

SIXTY-FOURTH SESSION

In re DASHIELL (No. 2)

(Application for review)

Judgment 912

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 794 filed by Mrs. Danelia Dashiell on 3 August 1987, the reply of the Pan American Health Organization (PAHO) (World Health Organization) of 7 October and the letter of 9 November 1987 from counsel for the applicant informing the Registrar that she did not wish to submit a rejoinder;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and WHO Manual provision II.1;

Having examined the written evidence:

CONSIDERATIONS:

1. The complainant is applying for review of Judgment 794 on the grounds that it omitted to pass judgment on one of her "claims" and that it was based on two errors of fact.
2. According to Article VI(1) of the Statute of the Tribunal its judgments are final and without appeal. Although the Statute makes no express provision, review is not ruled out altogether. Nevertheless it is admissible only in exceptional circumstances; otherwise a judgment might be under constant challenge, in disregard of the *res judicata* rule.

In Judgment 442 the Tribunal set out the admissible and the inadmissible grounds for review.

Inadmissible grounds for review are a mistake of law; a mistake in appraisal of the facts, i.e. the interpretation put on the evidence; failure to admit evidence; and failure to rule on a plea.

But there are several pleas for review which the Tribunal will entertain provided that its judgment was affected, and they include a material error, i.e. a mistaken finding of fact which involves no exercise of judgment (unlike a mistake in appraisal of facts, which involves exercise of judgment).

But where a plea, even an admissible one, is not such as to affect its decision the Tribunal will reconsider neither its earlier ruling nor its reasoning. It would lay an undue burden on a tribunal to have it correct flaws that had no effect on its decisions.

Alleged failure to rule

3. In her complaint the complainant asked the Tribunal to quash a decision of 1 August 1985 by the Director of the PAHO rejecting her claims, order that her post be upgraded from P.1 to P.2 as from 1 April 1983, grant any other relief it deemed fit and award her costs. In support of her claims she alleged four breaches of the grading procedure: intimidation, unconscionable delay, breach of WHO Manual provision II.1.40.5, and the PAHO's failure to base its decision on the desk audit.

The Tribunal dismissed her first two claims to relief and ruled that consequently the other two failed as well: it therefore ruled on all her claims. But what she is in fact alleging is that the Tribunal failed to rule on her plea that the Administration had not based its decision on the desk audit.

4. As is stated in 2 above, failure to rule on a plea does not afford admissible grounds for review. But in any event the complainant is mistaken. Implicit in the Tribunal's ruling was a decision that failure by the Administration to base its decision on the desk audit was not unlawful. The Tribunal therefore did not omit to rule on the fourth plea.

As was stated in Judgment 794, under A, the complainant applied on 12 August 1982 for review of her post on the

strength of a proposed new job description. The Classification Unit carried out the desk audit of the post in March 1983. Although the Personnel Department reported on 4 October 1984 that the audit warranted upgrading her post to P.2, the Post Reclassification Advisory Committee recommended on 5 October revising the job description and keeping the grade at P.1. On 25 October the Personnel Department told her that the grade was still P.1 and she appealed to the Board of Appeal on 24 December 1984. In a letter of 1 August 1985, the impugned decision, the Director told the complainant he rejected the Board's recommendations on her case, so that the grade of her post remained at P.1.

When determining the grade of a post the Administration has wide discretion, and the Tribunal will not interfere unless there was one of the flaws which, according to precedent, warrant setting the decision aside. In this case, as the Board of Appeal stated, there was no violation by the Administration of "the norms and procedures that regulate the reclassification process".

Since the Administration had complied with the established procedure, the Director, faced with conflicting opinions from the internal authorities he had consulted, did not act improperly in declining to base his decision on the result of the desk audit alone, nor in taking into account other elements as well, nor in coming to his own conclusion and maintaining the complainant's post at P.1.

Allegation of factual errors

5. The complainant's other plea is that the Tribunal made two mistakes of fact.

6. The first is that the Tribunal said that the Personnel Department supported the recommendation by the Post Reclassification Advisory Committee that her job description should be revised but the P.1 grade retained. She implies that the Tribunal would have ruled differently had it realised that the Department had not supported the Committee's recommendation.

There is no substance to the argument. There is no rule requiring the Director to base his decision on post grading on one element only, and, as was said in 4 above, he was entitled to take others into account as well. The alleged error is immaterial: the Tribunal's ruling would have been the same whether or not the Personnel Department agreed that the grade should be P.1.

7. The other factual error alleged by the complainant is in the statement that "it is undisputed that she did not have and does not have the qualification prescribed by the [International Civil Service Commission] Master Standard for job classification ... namely a university degree or the equivalent". The complainant maintains that, though she has no university degree, she has the equivalent because of "her outstanding performance in making the post grow over the years". So it is mistaken to say that her lack of equivalent experience was "undisputed".

The argument fails because the alleged error is again immaterial.

Annex A to Manual provision II.1 states the general rule on the minimum educational qualifications for her post: "The minimum educational qualification for posts at P.1 through P.3 levels is a university degree". To that was added, on 14 April 1983, an alternative taken from the Master Standard in the form of "an equivalent in self-study", and, as the Tribunal ruled in Judgment 794, under 7, the complainant was mistaken in thinking that the Master Standard had replaced the earlier Manual provision: the two existed side by side.

The primary concern in this case was the grading of the post, which depended on the duties and responsibilities pertaining to it. The complainant's qualifications were of minor importance. Besides there was no evidence to show that she had engaged in self-study, and her claim to regrading rested mainly on her contention that her performance had been exemplary.

8. The arguments put forward by the complainant in support of her application are in substance the same as those on which she founded her complaint and which the Tribunal rejected.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

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