

EIGHTY-FOURTH SESSION

In re Lebtahi (No. 2)

Judgment 1711

The Administrative Tribunal,

Considering the second complaint filed by Mrs. Farida Nadia Lebtahi against the World Health Organization (WHO) on 12 March 1997, the WHO's reply of 12 June, the complainant's rejoinder of 16 September and the Organization's surrejoinder of 17 October 1997;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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. Information on the complainant's career in the WHO and other material facts are set out under A in Judgment 1617 of 30 January 1997, which dismissed her complaint against a decision to extend her fixed-term appointment by only one year.

From March to June 1995 a report was made on her performance from 1 April 1994 to 31 March 1995. On the text of the report she said that she would welcome transfer to another unit, while remaining responsible for the WHO Pesticide Evaluation Scheme, known as WHOPES. In comments that he added on 10 April 1995 her first-level supervisor, the chief of the Schistosomiasis Control Unit (SCH), said that her performance and relations with others at work were below par; he recommended letting her have a transfer but withholding her within-grade increment for six months. On 31 May she challenged the impartiality of her supervisor. On 6 June her second-level supervisor, the Director of the Division of Control of Tropical Diseases (CTD), endorsed her first-level supervisor's adverse opinion of her.

In a letter of 14 June 1995 the Director cited the report and called on her to work better and to improve her relations with people both inside and outside the Organization.

In a letter dated 28 September 1995 the chief of the Administration and Staff Support Service told her that because of her unsatisfactory performance her appointment would not be extended beyond the date of expiry, 31 December 1995. That decision, he explained, was taken in the context of efforts to retrench staff before resort to the reduction-in-force procedure and came under WHO Manual paragraph II.9.265.3, which was about such procedure and which said that a fixed-term contract might be renewed only if performance proved on the whole satisfactory.

On 17 October the complainant applied to the Director-General for review. On 8 November 1995 an Assistant Director-General told her that the Director-General had rejected her request. On 27 November 1995 she lodged an appeal with the headquarters Board of Appeal.

In a report of 14 October 1996 the Board recommended upholding the decision of 28 September 1995. But it also held that the Organization had infringed Manual paragraph II.5.200, which requires supervisors to give someone whose performance is unsatisfactory "clear guidelines and assignments" to help in coming up to standard. It therefore recommended granting her, besides costs, compensation in an amount equivalent to one year's pay.

By a letter of 12 December 1996, which she is impugning, the Director-General confirmed the decision not to extend her appointment but rejected the Board's other recommendations.

B. The complainant observes that the Board of Appeal found nothing wrong with her technical qualifications. The reports on her performance up to 1995 were "sporadic". Since the period covered by the last one ended in March 1995 she had only three months instead of twelve in which to show her mettle.

She suffered from stress because the description of her post was out of date and she did not get support from the secretaries. The appointment in October 1994 of a new Director of CTD made matters worse. He did not take kindly to her filing a complaint against the WHO's refusal to review his decision to give her only another year, and she was "discriminated against time and again". Her supervisors failed to give her any suggestions or guidance for improving her work during the short extension. The new Director was on mission much of the time. He disregarded her application for transfer. Other staff sabotaged her work.

Since her supervisors failed to give her the assistance they owed her under Manual paragraph II.5.200 the Organization's reliance on II.9.265.3 amounts to a "breach of administrative process".

She asks the Tribunal to set aside the non-renewal of her contract, order her reinstatement as at 1 January 1996 and to grant her a fair amount in moral damages. She claims costs.

C. In its reply the WHO submits that the complainant's performance and her relations with others at work were poor throughout the year of the extension despite the warnings in her last report and in the letter of 14 June 1995 from the Director of CTD. The Organization cites "instances" of her poor performance. Although the Director did have to be absent from time to time, day-to-day supervision is not expected from a second-level supervisor.

There was no settling of scores, nor discrimination nor sabotage. She suffered no more from the occasional shortage of secretaries than did other members of the Division. The Organization met all its obligations towards her and gave her straightforward instructions at all times. Under Manual paragraph II.9.265.3 it may not extend the appointment of an official whose performance is not on the whole satisfactory.

D. In her rejoinder the complainant contends that the WHO's criticism of her work was unwarranted. She produces documents that were handed out at a meeting on 24 and 25 June 1997 of CTD staff and that laud the achievements of WHOPES since her departure on 1 January 1996. The documents show that the programme's goals and activities were the same after as before that date. The WHO adduces no factual evidence to suggest that she got on badly with other staff.

E. In its surrejoinder the Organization presses its pleas. Though WHOPES may seem "on paper" to have carried on much as before after she left, in fact much of the work wound down while she was still in charge. The impugned decision rests on objective assessment of her performance and her chronic failure to work well with others.

CONSIDERATIONS

1. The record of the complainant's employment with the WHO is summed up in Judgment 1617 of 30 January 1997. The Organization extended her appointment by just a year, from 1 January to 31 December 1995, though previous contracts had been for longer. In her first complaint she impugned its decision, and the judgment dismissed the complaint.

The chief of the Administration and Staff Support Service told her by a letter of 28 September 1995 that her contract would not be extended beyond 31 December 1995. She appealed to the headquarters Board of Appeal. The upshot was that in its report of 14 October 1996 the Board recommended upholding the decision of 28 September 1995 but granting her one year's pay in compensation for the Organization's failure to discharge in full its obligations towards her. By a decision of 12 December 1996 the Director-General upheld the earlier one but refused compensation.

The complainant is seeking the quashing of that decision, reinstatement as at 1 January 1996 and the award of a fair sum in moral damages.

The Organization asks the Tribunal to dismiss the complaint.

2. As was said in Judgment 1617, the grant of a fixed-term appointment under Staff Rule 1040 confers no

right to renewal. A decision not to renew a contract is discretionary and may be set aside only if it is *ultra vires* or breaks a formal or procedural rule, or shows some mistake of fact or of law or misuse of authority, neglects some material fact or draws a plainly wrong conclusion from the evidence.

So an organisation has broad discretion in deciding whether to renew. The Tribunal has but a limited power of review, and it will leave the organisation free to determine what staff it needs and how long to keep them on: see Judgment 1617 and the precedents cited therein.

3. The issue of renewal of the complainant's appointment arose in that judgment. The WHO had dropped the idea of refusing her an extension altogether on the grounds of unsatisfactory service and instead gave her one for a year -- though her previous contracts had been for two -- to give her the opportunity of coming up to standard. The Tribunal held that the Director-General had properly exercised his discretion. It observed that she had not in her internal appeal denied her shortcomings but had blamed them on poor conditions of work in that she had not had proper support from her supervisors and from secretarial staff. It observed that the Organization was right to rely mainly on the concurring views of some of her supervisors and on the opinion expressed by the Board of Appeal after hearing both parties and several witnesses. The witnesses said, among other things, that her relations with others at work had been especially strained and that she had failed to cope with cuts in staff. Since her earlier appraisal reports had been good, though few and far between, the WHO was right to keep her on long enough to let her improve and so correctly exercised its discretion. Indeed the complainant herself acknowledges that that decision was not arbitrary.

All that is at issue here is whether, in the light of Judgment 1617, what happened in 1995 warranted the refusal of further extension.

4. The complainant contends that since the alleged reason for the decision she impugns is poor performance the only material provision is Staff Rule 1070. But that rule applies only where a contract is ended before the date of expiry, whereas the complainant's appointment expired at 31 December 1995 and the only choice was to extend it or not. So the WHO was right to apply Rule 1040: see Judgment 1405 (*in re* Moore) under 6. Besides, a strong line of precedent says that unsatisfactory performance or misconduct afford grounds for non-renewal: see Judgments 1405, under 3 and 4, the precedents cited in 1405, and 1441 (*in re* Sock) under 18.

According to Manual paragraph II.9.265.3, when a general reduction in force is decided upon, "no fixed-term appointment will be renewed unless the staff member's overall performance record has been satisfactory". That is the provision on which the Organization is relying, and the complainant is not challenging its decision to make a reduction in force.

The Director-General's decision is to be construed in the light of the Board's recommendation. The Board agreed that she should not have her appointment renewed; though it found her technical work quite acceptable, it held that her behaviour towards her supervisors and other staff was not and, falling short of what was expected of an international civil servant, warranted non-renewal.

5. She got on no better in 1995 than before with her supervisors and other staff. She herself admits to a "hastening decline in her relations with superiors" and to adopting towards them language and a tone that no international civil servant ought to indulge in towards colleagues, let alone people in authority. So there is no need to go in detail into all the incidents that bear that out.

As the Board said, her attitude was reflected in what she had said, for example, in letters. It was that of someone unable "to interact adequately with colleagues and to accept the hierarchical structure and working conditions of an international organisation": "the manner of [her] interactions was not in line with the conduct expected of an international civil servant".

She tries to show that things were not wholly her fault, the ones most to blame being her supervisors, who were given to harassment and quibbling. In her submission they bore her a grudge for challenging the decision to extend her appointment by just one year; it was indeed in 1995 that her appeal was before the Board -- on 14 March she filed her brief and on 24 July the Board issued its report -- and it may have aggravated ill feeling.

But she herself had a duty of self-control, knowing as she did that in that year she was still on trial. She explains that her behaviour was actuated by disappointment at getting neither the higher grade she had asked for nor more support from secretaries. Though the Organization took long over her application for regrading, she had already been promoted to P.4 in the spring of 1992 in the expectation that it would go through. And though there was no meeting all her demands for secretarial help her supervisors did take them into account.

At all events, even if she was at loggerheads with her supervisors she owed them respect and should have used more seemly language.

She contends, and the Organization denies, that it failed to help her enough to work better. But its main criticism was her behaviour towards others and especially her supervisors. On that score she had many warnings in 1994, when she had her contract extended by one year, in the course of the ensuing procedure, and again in 1995. She paid not the slightest heed.

The conclusion is that the Director-General did not abuse his discretion in making the findings of fact that he did and in coming to the view that her performance was unsatisfactory, that she was unlikely to do any better and that it was in the WHO's interest to let her go.

6. Since her main claim fails so do her subsidiary ones.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

A.B. Gardner