

SEVENTY-FIRST SESSION

Judgment 1097

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss B. F. against the World Health Organization (WHO) on 6 November 1990, the WHO's reply of 30 January 1991, the complainant's rejoinder of 19 February and the Organization's surrejoinder of 25 March 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 1095 and 1230.8 and WHO Manual provisions II.9.750, 760 and 770;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Swiss citizen, was employed by the WHO as a secretary at grades G.3 and G.4 intermittently between 1980 and 1985. She returned as an administrative assistant under the Organization's Global Programme on AIDS at G.6 on a short-term contract from 1 December 1988 to 13 January 1989. She had the contract extended to 15 February 1989, when she left. On 13 February her immediate supervisor, a consultant with the Programme, gave her a personal reference on unheaded paper.

In a letter of 2 March 1989 to the Director-General at his home address the complainant alleged that the Director of the Division of Personnel ought to have endorsed the reference and that the reason for not giving her a proper certificate of service was that she had done work suitable for a staff member belonging to the

Professional category and the WHO feared that such a certificate might entitle her to higher pay. In a letter of 21 March 1989 a personnel officer explained to her that the endorsement she wanted was not customary and she was entitled to no retroactive salary adjustment; nor should she be writing to the Director-General at his home address.

By a letter which she wrote on 31 May 1989 to the Director-General, still at his home address, she again asked for a "proper work-reference". On 6 July 1989 the acting Director of Personnel offered her a certificate covering her various periods of employment and asked her in future to write to the Division of Personnel. She made no reply to the offer but went on sending registered letters to the Director-General's private address.

By a letter of 24 November 1989 the personnel officer offered her an interview with the acting Director of Personnel to discuss the matter but she did not accept the offer. On 1 May 1990 she gave notice of appeal to the Board of Appeal and on 10 May filed a formal appeal. On 8 August 1990 the Division of Personnel gave her a certificate of service but she was not satisfied.

In its report of 16 October 1990 the Board recommended dismissing her appeal as irreceivable on the grounds that no "final action" within the meaning of Staff Rule 1230.8.1 had been taken at the time of filing. By a letter of 31 October 1990, the decision impugned, the Director-General accepted the Board's recommendation.

B. The complainant submits that before she agreed to the extension of her contract as administrative assistant with the Programme her supervisor promised to give her a work certificate bearing the Organization's letterhead. Yet the certificate she finally got was on blank paper and bore no official endorsement. The certificate the Division of Personnel gave her

on 8 August 1990 was incomplete and inaccurate.

She wants what she calls a "true" certificate of service made out in accordance with the Staff Regulations and Rules. She claims damages for material and moral injury and 5,000 Swiss francs in costs.

C. In its reply the WHO submits that the complaint is vexatious and offensive. Since the complainant's internal appeal was irreceivable she has failed to exhaust the internal means of redress as required by Rule 1230.8.1. Her complaint is therefore irreceivable as well. She should have applied to the Director of Personnel for a certificate under Rule 1095. Instead she bypassed the official channels of communication and wrote to the Director-General at his private address. The Organization could not be accused of failing to reply to a written request under Rule 1230.8.2 because she never made one; and since no "final action" had been taken at the time of filing her internal appeal she was unable to meet her obligation under 1230.8.3 to identify such action in that appeal.

In any event her complaint is devoid of merit. Though the WHO was willing to issue a certificate under Rule 1095 and Manual provisions II.09.750, 760 and 770, that was not what she really wanted: she sought the endorsement of a reference her supervisor had prepared, and it is plain from her letter of 2 March 1989 to the Director-General that her intention was to use the reference to claim a retroactive pay adjustment.

D. In her rejoinder the complainant refutes the arguments in the WHO's reply. She observes that her efforts to comply with the established procedure were unsuccessful and she had no choice but to write to the Director-General. She was not claiming more pay, only a proper certificate of service covering her last assignment. She presses her claims.

E. In its surrejoinder the Organization reaffirms that the

complainant's internal appeal was irreceivable and that there was no final action at the time at which she made it. Her complaint is, besides being irreceivable for that reason, devoid of merit and indeed vexatious.

CONSIDERATIONS:

1. The complainant, a former temporary staff member at WHO headquarters, is impugning a decision of the Director-General's in a letter of 31 October 1990 to accept the Board of Appeal's recommendation and reject her internal appeal. In that appeal she claimed the grant of a certificate of service on separation and alleged that despite her many requests in writing she had never been given, as Staff Rule 1095 required, a certificate that in particular recognised the work she had done over a period of three months, from December 1988 to February 1989.

2. Staff Rule 1095 reads:

"Certification of Service. A staff member who so requests shall, on leaving the service of the Organization, be given a certificate relating to the nature of his duties and the length of his service. On written request of the staff member concerned, the certificate shall also refer to the quality of his performance and official conduct."

The issue of certificates of service is governed by Manual provisions II.9.750 and 760. According to II.9.750 a staff member who wishes to have a certificate of service on leaving the Organization should apply to the Director of the Division of Personnel. According to 760 the certificate is prepared by Personnel; if it is to include an assessment of performance and conduct, the staff member's performance reports are taken into account and the supervisor is asked to assist; and it is the Director of Personnel who signs the certificate for headquarters staff.

3. The complainant's supervisor in the three-month period was a consultant with the WHO's Global Programme on AIDS. The certificate which he gave her, and which was dated 13 February 1989, was written on plain paper without the Organization's letterhead. In a letter which she sent on 2 March 1989 to the Director-General at his home address she objected to that certificate.

In a letter dated 21 March a personnel officer told her that it was "contrary to established practice for Personnel to endorse a reference relating to a specific short-term appointment, such as the one prepared ... on 13 February 1989, nor is the Organization prepared to make any retroactive adjustment to the remuneration in respect of your recent assignment ...".

4. With another letter to the Director-General dated 29 March 1989 the complainant actually supplied the text of a certificate, typed out on WHO paper, which she wanted the Administration to endorse.

The Administration refused to do so. Instead the acting Director of Personnel wrote to her on 6 July 1989 offering her a certificate covering the entire period of her service. After further correspondence the personnel officer invited her in a letter of 24 November 1989 to an interview with the acting Director of Personnel. But she did not avail herself of the offer and at the date at which she lodged her internal appeal, 10 May 1990, the offered certificate had not been issued.

While her appeal was before the Board of Appeal the Administration did give her a certificate of service dated 8 August 1990, written on WHO paper and signed by the acting Director of Personnel. It covered the entire period of her service, including the three months from December 1988 to February 1989.

A copy of the certificate is appended to the complaint. A note on it, presumably in the complainant's hand, describes it as "incorrect" and "incomplete". Although the complainant could have appealed against its contents for non-compliance with Rule 1095, she did not do so.

5. In its report dated 16 October 1990 the Board observed that the Administration had never refused to give the complainant a certificate of service and had indeed made her a written offer of one five months after the end of her temporary appointment. The Board recommended rejecting her appeal.

The Director-General endorsed that recommendation and so informed her by a letter of 31 October 1990, the final decision she is impugning.

6. It is plain from the above that, although at the time she lodged her internal appeal she had not been issued a certificate of service, thereafter she had indeed been issued one as required by the Regulations and Rules. Accordingly she obtained satisfaction before filing her complaint and therefore has no cause of action.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

Jacques Ducoux

Mohamed Suffian
Mella Carroll
A.B. Gardner