

SIXTIETH ORDINARY SESSION

In re TAYLOR

Judgment No. 784

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. David John Taylor against the Pan American Health Organization (PAHO) (World Health Organization) on 10 March 1986 and corrected on 23 April, the PAHO's reply of 3 July, the complainant's rejoinder of 13 August and the PAHO's surrejoinder of 15 October 1986:

Considering the applications to intervene filed by:

Eduardo Alvarez

Eduardo Aquino del Puerto

Luis Alberto Arango

Hans Bahnemann

Carlos María Cúneo

John Fitzsimmons

Jaime Gamarra

Miguel Gueri

Enid Harden

José Augusto Hueb

Martha Manley de Carias

Julio de Araujo Mesquita

Marina Navarrete

Ramón Ocegüera

Carlos Pacheco

Héctor Sosa Padilla

Una Reid

Juan Ricardo Rios

Sinforiano Rodríguez

Henry Salas

Norma Siciliano

Silvere Simeant

Magnus Stael Sondahl

Paul Sutmoller

Jorge Tavera

Edgardo Torres

Eugene Vadies

Otoniel Velasco

María Elma Fernández Viera

Adán Young Torres

Juan Antonio Zapatel Vásquez; Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 380.4, 440.3 and 1230.1 and WHO Manual provisions II.2.920-1020;

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. In December 1982 the PAHO granted the complainant, an Englishman, a fixed-term appointment to a grade P.4 post as a technical officer in Kingston, Jamaica. The interveners are also in various field offices. All are employees of the PAHO save Mr. Vadies, who is an employee of the WHO. In October 1983 the Executive Committee of the Organization asked its Director to make rules similar to those followed in the WHO and the United Nations on the currency of payment of salaries and allowances, though exceptions might be granted "if special circumstances at a given duty station so warrant". On 21 May 1984 the Director issued a directive, No. 84-06, in exercise of his authority under PAHO Staff Rule 380.4: "All payments to staff members shall be made in such currencies and at such rates of exchange as the Director may determine, with due regard to the legitimate interests of the staff". Professional category staff in field offices would receive in the local currency a fixed percentage of monthly pay made up of basic salary and allowances less insurance and pension contributions; they would be paid the rest in United States dollars. The WHO Manual would be amended and specific instructions sent to each field office. The effect was that as from 1 July 1984 the complainant and the interveners got 30 per cent of their pay in local currency. On 18 June the complainant and eight others sent a cable in protest to headquarters in Washington. On 21 August 1984 he filed notice of appeal under Staff Rule 1230.1 and on 13 March 1985 the appeal itself. In its report of 25 October 1985 the headquarters Board of Appeal recommended rejecting the appeal but establishing new payroll dates to take advantage of the latest exchange rates. In a letter of 10 December 1985, the decision impugned, the Director informed the complainant that he rejected the appeal but would do all the rules allowed to keep up with the market rate.

B. The complainant says he is not challenging the policy itself, which he concedes is lawful under Rule 380.4 and WHO Manual provisions II.2.920-1020, but the PAHO's measures in the period of transition, which he submits are in breach (1) of his contract of employment and (2) of a condition set in 380.4. (1) Rule 440.3 says that "The offer of appointment (including Staff Regulations and Staff Rules) and the notice of acceptance shall constitute the contract of employment". The offer to the complainant stated his salary in United States dollars, and he is entitled to payment in dollars throughout his present appointment and until a new contract provides otherwise. His contract has been altered by a mere change in administrative policy. It must be so construed as to give full force to all its elements: if the Director may get off with paying him in local currency his pay is worth less because the currency is. That the contract states the installation allowance to be payable in the local currency implies that the currency in which a sum due is stated is that in which it will be paid. (2) The Director has not shown due regard for the "legitimate interests of the staff", as required by Rule 380.4. He made the change without thought of its consequences for staff in countries with weak currencies. Though a few dozen dispensations have been allowed they are just an afterthought, and besides no-one knows by what criteria they are granted. He asks that he be paid in full in United States dollars as from 1 July 1984. He seeks moral damages, costs and such other relief as the Tribunal deems fit.

C. In its reply the PAHO submits that since, as the complainant allows, the payment policy is lawful most of his objections fail. (1) There was no breach of his contract because it is subject to the Staff Rules, and Rule 380.4

empowers the Director to determine the currency of payment at any time. Salaries and allowances are stated in dollars only for the purposes of accounting. The complainant's interpretation of his contract and his plea that administrative policy may not alter it are both irrelevant because at odds with 380.4, which he does not challenge. It would be wrong to pay staff wholly in dollars until the expiry of their fixed-term appointments: the currency of payment would then depend on the date of expiry of their contract. There can be no period of transition. (2) There were years of deliberation on the new policy. The staff were duly informed and consulted and the consequences to them properly considered. The complainant shows no injury. It is only reasonable to suppose he spends at least 30 per cent of his pay in Jamaica to meet living expenses. Besides, individual exceptions may be and have been made to give relief. For example, the complainant got full payment in dollars in December 1984 and January 1985, when he was on home leave. Several interveners, too, have benefited from exceptions.

