

***In re* VERDRAGER**

**Judgment No. 325**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Jacques Verdrager on 25 August 1976, the WHO's reply of 28 October, the complainant's rejoinder of 6 December and the WHO's surrejoinder of 16 February 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the WHO Staff Regulations, particularly Regulation 1.2, the WHO Staff Rules, particularly Rules 410.1, 465.2 and 970, and the provisions of the WHO Manual, particularly sections II.5.195 (since repealed) and II.5.330;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. At the WHO's suggestion the complainant attended a three-part course of training in malaria eradication which began on 23 November 1957 in the United Kingdom. On 31 May 1958 he was recruited as a medical officer at grade P.2 and sent out to Brazzaville. On 1 October 1958 he was promoted to grade P.4 and given a two-year appointment. He stayed in Brazzaville until 1 October 1959 and was then transferred to Port Louis, in Mauritius. His appointment was twice extended for two years. He was temporarily posted to Zanzibar and then, on 1 June 1964, to the Pacific region. On 1 July 1964 he was given a "career service appointment". In the Pacific region he was posted to the Philippines and Pnom Penh and then, after spending several months in the Regional Office and following a course in England during a period of leave without pay, to Indonesia. On 1 April 1971 he was promoted to grade P.5 and he stayed in Jakarta until the beginning of 1975.

B. An intensive programme was launched for the eradication of malaria, the complainant's subject; it was decided to post him to Sri Lanka and he was so informed on 18 April 1975. By a cable confirmed by a letter of 23 April 1975 he said he was not interested in the post in Sri Lanka. The reasons he gave were that he wanted to carry on his work in Indonesia, he understood that the post offered him was P.4 whereas his own was P.5, and living conditions in Sri Lanka were not suitable for the child his wife was expecting in June. He was therefore allowed for the time being to stay in Indonesia. It was later decided to post him to Bangladesh and the decision was notified to him on 15 July and confirmed on 25 July 1975. By a cable of 2 August, which he explained in a letter of 7 September, he said that for family reasons he could not agree to the transfer, his main argument being that health conditions in Bangladesh were not suitable for his baby daughter, who had been delivered by Caesarian section. The WHO found his reasons inadequate and asked him to think again. On 14 November he repeated his refusal. On 28 January 1976 the WHO decided to end his appointment on 1 May 1976, in accordance with Staff Rule 970.

C. The complainant appealed to the headquarters Board of Inquiry and Appeal. In its report of 30 April 1976 the Board found unwarranted the Administration's view that the complainant was "unsuited ... to international service" and held that the termination of his appointment under Staff Rule 970 had been "inappropriate". It therefore recommended quashing the decision to end the appointment. The Director-General did not endorse the recommendation, however, and on 10 June 1976 upheld his decision. That is the final decision impugned.

D. The complainant contends that the impugned decision should be quashed for the following reasons. The WHO ignored essential facts in refusing to take account of his special family situation and seeking to post him in turn to Sri Lanka and to Bangladesh, where conditions were "obviously unfavourable to his wife's recovery and to the baby's survival". The WHO disregarded the rules in force in so far as they preclude any posting at a lower grade and require consultation, which there was not, with a staff member on any transfer. The WHO mistakenly applied Staff Rule 970, which authorises it to terminate a staff member's appointment if he proves "unsuited ... to international service". The complainant had served the WHO for eighteen years and that was "clear proof of his

qualities as an international official and of his availability for posting to any part of the world whatever". Hence the WHO committed an abuse of authority in revoking the contract on the grounds that he was "unsuited".

E. The complainant asks the Tribunal to quash the Director-General's decision of 10 June 1976 for the reasons set out in paragraph D above; to order his reinstatement in the WHO or, alternatively, award him damages amounting to not less than the equivalent of five years' salary; and to award him 15,000 French francs as costs.

F. In its reply the WHO says that it was quite aware of the complainant's family situation but because of the requirements of service took the view that that was not an adequate reason for his refusing the proposed transfers. It decided on those transfers in full knowledge and consideration of the facts. There was never any question of demoting the complainant, who would have kept his P.5 grade in his new posting. In transferring him the WHO committed no error of law, "being fully empowered to transfer a staff member if it believes such transfer to be warranted by the requirements of service, and even if the staff member's personal interests and the WHO's interests do not coincide". It does not seek to deny that for eighteen years the complainant's work was satisfactory; but "his successive refusals" from 1975 onwards "showed that he was no longer suited to international service". The WHO was therefore entitled to take Staff Rule 970 as the legal basis for ending his appointment.

G. Since the Director-General's decision of 10 June 1976 was fully warranted and reinstating the complainant or paying him compensation is therefore out of the question, the WHO asks

the Tribunal to dismiss the complaint outright.

#### CONSIDERATIONS:

The WHO appointed the complainant, who is a physician, on 31 May 1958 and gave him a career service appointment on 1 July 1964. He was posted to Jakarta and then, in April 1975, assigned by the Regional Director to Sri Lanka. He refused to go and again, in July 1975, despite the WHO's insistence, refused a post in Bangladesh.

The reason he gave for refusing the two posts was that the countries to which he was to be sent did not afford proper conditions of health for his family.

According to Staff Regulation 1.2 "All staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices" of the WHO.

According to Staff Rule 410.1 "All staff members are subject to assignment by the Director-General to any activity or office of the Organization", and according to Staff Rule 465.2 "A staff member may be reassigned whenever it is in the interest of the

Organization to do so".

These texts are in keeping with the general principles of international public service, which affirm the priority of the general interest, represented in each organisation by the Director-General, over individual interests.

It does not appear from the dossier that the WHO is wrong in contending that the posts in Sri Lanka and in Bangladesh had to be filled urgently. The complainant was therefore bound to take up the new assignments, save in exceptional circumstances such as did not exist in this case. He was aware of the conditions of international service and particularly of service with the WHO when he accepted an appointment, and all the more so later when he accepted a career service appointment, with that organisation. He also knew that he might be posted to a country where health conditions were not always favourable.

In the circumstances - there being no need to rely upon Staff Rule 970, which is open to interpretation - the Director-General was entitled, by virtue of the texts quoted above, to terminate the appointment of the complainant, whose refusal on strictly personal grounds to take up posts to which he was assigned by the competent authority constituted a grave breach of duty.

The complainant may not rely upon provisions of the Manual, which cannot in law run counter to those of the Staff Regulations and Staff Rules and in any event contain no binding rule which is of relevance to this case.

Nor may the complainant justify his refusal on the grounds that the post offered to him in Sri Lanka was graded

P.4: it is clear that it was graded P.5 - the same grade as he had held in Indonesia.

Moreover, a correspondence he engaged in with his supervisor before being ordered to Sri Lanka and to Bangladesh shows that he was consulted before any decision was taken. Such consultation was an essential formality, but in this case adequate. In particular, as appears from the above texts, the complainant did not have to give his prior consent.

Lastly, it appears from the documents in the dossier that the Director-General ordered the transfers in the interests of the Organization and that the allegation of abuse of authority is not proved.

There is no reason to hear the witnesses whom the complainant wishes to call, and since the impugned decision appears lawful there are no grounds for granting the compensation he claims.

#### 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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 November 1977.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet