

THIRTY-FOURTH ORDINARY SESSION

***In re* NOWAKOWSKI (No. 4)**

Judgment No. 248

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organization (WMO) drawn up by Miss Krystyna Nowakowski on 28 August 1972 and brought into conformity with the Rules of Court on 15 July 1974, the Organization's reply of 8 October 1974, the complainant's rejoinder of 14 December 1974, the Organization's surrejoinder of 21 January 1975, the complainant's additional memorandum of 6 February 1975 and the Organization's communication of 24 February 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WMO Staff Regulations 9.2 and 11.1 and WMO Staff Rules 151.1(b), 192.1, 193.1(c), 193.2(a), 193.3 and 195.3;

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. The complainant joined the service of the WMO on 17 January 1962. After holding a series of short-term appointments, on 1 September 1963 she obtained a contract of indeterminate duration at grade G.2, at first as a copy typist and later as a registry clerk. She was promoted to grade G.3 on 1 March 1964 and to grade G.4 on 1 April 1965. She was employed as registry clerk until 8 February 1972, when her appointment was terminated.

B. By letter of 3 February 1972 the Secretary-General informed the complainant that her appointment was terminated and attributed the decision to the unsatisfactory nature of her services. An accompanying letter of the same date described the various formalities relating to the termination of her appointment. By a minute of 22 February 1972 addressed to the Secretary-General the complainant contested the decision and invited him either to quash the dismissal notified to her and reinstate her as a WMO staff member or else grant her various forms of compensation and pay her several sums in compensation for the material and moral prejudice she had suffered by reason of her dismissal. By letter of 6 March 1972 the Secretary-General informed her that he upheld his decision. On 20 March 1972 she appealed to the Joint Appeals Board. In its report of 12 May 1972 the Board held that none of the complainant's grievances was well-founded and recommended the Secretary-General to uphold the impugned decision. The Secretary-General endorsed that recommendation and the complainant was so informed by letter of 2 June 1972. She now appeals against that final decision to dismiss her.

C. In her complaint she maintains that the WMO dismissed her on the grounds of unsatisfactory services without regard to her state of health. A check-up by a medical board revealed that she was suffering from total disability and she therefore believes that the decision to dismiss her was clearly based on an error of judgment and of law. She also contends that the impugned decision was taken without due respect for proper procedural safeguards.

D. In her claims for relief the complainant asks the Tribunal to quash the decision to dismiss her inasmuch as it was based on an error of law and without due respect for proper procedural safeguards; to reserve her right to claim compensation for the prejudice which she suffered by reason of her dismissal; to order the WMO to pay her a substantial sum in compensation for moral prejudice; to order it to pay costs, including the fees of legal advisers and of the present proceedings; and to add interest at the rate of 7 per cent a year on the sums due to her and take account of salary increases granted since the effective date of her dismissal.

E. In its reply, to which it appends many items of evidence intended to show, among other things, that the complainant's services were unsatisfactory, the Organization maintains that its treatment of her was beyond reproach. She has produced no proof to support any of her grievances and the decision to dismiss her was perfectly correct inasmuch as it respected the relevant Staff Regulations and Staff Rules and the strict limits of the rights and

powers enjoyed by the Secretary-General. In particular, the Organization contends that the manner in which the Secretary-General applied the provisions of Staff Regulation 9.2 to her case is not open to criticism.

F. The Organization therefore prays that the Tribunal dismiss the complaint as ill-founded.

CONSIDERATIONS:

As to the regularity of the procedure:

The complainant maintains that the procedure which led to the impugned decision of 3 February 1972 to dismiss her, and to the subsequent decisions upholding it, was irregular, in particular in that she was denied her right to a hearing.

It appears from the documents in the dossier that she was warned by her supervisors several times that the quality of her services was not satisfactory and must improve. To enable her to overcome the difficulties of adapting to her work she was transferred three times. But the chiefs of the units to which she was transferred all found her incompetent.

She received several warnings that if her services did not improve the Organization would feel bound to dismiss her under Staff Regulation 9.2. She cannot therefore properly maintain that she was dismissed suddenly, without warning and in ignorance of the reasons for dismissal.

Indeed the Tribunal holds that not only was the correct procedure followed for dismissing her but the Organization actually showed great forbearance and consideration towards her.

Moreover, after her dismissal, before she appeared before the Joint Appeals Board and on appearing before the Board she had every opportunity to examine all the documents in her dossier and to submit her case.

She thus enjoyed all the formal and procedural safeguards stipulated by the terms of her appointment and the general principles of law.

As to the lawfulness of the impugned decisions under the internal procedure:

The complainant, who has consistently maintained that she could not be properly dismissed for reasons of health, now contends that the sole reason for her unsatisfactory services was her poor state of health and that in fact her dismissal was a disciplinary measure.

The Tribunal therefore has to determine the real reason for the decision to dismiss her.

A staff member cannot properly be dismissed for reasons of health unless he is no longer physically or mentally fit for work.

A staff member cannot properly be dismissed for disciplinary reasons unless he has committed misconduct in the performance of his duties or in the course of such performance or in some manner directly connected therewith.

Dismissal on the grounds of unsatisfactory services is warranted if in the performance of his duties - there being no specific, medically certified reason of health and no act or attitude in the nature of misconduct - a staff member shows incapacity, indolence or inadaptability or by his general attitude hampers the proper functioning of the public service to which it is his duty to contribute.

In the present case it appears clearly from the complainant's medical examinations, which served as the basis for highly detailed certificates and reports, that, as indeed she consistently maintained until her dismissal, she was not unfit for work.

The Organization has consistently contended that she did nothing to warrant disciplinary action, and indeed that is borne out by the dossier.

On the other hand, she never performed her duties satisfactorily. In her successive assignments she showed incompetence or failed to adapt to the requirements of her work, even though it was not particularly difficult or

demanding.

In these circumstances, which appear quite clearly from the documents in the dossier, the Organization acted lawfully in dismissing the complainant on the grounds of unsatisfactory services in accordance with Staff Regulation 9.2.

As to the claims for compensation:

Since her dismissal was lawful the complainant is not entitled to any compensation over and above the generous sums already paid to her by the Organization.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 5 May 1975.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet