

Date: 20250211

File: 771-02-49292

Citation: 2025 FPSLREB 15

*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

RUDY MEHRA

Complainant

and

**DEPUTY HEAD
(Statistics Canada)**

Respondent

and

OTHER PARTIES

Indexed as
Mehra v. Deputy Head (Statistics Canada)

In the matter of a complaint of abuse of authority - sections 77(1)(a) and (b) of the
Public Service Employment Act

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Complainant: Himself

For the Respondent: Adam Feldman, counsel

For the Public Service Commission: Guillaume Fontaine

Decided on the basis of written submissions,
filed July 24 and August 8 and 13, 2024, and January 7, 2025.

REASONS FOR DECISION

I. Complaint before the Board

[1] This is a complaint from Rudy Mehra (“the complainant”) made under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; “the *PSEA*”). He alleges that the deputy head of Statistics Canada (“the respondent”) abused its authority under ss. 30(2) and 33 of the *PSEA*.

[2] The respondent maintains that there has been no abuse of authority. It submits that the staffing request was cancelled before the effective start date of the extension of the acting appointment. Therefore, it requests that the complaint be dismissed.

[3] On March 11, 2024, the respondent announced to the employees of Census, Regional Services and Operations Field, the extension of an acting appointment for Darrick Cheuk in the assistant director, Western Region and Northern Territories, position, effective April 3 to August 1, 2024. This announcement was made despite the fact that the appointment had not yet been finalized. According to the respondent, the purpose of the advance notice was to be proactive and transparent.

[4] On March 13, 2024, the complainant made this complaint to the Board. He submitted that Mr. Cheuk had been in the position for a year but that he still did not meet the language requirements. He questioned how the acting appointment could have been extended when others in the same situation could act for only a maximum of one year. He further noted that no formal advertised process for the position was put in place when Mr. Cheuk was first appointed in April 2023.

[5] On March 14, 2024, Mr. Cheuk underwent a second-language evaluation and did not attain the required level for the oral portion.

[6] According to the respondent, as a result, the announcement was erased from its internal website, and the extension of Mr. Cheuk’s acting appointment was considered annulled. The staffing request was cancelled before the extension’s effective start date.

[7] However, the complainant argued that while the respondent said that it would never have extended Mr. Cheuk because the mistake would have been noticed before any such extension was made, the complainant believes that it would not have noticed the mistake but for his complaint. It provided no details as to how it would have

caught the mistake. Both the director of the respondent's Western Region and the Strategic Planning Committee had already approved the extension; that is, it had gone through multiple levels of approval, without anyone noticing that it was not allowed. In the complainant's view, the respondent did not extend Mr. Cheuk in the acting assignment only because he made his complaint, and he asked how such a situation would be avoided in the future.

[8] The respondent submitted that the complainant asks that the Board order a correction of the approval process, for future appointments. It submitted that the Board's powers are limited by ss. 81 and 82 of the *PSEA* and that the Board has no power to address what must be corrected in the future.

[9] The respondent stated that although it constantly takes measures to decrease administrative errors, it is impossible to guarantee that no further errors will ever be made in the future. What is critical is that any errors are corrected in a timely and appropriate way, as was done in this case. The respondent also noted that it ensures that human resources advisors receive monthly training and that the corporate staffing team monitors staffing files annually.

[10] The respondent maintained that there was no abuse of authority in the choice of process or in the application of merit since no appointment occurred, and it asked the Board to dismiss the complaint. The complainant was invited to reply to the respondent's request to dismiss the complaint, and he did.

[11] He reiterated his submission that the respondent annulled the acting appointment extension only when, and because, he made his complaint. He elaborated on his belief that it would not likely have been annulled had he not made one. He noted that the respondent's first response to the complaint was not to annul the acting appointment extension but rather to object that the complaint was untimely. The Board dismissed that objection.

[12] He also submitted that at a hearing, Mr. Cheuk would confirm that he was simply advised that he was being extended in his acting appointment, with no conditions attached. He was not advised of any issues with the extension.

[13] The complainant concluded his reply as follows:

...

I believe my complaint should continue so this does not happen again in the future. I have asked for procedures from the respondent on these types of appointments and nothing was provided. There should be checks and balances before the "Strategic Committee" makes appointments. This issue should have been an easy one to catch as we had other employees not given extensions because they did not meet the language requirements (and it was recent). This just shows how the respondent is not transparent in their hiring and biased to certain employees.

II. Reasons

[14] Based on the information provided by the parties, it is not contested that the staffing action was cancelled before the effective start date, meaning that Mr. Cheuk did not continue in the assistant director, Western Region and Northern Territories position, which was to be extended on April 3, 2024. I note that the complainant does not allege that the extension was deliberate, but rather that it was a mistake. He requests that checks and balances be put in place to ensure that this does not happen again.

[15] In *Dubord v. Commissioner of the Correctional Service of Canada*, 2013 PSST 10, the complainant was initially screened out of the appointment process; however, after the complaint was filed, the respondent reassessed him and found him to be qualified and appointed him to the position. In that case, the Public Service Staffing Tribunal ("the Tribunal") dismissed the complaint concluding that it was moot given that there was no longer a dispute between the parties.

[16] At paragraph 40 of its decision, the Tribunal referred to the Supreme Court of Canada's decision in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, with respect to the doctrine of mootness; and at paragraph 42, it summarized the applicable two-step test:

40 *In Borowski v. Canada (Attorney General), [1989] 1 S.C.R. 342, the Supreme Court ruled that, pursuant to the doctrine of mootness, a court may refuse to hear a case if it raises merely a hypothetical question. This doctrine may be applied when the court's decision would not resolve any controversy that affects the rights of the parties (p. 353):*

Mootness

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which

raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice ...

...

42 *This analysis involves two questions:*

- 1. Is there still an issue, that is, a tangible and concrete dispute, between the parties?*
- 2. If there is no longer a dispute between the parties, should the Tribunal still exercise its discretion to rule on the merits of the complaint?*

[17] Based on the information provided by the parties before me, I find that there is no longer a tangible and concrete dispute between the parties because the respondent annulled the proposed appointment before the effective start date. Consequently, there is no longer an appointment for the Board to assess with respect to any alleged abuse of authority. The complainant's concern that the respondent almost extended Mr. Cheuk's acting appointment improperly is a legitimate concern, but the fact is, it did not go through with it. The error was corrected before the extension took effect. Therefore, I find that the complaint is moot.

[18] I must now determine if the circumstances warrant exercising my discretion to hear the complaint even though it is moot. In *Dubord*, at para. 49, the Tribunal explained that "This could be the case, for example, when the complaint raises important issues that could affect staffing in general or if the respondent's alleged behaviour is a gross violation of the PSEA." (also see *Obioha v. Deputy Minister of Employment and Social Development*, 2016 PSLREB 13).

[19] The complainant believes that his complaint should continue so that this does not happen again, and he requests that checks and balances be put in place. The

respondent submitted that it takes measures to decrease administrative errors, but that it is impossible to guarantee that errors will not occur again in the future. It also stated that it ensures that human resources advisors receive monthly training and that the corporate staffing team monitors staffing files annually.

[20] The Federal Court said in *Canada (Attorney General) v. Cameron*, 2009 FC 618, that corrective action must be related to the complaint at issue and not address past or future appointment processes:

...

18 The combined reading of sections 77, 81 and 82 of the Act indicates that any corrective action ordered by the Tribunal must address only the appointment process that is the subject of the complaints before it. The corrective action must aim at remedying the default identified by the Tribunal in hearing the complaint before it, and cannot address other past or future appointment processes not before the Tribunal further to a complaint made according to the Act.

...

[21] Whether the respondent did the right thing on its own or whether it did so only due to this complaint, nevertheless, it did the right thing in the end.

[22] While recognizing the complainant's worry for the future, the complaint does not raise an important issue that could affect staffing in general and the respondent's behaviour does not amount to a gross violation of the *PSEA* that would justify exercising my discretion to hear the complaint even though it is moot.

[23] For all of the above reasons, the respondent's motion to dismiss the complaint is granted and the Board makes the following order:

(The Order appears on the next page)

III. Order

[24] The complaint is dismissed.

February 11, 2025.

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**