

SEVENTY-SIXTH SESSION

In re ROGGIERO

Judgment 1331

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought by Mrs. Silvia Roggiero against the Pan American Health Organization (PAHO) on 12 March 1993 and corrected on 22 April, PAHO's reply of 2 July, the complainant's rejoinder of 26 August and the Organization's surrejoinder of 21 September 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal and the PAHO Staff Rules;

Considering the application filed by Miss Marta O'Brien-Goldie on 27 April 1993 to intervene in the complaint;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a citizen of Ecuador who was born in 1948, joined the staff of the PAHO on 7 September 1982 under a six-month temporary contract as a secretary at grade G.5. In August 1983 the Organization appointed her to a secretarial post at the same grade. In January 1991 it transferred her to a post as office assistant, again at G.5.

On 30 August 1990 it issued notice of a vacant post, No. 5441, for a G.6 secretary in its Office of Information and Public Affairs (DPI). It invited applications by a deadline it set at first at 20 September and later at 19 October. The complainant applied on 6 September. The intervenor, Miss Marta O'Brien-Goldie also applied for the post.

A Selection Committee of five members was set up to make a recommendation for appointment and met on 3 July 1991. It voted by four to one in favour of appointing another applicant, Miss Verónica Garrido, who was already performing the duties of the post. On 25 July the Personnel Department informed the complainant that Miss Garrido had been appointed.

The complainant filed an appeal on 29 August 1991. In its report of 8 September 1992 the Headquarters Board of Appeal held that since Miss Garrido "did not meet all the minimum requirements" the selection should be declared void and the post advertised again.

In a letter of 11 December 1992 the Director of the PAHO told the complainant that though he disagreed with the premise upon which the Board of Appeal had made its recommendations, he had, because of "the noticeable delay" in convening the Selection Committee, asked the Department of Personnel to review the description of the post, re-advertise the vacancy and convene a new selection committee. The post description having been revised, the post was re-advertised on 27 January 1993. The complainant and Miss Garrido again applied.

She filed this complaint on 12 March impugning the Director's decision not to cancel Miss Garrido's appointment.

By a memorandum of 10 May 1993 the Chief of Personnel told Miss Garrido that on the Director's instructions her appointment had been cancelled but that she would continue to perform the duties provisionally. By a letter of 11 June the Chief of Personnel informed her that, a second Selection Committee having "submitted its recommendations to the Administration", she was again appointed to the post as from 1 June 1993.

B. The complainant has two main pleas.

The first is that to judge from Miss Garrido's personal history form as submitted to the first Selection Committee she fails to meet the minimum qualifications for the post as announced. That was also the opinion of the Board of Appeal and of the dissenting member of the first Selection Committee. Although the Director disagreed, his letter of 11 December 1992 does not say why.

The second plea is that the first Selection Committee followed the wrong criteria. The representative of the DPI told the Selection Committee that most of the actual duties were different from those stated in the vacancy notice. If that were so, the process of selection should have been stopped at once since it was based on misrepresentation.

The complainant seeks the cancellation of Miss Garrido's appointment, resumption of the process of selection and awards of damages for moral injury and costs.

C. In its reply the PAHO observes that after she filed her complaint it did what the complainant is now asking for. As he explained in his letter of 11 December 1992 to the complainant, the Director instructed Personnel to repeat the selection procedure: he asked it "to review the post description for Post 5441, re-advertise the post, and convene a new ad hoc Selection Committee". He thereby cancelled the appointment of Miss Garrido, although, as was both logical and lawful, she continued to discharge the duties temporarily.

Besides, the Organization need not answer the complainant's challenge to the first selection procedure because by entering the second competition she tacitly acknowledged the lawfulness of the Director's action.

Her claim to moral damages is groundless because she affords no evidence of suffering attributable to delay in the first process of selection.

D. In her rejoinder the complainant objects to the PAHO's reading of the facts and presses her claims. She contends that the Director never cancelled the appointment of Miss Garrido. Three "Authorized Post Summaries" issued after the Director's purported cancellation of it showed Miss Garrido to be still on post 5441. The second Selection Committee made the same mistakes as the first: it recommended a candidate whose records revealed that she was not up to the minimum requirements, and it preferred her on the strength of an allegation by the Chief of the DPI that the post was not just secretarial, i.e. that it was not as described in the announcement of vacancy. So there has not yet been any proper process of selection.

E. In its surrejoinder the PAHO contends that the complainant is not properly distinguishing between incumbency and temporary assignment. The successful candidate was not the incumbent of the post: she was put on it temporarily after the Director had cancelled the first selection process and her appointment. The second Selection Committee, like the first, took the view that the successful candidate was qualified for the post.

CONSIDERATIONS:

1. On 30 August 1990 the PAHO issued a vacancy notice inviting applications for a grade G.6 post as a secretary in its Office of Information and Public Affairs (DPI). It set the following minimum requirements of education and experience:

"Graduation from secondary school with additional secretarial courses and not less than three years of experience in secretarial work, including experience with the use of computer terminals or microcomputers for data processing, or graduation from secondary school with not less than five years of experience performing secretarial duties in an international environment, including experience with the use of computer terminals or microcomputers for data processing."

The applicants included the complainant, the intervenor and Miss Verónica Garrido, who had joined the Organization in September 1988 as an office assistant.

2. A Selection Committee having met on 3 July 1991, a majority of four recommended appointing Miss Garrido. The one dissenting member took the view that Miss Garrido did not satisfy the stated minimum requirements of "additional secretarial courses" and "three years of experience in secretarial work". According to the Committee's report the Chief of the DPI too was in favour of Miss Garrido. She was thereupon appointed to the post.

3. The outcome of the complainant's appeal to the Board of Appeal is set out under A above. In a letter of 11 December 1992 the Director told her that he believed the Board to be mistaken in concluding that Miss Garrido did not meet the minimum requirements. Yet, acknowledging "noticeable delay" in convening the Selection Committee, he said that he was ordering the Department of Personnel "to review the post description ... re-advertise the post, and convene a new ... Selection Committee". Although he did not expressly declare the impugned selection to be void, the Organization contends that "thus, he voided the appointment" of Miss Garrido.

4. Another notice of vacancy went out on 27 January 1993 with some changes in the list of duties and minimum requirements. The applicants again included the complainant and Miss Garrido.
5. In her complaint, filed on 12 March 1993 pending the outcome of the second process of selection, the complainant submits that the Director has never declared Miss Garrido's appointment void, that she is still holding the post and that the second Selection Committee has not met. She is impugning the Director's decision of 11 December 1992 and her claims are as set out at the end of B above.
6. In its reply to the complaint the PAHO says that although in the Director's view Miss Garrido did meet the minimum requirements for the post he ordered a new process of selection. "In the meantime" - says the Organization - "Miss Garrido was informed that the selection had been declared null and void and that she was to continue to perform the duties of post 5441 on a provisional basis". The Chief of Personnel gave Miss Garrido that information in a memorandum of 10 May 1993. The second Selection Committee met on 2 June 1993 and recommended Miss Garrido, who was thereupon duly appointed to the post. In the PAHO's submission the complainant has thus already obtained the two main remedies she seeks from the Tribunal, namely the cancellation of the original appointment of Miss Garrido and resumption of the process of selection.
7. The complainant's answer in her rejoinder is to reaffirm that Miss Garrido's original appointment was never declared void and to contend that the second process of selection is as flawed as the first. She argues in particular that Miss Garrido's records as made available to the Selection Committee showed that she did not meet the minimum requirements even by the date of the re-advertisement of the post and that the second Selection Committee acted improperly by using information it had informally obtained from Miss Garrido by telephone during its meetings about courses she had taken to supplement her training.
8. According to Miss Garrido's curriculum vitae at the time of the first process of selection she had not taken any additional secretarial courses and did not have the three years' secretarial experience. Indeed the Organization has not contended that she did have those qualifications. The Tribunal is satisfied that the Board was correct in concluding that Miss Garrido did not satisfy the minimum requirements for the post. In the letter of 11 December 1992 that is the impugned decision the Director stated no reason for disagreeing with that view. He committed a mistake of fact by simply asserting, without explanation, that the premise on which the Board had based its recommendations was wrong. The complainant is therefore entitled to the cancellation of the selection and appointment of Miss Garrido and to a new competition and a new selection process, to be carried out on the same terms and conditions as the first.
9. The Organization is further mistaken in its plea that the Tribunal should not order such relief because the complainant has already obtained it. The Director did not expressly declare the selection of Miss Garrido to be void; the Organization's pleadings rest on the assumption that she was selected and appointed to the post after the first selection process; and there is no written evidence prior to 10 May 1993 to show that the Organization told Miss Garrido - or indeed anyone else - that it had cancelled her appointment and that she was to hold the post only provisionally. What is more, the Director ordered a review of the post description and it was done, so that the second competition was not held on the same terms and conditions as the first. Lastly, the Director attributed his decision to order a new process of selection to "noticeable delay" in the process of selection, not to the reason relied on by the complainant, which was Miss Garrido's ineligibility - borne out by the Board of Appeal - at the closing date for the first competition. In the circumstances the conclusion is that the Organization has not granted the complainant the remedies she seeks.
10. The PAHO further pleads that by participating in the second process of selection the complainant acquiesced in the Director's decision of 11 December 1992 and was not free to challenge the selection of Miss Garrido unless she presented "a new claim concerning the new selection procedure". The plea again fails. By making an application in response to the second notice of vacancy the complainant was quite properly seeking to obtain redress, in the form of selection to the advertised post, from the Organization itself. Not having obtained redress within the prescribed period of appeal, she was entitled to come to the Tribunal in pursuit of it.
11. The impugned decision is in two parts. The first part - the declaration that Miss Garrido was qualified - was flawed for the reasons already stated; the second part - the decision that the post description must be reviewed because of the delay in the selection process - is also flawed because the delay was not a valid reason for such review.

12. The Director's decision of 11 December 1992 must therefore be quashed, the post re-advertised on the terms of the notice of 30 August 1990, and a new process of selection held. The second selection process, being a consequence of that decision, is null and void.

13. On account of the undue delay in the selection process the Tribunal awards the complainant damages for moral injury in a sum of 1,000 United States dollars. She is also entitled to \$3,000 in costs.

14. The Organization has not challenged the right of Miss O'Brien-Goldie as another applicant for the post to intervene in the complaint. Her intervention is allowed but since she has failed to show any moral injury she is not awarded any sum under that head.

DECISION:

For the above reasons,

1. The Director's decision of 11 December 1992, and the subsequent selection and appointment of Miss Garrido, are quashed.
2. The Organization shall re-advertise post 5441 on the terms stated in the vacancy notice of 30 August 1990 and shall hold a new process of selection.
3. It shall pay the complainant \$1,000 in damages for moral injury.
4. It shall pay her \$3,000 in costs.
5. The application to intervene is allowed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

José Maria Ruda
E. Razafindralambo
Mark Fernando
A.B. Gardner