

FIFTY-FIRST ORDINARY SESSION

In re GARCIA

Judgment No. 591

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan America Health Organization (PAHO) (World Health Organization) by Mr. Carlos García on 1 March 1983, the PAHO's reply of 3 May, the complainant's rejoinder of 17 June and the PAHO's surrejoinder of 10 August 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 230, 530 and 1230.1 and WHO Manual sections II.1.10, 40, 50, 95, 100, 105 and 110 and Annex C, and II.4.190 to 250;

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 Spain, joined the PAHO in Washington in 1956 as a clerk in the General Service category. In 1962 he obtained grade P.1. In 1973 he was promoted to P.2 and then appointed to post 0201 as a conference officer in the Department of Conference and General Services. He obtained grade P.4 in 1977. In the autumn of 1980 he applied for review of the P.4 grading of post 0201. In the spring of 1981 the Classification Unit of the Department of Personnel did a "desk audit" and its findings went to the Advisory Committee on Post Reclassification for Professional Posts, which on 9 February 1982 recommended confirming the grade. Personnel did so on 19 February and on 7 May he appealed to the Board of Inquiry and Appeal. Reporting on 1 November 1982, the Board recommended by four to one rejecting his claim but paying his costs. The Director told him by a letter of 17 December 1982, which is the impugned decision, that he upheld the grading but would pay costs up to 1,000 United States dollars.

B. The complainant alleges "improper application of the post classification standards" within the meaning of Staff Rule 1230.1.4, and in particular of Manual section II.1.40.1 to 4. He believes he has greater responsibility than other P.4 officials; under II.1.40.3 he is entitled to a higher grade if his duties warrant it, and they warrant P.5; and the description of post 0201 takes no account of an increase in his actual duties. The classification Unit's methods and conclusions were wrong. Similar posts in other United Nations organisations are P.5. "Personal prejudice" against him, within the meaning of Rule 1230.1.1, may be inferred from his account of the facts. In 1969 he objected to his then grade and fell foul of his supervisor, the Chief of Personnel and Management, who has been hostile ever since. Since 1977 his performance has not been appraised: a breach of Rule 530 and evidence of prejudice. There was breach of Manual section II.4.190 to 250, which allows officials "access to any non-privileged material in their files". Yet until he appealed he was refused copies of the non-confidential documents which served to confirm his grading. He criticises the Board's

report. He invites the Tribunal to quash the decision, to order the upgrading of his post to P.5 with effect from 14 November 1980 and to award him costs and any other relief it thinks fair.

C. The PAHO replies that the complaint is devoid of merit. The review was carried out competently and in keeping with Manual section II.1, Annex C (the Post Classification Plan). It disclosed that the post was not up to P.5 standard. The complainant exaggerated the increase in his duties. Other conference officers are graded only P.3 or even P.2. Gradings in other organisations, are irrelevant: besides, to compare the senior posts he mentioned with his own is absurd. The duties of P.5 officials in his Department are broader in scope and more responsible. The review bodies made no mistake of fact, overlooked no essential fact and drew no mistaken conclusions. The Tribunal has declared it will decline to substitute its own assessment. There was no personal prejudice. His relations with his supervisor, though strained, prevented neither of them from working normally and had no effect on his grading. Even if it had, the remedy would be not the complainant's promotion, but a new grading exercise. The absence of performance appraisals in recent years has not injured him since he has had normal salary

increments. PAHO policy is to refuse, on grounds of privilege, not confidentiality, to divulge the contents of a file on post classification. That would deter discussion in grading reviews, and it is reasonable to disclose evidence only at the instance of the Board of Inquiry and Appeal or the Tribunal. The PAHO rejects his criticism of the Board's report. In particular the submission to the Board of evidence on his character which the Director of Administration had ordered to be removed from the records had no effect on the Board's decision anyway.

D. In his rejoinder the complainant again alleges procedural flaws in the review procedure. The desk audit was perfunctory and papers were secretly assembled. His description of his duties is not inflated and he further explains why they do warrant P.5. The PAHO's comparison of his post with similar ones in other organisations is incorrect. Its grading standards are out of date and its methods arbitrary. Relations with his supervisor were so bad that his appraisals stopped and for two years he had no post description. It is absurd and unfair to allow access to classification files only on appeal. The evidence put to the Board on the complainant's character spoiled his chances of success.

E. In its surrejoinder the PAHO develops its case and comments on several points raised in the rejoinder. In particular it rejects the contention that the method of classification applied was a formula for abuse simply because there was a better one. It reaffirms that there was no defect in the classification procedure and that confidential or privileged files will not normally be communicated to staff unless the Board or the Tribunal so orders.

#### CONSIDERATIONS:

1. The complainant has since 1973 held post 0201 in the Organization. It was usually referred to as that of conference officer and was classed at the level of P.4. On 29 October 1980 the complainant requested, as under Staff Rule 230 he was entitled to do, that the post should be reclassified at P.5. In accordance with the prescribed procedure the request was examined by the Classification Unit which reported its findings to the Advisory Committee on Post Classification. On 9 February 1982 the Committee decided to maintain the post at the P.4 level. The complainant appealed against this decision and on 1 November 1982 the Board of Inquiry and Appeal by a majority of 4 to 1 recommended the Director to adopt this decision. On 17 December 1982 the Director decided to do so and this is the decision impugned.
2. The classification of a post depends upon an assessment of the type of work performed and the level of responsibility. It is an assessment which can only be made by persons whose training and experience equip them for the task of evaluating and grading posts. The Tribunal, therefore, will not substitute its own assessment or direct that a new assessment be made unless it is shown that the Organization acted in the matter on a wrong principle.
3. It is hardly to be disputed that the post classification system in force in 1982 in the Organization was unsatisfactory. This was the unanimous conclusion of the Board, who said that the system was unsafe, and it is not challenged in the argument which the Organization has presented to the Tribunal. The Board found that the system lacked parameters and criteria with the result that the Unit had to resort to "indirect indicators and considerations" instead of applying clear standards. The majority of the Board found it necessary to proceed in the same way, i.e. "on the basis of its best Judgment and general principles of administration" and by comparing the functions of the post "with the general profile of the P.4 and P.5 posts in PAHO". "Given the lack of categorical elements of judgment to support a reclassification to a P.5 level" the majority concluded "that the post could remain reasonably classified at the P.4 level". This seems to be putting the onus on the complainant of finding a way out of a situation created by the obscurity of the system for which the Organization is responsible. This is hard, since he had shown, as the Board found, that "important and difficult" duties had been added to the post.
4. The question is whether in acting upon the recommendation of the majority the Director erred in principle. In the opinion of the Tribunal he did. This need not be put simply on the narrow ground that the recommendation erred as to the burden of proof. The substantial ground is that the majority, and therefore the Director, failed to apply the system in force. True, it may be assumed that that system was so defective as to be inapplicable. But this does not warrant the Unit or the Committee or the Director himself in proceeding unsystematically. The Director should have remitted the request to the Unit for reconsideration after he had provided it with clear and intelligible parameter and criteria.
5. In the particular circumstances this would have been easy. Article 13 of the Statute of the International Civil Service Commission requires it to establish job classification standards. It has devised a document which is known as the Master Standard. This contains a point factor rating system which would show, so the complainant contends

with the aid of a detailed calculation of points, that post 0201 should be graded P.5. Since early in 1980 the WHO has been completing post descriptions on ICSC forms, and on 4 March 1983, i.e. three-and-a-half months after the decision impugned, the occupational group to which the complainant belongs was classified in accordance with the Master Standard.

DECISION:

For the above reasons,

1. The appeal is allowed and it is ordered that a new assessment be made by the application of the ICSC Master Standard.
2. The Organization shall pay to the complainant 2,000 United States dollars as costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable Lord Devlin, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Devlin

E. Razafindralambo

A.B. Gardner