

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20251103**

**Docket: A-295-24**

**Citation: 2025 FCA 195**

**CORAM: STRATAS J.A.  
MONAGHAN J.A.  
ROUSSEL J.A.**

**BETWEEN:**

**SCOTT T. BYHRE**

**Applicant**

**and**

**PRESIDENT OF CANADA BORDER  
SERVICES AGENCY**

**Respondent**

Heard at Vancouver, British Columbia, on November 3, 2025.  
Judgment delivered from the Bench at Vancouver, British Columbia, on November 3, 2025.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**ROUSSEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on November 3, 2025).**

**ROUSSEL J.A.**

[1] The applicant, Scott T. Byhre, is a Border Services Officer (BSO) employed by the Canada Border Services Agency (CBSA). He worked as a detector dog handler from 2002 until 2022, when his dog retired from service. He was then assigned to other BSO duties, and the detector dog duties were assigned to a new individual. Following this, Mr. Byhre filed three

complaints with the Federal Public Sector Labour Relations and Employment Board under sections 74, 77, and 83 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (PSEA). In essence, he alleged that that decision was unreasonable and constituted an abuse of authority.

[2] In a decision dated April 9, 2024, the Board granted the CBSA's motion to dismiss the complaints on the basis that it did not have jurisdiction to consider them. The Board agreed with the CBSA that the assignment to detector dog handling duties did not constitute an appointment under the PSEA in part because such duties were part of the BSO's job description and, as such, no revocation of appointment occurred when Mr. Byhre was re-assigned to other BSO duties. The Board also found that Mr. Byhre failed to demonstrate the preconditions required for recourse under section 83 of the PSEA or that a lay-off had occurred or would occur.

[3] Mr. Byhre submits that it was unreasonable for the Board to summarily dismiss his complaints on their merits on a motion to dismiss. He claims that the Board misapplied the standard that such motions are decided on and should have referred the matter to a full hearing given the presence of conflicting evidence.

[4] We have considered Mr. Byhre's written and oral submissions and are satisfied that the Board did not commit a reviewable error in its application of the standard to be applied on a motion to dismiss. To determine whether it had jurisdiction to consider the complaints, the Board had to decide whether being assigned to detector dog handling duties constituted an appointment,

since the right to file the complaints at issue is subject to the preliminary condition of an appointment or a proposed appointment having been made.

[5] In making this determination, the Board referred to the relevant jurisprudence and considered the relevant factors. Furthermore, the key information upon which the Board relied to make its decision – such as Mr. Byhre’s job description and the Call Letter of Interest – was before the Board. On the basis of this evidence, the Board could reasonably find that there was no material difference between the facts in the current case and those in *Smith v. President of the Canada Border Services Agency*, 2010 PSST 22, upheld by this Court in *Canada (Attorney General) v. Smith*, 2012 FCA 326, a decision that binds us. In *Smith*, the Public Service Staffing Tribunal (the Board’s predecessor) determined, in circumstances substantially similar to Mr. Byhre’s, that the assignment to detector dog handling duties did not constitute an appointment under the PSEA. In the absence of an appointment, it was reasonably open to the Board to conclude that it did not have jurisdiction to consider Mr. Byhre’s complaints.

[6] Mr. Byhre also submits that the Board’s decision was rendered in a procedurally unfair manner. In particular, he alleges that the Board did not warn him that a decision on the merits of the matter based only on the written record would be a possibility. He also argues that he did not know the case to meet or have the opportunity to present all his evidence to the Board, as a full exchange of information did not occur given the absence of a hearing on the merits of his complaints. Finally, he argues that he was owed substantial procedural fairness rights because of the decision’s impact on him and the limited availability of an appeal.

[7] We are satisfied that the process the Board followed did not amount to a breach of procedural fairness. Contrary to Mr. Byhre's submissions, the Board did not decide the matter on its merits. A decision on the merits would have required the Board to consider, in particular, whether there was an abuse of authority in the appointment process or whether there was an unreasonable revocation of appointment. As it found there was no appointment or revocation of appointment, the Board was not required to do so. Furthermore, the Board has the authority to decide any matter before it without holding an oral hearing pursuant to section 22 of the *Federal Public Sector Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365. Finally, Mr. Byhre had a meaningful opportunity to present his case and have it considered by the Board. He was provided with the CBSA's motion to dismiss, knew from it the evidence to be rebutted, and had the opportunity to file both reply and rebuttal submissions. We see no basis for intervention.

[8] Accordingly, the application for judicial review will be dismissed without costs.

"Sylvie E. Roussel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-295-24

**STYLE OF CAUSE:** SCOTT T. BYHRE v. PRESIDENT  
OF CANADA BORDER  
SERVICES AGENCY

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** NOVEMBER 3, 2025

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
MONAGHAN J.A.  
ROUSSEL J.A.

**DELIVERED FROM THE BENCH BY:** ROUSSEL J.A.

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