

TWENTY-SEVENTH ORDINARY SESSION

In re NOWAKOWSKA (No. 3)

Judgment No. 183

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organization (WMO) drawn up by Miss Krystyna Nowakowska on 7 April 1971, the Organization's reply of 30 July 1971, the complainant's rejoinder of 31 August 1971 and the Organization's surrejoinder of 23 September 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rule 145.2 of the Staff Regulations and Staff Rules of the Organization;

Having examined the documents in the dossier, oral proceedings having been neither requested by the complainant nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Miss Nowakowska, who has worked in the Registry of the WMO since 2 January 1968, has received three annual reports. The last relates to the period from 1 October 1969 to 30 September 1970 and differs from the first two, following which she obtained a salary increment, in that its author, the Chief of the Administrative and Common Services Division, recommended withholding the increment. On receiving the report the complainant refused to sign it, and on 12 October 1970 she wrote to the Secretary-General commenting on the appraisal in the report.

B. The report indicated that the quality and standard of accuracy of the complainant's work were good, that her output and relations with others were uneven, and that her sense of responsibility was inadequate. The author of the report appended to it the following note:

"Miss Nowakowska, who has had a University education and holds a degree, has been occupied in various posts in the WMO Secretariat, and since 1968 in the Registry, in positions which have not satisfied her intellectually. Since 1968, and no doubt before, she has made considerable efforts for transfers to other more senior jobs inside and outside the Organization, which have not proved successful.

As a result of this situation she is more and more dissatisfied, bored with her job and most bitter. Her attitude reflects this situation in every respect. She is nervous, unstable, suspicious of everyone, extremely aggressive, undisciplined and most difficult to work with or to supervise. As a method of escape or protest sick leave is systematically used. During the year under review she has had 70 working days sick leave, in addition to her normal absence on annual leave.

As there are two staff members in the Registry, and as the Registry receives and transmits all incoming and outgoing mail, it is obvious that this situation affects the smooth functioning of the Secretariat of WMO as a whole and cannot continue.

Therefore, I consider that the services of Miss Nowakowska during this past year have not been satisfactory and recommend that the yearly increment be withheld.

In view of the nature of this report and its implications it is also submitted to the Secretary-General."

C. In a minute of 23 October 1970, the substance of which was notified to the complainant on 27 October, the Secretary-General stated:

"I have read carefully the attached papers [the report and the complainant's comments] and while I am in no position to comment on the medical questions raised, I am satisfied that the services of Miss Nowakowska during the past year have not been satisfactory." He added that he accepted the recommendation for withholding the annual increment and expressed the hope that the complainant's services would improve in the future. In a letter of

5 November 1970 Miss Nowakowska asked the Secretary-General to review his decision. She maintained that out of 70 days' sick leave she had taken 68 on a medical certificate and two without a certificate - whereas the Staff Rules authorised her to take up to seven days without one - and that absence on sick leave, duly certified by qualified doctors and not contested by the Medical Adviser of the WMO, could not be regarded as neglect of duty or failure to meet the requirements of service. Her absences on sick leave had been the main reason for withholding the increment although they were totally irrelevant to the decision. The Secretary-General replied on 13 November 1970 that he had given careful consideration to her performance report and to the views expressed in her letter of 5 November 1970 and that, while in no position to comment on the medical questions raised, he had come to the conclusion that her services during the past year had not been satisfactory. He maintained his decision to withhold the increment.

D. Miss Nowakowska then appealed to the Joint Appeals Committee. She maintained that the report showed beyond any possible doubt that all the observations contained therein were based on the fact that she had been ill for 70 working days and that the Secretary-General's decision was tainted with prejudice and motivated by other irrelevant factors. The Committee nevertheless held that the decision to withhold the salary increment had not been based on irrelevant grounds or motivated by prejudice and was contrary neither to the provisions of her contract of employment nor to any provision in the Staff Regulations and Staff Rules. The Committee accordingly recommended the Secretary-General to confirm the impugned decision. The Secretary-General accepted that recommendation on 6 January 1971 and the complainant, was so informed on 12 January 1971.

E. In her complaint before the Tribunal Miss Nowakowska prays the Tribunal to quash the decision and to order payment of the salary increment and of her basic salary as an official at grade G.4, step 4, from 1 October 1970, plus 6 per cent interest on the sums due. She bases her claims on the same arguments as those which she submitted to the Joint Appeals Committee.

F. In its reply the Organization contends that the quality of the complainant's work was often impaired by her difficult personality and sometimes temperamental characters that was the reason why her supervisor had expressed dissatisfaction with the quality of her work, not her many absences due to illness, which were mentioned in the report only as incidental information and were therefore not the grounds for the Secretary-General's decision. It prays that the complainant's claims be dismissed.

CONSIDERATIONS:

It is not established that the assessments in the performance report of the complainant's attitude to her work were influenced by the fact that she had had prolonged absences on sick leave. It was on the basis of these assessments, and not because of the sick leave, which he expressly disregarded, that the Secretary-General took his decision. There are no grounds on which the Tribunal can interfere with it.

DECISION:

For the above reasons, The complaint is dismissed. In witness of this Judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 November 1971.

M. Letourneur
André Grisel
Devlin

Bernard Spy