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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

ANDA CARABINEANU

Complainant

and

DEPUTY HEAD

(Department of Public Works and Government Services)

Respondent

and

OTHER PARTIES

Indexed as

Carabineanu v. Deputy Head (Department of Public Works and Government Services)

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

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainant: Herself

For the Respondent: Neil Dzuba and Zoriana Priadka, counsel

For the Public Service Commission: Maude Bissonnette Trudeau, senior analyst

Heard by videoconference,
December 18 and 19, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] On August 12, 2020, the Department of Public Works and Government Services, also known as Public Services and Procurement Canada (“the respondent”), advertised a process (numbered 2020-SVC-IA-HQ-372955; “the process”) to staff on an indeterminate basis the position of Manager of Public Opinion Research, Knowledge and Practices, classified at the EC-07 group and level.

[2] Anda Carabineanu (“the complainant”) applied to the process but was screened out because according to the respondent, she failed to demonstrate in her written application that she met one of the merit criteria: experience building effective partnerships with internal and external stakeholders.

[3] On April 13, 2021, the respondent announced the indeterminate appointment of Nadia Nappert (“the appointee”). On April 26, 2021, the complainant made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”), alleging an abuse of authority by the respondent in the appointment.

[4] Specifically, the complainant alleged that she had been wrongfully assessed and that the appointee did not meet the essential qualifications and had been appointed because of personal favouritism. The complainant also alleged as abuse of authority the fact that knowledge was not assessed as a merit criterion.

[5] The Public Service Commission did not appear at the hearing but provided general and specific written submissions on its appointment policy. It did not take a position on the merits of the case.

[6] For the reasons that follow, I find that an abuse of authority occurred in the complainant’s assessment. However, I do not find abuse of authority in the appointee’s appointment.

II. Summary of the evidence

[7] The complainant testified about her experience in the Public Opinion Research Directorate (PORD), where she was a senior analyst for some 10 years at the EC-06 group and level. She contributed to research and was responsible for many projects. In 2018, the manager of Knowledge Management announced his retirement. In November

2019, the PORD's director, Tina Casey, solicited notices of interest for an acting appointment to fill the position, pending an advertised process to fill it indeterminately.

[8] The complainant applied for the temporary assignment. She was offered the position on an acting basis, starting on January 6, 2020. The acting period was extended from May 6 to October 31, 2020, but then was ended abruptly on October 15, 2020.

[9] The appointee had been Ms. Casey's initial choice to fill the position on an acting basis, and she filled the position for the month of December 2019. She left on parental leave at the end of December 2019 and returned on October 19, 2020.

[10] The advertised process to fill the position indeterminately started in August 2020. The appointment was made in April 2021. In the meantime, the appointee's name appeared on the organizational chart in the manager position. However, the name appears in parentheses, which would tend to confirm the acting position that she was in.

[11] The complainant was screened out because according to the respondent, her application did not demonstrate that she met the following requirement: "Experience building effective partnerships with internal and external stakeholders to support delivery of outreach activities."

[12] At the hearing, the complainant called Inga Petri, a former president of the Marketing Research and Intelligence Association (MRIA), which was a research industry organization that brought together private research companies and public-sector polling agencies. The Canadian Research Insights Council replaced it in 2018.

[13] Ms. Petri testified to the MRIA's extensive activities and its importance in the opinion-research world. The complainant was an active member and was very much involved in planning different activities.

[14] The complainant also testified as to the different activities that she participated in that showed how she had indeed established effective partnerships with internal and external stakeholders.

[15] The full question in the application form read as follows:

...

Do you have experience building effective partnerships with internal and external stakeholders to support delivery of outreach activities?

...

Using concrete examples, describe where, when and how you acquired this experience. Examples used must illustrate the complexity, diversity and scope of your experience.

...

[16] In her application, the complainant described the relevant experience in the following terms:

...

Internal Stakeholders: 2010-2019 - as Senior Advisor at PORD and 2020-present as Acting Manager of Knowledge Management and Practices:

- *Developed a good working relationship with Communication Procurement Directorate, Treasury Board Secretariat, Privy Council Office, and Library and Archives Canada especially during EC 7 acting assignments held in the past. They were essential in helping interpret the policy, providing approvals and feedback on the contracting process.*
- *Attended Public Service Engage Conference; set up kiosk and raised awareness of our program and services.*
- *Attended the Client Service Forum to showcase the services offered by the Public Opinion Research Directorate.*
- *Prepared meet-and-great events for internal colleagues (Canada Gazette, Publishing, and Communication Procurement Directorate) and for regional coordinator travelling to Ottawa from the regions.*
- *Assisted with the nomination of Manager of Knowledge Management to receive a fellowship from the Marketing Research Intelligence Association. Worked with an external committee formed of research members to prepare and submit the nomination.*
- *Participated in the Integrated Service Branch Employee Recognition Program by nominating 3 different colleagues. Collected examples of noteworthy projects and tasks done by the employees, highlighted their accomplishments and experience.*
- *Liaised and created partnerships with a number of internal operations teams such as communication, web development and publishing while preparing the publication of the 2009-2010 Annual Report for POR.*

- 2010-2019 - as senior advisor at PORD - Collaborated with Canada Radio-television and Telecommunications, Indigenous Affairs of Canada, Statistics Canada as key experts in public opinion research. They were engaged in technical discussions such as demographic questions to be included in survey instruments; regulations for making calls to respondents, calling respondents using an Interactive Voice Response.

- Community of Practice- 2010-2019 - Senior Advisor at PORD Participated in working groups to ensure that the survey software meets the needs of the Government clients, particularly French capabilities. Continued the conversation regarding survey platforms and briefed clients and management on the feature changes and their implications to our program.

External Stakeholders:

- 2011-2015 - Program Director with the Marketing Research Intelligence Association (MRIA) Ottawa Chapter - Elected Program Director for Ottawa Chapter Board of Directors for the Marketing Research Intelligence Association. Requirements for the position included being a members-in-good-standing of MRIA, residing in the National Capital Region and being nominate by another member-in-good-standing of the Association. Professional relationships were built with CEO's, Directors, Vice Presidents and Principals while delivering a number of research sessions.

- 2010-present - at PORD - Attended industry association courses, conferences and webinars delivered by experts, actively participating in the discussions and providing expert government advice upon demand. These helped build partnerships with experts in the field.

- 2010- 2019 - as Senior Advisor for Public Opinion Research Directorate - developed working relationships with suppliers in delivering the first qualitative standards and the review of the quantitative standards. Managed and supervised the contract with the experts who assisted our team with the literature review reports. Additionally I worked with the communication team at PSPC to release the Standards via twitter, PSPC newsletters and main website.

- 2010-present - Guest lecturer for Questionnaire Design as part of the Marketing Research and Business Intelligence Program at Algonquin College.

- 2001-2009 - Presented at national and international conferences while working with the Office of the Auditor General and Canadian Tourism Commission.

...

[Sic throughout]

[17] The complainant also testified that at the informal discussion held after she received the email informing her that her application would not be considered further, Federal Public Sector Labour Relations and Employment Board Act and Public Service Employment Act

she was told that not only was her answer insufficient but also, even considering the whole of her application, her experience building stakeholder partnerships was not sufficiently detailed. During her testimony, she highlighted in her application several references to building stakeholder relationships, notably by attending conferences and lecturing on opinion research.

[18] At the hearing, Ms. Casey explained why the complainant's answer was considered insufficient to demonstrate experience building relationships with internal and external stakeholders. A consultant, Joslyn Brodeur, did the screening, which Ms. Casey reviewed. Both agreed that the answer did not explain how partnerships were built but rather simply listed several contacts.

[19] The appointee provided the following answer to the same question:

[Translation]

...

Over the course of my professional career and as an advisor to the Public Opinion Research Directorate, I have been called on to create and develop effective partnerships with diverse stakeholders both inside and outside government, to support delivering outreach activities.

For example, in the fall of 2019, I worked closely with my colleagues in the Privy Council Office and the Acquisition Branch of Public Services and Procurement Canada to develop a presentation intended for members of the Real Property Institute of Canada, which includes federal, provincial, and municipal officials from across Canada. That experience provided me with a unique opportunity to network internally and externally with colleagues who had specific needs and varied expectations. To complete that project, I was called on to develop my skills, to mobilize different stakeholders to achieve the common objectives and to implement diverse strategies to deal with the multiple benefits that a multidisciplinary and interdepartmental project entails.

Over the past five years, I have been actively involved in strengthening partnerships between the Public Opinion Research Directorate, the Advertising Services Directorate, and the Copyright Media Clearance Program through the Communications Community Office's quarterly meetings that bring together the leaders of the different communities of practice. Those meetings have enabled the above-mentioned branches to consolidate their resources toward achieving common objectives for our communities, namely, to raise awareness and promote the information tools that are available to clients. Moreover, those networking opportunities allow members of different communities to discuss diverse issues and to work together to solve common

problems. For example, in recent years, I have organized several activities in partnership with those communities mentioned above by planning joint events such as 3 information sessions on target audiences and Canadian millennials and 2 other sessions on Canadians' social values or by promoting an analysis tool such as the Media Observer.

Finally, I was called on to create and strengthen numerous partnerships with both industry (Quorus, Phoenix SPI, Ekos) and an academic institution (Algonquin College) to organize and deliver events and information sessions for our client departments. For example, I worked closely with Quorus on renewing quantitative methods training materials and another, on online survey techniques.

...

[20] The complainant took issue with the fact that the work description had been modified and that knowledge was no longer a listed requirement. According to her, knowledge has to be a requirement at the EC-07 group and level since the position requires thorough knowledge of research methodology, to be able to direct the team efficiently.

[21] Ms. Casey testified that the work description had been modified to better reflect what was needed, which was a team leader with not only knowledge of the work but also the capacity to ably direct others.

[22] The complainant questioned whether the appointee truly had the experience that she claimed. According to the complainant, in her application, the appointee took credit for actions that were vague and ill-defined. Ms. Casey explained that the experience had been validated in the further process through the interview and reference checks.

[23] The complainant also questioned whether the appointee had the required language level to fill the position. According to her, the appointment was delayed so that the appointee could obtain the necessary language level, as she did not have it when the process was underway. The poster stated that the language requirement would be assessed later.

[24] The complainant called as a witness Garwood Tripp, a senior communications advisor. Mr. Tripp worked on six-month assignments at the PORD, from September 2015 to July 2019, on producing three PORD annual reports.

[25] Mr. Tripp testified to the fact that he had worked with both the complainant and the appointee. When pressed to compare their respective contributions, he stated that in a team, each contributes what they are best at. The complainant had a wealth of knowledge, and the appointee was a good organizer.

[26] The complainant alleged that the appointee had been appointed out of personal favouritism, giving as an example that Ms. Casey and the appointee had long lunches together. Ms. Casey denied any personal relationship with the appointee and denied socializing with her outside work.

[27] There were 18 candidates in the process. Four were screened in, of which 3 were found to be qualified and one withdrew from the process.

III. Issues

[28] These three issues arise from the complainant's allegations and will be addressed: whether there was abuse of authority in the complainant's assessment, whether the appointee met the essential qualifications, and whether there was personal favouritism in the appointment.

[29] The term "abuse of authority" is not defined in the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), yet it is the basis for this complaint made under s. 77(1)(a) of the *PSEA*, which reads as follows:

77 (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Board's regulations — make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in

77 (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la personne qui est dans la zone de recours visée au paragraphe (2) peut, selon les modalités et dans le délai fixés par règlement de la Commission des relations de travail et de l'emploi, présenter à celle-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :

a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs

the exercise of its or his or her authority under subsection 30(2)

attributions respectives au titre du paragraphe 30(2);

[30] Section 30(2) follows s. 30(1), which states that an appointment must be made on the basis of merit. It reads as follows:

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

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

(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; and*

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;*

(b) *the Commission has regard to*

b) *la Commission prend en compte :*

(i) *any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,*

(i) *toute qualification supplémentaire que l'administrateur général considère comme un atout pour le travail à accomplir ou pour l'administration, pour le présent ou l'avenir,*

(ii) *any current or future operational requirements of the organization that may be identified by the deputy head, and*

(ii) *toute exigence opérationnelle actuelle ou future de l'administration précisée par l'administrateur général,*

(iii) *any current or future needs of the organization that may be identified by the deputy head.*

(iii) *tout besoin actuel ou futur de l'administration précisé par l'administrateur général.*

[31] The only interpretative guide of the term “abuse of authority” is found at s. 2(4) of the PSEA and reads as follows:

2 (4) *For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.*

2 (4) *Il est entendu que, pour l'application de la présente loi, on entend notamment par abus de pouvoir la mauvaise foi et le favoritisme personnel.*

[Emphasis in the original]

[32] The Board, and before it, the Public Service Staffing Tribunal (PSST), have defined “abuse of authority”.

[33] *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8, is the seminal case that addresses the definition of abuse of authority. The preamble to the *PSEA* serves as its guide. The *PSEA* is designed to give managers considerable discretion and flexibility when they select an employee for a given position, but that discretion is not unlimited. Notably, it would be an abuse of authority to act on inadequate information to make a decision.

A. Was there abuse of authority in the complainant’s assessment?

[34] In her evidence, the complainant amply demonstrated that indeed, through the years, she had established relationships with several stakeholders, both within and outside the federal government.

[35] I agree with the respondent that the onus is on the candidates to show in their application that they have the experience that is sought. The deputy head can decide on the assessment methods to be used (see s. 36(1) of the *PSEA*), for example it can determine whether personal knowledge will be used. In this case, Ms. Casey testified that the screening of candidates was done strictly on the basis of the applications. As such, it was irrelevant whether she was aware of the complainant’s stakeholder relationships since the assessment board did not rely on their personal knowledge of the candidates.

[36] That said, I fail to see how the lengthy exposé from the complainant with respect to the qualification related to “Experience building effective partnerships with internal and external stakeholders to support delivery of outreach activities” is in any way deficient compared to the appointee’s answer. The respondent did not explain how the complainant’s answer was deficient or how it differed from the appointee’s answer. They both gave examples of relationships that they had established and some examples of activities — setting up for a conference, giving lectures, etc. — that provided concrete examples.

[37] Consequently, based on the evidence, I find that the way in which the complainant was assessed constitutes more than a mere error; it is such an egregious error that it amounts to an abuse of authority.

B. Did the appointee meet the essential qualifications?

[38] In her evidence, the complainant strongly emphasized that she had played a more knowledge-based role in the PORD as opposed to the appointee, who seems to have played a more coordinator role.

[39] The deputy head (see s. 31(1) of the *PSEA*) sets the qualifications for a position. The delegated manager could revise the work description to better suit the PORD's needs. The complainant believes that she was better qualified than was the appointee and that the appointee was underqualified as she had not contributed to market-opinion research in the same way as had the complainant.

[40] However, it is not for candidates to determine what qualifications are sought. Again, as Ms. Casey stated in her testimony, she sought someone who would be able to lead a team to produce the PORD's deliverables. There is no evidence to suggest that the appointee did not meet those requirements.

[41] *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 35, is an example of flagrant disregard for the rules when staffing a position and thus of an abuse of authority. The appointee in that case was appointed first to an acting position and was then appointed to a new position, with a new classification, through an unadvertised process. It was clear that the appointee did not meet the essential qualifications of the position. The PSST concluded that there had been an abuse of authority as the statement of merit criteria had been modified to fit the manager's chosen candidate. In that case, the gap between the duties carried out by the appointee and the expectations of the position was so wide that the abuse of authority was obvious.

[42] In the present case, I do not consider that realigning the priorities for the EC-07 position was an abuse of authority. As the director, Ms. Casey could decide the PORD's operational needs and how its operations should be carried out. Emphasizing team leadership as opposed to knowledge was justifiable. The manager is responsible for delivering products and must coordinate their team to do so.

[43] The complainant also sought to highlight the fact that during the process, the appointee did not meet the required language qualification. The poster advertising the position stated that the language qualification would be assessed later. The language

requirement did not apply when the candidates applied but it did for the appointment. From the evidence, by the time she was appointed, the appointee did meet the language requirements.

[44] I find that I have received no evidence that would set out that the appointee was not qualified for the position.

C. Did personal favouritism play a role in the appointee's appointment?

[45] It is telling that the *PSEA* gives as examples of abuse of authority “bad faith” and “personal favouritism”. Personal favouritism is not simply the professional preference that may develop over the course of a working relationship. It has to be something more, such as a personal relationship between the person making the appointment and the appointee, appointing a personal friend or family member, or making an appointment to gain a favour (see *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7).

[46] There is no indication that personal favouritism played a role. It does seem that Ms. Casey considered the appointee better suited to the EC-07 manager position role. The appointee was her first choice to fill the acting position, pending its permanent staffing. That does not meet the level of personal favouritism. As expressed in the following extract from *Desalliers v. Deputy Head (Department of Citizenship and Immigration)*, 2022 FPSLREB 70, a friendly professional relationship is not in itself the mark of personal favouritism:

...

[147] During his or her career, a manager might become friends with former colleagues who, one day, could be worthy candidates for appointment on his or her team. I cannot conclude that any appointment of a friend or former colleague would amount to personal favouritism. Such an appointment can be based on merit if the selected candidate meets all the merit criteria....

...

[47] Ms. Casey testified that she did not socialize with the appointee outside work hours. The complainant alleged that they had long lunches together. I have no doubt that Ms. Casey and the appointee got along well. That, in itself, cannot lead to the conclusion that the appointment was based on personal favouritism as opposed to merit.

[48] Contrary to *Beyak*, the work description was modified before the process to staff the position indeterminately took place, and the process was advertised. Several candidates applied, and four were found qualified. The complainant was given the opportunity to act in the position, again contrary to the facts in *Beyak*. That Ms. Casey found the appointee more suitable for the position as she envisaged it is not in itself personal favouritism or an abuse of authority.

IV. Conclusion and remedies

[49] The complainant has established that the respondent abused its authority when it screened her out of the process.

[50] However, she has not demonstrated that an abuse of authority occurred based on personal favouritism or in the assessment of the appointee. I have no evidence to demonstrate that the appointee did not meet the merit criteria as specified by the deputy head.

[51] The complainant sought three remedies: that the appointment be revoked, that she be screened in the pool of qualified EC-07 candidates and that she receive a written acknowledgement of the inappropriate screening out of her candidacy.

[52] Since I have concluded that there is no evidence to show that the appointee did not meet the merit criteria as defined, I have no basis for a revocation of the appointment.

[53] Since the pool of candidates is now closed (this was confirmed at the hearing), it would not be useful to have the complainant reassessed for this position. Finally, this decision serves as an acknowledgement that the complainant was unreasonably screened out.

[54] Therefore, I find that the appropriate remedy in this case is a declaration that there was an abuse of authority in the complainant's assessment. Given the evidence, screening her out on the basis of stakeholder partnerships was unreasonable.

[55] I have no evidence to find that the appointee did not meet the qualifications set for the position. The complainant disagrees. She very much insisted on the importance of knowledge for the role.

[56] I can understand why the complainant feels that she was more qualified for the position, as she defined it, as a knowledge-driven role. However, the deputy head chose not to define it that way. It is certainly within the deputy head's authority to define operational needs, how different positions will fulfil those needs, and consequently, what qualifications will be required of the persons filling those positions.

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

(The Order appears on the next page)

V. Order

[58] The complaint is allowed in part.

[59] I declare that the respondent abused its authority in the assessment of the complainant when it screened her out of the appointment process.

May 24, 2024.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**