

111th Session

Judgment No. 3041

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A.E. R. against the World Health Organization (WHO) on 15 September 2009 and corrected on 4 November 2009, WHO's reply of 22 February 2010, the complainant's rejoinder of 3 May, corrected on 25 May, and the Organization's surrejoinder of 20 August 2010;

Considering Articles II, paragraph 5, and VII 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 national of Trinidad and Tobago who was born in 1961. She joined the Organization in August 2004 under a two-year fixed-term contract at grade P.4 as Reference Librarian and Head of Reference, WHO Library, in the Library and Information Networks for Knowledge Unit (LNK) of the Knowledge Management and Sharing Department. Her contract was subsequently extended for a period of two years and was due to expire on 31 July 2008.

By a memorandum of 4 July 2007 the Acting Director of the Knowledge Management and Sharing Department informed the Office of the Director-General that, in order to complete the implementation of the Strategic Direction and Competency Review (SDCR) of the Department and LNK, the Reference and Referral Services within the Library would be reorganised because of the need to implement programmatic changes dictated by improved technology and five posts would be affected. He requested approval for the abolition of the complainant's post, which was granted on 16 July.

On 10 October 2007 the complainant was informed that following the SDCR process her post would be abolished with effect from 9 April 2008. She was told that this would not necessarily result in the termination of her appointment. All possible efforts were being made to find her an alternative assignment and she was entitled to the reassignment process conducted by a Reassignment Committee. On 25 October the complainant filed a statement of intention to appeal with the Headquarters Board of Appeal (HBA) challenging the decision to abolish her post. She alleged personal prejudice on the part of responsible staff members, incomplete consideration of the facts and failure by the Administration to observe and apply correctly the terms of her contract and the provisions of the Staff Regulations and Staff Rules. She subsequently submitted her formal statement of appeal on 14 December 2007.

By a letter of 25 September 2008 the complainant was informed that, after applying the procedures stipulated by WHO Manual paragraphs II.9.300 to II.9.350, the Reassignment Committee had been unable to identify a suitable alternative assignment for her. Thus, the reassignment process had come to an end and the Director-General had decided to terminate her appointment with effect from 31 December 2008. Upon her separation from service she would be entitled inter alia to an indemnity payment in accordance with Staff Rule 1050.4.1. The complainant left the Organization on 30 December 2008.

The HBA issued its report on 20 March 2009. It recommended maintaining the decision to abolish the complainant's post. It further

recommended that an SDCR process be initiated pursuant to Information Note 30/2005 and the SDCR Operational Guidelines of 3 October 2005; that the process be completed within 90 days from receipt of the Board's report; that it be applied to the complainant and all other LNK staff members with retroactive effect from February 2007; and that a review of all posts and functions which had existed in LNK between February 2007 and 10 October 2008 be included in the process. The SDCR Review Team was to be convened to oversee the process. In the event that an alternative assignment was identified for the complainant, she was to be reinstated with retroactive effect from 1 January 2009. If she chose not to rejoin the Organization, the Board recommended compensation in an amount to be agreed upon by the parties. The Administration did not forward the Board's report to the complainant before she filed her complaint with the Tribunal.

By an e-mail of 14 April 2009 the complainant requested information regarding the termination indemnity payment due to her, which she had not received. On 28 April 2009 WHO sent her another letter, indicating that that letter was to supersede the letter of 25 September 2008. The content of both letters was otherwise identical. By a letter of 10 June 2009 from the Director of Human Resources Management, she was informed that the HBA had produced its report but that, as the Director-General was still considering it, the complainant's "indulgence" was requested for a limited period of time. On 17 June the complainant requested that the Director-General take an immediate explicit decision regarding her case and she asked for a copy of the report. She stated that she would consider the absence of a response to be an implicit negative decision. Having heard nothing further, on 15 September 2009 she filed her complaint with the Tribunal, impugning the implicit rejection of her appeal.

B. The complainant puts forth three main arguments. Firstly, she alleges that the procedure followed for the abolition of her post was based on error of law and an incomplete consideration of the facts. She submits that both the WHO Manual and the SDCR Operational

Guidelines state that it is desirable to provide information to substantiate objective programmatic and/or budgetary reasons for any proposed post abolition, yet she was not provided with that information. Relying on the Tribunal's case law, she asserts that a staff member must know the reasons for a decision so that he or she can act on it, for example, by challenging it or filing an appeal. She points out that the letter of 10 October 2007 did not provide any salient details regarding the reassignment process and the Reassignment Committee did not, in fact, contact her until February 2008. Moreover, the letter referred to the SDCR process as the sole reason for the abolition of her post. In her view, that process was completed in November 2005 and it did not affect any fixed-term posts in the Knowledge Management and Sharing Department. Thus, the Organization abused its authority and deprived her of the due process rights that had been afforded to staff members during the SDCR exercise by referring to it two years after the exercise had been closed. In addition, she asserts that the process applied to the abolition of her post was rapid, non-transparent and did not follow the SDCR methodology. No attempt was made to maintain her post, which was not obsolete. Three recruitments occurring at the material time in the same Unit both invalidate the decision and contradict WHO's reliance on programmatic restraints as a reason for the abolition. She points out that she has a record of satisfactory performance appraisals and that her functions were essential to the Library.

Secondly, the complainant asserts that the decision to abolish her post was tainted with personal prejudice on the part of her supervisor and led to a situation that was not dealt with in a timely and appropriate manner by the Organization. She submits that she was discriminated against with respect to duty travel and that her performance appraisal for 2006 was delayed to her detriment. In her view, the Administration was aware that poor working conditions existed within LNK, but it did not address the issue.

Thirdly, she contends that she suffered damage and was denied justice as a result of the unreasonable delay in the internal appeal

process and the failure by the Director-General to take a final decision on the matter and provide her with a copy of the HBA's report.

The complainant asks the Tribunal to quash the Director-General's implicit decision to abolish her post and to hold that the reasoning behind the decision was irregular, based on error of law, incomplete consideration of the facts and tainted with personal prejudice. She seeks reinstatement or assignment to another suitable post and asks the Tribunal to order an audit of the management of WHO's Library. She also seeks moral damages, compensation for damage to her career and costs.

C. In its reply WHO argues that, according to the Tribunal's case law, an international organisation necessarily has authority to restructure some or all of its departments or units, including by the abolition of posts, and that decisions on these matters are discretionary and subject to only limited review by the Tribunal. The decision to abolish the complainant's post was a proper exercise of discretionary authority, based on objective grounds. It explains that the Knowledge Management and Sharing Department underwent restructuring following the SDCR process which was initiated in 2005. However, after restructuring at departmental levels had occurred within the Organization, changes within some units were still under way or pending. Changes within the LNK Unit had been delayed until an examination of internal issues had been concluded, but a review of the Unit was initiated in early 2007, at the request of the then Director of the Knowledge Management and Sharing Department. The process within the LNK Unit followed a methodology similar to that of the SDCR process and, as a result of the review, it was determined that the functions of the post occupied by the complainant were no longer required. The abolition of her post was approved solely on the basis of programmatic considerations.

The Organization submits that there is no requirement that the proposal for the abolition of a post be provided to the affected staff member. Furthermore, LNK's restructuring was a continuation of

the SDCR process that had commenced in 2005 and the complainant's supervisor explained the process to the staff concerned as early as January 2007. The complainant was present at many, if not all, subsequent staff meetings where it was discussed and she participated in the analysis of the activities and responsibilities of the LNK Unit. In WHO's view, those discussions and the letter of 10 October 2007 provided her with the information she needed to challenge the abolition of her post.

With respect to the reassignment process, WHO contends that the Reassignment Committee carefully considered the complainant's case and conducted its work in accordance with the applicable rules, but it was unable to identify a suitable alternative assignment for her.

The defendant states that the abolition of the complainant's post was not based on a review of her performance, and that there is indeed no requirement to consider performance in this context. As a consequence of changing service delivery within the Library, the functions of her post were no longer needed. It contests her assertion that equivalent posts were created at the time her post was abolished.

WHO denies the complainant's allegation of personal prejudice and discrimination on the part of her supervisor. It points to an external management review which concluded that work conditions and management within the LNK Unit were excellent and it asserts that the complainant was made aware of these findings in December 2007.

In relation to the alleged delay and failure to render a final decision, the Organization submits that the conclusions and recommendations of the HBA created a "difficult situation", particularly because the Board's recommendation to implement a retroactive SDCR process was inconsistent with its recommendation to confirm the decision to abolish the complainant's post. Furthermore, as the complainant had already been offered supportive measures which included a reassignment process, a retroactive SDCR process would not have been beneficial for her. As a consequence, no decision was taken by the Director-General and the Administration, in good faith, tried to

resolve the matter by seeking to identify a suitable alternative post for the complainant. It adds that the new Executive Director of the Office of the Director-General replied on 18 June 2009 to the complainant's letter of 17 June, suggesting that a meeting could be useful. In the defendant's view, the complainant's allegations of denial of justice are unfounded.

D. In her rejoinder the complainant presses her pleas. In particular, she alleges that by withholding the HBA's report from her until the filing of its reply before the Tribunal the Organization deprived her of her due process rights. In her view, WHO's attempt to find a solution was merely a way of avoiding the Board's recommendations. Moreover, the reassignment process was flawed by a lack of appropriate and essential information; she requests the Tribunal to order disclosure of the Reassignment Committee's final report, which was not provided to the HBA.

E. In its surrejoinder WHO maintains its position in full. It contends that the complainant's claims with respect to the reassignment process and its outcome are irreceivable for failure to exhaust internal means of redress.

CONSIDERATIONS

1. The complainant disputes the abolition of her post with WHO. In August 2004 she joined the Organization on a two-year fixed-term contract at grade P.4 as a Reference Librarian and Head of Reference, WHO Library, in the LNK Unit of the Knowledge Management and Sharing Department. Her contract was subsequently extended for two years until 31 July 2008. Following the SDCR of her department, she was informed on 10 October 2007 that her post was scheduled for abolition on 9 April 2008. The complainant was placed in the reassignment process, which ultimately failed. On 25 September 2008 she was informed that the Director-General had decided to terminate her appointment, and she left the Organization on 30 December 2008.

2. In the meantime, on 25 October 2007, the complainant launched an internal appeal with the HBA against the decision to abolish her post. The Board transmitted its report to the Director-General on 20 March 2009. However, on 10 June the Director of Human Resources Management wrote to the complainant explaining that the Director-General had yet to take a decision on the appeal and requested her indulgence for the delay. On 17 June the complainant responded asking for an immediate final decision as well as the Board's report. The complainant did not receive either. On 15 September 2009 she filed a complaint with the Tribunal.

3. The complainant contends that the decision to abolish her post is tainted by error of law and was based on an incomplete consideration of the facts and personal prejudice. She claims that WHO did not provide her with objective programmatic reasons for the decision and no efforts were made to maintain her post. In addition, she argues that at the time of the internal appeal challenging the abolition of her post, the Organization was engaged in the recruitment of other staff members to fill similar posts. She also claims that she suffered damage and was denied justice as a result of the delay in the internal appeal process and by the Director-General's failure to take a final decision regarding her appeal. She asks the Tribunal to quash the implicit decision to abolish her post and to find that it was tainted with personal prejudice. She seeks reinstatement in her post or placement in another suitable post. She also asks the Tribunal to order an audit of the management of WHO's Library and she claims moral damages, compensation for injury to her career, and costs.

4. The Organization submits that the decision to abolish the complainant's post was a proper exercise of its discretionary authority which is subject to only limited review by the Tribunal. It adds that the decision was taken for objective reasons.

5. The complainant advances a number of arguments. As these arguments are detailed above, they are not repeated in these

considerations. The arguments concern the process surrounding the abolition of her post, an allegation of personal prejudice, and unreasonable delay coupled with the failure to render a final decision. In summary, the complainant submits that she was not provided with sufficient reasons for the abolition of her post as required by the WHO Manual and the Tribunal's case law. Additionally, she challenges the validity of the one reason she was given for the abolition of her post, namely the SDCR process. She points out that the review of the LNK Unit did not follow the review exercise stipulated in the Operational Guidelines of October 2005. She contends that the unclear process leading to the abolition of her post impeded her ability to exercise her right to present her case against the abolition of the post. She also notes that the recruitment that was undertaken at the time of her appeal contradicts the alleged programmatic constraints requiring the abolition of her post. Lastly, in relation to the process that was followed, the complainant argues that the reassignment process was flawed by WHO's failure to provide her with appropriate and essential information concerning reassignment.

6. It is well established in the Tribunal's case law that a decision to abolish a post is a discretionary decision subject to only limited review by the Tribunal (Judgment 2510, under 10). It is equally well settled that there must be objective grounds for the decision (Judgment 1231, under 26). In the present case, WHO states that the reorganisation was motivated by the need to bring the reference and referral services in line with the modernisation of the rest of the library services and the functions of the complainant's post were no longer needed.

7. In assessing whether there is an objective basis for the decision to abolish a post, it is also useful to examine whether the abolition of the post has resulted in a reduction of the number of staff in the department (see Judgment 2092, under 7). In this instance, while the complainant identified three staff members hired around the time her post was abolished, WHO has shown that the hiring decisions

were made in relation to a specific online research programme that is separate from the complainant's former functions in referral services. Additionally, the fixed-term position that was created at the material time was for a technical officer for that programme. Although there is some debate as to whether there was an actual reduction in staff and budget following the abolition of the post, there is no evidence that an equivalent post was re-established within the LNK Unit. In light of the evidence, the Tribunal concludes that the abolition of the post was for objective programmatic reasons. However, this does not end the inquiry.

8. The decision to abolish a post must be communicated to the staff person occupying the post in a manner that safeguards that individual's rights. These rights are safeguarded by giving proper notice of the decision, reasons for the decision and an opportunity to contest the decision. As well, subsequent to the decision there must be proper institutional support mechanisms in place to assist the staff member concerned in finding a new assignment.

9. As the Tribunal stated in Judgment 2124, under 4, "the need to give reasons in support of adverse administrative decisions arises precisely because the affected staff member must be given an opportunity of knowing and evaluating whether or not the decision should be timely contested".

10. By the letter of 10 October 2007 the complainant was informed that her post was scheduled to be abolished following the SDCR. The HBA found that by citing the SDCR as the process giving rise to the abolition of the post, the Organization bound itself to the SDCR procedures and owed a duty to the complainant to offer her all of the safeguards set out in the SDCR Operational Guidelines. From this, the Board concluded that the complainant was entitled to an SDCR process which had not been applied in the LNK Unit. On this basis, the HBA recommended that the entire process be repeated.

11. The SDCR Operational Guidelines are just that, guidelines. They provide that they “may apply to a greater or lesser degree depending on the particular situation of a Department under review” and that they may be applied flexibly. The evidence shows that a review process did take place in the LNK Unit leading up to the abolition of the complainant’s post. It included presentations with organigrams, staff members were asked to report on their respective roles and tasks in the Library and an individual was appointed to review the functions of the Unit. In the Tribunal’s view, the review process was respected in the circumstances. Further, the Tribunal notes that by the letter of 10 October 2007 the complainant was notified of her entitlement to participate in a reassignment process. There was therefore no procedural or substantive breach in WHO’s decision and implementation of the abolition of the complainant’s post.

12. As noted above, the complainant also submits that the abolition of her post was motivated by personal prejudice. Having reviewed the complainant’s allegations, the Tribunal is unable to conclude that the post was abolished for any reason other than the stated reason of bringing the reference services in line with web-based library services.

13. The last issue concerns the delay in the processing of the complainant’s appeal and the failure to render a final decision in accordance with WHO’s statutory requirements. On 10 October 2007 the Administration informed the complainant that following the SDCR process her post would be abolished on 9 April 2008. The complainant filed her internal appeal on 25 October 2007. She was told on 25 September 2008 that the reassignment process had been concluded and that her employment would end on 31 December 2008. On 10 June 2009 she was asked for her indulgence for the delay in processing the appeal. On 17 June the complainant requested that the Director-General take an immediate explicit final decision. The

record does not indicate that a final decision has yet been given to the complainant. Further, the HBA's report was not given to the complainant until it was provided with WHO's reply to her complaint before the Tribunal in February 2010. The complainant points out that the recent discussions to resolve the dispute were triggered by the filing of her complaint.

14. In relation to the delay and the failure to give a final decision, WHO states that on 18 June 2009, when alerted to the complainant's letter of 17 June 2009, the newly appointed Executive Director of the Office of the Director-General immediately replied to the complainant's legal representative, indicating that she was very new in the position and that there was also a new Director of Human Resources Management; she suggested that a meeting could be useful.

15. With regard to the failure to render a final decision, WHO notes that on 10 June 2009 the Director of Human Resources Management informed the complainant that in light of the issues pertaining to the case, the Director-General was still considering the Board's report and asked for her indulgence. WHO states that the HBA's conclusions and recommendations left the Organization in a difficult position. In light of the difficulties posed by the recommendations, in good faith the Administration opted to engage in extensive efforts to find a solution to the dispute, focusing first on seeking to identify a suitable post for the complainant. WHO states that these efforts continued until February 2010.

16. The Tribunal observes that there can be no justification for the delay and the failure to give the complainant a final decision. The fact that the HBA's recommendations left the Administration in a difficult position does not excuse the unreasonable delay or absolve the Director-General from fulfilling her obligation to give a final decision in accordance with the Staff Regulations and Staff Rules. The Tribunal finds it particularly egregious that the failure to give a

decision also resulted in the complainant not knowing the outcome of the HBA process. In addition to leaving the complainant in an unfair position in terms of any negotiations or other attempts to resolve the dispute, the complainant was deprived of the opportunity to consider the findings and recommendations contained in the Board's report before filing a complaint with the Tribunal. It appears that WHO's conduct undermined the integrity of the internal appeal process and was a blatant disregard of the complainant's rights. In these circumstances, the complainant is entitled to an award of moral damages in the amount of 20,000 United States dollars and costs in the amount of 5,000 dollars.

DECISION

For the above reasons,

1. WHO shall pay the complainant moral damages in the amount of 20,000 United States dollars.
2. It shall also pay her costs in the amount of 5,000 dollars.
3. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet