

THIRTY-FOURTH ORDINARY SESSION

***In re* ROUTIER**

Judgment No. 252

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Lucien Routier on 27 June 1974 and brought into conformity with the Rules of Court on 24 July 1974, the Organization's reply of 3 October 1974, the complainant's rejoinder of 21 October 1974 and the Organization's surrejoinder of 12 November 1974;

Considering Article II, paragraph 5 of the Statute of the Tribunal, WHO Staff Rule 1030.1(d) and Appendix B of Part II, section 1, of the WHO Manual, in force up to July 1974;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. The complainant was appointed to the WHO in July 1970 as a "messenger" at grade G.2. In January 1973 a group of "messenger-doorkeepers" submitted to the Administration a collective request for promotion. The Administration informed them that requests for regrading should be made in accordance with the procedure laid down in the WHO Staff Rules and Manual, which prescribe that any staff member may request review of his post classification by addressing to Personnel a memorandum accompanied by a description of his duties. So as to simplify matters, however, the Administration suggested that they should appoint one doorkeeper to represent the doorkeepers and one messenger to represent the messengers. The complainant was appointed to represent the messengers. After reviewing the matter on 11 October 1973 the Chief of Personnel informed the messengers that in the Administration's opinion their posts were properly graded at grade G.2.

B. The messengers then lodged a collective appeal with the headquarters Board of Inquiry and Appeal against the decision of the Chief of Personnel. The Board held the appeal in its collective form to be irreceivable. In accordance with Staff Rule 1030.1(d) the complainant then lodged an individual appeal against the decision of the Chief of Personnel, there being an understanding with the Administration that the Director-General's final decision would also apply to similar cases of messengers who did not accept the original decision. After examining the complainant's appeal the Board of Inquiry and Appeal reported in March 1974. It recommended amending the WHO Manual so as to make the criteria for grading messenger posts correspond to the actual duties of messengers by creating an additional G.3 category "more in keeping with the importance and difficulty of the actual duties of messengers". The Board of Inquiry and Appeal also recommended Promoting the complainant to the new G.3 category "since his duties far exceed in number and difficulty those prescribed" originally in the "Manual provision relating to the G.2 messenger category". In his complaint the complainant points out that the Ombudsman, to whom the case was submitted, "reached favourable conclusions in support of the Board's recommendations".

C. On 1 April 1974 the Director-General informed the complainant that he had decided to dismiss his appeal - a decision against which the complainant is now appealing - and to have the criteria for grading messenger posts revised. "Once those criteria have been revised and I have approved them", he went on, "the Personnel Service will reconsider the grading of your post in the light of the revised criteria and the final decision will be notified to you not later 'than 1 October 1974". On 9 July 1974 the Chief of personnel informed the complainant that new criteria for grading messenger posts had been adopted, had received the Director-General's approval and had come into force on 1 July 1974. The complainant's post was then reviewed in the light of those criteria, and the Administration held that it was properly graded at grade G.2. The Organization states that the complainant's attention was nevertheless drawn to the fact that according to the new grading criteria a staff member could be promoted to grade G.3 even if he continued to be a "messenger". "For that purpose", the Organization continues, "it was open to the complainant to apply for a post as messenger/watchman, messenger/driver or messenger/key

operator and so achieve promotion to grade G.3. The complainant declined that suggestion and confirmed that he was appealing to the Tribunal against the decision not to promote him to grade G.3 in his present post."

D. In his claims for relief the complainant asks the Tribunal to hold:

- that it is the Staff Rules (Manual) in force in 1973 which are valid in law in determining a question which dates back to 10 January 1973;
- that in the chapter entitled "Messengers, doorkeepers and watchman", subchapter I, paragraph 4 (category G.3), the Staff Rules provide that doorkeepers perform either the duties of doorkeeper "in general" or those of doorkeepers "on conference duty";
- that that clause provides an alternative which draws a distinction between two categories of doorkeepers;
- that according to the complainant's post description, which sets out his various duties, it is the conferences service to which he is responsible;
- that this situation has existed de facto since at least 1967 as the service orders issued then and since make clear;
- that it is mistaken to describe and pay the complainant as a "messenger" when in official documents he clearly has the duties of a "doorkeeper".

The complainant therefore asks the Tribunal to hold that he should receive the remuneration which corresponds to his duties and responsibilities as a G.3 conference doorkeeper in accordance with the WHO Manual.

E. The Organization maintains that the complainant's duties, as set out in his post description and in the light of the WHO Manual, are those of a G.2 messenger. It therefore believes that his post is properly graded in accordance with the grading plan set out in the Manual before the revision of July 1974. In view of the level of his present duties it was therefore right to refuse promotion and it properly observed the provisions of the Manual and the WHO's administrative practices.

F. The Organization therefore invites the Tribunal to dismiss the complaint. It also asks the Tribunal to acknowledge its willingness to consider regrading the complainant at grade G.3 should he accept additional duties and responsibilities.

CONSIDERATIONS:

As to the grading of posts in general:

1. The Staff Manual defines the duties of staff members by dividing them into categories or grades on the basis of the qualifications and degree of responsibility required. The post description is determined when the staff member is appointed and may be reviewed in the course of his appointment. It does not necessarily reproduce the Staff Manual definition of the duties of any particular grade. It is generally more detailed than the corresponding Manual provision and may also contain information which appears in the definitions of different grades.

It is for the competent body and in the last resort the Director-General to grade each staff member. Certain criteria have to be followed. Thus when a staff member's duties do not all pertain to the same grade only the main ones will be taken into account. Further, the competent body will not base its grading exclusively on the text of the Staff Manual and post description, but will also consider the qualifications and degree of responsibility required by each. In all cases grading a post requires close familiarity with the conditions in which the incumbent works. It is therefore a discretionary decision which in general the Tribunal may not interfere with unless it was taken without authority, or violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

As to the grading of messenger posts:

2. The complainant is merely contending that as messenger he has to perform the duties of a conference doorkeeper and consequently should have the same grade as such an official, i.e. G.3. In this case, therefore, the only question

to consider is whether on account of his conference duties the complainant ought to be promoted from his present grade, G.2, to G.3, the grade held by doorkeepers in general and by conference doorkeepers.

The Staff Manual requires "messengers", who perform grade G.2 duties, to "keep meeting rooms in order". According to the post description established on 5 September 1973, which the parties accept as applicable to this case, messengers have the following duties at meetings "Preparing meeting rooms and posting announcements of meetings. For internal meetings or smaller ones (the number of participants or the service required being more limited), co-ordination with other units as required (doorkeeping, heating, cleaning, refreshments, etc.) For larger meetings, assisting the doorkeeper of the competent unit (distribution of documents, finding delegates who receive calls, etc.)." Two conclusions may be drawn from a comparison of the Manual definition and the post description. The first two duties mentioned in the post description - "preparing meeting rooms and posting announcements of meetings" - differ neither in nature nor in importance from the duty described in the Manual as "keeping meeting rooms in order". They therefore fall within the scope of grade G.2 duties. The other two duties set out in the post description - co-ordination with other units and assisting the doorkeeper in charge - do not appear in the Manual definition. They therefore fall outside the scope of grade G.2. That is no adequate reason, however, for promoting messengers such as the complainant from G.2 to G.3.

First, the duties of co-ordination and assistance during meetings account for only a small part of a messenger's duties. According to the Staff Manual he is responsible - in addition to keeping meeting rooms in order - for sorting and routing mail, documents and supplies; giving simple information to visitors; keeping stocks of stationery and distributing it; instructing the staff in the use of equipment for document reproduction; day-to-day maintenance of such equipment; operating it as the need may arise; keeping a watch on a section of WHO premises; and safety precautions. The figures cited by the complainant relating to the performance of conference duty by messengers confirm that in comparison with their other duties such duty is, at least quantitatively, one of secondary importance. For grading purposes, however, only the main duties of a staff member should be taken into account, and in the present case they plainly fall within the scope of grade G.2. Moreover, even if messengers spent most of their time on conference duty they could not claim to be assimilated to doorkeepers and to hold the same grade, G.3. Messengers and doorkeepers do not have the same conference duties. Whereas, according to the post description of 3 September 1973, the messenger "assists the doorkeeper in charge", the latter, according to the description of G.3 post 0.1073, is responsible for "independent" servicing of the meeting rooms. In other words, the messenger is subordinate to the door keeper and his lower grading is therefore only reasonable. Lastly, not only is the complainant's argument unfounded, but there is no reason to suppose that in taking the impugned decision the Director-General exceeded or abused his discretionary authority. It follows that the complainant's claim for upgrading to G.3 should be dismissed. So also should his others, which are prior claims and the premisses on which the claim for upgrading is based.

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

