

FORTY-FIRST ORDINARY SESSION

In re ALONSO (No. 2)

Judgment No. 362

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan-American Health Organization (PAHO) (World Health Organization) by Ms. Mercedes Alonso on 26 September 1977, the PAHO's reply of 26 October, the complainant's rejoinder of 2 December, the PAHO's surrejoinder of 5 January 1978, the complainant's communications of 31 July and 21 August and the PAHO's communication of 11 September 1978;

Considering Article II, paragraphs 5 and 6, of the Statute of the Tribunal and PAHO Staff Rules 1030, 1210 and 1220;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. In August 1950 the complainant joined the staff on the Pan-American Sanitary Bureau, the secretariat of the PAHO and she now holds grade P.2. As "Chairperson" of the Legal Subcommittee of the Staff Association she represents and defends staff members in dispute with the Administration, and also retains counsel for any case in which one is needed and provided that the staff member asks or agrees that she should.

B. In 1977 the complainant thus took up disputes between two staff members and the Administration. One case was that of a Ms. Moore, who had been denied promotion because of incomplete consideration of the file by the selection committee. The other case related to a Ms. Harden, a nurse whose post had been abolished and whose appointment had not been renewed.

C. The complainant's preliminary talks with the Administration on the two cases came to nothing. Apparently with the consent of the two officials the complainant retained counsel, Mr. Altman, to represent them before the Board of Inquiry and Appeal. Meanwhile the PAHO had engaged the law firm of Starr and Lloyd and said that they were willing to negotiate. Accordingly Ms. Moore's case was settled on 4 March 1977 and Ms. Harden's on 11 March. By those dates, however, Mr. Altman had already filed submissions with the Board of Inquiry and Appeal and on 14 March he sent the bills for his fees to the complainant, who, as "Chairperson" of the Legal Subcommittee of the Staff Association, had retained him. The bills came to \$500 for Ms. Moore's case and \$600 for Ms. Harden's.

D. On 17 March the complainant forwarded the bills to the Administration for settlement on the grounds that Ms. Moore and Ms. Harden had been "obliged to proceed with the presentation of the briefs and to incur legal costs to defend their interest" because of the Administration's lateness in negotiating. On 20 April the Administration refused the complainant's claim for payment and she went to the Board of Inquiry and Appeal. In its report of 14 July the Board recommended the Administration to pay the fees. By a decision of 12 September the Director-General rejected the Board's recommendations, and that is the decision impugned.

E. The complainant observes that the impugned decision is based on three arguments. First, it is said that she acted in her own name without informing Ms. Moore and Ms. Harden and so was not authorised to act on their behalf. The second argument is that it was the Staff Association, and not individual staff members, that incurred Mr. Altman's fees. And thirdly, the matter of fees ought to have been raised at the time when the disputes were settled. The complainant infers from those three arguments that account was not taken of all the essential facts and that mistaken conclusions were drawn from the facts submitted by her and by the Board of Inquiry and Appeal. She asks the Tribunal to confirm that the fees of the lawyer whom she engaged to represent staff members in internal proceedings should be paid by the PAHO; to order the PAHO to pay reasonable interest to take account of the delay in settling the cases; and to award her a reasonable amount as costs. The purpose of her claims, she adds, is to secure release from a debt which she incurred on behalf of Ms. Moore and Ms. Harden and for which she is now being held directly liable "because of her official role as a staff representative".

F. The PAHO replies that the complaint may be taken in two ways. It may be treated as having been filed by the complainant in her capacity as staff representative - or on behalf of the Staff Association - in so far as it relates to a debt for which she holds the Administration liable. Alternatively, it may be regarded as having been filed by her on behalf of two other staff members and to relate to a debt contracted by those staff members which the Administration should repay them. Whichever view is taken, according to Article II of the Statute of the Tribunal the complainant cannot appeal to the Tribunal. Whether the complainant has filed her complaint in her own name or on behalf of the Staff Association there has been no "non-observance" of the terms of her appointment. There is nothing in the Staff Regulations and Staff Rules which authorises a staff member to claim fees for having represented other staff members. Neither the Staff Association nor any of its bodies is as such empowered to appeal to the Tribunal. If, on the other hand, the complainant wishes to file her complaint on behalf of Ms. Moore and Ms. Harden, then it is not receivable since again the right to file a complaint with the Tribunal is a personal right and cannot be exercised on behalf of third parties. The PAHO therefore asks the Tribunal to dismiss the complaint.

G. In her rejoinder the complainant argues, among other things, that as a PAHO staff member she has suffered prejudice in the performance of duties laid upon her under the rules in force and that she is therefore entitled to appeal to the Tribunal. She also contends that in seeking and agreeing to her participation in the internal negotiations the PAHO recognised her official capacity under those rules. Moreover, being liable to pay a bill for \$1,100 sent to her personally by a lawyer, she is suffering prejudice which she could not foresee and which originated directly in the behaviour of the Organization, which now proves to have been improper.

H. In its surrejoinder the PAHO contends that there is no proof that there was any breach of the complainant's terms of appointment or that she has suffered any prejudice by reason of any such alleged breach. The PAHO therefore abides by the conclusions in its reply.

CONSIDERATIONS:

As to the jurisdiction:

The complainant is an official of the Organization and she is also the Chairperson of the Legal Subcommittee of the PAHO/WHO Staff Association. The Association is recognised in Staff Rule 1210 as "a formal organization for the purpose of developing staff activities and making representations to the Bureau concerning personnel policy and conditions of service". It is further provided by Staff Rule 1220 that in any consultations concerning personnel policy and conditions of service the duly elected representatives of the staff "shall be recognised by the Bureau as representing the views of that portion of the staff from which elected".

In 1977 two officials made appeals against the Organization alleging non-observance or breach of regulations which the Tribunal will assume were well founded. If these appeals had reached the Board of Inquiry and Appeal the appellants could under Staff Rule 1030.7 have appealed through a representative of their choice. The complainant was authorised by the two officials to represent them in negotiations with the Organization and to obtain legal counsel on their behalf. The complainant retained counsel and for some reason made herself personally liable for his fees. In March 1977 both complaints were settled on terms which made no provision for payment of costs. Legal counsel has submitted his bill to the complainant and she in turn submitted it to the Organization which has refused to pay it. The present complaint is brought against this refusal.

Under Article II of its Statute the Tribunal is open to any official who alleges non-observance of his terms of appointment or of the Staff Regulations; or who is in dispute with the Organization concerning the compensation provided for in cases of invalidity, injury or disease incurred by him in the course of his employment. The complainant does not allege non-observance of her terms of appointment, She alleges that she is entitled to be compensated by the Organization for injury sustained in the course of her employment, the injury being that she has been left to pay counsel's fees herself.

In the opinion of the Tribunal the word "injury" in this article must be given the restricted meaning of physical injury. Not only is this consistent with its context, but if it were not so restricted it would be far wider than "accident" in the French text. Furthermore, even if there were a physical injury, it was not incurred by the complainant in the course of her employment. There is nothing in the Regulations which she cites to suggest that an elected representative of the staff is employed as such by the Organization. Any such interpretation would be destructive of the nature and purposes of the Staff Association, since, if its representatives were as such in the employment of the Organization, they could be instructed by the Organization what to do.

If and in so far as the claimant alleges that the legal expenses are part of the loss sustained by the two officials and therefore damage which flows from the wrong done to them by the Organization, the answer is that the incurring of this liability was not legally a consequence of the wrong but of the complainant's voluntary act in making herself personally liable for the fees, which she was under no duty to anyone to do. It is not suggested that if the officials had themselves incurred the liability for the fees, they could have recovered them from the Organization otherwise than by agreement. If they could not, it would be absurd if the result could be achieved by getting a third party to assume the liability.

DECISION:

For the above reasons,

The complaint is dismissed as outside the Tribunal's jurisdiction.

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 13 November 1978.

M. Letourneur

André Grisel

Devlin

Roland Morellet