

FORTY-NINTH ORDINARY SESSION

In re AMONFIO

Judgment No. 539

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Emmanuel Quao Amonfio on 20 October 1981 and brought into conformity with the Rules of Court on 24 December 1981, the WHO's reply of 15 March 1982, the complainant's rejoinder of 7 April and the WHO's surrejoinder of 3 May 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 110.1, 110.8, 1075.2, 1110, 1120 and 1130;

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. The complainant, a citizen of Ghana, was employed by the WHO at its Regional office for Africa in Brazzaville. In June 1978 the auditors were informed that two staff members, one of them the complainant, had been making large claims for reimbursement from the Staff Health Insurance Scheme of the cost of drugs and medical treatment. The auditors carried out an inquiry and in a report dated 18 December 1979 found that "much of the documentation submitted by both staff members was forged and/or falsified or not substantiated". They found collusion. They stated that pharmacies from which the complainant had submitted bills were not registered with the Pharmacy Board of Ghana nor even listed in the telephone directory; that the price of some of the drugs was as much as thirty times too high; that a certificate of attendance at a church school by his daughter in 1977 had been declared false by a clergyman in charge of the school; and that five teachers from whom he had submitted large bills for the private coaching of his children could not be identified by the Ministry of Education. By a letter of 14 December 1979 the WHO informed the complainant that irregularities had been found in supporting documents attached to his claims; that the charge was one of serious misconduct under Staff Rules 110.1 and 110.8; and that he was therefore suspended from duty pending investigation of the charge in accordance with Staff Rule 1120. The complainant wrote a letter on 20 December denying the charges. On 31 December he received a letter informing him that he was summarily dismissed for serious misconduct under Staff Rules 1075.2 and 1110.1.5. On 3 January 1980 he appealed to the Regional Board of inquiry and Appeal. On 13 May the Board recommended dismissing the appeal, the Regional Director accordingly dismissed it, and he appealed to the Headquarters Board of Inquiry and Appeal. The Headquarters Board found ample evidence to bear out the charge, and on its recommendation the Director-General rejected the appeal by a letter of 23 July 1981, which is the decision impugned.

B. The complainant argues that the charges in the WHO's letter of 14 December 1979 were not specific enough to allow of a reply. The specific charges were in fact set out in the letter of dismissal which he received on 31 December, and he objects that there was a gross breach of Staff Rule 1130, which states: "A staff member may not be ... summarily dismissed for serious misconduct until he has been notified of the charges made against him and has been given an opportunity to reply to those charges". He believes that he was not given a proper opportunity to reply, and that there has been a miscarriage of justice.

C. The WHO observes in its reply that the charges were set out in its letter of 14 December 1979, which read "... you are hereby charged with ... repeated submission of medical claims and education grant claims supported by forged and falsified documentation including pharmacy bills, receipts for private tuition and certificates of attendance resulting in significant financial losses to WHO and to the Staff Health Insurance". Those charges were specific, and the complainant answered them in his letter of 20 December. His reply was unsatisfactory, and the dismissal followed, the procedure in Rule 1130 being fully complied with.

D. In his rejoinder the complainant argues, first, that the PAHO intended to dismiss him whatever he might say in reply to its accusations. He does not accept that the wording of the charges in the letter of 14 December 1979 was

specific. Had that been so, there would have been no need to repeat the charges in the letter of dismissal. Secondly, the Administration was aware of its breach of the procedure, and that was why it included in the letter of dismissal what purported to be evidence of falsified documentation.

E. In its surrejoinder the WHO retorts that the complainant's alleged feeling that the WHO was not interested in his reply did not prevent him from making one in his letter of 29 December 1979. In fact the letter of 14 December expressly invited him to reply. As to the second argument, what the letter of 14 December contained was the charges; what the letter of dismissal contained was evidence. In any event, as the Regional Board observed, the complainant made no effort between December 1979 and April 1980 to establish his innocence.

CONSIDERATIONS:

The issue

WHO Staff Rule 1130 provides as follows:

"A staff member may not be reassigned for misconduct, dismissed for misconduct nor summarily dismissed for serious misconduct until he has been notified of the charges made against him and has been given an opportunity to reply to those charges. The notification and the reply shall be in writing, and the staff member shall be given eight days from receipt of the notification within which to submit his reply. This period may be shortened if the urgency of the situation requires it."

On 14 December 1979 the WHO notified the complainant in writing of the charge made against him, namely:

"Repeated submission of medical claims and education grant claims supported by forged and falsified documentation including pharmacy bills, receipts for private tuition and certificates of attendance resulting in significant financial losses to WHO and to the Staff Health Insurance."

In his communication dated 20 December in answer to the WHO's letter of 14 December the complainant stated: "... I have neither forged nor falsified any documents relating to either education grant or medical claim. I therefore see no substance in the charge levelled against me."

On 31 December 1979 the WHO summarily dismissed the complainant for gross misconduct.

The question for resolution is whether, as the complainant maintains, the charge was vague and too general and did not contain any specific charges to which he could reply, or, as the WHO submits, the charge was formulated in conformity with Staff Rule 1130.

The complainant was employed from October 1968 as a clerk-typist in the WHO Office in Brazzaville. He is a person with onerous family responsibilities. His former wife lives in Ghana where the four children of his former marriage reside. He also has six children living in Brazzaville. Under the conditions of service applicable to his post the complainant made claims for education grants in respect of the children and claims under the Staff Health Insurance Scheme for himself and his dependants.

In their report dated 18 December 1979 the WHO auditors found that during the period January 1978 through January 1979 much of the documentation in support of the complainant's claims for reimbursement from the Staff Health Insurance Scheme of the cost of drugs and medical treatment and in respect of education grant was forged or falsified or not substantiated. As a result of the investigation and prior to the submission of the audit report the Director-General of the WHO on 13 December 1979 requested the Regional Director to suspend the complainant with a view to summary dismissal for serious misconduct.

In its letter of dismissal of 31 December, the WHO stated that a certificate of attendance submitted by the complainant in support of an education grant was false in that it was written on a letterhead not used by the school, was signed by a person unknown to the school authority, and because, most significantly, the name of the complainant's daughter did not appear on the Admission Register. As regards pharmacy bills, the letter stated that the prices were grossly inflated and that the Registrar of the Pharmacy Board had confirmed that none of the pharmacies from which bills were submitted was registered with the Pharmacy Board.

In subsequent proceedings the Regional Board of Appeal found that the documents submitted by the complainant

in support of reimbursement of educational expenses and medical expenses were complete forgeries.

In his appeal to the Headquarters Board of Inquiry and Appeal the complainant raised the possibility of collusion with others on the part of his former wife, with whom relations were strained, to extract money from him.

In the event, the Headquarters Board considered that the complainant was solely responsible for the genuineness of the claims he submitted and recommended that his appeal be dismissed.

The procedural point

WHO Staff Rule 1130 imposes on the Organization a duty to provide a staff member charged under the rule with sufficient information of the charge to make it clear to the staff member exactly what he is being accused of. The amount of detail will depend on the nature of the charge but should be sufficient to allow him to answer the accusation.

It must be said that the complainant should have been informed of the period during which the WHO was alleging he submitted medical and education grant claims supported by forged and falsified documentation. In view of the fact that the accusation was based on the investigation by the WHO auditors, which covered a limited period only, the complainant's attention should have been drawn to the dates of the commencement and of the end of the period in question.

It is not difficult to conceive of cases in which such an omission would constitute an irreparable flaw in the procedure laid down in Staff Rule 1130. But in the circumstances of this case, where the complainant was himself submitting claims which by their very nature required his verification and which, since the documentation came from abroad, could not be readily confirmed by the Brazzaville Office, the complainant could have been in no doubt as to the accusation he was called upon to answer, his attention having been specifically drawn to pharmacy bills, receipts for private tuition and certificates of attendance.

In any event, even assuming that Staff Rule 1130 was not fully complied with, the evidence which emerged before the Regional Board was so overwhelming that it cannot be said that there has been any miscarriage of justice.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner