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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

**ANTHONY CHASTON**

Complainant

and

**DEPUTY HEAD  
(Canada Border Services Agency)**

Respondent

and

**OTHER PARTIES**

Indexed as

*Chaston v. Deputy Head (Canada Border Services Agency)*

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

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

**For the Complainant:** Himself

**For the Respondent:** Amanda Neudorf, counsel

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

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Heard by videoconference,  
March 21, 2024.

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## REASONS FOR DECISION

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### I. Introduction

[1] The complainant, Anthony Chaston, made a complaint to the Federal Public Sector Labour Relations and Employment Board (“the Board”) under s. 77(1)(a) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; “PSEA”). He alleged an abuse of authority by the respondent, the deputy head of the Canada Border Services Agency, in the application of merit for the position of Superintendent, classified FB-05, located in several locations in Ontario. The internal advertised appointment process number was 2021-IA-SOR-FB\_05-638 (“the appointment process”).

[2] The respondent denied abusing its authority in the appointment process.

[3] The Public Service Commission did not attend the hearing, and it provided written submissions addressing the applicable policies and guidelines. It did not take a position on the merits of the complaint.

[4] For the following reasons, the complaint is dismissed.

### II. Summary of the evidence

[5] The complainant submitted an application to the appointment process. The poster advertising the appointment process included the following provision, reproduced as it appeared on the poster:

...

*A Covering Letter is required and will be used to assess the following competencies: C1 - Conflict Management, C5 - Collaborate with Partners and Stakeholders and C6 - Promote Innovation and Guide Change.*

*For the purposes of this selection process, the assessment board has defined “Conflict Management” as the ability to facilitate the prevention, management and/or resolution of conflicts. In your cover letter in approximately 750 words, demonstrating in a CLEAR and CONCISE manner describing a work related example where you demonstrated expected behaviours in support of “Conflict Management”....*

...

[6] The assessment board determined that the complainant's letter did not meet the requirements of competency C1, "Conflict Management", and he was eliminated from further consideration.

#### A. For the complainant

[7] The complainant stated that he has 20 years of experience as a border services officer. He believes that the assessment board acted irregularly and not within the rules that require qualifications to be expressed in straightforward language.

[8] The complainant's answer for C1 was as follows:

*In August of 2021, while working in Customs Secondary an acting Superintendent directed a waiting traveller to my counter while I was still in the process of entering a notepad narrative for my previous passenger, who was an NTC Lookout for National Security. When the traveller arrived at my counter, I was clearly unprepared to receive them as I was still typing my report in ICES and had multiple photocopies and reference documents scattered across my counter. I found these actions of the superintendent directing a travelling to my counter unannounced very unprofessional and frustrating, and it made me look unprofessional and integrally compromised.*

*I carefully moved and covered the documents from my previous traveller aside, apologized to the traveller now in front of me for being "pre-occupied" and then processed them as per the normal customs processes until they were free to leave.*

*Once the passenger had left Secondary I approached the superintendent and asked to speak to him in private and we walked to the far side of Secondary out of earshot of any other employees. I then explained to the superintendent that at no time would I ever have an issue with him directing travellers to my counter for examination, to the contrary I would even encourage it as I might occasionally be unaware that there are travellers waiting in line, however before he does so in future I would appreciate the common courtesy of a "heads up" in advance to ensure I am not already occupied with something and I am ready to receive my next traveller.*

*I further explained that directing the traveller to my counter without ensuring first I am unoccupied potentially made me feel somewhat embarrassed as an officer because it made us both look unprofessional and unprepared to carry out my duties.*

*The superintendent understood my reasoning and request, and agreed to check with or advise me prior to directing a traveller to my counter in the future and I Thanked him for his time and his cooperation in correcting this issue moving forward.*

*By dealing with this conflict in this manner I was able to i) prevent any further occurrence or escalation of this issue by addressing the situation in a timely and appropriate manner, ii) manage the issue by calmly describing and discussing what occurred and how the situation negatively impacted the performance of my duties but also the optics of the Agency's professionalism with the directed traveller and iii) was able to then provide a resolution to the issue moving forward which both parties could agree to and which would prevent this issue from re-occurring and prevent any future such conflict.*

...

[Sic throughout]

[9] In the complainant's view, his response covered two of three elements of conflict resolution, specifically prevention and resolution. During an informal discussion after the appointment process was completed, the assessment board told him that he had not established that a conflict had occurred. He agreed, stating that his answer demonstrated that he had prevented a conflict from taking place.

[10] The complainant testified that he could have chosen from many examples of conflict. He described conflict prevention in his answer, and he believed that his example was compatible with training he had taken on informal conflict management. Prevention was listed in C1's definition. By its nature, prevention must occur before a conflict takes place. However, the assessment board would accept only an example of conflict management in an active conflict.

[11] The complainant described his scenario as the prevention of an escalation that would have led to a conflict. He explained that a conflict would have occurred had the supervisor continued to direct travellers to him while he was in the midst of a previous examination. He added that this was problem solving.

[12] During cross-examination, the complainant emphasized the use of "and/or" in C1's definition. To him, it meant that the conflict management could be demonstrated by any one or more of the prevention, management, or resolution of a conflict. He recalled that during the informal discussion, the assessment board told him that had he written of the superintendent's feelings, it would have established that a conflict took place between them. He responded that his actions were taken to prevent escalation and to resolve the matter at the lowest possible level.

**B. For the respondent**

[13] Paul Boakye-Cofie (“the assessment board member”) testified that he was a member of the assessment board. He reviewed his experience and training as an assessor. He confirmed that the assessment board designed the poster, the assessment tools, and the rating guide for the appointment process.

[14] Documents show that more than 300 applications were received. According to the assessment board member, the applications were divided among the assessment board members. He was responsible for evaluating the complainant’s answer for C1.

[15] The assessment board member’s written assessment of the complainant’s answer follows:

*- while the example provided could have been appropriate and the candidate did clearly articulate how they were in conflict with the Superintendent, the two sided nature of the conflict was not adequately articulated.*

*- there was not any information provided on how the Superintendent felt, was the Superintendent in a state of conflict with the candidate? It did not appear to be the case...*

*- there was no articulation as for any follow up on the situation, did the Superintendent have a history of this sort of behavior previously with the candidate or other officers?*

*- there does not appear to have been an actual conflict that required management, but rather the candidate was upset, stated his reasons and the Superintendent merely acquiesced*

[16] The assessment board member explained his assessment of C1. The assessment board expected candidates to describe a two-sided conflict. It was not necessary for the complainant to be involved as a party in the conflict. The assessment board looked for the candidates to establish that a conflict had occurred and for them to provide detail.

[17] In this case, the complainant’s answer lacked the articulation of a two-sided conflict. It appeared that he stated an opinion and that the superintendent agreed with it. On the information presented, the assessment board member could not infer that a conflict had occurred. He noted that the minimum required mark for C1 was 6 out of 10, or “fair”. The complainant did not attain that mark.

[18] After reaching the decision that the complainant's answer did not meet the minimum requirement to pass, the assessment board member conferred with other assessment board members to ensure that the answers were being marked consistently.

### III. Summary of the arguments

#### A. For the complainant

[19] The complainant argued that the assessment board's evaluation of C1 did not accord with the definition set out on the poster, which he felt was misleading. By the definition of C1, an acceptable answer could have had one, two, or three elements of conflict management.

[20] The assessment board erred by requiring the candidates to demonstrate the management of an established or ongoing conflict. It wrongly diminished the validity of his argument that his intervention with the superintendent prevented the issue from growing into a conflict.

#### B. For the respondent

[21] The respondent argued that the complainant did not discharge the burden of demonstrating a serious error or omission or wrongdoing in the assessment board's decision. He did not adequately articulate the two-sided nature of a conflict. He failed to meet C1's requirements as he failed to articulate and describe the conflict from all perspectives, or, if there was a conflict, how it was prevented.

### IV. Reasons

[22] This complaint was made under s. 77(1)(a) of the *PSEA*. It provides 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*

*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) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2) ...*

*a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs attributions respectives au titre du paragraphe 30(2) [...]*

[23] When appearing before the Board, a complainant bears the onus of proving their allegations on the standard of the balance of probabilities. (See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8.)

[24] In this case, the complainant alleged that the assessment of his answer for C1 was flawed. He acknowledged in his testimony that he presented no conflict in his example. He proposed that his intervention to avoid the development of a conflict ought to have been considered because it prevented and resolved a situation before it developed into a conflict.

[25] The complainant may be of the view that the assessment board improperly narrowed C1 when it did not consider his actions to prevent a conflict. The Federal Court of Appeal addressed the issue of narrowing a qualification in *Bambrough v. Public Service Commission*, 1975 CanLII 2207, in which it stated that changing a qualification by narrowing it has no adverse effect on the principle of selection according to merit. The use of “and/or” in the conjunctive or disjunctive sense was also discussed in *Henry v. Deputy Head of Service Canada*, 2008 PSST 10.

[26] The respondent's evidence demonstrates that the assessment board expected the candidates to describe a two-sided conflict and how they managed it. I am satisfied that this was a reasonable application of C1 and the assessment board's decision properly fell within its “... leeway in determining what constitutes satisfactory answers and to what extent the answers reflect the qualities sought ...”. (See *Drozdowski v. Deputy Head (Department of Public Works and Government Services Canada)*, 2016 PSLREB 33 at para. 36.)

[27] The complainant's position would require the assessment board to evaluate C1 without any indication of a conflict. It could lead to the conclusion that a candidate

met the requirements of the conflict management qualification because he or she had avoided a conflict.

[28] It is clear to me from C1's definition and assessment that this was not the assessment board's intention. The respondent demonstrated a logical, coherent, and reasoned approach to assessing conflict management in the context of a conflict. It was insufficient for a candidate to set out that they had prevented a conflict. I am not persuaded by the complainant's argument that the conjunction "and/or" in C1's definition opened the door for a candidate to demonstrate conflict management by describing a situation that did not present a conflict. While C1's definition might have been expressed with greater precision at the outset, it was reasonable for the assessment board to consider that the assessment of conflict management required the presence of a conflict.

[29] As set out in s. 30(2) of the *PSEA*, an appointed person must meet the essential qualifications established for a position. In this case, the complainant did not provide an example that met or exceeded the minimum score for C1. As such, the assessment board could not find that he met C1. On that basis, he was properly eliminated from consideration.

[30] In my view, the complainant did not discharge the burden of proving that an abuse of authority occurred in the application of merit.

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

*(The Order appears on the next page)*



**V. Order**

[32] The complaint is dismissed.

July 18, 2024.

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