

SEVENTIETH SESSION

***In re* VERDRAGER (No. 9)**

Judgment 1056

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr. Jacques Verdrager against the World Health Organization (WHO) on 20 February 1989 as supplemented on 23 March, 22 April and 5 May, the WHO's reply of 9 June, the complainant's rejoinder of 9 August and the WHO's letter of 23 August 1989 to the Registrar of the Tribunal stating that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and WHO Staff Rules 1230.8 and 1240.2;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant is a Frenchman and was born in 1928. His career with the WHO came to an end in 1976 in the way described, under A, in Judgment 325, which dismissed his first complaint. He has since filed several applications for review, each of which the Tribunal has also dismissed, the last of them in Judgment 1015 of 23 January 1990.

He has in vain sought employment with the WHO and other international organisations.

A visit he paid in January 1989 to WHO headquarters in Geneva led him to believe that he had been "black-listed" for employment in the international civil service. He is objecting to his inclusion at some unknown date in the list.

B. The complainant contends that on going to headquarters he learnt from a reliable source that there was a black list containing the names of every WHO official who had lodged an internal appeal or gone to the Tribunal. He believes that he is on the list and that that is why he has failed to get employment in the international civil service, notwithstanding sometimes encouraging initial responses to his inquiries. He says that several staff members could bear witness to the existence of the list but have asked him for fear of reprisals by the Administration not to reveal their names.

The list is unlawful because it offends against the staff member's right of appeal as embodied in the WHO Staff Regulations and Staff Rules and in Article II(5) of the Tribunal's Statute.

The WHO has caused him the greater injury in that it has prevented his employment in other organisations as well.

He asks the Tribunal to order it to do away with the list, grant him the equivalent of seven years' salary in damages, plus interest, and award him 30,000 French francs in costs.

C. In its reply the WHO submits that the complaint is irreceivable.

On the strength of mere talk about a black list and without even awaiting the answer to a letter he wrote to the Director of Personnel on the subject the complainant has filed a complaint which gives neither the date of the impugned decision nor the date at which it was notified to him.

He has addressed no claim to the Organization. Even supposing he has there has been no rejection by the WHO and so there is no "final action" within the meaning of Staff Rule 1230.8.3. There is no "final decision" as defined in Rule 1240.2 and in Article VII(1) of the Tribunal's Statute.

The complaint being an abuse of process, the WHO invites the Tribunal to order the complainant to pay it a sum to cover its expenses.

D. In his rejoinder the complainant observes, as to receivability, that it is the WHO's fault that there is no decision for him to challenge: the very secrecy of the list makes it doubly unlawful. To declare his complaint irreceivable would be to encourage the Organization's improper policy. He wrote several times to the WHO offering his services. He last wrote to the Director-General on 7 December 1988 but got a letter of 10 January 1989 from the Director of Personnel which amounted to rejection. He has therefore exhausted the internal means of redress.

He enlarges on his pleas on the merits. He states that the Director of Personnel informed him by a letter of 21 February 1989 that there was no black list. Even if that is so, the WHO still keeps a list of acceptable candidates for employment and the effect of that is the same: however good he may be, a candidate who is not on that list will be barred from employment.

CONSIDERATIONS:

1. By a decision of 28 January 1976 the Director-General of the WHO terminated the complainant's appointment. In Judgment 325 of 21 November 1977 the Tribunal dismissed his complaint against termination, and he has applied several times for review of that judgment.

The purpose of this complaint is different. He alleges that since being dismissed he has failed to find other employment in the international civil service. He produces letters of support from officials in the WHO, the Pan American Health Organization and the United Nations Children's Fund.

Although his professional merits are acknowledged, the claims he has addressed to the Director-General of the WHO have always been rejected and any sort of settlement consistently ruled out.

The complainant attributes his failure to his having been put on a list so that he can be employed neither in the WHO nor in any other organisation.

2. The complainant is not challenging any administrative decision. Nor has he submitted any text that may be treated as a claim that has by implication been rejected. His complaint is therefore irreceivable.

3. The Tribunal will not entertain the Organization's counter-claim to an award of costs against the complainant for abuse of process.

DECISION:

For the above reasons,

The complaint and the Organization's counter-claim are dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux
Mella Carroll
William Douglas
A.B. Gardner