

## SIXTIETH ORDINARY SESSION

In re DASHIELL

Judgment No. 794

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Danelia Dashiell against the Pan American Health Organization (PAHO) (World Health organization) on 30 October 1985 and corrected on 14 November, the PAHO's reply of 14 February 1986, the complainant's rejoinder of 28 March and the PAHO's surrejoinder of 14 May 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rule 560.2 and WHO Manual provision II.1.40.5 and Annex A;

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 Nicaraguan, joined the PAHO in Washington in 1957 as a "clerk". In 1967 she was promoted to a grade G.6 post in the Visual Aids Unit and in 1968 to a G.7 post, No. 2115, as a "technical assistant" in the same unit. On 1 April 1977 her post was regraded P.1 and redefined as an "editor"s. In 1979 a rule was introduced in WHO Manual provision II.1, Annex A, requiring a college degree of any holder of a Professional category post. But PAHO policy was to let an incumbent who, like the complainant, had no degree keep the post. She applied on 12 August 1982 for a review of her grading on the strength of a proposed new job description. The Classification Unit carried out a "desk audit" of her post in March 1983. On 14 April 1983 the PAHO incorporated into the Manual the "Master Standard" for job classification approved by the International Civil Service Commission, which allows qualification for a post by "the attainment of a body of theoretical knowledge in a recognised field ... through personal application or effort not involving attendance at a formal educational or academic institution". The review was held up for reasons which the Unit explained to the complainant in a minute of 9 December 1983. Her supervisor wrote a new description of her duties on 15 August 1984. Although the Personnel Department said in a minute of 4 October 1984 that the audit warranted upgrading to P.2, on 5 October the Post Reclassification Advisory Committee, to which the matter had been referred recommended revising the job description and keeping the grade at P.1. On 25 October the Personnel Department told her that the title of her post was changed to "visual information specialist" but that the grade was still P.1. She appealed to the Board of Appeal on 24 December 1984. A new job description was made on 15 May 1985. In its report of 13 June 1985 the Board, besides making general comments and recommendations on grading, recommended submitting the report on the audit and the Advisory Committee's report to grading officers of the International Civil Service Commission for "arbitration". In a letter of 1 August, the impugned decision, the Director told the complainant he rejected the recommendations on her case and all the general recommendations except one that the procedure should be less slow.

B. The complainant recounts the facts in full. (1) She alleges breaches of the grading procedure. She says that two members of the Personnel Department intimidated her by warning that her post might be so redefined that she would no longer qualify. The PAHO was to blame for the inadmissible delay. There was breach of Manual provision II.1.40.5, which makes the grading "dependent upon the duties and responsibilities required and not on the qualifications of the incumbent": the PAHO allowed the complainant's lack of a degree to influence the grading. The decision was based, not on the audit, but on the Advisory Committee's recommendation for a new definition of her post. (2) The requirement of a degree in II.1, Annex A, was repealed by the adoption of the Master Standard. (3) The PAHO is victimising her. It attributed no further responsibilities to her post. Just before the Board heard her case it issued a new and mistaken job description without consulting her. It tried to hide from the Board the Personnel Department's recommendation for upgrading. She seeks the quashing of the decision, the upgrading of post 2115 to P.2 as from 1 April 1983, any other relief the Tribunal deems fit, and costs.

C. In its reply the PAHO submits that the complainant's version of the facts is in part distorted. Her application for regrading was examined by competent officials in accordance with the proper procedure and was rightly rejected. Even if her post had been upgraded she might not have kept it since under Staff Rule 560.2 a staff member may be

promoted on regrading of his post only "if he has the necessary qualifications and his performance has been satisfactory". In seeking regrading she was not challenging the lawfulness of the requirement of a degree, and so she may not challenge it now. Although officials with no degree were allowed to keep Professional category posts on the introduction of the new rule in 1979 they may not rise in grade. The Master Standard does not do away with the general rule but is an exception, and one allowed only on strict conditions. Besides, the complainant fails to show she meets the conditions: satisfactory routine performance over the years is not enough. The Board utterly misunderstood the case, and its recommendation for referral to the Commission was quite unacceptable. Her allegations of intimidation are mistaken: she saw friendly advice as threats. Although the procedure did take too long -- partly because of changes of structure in the Organization -- there were no consequences in law for the complainant since it was her post, not her grade, that was under review. The PAHO invites the Tribunal to dismiss the claims as unfounded.

D. In her rejoinder the complainant observes that she was not free to challenge the lawfulness of the requirement of a degree since only administrative decisions are challengeable. The Master Standard contains a new rule, not just an exception to Manual provision II.1.40.5 since it sets the criteria for grading all Professional category posts in the United Nations common system and, coming later, replaced that provision. In Judgment 591 the Tribunal ordered the PAHO to apply the Master Standard because its own grading system was inadequate. The complainant's performance reports attest to her technical competence. She presses her claims.

E. In its surrejoinder the PAHO enlarges on its contention that the Master Standard made an exception to the requirement of a degree. Judgment 591 is not now relevant since the PAHO adopted the Master Standard several years ago. Though not denying the complainant's competence the PAHO submits she does not satisfy the conditions for allowing exemption from the requirement of a degree: she has no command of the theory of any academic discipline.

#### CONSIDERATIONS:

1. As is stated above, the complainant invites the Tribunal to:

- a) quash the PAHO Director's decision of 1 August 1985 confirming her post at grade P.1;
- (b) order the reclassification of her post at P.2 as from 1 April 1983;
- (c) grant her any other relief that the Tribunal thinks fit; and
- (d) award her costs.

The gist of her complaint is that her request for reclassification set in motion a series of illegalities over a period of three years which resulted in keeping her post at the same grade, P.1. The illegalities, she says, included threats to her employment, outrageous delays in processing her request and manipulation of her job description to support a predetermined decision not to reclassify her post. The root of the problem, in her view, is the Administration's desire to require a university degree, which admittedly she does not have, of everyone in the Professional category: rather than achieve its end through legal process it chose to do so through the heavy hand of fiat. The complainant is not challenging the validity of the requirement in Manual provision II.1, Annex A, of a university degree as the minimum qualification for holders of Professional category posts like her own.

Claims (a) and (b)

2. The Tribunal will deal with her claims (a) and (b) first.

3. What she tried to do was to get her post upgraded from P.1 to something higher and with more pay. Before the Board of Appeal she said that it might even be upgraded to P.3, but before the Tribunal she says that it should be reclassified merely at P.2. Probably, and quite naturally, she hoped that she might herself get the post if it was upgraded, but in the event the Director did not upgrade it.

On 24 December 1984 she appealed to the Board of Appeal. According to the Board's report of 13 June 1985 to the Director, the question before it was "denial of reclassification of the post".

The Board, which met from 20 May to 13 June 1985, made a thorough study of the evidence before it, noted the

differences of opinion between PAHO officials on the proper classification of the complainant's post and criticised the PAHO for its 30 months' delay in deciding the classification.

But it was unable to say whether the Director had been right to leave the grade at P.1. So much is clear from its recommendation that the matter should be referred to two "auditors or classifiers" of the International Civil Service Commission (ICSC) for binding arbitration. It did, however, believe that the PAHO had followed the right procedure for review of the classification: it "did not find any violations by the Administration of the norms and procedures that regulate the reclassification process".

There was a desk audit and -- as the Administration said in its submissions to the Board of Appeal -- discussions were held with everyone concerned, including the Post Reclassification Advisory Committee, which made its recommendation to the Director. The recommendation was backed by the Personnel Department.

On this evidence the Board concluded that, despite the long delay in reaching the final decision, the Administration had not acted in breach of the grading procedure.

While admitting the delay, the PAHO explains that it was due to "a change in the Administration, the restructuring of PAHO and a review made by the Joint Administration/Staff Association Working Group". It accepted the recommendation by the Board that desk audits be completed within three months in future.

4. Following the Board's finding that the Administration respected the proper procedure, the Tribunal holds that there was no manipulation by the Administration of the job description to support a predetermined decision not to reclassify the post.

5. The complainant alleges that she received threats to her employment. Yet it was not unreasonable to point out to her that the post might be reclassified beyond the reach of her educational qualifications. Because she was a career officer reclassification could not and did not deprive her of employment. Besides, she must have been aware of Staff Rule 560.2, and merely pointing out the effect the rule would have if her post were upgraded could not reasonably be regarded as a threat.

The rule reads:

"A staff member shall be entitled to the promotion resulting from a reclassification of the post he occupies if he has the necessary qualifications and his performance has been satisfactory..."

It clearly means that if her post had been upgraded she might not have got it for herself. It is undisputed that she did not and does not have the qualification prescribed by the ICSC Master Standard for job classification referred to below, namely a university degree or the equivalent. (She was allowed to keep her present P.1 post, though she does not have a university degree, only because she was holding it at the time when it was reclassified to the Professional category.)

6. Another question she raises is whether a university degree is still the minimum educational qualification for appointment to a Professional category post.

Her plea is that Manual provision II.1, Annex A, which dates back to 1979, has been of no effect since the incorporation into the WHO Manual on 14 April 1983 of the ICSC Master Standard for job classification. The Manual provision says:

"PAHO's policy on educational requirements for Professional posts is as follows: the minimum educational qualification for posts at P.1 through P.3 levels is a university degree."

whereas the Master Standard sets an "equivalent in self-study" as the minimum educational qualification, viz. "the attainment of a body of theoretical knowledge in a recognized field by an individual through personal application or effort not involving attendance at a formal educational or academic institution".

7. The Tribunal accepts the PAHO's contention that the later provision has not repealed the earlier one. The two provisions exist side by side and complement each other. The earlier lays down the general rule, still in force, that the holder of a Professional category post must have at least a university degree, while the later provision introduces an exception to the general rule. The exception gives someone without a degree access to a Professional

category post if he has attained a body of theoretical knowledge in a recognised field through personal application or effort.

8. For the foregoing reasons the Tribunal rejects the first two claims and upholds the decision of 1 August 1985 to maintain the complainant's post at the P.1 grade.

Claims (c) and (d)

9. The first two claims having failed, so too do the other two.

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 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