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File: 771-02-49317

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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

MARIO GHAFARI

Complainant

and

**DEPUTY HEAD
(Statistics Canada)**

Respondent

and

OTHER PARTIES

Indexed as
Ghafari v. Deputy Head (Statistics Canada)

In the matter of a complaint of abuse of authority under section 77(1)(a) of the *Public Service Employment Act* and a request for an order to provide information pursuant to s. 17 of the *Public Service Staffing Complaints Regulations*

Before: Edith Bramwell, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Caroline Rousseau

Decided on the basis of written submissions,
filed September 9, 16 and 17, 2024.

REASONS FOR DECISION

I. Request for an order to provide information

[1] The complainant, Mario Ghafari, alleges an abuse of authority in the application of merit in an advertised appointment process with respect to the position of Senior Methodologist, at the MA-04 group and level. He was eliminated from the process after failing to meet three competencies: *C1 - Demonstrating integrity and respect*; *C2 - Thinking things through*; and *C3 - Working effectively with others*. The complainant stated that he attended an informal meeting with representatives of the respondent, the deputy head of Statistics Canada, where the respondent's reasons for failing him on the three competencies were not clearly conveyed and based on outcomes of events that were surprising to him. In particular, the appointment process required him to provide only two references with his application whereas feedback was apparently sought from five references in his case.

[2] To facilitate the resolution of complaints under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*"), the complainant and respondent must, as soon as feasible after the complaint has been filed, exchange all relevant information regarding the complaint. If a party refuses to provide information, the complainant or respondent may, pursuant to s. 17 of the *Public Service Staffing Complaints Regulations* (SOR/2006-6; "the *Regulations*"), request that the Federal Public Sector Labour Relations and Employment Board ("the Board") order that the information be provided.

[3] This decision deals with the complainant's third request for an order to provide information ("an OPI").

[4] In its June 24, 2024, letter decision regarding the complainant's first request for an OPI, the Board partially granted the request, ordering the production of 13 of the requested items, including information related to the complainant and appointee's references and the assessment for competencies C1, C2 and C3.

[5] In its August 28, 2024, letter decision regarding the complainant's second request for an OPI, the complainant requested the same information but with respect to other appointments that had been made through the same appointment process. The Board denied the second request on the basis that the information requested

about various other appointments was not arguably relevant to his complaint challenging only one appointment made in the process.

[6] In this third request for an OPI, the complainant requests the same information as in previous requests. He also raises an allegation of discrimination and asks for information related to the assessment of candidates who were not successful in the appointment process.

[7] For the reasons that follow, the Board requests further submissions from the parties.

II. Summary of the arguments

[8] The complainant argues that he needs the requested information with respect to a trend, to prove differential treatment, and “to prove a theory.” Based on the information the respondent provided him to date and what he obtained through an Access to Information and Privacy request, the complainant questions the fairness of the appointment process, particularly regarding references. He provides examples of past issues with some of the references who were consulted in the process, including what he alleges was discriminatory treatment by at least one previous supervisor. He suggests the negative references are penalizing him for having challenged unfair treatment in the past. He submits that the respondent was biased in assessing him and “that there is an issue of discrimination whether it is based on disability or on race.”

[9] In its brief response to the complainant’s third request, the respondent notes that it is for the same items that were the subject of the Board’s August 28, 2024, letter decision. It submits that that decision is final and cannot be reconsidered. It did not respond to the complainant’s allegations of discrimination.

III. Analysis

[10] Section 17(4) of the *Regulations* states that the Board must order the provision of information that it determines may be relevant. The onus is on the requesting party to specify the information sought and to establish its arguable relevance or link to the complaint (see *Akhtar v. Deputy Minister of Transport, Infrastructure, and Communities*, 2007 PSST 26 at paras. 27 and 28).

[11] In his submissions related to the third request for an OPI, the complainant has raised an allegation of discrimination. The allegation of discrimination appears to be

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linked to the individuals from whom references were sought in the appointment process at issue, along with the number of references sought for the complainant compared to others. The complainant further explained and refined his OPI request in his reply of September 17, 2024.

