

EIGHTY-SECOND SESSION

In re Rota (No. 3)

Judgment 1599

The Administrative Tribunal,

Considering the third complaint filed by Mrs. Adriana Rota against the World Health Organization (WHO) on 22 August 1995 and corrected on 26 October, the WHO's reply of 14 February 1996, the complainant's rejoinder of 30 May and the Organization's surrejoinder of 4 September 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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 follows:

A. The complainant has been on the staff of the WHO since November 1984 at its Regional Office for the Americas (AMRO), in Washington, DC. She holds a fixed-term appointment as an office assistant II at grade G.5.

On 9 July 1993 she had a row with another staff member and slapped her face. By a memorandum of 25 August the chief of Personnel gave her a written reprimand under Staff Rule 1110.1.2 and assigned her to another office under another supervisor. The colleague got an oral reprimand.

The complainant appealed to the regional Board of Appeal on 23 November 1993. In its report of 21 July 1994 the Board recommended rejection. By a letter of 9 August the Regional Director endorsed that recommendation.

She then put her case to the headquarters Board in Geneva. In a report dated 28 March 1995 the headquarters Board recommended upholding the decision to reassign her but recommended removing the written reprimand from her personal file; issuing an oral reprimand instead; and paying up to 3,500 United States dollars towards her costs. In a letter of 23 May 1995 the Director-General told her he was refusing to withdraw the written sanction and to pay her costs. That is the decision she is impugning.

B. The complainant submits that the Director-General's decision is unlawful. She alleges breach of her right to a hearing, disproportion between penalty and offence, failure to discharge obligations incumbent on the Organization, and mistakes of fact.

She wants the Tribunal to quash the impugned decision and the earlier decision the Director of the Regional Office took on 9 August 1994; have her "official reprimand" taken out of the file; order her reinstatement in her old job; and award her moral damages and costs.

C. In its reply the WHO denies any mistreatment. The essential facts of the case are common ground. Written reprimand was a "moderate" sanction for a physical assault. In any event the decision to reassign the complainant was not a disciplinary measure, but a proper exercise of discretion in the Organization's own interests.

D. In her rejoinder the complainant enlarges on her pleas. She charges the Administration with overlooking essential facts and presses her claims.

E. In its surrejoinder the WHO points out that the impugned decision was warranted and in any event caused her no injury. The Organization extended her appointment by five years instead of the two she had had before. Since she has committed no further misconduct it has removed the written reprimand from her personal file.

CONSIDERATIONS

1. The complainant is an office assistant II at grade G.5 at the WHO's Regional Office in Washington, DC. On 7 July 1993, a few days before she was to go on holiday, her supervisor, the Co-ordinator of Research and Technological Development in Health (HDR), told her to add information to a memorandum about the delegation

of duties at times when she was absent. She typed that information at the end of the memorandum. Another member of the staff got a copy of the memorandum on 8 July. She saw that the complainant's work was to be assigned to her while the complainant was absent on holiday. She did not know who had taken the decision. On 9 July she went to the Co-ordinator's office to see him but he was not there. She then approached the complainant. The complainant says that in the dispute that then broke out she slapped her colleague on the face.

2. The chief of Personnel was unable to hear any explanation from the complainant until she came back from holiday six weeks later. After hearing both the complainant and her colleague the chief of Personnel issued a written reprimand to her in a memorandum of 25 August 1993 which also told her that she was reassigned at once to the office of the Director of the Division of Health and Development. The other staff member got an oral reprimand. The complainant objected in a memorandum of 22 September to the chief of Personnel. In a reply dated 11 October the chief of Personnel told her that the decision had been taken after giving her the opportunity to state in full her own version of what had happened; the slap was "unworthy of the standard of conduct expected of a staff member", "simply unacceptable" and "not [to] be tolerated". Having exhausted her internal remedies without success the complainant is impugning the Director-General's decision of 23 May 1995 refusing to remove the written reprimand from her file and return her to her old position.

3. She pleads that she was "condemned without a hearing". She is mistaken. No decision was made until she had had an opportunity of giving her own version and she gave it.

4. She contends, first, that the written reprimand was a disproportionately heavy sanction; secondly, that she was singled out for punishment. Striking someone in the face at work is an act that the WHO was justified in treating as misconduct, which Staff Rule 110.8.1 defines as "any improper action by a staff member in his official capacity". The Organization rightly took the view that such violence at the workplace was not to be tolerated. The Director-General has discretion to take disciplinary action under Regulation 10.1 and, according to the gravity of the offence, may decide on an oral or written reprimand, reassignment with or without reduction in grade, dismissal for misconduct, or summary dismissal for serious misconduct. The sanction of a written reprimand was not disproportionate to the misconduct that consisted in striking another staff member. As for her second plea, she was not singled out for punishment since a sanction was imposed on the other staff member as well, even though it was justifiably a lesser one. So both her pleas fail.

5. She submits that reassigning her was a disciplinary sanction. But the chief of Personnel's memorandum of 11 October 1993 explained to her that the only sanction imposed on her was the written reprimand: reassignment was no sanction but ordered for the sake of harmony in the office and to cope with the workload of the Director's office. It complied with Rule 565.2, which reads:

"A staff member may be reassigned whenever it is in the interest of the Organization to do so. ..."

True, it was perhaps unfortunate that the chief of Personnel told the complainant of reassignment in the same memorandum that imposed the written reprimand. But there is no proof that the reassignment was an additional sanction: her new duties were commensurate with her grade. She did not, as she says, lose the "chance for reclassification": the reclassification of the post was stopped because of the wider reforms that were taking place at the time. Nor has she since suffered any injury: she had her contract renewed for five years following a contract for two. What is more, as the chief of Personnel promised her shortly after imposing the written reprimand, it has actually been removed from her file because of favourable appraisal of her performance.

6. Again, the complainant is mistaken in alleging that the Organization presented no facts to justify the punishment. The slap alone provided the justification, the chief of Personnel taking the view that her explanation offered no excuse.

7. Lastly, the complainant contends that the Organization failed to provide a safe workplace and her supervisor did nothing to alleviate the situation between her and her colleague, and that was the direct cause of the incident. It is sheer misuse of language to make out that the incident was the outcome of the Organization's failure to ensure safety at work. The complainant is responsible for her own acts: it was she who committed the act of aggression.

8. The conclusion is that the Organization was justified in imposing on her a minor sanction for a minor incident, and her claims must therefore fail in their entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas

Michel Gentot

Mella Carroll

A.B. Gardner