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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

MUNA YOUSUF

Complainant

and

**DEPUTY HEAD
(Department of Indigenous Services)**

Respondent

and

OTHER PARTIES

Indexed as

Yousuf v. Deputy Head (Department of Indigenous Services)

In the matter of complaints of abuse of authority pursuant to s. 77(1)(a) and (b) of
the *Public Service Employment Act*

Before: Patricia H. Harewood, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainant: Herself

For the Respondent: Peter Doherty, counsel

For the Public Service Commission: Lissa Mussely, counsel

Heard by videoconference,

January 29 and 30, 2025.

REASONS FOR DECISION

I. Complaints before the Board

[1] Muna Yousuf (“the complainant”) made two complaints under s. 77(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) on October 19, 2023, to contest two non-advertised acting appointments for PM-04 program officer positions at Indigenous Services Canada (ISC). When she made her complaints, Ms. Yousuf was working as a policy and program officer classified at the PM-03 group and level in ISC’s Registration and Entitlement Unit.

[2] The Federal Public Sector Labour Relations and Employment Board (“the Board”) consolidated the complaints after ISC’s deputy head (“the respondent”) requested it because they were made by the same complainant and are similar, even though they relate to different appointment processes.

[3] The complainant alleged that the respondent abused its authority in the choice of process and in the application of merit in the two appointment processes at issue. She alleged that the essential qualification of experience processing complex files was lowered from 24 months of experience to 12 months, to favour the appointees. She also alleged that the acting appointments were evidence of personal favouritism toward the two appointees.

[4] The respondent submitted that the complainant failed to establish that there was abuse of authority in the choice of process or the application of merit in either process at issue. In response to the personal-favouritism allegation, it noted that she failed to demonstrate that the subdelegated manager and the appointees had any personal relationship. Finally, it noted that reducing the required duration of experience processing complex files was not abuse of authority since, under s. 33 of the *PSEA*, management enjoys significant discretion when it establishes essential qualifications.

[5] The Board must consider the following questions for both complaints:

- 1) Was there abuse of authority in the choice of non-advertised processes?
- 2) Was there abuse of authority when the duration of the essential qualification of experience processing complex files was reduced from 24 to 12 months?
- 3) Was there abuse of authority due to personal favouritism?

[6] For the reasons that follow, I must answer no to those questions and dismiss both complaints. I find that the complainant failed to demonstrate that there was abuse of authority in the choice of process for both processes at issue and in the duration reduction of the essential qualification. Further, she did not meet her burden of establishing that personal favouritism occurred.

[7] The respondent provided uncontradicted testimony that there was an urgent organizational need to fill two PM-04 positions, to then train new hires classified PM-01. It also provided uncontradicted testimony that over time, management had learned that 24 months was too rigid and that it did not reflect the time that the officers required to learn complex files.

[8] Finally, the complaint raised two additional allegations with respect to one of the appointees. In the first allegation, the complainant claims that the appointee did not meet the experience requirement for processing complex files. The second allegation alleges the appointee was not bilingual. The respondent raised an objection that these additional allegations did not form part of the initial complaints, nor were they otherwise raised during the complaint process, thus taking the respondent by surprise at the hearing. The objection is upheld for the second additional allegation but not for the first. I will explain later in this decision.

A. Note on terminology

[9] Throughout this decision, I will refer to the *Indian Act* (R.S.C., 1985, c. I-5), which uses the word “Indian” to describe Indigenous people. Although the more appropriate term “Indigenous people” is now used to describe Canada’s First Peoples (Inuit, Métis, and First Nations), any reference to the *Indian Act* or “Indian” reflects the language of that Act, which the witnesses also used.

II. Summary of the evidence

A. For the complainant

[10] The complainant was self-represented and testified on her own behalf. She called no other witnesses.

[11] The complainant was working as a policy and program officer classified at the PM-03 group and level when she made her complaints. Her job involved assessing and

processing applications for Indian status under the *Indian Act*. As a PM-03, she processed more complex files than would have a PM-01.

