

The Administrative Tribunal,

Considering the complaint filed by Mr S. P. against the World Health Organization (WHO) on 2 May 2001 and corrected on 26 July, the WHO's reply of 9 November 2001, the complainant's rejoinder of 11 February 2002 and the Organization's surrejoinder of 8 April 2002;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a citizen of Canada who was born in 1966. Between 9 March and 7 May 1992 he was a temporary adviser at the WHO in Geneva. He then returned to Canada. For two months in mid-1992 (and again in early 1994) he worked under a contractual service agreement. From 8 November 1993 he joined the staff of the WHO at headquarters as a technical officer. He had a series of short-term contracts, of varying durations, in what was then the Division of Mental Health. From November 1996 he held grade P.4. On 7 March 2000 he accepted an 11-month contract due to start on 17 April but, having been offered a position outside the WHO, he tendered his resignation on 4 April 2000. His contract was revised and his last day of service was 5 May 2000.

The complainant wanted the WHO to pay his air fare back to Canada and extra luggage expenses, but was told that would not be possible. He took the matter up in a letter of 4 May 2000 addressed to the Director-General, pointing out that because he had been on short-term contracts he was denied benefits that were being granted to his fixed-term peers. He requested retroactive payment of such benefits. By a letter of 16 June a personnel officer said that the WHO could exceptionally consider paying for the air ticket and "some extra kilos" for the professional books that he had brought with him if he provided evidence that the WHO, or another United Nations agency, had paid for his flight when he initially reported for work in Geneva.

On 30 June 2000 the complainant submitted notice of his intention to appeal to the Headquarters Board of Appeal. In its report on his case, the Board concluded that the WHO was under no obligation to cover the complainant's return journey to Canada, nor to renegotiate the terms of his contracts. It recommended dismissing his appeal. The Director-General endorsed that opinion and by a letter of 1 February 2001 dismissed his appeal. That is the impugned decision.

B. The complainant is challenging the decision on two grounds. First, in failing to pay him the air fare and extra luggage expenses the Organization was denying him "standard termination indemnities". It thus acted in breach of the rules and the implied agreement that existed between him and the WHO. Indeed, his initial contract expressly provided that his air fare and luggage expenses would be paid. His place of recruitment was Canada, and it was and still is his place of residence. He travelled back there upon the termination of his employment.

Secondly, in failing to pay him the same benefits as those granted to his fixed-term peers the Organization acted in a discriminatory manner. It kept him on short-term contracts for a total of six and a half years which resulted in unequal treatment. He was "falsely labelled" a short-term staff member. He was performing the same core functions as officials on fixed-term contracts but without receiving adequate remuneration. The Organization thus acted in breach of the principle of "equal pay for equal work" and was unjustly enriched. He concedes that it was legitimate for the WHO to place him on a short-term contract for the first 11 months of his service, but is seeking redress for being kept on such contracts thereafter.

In addition, he submits that there were several irregularities in the proceedings before the Headquarters Board of

Appeal for which the Organization was to blame and which caused him injury.

By way of compensation the complainant claims the "difference in monetary value" between the benefits normally paid to fixed-term officials and those actually paid to him from 12 August 1994 to 5 May 2000 (such as various allowances, step increases, home leave, and benefits on termination). He seeks 25,000 United States dollars in moral damages for "professional insecurity" and "belittlement"; 250,000 dollars in damages for loss of "future career opportunity with the WHO", loss of "career momentum outside the WHO" and loss of "opportunity for long-term contribution" to the United Nations Joint Staff Pension Fund; and 5,000 dollars in "nominal damages" for the procedural irregularities before the Headquarters Board of Appeal. He also claims the cost of a one-way plane ticket from Geneva to Canada and of the repatriation of his luggage, interest on sums awarded to him, and legal costs.

C. In its reply the Organization points out that temporary advisers and holders of contractual service agreements do not have staff member status. The complainant was recruited for the first time as a WHO staff member in November 1993, and his short-term contracts totalled a period of approximately five years and ten months. It assumes that the "implied agreement" referred to by the complainant was no more than a travel authorisation form drawn up at the time of his two-month assignment as a temporary adviser in 1992. In accordance with the terms of that document the Organization covered the cost of the complainant's round trip to Geneva and back to Canada. That travel authorisation applied exclusively to his assignment as an adviser and can have no bearing on the terms of his subsequent employment as a WHO staff member, for which he was locally recruited. Nowhere in the short-term contracts that the complainant signed did the Organization agree - explicitly or implicitly - to pay for his travel costs.

The Organization argues that the complainant cannot claim retroactive payment of benefits granted to fixed-term staff, and short-term appointments do not change into fixed-term contracts after 11.5 months of service. Whether or not functions are "core functions" does not determine the category of staff assigned to carry it out. There are no grounds for concluding that the Organization has been unjustly enriched or that it has offended against the principle of equal pay for work of equal value. By signing each contract the complainant agreed to the contractual conditions applied. He was bound by the terms of each contract and they cannot be reconstructed retroactively.

It submits that the complainant's allegations of procedural irregularities at the internal appeal stage are outside the scope of this complaint.

D. In his rejoinder the complainant states that he is not asking the WHO to rewrite or convert his contracts. The question to be determined is whether the Organization was at fault in discriminating against him.

Should the Tribunal not allow his claim for the entire period at issue, he asks it to allow his claim over an 18-month period - commencing at the point when he had worked for the Organization for five years. And whatever the Tribunal's ruling on the merits of his case might be, he seeks reimbursement of his legal expenses by the WHO on the grounds that the issues raised were complex and the Organization refused to even consider an amicable resolution of the matter.

E. In its surrejoinder the Organization states that there are no grounds for allowing either claim. By signing his contracts the complainant accepted the conditions of employment for short-term staff. He cannot now, after the fact, ask the Tribunal to grant him conditions of employment for fixed-term staff. If he thought he was the victim of discrimination he could have rejected the Organization's offers of employment. With regard to the amicable solution to which the complainant refers, the Organization told him that it was willing to reconsider its position if he could provide evidence that the WHO had ever agreed to pay for the one-way ticket and extra baggage allowance. He has not produced such evidence.

## CONSIDERATIONS

1. The complainant, who is from Canada, first accepted an assignment as a temporary adviser at the WHO from 9 March to 7 May 1992. He twice worked under contractual service agreements. He joined the Organization on 8 November 1993 as a short-term professional, holding contracts of varying durations. Between some of them there were what the complainant calls "mandatory contract breaks". In April 2000 he tendered his resignation; his last

day of service was 5 May 2000.

2. Before the complainant's resignation was to take effect, he met with the Executive Director of the Noncommunicable Diseases and Mental Health Cluster on 2 May 2000 asking if the Organization would pay his air fare and extra luggage expenses. He then met with the Acting Manager of the Cluster's Management Support Unit on 3 May 2000 seeking not only the same expenses, but specifically, retroactive fixed-term benefits for approximately the preceding five and a half years.

3. Both officials having taken the position that his demands were contrary to the Staff Rules and Regulations, the complainant, on 4 May 2000, wrote to the Director-General alleging that he was being denied benefits that were granted to fixed-term peers who were performing comparable duties. He also raised the matter of his air fare and transportation costs.

4. By a letter of 16 June 2000 a personnel officer told the complainant that the WHO would exceptionally consider paying for an air ticket and "some extra kilos" of books if he could provide evidence that the WHO, or another United Nations agency, had paid for his flight from Canada to Geneva.

5. On 30 June 2000 the complainant notified his intention to appeal to the Headquarters Board of Appeal. In its report of 20 December 2000 the Board concluded as follows:

(a) Under its Staff Rules and Regulations, the WHO was under no obligation to cover the complainant's return travel costs to Canada. There was no indication in any of his short-term contracts that the Organization had agreed to pay his travel costs. They were paid to him under the terms of the first contract he had with the WHO, when he worked as a temporary adviser from March to May 1992; but the Organization had fulfilled its obligations under that contract. On the other hand, his travel costs from Canada to Geneva in November 1993 when he started his first short-term contract were covered by a private company and not by the WHO or any other United Nations organisation.

(b) The complainant had accepted his short-term contracts of his own free will, and the Board was in no position to retroactively renegotiate the terms of those contracts. Its mandate was to consider whether the Staff Rules and Regulations had been properly applied, and the Headquarters Board of Appeal was not the proper forum for setting WHO policy.

(c) The Board found no evidence of personal prejudice. Nor had there been incomplete consideration of the facts or failure to observe or correctly apply the provisions of the Staff Rules or Regulations, or the terms of his contract.

6. By a letter of 1 February 2001 the Director-General accepted the Board's conclusions and recommendations and decided to dismiss the complainant's appeal. That is the decision impugned by the complainant.

7. The complainant seeks the following relief:

(a) the difference between benefits normally paid to staff on fixed-term contracts and those actually paid to him from 12 August 1994 until his separation from service on 5 May 2000;

(b) moral damages in the amount of 25,000 United States dollars to compensate him for the "professional insecurity" and "belittlement" inflicted on him during his employment with the WHO;

(c) damages in the amount of 250,000 dollars for loss of "future career opportunity with the WHO", loss of "career momentum outside the WHO" and loss of "opportunity for long-term contribution" to the United Nations Joint Staff Pension Fund;

(d) full legal fees and expenses incurred;

(e) interest on any amount awarded;

(f) cost of a one-way plane ticket from Geneva to Canada and for repatriating his luggage; and

(g) a sum of 5,000 dollars as "nominal damages" for the procedural irregularities before the Headquarters Board of Appeal.

8. The complainant's principal position is that although his service within the Organization took the form of a series of short-term contracts, his true status "in fact and in law" became that of a fixed-term staff member. He concedes that he was legitimately employed as a short-term staff member for the first 11 months, the maximum duration theoretically allowed under the WHO Manual provisions governing the employment of such staff. On this assumption, he seeks a retroactive revision of approximately five years of his WHO employment so as to entitle him to the conditions of employment for fixed-term staff.

9. It appears that each contract entered into and signed by the complainant for short-term employment included the following:

"I accept the appointment under the terms and conditions as stated in the contract offered and in the conditions of employment for short-term staff of which I have taken note".

10. It also appears that in consenting to work as a short-term staff member, nobody exerted force on him. He assumed the conditions of his own free will. It was obviously the common intention of the Organization and the complainant for the latter to work under such terms.

11. In support of his argument that his appointment should be converted automatically to a fixed-term one, the complainant contends that he performed "core functions" and endorsed "core responsibilities"; that his duties carried over from one contract to the next; and that health law and policy continue to be an important part of WHO's work.

12. The WHO asserts that it is possible for a "core function" to be carried out by a short-term staff member. It points out that in the course of his employment, the complainant was never offered a contract other than that of short-term employment.

It was clearly within the discretionary authority of the Director-General to decide whether to renew the complainant's short-term contract or offer him a fixed-term contract. The complainant cannot now claim to be treated retroactively as if he had a fixed-term contract; he was at all times a short-term staff member (see, for example, Judgment 2107, under 10).

13. Precedent has it that, at the discretion of the executive head, a temporary appointment may be extended or converted to a fixed-term appointment, but it does not carry any expectation of, nor imply any right to, such extension or conversion and shall, unless extended or converted, expire according to its terms, without notice or indemnity (see, in particular, Judgment 1560, under 4).

14. The complainant's submission is that in so keeping him on a short-term appointment basis, there was breach of equal treatment, as compared with his peers. This argument is not tenable as the principle of equality of treatment is infringed when staff members in an identical or comparable position in fact and in law receive different treatment from the employer organisation. There has been no evidence to prove this was the case. The plea fails.

15. So does his plea that there has been unjust enrichment on the part of the Organization. He argues that it has profited materially from appointing him on a short-term basis because he was doing the work of a fixed-term staff member.

The existence and validity of the contracts of employment are a complete bar to this plea. The doctrine of unjust enrichment finds its origins in the law of quasi-contract. As was said in Judgment 2097, under 20, "the existence of a valid contract between the parties, covering the very matters which are the subject of the claim, excludes any claim of unjust enrichment".

16. These appointments extended by the Organization to prospective employees and accepted by the latter freely, are policy matters over which the Tribunal will not interfere.

17. As regards the claim for a one-way plane ticket from Geneva to Canada, no such obligation has been assumed by the Organization in any of the short-term contracts entered into by the parties since 1993. The complainant is, therefore, bound by the terms of his appointment, especially where the box on the contract relating to "authorized travel" remained empty. Nothing can be implied from the 1992 travel authorisation given as part of his two-month temporary adviser assignment in 1992. So, the claim fails.

18. The conclusion is that none of the complainant's claims can succeed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 1 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet