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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

AURÉLIE REGY

Complainant

and

DEPUTY MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES

Respondent

and

OTHER PARTIES

Indexed as

Regy v. Deputy Minister of Public Works and Government Services

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

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Andréanne Laurin, counsel

For the Public Service Commission: Claude Zaor

Heard by videoconference,
December 21, 2020.
(FPSLREB Translation)

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Application before the Board

[1] Aurélie Regy, the complainant, made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) about a decision by the Deputy Minister of Public Works and Government Services (now called Public Services and Procurement Canada; “the respondent”) to not consider her application for a position at the screening stage. The complainant alleged that the decision constituted an abuse of authority and was unfair to her, for many reasons. The respondent replied that the complainant had not met her burden of proof to demonstrate that an abuse of authority had occurred.

[2] For the following reasons, the complaint is dismissed. Nothing in the evidence presented by the complainant would allow the Board to find abuse of authority on the part of the respondent.

II. Summary of the evidence

[3] The complainant applied for the position of Manager, Client Services - Human Resources, classified at the PE-05 group and level. The complainant was released from the Canadian Armed Forces (CAF) for medical reasons; therefore, she had hiring priority in the public service under s. 39.1 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13; “PSEA”).

[4] The subdelegated manager responsible for the staffing process was Laurent Guérard, who testified at the hearing. He was part of the screening board along with Louise Cléroux, public servant, now retired, who worked on the process under a casual employee contract. Ms. Cléroux also testified at the hearing. Both Mr. Guérard and Ms. Cléroux had lengthy human resources careers in the federal public service.

[5] At the hearing, Mr. Guérard explained that the complainant did not pass the screening stage because she had none of the three essential qualifications of the advertised position, namely, a post-secondary degree, experience in at least two human resources areas (staffing, classification, labour relations, or human resources management), and experience providing human resources advice and guidance to senior management.

[6] The complainant argued that the “[translation] advisor” aspect was not part of the title of the advertised position. Ms. Cl  roux and Mr. Gu  rard both said that the position of “Manager, Client Services - Human Resources” had two components: the incumbent directed a team, but was also a human resources consultant and had to provide advice in that area.

III. Analysis

[7] The complainant claimed that the respondent abused its authority for three reasons: it did not take her priority status into consideration, it did not recognize her university degree, which she obtained in the weeks after she submitted her application, and it contradicted itself about the importance experience played in assessing her application.

A. Hiring priority

[8] The *PSEA* provides certain hiring priorities, particularly for people who served in the CAF and left for medical reasons. However, hiring priority is not unconditional. In fact, s. 39.1(2) of the *PSEA* states that the merit principle continues to apply when hiring a person with priority status, meaning the person must meet the merit criteria that constitute the essential qualifications.

[9] The respondent was well aware that the complainant had priority status due to her release from the CAF for medical reasons, but it still had to ensure that she met all the essential qualifications. According to the respondent, that was not the case; the complainant did not have the required post-secondary degree, and she was missing two types of required experience. Consequently, the respondent concluded that despite the complainant’s priority status, her application could not be considered.

B. Academic qualification

[10] The job posting stated that the candidate had to have a post-secondary degree with a specialization in human resources or a related field. The evidence shows that the complainant did not have the degree when she submitted her application, but that she obtained it shortly after that. The application period ended on September 5, 2019. On October 18, 2019, the Universit   du Qu  bec confirmed in a letter addressed to the complainant that she had passed all the required components of her bachelor’s degree. Consequently, her file would be sent to the university’s Academic Council, which

would recommend that the Board of Governors, which was to meet on December 11, 2019, grant her a bachelor's degree in business administration.

[11] At the hearing, the complainant submitted a document that simply stated the following: “[translation] You are eligible if you have a college diploma or a university degree, or if you will be obtaining one soon.” The source of the document and the context of the eligibility were not stated in the document.

[12] The job posting stated the following:

[Translation]

...

For your application to be considered, it must clearly describe how you meet the following (essential qualifications)

EDUCATION:

A degree from a recognized postsecondary institution with acceptable specialization in human resources management, industrial or labour relations, psychology, public or business administration ... or any other field relevant to the work to be performed.

...

[13] The degree that was to be granted to the complainant met the requirement, but she did not have it in September 2019. Mr. Guérard testified at the hearing that it was important for the selected individual to already have the degree. His view was that the document quoted by the complainant did not apply at all to the situation. According to Mr. Guérard and Ms. Cléroux, the document that the complainant was referring to was addressed to external recruitment candidates at the post-secondary level. In an internal appointment process like in this case, the employer could require that the person already have obtained a degree. Mr. Guérard also specified that for a position at this level, they were looking for someone who had not only obtained the degree, but also had been applying the knowledge acquired over a certain period, as indicated in the experience-related criteria.

[14] Section 31(1) of the *PSEA* provides the following:

31(1) *The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the*

work to be performed and the present and future needs of the public service.

[15] The employer was entitled to require that candidates have the degree when they applied. I cannot see an abuse of authority from exercising a right that is recognized by the PSEA.

C. Contradictions about experience as a qualification

[16] The job posting also stipulated the following types of experience as essential qualifications:

[Translation]

1. Recent and significant** experience in at least two human resources management disciplines.*

...

2. Recent and significant** experience providing advice and recommendations to managers on complex*** and sensitive human resources (HR) issues.*

** Recent refers to experience gained within the past (5) years.*

*** Approximately two (2) years of experience.*

**** Management of files with regional or national scope.*

[17] The complainant alleged abuse of authority on the respondent's part with respect to these requirements. She did not allege that she had the required experience.

1. Position title: Manager, Client Services - Human Resources

[18] According to the complainant, the position title, Manager, Client Services - Human Resources, in no way stated that the required experience was necessary.

[19] Both Ms. Cléroux and Mr. Guérard testified that the position title was a generic one provided by the Treasury Board. It was up to the employer to determine the duties of the position. They testified that the Manager, Client Services - Human Resources required in-depth knowledge of human resources, and experience providing advice, because the incumbent of the position had to act as management's resource person for human resources. In other words, the reality of the position was broader than its simple title.

[20] The explanation seems reasonable to me. The employer initiated an appointment process to meet some staffing needs. The employer must determine the duties of a position and which qualifications are necessary to perform those duties.

2. Ms. Cl  roux's statements during the informal discussion

[21] The complainant argued that during the informal discussion, Ms. Cl  roux told her that it was solely because she lacked a post-secondary degree that her application was not considered at the screening stage.

[22] The complainant recorded her discussion with Ms. Cl  roux without her knowledge. For that reason, I did not allow the recording to be adduced. The complainant requested authorization to submit the written transcript at the hearing.

[23] The respondent objected to the admissibility of that evidence for the same reason that I refused to allow the recording to be adduced.

[24] However, I allowed the complainant to adduce the transcript into evidence, subject to Ms. Cl  roux's careful reading of it so that she could report any discrepancies that she recalled from that discussion. I allowed it because the transcript was short, and it was relatively easy for Ms. Cl  roux to check that it was a faithful reproduction of the informal discussion. If Ms. Cl  roux had hesitated to confirm the accuracy of the transcript, it would have lost all its probative value. Ms. Cl  roux confirmed that the transcript accurately reflected her memory of the informal discussion.

[25] That said, I must emphasize that admitting such evidence is exceptional and that in other circumstances, it would be justified to refuse to admit a transcript of a recording made without the other party's knowledge.

[26] As a matter of fact, the transcript contradicts the complainant's allegation that Ms. Cl  roux insisted only on the lack of a post-secondary degree to justify the respondent's decision. After she spoke about the fact that the degree had not been obtained at the time of the application, Ms. Cl  roux added the following:

[Translation]

...

... Another thing, I looked at your CV and the experience you have had as a manager.

...

... And now you are applying ... Which is very good, but you are applying for a human resources advisor position. I know the title is confusing because it's called manager, but it's an expert position in the field of ... the first position we are going to staff is in labour relations. Certainly, you have managed people because you are a manager but it is management experience.

...

... Although the position that is being staffed, and if there are others, they are positions where, how should I say, you are like the expert person, whether in labour relations or in staffing....

...

... That is why you were not considered because you have experience in managing people.

...

... It's good; it's not because you got that somewhere other than at the federal level, it would be recognized, but in this case, this is not the experience being sought. It really was human resources experience.

...

[27] Ms. Cl  roux did speak about the lack of human resources experience as being one of the reasons for not considering the complainant's application. I see no contradiction or inconsistency in the respondent's position.

3. Response to a request to provide information

[28] On July 22, 2020, as part of preparing her complaint for the hearing, the complainant submitted a request to the Board for the respondent to provide information. The respondent responded to the request, indicating to the Board that the request did not specify which documents were being requested and that consequently, it would be impossible to comply with it. In its response, the respondent wrote the following sentence: "[translation] In the screening process, the complainant did not pass the screening stage because she did not show that she met the education criteria or the two experience criteria for the position."

[29] In that wording, the complainant saw proof that it was not necessary to meet both the education and the experience criteria. The respondent subsequently corrected the misunderstanding, indicating that it was a clerical error and that the letter should have used the conjunction "and" instead of "or".

[30] I cannot agree with the complainant's theory that this was a subsequent correction made in bad faith. The job posting was clear, and it listed all the necessary qualifications.

[31] I am prepared to recognize that the letter contained errors, but the letter in no way changes the requirements of the position; it was necessary to have both the degree and the required experience. Much more than a simple error or omission is required for a finding of abuse of authority (on this point, see the landmark decision *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8).

IV. Conclusion

[32] The complainant had priority because of her status as a CAF member who was released for medical reasons. However, since she did not meet the essential qualifications for the position, it could not be granted to her under s. 39.1(2) of the *PSEA*.

[33] The failure to recognize the university degree that was obtained after the application for the position was made does not constitute an abuse of authority. The posting was clear: it was necessary to have the degree, not to be on the cusp of obtaining it. Section 31(1) of the *PSEA* gives the respondent the authority to establish qualification standards. The respondent was entitled to require that candidates have the degree at the time of their application; this does not constitute an abuse of authority.

[34] Section 31(1) of the *PSEA* allows the employer to determine the necessary experience as a qualification standard, based on "... the nature of the work to be performed ...". Both Mr. Guérard and Ms. Cléroux testified that the position of Manager, Client Services - Human Resources, included an advisory component and that consequently, the experience of providing advice and having an in-depth knowledge of human resources was necessary. The employer assigns duties and is able to determine which skills are necessary to perform those duties. Both types of experience that were lacking in the complainant's qualifications appeared in the job posting. I see nothing dishonest in the fact that a manager must also act as an advisor in his or her field, if that is the service requirement in that area. Public service position titles are often generic, and the content of the duties is determined by management and not by the

position title. I cannot find an abuse of authority in asking a manager to also be the person to be consulted in his or her area of expertise.

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

(The Order appears on the next page)

V. Order

[36] The complaint is dismissed.

February 22, 2021.

FPSLREB Translation

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**