

EIGHTY-THIRD SESSION

In re Eben-Moussi

Judgment 1619

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Emmanuel Eben-Moussi against the World Health Organization (WHO) on 21 December 1995 and corrected on 20 February 1996, the WHO's reply of 30 October 1996, the complainant's rejoinder of 31 January 1997 and the Organization's surrejoinder of 11 April 1997;

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. This dispute has arisen from the facts on which the Tribunal ruled in Judgment 1376 (*in re* Mussnig) of 13 July 1994.

In a memorandum of 5 September 1994 to the Director of Personnel the complainant refuted accusations of sexual harassment brought by Mrs. Gabriele Mussnig, which were reported in the *Japan Times* of 6 August 1994, and asked the WHO to publish a denial. He wrote to the Director-General on 23 September asking "what arrangements the Organization [had] made to ensure his protection" and seeking his guidance in putting the record straight.

In November 1994 the WHO appointed an ad hoc grievance panel to investigate Mrs. Mussnig's accusations against the complainant. The panel submitted its report to the Director-General on 8 June 1995. It found that no sexual harassment had occurred and it recommended offering a written apology to the complainant and his family, making known the panel's findings to the press, particularly in Angola, and granting the complainant financial compensation.

The Director-General sent the complainant a copy of the report and in a covering letter of 10 July 1995 said that the Organization was sorry not to have told him of the accusations, offered him an apology on the Organization's behalf and said that the WHO's Legal Counsel would be in touch with his counsel to discuss compensation for the costs he had incurred. Attached to the letter was a statement by the Director-General in which he said that he "noted that there are significant contradictions between the Panel's conclusions and the allegation of sexual harassment, and that the Panel's findings could support the view that Dr. Eben-Moussi did not commit sexual harassment". Copies of the statement were sent to the foreign minister of Angola, the *Jornal de Angola* and the *Japan Times*.

The Organization's Legal Counsel and the complainant's counsel met several times and exchanged letters but failed to reach agreement.

By a letter of 29 September 1995 - the impugned decision - the Director-General informed the complainant's counsel that the Organisation had applied to the Tribunal for review of Judgment 1376 and that he rejected his client's claim to a large award of moral damages.

Judgment 1504 of 11 July 1996 dismissed the Organization's application for review of Judgment 1376.

B. The complainant has several pleas. He submits that when Mrs. Mussnig's complaint was before the Tribunal the WHO wilfully confined its reply to the issue of receivability, despite a "warning" from the Registrar. The reason was that for the sake of his "protégée" the Organization's Legal Counsel wished to avoid going into the merits. The WHO neither informed the complainant of the accusations against him nor challenged them. The Legal Counsel wrote a letter expressing doubts about the complainant's honesty and integrity.

When the complainant did happen to hear that the Tribunal had a case which involved accusations against him, the Organization failed to answer his letters.

Although the ad hoc grievance panel absolved him of guilt, the Director-General did not act on all its recommendations. He apologised for the procedure but refused to acknowledge the complainant's innocence.

Lastly, the WHO refused to pay him moral damages.

He seeks 500,000 United States dollars in moral damages and 10,000 Swiss francs in costs.

C. In its reply the Organization makes no bones about its failure to tell the complainant that he stood accused of sexual harassment in a complaint to the Tribunal. It observes that it has offered him an unqualified apology, both in private and in public, and does so again before the Tribunal.

It concedes that its former Legal Counsel, who later became head of the Director-General's office, ought to have consulted him before making some of his statements. But he failed to do so, not from bias or malice, but from a genuine wish to settle the dispute between the complainant and Mrs. Mussnig.

The defendant denies withholding information from him with malice aforethought: it was not expecting the Tribunal to "throw out" its objections to receivability or name him in Judgment 1376.

The reason for the delay in answering his correspondence was that at the time it had no official procedure for looking into charges of sexual harassment.

Lastly, it had no grounds in law for acting on the recommendations of an internal body when the Tribunal itself had made a different ruling.

D. In his rejoinder the complainant enlarges on his pleas and rebuts the Organization's arguments.

The WHO is, he says, using Judgment 1376 as a pretext: it knows full well that its handling of the case was wretched, and it wants the presumption of his guilt to stand on the strength of that judgment.

He was not a party to Mrs. Mussnig's complaint and had no inkling of her charges.

He raises to 12,000 francs the amount he is claiming in costs.

E. The Organization presses its pleas. It contends that the amount the complainant claims in damages is blatantly too large and disproportionate to the injury he is alleging.

CONSIDERATIONS

1. Judgment 1376 of 13 July 1994 set aside a decision by the Director-General of the WHO not to renew the appointment of Mrs. Mussnig, ordered the Organization to reinstate her and awarded her damages. That judgment rested on the assumption, undisputed by the Organization at the time, that she had suffered sexual harassment by her supervisor, the complainant, and after spurning his advances was given poor performance reports which left her career in ruins.

2. The Organization thereupon set up an ad hoc grievance panel, in November 1994, to investigate Mrs. Mussnig's charges of sexual harassment. After lengthy hearings the panel submitted its report on 8 June 1995. It found that there had been no sexual harassment of Mrs. Mussnig by the complainant and that the Organization should make him a written apology and pay him financial compensation for the damage it had done to his good name by failing to submit full pleadings to the Tribunal. It had pleaded only that the complaint was irreceivable and it had offered no grounds for disputing Mrs. Mussnig's allegations.

3. On the strength of the panel's findings the Organization filed an application for review of Judgment 1376. The Tribunal dismissed the application by Judgment 1504 of 11 July 1996. It restated the exceptional grounds on which it would entertain such an application. It ruled that the panel's report was not to be deemed as a new fact warranting review since the Organization could quite well have refuted the charges in replying to Mrs. Mussnig's complaint, for example by asking Dr. Eben-Moussi to give his own version. It concluded:

"If it failed to approach Dr. Eben-Moussi it must bear responsibility for such failure. As far as the complainant is concerned, she succeeded in her claim on the evidence as presented to the Tribunal. It would be sheer negation of justice to reopen the case as the Organization now asks."

4. That judgment was the final ruling on the dispute that Mrs. Mussnig had with the WHO. But the complainant is arguing that the Organization has caused him injury by failing to defend his good name and he is asking the Tribunal to award him 500,000 United States dollars in moral damages.

5. The two earlier judgments are final and binding and call for no further comment. Yet the Organization is not denying that it was wrong not

to produce at the time any evidence that would have tended either to corroborate or to refute the charges against the complainant. The Director-General's public statement was explicit:

"I also note that WHO failed to inform Dr Eben-Moussi of the allegation of sexual harassment that had been made against him, and to give him a timely opportunity to respond. The Organization offers Dr Eben-Moussi its unequivocal apology for this failure, and for any resulting damage to his reputation."

In its pleadings in reply to the present complaint the Organization repeats that it has apologised to him in private and in public and does so again before the Tribunal.

6. When a staff member makes charges as serious as sexual harassment an organisation must do its utmost to afford protection. But it must at the same time carry out a full and proper inquiry that respects the rights of the accused. Here the WHO obviously failed to do so. Instead it originally preferred to let the Tribunal rule without adducing evidence that might have proved material. It thereby erred, and the complainant is entitled to redress on that account.

7. As the Organization submits, the complainant has sustained no injury to his career from Mrs. Mussnig's winning her case. The only damages he is entitled to are for the moral injury, and the Tribunal sets the amount *ex aequo et bono* at 10,000 United States dollars.

8. He is also awarded 5,000 Swiss francs in costs.

DECISION

For the above reasons,

1. The Organization shall pay the complainant 10,000 United States dollars in moral damages.
2. It shall pay him 5,000 Swiss francs in costs.
3. His other claims are dismissed.

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

Delivered in public in Geneva on 10 July 1997.

(Signed)

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner