

THIRTY-SIXTH ORDINARY SESSION

***In re* BA**

Judgment No. 268

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mrs. Roberte Bâ on 23 April 1975, the WHO's reply of 20 June 1975, the complainant's rejoinder of 30 August 1975, the WHO's surrejoinder of 6 October 1975, the complainant's communication of 26 October 1975 and the WHO's communication of 19 November 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, section 20.2 of Part II.5 of the WHO Manual and sections 940, 950.4, 960, 990, 1010, 1030 and 1045 of the WHO Staff Rules;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows :

A. On 1 June 1966, the complainant who was originally recruited in March 1965, was appointed as a secretary on a two-year appointment in the office of the WHO Representative in Dakar. Her appointment was extended by two-year periods in 1968, 1970 and 1972. During her appointment she received salary increments each year. In April 1974, as a result of an unfavourable annual report by her supervisor, Dr. Atayi, the WHO Representative in Dakar, the Regional Director told her that her appointment would not be renewed. In a letter of 25 April 1974 he said: "In view of your unsatisfactory work performance and your poor working relations with your supervisor, I am sorry to have to inform you that, in accordance with Staff Rule 940, I do not intend to offer you a further appointment after 31 May 1974."

B. In the belief that her performance report was mistaken and that her supervisor's assessment had been motivated by animosity due to her refusal to respond to the advances she alleged he had made to her, the complainant appealed to the Regional Appeals Board on 1 May 1974 against what she regarded as unfair dismissal. In its report of 15 July 1974 the Regional Board acknowledged the Regional Director's authority to terminate a fixed-term appointment in accordance with Staff Rule 940, but criticised the regional administration on the following grounds: the reference to "unsatisfactory work performance and [her] poor working relations with [her] supervisor" in the letter notifying the decision not to renew her appointment suggested that she was being dismissed and caused her moral prejudice; the WHO Representative and the Regional office acted "far too hastily" and committed procedural errors in deciding not to renew her appointment; and it would have been reasonable to ask for further appraisals of her performance every three months instead of deciding at once not to renew her appointment. The Board accordingly recommended paying her compensation in lieu of two further months of notice and giving her a certificate of service which should not include any of the adverse comments made in the letter of 25 April 1974. By letter of 19 July 1974 the Regional Director informed the complainant that he endorsed the Board's recommendations but added that his decision not to offer the complainant a new appointment had been motivated by his desire to prevent an atmosphere of tension harmful to efficiency from arising in the Representative's office.

C. Being dissatisfied with the outcome of her appeal to the Regional Appeals Board, on 9 September 1974 the complainant appealed to the Headquarters Board of Inquiry and Appeal. In its report of 6 January 1975 to the Director-General the Board held that the decision not to renew the complainant's appointment fell within the scope of Staff Rule 940 and was therefore administratively correct, but was not morally justified. It held that where, as in the present case, a staff member and his supervisor were personally incompatible it would be reasonable to consider a transfer, if possible, and the complainant should receive compensation for the serious material and moral prejudice she had suffered. It made the following recommendations: "5.1. since Mrs. Bâ performed her work satisfactorily for eight years up to May 1973 and her subsequent dispute with her supervisor was mainly due to personal incompatibility and not to any lack of professional competence on her part, the Board recommends that

the Regional Director's decision not to renew her appointment should be quashed on the grounds that it was not warranted. Accordingly the Board recommends tacit renewal of her appointment with all the material and administrative consequences that that entails. 5.2. Taking account of the lack of impartiality apparent in Mrs. Bâ's case, the Board recommends that the relevant appraisal should be removed from her personal file. 5.3. Should it prove impossible to keep Mrs. Bâ in the Dakar office in view of the personal incompatibility between her and the present representative, the Board recommends that the WHO should take active steps to find her an equivalent post in one of the other United Nations offices in Dakar (UNDP, UNICEF, or UNESCO) or with the Organisation of Senegal Riparian States to enable her to pursue her professional career without disruption.." After examining the report of the Headquarters Board of Inquiry and Appeal, on 30 January 1975 the Director-General wrote to the complainant: "I cannot endorse recommendation 5.1 for the "tacit" renewal of your appointment: your appointment terminated on 31 May 1974 in accordance with Staff Rule 940 and cannot be extended since, as the Board realised, you cannot be reinstated in the Dakar office. I have, however, decided to authorise extension of the period of notice from three to six months as compensation for the procedural errors committed in deciding not to renew your appointment. As to recommendation 5.2, the relevant appraisal will be deleted from your personal file. As to recommendation 5.3, it is for you, not the WHO, to find a post with some other organisation or company, but if you wish you will be given a certificate of satisfactory service to help you in finding other employment." The complainant now impugns the final decision contained in the Director-General's letter of 30 January 1975.

D. The complainant claims: (a) strict application of the recommendations of the Headquarters Board of Inquiry and Appeal; (b) reinstatement in her post on a five-year appointment at a higher grade; (c) payment of the salary increases granted since December 1973; and (d) compensation amounting to 15 million CFA francs for the serious injury and moral and material prejudice she has suffered. Should these claims fail, she claims compensation amounting to 30 million CFA francs for "unlawful interruption" of her professional career "due to defamation" after nineteen years' service as secretary, including nine with the WHO, and a certificate of satisfactory service.

E. In its reply the WHO points out that although the complainant alleges "unfair dismissal" the present case relates not to dismissal but to non-renewal of a fixed-term appointment, a matter within the Administration's discretion. The complainant's accusations concerning Dr. Atayi's attitude towards her have been denied by Dr. Atayi and she has not proved them. The reason why the decision not to renew her appointment was upheld is that relations between her and her supervisor were undeniably poor and therefore harmful to the efficiency of the service. As to her claims for compensation, the sums of 15 and 30 million CFA francs would be equivalent to no less than ten and twenty years' final salary respectively. The WHO asks the Tribunal to dismiss the complaint.

F. In her rejoinder the complainant observes that Dr. Atayi has since been transferred from Dakar and therefore no obstacle now stands in the way of her reinstatement in the Dakar office. In its surrejoinder the WHO replies that in the meantime her post has been filled.

CONSIDERATIONS: The complainant may not rely on the provisions of Staff Rule 1010: according to Staff Rule 960, to which those provisions refer, they apply solely to the case - which is not that of the complainant - of a staff member during an initial or extended probationary period.

The complainant joined the service of the WHO as a secretary in Dakar in March 1965. With effect from 1966 she held a two-year appointment, which was extended in 1968, 1970 and 1972. She is impugning the decision not to extend her appointment in 1974. Her case therefore falls within the scope of Staff Rule 940, which is entitled "Completion of fixed-term appointment" and reads:

"Fixed-term appointments terminate automatically on the completion of the agreed period of service in the absence of any offer and acceptance of extension. However, a staff member serving under a fixed-term appointment of one year or more, whom it has been decided not to reappoint, shall be notified thereof at least one month and normally three months before the date of expiry of the contract. A staff member who does not wish to be considered for reappointment shall give notice of his intention at least within the minimum period specified above."

The decision whether or not to extend a fixed-term appointment on its expiry falls within the discretionary authority of the Regional Director and, on appeal, within that of the Director-General. By reason of its very nature it is subject to only limited review by the Administrative Tribunal. In general the Tribunal will not interfere with that decision unless it was taken without authority, or violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

In the present case the Regional Director based his decision not to extend the complainant's appointment on two reasons: (a) unsatisfactory performance, and (b) poor relations with her supervisor.

In its submissions the WHO has declared its intention not to rely upon the first reason. The impugned decision should therefore be regarded as based solely on the complainant's poor relations with her supervisor, Dr. Atayi - whose secretary she was - which prevented their working together in the interests of efficiency.

In view of the contradictory allegations made by the complainant and by Dr. Atayi concerning the functioning of the branch between the latter's arrival in Dakar and the complainant's forced departure and the absence of any thorough on-the-spot inquiry at the time, it is impossible to determine exactly what happened.

It appears, however, from the documents in the dossier that Dr. Atayi's predecessors as head of the branch were consistently satisfied with the complainant's performance over a period of eight years, that Dr. Atayi never addressed any serious criticisms to the complainant concerning the actual operation of the branch and that, as the Headquarters Board of Inquiry and Appeal rightly observed, the mistakes attributed to the complainant by her supervisor were fairly unimportant and, even if proved, were not of a kind which would normally have caused any serious disturbance in working relations.

Lastly, as the Board of Inquiry and Appeal also pointed out, the regional administration failed in particular to carry out a thorough and impartial inquiry, which would have been possible shortly after the incidents in question, and merely endorsed the report made by Dr. Atayi, whose impartiality was in dispute.

It appears from the circumstances of the case taken as a whole that the decision not to renew the complainant's appointment was not based on the interests of the office and that the Director-General's decision should be quashed on that first point.

Since in the circumstances the WHO cannot offer the complainant a further appointment in Dakar, the quashing of the decision should give rise to a right to compensation. In view, among other things, of the complainant's length of service and satisfactory performance, a fair assessment of all the circumstances of the case will be made by granting her compensation equivalent to twelve months' salary. Hence the impugned decision, which provides for payment of compensation equivalent to only six months' salary, should be corrected on this second point.

DECISION:

For the above reasons,

1. The Director-General's decision of 30 January 1975 is quashed.
2. The World Health Organization shall pay the complainant compensation equivalent to twelve months' salary.
3. The Organization shall pay the complainant half a month's salary as costs.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André, Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 12 April 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

