

SEVENTY-EIGHTH SESSION

In re SAVOPOULOS

Judgment 1378

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Norma Savopoulos against the Pan American Health Organization (PAHO) on 3 December 1993, the PAHO's reply of 8 April 1994, the complainant's rejoinder of 24 May and the Organization's surrejoinder of 29 July 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, 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, a citizen of the United States, joined the staff of the PAHO at its headquarters in Washington D.C. in 1979. She holds a G.6 post as an accounting assistant in the Staff Payments Section of the Department of Finance.

On 1 November 1991 the Organization announced by notice 130 the vacancy of two posts at grade G.7 for accounting technicians in the Department. The posts were numbered 179 and 3575, and the complainant applied for both. The one at issue in this case is 3575.

A Selection Committee of five members was set up to make a recommendation to the Director for appointment. Some time before it met three officials belonging to the Professional category of the Department's staff called the complainant for interview. At the interview they put her through a test to which she had to give oral answers.

The Selection Committee met on 30 March 1992. Four of its members recommended appointing Mrs. Helena Morelli to post 3575, and the fifth Miss Julia Claudio. On 7 April the PAHO appointed Mrs. Morelli. By a letter of 25 June the Chief of the Manpower Planning and Staffing Unit informed the complainant that she had been unsuccessful. On 25 August 1992 she gave notice of appeal to the Board of Appeal. In its report dated 9 July 1993 four of the Board's five members recommended rejecting her appeal. By a letter of 3 September 1993, which is the impugned decision, the Director of the Organization informed the complainant that he was rejecting her appeal.

B. The complainant observes that according to Judgment 107 (in re Passacantando) every candidate "must be treated on an equal footing" throughout the process of selection. Here that rule was not observed. When the PAHO gave notice of the interviews it failed to warn that there would be an examination. In the few days before her turn came others were interviewed and she learned from them that "an exam formed part of the interview". So the first few to be interviewed were taken by surprise, whereas the others knew what to expect and had a chance to prepare. There is no guarantee that the applicants were put questions in the same terms; yet the phrasing of a question may influence or even suggest the answer. The candidates were allowed to use notepaper; whereas the complainant was not allowed to keep the paper used at least one other candidate was; so there too the treatment of them was not equal, the examinations being carried out haphazardly. It was also improper that not every candidate had to take the examination and "that the interviewers knew the identity of the person taking the exam": Judgment 1077 (in re Barahona) said that examiners might be influenced by knowing the identity of candidates.

Paragraph II.3.344 of the PAHO Manual reads:

"Selection Committee members are responsible for using and applying a relevant, consistent and fair process for evaluating and making meaningful distinction among candidates, with the objective that the selected candidate best meets the needs of the Organization."

In this instance the "receiving unit", which was the Department of Finance, rated fourteen of the candidates and submitted a "rating sheet" to the Selection Committee. It ranked the successful candidate twelfth and the complainant third. Yet the unit recommended Mrs. Morelli and the Selection Committee agreed, in blatant breach

of II.3.344. The Board of Appeal failed to determine the origin of the rating sheet.

The complainant asks the Tribunal to quash the appointment of Mrs. Morelli, order a new process of selection and award her damages and costs.

C. In its reply the PAHO submits that the process of selection was proper and fair.

The interviews consisted of discussion with the candidate about background and experience and included questions on accounting. The sole purpose of the questions was to see whether the candidate had a thorough knowledge of accounting; they did not amount to examination. Though one candidate declined to be interviewed, that does not warrant alleging that "not everyone" had to answer the questions. It is wrong to say that the candidates taken first were caught out: what they were asked was just questions to which the answers were part of any accounting technician's general knowledge. The Board of Appeal held that the Staff Rules did not preclude such interviews.

Judgment 107 is irrelevant because in the case it ruled on the competition had expressly provided for a test. Judgment 1077 differed, too, since in that case the PAHO set a competitive written test.

It was the representative of the Staff Association on the Selection Committee who expressed the view that the receiving unit had drawn up a rating sheet. In fact no rating sheet formed part of the records, or came from the Department of Finance, or was put to the Selection Committee as a whole. Though the representative did somehow get hold of such a sheet it was unsigned, undated and incomplete. It is therefore immaterial.

D. In her rejoinder the complainant maintains that the interviews took the form, not of discussion, but of questions and answers. Since on the PAHO's own admission the purpose was to test general knowledge of accounting, the exercise did amount to examination and so should have come up to the standards the case law sets.

Although the rating sheet was not part of the official records, the staff representative did show it to the other members of the Committee: it lists the candidates by name and obviously refers to post 3575.

All the candidates turned up for interview even though one of them refused to undergo the examination.

E. In its surrejoinder the Organization observes that the interviews, which were only one factor of the selection, were quite proper and amounted to neither "test" nor "examination". Even supposing that they did, the process was impartial and put the complainant at no disadvantage. On her own admission she learned from others who had already been interviewed that "an exam formed part of the interview". So she herself had "a chance to prepare" and any inequality of treatment can only have helped her. It is irrelevant to the fairness of the process that some candidates kept their notepaper and others did not. The cases the complainant is relying on are distinguishable on the facts. The Board of Appeal did not err in failing to determine the origin of the rating sheet: the sheet was not part of the official records. Besides, even if it had been it would not have helped the complainant since it did not put her first.

CONSIDERATIONS:

1. The complainant was holding a G.6 post as an accounting assistant II in the Department of Finance of the PAHO on 1 November 1991 when vacancy notices were issued for two G.7 posts for accounting technician I in the same department. She applied for both posts but was unsuccessful. It is her rejection for one of them, No. 3575, that she is objecting to in this complaint.

2. The selection procedure as set out in paragraphs II.3.340-342 of the PAHO Manual may be summed up as follows:

(a) The Selection Committee is presented with a short list of internal candidates and of the external candidates favourably evaluated by the receiving unit, and with a list of the external candidates not included among the preferred ones.

(b) The Department of Personnel prepares for the Selection Committee complete documentation on the short-listed candidates, including reports appraising the performance of internal candidates, reports on interviews with external candidates and written evaluations of candidates by the receiving unit.

(c) Candidates are "interviewed by a person who is familiar with the particular subject field concerned, preferably in the area of the duty station ... [and] written reports of such interviews [are] completed and forwarded to the Department of Personnel so that the report may become part of the documentation available to the Selection Committee".

3. Before the Selection Committee met to consider its recommendation for appointment to the post at issue in the present case, three Professional category officials belonging to the Department of Finance interviewed candidates for the post. The candidates were given the text of a "fact pattern" and were then asked oral questions on accounting, being allowed to use notepaper for calculations.

4. The complainant alleges, first, that that amounted to an examination, and indeed one that did not ensure equal treatment for all the candidates and that was therefore in breach of the principles the Tribunal declared in Judgments 107 (in re Passacantando) and 1071 (in re Castillo). Secondly, she contends that the identity of the candidates was known to the examiners and that was contrary to what the Tribunal required in Judgment 1077 (in re Barahona).

5. The Selection Committee met on 30 March 1992. Four of its members recommended appointing the candidate who was ultimately selected, while the fifth - the representative of the Staff Association - recommended someone else. In his report the dissenting member stated that the selection procedure was normal and that all the relevant documents had been available. But he observed that the "receiving unit did not use its own rating sheet which showed selected candidate as 14th out of 15 [sic] candidates rated". He appended that "rating sheet". It is not signed, dated or authenticated in any way, and its source is unknown. He alone had the text of it, though the complainant alleges that he shared it with the other members of the Committee. She contends that the selection process was flawed because the rating sheet was ignored.

6. The majority recommendation of the Selection Committee was accepted. The complainant appealed to the Board of Appeal, which recommended, by four to one, dismissing her appeal. The Director accepted the recommendation on 3 September 1993, and that is the decision she is impugning.

7. The Organization replies that what took place at the interviews was just an exchange of questions and answers on accounting that was intended to assess the candidates' knowledge of the functions set out in the notice of vacancy.

8. The Tribunal agrees. It is proper to ask candidates such questions at an interview. The interview does not become an examination just because similar questions may be put to candidates in writing to test their knowledge. The relevant provisions of the Manual require that candidates be interviewed and that the receiving unit prepare written evaluations of them. Thus it was both proper and reasonable for the receiving unit to interview candidates in order to prepare the required reports and evaluations. There is no suggestion that the Selection Committee was in any way improperly influenced by those interviews. The complainant's first contention therefore fails.

9. The majority of the Board of Appeal concluded that there was only one official document, containing the written evaluation of the candidates, prepared by the receiving unit, and that the "rating sheet" did not form part of it. That evaluation ranked the selected candidate first. The dissenting member agreed that the "rating sheet" had not been used by the receiving unit in its final recommendation, and the complainant accepts that it was not part of the official documentation. So quite apart from doubts as to its authenticity and origin the "rating sheet" was a document which the Selection Committee was not entitled to take into consideration. The complainant's second contention fails as well.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.