

TD 9/ 87 THE CANADIAN HUMAN RIGHTS ACT

(S. C. 1976- 77, C. 33) (Amended by 1977- 78, C. 22; 1980- 81- 82- 63, C. 111, 143)

HUMAN RIGHTS TRIBUNAL

BEFORE: ROBERT W. KERR
JANE BANFIELD HAYNES
JOHN I. LASKIN

BETWEEN: PUBLIC SERVICE ALLIANCE OF CANADA Complainant - and

TREASURY BOARD Respondent - and

THE CANADIAN HUMAN RIGHTS COMMISSION

ORDER > ORDER The Public Service Alliance of Canada (the "Alliance"), the Treasury Board (the "Board"), and the Canadian Human Rights Commission (the "Commission") attended before the Tribunal on July 15, 1987, and jointly proposed that the Tribunal issue a Consent Order respecting the Alliance's complaint dated the 9th of September 1981, against the Board (the "complaint"). The complaint alleged a violation of sections 7, 10, and 11 of the Canadian Human Rights Act (the "Act").

The parties are agreed that the Hospital Services (the "HS") Group which is predominantly female has received less wages than the General Services (the "GS") Group, a predominantly male group, for performing work of at least equal value.

The parties filed an Agreed Statement of Facts, an Addendum to the Agreed Statement of Facts, and pay rates from the relevant collective agreements, and called an expert witness to explain their proposal.

Upon the consent of the parties the Tribunal orders: PART I - RETROACTIVE PERIOD 1. For the purposes of this Part, the following definitions shall apply:

- (a) "eligible employee" means any person employed by the Treasury Board in the HS Group during the retroactive period.
- (b) "retroactive period" means the period from September 9, 1980 to July 26th, 1987 inclusive.
- (c) "Period of service" means any period within the retroactive period during which the eligible employee received wages and, for greater certainty, includes any period of paid leave.

2. The Board is liable to make a payment to each eligible employee, as specified below, as compensation for back wages arising out of the complaint.

3. Such payment shall be calculated as follows: > - 2 (a) Determine the applicable GS level(s) for each eligible employee

according to the table below: HS Level GS Level HS- 1 GS- 1 HS- 2 GS- 2 HS- 3 GS- 4 HS- 4 GS- 5 HS- 5 GS- 5 HS- 6 GS- 7 HS- 7 GS- 9 HS- 8 GS- 11 HS- 9 GS- 13 HS- 10 GS- 13

(b) Determine the applicable GS rate(s) of pay for the eligible employee, by calculating the average GS rate of pay, in the HS region, weighted by the HS population in the GS zones.

(c) Using the applicable GS rate(s) of pay determine the wages that would have been earned during the eligible employee's period(s) of service.

(d) Determine the wages that would have been earned during the same period(s) of service using the average of the HS pay range weighted by the HS population as of December 31st of each year, in the HS region, for the HS level(s) occupied by the eligible employee.

(e) Subtract the amount calculated in (d) from the amount calculated in (c) and if the difference is less than zero, it is deemed to be zero.

(f) Increase the amount calculated in (e) by 5 percent as compensation for non straight time wages.

(g) Where applicable, increase the amount calculated in (f), by the supervisory differential indicated below:

HS- 3 2.5% HS- 4 2.5% HS- 5 3.5% HS- 6 4.5% HS- 7 4.5% HS- 8 7.5% HS- 9 7.5% HS- 10 7.5%

> - 3 4. (1) Notwithstanding and in addition to the foregoing, the Board shall

forthwith evaluate all existing HS- 1 positions and seamstress positions using the GS classification standard. If the result of such evaluation is to increase the applicable GS level, such increased level shall be substituted for that specified in sub- paragraph 3(a).

(2) The Board will apply the same evaluation process and remedial treatment as specified in paragraph 4(1) to all community health representative positions without prejudice to any position it may wish to take in any future proceedings before this Tribunal or in any other forum.

5. The Board shall pay the sum calculated in paragraph 3 to: (a) all eligible employees employed by the Board and classified in the

HS Group on July 26th, 1987; and (b) all other eligible employees who apply in writing to their actual

or last employing department or agency, or to the Board before December 31, 1990.

6. All monies paid to eligible employees as compensation as specified herein, shall be deemed to be pay for purposes of pension and superannuation.

7. The Board shall send a notice of entitlement, in a form satisfactory to the parties, to:

(a) all eligible employees who have retired from the HS Group during the retroactive period and who are in receipt of a pension under the Public Service Superannuation Act;

(b) all institutions that have been transferred to other jurisdictions since the commencement of the retroactive period; and

(c) any person requesting information respecting this matter. PART II - FUTURE PHASE 8. (1) The Board will undertake a revision of the HS Classification

Standard to correspond to the GS Classification Standard and convert all existing HS positions to it retroactive to July 27, 1987.

(2) The Board shall complete the conversion process within six months of the new classification standard being published. The

effective date of the conversion of all HS positions shall be July 27, 1987.

> - 4 9. (1) The Board shall pay to each HS employee equalization payments for

performing work of equal value to that performed by GS employees. (2) Such equalization payments shall equal the difference between an HS

employee's actual wages and the wages that would have been earned by a GS employee at the matching GS level, in the HS region, weighted by the HS population in the GS zones, provided that the GS rate is higher than the HS rate.

(3) The equalization payments shall be pay for all purposes. PART III - RETAINED JURISDICTION 10. The Tribunal shall remain seized and retain jurisdiction with respect to

those aspects of the complaint to be addressed in the Board's evaluation and revision described in paragraphs 4 and 8(1) hereof. Where the Board's evaluation and revision do not lead to a resolution of those aspects of the complaint such aspects may be brought back to the Tribunal for hearing and determination.

11. The parties have acknowledged that there is underway a review process in light of section 11 of the Act of compensation practices in the federal public service known as the Joint Union/ Management Initiative. The Tribunal retains jurisdiction with respect to the extent to which, if any, the Board's obligation to make equalization payments under paragraph 9 hereof is affected by the completion of that process.

DATED at Ottawa this 15th day of July, 1987. Robert W. Kerr, Chairman Jane Banfield Haynes,
Member John I. Laskin, Member