

SEVENTY-THIRD SESSION

In re HERNANDEZ QUINTANILLA

Judgment 1183

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Maria Hernández Quintanilla against the World Health Organization (WHO) on 10 September 1991, the WHO's reply of 22 November 1991, the complainant's rejoinder of 3 January 1992 and the Organization's surrejoinder of 21 February 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules, 420.4, 530, 540, 1060 and 1210.1;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. WHO Staff Rule 1060 reads:

"If, during an initial or extended probationary period, a staff member's performance or conduct is not satisfactory, or if he is found unsuited to international service, the appointment shall not be confirmed but terminated. The staff member shall be given one month's notice. No indemnity is payable."

The complainant, a Canadian citizen who was born in 1948, joined the staff of the WHO on 24 September 1989 under a two-year appointment. She was a technical officer under the Global Programme on AIDS at grade P.3. In keeping with Rule 420.4 her first year was probationary.

She was assigned in October 1989 to Kigali, in Rwanda, and for eight months was the only WHO official serving under the country's AIDS programme. In May 1990 the WHO appointed an epidemiologist to head it and in July put it under the technical and administrative authority of the Regional Office for Africa in Brazzaville.

The complainant's relations with her new supervisor, though at first good, soon soured.

In accordance with Staff Rules 530 and 540 a report appraising her performance had to be made before the end of the period of probation, i.e. by 23 September 1990, and so in June 1990 she was sent the report form and asked to fill up by the end of August the section describing her duties.

In October 1990, as civil war flared in the north of the country, she learned that one of the WHO vehicles she was responsible for had gone missing in the war zone. In a handwritten telefax message of 27 October to the officer at headquarters in Geneva who was in charge of co-operation with national programmes she spoke of the fighting and sought "explicit instructions" about the "WHO AIDS Imprest Account" and about the vehicles which the WHO and the United Nations Development Programme (UNDP) put at the disposal of the national programme. She asked that the WHO's Representative in Rwanda, who was then on mission at headquarters, be told of any decision to be taken. Part of her message having become garbled in transmission, headquarters returned the second page to Kigali on 29 October with a request for retransmission. The page referred to the worsening situation in Rwanda and to an explanation from the Ministry of Health about the missing vehicle. The complainant was not on the spot when the message came back and a government official working on the premises picked it up and took it to the Minister. By letter of 7 November the Minister asked the WHO's Representative to relieve her of her duties forthwith.

On 23 November she filled up the section in the probation report form describing her duties and submitted the form to her supervisors. On 25 November she set off for home leave in Canada. On 7 December her first-level supervisor entered his comments in the form and recommended extending the period of her probation by twelve months. He said that she might do better if she was more an understanding adviser than a taskmaster and showed greater team spirit. On 12 December the WHO's Representative added that she had failed to keep on good terms with the national authorities. By a telex of 22 February 1991 sent to Montreal a personnel officer in the Regional

Office for Africa informed her on the Regional Director's behalf that in the light of her probation report her appointment would be terminated under Rule 1060 as from 1 April 1991 on the grounds that her "difficulty in dealing with people" made her "unsuitable for international service".

As Rule 1210.1 allows, she appealed to the Director-General by a letter of 6 May against the decision not to confirm her appointment. The Director-General rejected her appeal in a letter of 3 June on the grounds that she had "failed to establish satisfactory working relationships with both WHO and national staff". That is the decision she impugns.

B. The complainant submits that her dismissal was unfounded. She is not one to have "difficulties" with people: though she did have words with her supervisor, the head of the programme, it happened only once. She got on well with many people at work, both at headquarters and in the field. She also got on well with the Ministry of Health staff, at least until the incident of 27 October 1990. The Regional Director was wrong to base any general assessment of her ability to work with others on the dispute with her supervisor.

The WHO infringed her right to a hearing. Neither its Representative nor the Regional Director tried to find out her version of the incident. The Regional Director picked on the one flaw in her relations with others as a pretext for getting rid of her. The decision was tainted with bias and taken in a highly emotional atmosphere without dispassionate reflection.

She seeks reinstatement in some other post so that she may prove her ability "to develop cordial and efficient working relationships". Failing that, she claims pay for the rest of her two-year appointment, from the date of termination, 1 April 1991, to the date of expiry, 23 September 1991.

C. In its reply the WHO submits that the Director-General correctly based his decision on the complainant's unsuitability for international service. Difficulty in getting on with people marred her dealings with supervisors and government officials. She herself acknowledges the clash with her first-level supervisor, and her only suggestion for a solution - her own departure - shows how unyielding she was. Her attitude towards her second-level supervisor, the WHO's Representative in Rwanda, was unhelpful and she disregarded the proper chain of command by seeking instructions from a senior officer at headquarters in her fax of 27 October 1990. In comments appended to his letter of 7 November 1990 to the WHO's Representative in Rwanda the Minister of Health said: "It has been clear since she took up duty that she finds it hard to get on both with those in charge of the programme and with the Ministry". That belies her allegation of good relations with government officials.

She offers no evidence in support of her allegations of bias and breach of her right to reply. The Regional Director, the WHO's Representative and the Minister of Health arranged meetings between the complainant and her supervisor so that they could make their peace and she had the opportunity of stating her case to the Director-General in her internal appeal of 6 May 1991.

What she is impugning is a decision, not to dismiss her, but to refuse confirmation of appointment. Since the Director-General took it in the Organization's interests and in due exercise of his discretion her complaint is devoid of merit.

D. In her rejoinder the complainant challenges the WHO's reading of the facts and presses her claims. It is common ground that the souring of relations with her supervisor prompted the decision. She actually offered to withdraw so as to let the programme go ahead smoothly: what was "unyielding" about that? She denies the charges of poor relations with her higher-level supervisor, whose authority she never tried to bypass. Sending a telefax message to headquarters on 27 October 1990 was an informal attempt to get an outside opinion on matters which the Regional Office, not headquarters, was handling. And her message had to go to someone senior because the matters she raised in it were delicate. The Ministry staff stood by her up to the date of the fax message, and it may have been her wish to abide by WHO guidelines, particularly on budget matters, that aroused resentment.

E. In its surrejoinder the WHO comments on the main issues the complainant raises and enlarges on the pleas in its reply. In its submission her rejoinder raises no new points of fact or law. She herself acknowledges the causal link between the misunderstanding with her supervisor and her separation. The solution she proposed shows how hard it was for her to compromise: it implied that either the Organization accepted she was right or she would leave. As her fierce criticism of colleagues and her tactlessness often revealed, she had no team spirit.

CONSIDERATIONS:

1. The complainant joined the staff of the WHO on 24 September 1989 as a technical officer at grade P.3 under the Global Programme on AIDS. She was stationed in Rwanda. There she served on a team comprising an epidemiologist, who was the team leader, a technical officer and a specialist in health education. She was granted an appointment for two years, in the first of which she was on probation.

2. The probation report which her supervisors signed on 7 and 12 December 1990 was unfavourable. Though he found her technical skills "adequate", her first-level supervisor said that she was lacking in team spirit, that she should keep to the work set out in her job description and that she must learn to get on better with the Rwandese and not regard herself as "above everything around her". Her second-level supervisor observed that she was not on good terms with the national authorities or the staff of other international agencies. Their conclusion was to recommend extending by twelve months the initial period of her probation, which had come to an end on 23 September 1990.

3. In a telex of 22 February 1991 a personnel officer in the Organization's Regional Office for Africa referred to that probation report and informed her that her appointment would not be confirmed but would end at 1 April 1991 in accordance with Rule 1060. The text of that rule is reproduced in A above. The reason the telex gave was her "difficulty in dealing with people", which made her "unsuitable for international service".

The extension of the period of the complainant's probation

4. There is no trace in the case records of the approval of her supervisors' recommendation for extending the period of probation, the box for such approval being apparently left blank in the report form. But the parties do not address the issue and indeed it is not in dispute that at 22 February 1991, the date of the telex giving her notice of termination, the complainant was still on probation. At all events it was her own fault that her probation report was not processed before the date of expiry of the initial twelve-month period of probation. By a memorandum of 18 June 1990 she had been reminded that her probation would end at 23 September and told to fill up by 31 August the section of the report form giving her own description of her duties.

The decision not to confirm the complainant's appointment

5. In her internal appeal of 6 May 1991 under Rule 1210.1 the complainant admitted to having made mistakes but said that, though they were "painful experiences", they had given her an insight into her own behaviour and helped her to realise the need for change.

The Director-General nevertheless concluded that she had "failed to establish satisfactory working relationships with both the WHO and national staff". He so informed her in his letter to her of 3 June 1991, which confirmed the termination of her appointment and rejected her appeal, and which is the final decision she now impugns.

6. As the complainant acknowledges, she was at odds with her first-level supervisor, the leader of her team, who arrived at the duty station some eight months after she did. At the request of the Regional Director for Africa the WHO's Representative in Rwanda called upon the complainant and the team-leader to explain in writing the conflict between them. In her reply dated 2 October 1990 the complainant said that her departure might be one way of solving the problem. Her first-level supervisor stated that there was, not a personal dispute, but a difference of view between himself and the complainant: he believed that the Programme should be decentralised and integrated with the national programme, whereas she thought that it should be "vertical" and centralised. For her part, the Representative, who was the complainant's second-level supervisor, described her as not being on good terms with national staff.

7. A decision by the Director-General under Rule 1060 not to confirm the appointment of a probationer is a discretionary one. Its power of review being limited, the Tribunal will set the decision aside only if it finds a mistake of fact or of law, or a formal or procedural flaw, or a clearly mistaken conclusion on the evidence, or neglect of an essential fact or abuse of authority.

The purpose of probation is to find out whether a probationer has the mettle to make a satisfactory career in the Organization. The competent authority will determine on the evidence before it whether or not to confirm the appointment and must be allowed the utmost measure of discretion in deciding whether someone it has recruited shows, not just the professional qualifications, but also the personal attributes for the particular post in which he is

to be working. Only where the Tribunal finds the most serious or glaring flaw in the exercise of the Director-General's discretion will it interfere. It will not substitute its own judgment for the Organization's in assessing such matters as fitness for international service.

8. The Tribunal is satisfied on the evidence before it in this case that the Director-General made proper exercise of the wide discretion he enjoys under Rule 1060 in declining to confirm the complainant's appointment. She has failed to show that her supervisors were prejudiced against her in their comments in the probation report or that the Director-General drew any clearly mistaken conclusion in forming the opinion that she was unsuitable for international service.

9. Since the impugned decision must stand, the complainant's claims are rejected in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Jacques Ducoux
Mella Carroll
William Douglas
A.B. Gardner