

FIFTY-SEVENTH ORDINARY SESSION

In re LEGASPI

Judgment No. 686

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Miss Clariza Legaspi on 28 December 1984 and corrected on 25 March 1985, the WHO's reply of 28 May, the complainant's rejoinder of 18 June and the WHO's surrejoinder of 18 July 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rule 1230.1;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of the Philippines, was appointed to the staff of a tuberculosis team in the WHO's Regional Office in Manila in 1969 as a clerk-stenographer. On 17 June 1982 her supervisor, the Regional Adviser on Chronic Diseases, drafted a good annual performance report for her for 1981-82. But the Regional Personnel Officer discussed the matter with her supervisor, who then added: "There is need to improve her punctuality and her work output. She needs closer supervision." On receiving the report the complainant herself deleted this comment and, on 24 June, typed in the following instead: "Besides her cordial relationship with the TB team members she is just as helpful to all staff ... booked in the TB rooms". On 29 June the Personnel Officer told her at an interview that she had committed misconduct. On 9 July she signed her resignation, dated 15 July. It took effect on 1 October 1982. On 30 September, however, she wrote to the Regional Director protesting that she had resigned under duress and asking for reinstatement. On 14 October the Regional Director answered that he rejected her allegation and claim, and she then went before the Regional Board of Inquiry and Appeal. On 14 April 1983 the Regional Board recommended dismissing her appeal, the Regional Director did so, she appealed to the Headquarters Board of Appeal, and the Headquarters Board recommended on 31 August 1984 dismissing her appeal. The Director-General informed her by a letter of 17 September, which she received on 8 October 1984 and which is the impugned decision, that he did so.

B. The complainant alleges that out of personal prejudice within the meaning of Staff Rule 1230.1.1 the Personnel Officer conspired with her supervisor to injure her. She observes she had worked long enough in the WHO to know it was wrong to tamper with a performance report, and she made the change only at the instigation of a colleague on the team, Mr. Eng, even though he has since strenuously denied it, from a desire to protect himself. The Personnel Officer harassed the complainant every day and intimidated her into resigning. She has suffered anguish. She seeks full remuneration and benefits for the remainder of her appointment, up to 31 May 1985, material damages amounting to at least 50,000 Philippine pesos, moral damages amounting to at least 100,000 pesos, and exemplary damages amounting to at least 100,000 pesos, costs amounting to 50,000 pesos, and such further relief the Tribunal thinks fair.

C. The WHO replies that the complaint is devoid of merit. The performance report did no more than reflect the truth, and the complainant was not threatened with any kind of adverse action. There was nothing improper in her supervisor's consulting the Personnel Officer about the report. Her tampering with the report amounted to misconduct. Mr. Eng denies that he advised her to alter the text; in fact he suggested that she take the matter up with her supervisor. In any event once she decided to resign, the earlier circumstances became irrelevant, unless she can show -- which she cannot -- that her resignation was rendered void by some act of the WHO's. Her accusations of intimidation -- which she did not even make until one month later -- are groundless. The reason why she resigned was that she might face disciplinary action if she did not. It is her own fault if she has suffered anguish. The amount of damages she claims is, besides, excessive.

D. In her rejoinder the complainant develops her accusations of intimidation and harassment by the Personnel Officer. She altered the report, not of her own free will but only at the urging of Mr. Eng. Besides, the unfavourable comment had been improperly added to the text by the Personnel Officer, not by her supervisor.

There was therefore no misconduct on her part, and she had no reason to resign. The inhuman treatment she suffered warrants the amount of the damages claimed.

E. In its surrejoinder the WHO observes that there is nothing in the rejoinder to give credit to the complainant's allegations, which she has merely repeated without adducing any further evidence in support. She was given time in which to withdraw her resignation; yet she did not. The Organization enlarges on the pleadings in its reply, and again invites the Tribunal to dismiss the case as without merit.

CONSIDERATIONS:

1. The complainant was appointed on 1 June 1969 as a clerk-stenographer in the WHO Regional Office in Manila. She was promoted on 1 October 1978 on reclassification of her post and continued in that post on a five-year contract.

2. It appears from the documents in the dossier that the complainant's appraisal report which was signed on 17 June 1982 by the acting appraising officer contained the following two paragraphs:

"Miss C. Legaspi's performance is satisfactory. She has a pleasant character and has co-operated well with team members.

There is a need to improve her punctuality and her work output. She needs closer supervision."

The complainant admits that on 24 June 1982 without the knowledge or consent of the acting appraising officer, who by then had been transferred to Kuala Lumpur, she deleted the second paragraph and substituted therefor the following text: Besides her cordial relationship with the TB team members she is just as helpful to all staff (CLOs, consultants and other staff) booked in the TB rooms."

3. The complainant says two things about the alteration. She says that the original second paragraph emanated not from her appraising officer but from the Personnel Officer, Mr. Mani. This is not contested. She says, too, that when she saw it, she was shocked, she showed it to Mr. Eng, a Technical Officer attached to the Regional Tuberculosis Team, and it was Mr. Eng who instructed her to change the second paragraph. This latter allegation is strongly denied by Mr. Eng.

4. It is common ground between the parties that on 29 June 1982 Mr. Mani summoned the complainant to his office, where she admitted having altered the appraisal report. He pointed out to her that the alteration of the report amounted to misconduct on her part and gave her time to consider the option of resignation.

5. On 9 July 1982 the complainant was again summoned to Mr. Mani's office and there signed a document stating:

"It is with great regret that, for personal reasons beyond my control, I'm obliged to submit my resignation from WHO effective 30 September 1982.

I appreciate the opportunity to have worked for WHO."

6. The sole question in these proceedings is whether the resignation was voluntary and freely tendered. In her appeal to the Regional Board of Appeal based on Staff Rule 1230.1.1 (personal prejudice on the part of a supervisor or of any other responsible official) and Staff Rule 1230.1.2 (incomplete consideration of the facts), the complainant set out the facts in these terms:

"This is a case of a forced resignation employed upon my person through machination and intimidation of Mr. Mani on 9 July 1982. For brevity, we wish to state that on the same date, I was summoned by Mr. Mani in his room and had not been allowed to leave for about thirty (30) minutes until I signed a prepared resignation memorandum against my will."

7. It must be observed that the complainant's subsequent conduct is totally inconsistent with her being detained against her will in Mr. Mani's office. It would be only reasonable for her to protest against such a highly improper occurrence and bring the matter immediately to the attention of her supervisor and through him to the attention of the Regional Director. In the event, it was not until 9 August 1982 that counsel, on behalf of the complainant, wrote to the Regional Director requesting that the "forced" resignation be reconsidered.

8. Taking into consideration the events connected with the alteration of the complainant's appraisal report, bearing in mind the fact that she had ample time between 29 June and 9 July to consider whether or not she should submit her resignation, and having regard to her subsequent conduct, the Tribunal concludes that the resignation signed by the complainant was voluntary and freely tendered and that her complaint must be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable the Lord Devlin, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Devlin

William Douglas

A.B. Gardner