

Registry's translation, the French text alone being authoritative.

FIFTIETH ORDINARY SESSION

In re GLORIOSO (No. 2)

Judgment No. 550

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mrs. Olinda Glorioso on 18 March 1982 and brought into conformity with the Rules of Court on 20 April, the PAHO's reply of 11 June, the complainant's rejoinder of 29 July and the PAHO's surrejoinder of 12 October 1982;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and PAHO Staff Rules 1230.1 and 8;

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 Honduras employed by the PAHO since 1973, had a dispute with the Organization which is recounted in Judgment No. 450, under A. On 22 April 1980 the PAHO Board of Inquiry and Appeal recommended dismissing her internal appeal but reimbursing such "medical costs resulting from this situation as can be substantiated by her personal physician and verified by the Organization's medical referee", giving her priority for training courses in the Office of Personnel, and expunging comments made by Mr. Brooks, her supervisor, in her 1977-78 appraisal report. The Director accepted those recommendations in a letter he sent her on 18 June 1980. On 7 July she was informed that Mr. Brooks' comments had been removed from the records. On 19 January 1981 she was transferred within the Office of Personnel to the Operations Unit. On 11 March she sent the Chief of Personnel bills for medical costs allegedly incurred on account of her appeal and claimed 1,063 United States dollars. She slightly altered her claims on 24 March and 9 April. On 20 April the PAHO told her that on the medical referee's advice it would repay \$176. On 26 June she supplied two certificates by physicians of treatment for physical and psychological disorders due to tension at work and over her appeal. On 30 June the Chief of Personnel authorised payment of a further sum, and the total amount eventually reimbursed was \$343. On 3 July she went again to the Board alleging that its earlier recommendations had not been respected and in particular claiming \$420 to cover the cost of psychotherapy in 1980-81. On 26 October 1981 the Board found that its earlier recommendations were "under implementation" and declared the appeal irreceivable. On 3 January 1982 she received from the Director a letter dated 18 December endorsing the Board's conclusions, and that is the decision impugned.

B. The complainant accuses the PAHO of failing to respect the Board's recommendations. Her ailments were due to stress at work and over her earlier appeal. She had to go into hospital three times and undergo surgery twice. In her old unit in the Office of Personnel she suffered constant harassment. She still does. The PAHO has not explained its refusal to grant her claims in full. Mr. Brooks' comments, though removed from her appraisal report for 1977-78, still appear in the report for 1978-79. Nor has she received proper training for her new duties. The PAHO is in breach of its undertaking, in Bulletin No. 78/7 of 20 January 1978, "to make no administrative use of material concerning a staff member, whether originating from a supervisor or any other source, which the staff member has not been made aware of": it has used secret documents to her detriment, in breach also of the rules of due process in Staff Rule 1230, and even submitted some of them to the Tribunal in her first case. She seeks reimbursement of out-of-pocket medical costs proximately caused by her transfer to the Office of Personnel, including additional costs incurred but not before submitted to the PAHO, removal of all correspondence, including documents in her files, of which she was not given copies at the time, moral damages for mental anguish and injury to reputation, costs and any other remedies the Tribunal deems fit.

C. In its reply the PAHO contends that the claims for training and for reimbursement of \$420 are irreceivable

because the complainant has not exhausted the internal means of redress as required by Rule 1230.8.1. The claim for removal of the appraisal by Mr. Brooks is irreceivable because it is res judicata and because it was not lodged with the Board within the sixty-day time limit set in Rule 1230.8.3. The only claim which may be receivable relates to certain medical expenses, and the Board held that its own recommendation was being respected. In any event the claims are devoid of merit. The PAHO has reimbursed all the medical expenses due. As the medical referee recommended, it has recognised only claims for treatment due to nervous tension. Thus it refused to pay for a lipectomy and treatment of a sore throat, but not for minor surgery required by menstrual changes possibly induced by nervous tension. Since January 1981 it has given the complainant on-the-job training for her duties in the Operations Unit, and she has never objected to the amount or the quality of it. Mr. Brooks' comments in the appraisal for 1977-78 no longer appear in her file, as she was informed in July 1980. She did not then object to the reference in her 1978-79 report to her working for Mr. Brooks, and the reference causes her no prejudice anyway. The objection to submitting certain documents to the Tribunal in the first case is time-barred and res judicata: it is in any event unfounded.

D. In her rejoinder the complainant invites the Tribunal to reject the PAHO's procedural objections. She accuses the Administration of victimising her for lodging her original appeal, for example, by disregarding the Board's recommendations. Inclusion in her 1978-79 appraisal report of a reference to her working for Mr. Brooks is a way of refusing the remedy recommended, and she raised the matter as soon as she became aware of it. Lastly, she has received hardly any real training in the Office of Personnel.

E. Enlarging on its reply in its surrejoinder, the PAHO denies the charges of victimisation and abuse, for which, in its view, there is not a shred of evidence and which the Tribunal is not competent to hear anyway. There was no reason why the PAHO should pay medical expenses unrelated to the complainant's first case. It reaffirms that Mr. Brooks' comments appear nowhere in her personal records. She has had full access to the training courses available and had additional training related to her own duties.

CONSIDERATIONS:

Application for postponement

1. In her rejoinder the complainant asks the Tribunal to hear this complaint together with another she has filed but in which the written proceedings are not completed. Thus she would like the Tribunal to postpone the hearing of this case. She repeats her application in a letter in which she also suggests joining the two complaints with another yet to be filed.

The Tribunal rejects the application. It will deliver a separate judgment on the present case, which raises distinct and quite separate issues, and it reserves its decision on the joinder of subsequent complaints.

The repayment of medical expenses

2. On 1 May 1979 the complainant was transferred from the Unit of Procurement to the Office of Personnel of the Pan American Sanitary Bureau. She appealed to the Board of Inquiry and Appeal. On 22 April 1980 the Board recommended to the Director various measures for her benefit, including repayment of the medical expenses she had incurred because of the PAHO's treatment of her. On 18 June 1980 the Director endorsed most of the recommendations, including the one about medical expenses.

The complainant appealed to the Tribunal against the Director's decision, objecting to her transfer and to the rejection of some of her claims. The Tribunal dismissed her complaint on 14 May 1981 in Judgment No. 450.

The complainant's first claim in this complaint, which she filed on 18 March 1982, is to repayment of the medical expenses she says she had to incur because of the PAHO's treatment of her. Her contention is that by refusing to pay her in full the amounts she claims the PAHO has failed to give due effect to the Director's decision of 18 June 1980.

3. The first issue is whether the claim to medical expenses is receivable.

In its report of 26 October 1981 the Board of Inquiry and Appeal expressed the view that the appeal against failure to give effect to the Director's decision was, besides being without merit, irreceivable because the matter had been settled by Judgment No. 450, and indeed in the impugned decision the Director also declared the appeal

irreceivable. But a decision declaring an appeal irreceivable is just as open to challenge as a decision on the merits. And the receivability of this complaint does not turn on that of the internal appeal, and on such questions as whether the latter was submitted in time or duly brought within the scope of Staff Rules 1230.8.3 and 1230.1. The point must be settled solely by reference to the Tribunal's own Statute.

Under Article VII of the Statute there are two conditions of receivability:

- "1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.
2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned..."

By the former requirement is meant making use of all the possibilities of legal redress available to the official within the organisation, whatever the competent authority may be. In determining whether the requirement was met in this case the Tribunal will take account of Rules 1230.8.1 and 1230.8.3. The former precludes an appeal to the Board of Inquiry and Appeal until an authorised official has taken a final decision. The latter rule requires the filing of the appeal within sixty days from the date of notification of the final decision. On 7 May 1981 the Chief of Personnel gave a final decision on the claims submitted by that date, but not on any which might be submitted later. The complainant did later make further claims but did not seek a final decision on them. Accordingly, although she submitted to the Board of Inquiry and Appeal and to the Director the general question of her medical expenses she exhausted the internal means of redress only in respect of the claims she had made by 7 May 1981.

The question of the time limit does not arise since she filed her complaint in time with the Tribunal.

The Tribunal concludes that the complaint is receivable in respect of the claim to medical expenses other than those she claimed after 7 May 1981.

4. To this extent the complaint is not only receivable but, for the following reasons, well-founded.

The Director accepted the Board's conclusion that the appeal was irreceivable and he did not state any view on the question of the effect given to his decision of 18 June 1980. Thus the only conclusion he endorsed was the one the Board had drawn from Judgment No. 450: that the claim was *res judicata*. Whether the impugned decision is to be upheld therefore depends on the soundness of this conclusion.

In fact it is mistaken. Although Judgment No. 450 observed that the Director had endorsed most of the Board's recommendations, it said nothing of how the PAHO had discharged the obligations so assumed. In particular it did not dispose of the question of the repayment of the medical expenses the PAHO had agreed to bear, and Judgment No. 450 does not have the authority of *res judicata* on this matter. In fact both the Board and the Director were required to take the matter up. The Director's refusal to consider the claim to repayment of medical expenses therefore suffers from a mistake of law and on this point the impugned decision must be set aside. The Director must now ascertain whether due effect has been given to his decision of 18 June 1980 in respect of the payment of the medical expenses claimed by 7 May 1981.

Removal of evidence

5. In the complainant's first case the PAHO appended to its surrejoinder two documents till then unknown to her, namely an account of measures allegedly taken to give her job training and a note on what was said at a meeting.

In the appeal she submitted to the Board of Inquiry and Appeal before filing this complaint the complainant took the Administration to task for accumulating without her knowledge documents detrimental to her interests and using them against her.

The majority of the Board members rejected this argument on the grounds that she had neither supplied sufficient evidence in support of her allegations nor proved the existence of a final decision as required by Rule 1230.8.1.

The complainant now repeats her objections and under the second head of claim in this complaint is seeking the "expungement of all correspondence" about her of which she was not given a copy at the time, including documents in her personal files.

6. This claim is irreceivable. She did refer the matter to the Board and to the Director, and then to the Tribunal, within the time limits. As the Board held, however and she does not demur - she failed to seek from the Administration the final decision required by Rule 1230.8.1. She has therefore failed to exhaust the internal means of redress in accordance with Article VII(1) of the Statute of the Tribunal. Her second claim is therefore irreceivable.

7. The complainant does not deny that there is no final decision. By way of explanation she says that the items she objects to were used against her in the first case and there was therefore no point in asking the PAHO to remove them. This is an unsound argument. The claims submitted to the Board and to the Tribunal relate not just to particular items but to a set of unspecified items. Some purpose would therefore have been served by her asking the PAHO for their removal. Indeed, she is being inconsistent in submitting to the Tribunal a claim which she maintains it would have been pointless to address to the Administration. The Board was therefore right in holding that the complainant had failed to comply with Rule 1230.8.1. The internal means of redress have not been exhausted.

Compensation for moral injury

8. The third claim is to damages for distress, moral injury and harm to her reputation, which she says were caused by the Administration's actions during the proceedings before the Board and the Tribunal.

There is no allusion to such a claim in the Board's report or in any of the other items of evidence, which do not include the complainant's submissions to the Board. The Tribunal therefore cannot tell with certainty whether the internal means of redress have been exhausted. But it need not obtain further evidence on the point since, even if receivable, the claim is devoid of merit.

9. Friction, in greater or lesser degree, is the inevitable adjunct of everyday life and to award restitution for every sort of emotional distress would be to invite ceaseless litigation. Only exceptional circumstances warrant compensation for such distress, and there are none in this case.

The complainant's disputes with the PAHO over the repayment of her medical expenses are not unlike those which are common between creditor and debtor. The trouble they have caused her is no greater than the inconvenience anyone may have to put up with, short of entitlement to financial compensation.

The two items appended to the PAHO's surrejoinder in the first case had no effect on the Tribunal's decision and their disclosure plainly did not cause the complainant any injury entitling her to damages.

It is immaterial that one of her performance appraisal reports refers to her working for a supervisor whose report the PAHO agreed to expunge from the records. The reference was not such as to cause her either material or moral injury.

Lastly, she has failed to prove her contention that she did not get proper job training after transfer. The Tribunal will not award compensation on the strength of a mere allegation.

The other claims

10. The fifth claim is to any other remedies the Tribunal deems just. This is too vague a claim to be receivable. The Tribunal will not go beyond the parties' pleas and issue orders of which the content is not suggested with at least a minimum of precision.

Costs

11. Having succeeded in her claim to repayment of medical expenses, the complainant is awarded 500 United States dollars in part payment of costs.

DECISION:

For the above reasons,

1. The impugned decision is quashed as it relates to the repayment of medical expenses claimed by 7 May 1981.

2. The PAHO shall pay the complainant 500 United States dollars in part payment of costs.

3. Her other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., 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 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner