

FORTY-NINTH ORDINARY SESSION

In re HAGAN

Judgment No. 540

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health organization (WHO) by Mr. Francis Hagan on 3 November 1981 and brought into conformity with the Rules of Court on 3 May 1982, the WHO's reply of 3 June, the complainant's rejoinder of 17 July and the WHO's surrejoinder of 17 August 1982;

Considering Article 11, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 110.1, 110.8, 1075.2, 1110, 1120 and 1130;

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. The complainant, a citizen of Ghana, was employed by the WHO at its Regional Office for Africa in Brazzaville. In June 1978 the auditors were informed that he and another staff member had been making large claims for reimbursement from the Staff Health Insurance Scheme of the cost of drugs and medical treatment. The auditors carried out an inquiry and in a report dated 18 December 1979 found that "much of the documentation submitted by both staff members was forged and/or falsified or not substantiated". They found collusion. They stated that pharmacies from which the complainant had submitted bills were not registered with the Pharmacy Board of Ghana nor even listed in the telephone directory; that the price of some of the drugs was as much as thirty times too high; that a certificate of attendance at a church school by one of his daughters had been declared false by the head teacher; that a certificate of admission to school of another daughter had been declared a forgery by the head teacher; that a receipt for the private coaching of his children had been forged; and that bills purporting to come from two other teachers for private coaching did not bear the teachers' registration numbers, as required by the law of Ghana. By a letter of 14 December 1979 the WHO informed the complainant that irregularities had been found in supporting documents attached to his claims; that the charge was one of serious misconduct under Staff Rules 110.1 and 110.8; and that he was therefore suspended from duty pending investigation of the charge in accordance with Staff Rule 1120. The complainant wrote a letter on 19 December denying the charge. The Personnel officer then wrote to inform him that he was summarily dismissed for serious misconduct under Staff Rules 1075.2 and 1110.1.5. On 3 January 1980 he appealed to the Regional Board of Inquiry and Appeal. On 13 May the Board recommended dismissing the appeal, the Regional Director accordingly dismissed it, and he appealed to the Headquarters Board of Inquiry and Appeal. The Headquarters Board found ample evidence to bear out the charge, and on its recommendation the Director-General rejected the appeal by a letter of 22 July 1981, which the complainant states he received, in Ghana, on 28 August, and which is the decision impugned.

B. The complainant contends that the Headquarters Board failed to give proper weight to important items of evidence which he believes refute the charge against him. He appends these items and explains how, in his view, they show the allegations to have been false or misleading. He alleges procedural irregularities. The charges in the WHO's letter of 14 December 1979 were not specific enough to allow of a reply: that was why in his letter of 19 December he asked for details of the charges. There was therefore breach of Staff Rule 1130, which states: "A staff member may not be ... summarily dismissed for serious misconduct until he has been notified of the charges made against him and has been given an opportunity to reply to those charges". It was the Personnel Officer's notification of summary dismissal - which, moreover, was undated which gave the particulars he had asked for. The letter ought to have stated the effective date of dismissal. He was not given a proper opportunity to reply, and the dismissal was therefore wrongful. There was also breach of Rule 1120, which lays down the procedure for suspension of a staff member pending investigation of charges of misconduct.

C. In its reply the WHO discusses in detail the items of evidence adduced by the complainant and concludes that they fail to rebut the charges against him. It observes that those charges were set out in its letter of 14 December

1979, which read: "... you are hereby charged with ... repeated submission of medical claims and education grant claims supported by forged and falsified documentation including pharmacy bills, receipts for private tuition and certificates of attendance resulting in significant financial losses to WHO and to the Staff Health Insurance." Those charges were specific, and the complainant answered them in his letter of 19 December. His reply was unsatisfactory, and the dismissal followed, the procedure in Rule 1130 being fully complied with. The letter of 14 December met all the requirements of Rule 1120. The complaint is therefore devoid of merit.

D. In his rejoinder the complainant enlarges on his pleas. He challenges in detail the conclusions the WHO drew from the evidence. He believes that its charges are pure surmise and do not stand up to scrutiny of the facts: there has been a miscarriage of justice. He repeats his allegations of procedural irregularities: for example, the letter of dismissal was undated and did not state the effective date of termination. Those irregularities, he maintains, render the decision null and void.

E. In its surrejoinder the WHO maintains that the complainant has failed to refute the overwhelming evidence which shows that he submitted unjustified claims for medical and educational expenses on the strength of false papers. Instead he merely quibbles over details of procedure. In particular Rule 1075.2 says that in case of summary dismissal for serious misconduct the staff member shall not be entitled to notice of termination. Moreover, he was in no way prejudiced by the fact that the letter of dismissal was undated. His dismissal fully complied with the rules and was justified.

CONSIDERATIONS:

The issue

WHO Staff Rule 1130 provides as follows:

"A staff member may not be reassigned for misconduct, dismissed for misconduct, nor summarily dismissed for serious misconduct until he has been notified of the charges made against him and has been given an opportunity to reply to those charges. The notification and the reply shall be in writing, and the staff member shall be given eight days from receipt of the notification within which to submit his reply. This period may be shortened if the urgency of the situation requires it."

The charge laid against the complainant is contained in a letter of 14 December 1979 in these terms:

"Repeated submission of medical claims and education grant claims supported by forged and falsified documentation including pharmacy bills, receipts for private tuition and certificates of attendance resulting in significant financial losses to WHO and to the Staff Health Insurance."

In his reply dated 19 December 1979 the complainant denied having forged or falsified any document in support of any claim he made and stated that the WHO's letter was too general and vague and complained that it did not specify (i) the date of such forgery; (ii) in respect of whom the forged claim was submitted; (iii) which document was forged and who testified to the illegality of the document; (iv) whether or not the repeated medical bills were signed by a qualified medical officer.

On 31 December 1979 the Regional Director informed the complainant that he was summarily dismissed and stated that a document dated 3 December 1978 relating to the admission to school of the complainant's daughter was a forgery, that a cash receipt dated 30 September 1978 for special coaching was also a forgery and that receipts for medicine were grossly inflated and the pharmacies were not registered with the Pharmacy Board.

The complainant appealed and the Regional Board of inquiry and Appeal on 9 May 1980 upheld the Regional Director's decision and subsequently the Headquarters Board of Inquiry and Appeal on 13 July 1981 recommended that the complainant's appeal be dismissed.

The complainant is a Ghanaian national and was appointed in 1974 as a clerk-stenographer at the Regional Office of WHO at Brazzaville. At all material times his wife and his seven children of school age lived at Saltpond in Ghana while the complainant lived and worked in Brazzaville.

The procedural point

The clear intentment of Staff Rule 1130 is that a staff member must be informed of the accusation being made against him. The amount of detail which must be given him may vary according to the nature of the charge but must be sufficient to enable him to know the particular breach or shortcoming which is alleged to constitute misconduct or serious misconduct.

It must be said that the complainant should have been informed of the period during which the WHO was alleging he submitted medical and education grant claims supported by forged and falsified documentation. In view of the fact that the accusation was based on the investigation by the WHO auditors which covered a limited period only, the complainant's attention should have been drawn to the dates of the commencement and of the end of the period in question.

It is not difficult to conceive of cases in which such an omission would constitute an irreparable flaw in the procedure laid down in Staff Rule 1130. But in the circumstances of this case, where the complainant was himself submitting claims which by their very nature required his verification and which, since the documentation came from abroad, could not be readily confirmed by the Brazzaville Office, the complainant could have been in no doubt as to the accusation he was called upon to answer, his attention having been specifically drawn to pharmacy bills, receipts for private tuition and certificates of attendance.

In any event, even assuming that Staff Rule 1130 was not fully complied with, the evidence which emerged before the Regional Board was so overwhelming that it cannot be said that there has been any miscarriage of justice.

The merits

Besides alleging a procedural defect the complainant is denying the charges against him. Even if not all the accusations are proved those which are proved were, in the Tribunal's view, serious enough to warrant the dismissal.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner