

FORTY-SEVENTH ORDINARY SESSION

***In re* JANKOVI**

Judgment No. 471

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Stevan Jankovi on 23 August 1980 and brought into conformity with the Rules of Court on 12 September 1980, the WHO's reply of 20 February 1981, the complainant's rejoinder of 20 March and the WHO's surrejoinder of 10 April 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 120, 380.7 and 780, and WHO Manual sections VIII.5.50 and 160;

Having examined the written evidence and considering oral proceedings to be unnecessary;

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

A. The complainant, who is a citizen of Yugoslavia, served on the staff of the WHO in Rabat from August 1969 to September 1976 as professor of an inter-regional centre for sanitary engineering. He was then put on leave without pay until March 1977. During the period of his appointment he and a Professor Drapeau, Professor of Environmental Engineering at the Polytechnic School in Montreal, wrote, among other things, a study running to some 300 pages, and illustrated with 96 plates, on methods of environmental analysis. According to a letter which Professor Drapeau wrote to WHO headquarters on 2 May 1972 the study had been completed, subject only to revision, since the end of 1971. Revision having been completed in June 1972, Professor Drapeau sent the full final text to Geneva by 16 November 1972. By a letter of 1 March 1974 the WHO informed the complainant that the study was to be set aside for the time being, and on 26 March it explained that the reason was lack of funds for 1974 and 1975. Having left the WHO and taken up a post in Belgrade, the complainant visited WHO headquarters in Geneva on 21 August 1979, and on the same day the head of the Publications Office informed him in writing that for want of funds the WHO was still unable to publish the text but had no objection to its being published by another publishing house. In reply to a letter from the complainant dated 17 October the WHO wrote to him in Belgrade on 22 November to say that a search for the document had proved unavailing: the Rabat project having in 1975 been transferred to the WHO Regional Office for Europe, in Copenhagen, he might wish to address an inquiry to that office. On 9 February 1980 he wrote to the Director-General saying that a well-known publishing house was willing to publish the manual and that he and Professor Drapeau wished to recover the text as soon as possible, and asking the Director-General to help in recovering it. On 28 February the Director-General replied that, to his sincere regret, and despite a thorough search, the document could not be found. On 31 May the complainant wrote to the Director-General accusing the WHO of negligence and claiming compensation under the provisions of the WHO Manual for "loss of personal property". He estimated the amount at \$36,000, equivalent to one year's grade P.5 salary at the time of the claim. Having received no reply, on 23 August 1980 he filed his complaint with the Tribunal.

B. The complainant observes that he invited the Director-General to discuss an amicable settlement but, having received no reply, he is appealing to the Tribunal to compensate him on the grounds that he "must start the work all over again". The reason why he wished to recover the text was that the WHO had had no objections to its being published elsewhere and he had found a publishing house to agree to publish it. The loss of the text by the WHO was due to negligence, and as co-author he is entitled to compensation.

C. In its reply the WHO contends that it is required to make to a staff member only such payments as are provided for under the contract of employment, the Staff Regulations or a general principle of law. The complainant's contract being silent on the matter in dispute, the only material text is Staff Rule 780, which reads: "The Director-General may authorise the indemnification of the staff member for loss of personal property as a result of conditions of service, provided he has taken reasonable precautions to safeguard and insure the property and provided that claim for such indemnification shall normally be limited to items of basic living". First, the Director-

General is not bound to authorise compensation, and the complainant had no right to it. Secondly, the complainant is no longer a staff member. Besides, even if that did not disqualify him for compensation, Staff Rule 380.7 precludes any claim for payment submitted beyond twelve months of the date when the initial payment would have been due. In this case the date would be that on which the text was lost, or on which the complainant, had he taken reasonable care, would have learned of its loss. He was negligent in letting over five years pass without asking about his text. Moreover, a former staff member cannot derive from the contract of employment a right which he did not have when it terminated. Thirdly, the text was not lost "as a result of conditions of service"⁹¹. Fourthly, although the complainant could not "safeguard" the text he had handed over to the WHO, he could have kept a copy. He should also have taken precautions more promptly. Fifthly, the text was not an object of "basic living". Sixthly, and most important, it was not the complainant's "personal property". Even supposing the WHO were no longer the owner, the complainant would not be the sole owner: Professor Drapeau was co-author and would therefore be co-owner. The WHO could not surrender the text to one co-author without the other's consent. Moreover, according to the Tribunal's own case law (in re Press, Judgment No. 66), an official of an international organisation has no rights whatsoever in the results of such work and such studies as he carries out on its behalf within the scope of his duties, at the request of his supervisors and during hours of work. Moreover, Staff Rule 120 states: "All rights, including title, copyright and patent rights in any work or invention produced or developed by a staff member as part of his official duties shall be vested in the Organization. The Director-General shall decide on the use to be made of these rights." In fact the rights are exercised by the Chief of Publications, and, in accordance with Manual sections VIII.5.50 and 160, the Chief of Publications, by his letter of 21 August, confirmed the WHO's intention of not publishing the complainant's text and authorised its publication elsewhere. The WHO thereby surrendered copyright, but not title, and indeed it still holds title. Staff Rule 780 therefore does not apply. Nor is there any general principle of law entitling a staff member to demand that an organisation surrender property which it is not using or to obtain a copy of a text on the grounds that he is the author. The WHO paid the complainant a salary in return for the writing of the text. Moreover, it may destroy its own records if it so wishes and is under no duty to compensate a staff member for their loss. The WHO also contends that the complainant's claim for relief is too vaguely worded to be receivable: in any case he may not claim more than he claimed in the internal proceedings - damages amounting to US\$36,000. This sum is disproportionately large: the complainant was only co-author and carried out other duties during his year in Morocco; he was remiss in safeguarding his own interests and the text is out of date anyway and would be of little use in writing a new work on the subject.

D. In his rejoinder the complainant observes that there was never any question of publishing the text before mid-1977 anyway. During brief visits to Geneva in 1977, 1978 and 1979 he went to WHO headquarters to ask about it. It is therefore mistaken to allege that he made no inquiries until 21 August 1979 and was therefore negligent in protecting his interests. All his inquiries were made with the full consent of Professor Drapeau, who authorised him to recover the original text for publication elsewhere. As to the argument that a former official may not make a claim, the date when the text was lost is unknown, and it is therefore impossible to allege that he was not an official at that date. If the text is the property of the WHO, why did the Director-General take such pains to try to recover it for him? WHO publications bear the author's name, and that is why the lost text may be described as "personal property". The WHO accuses the complainant of negligence and ignores its own in losing the text. He carried out the work mostly outside his hours of work in Rabat, and therefore the Tribunal ruling in re Press does not apply. It is not true to say he was paid to write the text: his post description made no reference to it, and he was not released from his many other duties to write it. As for the contention that it is out of date, the co-authors are the best fitted to decide that, and in their view most of the data are not subject to substantial change. Texts written by the complainant on related subjects some ten years earlier are still on sale in France. It is quite wrong to state that the damages claimed are disproportionately high considering the great amount of spare time he devoted to the work.

E. In its surrejoinder the WHO reports that it was clear as early as March 1974 that it had no intention of publishing the text. While not questioning the complainant's good faith, it finds no trace in its records of the inquiries he made between 1977 and 1979 at headquarters. Professor Drapeau seems never to have committed himself to the publication of the text. The evidence suggests anyway that either he or the complainant does have a copy of the text, and that what the complainant wants from the WHO is the 96 photographic plates which illustrate it. In that case any damages the Tribunal awarded should not exceed the cost of obtaining those plates. Editors commonly give the author's name and decline liability for his views: this publishing practice denotes no renunciation of title. The judgment in re Press is qualified by Staff Rule 120, which requires merely that the work be done as part of "official duties". Even if the complainant did some of the work outside working hours, it still formed part of his official duties. The WHO appointed him as a professor of sanitary chemistry and biology and his duties included research. His post description said that he would "undertake such other related duties as may be assigned"; and the

complainant himself admits that the WHO asked him to carry out the work. Lastly, with few exceptions, scientific works nowadays have to be kept regularly up to date, and nine years have elapsed since the text was written. The WHO accordingly invites the Tribunal again to dismiss the complaint.

CONSIDERATIONS:

1. The complainant served on the staff of the World Health Organization as a professor at the Inter-regional Centre for Sanitary Engineering in Rabat. In his capacity as a WHO official he wrote three manuals in collaboration with another university professor, Professor Drapeau. The first two manuals were published by the WHO in 1974 and in 1977.

Because of lack of funds the WHO was unable to publish the third, of which Professor Drapeau was also co-author. With Professor Drapeau's consent the complainant sought from the WHO, and obtained, permission to have it published by an editor of his own choosing.

But when he asked the WHO to hand over the original text, he was told that it had disappeared. On 31 May 1980 he claimed compensation for the WHO's negligence in losing the text. The Director-General did not answer his claim, and he is impugning the implied decision to dismiss it.

2. In his complaint, dated 11 September 1980, the complainant alleges that he has suffered serious prejudice from the loss of his personal property and claims compensation for that loss. He thus appears to be relying on WHO Staff Rule 780, which provides for the payment of compensation to WHO officials who have lost personal property as a result of conditions of service.

Staff Rule 780 provides for the indemnification of staff members in certain cases for the loss of movable assets or personal effects which have been destroyed or which have disappeared for some fortuitous reason. It does not cover work which a staff member may have done in the performance of his duties, which cannot be assimilated to personal property or effects.

Staff Rule 780 therefore does not apply, and the complainant may not rely on it.

3. It is arguable, however, that the complainant is relying on another right, the right to intellectual property.

The Staff Rules provide: "All rights, including title, copyright and patent rights, in any work or invention produced or developed by a staff member as part of his official duties shall be vested in the Organization. The Director-General shall decide on the use to be made of these rights." Accordingly, when the Organization employs staff to produce works of scholarship, it holds all author's rights, including copyright and reproduction rights. It may decide that the work shall be published under arrangements which it determines. It may also decide to do nothing, and, subject to review by the Tribunal, it may do so for any reason. In any event, in referring to lack of funds, as it has in this case, the Organization stated its reason, and indeed the complainant does not challenge it.

First, it appears on the evidence that the text was written for the WHO and at its request. The complainant received no special remuneration for the other manuals which he wrote, and which have been published. From that it is clear that he did not hold the copyright.

Secondly, the decision not to publish did not divest the WHO of its rights in the text. The complainant was aware of that and sought, and obtained, permission to publish under his own name.

The original text, handed over to the WHO as the holder of the copyright, continues in any event to be its property. In giving the complainant permission to publish, the Director-General transferred production rights only for the future.

As the owner of the manuscript, the WHO was not bound to keep the text in its archives. It was therefore not at fault on account of the loss of the text. There is therefore no need to consider whether, if it had still been in the WHO's possession, the Director-General would have been bound to hand it over to the complainant. Accordingly, he has no right to redress.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 28 January 1982.

(Signed)

André Grisel
J. Ducoux
Devlin

A.B. Gardner