FORTY-EIGHTH ORDINARY SESSION

In re ANDERSON

Judgment No. 497

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mrs. Carmen Fonseca Anderson on 2 June 1981 and brought into conformity with the Rules of Court on 16 June, the PAHO's reply of 11 August, the complainant's rejoinder of 16 September and the PAHO's surrejoinder of 22 October 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 310.5.2, 350.1 and 1230.1 and WHO Manual provision II.1, Annex A;

Having examined the written evidence, 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, a citizen of Honduras, joined the staff of the Pan American Sanitary Bureau, the secretariat of the PAHO, in 1966 and is now employed as a secretary at grade G.6 in the Washington office. Her dependent daughter, Isis, who was born on 19 February 1955, attended a junior college from September 1974 and graduated in June 1976 in social sciences. She then studied architecture at the Catholic University of America in Washington, graduating in June 1980. On 29 June 1979 bulletin No. 79-69 informed the staff of the Bureau that Staff Rule 350.1.2 was amended "from the beginning of the academic year in course on 1 January 1979": in future the education grant would be payable in respect of

"each unmarried child for whom the staff member provides the main and continuing support, after such child has reached the age of 21 but not beyond the scholastic year in which he reaches the age of 25, up to the end of the fourth year of post-secondary studies or award of the first recognized degree, whichever is earlier."

On 13 September 1979 the complainant applied for payment of the education grant for her daughter, Isis, for the period from September 1978 to May 1979, and she was paid some 1,600 United States dollars. On 13 December 1979 she applied for the grant for the period from September 1979 to June 1980. By a minute of 23 January 1980 the Chief of Personnel informed her that her second application was refused on the grounds that her daughter was not in her fourth, but in her sixth year of university studies and therefore did not qualify under Rule 350.1.2; the US$1,600 paid for 1978-79 would also have to be paid back since it should never have been approved. On 19 March the acting Chief of Finance wrote to her about the recovery of the US$1,600. On 26 March she wrote a memorandum to the Personnel Office objecting to the decision. On 1 April the Office replied confirming it. At the request of the complainant's counsel the PAHO sought the WHO's opinion on the matter. On 17 July the Chief of Personnel informed the complainant that, having consulted the WHO, the PAHO upheld the decision. She appealed to the Board of Inquiry and Appeal on 14 August. In its report of 27 February 1981 the Board found that there had been no breach of the rules; it recommended dismissing the appeal and compensating the complainant for the cancellation of payment of the grant for 1978-79. By a letter of 22 April, which is the decision now impugned, the Director dismissed the appeal and refused the compensation recommended by the Board.

B. The complainant submits that the PAHO misinterpreted and therefore misapplied Staff Rule 350.1.2. Although her daughter had completed two calendar years of education at junior college and three years at the Catholic University, in 1979-80 she was, according to the academic credits she had earned, only in her fourth or "senior" academic year of study. She was therefore qualified for the grant under the rule. It is not clear whether "fourth year of post-secondary studies" refers to the "scholastic", or calendar, year or to the "academic" year. To construe the rule as referring to the former and disregarding the dependant's "academic" status is to restrict its meaning unnecessarily. More than four calendar years may be required to complete four academic years. Education systems are diverse. In some Latin American countries a student may have to attend the university for six calendar years to

complete a degree recognised by the PAHO, which in the United States or Europe may take only four calendar years. The rule is ambiguous, and perhaps deliberately so, to take account of the variety of education systems. Under the principle governing the interpretation of contracts it should be given the construction most favourable to the staff member. The complainant invites the Tribunal to order the PAHO to repay all funds withheld from her remuneration and to pay the education grant for her daughter's "last semester of eligibility"; to award her at least US$1,000 in costs; and to grant any other remedies it deems just.

C. In its reply the PAHO, after tracing the history of the provisions on education grant, submits that the principles governing the interpretation of contracts do not apply in this case. Staff Rule 350.1.2 must, in its view, be so construed as to give effect to its purpose, namely to compensate a staff member for the additional costs of education incurred because of his expatriation. It was never intended that the PAHO should defray the full costs of education of dependants, and the setting of an age limit was designed to restrict claims, not to grant a new entitlement. In any event the wording of the rule is clear. The complainant's daughter having completed fours years of post-secondary studies by the end of the scholastic year 1977-78, there could be no further claim thereafter. The distinction between "scholastic" and "academic" years, based on the notion of academic credits applied in the country of the duty station, is not valid. The term "scholastic year" in the rule denotes the period from the beginning of the first term to the end of the last term of the year. If the student fails to obtain the recognised degree in the four years, the PAHO is not liable for subsidising further education, and the grant was therefore not payable in respect of the complainant's daughter after the end of the scholastic year in 1978. As for the recovery of the sum of US$1,600 mistakenly paid to the complainant for 1978-79, the PAHO admits that it erred in not investigating the claim properly. But until the rule was amended the complainant herself had paid for her daughter's post-secondary studies, and so she was no worse off after the amendment even if it gave her no entitlement. In fact she got an interest-free loan with repayment spread over 12 months. There is no evidence to suggest that she suffered any financial hardship: she did not even take up the offer of discussions on the rescheduling of the salary deductions. The PAHO therefore invites the Tribunal to dismiss the complaint.

D. In her rejoinder the complainant points out that even though the rule refers to the "scholastic" year in the context of the age limit it does not do so - though the PAHO implies that it does - in setting the period of post-secondary studies. The inclusion of the word "scholastic" in the second part of the rule would have been restrictive: its exclusion was intended to broaden the rule, as is borne out by the history of the amendment, to take account of the international diversity of education systems. In the United States, but not in Latin American countries, the academic year in which the student is placed depends on the number of "semester units" he has completed. It is more difficult for the dependants of expatriate staff in Washington to complete the number of units required for a degree. The complainant submits that the principles governing the interpretation of contracts do apply: the Tribunal has often treated staff rules as contractual and interpreted them as such. In having deductions made from her salary the complainant suffered severe financial stress and the Personnel Office was callous. To describe the US$1,600 as a loan is absurd: the method of repayment by a borrower is settled before the loan is made. The complainant presses her claims for relief and in particular her claim for costs since she believes that a compromise could easily have been reached had the Administration responded to her bona fide attempts to settle.

E. In its surrejoinder the PAHO points out that for the purpose of the education grant it has never taken account of the student's performance, only of his age and the number of scholastic years he has completed. The grant is not an element of remuneration to which the staff member is entitled, but a form of benefit designed to compensate the additional costs of expatriation. The complainant's allegations of financial stress and callousness are unfounded. She never spoke of financial stress in 1980 when discussing the matter with the Personnel Office. In any event the salary deductions were suspended while the WHO was being consulted, and she was offered an extension of the period of repayment. As for the grounds she gives for her claim for costs, since the interpretation of the rule is fully compatible with that applied by other leading international agencies, there is no reason why the PAHO should have negotiated with her or failed to resist her claims. It again invites the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The claim for education grant

1. The complainant's daughter graduated from high school in Washington D.C. in June 1974 at the age of 19. At that time there was no provision in the Staff Rules applicable to the complainant for an education grant for higher education. The daughter took at the complainant's expense a two-year course at a junior college in Washington at the end of which she obtained an associate degree. In September 1976 she began, still at the complainant's

expense, a four-year term at the Catholic University of America in Washington. In September 1978 she had completed two years of this course with two still to run. On 1 January 1979 there was introduced into the Staff Rules a new provision, retrospective in the present case to September 1978, under Staff Rule 350.1.2, which made the education grant payable "up to the end of the fourth year of post-secondary studies or award of the first recognised degree, whichever is earlier". The complainant applied for and obtained a grant for the scholastic year 1978-79, but was refused a grant for 1979-80 on the ground that by September 1978 her daughter had reached the end of the fourth year of post-secondary studies. Another ground put forward is that she had obtained an associate degree in 1976. This was not vigorously argued. The appeal board found that an associate degree is not a recognised degree within the meaning of the rule and the Tribunal agrees.

2. The complainant advances three contentions against the Organization's decision to terminate the grant, the first being that a year of post-secondary studies means, or could be thought to mean, an academic year. An academic year at the American University consists, it is argued, of the time taken to complete the courses prescribed for a scholastic year; it is open to a student, it is said, to take four, five or six terms instead of the customary three. There is no evidence in the dossier to show what the effect of this, if correct, would be in the present case. The complainant contends that the argument makes the regulation at the least ambiguous and that the ambiguity ought to be resolved against the Organization who worded the rule. The Tribunal on the other hand considers it to be beyond doubt that the regulation refers to a scholastic year not exceeding twelve months.

3. The second contention is that the junior college was not a place of post-secondary education and accordingly that the four-year period did not begin to run until September 1976. It appears to be agreed that a university is a place of post-secondary education; and that the secondary education at the high school, when completed, should fit the pupil of normal ability and diligence for the university. But it is argued that for some pupils, particularly expatriate pupils such as the children of international civil servants may be, will need further preparation for a university which can be provided by a junior college. There is no evidence that the present case was of this type. The Tribunal, again in agreement with the Board of Appeal, finds that the junior college is a place of post-secondary education.

4. The third contention raises a more substantial point. This is that the four-year period for which the rule provides may be any four-year period up to the age of 25 which is prescribed by the rule as the limit. This interpretation would require a liberal construction of the text but would, it could be argued, be in full accordance with the spirit of the regulation. The Organization is prepared to pay for four years and it cannot matter to it, it could be argued, which the four years are; nor, if the post-secondary studies last for six years as they may easily do and as they do in fact in the present case, whether the excess for which the Organization does not pay comes at the end or at the beginning. The complainant in this case is asking only for two years.

5. This is a tempting point, for it seems hard upon the complainant that she should be denied any benefit from a provision which was designed to help parents in her position and was drawn to her attention by the Organization as such. But if the text is not strictly adhered to, difficulties are bound to arise. If the period is not fixed as the first four years, who is to select which years they should be? If it is the parents, who might try to make them the most expensive years it might well lead to uncertainty and confusion. Rules are inevitably designed to meet ordinary cases and it is important, especially in the case of a rule that is, as this one is, part of a scheme adopted by the common system, that the text should not be distorted to meet hard cases. The proper way of giving special relief to the complainant, had that been thought desirable, would have been by a transitional provision; it is her misfortune that the new scheme did not take effect until in her case the post-secondary period was nearing its end. The Tribunal concludes that the complainant does not qualify for the grant.

The claim for repayment

6. Since the money was paid in the mistaken belief that payment was due when in law it was not, prima facie it is recoverable. But the extent to which recovery will be ordered depends on the circumstances of the case. In this case the Tribunal considers that it will be sufficient if the complainant repays half.

DECISION:

For the above reasons, it is ordered

1. that the Organization pay to the complainant one-half of each sum deducted as aforesaid with interest thereon at

the rate of 12 per cent per annum running from the date of each deduction,

2. that the Organization pay to the complainant US$500 as costs, and

3. that the other claims of the complainant be 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 3 June 1982.

André Grisel

J. Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.