

Date: 20211019

File: EMP-2017-11334

Citation: 2021 FPSLREB 114

*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

NICOLE ADAMS

Complainant

and

DEPUTY MINISTER OF VETERANS AFFAIRS

Respondent

and

OTHER PARTIES

Indexed as

Adams v. Deputy Minister of Veterans Affairs

In the matter of a complaint of abuse of authority pursuant to s. 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: Not applicable

For the Respondent: Not applicable

For the Public Service Commission: Not applicable

Decided on the basis of the record.

REASONS FOR DECISION

I. Introduction

[1] On July 31, 2017, the complainant, Nicole Adams, made a complaint of abuse of authority against the respondent, the Deputy Minister of Veterans Affairs, concerning a non-advertised appointment on an acting basis to a WP-05 position of veteran service team manager (VSTM) in Pembroke, Ontario. The complainant alleged that the appointee did not meet the linguistic profile for the position, resulting in inadequate bilingual coverage; a VSTM qualified inventory was available and could have been used; undue weight was placed on case management experience; and, other employees might have been interested in the appointment opportunity.

[2] The respondent denied that an abuse of authority occurred and stated that although the appointment exceeded four months and the appointee did not meet the linguistic profile for the position, an equal alternative administrative arrangement was in place to ensure the availability of bilingual service. The respondent determined that appointing a person to act was a reasonable alternative while an appointment process was conducted. The experience criterion was an asset qualification that was set by the manager and met by the appointee. Lastly, the final allegation suggested others, but not the complainant, were interested in the VSTM position. As such, the complainant lacked the required personal interest for standing to file a complaint.

II. Procedural history of the case

[3] On July 25, 2017, a Notice of Acting Appointment was posted, and on July 31, 2017, the complaint of abuse of authority was made to the Federal Public Sector Labour Relations and Employment Board (“the Board”).

[4] On September 14, 2017, the complainant submitted allegations to the Board. On September 27, 2017 and October 2, 2017 respectively, the respondent and the Public Service Commission replied to the allegations.

[5] On September 29, 2021, the Board sent notice of the hearing to the parties that the complaint would be heard on November 9 and 10, 2021.

[6] As the Board’s last contact with the parties occurred February 2, 2018, on August 19, 2021, I instructed the assigned registry officer to contact the parties for the purpose of a pre-hearing conference.

[7] The registry officer's email was sent to all the parties, including the complainant and her representative. The email sent to the complainant at the Veterans Affairs Canada address she supplied with her complaint was returned as the account was no longer active. The representative identified by the complainant in the complaint did not respond. The respondent replied to indicate its readiness to proceed with the hearing.

[8] On August 26, 2021, the registry officer telephoned the complainant and her representative. The complainant's telephone number was no longer active. The individual who answered for the representative indicated no knowledge of the complaint or representation of the complainant.

[9] The registry officer then conducted a search of the federal government's electronic directory service (GEDS) and could not locate the complainant's name. The complainant's representative was again contacted by email, without response.

[10] On September 1, 2021, I instructed the registry officer to send a notification of status review to the parties, providing a deadline of September 15, 2021, to respond. In part, the notification provided as follows:

...

Email messages to the complainant at the address given with her complaint have been returned as undeliverable. The telephone number given for her representative is not current and the representative has not responded to emails sent to a Gmail address.

Accordingly, prior to issuing a formal Notice of Hearing, the Board Member has directed a status review of the complaint. The parties are directed to update the Board and in particular to provide submissions to address reasons for which the matter should proceed to hearing or should be deemed to be withdrawn.

*If there is no response on or before **September 15, 2021**, the complaint will be deemed withdrawn and the complaint file will be closed without a hearing or further notice to the parties.*

[11] The notification was mailed to the complainant through Canada Post priority mail and a tracking number was issued. All other parties received the notification by email.

[12] On September 3, 2021, Canada Post acknowledged delivery of the notification to the complainant.

[13] By September 15, 2021, there was no response to the notification from the complainant or her representative.

[14] On September 29, 2021, the complainant's named representative contacted the Board by email, stating that she was no longer an employee of Veterans Affairs or a member of the Public Service Alliance of Canada. She provided no updated contact information for the complainant and asked to be removed from the file.

III. Analysis

[15] This is a case in which reasonable efforts by the Board to contact the complainant by telephone, email, and regular mail achieved no response.

[16] The GEDS directory shows no listing for the complainant. The individual formerly identified as her representative has withdrawn from the file. The complainant has not provided current contact information to the Board.

[17] It is my view that given the multiple attempts to contact the complainant, the confirmation that the Board's notification of status review was delivered to her, and the absence of a response from her, it is reasonable to conclude that she has no intention to present a case or to proceed with the complaint.

[18] It is well settled that the Board is the master of its proceedings. (See *Public Service Staffing Complaints Regulations* (SOR/2006-6), s. 27; and *Vani v. Chief Statistician of Canada*, 2008 PSST 29 at para. 24.)

[19] The complainant bears the burden of proof in a complaint before the Board (See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 50.) Ordinarily, proof is given through oral and documentary evidence presented by or on behalf of the complainant. The respondent then presents its case to reply to the evidence.

[20] I am satisfied by the chronology of events and the unsuccessful attempts to contact the complainant that she has shown no intention of proceeding to present her case. In this circumstance, it serves no purpose to require the respondent to prepare its case in reply.

[21] The notification of September 1, 2021, advised the complainant that failing to respond would result in this file being closed without further notice.

[22] Accordingly, on the Board's motion and in consideration of the history of this case, the absence of contact from the complainant, and particularly her lack of response to the notification of status review that she received on September 3, 2021, I have determined that it is appropriate to dismiss the complaint.

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

(The Order appears on the next page)

IV. Order

[24] The complaint is dismissed.

[25] The hearing scheduled for November 9 and 10, 2021, is cancelled.

October 19, 2021.

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