

FORTY-FIFTH ORDINARY SESSION

***In re* GATMAYTAN**

Judgment No. 424

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Napoléon Garcia Gatmaytan on 9 May 1979, and brought into conformity with the Rules of Court on 18 June 1979, the PAHO's reply of 30 August, the complainant's rejoinder of 2 October and the PAHO's surrejoinder of 26 November 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and PAHO Staff Regulations 2.1, 3.2 and 4.4., PAHO Staff Rules 030, 050, 230, 320.2, 320.4, 380.3, 560.2 and 565.1 and WHO Manual provisions II.1.40.1, II.1.40.3, II.1.60, II.1.95, II.3.190 and II.5.190;

Having examined the written evidence, 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. On 5 May 1971 the complainant joined the staff of the Pan American Sanitary Bureau, the secretariat of the PAHO, as a G.3 archives clerk. By the end of November 1975 he held grade G.6. On 1 December 1975 he was appointed to a P.1 post - No. 3409 - in the Personnel Section of the Administration Division as an administrative officer trainee. In that post he performed duties in personnel and administrative management and received training in finance, budgeting and procurement of supplies. From 17 June 1976 he performed the duties of a P.2 management officer in the Office of Administrative Analysis in the Administration Division, although he continued to hold the P.1 trainee post. He asked to have the anomaly removed by his official reassignment to grade P.2 in the Office of Administrative Analysis. His application was refused on the grounds that trainee posts could not be regraded. Finally, on 12 May 1977 the Chief of Personnel recommended the complainant's assignment to the Office and his reclassification at P.2 with effect from 1 June 1977. The new Personnel Reclassification Advisory Committee refused to review the case, however, on the grounds that it was a case not of reclassification but of establishment of a new post with duties different from those of a trainee post. The Chief of Personnel took the matter up again, the complainant was officially reassigned to the Office on

10 November and his post was reclassified at grade P.2 with effect from 1 December 1977. On 30 November 1977 the complainant asked that the reclassification should take effect from 1 October 1976 and, the Director having refused, he appealed to the regional Board of Inquiry and Appeal. In its report, which was dated 5 January 1979, the Board found that for two years the complainant had been performing management work while still employed as a trainee and that his supervisors had sought somewhat belatedly, in May 1977, to remove the anomaly. The Board therefore recommended that his reclassification should take effect from 1 June 1977. On 2 March 1979 the Director informed the complainant that he could not endorse the Board's recommendation because it failed to take account of all the facts and circumstances. That is the decision now impugned.

B. The complainant argues that there was no reclassification of any post: he was reassigned to the Office of Administrative Analysis and, there being no post in that Office, his P.1 trainee post in the Personnel Section - No. 3409 - had to be moved to the Office and reclassified at grade P.2. He cites Staff Rule 565.1, which reads: "A reassignment is any formal movement of an individual from one post to another. It may involve a change in title, grade, function, salary, or official station, or a combination of these changes". He also cites Manual provision II.5.190, which states that "the effective date for any reassignment is the date of arrival at the new post": he takes the view that in practice he took up his new duties on 1 October 1976. He cites Manual provision II.1.60 (temporary assignment) as evidence that his reassignment was not temporary. He relies on Manual provision II.1.40.1 (prescribing equal pay for equal work), arguing that it was quite wrong to make him do P.2 work on a P.1 salary; on Manual provision II.1.40.3, which provides that promotion must be based on increased duties and

responsibilities; on Manual provision II.3.190, which requires a post description for every post; on Staff Regulation 2.1, which requires the classification of posts; on Staff Regulation 3.2, which stipulates payment of salary on the basis of duties and responsibilities; on Staff Regulation 4.4, which gives preference to PASB staff members over outside candidates; on Staff Rule 030, which says that the rules apply to all officials; on Staff Rule 050, which sets conditions for exceptions from the Rules; on Staff Rule 230, which entitles the staff member to review of the classification of his post; on Staff Rule 320.2, which relates to calculation of salary after promotion; on Staff Rule 320.4, which limits to 12 months the period of temporary assignment to duties at a higher grade; and on Staff Rule 560.2, which entitles the staff member to promotion in the event of reclassification of his post.

C. In his claims for relief the complainant asks the Tribunal: (1) to establish the date of entitlement to promotion at 1 October 1976; (2) to award him retroactive payment of salary and incidental benefits; (3) to order the revision of his personnel records to make it clear that he took up his duties as a P.2 management officer on 1 October 1976; and (4) to award him costs.

D. In its reply the Organization observes that the complainant's new post description was not drawn up until 18 March 1977, when he was transferred to the Administrative Management and Computer Services. The complainant did not exercise his right to appeal to the internal appeals bodies until 21 March 1978. The effective date of promotion is not the date on which it was first suggested or recommended, nor that on which the circumstances leading to any such suggestion or recommendation occurred, but the date on which it was approved by the competent official. The proposal to transfer post 3409 was first made on 11 March 1977 and the reclassification to P.2 was recommended on 12 May. The Personnel Section submitted the proposal for reclassification to the new Personnel Reclassification Advisory Committee. The Committee held that it was not a matter of reclassifying a post but of establishing a new post with different duties. The Personnel Section accordingly submitted a new proposal to the Director on 10 November 1977, and that proposal was approved with effect from 1 October 1977. The PAHO was not to blame for the Committee's delay in considering the case; in any event the delay - being only about two months - was very short. The Organization therefore asks the Tribunal to dismiss the complaint.

E. In his rejoinder the complainant points out that he could not lodge any internal appeal until a decision had been taken and therefore could not have acted any more promptly. As to the merits, he points out that the Organization overlooked the fact that, though only a trainee, he performed the duties of a P.2 management officer for a long time before getting promotion. What the rules must mean, and particularly Staff Rule 380.3, is that P.2 remuneration is payable from the date on which he actually took up P.2 duties. What makes it even harder to condone the delay caused by the reclassification committee in its decision that it was not competent. He should not have to bear the consequences of that decision. It is mistaken to contend that the reassignment was to his advantage in that it brought him promotion, when, instead of reassigning him, the Organisation could have created a P.2 post in the Office of Administrative Analysis and put it up for competition. The only reason why a P.1 trainee was improperly assigned to P.2 duties was that it suited the PAHO's interests.

F. In its surrejoinder the Organization observes that the original purpose in reassigning the complainant to the P.2 management officer post was to relieve him of training by giving him more responsible work. He himself consented to that since he neither applied for reclassification of his post nor objected that the training programme had not been carried out. Not until early 1977 did he ask for an explanation - prompting his supervisor on 11 March of that year to propose the transfer of post 3409 to the Office of Administrative Analysis - and not until 30 November 1977 did he apply for the reclassification of his post from P.1 to P.2 with effect from 1 October 1976, with retroactive payment of the P.2 salary. As for the delay after 12 May 1977, the date on which the Chief of Personnel proposed reclassification, and after 1 December 1977, the date of promotion, the Organization abides by the arguments put forward in its reply.

CONSIDERATIONS:

The subject of the dispute

1. On 1 December 1975 the complainant was appointed to post 5409 as an administrative officer trainee at grade P.1 in the Personnel Section. From 1976 he performed duties pertaining to a higher grade. He was accordingly promoted with effect from 1 December 1977, when his status altered as follows: he became a management officer trainee instead of an administrative officer trainee; he was transferred from the Personnel Section to the Office of Administrative Analysis; and he was promoted from P.1 to P.2. The number of his post did not change.

The complainant asks that the date of his promotion should be 1 October 1976, that he should be paid the difference between the sums due and the sums actually paid to him from that date and that his personnel records should be revised accordingly.

2. In his complaint he argues that he was not regraded but given a "reassignment" within the meaning of Staff Rule 565.1. In his rejoinder he again maintains that he was not regraded but that two simultaneous measures were taken - the abolition of one post and the creation of another. The Personnel Reclassification Advisory Committee (Professional) held that it was not competent to hear the case since there had not really been any reclassification, and the Director therefore did not seek the Committee's advice.

There is no need to determine the legal character of the complainant's transfer. Whether it is treated as reclassification, the transfer of a post or the replacement of one post with another, the material rules are the same.

The date of transfer: the general rule

3. Staff Rule 380.3.1 determines the effective date of any change in salary. It provides that an increase shall take effect from the date of entitlement. It then draws a distinction: the date of entitlement to a within-grade increase shall be the first day of the month nearest the date of satisfactory completion of the service requirement, whereas the date of entitlement to any other increase in salary shall be the first of the month nearest the date of final approval.

This Rule relates to salary increases in general and allows no exceptions. It therefore applies to any increase whatever, whether it is due to reclassification, the transfer of a post or the replacement of one post with another.

4. The provisions of Staff Rule 380.3.1 are not absolute. First, if the Organization grants a salary increase, not of its own accord, but as the result of appeal proceedings duly introduced by the official, the increase will take effect from the date on which the proceedings were introduced. Otherwise an official who obtains satisfaction without taking action would enjoy an unfair advantage over an official who has been obliged to take steps to pursue his claim.

Secondly, if the transfer procedure is unreasonably prolonged for causes attributable to the Organization, the official should not suffer for the delay. The increase will therefore take effect on the date on which it ought to have been granted.

The effective date of the complainant's transfer

5. The salary increase was approved on the strength of a proposal which the Chief of Personnel made to the Director on 10 November 1971. Although its precise date is not clear from the evidence, it was obviously taken in the second half of November 1977. The Organization declared that the increase, which was accompanied by a change in grade, would take effect on 1 December 1977, and it thus respected Staff Rule 380.3.1 by taking the first day of the month nearest the date of final approval of the transfer. The complainant does not demur.

He reads a decision into the letter of 11 March 1977, in which his first-level supervisor expressed a wish to transfer post 3409 from one branch to another. But whatever the supervisor's authority may have been, the alleged decision was subject to approval by the Director, as is borne out by the requests addressed to the Director by the Chief of Personnel on 12 May and 10 November 1977. In accordance with Staff Rule 380.3.1, it was the date of final approval which ought to determine and which did determine the effective date of the increase.

The Tribunal will now consider, however, whether the complainant may succeed under any exception to the rule.

6. He did not introduce any proper appeal proceedings although, contrary to what he states, he was entitled to do so under WHO Manual provision II.1.95. It is true that in a memorandum he wrote to the Chief of Personnel on 13 May 1976 he said that he had acquired "more than adequate background" as an administrative officer and proposed an "on-the-job training schedule". In a later, undated memorandum he referred to a conversation held in December 1976 and asked for a decision on his future from his supervisors. He did not, however, expressly apply for the reclassification of his post or reassignment. Accordingly, although the action he took shows concern about his future, he did not really introduce appeal proceedings. There are therefore no grounds for making the transfer effective from the date on which he took that action.

7. There is merit, however, in the complainant's plea that the transfer procedure took an unreasonably long time. On 11 March 1977 his first-level supervisor informed the Chief of Personnel of his wish to have post 3409 transferred from one branch to another. On 12 May the Chief of Personnel submitted to the Director a new description of the post, which he recommended grading at P.2 from 1 June 1977. On 2 July 1977 the Director informed the Chief of Personnel that he would not consider any reclassification of posts for the remainder of the year. That decision was linked with the establishment of two personnel reclassification advisory committees, one for the General Service category and the other for the Professional category. The committee which heard the complainant's case refused to take a decision on the grounds that there had not really been a reclassification. The Chief of Personnel concurred in that view and thereupon made another proposal to the Director for transferring the complainant with effect from 1 December 1977. He was accordingly transferred.

Instead of being promoted to grade P.2 at the prescribed date, 1 June 1977, the complainant thus had to wait six months for his promotion. It is immaterial whether the long and futile delay was the fault of any PAHO body. All that need be said is that it was entirely due to the way in which PAHO bodies worked and that the Organization should make good the wrong by transferring the complainant with effect from the date on which he ought normally to have been transferred and the one suggested by the Chief of Personnel in his letter of 12 May 1977, namely 1 June 1977. The Organization shall therefore pay the complainant the difference between the sums due and those actually paid to him from 1 June 1977 and shall correct his personnel records accordingly.

The costs

8. Although the amount at stake is not high, the case is a complex one and warranted the assistance of counsel. The complainant is entitled to costs, but since his complaint is allowed only in part the Tribunal will award only 1,000 dollars.

DECISION:

For the above reasons,

1. The impugned decision is quashed.
2. The complainant is promoted to grade P.2 from 1 June 1977.
3. He shall be paid the difference between the sums due and the sums actually paid to him since that date.
4. His personnel records shall be corrected accordingly.
5. The Organization shall pay him 1,000 dollars in costs.

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 11 December 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy