

THIRTY-FOURTH ORDINARY SESSION

In re GLYNN (No. 2)

Judgment No. 254

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Gerard Joseph Glynn on 3 June 1974, the Organization's reply of 4 July 1974, the complainant's rejoinder of 21 August 1974 and the Organization's surrejoinder of 20 September 1974;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 430, 465.3 and 1030.1 and paragraph 55 of Part II.5 of the WHO Manual;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the service of the WHO in 1956. From 1965 he was assigned to Uganda as WHO representative. He retired on 1 October 1973. While he was in Uganda he received two appraisal reports, one for the period from 1 November 1970 to 31 October 1971 and the other for the period from 1 November 1971 to 31 October 1972. He took exception to both of them. The former was signed by Mr. A. Quenum and read as follows: "I cannot assess at its proper value the work of Dr. Glynn by reason of his very particular conception of the role of WHO representative." The complainant appealed against the report to the Regional Board of Inquiry and Appeals. In its report of 6 April 1972 the Board concluded that the requirement of Staff Rule 430.2 that "supervisors shall periodically make a formal evaluation of the performance and conduct and potentialities for greater usefulness of each staff member under their supervision" had not been met. Another report was therefore drawn up for the same period, which read as follows: "As in previous reports, Dr. Glynn's experience and qualifications as a public health administrator are not questioned. However, Dr. Glynn's independent attitude towards the Regional Director, and his tendency to question or to criticise the instructions he is given are perturbing factors." The complainant asked for yet another version of the report, but the Regional Director refused it. The complainant then lodged another appeal with the Regional Board. In its report of 8 December 1972 the Board reached the same conclusion as in its report of 6 April 1972. The second version of the report was nevertheless upheld and notified to the complainant on 27 December 1972. At the same time he received the report for the period from 1 November 1971 to 31 October 1972, which read as follows: "Work satisfactory".

B. The complainant appealed against both reports to the Regional Board of Inquiry and Appeal. The Board held that his appeal should be dismissed. The Regional Director accepted that view and the complainant thereupon appealed to the Headquarters Board of Inquiry and Appeal. In its report of 15 February 1974 the Headquarters Board recommended dismissing the appeal. The Director-General accepted that recommendation and so informed the complainant by letter of 6 March 1974. That is the decision which the complainant now impugns.

C. The complainant believes that the contested appraisal reports do not meet the requirements of the WHO Staff Rules and were prepared by a supervisor who, he maintains, had visited the complainant's field of operations only once in eight years and was therefore not really familiar with his work, and who, moreover, showed prejudice towards him. He therefore asks the Tribunal:

(a) to find that the reports were not formulated in accordance with statutory requirements;

(b) to find that they were prepared by a supervisor disqualified on the grounds of personal prejudice and insufficient knowledge of the facts and that their contents in no way reflect the complainant's work performance during the periods in question;

(c) to find that both reports are accordingly null and void;

(d) to find that no proper appraisal report has been prepared on the complainant's services during the periods in

question and that a breach of contract has thereby been committed;

(e) to find that the complainant has thereby suffered financial loss, having been denied because of the animosity and incompetence of his supervisor the promotions which he might have expected and an extension of his appointment, and that both he and his family have also suffered serious moral prejudice; and

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(f) to order the Organization to pay him compensation equivalent to one year's salary at the final step in grade P.6, the position which the complainant might reasonably have expected to attain.

D. In its memoranda the Organization points out that the preparation of appraisal reports is governed by Staff Rule 430.3 and paragraph 55 of Part II.5 of the WHO Manual and that the contested reports were prepared in accordance with those provisions. As to the contents of the reports, which fall within the supervisor's discretionary authority, whatever the complainant may think of those reports he has not shown that they were drawn up without authority, or were irregular in form or tainted by procedural irregularities or by illegality or were based on incorrect facts or that essential facts were not taken into consideration or that the reports were tainted with misuse of authority or that clearly mistaken conclusions were drawn from the facts. As to the complainant's contention that he has suffered financial loss, the Organization demurs and maintains that his claims are purely speculative.

E. The Organization therefore prays that the Tribunal dismiss the complaint.

CONSIDERATIONS:

1. As to the contention that the appraisal reports were not formulated in accordance with the Staff Rules

The first report consists of a statement that the complainant's experience and qualifications are not questioned, but that his independent attitude and tendency to question or criticise are "perturbing factors". The complainant contends in the first place that this is not "a formal evaluation of his performance and conduct and potentialities" as required by Staff Rule 430.2. Read literally it is not, but the Tribunal considers that the effect of the report is that, except in the respects specified, the supervisor has no fault to find. The Tribunal will not construe appraisal reports as if they were clauses in the Staff Rules. Indeed, the Tribunal will not normally entertain complaints about the contents of appraisal reports and will grant relief only if they show a total misconception of the situation. This is not shown in either of the reports under attack. The second report consists only of the statement: "work satisfactory". This is clearly an evaluation and, if the complainant considers it inadequate, he is at liberty under Staff Rule 430.3 to attach a statement to that effect.

In relation to both reports the complainant contends that the supervisor failed to discuss his conclusions with the complainant as required by Staff Rule 430.2 and Manual provision Part II.5.55. Non-compliance with these requirements does not however ipso facto invalidate a report. In the present case it is clear from the facts in the dossier that discussion would have served no useful purpose.

2. As to the contention that the reports were prepared by a supervisor disqualified on the grounds of personal prejudice and insufficient knowledge of the facts

The same supervisor had previously prepared a report on the complainant for the year 1968-69, i.e. two years before the first of the reports which are the subject matter of his complaint. This earlier report contained, as the complainant alleged and as the Tribunal in its judgment No. 182 agreed, the implication that the complainant had failed to act in accordance with directives established by the Regional office. The Tribunal in its judgment found that on the facts as they appeared in the dossier there was no act or omission by the complainant which would justify this criticism. This misjudgment on the supervisor's part may have disposed him to a similar misjudgment in the somewhat similar criticism of the complainant that he makes in the first report in this case. This would be a matter to be considered by the Director-General before he took or permitted to be taken any action to the disadvantage of the complainant on the basis of the report; and in order to make sure that the point was not overlooked, the complainant could properly draw attention to it in an attached statement. But whether the supervisor is in error or not, there is nothing in the dossier to show that the criticism does not express his honest opinion. For the Tribunal to interfere in the case of an appraisal report what must be shown is not a preconceived opinion in the mind of the maker of the report but a wrongful motivation.

As to the allegation of insufficient knowledge, the Tribunal accepts, since it is not disputed, the complainant's statement that the supervisor did not during the material periods visit his field of operations. Under the conditions in which the Organization conducts its work in Africa, this may be inevitable. In any event, the criticism complained of would not appear to depend for its efficacy on a personal visit; if it does, the complainant could properly make that point in an attached statement.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 5 May 1975.

M. Letourneur
André Grisel
Devlin

Roland Morellet