

FORTY-SIXTH ORDINARY SESSION

***In re* GLORIOSO**

Judgment No. 450

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan American Health Organization (PAHO) (World Health Organization) by Miss Olinda Glorioso on 16 September 1980, the PAHO's reply of 15 December 1980, the complainant's rejoinder of 20 February 1981 and the PAHO's surrejoinder of 3 April 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulations 4.2 and 8.1, PAHO Staff Rules 410, 440, 510.1, 530, 565.2, 580.1, 910 and 1230 and WHO Manual section II.5.195;

Having examined the written evidence, 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. The complainant joined the staff of the Pan American Sanitary Bureau, the secretariat of the PAHO, at grade G.3 in 1973 as an assistant in the Office of Procurement and was promoted to grade G.5 in 1974. Her first-level supervisor was Miss Shuert, and Miss Shuert's supervisor and the chief of the Office was Mr. Umstead. Her performance at the time was always found very satisfactory. In February 1977 she took a course in purchasing procedures and as a result made recommendations for reform to Mr. Umstead, who commended her for them. Her relations with her supervisors thereafter deteriorated. In a memorandum dated 12 May 1977 Mr. Umstead reprimanded her but the Chief of Administration considered it unwarranted and had it removed from the files. In the appraisal report for the period from 1 December 1976 to 30 November 1977 Miss Shuert said that she worked hard but would have to increase her productivity and improve her performance. At her request the complainant was then transferred, on 15 March 1978, to another unit in the Office of Procurement, headed by Mr. Glenn. She was then responsible to Mr. Brooks, but in fact worked under him for only a short time. Mr. Glenn's appraisal report on her was wholly favourable and she signed it, but Miss Shuert added her own observations for the period from 1 December 1977 to 15 March 1978 confirming the criticisms in the earlier report. Mr. Brooks added his own appraisal: while praising her work as very satisfactory, he questioned her judgment about priorities. She was then again put under the orders of Miss Shuert and her relations with her supervisors became even more strained. On 31 January 1979 Mr. Umstead recommended that her appointment should not be extended or else that she should be transferred to another department. The Chief of Personnel renewed her contract for two years but informed her in a minute dated 30 April that she was reassigned to the Office of Personnel. In that Office she was assigned to a new unit headed by Mr. Custy, and she received a post description on 11 October. She states that she has an office away from the rest of the unit, is kept out of the work of the unit and is given trivial tasks, such as typing and telephoning, which do not match her grade and experience. On 12 December 1979 she appealed to the Board of Inquiry and Appeal claiming reinstatement in her former position in the Office of Procurement or assignment to a comparable one, the removal of the negative appraisals of her performance, the award of grade G.6, compensation for medical expenses, moral prejudice and injury to her reputation, and costs. On 22 April 1980 the Board unanimously held that the decision to reassign her had not been taken for reasons of prejudice but from a desire to resolve conflict in the unit, but it recommended that, in view of the injury caused by the transfer, she should be repaid medical expenses and given first priority for training for her duties in the Office of Personnel, that Mr. Brooks' comments should be expunged from the 1978 appraisal report, that she should be offered an apology for the reprimand imposed by Mr. Umstead in 1977, and that she should be repaid one-third of her legal costs. On 18 June 1980 the Director endorsed those recommendations, and that is the decision now impugned.

B. The complainant puts forward the following pleas. (a) The decision is in breach of Staff Rule 1230, which recognises the right of a staff member to appeal against a transfer which was prompted by personal prejudice. The grounds given for the transfer - an alleged "reorganisation" and lack of work for the complainant in the Office of Procurement - were false since her post was advertised as vacant shortly after her transfer. Her duties in the Office

of Personnel are makeshift and menial. The real reason for the transfer was the hostility she had aroused in Miss Shuert by sending her recommendations for reform directly to Mr. Umstead, who sided with Miss Shuert. The tension was heightened by the complainant's activities for the Staff Association, which was openly at odds with Mr. Umstead over his allegedly dictatorial behaviour. There is evidence of personal prejudice in the change in the appraisal reports, which, without the slightest warning, suddenly grew critical, and in the fact that Mr. Glenn's favourable and objective remarks were deliberately contradicted by her other two supervisors. (b) The decision is in breach of Staff Regulation 4.2 and Staff Rule 410.1. These provisions lay down three paramount considerations in transfers: efficiency, competence and integrity. The complainant maintains that she was the victim of a "vendetta" and that her unchallenged efficiency and competence were disregarded. (c) The decision is in breach of Staff Rule 510.1 and Manual section II.5.195, which require that account be taken in assigning staff members of their particular abilities and interests and of the Organization's interests. It could not have been in the PAHO's interests to remove such an experienced and devoted official from the Office of Procurement. (d) The decision is in breach of Staff Rules 440.1, 440.1.1, 530.3 530.4 and 580.1. Before any appointment a future staff member shall receive information on the requirements of the appointment and shall be given a description of duties, and it is logical to assume that a staff member should enjoy the same rights on any analogous change in status. This, in the complainant's view, is the main purpose of the rules. Yet she was informed only two hours in advance of her transfer and did not get her post description until four months later. (e) The decision is in breach of Staff Rule 530. The rule requires a supervisor to guide his subordinates and discuss their work with them at frequent intervals. Mr. Umstead and Miss Shuert did nothing of the kind and gave her no warning before criticising her in the appraisal reports. She was the victim of similar neglect after transfer. (f) The decision is in breach of Staff Regulation 8.1 and Staff Rule 910, which relate to staff consultation and the right of association. She was an elected staff representative and often had occasion to protest against breaches of the prescribed procedures, for example, those caused by Mr. Umstead's behaviour, which prompted his subordinates to lodge appeals and led to dispute between him and the Staff Association.

C. The complainant asks the Tribunal to order her reassignment to the Office of Procurement or her assignment to a comparable position at grade G.6; the removal from her personal file of the "irregular and tainted evaluations"; the payment of compensation for moral prejudice; the repayment of medical expenses incurred on account of the nervous strain she suffered because of harassment; compensation for mental distress and humiliation; and costs.

D. In its reply the PAHO observes that the decision consisted simply in reassigning the complainant to another branch because of the problems caused by tension with her supervisors, and that the reason for it was explained to her and is borne out by the facts of the case. It is not true to say that the reason given was reorganisation or lack of work: nothing to that effect appears in the minute of 30 April 1979 from the Chief of Personnel notifying the transfer. Considerations of efficiency do not preclude the transfer of staff members to safeguard good working relations in a unit. On the contrary, such transfer makes for the efficiency both of staff members and of the Organization as a whole. The Director has discretionary authority to order a transfer in the PAHO's interests (Staff Rule 565.2). As regards the staff member's interests, the PAHO points out that according to Staff Rule 510.1 account is taken of them "to the extent possible". The complainant was transferred in her own interests to duties which matched her abilities and enabled her to make a new start. In reply to the argument set out in B(d) above, the PAHO points out that the relevant rules apply to the appointment of a new staff member, not to transfer. Besides, the complainant was informed of the proposed transfer since Mr. Umstead had recommended it in a memorandum of 31 January. The reason why the post description was delayed was that the unit was a new one. To begin with the complainant took readily to her new duties, but then her attitude changed, as her supervisor, Mr. Custy, said in the appraisal report for the period from 1 December 1978 to 30 November 1979. Her new duties, though different, are no less responsible than her old ones. Her allegation that she had no instructions from her supervisors is incorrect and in any event immaterial. Contrary to what she maintains, she is not segregated from the rest of the unit in her new post. Since she has to make constant use of all the files in the branch, it is only reasonable that she should have been allocated the file room. Her Staff Association activities have nothing whatever to do with Mr. Umstead's attitude towards her. Besides, she was not elected to the Staff Committee until 3 May 1979, i.e. after her transfer. As to her claims for relief, she has no right to reassignment to her former position, let alone to promotion to grade G.6. The prejudice she suffered from poor assessment of her performance by Mr. Brooks has already been fully compensated by action taken on the recommendation of the Board of Inquiry and Appeal and by letting her add her own comments to the report. She did not suffer any prejudice by reason of her reassignment to comparable duties and the Board was therefore right in recommending paying only one-third of her costs. PAHO therefore invites the Tribunal to dismiss the complaint in so far as the complainant is claiming more than was granted to her on the Board's recommendation.

E. In her rejoinder the complainant points out that the PAHO has not answered her main arguments. May a staff member be transferred with only two hours' notice and without getting a description of the new post? Is it in the PAHO's interests to transfer a competent official from a unit where he is needed and useful to one where his skills are not used when it is a matter of common knowledge that the chief of unit was to blame for the "disharmony" which led to the transfer? Is it not an abuse of authority to displace a subordinate in such circumstances? If the purpose of the decision was to restore harmony in the unit, why did the PAHO ignore the real source of trouble, the attitude of the supervisor? Her transfer was not in the PAHO's interests and therefore constitutes a misuse of authority. In taking the decision the Chief of Personnel drew mistaken conclusions from the facts and overlooked essential facts, namely the behaviour of the supervisor. By putting so much stress on the words "to the extent possible" in Staff Rule 510.1 the Organization is making the rule meaningless. No account whatever was taken of the complainant's abilities and interests. The safeguards in the Staff Regulations and Staff Rules in regard to the provision of a post description on appointment apply a fortiori to transfers. As to the requirement of notice of transfer, it is absurd to treat Mr. Umstead's memorandum of 31 January as constituting notice. If the unit to which the complainant was transferred was as new and poorly organised as the PAHO contends, why was she transferred to it so hurriedly when a short-term official could easily have performed the routine G.3 duties she has been given? Nobody has ever before been put in the gloomy room where the files are kept. Her humiliation has been aggravated by requiring her to keep a detailed minute-by-minute record of even her most routine and trivial activities, and this has made her the laughing stock of the office. Moreover, it was highly improper of Mr. Custy to interrogate her about her Staff Association activities. Long before she was elected to the Staff Committee she was active in the Association, as is clear from the campaigning she did before her transfer. She therefore presses all her claims for relief.

F. In its surrejoinder the PAHO observes that the complainant was duly afforded and indeed used the opportunity to add her comments to the appraisal report established in 1978, and any appeal against that report is in any event time-barred. Besides, the moderate terms of the criticisms neither suggest personal prejudice against her nor warranted her "violent reaction". Mr. Brooks' comments on her performance have been removed from her file. The written evidence illustrates the climate of animosity between her and Mr. Umstead. The Administration refrained from going into the substance of their mutual accusations; it granted her normal contract renewal and shortly afterwards, when a post became vacant in the Office of Personnel, it transferred her so as to put an end to the problem. The complainant's allegations about her materia working conditions in the Office of Personnel are quite unfounded. As the Board recommended she has received training and in January 1981 began training in the Operations Unit of the Personnel Department and is apparently satisfied with this change in her duties. The Chief of Personnel apologised to her for being advised of her transfer only at the last moment. The absence of a post description does not affect the legality of transfer and was in any case understandable since the unit had just been established. The transfer was designed both to meet a need in her new unit and to eliminate conflict in her former one, and absence of conflict between staff member and supervisor is an important factor of efficiency, one of the criteria mentioned in Staff Rule 410.1 and Staff Regulation 4.2. The complainant's "abilities and interests" relate to general clerical work and are not so "particular" as to preclude her transfer to other clerical work. Her allegations of improper interference by Mr. Custy in her Staff Association activities are unfounded: he merely impressed on her the need for discretion and the risk of conflict of interest. Her attempts to make out some connection between her Staff Association activities and her conflict with Mr. Umstead are equally unfounded. The PAHO invites the Tribunal to reject all her claims in so far as they go beyond what the Director has already agreed to on the Board's recommendation.

CONSIDERATIONS:

The Tribunal's power of review

1. On 1 May 1979 the complainant was transferred from the Office of Procurement to the Office of Personnel. She appealed against the decision to the Board of Inquiry and Appeal seeking reinstatement in her former position or assignment to a comparable one, the removal of adverse appraisals of her performance, compensation for moral prejudice, promotion to grade G.6, compensation for loss of earnings due to the appraisals, repayment of her medical expenses, compensation for mental distress and injury to reputation, and costs.

On 22 April 1980 the Board recommended that the Director should repay her medical expenses, enable her to take training courses, remove a performance report, offer her an apology for an unwarranted reprimand and pay one-third of her costs. It recommended dismissing her other claims.

On 18 June 1980 the Director accepted the Board's recommendations on the whole and accordingly upheld the transfer. The complainant is contesting not only that decision but also the partial rejection of her claims for compensation for the prejudice she alleges.

2. The transfer was ordered under Staff Rule 565.2. The rule allows transfer whenever the PAHO's interests require it and thus confers wide discretion on the competent authorities. The Tribunal will therefore quash the impugned decision only if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

Errors of fact and the disregard of essential facts

3. The complainant alleges infringement of the Staff Regulations and Staff Rules, viz. procedural flaws and errors of law. To support the reasoning she bases on the rules, however, she suggests that neither unsatisfactory performance nor strained relations with her supervisors justified her transfer, the implication being that the decision rested on errors of fact and disregarded essential facts. The Tribunal will first consider these pleas and therefore review her supervisors' appraisals of her performance.

4. To begin with, the reports were wholly favourable. That is why she was promoted in 1974.

Of her performance from 1 December 1976 to 30 November 1977 however, Miss Shuert, her first-level supervisor, expressed both praise and criticism, saying, among other things, that if she was to advance her performance would have to improve in several respects. Mr. Umstead, the Chief of the Office of Procurement, endorsed Miss Shuert's comments and himself imposed a written reprimand on the complainant on 12 May 1977, although it was removed on the instructions of the Chief of Administration.

Having seen her supervisors' appraisals, the complainant successfully applied for transfer within the Office of Procurement. From 1 December 1977 to 30 November 1978 she was responsible in turn to Miss Shuert, Mr. Glenn and Mr. Brooks. Miss Shuert confirmed her earlier opinion; Mr. Glenn was satisfied; and Mr. Brooks passed a qualified opinion questioning the complainant's judgment about priorities.

Her relations with Miss Shuert and Mr. Umstead continued to deteriorate. In a minute dated 31 January 1979 to the Chief of Personnel, which was notified to her, Mr. Umstead recommended that her appointment should not be extended or that she should be transferred to another department as soon as possible and in any event not later than 30 April. On 26 March the Chief of Personnel renewed her contract for two years but drew attention to her supervisors' reservations. On 30 April he informed her that, to meet the PAHO's requirements and interests, her post was transferred to the Office of Personnel on 1 May 1979.

From that date the complainant worked under Mr. Custy in a new unit which was being set up. That took several months. Not until 11 October did she get the description of her new post. In his report for the period up to 30 November 1979 Mr. Custy said that she took readily to her new duties but after getting her post description changed her attitude.

5. These facts are open to different interpretations.

The complainant says that the adverse reports should carry no weight. She contends, among other things, that Miss Shuert grew hostile because she had put directly to Mr. Umstead suggestions for improving work methods in the Office of Procurement, that her connection with the Staff Association aroused the ire of Mr. Umstead, who had made life difficult for other members of the Staff Association, that she worked for only a few days with Mr. Brooks and he was therefore unable to pass sound Judgment on her performance; and that she was harassed by Mr. Custy because of her involvement in the Staff Association and her appeal against transfer. In short, she is contending that there was no change in her professional competence and that only the personal prejudice of some of her supervisors can account for their differing opinions.

The complainant's arguments are not decisive. Miss Shuert is unlikely to have taken great exception to her approaching Mr. Umstead over a fairly unimportant matter. Had Mr. Umstead really been influenced by her connection with the Staff Association, which had lasted for years, he would scarcely have waited until 1978 to turn against her. He states that she spent more time working with Mr. Brooks than she allows. Lastly, it appears that the only reason why Mr. Custy cared about her Staff Association activities was a legitimate concern that they might

conflict with her performance in the Office of Personnel. Besides, even though there was no change in her competence, she may for a time have adopted an attitude which was open to reproach.

Her pleas in support of her contention therefore do not appear to carry any greater weight than those put forward against it. Accordingly, in implying that her performance and her relations with her supervisors were unsatisfactory the impugned decision is not tainted with any error of fact and did not leave essential facts out of account. Indeed it came within the scope of the Director's discretion. On this premiss the Tribunal will now consider the complainant's allegations that there were procedural flaws and errors of law.

Procedural flaws and errors of law

6. First, the complainant alleges personal prejudice against her within the meaning of Staff Rule 1250.1.1. It is clear from the foregoing that the Director did not exceed the limits of his discretionary authority in accepting the supervisors' criticisms of the complainant. He therefore committed no error of law in rejecting her plea of personal prejudice.

7. The complainant is mistaken in relying on Staff Regulation 4.2 and Staff Rule 410.1, under which the PAHO shall in transferring staff have regard to considerations of efficiency competence and integrity. These rules do not preclude the transfer of a staff member, however well qualified he may be, if relations with his supervisors are strained. Indeed, transfer will make for better use of his abilities. The Director was therefore entitled to transfer the complainant, whose relations with her supervisors could be considered to have deteriorated.

8. Secondly, the complainant contends that in breach of Staff Rule 510.1 the decision disregarded her particular abilities and interests. Thus she alleges that after her transfer to the Office of Personnel she was segregated from the rest of the staff and assigned duties inferior to her grade. The rule does require the Director to take account of the staff member's particular abilities and interests, but only "to the extent possible", that is to say, subject to the PAHO's interests. In this case it was not in the PAHO's interests to keep the complainant in a unit where, as the Director was entitled to conclude, her performance was not wholly satisfactory.

9. The complainant also relies on such rules as Staff Rules 440.1, 440.1.1 and 580.1, which say, among other things, that an offer shall be made to every new staff member giving information on the nature and duration of the appointment, the probation period, the title and duties of the post, and the salary and allowances. Not having received her post description until several months after her transfer, the complainant alleges breach of the rules.

The Tribunal need not consider the PAHO's argument that, the complainant being not a new recruit but simply transferred in a reorganisation, the rules are irrelevant. Be that as it may, even if there was a breach of the rules the decision would be set aside only if the breach was such as to cause the complainant prejudice, for example by preventing the regular appraisal of her performance. That it was not is clear from the fact that even though the post description came late Mr. Custy was able to appraise her performance from the date on which she joined the Office of Personnel.

10. The complainant objects that her supervisors failed to inform and advise her on the provisions of Staff Rules 530.1 and following. The PAHO rejects the plea, the written evidence does not bear it out, and the Tribunal will therefore reject it.

11. Lastly, the complainant alleges that her involvement in the Staff Association was one reason for the impugned decision, which was therefore in breach of the right of association recognized in Staff Rules 910 and following. In view of the foregoing, however, her transfer may be explained by her shortcomings and strained relations with her supervisors, quite apart from her Staff Association activities. She has therefore failed to establish any causal link between those activities and the decision. The plea of infringement of the right of association fails.

Conclusions

12. As is clear from 3 to 11, the impugned decision is not tainted with any flaw which would entitle the Tribunal to set it aside. All the claims for relief must therefore be dismissed, whether they are for reinstatement in her former position - i.e. for the quashing of the decision - or for compensation for the prejudice it has allegedly caused her.

13. It is true that even if the challenged decision suffers from no flaw which warrants quashing it, a staff member will be awarded compensation for any especially grave moral prejudice caused by the Organization's action, and

the complainant does seek compensation on that account, maintaining that her transfer has caused her physical and mental distress requiring medical and even hospital treatment. It is doubtful, however, that the moral prejudice she alleges is serious enough to warrant compensation when the decision was not unlawful. The Tribunal need not settle the point. The alleged moral prejudice is attributable to circumstances for which she may be held at least partly to blame, namely the quality of her performance and her relations with her supervisors. However grave the alleged moral prejudice may be, therefore, the PAHO cannot be held liable and will not be required to pay compensation.

Besides, in endorsing on the whole the Board's recommendations the Director mitigated the alleged prejudice. Moreover, since the beginning of 1981 the complainant has been performing new duties which may bring her promotion and are also likely to compensate any prejudice.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner