

SEVENTY-SECOND SESSION

In re CHARFEDDINE

Judgment 1159

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Abdessatar Charfeddine against the World Health Organization (WHO) on 7 November 1990 and corrected on 8 December, the WHO's reply of 13 March 1991, the complainant's rejoinder of 4 May and the Organization's surrejoinder of 10 July 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Regulation 4.4 and WHO Staff Rules 050, 1040, 1050.2.3 and 1050.2.4;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a Tunisian born in 1942, joined the WHO in January 1971 as a laboratory technician and was assigned to Zaire. His appointment ended in January 1976, but he was put first on sick leave and later, at his own request, on unpaid leave. As from August 1977 he got a series of contracts and was assigned to the Comoros and then, from 13 January 1985, to Benin. His last contract was due to run out on 31 December 1985.

On 17 January 1986 he got a telex saying that his post had been abolished and that his appointment would expire on 16 April 1986; he was to regard the telex as giving him the three months' notice Staff Rule 1040 requires in case of non-renewal. Early in April 1986 the WHO granted him sick leave up to 23 May 1986 and set the date of his separation at 24 May. Owing to the state of his health it later extended that date to 29 September 1987 and then to 31 October 1987.

On 6 June 1986 he lodged an appeal against the non-renewal of his contract with the Regional Board of Appeal for Africa. In its report of 21 November 1988 the Board favoured rejecting his appeal. By letter of 14 December 1988 the Regional Director informed him that he had accepted the Board's recommendation.

On 15 February 1989 the complainant appealed against the Regional Director's decision to the headquarters Board of Appeal. In its report of 19 June 1990 it recommended making every effort to find him a post in the Organization and, unless one was found by the end of 1990, paying him two years' salary and a reasonable amount in compensation. By letter of 14 August 1990 the Director-General notified a decision to accept the Board's recommendation in part: the WHO would do its utmost to find him a new post; renew the two-year contract that had ended at 31 December 1985 for another two years to 31 December 1987; grant him compensation in the amount of twelve months' pay; and pay him 1,000 Swiss francs in costs. That is the decision he is impugning.

B. The complainant submits that the WHO's decision not to reappoint him shows several flaws. It constitutes wrongful breach of contract and caused him serious injury.

The Administration failed to comply with Staff Rule 1040, which says that "a staff member serving under a fixed-term appointment of one year or more, whom it has been decided not to reappoint, shall be notified thereof not later than three months before the date of expiry of the contract". Not until 17 January 1986 did he get notification of the WHO's sudden decision not to reappoint him, well after the expiry of his contract on 31 December 1985.

He argues that according to the principles of international civil service he was entitled to expect not only the extension of his fixed-term appointment but also the grant of a permanent one.

He alleges misuse of authority inasmuch as the Organization removed him from the Comoros against the Government's wishes and it was a WHO officer who later caused the Government to object to his getting another post there. The appointment of an outside candidate to that post offended against Staff Regulation 4.4 and Staff Rules 1050.2.3 and 1050.2.4.

The WHO showed bias and favouritism by refusing to reappoint him whereas it extended by one year the contract of an official in like case, whose appointment it had also terminated. That was in breach of Staff Rule 050.

He alleges bad faith. For all its promises the Organization made no real attempt to find him a suitable post, and it was dilatory.

He objects to the WHO's ignoring the state of his health and alleges that its treatment of him has caused him moral, occupational and financial injury, the effects of which have weighed heavily on his family.

He invites the Tribunal to set aside the Director-General's decision of 14 August 1990 and order the Organization to meet the commitments in that decision. He accordingly seeks reinstatement, renewal of his contract for two years from 1 January 1986, compensation in the amount of twelve months' pay and the award of costs. Failing reinstatement by 31 March 1991 he asks the Tribunal subsidiarily to quash the decision of 14 August 1990 and award him (a) his salary and allowances plus interest at 15 per cent a year as from 1 November 1987 to the date of payment; (b) 350,000 United States dollars in material damages and \$200,000 in damages for the moral injury to himself and his family; and (c) 20,000 Swiss francs in costs.

C. In its reply the WHO submits that the decision not to renew the complainant's contract was lawful. He had a fixed-term appointment which had simply run out, leaving him no legitimate expectation of renewal. Though the decision not to reappoint him did not give him the notice required in the Rules the renewal of his contract for two years compensated him, in keeping with recent rulings of the Tribunal, for any moral and material injury he might have suffered.

The Organization did try to place him but failed because there was no longer any demand for specialised laboratory technicians. Since the expiry of his contract no posts for such technicians had been created and the Organization had no more such posts in the Professional category at 1 January 1990.

The Organization dismisses his allegations of bias and favouritism. How could extending someone else's contract offend against Rule 050 since that caused him no injury?

The WHO did not go back on its word and was in no way dilatory. It strove to find him a new assignment, but found it difficult because of the constraints of his professional and language qualifications, his unwillingness, in at least one instance, to agree to reassignment and, in another, the state of his health.

His health was its overriding concern. That is why it put him on sick leave from 7 April 1986, immediately after he had undergone further medical tests in Paris, until 23 May 1986. It then convened a medical board whose recommendations it endorsed by extending his sick leave to 29 September 1987 and his appointment retroactively to 31 October 1987.

The amounts the Director-General offered the complainant in the decision of 14 August 1990, along with the sums already paid, are fair amends for the injury he sustained. The main purpose of his complaint being merely to extort still more, the Organization asks the Tribunal to let the impugned decision stand and undertakes to give effect to it.

D. In his rejoinder the complainant submits that the Organization made no attempt until 17 January 1986 to find a new post for him. Though there were suitable posts in other areas it failed to look outside the anti-malaria programme. The curriculum vitae it circulated about him was out of date.

Contrary to what it says, his illness began in October 1985, not in April 1986, during the period of notice. Had he been properly treated in time his health would not have worsened.

The abolition of the title "laboratory technician" had no effect on the actual duties of technicians; it is the WHO's "scientists" who now discharge them.

He objects to the WHO's keeping him out of the AIDS programme on the grounds that he was unwell: that does not square with the opinion of its own medical service.

It is untrue that he turned down an assignment in Mali. The reason why he did not fill up the application form was that the Administration already had his curriculum vitae on file and so he saw no need to do so.

He rejects the Director-General's offer and asks the Tribunal to award him a total of \$726,000 in damages.

E. In its surrejoinder the WHO addresses several issues raised in the complainant's rejoinder. It says it did not simply abolish the title of "laboratory technician" without regard for the work such technicians performed: the material point is that member States no longer need assistance of that kind. It is odd that, after acquiescing in the Director-General's confirmation of the non-renewal, the complainant should now make out that that decision is flawed. The Organization's failure to give him a field assignment under the AIDS Programme was in keeping with the opinion of its medical service. His statement to the headquarters Board of Appeal that he never applied for the post in Mali belies his explanation of his refusal to fill up the application form.

CONSIDERATIONS:

1. The complainant is impugning the Director-General's final decision of 14 August 1990, and the terms of that decision are summed up in the last paragraph of A above. The complainant's claims are set out at the end of B above.

The decision not to renew the complainant's appointment

2. The complainant submits that he was entitled, according to the principles that govern the international civil service, not just to the renewal of his appointment, but to the grant of a permanent appointment and to a stable career. He gives several reasons, one being that he had given the Organization fifteen years' satisfactory service.

3. The complainant's fixed-term contract expired at 31 December 1985. WHO Staff Rule 1040, which is headed "Completion of temporary appointments", reads:

"Temporary appointments, both fixed-term and short-term, shall terminate automatically on the completion of the agreed period of service in the absence of any offer and acceptance of extension. However, a staff member serving under a fixed-term appointment of one year or more, whom it has been decided not to reappoint, shall be notified thereof not later than three months before the date of expiry of the contract. Such a staff member who does not wish to be considered for reappointment shall also give that period of notice of his intention."

The terms of Rule 1040 are clear: a fixed-term appointment expires at the end of the period of service set in the contract, and no expectancy of renewal may be read into the text. Moreover, as the Organization observes, where the continuance of a post depends on the existence of a particular project, there is even less reason to take renewal of a contract for granted since the project may be altered or terminated.

That is just what happened in the complainant's case: the project under which he was employed was terminated, and his appointment therefore had to come to an end. The Organization had no duty, whether under the general principles of the international civil service or its own Staff Regulations and Staff Rules to keep the complainant on its staff. Its sole obligation was to explain to him why his fixed-term appointment would not be renewed, and it discharged that obligation.

Notice of non-renewal

4. The complainant argues that the decision he is impugning affords him only partial compensation for the injury he has suffered. In his rejoinder he alleges that the original non-renewal caused him, his wife and his three children "terrible hardship". In particular, the shock it caused him impaired the already frail state of his health; he had to incur financial debts; and his children's education was disrupted. He is therefore entitled, he submits, to the much larger awards referred to in B and D above.

5. The Organization concedes that it did not give the complainant the three months' notice of non-renewal that Rule 1040 requires and that it may thereby have caused him injury. That, it says, is why in his decision of 14 August 1990 the Director-General said that the notice of termination of the two-year appointment ended 31 December 1985, which the complainant did not receive until 17 January 1986, should not be deemed to take effect until two years later, at 31 December 1987.

6. The complainant is confusing two heads of claim: one relates to an award of damages for non-renewal; the other to an award of compensation for failure to give three months' notice. As to the non-renewal, his claim is unsound since, for the reasons set out in 3 above, the decision was lawful and must be upheld. As to the lack of proper

notice, the Director-General's decision of 14 August 1990 to grant him another two years' appointment affords ample compensation and there are no grounds whatever for making the complainant any further award under that head.

The extension of the complainant's appointment for reasons of health

7. The complainant objects to the Organization's failing to take promptly the action the state of his health required.

The objection is unsound. Immediately after undergoing medical tests in France early in April 1986 the Organization put him on sick leave up to 23 May 1986. It then decided because of the state of his health to extend his appointment retroactively to 31 October 1987. Although the Organization did not send him that decision until March 1988 it may not be held liable for the dilatoriness of the various stages of the procedure. At all events he is estopped from objecting to the decision since he stated his acceptance of it in his letter of 13 April 1988.

The failure to place the complainant

Other posts considered

8. The complainant contends that the Organization failed to make proper efforts to find him a new position. The Organization explains that the countries of the region no longer had any need for laboratory technicians, partly because of earlier assistance it had given them.

9. The Organization did consider him for several posts. One post he had applied for was under the anti-malaria programme in the Comoros. But since the Government of that country declined to give clearance the Organization was unable to go ahead with the appointment. Though he alleges improper interference by a colleague with whom he had earlier been in dispute while employed in the Comoros, he offers no evidence whatever in support of the charge: the burden is on him to prove such interference and he fails to discharge it.

He was also a candidate for a grade P.4 post for a "scientist" under the AIDS Programme. But the competent selection board chose another candidate. Even supposing, as he alleges, that the Regional Director did promise him the post, the Organization was not free to depart from the prescribed procedure for filling vacancies of that kind.

The Regional Director recommended considering him for other posts under the AIDS Programme, but the Organization took the view that he was not fit enough for them. He says that he had been declared fit for employment on a project for the eradication of onchocerciasis in Mali and may therefore be assumed to have been fit for the AIDS Programme as well. But the Organization's answer is that fitness for the other project did not necessarily make him fit for the different sort of work he would be doing under the AIDS Programme. The Tribunal sees no reason to question that point of view.

Lastly, there was a post for a technical administrator under the Mali programme. But in his pleadings to the headquarters Board of Appeal the complainant himself admitted that he had refrained from applying for it in the belief that he did not have the right qualifications and experience.

10. The Tribunal is satisfied that the Organization did make serious efforts to place him and therefore rejects his contention under this head.

Alleged omissions on the WHO's part

11. The complainant further submits that two reasons why the Organization's efforts proved unavailing were that notice of his availability for a post was not circulated to regional offices until his contract had expired and that the appended curriculum vitae was out of date.

12. The Organization notified his availability in a form dated 12 February 1986, which stated that his post had been abolished as from 1 April 1986. Although his appointment expired at 31 December 1985, he was not given notice of non-renewal until 17 January 1986, and that is the date to be taken as the start of the three-month period of notice. The notification of his availability therefore went out before his appointment had ended.

Although his curriculum vitae is not among the items of evidence the complainant has submitted, what seems to have mattered in determining his suitability for other assignments was his knowledge of languages other than

French, and an up-dated curriculum vitae would have made no difference on that score.

The charge of discrimination

13. The complainant cites the case of another official in a similar position and he alleges discrimination in that the WHO renewed that official's contract.

The Organization's explanation is satisfactory: it extended the other official's contract by only one year to enable him to acquire entitlement to early retirement at the age of fifty-five, a possibility that was not available to the complainant anyway.

The charge of breach of the rules

14. Lastly the complainant submits that the Organization acted in breach of Rules 1050.2.3 and 1050.2.4, which read:

"1050.2.3 staff members holding career-service appointments shall be given priority for retention. The Director-General may establish priorities among the temporary staff;

1050.2.4 within any priority group, preference for retention shall be based first upon performance, and, when this is not decisive, upon seniority of service."

15. Those two provisions lay down the principles that must govern the Director-General's action when a post of indefinite duration comes to an end. But 1050.2.3 distinguishes between holders of a career-service appointment and temporary staff. Whereas the former "shall be given priorities", the Director-General enjoys discretion to "establish priority" among the latter. He was therefore under no obligation to give any particular priority to the holder of a temporary appointment like the complainant. The plea is therefore unsound.

The Tribunal's ruling

16. The conclusion is that the impugned decision is not tainted with any flaw that warrants setting it aside. Since the retroactive grant of two years' appointment and the awards of twelve months' remuneration and of 1,000 Swiss francs in costs, offered by the Director-General in the letter dated 14 August 1990, are sufficient, the complainant's claims fail in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. José Maria Ruda, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Jacques Ducoux
Mella Carroll
José Maria Ruda
A.B. Gardner