[12] The complainant began working for ISC in February 2010 as a PM-01. Initially, she was in the Status Card Unit. She knew the appointees because they all worked together in the unit. Benoit Lavallée started working a couple of months before her in 2010, and Nathalie Chainey came later in 2011. They were the two appointees in the appointments at issue (“the appointees”).

[13] In March 2019, the complainant moved to the Registration and Entitlement Unit, where she continued as a PM-01. She said that eventually, she received an opportunity in April 2022 to act as a PM-03 and that she qualified in a pool for a PM-03 position. She became indeterminate on August 15, 2022.

[14] The complainant explained that she has the delegation required to assess applications. PM-03 program officers have to take an exam before they obtain their delegation from the registrar to process a certain category of applications. Before obtaining it, an officer has to work on complex files, to gain experience with them. Once they have their delegation, they can work on those files without having their work reviewed.

[15] In cross-examination, the complainant acknowledged that she enjoys her job. At the same time, she always reads job postings and appointments, to determine what she must do to improve and to advance in her career.

[16] The complainant reviewed Ms. Chainey’s CV. She claimed that in her application, Ms. Chainey exaggerated her experience processing complex files. The complainant said that when Ms. Chainey was appointed, she did not have one year of experience processing complex files. She also claimed that Ms. Chainey was not bilingual and that she could hardly speak English when she first met her in 2011.

[17] The complainant also reviewed the “Assessment of the Candidate Against Statement of Merit Criteria” document and claimed that Ms. Chainey had no experience with adoption files or processing complex files and that in her application, she listed duties for which delegation was required.

[18] The complainant said that her understanding was that a program officer had to have two years of experience processing complex files before becoming a PM-04 and

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that Ms. Chainey did not have the requisite experience, since she joined ISC only in July 2022.

[19] The complainant testified that before the appointments were made and before Ms. Chainey's arrival, she had requested acting opportunities classified at the PM-03 group and level and had received none. She submitted an email that she sent to her manager, dated October 15, 2020, in which she requested a PM-03 acting opportunity.

[20] In cross-examination, the complainant acknowledged that the manager who assigned her the acting PM-03 non-advertised appointment in April 2022 was Ms. Simoneau and that Ms. Simoneau was also the manager who offered her the PM-03 indeterminate position after she had qualified in a pool.

[21] The complainant noted that she did not have any second-language-test results and that she did not meet the language requirements of the acting positions that were the subjects of her complaints. In her opinion, French was not required for those PM-04 positions.

[22] In cross-examination, she acknowledged that her assessment of one appointee's language capability was based on her observation, and without any further evidence, she claimed that 99% of the unit's work was done in English.

B. For the respondent

[23] The respondent called one witness, Ms. Simoneau, who was the subdelegated manager responsible for the staffing processes at issue. The respondent also requested language interpretation services for this witness. Although the witness was reminded several times that she had the right to testify in the official language of her choice, and that interpreters were at the hearing to interpret from French to English, Ms. Simoneau chose to testify in English.

[24] When the appointments were made, Ms. Simoneau was working (and as of the hearing, still worked) as a senior program manager, classified PM-06, in ISC's Registration and Entitlement Unit. She had been in the position since July 2015.

[25] In March of 2023, Ms. Simoneau had 61 employees in her unit, including 6 direct reports. She had a PM-04 team lead, Sébastien Lalande, reporting to her, and Ms. Yousuf reported to that team lead.

[26] The Registration and Entitlement Unit oversees the responsibility of determining eligibility for Indian status under the *Indian Act*. Different levels of processing are required when reviewing an application, to determine eligibility under the *Indian Act*.

[27] Ms. Simoneau referred to an organizational chart which represented the status of the unit in March 2023.

[28] At that time, the Subject Matter Expert Team (“the SME team”) under Mr. Lalande had two vacant PM-04 bilingual positions open at the BBB language level, which were the positions that Mr. Lavallée and Ms. Chainey were appointed to on an acting basis.

[29] At first, each was appointed to act for four months less a day. Then, through a non-advertised appointment process, their acting appointments were made for eight months, which extended their acting appointments from August 2023 to April 2024, as indicated in each notice of appointment.

1. Operational environment in 2023

[30] Ms. Simoneau explained that the spring and summer of 2023 were very busy times in her unit. She was understaffed and had 21 vacant positions classified either PM-01 or PM-03.

[31] She had 18 000 files waiting to be reviewed by officers, who would make entitlement decisions. Due to changes to the *Indian Act* in 2019 under *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (S.C. 2017, c. 25; known as “Bill S-3”), which addressed sex-based registration inequity, her unit received more and more applications.

[32] Ms. Simoneau testified that contrary to Ms. Yousuf’s claim, 90% of the files processed are in English, while 10% are in French. Over 50 Indian bands under the *Indian Act* are located in Quebec. Overall, her unit had more anglophone than francophone staff.

[33] Due to the pressing need for more staff to address the backlog, her unit decided to onboard 10 new PM-01 officers — 5 unilingual anglophones, 4 unilingual francophones, and 1 bilingual individual.

[34] Ms. Simoneau testified that her challenge over the last nine years had been to maintain service standards for the PM-03s' and PM-01s' workload. Her unit has more anglophone than francophone officers. Therefore, English files are processed at a faster rate than are French files. So, hiring more francophone officers was essential for the business and to improve service to francophone clients.

[35] After she hired new PM-01 staff, she needed francophone officers to train the unilingual francophones. Training was a new responsibility for the SME team. Although the group had another bilingual PM-04, she needed that individual to continue to fulfil his PM-04 functions. She could not stop everything just to focus on the training. She needed additional capacity, to train the new staff members.

2. The choice of a non-advertised processes

[36] Ms. Simoneau explained that she considered several factors in the ISC Staffing Framework when she chose non-advertised processes for the two acting appointments.

[37] Given the increase in volume, the time constraints, and the urgency to train the 10 new officers, she decided to move forward with 2 non-advertised processes. She needed capacity to train them on how to process files, so that the unit could better serve its clients. She also had to take immediate action. Going through lengthy advertised processes was not feasible at the time, so she went the non-advertised route. Later, she also launched an advertised PM-04 process and filled the additional vacant position.

[38] When she referred to the ISC Staffing Framework, Ms. Simoneau explained that the organizational environment, business needs, the impact on the ability to deliver the unit's priority and mandate and enhancing the unit's capacity were all factors that she considered.

[39] She strives to achieve a workforce that is representative, able to serve clients, and can speak the official language of the clients' choice, to deliver service to internal employees and trainees. She required bilingual capacity to train new staff members and to serve clients in French, which was, at the time, a significant challenge.

[40] She also wants existing internal staff to have developmental opportunities to move from CR-04 to PM-01, PM-01 to PM-03, and PM-03 to PM-04 positions.

[41] Ms. Simoneau testified that in her operational environment, using non-advertised processes is common. She tries to promote from within her unit and has used non-advertised processes several times.

[42] She said that entry-level staff members are classified CR-04. When she wants to build their capacity, she gives them promotional acting opportunities, to allow them to learn the registration work. This can take several months. If they succeed, they can write the delegation exam, which could lead to a non-advertised appointment. She has also given PM-01s acting opportunities in PM-03 positions to learn more complex work. And she has appointed individuals through advertised processes. That is a cycle in her operations.

[43] She said that Ms. Yousuf was a PM-01 processing officer in her unit. She did the same for Ms. Yousuf as she does for everyone else. She offered her a non-advertised acting opportunity classified at the PM-03 group and level. Later, she appointed her into an indeterminate position after the complainant succeeded in an advertised process.

[44] She said that generally, this is how people are promoted internally because time, effort, and money is invested into staff, so the employer wants to retain as many officers as possible. This is especially important, given the difficulty training people in registration.

[45] She explained that the standard advancement process in her teams is to move from a PM-01 to a PM-03 position, since there are no PM-02 positions in her unit.

[46] The PM-01s process an average of 25 files per week and deal with more straightforward files, while the PM-03s process 12 to 15 files. Generally, a PM-03's workload is more complex and requires more research on ancestors, to determine eligibility.

3. The appointments at issue

[47] Ms. Simoneau explained that she had no contact with the appointees outside work. She had no personal relationships with them. Given that she had a team of over 60 employees, she tried to stay away from personal relationships and did not become involved with her employees outside work. She preferred to stick to her professional role as a manager and to lead by transparency.

[48] She did not want to cause situations like the one in this case.

[49] Ms. Simoneau explained that the “Statement of Merit Criteria” (SOMC) for the PM-04 position had been in place for several years. Since her intention was to eventually launch an advertised process, she felt it necessary to review the SOMC and its contents with Team Lead Mr. Lalande, to see if it still met their business needs.

[50] When they reviewed it, they decided to reduce the experience required processing complex files from 24 months to 12. Over the years, an evolution had occurred. Ms. Simoneau explained that officers could now learn the job in 4 months, and others in 6 months, given the changing work environment. As a result, they reduced it to 12 months, which was the same experience that was key for the subsequent PM-04 advertised appointment processes. It remained the experience requirement as of the hearing.

[51] When asked whether Ms. Yousuf was considered for the acting appointments, Ms. Simoneau explained that she would have considered all the PM-03s in her unit, but the acting positions were bilingual, and Ms. Yousuf was not bilingual. She knew it because Ms. Yousuf had been under her responsibility for several years. Although the complainant had completed some training, she had not acquired the BBB level in terms of her language skills.

[52] Ms. Simoneau did not have processing experience, but she relied on her manager to advise her. Ms. Chainey was bilingual and had at least 14 months of experience processing complex files, from July 2022 to April 2023 and from April 2023 to August 2023. She did not have her delegation at category 2, but it was not required for her to do the PM-04 job as a trainer of PM-01 officers. Other PM-03 officers did not have their delegations, but they still worked on complex files and had them peer reviewed by someone delegated at-level, to review the decision for quality assurance and to see if the PM-03 made the right decision.

[53] No delegation was required to do the acting PM-04 position.

[54] In cross-examination, in response to a question as to whether she considered filling the PM-04 acting positions on a rotational basis, to give others an opportunity, she said that she did not. She said that no other bilingual PM-03 could have rotated into those positions within the unit.

[55] She said that she found it effective to have two officers doing the training, so that they could cover for each other if one was off and maintain a 1:2 ratio. It was the first time her unit had done the training, and she wanted it to succeed. The trainees' feedback was that in the past, feedback had been delayed, and she wanted to make sure that it did not happen.

[56] In redirect examination, Ms. Simoneau clarified that the ideal scenario for training five trainees was to have two PM-04s. She said that training requires time and effort. In the beginning, there is more one-on-one interaction. The trainer has to ensure that the PM-01 has the right analysis and the right documentation. Then, as the PM-01 becomes more comfortable, there is less intervention. The 1:2 ratio allows for the provision of timely feedback.

[57] She explained that the trainers had to train the trainees on how registration works, the theory of registration, and how to navigate the database, and that they had to perform quality assurance and provide ongoing feedback. At the same time, they continued to work on complex files, to field phone inquiries to members of Parliament and to the minister's or Assistant Deputy Minister's office.

III. Argument and analysis

[58] The Board must determine whether there was abuse of authority in the choice of process and in the application of merit in both processes at issue, contrary to s. 77(1) of the *PSEA*.

[59] The complainant also claimed that abuse of authority occurred in terms of personal favouritism in the appointments.

[60] The respondent denied all the complainant's allegations and maintained that the two appointments were fair and that she failed, on a balance of probabilities, to establish that abuse of authority occurred. It also submitted that she provided no evidence of personal favouritism.

[61] During the hearing, the respondent also raised its objection to the complainant's new allegations that involved one appointee's second-language-test results and that stated that that appointee did not meet the one-year experience requirement processing complex files, which the complainant raised in Ms. Simoneau's cross-examination. I will address it later in this decision.

[62] The respondent also objected to the complainant's attempt to enter into evidence a letter of February 28, 2022, requesting that her former PM-01 position be reclassified, and a "Notification of Consideration" about Ms. Chainey's appointment to an indeterminate PM-04 position after an advertised process was run in January 2024. Both objections were upheld on the ground of relevance. The letter had no link to the appointment processes that are the subjects of these complaints. Further, the indeterminate appointment process in 2024 is not relevant to the issues raised that involve abuse of authority in the 2023 appointment processes.

[63] The PSC submitted its usual policy document, along with *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24, as the case law it relied on. It also made very brief oral submissions related to the remedy, which essentially supported the respondent's submissions.

[64] Before analyzing the merits of the complaints, I must note that throughout the hearing, the complainant mentioned that she is not an expert in the PSEA or in hearings. As a self-represented complainant she suggested repeatedly that she was at a disadvantage and that the complaint process was not fair.

[65] Despite these general comments, the complainant was given a full and ample opportunity to present her case. The procedure for staffing complaints includes the opportunity to request information and exchange allegations in writing before the hearing. On its website, the Board has resources for self-represented litigants, including the *Procedural Guide for Staffing Complaints* and a guide to *Hearings before the Federal Public Sector Labour Relations and Employment Board*. The complainant also participated in a pre-hearing conference to prepare for the hearing and the Board used that opportunity to explain how the hearing would proceed and to give the parties a chance to raise any procedural questions they might have.

[66] During the hearing, the Board made its best effort to ensure that all the parties experienced a fair and efficient hearing, including taking a recess when the complainant became overwhelmed, positioned her screen toward the floor, and left the hearing without notice. Counsel for the respondent was also cooperative and exhibited the requisite collaboration and empathy required of his position when the Board asked him to display documents in the respondent's book of documents on the screen. The

complainant was also accommodated when she asked for an additional recess after the lunch one, to eat.

[67] The Board has significant experience with self-represented litigants who often face barriers accessing administrative justice. While the Board has an obligation to provide procedural guidance and help self-represented litigants understand its unique procedures, policies, and directives, it cannot serve as an advocate or coach for any party.

[68] The Board has a statutory mandate to ensure a fair, efficient, and credible process for all, which it did in this case. Ultimately, the complainant bore the responsibility to make her case on the balance of probabilities.

A. The questions at issue

1. Was there abuse of authority in the choice of non-advertised processes?

[69] With respect to the choice of process, s. 33 of the *PSEA* provides the discretion to choose between an advertised and a non-advertised process. Further, management's discretion in making that choice is considerable. (See *Viggers v. Deputy Head (Department of National Defence)*, 2024 FPSLREB 34 at para. 82; and *Mousseau Bailey v. Deputy Head (Department of Indigenous Services)*, 2024 FPSLREB 52 at paras. 46 to 51).

[70] However, if a non-advertised process is chosen, it may be incumbent on the manager to explain why that choice was made (See *Mousseau Bailey*, at para. 52; and *Upcott v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 2, at para. 16).

[71] In *Upcott*, the former Public Service Staffing Tribunal ("the former Tribunal") determined that pressing and urgent operational needs justified the choice of a non-advertised process and supported the flexibility that the *PSEA* gives managers to respond to urgent situations.

[72] In *Mousseau Bailey*, after reviewing the ISC's Staffing Framework, the Board concluded that non-advertised processes are not presumptively bad or improper. It concluded that the rationale in that case for using a non-advertised process was reasonable, since, as in the case at bar, the manager appointed someone who she knew could do the job. I find *Mousseau Bailey* particularly relevant to this case because it

also involved complaints against ISC that alleged that abuse of authority occurred in the choice of a non-advertised process for two positions. Moreover, the Board member determined that there was no abuse of authority in the choice of a non-advertised process.

[73] The complainant in this case submitted that there were no criteria for selecting a non-advertised process for each appointment.

[74] I disagree.

[75] I accept Ms. Simoneau's uncontradicted testimony that she chose non-advertised processes to staff the two positions at issue due to urgent operational needs. The unit had been tasked for the first time with the job of training 10 new PM-01 officers, 5 of whom were bilingual. To get the job done quickly, Ms. Simoneau testified that she had to choose staffing processes that would be expeditious and that would meet the need to address the backlog of 18 000 cases in the Registration and Entitlement Unit, 2500 of which were French applications.

[76] She chose to staff the two vacant PM-04 positions because she had to maintain the production level of the SME team. The candidates, Ms. Chainey and Mr. Lavallée, were already in acting PM-04 program and policy officer positions in the unit and were bilingual (BBB) and familiar with the work.

[77] Further, Ms. Simoneau testified that she relied on the criteria in the ISC Staffing Framework to justify her decision. The framework is a guide for staffing at ISC. Its Module 2 provides guidance to subdelegated managers on factors and associated risks to consider when choosing an advertised or a non-advertised process.

[78] Ms. Simoneau referenced Module 2 and several of the factors that she considered, including the organizational environment and business needs, as well as the need to enhance the capacity of her work unit.

[79] Ms. Simoneau's uncontradicted testimony was that she could not fulfil the bilingual training function in her unit in a timely fashion without extending the two acting PM-04 positions via non-advertised processes.

[80] The Board and the former Tribunal have repeatedly noted that in federal-public-service staffing, there is no preference between an advertised and a non-advertised

process (see *Mousseau Bailey*, at para. 46-51; and *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at para. 25). Further, while the complainant claimed that the processes were unfair because they were not advertised and she did not have the opportunity to apply, the mere fact that a non-advertised process is chosen does not automatically amount to abuse of authority.

[81] While values of transparency, respect, and fairness in the *PSEA* support the need for a manager to explain why a non-advertised process was chosen, a reasonable explanation, supported by evidence, is generally sufficient to quash an allegation of abuse of authority in that choice.

[82] The rationale for choosing non-advertised appointment processes was outlined in the “Articulation of the selection decision” documents and is identical for both candidates. An excerpt of that justification follows:

...Registration is a vital service to Indigenous people as it is the gateway to accessing services and benefits to which status Indians are entitled. Recent S3 [Bill S-3] amendments have generated new policies, directives and procedures in order to support a major change to the Indian Act. The lack of experienced resources with the necessary knowledge of the Indian Act, combined with the time required to train Entitlement Officers on complex files currently prevents us from training new employees since this would result in a considerable loss of production. The officers currently in place already have the knowledge and the experience required to ensure the continuation of our operations and train new employees. In order to meet not only the set objectives, but also to contribute to the mandate of the ministry, it is essential to have officers in place who are capable of responding to the high demands in a timely manner and to provide the necessary training to the officers when required....

...

[83] In light of the Articulation of the selection decision document and Ms. Simoneau’s clear testimony, I find that the respondent provided ample justification for selecting non-advertised processes.

[84] Therefore, I find the complainant failed to establish that on a balance of probabilities, abuse of authority occurred in the choice of process in each appointment process at issue.

2. Was there abuse of authority when the duration of the essential qualification of experience processing complex files was reduced from 24 to 12 months?

[85] Merit is the statutory basis upon which appointments are made in the public service, per s. 30(1) of the *PSEA*.

[86] An appointment is based on merit when the appointee meets the essential qualifications for the work to be performed, including the required official language proficiency.

[87] The PSC's *Appointment Policy* reiterates the language found at s. 30(1) of the *PSEA* in its policy objective nearly word for word. It also enumerates the expected results of public service appointments, including that they be conducted fairly and transparently and in good faith.

[88] The complainant claimed that the two appointments constituted abuse of authority in the application of merit. Most of the complainant's arguments focused on the appointment of Ms. Chainey. Several times in her argument, she noted that the appointment processes were unfair.

[89] However, it is undisputed that the complainant did not meet the merit criteria. She acknowledged that she is not bilingual, and there are no second-language-test results for her in the PSC's database. Therefore, she did not meet the bilingual-imperative requirement for the PM-04 positions and could not have been appointed to either one.

[90] With respect to establishing essential qualifications, in *Visca v. Deputy Minister of Justice*, 2007 PSST 24 at para. 34, the former Tribunal acknowledged that there are no strict rules on how essential qualifications should be established.

[91] Section 30(2) of the *PSEA* confers on management broad discretion to determine a position's essential qualifications and to consider additional qualifications that may be assets, as well as current or future operational requirements and organizational needs.

[92] The SOMC for each PM-04 position was identical and detailed the education, experience, knowledge, abilities, personal suitability, asset education, asset qualifications, and language requirements for each position. It also included an organizational need to ensure that ISC has a workforce that is representative of the

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population it serves and the potential for a preference for candidates who met the merit criteria and self-identified as belonging to one of the four employment equity groups set out in the *Employment Equity Act* (S.C. 1995, c. 44).

[93] The “Evaluation of Biases and Barriers Assessment and Articulation of the Selection Decision” form was also completed for both candidates. It is a fairly new requirement, following June 2021 amendments to the *PSEA*, which requires managers to evaluate their assessment methods and their application in order to identify potential biases and barriers, and explain actions taken to mitigate them.

[94] Further, in the evaluation of each candidate, the subdelegated manager provided a list of all the information sources in the assessment and a narrative assessment explaining how each candidate met the essential criteria for the position.

[95] The Board has accepted operational reasons, including urgent operational needs and staffing stability, as legitimate justification for changing or lowering an essential qualification.

[96] In *Viggers*, the Board found that a manager’s decision to lower the required certification level for vessel-pool masters was not an abuse of authority. It accepted the subdelegated manager’s explanation that it was done because there was an urgent need to staff certain positions.

[97] In *Hutlet v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 73, the Board found no abuse of authority in management’s decision to establish a lower certification requirement, as an essential qualification, to ensure staffing stability. Further, it found that the more stringent qualification was not required for the position in question.

[98] Similarly, in this case, I accept the respondent’s explanation for reducing the required experience processing complex files for the PM-04 positions from 24 to 12 months. In this case, the subdelegated manager responsible for the appointments reviewed the SOMC for the policy and program officer PM-04 position.

[99] It was determined that the essential qualification of 24 months experience processing complex registration files could be reduced to 12 months, given changes to the work environment, and that generally, it was sufficient experience for the positions. Further, the change was applied to the two acting appointments and to the

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indeterminate PM-04 position that was subsequently staffed. There is simply no evidence that the modification was a one-off to favour the appointees or that it was in any way abuse of authority.

[100] While the complainant clearly disagreed with management's decision and has used the complaint process to formalize her disagreement, mere disagreement is not sufficient to meet the threshold of abuse of authority.

[101] Contrary to the complainant's claim, I find no evidence that reducing the number of months required to process complex files from 24 months to 12 was an abuse of authority.

3. Was there abuse of authority due to personal favouritism?

[102] The complainant also alleged that the appointments were evidence of personal favouritism on the part of Ms. Simoneau.

[103] Section 2(4) of the *PSEA* reads as follows: "For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism."

[104] The Board has provided guidance on what "personal favouritism" means. In *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7, the former Tribunal provided several examples of personal favouritism, including selecting someone due to an undue personal interest in the appointment. It would include selecting an appointee because they are a friend, family member, or neighbour or because there is a close personal relationship, including those that may be formed by working closely with others day in and day out. The Board also noted that selecting someone as a personal favour or to gain personal favour are the kinds of personal favouritism that would constitute abuse of authority.

[105] Allegations of personal favouritism challenge the transparency and fairness of staffing processes under the *PSEA*. Further, I agree with the respondent that they are serious because they often contest the integrity of the subdelegated manager involved in the appointment process. When they are raised, they must be grounded in evidence, not pure conjecture.

[106] I accept Ms. Simoneau's uncontradicted testimony that she was vigilant about not mixing her professional and personal lives and that she refrained from having any personal relationships with staff, even going as far as to avoid friending her staff members on social media, to avoid giving them the impression that she was their friend. I find it commendable that Ms. Simoneau takes her role as a public service manager so seriously and that she tries to avoid the grey areas that invariably emerge when managers become friends with the employees who report to them. There is simply no evidence that Ms. Simoneau had any personal relationship with the candidates or that she selected either candidate because of any interest other than a professional one.

[107] Therefore, I find no evidence of personal favouritism in the appointment processes.

4. The complainant's two additional allegations

[108] During the hearing, the complainant made two additional allegations that the respondent alleged were not in her initial complaints, the exchange of information, or her allegations.

[109] The first allegation was that abuse of authority occurred in the application of merit for Ms. Chainey's selection because when she was appointed in August 2023, she did not have 12 months of experience processing complex files.

[110] The second allegation was that Ms. Chainey was not bilingual because the complainant had worked with her and had observed that she could not speak English fluently.

[111] The respondent objected to both allegations and argued that it has the right to know the case to be met and that the complainant had many opportunities to raise these allegations before the hearing, to allow the respondent time to respond to them.

[112] As I said earlier, several times, the complainant raised the point that the process was all new to her and that she was inexperienced and disadvantaged as a result. While she lacked experience, she seemed to be focused on fairness throughout the hearing.

[113] The respondent raised its objection pursuant to the decision in *Burchill v. Attorney General of Canada*, 1980 CanLII 4207 (FCA). *Burchill* protects against

procedural unfairness by ensuring that parties do not try to change or alter the nature of their grievances after referring them to adjudication. Although this case involved complaints and not grievances that must be presented at all levels of a grievance process, I find that the principle that parties must be put on notice as to the content of their grievances applies in this case. In essence, parties have the right to know the case to be met and to be put on notice as to all the allegations that were made.

[114] I find that the objection applies to the second allegation, which was that Ms. Chainey did not meet the bilingual requirement. The complainant had several opportunities to articulate this allegation, in the initial complaints, in the exchange of information, and after the pre-hearing conference, when she was ordered to provide the particulars of what she meant by her alleged “inconsistencies” in the appointment processes. Despite these opportunities, she did not include the allegation that she tried to make for the first time at the hearing, which was that Ms. Chainey did not meet the bilingual requirement.

[115] However, I reject the respondent’s objection to the first allegation as not constituting part of the complaints. The complainant set out this allegation on January 5, 2024. It is clear that from its response on February 2, 2024, that the respondent understood that the claim that Ms. Chainey did not meet the one-year essential qualification requirement was part of the consolidated complaints. It characterized its understanding of this allegation as follows:

...
... The complainant alleges abuse of authority in the establishment of merit for the appointment of Nathalie Chainey. More specifically, that the merit criteria of the position were tailored to the appointee. The complainant further alleges that the appointee does not meet the experience criteria: Minimum of 1 year of experience processing complex registration files and that there was an exaggeration of what the candidate does in the articulation. The complainant claims that this is favouritism as the rules were bent for the appointee.
...

[Emphasis in the original]

[116] Therefore, I find that the respondent was not taken by surprise; nor was this allegation made for the first time at the hearing.

[117] However, I find that the appointee, Ms. Chainey, met the one-year requirement processing complex files from July 2022 to August 2023. The document entitled “Assessment of the Candidate Against Statement of Merit Criteria” notes that she came to the registration area as a program officer in June 2022 and that she processed complex files ever since, even when she began acting as a PM-04 on the SME team beginning in April 2023.

[118] That document describes in detail the types of files that Ms. Chainey worked on, including adoption files, files of non-Indigenous women from before 1987 who gained status by marrying an Indigenous person, and files from individuals without a band number and without registered family members.

[119] The complainant provided no evidence to refute Ms. Chainey’s work on complex files other than to note that Ms. Chainey did not have her delegation. The Board accepts the uncontradicted testimony of Ms. Simoneau that delegation is not a condition for working on complex files and that many PM-03 program and policy officers lack a level 2 delegation. As with Ms. Chainey, it does not prevent PM-03 program and policy officers from working on complex files. As a result, I find no abuse of authority in the application of merit as it pertains to Ms. Chainey’s one year of experience working on complex files.

B. Remedy

[120] The parties made submissions on corrective measures or remedies under ss. 81 and 82 of the *PSEA*.

[121] Since I have found that the complainant failed to establish that abuse of authority occurred in the choice of process and in the application of merit for both appointments, I find it unnecessary to address the parties’ arguments on remedy, including the PSC’s oral submissions.

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

(The Order appears on the next page)

IV. Order

[123] The complaints are dismissed.

April 24, 2025.

**Patricia H. Harewood,
a panel of the Federal Public Sector
Labour Relations and Employment Board**