

SEVENTIETH SESSION

In re GLENN

Judgment 1067

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Clark Glenn against the Pan American Health Organization (PAHO) (World Health Organization) on 11 July 1990, the Organization's reply of 17 August, the complainant's rejoinder of 3 October and PAHO's surrejoinder of 2 November 1990;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, PAHO Staff Rules 230 and 320.4, WHO Manual provisions II.1.40.1 and .2 and PAHO/WHO Manual provision II.1.95;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant joined the PAHO on 1 January 1977 as a supply officer at grade P.2. He was given further duties as acting head of a procurement unit, a P.4 post, from 15 July 1977 to 13 December 1978. On 1 October 1980 he was promoted to a P.3 post, still as a supply officer, in the Procurement Office (APO). Descriptions of his post were made in August 1984 and July 1989. His work was highly rated.

On 14 September 1988 he applied under Staff Rule 230 for review of the grading of his post. On 22 September the Department of Personnel asked his supervisor, the Chief of APO, to bring the description of his post up to date. In a memorandum of 7 October the complainant himself set out the duties his supervisor might mention. On 10 October his supervisor passed on that minute to the Department of Personnel, endorsing his application for regrading and explaining that there was no need to revise the description since the one in force held good.

In July 1989 a new description was issued. The upshot of a "desk audit" of his duties and responsibilities, interviews with him and his supervisor, and an inquiry by the classification unit of the Department was notification from the Chief of Personnel on 1 August 1989 that his post would not be regraded. On 10 October 1989 he lodged an internal appeal, in its report of 23 March 1990 the Board of Appeal recommended against regrading and by a letter of 23 April 1990, the decision impugned, the Director told him of the rejection of his appeal.

On 27 June 1990 the complainant asked the Chief of Personnel to produce the classification unit's findings. The Chief of Personnel refused in a letter of 3 July 1990, adding that the information he wanted would be disclosed if the Tribunal so ordered.

B. The complainant sees the present dispute as the culmination of over ten years of unfair treatment by the Organization. It began when he had to spend fifteen months doing P.4 work in charge of the procurement unit: that was in breach of Staff Rule 320.4, which says that no staff member may "assume temporarily the responsibilities of an established post of a higher grade ... for more than 12 months". Instead of putting things right by appointing him to the higher post in December 1978 he was relegated to supply officer at P.2. He was wronged again in October 1980 when appointed to the other post for supply officer only at P.3, the very post that the Tribunal had declared in Judgment 342 (*in re* Price No. 2) in 1978 should be regraded P.4.

When he applied for regrading he expected the PAHO to keep to the procedure which a brochure from the Department of Personnel had explained and which, for one thing, required the supervisor to fill up a form providing information on changes in the duties of the post. Since his supervisor failed to do so the procedure was flawed.

As he explained in his memorandum of 7 October 1988 to his supervisor, the Chief of APO, his new duties call for experience of many fields, such as management, technology and medicine, and his supervisor, who made no change in the text of that memorandum, thought that it afforded adequate grounds for the regrading. But the PAHO overlooked the essential facts it contained, and that, too, was a flaw in the Director's decision.

His post is at the same level of responsibility as that of a P.4 medical supply officer at the headquarters of the World Health Organization, and indeed the descriptions of the two posts are much the same. The difference in grading offends against the stipulation in WHO Manual provision II.1.40.1 that "there should be equal pay for equal work" and in II.1.40.2 that "posts of approximately equal difficulty and responsibility and requiring approximately the same qualifications should be placed in the same class, given a common title and assigned to the same pay level ...".

Lastly, the refusal to disclose the classification unit's findings is in breach of due process.

The complainant seeks disclosure of the reasons for the refusal of regrading, the regrading of his post to P.4 as from 3 August 1989 and an award of costs.

C. In its reply the PAHO submits that there is nothing wrong with the grading of the complainant's post. It distinguishes between the grading of that post and that of other posts that have borne the same title at various times: the only material issue is whether the description and the grading of his post made in 1988 were correct.

The issues on which the Tribunal ruled in Judgment 342 are res judicata and not open to further discussion. Besides, by the time that the complainant came to be appointed to his post in 1980 a new description of it had been approved. In any event the complainant accepted the appointment without reservations.

The procedure followed was in all essential respects as prescribed. Thus the complainant's first- and second-level supervisors made written comments on his application, there were a desk audit and interviews, and the Advisory Committee on Post Reclassification made unanimous findings on the strength of an assessment by grading experts and in line with established criteria. It does not matter that the head of Procurement failed to fill up the questionnaire since he believed that the post description in force was satisfactory. The whole matter was looked into thoroughly.

There are significant differences, which the PAHO explains, between the complainant's duties and those of a supply officer at WHO headquarters.

The Advisory Committee's findings are confidential, though the Organization will of course disclose them if the Tribunal so orders.

D. In his rejoinder the complainant points out that the res judicata rule cannot apply to the complaint ruled on in Judgment 342 since he was not a party to that complaint. The PAHO sought to lower the level of responsibility of the post after Judgment 342 ordered that it should be P.4, but his own acceptance of the post in 1980 does not bar him from seeking regrading later. His duties were greater and more complex and, for one thing, required him to stand in for the chief of the unit, a P.5 official, in his absence.

He enlarges on his contentions that the grading standards are not evenhandedly and fairly applied in the PAHO and in the WHO; that the Organization should have disclosed to him his supervisors' comments and the findings of the Advisory Committee; that it has failed to show that for its decisions it took due account of essential information he supplied on the similarity between the PAHO and WHO posts and on his own duties.

E. In its surrejoinder PAHO answers some of the pleas developed in the rejoinder and enlarges on the merits. Among other things, it seeks to distinguish the issues the Tribunal ruled on in Judgment 342 from those that are material in this case; it maintains that his allegation of a procedural flaw in his supervisors' failure to answer the questionnaire is groundless, the questionnaire being relevant only for posts in the General Service category; it contends that he has adduced no evidence of any increase in duties and responsibilities that might warrant the regrading he seeks; and it points out that officials commonly stand in for absent supervisors without thereby becoming entitled to any upgrading of their own posts.

CONSIDERATIONS:

1. The complainant joined the PAHO on 1 January 1977 as a P.2 supply officer. On 1 October 1980 he was promoted to P.3 on post 239, still as a supply officer. On 14 September 1988 he applied for the re-examination of the classification of his post under Staff Rule 230, which reads:

"A staff member may at any time request a re-examination of the classification of the post which he occupies ..."

PAHO/WHO Manual provision II.1.95 further provides that "When substantial changes in the duties and responsibilities of a post occur which may effect a change in the classification", the incumbent may request a study by the classification unit of the Department of Personnel.

On 22 September 1988 the unit accordingly asked the head of his branch, the Chief of the Procurement Office (APO), to provide a revised job description for post 239 showing the changes in duties and responsibilities as well as justification for the regrading. On 7 October 1988 the complainant sent the Chief of APO a memorandum in which he recommended replies showing that greater technical expertise was needed to meet the demands of other departments. He gave a list of "new responsibilities", which included "performing research into product usage, design, technical application and program/project applicability" and "co-ordinating planned, projected and emergency requirements with technical departments". He concluded that "the new activities require a higher degree of procurement expertise, a more detailed knowledge of medical, clinical and biomedical technology and increased managerial experience and skill".

When forwarding the complainant's memorandum to the Department of Personnel the Chief of APO stated that it afforded justification for his request for reclassification, observed that a revised post description was unnecessary because the current one covered the areas the complainant mentioned, and added that to his mind the level of knowledge required and the complexity of the work merited reclassification of the post.

In due course the classification unit carried out a desk audit and submitted its findings to the Advisory Committee on Post Classification. The Committee in turn reported to the Director, on 20 July 1989. A new post description was issued on 28 July 1989 and on 1 August 1989 the complainant was informed that his post was properly classified at P.3.

