

TWENTY-NINTH ORDINARY SESSION

***In re* STERNFIELD**

Judgment No. 197

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Aaron Sternfield on 4 May 1972, the Organization's reply of 20 June 1972, the complainant's rejoinder of 10 July 1972 and the Organization's surrejoinder of 20 July 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 320.3, 430.2, 430.3, 440(c), 960 and 1010;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. On 17 May 1971 Mr. Sternfield was appointed by the World Health Organization for a period of two years as an editor in the Division of Public Information. In accordance with WHO Staff Rule 320.3 the appointment was subject to a minimum probation period of one year. According to the post description he was to work "under the authority of the Assistant to the Director of Public Information" and, among other things, to be responsible for the English editing of the magazine *World Health* and other WHO public information publications; revise translations and original English texts for accuracy and style; correct proofs; and write articles for the magazine or other outlets.

B. The complainant alleges that on several occasions the Assistant to the Director commended him on the quality of his work, the speed with which he worked, and his willingness to take on additional responsibilities. On 15 October, however, and again on 5 November 1971, the Director informed him that his work was unsatisfactory and that his contract would not be confirmed although he would be allowed to serve the remainder of the one-year probation period. According to the complainant, on 3 and 4 February 1972 the Director asked him to offer his resignation in return for an excellent recommendation, but he refused.

C. On 4 February 1972 the Director signed an appraisal report on Mr. Sternfield for the period from 17 May 1971 to 16 May 1972. In this report he stated, among other things:

"It is in the editorial part of his work that I have found Mr. Sternfield to lack accuracy and thoroughness. He has not displayed that rigorous attention to detail required of an editor. As a proof reader, for the same reasons, he is not outstanding. He can find useful shortcuts in expression, but fails at times to take out editorial insurance against ambiguities and possible misunderstandings. Some of his simplifications have made for distortion. In sum, I lack confidence in his editing. As a writer he has been much more successful He has adjusted well to the Division, is well liked and is receptive to suggestions. I have not always, however, been able to communicate with him on the details of editorial changes He is an effective communicator in writing and speaking English and a brilliant improvisator in translating from French into English with occasional lapses because of his insufficient command of French idiom. My conclusion is that Mr. Sternfield is a rapid and creative worker capable in various ways, who has a contribution to make, but who is not suitable for the post of public information editor." Mr. Sternfield signed the report on the same date.

D. On 8 March 1972 Mr. Sternfield received a letter from the Chief of Personnel informing him, in accordance with Staff Rule 960, that his appointment would not be confirmed at the end of the probation period, which expired on 16 May. On 13 March he addressed a letter to the Director-General appealing against that decision in accordance with Staff Rule 1010. In a memorandum addressed to the Chief of Personnel on 28 March 1972 he contended, first, that he had not had a proper probation period as provided for in the Staff Rules; secondly, that his

performance appraisal report had not been prepared by his supervisor as provided for in the Staff Rules; and, thirdly, that the Director of the Division had failed utterly to communicate with him and had never once explained to him his editorial preferences. He appended to his memorandum his own revised version of a translation prepared by a freelance translator, the Director's version and his own critical comments on the latter, suggesting that his own version could stand fair comparison with the Director's. In a letter to the complainant dated 24 April 1972 the Director-General stated his view that the decision had been taken on the basis of performance only, as reflected in the Director's appraisal and in his own subsequent examination, and he confirmed that decision.

E. In his complaint to the Tribunal Mr. Sternfield contends that he was denied his rights inasmuch as he did not receive the minimum probation period, the Director having taken his decision just over five months after the beginning of his appointment. Secondly, he points out that under Staff Rule 430.3 "the supervisor shall record his periodic evaluation on an established form and sign it". Although his post description designated the Assistant to the Director as his supervisor, the Director himself had written the appraisal report. Since his contract was terminated on the basis of that appraisal report, he maintains that the Staff Rules were broken merely to enable the Director to terminate his contract. Thirdly, he claims that he was denied his rights under Staff Rule 430.2, which provides that "supervisors shall discuss their conclusions with the staff member and make specific suggestions for improvement in all aspects of performance which are not entirely satisfactory". Finally, he contends that his performance was of a high professional calibre and rejects any suggestion that his work was substandard. He accordingly asks the Tribunal to set aside the decision not to confirm his contract and direct the WHO to pay him all salaries due from 16 May 1972 to the end of the contract period, 16 May 1973, and financial compensation for the loss of home leave to which he would normally have been entitled.

F'. In its reply the WHO points out that the complainant's appraisal report was written before the end of the normal probation period in accordance with Staff Rule 440. Besides, although the decision not to confirm his appointment was taken on 4 February, the effective date of termination was 16 May 1972, one year exactly from the date of his appointment. Secondly, the Organization maintains that although the Assistant to the Director was described in the post description as the complainant's immediate supervisor, the Director had the over-all power of supervision. Moreover, in several personnel action forms his supervisor is stated to be the Director. Thirdly, the WHO maintains that staff members may expect suggestions from their supervisors only if it is reasonably likely that improvement is possible. Someone like Mr. Sternfield who had twenty-five years of experience as an editor and writer should not have needed continuous and regular advice on his work. Since the decision fell within the discretion of the Director-General and that discretion was properly exercised, it prays that the Tribunal dismiss the complaint.

CONSIDERATIONS:

As to the procedural arguments:

There is no statutory provision or general rule of law that makes it mandatory for the Organization to retain a staff member on probation in its service for at least a year if, before the year has expired, the competent authority has come to the conclusion that the staff member concerned is unsuitable for the post to which he was assigned.

In the case at issue it may be noted that while the Director-General informed Mr. Sternfield on 8 March 1972 that his contract would not be confirmed, he did not terminate it until 16 May 1972, i.e. a year after appointment.

Secondly, the fact that Mr. Sternfield entered the Organization's service on the basis of his successful participation in a competition could not affect the authority of the head of the Organization to dismiss him on the ground of unsatisfactory service during probation.

Thirdly, examination of the case has established that, contrary to what the complainant claims, he had received advice and suggestions from the chief of division.

Fourthly, in principle, reports on every staff member of an international organisation must be made in the first place by his immediate supervisor, since he is best qualified to make an appraisal. This principle, however, cannot be strictly applied in some units in which, because of their nature, activities or the very form of their organisation, a small number of officials are associated in a specific common task. It may be conducive to the efficiency of such units for the chief to report directly on all the staff members with whom he is in close and continuous collaboration in the exercise of their duties. This applies in the case of the direction of the Division of Public Information, which

because of the special nature of its work cannot be organised on strictly hierarchical lines. The texts and articles it publishes for information purposes must be presented in a co-ordinated manner and in a style conforming to certain standards of uniformity and clarity for the benefit of readers of different nationalities. Hence the Director of Public Information was qualified to report directly on Mr. Sternfield in the case at issue, since he had regularly to review his translations and was thus in a position to appraise his work on a day-by-day basis, merely consulting the Chief Editor, as in fact he did.

Fifthly, it is within the Director-General's desertion, on receiving an appeal from a staff member of the Organization, to decide whether, in order to establish the facts, it is necessary to give a personal hearing to the person concerned or whether the arguments and documents supplied by him and the information given by the chief of his unit are sufficient to allow a decision to be taken in full knowledge of the facts.

In the present case, Mr. Sternfield in his "Appeal to Dr. Candau" had recorded the facts and set forth his arguments in full detail, and the chief of his unit and the Director of Personnel had also made fully documented reports. In these circumstances the Director-General was entitled to consider that it was unnecessary for him to interview Mr. Sternfield.

As to substance:

Without casting doubt on Mr. Sternfield's knowledge of languages, the Director-General took the view that he did not have the necessary qualifications for the post to which he was assigned, which called not only for a perfect knowledge of English and great accuracy in editing texts to be printed but also for the ability to write in a style suitable to enable WHO publications to reach the international readership at which they are aimed.

It appears from the evidence, and in particular from the publications included in the dossier, that in making this appraisal the Director-General's decision was not tainted by illegality or based on incorrect facts, that he did not fail to take account of essential facts, and did not draw from the evidence conclusions that are clearly false. The Tribunal's power to review the substance of this case is limited to the foregoing four points, and it cannot substitute its own judgment for that of the head of the Organization.

It follows from what has been said above that none of the arguments submitted is well-founded, and the complaint must accordingly be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed. 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, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 13 November 1972.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy