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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

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BETWEEN

**DEAN SCOTT**

Complainant

and

**DEPUTY HEAD (DEPARTMENT OF TRANSPORT)**

Respondent

Indexed as

*Scott v. Deputy Head (Department of Transport)*

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

**Before:** James R. Knopp, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainant:** Himself

**For the Respondent:** Lisa Bambrick, senior paralegal, Treasury Board Legal Services

**For the Public Service Commission:** Alain Jutras, senior analyst

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Decided on the basis of written submissions,  
filed January 31 and February 10 and 14, 2022.

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**REASONS FOR DECISION**

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**I. The staffing complaint**

[1] Dean Scott (“the complainant”) is a retired veteran of the Canadian Armed Forces (CAF). He was released from the CAF and placed on the priority entitlement system. He applied to a staffing process, was screened out, and made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”), alleging that an abuse of authority occurred. For the reasons that follow, his complaint is dismissed.

**II. Chronology of events**

[2] According to the parties’ written submissions, between February 24 and March 9, 2015, the Deputy Head of the Department of Transport (“the respondent”) advertised an internal selection process, numbered 15-MOT-IA-HRS-82781, to staff three indeterminate positions, marine policy and standards officer, regulations and legislations [*sic*] analysis officer, and senior program officer, at the PM-05 group and level. A pool of qualified persons was created from this process.

[3] On March 20, 2015, the respondent sent a request for a priority clearance to the Public Service Commission (PSC) to staff the senior program officer position. This is the process by which potentially qualified persons on priority status are informed of the employment opportunity, who may then respond if they are interested in it. The complainant was not referred for this priority-clearance request.

[4] The senior program officer position was not filled at the time.

[5] In the summer of 2017, the respondent was ready to fill the position from the pool of qualified candidates.

[6] On July 17, 2017, the respondent sent a new request for a priority clearance to the PSC, to staff this position.

[7] On July 19, 2017, the complainant received a notification from the Priority Information Management System about the position along with a detailed list of the qualification requirements.

[8] Twenty-seven persons with a priority entitlement were identified; four of them, including the complainant, expressed interest in the position. The complainant applied within the prescribed periods.

[9] On August 4, 2017, the respondent completed the complainant's assessment and reported the results in a screening sheet.

[10] On August 15, 2017, the respondent emailed (in part) the following to the complainant:

...

*The purpose of this email is to inform you that you have been screened out from further consideration as you did not demonstrate that you meet the following criteria:*

*- EX1: Significant\*\* experience in developing working relationships with various internal and external stakeholders.*

*- EX5: Significant\*\* experience in writing program documents for Senior management\*, such as briefing notes, Memorandum of Understanding, project proposal submissions, procedures, etc.*

*\*Senior Management is defined as Director level or above.*

*\*\*Significant experience is defined as a minimum of three (3) years.*

...

[11] On August 15, 2017, the respondent submitted the feedback form to the PSC indicating that the complainant had failed two of the essential qualifications.

[12] On August 15, 2017, the complainant wrote to the respondent, challenging the assessment he received.

[13] The following day, August 16, 2017, the respondent agreed to meet with the complainant to discuss the assessment. The meeting took place on August 23, 2017.

[14] The meeting was not satisfactory to the complainant, and on August 31, 2017, his complaint pursuant to s.77(1)(a) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) was received by the Board. On October 22, 2017, he filed his allegations with the Board, and on December 5, 2017, the respondent filed its response.

[15] The matter was set for a hearing by way of a videoconferencing platform on January 31 and February 1, 2022. In-person hearings had been suspended as of March 2020, owing to the global COVID-19 pandemic.

[16] On November 23, 2021, a case management conference was held at which the complainant stated that the thrust of his case was the feedback meeting and his conviction that the respondent's representative was unable to properly articulate why he had been screened out of the process. According to the complainant, this was an abuse of authority.

[17] At the conference, the respondent noted that when an abuse of authority is alleged, the scope of inquiry is confined to the process itself. It does not include events that transpired after the process was complete. Section 47 of the *PSEA* does not make an informal discussion mandatory. It is a discretionary decision made independently of the screening process.

[18] At the conference, I voiced my concern to the complainant that the respondent's position was correct and that I was without jurisdiction to find an abuse of authority that lay outside the process itself.

[19] The complainant restated his firm conviction that he had the case law to back his claim that the respondent's actions at the informal meeting amounted to an abuse of authority.

[20] I decided at the case management conference that the case should proceed by way of written submissions, with the complainant to file his by the date that had been set for the hearing, namely, January 31, 2022. The PSC also had until that date to file its submissions. The respondent was to reply by February 11, 2022, and the complainant was given a right of rebuttal to be filed by February 25, 2022. These filings were all made at the deadlines or before them.

### **III. Summary of the submissions**

#### **A. For the complainant**

[21] In his submissions, the complainant describes at length his experience and qualifications, especially his experience with the CAF. He offers his opinion as to why he should not have been screened out of the process and states that obviously, he had the necessary experience and credentials.

[22] At paragraph 2.3 of his submissions, he states, “The Complainant contends that the decision of the selection board to screen the Complainant out of the appointment process for failing to meet two (2) of the essential qualifications ... constitutes abuse of authority.”

[23] The complaint set out excerpts from his resume that he had submitted when he applied and claimed that the experience identified in those excerpts demonstrated that he did indeed meet the qualifications (EX-1 and EX-5) that the respondent had said he lacked when it screened him out. The submissions reflect what he had also maintained in his allegations, which he had filed on October 22, 2017. In the allegations, the complainant stated that he presented these points to the respondent during his informal discussion, but it responded that the resume lacked some needed details. The complainant countered that the additional detail was not required in the essential qualifications and that his resume should have been read as a whole. He also questioned the respondent’s understanding of the competencies and experience of Canadian Armed Forces personnel.

[24] The complainant also alleges abuse of authority at paragraph 2.9 of his submissions, as follows: “... through failure to comply with legislative procedure for Persons with a Priority Entitlement and bias in the assessment of candidacy in both the job application and feedback discussion.”

[25] The complainant’s submissions then focus at length on the respondent’s alleged failure to comply with PSC’s Priority Administration Directive and its Guide of Priority Entitlements, including:

- 1-Ensure that the respondent is fair and transparent when contacting and assessing persons with a priority entitlement;
- 2-Contact interested persons with a priority entitlement and provide them with information on the position to be filled and what methods to be used for assessment;
- 3-Provide evidence that the person with a priority entitlement was appropriately assessed if they responded they wished to be considered for the position and provided information to show how they met the essential education/and or essential experience qualifications;
- 4-Provide timely written feedback about the assessment results through the system to the person with a priority entitlement, the PSC and the home organization, with clear and full explanation of the reasons for the outcome;
- 5-Ensure that persons with a priority entitlement who are identified for a job opportunity by the system are assessed prior to other candidates. This is to ensure that the legislative requirement for persons with a priority entitlement

to be appointed ahead of all others is maintained and to ensure fairness in their assessment by avoiding potential comparison with other candidates.

[26] The complainant claims the respondent failed to comply with each of these requirements. For instance, regarding item 1, he claims the respondent did not look at the aggregate of his qualifications set out in the resume and did not understand the full attributes of his qualifications in his years of senior leadership at the Department of National Defence. The respondent did not seek out any clarification on these points.

[27] Regarding item 2, he contends that the respondent did not contact him to provide information of the position to be filled and what methods were to be used for assessment. About items 3 and 4, he claims that the respondent did not contact him and provide information on being properly assessed. He was only told he was screened out. A clear and full explanation of the reasons for the outcome was not provided. As for item 5, he points to the fact that it took three weeks to notify him that he was screened out, which he contends was to camouflage that the respondent had already decided who to appoint internally.

[28] The complainant was particularly dissatisfied with the conduct of the informal discussion. At paragraph 3.6 of his submissions, he states as follows:

*3.6 In the post feedback interview, the Complainant challenged the Respondent that the resume was not merited on aggregate qualifications, but in lieu, were assessed and given credence based solely on format discretions. The Respondent was unresponsive to this cross-examine. The Respondent failed to clearly explain where the two (2) essential qualifications were not met. The Respondent noted there was a lack of significant reporting to senior management, however by his own admission, had no experience or understanding with the CAF rank structure. The Complainant informed the Respondent, there was no direct matchup between the CAF and Public Service reporting and rank structure. In fact, the Complainant indicated he himself was senior management for all in tense purposes and his reporting channels would have all been to additional senior management. The essential qualifications requirement did not indicate what senior management position, title or seniority had to included in the resume, but only identify "senior management". The Respondent neglected to query this important factor and made the decision and discussion comments based on his lack of knowledge.*

[Sic throughout]

[29] In the next paragraph, the complainant contends that "... the deputy head should first have to establish how the appointee meets the essential qualifications."

[30] The complainant concludes his submissions with paragraph 3.8, which reads as follows:

*3.8 The Complainant contends the Respondent failed to fully discuss decisions and provide evidence how the appointee met the essential qualifications. The Respondent failed to exercise judgement and discretion with an open mind for EX1 & EX5. The Complainant contends the two (2) essential qualifications were met, and the Respondent acted discriminatively by promoting and appointing internally within the hiring organization. In contrast to Para 2 of the Respondents email dated 5 December 2017, the hiring manager did not go above and beyond, but in contrast; lacked insight, was not forthcoming and dismissive. In addition, the hiring manager neglected to contact the Complainant references to corroborate the essential qualifications. The manager's unwillingness to answer public knowledge questions, substantiate and reassess the result, left the Complainant as feeling unfairly treated and the outcome non-transparent.*

[Sic throughout]

[31] In his submissions, the complainant refers to the following cases:

- *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8, for the five generic types of abuse, specifically, the fifth type, which is, "... it is an abuse for a delegate to refuse to exercise his discretion by adopting a policy which fetters his ability to consider individual cases with an open mind."
- *Rizqy v. Deputy Minister of Employment and Social Development*, 2021 FPSLREB 12, *Abi-Mansour v. Deputy Minister of Fisheries and Oceans*, 2021 FPSLREB 3, and *Ross v. Commissioner of the Correctional Service of Canada*, 2017 PSLREB 48, for the proposition that abuse of authority does not have to be intentional for the Board to find that it occurred.
- *Lavolette v. Commissioner of the Correctional Service of Canada*, 2015 PSLREB 6, in which the Board's predecessor found that abuse of authority had occurred because the selection committee had made decisions despite a lack of information.

[32] The complainant also offers his opinions as to the appropriate remedy that should apply under the circumstances.

## **B. For the respondent**

[33] In its submissions of February 11, 2022, the respondent asserts that it has met the legislative requirements under circumstances involving priority entitlement. It refers as follows to ss. 39.1(1) and (2) of the *PSEA*:

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*Federal Public Sector Labour Relations and Employment Board Act and Public Service Employment Act*

**39.1(1)** Despite sections 40 and 41, priority for appointment over all other persons is to be given, during the period determined by the Commission, to a person who was released from the Canadian Forces for medical reasons that the Minister of Veterans Affairs determines are attributable to service, who belongs to a class determined by the Commission and who meets the requirements established by the Commission.

**Essential qualifications**

(2) A person referred to in subsection (1) has a priority for appointment with respect to any position if the Commission is satisfied that the person meets the essential qualifications referred to in paragraph 30(2)(a).

**39.1 (1)** Malgré les articles 40 et 41, la personne qui, d'une part, a été libérée des Forces canadiennes pour des raisons médicales attribuables, selon la décision du ministre des Anciens Combattants, au service et qui, d'autre part, appartient à une catégorie déterminée par la Commission a droit, si elle satisfait aux conditions établies par la Commission, à une priorité de nomination absolue pendant la période fixée par la Commission.

**Qualifications essentielles**

(2) La personne a une priorité de nomination à tout poste pour lequel, selon la Commission, elle possède les qualifications essentielles visées à l'alinéa 30(2)a).

[34] Section 30(2)(a) of the PSEA states as follows, under the marginal note "Meaning of merit":

**30(2)** An appointment is made on the basis of merit when

(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency ....

**30(2)** Une nomination est fondée sur le mérite lorsque les conditions suivantes sont réunies :

a) selon la Commission, la personne à nommer possède les qualifications essentielles — notamment la compétence dans les langues officielles — établies par l'administrateur général pour le travail à accomplir;



[35] The respondent submits that the hiring manager legitimately exercised his discretion when he determined that the complainant did not meet the essential qualifications for the position.

[36] Furthermore, it submits that it acted in compliance with the PSC's Priority Administration Directive and Guide on Priority Entitlement. Feedback was sent to the complainant detailing the essential criteria he failed to meet. The hiring manager met with the complainant to discuss the decision taken regarding his application and provided the complainant a forum to seek additional information. During this meeting, the complainant brought additional information forward that was not included in his application. This information was considered and assessed, but ultimately, the hiring manager determined it still was not sufficient to demonstrate that his experience met the requirements of the position. The complainant's references were not contacted as he failed to pass the initial screening.

[37] The requirements needed to qualify for the position were clearly outlined in the PSC email notification sent to the complainant on July 19, 2017. The onus was on the candidate to clearly outline how he met the essential qualifications for the position in the cover letter. A full explanation as to the complainant's elimination was provided in a fair, transparent and timely manner. The references were not contacted as he failed to pass the initial screening.

[38] With respect to the allegations of abuse of authority, the respondent submits that the appointment process was conducted in a fair and transparent manner and there is no element of abuse of authority in assessing the complainant against the essential qualification nor in providing feedback as to why his candidacy could not be further considered.

[39] With respect to the assessment of essential qualifications, the respondent cites these three cases for the proposition that the Board's role is not to substitute its assessment of a candidate's qualifications for that of the assessment board:

- *Lavigne v. Canada (Justice)*, 2009 FC 684, at paras. 2 and 70;
- *Oddie v. Deputy Minister of National Defence*, 2007 PSST 30 at para. 66; and
- *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 20 at para. 54.

[40] Finally, the respondent refers to *Henry v. Deputy Head Service Canada*, 2008 PSST 10 at paras. 55 to 58, in its assertion that it was the complainant's responsibility to ensure his application was complete and contained all the information necessary to demonstrate he met all the essential qualifications listed in the job advertisement.

### **C. The PSC's arguments**

[41] In those of its submissions that were specific to this case, the PSC pointed out that some details of the complaint relate to the administration of the complainant's priority entitlement. This is a matter that falls outside the Board's jurisdiction. In *Magee v. Commissioner of the Correctional Service of Canada*, 2011 PSST 0012, at para. 20, the former Public Service Staffing Tribunal (PSST) acknowledged that the PSC Guide on Priority Administration (now entitled PSC Guide on Priority Entitlements) provides that the PSC is responsible for administration and oversight in matters of priority entitlement. Persons with priority entitlements who have questions or concerns regarding their priority entitlement can contact the PSC's Priority Entitlements Activities Division.

### **D. The complainant's rebuttal**

[42] On February 14, 2022, the complainant filed a rebuttal that essentially restates his earlier submissions, adding "... the Respondent has not made any convincing arguments that abuse of authority did not happen."

## **IV. Analysis and decision**

[43] The parties referred to many cases in their submissions. I have carefully read and considered all of them, but I will refer only to those that I feel help illuminate the reasoning behind my decision to dismiss the complaint.

[44] The complainant's submissions are basically two-fold. Initially, in his allegations and to some extent in the submissions, he argued that he possesses the qualifications for the position in question, and that the respondent abused its authority by failing to acknowledge them.

[45] However, the main thrust of his arguments, as he maintained at the case management conference of November 23, 2021, is his dissatisfaction with the informal discussion, which occurred after the decision to screen him out had already been

made. He submits that the respondent failed to comply with many of its obligations under the PSC's Priority Administration Directive and Guide of Priority Entitlements.

[46] It is evident that the complainant disagrees with the respondent's assessment of his qualifications. He feels that he should have been assessed differently and is basically asking the Board to make this finding. But, as was held in *Broughton* at para. 54, it is not the Board's role to redo an assessment or second guess whether the complainant's experience was assessed correctly by the selection board. Based on the complainant's and respondent's submissions, it appears that his resume and cover letter did not contain sufficient details to clearly establish that he possessed the EX-2 and EX-5 experience qualifications. It was his responsibility to ensure that the documents by which he was required to demonstrate his qualifications (the resume and cover letter) presented sufficient information up front to enable the respondent to determine he was qualified.

[47] As the PSST held in *Henry*, at paras 54-57:

*[54] Candidates should not take for granted that assessment boards will follow-up with them to ensure they have listed all the elements required to meet essential qualifications. There was no such obligation for the assessment board in the circumstances of this complaint. Similarly, if an application is incomplete, a candidate should not assume that an assessment board will use its personal knowledge of a candidate to screen him or her in. An assessment board can screen out an applicant who does not meet the essential qualifications. See Neil v. Deputy Minister of Environment Canada et al., [2008] PSST 0004.*

*[55] The Tribunal finds that it was the complainant's responsibility to ensure that the application was complete and contained all the information necessary to demonstrate that she met all the essential qualifications. As the Tribunal stated in Charter v. Deputy Minister of National Defence et al., [2007] PSST 0048:*

*[37] In order for a candidate to be appointed to a position, he must demonstrate through the chosen assessment process, that he meets the essential qualifications for the position. (...)*

*[56] As in Charter, the chosen assessment tool here was the candidates' applications. After reviewing the complainant's application, the assessment board decided the complainant did not meet the training component and, therefore, did not screen her into the process.*

*[57] The Tribunal has stated in previous decisions that its role is not to reassess a complainant's qualifications, but rather to*

*examine if there was an abuse of authority in the manner in which the assessment board reviewed the complaint....*

[48] The use of the word “complaint” in the final sentence of the preceding paragraph is a mistake. An assessment board does not review a complaint; it reviews an application.

[49] The complainant maintains that even if his cover letter and resume were not sufficiently detailed, he demonstrated that he did possess the qualifications at the informal discussion, but the respondent did not properly conduct itself at this stage and failed to follow up on the information that the complainant provided.

[50] The process of informal discussions is set out s. 47 of the *PSEA*, which provides that where a person is informed that they have been eliminated from consideration for appointment, an informal discussion *may* take place at that person’s request. It is not a mandatory step in the complaint process (see *Henry* at paras 61-62) nor, for that matter, is it a step in the assessment of a candidate, as it occurs after the assessment is complete and their candidacy has been eliminated. As the PSST held in *Rozka* at para. 76, the informal discussion is intended primarily to be a means of communication for a candidate to discuss the reasons for elimination from a process. If the manager finds that an error was made, an opportunity is there to correct it. However, informal discussion is not an occasion for a candidate to demand or insist that they be reassessed. In the present instance, the respondent did not consider that a reassessment was warranted.

[51] The complainant argues that even if s. 47 of the *PSEA* did not oblige the respondent to reassess him, the PSC’s Priority Administration Directive and Guide on Priority Entitlement required it to do so. Indeed, he contends that the respondent did not comply with several requirements set out in these documents.

[52] However, as the PSC noted in its submissions, the administration of the complainant’s priority entitlement is a matter that falls outside the Board’s jurisdiction. In *Magee*, at para. 20, the PSST recognized that the PSC is responsible for administration and oversight in matters of priority entitlement. Persons with priority entitlements who have questions or concerns regarding their priority entitlement may raise them with the PSC’s Priority Entitlements Activities Division, not the Board.

[53] While it is unfortunate that the informal discussion did not unfold in a manner that was satisfactory to the complainant, this does not provide me with any basis to find an abuse of authority in the assessment of the complainant.

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

*(The Order appears on the next page)*

**V. Order**

[55] The complaint is dismissed.

June 1, 2022.

**James R. Knopp,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**