

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

## FIFTIETH ORDINARY SESSION

In re ZIANTE

Judgment No. 548

### THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Jacob Ziante on 24 June 1982 and brought into conformity with the Rules of Court on 28 August, the WHO's reply of 10 November 1982, the complainant's rejoinder of 4 January 1983 and the WHO's surrejoinder of 10 February 1983;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal and WHO Staff Rules 320.4, 555, 1075, 1130 and 1230.8;

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, a citizen of the Central African Republic, was appointed in 1974 as a secretary in the Office of the WHO Co-ordinator in Bangui, which comes under the WHO's Regional Office for Africa in Brazzaville. He held a series of appointments, the last of which was to run from 1 February 1979 to 31 January 1981. His report for 1977-78 spoke of his "highly satisfactory" performance and recommended a "within grade salary increase" and "promotion". The increase was approved in May 1978. In January 1979 he fell under suspicion of various financial misdemeanours and after investigation by a finance officer from Brazzaville the WHO decided, on 20 February, to let him resign. He did so on 23 February. In letters of 28 February and 3 March to the Regional Director he stated many grievances and claimed, unsuccessfully, additional salary for periods during which the Co-ordinator had been absent from Bangui and he had allegedly himself performed additional responsibilities, and the "promotion" recommended in his report for 1977-78. After lengthy correspondence with Brazzaville and with headquarters in Geneva, he notified to the Regional Board of Appeal on 7 May 1980 his intention of filing an appeal, and he did so on 22 June. On 23 July the Secretary of the Board wrote saying that his appeal was time-barred. The Regional Director communicated no decision. On 5 September he went before the Headquarters Board of Inquiry and Appeal. In a reply dated 18 September the Secretary of the Headquarters Board observed that according to Staff Rule 1230.8.5 he must challenge a decision of the Regional Director, not a conclusion of the Regional Board. In its report of 27 May 1982 the Headquarters Board held that the appeal to the Regional Board had been time-barred and that the new appeal should be dismissed. By a letter of 8 June 1982, which is the impugned decision, the Director-General informed the complainant that his appeal had been dismissed.

B. The complainant observes that he had to replace the Co-ordinator during the latter's absences from Bangui since no one was officially appointed to do so. His performance thus being recognised as "especially meritorious" within the meaning of Rule 555, his report for 1977-78 recommended "promotion" - which he was denied - in accordance with that rule. While he admits to misconduct, he believes his right to a hearing was not respected. The Regional Office was thus in breach of Staff Rules 1075 and 1130, which require that the staff member be given written notification of the charges and an opportunity to reply in writing before action is taken. He claims the payment of additional salary consequent on "promotion" with effect from April 1978 and in respect of periods during which the Co-ordinator was absent, viz. from 27 June to 9 August 1975, from 30 August to 3 October 1976 and from 1 April 1978, and damages for the breach of procedure by the Regional Office.

C. The WHO replies that the complaint is irreceivable. It contains no objections to the decision purportedly challenged, that of 8 June 1982, and there is in part failure to exhaust the means of redress, the internal appeals having included claims neither for additional salary for periods in 1975 and 1976 nor for damages for breach of procedure. Subsidiarily, the WHO argues that the Director-General was right to reject the appeal as irreceivable. The complainant failed by months to respect the time limits set in Rule 1230.8 for appealing to the Regional Board.

It is true that the Regional Director never expressly endorsed the Board's conclusion. But Rule 1230.8.2 provides that a request shall be deemed to have been rejected if no final reply is given within a set period. Article VII(3) of the Statute of the Tribunal is in similar terms. There may thus be inferred a general rule in the WHO, applicable at all stages in the procedure, whereby in time silence implies rejection. The appeal to the Headquarters Board, the Board's recommendation and the Director-General's decision were therefore valid. In any event the claims are devoid of merit. (a) Absence of "promotion": the complainant knew on receiving his salary for May 1978 that promotion was refused, and his claim is time-barred. Besides, a recommendation is not a decision, and no one has a right either to promotion or to a "meritorious within-grade increase" under Rule 555. (b) Additional salary: under Rule 320.4 extra pay is due for temporarily assuming responsibilities of a higher grade only to a staff member who is officially required to assume them. The complainant was not. (c) Damages for breach of procedure: the treatment of the complainant - who resigned, and was not dismissed - was neither unlawful nor so unfair as to warrant any award of damages.

D. The complainant develops his pleadings and presses his claims in his rejoinder. He elaborates on certain points of fact and refers to what he regards as errors in the WHO's account of the case. He observes that the delay in his filing an appeal was due to the serious injuries he sustained in a motor-cycle accident in Bangui on 3 March 1979. He maintains that his complaint is receivable. He alleges that he is the victim of intrigue and prejudice and that he did not resign from the WHO.

E. In its surrejoinder the WHO submits that the complainant's version of the facts is confused. Having admitted his guilt, he was offered and took the opportunity of resigning, with effect from 23 February 1979. What happened thereafter, and in particular the accident of 3 March 1979, is irrelevant. He was not promoted in April 1978, even if he imagined his supervisor proposed it. He adduces no proof of intrigue; indeed he was treated with consideration.

#### CONSIDERATIONS:

The complainant is impugning the Director-General's decision of 8 June 1982 dismissing his appeal. The decision does not itself state the reasons for it, the Director-General having merely endorsed a recommendation made by the Headquarters Board of Inquiry and Appeal on 27 May 1982. The Tribunal will therefore consider the complainant's pleas in the light of the Board's report, and of that alone.

The Board held that, the appeal to the Regional Board of Appeal being time-barred, it had no choice itself but to hold the appeal again irreceivable, even though there had been no express decision by the Regional Director.

The complainant, a WHO staff member, offered his resignation, and it was accepted on 28 February 1979. He knew of that decision by 3 April 1979, when he wrote a letter about the acceptance of his resignation to the Personnel Officer at the WHO Regional Office in Brazzaville. It thus appears that the time limit for submitting an internal appeal began on 3 April 1979 and expired long before 22 June 1980, when he actually appealed to the Regional Board. The acceptance of his resignation had by then become final and was no longer open to challenge. His involvement in a serious accident in 1979 did not have the effect of suspending the time limit. The Director therefore correctly applied the rules in dismissing the appeal which the complainant addressed to him against the decision.

The complainant is also claiming payments of additional salary on account of promotion which he alleges he was granted in April 1978 and on the grounds of his discharge of another official's duties in 1975, 1976 and 1978.

He applied for these sums in a letter of 28 February 1979. Since he did not lodge an appeal with the Board of Appeal until 22 June 1980, the claims are again time-barred.

As for his application for damages, there is nothing in the evidence to suggest that he submitted any claim which the WHO might have rejected expressly or by implication. The claim is, again, irreceivable.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right

Honourable the Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.