

The Administrative Tribunal,

Considering the complaints filed by Ms L. C., Ms I. M. and Ms S. R.-C. - her second - against the Pan American Health Organization (PAHO) on 15 October 2002, the Organization's single reply of 20 January 2003, the complainants' rejoinder of 3 March and PAHO's surrejoinder of 25 April 2003;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The complainants are staff members of PAHO who applied, as internal candidates, for the post of Programming Assistant in the Department of Management and Information Support advertised in Vacancy Notice 01/PAHO/113 of 13 March 2001. The minimum requirements stipulated in the vacancy notice included the following:

"Education and experience: Graduated from secondary school, and either six years experience in the support of end users' use of computer systems or in the support of software development efforts, **or** one year of university or college training in computer sciences or a related field and four years experience in the support of end users' use of computer systems or in the support of software development efforts."

An ad hoc Selection Committee met on 4 and 15 June 2001. Three members of the Committee voted in favour of the candidate who was ultimately selected, and two members voted for a second candidate. On the basis of this vote, the Committee signed a recommendation in favour of these two candidates on 15 June 2001. None of the complainants was considered by the Committee to be suitable for the post.

However, on 21 June the Staff Association representative, who had been a member of the Selection Committee, sent a "minority report" to the Department of Personnel stating that none of the candidates had met the minimum requirements for the post and expressing her disillusionment and frustration with the selection process. She found fault with the scoring table and alleged that the candidate who has "favoritism" is often preferred.

This "minority report" was forwarded, together with the Committee's recommendation, to the Chief of Administration, who decided on 24 June 2001 to appoint the candidate recommended by the majority of the Committee. On 26 June the complainants were informed that their applications had been unsuccessful and that another candidate had been selected.

Believing that the appointed candidate did not have the qualifications stipulated in the vacancy notice, on 20 August 2001 the complainants individually challenged the selection process for the post in question by filing an intent to appeal. The case was examined by a Board of Inquiry and Appeals, which issued a report on 19 June 2002. The Board found no evidence that would cast doubt on the Selection Committee's finding that the appointed candidate met the minimum requirements for the post. Consequently, it recommended that the appeal be dismissed. The Director of PAHO wrote to the complainants individually on 15 July 2002 and informed them of his decision to dismiss their appeals. That is the decision they impugn.

B. The complainants argue that they have a right to challenge the appointment regardless of whether they themselves were qualified for the post.

They consider that the disputed appointment was unlawful because the appointed candidate did not meet the minimum requirements stipulated for the post. They point out that the successful candidate's degree was

not computer-related, and that he left university too recently to have accumulated the number of years' professional experience required for the post. Referring to the case law they conclude that his appointment could not have been legal under such circumstances.

The complainants also argue that the appointment of a candidate who lacked the minimum requirements for the post necessarily contravened Staff Regulation 4.2, which provides that "[t]he paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence, and integrity".

They ask the Tribunal to declare that the candidate appointed to the disputed post did not meet the minimum requirements for the post, annul his appointment and order the Organization to repeat the selection process. They each claim an award of moral damages and costs.

C. The Organization replies that the complaints are time-barred. The impugned decision was received by the complainants on 16 July 2002, and they filed their complaints on 15 October 2002. In order to comply with the 90-day time limit provided for in Article VII of the Tribunal's Statute, they ought to have filed their complaints no later than 14 October 2002. Referring to the Tribunal's case law, the Organization emphasises that this time limit is mandatory.

Subsidiarily, PAHO argues that the appointed candidate satisfied and even exceeded the requirements of the post. It describes his educational and professional background in detail, emphasising that the required experience need not necessarily be gained after leaving university, but can be acquired while studying, as in this case.

The Organization also submits that appointment decisions are discretionary and that, in accordance with the Tribunal's case law, they are subject to only limited review.

With regard to the "minority report", it observes that the Staff Association representative signed the Selection Committee's recommendation without reservation, instead of ensuring that her objections were properly recorded; she then waited six days before submitting her report to the Department of Personnel. PAHO also points out that the minority report merely expressed the views of one member of the Selection Committee, and not those of the two-person minority which voted for the candidate ranked second, and that the allegations it contained were entirely unsubstantiated.

The Organization asks the Tribunal, in view of "the frivolous nature" of the complaints, to award costs against the complainants.

The selected candidate was invited by the Tribunal to comment on the complaints. In written observations submitted as an annex to the Organization's reply, he provided further details of his studies and professional experience and concluded that his knowledge of information technology went far beyond the requirements of the post.

D. In their rejoinder the complainants argue that their complaints are not time-barred, because the ninetieth day after the date of notification of the impugned decision was a public holiday, and the statutory time limit for filing their complaints was therefore extended until the next business day. They refer to the case law in support of their argument.

They examine the Organization's presentation of the appointed candidate's experience and emphasise that it is not supported by any evidence. In the absence of such evidence the complainants interpret the qualifications restrictively to support their contention that although the appointed candidate may have been computer-literate, he lacked the experience required for the disputed post.

E. In its surrejoinder the Organization maintains its objection to receivability and calls for a strict application of the Tribunal's rules, arguing that although an extension to the statutory time limit may be justified where the ninetieth day falls on a Sunday, it cannot be justified in the case of a "local" public holiday, such as Columbus Day, which is not even universally observed within the United States, let alone further afield.

It emphasises that at the time when she signed the Selection Committee's recommendation, the staff representative clearly agreed that the recommended candidates met the minimum requirements of the post.

PAHO also produces evidence of the appointed candidate's qualifications and reiterates that the impugned decision shows none of the flaws which, according to the case law, justify setting aside a discretionary decision

CONSIDERATIONS

1. The three complainants applied for the position of Programming Assistant as described in Vacancy Notice 01/PAHO/113 issued by PAHO on 13 March 2001.
2. A list of all candidates was sent by the Department of Personnel to the "receiving unit", which interviewed and ranked the candidates. None of the complainants was recommended to the Department of Personnel.
3. An ad hoc Selection Committee met twice to evaluate the recommendations of the receiving unit and agreed that the candidates placed in first and second position met the minimum requirements of the post for which they had applied. However, the staff representative on the Committee subsequently wrote a "minority report", expressing the view that no candidate satisfied those requirements. On 26 June 2001 the Chief of Classification informed the complainants of their non-selection.
4. The complainants filed their respective intents to appeal on 20 August 2001. On 19 June 2002 the Board of Inquiry and Appeals unanimously found that "based on its review of the selection file, the Selection Committee report, the receiving unit's recommendation, the personal history form and Curriculum Vitae", there was no evidence that would cast doubt on the Selection Committee's decision.
5. On 15 July the Director of PAHO informed each of the complainants that, having reviewed the Board's findings, he agreed that the selection process had been properly carried out and that the selected candidate met the minimum requirements for the post; consequently, he had decided to dismiss their appeals.
6. Each complainant filed a complaint on 15 October 2002, asking the Tribunal to annul the appointment of the selected candidate and order the Organization to conduct a new selection process on the grounds that the successful candidate did not meet the minimum requirements set forth in the vacancy notice. They also claim moral damages and costs.
7. The Organization asks that the complaints be dismissed as irreceivable for non-compliance with the time limit established by Article VII of the Statute of the Tribunal. Alternatively, it submits that if the complaints are reviewed on the merits, they should likewise be dismissed, as the record of the successful candidate unequivocally proves the allegations of the complainants to be "frivolous and unsubstantiated".
8. The Tribunal holds that the complaints are receivable, having been filed on the ninety-first day after the date that the complainants received the impugned decision. The last day of the statutory ninety-day period being a holiday, the deadline is extended to the next business day, in line with the Tribunal's ruling in Judgments 306 and 517, in which an extension to Monday was granted because the ninetieth day fell on a Sunday.
9. As regards the alleged lack of experience of the successful candidate, the Tribunal is of the view that the Selection Committee and the Board of Inquiry and Appeals were entitled to find that he amply met the requirements for the post. The curriculum vitae in his personnel file, unlike the abbreviated work history filed with his application for the post, revealed that he had more than one year's university study and at least the equivalent of four years' work experience. Thus, no error is to be discerned in the Director's decision, which concurred with the recommendations of the Board of Inquiry and Appeals and of the Selection Committee.
10. The Tribunal has consistently held that the executive head of an organisation has the discretionary authority to make appointments and, unless there is abuse of such authority or a violation of rules of form or procedure constituting a breach of due process, it will not interfere with such decisions; for its function is "not to judge the candidates on merit but to allow the Selection Committee and the executive head full responsibility for their choice" (see Judgment 1077, under 4).
11. Having considered the circumstances of the case, the Tribunal is of the view that PAHO's counterclaim for an award of costs against the complainants must be rejected.

DECISION

For the above reasons,

1. The complaints are dismissed.
2. PAHO's counterclaim is also dismissed.

In witness of this judgment, adopted on 15 May 2003, Mr Michel Gentot, President of the Tribunal, Mrs Florida Ruth P. Romero, Judge, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

Florida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet