

SIXTY-SIXTH SESSION

In re LINDEMANN

Judgment 968

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Marcelle Amélie Marianne Lindemann against the World Health Organization (WHO) on 17 May and corrected on 13 July, the WHO's reply of 10 August 1988, the complainant's rejoinder filed on 17 February 1989 and the WHO's surrejoinder of 8 March 1989;

Considering Articles II, paragraph 5, VII, paragraphs 1 and 2, and VIII of the Statute of the Tribunal, WHO Staff Rules 510.1, 650, 730, 740, and 1230.1 and WHO Manual sections II.1, Annex E, and II.7, Annex E;

Having examined the written evidence;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French citizen born in 1934, worked as a translator for several international organisations before joining the WHO. On 12 May 1980 she was appointed to the WHO's European Office (EURO) in Copenhagen on a post as a "Reviser/ translator/editor" at grade P.4 in the Translation and Editorial Unit (TRED). Her appointment was for two years and she was put on one year's probation. The Chief of TRED, Mr. Deramat, gave her a bad appraisal report in April 1981 and, against her objections, the probation period was extended by six months. On 8 October Mr. Deramat wrote another report that was no better; he recommended confirming her appointment, but only at grade P.3. Again she protested strongly. The Regional Director extended her probation by another six months, to 11 May 1982. She appealed, and on the recommendation of the Regional Board of Appeal the Director decided on 22 February 1982 to confirm her appointment at P.4.

From February 1983 she was directly responsible not to Mr. Deramat but to the Director of Health Information Services (DHI). On 30 July 1984 she sent Personnel a long letter relating earlier incidents in her WHO career and stating her grievances. She was thereupon transferred back to TRED as from 1 October 1984. On 29 November the Regional Director made a written statement about the points she had raised and concluded: "Further internal strife in the TRED unit shall not be without consequences".

Translation and related services in EURO were to be overhauled and new post descriptions were drawn up for the staff. On 5 March 1986 a personnel officer sent the complainant a revised description of her post dated 20 February 1986 and entitled "Translator-reviser (French)". She objected that it belittled her official duties, but after lengthy correspondence the Chief of Personnel at headquarters confirmed it on 7 July.

In June 1986 she was given a five-year extension of appointment.

In a letter of 11 November 1986 to the Regional Director she observed that Mr. Deramat had failed to write her annual appraisal report in time; she set out her grievances in detail, mainly that she had never had a fair and proper appraisal and that her post description downgraded her from a reviser to a "self-revising" translator; and she asked for promotion to grade P.5 as a "senior reviser" or else a fair award of damages.

On 5 December she submitted her own draft of the post description. She had inserted in it a standard job description for P.5 translators which she had taken from the classification standards of the International Civil Service Commission, set out in document ICSC/R.302, Annex V, and which she had "adapted to EURO needs as I see them".

On 17 March 1987 the Regional Director approved the new structure of the translation, publication and text services, known as TPT, as from 1 April 1987. In a letter of 19 March he answered the complainant's letter of 11 November 1986: he agreed with senior officers of EURO that her draft description did not fit into TPT, as all descriptions of translators' posts must.

On 20 March she appealed to the Regional Board of Appeal under Rule 1230.1 alleging breach of contract and of

the grading standards and accusing the Chief of TRED of personal prejudice. In its report of 12 June 1987 the Board recommended (1) keeping her title as "Reviser/translator/editor" and maintaining the status of her work as stated in her original post description and (2) granting her personal promotion to P.5. But in a letter of 10 July 1987 the Regional Director rejected the recommendations on the grounds that her post description could be changed at any time to suit the WHO's interests and that she did not deserve promotion.

On 20 August 1987 she appealed to the headquarters Board of Appeal, enlarging on her claims, but in its report of 8 February 1988 the headquarters Board recommended rejecting them, and by a letter of 22 February, the final decision impugned, the Director-General informed her that he did so.

On 13 January 1988 she appealed to the Regional Board of Appeal against her appraisal report for 1986-87 and the Regional Board made several recommendations in her favour in its report of 15 April 1988 on that appeal. The Regional Director took a decision on those recommendations on 8 June.

On 26/27 November 1988 she lodged yet another appeal with the Regional Board, this time challenging her appraisal report for 1987-88. In its report of 15 December 1988 the Board recommended rejecting the appeal as irreceivable, the Regional Director endorsed that recommendation on 19 December, and she has appealed against his decision to the headquarters Board of Appeal.

B. The complainant recounts her many disputes with the Organization over the years. She observes that she utterly failed to get the "outrageous" appraisals by Mr. Deramat and others withdrawn; despite endorsement of her stand by the Regional Board of Appeal and her first-rate performance Mr. Deramat went on reviling and discrediting her; because of his dislike of her she was ostracised, given little or nothing to do, and discriminated against; her professional standing and career are in ruins.

The Regional Director's letter of 10 July 1987 was mistaken in rejecting the Regional Board's recommendations in her favour. Since she had clamoured for proper work it was callous to say that she did not deserve promotion. Her energy and high output, amid constant troubles, warranted some reward. How could it be in the WHO's interests to keep her from performing her proper duties? It is untrue to say that the revised post description dated 20 February 1986 was in line with the new structure of the translation services, the real purpose of which was to transfer the Chief of TRED and another staff member elsewhere. In any case the new structure is, for reasons she sets out, not in the WHO's interests. It did away with "sub-unit heads" and so denied her "sub-managerial" responsibility. The headquarters Board's report was superficial and insulting and its recommendations unsubstantiated.

She asks the Tribunal to order (1) that the Regional Director "make a public statement to a large audience" regretting the "unjustified distress" caused to her and the damage to her "image". She claims damages for injury (2) to her personal and professional reputation and (3)(a) to her health and peace of mind. She demands (3)(b) "a suitable period of rest and recuperation". She seeks (4)(a) the replacement of the revised post description with the one she was given on appointment; (4)(b) damages for being prevented since 1981 from performing her "contractual duties"; and (4)(c) the grant of suitable functions and status, or, failing that, (5)(a) abolition of the post of "Reviser/translator/editor", (5)(b) payment of an indemnity for abolition of post, (5)(c) the damages claimed under (4)(b) above and (5)(d) assignment within six months to a suitable new post or else the grant of special leave with full pay up to the age of retirement, together with compensation for loss of pension entitlements. She claims (6) 5,000 United States dollars in costs. She invites the Tribunal to hear a witness on the matter of differences between a P.4 reviser and a P.4 "self-revising" translator.

C. In its reply the WHO gives its own version of the facts of the case.

The Organization confines its reply to her claims arising out of the application of the grading standards and her post description. In its submission all her other claims are irreceivable because she has failed to exhaust the internal means of redress as Article VII(1) of the Statute of the Tribunal requires, or because they are time-barred under VII(2), or because they fail, as II(5) requires, to challenge specific decisions or to allege non-observance of the Staff Regulations and Staff Rules.

Claim (1) - to a public statement by the Regional Director - is outside the Tribunal's competence as defined in Article VIII of its Statute. Besides, the complainant has suffered no moral injury for which the WHO may be held liable. According to the rules on compensation for service-incurred injury or illness (WHO Manual section II.7, Annex E) claim (3)(a) should have been put to the Advisory Committee on Compensation Claims. Since it was not

it is irreceivable under Article VII(1) of the Statute. So is claim (3)(b) because she has not claimed sick leave under Staff Rule 740. Besides, she offers no medical evidence of lasting injury to her health or unfitness for duty.

The decisions upholding the revised description of her post and refusing her personal promotion to P.5 were discretionary and the Director-General's exercise of his authority shows no flaw that would warrant setting them aside.

As to the post description, the complainant's own draft was irrelevant to her prescribed duties and did not fit into the structure of TPT. In confirming the grade at P.4 the Organization complied with the grading standards in Manual section II.1, Annex E, and the guidelines in ICSC/R.302, Annex J ("Grade level standards (Tier II) for translators and revisers"). The WHO discusses the grading standards for self-revising translators, whom it distinguishes from managers of translation services, ordinarily graded P.5 or above. The Regional Board was wrong in saying in its report of 12 June 1987 that the complainant's competence and experience had been disregarded: a post is gauged against general standards, not against the holder's own attributes. Though changed, her duties were much the same after as before the reorganisation. At no time was revision her main or only duty. There was compliance with the requirement in Staff Rule 510.1 that in any assignment consideration should be given as far as possible to the staff member's abilities and interests: she was given work and responsibility suited to her grade. There is no evidence to suggest that the reorganisation was prompted by animosity against anyone. No official has the right to keep his post description, which may vary with changes in the Organization's work. The complainant has fared neither better nor worse than the staff of other translation units: claims (4)(a), (b) and (c) are therefore unfounded. She adduces no evidence to show that her work is inappropriate to her grade, or that her personal or professional reputation has suffered: claim (2) is groundless. As to claim (5), the Tribunal is not competent under Article VIII of its Statute to order the abolition of a post or the placing of the complainant. Her claim to leave with pay is fanciful: the Tribunal is not competent, and she does not qualify anyway under Rule 650. There are no grounds for supposing that she deserved promotion to P.5.

Lastly, oral evidence on the distinction between a P.4 reviser and a P.4 self-revising translator would be immaterial.

D. In her rejoinder the complainant develops her narrative of what she sees as the grossly and consistently unfair treatment of her. She objects to misrepresentation and distortion in the Organization's account. The issues she covers include her personal background, her appraisal reports and the fate of her appeals to the Regional and headquarters Boards; the steady erosion of her functions and status; the revision of her post description; her conciliatory attempts to get recognition of her merits; the grave damage done to her reputation; the evil atmosphere in TRED and the harassment and vilification of her, abetted by the Chief of TRED and winked at by the Regional Director. In support of her case she appends written testimony from colleagues, one of whom brands the running of EURO as "a sad story of complicated idiocy".

As to receivability, she maintains that all matters that have a bearing on her character and status are relevant to her allegations of injury to her reputation and health. The events she cites show constant injustice and abuse of authority that may not be dismissed as immaterial just because the challenge to some of the individual decisions is time-barred.

She develops her pleas on the merits and presses her claims.

She further asks that the matter of her performance report for 1987-88, which forms the subject of her appeal to the headquarters Board of Appeal, be directly referred to the Tribunal.

As further evidence of the injury to her health she submits statements by doctors she has consulted and asks the WHO to produce her medical records.

As to the revised post description, she goes over the reasons why in her view it was flawed with personal prejudice, mistakes of fact and law and disregard of essential facts. She compares the duties of P.4 and P.5 posts. She submits that the WHO misrepresents the Regional Board's reasoning and she challenges the Organization's explanation of its grading standards. In her view the revision of the post description was not the outcome of the reorganisation. The Organization at last and at least admits that her duties have changed, though not that they have been downgraded. It has failed to show that its decisions served its own interests. Her fine record is ample reason for her to expect promotion.

She makes detailed comments on the appendices to the reply.

As to her claim to costs, she points out that it does not cover the time she took - 320 hours of her spare time - to produce her rejoinder.

E. In its surrejoinder the WHO observes that much of the complainant's rejoinder merely repeats her earlier allegations and arguments and much of it is utterly irrelevant. Moreover, it is often obscure: it is for her to state concisely, not for the defendant to try to guess from the mass of papers she has put in, just what it is she wants. The Organisation points to several mistakes of fact in her narrative and develops the arguments in its reply on receivability and on the merits. It submits in particular that the subject of her appeals to the Regional and headquarters Boards, which is the appraisal of her performance, is immaterial to this case, which is about the description of her post, and in any event is an issue as to which she has not yet exhausted the internal means of redress.

The Organization does not agree that the matter of her report for 1987-88 be directly referred to the Tribunal since her appeal on that score is pending before the headquarters Board of Appeal.

The Administration has treated her at all times in a reasonable and considerate way. When the Board of Appeal held that it had acted incorrectly it put things right, with the exception of the issue now in dispute. Her claim to rest is unclear and unfounded. There is no evidence to suggest that she is unfit for work. Besides, she has made no claim to compensation under the Rules and has produced no medical certificate to say that she is actually ill or disabled. The statements she submits from doctors are contradictory and inconclusive. Promotion is not a right that the staff member can gain just by good performance and in disregard of the grading structure. Her arguments about the nature of her duties are, for reasons the WHO sets out, implausible.

CONSIDERATIONS:

1. After serving as a translator in several other international organisations the complainant joined the staff of the WHO's European Office in Copenhagen in 1980 as a reviser, translator and editor at grade P.4 in the Translation and Editorial Unit. After completing probation she had her appointment confirmed in 1982 at that grade. In June 1986 her appointment was extended by five years.

As part of a review of translation and related services in the Office new post descriptions were drawn up for the complainant's post and others in 1986. In a letter of 11 November 1986 to the Regional Director she asked that her post be upgraded to P.5 as "senior reviser". Her request having been turned down, she appealed to the Regional Board of Appeal. Although the Board recommended granting her appeal, the Regional Director rejected it on 10 July 1987 and on 20 August 1987 she appealed to the headquarters Board of Appeal. The headquarters Board recommended rejecting her appeal, the Director-General so decided on 22 February 1988, and that is the decision she is impugning.

On 13 January 1988 the complainant lodged another appeal with the Regional Board of Appeal challenging her appraisal report for 1986-87, the Board reported in her favour on 15 April, and the matter was settled by the Regional Director's decision of 8 June.

2. The complainant has since appealed against another decision which the Regional Director took on 19 December 1988 endorsing a recommendation by the Regional Board of Appeal in a report dated 15 December that he dismiss another appeal by her. That appeal challenged her performance appraisal report for the period from November 1987 to October 1988. In her rejoinder she asks the WHO to agree to let that matter too be decided at this stage by the Tribunal.

3. So there are two issues in dispute: one forms the main subject of this complaint and is the grading of her post, which she believes should be P.5; the other is her appraisal report for 1987-88.

The complainant asks the Tribunal to take the two issues together, but the Organization does not agree.

Article VII(1) of the Tribunal's Statute provides that a complaint shall not be receivable unless the decision impugned is a final one and the official has exhausted all means of resisting it that are available under the organisation's rules. As regards the matter of the complainant's appraisal report, the complainant has not exhausted the means of redress available to her within the WHO and the Director-General has not yet taken his final decision.

Her claims as to the report for 1987-88 are therefore irreceivable and there can be no question of joining them to the claims put forward in her complaint.

The complainant's claims

4. The complainant's claims are as set out in B above.

Claim (1)

5. By virtue of Article II(5) of its Statute the Tribunal is competent to hear a complaint alleging non-observance of the terms of appointment of an official of the WHO and of provisions of its Staff Regulations. If the Tribunal finds the complaint well-founded it may, under Article VIII, order rescission of the decision impugned or the performance of the obligation relied on.

Claim (1) - to a public apology from the Regional Director - is dismissed because Article VIII does not provide for relief of that kind.

Claim (2)

6. Claim (2), which is to damages for injury to the complainant's personal and professional reputation, also fails, the complainant having produced not a shred of evidence to suggest that her personal or professional reputation has suffered.

Claim (3)

7. Claims 3(a) and (b) are to compensation under Staff Rule 730 for continuing and lasting damage to health and to a suitable period of rest and recuperation.

Rule 730 provides that a staff member shall be entitled to compensation in the event of illness and injury attributable to the performance of official duties. A claim to compensation under that head has to be addressed to the Advisory Committee on Compensation Claims, which makes recommendations to the Director-General; it has to be supported by medical evidence; and there is a special procedure for resolving disputes.

Since the complainant has addressed no such claim to the WHO, let alone to the Advisory Committee, she has not exhausted the internal means of redress as Article VII(1) of the Tribunal's Statute requires, and the claims fail because they are irreceivable.

Claims (4) and (5)

8. The attribution of duties to a staff member, the nature of the duties to be carried out and the grading of posts are matters that the Director-General decides at discretion. The Tribunal will not interfere with such a decision unless it was taken without authority or in breach of a rule of form or procedure, or was based on an error of fact or law, or if some essential fact was overlooked, or if there was misuse of authority, or if a mistaken conclusion was drawn from the facts.

9. In claim (4) the complainant asks that the revised post description, which put her post at grade P.4, be replaced with the one she was given on appointment, and which she says would have given her grade P.5.

The claim is devoid of merit. Having decided to reorganise translation and related services in EURO, the Administration strictly applied the classification standards laid down by the International Civil Service Commission and there was no flaw in its decision to grade the complainant's post at P.4. Grade P.5 involves managerial duties, but her post did not include such duties. Though changed, they were much the same after as before the reorganisation. The work and responsibilities suited her grade.

The Tribunal accordingly dismisses claim (4).

10. Claim (5) is stated as an alternative to (4).

Although, as was said above, the Tribunal may under Article VIII of its Statute order the rescission of a decision or

the performance of an obligation, it may not order the abolition of the complainant's post or, for that matter, of other posts in the Organization. It may not order the Director-General to place the complainant in any particular post.

Besides, the Director-General could not order the grant of special leave with full pay up to the date of retirement. Staff Rule 650 restricts the grant of special leave for the purpose of training or research in the Organization's interest or for some other valid reason, the reason stated by the complainant for granting her special leave is not a valid one, and the claim therefore fails.

Lastly, she is not entitled to compensation for loss of pension rights which she attributes to the withholding of promotion since there are no grounds for holding that she had any right to be promoted anyway.

Accordingly all her claims under (5) are dismissed.

Claim (6)

11. Since all her other claims are dismissed, so too is her claim to costs.

Hearing of a witness

12. Lastly, the Tribunal disallows her application for the hearing of a witness on the matter of differences between a P.4 reviser and a P.4 "self-revising" translator since such differences, if any, are immaterial.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner