

FORTY-NINTH ORDINARY SESSION

In re CARBO

Judgment No. 519

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Ricardo Carbo on 22 February 1982 and brought into conformity with the Rules of Court on 2 March, the PAHO's reply of 10 May, the complainant's rejoinder of 9 July and the PAHO's surrejoinder of 18 August 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulations 4.2, 4.3 and 4.4, PAHO Staff Rules 920 and 1230.1 and WHO Manual section 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. On 30 May 1980 the PAHO issued a notice, No. 80/63, inviting applications for a grade P.2 post, No. 2052, for a finance officer in the Budget and Finance Department of the Pan American Sanitary Bureau, the secretariat of the PAHO. The minimum qualifications included "Graduation from a four-year college or university with a major in Accounting or Business Administration. A recognized certification in accounting as a Certified Public Accountant or a Chartered Accountant." The complainant applied for the post. A United States citizen, he joined the Bureau in 1955, has held grade G.8 since 1972 and has been an "accounting technician" in the accounts section since 1979. The Office of Personnel asked him for "transcripts" of college "credits" he had gained, and by a letter of 14 October he replied that he had 65 credits in business administration. On 18 November 1980 the Office of Personnel told him that a selection committee had reviewed his file but that he had not been chosen. The successful candidate was Ms. Mora Reynoso, a G.6 clerk under temporary contract, who has a degree in accountancy from the University of Guadalajara, in Mexico. On 16 January 1981 the complainant appealed to the Board of Inquiry and Appeal against the decision not to appoint him. In its report of 30 September the Board recommended rejecting the appeal, and the Director informed the complainant of his acceptance of the recommendation in a letter of 24 November 1981, which is the decision impugned.

B. The complainant has three main pleas. (1) Regulation 4.4 ("... vacancies shall be filled by promotion of persons already in the service of the [Bureau] in preference to persons from outside") implies that officials with a long record of service should be preferred to recent recruits: career opportunities should reward satisfactory performance and loyalty. Yet here the PAHO preferred a temporary employee holding a lower grade. The educational qualifications for the post were added to suit someone chosen in advance. (2) The Selection Committee cannot have taken account of the complainant's educational attainments since it met on the very day, 9 October 1980, on which the request for the transcripts reached him. There was therefore incomplete consideration of the facts within the meaning of Staff Rule 1230.1.2. (3) Manual section II.1, Annex A, requires a university degree for posts at grades P.1 to P.3. This discriminates against serving staff and especially - in breach of Regulation 4.3 - against women, who make up four-fifths of the General Service category. The provision is also invalid because the staff representatives were not consulted before it was adopted: Rule 920 requires such consultation on any proposal to change the Regulations or Rules, which should include Manual sections, since they may be used, as they were in this instance, to curtail or deny rights embodied in the Rules. The complainant seeks reclassification of his post to P.2, financial compensation retroactive to the date at which he would have been appointed to post 2052 had he been selected, such other relief as the Tribunal thinks fit, and costs.

C. In its reply the PAHO invites the Tribunal to consider the complaint together with those of Mrs. Gluecksmann and Mr. Mejía, which are also before the Tribunal, because the rights of one exclude the rights of the others. The PAHO denies breach of Regulation 4.4: Ms. Mora Reynoso was not a person "from outside" since she held a temporary contract, and the complainant can scarcely be claiming priority for permanent over other staff. Besides,

Regulation 4.2 states that the paramount consideration in appointing staff shall be "the necessity of securing the highest standards of efficiency, competence and integrity". For reasons which the PAHO explains, a university degree was required for the post, and the complainant does not have one. The updating of his file added only six credits to his total, which still fell far short of the minimum. All the relevant facts were therefore taken into account by the Selection Committee. The successful candidate is well qualified for the post. There is no merit in the allegations, based on Manual section II.1, Annex A, of discrimination against serving staff, especially women, since the person appointed was a member of the staff and a woman. There was no flaw in the Selection Committee procedure. The claims for relief are in any case unfounded. The complainant has suffered no wrong since he was not qualified for the post anyway, and his claim to reclassification is irreceivable since for that there is a special procedure which he has not followed.

D. The complainant argues in his rejoinder that it would be contrary to due process and the Tribunal's practice to join his own complaint with those of Mrs. Gluecksmann and Mr. Mejía. What each of them contends is that the selection procedure was unfair and in breach of the rules, and the remedies each is claiming are not mutually incompatible. The PAHO gave Ms. Mora Reynoso a temporary contract so as to make her an "insider" and get round Regulation 4.4. "Efficiency" and "competence" do not depend on holding a degree, and there must be some connection between the educational requirements and the duties of post 2052. The failure of an official of proven fitness like the complainant to obtain the post reflects personal prejudice against him, which he attributes to his staff activities in 1975-76. Charges of discrimination against women are not rebutted by pointing out that one woman was successful. The claims are valid, the remedy sought being, not appointment to post 2052, but compensation for the wrongful selection procedure.

E. The PAHO observes in its surrejoinder that it is inviting the Tribunal, not to join the three complaints, but merely to consider them together, since they are similar and the relief sought in one may exclude that sought in the others. The determination of the educational requirements for a post is a matter of administrative discretion and was in this instance correct. Regulation 4.4 does not, as the complainant suggests, prescribe promotion by seniority. Ms. Mora Reynoso is far better qualified for post 2052 than the complainant and there was no abuse of discretion in appointing her. He has not suffered the violation of any right, and his claims are, in the PAHO's view, devoid of merit.

CONSIDERATIONS:

On 30 May 1980 a notice of vacancy was published for post 2052 which was that of a finance officer at grade P.2. The notice included among the minimum qualifications for the post "graduation from a four year college or university". This requirement was in accordance with the post description. On 12 June the complainant, who had by then been for 25 years in the service of the Organization and was at grade G.8 in the accounts section, was among 18 candidates applying for the vacancy. He did not meet the minimum qualification, having accumulated only 65 credits out of a normal 120 towards a college degree. The Selection Committee met on 9 October and at the beginning eliminated the complainant among others who had not the minimum qualifications. It subsequently appeared that the Committee had not the most recent information about the complainant and it is not clear whose fault that was; it is in any event immaterial since there would have been only six additional credits to add to the 65. The Committee selected Ms. Reynoso, a temporary clerk at the G.6 level, who had been only 15 months in the service of the Organization but who had a university degree.

The complainant believes that with his long experience and excellent record in the Organization he was a stronger candidate for the position than Ms. Reynoso and ought to have been preferred. He relies principally on Staff Regulation 4.4 which provides that, without prejudice to the inflow of fresh talent, vacancies shall be filled by promotion of persons already in the service in preference to persons from outside. He contends that it is implicit in this regulation "that staff members who have served the Organization over a long period of time should be given preference over new hires".

It must be obvious that no argument on these lines can get anywhere so long as there is for the post a minimum qualification which the complainant has not got. The complainant would need to argue that the minimum requirement was inserted *ultra vires*, or otherwise improperly; to do this he would have to examine the machinery for making up the post description and show how the impropriety occurred. He does not attempt this. Instead he makes a number of unsupported, and probably insupportable, allegations. He asserts, which may be right, that the qualifications are higher than those needed for the job, but then goes on to allege that they were deliberately made higher than necessary so as to exclude from consideration a group of senior staff of which he was one. Without

examining in any detail the process by which the requirement of a university or college degree came to be framed (it goes back at least as far as 1975) he asserts that it was introduced by a particular method so as to exclude consultation with the Staff Association. He alleges that Ms. Reynoso, presumably preselected for the post, was given a short period of employment merely so as to comply with the desideratum in 4.4.

There are other allegations of procedural irregularities and general prejudice which it is unnecessary to consider since, so long as the educational qualification stands, the rejection of the complainant was inevitable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy 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 18 November 1982.

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner