

Date: 20211110

Files: EMP-2017-11482 and 11484

Citation: 2021 FPSLREB 122

*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

CLIFFORD WATSON and RON HENRY

Complainants

and

DEPUTY MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES

Respondent

and

OTHER PARTIES

Indexed as

Watson v. Deputy Minister of Public Works and Government Services

In the matter of complaints of abuse of authority pursuant to paragraphs 77(1)(a) and (b) of the *Public Service Employment Act*

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

For the Complainants: No one appearing

For the Respondent: Peter Doherty, counsel

For the Public Service Commission: Louise Bard

Heard via videoconference,
October 12, 2021.

REASONS FOR DECISION

I. Introduction

[1] The complainants, Clifford Watson and Ron Henry, made complaints of abuse of authority against the respondent, the Deputy Minister of Public Works and Government Services, alleging abuse of authority in the application of merit and the choice of a non-advertised appointment process for an appointment to an EG-07 senior maintenance officer (SMO) position located in Ottawa, Ontario.

[2] The respondent denied that an abuse of authority occurred. It stated that the appointed person was assessed and found qualified. In addition, the choice to use a non-advertised appointment process was efficient and was within its authority, according to s. 33 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13).

[3] The Public Service Commission (PSC) did not appear at the hearing. It presented a written submission reviewing its relevant policies and guidelines. It took no positions on the merits of the complaints.

[4] For the reasons that follow, the complaints are dismissed. It was not shown that the respondent abused its authority in the appointment process.

II. Chronology of events

[5] On October 5, 2017, the respondent issued a Notification of Appointment or Proposal of Appointment for the appointee to the SMO position.

[6] On October 20, 2017, the complainants made their complaints with the Federal Public Sector Labour Relations and Employment Board (“the Board”). Their complaints were two in a group of six concerning the SMO appointment.

[7] On July 30, 2021, the parties were advised of a pre-hearing conference (PHC) to be held on August 20, 2021. They were asked to confirm their availability. Neither complainant responded.

[8] On August 18, 2021, the Board issued a Notice of Hearing to the parties. It stated that the hearing for the complaints would convene on October 12 and 13, 2021, at 9:30 a.m.

[9] On August 20, 2021, the PHC was conducted. Four complainants, the respondent, and the PSC attended. Mr. Henry and Mr. Watson did not attend and were not represented.

[10] On September 7, 2021, four complaints were withdrawn, leaving only those of Mr. Henry and Mr. Watson.

[11] The Board received unconfirmed information that Mr. Watson was deceased and that Mr. Henry had retired from the public service. This information, even if verified, did not constitute a withdrawal of their complaints, which remained before the Board to be decided.

[12] On September 13, 2021, the parties and their representatives were directed to provide reasons for which the complaints should proceed to a hearing or be considered withdrawn. The deadline to respond was October 1, 2021. No one responded on behalf of the complainants.

[13] In the interest of fairness, and particularly given the short time between October 1, 2021, and the scheduled hearing dates of October 12 and 13, 2021, the Board decided to proceed with the hearing.

[14] The hearing was convened by videoconference on the scheduled date. Only the Board member and counsel for the respondent were present at the appointed time. Neither Mr. Watson nor Mr. Henry appeared or was represented.

[15] The hearing was adjourned for 15 minutes to permit a further opportunity for them to join. At the conclusion of that time, no additional participants had joined the videoconference.

[16] The respondent then asked the Board to dismiss the complaints either on the ground that they had been abandoned or in the alternative on the ground that the complainants had not discharged their burden of proving an abuse of authority in the application of merit or the choice of process.

III. Analysis

[17] The complainants did not appear and were not represented at the PHC or the hearing. No new contact information has been furnished to the Board for either complainant since the complaints were made.

[18] The Board's records show no contact from or on behalf of the complainants since March 2, 2018, when another complainant made allegations on their behalf.

[19] I am satisfied that the Board has taken reasonable steps to contact the complainants and provide them with proper notice of the PHC and hearing using the contact information that they provided with the complaints.

[20] A complainant bears the burden of proof in a staffing complaint before the Board. (See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 50.) The standard of proof is the balance of probabilities.

[21] Allegations do not serve as proof. Participating in the hearing process and presenting convincing evidence and arguments to support the allegations is the manner of establishing a complainant's case. (See *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at para. 49.)

[22] As the former Public Service Staffing Tribunal held in *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 20 at para. 50:

It is not sufficient for a complainant to make bold statements in the complaint and allegations claiming abuse of authority without supporting these allegations with evidence from witnesses, facts and/or documents....

[23] In this case, no evidence was presented to the Board by or on behalf of the complainants. In the absence of evidence to support the allegations, I find that the complainants failed to discharge the burden of proof.

[24] In addition, I adopt the Board's reasoning in *Patwell v. Deputy Minister of Employment and Social Development*, 2018 FPSLREB 37 at para. 31, and *Dubord v. Union of Safety and Justice Employees*, 2018 FPSLREB 92 at para. 69, in which the Board held that, among other things, the public interest and efficient administration of justice are factors to be considered when determining whether a complaint has been abandoned.

[25] In this regard, it bears repeating that neither the complainants nor a representative has made contact or engaged with the Board since March 2018. In spite of notice being given, they did not respond or participate in the PHC or the hearing. They did not reply to the status review.

[26] Based on the chronology of events and the complainants' absence of engagement, and consistent with the Board's findings in *Patwell* and *Dubord*, I also find that the complainants have abandoned their complaints.

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

(The Order appears on the next page)

IV. Order

[28] The complaints are dismissed.

November 10, 2021.

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