

## FORTY-THIRD ORDINARY SESSION

### *In re* SCHOFIELD (No. 2)

#### Judgment No. 399

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Francis Donal Schofield on 1 December 1978, the WHO's reply of 30 January 1979, the complainant's rejoinder of 5 April 1979 and the WHO's surrejoinder of 5 April 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rule 530;

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

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

A. The complainant, who had joined the staff of the WHO in 1964, was assigned in April 1973 to the Division for the Strengthening of Health Services (SHS). In 1975 he was put in charge of a new programme known as the "Expanded Programme of Immunisation" (EPI) and in January 1977 was made acting Director of SHS. Both functions were withdrawn from him, however, in the circumstances which are described in Judgment No. 361 (*Schofield v. WHO*) dated 13 November 1978. In the dispute which culminated in that judgment the Director-General had taken a decision, dated 22 September 1977, instructing the Assistant Director-General responsible for SHS to draft the description of the post which the complainant then held.

B. In the meantime, on 17 October 1977, Personnel sent to SHS a blank form for appraisal of the complainant's performance from December 1976 to November 1977. He filled up section 1 (self-appraisal) and the Director of SHS sections 2 and 5. In March 1978 the complainant appealed to the headquarters Board of Inquiry and Appeal challenging that report and the list of SHS staff on the grounds that they confirmed the change in his administrative status since the Director-General's decision of 22 September 1977. The Board held that the staff list was an internal SHS document and did not have the official status of a written notification and that the report had not been completed and therefore could neither be regarded as providing any legal evidence of any past administrative action or decision nor be used as a valid basis for any future administrative action or decision. On those grounds the Board recommended dismissing the appeal as irreceivable but expressed the hope that a valid appraisal report would be drafted without further delay, bearing in mind the fact that the complainant had more than one supervisor and was performing two distinct functions in different divisions. The Director-General informed the complainant on 25 May 1978 that he endorsed the Board's recommendation, noted the hope which the Board had expressed and said that he had instructed the Chief of Personnel to get in touch with the complainant over the matter.

C. On 16 June 1978 the complainant again appealed to the headquarters Board of Inquiry and Appeal against the failure to meet his claim of 21 March 1978 for an appraisal report, explaining that his sole purpose in doing so was to make sure that the time bar would not be applied under Staff Rule 1230.8. He based his appeal on Staff Rule 1230.1.3 (failure to observe or apply correctly the provisions of the Staff Regulations or Staff Rules, or the terms of his contract). On 30 June 1978 the Board recommended the Director-General to give the complainant a written statement to confirm: (1) that the incomplete report of December 1977 had no administrative validity as it stood and therefore could not be used as the basis of a valid administrative action or as a certificate of the complainant's administrative status on 23 December 1977, and (2) that the SHS staff list of 9 January 1978 did not possess the official status of a written notification in terms of Staff Rule 580.1. The Board suggested that the report should be established or that both sides should consent to there being no report at all. On 27 July 1978 the Director-General informed the complainant that he endorsed the Board's recommendations. Having failed, despite much discussion, to agree on the final text of the report, the parties then agreed to postpone the writing of the report until the Tribunal had heard the complainant's first complaint. The appraisal report not having been drafted in the weeks following that judgment, the complainant filed a second complaint with the Tribunal in accordance with Article VII, paragraph 3, of its Statute, on the grounds that the Director-General had failed to answer his letter dated 22 September 1978 asking for the appraisal report.

D. In his claims for relief the complainant asks the Tribunal: (1) to order the Director-General to provide him with administratively valid and professionally fair, honest and unprejudiced appraisals for the year from December 1976 to November 1977, and (2) to award him costs.

E. The complainant explains that one reason why he did not accept the original version of the report was that the intention underlying it was to put him back in the SHS post he had held in 1971. On 3 March 1978 he was informed of a decision to give him a new assignment which he found even more harmful to his status than that post. Had a valid appraisal report been written within the time limit set in Staff Rule 530.3 it might have influenced the Director-General to give him a "less harmful assignment" on 3 March. The point holds good. The Administration's inexplicable refusal to fill up sections 2 to 5 of the report properly is prejudicing his career with the WHO and, should he leave it, his prospects of obtaining employment elsewhere. Moreover, a valid report would be an essential supplement to the Tribunal's findings in Judgment No. 361.

F. In its reply the WHO observes that under Article VII, paragraph 3, of the Statute of the Tribunal the complainant did not need to lodge his complaint until late in February 1979 and that the urgency of his appeal was unjustified. The dispute is the outcome of the Organization's genuine efforts to reach agreement on the text of an appraisal report. It might have required him to accept the original version or later simply ignored his objections to the second one. In fact it withdrew the original version and in the second one tried to take account of his objections. Those objections were that the draft did not accurately reflect his administrative status in that it said that during the review period he had had supervisors who in his view had not been his supervisors at all. The comments by Dr. Tarimo, Dr. Zahra and Dr. Ladnyi in the second version were in any event unsatisfactory. The WHO believes that Judgment No. 361 showed up the falsity of the complainant's argument about who his supervisors were. For his SHS work his first-level supervisors were Dr. Newell until 31 January 1977, Dr. Zahra from 1 February to 23 November 1977 and Dr. Tarimo from 24 September 1977. For his EPI work his first-level supervisors were Dr. Cockburn until 13 December 1976 and Dr. Ladnyi from 14 December 1976 to 25 February 1977. As for the comments by Dr. Tarimo, Dr. Zahra and Dr. Ladnyi, his remedy was to challenge them by attaching a statement to the report in accordance with Staff Rule 530.3. It is not true to say that his career inside the WHO and his prospects of obtaining employment elsewhere have been damaged. As Staff Rule 530.4 makes clear, the purpose of evaluating performance is neither to settle a dispute nor to provide a testimonial for employment elsewhere. The WHO takes up the recommendation by the second Board of Inquiry and Appeal that the parties might consider agreeing not to establish any report at all: with the lapse of time, such a report, the WHO believes, would not now serve any useful purpose. The WHO invites the Tribunal to dismiss the complaint. That would be tantamount to acceptance of the Board's recommendation and would discharge the Organization of any obligations towards the complainant in respect of the 1976-77 report. It is not conceivable that the Tribunal should grant the relief sought by the complainant and order the WHO to provide a report which meets his wishes, since the formulation of appraisals is a matter which falls within the Director-General's executive discretion.

G. In his rejoinder the complainant comments on the WHO's reply point by point and seeks to show what his administrative status actually was. He asks the Tribunal to determine what his status was on 30 November 1977 and who were the supervisors competent to sign his appraisal report. He amends his claims for relief to read as follows:

"That the Tribunal will be pleased to:

- (1) order the Director-General to provide the complainant with an administratively valid professional appraisal for the year December 1976-November 1977;
- (2) order the Director-General to confirm the administrative validity of the complainant's assignment 1975-77 and of his entire post description dated 4 July 1975, including the grade P.6 and the amended title...;
- (3) order the Director-General to compensate the complainant with a sum to be named by the Tribunal for the moral and professional prejudice caused by lack of an appraisal for more than a year;
- (4) order reimbursement of the legal costs of this complaint."

H. In its surrejoinder the WHO points out that, with the amendment of the claims for relief, the matter in dispute goes beyond the original complaint, which related to the appraisal report. The complainant ought to have declared his objections to the report by attaching a statement. He is seeking to resume argument on several points which the Tribunal has already settled. The Director-General's letter dated 22 September 1977 cannot be construed as proof

that the complainant was directly responsible to the Assistant Director-General. The reason why the Assistant Director-General had to draft the new post description was that the Director of SHS, Dr. Tarimo, took over only two days later, on 24 September 1977, and so could not do so. The WHO points out yet again that throughout the period from December 1976 to November 1977 the complainant's supervisors were the successive Directors of SHS. It therefore again asks the Tribunal to dismiss all his claims for relief, including the claim for damages, on the grounds that its proposals for the settlement of the dispute are not prejudicial to him and that the terms of the draft appraisal report are favourable to him and can in no sense cause him prejudice.

#### CONSIDERATIONS:

1. Staff Rule 530 reads:

##### 530. SUPERVISION AND PERFORMANCE EVALUATION

530.1 Supervisors shall be responsible for facilitating the adjustment of a staff member to his work by:

530.1.1 providing him with a clear statement of his duties and his official relationships;

530.1.2 instructing and guiding him in performing his functions;

530.1.3 introducing him properly to those staff members with whom he will be required to work;

530.1.4 discussing his work with him at frequent intervals.

530.2 For staff at D.2 level and below, in addition to the normal work review and discussion with a staff member, supervisors shall periodically make a formal evaluation of the performance, conduct and potentialities for greater usefulness of each staff member under their supervision. This evaluation shall be made at such intervals as the work situation or the individual's performance requires but in no case less frequently than once a year. Supervisors shall discuss their conclusions with the staff member and make specific suggestions for improvement in any aspects of performance which are not entirely satisfactory. If a staff member exercises supervisory responsibilities, the evaluation shall include an assessment of his performance as a supervisor.

530.3 The functions and activities performed by the staff member during the preceding year shall be summarized by him and shall be evaluated by his supervisors on an established form, in relation to the actual duties and responsibilities of the post. The form shall be signed by the supervisors and the staff member concerned, who may if he so wishes attach a statement concerning any part of the report with which he disagrees and this shall become a part of his performance report file.

530.4 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.

2. The form provided for in paragraph 530.3 above is usually referred to as an appraisal report. The complainant has not been supplied with an appraisal report for the year December 1976 to November 1977. In the unusual circumstances of this case (which are set out in Judgment No. 361) discussions took place in 1978 between the complainant and the other officials concerned with the preparation of the report. On 22 September 1978 the complainant wrote to the Director-General a letter which the Organization is willing to treat as a claim that the report should be completed. The Organization accepts that the claim was not decided within sixty days and that accordingly the complaint is receivable under Article VII of the Statute of the Tribunal.

3. The Organization does not dispute that Staff Rule 530 has not been complied with. It submits, however, that the complaint should be dismissed on the basis that "it has acted in good faith, but that the position taken by the complainant has rendered this obligation no longer possible of achievement and of doubtful value". The Organization points out that under Staff Rule 530.4 the report is to 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. Questions relating to the complainant's contribution to the work of the Organization and to the status which he has or ought to have, have been the subject of controversy on which there has been a mass of documentation. He is now within a few years of retirement. The Organization argues that it is unlikely that the views of his supervisors as expressed in an appraisal report can now affect the complainant's

prospects within the Organization. The complainant does not concede this, but he places most emphasis on the need for appraisal reports when he is looking for a job after his retirement in 1981. The Organization replies to this that the provision of a testimonial is not the purpose of Staff Rule 530, but of Staff Rule 1095, which provides for a certification of service.

4. There is nothing to show that the completion of the report is no longer possible of achievement. If, however, the Tribunal was satisfied that the report could now serve no useful purpose whatsoever, it would be within its competence, notwithstanding that there had been a breach of the Staff Rule, to refuse to order its completion. But prima facie the complainant is entitled to have it for what he thinks it to be worth; a doubt thrown on its value is not a ground for denying it. Furthermore, its usefulness to the complainant is not to be judged exclusively by reference to the main purpose of the report as set out in Staff Rule 530. Appraisal reports constitute a record of service which as a general rule an official is entitled to have for his own satisfaction as well as for use if he is seeking other employment; in this latter respect he is not confined to the certificate of service provided under Staff Rule 1095. The complaint must be upheld on the merits.

5. The Organization objects to the form of the relief sought by the complainant, which is for an order for "administratively valid and professionally fair, honest and unprejudiced appraisals". The Tribunal agrees that these adjectives are inappropriate for insertion in the order.

6. The complainant requests compensation for the moral and professional prejudice caused by the lack of an appraisal for more than a year. There is no evidence of any such prejudice, and this claim should be rejected.

7. The complainant requests also the "reimbursement of the legal costs of this complaint". The dossier does not show that any legal costs were incurred, nor does it appear to the Tribunal that there would have been any need for them. Probably there would have been no need for this case if the Organization had not supposed that what the complainant wanted was an agreed report; the complainant did nothing to correct this impression. The dispute was about what the report should contain; it was not on the issue of whether or not the complainant was entitled to a report; indeed that issue was never raised and a report was never in terms refused. This is not a case for the award of costs.

#### DECISION:

For the above reasons,

1. It is ordered that the Director-General should provide the complainant with an appraisal report as specified in Staff Rule 530 in respect of the year December 1976-November 1977.

2. The other claims are dismissed.

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

Delivered in public sitting in Geneva on 24 April 1980.

André Grisel  
Devlin  
H. Armbruster

Bernard Spy