

SEVENTY-NINTH SESSION

In re OZORIO (No. 5)

Judgment 1438

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Edmund Peter Ozorio against the World Health Organization (WHO) on 25 October 1994, the WHO's reply of 17 January 1995, the complainant's rejoinder of 30 January and the Organization's surrejoinder of 7 April 1995;

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, a citizen of the United States who was born in 1928, retired from the WHO in 1988. Facts relevant to this case are set out under A in Judgment 1367 of 13 July 1994 on his fourth complaint. In that judgment the Tribunal quashed a decision by the Director-General setting at 1 May 1995 the deadline by which he might exercise his right to remove household goods at the WHO's expense; the Tribunal sent his case back to the Organization for a new decision.

By a letter of 30 September 1994, which he impugns, the Director-General granted him up to one year from the date of receipt in which to exercise that right. The Director-General also told him that, being final, the decision was challengeable before the Tribunal.

B. The complainant submits that the impugned decision is "perverse and arbitrary". He pleads mistakes of fact and law.

By extending by five months the period set in the decision which the Tribunal quashed in Judgment 1367 the Director-General merely restated the WHO's general policy that removals should take place within one year of separation from service. But the material issue is whether the complainant's situation warrants discretionary extension of that limit.

The proper exercise of discretion requires the Director-General to consider the continuing employment at Geneva of the complainant's wife, a fact he has still failed to take account of. What is more, he wrongly concluded that the complainant's request had no bearing on his contractual ties with the WHO: but it was his transfer in 1977 to WHO headquarters at Geneva that led his wife to give up her career in the United States.

The Director-General's letter of 30 September 1994 refers to "the policy in effect" when the complainant retired, which restricted discretionary extension to two years beyond the usual time limit of one year. By relying on what was an unpublished policy at the time the Director-General has further erred in law.

It is true that all United Nations agencies have time limits for the removal of household goods. But the Director-General has failed to take into account the variety of the arrangements made for that purpose, and the complainant cites by way of example the International Labour Organization where, he says, the time limit may be as much as 12 years after separation, and extension is possible.

The complainant invites the Tribunal to quash the decision of 30 September 1994 and order the Director-General to take a new decision to allow him a "reasonable period" after his wife's retirement for the exercise of his right to reimbursement of removal expenses on repatriation. He also claims 2,000 Swiss francs in costs.

C. In its reply the WHO contends that the impugned decision was a proper exercise of discretion. The Director-General gave "consistent" reasons for it. That he did not regard as relevant the date of retirement of the complainant's wife does not make his decision arbitrary. The complainant's staying on in Geneva is a choice of his own that is unrelated to his former employment.

D. In his rejoinder the complainant comments on the Organization's reply and enlarges on his earlier pleas. The fact that his wife was not party to a contract with the WHO does not bar the Director-General from taking her employment into account. Indeed the rules of the United Nations stipulate that whenever a staff member's spouse works for it or another United Nations agency the normal time limit starts to run at the time of the spouse's separation.

E. In its surrejoinder the Organization maintains that it took account of the employment of the complainant's wife but did not regard it as a valid reason for extending the time limit. The WHO was not bound to be as "generous" as other agencies.

CONSIDERATIONS:

1. The complainant's claim is that the time limit for the refund of the costs of removal of his household goods to the United States be extended until the retirement of his wife, who is an employee in the Office of the United Nations High Commissioner for Refugees in Geneva.

2. The applicable Manual paragraph in force at the date of the complainant's retirement, 30 November 1988, allowed an exception to the requirement that removal should begin within one year of termination of employment, provided that the Chief of Personnel authorised the exception on the strength of written justification and the cost to the Organization was not increased.

3. The Organization extended the time limit for the refund of the costs of removal first to 30 November 1990, then to 30 November 1991. It refused to grant any extension beyond that date. The complainant lodged an internal appeal and the headquarters Board of Appeal recommended that the Director-General reconsider. In a decision dated 1 May 1993 the Director-General set 1 May 1995 as the new time limit. On 28 July 1993 the complainant filed his first complaint, which impugned that decision. In Judgment 1367 the Tribunal held that the Director-General's decision of 1 May 1993 was arbitrary and a wrong exercise of discretion not only because it failed to state the reasons for choosing 1 May 1995 as the new deadline for the refund of the costs of removal, but also because it gave no consistent reply to the complainant's claim. The Tribunal therefore quashed the Director-General's decision of 1 May 1993 and sent the case back to the Organization for a new one. By his new decision, which he conveyed to the complainant in a letter dated 30 September 1994, the Director-General extended the time limit to "one year from the date of receipt of this letter". The new deadline was thus 5 October 1995. That is the decision challenged in the present complaint.

4. The Director-General's letter of 30 September 1994, after referring to the relevant Manual paragraph, makes general statements about the rationale of time limits for the removal of household goods on repatriation. He makes the point that after a certain time the logical connection between the former staff member's presence at the former duty station and past employment ceases to exist and continued presence must be a matter of personal choice. He recognises the importance of the staff member's own needs and desires but observes that the policy embodied in the Manual paragraph is designed to accommodate them within reasonable limits. For reasons of proper management, he says, flexibility in individual cases must at some point give way to consistent policy.

5. The Director-General gives three specific reasons in his letter for further extending the time limit. The first is that the policy, now provided for in the Manual, of limiting any extensions to two years had not been incorporated into the Manual at the date of the complainant's retirement. The second is that "the three year time limit" - from the date of the complainant's retirement - "has expired". The third is that the Organization wishes to give him a "reasonable period" from the date of receipt of the letter to make arrangements for the removal.

6. The complainant submits that both the general and the specific reasons stated by the Director-General are illogical. He contends that the Director-General refused to regard his wife's employment as relevant and "misdirected himself in law" in treating it as irrelevant. He argues that the Director-General, having referred to the concept of setting time limits on claims throughout the United Nations common system, should have taken into account the flexibility with which allowance is made for the staff member's particular circumstances.

7. In accordance with its case law the Tribunal will not substitute its own views for those of the Director-General in a matter in which he has discretion. It is true that the reasons he gave in his letter were poorly stated, much of what he put forward as reasons for his decision being irrelevant. The simple issue which he had to determine was whether he should grant an extension by reason of the complainant's wife's employment in another United Nations

agency and the prospect of her retirement in November 1996. In dealing with that issue he concluded that the reason for the complainant's continued presence in Geneva, his former duty station, was the fact that his wife was still employed there, but that was a personal reason which should not be allowed to lay any indefinite obligation on the Organization. Thus the Director-General did address his mind to the particular circumstances of the case, including the employment status of the complainant's wife, but found other, countervailing factors relevant to his decision. His references to the setting of time limits in the United Nations common system for the refund of the costs of removal were intended to support his view that, for the sake of proper management, flexibility in individual cases must at some point give way to a consistent policy. He did not base his decision on the practice of other United Nations agencies.

8. The complainant has been unable to show any flaw in the Director-General's exercise of discretion which would warrant setting the decision aside. So the complaint fails.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 6 July 1995.

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner