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

EIGHTEENTH ORDINARY SESSION

Judgment No. 112

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (O.M.S.) drawn up by Mr. P. C. de C. on 27 October 1966, the reply of W.H.O. of 16 December 1966, complainant's rejoinder of 17 March 1967, and W.H.O.'s reply to that rejoinder of 3 May 1967;

Considering Article II, paragraph 5 of the Statute of the Tribunal, Article XI of the W.H.O. Staff Regulations, and W.H.O. Staff Rules 440, 960 and 1040;

Considering the evidence given under oath by Mr. Michon, official of W.H.O., before Mr. André Grisel, Vice-President of the Tribunal, and the Assistant Registrar, acting on behalf of the Tribunal, on 5 October 1967;

Considering the letter of 2 October 1967 addressed to the Tribunal by Mr. Lucas, former official of W.H.O., and transmitted to the parties by the Assistant Registrar on 4 October 1967;

Having heard in public session on 9 October 1967 Messrs. Laurent and Marillier, officials of W.H.O., as sworn witnesses, together with Mr. Troyanov, Counsel for complainant, and Mr. Vignes, Agent of W.H.O.;

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

A. In 1964 the World Health Organization held a competition for a vacancy as reviser and for several vacancies as translator. Mr. C. de C., who had been unsuccessful in the tests set for candidates for the post of reviser, was nevertheless engaged as translator at Geneva headquarters as from 1 February 1965 for a period of two years, the first year being a probationary period. In October 1965 he served as translator at a conference held in Addis Ababa.

3. The first report on Mr. C.'s work, drawn up on 19 November 1965 by the Chief of the Translation Service of the Organization, Mr. Rigolot, complained in strong terms that he viewed his duties in a manner which was not compatible with the requirements of international organisations. On 23 November Mr. C. asked that this report should be amended, that he should be assigned to another post, and that in the event of these requests being refused, his appointment should be extended for a further six months. After repeating these requests on 27 November he informed the Chief of Personnel, in a conversation confirmed in writing on 3 December, of his intention to leave his employment on 31 July 1966 at the latest, subject to the Organization's agreement. On 8 December the Chief of the Translation Service substituted an amended report for that of 19 November, reiterating the criticisms made in the first report but in briefer form. On 14 December the Chief of Personnel informed Mr. C. that his probationary period had been extended for a further six months in the light of the report of 8 December, and that the Organization agreed to the date of 31 July 1966 for the termination of his appointment.

C. On 10 December 1965 Mr. C. de C. was taken violently ill and admitted to hospital as an urgent case; he did not return to work until 1 April 1966. On 20 April the Chief of the Translation Service made a further report on Mr. C.'s work, confirming the terms of the earlier one. On 25 May, soon after refusing to sign the above-mentioned report, Mr. C. was informed that his

appointment would be terminated on 31 July 1966 for unsatisfactory service, in accordance with Article 960 of the Staff Rules. On 28 July the Director-General rejected the appeal made against this decision. To a request for compensation for sickness arising out of his employment he replied, also on 28 July, that he would take a decision later in the light of the recommendations of a special advisory committee. On 21 September, while stating his intention of submitting a complaint to the Administrative Tribunal of the International Labour Organisation against the termination of his appointment, Mr. C. also stated that he would await the Director-General's decision before bringing the question of sickness compensation to the Tribunal's notice.

D. In the present complaint, dated 27 October 1966, Mr. C. prays the Administrative Tribunal:

1. To quash Mr. Rigolot's report of 20 April 1966 concerning complainant's work;

2. To order payment to complainant of damages in an amount equal to the salary which would have been due to him for the last six months of his appointment, namely 26,580 Swiss francs;

3. To order payment to complainant of compensation for the injury suffered by him as a result of illness attributable to the performance of his official duties, in the amount of 25,000 Swiss francs;

4. To order the World Health Organization to pay all the costs, including the fees of complainant's legal counsel.

The Organization prays that the complaint be dismissed.

E. On 28 October 1966 the Director-General, in the light of the recommendations of the Advisory Committee, refused

complainant’s request for sickness compensation.

CONSIDERATIONS:

On the claim that the report of 20 April 1966 should be quashed

1. A plea to quash can be directed only against a decision, that is, against an act deciding a question in a specific case. The report of 20 April 1966 does not rule on any disputed point, but merely contains an appreciation of the capabilities of the complainant; it does not, therefore, contain a decision capable of being rescinded. To the extent to which the complaint seeks this relief it is not receivable.
On the claim for compensation for termination of appointment

2. The Organization terminated complainant's appointment on 31 July 1966, i.e. at the end of the probationary period which was initially fixed at one year and later extended for six months. The Tribunal is competent to review any decision of the Director-General terminating the appointment of an official during the probationary period, if it is taken without authority, is in irregular form or tainted by procedural irregularities, or if it is tainted by illegality or based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier. But the Tribunal may not substitute its own judgment for that of the Director-General in regard to the work or conduct of the person concerned or his suitability for international service.

3. Article 440, second paragraph, of the Staff Rules lays down that in the event of the extension of the probationary period for a specified term a further report and decision is required before the expiry of the period of extension. Complainant has criticised the author of the report of 20 April 1966 for having based his judgment on a period of only twelve days's work subsequent to a

long period of sickness, and consequently writing without full knowledge of the facts and thus acting contrary to the spirit of article 440, second paragraph, of the Staff Rules. Accordingly he complains that the Director-General infringed this provision by taking his decision in the light of such a report.

It is clear, however, from the correspondence between the parties that it was the understanding of both sides that the extension of the probationary period was not designed so as to allow of a further review of complainant's performance, but merely to give him an opportunity of looking for a new position. In his letters of 23 and 27 November 1965, complainant requested an extension, in his own words, to avoid having to move house before the end of the school year or in the middle of winter. Further, on 3 December 1965, he confirmed his previously stated intention of leaving his employment on 31 July 1966. For its part, on 14 December 1965 the Organization agreed to the extension on the basis of the report of 8 December, that is to say in the knowledge that complainant's work so far had been unsatisfactory, and on the assumption that he would not be able to correct the unfavourable impression left by his first probationary year. In these special circumstances, continuation of complainant's appointment on the expiry of the probationary year cannot be regarded as an extension of the probationary period within the meaning of article 440 of the Staff Rules. It follows that the Organization had no obligation to make the report specified in the above-mentioned article and that the date at which the report was drawn up is of no consequence in the present case.

4. Complainant claims or implies that the Director-General did not take into account certain facts, namely the results of the competition which led to his appointment as translator, the lack of adequate training during his probationary period, the absence of any warning before the first unfavourable report was made, and the praise he received for his work at Addis Ababa.

Since they do not relate to facts in issue in the present case these alleged omissions are immaterial. The degree of success attained by complainant in the competitions in which he took part is immaterial, his actual work during his probationary period being the only material factor. Furthermore, if his supervisors did not think it necessary to give him any special training, this was because he had already had some 15 years' experience as translator and reviser, so that he was assumed to know his job. Moreover, it is clear from his own statements, which are confirmed by evidence from several other sources, that, even if they were not frequent, the criticisms made of his work were nonetheless such as to make him aware of the failings of which he is accused. Lastly, the comments made on his work at the Addis Ababa conference are not relevant, the circumstances of his work there being different from those affecting translators at headquarters.

5. It remains to be considered whether, in terminating complainant's appointment on the basis of the reports of his supervisor, the Director-General drew conclusions which are clearly false from the documents in the dossier. On this point the Tribunal would exercise its power of review only if it was abundantly clear that complainant's work was well up to such standards as the Organization might reasonably set. It appears from the dossier, however, that complainant's translations were the subject of numerous corrections, some of which are debatable and possibly unjustified, but most of which are certainly pertinent. Moreover, it is the consensus of opinion among the revisers responsible for cheeking the translators' work that complainant's translations were below the average standard of those of his colleagues. It follows that, although complainant's linguistic knowledge is beyond question, it is not unreasonable that his work should be considered unsatisfactory. In consequence, the conclusions on which the decision impugned is based are not manifestly unfounded.

On the claim for compensation for sickness

6. This claim is not directed against the original decision of 28 July 1966, which was a purely suspensory measure expressly accepted by complainant and not challenged by him. If it is to be taken as included in the complaint of 27 October 1966, it clearly does not attack the decision taken by the Director-General on the following day on the subject of sickness compensation. If it is to be taken as contained in the rejoinder of 17 March 1967, it still does not attack that decision, which is not mentioned in the rejoinder. Lastly, complainant does not allege that the Director-General implicitly decided to reject his claim. Accordingly, the claim which is not directed against any decision of the Director-General must be dismissed as not receivable.

7. Even if there were any decision of the Director-General which the complainant could attack, his contention would have to be dismissed as ill-founded. The evidence he has produced does not establish any relation of cause and effect between the exercise of his profession and his illness. In particular, the medical reports produced by him say nothing about the origin of his illness, while the Advisory Committee consulted by the Director-General concluded that the illness contracted by complainant was unrelated to the performance of his official duties. In these circumstances rejection of the claim for compensation would in any event be justified.

8. Even if the illness arose out of his employment, complainant would still not be entitled to claim compensation. The illness would not be due to complainant's working conditions, i.e. to a state of affairs for which the Organization was responsible. On the contrary it would be the result of measures taken in respect of complainant as a consequence of his own work which the Director-General was justified in considering unsatisfactory. In other words, it would be attributable to the failings of complainant himself, and he alone would therefore have to bear

the consequences of the damage to his health.

DECISION:

For the above reasons,
The complaint is dismissed.

In witness of this judgement, delivered in public sitting in Geneva on 18 October 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy