

## SEVENTY-NINTH SESSION

### *In re* WOOLLARD

#### Judgment 1430

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Robert John Woollard against the International Atomic Energy Agency (IAEA) on 26 August 1994 and corrected on 5 September, the IAEA's reply of 21 November, the complainant's rejoinder of 29 December 1994 and the Agency's surrejoinder of 13 March 1995;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Paragraph 68 of Section 3 of Part II of the IAEA's Administrative Manual reads:

"Appointments to posts subject to geographical distribution require sponsorship by the competent authorities in the applicant's Member State. This will be obtained by the DIR-ADPR [Director of Personnel] before an offer of appointment is made to the selected candidate. Such sponsorship is deemed to have been given if the Member State concerned does not inform the DIR-ADPR to the contrary within a reasonable period of time after having been approached in writing by the Agency."

On 31 January 1990 the Director General issued circular SEC/NOT/1309 entitled "General policy for advancement from the general service to the professional category". Paragraph A2 of the circular reads:

"In the case of posts subject to geographical distribution, due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible. Accordingly, government sponsorship will be required."

The complainant, a British citizen who was born in 1941, joined the Agency at its headquarters in Vienna on 21 February 1978 as a clerk at grade G.5 in the Division of Safeguards. After a series of short-term appointments he was given a fixed-term contract as from 1 January 1979. His appointment has since been regularly renewed. At the material time his grade was G.6.

On 22 December 1993 he applied for a grade P.3 post as a head of unit in the Division of Budget and Finance, advertised in vacancy notice 93/068 of 29 September 1993. The notice said: "Appointment is subject to government endorsement".

By a memorandum of 25 January 1994 the complainant asked the Director of Personnel to waive the requirement of government sponsorship in paragraph A2 of circular SEC/NOT/1309. In his view the requirement was incompatible with his status as an international civil servant as defined in Article VII.F of the Agency's Statute and in Provisional Staff Regulation 1.01. The acting Director of Personnel replied in a memorandum of 15 February that the complainant's request was premature since government sponsorship was not required until the process of selection had been completed.

By a memorandum of 17 February the head of the Recruitment Unit of the Division of Personnel informed the complainant that his application had been unsuccessful.

In a letter of 17 March to the Director General the complainant applied under Staff Rule 12.01.1(D)(1) for review of the acting Director of Personnel's decision of 15 February. He also sought leave to go directly to the Tribunal. In a letter of 31 May to the complainant the Director General gave him such leave, declined to go back on the decision of 15 February and said that the procedure for consultation with governments set out in paragraph 68 of Part II/3 of the Administrative Manual was being reviewed. That is the decision he is challenging.

B. The complainant argues that government sponsorship of applicants is inconsistent with the law of the

international civil service. The Agency has made such sponsorship the main prerequisite for the appointment of staff. That offends in particular against Article VII.D of its Statute, which reads:

"The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be to secure employees of the highest standards of efficiency, technical competence, and integrity. Subject to this consideration, due regard shall be paid to the contributions of members to the Agency and to the importance of recruiting the staff on as wide a geographical basis as possible."

Without government sponsorship a candidate cannot qualify for appointment, however suitable he may be. To require sponsorship means leaving the choice of staff to member States. Though the Director General might reject candidates sponsored by some governments, that would make it difficult for him to comply with the requirements of geographical distribution.

The complainant cites Article VII.F of the Agency's Statute, which says that "the Director General and the staff shall not seek or receive instructions from any source external to the Agency". In his submission the Director General infringes that rule by undertaking to disregard any candidate not sponsored by a government. The Tribunal has pointed out more than once that there is no valid reason why the executive head of an organisation should fall in with the wishes of governments. Besides, can a staff member who owes appointment to government sponsorship ever be truly independent.

The complainant's request for waiver of the requirement was not premature. Paragraph A2 of circular SEC/NOT/1309 affects in two ways the lawfulness of the process of selection. First, a government that sponsors an applicant may expect a favour in return once he is appointed, and that may deter potential candidates. Secondly, the selection body is likely to prefer an outside candidate who already has sponsorship to an inside one who has yet to secure it.

The complainant asks the Tribunal to declare void paragraph 68 of Part II/3 of the Administrative Manual and paragraph A2 of circular SEC/NOT/1309, quash the Director General's decision of 31 May 1994, and order the Agency to reconsider the decision that the head of the Recruitment Unit took on 17 February 1994 to reject his application or, failing that, pay him suitable "monetary compensation" and grant "any other appropriate relief". He claims 25,000 schillings in costs.

C. In its reply the Agency submits that the complainant's challenge to paragraph 68 of Part II/3 of the Administrative Manual is irreceivable. Since his application was turned down on the grounds of inadequate professional experience he has no cause of action. It would be illogical to ask a government to sponsor someone who has not yet been chosen. The procedure for consulting governments is being reviewed.

The Agency contends that the complainant's claim to the quashing of the Director General's decision of 31 May 1994 is devoid of merit. His allegations on that score are purely speculative and have no substance in fact.

The requirement of government sponsorship is useful in checking a candidate's credentials, and that is especially important because of the sort of work the Agency does. Paragraph 68 of Part II/3 squares with Article VII.D of its Statute. A requirement is not necessarily unlawful just because it makes recruitment harder. Besides, the main criterion in recruiting staff is still the need to attain "the highest standards of efficiency, technical competence, and integrity" since selection takes place before government sponsorship is sought.

The Agency contends that in this case the independence of the international civil service is not at issue and there is no question of any breach of Article VII.F of its Statute. The Director General has when necessary been waiving the requirement of government sponsorship. It was on procedural grounds and in accordance with paragraph 68 of Part II/3 that he declined to waive it in the present case.

D. In his rejoinder the complainant presses all his claims. He submits that the Agency has tried to mislead the Tribunal by stating that on 15 February 1994 the process of selection had not yet been completed: two days later it informed him that his application had been rejected.

He points out that under paragraph 50 of Part II/3 outside applications for posts which are subject to geographical distribution are as a rule submitted to the Agency through government channels, and a government is hardly likely to refuse sponsorship of someone it has itself put forward. In any event, when government sponsorship comes in is a question that has no bearing on the lawfulness of the rule under challenge. Likewise, the rule is not lawful just

because the Director General has been waiving the requirement of government sponsorship in the exercise of implied discretionary authority.

E. In its surrejoinder the Agency enlarges on its arguments. It maintains that the rule has caused the complainant no injury. Indeed he does not deny that he was unqualified for the post he wanted.

It submits that he is confusing the procedure whereby outside applications are channelled through member States with the process of government sponsorship. Whereas the former comes under paragraph 50 of Part II/3 and is mere routine, the latter requires the government to assess the candidate. What is more, the Agency receives many outside applications directly.

#### CONSIDERATIONS:

1. The complainant joined the staff of the Agency on 21 February 1978 under a short-term contract as a data preparation clerk in the Division of Safeguards. His grade was G.5. He was granted a fixed-term appointment as from 1 January 1979 in the same position and at the same grade and had it constantly renewed. His present appointment is also in a grade of the General Services category, G.6.

2. On 29 September 1993 the Agency issued a vacancy notice, No. 93/068, for a grade P.3 post. The post was for a head of unit in the Division of Budget and Finance. The complainant applied on 22 December 1993.

3. The "essential qualifications" for the post were:

"University degree in Business Administration, Accounting or Economics. At least six years of work experience and responsibility in financial management and supervisory experience. Good knowledge and experience in data processing and [personal computer] applications."

The notice further stipulated: "Appointment is subject to government endorsement". It required applicants to submit a "detailed Curriculum Vitae".

4. The complainant's application merely stated that he possessed the "qualifications necessary" and "much experience" and that before 1978 he had been "employed as an Accountant by IBM and by the Royal Chartered Institute of Secretaries in London", though he did not say that such experience had lasted "at least six years".

5. The Agency's policy on government sponsorship for appointment to a post in the Professional category of staff is set out in paragraph 68 of Part II/3 of its Administrative Manual. That paragraph is reproduced in A above. It applies also to advancement from the General Services to the Professional category.

6. By a memorandum of 25 January 1994 to the Director of Personnel the complainant asked that the requirement of government sponsorship be waived on the grounds that it was incompatible with his status as an international civil servant and with Article VII.F of the Agency's Statute, which provides:

"In the performance of their duties, the Director General and the staff shall not seek or receive instructions from any source external to the Agency. They shall refrain from any action which might reflect on their position as officials of the Agency; subject to their responsibilities to the Agency, they shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency. Each member undertakes to respect the international character of the responsibilities of the Director General and the staff and shall not seek to influence them in the discharge of their duties."

7. The acting Director of Personnel replied in a memorandum of 15 February that government sponsorship was "not required before the selection process for a post has been completed", that it was "premature to address the matter at this point in time", and that he would "revert to the question ... only when this becomes of relevance" to the complainant.

8. By a letter of 17 February the head of the Recruitment Unit of the Division of Personnel informed him that his application had not been successful. "This", the letter added, "does not, in any way, reflect upon your qualifications or personality but is solely the result of the competitive selection process in which, usually, a large number of candidates from all over the world compete".

9. By a letter of 17 March the complainant asked the Director General to review in accordance with Staff Rule 12.01.1(D)(1) the decision communicated to him on 15 February by the acting Director of Personnel and either to grant him the waiver he had originally asked for or determine that the requirement of government sponsorship was not a rule "that can be maintained by the Agency", or, failing that, give him leave to appeal directly to the Tribunal without going through the internal appeal procedure.

10. In his reply of 31 May the Director General said that it would have been premature on 15 February 1994 to decide whether or not to waive the requirement of government sponsorship since no candidate had then been selected for appointment. The Director General agreed to the complainant's submitting the matter directly to the Tribunal without first exhausting the internal remedies. He added that "an evaluation of the consultation procedures with Governments as set forth in paragraph 68 of AM.II/3 is presently under way".

11. The complainant has accordingly come straight to the Tribunal and his main claims are that it:

(a) declare the requirement of government sponsorship in paragraph 68 of Part II/3 of the Administrative Manual and paragraph A2 of circular SEC/NOT/1309, which extends the requirement to General Services staff, to be void as contrary to Articles VII.D and VII.F of the Agency's Statute and to the general principles of international civil service;

(b) quash the Director General's decision of 31 May 1994, which upheld the refusal of the acting Director of Personnel to waive the requirement; and

(c) direct the Agency to reconsider his application of 22 December 1993 or, failing that, award him damages and any other appropriate relief.

12. The Agency contends:

(a) The experience which the complainant had acquired before joining its staff did not satisfy the requirement of at least six years' work experience and responsibility in financial management.

(b) The requirement of government sponsorship is in conflict neither with Articles VII.D and VII.F of its Statute nor with the general principles of the international civil service.

(c) Government sponsorship is sought only after a candidate has been selected on merit and with regard to the paramount consideration, laid down in Article VII.D, of ensuring the highest standards of efficiency, technical competence and integrity.

(d) Though the Director General has in the past been waiving the requirement of government sponsorship where necessary, the need to consider such waiver arises only after a candidate has been selected on merit and it was premature in this case to consider waiver before a selection had been made.

13. The complainant has not at any stage given details of the nature and extent of his work experience and responsibility in financial management or of his supervisory experience so as to show that he had one of the essential qualifications stipulated in the vacancy notice. He did not give such details even after the Agency had pleaded in its reply that he lacked the qualifications for the post. So he was not eligible anyway according to the terms of the vacancy notice for selection to the post and the decision not to select him has caused him no injury.

14. It is therefore unnecessary to consider whether the Agency was right to refuse to waive the requirement of government sponsorship of his application or whether the requirement should be declared void.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas  
E. Razafindralambo  
Mark Fernando  
A.B. Gardner

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