

FORTY-FOURTH ORDINARY SESSION

In re SCHOFIELD (No. 3)

Judgment No. 410

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Francis Donal Schofield on 30 March 1979 and brought into conformity with the Rules of Court on 27 April, the WHO's reply of 5 July, the complainant's rejoinder of 27 September and the WHO's surrejoinder of 7 December 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 1110.1, 1130 and 1230;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. The complainant, who is a doctor of medicine, joined the staff of the WHO in 1964. After several years in the field he was assigned to headquarters in Geneva, where he holds a post at grade P.6. At the beginning of 1978 he made several attempts to see Dr. Quenum, the Regional Director for Africa, to discuss charges of racial prejudice which he believed Dr. Quenum had levelled against him. On 31 May 1978 the complainant went to see Dr. Quenum, who was in Geneva at the time. Each tells a quite different story of what then occurred. In a statement which he wrote that very day to the Chief of Personnel the complainant said: "... I went straight down to his [Dr. Quenum's] office soon after 9 a.m., knocked and he said: 'Entrez'. There was no-one else in his office. I said I had to see him; this was my last chance to get him to change the mind of the Director-General about me. He said I had no right to be in his office without an appointment. I said I had a right to a brief talk with him because my need on this occasion was greater than his. Then he got up, hit me - though it did not hurt - opened the door, got hold of my collar with both hands, pushed me into the corridor and hit me again. There were two people in the corridor." Asked by the Director-General to report on the incident, Dr. Quenum wrote in a letter dated 21 July 1978: "... astonished at such an intrusion at a time when I was taken up with other matters I gave Dr. Schofield short shrift. I told him to get out of my office, since it is not done to break into the Regional Director's office without first speaking to his secretary. When Dr. Schofield continued his speechifying, I made him go out and I shut the door". On 1 June, the day after the incident, the Director-General addressed to the complainant a "written reprimand" as provided for in Staff Rule 1110.1.2 stating that he could not accept that a staff member should force his presence upon a senior officer and insist upon a discussion without consent or a prior appointment to do so. The reprimand was upheld by a final decision taken on 22 June 1978 in accordance with Staff Rule 1230.8.1. The complainant appealed to the Board of Inquiry and Appeal. In its report dated 15 January 1979 the Board expressed the view that it could not investigate an incident which had occurred seven months earlier. In its opinion the Director-General ought to have carried out the investigation immediately. Citing the Tribunal's Judgment in *re* Ferrecchia (No. 203, page 5), the Board held that Dr. Schofield ought to have been given a hearing before being reprimanded and that the reprimand had therefore been issued too hastily and should be withdrawn. Nearly sixty days after the Board had made that recommendation, the Director-General not yet having taken a decision, the complainant appealed to the Tribunal.

B. The complainant believes that he suffered five wrongs: (1) he was struck on 31 May 1978; (2) the Administration failed to investigate the incident; (3) the next day the Director-General sent him a reprimand and on 22 June 1978 confirmed it despite the intercession of the Ombudsman; (4) the Board of Inquiry and Appeal also failed to investigate the incident; and (5) the WHO failed to reply in time to the appeal he notified to it on the matter. He contends that the incident has done serious damage to his honour and career and shows that, despite the Tribunal's findings in Judgment No. 361 (*Schofield* (No. 1) v. WHO) concerning the groundless charges of racial prejudice brought against him, he is still being victimised on those grounds. That accounts for the view the Director-General took of the incident. He asks the Tribunal: (1) to order the Director-General to inform him in writing that the WHO does not condone Dr. Quenum's action; (2) to order the Director-General to confirm in writing that at no time during his service has the complainant displayed "racist", "colonialist" or other harmful personal attitudes, or to convene an official inquiry into the allegations; (3) to rescind the reprimand of 1 June 1978; (4) failing the relief claimed under (1) and (2), to order payment of compensation in amounts to be decided

by the Tribunal; and (5) to award costs to the complainant.

C. The WHO does not challenge the receivability of the complaint, which is dated 30 March 1979, i.e. over 60 days after the filing of the report of the Board of Inquiry and Appeal, which is dated 15 January. It believes, however, that the complainant acted too hastily in appealing to the Tribunal. The reason why the Director-General's decision was delayed was that an attempt was being made at the time to settle all the differences outstanding between the complainant and the WHO. On 2 July 1978 the Director-General wrote to the complainant saying that his own conviction was and always had been that there had never been any grounds for charges of racial prejudice against him and that to his knowledge no such charges had ever been addressed to him that might directly or indirectly have influenced his administrative decisions. The WHO believes that the Tribunal is not competent to hear the complainant's first claim since it has no bearing on any decision or obligation. Whatever version the complainant and Dr. Quenum may give of the facts, one thing is clear: the complainant forced his presence on Dr. Quenum. It was on that account that the Director-General admonished the complainant and on that account alone that he issued the reprimand. As regards the complainant's right to a hearing before suffering a disciplinary sanction, the WHO observes that under Staff Rule 1110.1 oral and written reprimands are the lightest forms of penalty: the charges are not notified to the staff member and he does not have to be given an opportunity to reply. In any event the complainant was given such an opportunity since on 31 May he sent the Chief of Personnel his own account of the incident and the Director-General was aware of that account when, the next day, he decided to reprimand the complainant. Moreover, the final decision confirming the reprimand is dated 21 June and was therefore taken after the Ombudsman had interceded on the complainant's behalf. The penalty was not out of proportion to the offence, and there is no evidence of any prejudice against the complainant. Neither the WHO nor the Board of Inquiry and Appeal was under any duty to hold an investigation. Lastly, as for the charges of racial prejudice, the WHO takes the view that what the complainant says on the matter is mere repetition of the arguments he put to the Tribunal in his first complaint (Judgment No. 361) and has no bearing on the incident which forms the subject of the present complaint. The WHO accordingly asks the Tribunal to dismiss the complaint, disallow the claims for relief and let the disciplinary sanction stand.

D. In his rejoinder the complainant observes that what the WHO singles out as grounds for the penalty is a mistake of fact: he did not force his way into Dr. Quenum's office; he knocked and went in only after being asked to do so. Moreover, the WHO says nothing of Dr. Quenum's aggressive behaviour. The impugned decision is therefore based on mistakes of fact and should be quashed. That Dr. Quenum was so eager to complain about the incident to the Director-General and the Director-General to impose the penalty the very next day shows the prejudice against the complainant. The WHO also overlooks the Board's finding that before the incident he had made several quite proper but vain attempts to talk to Dr. Quenum about matters which had a close bearing on his career, and the Board's view that Dr. Quenum's refusal to see him was a breach of his fundamental rights and a grave dereliction of duty. The complainant denies the WHO's contention that the charges need not be notified to the staff member before a written reprimand is issued. Since the two sides gave contradictory versions of the facts it was the Director-General's duty under Staff Rule 1230.1.2 to find out what had really happened by carrying out an investigation and giving the complainant a hearing. It is clear from the evidence that the penalty is out of proportion to the facts and can be explained only by the prejudice against him.

E. The complainant states that on 11 September 1979 he gave to the Chief of Personnel notice of his intention to resign. In a letter dated 12 September the Chief of Personnel wrote: "I am pleased to state officially that the World Health Organization holds that there have never been any grounds whatever for charges that you have displayed racist, colonialist or other prejudiced personal attitudes". In recognition of that statement the complainant withdraws his second claim for relief (see B above). Lastly, he repeats his application for oral proceedings to establish the facts of the case.

F. In its surrejoinder the WHO observes that the only material fact of the case is that the complainant forced his presence on Dr. Quenum, uninvited and without an appointment.

If he believed that Dr. Quenum was under a duty to see him and was in breach of that duty, he ought to have referred the matter to the Director-General and, if necessary, to the appeals body. The Director-General was therefore right to address him a written reprimand. Staff Rule 1130 does not require notification of charges before a written reprimand is issued.

CONSIDERATIONS:

1. In 1977 the complainant was relieved of the assignments which he then held. He challenged the relevant decisions and in Judgment No. 361 the Tribunal held that they were decisions taken within the discretion of the Director-General and that accordingly the challenge failed; but the Tribunal awarded him compensation because of the manner in which the decisions were enforced. The complainant was not at the time given any adequate reason for his displacement and this led him to search for ways in which he might have been unfairly discredited or the Director-General improperly influenced. The supposed discoveries formed the basis of his unsuccessful challenge to the substance of the decisions. Among them was one which the Tribunal held to be without any foundation, that the Director-General had been misled by a false allegation that the complainant was a racist. This is the background to the incident which is the subject-matter of the present complaint.

2. The complainant was greatly disturbed by the treatment he had received. He convinced himself that an allegation of racism had been made against him by Dr. Quenum, the Regional Director Afro, and that he must see Dr. Quenum and get him to see the Director-General and put things right. In spite of vigorous efforts made from January 1978 onwards he could not get an interview with Dr. Quenum or an answer to his letters. On 31 May 1978, hearing that Dr. Quenum was to leave the next day, he tried again. To use his own words:

So I went straight down to his office soon after 9 a.m., knocked and he said "Entrez". There was no one else in his office. I said I had to see him; this was my last chance to get him to change the mind of the Director-General about me. He said I had no right to be in his office without an appointment. I said I had a right to a brief talk with him because my need on this occasion was greater than his. Then he got up, hit me - though it did not hurt - opened the door, got hold of my collar with both hands, pushed me into the corridor and hit me again. There were two people in the corridor.

This passage is taken from the written account which on the same day the complainant gave to the Chief of Personnel, sending a copy to Dr. Quenum.

3. Meanwhile, Dr. Quenum expressed to the Director-General his concern that regional Directors should be protected from unannounced visitors. Dr. Quenum's version of the incident differs on some points from the complainant's. He says that the complainant did not knock and was not invited in. He opened the door and began to utter threats. Dr. Quenum was deep in preparation for the Director-General's conference which was to take place that morning, and he ordered the complainant to leave. "When Dr. Schofield continued his speechifying, I made him go out."

4. The next day, 1 June, the Director-General, after reading the complainant's written account, sent a letter to him as follows:

Please be informed that I cannot accept that a staff member should force his presence upon a senior officer insisting upon a discussion without consent or a prior appointment to do so.

I take a grave view of such action by a staff member, and this memorandum is addressed to you as a written reprimand and formal disciplinary measure under the terms of Staff Rule 1110.1.2.

5. The complainant's statements in the dossier are lengthy, imprecise and largely devoted to matters already covered by Judgment No. 361. The Tribunal is satisfied that the only complaints which are arguable are the two framed by the Board of Inquiry and Appeal, the first being against the inaction of the Administration after the complainant had charged Dr. Quenum with hitting him and the second being against the reprimand. It is convenient to deal first with the latter. It is argued that the reprimand was premature and given (a) without hearing the complainant, and (b) without knowledge of the complete facts. The administration replies that the Director-General had before him the complainant's written account, from which alone it was obvious that he had behaved improperly and that a reprimand was justified.

6. It is unnecessary for the Tribunal to hold that no case in which disciplinary action is contemplated should be decided on the written record alone. The Tribunal will assume that the present case could properly have been so decided provided that the written record was complete. But the record was incomplete. What the Director-General had to decide was not merely whether on the facts there was misconduct by the complainant, but also whether, if there was, it merited in all the circumstances a formal reprimand. An incident of this sort between a P.6 officer and a regional Director does not just explain itself; the background must be presented. It was essential for the Director-General to ascertain what explanation or excuse the complainant had to give. It cannot be said that it would

inevitably have been unacceptable, since the Board, which characterised the complainant's conduct as "not proper", none the less recommended that the reprimand should be withdrawn.

7. Moreover, it is not feasible to split the incident into two parts and to ignore the alleged misconduct of Dr. Quenum. To be sure, whatever Dr. Quenum did, he was not unprovoked. But if the complainant is right, he was manhandled and ignominiously treated in front of other members of the staff. This brings the Tribunal to a consideration of the first complaint. As to this the Director-General must be allowed the widest possible discretion in deciding how to handle incidents of this sort. If he had decided against any formal disciplinary proceedings against either of the parties, his decision would have been beyond criticism. But a decision to reprimand one party while leaving the case against the other unconsidered is open to question.

8. The Tribunal has however reached the conclusion that the decision to reprimand the complainant, even when looked at in isolation, was defective in that it was not based on a complete consideration of the facts. It must therefore be quashed and thus there is taken out of the first complaint the only element in it that might have called for consideration; the case can be treated as one in which the Director-General decided to take no action at all.

9. The complainant asks for an order for compensation and costs. Since however the Tribunal considers that the complainant's conduct, whether or not deserving of a reprimand, was improper, such an order would not be appropriate.

DECISION:

For the above reasons,

It is ordered that

1. The decision of 31 May 1978 to reprimand the complainant under Staff Rule 1110.1.2 be quashed; and
2. The other complaints be dismissed.

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.

André Grisel
Devlin
H. Armbruster

Bernard Spy