

2001/11/05

PANEL: Anne Mactavish, Chairperson

[1] After a lengthy hearing in this matter, I rendered a decision on February 5, 2001, wherein I sustained Ms. Nkwazi's complaint against the Correctional Service of Canada. By way of remedy, I ordered that Ms. Nkwazi be reinstated in her contract position with CSC, that she be provided with a letter of reference, and that she be compensated for the financial losses she sustained as a result of what I found to be discriminatory conduct on the part of her employer. The parties were provided with parameters to follow with respect to the calculation of Ms. Nkwazi's losses, but the specific calculations were left to be worked out by the parties. I remained seized of the matter in the event that no agreement was possible.

[2] Ms. Nkwazi subsequently advised the Tribunal Registry that the parties had been unable to come to an agreement regarding several issues. A conference call was held on June 13 in order to review the status of the matter. During the course of the call, Ms. Nkwazi stated that her counsel had provided counsel for CSC with a calculation of what Ms. Nkwazi viewed as her pecuniary losses, and that CSC had paid the amount requested, in full. Nevertheless, Ms. Nkwazi remained concerned that she may be entitled to compensation for items not addressed in her demand.

[3] I suggested that the parties meet in order to see if the matter could be resolved by agreement, failing which a timetable was established for the delivery of submissions from Ms. Nkwazi and CSC. No agreement evidently having been reached, I am now required to address what Ms. Nkwazi considers to be the outstanding issues arising out of my original decision.

I. LETTER OF REFERENCE

[4] In my February 5 decision, I concluded that after Ms. Nkwazi began to complain about the discriminatory treatment that she had encountered within CSC, certain individuals within CSC closed ranks and manufactured concerns with respect to Ms. Nkwazi's performance. As a consequence, the decision was ultimately made not to renew Ms. Nkwazi's casual contract. I further found that after the expiry of Ms. Nkwazi's contract, a prospective employer was advised that CSC had not renewed Ms. Nkwazi's contract, and that this information was a factor in the decision not to offer Ms. Nkwazi

the job. I directed CSC to provide Ms. Nkwazi with a letter of reference that truly reflected her performance as a nurse.

[5] I have been provided with an exchange of correspondence between Ms. Nkwazi's solicitor and counsel for CSC regarding the wording of the letter of reference and the identity of the proposed signatory. CSC has accepted Ms. Nkwazi's suggestion that the letter come from Tim Leis, the Executive Director of the Regional Psychiatric Centre for the Prairie Region. CSC has also agreed to incorporate a list of Ms. Nkwazi's positive attributes into the text of the letter. This list is introduced with the statement that "She has received many favourable comments from members of the Clinical Staff, such as: ..." It is the inclusion of this introductory phrase that offends Ms. Nkwazi. In Ms. Nkwazi's view, the inclusion of this phrase suggests that the reference is not coming from CSC, but rather from the people who testified on her behalf.

[6] Having Mr. Leis sign the letter was Ms. Nkwazi's choice. From his testimony during the hearing, it appears that Mr. Leis had little firsthand knowledge regarding Ms. Nkwazi's clinical skills and her performance as a nurse. Mr. Leis is, therefore, necessarily dependant on the views of others in providing a reference. In my view, when read in its entirety, the wording of the letter of reference as it appears in CSC's August 2 draft reasonably satisfies the spirit of my order, and I am not prepared to make any further order in this regard.

II. EDUCATIONAL ALLOWANCE

[7] It appears the CSC made an error in relation to the calculation of an Educational Allowance to which Ms. Nkwazi was entitled, and that Ms. Nkwazi may have been overpaid by some \$870.28. CSC has advised that it is prepared to waive repayment of the overpayment, and thus it is unnecessary for me to do anything further in this regard.

III. OTHER FORMS OF COMPENSATION

[8] Ms. Nkwazi's submissions allude to a general concern that she has with respect to the way in which her entitlement to compensation for a "Penological Factor" has been calculated. She also mentions a similar concern with respect to compensation in lieu of statutory holidays. She has not, however, identified any particular error in the way in which these issues have been addressed by CSC, nor has she provided any indication of what it is that she says she should be entitled to. Ms. Nkwazi's submissions also have to be considered in light of her earlier statement that CSC has paid her everything that she has asked for in terms of monetary compensation. In all of the circumstances, no further order will be made in this regard.

IV. INTEREST

[9] Finally, Ms. Nkwazi claims compensation for the interest that she has been required to pay in connection with certain unidentified obligations, pending release of the settlement funds. As I understand the situation, CSC has provided Ms. Nkwazi's counsel with the funds that CSC believes satisfy its obligations under the terms of my decision. These funds have been delivered to be held in trust, pending the execution of a Satisfaction Piece by Ms. Nkwazi. Given Ms. Nkwazi's disagreement with the issues identified in this decision, she has yet to sign the Satisfaction Piece, and thus has been unable to access the funds.

[10] My original decision made provision for the payment of interest on the monies payable to Ms. Nkwazi. There is no indication that this has not been paid. What Ms. Nkwazi is now asking is that I go beyond the terms of my original order, and compensate her for other losses that she says that she incurred as a result of CSC's conduct in this matter. In my view, this goes beyond the implementation of my original award, and is beyond my jurisdiction.

[11] Even if I have jurisdiction to deal with this matter, I do not think that such an order is appropriate here, given my conclusion that the letter of reference provided by CSC reasonably satisfies the spirit of my order, and Ms. Nkwazi's failure to persuade me that any of the monetary items remain outstanding.

"Original signed by"

Anne L. Mactavish, Chairperson

OTTAWA, Ontario

November 5, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T538/3399

STYLE OF CAUSE: Beryl Nkwazi v. Correctional Service Canada

RULING OF THE TRIBUNAL DATED: November 5, 2001

APPEARANCES:

Beryl Nkwazi On her own behalf

Denis Bonthoux For Correctional Service Canada

Reference: T.D. 1/01

February 5, 2001