

SEVENTY-FOURTH SESSION

In re BOUNGOU

Judgment 1207

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. René Bounou against the World Health Organization (WHO) on 17 April 1992, WHO's reply of 3 July, the complainant's rejoinder of 3 August and the Organization's surrejoinder of 25 September 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 380.3.1, 1230.1.1, 1230.1.2 and 1230.8.2 and WHO Manual paragraph II.5.400;

Having examined the written submissions and decided not to order hearings, 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 citizen of the Congo, joined the WHO's Regional Office for Africa (AFRO) at Brazzaville on 1 September 1983 as a personnel officer at grade P.2 in the personnel unit. In April 1987 AFRO's regional personnel officer started the procedure for review of the description of his post and recommended upgrading it to P.3. On 7 May 1987 the post classification unit of the Personnel Division at WHO headquarters in Geneva, the competent body for Professional category posts in regional offices, asked AFRO to send in a classification report and an organisation chart for its personnel unit. AFRO did so on 30 June. On 15 July headquarters asked AFRO to supply revised post descriptions for other members of the unit too. Only after several reminders did AFRO send them to headquarters on 14 June 1989. On 15 March 1990 the Regional Director informed the complainant that his post had been upgraded and he was promoted to P.3 as from 1 March 1990.

In a memorandum of 23 March 1990 the complainant asked the Director of the Personnel Division at headquarters to backdate the upgrading and promotion to 1 January 1988 on the grounds that what had held up the process for the uncommonly long period of three years was malice on his supervisor's part. He put his claim again on 14 December 1990. On 6 February 1991 the Director refused it. On 28 March 1991 he appealed to the headquarters Board of Appeal under Staff Rules 1230.1.1 and 1230.1.2, which read:

"... a staff member may appeal against any administrative action or decision ... on the grounds that the action or decision complained of resulted from one or more of the following factors:

1230.1.1 personal prejudice on the part of a supervisor or of any other responsible official;

1230.1.2 incomplete consideration of the facts."

In its report of 4 February 1992 the headquarters Board found no grounds for upholding the allegations of personal prejudice. It was sorry to see that the Organization had needed almost three years to reach a decision that ought not to have taken more than one. As a rule, whenever the proceedings lasted longer and a staff member had in the meantime been carrying out duties warranting the new grade, he should get back-pay equivalent to the difference in salary between that grade and the old one. So in this case reclassification and promotion should take effect at 1 July 1988.

By a letter of 4 March 1992, the impugned decision, the Director-General rejected the Board's recommendation on the grounds that such backdating of the promotion would be in breach of Staff Rule 380.3.1 and Manual paragraph II.5.400. Rule 380.3.1 reads:

"Any increase shall be effective from the date of entitlement. The date of entitlement to a within-grade increase shall be the first of the month nearest the date of satisfactory completion of the service requirement. The date of

entitlement to any other increase in salary shall be the first of the month nearest the date of final approval."

And Manual paragraph II.5.400 provides:

"The effective date (see Staff Rule 380.3) of a promotion is the first of the month nearest the date on which the promotion is finally approved ..."

B. The complainant alleges that, the request for reclassification having been made in April 1987, the administrative delay was due to personal prejudice on the part of the then regional personnel officer in Brazzaville, later head of the post classification unit at headquarters, who deliberately held off sending the four post descriptions headquarters had asked for. He took two years to revise the post descriptions and the Director of the Personnel Division ten months to answer the complainant's claim of 23 March 1990. In a memorandum of 6 February 1991 the Director threatened reprisals unless he dropped the charge against his former supervisor. It was the supervisor's hostility that kept the Director from looking into the whole case properly.

As the Board of Appeal held, the process of reclassification should in any event be completed in under a year if the official is not to suffer serious detriment. The upgrading of the complainant's post and his promotion should be backdated to 1 July 1988, by which date the Personnel Division at headquarters had all the required material to hand.

He asks the Tribunal to set the effective date of reclassification and promotion to P.3 at 1 January 1988.

C. In its reply the WHO submits that there is no evidence of personal prejudice against the complainant on the part of his former supervisor. The reports he wrote on the complainant's performance had always been good, and indeed it was he who proposed and recommended upgrading the post from P.2 to P.3, though in 1989 headquarters were loth to do so. There was delay because the Organization did not want to make any error of judgment, because the Regional Director's decision to review the management of the unit made for a heavy workload, and because the Global Programme on AIDS was being decentralised.

The Director of the Personnel Division did not overlook the complainant's memorandum of 23 March 1990. Regarding the the complainant's charges against his supervisor as gratuitous and inadmissible, the Director sent the head of Personnel Administration out to Brazzaville to set things straight for him. Though the Director did rebuke him in his memorandum of 6 February 1991 there was nothing wrong with that. The refusal to backdate the promotion is not tainted by bias, the sole aim being to safeguard the interests of the Organization and secure compliance with Rule 380.3.1 and Manual paragraph II.5.400. Backdating the reclassification would set a precedent for other staff in like position who have hitherto come under the ban against giving retroactive effect to such measures.

The Board of Appeal's finding that the complainant's post could have been reclassified pending the outcome of the general review of AFRO's personnel unit does not square with the Organization's practice.

Lastly the WHO maintains that the complainant's allegations of personal prejudice and incomplete consideration of the facts are without merit.