D. In his rejoinder the complainant submits that the PAHO's reading of Rule 380.4 is wrong: the assumption that underlies its reply, that the rule permits changes in the currency of payment at any time, is mistaken. What the rule requires is "due regard" to the staff's interests, and the PAHO fails to address the main issue, which is whether that allows for the transitional measures. Its only other plea is that the dollar is just a currency of account, the implication being that it is not bound to pay in dollars. But the offer of appointment gives the staff member reason to expect payment in the different currencies stated for different components of pay. The Organization has failed to show that 380.4 was respected. However long it was debated, the new policy benefits member States, not the staff. There is no evidence in support of the affirmation that the complainant spends a third of his pay in the local currency. A cut in salary does cause injury: he reckons his loss at between 150 and 250 Jamaican dollars a month. Exemptions are granted for subjective reasons and do not properly relieve the hardship.

E. In its surrejoinder the PAHO develops its main contentions. In its submission there has been no breach of the complainant's contract of employment. The Director exercised his authority with due regard to the staff's interests. In particular he gave ample notice of the action being taken. The complainant is muddling expectation and entitlement. Nor has there been breach of Rule 380.4, and the complainant fails to answer the arguments in the reply on the point. There is no proof of any injury, let alone hardship, sustained by him. He loses nothing because the rate of exchange which the United Nations apply to the dollar in Jamaica is the maximum legal rate of exchange. The procedure for exemption works well, and many staff have been granted exemption on objective and consistently applied criteria.

CONSIDERATIONS:

1. The Tribunal holds that there was no breach of contract by the Director.
2. The offer of appointment, which was made to the complainant on a printed form, was stated to be "in accordance with the terms outlined below". Among them were:
 - (i) "the appointment is governed by the provisions of the Staff Regulations and Staff Rules, copies of which are attached";
 - (ii) "the appointment is subject to revision and adaptation to bring it into line with any subsequent amendment to the Staff Regulations or Staff Rules",
 - (iii) "if you are prepared to accept appointment in accordance with the stated terms and conditions, please return the signed and completed annexes..."

The acceptance form states:

"I accept the offer of appointment under the terms and conditions as stated in your letter..."

The Personnel Action form, which was part of the contract, states:

"Your appointment is subject to the terms and conditions specified herein or otherwise provided in the Staff Regulations, the Staff Rules, and the directives of the Director ... as amended."

3. In the circumstances it was made quite clear to the complainant when he received and read the offer of appointment that his employment was to be subject to the Staff Regulations and Rules and to the Director's directives as they might be amended in the future, even unilaterally, not just to those that were in force at the time

of the offer.

He signed his acceptance and returned it to the Director.

Staff Rule 380.4 reads:

"All payments to staff members shall be made in such currencies ... as the Director may determine, with due regard to the legitimate interests of the staff."

Staff Rule 440.3 reads:

"The offer of appointment (including the Staff Regulations and Staff Rules) and the notice of acceptance shall constitute the contract of employment...".

4. It is true that the complainant's salary was expressed in United States dollars. But at its 91st meeting, in October 1983 the Executive Committee of the organization passed a resolution asking the Director to introduce as soon as possible rules similar to those followed in other regions of the WHO and by the United Nations on the currency of payment of salaries and allowances.

On 21 May 1984 the Director issued Directive 84.06 giving effect to the resolution and citing WHO Manual provisions II.2.920 to 990 and 1020.

5. The Tribunal rejects the complainant's argument that only member States of the PAHO, not the Director alone, may determine the currency in which salary or part thereof is payable. The Tribunal does so because in July 1984 WHO Manual provisions II.2.920 to 990 and 1020 were themselves amended so as to give formal effect to the Executive Committee's decision.

Manual provision II.2.920 as amended reads:

"Currency of payments

920 Irrespective of the location of the official station, professional and non-locally recruited general service staff members are paid their net base salary; post adjustment or non-resident's allowance, assignment allowance, language and dependants' allowance in the following currencies:

920.1 a minimum of 30% in the currency of the official station, referred to as 'field payment',

920.2 the balance, after the deduction of contributions to the United Nations Joint Staff Pension Fund, the WHO Staff Health Insurance and the accident and other insurance premiums etc., in a single other currency."

The effect is to empower the Director to vary the complainant's contract by paying 30 per cent of his salary in Jamaican currency.

6. The complainant concedes that the Director has power under Staff Rule 380.4 to determine the currency in which to pay staff members but argues that the power is not absolute: the Director must exercise it with due regard to the legitimate interests of staff. In this instance, he submits, the Director has not done so.

7. There is no merit in the argument.

First, before introducing the new policy the Executive Committee, at its 90th meeting (June 1983), discussed the proposed change with the Staff Association and the Association actively presented its case. In May 1984 the Staff Association at its annual meeting again discussed it at length with the Administration.

Secondly, in July 1984 when the Staff Rules were amended to give effect to the new policy, provisions were included to enable staff to apply for exemption on the grounds of hardship. Such applications were considered, case by case, by an ad hoc committee which took up nearly fifty of them, including one by the complainant and others by several interveners.

8. The applications to intervene are dismissed insofar as they are receivable.

DECISION:

For the above reasons,

The complaint and the applications to intervene, insofar as they are receivable, are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner