

TWENTY-THIRD ORDINARY SESSION

In re DADIVAS and CALLANTA

Judgment No. 153

THE ADMINISTRATIVE TRIBUNAL,

Considering the joint complaint against the World Health Organization (WHO) drawn up by Mrs. Priscila Dadivas and Mr. Macedonio Callanta on 22 July 1968, received by the Registrar of the Tribunal on 28 October 1968 and brought into conformity with the Rules of Court on 13 November 1968, the Organization's reply of 28 January 1969 and the complainants' rejoinder of 12 March 1969;

Considering Article II, paragraph 5 of the Statute of the Tribunal, WHO Staff Rule 1030.3 and provisions 10 to 50 of Part II(1) of the Manual of the Organization;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Mrs. Dadivas and Mr. Callanta were both assigned in February 1964, after several years' service in the Regional Office of the WHO in Manila, to grade III.M5 posts (General Service category) in the Budget Sub-unit of the Budget and Finance Unit of that office. At the same time and to give effect to the lost Classification Plan in Manila, job descriptions were drawn up for all posts in the Unit, including the posts occupied by the two complainants. Ten months later the post immediately above theirs, which was described as that of "budget analyst" and at an intermediate grade MX between the General Service category and the higher category of "Professional" officials, was abolished, and a new post, that of "budget officer", was created at grade P.2.

B. The complainants maintain that they were assigned almost all the functions of the abolished MX post, which should in theory have been assigned to the new P.2 post. In June 1967 they therefore formally requested the reclassification of their posts at grade MX or at least grade M7. The Budget and Finance Officer first examined their request. The Chief, Administration and Finance, then himself carried out a desk audit of the complainants' functions, particularly those which they alleged should have been assigned to the higher post. He decided that their request should be refused. In his view, their job descriptions drawn up in 1964 covered those functions and it was therefore only normal that they should also assume those functions. On 28 August 1967 the complainants asked him to reconsider the matter. He consulted the Chief of Personnel at WHO Headquarters in Geneva, to whom he proposed that the Director of the Regional Office - who had delegated authority to decide on the classification of General Service category posts - should give the complainants the same reply. The Chief of Personnel approved this course of action and on 25 September 1967 the Director of the Regional Office confirmed the refusal of reclassification.

C. Mrs. Dadivas and Mr. Callanta appealed to the Regional Board of Inquiry and Appeal. They alleged improper application of the WHO post classification standards; failure to observe or to apply correctly the relevant provisions of the Staff Regulations and Staff Rules and incomplete consideration of the facts. On the recommendation of the Regional Board of Inquiry and Appeal the Director of the Regional Office dismissed the complainants' claims on 12 December 1967. Mrs. Dadivas and Mr. Callanta then appealed to the Headquarters Board of Inquiry and Appeal. That appeal was dismissed by the Director-General on 22 April 1963 on the unanimous recommendation of the Board of Appeal.

D. In their complaint to the Tribunal the complainants again state that the Director of the Regional Office acted hastily and improperly in himself rejecting their original request for reclassification without allowing them first to appeal to the Regional Board of Appeal and that the latter's recommendation constituted an infringement of its rules of procedure in that no reasons for the recommendation were given. They maintain that comparison of their job description with that of the budget analyst and later of the budget officer shows that the additional responsibilities assigned to them properly belong to those two higher posts and not to their own, both because of the degree of responsibility involved in those functions and because of the decision-making which those functions entail. As proof of that allegation they point out that a post of assistant budget officer was created at grade M7 and

opened to competition in September 1963 and that the functions relating to that post are strikingly similar to the additional functions referred to above. They also consider that the fact that neither of them was appointed to that post, which was assigned to an official of the same grade in the Finance Subunit of their unit, is a further indication of the Organization's prejudice against them. They also protest that even after that new post had been filled they continued to perform the functions in question and had to insist that they should no longer be required to do so. They accordingly pray the Tribunal to order the Organization to reclassify their posts at grade MX or at least grade M7 and to award them compensation.

E. The Organization rejects these claims. It maintains that it was perfectly normal for the Regional Director to reach his original decision since he had authority to do so, that reasons were in fact given by the Regional Board of Appeal for its findings and that, while the letter in which the Director of the Regional Office informed complainants of his decision to refuse their claim on the basis of that report did not contain any explanation, the complainants could always have asked to see the report, as indeed they did later. The Organization claims that the additional functions were covered by the complainants' job descriptions and that the case arises out of a misunderstanding in that they were assigned those additional functions simply because their job descriptions so provided. It also maintains that the assignment of functions on the basis of job descriptions falls within the discretion of the Director-General and that the Tribunal cannot substitute its own judgment for that of the Director-General, that at most the Tribunal can correct any procedural irregularities tainting the decision - a form of control whose limits have often been defined by the Tribunal itself, that in the present case no such irregularity taints the decision, and finally, that complainants have not established the prejudice of which they claim to be the victims and which in fact is non-existent.

CONSIDERATIONS:

The complainants contend in the first place that the decision of the Director-General was erroneous in not finding that additional duties assigned to them had so substantially increased the responsibilities and duties of their posts as to entitle them to a reclassification to a higher grade and pay-level. In the opinion of the Tribunal an assessment of what amounts to an increase in duties and responsibilities sufficient to entitle the holder of a post to a higher grade or pay-level cannot be made simply by comparing one list of tasks with another. It requires to be made by persons whose knowledge of working conditions enables them to appreciate to what extent, if at all, a change in duties and responsibilities adds to the burden of the official concerned. When, as in the present case, the assessment is made by the Director-General acting on the advice of a Board of Appeal, it is not enough for a complainant to allege simply that it is erroneous. Except upon clear evidence, which is not present in this case, of a mistaken approach to the problem, the Tribunal will neither substitute its own assessment for that of the Director-General nor direct that a new assessment be made. In baring this view the Tribunal acts in accordance with the well-established principle that it does not review a decision of this sort unless it is taken without authority, is in irregular form or tainted by procedural irregularities or is tainted by illegality or based on incorrect facts, or essential facts have not been taken into consideration, or unless conclusions which are clearly false have been drawn from the documents in the dossier.

The complainants contend in the second place that the decision of the Regional Director, from which they appealed to the Headquarters Board of Inquiry and Appeal, was tainted by prejudice. The grounds alleged are:

- (1) that the Regional Director's first decision in the matter, given on 25 September 1967, was made before he had received the advice of the Regional Board of Appeal;
- (2) that in communicating to the complainants on 12 December 1967 his second decision, taken after receiving such advice, the Regional Director did not set out in his letter the reasons given by the Board for recommending the rejection of the appeal; and
- (3) that steps taken by way of reorganisation of posts pending the hearing by the Tribunal of this appeal afford evidence of bad faith. The Tribunal finds in this no evidence of prejudice or bad faith. In any event, prejudice on the part of the Regional Director would be material only if the Headquarters Board, who made the inquiry on which the Director-General acted, had affirmed the decision of the Regional Director without examining the case for itself. It is however plain from the Board's report, and indeed the contrary is not alleged, that it did not act in this way.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 26 May 1970.

M. Letourneur
André Grisel
Devlin
Bernard Spy

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