

FORTY-SIXTH ORDINARY SESSION

In re ESPINOLA

Judgment No. 446

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan American Health Organization (PAHO) (World Health Organization) by Mrs. Sara Espínola on 3 July 1980, the PAHO's reply of 5 September, the complainant's rejoinder of 29 September, the PAHO's surrejoinder of 5 November 1980, the complainant's additional memorandum of 17 November 1980 and the PAHO's observations thereon of 23 January 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulation 2.1, PAHO Staff Rules 210 and 1230 and WHO Manual sections II.1.20, II.1.40.1 and II.1.40.5;

Having examined the written evidence, 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. As a result of a competition the complainant was appointed on 11 May 1970 as a G.6 Statistical Assistant at the Pan American Zoonoses Center (CEPANZO) of the PAHO in Argentina. In 1975 a new description including more responsible duties was given for the post which she held (No. 3570) and she applied for the reclassification of the post. On 25 March 1976 she was informed that her appointment would not be renewed after 30 June 1976. She appealed and, the decision having been cancelled, was reinstated on 1 March 1977 and resumed her former duties. Post 3570 having been abolished, however, she was put on post 2111, although she kept her grade and title. In a second appeal she objected that the duties attaching to the post were much less demanding than her former duties, but the appeal formed the subject of negotiations, and as a result on 14 March 1978 the description of post 2111 was changed to bring it into line with that of post 3570. On 4 July 1978 she applied for a "desk audit" of her post and she and her supervisor filled up a questionnaire on her duties for the classification officers. On 12 March 1979, having had no reply to her application, she appealed to the Headquarters Board of Inquiry and Appeal in Washington seeking reclassification with effect from 1 March 1977, the offer of a career appointment compensation for moral and professional prejudice, and costs. On 12 October 1979 three members of the Board - the majority - reported that the duties of the post did not warrant reclassification to grade P.1 and that the appeal should be dismissed. The two other members held that the post should be retroactively reclassified. On 14 December 1979 the Director of the PAHO informed the complainant that he endorsed the majority recommendation.

B. The complainant puts forward the following arguments: (a) The decision not to reclassify her post constitutes a breach of Staff Regulation 2.1, which states that the Director shall make provision for the classification of posts according to the nature of duties required, and of Staff Rule 210, which requires the Director to establish plans for the classification of all posts according to the type and level of the duties and responsibilities. (b) The decision not to reclassify post 2111 in the Professional category of statisticians is contrary to the post classification plan in the Manual and to Staff Rules 1230.1.2, 3 and 4. In particular the impugned decision did not take account of the fact that university education is required and that the complainant is working with a P.4 official. Moreover, comparisons were mistakenly drawn with other posts in other duty stations when there should have been reference only to the post classification plan. (c) The decision is in breach of Manual sections II.1.20, II.1.40.1 and II.1.40.5. Manual section II.1.20 states that posts are grouped into classes according to the type of work performed and the level of responsibility required. The complainant believes that she has demonstrated that her duties and responsibilities are exactly the same as those of a P.1 statistician. Manual section II.1.40.1 lays down the principle of equal pay for equal work. Manual section II.1.40.5 states that the grading of a post is dependent upon the duties and responsibilities required and not on the incumbent's qualifications. (d) The Administration's continued silence violated her right to due process. In seeking advice from the Argentine Government, moreover, the PAHO was in breach of Article 22.B of the PAHO Constitution and Article 37 of the WHO Constitution, which lay down the independence of international organisations with respect to member States.

C. In her claims for relief the complainant invites the Tribunal (a) to declare that the classification standards of the

PAHO were improperly applied; (b) to declare that the principle of equal pay for equal work was violated since the duties of P.1 statistician posts and those of her own post, No. 2111, are similar; (c) to order that her post be regraded P.1; (d) to order that the reclassification take effect on 1 March 1977, the date on which she was reinstated; (e) to award her compensation for the professional and moral prejudice which the Administration has caused her over the last four years and to set the amount as it sees fit; and (f) to award reasonable costs.

D. In its reply the PAHO states in answer to plea (a) that the procedure was correctly applied. While her post was being reviewed she chose to appeal, as was her right, to the Board of Inquiry and Appeal, and the majority of the Board, having considered the duties and responsibilities of the post, held that reclassification was unwarranted. Under (b) the complainant contends that the Director overlooked essential facts: what she refers to as "facts" are questions of technical evaluation which fall within the discretion of the Board and the Director. Her statements under (c) take it as proven that the duties and responsibilities are those of a P.1 statistician. That is not so. Lastly, the Administration did not fail to respond since as soon as the complainant made her application for reclassification it started the review procedure, which went as far as the Board of Inquiry and Appeal. The PAHO therefore invites the Tribunal to dismiss the complaint as unfounded.

E. In her rejoinder the complainant observes that the PAHO has not referred to the flaws in the procedure: the disappearance of the report explaining the reasons for the abolition of her post; her transfer to post 2111 in disregard of the agreement on reinstatement dated 22 February 1977; abuse of authority by the Area VI PAHO Representative, who took it on himself to dismiss her second appeal; and the communication of the papers relating to the desk audit of her post to several supervisors who were not competent to consider her application. The complainant does not agree that the review carried out by the majority of the members of the Board of Inquiry and Appeal was thorough since they considered only some aspects of her duties, whereas the other two members of the Board considered all of them. In failing to take account of the substantiated opinion expressed by the latter the Director overlooked essential facts. He also failed to take account of the complex duties she has actually been performing since 1977, which show the responsible nature of her work. The Administration took the advice of supervisors other than her first-level supervisors, since the latter never said that her duties and responsibilities were below Professional category level. The Administration gave no answer and did not act on her claims with due promptness. The Administration must be distinguished from the Board of Inquiry and Appeal, and the fact that the Board heard her claim does not excuse the Administration for having failed to do so earlier. Lastly, she expresses surprise that the PAHO's reply does not mention the negotiations which were begun on 10 July 1980 at the instance of the PAHO's agent and the main purpose of which was to offer reclassification of her post to grade P.1 if she would agree to withdraw her complaint. The negotiations have come to nothing because the PAHO did not offer an adequate contribution to her costs and because there was disagreement over the exact content of the new post description.

F. In its surrejoinder the PAHO rejects the arguments which the complainant founds on alleged improprieties with regard to such matters as the extension of her contracts of appointment: she did not challenge those other decisions in time and she is therefore now time-barred. The PAHO acknowledges that it offered her an amicable settlement granting her the reclassification she seeks and costs amounting to 2,000 United States dollars, but the settlement failed because the complainant insisted that one condition of the agreement should be a two-year extension of her appointment. To demonstrate the good faith it has shown towards her, the PAHO explains that the Center where the complainant works is situated in Argentina and is partly financed by PAHO funds, but mainly by funds from the Argentine Government. The high rate of inflation in Argentina (140 per cent in 1979) has caused the Center serious financial difficulties, and this has had an effect on extensions of appointment and led to reductions and decentralisation of activities. The PAHO representative was not guilty of any abuse of authority since he did not dismiss the complainant's appeal. As regards the supervisors who were consulted and who, according to the complainant, had nothing to do with the case, the fact is that in the complainant's description of her duties she mentioned work which came within their area of competence. It was therefore right to consult them. As regards the Administration's alleged silence, Staff Rules 1230.1.4 and 1230.2 expressly authorise the Headquarters Board of Inquiry and Appeal to hear claims alleging improper application of the post classification standards. The complainant exercised her right of appeal. The PAHO is willing to consider the matter of reclassification of her post at grade P.1 with effect from 1 July 1980 and to contribute 2,000 United States dollars towards her costs, but is unable to consider extending her appointment on account of the decision to abolish altogether the Unit of Epidemiology and Statistics at the Center.

CONSIDERATIONS:

1. On 4 July 1978 the complainant applied to have her post 2111, which was that of Statistical Assistant G.6, i.e. a clerical post, reclassified and put in the Professional level as Statistician P.1. Being unable to obtain a decision, she appealed on 12 March 1979 to the Board of Inquiry and Appeal. The Board considered a list of sixteen duties prepared by the complainant and compared them with the requirements in the classification plan for a Statistician P.1. The five members of the Board were divided in their opinions. The majority of three considered that the sixteen duties were principally clerical although two or three could be of Professional level and recommended against reclassification. The minority of two considered that post 2111 fitted the P.1 level in all its aspects and recommended reclassification. The Director accepted the majority view and on or about 14 December 1979 decided accordingly. This is the decision impugned on four grounds, headed A, B, C and D in the statement of complaint.

2. The main point is advanced under head B and is in effect a contention that the Tribunal should prefer the minority view, this contention being supported by criticisms in detail of the majority view. Obviously, where there is such a close division of opinion, there must be room for criticisms of detail of both views. In the end, the question is one for a general appreciation by persons who are familiar with the working conditions; it cannot be solved by a meticulous comparison of duties as set down on paper. The majority opinion was to the effect that there was a good deal more of the clerical than of the professional about the job, and this was the view which the Director preferred. Unless there is clear evidence, which there is not in this case, of a mistaken approach to the problem, this is the view that must be accepted.

3. Under head A the complainant alleges a violation of certain Staff Regulations which require the Director in general terms to establish a plan for reclassification of all posts. There was a plan, which the board of appeal used, for the classification of Statisticians from P.1 to P.5 but none for the General Service staff. Neither the majority nor the minority regarded this lack as disabling them from reaching a conclusion on the complainant's application. If therefore there was a violation of the regulations cited, it does not vitiate the decision impugned.

4. Under head C the complainant cites several other provisions relating to post classification in the Administrative Manual which she contends have been violated. They give directions in general terms, e.g. that classification depends on the type of work performed and the level of responsibility required and that there shall be equal pay for equal work. The contention that they were disregarded is only another way of saying that the classification was incorrect.

5. Under head D the complainant contends that her right to due process was violated and she claims redress for professional and moral damage. Certainly the course of the proceedings was unusual and the Board considered that there was "a pattern of administrative action that could be interpreted as harassment"; the Board was unable to determine the intent of the actions but thought that they warranted administrative inquiry. It appears that the dispute over classification began about the end of 1975 when the complainant threatened to resign on the ground that her post was sub-classified; she had by then been employed for over five years with a satisfactory work performance. In April 1976 she was notified that her contract would not be renewed, a decision against which she appealed. The appeal was settled by a reinstatement agreement; an appeal alleging a breach of that agreement was also settled and it was in accordance with this settlement that she applied in July 1978, as noted in paragraph 1 above, for a reclassification. Nevertheless, as also noted in paragraph 1, she was unable by March 1979 to obtain a decision. All this may well call for elucidation, as the Board suggests. But the complainant does not impeach either of the two settlements she made and so the Organization rightly objects to their being reopened. The Tribunal is not satisfied that there was such mistreatment of the complainant as would amount to a breach of obligation leading to compensation.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.