

THIRTY-FOURTH ORDINARY SESSION

In re GLYNN (No. 3)

Judgment No. 255

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Gerard Joseph Glynn on 19 June 1974, the Organization's reply of 4 July 1974 and the complainant's rejoinder of 21 August 1974;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal and WHO Staff Rules 430 and 1030.8(a);

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 retired from the service of the WHO on 1 October 1973. Not having received his performance appraisal report for the period from 1 November 1972 to 30 September 1973, by letter of 28 December 1973 he drew the attention of WHO headquarters to the omission. By letter of 8 January 1974 the Organization replied that the matter had been referred to the Regional Director for Africa, the complainant's supervisor before he left the WHO. On 23 January 1974 the WHO sent the complainant a report for the period in question containing the words: "work acceptable". Not being satisfied with that report, by letter of 20 March 1974 the complainant asked the WHO to have a proper report made by a qualified staff member who was not hostile towards him - as was, in his view, the Regional Director for Africa. By letter of 5 April 1974 the Organization replied that note had been taken of his letter of 20 March.

B. In his claims for relief the complainant asks the Tribunal:

(a) to find that in failing to take action on the claim submitted by him on 20 March 1974 his supervisor and the WHO as a whole were in breach of Article VII, paragraph 3, of the Statute of the Tribunal;

(b) to find that such breach is evidence of the prejudice shown towards the complainant during the final part of his service with the WHO;

(c) since the complainant is now in retirement and it is therefore difficult to order the WHO to perform its obligation, to order it to pay him reasonable compensation; and

(d) to censure the WHO for its handling of his case.

C. In its reply the Organization, referring to the complainant's allegation that the WHO failed to take action on his claim, observes that he is mistaken in relying on Article VII, paragraph 3, of the Statute of the Tribunal. The complainant asked to have his appraisal report for the period from 1 November 1972 to 30 September 1973, and that report was sent to him by letter of 23 January 1974, which stated that if he disagreed with the report he could attach a statement which would become part of his file in accordance with Staff Rule 430. The Organization contends that no other action was required of it and that if he wished to object it was for the complainant to decide whether to follow the normal appeal procedures, i.e. to appeal in the first instance to the Regional Board of Inquiry and Appeal. That he failed to do.

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

CONSIDERATIONS:

Staff Rule 430 provides 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; and that the evaluation of performance as reflected in these reports shall be the basis for assisting the staff member to make his

most effective contribution to the work of the Organization and for decisions concerning the staff member's status and retention in the Organization. The complainant, who retired from the Organization on 30 September 1973, wrote to the Director-General on 28 December 1973 to say that he had not received an evaluation of his services for the period of 11 months immediately preceding his retirement. On 23 January 1974 the Chief of Personnel sent to the complainant an appraisal report for the relevant period which consisted simply of the statement: "work acceptable". On 20 March 1974 the complainant complained by letter to the Director-General that "this alleged appraisal" was a violation of natural justice and of human rights and requested that a proper appraisal be prepared. On 5 April 1974 the Chief of Personnel replied on behalf of the Director-General that the contents of the complainant's letter of 20 March 1974 had been noted. On 19 June 1974 the complainant made a complaint to the Tribunal in respect of the alleged failure of the Organization to provide a proper appraisal report as requested in his letter of 20 March. The claim is expressed to be made under Article VII, paragraph 3, of the Tribunal's Statutes which provides that where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal.

The Organization submits that the complaint should be dismissed as irreceivable under Article VII on the ground that paragraph 3 does not apply and that the complainant had failed to exhaust such means of resisting it as are open to him under the applicable staff regulations. The Organisation's contention appears to be that the letter from the Chief of Personnel of 23 January 1974 constituted a decision which the complainant should have challenged under the normal appeal procedures in the Organization. The Tribunal does not accept this contention. The letter of 23 January is not expressed as a decision but as a letter enclosing an appraisal report and asking for it to be countersigned subject, if he so desired, to a statement of disagreement to be attached to the report. The complainant however did not wish to disagree with the report, he wished to contend that it was not an appraisal report at all and to claim what he called a proper report. He was within his rights in taking this course by his letter of 20 March; and since the Director-General has failed to act upon it paragraph 3 of Article VII applies.

Nevertheless, the Tribunal dismisses the claim on the merits. It is open to question whether Staff Rule 430, having regard to its objects as stated above, applies at all in the case of a staff member who has retired. If it does, there could be no relief for a breach of it except by the payment of compensation; and it would be absurd to suppose that the statement that the complainant's work during his last 11 months was acceptable, could in any way be injurious to him.

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