

NINETY-NINTH SESSION

Judgment No. 2471

The Administrative Tribunal,

Considering the complaint filed by Miss A.E. against the Pan American Health Organization (PAHO) on 8 April 2004, the Organization's reply of 2 August, the complainant's rejoinder of 10 September and PAHO's surrejoinder of 7 December 2004;

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

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

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

A. The complainant, a United States citizen born in 1952, joined PAHO in March 1977. Following a short-term assignment as a Switchboard Operator she was appointed at grade G.4 as a Telephone Operator in the Office Services Unit of the Department of General Services (AGS). Her post was reclassified in 1989 as a G.5 post with the title Office Assistant, and again in 1995, when although it was maintained at grade G.5, this represented an increase in grade, as a result of the introduction of a new seven-level salary scale.

The upgrading of PAHO's telecommunications systems in 1996 brought about a number of changes in the area in which the complainant worked. In particular, maintenance of the systems was no longer carried out by PAHO staff but was entrusted to external contractors, and the grade P.1 post of Telecommunications Specialist, the incumbent of which had been the complainant's first-level supervisor, was abolished. In the complainant's performance appraisal report for the period August 1995 to August 1996, her new first-level supervisor indicated that she had assumed and successfully performed additional duties relating to the abolished post. He therefore recommended that her post description be revised.

On 6 April 2000, in response to a request by the Chief of AGS for a review of the classification of the complainant's post, the acting Chief of the Classification Unit sent the former a post description questionnaire to be completed by the complainant and her supervisors.

With effect from 1 January 2002 the telecommunications functions, which were then being performed by the complainant and two telephone operators, were transferred from AGS to the Department of Management and Information Support (ACS). The complainant's job title and post description remained the same, but she reported to different supervisors. Soon after the transfer, she became concerned that her duties were being taken from her. Her new first-level supervisor, Mr S., informed the two telephone operators that they were to report to him, and not to the complainant as they had in the past. He also established new procedures for dealing with helpdesk requests, which had previously been handled primarily by the complainant.

On 25 February 2002 the complainant submitted a request for remuneration under Staff Rules 565.4 and 320.4 to the Chief of Personnel, claiming that in addition to her own duties she had performed the grade P.1 duties of the former Telecommunications Specialist, without compensation, from the latter's retirement in 1996 until February 2002. This request was rejected on the grounds that the Telecommunications Specialist's post had ceased to exist and that there was no record of her having been asked officially to assume the responsibilities of a vacant post.

At the beginning of March 2002 the complainant and the two telephone operators moved from their offices in the basement to offices on the third floor. The complainant had been accustomed to spending many of her working hours in the switch room, which was located near to her basement office. Shortly before she moved into her new office, maintenance work was carried out in the switch room. The complainant was not present but Mr S., who accompanied the maintenance workers, found a box containing her possessions, which he moved from the switch room to her office. When the complainant discovered that her belongings had been moved, she protested strongly to her second-level supervisor. The latter asked her on several occasions to come and discuss the incident, but the complainant refused on the grounds that she was too upset. Following the maintenance work, Mr S. had the locks

on the switch room door changed. From that time onwards, the complainant no longer had a key to the switch room.

The complainant's second-level supervisor held a meeting on 8 March 2002 with the complainant and Mr S. to clarify the functions of all members of the unit. On 13 March she sent an e-mail to the complainant suggesting that they examine her post description with a view to upgrading it. On 22 March the complainant initiated an appeal alleging "demotion without cause coupled with humiliating treatment with consequent damage to reputation". On 23 April the Chief of Personnel held a meeting with the complainant and her supervisors to discuss the concerns raised by her. That same day, Mr S. asked her to submit her comments regarding possible changes to her post description.

At the end of May 2002 the complainant was absent on sick leave for several days. She informed her second-level supervisor that she was suffering from stress. She initiated a second appeal on 5 June alleging "continuous harassment causing emotional distress". She was then on sick leave continuously from 14 June until 21 October 2002. During that period a revised version of her post description was approved, in which her grade and most of her duties remained unchanged.

By a letter of 3 July 2002 PAHO's Medical Referee asked the complainant to provide a proper medical certificate to justify her absence, since the letter from her physician that she had submitted did not contain sufficient information. On 9 July, noting that she had not yet done so, the Chief of Personnel sent her a letter warning her that if she failed to submit a valid certificate her absence would be charged to annual leave. Referring to their meeting of 23 April, he stated that he was aware of her concerns regarding her work in ACS and regretted that her transfer to ACS had not been smooth. However, he observed that despite efforts by her supervisors to make her feel part of her new unit, she had shown a strong reluctance to work with them.

The Chief of Personnel informed the complainant, by a letter dated 26 July 2002, that it had been decided that her uncertified absence would be charged to annual leave. This decision was subsequently reversed, following the submission by the complainant of a valid medical certificate.

The complainant returned to work on a half-time basis on 21 October 2002. That same day, she had a meeting with the Chief of Personnel during which the possibility of a reassignment or transfer back to AGS was discussed. This issue arose again on 24 October, during a second meeting with the Chief of Personnel, which was also attended by the Chief of ACS and the Organization's Ombudsperson. On both occasions, the complainant indicated that she preferred to remain in her post in ACS.

By a memorandum of 25 November 2002 the Chief of ACS asked the Chief of Personnel to transfer the complainant to another department. She stated that the complainant was challenging the decisions of her second-level supervisor, had very limited communication with her first-level supervisor and was continuing to make negative comments about her supervisors to other members of the Department. She summed up the situation as follows: "[...] her attitude does not reflect someone who truly wants to work in ACS with the staff assigned to the Telecommunications unit. Neither does it reflect the respect that should be given to all colleagues and supervisors".

On 6 December 2002 the Chief of Personnel sent the complainant a memorandum informing her that as from 9 December 2002 she would be transferred, with her post, to a grade G.5 position in the Procurement Unit of AGS. Having referred to the "behavioural problems" mentioned in the memorandum of 25 November from the Chief of ACS, a copy of which was attached for her attention, he added that concerns had also been expressed about her performance, which had been rated unsatisfactory in her performance appraisal report for the first six months of 2002.

The complainant's two appeals were joined by the Headquarters Board of Appeal, which issued its report on 4 December 2003. It recommended that the complainant be compensated for having performed additional duties relating to the abolished post of Telecommunications Specialist from 1996 to 1998, as evidenced by her performance appraisal reports; that the Organization resume and complete the process of reclassifying her post, "if feasible"; that she be fully compensated, by means of an award of damages and reimbursement of her medical expenses, for the injury caused to her health; and that she be awarded 5,000 United States dollars in costs. The Board rejected her claims for the return of all her duties to her, for disciplinary measures against her supervisors and for the publication of a formal apology, and it saw no grounds for an award of damages for "humiliation, slander, or demotion of duties".

Having reviewed the Board's findings and recommendations, the Director of PAHO took the following decision, which she conveyed to the complainant by a letter of 6 February 2004. She considered that the claim for compensation for the performance of additional duties, apart from being time-barred, did not satisfy the requirements of the Staff Rules. Nevertheless, in view of the particular circumstances of the case, she agreed to grant the complainant the difference in pay between her grade (G.5) and grade G.7 for a period of nine months, the maximum period of compensation allowed under the applicable provisions. She rejected as unfeasible the Board's recommendation regarding the reclassification of a post which the complainant no longer occupied. She also rejected the recommendation that the complainant be compensated for injury to her health, which she viewed as contrary to the Board's own findings. The Board, which had stated that there were no grounds for awarding damages for "humiliation, slander, or demotion of duties", had not established a causal link justifying such compensation. Furthermore, it had noted that the complainant's "attitude, behavior, resistance/reluctance to change and lack of communication with her new supervisors" had contributed to the stressful situation which had arisen following her transfer to ACS. Lastly, the Director rejected the recommendation that the complainant be awarded costs, on the grounds that it was not the Organization's practice to pay costs incurred at the internal appeal stage. That is the impugned decision.

B. The complainant contends that by not compensating her in respect of the six years during which she performed the duties of the abolished post of Telecommunications Specialist the Organization breached Staff Rules 320.4 (now 320.5) and 565.4. Rejecting the Director's argument that these rules allow her to be compensated for a maximum of nine months, she submits that their purpose is to prevent the Administration from maintaining a staff member in such a situation indefinitely.

She considers that in transferring her to ACS, the Organization "did not respect [her] contract nor her knowledge". In her view, the transfer of the telecommunications functions to ACS and the subsequent appointment of her second-level supervisor to the new post of Chief of Communication contravened Staff Rule 4.2. She also asserts that the Administration did not provide her with a new job description until seven months after the transfer had taken place, thereby "exposing her to the abuse of [Mr S.]".

The complainant further contends that she was improperly demoted in breach of Staff Rule 580.1, since she was not duly notified of the decision to transfer her. This, coupled with the fact that Mr S. humiliated her, particularly at the time of the switch room incident, caused her to become severely ill. She considers that her injuries should be compensated in accordance with Staff Rule 730. Referring to a report provided by her physician, she submits that she has produced evidence proving the causal link between the injuries she has suffered and the actions of her colleagues.

She seeks compensation "for the time she replaced [the former Telecommunications Specialist] to the time of [her transfer to ACS]"; an order that all the duties and responsibilities she had in December 2001 be returned to her and that the Administration "reclassify her properly, give her position back, or give her a position back of equal responsibilities and salary"; damages for "humiliation, slander, demotion of duties and injury caused to her health"; payment of her medical expenses; and costs.

C. In its reply the Organization submits that the complainant is not entitled to additional compensation in respect of the period from 1996 to 2001. The Staff Rules provide that the time limit for appealing against a final action is 60 days. The duties of the abolished post were allegedly assumed by the complainant in 1996, and she relies in support of her claim on a performance appraisal dated March 1997. Consequently, her claim for compensation, brought five years later, is time-barred. Furthermore, the complainant did not challenge the new post description she was given in May 1997, even though the duties it contained were similar to those listed in her previous job description. She could have requested a reclassification of her post at any time, in accordance with Staff Rule 230, but failed to do so. Likewise, when she was given the opportunity to have her post reclassified in April 2000, she failed to complete and return the questionnaire. In any case, she could not have been performing all the duties of the abolished post, because those duties were no longer required, notably as a result of the outsourcing of maintenance work. Despite these considerations, the Director agreed, exceptionally, that the complainant be paid the difference in salary between grades G.5 and G.7 for nine months, which is the maximum period of compensation allowed by the Staff Rules.

The Organization maintains that the telecommunications functions were transferred to ACS for valid reasons: the merging of these functions with information technology functions reflected the direction taken by the telecommunications industry and indeed the practice of other international organisations. The complainant's

contract and knowledge were not disregarded: her post descriptions before and after the transfer show that she was given the opportunity to continue performing the same functions. The only difference lay in the removal of supervisory and training functions representing only 5 per cent of the duties of her post. Nor was the transfer vitiated by any procedural flaw.

The Organization considers the complainant's claim for damages to be unfounded. Her attitude, behaviour, resistance to change and lack of communication created problems in ACS, and she was transferred back to AGS as a result of her continued lack of cooperation and out of concern for her health. PAHO recalls that the Tribunal has recognised that international organisations have a broad discretion to transfer staff. It also denies that the complainant was mistreated in ACS. It asserts that, contrary to her allegations, Mr S. did not discard any of her possessions, which in any case should not have been stored in the switch room. He merely removed them and placed them in her office. Nor was the complainant barred from working in the switch room: the locks were changed as a security measure, because it was not known how many people had access to the room. Had she needed to perform duties there, she would have been given access. PAHO also rejects the argument that the complainant was demoted. The transfer to ACS involved no change in her classification, grade or salary, and her duties remained substantially similar to her previous ones, as confirmed by the Board of Appeal.

Regarding her claim for payment of her medical expenses, 80 per cent of which are reimbursed by PAHO's medical insurance plan, the Organization submits that since no causal link between her injuries and the performance of her duties has been established, this claim should be rejected.

D. In her rejoinder the complainant presses her pleas. She explains that she refused to train Mr S. to use the new system because she felt that she was not qualified to do so, and because she was unwilling to take responsibility for training someone to use such expensive equipment, which could easily have been damaged. Regarding her failure to request a reclassification of her post, she cites Judgment 1677 as authority for the view that it is the duty of supervisors and the Department of Personnel to keep post descriptions up to date.

E. In its surrejoinder the Organization maintains its position. It considers that since the complainant's post description was never outdated, her supervisors and the Department of Personnel had no obligation to modify it or to reclassify her post.

CONSIDERATIONS

1. The complainant started working in the Organization's Department of General Services (AGS) on 21 March 1977 as a Switchboard Operator and in May 1977 was appointed to the post of Telephone Operator at grade G.4. In 1989 she was promoted by reclassification to grade G.5 and given the title Office Assistant. When in 1995 a further review of the classification of her post resulted in her remaining at grade G.5, the contemporaneous introduction of a new seven-level salary scale meant that she in effect gained another grade. She had two desks, one in the switch room and another in a nearby office which she shared with the Telephone Operators.

2. She submits that when on 31 July 1996 her first-level supervisor, who held the grade P.1 post of Telecommunications Specialist, separated from the Organization, she assumed the duties and responsibilities of that post for six years, for which she claims compensation. The Organization asserts that the post of her former supervisor, whom she claims to have replaced, was in fact abolished and that her claim for compensation is not only patently time-barred, but also unfounded. The Tribunal agrees.

3. When the telecommunications and information technology functions were merged as part of a reorganisation, the complainant's post was transferred, in January 2002, to the Department of Management and Information Support (ACS). She showed considerable reluctance to accept that transfer and, as from January 2002, was frequently absent from work, though much of this absence was ultimately allocated to sick leave. Her working relationships with her new supervisors in ACS were always strained. She complained about her supervisors, claiming harassment and humiliation, but her request that disciplinary measures be taken against them was rejected by the Director of PAHO in accordance with the recommendation of the Board of Appeal. From the time of the transfer onwards, she refused to cooperate with her supervisors, which exacerbated the situation. For instance, when told by different superiors to move out of the two offices she used in the basement, she refused to comply, and in the end her personal items had to be removed from the switch room in her absence to enable maintenance work to be carried out.

4. In December 2002 she was reassigned to AGS, though in a different position. She now asks to be given back the duties and responsibilities she had in December 2001 in AGS, prior to the reorganisation that led to the transfer of her post to ACS. The Tribunal considers that this request cannot be granted, for it would imply undoing the reorganisation and reversing the technological changes that have been made, which, as the complainant herself acknowledges in her submissions, were both necessary and predictable. Her position is thus untenable.

5. The Tribunal does not consider it necessary to entertain the other arguments and assertions of fact that have been made by the complainant, in particular her claims that she suffered humiliation and harassment by her supervisor causing her injury for which she seeks compensation. As the Tribunal has said on several occasions, the complainant must provide evidence of the injury suffered and of a causal link between the alleged unlawful acts and that injury. In the present case, the complainant has not provided any evidence to establish the truth of her assertions; nor has she proved that her working conditions were responsible for her medical problems, or that she suffered harassment, or that her transfer was illegal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet