

SEVENTIETH SESSION

In re CASTILLO

Judgment 1071

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Magda Angélica Castillo against the Pan American Health Organization (PAHO) (World Health Organization) on 6 December 1989 and corrected on 2 January 1990, the PAHO's reply of 19 March, the complainant's rejoinder of 30 April and the Organization's surrejoinder of 12 June 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulations 4.2 and 4.4, Staff Rule 410.1 and PAHO/WHO Manual provision 344;

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

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of Guatemala, joined the Pan American Sanitary Bureau (PASB), the secretariat of the PAHO, in Washington D.C. in 1982. She was appointed in 1983 to a G.4 post as an office assistant in the Staff Benefits Section. She is employed under fixed-term appointments.

In September 1987 the PAHO announced a competition for a G.6 post, No. 5500, as an "accounting assistant II" in the Allotment Control Unit, and the applicants included the complainant and Mr. Pablo Quilodran, who at the time held a temporary appointment and was therefore treated as an "external" candidate.

The complainant's post was upgraded to G.5 and she was promoted to that grade as from 1 April 1988.

A selection committee with five members met on 13 May 1988 to make a recommendation for appointment to the post. It eliminated all the applicants but the complainant and Mr. Quilodran. The chairman had not yet made up his mind; two members preferred the complainant; and the other two, including one who represented the Unit, were in favour of appointing Mr. Quilodran. The committee then interviewed him about his education and experience. The chairman having come out in support of him, the committee recommended by a majority of three to two that he be appointed. On 26 May the Chief of Administration endorsed that recommendation, and on 15 June the complainant was told that she had been unsuccessful. On 12 August 1988 she lodged an appeal with the Board of Appeal.

On 21 June 1989 the complainant was appointed to another G.6 post.

In its report of 14 July 1989 the Board held that the selection procedure had been flawed because the selection committee had interviewed only one of the applicants; it recommended paying the complainant damages in the amount of 1,000 United States dollars and her costs.

By a letter of 8 September 1989, the impugned decision, the Director of the PAHO informed the complainant that, "even though some of the selection procedures might not have been perfect", the choice of Mr. Quilodran was valid, there were no grounds for granting her damages, and her appeal failed.

B. The complainant objects to the choice of candidate on three grounds.

(1) According to the report by the minority of the selection committee the representative of the Unit to which the post belonged said that since she was shortly to take home leave she would be unable to train the complainant in time, whereas Mr. Quilodran, who had been carrying out the duties of the vacant post under temporary appointments for two years, would not need any training.

PAHO Staff Regulation 4.2 reads:

"The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence, and integrity".

Staff Rule 410.1 provides:

"The paramount considerations in the selection of staff shall be competence and integrity".

And PAHO/WHO Manual provision 344 states:

"Selection committee members are responsible for using and applying a relevant, consistent and fair process for evaluating and making meaningful distinction among candidates, with the objective that the selected candidate best meets the needs of the Organization".

The criterion applied by the representative of the Unit being irrelevant to the applicants' competence and efficiency, her vote in favour of Mr. Quilodran and the committee's recommendation were invalid.

(2) There was breach of equal treatment and, more particularly, of the Tribunal's ruling in Judgment 107 (in re Passacantando) that at every stage of a competition the candidates must be put on an equal footing: the committee saw Mr. Quilodran but not the complainant.

(3) The PAHO was in breach of its duty to prefer an internal candidate to an external one.

Staff Regulation 4.4 reads:

"Without prejudice to the inflow of fresh talent at the various levels, vacancies shall be filled by promotion of persons already in the service of the Pan American Sanitary Bureau in preference to persons from outside".

Since the committee found that the complainant's qualifications were at least equal to those of Mr. Quilodran, an outside candidate, that provision gave the complainant priority.

She seeks an award of damages equivalent to the difference between her actual earnings at G.5 and the sums she would have earned had she been appointed to post 5500 from the date of Mr. Quilodran's appointment to that post up to the date of her own promotion to G.6. She seeks costs.

C. In its reply the PAHO contends that the complaint is devoid of merit.

(1) The report by the minority of the selection committee does explain why the representative of the Unit voted for Mr. Quilodran but the complainant draws the wrong conclusions. She does not deny that she would have needed training; so that member of the selection committee did base her choice on considerations of efficiency and competence. Even though the two candidates may have been equal in general qualifications the complainant would have needed training and the Unit's output would have fallen for some time. The member's vote was therefore proper and valid.

(2) There was no breach of equal treatment. The minority report reveals that the selection committee was fully aware of the complainant's education and experience and that the only reason why it saw Mr. Quilodran was to "clarify incomplete areas of his personal history statement". The information it gained from the interview was neither beneficial to him nor harmful to the complainant. She does not object to the chairman's having voted in his favour.

(3) Judgment 107 also says that someone already in an organisation's employ should have priority only if his qualifications are at least equal to those of other candidates. In this instance the complainant did not have qualifications "at least equal" to Mr. Quilodran's: he had the edge over her in that he had already proved himself in the job and did not need training.

D. In her rejoinder the complainant points out that, though Mr. Quilodran did not need training for work in the Unit, she had, unlike him, wide experience of PAHO work in general: the requirements for good performance go beyond familiarity with a particular post. She had a good record of performance and had had a better education than Mr. Quilodran. Besides, she was not wholly unfamiliar with the nature of the duties. To allow the Organization's argument that a need for training bars preference would thwart the purpose of Regulation 4.4. It was contrary to that provision to decide against her just because she would have needed training that the representative of the Unit did not have time to give her before going off on home leave. The majority members of the selection committee overlooked a material fact, her superior education; they ignored the rule on preference; and they should

have given her an interview. She presses her claims.

E. In its surrejoinder the Organization develops its earlier pleas. It points out that the complainant accepts that Mr. Quilodran did not need training for the job. "Wide experience" of PAHO work is a vague term and no valid criterion for appointment to a particular post. The Organization is arguing, not that the need for training will in general bar preference, but that in the circumstances of this case the majority were right to treat the need to train her as outweighing any preference she might have been entitled to as an internal candidate. Such a view is compatible with Regulation 4.4. Much of her case is gratuitous: she has no cogent objections to the majority members' appraisal of her. That they came to a view she dislikes does not mean that they overlooked any material fact.

CONSIDERATIONS:

1. In the Pan American Sanitary Bureau appointments and promotions to posts that are put up for competition are decided on by the Director on the recommendations of selection committees. PAHO/WHO Manual provision 344 provides:

"Selection committee members are responsible for using and applying a relevant, consistent and fair process for evaluating and making meaningful distinction among candidates, with the objective that the selected candidate best meets the needs of the Organization."

2. The PAHO announced in September 1987 that a post graded G.6, No. 5500, for an accounting assistant in the Allotment Control Unit would be put up for competition and it invited applications. The applicants included the complainant, who at the time of the announcement held a grade G.4 post as an office assistant in the Staff Benefits Section but was promoted to G.5 on 1 April 1988 on the reclassification of that post, and Mr. Pablo Quilodran, an external candidate.

A selection committee with five members was set up to make a recommendation to the Director for appointment to post 5500. It met on 13 May 1988. It eliminated everyone but the complainant and Mr. Quilodran, who had been performing the duties of post 5500 under temporary appointments for two years. Two of its members preferred the complainant and two Mr. Quilodran, the chairman being undecided. The committee then decided to see Mr. Quilodran and at the interview discussed with him his educational attainments and experience of accounting. The committee did not interview the complainant. Having heard and seen Mr. Quilodran, the chairman decided to join the two members who supported him, and so the committee recommended him by a majority of three to two. The Director followed that recommendation and duly appointed him, and on 15 June 1988 the complainant was informed that her application had been unsuccessful.

Although the Board of Appeal, to which she then went, made a recommendation in her favour, the Director held to his position and rejected her claims in a final decision dated 8 September 1989.

3. In Judgment 107 (in re Passacantando) the Tribunal held:

"If [the right to take part in competitions] is to be effective, it must necessarily include the right to demand that the arrangements for the competition ensure the appointment of the candidate who is really the best qualified. In other words, at every stage of the competition including the arrangements made, the conduct of the tests and the evaluation of their results, every candidate must be treated on an equal footing and with full impartiality."

In this case the selection committee did not put the complainant on an equal footing with Mr. Quilodran: it interviewed him but not her. The interview gave Mr. Quilodran an opportunity to let the committee have further information about himself and so it allowed him an unfair advantage over the complainant.

The Tribunal is satisfied that the selection procedure was flawed in that it did not come up to the standard of consistency and fairness required by the general principle stated above and reflected in PAHO/WHO Manual provision 344.

4. The complainant was promoted to another G.6 post on 21 June 1989 and she is not asking the Tribunal to set aside the decision to appoint Mr. Quilodran. What she seeks, and what she will be granted, is an award of damages equal to the difference in salary between the two grades from the date of Mr. Quilodran's appointment to the G.6 post up to the date of her own promotion.

5. This is one of two complaints before the Tribunal at this session from PAHO officials of several years' standing who say they have been passed over for promotion in favour of temporary staff who joined the Organization only recently. The other such complaint is that of Miss Barahona, on which the Tribunal rules this day in Judgment 1077.

6. In her minority report the representative of the Staff Association on the Selection Committee observed that the fact that Mr. Quilodran had been trained in the duties of post 5500 "was given the utmost importance and was the factor that tipped the scale" in his favour. She drew attention to the case of another temporary staff member in the Organization who, she said, was "being trained to perform the duties of another G.6 post". She thought it "clear" that when that post came to be advertised and was open for selection the temporary staff member would be appointed to it. She described "this practice" as "not fair to the other candidates that meet the requirements of education and work experience and have been working in PAHO for many years". She went on: "Especially considering the scarcity of G.6 posts, staff members who have been working at the G.5 level for many years, have a very limited opportunity of being promoted to a higher level. ... If one of the main goals of this Administration is to obtain technical excellence in all fields of the Organization, this practice does not contribute to maintain a high morale among its staff members."

7. Regulation 4.4 does not give existing staff members absolute priority in promotion and the Tribunal does not make rulings on such matters of Staff policy, which are within the prerogative of the Director. Yet, if there were a consistent practice of recruiting people under temporary appointments and later appointing them to permanent posts, in preference to inside applicants, on the strength of the experience they had thereby gained, it would offend against the purpose and spirit of Regulation 4.4.

8. Lastly, the complainant is entitled to an award of 500 United States dollars in costs.

DECISION:

For the above reasons,

1. The Director's decision of 8 September 1989 is quashed insofar as it refuses payment of an indemnity to the complainant.
2. The PAHO shall pay her damages equal to the difference between her actual earnings at grade G.5 and the sums she would have earned had she held G.6 post 5500 in the period from the date of Mr. Quilodran's appointment to that post up to the date of her own promotion to G.6.
3. The Organization shall pay her 500 United States dollars in costs.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner