

The Administrative Tribunal,

Considering the complaint filed by Mr I.L. against the World Health Organization (WHO) on 22 December 2004 and corrected on 11 March 2005, the Organization's reply of 27 May, the complainant's rejoinder of 19 September and the WHO's surrejoinder of 25 October 2005;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a Russian national born in 1951, was employed by the WHO in 1986 for approximately six weeks as a consultant. As from August 1987, on secondment from the government of the former Union of Soviet Socialist Republics, he was given a fixed-term contract as a Medical Officer at grade P.4. When the secondment ended in 1992, he remained employed by the Organization on fixed-term contracts, initially for periods of two years and then, from June 1995, for periods of five years. He was promoted to grade P.5 in December 1997, and in October 2000 he became Coordinator in the Family and Community Health Cluster.

From 21 to 31 July 2003 the complainant took home leave in Moscow with his spouse. On his return he submitted a travel claim in order to obtain reimbursement of his travel expenses, providing an invoice from the travel agency but not the corresponding airline ticket stubs. Following an investigation conducted by the Office of Internal Audit and Oversight, it was established that the invoice submitted by the complainant had been falsified. In a letter of 16 January 2004 the Director of Human Resources Services informed the complainant that, since the investigation had revealed that he had failed to observe the standards of conduct for staff members, he might be accused of misconduct. He asked the complainant to submit written comments, which the latter did on 19 January.

On 15 April the Director of Human Resources Services wrote to the complainant that it appeared from the available evidence that he had been guilty of misconduct. When the complainant had taken home leave in 2003, his airline tickets had been purchased with frequent flyer miles, which was incompatible with the method he had chosen for the reimbursement of his travel expenses, namely a lump-sum payment. The Director of Human Resources Services did not accept the complainant's explanation that the tickets had been purchased by an acquaintance of his family who, without his knowledge, had used his frequent flyer card. He considered that the complainant had provided a falsified document in support of his claim for reimbursement, and he informed him that the Assistant Director-General concerned had decided to apply the sanction of dismissal with effect from 17 May 2004.

On 10 May 2004 the complainant submitted a statement of intention to appeal against the decision of 15 April to the Executive Secretary of the Headquarters Board of Appeal. In its report of 22 September, the Board stated that it would not make a judgement on the merits until the correct procedure had been followed. It recommended that the Director-General reconsider the case in the light of the fact that, pursuant to WHO Manual paragraph II.9.495, the complainant's dismissal should have been decided by the Assistant Director-General concerned, in consultation with the Director of Human Resources Services, which had not been the case. In a letter of 25 October 2004, which constitutes the impugned decision, the Director-General set aside the decision of 15 April and reinstated the complainant retroactively as from 17 May. Pending a new decision, the latter was placed on special leave with full pay. The Director-General added that the complainant had the right to lodge an appeal against his decision with the Tribunal.

In a letter dated 18 November 2004 the Assistant Director-General for Family and Community Health informed the complainant that, having reviewed all the relevant evidence and discussed the matter with the Director of Human Resources Services, she considered that the invoice he had submitted had been falsified and that the explanation he had given was not convincing. She concluded that he had been guilty of misconduct and that he should be

dismissed with effect from 18 December 2004. She informed him that he had the right to lodge an appeal with the Headquarters Board of Appeal.

On 12 December the complainant wrote to the Director-General asking him to set aside this new decision to dismiss him and to ensure that his case was considered anew by “qualified and unbiased” officials, failing which he would appeal directly to the Tribunal. The Acting Director of Human Resources Services replied on 17 December that any appeal against the decision of 18 November had to be brought before the Headquarters Board of Appeal. On 22 December 2004 the complainant sent the Executive Secretary of the Board a second statement of intention to appeal, while requesting that the Board suspend the appeal *sine die* until such time as the Tribunal had ruled on the receivability of the present complaint. The Board agreed to this request.

B. The complainant contends that the decisions of 15 April and 18 November 2004 are in fact one and the same decision. He asks the Tribunal to consider his complaint receivable on the grounds that it was filed within ninety days of receipt of the decision of 25 October.

On the merits, he argues that the impugned decision is tainted by an error of fact insofar as the Administration concluded that he had wilfully provided the WHO with a false document. According to him, his frequent flyer card was used without his knowledge by a family acquaintance, who also falsified the invoice that was attached to his travel claim, yet the Administration ignored the confession of the person concerned. He deplores the fact that he was not given the benefit of the doubt and considers that the penalty imposed was inappropriate and disproportionate. He also alleges that his right to be heard was disregarded, and that the principle of equal treatment was violated insofar as other officials having committed similar acts had not been subjected to the same level of severe disciplinary sanction. Lastly, he alleges a “*détournement de procédure*”.

The complainant requests that the decisions of 15 April and 18 November 2004 be quashed and that he be reinstated in his previous post with full retroactive effect. Upon reinstatement, he asks to be granted either a five-year extension of his contract or alternatively a “service appointment” which would take him to the age of retirement. He claims one million Swiss francs in moral damages and asks for those responsible for his dismissal to be subjected to “appropriate disciplinary sanctions”. He claims costs, interest at the rate of 8 per cent per annum on all amounts that he may be awarded and such other relief as the Tribunal deems equitable. He further requests that the defendant disclose a number of documents concerning the case.

C. The WHO begins by indicating that, as authorised by the President of the Tribunal, its reply to the complaint is confined to the issue of receivability. It points out that, as far as the quashing of the decision of 15 April 2004 is concerned, the complainant has already obtained satisfaction since that decision was set aside by the Director-General on 25 October. It also notes that the complaint is in fact directed against two decisions, that of 15 April and that of 18 November, and that where the latter decision is concerned the complainant has failed to exhaust the internal means of redress.

D. In his rejoinder the complainant objects to the Tribunal’s decision to limit its review of the case to issues of receivability alone. He considers that this decision is contrary to its case law and threatens to appeal to the European Court of Human Rights in the event that his complaint is found irreceivable or if he is not awarded the relief he has claimed.

The complainant endeavours to show that his complaint is receivable and points out that he filed his appeal against the Director-General’s decision of 25 October 2004 within the time limits indicated by the latter in the final paragraph of his letter. He argues that the fact that the decision of 18 November 2004 was taken indicates that the decision of 25 October to reinstate him was “illusory”. According to him, the WHO is resorting to delaying tactics in an effort to avoid addressing substantive issues. A further review by the Headquarters Appeals Board would serve no purpose since the Board, which has already examined the case, refused to comment on the substance. In his view, if he is required to go back to the Board he will not receive fair treatment owing to the Administration’s bias against him.

In additional claims, the complainant asks the Tribunal to find his complaint receivable and to rule on the merits of the case without further delay, and no later than in the course of its next session. If his complaint is found receivable and the Tribunal decides to allow the Organization to reply on the merits, thereby causing him further delay and injury, he requests that the Tribunal order the WHO to reinstate him with effect from 17 December 2004 until such time as a final judgment is delivered. He also asks the Tribunal to order the Organization to conduct an

immediate investigation. He requests the award of his full legal costs incurred to date and any additional redress the Tribunal considers necessary, given the “exceptional circumstances” of the matter.

E. In its surrejoinder the defendant reiterates its position. It asserts that it sought permission to confine its reply to the issue of receivability only because it considered the complaint to be clearly irreceivable, and that the decision of the President of the Tribunal to grant its request was fully in keeping with the Tribunal’s Statute and case law.

According to the WHO there was nothing “illusory” about the complainant’s reinstatement. The possibility of filing a complaint with the Tribunal, which was mentioned in the letter of 25 October 2004, could not apply to a dismissal decision taken only the following month, so that the complainant did not exhaust the internal means of redress with respect to that decision. The Organization maintains that it is not trying to delay consideration of the complaint on the merits and that it cannot be faulted for the delay arising from the complainant’s decision to file a complaint directly with the Tribunal rather than pursuing the internal appeal procedure. It points out that, for the time being, only the issue of the lawfulness of the dismissal decision taken in April 2004 has been submitted to the Appeal Board. In its view, the complainant’s allegation of bias is without foundation and has no bearing on the receivability of the complaint. It recalls, lastly, that according to precedent the additional claims submitted by the complainant are irreceivable.

Noting that the complainant has also put forward allegations and arguments which are unrelated to the receivability of his complaint, it addresses them only “in a summary way”.

CONSIDERATIONS

1. The complainant, a Russian national, was seconded to the WHO as from August 1987 by the government of the former Union of Soviet Socialist Republics, and was then employed by the Organization on the basis of fixed-term contracts from 1992 onwards. He was promoted to grade P.5 in December 1997.

The invoice which the complainant submitted to obtain reimbursement of the travel expenses he had incurred for his wife and for himself when he had taken home leave in July 2003 prompted an investigation. On 16 January 2004 the complainant was informed that in view of the findings of that investigation he might face disciplinary action. He denied the accusations made against him, but on 15 April 2004 the Director of Human Resources Services informed him that the Assistant Director-General for Family and Community Health had decided to dismiss him for misconduct with effect from 17 May 2004. The complainant lodged an appeal against that decision with the Headquarters Board of Appeal, which considered, after requesting further information on 3 September 2004, that the Assistant Director-General had been absent on the day the decision was taken and had not participated in the process leading to the dismissal decision. The Board recommended that the Director-General reconsider the case and that the complainant be maintained on administrative leave until the case was concluded.

2. By a decision of 25 October 2004 the Director-General accepted that recommendation and set aside the dismissal decision of 15 April 2004. He also retroactively reinstated the complainant, placed him on special leave with full pay and referred the case back to the competent WHO officials to determine whether he had committed an act of misconduct and, if so, the nature of any disciplinary sanction to be imposed. He granted the complainant the sum of 1,000 Swiss francs in costs.

3. The case was reviewed as the result of that decision, and on 18 November 2004 the Assistant Director-General informed the complainant that, after consulting the Director of Human Resources Services, she had concluded that he had committed an offence which constituted misconduct, for which the appropriate sanction was dismissal. She informed him that he could appeal to the Headquarters Board of Appeal. His dismissal took effect on 18 December 2004.

4. By a letter of 22 December 2004 the complainant informed the Executive Secretary of the Board of his intention to appeal against the decision of 18 November 2004. He requested that the Board suspend his appeal *sine die* until such time as the Tribunal had ruled on the receivability of the complaint he had filed, adding that, should that complaint be deemed irreceivable, the proceedings before the Board of Appeal could be resumed. This is because, on 22 December 2004, the complainant had also filed a complaint with the Tribunal, seeking the quashing of the dismissal decisions of 15 April and 18 November 2004, as well as his reinstatement and the payment of various sums in damages. The complainant also requested that the staff members of the Organization responsible

for his dismissal be subjected to “appropriate disciplinary sanctions”.

5. The Board of Appeal agreed to suspend his appeal until such time as the Tribunal had delivered a ruling. The defendant then sent the President of the Tribunal a letter dated 4 May 2005, requesting a stay of proceedings in order to allow the Board of Appeal proceedings to continue or, failing that, permission to confine its reply to the issue of the complaint’s receivability. For the sake of the good administration of justice, and in order to avoid blocking the two simultaneous sets of proceedings, the President, who is authorised to direct proceedings (see Judgment 809), decided exceptionally to grant the Organization’s request to confine its reply to the issue of receivability.

6. The Tribunal considers that the defendant’s objection to receivability is well founded: to the extent that the complainant seeks the quashing of the decision of 15 April 2004, he has no cause of action because that decision was expressly revoked with retroactive effect on the grounds that it was unlawful. Insofar as he seeks the quashing of the decision of 18 November 2004, his complaint is irreceivable under Article VII, paragraph 1, of the Statute of the Tribunal, because he has not yet exhausted internal means of redress in view of the fact that his appeal is still pending at his request. His claims are therefore premature.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet