

In re PINTO DE MAGALHAES

Judgment No. 309

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. René Aouad on 15 May 1976, the complainant's further memorandum of 24 May, the WHO's reply of 22 June, the complainant's rejoinder of 10 July, the WHO's surrejoinder of 16 August, the complainant's further memoranda of 19 September and 16 December 1976;

Considering Judgment No. 224 delivered on 28 April 1977 by the Administrative Tribunal of the United Nations;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, WHO Staff Rules 1030.1, 1030.2 and 1030.8 and paragraph 28(b) of section II.7 of Annex E to the WHO Manual;

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. The complainant joined the staff of the WHO in May 1970 at grade P.4 as a translator and was posted to the Regional Office for the Western Pacific in Manila. Since 1959 he had been working in the United Nations. The WHO gave him at first a five-year appointment and in 1974 extended it to August 1978, the date at which he would have retired. On 31 December 1974, however, he resigned with effect from 31 March 1975.

B. In 1971 and 1973 and again in April 1974 the complainant had proposed the transfer of a Miss Vetsch, one of the three secretaries in the translation unit of which he was chief, on the grounds that she was insubordinate and unco-operative and had committed slanders and libels of her supervisor which made working relations impossible. The WHO admits that her relations with the other members of the unit had been strained for many years. On 16 December 1974 the complainant made a last attempt to have her transferred, but she was not and, as he said in his letter of 31 December 1974, that was why he resigned.

C. In the same letter the complainant referred to his state of health and to a claim he had made for compensation in the form of an invalidity pension for facial paralysis which he blamed on a fault in the air conditioning in his office. His claim for an invalidity pension on grounds of a service-incurred illness was dismissed. He did not appeal but had the matter put to the United Nations Joint Staff Pension Fund with a view to being awarded an invalidity pension for a non-service-incurred illness. At the time when the complaint was lodged the Fund had not yet taken a decision and an appeal against any such decision would lie to the United Nations Administrative Tribunal.

D. The complainant resigned and left the WHO on 31 March 1975. He sought work as an interpreter at WHO meetings in Manila and sets his failure down to ostracism prompted by the Chief of Administration in the Regional Office.

E. Since leaving the WHO the complainant has lodged grievances concerning the foregoing matters in letters to the Regional Director, the Chief of Finance at headquarters, the Chairman of the Staff Association, the Director-General and, lastly, the Chairman of the headquarters Board of Inquiry and Appeal. In a letter of 12 July 1975 to the last of these he said he would claim reinstatement if denied an invalidity pension for service-incurred illness. In its memoranda the WHO points out that the medical aspects of his claim fell within the competence not of the Board of Inquiry and Appeal but of a medical board set up under paragraph 28(b) of section II.7 of Annex E to the WHO Manual, as the Board secretary told him by letter of 11 August 1975.

F. On 28 September 1975 the complainant appealed to the headquarters Board, claiming reinstatement on the grounds that his resignation had in fact been a "forced departure". By letter of 13 October 1975 the Board secretary

told him that under Staff Rules 1030.2 and 1030.8 he should first appeal to the Regional Board of Appeal, in Manila. With his consent the secretary of the Regional Board was sent a copy of the appeal he had originally addressed to the headquarters Board on 28 September. On 16 December he appealed to the headquarters Board against the dismissal of his claim which he inferred from the Regional Board's silence. By telegram of 30 December he was told that the Regional Board had thought the copies of his letter of 28 September had been sent to it only for information and was still awaiting his formal appeal. It appears from the dossier, however, that he never received the telegram of 30 December and knew nothing of it when he appealed to the Tribunal.

G. The complainant asks the Tribunal to order the WHO to reinstate him at once in his former post in Manila and grant him such salary increments as he would have had he not been forced to leave, and to pay him full compensation for his lack of earnings since his forced departure on 31 March 1975 and fair damages for the moral and material prejudice he has suffered. He adds that even if he were awarded an invalidity pension his second and third claims would stand.

H. The Organization contends that in so far as the complaint relates to the circumstances in which the complainant's employment ended - and on those, in its view, the whole case turns - it is not receivable: he failed to appeal within the thirty days' limit set in Staff Rule 1030.8(c) and to the competent body, namely the Regional Board of Appeal, prescribed in Staff Rule 1030.2. The conditions of receivability laid down in Article VII of the Statute of the Tribunal have therefore not been met.

I. As to the merits the WHO points out that the complainant's contention that he was forced to resign rests solely on the Regional Office's refusal to transfer a secretary he thought undesirable. He is not alleging any pressure on him to resign and indeed acknowledges that the Manila office was willing to keep him on despite his poor health, as is confirmed by the extension of his appointment to the expected date of his retirement. He decided of his own free will to leave because he felt unwilling or unable to carry on working with a secretary he wanted to have transferred, and he cannot now evade the consequences of his own freely taken decision by describing his resignation as forced.

K. The Organization asks the Tribunal to declare the complaint irreceivable, or subsidiarily, to dismiss it as unfounded.

CONSIDERATIONS:

As to the complainant's claims relating to his pension:

These claims do not fall within the competence of the Administrative Tribunal of the ILO, but within that of the Tribunal of the United Nations, to which indeed they have been referred.

As to his claims relating to his dismissal:

There being no need to examine the WHO's plea of irreceivability;

The complainant, a translator on the WHO staff, was posted as chief of unit to the Regional Office for the West Pacific, in Manila. By a letter of 31 December 1974 he resigned on the grounds that the Regional Director had refused his repeated requests to remove one of his secretaries, a Miss Vetsch, who was utterly insubordinate.

It appears from the documents in the dossier that because of her attitude Miss Vetsch ought long before to have been compulsorily transferred at least and that, on the other hand, the complainant behaved with great and unflinching propriety. But it cannot be said that the effect of Miss Vetsch's regrettable behaviour and of the Regional Director's equally regrettable inaction was either to put the complainant in a position which in practice precluded his continuing as chief of unit or to damage seriously his state of health or to impair his free will.

Hence the complainant's resignation, which he gave of his own free will and without duress, was fully valid in law. It may have been given somewhat lightly, but the complainant is alone responsible and that fact does not vitiate its legal validity.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, 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 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet