

Registry's translation, the French text alone being authoritative.

FIFTY-SECOND ORDINARY SESSION

In re MADUREIRA

Judgment No. 605

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Jorge Manuel Madureira on 13 April 1983 and corrected on 7 June, the WHO's reply of 5 September, the complainant's rejoinder of 12 October and the WHO's surrejoinder of 11 November 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rule 1110.1.2 and WHO Manual section II.2.330;

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. In February 1980 the complainant, a Portuguese citizen, joined the WHO's Regional Office at Brazzaville, in the Republic of the Congo, as a translator. He was given the lease of a villa at Djoué, a residential settlement owned by the WHO. With him in the villa lived a Congolese citizen, Miss Bernadette Kibindza. Her "moped" was stolen on 23 February 1982 and police suspicion fell on the Regional Director's son and another. On 25 February the complainant took time off to go to the police station and there he consented not to bring charges. Called to account for his absence, he explained the reason to the WHO, but on 2 March the Personnel Officer replied that a written reprimand was imposed on him under Staff Rule 1110.1.2 for absence without leave. According to a circular of 1977 staff were required to report to the WHO the presence of guests and the length of their stay in WHO dwellings. A lease concluded between the complainant and the WHO on 10 March 1982 stipulated that no guest might live in the villa without the WHO's consent. On 11 March a new circular defined a guest as someone other than a "dependant" under the staff rules. On the grounds that Miss Kibindza was not such a dependant and that her residence in the villa was in breach of the lease and the new circular, the WHO terminated the lease on 22 March and ordered the complainant to leave forthwith. On 24 March he supplied an attestation from a district leader in Brazzaville saying that Miss Kibindza had been his wife since February 1981; he contended that she was such by local custom. He appealed to the Regional Board of Appeal against the reprimand and the eviction. The Regional Board recommended paying him housing allowances due under the rules and letting him go back to Djoué once his marital position was in order. To that the Regional Director agreed. The reprimand was upheld. The complainant went before the headquarters Board of Inquiry and Appeal on 29 October. On 3 March 1983 the Board recommended rejecting the appeal, and the Director-General accepted the recommendation on 14 March.

B. The complainant says he has suffered vindictive pressure because of the theft of the motor cycle. Marriage by custom is officially recognised in the Congo, and he had every right to have Miss Kibindza living with him as his wife. The WHO hastily concluded a lease and changed the circular just so that it could attack him. The circular merely required reporting the presence of guests, and he reported that of his wife on 10 March. On 17 March the WHO told him to sort matters out as soon as possible, and he supplied the attestation on 24 March. Yet it refused to cancel the eviction, ordered only two days before. The appeals boards offered mere palliatives and their reports are tendentious. His presence at the office on 25 February was not indispensable and the reason for his absence was legitimate. He asks the Tribunal to order that he be allowed to return to the villa (his present lodgings being unhealthy), repaid his expenses and awarded damages.

C. The WHO maintains that under Article II(5) of its Statute the Tribunal is not competent to hear the appeal against eviction. The WHO is under no duty to accommodate its staff, and it provided the villa not as employer but as landlord. The Tribunal may not hear a dispute between landlord and tenant. Besides, the complaint is devoid of merit. All the challenged decision says is that he may return to Djoué provided Miss Kibindza becomes his

dependant. All Manual section II.2.330 requires is that he supply birth and marriage certificates and, each year, various other papers. WHO practice is not to treat the attestation as a marriage certificate. There was neither abuse of authority nor discrimination. The requirements in the circular of 1982 are legitimate, the purpose being to check who is at Djoué, and they are reflected in the lease, which forbids the residence of a third party without the WHO's consent, under pain of eviction.

D. The complainant rejoins that the Tribunal must be competent since no other judicial body is: if it were not, the WHO could do anything it pleased in the matter of leases. Some staff could not stay on in Brazzaville if they had to leave Djoué since other housing is too expensive: that is why the leasing of a WHO house is so important. He is being discriminated against. The traditional is generally preferred to the European form of marriage. Most staff are wed by custom and have wives living with them in Djoué; yet the WHO has not treated them so severely. Besides, the lease did not forbid a guest, but occupancy by a third party, for example under a sub-let. All the circular says is that the WHO must be informed of the presence of a guest; its consent is not required.

E. In its surrejoinder the WHO points out that the circular requires reporting the presence of guests and the length of their stay: obviously the intention is that their stay should be temporary. It was the lease that required the WHO's consent to the lodging of a third party, and the complainant was in breach of that requirement since the person in question was to live in the villa permanently: he has offered no evidence to show he has been treated differently from anyone else in the same position.

CONSIDERATIONS:

1. On 14 March 1983 the Director-General of the WHO decided, on the recommendation of the headquarters Board of Inquiry and Appeal, to uphold the written reprimand imposed on the complainant on 2 March 1982 and to confirm termination of his lease of a villa in a residential settlement belonging to the WHO at Djoué.
2. Although the complainant says he is challenging both points of the decision, he addresses no pleas to the reprimand, and the Tribunal holds that the only point at issue in this case is the termination of the lease.
3. According to Article II(1) of its Statute the Tribunal "shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case". Article II(5) says that the Tribunal "shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure".

The WHO has recognised the Tribunal's jurisdiction and the complainant is a staff member of the WHO and subject to its Staff Regulations.

4. His contention is that in terminating the lease of his villa at Djoué the WHO was in breach of a right he enjoyed as an international civil servant. The WHO replies that the Tribunal may not hear a dispute over the lease of premises which it made available to a staff member when the Staff Regulations put it under no obligation to do so.
5. Le Tribunal has only such competence as is conferred on it, and this is confined to complaints alleging non-observance of the terms of appointment or Staff Regulations. The staff member does not have to rely on a particular clause of his contract, the regulations or any subsidiary text. When he is seeking enforcement of a right he claims as an international civil servant and his claim rests on a breach of that right by the organisation in his status as a staff member, Article II(5) empowers the Tribunal to entertain it.

What, then, was the nature of the lease agreement between the WHO and the complainant?

The villa forms part of a residential settlement which the WHO, in return for the payment of rent, puts at the disposal of staff who are not citizens of the Congo. Neither the Staff Regulations nor the Staff Rules nor any other text adopted thereunder lay any obligation whatever on the WHO to provide accommodation for staff stationed in Brazzaville. Indeed the terms on which accommodation is provided are at its discretion. Nor are staff members bound to accept any accommodation it may offer them. The WHO is like any other landlord, save that rent is deducted from salary. The terms on which accommodation is offered and accepted are therefore not governed by

the Staff Regulations. The lease which the WHO concludes with the tenant does not refer to them, nor does any of its clauses allow of indirect reference to them.

6. Apart from the contract of lease there is, it is true, a WHO circular, which has been amended several times, on the lodging of visitors and guests at Djoué. But the provisions of the circular clearly fall outside the ambit of the applicable law. If their purpose were to ensure the efficiency of the Organization it might be agreed that they do form part of the Staff Regulations and that the Tribunal may review their application.

But that is not so. The purpose of the circular -- and that was what brought about the complainant's expulsion -- is to ensure the safety of the denizens of Djoué. It is a regulation which has no bearing on WHO work as such. It is therefore something quite different from the Staff Regulations and the Tribunal is not competent to hear the complainant's allegation that his eviction was unlawful and his claim to damages in consequence.

7. He submits that if the Tribunal declares it is not competent he will have no judicial means of redress for the injury caused by the eviction. That may indeed be regrettable, but the Tribunal has no more than the competence conferred on it: it is bound by the provisions of its Statute, and under the Statute it is not competent.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 12 April 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner