

**TWENTY-SEVENTH ORDINARY SESSION**

***In re* OZORIO (Nos 1 and 2)**

**Judgment No. 185**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints (Nos 1 and 2) against the World Health Organization (WHO) drawn up by Mr. Edmund Peter Ozorio on 10 July 1970, the Organization's reply of 6 November 1970 to these two complaints, the complainant's rejoinder of 10 March 1971 and the Organisation's surrejoinder of 19 April 1971;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Administrative Tribunal and WHO Staff Rules 110, 120, 130, 220.4, 1030 and 1040;

Having decided to join the two complaints and having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Mr. Ozorio joined the WHO Regional Office for the Americas in 1958 and in 1961 obtained a P.1 post in the Office of Public Information. The post was reclassified P.2 in March 1966. As part of his duties he was required to replace the Chief of the Department in his absence. In May 1966 the Chief of Public Information retired and Mr. Ozorio took charge until July of that year. The Department was then put officially under the authority of the Deputy Director until 6 March 1968, when it was retransferred to the Professional Education Branch. Finally, on 1 April 1969 the new Chief of the Public Information Office was appointed. At first he worked on a part-time basis, and then from September 1969 on a full-time basis. A new job description received by Mr. Ozorio on 2 March 1970 omitted the following sentence which had appeared in paragraph 9 of his previous job description under the heading "Responsibility for Decisions and Exercise of Judgment. In the absence of the Chief, assumes responsibility of the office".

B. Since December 1968 Mr. Ozorio had been asking for a desk survey of his post for the purpose of reclassifying it at grade P.3. The survey was completed on 16 October 1969 and its results were communicated to the Regional Director on 5 December 1969. On 29 December 1969 Mr. Ozorio also asked for the payment of the supplementary remuneration provided for by Staff Rule 220.4 in respect of the period during which he claimed to have served as acting Chief of the Office. On 9 February 1970 the Chief of Personnel informed him that he could not meet the request for supplementary remuneration nor for reclassification of the post. He pointed out in justification that the complainant had not at any time been officially responsible for the Office of Public Information and that the desk survey relating to the classification of his post had led to the conclusion that the post was correctly classified at grade P.2. On the next day, 10 February 1970, Mr. Ozorio wrote as follows to the Personnel Service: "Thank you for your memo of February 9. May I ask now that you be kind enough to confirm that the decisions taken in that memo are final in the sense of Staff Rule 1030.8? I would appreciate a few lines from you on this point." According to Staff Rule 1030.8(a):

"No staff member shall bring an appeal before a Board until all the existing administrative channels have been tried and the action complained of has become final. An action is to be considered as final when it has been taken by a duly authorised official and the staff member has received written notification of the action."

C. On 9 March 1970 Mr. Ozorio received his performance appraisal report for the period 1 March 1968 to 31 December 1969 signed by his supervisor. He was asked to return it signed to the Personnel Section. According to the Organization the complainant then had a conversation on the subject with a member of the Personnel Section during which he agreed that the Section should wait until he had returned the appraisal report duly signed and accompanied by his comments before replying to his memorandum of 10 February 1970. On 19 March, 4 April, 27 April, and 15 May 1970 the Personnel Section asked him to return the report. The complainant finally pleaded pressure of work as a reason for not returning it. On 5 May 1970 he informed the Organization that he was lodging

a complaint with the Administrative Tribunal and on 20 May returned the appraisal report with comments in which he contested the validity of some of the observations which it contained. On 22 May 1970 the Chief of Personnel acknowledged receipt of the report and stated that the complainant's memorandum of 10 February 1970 and his communication of 20 May 1970 were under review and that his Section would reply to them in the near future. According to the Organization, however, the Personnel Section decided not to reply on discovering later that the complainant had lodged a complaint with the Tribunal.

D. In support of his request for extra pay, which forms the subject of his first complaint before the Tribunals Mr. Ozorio pleads Staff Rule 220.4, which provides that a staff member who temporarily assumes responsibilities higher than those pertaining to his grade shall be entitled to extra pay. He maintains that he exercised such responsibilities from 1 August 1966 to 1 April 1969 and utterly rejects the Organization's claim that he is not entitled to extra pay because he had been "at no time officially required to assume the responsibility of Public Information". He prays the Tribunal to order the WHO:

(1) to apply Staff Rule 220.4 with respect to him for the period 1 August 1966 to 1 April 1969;

(2) to pay him a sum equivalent to the amount of extra pay not exceeding the difference between the salary which he was receiving during that period and the salary which he would have received if promoted to a higher grade.

E. As regards the complainant's claim for reclassification of his P.2 post at grade P.3, which forms the subject of his second complaint, Mr. Ozorio observes that he submitted this claim to the proper authority as he was authorised to do by Staff Rule 130. He maintains, among other things, that a comparison of the duties of his post with those of a P.3 Information Officer, as prescribed in the classification plan covering all posts, shows that his post is classified at too low a grade. According to Staff Rule 120, he contends, all posts should be classified in accordance with the established plan. He therefore impugns the decision of 9 February 1970 refusing the reclassification and confirming the classification of his grade at P.2. He prays the Tribunal to order the WHO:

(1) to implement in the Regional Office for the Americas the standards for classification of posts in Public Information introduced into the Manual of the Organization on 8 April 1963;

(2) to apply those standards to his post and to assign to it the pay level of grade P.3 and at the step which the complainant would have held if the standards had been implemented in March 1966;

(3) to pay a sum corresponding to the difference between the salary and allowances which should have been paid to him if the above-mentioned standards had been implemented in the Americas from 8 April 1963, provided, however, that that sum should be adjusted in the light of the decision of the Tribunal on the complainant's claim under Staff Rule 220.4.

F. In its reply to the two complaints the Organization maintains that each of them is irreceivable on two grounds. First, it asserts that Mr. Ozorio had agreed after receiving his appraisal report for the period 1 March 1968 to 31 December 1969 on 9 March 1970 that the Administration should wait until he had returned the report together with his observations and signature before replying to his memorandum of 10 February 1970. The Organization considers that he was thereafter estopped from revoking his acceptance. Secondly, the Organization considers that by lodging a complaint direct with the Administrative Tribunal without first submitting it to the Regional Board of Appeal and then to the Headquarters Board of Inquiry and Appeal Mr. Ozorio disregarded the provisions of Article VII of the Statute of the Tribunal. It further submits that under the general principles of administrative law the silence of an administration in the face of a claim is to be deemed equivalent to a refusal. In the present case the Administration postponed replying to the complainant's memorandum of 10 February 1970 only with his consent; yet even if the absence of a reply is regarded as silence on its part, such silence had the effect at most of constituting a refusal of the complainant's requests and it was thereafter incumbent upon Mr. Ozorio to try the internal channels for obtaining redress.

G. In his rejoinder the complainant rejects this submission. He maintains that the term "a final decision" as used in the first paragraph of Article VII of the Statute of the Tribunal means a decision taken by the Director-General on the advice of the internal bodies of appeal. Once it exceeds sixty days the administration's silence amounts to an outright rejection of the appeal, or in other words, a final decision which makes it unnecessary to resort to internal means of redress and allows direct submission of a complaint to the Administrative Tribunal. Moreover, the complainant rejects the Organization's argument that it was waiting for the appraisal report to be returned with his

signature and comments before replying to his request of 10 February 1970. He contends that the Administration's delay in replying to that request has no connection with his appraisal report. The Organization could not have expected him to surrender his right to receive a reply within sixty days. In its surrejoinder the Organization repeats its point of view. It refers to Staff Rule 1040.2, which provides that complaints submitted to the Administrative Tribunal "shall not be receivable unless the decision contested is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under these Staff Rules and in particular Rules 1010 to 1030". It further maintains that the complainant could not at one and the same time accept the advantage of further review of his situation and consider that time was running against the Administration for the purpose of lodging an appeal.

#### CONSIDERATIONS:

Article VII, paragraph 3, of the Statute of the Tribunal provides as follows:

"Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration."

This provision must, however, be read in conjunction with paragraph 1 of the same Article, which is in the following terms:

"A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations."

It follows that the provision can apply only if a complainant has exhausted all internal means of resisting the decision open to him, and if he is impugning either an explicit decision or the implicit decision resulting from the failure of the Director-General of the Organisations the final competent authority, to give a ruling on his claim.

It appears from the documents in the dossier that Mr. Ozorio, by a letter of 29 December 1969 to the Chief of Personnel, applied for the award of financial compensation for having assumed the duties of a more senior post, and by letter of 6 February 1970 requested the reclassification of his post; that on the following 9 February the Chief of Personnel refused these two requests as being unjustified, and that on the following day Mr. Ozorio asked whether that decision was final within the terms of Staff Rule 1030.8(a).

As no reply was received to the latter request within a reasonable time and whatever may have been the circumstances pleaded by the local administrative authorities, the complainant's claim ought to have been deemed to have been refused by virtue of the general rule of law whereby the silence of the administration after a reasonable period amounts to refusal of the claim. The absence of any express mention of this rule in Staff Rule 1030 referred to above affords no ground for not applying the rule. Hence Mr. Ozorio ought to have followed the procedure prescribed in Staff Rule 1030 so that, if his regional appeal failed, he might finally appeal to the Headquarters Board of Inquiry and Appeal with a view to securing a decision by the Director-General, which decision could alone be impugned before the Administrative Tribunal.

Instead of following the above procedure the complainant, on receiving no reply to his letter of 10 February, addressed himself directly to the Administrative Tribunal. His complaint is not in accordance with the aforementioned provisions of Article VII, paragraphs 1 and 3, of the Statute of the Tribunals nor, incidentally, with WHO Staff Rule 1040.2 and is therefore not receivable.

Although Mr. Ozorio wrote to the Regional Director on 1 March 1970 and to the Chief of Personnel at Headquarters and the Director of the Public Information Division on 5 May informing them that he had appealed to the Administrative Tribunal, which was not true at the time, these authorities were in no way bound to check the veracity of his statement and inquire whether a complaint had in fact been filed with the Tribunal or to point out to him the means of redress open to him. Mr. Ozorio cannot properly rely on these letters containing erroneous information to plead that his complaint, although time-barred, should nevertheless be regarded as receivable.

However, it appears from the evidence in the dossier that the regional administration failed to reply to the aforementioned letter of 10 February 1970 because, without good reason, it made a reply conditional on the complainant

s signature of his appraisal report. The position thus taken up by the Administration misled Mr. Ozorio and prevented him from following the procedure laid down by Staff Rule 1030. There is all the more reason for taking account of his error inasmuch as the Staff Rules do not mention the general rule of law referred to above whereby the silence of the administration after a certain period is equivalent to rejection of a claim.

In all the circumstances of the case, therefore, the procedural error committed by Mr. Ozorio may be excused and he must be referred back to the Director-General for a ruling by the Organization on the merits of his claim in accordance with the procedure laid down in the Staff Rules.

#### DECISION:

For the above reasons,

The complainant is referred back to the Director-General of WHO for a ruling by the Organization on his claim in accordance with the procedure laid down in the Staff Rules.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 November 1971. (Signed)

M. Letourneur  
André Grisel  
Devlin

Bernard Spy