

## EIGHTY-FOURTH SESSION

### *In re Curina*

#### Judgment 1727

The Administrative Tribunal,

Considering the complaint filed by Mrs. Brenda Curina against the World Health Organization (WHO) on 21 March 1997 and corrected on 3 April, the WHO's reply of 9 July, the complainant's rejoinder of 21 August and the Organization's surrejoinder of 24 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. The complainant, an Italian who was born in 1944, joined the staff of the WHO in 1990 as a secretary at grade G.4 in the Health Systems Research and Development Unit. The Organization gave her a fixed-term appointment for 18 months, the first 12 being probationary. It twice extended the period of probation, by three months each time. On 18 June 1991 it issued vacancy notice LR/91/53 for a G.4 post of secretary in the Resources for Research Unit of what is known as the "Special Programme of Research, Development and Research Training in Human Reproduction". The complainant applied, was chosen and in October 1991 took up her new duties under probation until 30 June 1992. At that date the Organization confirmed her appointment and granted her a two-year extension. On 1 March 1994 it offered her another two years, until 30 June 1996.

By a memorandum of 28 March 1996 a senior personnel officer told her that her post would be abolished at 30 June 1996 owing to "financial constraints" and, failing another assignment, the Organization would be terminating her appointment under Staff Rule 1050.5. She appealed to the headquarters Board of Appeal on 24 May 1996. In its report of 12 November 1996 the Board recommended upholding the decision to abolish her post on financial grounds but seeking some other suitable post for her and, since "the procedure used could not be proven to be free of prejudice", granting her 25,000 Swiss francs by way of moral damages and an award of costs.

By a letter of 23 December 1996 the Director-General upheld the decision to abolish her post and said that the Organization would neither try to find another post for her nor award her damages or costs. That is the decision she is impugning.

B. The complainant submits that the abolition of her post was unlawful. There were no objective reasons for abolition. Money was not decisive: less than two months after abolishing her post the WHO announced a vacancy for another secretary within the Programme. Her supervisors had assured her that any secretary whose post was abolished would be employed under short-term contracts and that the Programme needed her. She adduces evidence to suggest that the WHO abolished her post merely to get rid of her and she pleads misuse of authority. On the Organization's own avowal in its submissions to the Board of Appeal, her record did not warrant termination for unsatisfactory performance. She asserts her right to application of the "reduction-in-force" procedure on the grounds that the notice about the vacancy of her post failed to say that it was "time-limited" or indeed what its duration was.

She asks the Tribunal to set aside the impugned decision and the earlier ones to abolish her post and terminate her appointment. She claims reinstatement as from 1 July 1996 and awards of moral damages and costs.

C. In its reply the WHO describes her account of the facts as "distorted" and seeks to refute her pleas. The decision to abolish her post was, it says, a proper exercise of discretion and prompted by the need to cut costs and meet priorities. Because her record was not as good as that of officials on other posts at the same

grade and equivalent in "value", it was in the Organization's interests to abolish hers. In any event she had no right to renewal. Nor was she entitled to application of the reduction-in-force procedure, her post being one of limited duration.

**D.** In her rejoinder the complainant disputes the WHO's account of the facts and answers its pleas. She offers further evidence of personal prejudice and observes that the Organization has failed to adduce any objective reasons for abolition. It had a duty under the case law to apply the reduction-in-force procedure. Had she been on a time-limited post that came to an end at the scheduled date, it would have had no such duty. But the WHO did not announce any date at which her post was to go. She presses her claims.

**E.** In its surrejoinder the WHO maintains that the abolition of the complainant's post was necessary because of lower financial contributions to the Programme. The reasons for abolition were objective. As to the reduction-in-force procedure, she herself conceded in a memorandum of 5 February 1996 to the Director of the Programme that the procedure was "not applicable to posts funded by the Special Programme". Nor does Rule 1050.2 require the procedure when a post of limited duration is abolished before the date of expiry. Her plea of personal prejudice is unfounded.

### CONSIDERATIONS

**1.** The complainant joined the WHO on 1 July 1990 as a secretary at grade G.4 in the Health Systems Research and Development Unit under an appointment for eighteen months. Her letter of appointment described the post as one of limited duration. Her one-year probationary period was twice extended, by three months at a time.

**2.** The WHO issued a notice of vacancy in June 1991 for a secretary at grade G.4 in the Resources for Research Unit of the Special Programme of Research, Development and Research Training in Human Reproduction. It did not describe the post as one of limited duration. The complainant applied, was successful and was transferred to that Unit on 1 October 1991. Her performance during her new probationary period was assessed as satisfactory, and she was given a fixed-term contract from 1 July 1992 to 30 June 1994. The documents pertaining to the transfer and the contract have not been produced, but it is admitted that they did not describe the post as one of limited duration.

**3.** In January 1994 the Organization offered the complainant a two-year extension up to 30 June 1996 and this time described the post as one of limited duration. She accepted the offer without demur. Her complaint is about the abolition of her post.

**4.** From about 1988 the Special Programme was co-sponsored by a number of international organisations. It was financed almost entirely out of extra-budgetary funds made available by governments and other donors. It was out of those funds that all Programme posts but four were financed. The complainant accepts that her post, being "financed from non-regular budget funds", was a post of limited duration as defined in Manual paragraph II.9.260.1.

**5.** The WHO says that contributions to the Programme began to decline in 1993. Accordingly, it had to reduce staff from 74, in the 1992-93 biennium, to 70 in 1994-95; and it decided to make a further reduction to 60 in 1996-97. It decided to abolish four General Service category posts in the Programme, including one in the Unit in which the complainant was working. In that Unit there were three full-time and two half-time posts of secretary, all at the same grade, of equal value and importance to the Programme and involving secretarial functions that were interchangeable. All of them were occupied.

**6.** In January 1996 the responsible officer of the Unit had discussions with all the staff members involved and with the three Professional category staff members "closely associated with the issue". Having invited suggestions for criteria for reduction in staff, he decided that seniority and performance were "the most pertinent considerations". As to seniority only one of the five secretaries was junior to the complainant; and as to performance, while all the others had consistently good appraisals, the first two of the complainant's last three appraisals contained several criticisms, though the most recent one was good and showed improvement. The responsible officer nevertheless considered performance to be more important than seniority.

**7. Consequently, by a memorandum dated 28 March 1996 the chief of Contract Administration and Information told the complainant that it had been decided to abolish her post at 30 June 1996, the date of expiry of her contract.**

**8. On appeal the headquarters Board of Appeal -**

**"took note of the efforts made to base the decisions concerning abolition of posts within the Special Programme on what the Programme Managers considered to be objective criteria.**

**Nevertheless, the Board considered that it was unsuitable for such decisions to be taken solely by persons so closely connected with the posts in question, a practice which it considered was clearly open to accusations of prejudice. In this particular instance, the Board considered that the Management of the Programme was not in a position to take a decision that could be considered fair by all concerned ...**

**The Board noted that in adapting the principles of a Reduction-in-Force procedure to their specific situation, the management of the Special Programme had not taken the necessary steps to ensure that decision-makers had no connection with the posts involved. The Board considered the procedure which had been implemented was flawed, in that it could not be proven free of prejudice.**

**The Board concluded that while the need to reduce the staffing level of the Special Programme had clearly been established, the procedure used to select the [complainant's] post for abolition could not be proven to be free of prejudice. It seemed that the criteria were applied to the incumbents instead of the posts."**

**The Board recommended, in the light of the financial situation, that the decision to abolish the complainant's post should not be reversed; that every effort should be made to find a suitable assignment for her within the Organization; that, since the procedure could not be shown to be free from prejudice, she should be paid 25,000 Swiss francs in moral damages and her costs.**

**9. The Director-General accepted only the first of those recommendations and rejected the appeal.**

**10. There are two grounds of complaint:**

**(a) There were no objective reasons for the abolition of the complainant's post, and the decision to abolish it was illegal; in any event, the abolition of post procedure was misused.**

**(b) The reduction-in-force procedure provided for by Staff Rule 1050 should have been applied either because the complainant's post was not one of limited duration or - even if it was - because the premature abolition of her post put her in the same position as the incumbent of a post of unlimited duration which was abolished.**

**The Tribunal will take up (b) first.**

***The reduction-in-force procedure***

**11. Staff Rule 1050.2 provides:**

**"When a post of indefinite duration - or any post held by a staff member with a career-service appointment - comes to an end, a reduction in force shall (if the post was filled) take place, in accordance with procedures established by the Director-General ..."**

**Paragraph II.9.260 of the Manual reads:**

**"Reduction-in-force provisions do not apply to posts of limited duration; incumbents of such posts are not affected by these provisions and cannot benefit from them. Posts of limited duration automatically lapse at the end of the period for which they were established unless an express decision is taken to continue them. This period is specified in the relevant authorized position lists or programme budget proposals and also in vacancy notices and post descriptions. Posts of limited duration include:**

**260.1 posts financed from non-regular budget funds located either at Headquarters or at a regional office; ..."**

**12. The complainant argues that although her post was "financed from non-regular budget funds" the notice of vacancy did not specify, as II.9.260.1 required, that it was of limited duration; had that been stated, she would, she says, have "seriously hesitated" to apply for it.**

**13. The WHO replies that when the complainant first applied for employment she stated in her letter of 3**

May 1990 that "although interested in long-term posts, [she was] available to take any posts in the interim"; accordingly, she accepted the appointment that began on 1 July 1990, even though it was of limited duration. While that appointment was still in force she was transferred to a post under the Special Programme. Not only did that post fall within the definition of "limited duration" in Manual paragraph II.9.260.1, but such duration was expressly stated in the document granting the extension which was in force at the time of the impugned decision.

14. In those circumstances, whatever may have been the consequences of the WHO's failure in the notice of vacancy, in the transfer and in the subsequent contract to describe the post as limited in time, the complainant suffered no injury because when she accepted the extension of her contract she knew full well that the post was of limited duration and she made no protest.

15. The complainant submits that her post was not intended to end on 30 June 1996 and that upon its premature abolition she was in the same position as the incumbent of a post of indefinite duration which was abolished. She contends that reliance by the WHO on "the formal exception provided for in the Manual II.9.260" for not applying the reduction-in-force procedure was "in clear violation of the spirit of the rule" and that "the WHO's Rules and Regulations are out of date, and no longer reflect the actual situation of permanent and time-limited posts".

16. The Tribunal holds that there is good reason for drawing a distinction between the two categories of post and that, since the Staff Rules and the Manual do not require the WHO to apply the reduction-in-force procedure to posts of limited duration, the impugned decision is not vitiated by its omission to do so. The complainant's plea fails.

#### *The abolition of the complainant's post*

17. While not questioning the reduction in funding for the Special Programme the complainant doubts whether there were financial constraints. She alleges that within two months the Organization issued a notice of vacancy for a full-time secretary for the Programme; and that the responsible officer of the Resources for Research Unit had assured all the secretaries that the incumbent of the post to be abolished would remain temporarily in the Unit.

18. The WHO explains that the notice was for a secretary at grade G.5; that that was not a new post but one which had fallen vacant on the reassignment of the incumbent; and that it had different functions and was in another unit. Whatever assurances the responsible officer may have given, his task was - says the Organization - merely to recommend which post should be abolished.

19. The complainant also says that the management of the Special Programme had given assurances that no more than 15 per cent of the budget would be allocated for administration; so what was required was the abolition of an administrative post, not of a scientific one like hers. Further, immediately after the abolition of her post, another secretary was brought in to continue her work and that shows that her post was needed.

20. The WHO replies that posts for secretaries in the General Service category are not scientific ones; and that although her post had to be abolished her duties did not have to be abolished too: they could be assigned to other staff members. The WHO cites Judgment 139 (*in re* Chuinard).

21. The complainant argues that the abolition procedure was misused: instead of objectively determining which post to abolish the WHO first decided that she should be the one to go, either because her contract was the first to come up for renewal or on the strength of appraisals of her performance - and the earlier unfavourable ones "had not always been objective".

22. The WHO denies the first allegation. As for the second, it refers to written admissions by the complainant, in comments on her appraisal reports as well as in letters, to shortcomings in her performance; the appraisals were therefore justified. In the Organization's submission there was no misuse of the abolition procedure: it had to choose one of several posts for abolition; as the posts were identical, no distinction could be made on the basis of functions or the needs of the Programme; accordingly, the selection was made on the basis of performance.

23. The Tribunal holds that there were objective reasons for the abolition of the post and that the procedure

was not misused. The headquarters Board of Appeal was in error in presuming prejudice simply on the grounds that the absence of prejudice had not been proved.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Mella Carroll  
Mark fernando  
James K. Hugessen

A.B. Gardner