

THIRTY-SECOND ORDINARY SESSION

In re ALONSO

Judgment No. 233

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Pan American Health Organization (PAHO) (World Health Organization) drawn up by Miss Mercedes Alonso on 24 July 1972, and brought into conformity with the Rules of Court on 20 September 1972, the Organization's reply of 19 December 1972, the complainant's rejoinder of 23 February 1973 and the Organisation's surrejoinder of 27 March 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal PAHO Staff Rules 210.1, 220.2, 230.4, 230.5, 235.1, 280.3(b), 455, 460.1, 490.1, 490.2 and 1110 and WHO Manual section II.10.300;

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

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

A. On 24 August 1950 the complainant joined the staff of the Pan American Sanitary Bureau (PAHO), the secretariat of the PAHO, and in June 1970 was transferred from the General Service category, in which she held a post at grade G.7, step X, to the Professional category, at grade P.1, step X. She then found that the transfer had had the effect of reducing her total remuneration by some US\$500 a year (the parties do not agree on the exact figure). She raised the matter with the Administration of PAHO and asked that headquarters should make a recommendation. Headquarters settled the matter by confirming the Administration's decision on the grounds that the highest step which could be granted to a staff member transferred from the General Service to the Professional category was step X of grade P.1. On 19 January 1972 the Administration of PAHO wrote to the complainant confirming that it could not give her a higher grade than P.1, step X. She appealed against the Administration's decision to the PAHO Board of Inquiry and Appeal on 25 January 1972. The Board found that the Staff Rules had been correctly applied in determining her new salary but recommended that the Staff Rules should be amended or supplemented to ensure that the salary scale was extended when necessary and staff members did not find themselves in future in the complainant's position. It recommended that the salary scale should be extended as an exceptional measure in the complainant's case so that the spirit of Staff Rule 220.2 would be respected and that she should receive an *ex gratia* payment in compensation for the decrease in salary due to her promotion. The Director of the PAHO said that he could not endorse the recommendations of the Board of Inquiry and Appeal and so informed the complainant in a letter of 17 July 1972. The present complaint impugns that decision of 17 July 1972.

B. The complainant argues that several provisions of the Staff Rules have been infringed: Staff Rule 220.2 in that she has not received the increase prescribed thereunder in case of promotion to a higher category; Staff Rule 490.1 in that there has been breach of the requirement in that rule that a staff member should be notified by letter in advance of any involuntary reduction in salary; and Staff Rule 280.3(b) in that the Administration did not respect the required period of notice of a reduction in salary.

C. In her claims for relief the complainant asks the Tribunal to order the Organization to give effect to Staff Rule 220.2 or, failing that, to the recommendations of the Board of Inquiry and Appeal; to grant compensation for breach of Staff Rules 490.1 and 280.3(b); and to award fair and reasonable legal costs.

D. The Organization points out that in the international civil service, including the Pan American Sanitary Bureau, there are two categories of staff members: the General Service and the Professional. In the salary scale it so happens that the final steps of the G.7 grade and all the steps of the P.1 grade overlap. On her transfer from the General Service category to grade P.1 in the Professional category, although her former salary had been higher she could not be promoted beyond step X of the P.1 grade, the final step in that grade. Staff Rule 220.2 does not empower the Administration to add steps to those prescribed by Staff Rule 230.4. Staff Rule 490.1, to which the complainant alludes, does not apply in her case: it relates to reductions in grade or salary involving involuntary change in status and is intended to protect the staff member by giving him an opportunity to challenge the decision. The complainant's transfer to a P.1 post in the Professional category was not involuntary. Finally, the Organization

points out that Staff Rule 280.3(b), to which she also refers, is irrelevant since it does not relate to transfers from the General Service to the Professional category.

E. The Organization therefore prays that the complaint be dismissed.

CONSIDERATIONS:

On the merits:

Staff Rule 220.2 provides:

"On promotion to a higher grade, the salary of a staff member shall be fixed at the lowest step in the new grade which will provide an increase in salary no less than would have resulted from the next within grade increase in the old grade ..."

The Organization contends in the first place that this Rule does not apply to transfers of staff from the General Service category to the Professional category. In the opinion of the Tribunal such transfer is a "promotion"; and since such promotions are contemplated by the WHO Manual section II.10.300 and are in fact made and since they are not governed by any special Rule, Rule 220.2 must apply. This contention is rejected.

The intention of the Rule 220.2 is to ensure that on promotion to a new grade the staff member receives an increase in salary of a certain amount. The minimum is fixed as the amount he or she would have received if the promotion, instead of being to a higher grade, had been to the next highest step in the old grade. The language of the Rule assumes that there will be a step in the new grade which will carry with it a salary high enough for this purpose.

In the present case this assumption turns out to be incorrect. The increase necessary to give the complainant the minimum salary required by the Rule amounts, according to the Organization itself, to US\$260 per annum. But the salary attached to the highest step in the new grade P.1 in the Professional category, so far from being large enough to permit this increase, is actually less by US\$257 per annum than the salary which the complainant was receiving in the old grade. What is the effect of the incorrect assumption? Does it mean that, as the Organization contends, the Rule, so far as it stipulates for a salary increase, must be treated as ineffective? Or does it mean, as the complainant contends, that some way other than the way prescribed must be sought of paying the increase?

The solution is to be found by ascertaining the main or primary object of the Rule. Is the main object to provide a way of determining a salary increase? Or is it to provide a way of fixing the appropriate step at which the staff member is to enter the new grade? The Tribunal concludes that it is the former question which has to be answered in the affirmative. The Rule is in a section headed "Salary Determinations"; and when a Rule under that head is dealing with a promotion, which is naturally expected to carry with it an increase of salary, it is only reasonable to see the increase as the true object of the Rule. Thus the fixing of the step must be construed as only the means by which the true object of the Rule is to be secured. The means are the servant of the end not its master; the failure of the means prescribed cannot be allowed to defeat the object; the object must be achieved in some other appropriate way. A man who undertakes to make a payment by a cheque on a certain bank is not released from his debt because the bank has ceased to exist.

Rule 220.2 is therefore on this construction itself the authority for making the increased payment and it matters not that there is no other Rule formally authorising the payment. The fact that the payment cannot be fitted into any particular niche in the framework of the regulations will doubtless cause administrative inconvenience, but administrative inconvenience does not prevent the operation of the Rule.

Hence, there being no need to examine the other arguments put forward by the complainant, her complaint should be allowed.

DECISION:

For the above reasons,

1. The decision of the Director-General dated 17 July 1972 is quashed.
2. It is ordered that the Organization pay to the complainant arrears of salary at the rate of US\$517 per annum from

1 June 1970.

3. The costs incurred by the complainant in connection with this complaint, the amount of which shall be fixed by the President of the Tribunal, shall be borne by the Organization.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 May 1974.

M. Letourneur
André Grisel
Devlin

Roland Morellet