

FIFTY-SEVENTH ORDINARY SESSION

In re HUSAIN

Judgment No. 693

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Meteorological Organization (WMO) by Mr. Mohammed Ather Husain on 7 June 1984 and corrected on 17 July, the WMO's reply of 9 October, the complainant's rejoinder of 6 December 1984 as corrected on 21 February 1985, and the WMO's surrejoinder of 29 March 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rule 209 of the Rules Applicable to Technical Assistance Project Personnel of the WMO;

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 India, was offered and on 8 January 1981 accepted a one-year appointment with the WMO, starting on 16 April 1981, as a Very High Resolution Radiometer (VHRR) technician on a project in the Yemen. He was stationed in Sana'a, and the appointment was governed by the staff rules applicable to Technical Assistance Project Personnel. By a letter of 2 December 1981 the Chief of the Personnel Division told him, among other things, that by 15 April 1982, the date of expiry of his appointment, he would have accumulated 19 days' leave; he was to leave Sana'a on or about 1 April 1982, using up part of that leave, and any unused days would be paid for under Rule 209.8 of the Rules applicable to Technical Assistance Project Personnel. But in a letter of 20 February 1982 the co-director of the project told him that, account being taken of his leave entitlements, he was to depart on 11 March instead. The date on which he actually did leave is in dispute. On 20 January 1982 he wrote to headquarters asking for a certificate of service, and the Chief of the Personnel Division sent him one dated 7 February saying he had been employed by the WMO in Sana'a for a year. On 25 February he wrote to headquarters asking for a more specific certificate and also, on the grounds that he had worked up to 30 March 1982, for payment of compensation for the leave he had not taken. On 7 September 1983 the Chief of Personnel sent him a more detailed certificate and told him that according to the co-director of the project his last working day had been 10 March 1982; from 11 to 30 March he had been dealing with his personal affairs in Sana'a; he therefore had no balance of leave and no payment was due. After further correspondence, on 2 November 1983 the Chief of Personnel sent him a third certificate and, admitting a mistake, said that he would be paid compensation for two days' leave. On 21 January 1984 the complainant appealed to the Joint Appeals Board. The Board held that his last working day had been 10 March 1982 and that the question of the certificate was still under review. By the impugned decision of 18 May 1984 the Secretary-General confirmed his decision on leave; he also said no other certificate would be provided.

B. The complainant observes that the certificates do not mention the independent work he did on a radar station, and he produces three items of evidence in support of this contention. He also maintains that his last working day was 30 March 1983 and that he did not, as the WMO asserts, take leave from 11 March. He never applied for any such leave, and any personal business he had he attended to outside office hours. He asks the Tribunal to order the WMO to issue a new certificate stating that he independently handled both VHRR ground station and radar station from 11 June 1981 to 30 January 1982, that the "radar station work was additional to the work" for which he had been recruited and that he had brought the radar station into operation before the engineer and radar technician arrived. He claims financial compensation for the extra work and for six days' unused leave.

C. In its reply the WMO submits that the complainant was not entitled under Rule 209.8 of the applicable rules to any compensation for accrued annual leave since he had used up all his remaining leave between 11 March 1982 and 15 April, the date of expiry of his appointment. He provides no evidence to refute the project co-director's assertion, endorsed by the Secretary-General, that he was not on duty at any date after 10 March.

The applicable rules do not oblige the WMO to issue certificates of service to technical assistance staff. But if one is issued it must state the truth. The three documents produced by the complainant in support of his contention that

the certificate is inadequate do not show any such thing. The certificate was based on what the co-director said in a letter of 18 October 1983 to headquarters. There is no evidence to show that the complainant did independent work, and it took only a few days anyway. The certificate is neither inaccurate nor misleading.

D. In his rejoinder the complainant develops his arguments on both heads of claim. As to the certificate, he produces other items which he says show it was mistaken and misleading. He presses his claims.

E. In its surrejoinder the WMO says that the rejoinder calls for no detailed reply: the complainant has failed to prove that, contrary to the instructions he had received, he continued to work in the office after 10 March 1982. The items he produces do not show that the work certificate was in any way inaccurate: they are either irrelevant or of no value as evidence.

CONSIDERATIONS:

1. By letter dated 22 December 1980 the complainant was appointed by the WMO to the post of VHRR Technician on the Saudi Arabia/WMO Trust Fund Project in the Yemen for the period of twelve months after the effective date of appointment. The effective date being 16 April 1981 his appointment terminated on 15 April 1982. He complains (i) that the certificate of service issued to him by the Organization is inaccurate and misleading; and (ii) that his leave entitlement has been wrongly computed.

The certificate of service

2. The applicable rules of the Organization make no provision for the granting of certificates of service to project personnel, the category to which the complainant belongs. However this may be, the Organization concedes that once it issues a certificate of service, that certificate must correspond to the truth.

3. On 7 February 1983 the Organization issued to the complainant a certificate of service in the following terms:

"I, the undersigned, Mustapha FELLAGUE, Chief, Personnel Division, certify that Mr. Mohammed Ather HUSAIN has been employed by the World Meteorological Organization as VHRR Technician for the Saudi Arabia/Yemen/WMO Trust Fund Project in Sana'a, Yemen Arab Republic for the period from 16 April 1981 to 15 April 1982."

4. The certificate did not satisfy the complainant, who wanted the inclusion of statements that he had worked independently at the two stations where he was posted, that the radar work was additional to the work for which he had been recruited and that he had restored the radar station to working condition.

5. The Organization did not accede to the complainant's request to issue a certificate in the terms sought by him, but in order to go as far as possible to meet his requirements the Organization issued, successively, three modified certificates. The last of these, dated 2 November 1983, contained in addition to the statement set out above the following information:

"Under the supervision of the Project Co-Director, Mr. Husain carried out in a satisfactory manner the following duties:

-- checked from time to time the component of a Rhode and Schwarz APT station;

-- prepared reports on the status of a Plessey Weather Radar Type 435, which included a listing of available spare parts, test equipment and manuals;

-- participated together with a Plessey Engineer during the period from 20.1.1982 to 1.2.1982, in setting up the weather radar in operating condition."

The additional assessments sought by the complainant are not supported by the documents in the dossier on which he relies, viz. a request from the project co-director for certain information about a satellite station and a weather radar station; a request to hand over the keys to the radar and satellite stations; and a note from a supplier's engineer that the complainant had "brought the radar into a part-working conditional.

6. By its very nature a certificate of service should state with reasonable precision the nature of the employee's

duties and the length of his service. If there is a reference to the quality of his work, then that assessment must be fair in all the circumstances. As it is a matter of assessment, the Tribunal will not intervene unless it is shown that the assessment is motivated by prejudice, or based on materially incorrect facts or on an obviously wrong conclusion drawn from the evidence. There is no evidence in the instant case to support the proposition that the certificate of service issued to the complainant is either prejudiced or inaccurate

or misleading. On the contrary it is, in the opinion of the Tribunal, a fair and accurate statement of the complainant's service as reflected in the dossier.

The leave entitlement

7. The only question here is whether the complainant's last work-day was 10 March 1982 or 30 March 1982. The complainant admits receiving a letter dated 20 February 1982 from the project co-director informing him that having regard to leave already taken and to his compensatory time off, he should leave his duty station on 11 March 1982. The complainant's leave entitlement was 30 working days, together with 6 days' compensatory leave. He had 10 days' leave in October 1981, leaving 26 days' terminal leave. He contends that he was on terminal leave from 1 April 1982. The Organization maintains that he was on terminal leave during the period from 11 March to 30 March 1982 and there is no reason to doubt that assertion. As a result, except for two days which were official holidays, for which the complainant received commuted payment, he exhausted his terminal leave by 15 April 1982.

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.

André Grisel

Devlin

William Douglas

A.B. Gardner