

SEVENTY-SECOND SESSION

In re KOROLEVICH

Judgment 1152

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Margarita Korolevich against the Pan American Health Organization (PAHO) (World Health Organization) on 10 April 1991, the PAHO's reply of 12 June, the complainant's rejoinder of 26 July as corrected on 5 August and the Organization's surrejoinder of 20 August 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 230, 510.1, 1230.1.3 and 1230.1.4 and PAHO/WHO Manual provisions II.1.60 and .80;

Having examined the written evidence;

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

A. The complainant, who is a United States citizen, took up duty with the PAHO at its headquarters in Washington D.C. in July 1977. She was a clerk at grade G.5 in the Finance Section. In December 1977 she was promoted to G.6 as an accounting clerk and in December 1979 to G.7 as a staff relations technician in the Department of Personnel (APL). In 1983 she was put on a G.6 post for an accounting assistant in the Staff Health Insurance Unit but she kept her grade, G.7. On 1 January 1985 she was put on a G.7 post, No. 4343, as a category I accounting technician in the Staff Payment Unit (AFI/SP) of the Department of Finance and Accounts (AFA).

In April 1988 the Chief of AFA made her responsible for supervision of the "duty travel and transportation desks". He and the complainant having applied for review of the grading of post 4343, the Chief of the Classification Unit (APL/C) wrote to her on 8 August 1988 asking her to fill up a questionnaire for the purpose and to the Chief of AFA asking him, if he so agreed, to justify reclassification. On 17 August the Chief of AFA sent the Chief of APL/C a revised description of post 4343 and proposed changing the title to category II accounting technician and the grade to G.8. He sent the Classification Unit further information in a memorandum dated 1 September. On 24 April 1989 the Chief of the Unit told the Chief of AFA that the Advisory Committee on Post Classification would be taking the matter up in May and June 1989. But it appears not to have done so until some later date.

In a memorandum of 20 December 1989 to the Chief of APL the complainant referred to "denial of reclassification" by the Committee and asked for an explanation. In a reply of 5 January 1990 APL said that the study of her post had in fact been completed and that the decision, which had been notified to the Chief of AFA on 1 November 1989, was to change neither the title nor the grade of her post.

On 8 January 1990 the Chief of AFA wrote to the Chief of APL saying that other members of AFI/SP had not accepted the complainant as supervisor and she had said that in future she would perform only the duties set out in an out-of-date post description of 1980. He proposed a new description of her post and sent her a copy of his memorandum. On 16 January she filed an appeal with the headquarters Board of Appeal. On 20 January she answered the Chief of AFA's memorandum, strongly objecting to several assertions it contained.

In its report of 21 November 1990 the Board held that there had been no breach of the rules on review of the classification of the complainant's post and recommended rejecting her appeal. By a letter of 15 January 1991, the decision now impugned, the Director of the PAHO informed the complainant of the rejection of her appeal.

B. The complainant gives an account of the facts of her case and puts forward the following main pleas on the merits.

(1) She submits that the Board of Appeal was mistaken in making an evaluation of her duties - something only an expert in grading may make - and in relying on the Classification Unit's findings. The Board refused to let her have copies of the descriptions of four posts on which it based its finding that even G.7 posts may involve supervisory duties. For want of those texts she cannot answer the argument. She asks that the Board or the Tribunal take evidence from a grading expert on the grounds that she is alleging "improper application of the post classification

standards" under PAHO Staff Rule 1230.1.4, which she says serves no purpose if she may not call such an expert.

(2) She alleges breach of Manual provision II.1.60:

"A staff member may be assigned new duties not included in his post description on a full-time basis for a temporary period not exceeding 90 days. If the period exceeds 90 days, a new post description should be established and a classification review undertaken ..."

Although she was given her new supervisory duties on 4 April 1988 the new post description was not established until 17 August. There was no study of the post such as the Post Classification Programme requires: "... a job audit conducted by a classification officer through interviews with the incumbent and supervisors ...". The review took far too long. The principles underlying the process of classification were not observed.

(3) The complainant's supervisors are partly to blame for the refusal of upgrading. In his memorandum of 8 January 1990 the Chief of AFA mistakenly said that only "on a trial basis" had he made her a supervisor and that "supervisors must be accepted in their roles before they can be effective". It was against the rules for him to put her on probation and to make her staying on as supervisor subject to other staff's accepting her as such.

She says that she was left with nothing to do from October 1989 to August 1990; she has been humiliated; and her assignment to new duties in September 1990 disregarded her own interests, in breach of Rule 510.1.

She asks the Tribunal to "order a review of the reclassification procedure of 1990 and based in that evaluation to transfer her to a post equal in grade". She claims a description of her new post and awards of moral damages and costs.

C. In its reply the PAHO gives its own version of the facts of the dispute and answers as follows on the merits.

(1) There was no flaw in the Board's report. There is no call for evidence by an expert in grading, whether before the Board or the Tribunal. The Tribunal will not substitute its own assessment of a post nor will it order reassessment unless the organisation's assessment suffers from some fatal flaw. The burden is on the complainant to show such a flaw, and she has failed to do so.

(2) The allegation of breach of the rules on grading is unsound. The decision to confirm the grading of post 4343 was the outcome of a thorough review of the complainant's duties. Contrary to what she contends, the request for review was discussed with everyone concerned, and the classification officer had interviews with her on 21 July 1989 and with her supervisor on 14 August 1989. The review revealed that her supervisory function was comparable to "proof-reading" and did not warrant putting post 4343 two grades higher than others in her unit. There was full compliance with the material rules and principles. She is wrong to say she was "denied" reclassification as if she had a right to a higher grade: her only right under Rule 230 was to a review.

(3) In a review of grading only the duties of the post may be taken into account: such matters as the incumbent's performance, subordinates' ineffectiveness and disputes with supervisors are irrelevant. The complainant must have known from the outset that the grade of her post might be confirmed and the fact that it was neither humiliated her nor gave her any right to an award of moral damages; else the review procedure could not work. She has, moreover, failed to show that the process of review was tainted with any extraneous considerations.

D. In her rejoinder the complainant seeks to refute the case made out in the Organization's reply and enlarges on her three main pleas.

She discusses several issues of fact and points out what she sees as inconsistencies in the reply. She develops her contentions that there was improper application of the standards on classification of posts and that there was, to quote Rule 1230.1.3, "failure to observe or apply correctly the provisions of Staff Regulations or Staff Rules". No auditing of her post was carried out in the course of the review. The short conversation she had with the Chief of APL/C on 21 July 1989 did not amount to such auditing, which sometimes takes several days. The staff under her supervision were never consulted either. Keeping her idle for nine months amounted to relegation. The supervisory functions were not given to her on a trial basis: if they were, why did the Chief of AFA ask for the review of the grading of her post and why was a new post description issued? She presses her application for the hearing of an expert witness, who would give objective and impartial evidence. She denies that her supervisory functions were on a par with proof-reading. She was refused the proper rate of pay for her increased responsibilities. The treatment

she received caused her anxiety and stress. She presses her claims.

E. In its surrejoinder the Organization enlarges on the pleas in its reply. It observes that many of the submissions in the complainant's rejoinder are misrepresentations or irrelevancies, and it identifies what it sees as the material issues. It regards as groundless her contention that no auditing took place and maintains that the review of post 4343 was in line with all the relevant rules and principles. Since she kept grade G.7, it is meaningless to say that she was relegated. CONSIDERATIONS:

1. From 1 January 1985 the complainant, who has served PAHO at its headquarters in Washington D.C. since July 1977, held post 4343, graded G.7, as an accounting technician in the Staff Payment Unit.

Having been put in charge in April 1988 of the "duty travel and transportation desks", she applied for the upgrading of her post, as she was entitled to do under Staff Rule 230, and her supervisor, the Chief of the Department of Finance and Accounts (AFA), made an application to the same effect in accordance with Manual Provision II.1.80. The application set off the review procedure which is summed up in A above. The upshot was notified to her in a letter of 5 January 1990 from the Chief of the Department of Personnel (APL): neither the title nor the grade of post 4343 was to be changed.

On 16 January 1990 she filed an appeal with the headquarters Board of Appeal. In its report of 21 November 1990 the Board held that there had been no breach of the rules in the review and recommended rejecting her appeal. By a letter of 15 January 1991 the Director of the PAHO informed her of the rejection of her appeal. That is the decision she is challenging and, as is stated in B above, her claims are to (1) "review of the reclassification procedure of 1990" and transfer to "a post equal in grade"; (2) "a description of her new post"; (3) an award of damages for moral injury; and (4) costs.

2. The principles that the Tribunal applies to cases of this kind are well-established. As it has said many times, grading requires close familiarity with the conditions in which the staff member works. The assessment of the type of work performed and the level of responsibility is a value judgment, and only those whose training and experience equip them for the task may make such an assessment. The decision is, in other words, a discretionary one, it is subject only to review on limited grounds, and so it will not ordinarily be set aside unless it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the facts. Consistent precedent has it that the Tribunal will not substitute its own assessment or direct that a new one be made unless it is satisfied on the evidence that there is a fatal flaw of that kind.

It is by such principles that the Tribunal will rule on the complainant's main pleas, which it takes up below.

The application of the standards on grading

3. Her first main plea is that there was improper application of the standards on post classification, and she wants the Tribunal to take evidence from an expert in grading so that she can bear out that contention. She maintains in particular that the Board of Appeal was mistaken in its findings and wrongly refused to let her have the texts of descriptions of other G.7 posts on which it based its view that a post at that grade may comprise supervisory functions of the kind she is performing.

4. As the Tribunal construes it, presumably what she is saying is that the Director's decision - and it is that decision she is properly challenging, not the Board's findings or recommendation - rests on some error of fact, or overlooks some essential fact, or draws a plainly mistaken conclusion from the evidence. But apart from vague accusations of errors in assessment she makes no attempt at establishing any of those particular flaws, or at explaining that evidence from a grading expert would establish any. She has the burden of proof, and she has failed to discharge it. The plea fails, as does her application for the hearing of an expert.

The alleged breach of procedure

5. The complainant's second main plea is that there was breach of the rules of procedure. She cites a passage in the PAHO's Post Classification Program, a text which the Department of Personnel issued in 1984 and which explains to the staff how the procedure for grading is to be carried out. It says that once the questionnaire about the post has been filed and, when as here reclassification may affect the incumbent's employment status, the supervisor has made a recommendation,

"The next step is a job audit conducted by a Classification Officer through interviews with the incumbent and supervisors to ensure that the information provided is correctly interpreted. ..."

The complainant observes that her supervisor, the Chief of AFA, submitted on 17 August 1988 a list of revised duties and responsibilities for her post and proposed changing the grade to G.8, and that the Classification Unit got the questionnaire back from her on 16 September 1988. She alleges that the classification officer thereafter carried out no "audit", as the Program required him to do, by means of interviews with her and her supervisors.

In its own account of what happened the Organization rejects her allegation. It retorts that the classification officer had interviews with her on 21 July 1989 and with her supervisor on 14 August 1989 and that it was only after review in the light of those interviews and the other information that the decision was taken not to change the grading of the post.

The complainant concedes in her rejoinder that she did have an interview with the Chief of the Classification Unit on 21 July 1989, but she says that it was short and she was not given to understand it amounted to an audit.

Lastly, she sees a further breach of procedure in that the Advisory Committee took far too long to review the matter and that amounted to "denial of classification".

6. Her pleas again fail.

Whatever her criticisms of the duration and scope of the interview may be, it is up to her to establish the breach of procedure she alleges. She has not done so.

It is true that it took a long time for her case to be settled and that the Advisory Committee did not take it up in May or June 1989, as the Chief of the Classification Unit had on 24 April 1989 told the Chief of AFA that it would. But, even though it failed to keep to the original schedule, the delay is reasonably attributable to the difficulty of the grading exercise and the Tribunal is satisfied that it affords no evidence of wilful dilatoriness on the Administration's part.

Moreover, the complainant's allegation of "denial of classification" is groundless: what she was entitled to under Rule 230 was review of the grading of her post, and in due course that review was completed.

The complainant's other submissions

7. The complainant puts forward many other pleas: she finds fault with her supervisors' treatment of her; she refers to the resentment of other members of her unit; she says she has been humiliated and was given no work to do for almost a year; she objects that a new assignment in September 1990 disregarded her own interests.

8. Such matters have no bearing whatever on the lawfulness of the decision which she is impugning and which is about the grading of post 4343. The Tribunal need not therefore entertain her submissions.

The complainant's claims

9. Since the complainant has failed to show in the impugned decision any of the fatal flaws set out in 2 above, that decision must stand. Since it is lawful, her claims to redress must be rejected in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Jacques Ducoux

Mohamed Suffian
William Douglas
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.