

FORTY-SECOND ORDINARY SESSION

In re ABBOTT

Judgment No. 373

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought March 1999 ought against the World Health Organization (WHO) by Miss Mary Oliphant Abbott on 15 March 1978, the WHO's reply of 29 May, the complainant's rejoinder of 15 July and the WHO's surrejoinder of 31 July 1978;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 565.3 (formerly 465.3), 1030.1.4 (formerly 1030.1(d)) and 1050.2.5 (formerly 950.2(e)) and WHO Manual provision II.9.340.

Having examined the documents in the dossier, oral proceedings having been neither applied for 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 on 24 October 1959 as a nurse at grade P.2 and was sent out to India. In January 1962 she was promoted to P.3. From September 1963 to May 1965 she was granted study leave without pay. She then resumed work and was sent to the Gambia. She was transferred to Nigeria in February 1967, promoted to P.4 in June 1967, transferred to Iran in October 1970, and in February 1972 sent to Manila as a regional nursing adviser on post 8.0040. Because of a structural reorganisation there were to be two regional advisers from 1974. The complainant was in charge of training and the other adviser, a Miss Lenoir, who held post 8.0852, in charge of administration. On 1 October 1976 the complainant's post, 8.0040, was abolished. She was transferred to Copenhagen on a three-month appointment, which was later extended and which expired on 31 October 1978.

B. On 14 January 1977 the complainant appealed to the Regional Board of Inquiry and Appeal against the administrative decision to abolish post 8.0040 and to terminate her appointment. She said that that decision had been notified to her orally 14 June 1976 by the Regional Director. The abolition of the post was confirmed by the Regional Director in a letter of 15 June 1976 which did not speak of termination of appointment, her appointment not in fact having been terminated. In the Regional Board proceedings the complainant pointed out that Miss Lenoir, who had taken over the duties pertaining to post 8.0040, was to retire at the end of February 1977, and she asked for her own reinstatement as regional nursing adviser when Miss Lenoir, who had taken over the duties pertaining to post 8.0040, was to retire at the end of February 1977, and she asked for her own reinstatement as regional nursing adviser when Miss Lenoir retired. In its report of 20 April 1977 the Regional Board noted that the WHO was still looking into the possibility of transferring the complainant and recommended that she should be informed without delay of her present status and her prospects. The Regional Director accepted that recommendation, as the complainant was informed by a letter of 22 April 1977. At the beginning of 1977 a notice of vacancy was circulated for post 8.0852, which had been regraded P.5. The complainant applied, but a Miss Fillmore was appointed, with effect from 1 May 1977.

C. On 26 May 1977 the complainant appealed to the headquarters Board of Inquiry and Appeal against the Regional Director's decision of 22 April. In its report of 6 October the Board recommended: (a) that the complainant should be offered an extension of contract to 31 August 1980; (b) that she should be reimbursed the cost of transporting her personal effects and household goods from Manila to Copenhagen; (c) that she should be reimbursed the expenses of two journeys Copenhagen/Geneva and return with per diem allowance and also her lawyer's fees; (d) that she should be credited with four days' annual leave. By a letter of 1 December 1977 the Director-General informed the complainant that he accepted recommendations (a), (c) and (d). As to (b), he said that it did not call for any decision on his part since the matter would be dealt with under the usual administrative procedure. It is the decision of 1 December 1977 that the complainant impugns. After filing her complaint she had her appointment extended, on 23 May 1978, to 31 August 1980, when she will reach the age of 60. She now holds a P.4 post in Copenhagen.

D. The complainant believes that she has suffered from the malice of the Regional Director and that there was no

sound reason for refusing to appoint her to the post left vacant on the retirement of Miss Lenoir. Her professional reputation has been damaged by what she regards as unlawful action, and her present duties do not carry the same responsibility and prestige as those she performed before. She claims payment of her full salary up to 31 August 1980, her full pension at the age of 60, and full termination benefits (repatriation expenses, etc.); repayment of the cost of shipping home her personal effects from Manila; compensation for the damage to her professional reputation, which she considers should be not less than \$30,000; and costs.

E. The Organization observes that the complainant is implying that she has been dismissed. She has not. The Director-General's decision of 1 December 1977, taken together with the transfer of the complainant to her present post and the extension of her appointment to 31 August 1980, complies with the Staff Regulations and Staff Rules in force. The WHO therefore asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

1. The complainant, who has been in the service of the Organization as a nurse from 1959, held in 1972 the post 8.0040 of Regional Nursing Adviser in Manila at grade P.4. In 1974 the Organization decided to divide her responsibilities, leaving her with Nursing Education and creating a new post 8.0582 of Regional Adviser on Nursing Administration and Services. Miss Lenoir was appointed to the latter post. In 1976 the Regional Director for a reason that is not challenged, namely, because of the decreasing work load, decided that the two posts should be re-united. Further, he decided, which decision is challenged, to achieve this by abolishing on 1 October 1976 the complainant's post. The complainant's contract of service was not terminated and she has since been employed on assignments at the P.4 grade in Copenhagen.

2. Miss Lenoir was due to retire from post 8.0582 in February 1977 when she reached the age limit. A new description of the post was prepared, it was raised to P.5 level and advertised early in 1977. The complainant applied for it unsuccessfully. Miss Fillmore, a staff member of WHO and serving as a nurse in a team financed by the United Nations Fund for Population Activities, was appointed.

3. The complainant contests both the decision to abolish her post 8.0040 rather than post 8.0582 and the decision to appoint Miss Fillmore rather than herself to the P.5 post 8.0582 after Miss Lenoir's retirement. Such decisions are within the sphere of discretionary authority. Hence the Tribunal will interfere with them only if they were taken without authority, or violate a rule of form or procedure, or are based on an error of fact or of law, or if essential facts have not been taken into consideration, or if the decisions are tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

4. Both sides accept the findings of fact of the headquarters Board of Inquiry and Appeal. The Board in its report drawn attention, as it is well qualified to do, to certain features of the affair which it finds surprising. The complainant had in 1976 about four years to run before she reached the retiring age, while Miss Lenoir had only five months: the complainant's annual appraisals had always been good: why was her post selected for abolition and not Miss Lenoir's? The Board found that the description of the new post 8.0582 was almost identical with that of the complainant's post before it was divided. In the choice between the candidates what weight, if any, was given to the complainant's experience of the same work between 1972 and 1974? Why was the grade of the new post raised to P.5? Had it remained at P.4, it would have been difficult not to have offered it to the complainant as "a reasonable offer of re-assignment" within the spirit of MS 9.340; this regulation, however, provides that there is no obligation to offer to a displaced official a post of a higher grade. No criticism is made of the competence and suitability of Miss Fillmore, but she did not enjoy the priority which attaches to a person whose post has been abolished.

5. The Board found no positive evidence of personal prejudice towards the complainant. Neither does the Tribunal. But in the opinion of the Tribunal the matters set out in the preceding paragraph call for an explanation. There is none to be found; in the dossier and in its absence the Tribunal feels bound to infer that in the taking of the decision there was some error of fact or of law or that essential facts were not taken into consideration or that a clearly mistaken conclusion was drawn from the facts. Accordingly, the decision must be set aside.

6. The complainant seeks relief under six heads. As to the first four the Organization objects in its reply that they are "not really pertinent to her situation" ; the Tribunal is unable to understand from the rejoinder what pertinence is alleged. Since the abolition of her post the complainant has been continuously employed at the P.4 level and no direct financial loss is alleged; she has now been given an assignment in Copenhagen as a nurse at grade P.4 in an

inter-country project and has had her contract extended until her retirement date on 31 August 1980. The sixth head of claim is for costs and is not opposed.

7. The chief head of claim is the fifth, which is for financial compensation for loss of professional standing and personal distress. The Organization contends that the complainant has suffered no diminution in responsibility or status. But what the complainant might have had to accept as the inevitable consequences of a valid transfer, she is not obliged to accept without compensation when the transfer is made improperly. Positions which are graded at the same level may nevertheless differ considerably in status and prestige. The Tribunal agrees with the Board of Inquiry and Appeal that the complainant has lost the professional standing that the post of Regional Adviser gives. Moreover, the transfer was handled in such a way as to give the impression that she was being edged out of her position for reasons unstated; this must have caused her personal distress.

DECISION:

For the above reasons, the complaint, in so far as it relates to compensation for loss of professional standing and personal distress, is allowed: and it is ordered

1. that the decision of the Director-General of 1 December 1977, in so far as it refuses to pay such compensation, be quashed;
2. that the Organization pay to the complainant \$8,000 as such compensation and reimburse her costs in these proceedings to the extent of \$2,000; and
3. that, save to the extent that they were accepted in the Director-General's said decision, the other claims be 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 18 June 1979.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy