

FORTY-SIXTH ORDINARY SESSION

***In re* VELIMIROVIC**

Judgment No. 445

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Boris Velimirovic on 29 April 1980, the WHO's reply of 14 July, the complainant's rejoinder of 12 August and the WHO's surrejoinder of 19 September 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Staff Rule 710 and WHO Manual provision II.12.490;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, an Austrian citizen, was first appointed by the WHO in 1962 as a district medical officer in the Congo (Leopoldville). His appointment was not pensionable. On 2 September 1963 he was appointed to the staff of the Pan American Health Organization (PAHO) and as such became an associate participant in the Pension Fund. On 31 August 1965 he resigned to take a course at the London School of Hygiene and Tropical Medicine. On 26 July 1966 he was reappointed to the staff of the WHO as a consultant for two months, a period which was extended by two months on 1 October 1966. At first he worked at headquarters in Geneva. He was later stationed in Tanzania and the United Arab Republic. This appointment did not entitle him to membership of the Pension Fund. On 27 October 1966 he was appointed for two years as a grade P.5 medical officer in Africa and thus again became an associate participant in the Pension Fund from the start of his new appointment. The starting date of his probation period, however, was set at 26 July 1966, the date of his first consultant appointment. His appointment was extended and on 16 April 1969 his successive appointments from the end of 1966 were consolidated in a single five-year appointment with the starting date retroactively determined at 1 December 1966. This enabled the complainant to validate for pension purposes his earlier period of service with the PAHO. Apart from a break between 1973 and 1975 he has since continued to work in the WHO. On 4 September 1969 he accepted the WHO's offer to validate the period from 31 August 1963 to 31 August 1965. Only seven years later did he become aware of the fact that the period from 26 July to 30 November 1966 had not been covered by the validation and he then applied to have it treated as a period of regular employment. His claim was rejected on 9 August 1978. He appealed to the Headquarters Board of Inquiry and Appeal, and on 27 December 1979 the Board recommended that the period should be treated as part of a fixed-term appointment and therefore pensionable. By a decision dated 21 January 1980 the Director-General rejected that recommendation on the grounds that before 1972 periods of employment as a consultant were not pensionable.

B. The complainant is impugning the decision of 21 January 1980. He contends that when he was appointed consultant he was promised a fixed-term appointment but told that it was administratively necessary to treat his assignment as a short-term consultancy appointment because the Nigerian Government had not yet signed the plan of operation under which he was to be appointed. That is clear from the fact that when he got his further appointment on 29 November 1966 the probation period was made to start on 26 July 1966. The amount of the deductions made from his salary for the purpose of validation confirmed his belief that the appointment was deemed to have begun on 26 July 1966 and there was therefore less than one year's interruption (between 31 August 1965 and 26 July 1966) in his employment. That meant that he could validate that period as well, since interruptions of less than one year could under the rules in force at the time be validated. Officials who take courses like the one he took in London at his own expense during that period may now do so without leaving the staff and without any loss of earnings. The WHO failed to qualify his appointment correctly in 1966 and has not fulfilled the commitments it then entered into. Nor has it explained why the deductions from his salary were so large if the period in question was not validated.

C. In his claims for relief the complainant asks the Tribunal to order the validation of his period of service from 26 July to 30 November 1966 as regular service - not short-term consultant service - so that he may claim validation of the period from 1 September 1965 to 25 July 1966 as well.

D. In its reply the WHO observes that until 1 June 1972 periods of service as a consultant could not be validated. There is no evidence in WHO files to suggest that any promise of regular employment from 26 July 1966 was given to the complainant at the time. Of the three officials who were involved in his case one has died and the others have retired. In any event he was informed in a letter dated 3 September 1969 from the Secretary of the WHO Staff Pension Committee of the contributions he had to pay to validate the period of service from 1 December 1966 to 30 April 1969, so that he knew full well that the periods validated were from 31 August 1963 to 31 August 1965 and from 1 December 1966 to 30 April 1969 and that the periods of his employment as a consultant were not covered. Accordingly, even if promises had been made, he accepted the position since he did not make his claim until seven years later in 1976. His claim is now time-barred. Lastly, the argument which he bases on the predating of the probation period is unfounded: under the rules in force at the time in the case of any full-time appointment "Prior satisfactory services for the organization in the same type of post may be credited towards completion of probation". It was therefore only reasonable when he was appointed on 1 December 1966, to take account for the purpose of probation of his consultancy from 26 July to 30 November 1966. The WHO therefore invites the Tribunal to dismiss the complaint.

E. In his rejoinder the complainant again contends that it was understood even before 26 July 1966 that he would be given regular employment. He was to work in the same area as before, for the same unit and for the same project (schistosomiasis, headquarters research). It is not true to say that he did not raise the matter until 1976. He did so in 1967, 1968 and 1969 and has done so every year since. The matter was discussed from the very first day of his consultancy, as is clear, for example, from the minute reproduced in Annex E to the WHO's reply. It is therefore untrue to say that he accepted the position. Between 1969 and 1972 the sum of 9,310 United States dollars was deducted from his account, i.e. \$4,528 more than the sums required to validate the period from 31 August 1963 to 31 August 1965 (\$1,740) and the period from 1 December 1966 to 30 April 1969 (\$3,042). That led him to believe that the whole matter of validation was being taken care of. An official of an international organisation is usually taken up with his work, not with the intricacies of administration or the mysteries of pension deductions. He knows that pension matters are dealt with slowly and that information is irregular, but he usually believes that all will eventually be settled. The complainant honestly believed that the period of service from 26 July 1966 would be validated, and he took action as soon as he understood that it had not been.

F. In its surrejoinder the WHO explains that its records are incomplete because when the complainant resigned in 1973 his personal file was destroyed, apart from the personnel action forms, which were microfilmed. It maintains that the service he wanted to have validated was at first only the period during which he was employed by the PAHO. It does not follow the argument he bases on the amount of the deductions from his salary. The letter written to him on 3 September 1969 by the Secretary of the WHO Staff Pension Committee was explicit: deductions would be made for the period from 1 December 1966 to 30 April 1969. It was therefore clear from that date that no deduction would be made for the period from 26 July to 30 November 1966. He may not rely on "the intricacies" of the matter: it would have been simple for him to obtain information. His complaint is therefore time-barred.

CONSIDERATIONS:

The question of principle

1. The Organization employed the complainant as a consultant from 26 July to 30 November 1966. In accordance with Staff Rule 710 consultants, who are appointed for periods not exceeding eleven months, are excluded from participation in the Pension Fund. Moreover, until 1 June 1972 the complainant's period of service could not be validated for Pension Fund purposes.

In the light of the rules the complainant may not have the period from 26 July to 30 November 1966 treated as pensionable service. As is clear from the considerations below, his arguments against applying those rules to his case must fail.

The complainant's pleas

2. The complainant's first plea is that, although he temporarily agreed to serve as a consultant, he did so on the

strength of statements by three officials who, he says, acknowledged that he had the right to participation in the Pension Fund from 26 July 1966. There is no evidence in the dossier, however, to suggest that such statements were ever made. One of the officials has since died. Another, who was summoned before the Board of Inquiry and Appeal, does not remember what was said in any discussions he may have had with the complainant. The third is also presumably unable to recount exactly what happened, since the affair goes back a long time and was of minor importance to him; no purpose would be served, therefore, by hearing evidence from him. The Tribunal will therefore take no account of the alleged statements. The complainant has all the less reason to object to the absence of proof because at the material time it was open to him to ask the three officials to confirm in writing what they had said.

3. The complainant's second plea is that the offer of appointment addressed to him on 29 November 1966 set 26 July 1966 as the beginning of the probation period and therefore conferred on him a right to participation in the Pension Fund for the period from 26 July to 30 November 1966. But the probation period and pensionable service do not necessarily coincide. The complainant was treated as a probationer from 26 July 1966 because a provision in the Staff Rules stated that service prior to the appointment might be credited towards completion of probation. That provision does not preclude the application of the rule disqualifying a consultant for participation.

4. The complainant's third plea is that the amount of the deductions made from his salary for the purpose of validating prior service led him to believe that the validation covered the period from 26 July to 30 November 1966. In fact he need not have drawn any such inference since under the arrangement proposed to him on 26 August 1969 the period of validation ran from 31 August 1963 to 31 August 1965. Moreover, having received a minute dated 17 October 1967 which expressly excluded the period in question he could not reasonably suppose that that period was covered by the validation.

The receivability of the complaint

5. Since the Tribunal dismisses the complaint on the merits, it need not consider whether, as the Organization contends, the complaint should in any event be dismissed as time-barred.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, 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, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner