

## TWENTY-SEVENTH ORDINARY SESSION

### *In re* GLYNN

#### Judgment No. 182

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Gerard Joseph Glynn on 24 November 1970, brought into conformity with the Rules of Court on 9 December 1970, the Organization's reply of 22 January 1971, the complainant's rejoinder of 10 March 1971, and the Organization's letter of 17 March 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 430.2, 430.3, 430.4 and 1030.89 and Part II, Section 4, including Annex A, of the Handbook applicable to the WHO Regional Office for Africa;

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. Mr. Glynn joined the WHO in 1956 and was assigned to the Regional Office for Africa in Brazzaville in March 1959. Following reclassification of his post he was promoted to grade P.5 in November 1960. In June 1965 he was appointed WHO representative in Entebbe (Uganda). According to the description in WHO Manual Circular No. 75 Rev. 1 of the duties of WHO representatives, his functions included "the preparation of requests [for assistance], negotiation of plans of operation". As regards Uganda, the WHO drew up in conjunction with UNICEF several plans of operation on the basis of lengthy consultations between that country and the two organisations. The WHO was anxious to secure Uganda's ratification of those plans.

B. On 19 September 1969 the Regional Director prepared Mr. Glynn's annual report for the period from 1 November 1968 to 31 October 1969. The report contained the following remarks: "Work satisfactory. We hope that Dr. Glynn will use his authority to obtain the signature by the Government of Uganda of several plans of operation in accordance with the instructions drawn up in the Regional Office." (Translation from French) The complainant wrote to the Personnel Section of the Regional Office protesting that the report failed to reflect the volume and quality of his work. In his view the remark concerning the signature of the plans of operation was unfair and should be expunged from the record. In his reply of 27 October 1969 the Regional Director expressed surprise at Mr. Glynn's reaction to his "critical observations" concerning the signature of the plans and added that his intention in making those remarks, which the complainant described as unfair, had been simply to "stimulate" him "to take action in the matter".

C. Mr. Glynn lodged a complaint with the Regional Board of Inquiry and Appeal. In its findings, dated 27 April 1970, the Board held the appeal to be premature in that Mr. Glynn had failed to exhaust all the administrative channels open to him for obtaining changes in his appraisal report and had thus disregarded the provision in Staff Rule 1030.8 that "no staff member shall bring an appeal before a Board until all the existing administrative channels have been tried and the action complained of has become final". The Board also held that the author of the appraisal report had not shown prejudice and had conformed to the spirit and letter of Staff Rule 430 relating to the appraisal of officials' performance. Staff Rule 430.2 laid down no "obligation to give a fully detailed appraisal of the complainant's performance, behaviour and potential for higher output". The Regional Director accordingly dismissed the complaint. Mr. Glynn then appealed to the Headquarters Board of Inquiry and Appeal. The Board found no prejudice against the complainant and held that there was no reason to believe that his supervisors would not have agreed to discuss further with him the appraisal in his annual report had he so wished; that the Regional Director was the only person in a position to assess the complainant's work performance and that by addressing himself to the Regional Board of Inquiry and Appeal the complainant had ruled out any possibility of revising the report. The Board noted that the complainant's comments had been appended to the report in his file and did not recommend any change in the report. By letter of 7 September 1970 the Director-General informed Mr. Glynn that he accepted the Board's recommendation and that he accordingly confirmed the Regional Director's decision of 26 May 1970.

D. In his complaint before the Tribunal Mr. Glynn maintains that the Regional Director was bound not only by WHO Staff Rule 430 relating to the appraisal of officials' work performance but also by Section 4 (performance, conduct and change of status) of Part II of the Handbook applicable to the Regional Office for Africa, which he had himself issued to determine the manner of application of Staff Rule 430 in the African region. Paragraph I.3 of Annex A to Section 4 states: "It is worth adding that critical observations should never be recorded unless and until the staff member has been clearly advised of the shortcomings, given an opportunity to improve and failed. The supervisor's attention is drawn to Staff Rule 430." The Regional Director acted both as the supervisor who drew up the appraisal report and as the supervisor who reviewed that report. He also disregarded the rule mentioned above, since the complainant was not advised of his shortcomings before the critical observations were recorded in his report. Further, in his reply of 27 October 1969 the Regional Director offered no rebuttal of the complainant's contention that the report was "unwarranted, untrue, misleading and without foundation in fact". Moreover, use of the word "satisfactory" in the report did not meet the requirement in the Staff Rules for an appraisal by the supervisor of the "potentialities for greater usefulness" of the staff member. Finally, notwithstanding the instructions in Section D(b) of WHO Form 66, no arrangements existed in the Regional Office for review of any annual report to which objections had been raised. The Regional Board of Inquiry and Appeal was wrong to blame the complainant for having failed to insist on review of his annual report, since such insistence would have proved fruitless. It was for the administration to resume discussion after he had warned it of his intention to appeal to the Administrative Tribunal. The complainant accordingly prays the Tribunal:

(a) to find that the appraisal report was not formulated in accordance with the Staff Rules;

(b) to find that the appraisal report was in substance unwarranted, untrue, misleading and without foundation in fact, and that by its maintenance on record he has suffered an injustice;

(c) to direct that the appraisal report be expunged from his performance record.

E. The Organization replies that by virtue of paragraph 30 of Section 4 of the Handbook for Africa "the Regional Director is responsible for establishing appraisal reports of" WHO representatives. A report to which objections have been raised cannot therefore be reviewed by any supervisor. The Regional Director was entitled to state simply and without further detail that he considered the complainant's performance "satisfactory". The Organization denies that the observation in the report concerning the signature of plans of operation constitutes any criticism: the Regional Director's words "my critical observations" in his reply of 27 October 1969 should be taken to mean "my critical appraisal" and not "my criticisms". There was therefore no reason to warn Mr. Glynn. The complainant has consequently suffered no prejudice. The Organization prays that the complaint be dismissed.

F. In his rejoinder the complainant maintains that in fact there were no plans of operation to be signed - to use his own words - because of "the absolute inability of the Regional Office to formulate a document in accordance with the repeatedly expressed wishes of the Government" of Uganda. This being so, it was pointless to try to "stimulate" him to secure ratification of the plans. The context of the letter of 27 October 1969 shows that criticisms, and not a critical appraisal, were meant. In seeking to "stimulate" him into action the letter implied that he had not hitherto shown enough diligence, and that was beyond any doubt a reproach which might damage his career prospects in the Organization. The Headquarters Board of Inquiry and Appeal treated the remark as a criticism. It was not a "directive", as the Organization contends, since an appraisal report is not the proper medium for giving instructions to a staff member. The complainant insists that use of the word "satisfactory" does not meet the requirements of the Staff Rules and stresses that it was the duty of the Regional Director, as the author of the report, on receiving the complainant's objections, to act in turn as a supervisor competent to review an appraisal report drawn up by a subordinate. This he failed to do. Mr. Glynn accordingly persists in his claims.

#### CONSIDERATIONS:

1. The appraisal complained of in the appraisal report is divisible into two parts. The first part of the appraisal is simply "work satisfactory". The complaint is that this is an inadequate appraisal of the complainant's work. If this be so, the remedy available to the staff member is contained in Staff Rule 430.3 which enables him to "attach a statement concerning any part of the report with which he disagrees". There is no ground for impugning this part of the appraisal.

2. The second part of the appraisal is: "Nous souhaitons que le Dr Glynn puisse user de son autorité pour faire

signer différents plans d'opération par le gouvernement de l'Ouganda, dans le cadre des directives établies au Bureau régional". The complainant contends that these words imply that he has failed to act in accordance with directives established by the Regional Office and that such a statement is without foundation and unjust to him. The Organization contends that the words are not a criticism of past performance and adopts the language of the Regional Director who wrote that they were intended only to stimulate the complainant to take action in the matter. The complainant in his reply (which has not been answered by the Organization) rejects this interpretation and alleges that there was no action to which he could have been stimulated, the delay being due to the failure of the Regional Office to prepare the plans of operation for signature.

3. The words complained of are contained in an appraisal report whose function it is to evaluate past performance and conduct and not to give directives for the future. Moreover the facts as they appear in the dossier show that there was no act or omission by the complainant which could prompt any special directive for the future, let alone any criticism of the past. The Tribunal will not normally entertain complaints about the contents of appraisal reports; it is essential to their value that the supervisor should be granted great freedom of expression and normally, if there be any errors of judgment on his part, they can be sufficiently remedied by the incorporation in the appraisal report of the staff member's point of view. But in the circumstances of this case the Tribunal feels bound to conclude that the words complained of were inserted in the report under a total misconception of the situation and that justice requires that they should be expunged.

#### DECISION:

For the above reasons,

1. The Director-General's decision dated 7 September 1970, by which he refused to delete from the appraisal report the words: "Nous souhaitons que le Dr Glynn puisse user de son autorité pour faire signer différents plans d'opération par le gouvernement de l'Ouganda, dans le cadre des directives établies au Bureau régional", is quashed.

2. The remainder of the complainant's claims 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 8 November 1971.

M. Letourneur  
André Grisel  
Devlin

Bernard Spy