

**NINTH ORDINARY SESSION**

***In re* ROBERT**

**Judgment No. 56**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Miss Georgette Robert on 15 July 1961 and the Organisation's reply of 17 August 1961;

Considering Article II of the Statute of the Tribunal and Rules 520, 540, 930 and 940 of the Staff Rules of the Organisation;

Having heard Mr. Jacques Mercier, Counsel for complainant, and Mr. Frank Gutteridge, agent of the Organisation, in public sitting on 2 October 1961;

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

A. On 27 February 1951 complainant was appointed to the staff of the Organisation as a sub-editor in the Official Records Unit, Division of Editorial and Reference Services. On 1 June 1961 she was granted an appointment for five years in the P.1 grade. On 1 June 1956 this appointment was renewed for a further period of five years, i.e. until 31 May 1961.

Until 1958 the comments of her supervisors on her work and conduct were generally favourable. In 1954, however, they reproached her for her attitude towards criticism and her unco-operative spirit. Nevertheless, she was granted regular salary increments.

From May 1958 to April 1959 she was seconded to other services, where her work and attitude were, on the whole, appreciated, though not altogether without reservations.

B. At the beginning of 1959 complainant applied for promotion to the grade of P.2. On a recommendation of the Board of Inquiry and Appeal, the Director-General of the WHO decided to entrust her with duties at the P.2 level for a period of three months and to take a final decision on her application in the light of her performance of these duties.

In May 1959, before the beginning of the trial period, complainant returned to her regular duties. Immediately, her supervisors began to complain of her insubordination and aggressiveness. Suggestions were made that the proposed test should be cancelled, that complainant should be transferred, that disciplinary action should be taken against her and that her appointment should be terminated.

Nevertheless, the test took place beginning in the latter part of July 1959. On 18 February 1960 the Director-General informed complainant that, although the results of the test had been "disappointing, to say the least", she would be promoted to the grade of P.2 with effect from 1 March 1960. At the same time, he drew her attention to the fact that it is an official's duty to maintain good relations with colleagues, and warned her that her appointment would not be renewed if future reports on her were not "entirely satisfactory in all respects".

In spite of this warning, complainant's conduct and performance were the subject of increasingly serious criticism. Her supervisors on many occasions deplored both the inadequacy of her performance and her character defects, which, they claimed, made it quite intolerable to work with her.

C. In August 1959 the Chief of the Medical Service had Miss Robert examined by Dr. Melley, a psychiatrist not connected with WHO. Complainant vainly sought to obtain a copy of Dr. Melley's report. The Chief of the Medical Service wrote to her that he alone had any knowledge of the contents of that document and that he had not considered it necessary to take any action thereon. These statements were corroborated by the Director-General.

D. On 10 February 1961 the Chief of Personnel informed complainant that her appointment would come to an end on 31 May 1961, i.e. on expiry of the period for which she had been appointed.

On 31 May 1961 the Director-General confirmed this decision, although the Board of Inquiry and Appeal had recommended renewal of complainant's appointment. He could not, he said, retain in the service of the Organisation officials whose work and behaviour were such as to hinder its normal operation .

E. Complainant prays for the quashing of the decision not to renew her engagement. Alternatively, she prays for compensation in the amount of three years' salary. She further asks that Dr. Melley's report be communicated to her in order that she might, if it fell to be the case, assert a claim to the benefits provided for under Staff Rule 930.

The Organisation submits that the complaint should be dismissed.

IN LAW

### On Non-Renewal of Complainant's Appointment

1. Having regard to the Advisory Opinion of the International Court of Justice of 23 October 1956, the I.L.O. Administrative Tribunal is competent to hear complaints relating to the non- renewal of fixed-term appointments (I.C.J.: Reports. 1956, p. 77). Although this opinion concerns UNESCO officials, it applies by analogy to the staff of other organisations falling within the Tribunal's Jurisdiction. Therefore, complainant's prayer for the quashing of the decision not to renew her appointment is receivable. The WHO does not, for its part, challenge the Tribunal's Jurisdiction.

The competence of the Tribunal is, however, not unlimited. In taking the decision complained of, the Director-General exercised his discretion. A decision of this nature can be quashed only if it is tainted by an error in law or based upon materially incorrect facts or if essential material elements have been left out of account, or if obviously wrong conclusions have been drawn from the evidence in the dossier (cf. In re Giufridda, Judgment No. 47). It falls, therefore, to be considered whether any one of these conditions has been fulfilled in the present case, and this review must be all the more searching as complainant was granted two five-year appointments and discharged duties of a continuing nature.

2. Complainant alleges ill-will on the part of her chiefs and contends that, as soon as she returned to her duties under their supervision in May 1959, they deliberately set out to create incidents in order to substantiate their unfair grievances against her. This contention must be set aside.

The Director-General was not in a position personally to judge Miss Robert's merits or failings. He had to rely for this purpose on the reports of complainant's immediate supervisors, unless he had valid reasons to doubt their impartiality. It has not been established, however, that he had any reasons for disregarding the opinion which complainant's immediate supervisors had expressed concerning her. These opinions, although they were expressed by different persons and at different times, are strikingly similar, and complainant offers nothing in rebuttal but her own allegations. Therefore, the Director-General had good reason to believe that, as early as 1954, Miss Robert's behaviour was not beyond reproach, and that from May 1959 onward her performance was inadequate and her attitude towards her colleagues insufferable. In these circumstances, it is quite clear that the refusal to renew complainant's appointment is not tainted by any defect such as would justify either the quashing of the decision or the award of an indemnity. It is immaterial whether complainant was of fully balanced mind and whether or not Dr. Melley's report so states. It is not necessary for an official to be mentally sick for working relations with him to be intolerable. Nor is there any need to consider whether Miss Robert is justified in criticising the WHO for not having displayed sufficient readiness to transfer her to another service or to carry out the proposed test. Even if these criticisms were relevant, they would not throw a more favourable light on complainant and, by the same token, would not suffice to justify the quashing of the decision complained of.

3. Complainant, it is true, alleges that the Director-General misdirected himself when he based his decision on Dr. Melley's report, while at the same time refusing to disclose its contents. The Chief of the Medical Service, however, states that he communicated the contents of this document to no one and that, after having read it, he made no recommendation to the Administration. Relying on these statements, the Organisation asserts that Dr. Melley's report did not in any way affect the Director-General's decision.

This submission must be dismissed, without it being necessary to examine whether the contents of the report conveyed to the Director-General. It has been shown above that, quite apart from any medical considerations, the Administration had valid grounds for not renewing complainant's appointment. Moreover, if the Administration had received a report indicating mental deficiency on the part of the complainant, it is most likely that it would have acted upon such a report at the time, i.e. in 1959, and terminated complainant's appointment forthwith. It would not have waited until 1961 before putting an end to the services of an official who, for at least two years, had no longer been giving satisfaction. The Tribunal is therefore satisfied that Dr. Melley's opinion had no effect on the decision complained of, and finds complainant's allegation that the Director-General misdirected himself devoid of substance. The present case is thus distinguishable from the McIntire case, in which the Administrative Tribunal quashed a decision based on a document which had been withheld from it (Judgment No. 13).

4. Complainant further describes as a misdirection in the exercise of power the refusal to renew her appointment under circumstances which, had they really existed, would have called for disciplinary action. It is, however, immaterial whether or not complainant's conduct was in fact such as to warrant action of this kind. A decision not to renew a fixed-term appointment bears no relation to disciplinary sanctions which an official may have incurred. It is precluded neither by imposition of, nor by the failure to impose, such sanctions. To hold as justified the decision complained of, therefore, it suffices to show that the Organisation had proper reasons for dispensing with the services of complainant on expiry of her contract. This being so, the Organisation was not bound to resort to the procedure governing disciplinary reassignment or dismissal as laid down in Staff Rule 540, which requires that the official concerned be notified of the charges made against him and given an opportunity to reply to such charges.

#### On the Applicability of Staff Rule 930

5. Complainant contends that, if Dr. Melley's report described her as sick, she is entitled to the benefits provided for under Staff Rule 930. She therefore asks that the report be produced.

6. This submission is ill-founded. Staff Rule 930 refers to the case of an official whose appointment is terminated on the ground of a physical or mental impairment, on the advice of the staff physician. It has been shown, however, that it was not for this reason that complainant was not re-engaged, but because of her performance and conduct. Complainant cannot, therefore, avail herself of the provisions of Staff Rule 930, and there is no ground for ordering a document to be produced for the sole purpose of helping complainant to pursue a claim on that basis which could not succeed.

#### DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 6 October 1961 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby  
M. Letourneur  
André Grisel  
Jacques Lemoine