D. In his rejoinder the complainant points out that what he is objecting to is not the Director-General's rejection of the Board of Appeal's recommendation for backdating the promotion to 1 July 1988, but his endorsement of the Board's finding that there was no personal prejudice. In keeping with Rule 1230.8.2 the Director of the Personnel Division should have answered his request of 23 March 1990 within three months. Instead the Director did not ask the former supervisor for an explanation until the internal appeal was filed, and that shows that he did not fully consider the facts in due time.

He claims an award of damages that takes account of the fact that his promotion should have become effective on 1 January 1988.

E. In its surrejoinder the WHO maintains the position it set out in its reply and again rejects the allegation of personal prejudice on the part of the complainant's former supervisor and the Director of the Personnel Division. It was the Regional Office, not the complainant, that asked for reclassification of his post. Inasmuch as a change in the personnel unit in one regional office may affect similar units in others there was nothing odd about headquarters' requiring AFRO to take time to review its internal organisation. Headquarters having disapproved of

the revised P.3 post description which AFRO had originally suggested, the Administration approved a new one on 9 March 1990 and gave effect to it on 1 March 1990. That was in line with a proposal which the Regional Office signed on 27 April 1989 and which reached headquarters in June 1989. The WHO acted properly in giving priority to broader considerations - the reorganisation of a whole unit - over an official's desire for promotion, which it did not refuse anyway.

CONSIDERATIONS:

1. The complainant is a grade P.3 official of the WHO. On 1 March 1990 his post as a personnel officer in its Regional Office for Africa (AFRO) was upgraded to P.3 and he was promoted to that grade. On 4 March 1992 the Director-General refused to backdate his promotion to 1 January 1988, and that is the decision he is now impugning.
2. In April 1987 the regional personnel officer for Africa addressed a request to headquarters for revising the complainant's post description and as a result promoting him from P.2 to P.3. Before deciding on the request the Personnel Division said that there must be thorough reform of AFRO's personnel unit because of work the WHO had to carry out in Africa. Only when the reform had been completed, early in 1990, did the Organization upgrade the complainant's post and promote him.
3. As soon as he heard he wrote to the Director of Personnel at headquarters asking that the upgrading and his own promotion be backdated to 1 January 1988. To his mind that was the date by which there was all the evidence required for promoting him, and the delay was the fault of his first-level supervisor, the regional personnel officer, who had wilfully and maliciously held things up.
4. The Director of Personnel rejected his claim and he went to the headquarters Board of Appeal. The Board reported on 4 February 1992. It rejected outright the charges of prejudice he had levelled against his supervisor and indeed later against the Director of Personnel as well. It accepted the Organization's explanation of the delay, unreasonably long though the procedure had been. It also thought it unreasonable to have made the complainant perform the duties of the post in the meantime but pay him only at grade P.2. It held that all the material required for the upgrading had been available by mid-1988 and that, quite apart from the reform of the personnel unit of AFRO, his claim was warranted. It accordingly recommended backdating his promotion to 1 July 1988.
5. In his letter of 4 March 1992 to the complainant the Director-General rejected the Board's recommendation for two reasons. The first was that any retroactive change in the effective date of his promotion would offend against Rule 380.3.1 and Manual provision II.5.400 and so set a bad precedent in staff management. The other reason was that the upgrading was the outcome of the whole process of reform of the personnel unit and there was therefore no question of taking his case out of context. The Director-General pointed out the possibility of appeal to the Tribunal.
6. In this complaint, which he filed on 17 April 1992, the complainant presses his original claim to the backdating of his promotion to 1 January 1988. In support he merely goes over at length his grievances against his former supervisor, who has since been transferred to headquarters, and the Director of Personnel. Both of them, he says, were hostile, not to say disdainful. In his rejoinder to the Organization's reply he repeats the charges and makes out yet again that out of sheer malice he was refused the promotion that was due as early as 1 January 1988.
7. One preliminary remark is that throughout the proceedings the complainant has consistently failed to produce a jot of objective evidence to bear out his allegations. All he has done is trot out over and over again the same charges of malice.
8. As to the merits the Tribunal need only observe, as it has often said before (for example in Judgments 940 (in re Hakin No. 10), 1016 (in re Assogna) and 1025 (in re Barahona and Royo Gracia No. 2), that no staff member has any right to promotion. Even if he is expecting it, as the complainant was, he may not demand that management grant him the benefit of it from any particular date.
9. In this case too a distinction must be drawn between the upgrading of the complainant's post and his own promotion. Any regrading is bound to affect an organisation's structure and will therefore depend on the way in which work is organised. So the Personnel Division of the WHO was quite right to shelve the matter of the complainant's own status pending the overhaul of his unit. Indeed it had no duty to tell him what its plans were and

how they were faring. There was nothing wrong with refusing to take his case out of the context of the reforms, even though by a particular date the material evidence on his post may have been deemed complete.

10. The fact that pending the outcome he was fulfilling duties pertaining to a more highly graded post that did not yet exist does not entitle him to compensation, let alone retroactive promotion. Besides, it is not proven how his duties differed, nor whether he took them on at the WHO's bidding or of his own accord.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

José Maria Ruda

P. Pescatore

Michel Gentot

A.B. Gardner