

*Registry's translation,  
the French text alone  
being authoritative.*

## **110th Session**

## **Judgment No. 2955**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. W. V. against the World Health Organization (WHO) on 6 February 2009 and corrected on 21 April, the Organization's reply of 10 August, the complainant's rejoinder of 20 October and WHO's surrejoinder of 3 November 2009;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

A. The complainant, a Congolese national born in 1944, joined the Organization in 1967. As from 1989 he held the post of conference technician at grade BZ.07, the equivalent of grade G.7, in the Conference Services Unit of the WHO Regional Office for Africa in Brazzaville (Congo). He left the Organization on 31 December 2004 on reaching the statutory retirement age.

When the grade P.2 post of Conference and Office Services Officer became vacant on 29 February 2004, the Administrative Services Officer asked the complainant, by a memorandum of

1 March 2004, temporarily to assume the responsibilities of that post. At a meeting held on 3 March 2004 the Administrative Services Officer was informed that, in accordance with Information Circular IC/03/16 of 30 April 2003 setting out the conditions for such temporary assumptions of responsibilities, he was not authorised to appoint the complainant in an acting capacity to the post in question without the prior approval of the Director of Programme Management. On 5 March 2004 the Administrative Services Officer advised the complainant that the decision to appoint him to the said post in an acting capacity had been cancelled, because it was not in conformity with the instructions contained in the above-mentioned circular, and that steps were being taken to obtain the requisite approval.

After his retirement the complainant submitted an initial memorandum dated 10 January 2005 to the Regional Personnel Officer in which he expressed his concern that no action had been taken on the decision of 5 March 2004 and requested extra pay under Staff Rule 320.5, because he considered that, from March 2004 until his retirement, he had performed all the duties of the Conference and Office Services Officer post. As he received no reply to this memorandum, he submitted two further memoranda dated 5 April and 12 May 2005 respectively. On 2 June the Regional Personnel Officer informed the complainant that his request had been rejected because no decision had been taken by those authorised to appoint him in an acting capacity to the post in question and that the decision on his temporary appointment had been cancelled.

On 15 August 2005 the complainant lodged an appeal with the Regional Board of Appeal, which recommended, in its report of 8 February 2007, that the request for extra pay should not be granted, since the complainant had not been appointed to the post of Conference and Office Services Officer. The Regional Director, acting on the basis of this recommendation, dismissed the complainant's appeal by a letter of 18 June 2007. On 7 August 2007 the complainant appealed against this decision to the Headquarters Board of Appeal. In its report of 11 July 2008 the Board recommended dismissal of the appeal on the grounds that the complainant had failed to substantiate his claim. It concluded, however, that an inordinately

long time had been taken to deal with his case and recommended that the complainant should be awarded 5,000 United States dollars in damages. The Director-General informed the complainant by a letter of 19 September 2008 that she had decided to follow these recommendations. That is the impugned decision.

B. The complainant submits that he carried out all the duties of Conference and Office Services Officer from March to December 2004, that he therefore meets the conditions of Staff Rule 320.5 and that he is consequently entitled to extra pay.

The complainant further accuses the Administration of showing bad faith and personal prejudice against him.

He claims the extra pay for which provision is made in Staff Rule 320.5 for the period March to December 2004, a sum equal to the amount of this monthly supplement multiplied by the number of months of delay in the “full payment of [his] due since January 2005”, damages to compensate *inter alia* for the Administration’s behaviour towards him and one symbolic CFA franc for the degrading treatment to which he was subjected by the administrative staff of the WHO Regional Office for Africa.

C. In its reply the Organization contends that the complaint is irreceivable, because it was filed after the expiry of the ninety-day time limit stipulated in Article VII, paragraph 2, of the Statute of the Tribunal. Indeed, the complainant received the Director-General’s decision of 19 September 2008 on 7 October 2008, but his complaint, accompanied by submissions dated 19 January 2009, was not filed with the Registry of the Tribunal until 6 February 2009.

Subsidiarily, the defendant submits that the duties of Conference and Office Services Officer were shared by the complainant and several of his colleagues pending the filling of the post. It also alleges that the complainant was not officially appointed to perform all the duties at issue on a temporary basis during the period in question and that the assignment of occasional responsibilities was covered by his job description as a conference technician. It infers from this that the

conditions laid down in Staff Rule 320.5 are not fulfilled in this case and that the complainant is not therefore entitled to extra pay.

WHO also rejects as unfounded the allegations of personal prejudice and unlawful acts on the part of the regional Administration.

D. In his rejoinder the complainant considers that the Organization has not refuted the points made in his complaint and he reiterates all of his submissions.

E. In its surrejoinder the Organization maintains its position in full.

WHO invites the Tribunal to censure the “completely gratuitous and misplaced [...] personal attacks” contained in the complainant’s rejoinder. It further requests the joinder of this complaint, which it regards as vexatious, with the second complaint filed with the Tribunal by the complainant.

## CONSIDERATIONS

1. The complainant, who joined WHO on 1 August 1967, retired on 31 December 2004. At that time, he held a post at a level equivalent to grade G.7 in the Conference Services Unit of the WHO Regional Office for Africa in Brazzaville. On 1 March 2004 the Administrative Services Officer asked him temporarily to assume the responsibilities of Conference and Office Services Officer at grade P.2, but this appointment was cancelled and the complainant was officially informed of this on 5 March 2004.

After having separated from service, he asked to be awarded extra pay alleging that he had carried out the duties of Conference and Office Services Officer from March 2004 until his retirement. He relied on a provision of the Staff Rules according to which such extra pay is granted to staff members who are required to assume temporarily the responsibilities of an established post of a higher

grade than that which they occupy. The Regional Personnel Officer rejected this request on 2 June 2005. The complainant brought the case before the Regional Board of Appeal, but the Regional Director informed him by a letter of 18 June 2007 that he had not accepted his claims.

On 19 September 2008 the Director-General dismissed the appeal against that decision which the complainant had lodged with the Headquarters Board of Appeal. This final decision against which the complaint is directed and the Board's recommendation were forwarded to the complainant, who acknowledged receipt thereof on 7 October 2008.

2. The defendant proposes that the Tribunal join this complaint with another complaint filed by the complainant in connection with the injury which he allegedly suffered on account of the temporary relocation of the WHO Regional Office for Africa to Harare (Zimbabwe). This joinder is not appropriate, since the two complaints are unrelated to one another.

3. Under Article VII, paragraph 2, of the Statute of the Tribunal, to be receivable a complaint must have been filed within ninety days after the complainant was notified of the impugned decision. Article 4(2) of the Rules of the Tribunal explains how the Tribunal takes account of the date of deposit for the purpose of determining compliance with this time limit.

In the instant case, the complainant acknowledged receipt of the impugned decision on 7 October 2008. His written submissions are dated 19 January 2009, but the date on which the complaint was sent to the Tribunal remains unknown. It was received by the Registry on 6 February 2009.

4. Time limits are an objective matter of fact and in principle the Tribunal may not entertain a complaint filed out of time, since this would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. The only exceptions to this rule are where the complainant has been prevented by *vis major*

from learning of the impugned decision in good time, or where the organisation by misleading the complainant or concealing some paper from him or her has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith (see Judgment 2722, under 3).

In the instant case, the complaint was clearly filed after the expiry of the time limit set in Article VII, paragraph 2, of the Statute of the Tribunal and it has not been shown, or even alleged, that any of the exceptional circumstances described above obtained. The complaint is therefore irreceivable because it was filed late and for that reason it must be dismissed.

5. The defendant asks the Tribunal to find that, especially in his rejoinder, the complainant engaged in “completely gratuitous and misplaced [...] personal attacks”. It asks the Tribunal “to censure such inappropriate language which detracts from the proper conduct of the proceedings”.

The complainant, who is not assisted by a lawyer, has certainly used, in his complaint and rejoinder, blunt, colourful language which is not always very courteous. However, this wording does not exceed the bounds of what is acceptable in the context of legal proceedings.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 2010, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Seydou Ba

Claude Rouiller  
Patrick Frydman  
Catherine Comtet