abuse of authority may involve an act, omission, or error that Parliament cannot have envisaged as part of the discretion given to those with delegated staffing authority. Abuse of authority is a matter of degree. For such a finding to be made, an error or omission must be of such an egregious nature that it cannot be part of the delegated manager's discretion.

A. Was it an error for the respondent to direct who would act as a reference for the complainant?

[15] The uncontradicted evidence established that the complainant was emailed while she was away from work on vacation and that she was asked to provide a reference by a deadline that was originally set for before she was to return.

[16] Despite testifying that she had limited connectivity while on vacation, a work colleague contacted her to inform her that the reference request had been made. When she was able to access and read the emailed request, she noted that she had been directed to use her current supervisor as her sole reference.

[17] The complainant replied and explained that she was on vacation and that she would need the deadline extended. She also asked the Human Resources (HR) representative if she could use a different reference as her current supervisor was a member of the selection board. She asked a second time in a follow-up email if she could use a previous supervisor as the reference. The HR representative replied and extended the deadline but also said that the one required reference was to be her current supervisor.

[18] The complainant testified that she and her supervisor, Lisa Matthews, had had disagreements and that she was uneasy working with Ms. Matthews. She added that

Ms. Matthews had not supported her career development. She testified that she would have preferred to provide as a reference her choice of at least one former supervisor.

[19] The complainant read from the reference that Ms. Matthews provided and noted that it stated as follows under the heading "Significant weaknesses":

> *Lisa exhibits a lack of attention to detail at times (e.g. typographical errors, mistakes), and a lack of engagement or interest in some of the more routine tasks associated with her current job. Because she is bright, she sometimes has difficulty engaging with more repetitive or menial task work.*

[20] Under the heading "Ability to work under pressure and meet multiple deadlines", Ms. Matthews wrote as follows:

> *Lisa can become emotional when placed in a stressful situation and sometimes has a hard time coping. For example, she has on occasion cried in my office in reaction to a stressful situation in the workplace.*
>
> …
>
> *Lisa sometimes has a difficult time coping with multiple deadlines, and prefers to action items sequentially. At times, she makes mistakes with the timing of deadlines or the triaging of them. For example, at times she has mis-read [sic] a deadline and not completed a work product on time, due to there being multiple deadlines she is juggling.*

[21] I note that the written reference also provided several very positive comments, including but not limited to the following under the heading "Significant strengths":

> *Lisa is articulate, professional, pleasant, warm, calm, composed, curious, and ambitious. She is outgoing and self-confident. She positively contributes to a very agreeable work environment. She is very bright and articulate.*

[22] In her testimony, the complainant pointed to a Public Service Commission (PSC) document titled, *Structured Reference Checks: A User's Guide to Best Practices*, and to the section entitled *Who is an appropriate referee?*, which included the following:

> …
>
> *It is recommended that applicants choose their own referees based upon guidelines such as those described in Appendix 3….*
>
> …

> *… A common request is that applicants and referees have worked together for at least six months within the last five years….*
>
> …
>
> *It is good practice to contact at least two or three referees, preferably the following persons, in order of importance:*
>
> *1. Recent immediate supervisors… Supervisors have had the opportunity to observe the applicant perform in a number of different circumstances and develop over time. It is, therefore, good practice to select recent supervisors as referees wherever possible….*
>
> …

[23] In her testimony on the matter of her reference, Ms. Matthews explained that she had worked with the complainant in the same Mississauga office since 2011 when she was a litigator there and the complainant was a legal assistant. She also confirmed that she had been the complainant's supervisor only since December 21, 2015, when she commenced serving as the team leader there. She also testified that she had no role in assessing the reference she provided for the complainant because the other two members of the board did it, which Tom Andreopoulos, Deputy Chief Federal Prosecutor and Selection Committee Chair, confirmed in his testimony.

[24] During her cross-examination, Ms. Matthews was asked why she decided to be the complainant's reference. She replied that she took direction on it from her superior, Mr. Andreopoulos. When she was asked why her written reference for the complainant was so brief as compared to what another person in the organization had provided for the appointee, Ms. Matthews replied that she did her best to provide an honest reference and that she prides herself on communicating succinctly. When she was shown the PSC's document about best practices, Ms. Matthews replied that she had never seen it before.

[25] I heard conflicting testimony from the complainant and Ms. Matthews on the allegation of whether and to what extent Ms. Matthews had written a performance evaluation for the complainant. Her representative argued that Ms. Matthews had not written one before composing her reference letter, which was improper.

[26] I make no finding of fact on this allegation as I received conflicting evidence on it. More importantly, I do not find that this issue has any probative value in my determination of whether an abuse of authority occurred.

[27] In argument on this allegation, the complainant's representative said that it was improper and a breach of the PSC guidelines to deny the complainant the choice of references and to restrict her to one. He also said that the referee was in conflict, as she was also on the selection board for the appointment, and that she should have been disqualified from being a referee as she had not supervised the complainant for six months.

[28] Upon the conclusion of the arguments, I asked the complainant's representative if he could confirm for me if there was any evidence before me that the reference contained errors. He confirmed that there was none but repeated that it should have been more comprehensive and detailed.

[29] Counsel for the respondent cited past Board jurisprudence that found that it was acceptable for an assessment board to rely upon a single reference and that it should not shop for either a favourable or an unfavourable reference (see *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at para. 59).

[30] Counsel for the respondent noted that it has been held that while it is preferable to have a candidate's consent (to select a particular referee), there is no requirement for it. The Board's predecessor tribunal, the Public Service Staffing Tribunal (PSST), found that what is important is that the referee is familiar with the candidate's work and can provide sufficient information to allow the selection board to adequately assess the candidate's qualifications (see *Dionne v. Deputy Minister of National Defence*, 2008 PSST 11 at paras. 56 and 57).

[31] In that decision, the PSST found that a referee who had a strained relationship with a candidate could still provide valuable information. In fact, it is a useful way to avoid speaking only with friendly references.

[32] As counsel for the respondent also stated, it has also been found that it is not a conflict of interest simply for a candidate's supervisor to be a member of the selection board or for that supervisor to provide a reference if he or she does not participate in

assessing the references (see *Cannon v. the Deputy Minister of Fisheries and Oceans*, 2013 PSST 21 at para. 25, which cited *Robertson v. Deputy Minister of National Defence*, 2010 PSST 11).

[33] While it may not be a best practice, according to the PSC's guidelines that were shared at the hearing, nevertheless, it was acceptable for the respondent to rely upon a single referee and to direct that the complainant's current supervisor provide the reference as long as she had knowledge of the complainant adequate to provide a fair and well-informed reference (in the context of the duties to be performed in the position sought), which I am satisfied occurred in this case.

[34] I conclude that there is no evidence of anything untoward related to the complainant's reference from Ms. Matthews upon which I can declare that an abuse of authority occurred.

B. Was there an abuse of authority in the assessment of the appointee?

[35] The uncontested evidence established that the eventual appointee was allowed an opportunity, after the deadline had passed, to clarify an aspect of her written submission that dealt with her experience, to satisfy, in part, the essential criteria of the position. At issue was the fact that the appointee had submitted the details of her relevant work experience, to satisfy the essential criteria, but she had not provided the details of the dates and the chronology, which were required to prove that her experience encompassed at least one year.

[36] The complainant's representative argued that it was improper for the respondent to allow just one candidate the opportunity to supplement her submission after a clear deadline had passed. He also noted that the instruction governing the submission had clearly stated that "… failure to clearly demonstrate how you meet this criterion may result in your elimination from the selection process."

[37] In his view, that emphasized the fact that the other candidate made a serious error by neglecting to provide the required information in her original submission.

[38] In the emails adduced as evidence related to this matter, the appointee replied to HR's message in which it asked about the missing information. She stated that she

might have misinterpreted the matter of cumulative experience equalling one year, so she clarified how long she had held certain positions, as requested.

[39] Building on that argument, uncontradicted evidence was adduced that established that the respondent relied upon the appointee's additional submission and that under the assessment criteria of "attention to detail", the selection board gave her a perfect score of 10. The complainant's representative argued that it was unreasonable for the appointee to receive a perfect score on that criterion, given that in his opinion, she had neglected the instructions and had submitted an incomplete response.

[40] When this was put to Mr. Andreopoulos in cross-examination, he stated that the selection board properly considered all the materials before it and then concluded that the appointee merited a perfect score on that criterion.

[41] Mr. Andreopoulos also stated in his examination-in-chief that the reference scoring had not been sufficiently weighted to have a determinative effect upon the outcome of the candidate scoring, given the complainant's marks on the many other criteria included in the assessment.

[42] After listening carefully to the complainant's argument, I understand the complainant's argument that it seems quite curious how the appointee could have received a perfect 10 for attention to detail when she either neglected or misunderstood a key part of the very information being sought in the material that made up that mark. However, as an evidentiary finding on the testimony and documents before me in this matter, it is not possible for me to know exactly the many factors that were in the minds of the assessment board members and to examine every matter they might have discussed that led them to conclude that the appointee deserved a mark of 10 on that one part of the overall assessment.

[43] It has been consistently held that it is not the Board's job to re-evaluate marking from an assessment even if it appears that an error might have occurred. The Federal Court endorsed this conclusion in its judicial review of the PSST's decision in *Lavigne v. Deputy Minister of Justice*, 2009 FC 684 at paras. 62 and 70. The Court stated as follows:

> *[62] Abuse of authority requires more than error or omission, or even improper conduct.*
>
> …
>
> *[70] … it is not for the Tribunal or the Court to establish the essential qualifications required for a position or to substitute its assessment of the candidates' qualification for that of the manager or his or her sub-delegates, the assessment board in this case….*

[44] It has also been established that the nature and seriousness of the improper conduct or omission will determine whether it constitutes an abuse of authority. See *Tibbs*, at para. 66.

[45] Having carefully considered the testimony and arguments of both parties, I conclude that although the candidate was told that failure to provide the requested information *may* result in her elimination, the omitted details were ancillary to the information about her experience that was being sought and the respondent's exercise of discretion to allow her to clarify her response after the deadline does not demonstrate that the respondent abused its authority by acting in bad faith or otherwise improperly. If I am wrong and the perfect-10 scoring was an error, I consider it a very minor error and not something that would justify a finding that an abuse of authority occurred on that basis alone.

C. Did the respondent commit an abuse of authority by discriminating against the complainant on the basis of her race and family status?

[46] In her examination-in-chief, the complainant testified that no other staff in her office had young children and that the people in the organization that she saw receiving promotions had no young children. She also testified that she knew everyone in the organization and upon review of an organizational chart counted the names and stated who was a visible minority, including herself, and concluded that at the office visible minorities were under-represented, relative to their availability, by one person (i.e., a "-1" in its employment equity quota). She reviewed the respondent's "Workforce Analysis" for her sector, completed on June 30, 2016. It showed that there was no gap in visible minority representation. She testified that in her opinion, this finding was wrong based on her accounting of all the staff, whom she named in her testimony.

[47] With respect to the discrimination based on family status, the complainant testified that in her opinion, people with children were either not accepted into her

office or not promoted. She also tearfully recounted how Ms. Matthews told her that her husband should stop bringing their two young children to the (secure, locked, and unmarked) office each morning to visit her, as she had recently returned to work after a maternity leave.

[48] Both Mr. Andreopoulos and Ms. Matthews contradicted the complainant's assertions as to the matter of office staff with young children, as Ms. Matthews said that she is a parent and that she was recently promoted to an office team leader position. They also contested the accuracy of the complainant's accounting of visible-minority staff. Mr. Andreopoulos explained that the office must account for visible-minority staff based upon the written self-declaration that each staff member may choose to complete and that he was satisfied that the zero rating cited by the complainant was indeed accurate.

[49] To determine if an employer engaged in a discriminatory practice, a complainant must first establish a case of discrimination at first view or *prima facie*, which means one that covers the allegations made and which, if the allegations are believed, would be complete and sufficient to justify a finding in the grievor's favour in the absence of an answer from the employer. An employer faced with a *prima facie* case can avoid an adverse finding by providing a reasonable explanation that shows that its actions were in fact not discriminatory or by establishing a statutory defence that justifies the discrimination (see *A.B. v. Eazy Express Inc.*, 2014 CHRT 35 at para. 13.

[50] I find that on the evidence as outlined above, the grievor has not established a *prima facie* case of discrimination based on family status or race.

[51] As a finding of fact, even if I accept the information presented by the complainant as to the composition of her workplace I am not able to conclude as to the exact number of staff who may have young children or how many have self-declared as members of a visible minority. While the complainant may know each staff member and their racial and ethnic heritage, it does not necessarily mean that each of these people have self-declared themselves to the respondent as being a member of a visible minority. Furthermore, even if there was an under-representation of one person, as the complainant alleges, the complainant would still have to

demonstrate a link between this evidence and her claim that she was individually discriminated (see *Ben Achour v. the Commissioner of the Correctional Service of Canada*, 2012 PSST 24 at para. 75). She has not established such a link, even on a *prima facie* basis.

[52] I am also not persuaded that the complainant being asked to stop her children's visits to the workplace is evidence of anything other than perhaps poor judgement on her part to have her young children visit the workplace.

[53] Consequently, I find that the complainant's evidence does not demonstrate on a *prima facie* basis that her family status or race were factors in the decision not to select her for appointment to the position at issue.

D. Were the respondent and its managers biased against the complainant?

[54] The complainant testified that she had a strained relationship with her supervisor, Ms. Matthews. She said that Ms. Matthews did not support her career development. She testified about several matters that in her view were all evidence of the respondent's bias against her.

[55] The complainant testified as follows:

> - she was unfairly denied an appointment in a previous process;
>
> - Ms. Matthews told her that she could no longer work a compressed schedule that gave her 1 day in 10 off, which was unfair;
>
> - Ms. Matthews was reluctant to allow her to attend interviews for other positions and tried to deny her such an opportunity;
>
> - Ms. Matthews asked her to account for her time spent driving and to return to work after being absent for job interviews;
>
> - Ms. Matthews refused to allow her to go on a secondment to a different job;
>
> - she was unfairly denied approval for a two-day computer software training course;
>
> - she was told that she should not allow her two young children to continue to visit her at the office each morning because they missed her after she returned to work following her maternity leave;
>
> - she was asked for a written reference with a deadline to reply while she was on vacation, which was unfair;

> - she was invited to an interview that was scheduled to conclude at 4:00 p.m., after the usual 3:00 p.m. end to her workday, which was unfair;
>
> - the interview being scheduled late required her to drive for an hour in rush-hour traffic, meaning that she arrived home later than usual;
>
> - as the proposed interview and drive time interfered with her childcare plans, she requested and received an accommodation in the form of an earlier interview time, but the need to make that request caused her stress;
>
> - she was denied the opportunity to use a former supervisor as a reference, which was unfair;
>
> - Ms. Matthews provided a brief and less-positive reference than what she deserved, which was unfair; and
>
> - she did indeed cry at work (as noted in Ms. Matthews's reference), but this only occurred once and it was inside Ms. Matthews's office before Ms. Matthews became her supervisor and while she was expecting a child, so it "was not a normal situation."

[56] In reply, Ms. Matthews testified that she had no personal animosity or bias against the complainant. She explained that the office was very busy, that it had almost constant deadlines driven by litigation, and that the complainant was the only legal assistant in the office. She added that if the complainant was not in the office, the lawyers often had to stop working on a file in order to open the door for a courier or to provide the custodians access to the office when they arrived after 3:00 p.m.

[57] Ms. Matthews also explained that the computer training that the complainant was denied was for a software program for which a detailed office user manual had been written as a guide to specific tasks regularly done in the office. She also testified that the office budget had been reduced to the point that there was no funding for anyone to attend such training.

[58] Ms. Matthews also testified that the claims that she denied the complainant a secondment and her compressed workweek were actually decided by more senior managers and were due solely to the office's extremely heavy workload. Ms. Matthews explained that for every day the complainant was away from the office on leave or secondment, the office had to backfill her duties with someone from an internal area and that sometimes, they were unable to arrange it. She added that once, in fact, the complainant had been approved for several weeks of leave with income averaging.

[59] Ms. Matthews also testified about the importance of precise attention to detail in the office and explained that the paralegal is responsible for dealing with numerous police agencies, to guide them in preparing evidence disclosure briefings. She said that the paralegals in the office produce all the documents for prosecutions and that one error could jeopardize an entire court case. She also testified that many of the prosecutions in the office rely upon confidential informants who provide information about organized crime or terrorist groups and that any disclosure error that risked identifying an informant could quickly lead to that person's death.

[60] In further response to the complainant's concerns, Mr. Andreopoulos testified that indeed, the complainant had been selected for a paralegal position with the "Notice of Consideration" of her appointment dated December 12, 2013. However, due to budgetary restraints, he never received approval to make the appointment for the vacancy. Eventually, the pool of qualified candidates expired. The complainant remained in this pool until its expiry on March 31, 2015. He also confirmed in great detail the office's very heavy workload, the very precise level of detail required in the paralegal's tasks, and the fact that prosecutions of national importance hang in the balance of these tasks being performed properly, with exact precision.

[61] With respect to accusations of real or perceived bias, it is not necessary that actual bias be found as a reasonable apprehension of bias may constitute abuse of authority (see *Ryan v. Deputy Minister of National Defence*, 2014 PSST 9 at para. 25)

[62] As noted in *Ryan*, the test for reasonable apprehension of bias, as adapted to staffing matters, is as follows:

> …
>
> *Where bias is alleged, the following test can be used to analyze this allegation, while taking into account the circumstances surrounding it: If a reasonably well informed [sic] bystander can reasonably perceive bias on the part of one or more persons responsible for assessment, the Tribunal can conclude that abuse of authority exists.*
>
> …

[63] Having carefully reviewed the evidence presented at the hearing, I find that a reasonably well-informed bystander would not reasonably perceive bias on the part of

one or more persons responsible for the assessment and hiring at issue. Rather, the observer would conclude that the complainant worked in an office with a very heavy workload in which management made fair and valid decisions motivated solely by the organization's operational needs with respect to her concerns. Her concerns with scheduling her interview and requesting a reference while she was on vacation were trivial, and the respondent addressed them properly when she raised them. Her other concerns were not relevant; they were about an assessment marking mistake, which was later corrected, and several emails from Mr. Andreopoulos, which were examined.

[64] Therefore, I conclude that the complainant did not establish that the respondent abused its authority based on bias against her.

IV. Procedural matters at the hearing

[65] Given the duties of the position at issue, namely, the preparation of materials for trial disclosure at court, it is relevant to note that several exhibits that the complainant tendered at the hearing had not been disclosed to counsel for the respondent beforehand.

[66] After giving counsel the opportunity on each occasion to review the documents and consult with his client, I cautioned the complainant and her representative about the importance of pre-hearing disclosure as we had discussed in the case management teleconference several weeks before the hearing. I then allowed each exhibit at issue to be put to the respective witnesses.

[67] One of the exhibits, an email, could not be identified by the complainant as she had neither sent nor received it and had no personal knowledge of it. As such, I granted the respondent's objection and denied it being put to the complainant as an exhibit, but I suggested to her representative that the respondent might call a witness later in the hearing to whom the email could properly be put for questioning.

[68] Despite my suggestion, all the respondent's witnesses finished their cross-examinations and the document in question was not put to any of them. After the close of evidence and after the witnesses had been allowed to depart the hearing venue, the complainant and her representative informed me that they had neglected to

question Mr. Andreopoulos about this document as well as one other which the complainant had been holding in her binder.

[69] The second document which the complainant had forgotten to table as an exhibit in cross-examination was a wholly redacted email sent by Mr. Andreopoulos. It had not been previously disclosed to counsel for the respondent.

[70] After I informed the complainant that it was exceedingly rare that the Board would agree to recall a witness, I said that out an abundance of caution to try to provide her with every possible opportunity to present her case, I requested that counsel for the respondent inquire as to Mr. Andreopoulos's availability to be recalled either in person or by telephone if he was no longer in the vicinity of the hearing venue in downtown Toronto. At the same time, the respondent immediately undertook to try to locate the redacted email, to determine if an unredacted version could be located.

[71] Over the course of a lunch break, Mr. Andreopoulos agreed to return to the hearing to be cross-examined on the two documents in question. As an unredacted version of the second email could not be located during the lunch break, he was able to testify only that he had no memory of what it contained.

V. Conclusion

[72] For all the previously noted reasons, I conclude that the evidence of each allegation, taken alone or taken all together, fails to establish any errors or omissions upon which I can make a finding of abuse of authority.

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

(The Order appears on the next page)

VI. Order

[74] The complaint is dismissed.

July 4, 2019.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board