[12] Despite the respondent's contention that the Board's previous OPI decision is final and cannot be reconsidered, there is nothing in the *Regulations* preventing the complainant from bringing another request for an OPI, in light of a new or re-framed explanation as to why the information is arguably relevant to the complaint. Ultimately, the purpose of s. 17(4) of the *Regulations* is to ensure that a requesting party is provided with the information that the Board determines may be relevant to a complaint, in conjunction with their right to be heard. Further, pursuant to s. 22 of the *Regulations*, it is only after the exchange of information and OPI process is completed that the complainant must provide his allegations, including a detailed description of all the relevant facts and allegations on which he intends to rely throughout the complaint process and hearing.

[13] In a letter decision dated January 22, 2024, in Board file no. 771-02-47726, *Asif Mohammed v. Deputy Head (Department of the Environment)* (see Appendix A), the complainant alleged discrimination and requested an OPI to obtain information related to appointments other than the appointment that was the subject of his complaint. In that case, the Board found that the requested information was arguably relevant to the allegation that a pattern of discrimination had recurred in the appointment process in question in that complaint. To prove the existence of that pattern, and for this purpose only, the complainant sought information related to other appointment processes. The Board granted this request.

[14] Statistical or comparative evidence including evidence from other selection processes may be arguably relevant where a complainant raises human rights issues or other allegations of systemic or recurring abuse of authority (see *Canada (Human Rights Commission) v. Canada (Department of National Health and Welfare)*, 1998 CanLII 7740; and *Agnaou v. Canada (Attorney General)*, 2014 FC 850).

[15] Before rendering a decision regarding the complainant's third request for an OPI, the Board requests further submissions from the parties in respect of the arguable relevance of the requested information, especially as it pertains to the complainant's

allegation of discrimination and the additional submissions he provided on September 17, 2024.

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

(The Order appears on the next page)

IV. Order

[17] The parties shall provide additional submissions with respect to the arguable relevance of the requested information.

[18] The respondent will provide its additional submissions by February 28, 2025.

[19] The complainant will provide his reply submissions by March 10, 2025.

[20] The suspension of timelines is maintained pending the Board's decision on the complainant's third OPI request.

February 19, 2025.

**Edith Bramwell,
a panel of the Federal Public Sector
Labour Relations and Employment Board**

APPENDIX A

Letter Decision in Board file no. 771-02-47726,
Asif Mohammed v. Deputy Head (Department of the Environment)

January 22, 2024

Asif M Mohammed
[email address redacted]**BY E-MAIL**Matthew Eldridge (Representative of Jean-François
Tremblay)
[email address redacted]**BY E-MAIL****Re: Federal Public Sector Labour Relations and Employment Board**
File 771-02-47726 Asif Mohammed & Deputy Minister of the Environment
Selection Process Number: 23-DOE-NCR-ACIN-581694

A panel of the Board, comprised of Edith Bramwell, Chairperson, has asked that I provide you with the following decision with respect to the complainant's request for an order for the provision of information (OPI).

Pursuant to ss. 77(1)(a) and (b) of the *Public Service Employment Act* (the *PSEA*), the complainant claims an abuse of authority in the application of merit and in the choice of a non-advertised appointment process in respect of an ENG-04 acting opportunity. He also raises an issue of discrimination. Specifically, the complainant submitted that a group of individuals provided acting opportunities among themselves for their own benefit, including for the appointee's position. He is of the view that the decision to appoint the appointee through a non advertised process created an advantage for the appointee. The complainant submitted that there are employees with certain traits/ characteristic who are given these acting opportunities, including the acting appointment in dispute, which put the complainant in isolation as he is from a designated employment equity group. There is a consistent pattern of discrimination of who gets selected when compared to him as he belongs to a marginalized group. When it comes to his situation, several rationales were used by hiring managers, putting a high bar of selection criteria for him to meet, treating him differently in the non advertised appointment process, and appointing the appointee based on preferential treatment or other grounds of personal favoritism.

The complainant submitted an OPI request alleging that the following information is relevant to these claims:

1. A list of all staff who acted in the ENG 04 position # 00060546, # 00284673, # 00060571, # 00071854 at ECCC Corporate Services and Finance Branch between January 2021 and May 3, 2023, how long they acted, under what circumstances the acting assignment came about (i.e., through formal or informal processes), and all documents related to the acting assignments;
2. A list of all staff who acted in the ENG 05 position # 00069181 in the ECCC Corporate Services and Finance Branch between January 2021 and May 3, 2023, how long they acted, under what circumstances the acting assignment came about (i.e., through formal or informal processes), and all documents related to the acting assignments; and
3. Any and all documents related to the assessment of Mr. Daniel Ventura including but not limited to merit criteria, evaluations criteria, assessment tools, and scoring against this evaluation criteria to establish merit.

The respondent replied specifically to each item requested by the complainant. The respondent submitted that the complaint pertains to the ENG-04 acting appointment of the appointee and not other ENG-04 or ENG-05 positions and actors or acting appointments. In his OPI request, the complainant has failed to provide a valid explanation as to how the information concerning the appointee is arguably relevant. The respondent objected to the disclosure of all the information requested.

The Board has considered and determined the complainant's request for an OPI as follows.

Section 17(4) of the *Public Service Staffing Complaints Regulations* (SOR/2006-6) (the *Regulations*) provides that the Board must order the provision of information that it determines may be relevant to a complaint. The Public Service Staffing Tribunal (the former Tribunal) has determined that the threshold test in considering an OPI request is arguable relevance (see *Akhtar v. Deputy Minister of Transport, Infrastructure, and Communities*, 2007 PSST 26). When making a request for provision of information, the onus is on the requesting party to demonstrate the relevance of the information that is sought and its link to the complaint. The party requesting the production of information must demonstrate a link between the complaint and the information being sought. The test of relevancy is broader at this stage of the process than the test that is ultimately applied at the hearing.

The Board finds that to demonstrate an ongoing pattern of discrimination, the appointment processes and staffing actions for acting opportunities in ENG-04 and ENG-05 positions are arguably relevant to the context of this appointment process. Although the appointments in those processes are not challenged by the current complaint, the information sought is relevant to the allegation that prevailing patterns of discriminatory staffing impacted the appointment process that is the subject of the current complaint.

The information concerning the appointee is arguably relevant given the allegation that a group of individuals provided acting opportunities among themselves for their own benefit, including for the appointee's position and the advantage to the appointee.

For these reasons, the Board grants the complainant's OPI request:

- A list of all staff who acted in the ENG-04 positions #00060546, #00284673, #00060571, #00071854 at ECCC Corporate Services and Finances Branch between January 2021 and May 3, 2023, how long they acted, under what circumstances the acting assignment came about (i.e., through formal or informal processes), and all documents related to the acting opportunities;
- A list of all staff who acted in the ENG 05 position # 00069181 in the ECCC Corporate Services and Finance Branch between January 2021 and May 3, 2023, how long they acted, under what circumstances the acting assignment came about (i.e., through formal or informal processes), and all documents related to the acting assignments; and;
- The merit criteria, evaluation criteria, assessment tools, and scoring against the evaluation criteria.

Pursuant to s. 18 of the *Regulations*, the parties are reminded that the above information may only be used for the purposes of this complaint.

Pursuant to sections 17(5) and 17(6) of the *Regulations*, the Board may make the order to provide information subject to any conditions that it determines are necessary and apply conditions before and after the hearing or after any other resolution or disposition of the complaint. If the respondent has concerns with the personal information of successful candidates and appointees, the Board will receive its submissions by **February 7, 2024**. The complainant will respond with reply submissions, if any, by **February 15, 2024**.

The timelines to provide the information on the OPI request and allegations remain suspended.

Respectfully,
[name redacted]
Case Management Officer

for the Federal Public Sector Labour Relations and Employment Board

c.c.

Treasury Board Legal Services (Staffing) (Treasury Board Representative to Respondent)
[email address redacted]

Guillaume Fontaine (Public Service Commission)
[email address redacted]

Daniel Ventura (Other Party)
[email address redacted]