

FORTY-THIRD ORDINARY SESSION

***In re* MOORE**

Judgment No. 393

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan-American Health Organization (PAHO) (World Health Organization) by Miss Helen Moore on 31 July 1978, the Organization's reply of 26 October, the complainant's rejoinder of 6 January 1979 and the Organization's surrejoinder of 6 February 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Regulation 4.4, Staff Rule 340 and WHO Manual provisions II.3.280-400;

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. In 1953 the complainant joined the Pan-American Sanitary Bureau, the secretariat of the PAHO, as a G.3 typist and by 1973 she had reached grade G .6. From 1960 she worked as a purchasing assistant in the Procurement Office and was given official status as such at the end of 1972.

B. In 1976 four P.1 vacancies were put up for competition in the Procurement Office and on 19 October the complainant applied for one of them. By a letter of 18 January 1977 Personnel informed her that her application had been rejected after her file had been "carefully reviewed by a Selection Committee". The post, No. 4.4198, went to a Miss Moyers, a recent recruit who held grade G.4 and was still on probation. The complainant heard from Selection Committee members that they had seen neither her file nor even a summary of her qualifications of the kind submitted to them for the other candidates. She therefore appealed to the PAHO Board of Inquiry and Appeal against the letter of 18 January 1977. The Chief of Personnel admitted the procedural irregularity, however, and by way of compromise proposed to the complainant either setting aside the Committee's report and convening a new Selection Committee, or else reviewing her post with a view to regrading. Because regrading takes some time and also because she did not think it right to follow the regrading procedure in such a case, the complainant preferred the first alternative. Another Selection Committee accordingly met on 25 and 28 March. It recommended appointing a Miss Haim. Three of the five committee members voted for Miss Haim and only two for Miss Moyers. But the Chief of Personnel, who was present at the meeting, unilaterally designated Miss Moyers as an alternative appointee. The Director of the PASB appointed Miss Moyers. The Administration had submitted to him a minute from the Chief of the Procurement Office stressing Miss Moyers's excellent qualifications and fluency in English, German and French, which would be a great asset in making purchases from Europe.

C. The complainant appealed to the Regional Board of Inquiry and Appeal alleging breach of her agreement of 4 March 1977 with the Chief of Personnel. On 20 May 1977 the Regional Board dismissed the appeal as irreceivable. The complainant then went to the headquarters Board of Inquiry and Appeal. That Board declared the appeal receivable and found that the two Selection Committees - the one of January and the one of March 1977 - had infringed Manual provisions II.3.280-400 and Staff Rule 340 and that the membership of the March Committee had been unsuited to its function. The Board recommended offering the complainant a choice between appointing a third Selection Committee, duly constituted and informed of its duties, and review and reclassification of her post, to be given retroactive effect from 1 March 1977, unless in the meantime there was an opportunity to give her priority for promotion. On 22 May 1978 the Director-General rejected the idea of setting up another Selection Committee and close the second alternative. In reply to a request for clarification from the complainant, on 26 June he confirmed that decision and explained: "if a reclassification of your post is decided, the effective date of your promotion would then be decided by Regional Director ... with due regard to the Board's recommendation that it be made retroactive to 1 March 1977." The Director-General also agreed that the complainant should be promoted if the right opportunity arose in the meantime. It was just then that a post similar to the one in dispute did become

vacant, and it was put up for competition. However, a university degree was added to the list of required qualifications and so the complainant, though she had hoped to be granted priority for promotion as the Director-General had said, was not appointed. In July a dispute arose over the procedure followed in reclassifying her post. The Organization wanted her to fill up a questionnaire about her post, but she took the view that the rules did not require it. She expresses her conviction that the Chief of Personnel and the Chief of the Procurement Office, who were both involved in the reclassification, were prejudiced against her. In the end she dropped the matter and decided instead to file a complaint with the Tribunal against the Director-General's decision of 22 May 1978.

D. The complainant contends that the Chief of the Procurement Office, a Mr. Umstead, an army veteran who joined the PASB in 1976 and had filled eight posts with outsiders, discriminates against former members of the Office like herself. She appends to her complaint several items which bear witness to some disturbance in the Office (reprimands, requests for transfer and the like). She maintains that the rules were arbitrarily disregarded, while the Director knew nothing and the Administration did nothing. She alleges that Mr. Umstead: (a) deliberately had her name withdrawn from the list of candidates for the January 1977 competition; (b) misinformed the March 1977 Selection Committee about her; (c) put pressure on her immediate supervisor when he was writing her yearly performance report; (d) prevented her reclassification; and (e) kept her out of the vacancy in the last competition by adding a university degree to the list of qualifications. She asks the Tribunal to declare null and void the selection proceedings of January and March 1977 because of the serious procedural flaws acknowledged by the headquarters Board of Inquiry and Appeal and to award her damages for moral injury and for injury to her personal and professional reputation, and costs.

E. In its reply the Organization admits that the two competitions were irregular but points out that the complainant has not asked for the quashing of the appointment of Miss Moyers, but merely for damages. Her allegations in D(a) and (b) above are therefore pointless. Besides, even if the proceedings had been unflawed it cannot be taken for granted that the complainant would have won the first competition. In the second competition someone else was appointed. Recommending Miss Moyers as an alternative to Miss Haim could be detrimental only to the latter, not to the complainant. Besides, Miss Haim appealed against that recommendation. (The appeal was dismissed on the grounds that the Director-General had full discretion in the matter of appointment.) The complainant therefore suffered only "minimal injury". As for the allegation in D(c) above, it is mistaken to accuse the Chief of the Procurement Office of prejudice, and in any case the complainant exercised her right to comment on her yearly performance report. The allegation in D(d) is groundless since matters of reclassification are settled by a committee which has several members and not by the chief of the branch. The complainant was wrong to refuse to fill up the classification questionnaire and so halt the reclassification ordered by the Director-General. It is true that the Staff Rules do not say that a questionnaire has to be filled up, but they cannot say everything and the Administration was right to expect the complainant to co-operate. Lastly, the allegation in D(e) is quite unfounded. Since January 1978 the rule has been to require a university degree or equivalent qualification for appointment to any Professional category post, and the Chief of the Procurement Office has nothing to do with it. The Organization therefore maintains that there is not a shred of proof of the complainant's contentions and asks the Tribunal to dismiss her claim for damages.

E. In her rejoinder the complainant notes the Organization's admission that the selection proceedings were null and void, but she objects to its describing the injury she has suffered as "minimal": she has incurred costs in defending her case; her reputation is marred; her career is ruined; she has been humiliated by the appointment of Miss Moyers, which was upheld despite all the procedural improprieties; and she has suffered intimidation and prejudice in the Office. Everything stems from Mr. Umstead's irregular actions and attitude, and the Administration is backing him up to justify its own selection of him. She asks the Tribunal to award her reasonable compensation for the injuries sustained by her.

G. In its surrejoinder the Organization contends that the complainant would have suffered no prejudice had she let the classification procedure take its course, subject to the rights of appeal safeguarded under the Staff Regulations.

CONSIDERATIONS:

1. The complainant's first claim is for the cancellation of the procedures which led to the decisions taken in January and March 1977 relating to selection for appointment to post No. 4.4198.

The Organization has acknowledged - and rightly so - that the procedures were irregular. Thus, in so far as the complainant wishes to have them cancelled, her complaint no longer has any foundation. She has now to co-

operate fully with the Organization in the review of the Director-General's classification of her post.

2. The complainant's second claim is for payment of compensation for all the wrongs she says she has suffered because of the regional administration's attitude since January 1977.

It appears from the documents in the dossier that by being improperly rejected in the selection proceedings in 1977 the complainant suffered, on that account and because of the hostility of Mr. Umstead, the Chief of the Procurement Office, moral prejudice serious and specific enough to entitle her to damages.

In determining the amount of damages, however, the Tribunal will take account of the fact that the Director-General corrected the mistakes made in the Regional Office and removed the anomalies by deciding that the regional administration should review the classification of the complainant's post and that the review should take effect on 1 March 1977. That decision goes some way towards compensating her for the material and moral prejudice she suffered.

In view of the foregoing, the prejudice actually suffered by the complainant will be fairly assessed by awarding her damages amounting to two thousand United States dollars.

The complainant may, notwithstanding this judgment, claim further compensation should the regional administration fail to carry out the Director-General's decision correctly.

DECISION:

For the above reasons,

1. The complaint is dismissed in so far as it impugns the Director-General's decision of 22 May 1978, as clarified by his decision of 26 June 1978.
2. The Organization shall pay the complainant damages amounting to 2,000 United States dollars.
3. The complainant is awarded the sum of 750 dollars towards costs.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy 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 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy