

THIRTY-NINTH ORDINARY SESSION

***In re* CONRAD, ARGOTE-VIZCARRA,
ORDONEZ, CARRILLO-FULLER (No. 2)
RODRIGUEZ, GANDOLFO,
ADCALDE-BECKNER and BLAISE**

Judgment No. 328

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints brought against the Pan American Health Organization (PAHO) (World Health Organization) by Mrs Julieta Conrad on 24 September 1976, by Mrs. Sheila Argote-Vizcarra on 29 September 1976, by Miss Dora Ordoñez on 6 October 1976 and by Miss Maria-Teresa Carrillo-Fuller, Mrs. Patricia Rodriguez, Mrs. Norma Gandolfo, Mrs. Linda Alcalde-Beckner and Mrs. Circe Blaise on 7 October 1976 - the eight complaints having been received by the Registry on 28 October 1976 under covers postmarked 22 October 1976 - the PAHO's single reply of 10 November 1976 to the eight complaints the complainants' rejoinders of 1 December 1976, which the Registry received on different dates, and the PAHO's single surrejoinder of 22 December 1976;

Considering that the eight complaints relate to the same matters and should be joined to form the subject of a single decision;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the Tribunal's Judgment No. 272, PAHO Staff Rules 270, 280.7 and 360 and WHO Manual provision II.10.350;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The Tribunal dealt with the subject of this case in Judgment No. 272 (in re Carrillo (No. 1)) of 12 April 1976. Miss Carrillo-Fuller was a party and the other complainants interveners in that case, which concerned officials who, though recruited outside the United States, had been given local status by the PAHO in Washington. The Tribunal decided in that case that, for the purpose of establishing entitlement under the Staff Regulations and Rules in accordance with Staff Rule 360, the place of residence of the complainant should, notwithstanding the contents of WHO Form 386 signed by her in June 1972, be determined as having been at Lima in Peru. The Tribunal further decided that the cases of the interveners should be remitted to the Director-General so that he might amend WHO Form 386 so as to show in each case the correct and agreed residence immediately prior to appointment, with liberty to each intervener to apply to the Tribunal if agreement was not reached.

B. No agreement has been reached between the complainants and the Administration in particular, on the date from which their "international recruitment" should be deemed to have taken effect. The complainants take the view that it should be the actual date on which they joined the staff of the PAHO. The PAHO contends that according to Staff Rule 280.7 the date should be 1 July 1973. That rule bars any claim for payment of benefit alleged to be due over twelve months before the date on which payment ought originally to have been made, i.e. in the present case twelve months before 1 July 1974 the date of the original claim the PAHO upheld this view for the last time on 26 July 1976 and that is the final decision the complainants are impugning.

C. The complainants ask the Tribunal to rule that they were "internationally recruited" and therefore entitled to all the benefits guaranteed by the Staff Regulations, Staff Rules and Manual provisions (Staff Rule 360 and Manual provision II.10.350); to rule that such benefits are acquired rights and mandatory and should be paid to the complainants with effect from the date on which they were engaged in accordance with the rules in force at the time; and, in view of the last sentence of paragraph 9 of the considerations in Judgment No. 272, to award them costs.

D. In its reply the PAHO contends that the complainants' first claim has already been met in accordance with Judgment No. 272. As to their second claim, it still maintains that under Staff Rule 280.7 it may not grant benefits

for any period before 1 July 1973. It has construed the texts correctly and committed no mistake of law. It accordingly asks the Tribunal to dismiss the complaints.

CONSIDERATIONS:

1. It is not disputed that subject to Staff Rule 280.7 the complainants who were all recruited outside the United States of America for employment in the Organization's Washington Office are entitled to arrears of benefits payable to staff members so recruited and specified in each case in paragraph 21 of the complaints. The claim for such benefits was first made on 1 July 1974.
2. Staff Rule 280.7 provides that the Organization will not accept a claim in respect of an allowance or entitlement of any kind that is submitted beyond twelve months from the date when the initial payment would have been due. In accordance with this rule the Organization has admitted liability for all benefits falling due after 1 July 1973. Consequently the benefits claimed are those which fell due before that date. In respect of them the complainants contend that the Organization cannot rely upon the rule because of conduct "tantamount to fraud".
3. If it can be established that the conduct of the Organization was such as to conceal from the complainants in bad faith that they had the claims which they are now putting forward then the Organization could not in the opinion of the Tribunal rely upon the rule the facts which are alleged to constitute such conduct are not as facts disputed. They are that the complainants were recruited outside the United States and were required to come to Washington at their own expense. On arrival there notwithstanding that the place of residence of each of them was (as the Tribunal has held in Judgment No. 272) for the purposes of the relevant Staff Rule outside the United States, each of the complainants was required to sign a document indicating a place of residence in Washington and was neither given a choice in the matter nor provided with a copy of the Organization's regulations and rules. This course was adopted by the Organization so that the complainants should be deemed not to qualify for the benefits which they are now claiming.
4. The crucial question is whether or not the complainants were being deceived. The facts as stated are consistent with the possibility that the complainants knew what they were doing and signed the form because they believed, probably correctly, that unless they did so they would not get the appointments they wanted. If this IS SO, it might be reprehensible conduct by the Organization but it would not amount to concealment or to bad faith towards the complainants. There is not in the dossier any allegation of such concealment or bad faith, nor is there any proof of it. According to the Organization, "it has never been suggested that any of the complainants ... were at any material time unaware of the situation or had been deliberately misled by the acts of the Organization". There is therefore nothing to prevent the application of Staff Rule 280.7.
5. It may happen that the amount of a benefit, such as a repatriation grant, which does not become due until after 1 July 1973, will depend upon length of service which may have commenced before 1 July 1973. Staff Rule 280.7 does not then prevent the whole of the service being taken into account. The Organization has acknowledged this. The acknowledgment does not, as the complainants contend, in some way prevent the Organization from relying upon the rule in cases to which it applies.

DECISION:

For the above reasons,

The complaints are dismissed.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 November 1977.

M. Letourneur
André Grisel
Devlin

Roland Morellet

