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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

RYAN DOUCETTE

Complainant

and

DEPUTY MINISTER OF VETERANS AFFAIRS CANADA

Respondent

and

OTHER PARTIES

Indexed as

Doucette v. Deputy Minister of Veterans Affairs Canada

In the matter of a complaint made under paragraph 77(1)(a) of the *Public Service Employment Act*

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Christine Côté, counsel

For the Public Service Commission: Louise Bard, senior analyst

Heard via videoconference,
July 27 and 28, 2021.

REASONS FOR DECISION

I. Introduction

[1] Ryan Doucette (“the complainant”) made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) under s. 77(1)(a) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13; “the *PSEA*”) of abuse authority in the appointment of a person (“the appointee”) on an acting basis to the position of National Program Manager, classified WP-06 (“the WP-06 position”).

[2] The complainant’s view is that the continuous appointments of individuals who did not meet the linguistic profile of the WP-06 position exceeded 12 months and contravened s. 30(2) of the *PSEA*.

[3] The Deputy Minister of Veterans Affairs Canada (“the respondent”) conceded that the uninterrupted period of appointments to act in the WP-06 position exceeded 12 months. The individuals appointed over this period to perform the duties did not meet the position’s language requirement.

[4] The Public Service Commission did not appear at the hearing. It provided a written submission addressing its relevant policies and guidelines. It took no position on the merits of the complaint.

[5] For the reasons that follow, the complaint is upheld. It has been established that the respondent abused its authority in the application of merit.

II. Summary of the evidence

[6] The respondent presented a written summary of facts and supplemented it with some details that were given orally. The complainant agreed that the information was accurate.

[7] A summary of the relevant facts follows.

[8] According to the “Statement of Merit Criteria” (“the SOMC”), the language requirement for the WP-06 position is bilingual imperative (CBC/CBC). This represents its official language proficiency requirement.

[9] From January 14, 2019, through May 10, 2019, the first individual was appointed to act in the WP-06 position. The individual did not meet the language requirement stated in the SOMC.

[10] The appointee immediately followed the first individual. The appointee also did not meet the language requirement.

[11] The appointee received an extension on January 10, 2020, and continued to occupy the WP-06 position on an acting basis through May 8, 2020. The appointment then ceased.

[12] A “Notice of Acting Appointment” for the extension was posted on January 20, 2020, and the complainant responded with this complaint.

III. Analysis

[13] Section 30(2)(a) of the *PSEA* provides that an appointment is made on the basis of merit when the person appointed meets the essential qualifications, including the official language proficiency.

[14] There is an exception to the application of s. 30(2)(a). Section 15(1) of the *Public Service Employment Regulations* (SOR/2005-334; “the *PSER*”) states that in specified circumstances, an acting appointment of more than 4 months and less than 12 months is excluded from the application of s. 30(2)(a).

[15] On the facts presented, for the period of January 14, 2019, through May 8, 2020, the WP-06 position was continuously occupied on an acting basis by individuals, including the appointee, who did not meet its official language proficiency.

[16] The uninterrupted period of approximately 16 months exceeded the permissible exception to s. 30(2)(a) of the *PSEA* set out in s. 15(1) of the *PSER*. Therefore, it constitutes an abuse of authority.

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

(The Order appears on the next page)

IV. Order

[18] The complaint is substantiated.

[19] I declare that an abuse of authority occurred in the appointment of January 10, 2020, which resulted in a period exceeding 12 months during which the WP-06 position was occupied on an acting basis by those who did not meet its official language proficiency requirement.

August 16, 2021.

**Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**