

OTTAWA, ONTARIO, Wednesday, January 29, 1997

PRESENT: The Honourable Mr. Justice Allan Lutfy

BETWEEN:

**PIERRE BENGE,**

Applicant,

AND:

**PUBLIC SERVICE COMMISSION  
APPEAL BOARD,**

Respondent.

**ORDER**

WHEREAS the applicant has filed an application for judicial review seeking:

- (1) a declaration that the applicant has the experience required for the position of Senior Intelligence Analyst, AS-04, with the Department of National Revenue, Ottawa, Ontario, Customs Border Services Directorate, Intelligence Services Division, which was to be filled pursuant to closed competition 95-NAR-CC-HQ-CBS-4003, that is, experience in intelligence analysis;
- (2) a declaration that the decision of the Public Service Appeal Board is hypothetical, since it does not specify the qualification that the applicant failed to demonstrate;
- (3) an order reversing the decision of the Public Service Appeal Board and a declaration recognizing the merits of the applicant's candidacy for the position of Senior Intelligence Analyst.

CONSIDERING the submissions made by the parties at the hearing held at Ottawa, Ontario, on January 14, 1997;

CONSIDERING that there are no grounds, within the meaning of section 18.1 of the *Federal Court Act*, on which the Court could intervene.

THE COURT ORDERS:

The application for judicial review is dismissed.

Allan Lutfy

J.

Certified true translation

C. Delon, LL.L.

BETWEEN:

**PIERRE BENGE,**

Applicant,

AND:

**PUBLIC SERVICE COMMISSION  
APPEAL BOARD,**

Respondent.

**REASONS FOR ORDER**

**LUTFY J.**

The applicant has filed an application for judicial review under section 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7, of a decision of the Public Service Commission Appeal Board (the "Appeal Board") dismissing his appeal under section 21 of the *Public Service Employment Act*, R.S.C. 1985, c. P-33, of the proposed appointments resulting from a competition for a Senior Intelligence Analyst position with the Department of National Revenue (the "Department").

The preliminary selection committee ruled out the applicant's candidacy in this competition since he did not meet either of the experience requirements. Under the heading "Experience", the statement of qualifications for the position he was seeking provided as follows:

Experience in intelligence analysis

**OR**

Experience in collecting and analyzing information to determine its implications in an enforcement environment and to predict future trends in criminal activities.

...

On March 7, 1996, the Appeal Board concluded, after reading the applicant's application and curriculum vitae, that he had not demonstrated that he met either of the experience requirements. Accordingly, the Appeal Board was unable to intervene and dismissed the appeal.

The applicant contends that in order to be able to apply under this competition he had to meet only one of the experience requirements. He then asserted that he had experience in analyzing intelligence: he contended that his experience with the Unemployment Insurance Commission from May 1970 to September 1972 as an insurance officer fulfilled this requirement. Since 1972, the applicant has been working primarily as an urban planner or land use planning consultant.

The applicant stated that in order to perform the work of an insurance officer he had to administer and apply the *Unemployment Insurance Act* and interpret the regulations thereunder. In addition, he interviewed claimants, employers and unions. He also did research into eligibility criteria or rejecting employees and employers from unemployment insurance programs. He had to assess the information received in relation to the *Unemployment Insurance Act*. Having regard to the documents in the record

and the applicant's presentation at the hearing before this Court, it is plain that in his mind that work provided him with experience in analyzing intelligence.

The Department was seeking a candidate with the necessary experience to fill the position of Senior Intelligence Analyst. This position is very specific and therefore requires special qualifications. The duties of this position do not consist solely of examining data supplied by the public or by the persons involved in a particular case, as the applicant had done when he held the position of insurance officer. On the contrary, the duties of a Senior Intelligence Analyst require that intelligence that is often obtained by means other than the conventional sources of information be obtained, assembled and analyzed. In addition, the person who holds this position is required to do a comprehensive analysis of the intelligence obtained. Accordingly, in the words used in advertising the competition, this person:

... creates intelligence assessments to assist Senior Management in the planning and formulation of policy at the national and international levels; identifies the intelligence needs of departmental management and enforcement staff; develops operational and strategic intelligence assessments to support enforcement programs nationally and regionally; ...

For these reasons, a candidate was required to meet one of the experience requirements stated. The preliminary selection committee therefore ruled out the applicant's application since he did not meet either of these requirements.

There is nothing in the record on which it could be found that the Department or the Appeal Board required that applicants meet both of the experience requirements set out

*supra*. The applicant based his application for the position solely on his experience in analyzing intelligence, in accordance with the requirements of the competition. Moreover, after the preliminary selection committee examined his application, it concluded that he did not meet either of the experience requirements: he had experience neither in intelligence analysis, notwithstanding his employment with the Unemployment Insurance Commission, nor in the second aspect of the experience required, for which the applicant in fact submitted no information.

Since the Appeal Board committed no error in fact or in law, within the meaning of section 18.1 of the *Federal Court Act*, based on which the Court could intervene in this case, the application for judicial review is therefore dismissed.

Allan Lutfy  
J.

Ottawa, Ontario  
January 29, 1997

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: T-1538-96

STYLE OF CAUSE: Pierre Benge  
and  
Public Service Commission Appeal Board

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: January 14, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE LUTFY

DATED JANUARY 29, 1997

APPEARANCES:

Pierre Benge

THE APPLICANT,  
REPRESENTING HIMSELF

Anick Pelletier

FOR THE RESPONDENT

SOLICITORS OF RECORD:

George Thomson  
Deputy Attorney General  
of Canada  
Ottawa, Ontario

FOR THE RESPONDENT