

SEVENTY-EIGHTH SESSION

***In re* DIOTALLEVI (No. 3)**

Judgment 1407

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Miss Marina Diotallevi against the World Tourism Organization (WTO) on 10 May 1994, the WTO's reply of 14 June, the complainant's rejoinder of 4 August and the Organization's surrejoinder of 11 October 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. The complainant's career at the WTO is summed up under A in Judgment 1272, which was about her first complaint. At the material time she held grade G.5.

In September 1991 she asked for a transfer. By a letter of 26 May 1992 the Secretary-General told her that she was to be temporarily moved from her post as assistant in Press and Publications to Regional Representation to help in the coordination of Technical Cooperation activities. In correspondence with the Secretary-General she said she was sorry that the transfer was temporary and her new duties were vague, and she blamed that on the fact that she had filed her first complaint with the Tribunal.

In May 1993 she saw that in the "list of personnel at 15 May 1993" she appeared as "acting secretary for technical cooperation".

By a letter of 24 May 1993 she asked the Secretary-General whether there had been some mistake since she had understood her title to be "assistant". She said that she reserved the right to appeal if the change of title amounted to a relegation. In a memorandum of 23 June 1993 the Secretary-General told her that she might not challenge a transfer she had applied for and accepted, that the titles "secretary" and "assistant" did not correspond to any particular category in the Organization, and that her transfer did not amount to relegation.

On 22 July 1993 she protested to the Secretary-General under paragraph 7(a) of the Rules of the Joint Appeals Committee against the refusal to correct her new title from "secretary" to "assistant". Having got no answer, she lodged on 21 September 1993 an internal appeal with the Committee under Staff Rule 31.1 and paragraph 7(c) of the Committee's Rules.

In its report of 4 February 1994 the Committee concluded that the complainant's contract conferred no title on her, that the impugned decision was not a disciplinary measure and that there was no ranking of "assistant" and "secretary". Being "unable to see the point at issue", it made no recommendation to the Secretary-General but simply suggested defining administrative titles more sharply.

By a letter of 28 February 1994 the Secretary-General rejected her claim to the change of title, pointing out that her new title was "neither sanction nor disciplinary measure". That is the decision she challenges.

B. The complainant seeks to show that assistant and secretary are not at all the same thing but different categories of staff performing duties that demand different levels of education and degrees of initiative. Since 1986 she has always been an "assistant" and her job goes far beyond secretarial work.

She contends that the WTO is being inconsistent: if it can indeed chop and change the titles why refuse her the one she has always had? The impugned decision is not innocuous: it is damaging to her career prospects both within

and outside the Organization. The titles would give an employer quite different impressions, and she has suffered serious moral injury.

She wonders what prompted the decision and sees it as a hidden disciplinary measure in response to her exercising her right of appeal.

She asks the Tribunal to set aside the Secretary-General's decision of 28 February 1994 and order the Organization to give her back the title of "assistant". She seeks awards of moral damages and costs.

C. In its reply the Organization submits that the complainant has no cause of action. In her protest of 24 May 1993 she said she would appeal "if she had been relegated". Yet the change in title was not relegation, as the Secretary-General told her on 23 June 1993 and again on 28 February 1994. Besides, she has no right to keep any title. Her assignment to Regional Representation was only provisional since formal transfer was not approved until March 1994. Since there was no breach of the rules or material principles, the Tribunal is not competent to hear her complaint.

On the merits the Organization denies that the purpose was to punish her for exercising her right of appeal. It merely met the request for transfer she made after "refusal to cooperate with her first-level supervisor".

The term "title" has no legal connotation in the Organization since posts are classified by grade, as in other international organisations. Her allegation that the new title could blight her prospects of employment elsewhere is unfounded: the Secretary-General wrote her a certificate giving an account of her experience and with no mention of title.

Since her supervisor's title is "assistant" it would have been absurd to describe her as "assistant to the assistant". Furthermore, the Organization feared that if it met her wishes it would set a precedent for letting any staff member challenge his title. It has agreed to the more precise classification of administrative titles that the Appeals Committee suggested.

D. In her rejoinder the complainant submits that though she kept her grade she was in fact relegated. The impugned decision causes her injury and is hidden disciplinary action. The Organization infringed her terms of appointment and the Staff Regulations and Rules; so the Tribunal is competent to hear her complaint.

E. In its surrejoinder the WTO points out that she is challenging not the lawfulness of her provisional assignment in 1992 but merely the title that went with it. Since the title was dropped in March 1994 her complaint is pointless.

CONSIDERATIONS:

1. The WTO recruited the complainant on 11 June 1984 as a clerk. On reform of the secretariat she was granted the title of "assistant" on 2 January 1986. She has served in several units of the Organization. In her first complaint she asked the Tribunal to set aside a decision by the Secretary-General to appoint a new Director of Communications. In Judgment 1272 of 14 July 1993 the Tribunal quashed the appointment. On 17 September 1993 she lodged an application for execution of that judgment and in Judgment 1365 of 13 July 1994 the Tribunal allowed her application in part.

2. In September 1991 she had applied to the Organization for transfer. On 26 May 1992 the Secretary-General informed her that "after consulting those concerned and with their consent" he was taking her off her post as assistant in Press and Publications and assigning her temporarily to Regional Representation. The assignment, he said, did not entail any change in her appointment, grade or salary. From a staff list issued on 15 May 1993 she discovered that the title of her post was "acting secretary for Technical cooperation".

3. On 22 July 1993 she protested to the Secretary-General against his refusal to change her title back to "assistant". For want of a reply she lodged an appeal with the Joint Appeals Committee under the Staff Rules. In its report of 4 February 1994 the Committee said it could make no recommendation to the Secretary-General for action on her case. By a decision of 28 February 1994, the one she now impugns, he rejected her appeal.

Competence and receivability

4. The WTO challenges first the Tribunal's competence to hear her complaint under Article II(5) of its Statute on

the grounds that she is not alleging non-observance of the terms of her appointment or of the Staff Regulations or Rules or of any general principle of the law of the international civil service. The plea fails because it is mistaken in fact. As will be seen when the Tribunal takes up the merits, her whole argument in favour of quashing the impugned decision rests on breach of provisions of the Staff Regulations and Rules.

5. The Organization submits that the complaint is irreceivable. It says there is no cause of action since the impugned decision gave her the assurance she wanted, namely that her transfer was not relegation. But the plea is again unsound: the title forms part of an official's status and so any change in the title is challengeable.

6. The defendant further argues that the impugned decision causes her no injury insofar as it refuses to change her title from "secretary" to "assistant". As the case law says, the assignment of staff is at the Secretary-General's discretion and no-one has any right to keep a particular title. What is more, the WTO contends, she has not lost any of her rights and since her assignment ceased to be temporary on 10 March 1994 she has suffered no injury.

7. The argument cannot be sustained. By presuming that the Secretary-General's refusal is lawful the Organization is begging the question: it is the very lawfulness of that decision which is at issue. In any event neither her assignment nor any right but her right to the title is at issue. The complaint is beyond question receivable.

The merits

8. In support of her claim to the quashing of the impugned decision the complainant alleges a difference, commonly acknowledged in national and international administrations alike, between "secretary" and "assistant": what each does and the levels of training and competence required of each is different. She says that various WTO circulars about staff reform bear that out. She observes that the title she got under her original contract in 1984 was "clerk", a post at the time graded higher than "secretary". But reforms in 1986 did away with the title of "clerk" and replaced it with "assistant". She thus became an "assistant" and remained such for eight years until her temporary assignment on 26 May 1992 as "acting secretary". So her rightful title, she concludes, is "assistant".

9. The WTO demurs. It sees the argument over the distinction between "secretary" and "assistant" as mere quibbling. In its submission title is not a legal concept. Like other international organisations, it does not have one category called "secretaries" and another called "assistants". Nor does grade hinge on title.

10. To rule on the matter at issue the Tribunal will look at the relevant texts about the structure and working of the WTO's secretariat. The list appended to the Secretary-General's circular of 11 August 1982 about the structure of the staff and WTO bodies shows that in every department there were three distinct categories of post, "assistant", "clerk" and "secretary" in that order. The posts "assistants" are assigned only to senior officers, namely the Secretary-General and some heads of section or unit. The "clerks" are ordinarily listed above the "secretaries". Such ranking was again observed in the reforms of 25 August 1986. Though the "clerks" went, "assistants" were above "secretaries" whenever there were both in the same unit, whether the assistant's grade was higher than the secretary's or even the same.

11. From the reforms of 1986 there emerges an order of ranking if not a hierarchy, in every unit from "chief" down to "typist" or "messenger". "Assistants" and "secretaries" came in between, in that order, where there were both, as indeed there were in the Statistics Unit, which the complainant belonged to at the time.

12. That may not be true of the staff list of 15 May 1993. But that list does not reflect any real reforms. To quote the Joint Appeals Committee, it is just a "heterogeneous table consisting mainly of descriptions of posts and duties".

13. As for the circular of 10 March 1994, all it does is announce several appointments and changes in duties. Though it does not give a title to all the staff members concerned, it does give one, curiously enough, to heads of section or unit and calls one official "secretary" to a head of division and another "senior assistant in the Secretary-General's office".

14. The Tribunal is satisfied on the foregoing evidence that even though there is no formal text laying down the precedence of "assistant" over "secretary" such ranking is a WTO practice so consistent as to bear out the existence of a general rule. As the Secretary-General said in his circular about the reforms in 1986, the practice derives from "general usage in the United Nations system". Indeed the Global Classification Standard which the International Civil Service Commission approved on 9 September 1991 for non-headquarters duty stations in the United Nations

draws a clear distinction between "assistant" and "secretary".

15. So the complainant may properly plead that for eight years without break she performed the duties and had the title of "assistant" and that only with her consent or by virtue of disciplinary action might she suffer such change in status.

16. On the issue of consent she says - and the defendant does not seriously object - that she was neither consulted nor even informed about the reasons for taking away her title and calling her "acting secretary". That she herself applied for the transfer does not warrant loss of her title. The first opportunity she had to state her opinion on the matter came one year after the transfer, when she had seen the staff list of 15 May 1993. Her performance afforded no grounds whatever for calling her "secretary" instead; indeed in his decision to transfer her the Secretary-General was at pains to stress her "devotion and competence".

17. The WTO is wrong to try and put her on a par with another official, at grade G.6, who also appeared in the list of 15 May 1993 as "acting secretary". Unlike the complainant, the other official later became an assistant - and a "senior" one to boot - according to the circular of 10 March 1994. So the comparison does not hold. Indeed if the two cases were in all respects identical the WTO's reasoning would argue in favour of breach of equal treatment. In any event the circumstances of the change in the complainant's title were bound to strengthen her conviction that the change and the Secretary-General's later refusal to reverse it were due to her internal appeal and her later complaint to the Tribunal against a senior appointment. Hence her charge of covert disciplinary action.

18. On that score she is wrong. Though the Organization describes her behaviour as "irritating", there is no reason to impute to it any desire to punish her for proper exercise of her rights. After all, she herself applied for the transfer and it caused her no loss of pay or grade or responsibility. Nor does she allege any loss of dignity in the duties she had to perform. The Tribunal is satisfied that there was no question of disciplinary action.

19. Yet the decision to take away her title and the refusal to give it back rest on misunderstanding of the legal force of the titles "assistant" and "secretary" by virtue of the practice reflected in WTO's circulars about reforms. The flaw being fatal, the impugned decision cannot stand.

20. Although, as was said in 18 above, the decision did not cause her material injury it did cause her moral injury that warrants compensation. The Joint Appeals Committee seems to acknowledge as much in its comment that to treat "secretary" and "assistant" as interchangeable titles might be confusing to people outside the Organization and that her new title might prove damaging to her. Even the WTO admits that by implication: it does not mention her title in the certificates it gave her after the change whereas the earlier ones did. The conclusion is that she has suffered moral injury and is entitled to damages in a sum which is set at 5,000 French francs.

21. Lastly, she is entitled to payment of 5,000 French francs in costs.

DECISION:

For the above reasons,

1. The Secretary-General's decision of 28 February 1994 is set aside insofar as it refuses to restore the title of "assistant" to the complainant.
2. The WTO shall pay her 5,000 French francs in moral damages.
3. It shall pay her 5,000 French francs in costs.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
Michel Gentot

E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.