

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0055011412:

CHARLES LAND NOTTINGHAM,)	Case No. 475-2006
)	
Charging Party,)	
)	
vs.)	FINAL AGENCY DECISION
)	
YELLOWSTONE COUNTY DETENTION)	
FACILITY,)	
)	
Respondent.)	

* * * * *

I. Procedure and Preliminary Matters

Charles Nottingham brought this human rights complaint alleging that personnel of the Yellowstone County Detention Facility (YCDF) discriminated against him because of his hearing impairment while he was incarcerated at that facility by failing to permit him to contact persons outside the facility to secure his release. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in Billings, Montana on January 31, 2006. Nottingham represented himself. Kevin Gillen, Deputy Yellowstone County Attorney, represented YCDF. Nottingham, Detention Officers Munter, Camarillo, Nelson, Chandler, Detention Shift Sergeant Peters, and Detention Captain McCave all testified under oath at the hearing. In addition, the parties stipulated to the admission of YCDF Exhibits 1 through 10. Based on the evidence adduced at the hearing as well as the argument of the parties, the hearing examiner makes the following findings of fact, conclusions of law, and recommended decision.

In order to accommodate Nottingham’s hearing disability, a court reporter using “Case View” real time transcription was utilized during the hearing. This permitted Nottingham to read all of the testimony as it was presented at hearing. This procedure produced a “dirty” transcript (one that is not certified) of the entire proceeding, which the Hearings Bureau retains in a PDF format (so that it cannot be altered).

II. Issues

A complete statement of issues appears in the final pre-hearing order that was issued in this matter. At the time of the hearing, YCDF stipulated that Nottingham was disabled within the meaning of the Montanan Human Rights Act at the time of the hearing. Thus, the only issue tried was the question of whether YCDF illegally discriminated against Nottingham by failing to accommodate his disability by providing him with adequate means to communicate with persons outside the facility in order to secure his release.

III. Findings of Fact

1. On July 24, 2004, a police officer of the Billings Police Department arrested Nottingham on a charge of abuse of the elderly, a felony. The Billings Police Officer who arrested him erroneously informed Nottingham that the charge was only a misdemeanor and that he would have to stay at least 24 hours at the location of his detention, the YCDF. The Billings Police Department is part of a different governmental entity than YCDF, which is part of Yellowstone County.

2. At the time of his arrest, Nottingham was on probation for two felonies, stalking and “bail jumping.” Upon learning of Nottingham’s arrest on the new charge, Nottingham’s probation officer placed a “no bond” hold on Nottingham, apparently in anticipation of probation revocation proceedings on the two charges. The “no bond” hold prevented any bond from being set for Nottingham and, more importantly, prevented his release from YCDF until a court set bail for him.

3. The Billings Police Officer then transported Nottingham to the YCDF for booking. Nottingham was brought into the YCDF's booking area and was processed through booking by Yellowstone County Detention Officer Shawn Munter. Officer Munter noted that Nottingham was hearing impaired and indicated that fact in Nottingham’s booking record. The Billings Police Department officer never informed anyone at YCDF that he had told Nottingham that Nottingham would be released within 24 hours of his incarceration. In addition, no one at YCDF told Nottingham that his stay in that facility would be short.

4. YCDF has a TTY telephone (text telephone) that permits hearing-impaired persons to make contact with other persons outside the YCDF. At all times pertinent to this matter, the TTY telephone was operational and could have been utilized by Nottingham. However, at no time during the booking process did Nottingham ask to use any telephone, let alone a telephone for the hearing impaired.

5. During the booking process, Officer Scott Nelson, Nottingham's acquaintance, recognized Nottingham and spoke to him. Nottingham asked Nelson to call either Sue Lyons or Deanna Villa, friends of Nottingham, to let them know that he had been detained. Nottingham never asked Nelson to contact Nottingham's employer, nor did he ask Nelson at that time to use either a regular or TTY type telephone. Nelson was aware of Nottingham's hearing impairment.

6. Officer Nelson told Nottingham that he would have to seek permission from his supervisor to make the telephone calls. Later that evening, Nelson contacted his supervisor and the supervisor permitted Nelson to make the telephone calls. Nelson placed calls to both Lyons and Villa, but neither person answered. Villa, however, had a message machine and Nelson left a message for her, in conformity with Nottingham's request, indicating that Nottingham had been detained at YCDF and also indicating how Villa could reach Nottingham at YCDF.

7. After making the phone calls on Nottingham's behalf, Nelson reported the results of the calls to Nottingham that same evening. At the time of the completion of his shift, Nelson had not heard from nor been made aware that either Lyons or Villa had attempted to call Nottingham.

8. Later that evening, while at home after his shift had been completed, Nelson received a phone call from Villa responding to Nelson's earlier call. Nelson reiterated to Villa that Nottingham had been detained at YCDF and further told Villa how she could contact Nottingham at YCDF.

9. On July 26, 2004, Nottingham was arraigned before a City of Billings judge by closed circuit television in a room at YCDF. Other than to provide the room for the arraignment, YCDF had no involvement in the procedure. The judge did not set a bond for Nottingham at that time.

10. Due to the "no hold" bond, Nottingham was not released within 24 hours from YCDF. In fact, the court having jurisdiction over the charge did not set a release bond on Nottingham until August 2, 2004. After the bond was set, Nottingham's friend posted the bond and Nottingham was released at approximately 10:00 a.m. on August 3, 2004.

11. On July 27, 2004, Nottingham penned a "kite" (a written request) to request that he be given an interpreter. Exhibit 1. The note further implies that Officer Nelson could read sign language and that he would be a suitable interpreter.

The response to the request, also noted on the kite, indicates that an interpreter would be provided.

12. On July 28, 2004, Nottingham wrote a second kite, this time to the public defender, indicating that he was being held “incommunicado because the jail system doesn’t allow for communications outside from deaf people.” This kite was immediately forwarded to the public defender’s office as Nottingham requested.

13. At some point during his stay, Nottingham finally asked to use the telephone. Officer Nelson assisted him with his request and took him into the room where the TTY telephone was located. The TTY was fully functional. The officer first let Nottingham use the system by himself, but Nottingham was unsuccessful in getting anyone to pick up the phone on the other end. Under Nottingham’s direction and at Nottingham’s request, Nelson then attempted to place calls across the TTY telephone. Nelson, too, was unsuccessful, getting only answering machines.

14. Prior to his incarceration, Nottingham was employed full time by Windstone Medical in Billings. Though he was released on August 3, 2004, he made no attempt to contact his employer until he sent an e-mail on August 9, 2004, 6 days after his release. Exhibit 3. In response to that e-mail, Nottingham’s employer informed him that he had been terminated and his last check had been sent to him on August 5, 2004.

IV. Opinion¹

Montana law prohibits denial of government services to an individual because of disability, Mont. Code Ann. § 49-2-308(1)(a), and discrimination in performance of government services based on disability, Mont. Code Ann. § 49-3-205(1). Nottingham has the ultimate burden of persuading the fact finder that he was the victim of discrimination. *St. Mary’s Honor Ctr. v. Hicks* (1993), 509 U.S. 502, 507; *Heiat v. Eastern Montana College* (1996), 275 Mt. 322, 328, 912 P.2d 787, 792.

YCDF does not contest that Nottingham is disabled within the meaning of the Montana Human Rights Act. Nottingham has not suggested nor produced any evidence to show that any of YCDF’s written or practiced policies actively encourage or passively condone discrimination against persons with hearing disabilities. Rather, Nottingham’s very limited issue in this case is that while he was incarcerated at

¹ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

YCDF, he was effectively held incommunicado because of his hearing disability and that this led to the loss of his job. The substantial evidence in this matter, however, shows that Nottingham was not denied access to means to communicate with persons outside the facility *at all*. And he most certainly was not denied such access based on his hearing impairment.

Nottingham has not claimed, and the evidence does not show, that YCDF personnel misled him into believing that there was no means by which a hearing-impaired person could communicate to the outside world from YCDF. Nottingham was made aware of his right to communicate with persons outside YCDF. Even though Nottingham was aware that he could use a telephone or any type of communications device for the hearing impaired until several days after his incarceration. When he did ask, he was given the opportunity to utilize a TTY phone that appears to have been in working order. Nottingham has cited no case law or statute, and the hearing examiner is unaware of any requirement, that YCDF had a duty specifically to apprise Nottingham that they had a TTY phone available for his use, in the utter absence of any request from Nottingham to use any kind of phone. Simply put, there is no authority for Nottingham's proposition that YCDF personnel had to be (in essence) "mind readers" in order to avoid discrimination.

Nottingham's testimony that he asked for materials to send letters to persons outside the detention facility, but did not receive such materials until two days after the request, does not show that he was kept incommunicado, particularly since he was never denied the use of a telephone to make his communications. There has been no showing, nor has Nottingham suggested, that the failure to deliver the material to write letters was due to his disability. Rather, any such delay was due to the fact that such material is provided to the inmates at YCDF only on certain days of the week. Had this been the only means by which Nottingham was permitted to communicate with the outside world, his case might have merit, in light of the fact that YCDF knew that Nottingham was hearing impaired. Because other means were available to Nottingham to communicate to persons outside the YCDF and other accommodations were made to help Nottingham communicate with persons outside YCDF (such as Nelson's efforts to contact Lyons and Villa) the two-day delay in providing the materials for letters cannot be considered a causal factor in this claim of discrimination.

Nottingham's testimony that, in essence, he repeatedly asked YCDF employees to help him use the phone and/or contact people outside is simply not credible. Had Nottingham been so intent on contacting his employer and seeking his release, he most certainly would have asked Officer Nelson to help him with the TTY phone the

very evening of his booking, or at least within the first two days of his incarceration. Indeed, Officer Nelson was clearly aware of Nottingham's hearing disability and was a friend of Nottingham's. Had Nottingham asked any sooner to use the TTY phone (or any phone, for that matter), Nelson would undoubtedly have intervened, as he did when Nottingham first asked him to contact Lyons or Villa. In fact, as YCDF's evidence demonstrates, each time Nottingham asked for a means to communicate with someone outside, he was given that opportunity, even though in one instance the county had to go above and beyond its ordinary protocol to assist him (Nelson contacting Lyons and Villa on Nottingham's behalf). YCDF reasonably accommodated Nottingham's desire to speak with someone outside the jail. Nottingham has failed to meet his burden of persuasion to show that YCDF discriminated against him based on his hearing disability.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.
2. YCDF did not illegally discriminate against Nottingham during his detention at YCDF.

VI. Order

Based on the foregoing, judgment is entered in favor of Yellowstone County Detention Facility and Charles Nottingham's complaint is dismissed.

Dated: March 17, 2006

/s/ GREGORY L. HANCHETT
Gregory L. Hanchett, Hearing Examiner
Montana Department of Labor and Industry