

EIGHTH ORDINARY SESSION

***In re* WAWRIK**

Judgment No. 41

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Atomic Energy Agency, drawn up by Mrs. Jeannette Wawrik on 25 September 1959 the Agency's reply of 6 November 1959 and the complainant's rejoinder of 20 April 1960;

Considering Regulation 7.04 in the provisional Staff Regulations of the Agency, Article XVIII of the Agreement between the Agency and the United Nations, Rule 106.3 of the United Nations Staff Rules and Rule 7.042 in the Agency's Staff Rules of 1 April 1959;

After examining the documents in the dossier, no oral proceedings having been either requested by the parties or ordered by the Tribunal;

Considering that the pertinent facts at issue are the following:

A. On 13 October 1958 complainant applied for maternity leave as from 15 December 1958, that is six weeks before the probable date of her confinement. On 20 October 1958 complainant was informed by word of mouth that, since there was not staff rule concerning the grant of the sick and maternity leave provided for in the Agency's Staff Regulation 7.04, the Director-General intended to follow the corresponding United Nations staff rule, Rule 106.3. Under that provision complainant would have received paid maternity leave neither during the six weeks preceding the probable date of confinement nor during the six weeks following confinement, because she had not completed 12 months' service before the probable date of the confinement. However, in view of the circumstances and of the length of complainant's previous service in other Specialised Agencies, the Director-General was prepared to give her the possibility of taking all her accumulated annual leave and of receiving, in addition, leave without pay for the six weeks preceding the probable date of confinement, and to grant her maternity leave on full pay for the six weeks following the date of the confinement. This offer was confirmed by a decision of the Director-General dated 5 December 1958 which complainant received on 8 December 1958.

B. On the same day complainant applied for leave as from the next day, 9 December, and on the latter date she sent in a medical certificate to the effect that her condition did not allow her to perform her normal duties. On 12 February 1959 the Agency informed the complainant that since the confinement had taken place on 26 January 1959 her maternity leave would last until 6 March 1959, and made reservations with regard to the manner in which complainant had relinquished her duties.

C. Mrs. Wawrik sent in her resignation by a telegram dated 8 March, which was confirmed by a letter of 12 March, in which complainant asked that the period of six weeks preceding the probable date of her confinement should be regarded as sick leave; that request was rejected, as being not justified on medical grounds, by a decision of the Director-General on 19 March 1959.

Complainant prays the Tribunal to declare on the one hand that she is entitled to six weeks of paid maternity or sick leave and, on the other hand, to order her reinstatement or, alternatively, compensation on the ground that she resigned from her job only under pressure.

IN LAW

As regards the submissions relating to the grant of leave

1. Under the Agency's Staff Regulation 7.04 "the Director-General may make appropriate rules governing the grant of sick leave and maternity leave". The object of this provision is, on the one hand, to lay down for the benefit of the Agency's personnel the principle of entitlement to sick or maternity leave and, on the other hand, to empower

the Director-General to issue appropriate rules governing the grant of such leave.

2. It is established that on 5 December 1958 the Director-General had not yet made use of the power that had been granted to him, so that it was for the Director-General, on receipt of a request for maternity leave from Mrs. Wawrik, to determine the manner in which the application would be granted. By his decision of 5 December 1958 the Director-General, within the framework of Article XVIII of the Agreement with the United Nations Staff Rule 106.3, while extending its scope in a sense favourable to Mrs. Wawrik. In so doing the Director-General, did not thereby violate any provision of the Regulations, but applied the principle laid down in the aforesaid Regulation 7.04 in an equitable manner. He was not under an obligation to take into consideration complainant's previous service in other international organisations since she had interrupted those services of her own free will and had entered the employment of the Agency more than a month after leaving the employment of UNESCO.

3. On 12 March 1959 Mrs. Wawrik also submitted to the Director-General a claim for sick leave for the same period, and the Director-General rejected this claim by a decision of 19 March 1959 in which he relied on United Nations Staff Rule 106.3(c), which provides that "sick leave shall not normally be granted for maternity cases except where serious complications arise". At that time, as stated above, and in the absence of any rule peculiar to the Agency, the Director-General could legitimately rely on the above-mentioned Rule; in the absence of complications, the existence of which has not been proved by complainant, incapacity for work resulting from maternity does not constitute sickness and cannot give rise to the grant of sick leave.

4. Although Mrs. Wawrik relies on the fact that on 1 April 1959 the Director-General, availing himself of his right under the above-mentioned Staff Regulation 7.04, approved in the new Staff Rules a Rule 7.042 containing provisions that would be in conformity with the claims of the complainant, this rule has no retroactive effect. Therefore it cannot be applicable to the case of complainant, on whose entitlement rulings were given in the impugned decisions of 5 December 1958 and 19 March 1959. Moreover, the period of six weeks following complainant's confinement came to an end before 1 April 1959.

It follows from the foregoing that the submissions of the complainant discussed above must fail.

As regards the submissions relating to Mrs. Wawrik's reinstatement, or alternatively to the grant of compensation

5. Under Article VII, paragraph 1, of the Statute of the Tribunal "a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable staff regulations".

It is established by the documents in the dossier that Mrs. Wawrik submitted her requests concerning reinstatement or the grant of compensation neither to the Director-General nor to the Joint Appeals Committee, so that when she applied to the Tribunal she had not exhausted all the means of resisting the decision that were open to her under the Agency's staff regulations; the above mentioned submissions are therefore not receivable.

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 13 September 1960 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
Maxime Letourneur
André Grisel
Jacques Lemoine