

## SEVENTY-FOURTH SESSION

### *In re* CROCKETT

#### Judgment 1234

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Herbert Crockett on 20 December 1991 and corrected on 13 January 1992, the WHO's reply of 13 April and the letter of 21 April 1992 from the complainant's counsel stating that he did not want to rejoin;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 31 of the Constitution of the WHO, Article VII of the Statute of the WHO's International Agency for Research on Cancer, WHO Staff Regulations 1.1 and 4.2 and WHO Staff Rules 510.1, 530.4, 565, 570, 1020.1 and 1230.1;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Canadian citizen who was born in 1937, joined the WHO in 1964 as a grade P.3 personnel officer at headquarters in Geneva. He was transferred in 1966 as personnel officer to the Organization's Regional Office for South East Asia (SEARO), in New Delhi, and promoted to grade P.4 in 1969. From 1970 to 1976 he served at Copenhagen as personnel officer in the Regional Office for Europe. In 1977 he went back to headquarters and in 1980 he was promoted to P.5. He obtained a higher university degree in organisational behaviour with sponsorship from the WHO.

In February 1983 he was promoted to Chief of Personnel at grade P.6. In 1986 he was granted a career service appointment.

In July 1988 the then Director-General appointed him Director of the Division of Personnel and General Services at grade D.2 and his career appointment was replaced with a fixed-term one for five years, to expire on 30 June 1993.

A new Director-General, Mr. Nakajima, took over and in November 1988 split the Division of Personnel and General Services into two, the Division of Personnel, known as PER, and the Division of Conference and General Services, known as CGS. A retired official, Mr. Lafif, was made acting head of PER and the complainant became Director of CGS, still at grade D.2.

In July 1990 the Director-General decided to transfer him to the WHO's International Agency for Research on Cancer (IARC) in Lyons, in France, as Director of Administration and Finance (DAF). Though the post was graded D.1 he was to keep his own grade and step. The Agency was set up by the World Health Assembly in 1965 and is a subsidiary body of the Organization. According to Article VII(1) of its Statute its secretariat is "Subject to the general authority of the Director-General", and according to Article VII(4) "The staff of the Agency shall be appointed in a manner to be determined by agreement between the Director-General ... and the Director of the Agency". Lyons lies just under 100 miles to the south-west of Geneva.

The complainant heard of his transfer from a conversation with an acting Assistant Director-General on 11 July 1990. On 16 July he wrote a memorandum to that Assistant Director-General asking for a final decision in writing, postponement of the starting date of his new assignment and some arrangement to make good the financial injury it would cause him.

By a letter of 24 August the Director-General informed him that he was appointed Director of Administration and Finance at the Agency in Lyons, that he would get due compensation for the additional expenditure he would incur because of the assignment and that although his new post was graded D.1 he would keep D.2 as his personal grade.

On 25 October 1990 he lodged an appeal with the headquarters Board of Appeal objecting to his new assignment and to the earlier decision to remove him from his post as Director of the former Division of Personnel and

General Services.

He took up duty in Lyons on 2 January 1991.

In its report of 30 September 1991 the Board found no evidence of personal prejudice against him. But it held that he had suffered moral injury and therefore recommended giving him "a letter reassuring" him about "his normal expectations to continue his career with WHO at least until the age of 60 years". It also recommended giving him priority for any appointment to a position in personnel management at headquarters at grade D.2 or above.

The Director-General wrote the complainant a letter on 14 October 1991 saying that he did not fully agree with the Board's conclusions but endorsing its recommendations. Subject to approval by the complainant's supervisor his appointment, which was to expire on 30 June 1993, was extended until 31 March 1997 and he was to serve on the post at the Agency until further notice. That is the decision he is impugning.

B. The complainant cites two instances of decisions which he took as Chief of Personnel before 1988 and which he believes offended Mr. Nakajima, who was at the time Director of the Western Pacific Regional Office. He points out that though he had by then been serving the Organization for 24 years and had an outstanding work record and a lifetime's experience of personnel management, all duties in that area were stripped from him and someone over the age of 65 was brought out of retirement to perform them in his stead. Worse still, he was not even consulted beforehand.

Although he was then given new duties of which he had had no experience, the appraisals of him were good. Yet, after only another twenty months he was told of the Director-General's decision to transfer him again, this time as Director of Administration and Finance of the Agency in Lyons. It was not nearly such a responsible job: although the post was D.1 it had just been upgraded from P.5 in April 1989 without any change in the description. Moreover, it required a knowledge of financial and budgetary questions that he lacked. It had not been vacant, someone had been displaced to make way for him, and the Director of the Agency had not even been consulted about the wisdom of the appointment.

He contends that his transfer to the IARC was in breach of the following provisions of the Staff Regulations and Staff Rules: Regulation 1.1 ("All staff members of the Organization ... pledge themselves to discharge their functions and to regulate their conduct with the interest of the [WHO] only in view"); Regulation 4.2 ("The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity"); Rule 510.1 ("Staff members in the professional category are subject to assignment by the Director-General"); Rule 530.4, which says that the purpose of appraisals is to help the staff member to make "his most effective contribution"; Rule 565.2 ("A staff member may be reassigned whenever it is in the interest of the Organization"); Rule 570.1, which lists exhaustively the admissible grounds for "reassignment to a different post of lower grade" and does not cover the circumstances of the complainant's case; Rule 1020.1, which says that no-one shall be appointed after the age of 65; and Rule 1230.1, which allows appeal against a decision on the grounds of "personal prejudice", "incomplete consideration of the facts" and failure to observe the Staff Regulations or Staff Rules or the terms of the official's contract.

By way of explanation he puts forward the following pleas.

(1) His keeping his own grade of D.2 on the D.1 post is immaterial. As was held in Judgment 631 (in re Go), Rule 570 "is not concerned with the personal grade of the staff member but with the grade of the post". None of the conditions listed in that rule being met, his transfer to Lyons was unlawful.

(2) By overlooking his appraisal reports the Director-General acted in breach of Rule 530.4.

(3) Rule 510.1 does not allow the Director-General to assign staff in the Director category without their consent.

(4) The transfer was not actuated by any desire to serve the Organization's best interests. Removing him from the Personnel Division in the first place cannot have served those interests since his work experience and academic background fit him for personnel management.

At all events his transfer to Lyons came at a time when he was managing important WHO projects. Interrupting that made for inefficiency, especially because no-one was appointed to take over from him or indeed has been since. As for his job with the Agency, when he pointed out that he had no competence in financial and budgetary

questions he was told just to rely on subordinates.

Since the post used to be held by someone expert in those matters it was a sheer waste of talent, and obviously against the Organization's interests, to dislodge him.

(5) The only conceivable explanation of such an "irrational" decision is personal prejudice: no-one impartial could have taken it.

(6) The shabby treatment of him offended against natural justice. Although by dint of talent and effort he had reached the peak of his career and won the esteem of the Administration and many staff he was neither consulted nor informed before crucial decisions about his career were taken. He is entitled to damages for the grave moral injury.

He seeks the quashing of the Director-General's decision of 24 August 1990 to transfer him to Lyons; reinstatement as Director of CGS or Director of PER (both posts being vacant at the date of the complaint); and awards of 100,000 United States dollars in moral damages and 18,000 Swiss francs in costs.

C. In its reply the WHO gives its own version of the facts of the case and submits that the decision the complainant is impugning is lawful.

(1) It observes that Rule 565, which vests authority in the Director-General to move staff from one post to another, makes it plain that reassignment may entail changes in title, grade, duties, salary, post adjustment and so on. In any event the complainant's transfer meant no downgrading and so was not in breach of Rule 510.1. Though he holds a D.1 post he himself is still D.2 and he has suffered no financial loss. Nor was there any de facto relegation since the duties of his post carry just as much responsibility: indeed they are more important than his former ones since he is in full charge of planning and co-ordinating the administration of the Agency. His case is not on all fours with the one the Tribunal ruled on in Judgment 631.

(2) He misreads Rule 510.1. There are only two categories of staff, the Professional and the General Service. There is no such thing as a Director category. As an official in the Professional category, albeit holding a post as Director, the complainant was, willy-nilly, "subject to assignment by the Director-General to any activity or office of the Organization throughout the world".

(3) No material fact was overlooked. It was on account of his talents and experience that the Director-General thought him quite fit for the senior post with the Agency. Indeed at no time has his ability to perform his duties ever been moot. Under Article 31 of the Constitution of the Organization, and as Judgment 1055 (in re Battra) acknowledged, the Director-General enjoys "wide discretion in assigning staff in the Organization's interest". There was no flaw in the exercise of his discretion in this instance.

(4) The complainant offers not a jot of evidence to bear out his insinuation about personal prejudice. In fact he was treated considerately. On transfer he was granted special financial benefits to protect him against loss of income and was given pledges about his future with the Organization. Before he was actually transferred the whole matter was discussed with his supervisors, he was duly informed, and his own wishes were taken into account. For one thing, he wanted his transfer to be postponed for a time, and it was, and the acting Assistant Director-General talked things over with him. So it is absurd to speak of moral injury. The rules of "natural justice" apply only where someone is accused of having acted improperly, and the complainant is not.

The Organization asks the Tribunal to dismiss the complainant's claims as devoid of merit.

#### CONSIDERATIONS:

1. The complainant joined the World Health Organization in February 1964 as a personnel officer at grade P.3 at headquarters. His training was in the social sciences and organizational behaviour. He was promoted to P.4 in 1969, appointed personnel officer in the Regional Office for Europe at Copenhagen in 1970 and personnel officer at headquarters in 1977, promoted to P.5 in 1980, and made Chief of Personnel at grade P.6 in 1983. He was granted a career service appointment in 1986. The reports appraising his performance were outstanding.

2. The post of Director of the Division of Personnel and General Services at headquarters was to become vacant on 1 July 1988. The then Director-General wished to appoint the complainant to the post, but first consulted the

present Director-General, Mr. Nakajima, who had already been appointed as his successor. Mr. Nakajima having agreed, the complainant was duly appointed Director of the Division, thereby acquiring direct responsibility for 372 posts. He was granted a five-year contract expiring on 30 June 1993 instead of his former career service appointment.

3. On 7 September 1988 Mr. Nakajima, having taken over as Director-General, asked him to have a Mr. Lafif, who was then 65 years old, appointed as special adviser to the Director-General on matters of personnel and management. Mr. Lafif was granted two five-and-a-half-month appointments with a one-month interruption in March 1989. Until retirement five years earlier he had been a P.5 personnel officer and subject to direct supervision by the complainant. After Mr. Lafif's appointment the complainant's proposals on staff matters had to go through him and could not, as before, go straight to the Director-General.

4. In October 1988, while the complainant was on mission in New York and without his knowledge, the Director-General decided to break the Division into two, a Division of Personnel (PER) and a Division of Conferences and General Services (CGS), and to make Mr. Lafif acting Director of PER and the complainant Director of CGS as from 4 November 1988.

5. The complainant was to return to Geneva on 1 November 1988. He found out about his new post from colleagues before he got back and had the news confirmed by an Assistant Director-General over the telephone on 27 October. As Director of CGS he was responsible for 285 staff, fewer than before.

Despite the shock of the change he decided not to appeal. Though the new job greatly differed from the old one he duly set about learning it. He was in charge of the construction of a six-storey extension to the headquarters building at a cost of 18 million Swiss francs, and it was finished in April 1991. The installation of a new digital telephone exchange costing 3.5 million francs began in June 1990 under his direction.

6. On 11 July 1990 an acting Assistant Director-General, Mr. Uhde, told him that his appraisal report was fully satisfactory. At the same time, and without any warning, he heard that the Director-General had made a final decision to reassign him in three months' time to the International Agency for Research on Cancer (IARC), in Lyons. There he was to be Director of Administration and Finance (DAF), a post that a budget and finance expert, Mr. Saita, had held only since 1 July 1989. That post had been reviewed and confirmed at grade P.5 on 28 June 1988 but in April 1989 the Director-General had the grade raised to D.1 without any change in the description. It carried managerial responsibility for 29 of the 38 posts at the Agency.

7. The complainant got in touch at once with Mr. Saita, who had not yet been told of the decision. Indeed the Director of the Agency himself did not know of it; though the Director-General had mentioned the matter to him casually some three weeks earlier "over coffee" in Japan he had understood it to be just "a proposal that might be pursued", not an actual decision.

8. The complainant had neither university training nor professional experience in financial and budgetary matters. On 12 July 1990 he protested in writing to Mr. Uhde at being moved a second time in eighteen months. The Director-General gave written instructions dated 24 August 1990 that he should be transferred to the Lyons post but keep his D.2 grade on a personal basis. He was told that he need not worry about his lack of formal training or experience in financial and budgetary matters since he could rely on, among others, the P.5 finance officer under his supervision, who did have such experience.

9. Mr. Saita was transferred to headquarters and at the date of the complaint, 20 December 1991, had not been appointed to any substantive post. Mr. Lafif was still acting Director of PER.

10. On 25 October 1990 the complainant lodged an internal appeal against the transfer though he moved to Lyons as he had been ordered, on 2 January 1991.

In its report of 30 September 1991 the headquarters Board of Appeal held that he had done his utmost to establish good working relations with the Director-General even after transfer to CGS. The Board could find no personal prejudice on the evidence before it but did conclude that he had suffered moral injury by being removed, while absent on mission, from his old post as Director of the Division of Personnel and General Services and that his transfer to the Agency was "regarded as a de facto demotion". No reasons for the transfer had been given to him, either orally or in writing, besides the general remark that it was in the Organization's interests. The Board

recommended writing a letter to reassure him about "his normal expectations to continue his career with WHO at least until the age of 60 years" and undertaking to give him "priority consideration" for "positions at headquarters graded D.2 and above that become vacant", preferably in personnel management. He should also be paid costs.

11. The final decision taken by the Director-General on 14 October 1991 was, first, that subject to the recommendation of his superior his appointment expiring on 30 June 1993 should be extended to 31 March 1997 when he reached the age of 60 and, secondly, that it was in the Organization's interests that he should serve as Director of Administration and Finance at the Agency until further notice. But "if and when possible" he would be "considered for any D.2 positions which are commensurate with [his] experience and competence in any of the activities or offices of the Organization". That is the decision he impugns and his claims are as set out at the end of B above. Citing Staff Rule 1230.1, he alleges personal prejudice, incomplete consideration of the facts and failure to observe and to apply correctly the provisions of the Staff Regulations and Staff Rules.

## Breach of the Staff Regulations and Staff Rules

### Rule 570

12. Staff Rule 570 is about "reduction in grade". Such reduction, it says, may be the consequence of "reassignment to a different post of lower grade" and "may result:

570.1.1 from the staff member's own request for personal reasons;

570.1.2 from unsatisfactory performance or misconduct;

570.1.3 as an alternative to termination in a reduction in force."

As the complainant says, none of those conditions applies to him. He cites Judgment 631 (in re Go), in which the Tribunal held, under 26:

"The rule is not concerned with the personal grade of the staff member but with the grade of the post ..."

The Organization's answer is that the complainant kept his personal grade and that it was not the first time that a senior officer had been transferred to a post lower in grade. Since he was still at grade D.2 at the Agency and suffered no financial hardship there is, in the Organization's view, no merit in his plea that he suffered a "reduction in grade". It seeks to distinguish Go and submits that the ratio decidendi in that case was that the circumstances showed misappraisal of the evidence.

13. Judgment 631 states plainly enough that Rule 570 applies even if someone who is transferred to a post at a lower grade keeps his personal grade. The Tribunal reaffirms that ruling: the Organization may not require a staff member to move to a post at a lower grade against his wishes, however generous the financial compensation, unless there is compliance with Rule 570. The financial arrangements made in this case have no bearing on the lawfulness of the complainant's transfer.

If there have indeed been transfers of staff members to posts at a lower grade, they presumably gave their consent and, not suffering any financial loss or affront to their dignity, had no reason to appeal to the Tribunal.

The conclusion is that the Organization acted in clear breach of Rule 570 in this case.

### Rule 510.1

14. The complainant further alleges "en passant", as he puts it, breach of Rule 510.1, which reads:

"Staff members in the professional category are subject to assignment by the Director-General to any activity or office of the Organization throughout the world. Those in the general service category are not subject to assignment, except by mutual agreement, to an official station other than that for which they have been recruited. ..."

He contends that since the rule does not mention staff with director status the inference is that they may not be transferred without their consent.

15. The plea is not sustainable. Rule 565.1 provides that reassignment "may involve a change in title, grade, duties, salary, post adjustment or official station, or a combination of these changes"; and Rule 565.2 that "A staff member may be reassigned whenever it is in the interest of the Organization to do so". Since the right to reassign staff is not limited by Rule 510.1 in the case of those with director status, someone with such status may be reassigned "in the interest of the Organization", subject of course to the general requirement that unless reassigned under Rule 570 he suffer no loss of personal grade, financial injury or offence to his dignity. Rule 510.1 is therefore immaterial in this case.

Other provisions

16. Other rules which the complainant says have been broken are Rule 530.4 and Regulation 4.2.

Rule 530.4 stipulates:

"The evaluation of performance as reflected in these reports shall be the basis for assisting the staff member to make his most effective contribution to the work of the Organization and for decisions concerning the staff member's status and retention in the Organization."

To the complainant's charge that his appraisal reports were not taken into consideration the Organization's answer is that his competence and performance are not at issue and that the allegation is irrelevant.

Regulation 4.2 provides:

"The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. ..."

The Organization says that it has raised no question about the complainant's "efficiency, competence and integrity", that it was precisely because of his ability and the Director-General's confidence in him that the transfer was ordered, and that the allegation of breach of the regulation is unsound.

17. The WHO's answers on both points merely reassert the Director-General's view that the complainant is fit to act as Director of Administration and Finance of the Agency despite his own fears about lack of relevant knowledge and experience. The Organization thereby ignores the main issue: why did he have to be moved twice in eighteen months? A salient feature of the case is that he was never told why he was taken off his post as Director of CGS. The Board of Appeal was never told and the Tribunal has not been told. The Organization just keeps on repeating that that decision was in its own interests, of which it is the best judge.

18. The complainant further pleads breach of Rule 1020.1, which makes 60 the normal age of retirement and, though it allows the Director-General to extend that age in "exceptional circumstances" and "in the interests of the Organization", states that "in no case shall any extension be granted beyond the staff member's sixty-fifth birthday".

The Organization retorts that since the rule does not affect the complainant it is irrelevant to his case.

That is a somewhat disingenuous answer, since what the complainant is objecting to is the appointment of Mr. Lafif as Director of PER in 1988. Mr. Lafif was already over 65 at the time and was still on the post at the age of 67. The matter is one of relevance to the whole case.

The flaws in the impugned decision

19. From all the circumstances the Tribunal concludes that the complainant is someone whose efficiency, competence and integrity are not and never have been at issue. He was subjected in November 1988, without any explanation, to transfer out of his area of experience and replaced in his old job by someone whose supervisor he himself had once been and who was over the age for appointment. He was transferred again only eighteen months later, away from headquarters to a small agency, again without explanation and to an area of work in which he lacked experience. His direct responsibility for staff has been reduced in turn from 372 to 285 and then to 29. Moreover, the post at the Agency, having been reviewed and confirmed at grade P.5, was upgraded to D.1 without any alteration in the description of it.

True, the WHO pleads that his transfer to Lyons was "in the interests of the Organization" and that the burden is on him to show that it was not. But there it betrays a deeply mistaken view of its duty. Of course its own interests are paramount, but it must still, for the sake of proper management and mutual confidence, treat its staff fairly. If it is transferring a staff member it must let him have a degree of responsibility corresponding to his grade and respect his dignity. It must give him a statement of the reasons for the transfer and the opportunity of responding. It must respect Rule 570.

The Organization makes out that it consulted the complainant. That is not so. Any consultation that did take place was about financial or other arrangements for the transfer. He was never told the reasons why he was being moved from the post of Director of CGS and never had the opportunity of responding. Worse, it was the second time in eighteen months that he had had a transfer imposed on him in such circumstances.

Although the Director-General will ordinarily be treated as the best judge of what the Organization's interests are and the Tribunal will not ordinarily interfere in his assessment of them, nevertheless it will do so in this case. It is quite inadequate to plead that the decision to transfer the complainant was "in the interests of the Organization". The basis for reaching that conclusion must be made clear so that the Tribunal may exercise its power of review and determine whether there exists any of the grounds for setting aside a discretionary decision of that kind.

20. To sum up, the Director-General's decision must be set aside:

- (1) because it was in breach of Rule 570.1, the complainant's transfer being, on any objective assessment, a "reduction in grade" and an offence against his dignity;
- (2) because no reason was given for moving him for the second time in eighteen months; and
- (3) because no explanation was given of the view that the move was in the Organization's interests.

The allegations of personal prejudice

21. The complainant argues that the transfers were actuated by personal prejudice. He submits that two incidents accounted for such prejudice on the Director-General's part.

The first incident arose out of a request which Mr. Nakajima made before taking over as Director-General. His request was for secretarial help in French, over and above the secretaries he was bringing with him, during the 41st World Health Assembly and 82nd Session of the Executive Board to be held in May 1988. The complainant replied by a telex of 8 April 1988 that, though the intention had been to use elsewhere, because of her knowledge of Spanish, a secretary whom he named, she was willing to work in French for Mr. Nakajima's office as well. Mr. Nakajima answered the complainant by a telex of 12 April that the arrangement proposed was "not satisfactory" but "accepted in view matter is within your jurisdiction". On 14 April the complainant replied that the Director-General would have the secretary's assistance full time.

The second incident was prompted by a proposal from Mr. Nakajima in April 1988 for reclassification at grade P.4 of a P.3 post for an administrative officer in the Western Pacific Regional Office. The matter was dealt with according to the usual routine in the complainant's then division, and the conclusion of review of the post was that it warranted P.3, not P.4. There was an immediate personal reaction from Mr. Nakajima, who expressed "surprise and serious dissatisfaction", and the post was eventually regraded P.4 after all.

Although those two incidents are revealing about the Director-General, it is implausible that anyone should have initiated the train of events that have led to the present dispute out of any personal prejudice the incidents may have bred. Though the Tribunal is at a loss to explain the motives for the two transfers it will not set them down to personal prejudice. The complainant's allegation under this head is not proven.

The Tribunal's ruling

22. The Tribunal may not order the Director-General to appoint the complainant to the post of Director of the Division of Personnel or of Director of Conference and General Services, as he asks. Instead it will quash the impugned decision transferring the complainant to the Agency as Director of Administration and Finance. He is entitled to an award of damages for the moral injury he has suffered, and the amount is set at 25,000 Swiss francs. He is awarded 10,000 Swiss francs towards costs.

DECISION:

For the above reasons,

1. The Director-General's decision of 14 October 1991 is set aside insofar as it confirms the transfer of the complainant as Director of Administration and Finance to the International Agency for Research on Cancer.
2. The Organization shall pay the complainant 25,000 Swiss francs in damages for moral injury.
3. It shall pay him 10,000 Swiss francs towards costs.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas  
Mella Carroll  
Mark Fernando  
A.B. Gardner