

## THIRTEENTH ORDINARY SESSION

### ***In re* REBECK**

#### **Judgment No. 77**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organisation drawn up, for the purpose of arbitration by the Tribunal, by Mr. Pasquale Rebeck on 14 October 1963, the Organisation's reply dated 30 December 1963, the complainant's additional memorandum dated 24 April 1964, and the Organisation's reply to that memorandum, dated 26 May 1964;

Considering the Organisation's offer dated 20 June 1963 to submit the case to the Tribunal for arbitration, the complainant's agreement dated 10 July 1963, and the Tribunal's acceptance to hear the case, notified to the parties on 13 August 1963;

Considering the contract signed between the World Health Organisation and the complainant on 2 and 7 March 1962;

Considering the documents in the dossier;

Having heard, in public sitting on 30 November 1964, supplementary to the proceedings ordered by the Tribunal, Mr. Rebeck, as well as Messrs. Brouland and Tolnay, officials of WHO, who testified under oath, Mr. André Guinand, counsel for the complainant, and Mr. Claude-Henri Vignes, agent of the Organisation, on the evidence submitted to the Tribunal;

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

A. On 28 October 1961 Mr. Rebeck, Professor of Medicine, offered his services to the Organisation in reply to an advertisement it had placed in the press with a view to recruiting medical staff for the Republic of the Congo. On acknowledging his application, the Organisation informed Mr. Rebeck of the contemplated terms of employment; in particular, by letter of 29 January 1962, it informed him that he would not be authorised to practise as a private physician and that, along with surgical work, he would be entrusted with related tasks if necessary. By a contract signed on 2 and 7 March 1962, the Organisation engaged Mr. Rebeck as a surgeon for one year, i.e. approximately from 10 April 1962. According to article II, paragraph 14, of the said contract, Mr. Rebeck was not engaged as an official. Article VI provided that any disputes arising between Mr. Rebeck and the Organisation regarding the fulfilment of the contract would be submitted to arbitration proceedings. Moreover, it appears from the statements made by Mr. Rebeck and Mr. Tolnay that they discussed the terms of appointment at the end of February 1962.

B. After arriving in the Congo on 4 May 1962, Mr. Rebeck stayed for some time at Leopoldville and was then assigned to the Thysville Hospital. In his first monthly report, dated 1 July 1962, he noted that, in agreement with the assistant doctor assigned to the hospital, he had taken charge of the surgery and maternity services. In his subsequent reports, while pointing out that he was obliged to be on duty every day, he complained of his working conditions and, in particular, of the inadequate equipment at his disposal. On 6 December 1962, according to the instructions of the Organisation's chief representative in the Congo (Leopoldville), Mr. Rebeck was requested to perform the duties of orthopaedic specialist at Leopoldville. However, even before taking up his new duties Mr. Rebeck was notified by the Organisation, by letter of 15 March 1963, that it was not in a position to renew his contract, which was due to expire shortly.

C. Since Mr. Rebeck advanced various claims against the Organisation, the parties agreed to submit these claims to the arbitration of the Tribunal, which accepted this commission. By a petition of 14 October 1963, Mr. Rebeck requested the Tribunal to order the Organisation to pay him the following amounts as compensation:

(1) U.S.\$1,716 for supplementary work during holidays

(60 days X 1/260 of salary, i.e. 60 X \$28.60);

(2) U.S.\$12,467 for extra-contractual obstetrical and gynaecological work;

(3) U.S.\$12,467 for extra-contractual ward duties throughout the year;

(4) U.S.\$49,868 for salary due during four years owing to the non-renewal of the contract;

(5) U.S.\$49,868 for loss of private clientele during four years;

(6) U.S.\$50,000 for decrease of private clientele during the five years following the four years normally covered by the renewed contract;

(7) U.S.\$100,000 for moral injury.

The Organisation prays that the complaint be dismissed, on the grounds that none of its contractual obligations has been violated and that the complainant is not entitled to damages because his contract was not renewed.

IN LAW:

I. The disputes to which the contract held by Mr. Rebeck may give rise do not, because of the particular nature of the said contract, fall within the competence of the Tribunal as defined by article II of its Statute.

The Tribunal is competent to hear this case only because Mr. Rebeck and WHO have by mutual agreement requested it to arbitrate the dispute arising between them concerning the non-renewal of the aforesaid contract on the expiry of its stipulated duration and because the Tribunal has accepted to do so.

In order to carry out the commission thus entrusted to it, the Tribunal must therefore base its decision on the clauses of the contract which constituted Mr. Rebeck's sole tie with WHO, adopt generally accepted rules of interpretation on the subject of contracts and, in particular, inquire into the mutual intentions of the parties at the time that the said contract was concluded.

Moreover, in carrying out this commission the Tribunal must consider the particular duties incumbent on an international organisation, especially those which bind it to refrain from taking any decision of an arbitrary nature.

In support of his claim for compensation, Mr. Rebeck alleges on the one hand that he sustained damages owing to various violations committed by WHO during the fulfilment of his contract and on the other that he sustained serious injury owing to the Organisation's refusal to offer him a new contract.

II. On the alleged violations of the contract:

1. The complainant charges the Organisation with having violated its contractual obligations by entrusting him at the Thysville Hospital with the obstetric service at the same time as the surgical service. Although it is true that the complainant was engaged expressly in the capacity of surgeon, it should be pointed out that on accepting an appointment in the Congo, where at that time hospital staff was manifestly insufficient and working conditions imperfect, the complainant could not expect to work exclusively as a surgeon in the strict sense. Furthermore, by letter of 29 January 1962, i.e. before the contract had been signed, the Organisation reserved the right to entrust him with related tasks, among which it would not be out of the question to include obstetrics and certain duties relating to general medical care. Moreover, in his monthly report of 1 July 1962 the complainant himself stated that he had accepted, in agreement with a colleague, to perform the duties of both surgeon and gynaecologist. Consequently, even though the complainant was not able to devote himself exclusively to the speciality for which he had been recruited, this fact cannot be regarded as a violation of the contract and, in particular, of article I, paragraph 2. Lastly, even if it were contrary to the clauses of the contract, the additional duties required of the complainant did not manifestly cause him any damage. Therefore the claim put forward on this count in any case is groundless.

2. The complainant also alleges that he was prevented from resting on holidays and obliged day and night to be on permanent duty, which was not provided for in the contract. Although, failing an express clause in the contract on this point, Mr. Rebeck could not demand to work regular hours but had to be prepared to work, in case of emergency, even at night, it is equally true that his duties were not unlimited, that he was entitled to hours of rest

compatible with the particular demands of the service entrusted to him and that, in the event that an exceptionally long period of duty was required of him, he was entitled to compensation in the form of supplementary leave.

In each of his monthly reports Mr. Rebeck claims to have been on duty every day, and the Organisation, although it denies the extra-contractual nature of such work, does not dispute the truth of these statements. Even considering the complainant's special situation, it must be acknowledged that he was subject to ward duties which were out of the ordinary and went beyond his contractual obligations. Under these circumstances, and not having obtained leave by way of compensation, the complainant is entitled to an indemnification, which the Tribunal fixes *ex aequo et bono* at \$500. The fact that during his appointment the complainant confined himself to reporting his extra services without expressly claiming compensation is immaterial; if his attitude shows that he probably forwent supplementary leave or waived damages in case of non-renewal of his contract, it does not follow that he should be deprived of the compensation to which he is entitled now that his appointment has terminated.

3. The complainant's other submissions cannot be entertained. Although he complains of having been described as "all-round physician" by the Organisation's mission in the Congo, he does not base any claim for damages on that fact and, consequently, the Tribunal may refrain from ruling on this allegation on the ground that it falls outside its jurisdiction. For the same reason it is useless to examine whether, as the complainant maintains, the Organisation was not entitled to make observations to him regarding his professional activities. Furthermore, when he complains that he was unable to practise medicine as a private physician, the complainant is criticising to no purpose a stipulation of which he was notified by letter of 29 January 1962, i.e. before entering the service of the Organisation, and which is not invalidated by any provision of the contract. Moreover, he is not justified in ascribing a slanderous character to the charges made by one of his superiors in discharging his duties and which, whether founded or not, cast no aspersions either on his honour or his reputation. Lastly, needless to say the Organisation did not violate any obligation by offering to provide the complainant with a certificate stating that the professional services performed by him were entirely satisfactory.

### III. On the non-renewal of the contract:

1. Article IV of the contract signed between Mr. Rebeck and WHO stipulates that "this contract is concluded for a period of one year as from the date of leaving Rome for Leopoldville, approximately 10 April 1962." No clause of the contract provides, either expressly or implicitly, for its renewal.

Secondly, however, it should be examined whether, in the absence of such a clause, the complainant could infer the promise of a new appointment from the Organisation's attitude.

On the one hand, neither in the advertisement placed in the press for the recruitment of physicians in the Congo nor in the correspondence exchanged with Mr. Rebeck did the Organisation state or imply that, if certain conditions were fulfilled, a new contract would be offered. In particular, Mr. Rebeck could not infer from the decision to move him to Leopoldville, taken on 6 December 1962, several months before the expiration of the contract, that it would be renewed.

On the other hand, it does not emerge either from the documents in the dossier or from the oral proceedings that, after the conversations he had with the official in charge of discussing with him the terms of his appointment, the complainant could reasonably consider that he was entitled to demand that the Organisation renew his contract. On the contrary, during these conversations he had learned that he was being engaged for the purpose of taking part in a special operation which the Organisation might be led by political or financial reasons to terminate within a more or less short period of time. Consequently, if he intended to remain in the employment of the Organisation beyond the period of one year established by the contract, he would have had to demand a formal guarantee, the utility of which could not escape a man with his background and experience. He had all the more reason to take such a precaution as according to his own statements, he was running a financial risk in leaving Italy for the Congo.

From the foregoing it follows that Mr. Rebeck cannot allege any express or tacit promise by the Organisation to conclude a new contract.

2. The question remains whether, by refusing to offer Mr. Rebeck a new contract, the Administration did not make arbitrary use of the very broad powers of appraisal at its disposal in cases of this nature.

It emerges both from the documents in the dossier and the statements made to the Tribunal that this refusal was

due to the existence of "friction" between the complainant and various officials or agents of the Organisation. Even, through the professional competence and the devotion of Mr. Rebeck have been acknowledged, such a motive, which in point of fact has not been proved incorrect and which is related to the running of the service, does not permit the decision impugned to be considered an arbitrary one.

#### IV. On the expenses:

Mr. Rebeck obtains partial satisfaction. On the other hand, his appearance before the Tribunal on 30 November 1964 proved useful to the understanding of the case. Consequently, grounds exist for awarding him a lump-sum compensation, fixed at \$200, to cover his expenses.

#### DECISION:

1. The World Health Organisation shall pay Mr. Rebeck the sum of \$500, as compensation for extra-contractual duties.
2. The other conclusions of the complaint are dismissed.
3. The World Health Organisation shall pay Mr. Rebeck the sum of \$200 for expenses.

In witness of this judgment, delivered in public sitting at Geneva on 1 December 1964 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signed:

M. Letourneur  
André Grisel  
H. Armbruster  
Jacques Lemoine