

31/03/2021

Attention: James Stent
GroundUp

MEDIA RESPONSE - RAILWAY SAFETY REGULATOR (RSR)

Herewith in response to your enquiries dated 31 March 2021.

- 1 Ms Tabane was appointed as Executive: Legal Services and Governance subject to a 6-month probation period. All appointments that are subject to probation are regulated by the Probation Policy ("**Policy**"). The Policy provides for two reviews during the probation period, the purpose of which are to review and assess the employee's performance (skills, conduct, capabilities etc.) and compatibility with the organisation. If the performance is satisfactory, a probation report confirming suitability will be filed. As such, Ms Tabane's appointments was subject to the successful completion of the probation period.
- 2 The confusion seems to relate to the Performance Management Policy. The review of performance during probation is addressed by way of the mechanism set out in the Probation Policy, and the Performance Management Policy does not find application.
- 3 Ms Tabane refused to prepare the requisite documents and subject herself to a performance review as prescribed in the Policy. If an employee's performance is not reviewed and/or assessed, their employment cannot be confirmed because a pertinent question remains unanswered – *Is the employee competent and suitable for the position?*
- 4 The Policy provides for the extension of the probation period in circumstances where the employee's performance is found to be unsatisfactory during the probation period. It thus follows that where a performance review has not been conducted, the probation period cannot be extended. On 10 February 2021, when the Board took a decision to extend Ms Tabane's

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probation, the probation had already expired on 31 January 2021. With that in mind, the Board has referred the matter to its Human Resource Committee for further consideration. In respect for that process, we will reserve further comment to allow the Board room to complete the process.

- 5 It is legally incorrect to state that Ms Kgare refused to comply with the court order. Ms Kgare appealed the Labour Court's judgment due to our view that the Court came to the wrong conclusion and made an adverse finding regarding the Acting CEO's conduct in circumstances where the Performance Management Policy does not apply and was, in fact, not applied in respect of Ms Tabane. However, since Ms Tabane lodged the application, the justice system has been chosen by Ms Tabane which she is rightfully entitled to. Once that happened the Board had to allow the process to unfold.
- 6 We are of the view that the litigation is in the interest of the organisation as it relates to the interpretation of the legislation and policies of the RSR and concerns an operational matter that falls within the powers of the CEO. Furthermore, be advised that we are not aware of any instructions by the Board on 18 March 2021 prohibiting Ms Kgare from appealing the judgement.
- 7 In response to the claim that Ms Kgare laid criminal charges against Ms Tabane, please be advised that this is inaccurate. The charges were brought by the Security Specialist in line with his role and responsibilities and the RSR's Code of Conduct and Ethics. Several attempts were made by the Security Specialist to collect the RSR's property with no success. Your attention is drawn to section 8.12 of the RSR's Code of Conduct and Ethics: *Employees/Board of Directors should return all RSR's information in their possession or control if they cease being employees/Board of Directors and they should sign a statement confirming that they will treat the information as confidential even after they have left the RSR. RSR will take the necessary steps to ensure that its information is protected.*
- 8 I wish to highlight that National Treasury is investigating matters that are predominantly related to the implementation of the Labour Relations Act Section 189 process that was undertaken in

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line with the RSR Financial Recovery Plan. The recovery was critical in restoring the RSR's financial stability which was in question at the time when Ms Kgare was appointed by the Board to act in the capacity as CEO. The financial recovery was initiated following a request for a bailout from the Department of Transport and at present the RSR is in good financial health. I further wish to state that the said investigation was initiated by the former Board and covers various events that predates Ms Kgare's acting as CEO.

- 9 Please be advised that the recruitment process is currently underway and is being handled by the Board. The process concluded in December 2020 with the finalisation of the competencies, validations, and security assessments on 1 February 2021. The so-called debacle ensued after the aforementioned process.

I hope that the above addresses all your queries.

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