

FIFTY-NINTH ORDINARY SESSION

In re RIVERA-CORDERO

Judgment No. 766

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Antonio Rivera-Cordero against the Pan American Health Organization (PAHO) (World Health Organization) on 25 June 1985 and corrected on 7 October, the PAHO's reply of 18 December 1985 the complainant's rejoinder of 3 February 1986 and the PAHO's surrejoinder of 28 March 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal and PAHO Staff Rules 350, 370, 460, 640.1, 820 and 1310.2;

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 was born in Rio Grande, Puerto Rico, and is a citizen of the United States. He joined the World Health Organization in 1980 and was sent to Malaysia, where he received so-called "expatriate benefits". On 1 July 1984 he was transferred to the PAHO at his own request and stationed at its headquarters in Washington D.C. The present dispute began in March 1984 while the transfer was being arranged, the question being whether as an American citizen the complainant was entitled in Washington to the benefits, namely home leave expenses as provided in Staff Rule 640, education grant for his children as prescribed in Rule 350, the expenses of travel to Puerto Rico for his family under Rule 820, and repatriation grant under Rule 370. On 18 September 1984 the PAHO told him that refusal of his claims was final, and he appealed to the Board of Appeal. In its report of 26 February 1985 the Board recommended rejection and by a letter of 25 March, which is the decision impugned, the Director informed the complainant that he rejected the appeal.

B. The complainant submits that the PAHO is overlooking the reasons for the benefits he seeks and frustrating their purpose. One purpose of home leave is that of preventing assimilation of the official into the host country, or, as Rule 640.1 puts it, "maintaining effective association with his culture, with his family, and with his national, professional or other interests". The education grant, too, enables him to have his children educated according to his own cultural traditions. Though a United States citizen, the complainant is and feels Puerto Rican. He traces the history of the commonwealth of Puerto Rico and explains why he believes its status and cultural identity within the United States to be unique, observing that in the United States Puerto Ricans are treated as if they were foreigners. The PAHO's interpretation of the Staff Rules discriminates against Puerto Ricans because it equates their nationality and home country. He claims the award of the benefits as from 1 July 1984, such other relief as the Tribunal deems fit, and costs.

C. In its reply the PAHO submits that what the complainant says of Puerto Rico and its people, true though it may be, carries no weight in law and has no bearing on the proper reading of the Staff Rules. The benefits are granted to "the staff member who is serving outside the country and area of his recognised place of residence" (Rule 640.1) and under Rule 460, subject to exceptions that are irrelevant, "the residence shall be determined to be the place in the country of the staff member's nationality where he was residing at the time of appointment". Entitlement does not depend on a sense of belonging to an ethnic group or on family interests or on cultural identity, but on nationality. Puerto Rico is a part of the United States and the complainant is an American citizen. Other groups of United States citizens may have the same sort of feelings as he. A citizen of the United States cannot qualify while living in that country. What the complainant really wants is a change in the rules, but that is not a matter within the Tribunal's competence.

D. The complainant observes in his rejoinder that Puerto Rico, which is not a state, is not and probably never will be part of the United States and it is mistaken to put Puerto Ricans on a par with other groups of American citizens. The Tribunal is being asked not to amend the Staff Rules but to order the PAHO to respect their true purpose, which is in the interests of the member States. That purpose is to safeguard the independence of the staff by enabling them to keep strong cultural and professional ties with their homeland. He may be living in Washington,

but his permanent residence is in Puerto Rico. He presses his claims.

E. In its surrejoinder the PAHO submits that the rejoinder is largely irrelevant and in no way weakens the force of the pleas in its reply. The complainant has failed to address the PAHO's fundamental objections to his complaint.

CONSIDERATIONS:

1. The complainant, a national of the United States whose permanent residence is at Rio Piedras, Puerto Rico, joined the WHO on 14 November 1980 as an environmental engineer. He was assigned to Malaysia, where he was eligible for expatriate benefits provided by the WHO: home leave, education grant for children, travel expenses for spouse and children and repatriation grant. On 1 July 1984 the complainant was transferred to the PAHO in Washington D.C. He claims to remain entitled to expatriate benefits, which are payable only to a staff member who is serving outside the country and area of his recognised place of residence.

2. The complainant was born in Puerto Rico, and apart from the period between 1969 and 1972, when he attended university and a polytechnic institute in the continental United States, he lived and worked in Puerto Rico before taking up his appointment with the WHO. He contends that because of the constitutional status of Puerto Rico, and because of the cultural differences between it and the states of the union, Puerto Rico should be considered an independent country for the purposes of the rules governing expatriate benefits. He concedes that all native Puerto Ricans hold United States citizenship and that legislation enacted by the Congress of the United States is binding on Puerto Rico unless the Congress specifically exempts it.

3. The Tribunal does not propose to pursue the many historical, constitutional and sociological points put forward by the complainant. It will do no more than construe the relevant Staff Rules, applying the recognised norms of interpretation. Rule 460 deals with the determination of a staff member's place of residence and provides:

"At the time of appointment of a staff member the Bureau shall determine, in consultation with him, that place which is to be recognized throughout his service as his residence prior to appointment, for purposes of establishing entitlements under these Staff Rules. Unless there are reasons to the contrary, and except as provided by Rule 1310.2, the residence shall be determined to be the place in the country of the staff member's nationality where he was residing at the time of appointment, if he was living in some other country at the time of appointment, the residence shall be a place in the country of his nationality determined in consultation with him on the basis of reasonable justification. Consideration may be given in individual cases to designating some other place if the facts so warrant."

The exception in Rule 1310.2 relates to General Service posts subject to local recruitment and has no bearing on the matter before the Tribunal.

Rule 460 requires that residence be determined by reference to the nationality of the staff member. His residence must be determined to be a place in the country of his nationality where he is residing, or, if he is living in some other country, his residence must be determined to be the place in the country of his nationality on the basis of reasonable justification, provision being made in individual cases for the designation of some other place if the facts so warrant.

There is no evidence that the complainant established residence in any country other than the country of his nationality. So the only question to be resolved is whether the country of his nationality is the United States or Puerto Rico. In his complaint the complainant states his nationality to be that of the United States. In the opinion of the Tribunal that statement answers the question posed above because the rule makes nationality the principal basis for the determination of residence.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, 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 12 June 1986.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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