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File: 771-02-41813

Citation: 2023 FPSLREB 111

*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

ABDELHAKIM CHABI

Complainant

and

**DEPUTY HEAD
(Public Services and Procurement Canada)**

Respondent

and

OTHER PARTIES

Indexed as

Chabi v. Deputy Head (Public Services and Procurement Canada)

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

Before: Gorette Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Hugo Giguère

For the Public Service Commission: Claude Zaor, senior analyst

[FPSLREB Translation]

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Complaint before the Board

[1] On June 9, 2020, Abdelhakim Chabi (“the complainant”) made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) pursuant to s. 77(1)(b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13).

[2] The complainant alleged that the deputy head of Public Services and Procurement Canada (“the respondent”) abused its authority in the choice of an appointment process. He challenged the respondent’s decision to use a non-advertised appointment process (process number 2020-SVC-INA-HQ-369830) to staff a strategic planning and investment manager position classified at the CS-04 group and level in the Digital Services Branch.

[3] The Board made several attempts to hold a pre-hearing conference but was unable to reach the complainant.

[4] The issue in this case is whether the complaint is to be considered to have been withdrawn. For the reasons set out later, the complaint is considered as having been withdrawn. The file is closed.

II. Background summary

[5] Under s. 11 of the *Public Service Staffing Complaints Regulations* (SOR/2006-6, “the *Regulations*”), a complaint is made in writing to the Board and includes among other things the complainant’s names and contact information. The Board has created a form for that purpose.

[6] In the complaint form signed on June 9, 2020, the complainant provided a work email address, a workplace mailing address, and a mobile phone number.

[7] On August 12, 2020, the Board invited the parties to participate in mediation, using the email address that the complainant provided. He responded to the email and gave his approval.

[8] The parties participated in mediation on January 21, 2021. They were unable to resolve the dispute. Based on the comments in the mediation report, the complainant

was to confirm whether he would continue with the process. These comments included the following: “[translation] The complainant will decide whether to continue with the process. He will consult the union.”

[9] On July 21, 2022, the Board informed the parties that the file had been selected to be part of the pilot settlement conference project. The parties were invited to notify the Board’s Mediation and Dispute Resolution Services by July 28, 2022, if they would attend the settlement conference.

[10] In the meantime, at the respondent’s request, the proceedings were put on hold until the end of 2022.

[11] On January 6, 2023, the Board again sent a notice to the parties that the file had been identified for a settlement conference. The complainant’s notice was sent to the work email address that he had indicated in the complaint form. He did not respond.

[12] On January 12, 2023, the Board received a message from the respondent stating that apparently, the complainant had left it for another department. The message stated the following:

[Translation]

...

This email is a follow-up to your correspondence below that invited the parties to participate in a settlement conference.

Our records indicate that the complainant accepted a transfer to the department ... on October 1, 2021, so it is possible that he did not receive your correspondence as it was sent to the email address that was valid before leaving our organization. Furthermore, we do not have his new contact information.

...

[13] On January 27, 2023, the Board’s Registry attempted to contact the complainant at the telephone number indicated in the complaint form. It left a message about his file and asked him to call the Board. Since it did not receive a response, the Registry tried again, and at that time, the number was out of service.

[14] The file was scheduled for a hearing on May 2 and 3, 2023.

[15] On March 28, 2023, the Board emailed the parties, this time using the complainant’s new work email address. The message indicated that the Board wished

to hold a case management conference on April 6 or 7, 2023, and requested that the parties provide their availability by April 4, 2023.

[16] The Board then received an automated absence message from an email account that appeared to belong to the complainant. It indicated that he was no longer working at the new workplace and read as follows:

Note that I left ... for any concern, please contact my manager
[name excluded]

Notez que je ne travaille plus a [sic] [...], pour toute question
veuillez contacter mon gestionnaire [name excluded].

[17] On the same day, to reach the complainant, the Board's Registry contacted the manager by email, writing as follows:

[Translation]

Good day,

I am trying to reach Mr. Abdelhakim Chabi about his file with the FPSLREB. Is it possible to provide Mr. Chabi's current email address? Or please advise Mr. Chabi to contact the FPSLREB at director.directeur@fpslreb-crtespf.gc.ca.

...

[18] On April 13, 2023, the Board's Registry followed up with the manager by email as follows:

[Translation]

...

We tried to reach Abdelhakim Chabi, to no avail. A hearing that involves Chabi is scheduled for May 2 and 3, 2023. The attached automated message indicates to contact you. We would greatly appreciate your answer.

...

[19] On April 14, 2023, the manager replied that the complainant was now working for another department. His message read as follows:

[Translation]

...

Chabi transferred to ... in early April 2022. That said, I do not see his email or information in GEDS. Please let me know if you would like more information.

Thank you

...

[20] On April 14, 2023, the Board's Registry attempted to email the complainant at the address for the new job, to no avail. The email was rejected.

[21] On April 24, 2023, the Board informed the parties that the hearing scheduled for May 2 and 3, 2023, was cancelled. The message was sent to the email address that the complainant provided in the complaint form.

III. Reasons

[22] Section 8.2 of the *Regulations* governs the withdrawal in question. It does not provide for a complaint that is determined to have been abandoned. It simply states that the Board may do the following:

8.2 ... send a notice of status review to each of the parties that requires them to make submissions stating the reasons why the complaint should not be considered to be withdrawn and, if there is no response within the period specified by the Board, may consider the complaint to be withdrawn.

8.2 [...] envoyer aux parties un avis d'examen de l'état de l'instance exigeant que celles-ci présentent leurs observations indiquant les raisons pour lesquelles elle ne devrait pas considérer la plainte comme ayant été retirée et, à défaut de réponse dans le délai qu'elle fixe, considérer la plainte comme ayant été retirée.

[23] In this complaint, the Board was unable to inquire into all the parties' submissions, as per that provision, as it could not reach the complainant.

[24] However, s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) states, "The Board may decide any matter before it without holding an oral hearing." The Board considers that it has sufficient items to decide the withdrawal issue.

[25] On January 21, 2021, the complainant participated in a mediation in which he stated that he would inform the Board as to whether he would continue with his complaint. Since then, the Board has not had any further contact with him. According to the evidence, the Board tried to reach him several times, to no avail. He provided a

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

work email address when he made his complaint. But then, he changed jobs twice and did not inform the Board of the changes to his contact information.

[26] The circumstances of this case are similar to those in *Patwell v. Deputy Minister of Employment and Social Development*, 2018 FPSLREB 37. In that case, the Board attempted to reach the complainant, to no avail. It found that the complaint had been abandoned. I agree with the following comments at paragraph 31 of that decision:

[31] ... the Board finds that the complainant has displayed all the hallmarks of abandoning his case. His lack of communication with the Registry, the Board, and the respondent and his failure to inform the Board of any change to his contact information, as demonstrated in the events before the hearing together with his failure to appear, are sufficient to constitute the abandonment of his complaint. The public interest and the efficient administration of justice also lean in favour of the complaint being treated as abandoned.

[27] That reasoning has also been adopted in other Board matters, including *Dubord v. Union of Safety and Justice Employees*, 2018 FPSLREB 92 (see paragraphs 58 to 64), and *Stewart v. Deputy Head (Royal Canadian Mounted Police)*, 2023 FPSLREB 26 at para. 27.

[28] The complainant had the burden of proving the basis of the allegations (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 50). His lack of follow-up to advance his complaint after the mediation in January 2021 and his failure to inform the Board of the changes to his contact information lead to the conclusion that he has decided not to pursue his complaint.

[29] Given the circumstances of this case, I do not believe that it would be in the interests of the public and the effective administration of justice to keep this complaint pending in the hope that the complainant will someday contact the Board to inquire about his remedy.

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

(The Order appears on the next page)

IV. Order

[31] The complaint is considered withdrawn. The file is closed.

November 29, 2023.

FPSLREB Translation

**Goretti Fukamusenge,
a panel of the Federal Public Sector Labour
Relations and Employment Board**