The merits

2. The grading of a post depends on evaluation of the work done and the degree of responsibility it involves. The evaluation must be done by those who by training and experience are able to apply the relevant technical criteria and the Tribunal will interfere with a decision based thereon only where the organisation is shown to have applied wrong principles or drawn illogical conclusions.

3. In his request for review of his classification the complainant stated that it was based on the fact that similar United Nations posts for supply officers were classified at higher grades. He cited in support of this contention Manual provision II.1.40.2 which says that "posts of approximately equal difficulty and responsibility and requiring approximately the same qualifications should be placed in the same class, given a common title and assigned to the same pay level ...".

4. Whether two posts are "approximately equal" within the meaning of this provision is an issue of fact. The headquarters Board of Appeal was unanimous in finding differences between the description dated 3 August 1984 of P.3 post 239 and the description provided to it by WHO headquarters in Geneva on P.4 post 1.2981 for a medical supply officer. Having evidence before it to cast doubt on the Board's finding on that issue, the Tribunal holds that comparison does not bear out the complainant's view.

5. In his request the complainant further argued that the post he held had formerly been given a higher grade, and he cited the ruling the Tribunal made in Judgment 342 (in re Price No. 2) of 8 May 1978.

There are several reasons why that ruling does not help his case. First, it turned on circumstances and irregularities that are not present in the instant case. Secondly, the headquarters Board of Appeal found differences between the descriptions of post 239 dated 22 September 1976, 14 April 1979 and 3 August 1984. And thirdly, the PAHO adopted in 1984 the International Civil Service Commission Master Standard, which for certain occupational groups, including supply officers, replaced the former methods of evaluation with "factor analysis".

6. The complainant raises other points. He alleges that the PAHO acted in breach of Staff Rule 320.4 in that it required him to assume the responsibilities of a higher post for a period exceeding 12 months.

The point is irrelevant because the reclassification procedure is, not with the position of the incumbent, but with the post.

7. The complainant submits that the PAHO failed to follow the procedures laid down in its own rules in that the Chief of APO did not complete the questionnaire sent to him by Personnel about changes in the duties and responsibilities of post 239. The questionnaire sought information on the number and grade of the post, the proposed grade, the present and proposed titles, changes in the overall programme, new responsibilities and activities under the programme, their effect on levels of complexity, difficulty and overall responsibility, and so forth.

Since the Chief of APO took the view that there were no duties over and above those already set out in the post description, he must have thought either that filling up the questionnaire would serve no purpose or that it applied only to posts in the General Service category, an argument that the PAHO puts forward in its surrejoinder, and that the complainant has therefore not had an opportunity to answer. Be that as it may, the failure to complete the questionnaire does not in itself constitute an irregularity such as to vitiate the reclassification procedure.

8. Lastly, the complainant contends that the PAHO's refusal to disclose the classification unit's findings amounted to denial of due process.

He made his request for disclosure on 27 June 1990. On 3 July the Chief of Personnel replied that the Board of Appeal had already submitted its findings and recommendations and that the Director accepted them, but that there would be no objection to providing the documents for the Tribunal if necessary. The complainant had been told on 1 August 1989 that the re-evaluation had been completed and that after analysis of his duties and responsibilities it had been determined that his post was properly classified. There is no rule in the procedure which requires disclosure of the classification unit's findings. Besides, the complainant took no steps to obtain them before lodging his appeal of 10 October 1989 to the Board of Appeal, which found no evidence of failure by the Administration to consider all the relevant facts. The complainant has not applied to the Tribunal for disclosure of the unit's findings, but he asks the Tribunal to infer that the PAHO refuses to disclose them because they would support his position. The Tribunal holds that the evidence already before it is sufficient to enable it to rule on the case and there is therefore no need to order such disclosure.

DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mella Carroll
William Douglas
A.B. Gardner