

F.
v.
WHO

123rd Session

Judgment No. 3751

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs S. A. F. against the World Health Organization (WHO) on 18 May 2014 and corrected on 2 July, WHO's reply of 8 October 2014, the complainant's rejoinder of 13 February 2015 and WHO's surrejoinder of 4 May 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant, a former WHO staff member, challenges the decisions to abolish her post and terminate her fixed-term appointment.

The complainant joined WHO in March 2008 as a Human Resources Assistant in the Global Human Resources (GHR) team within the Global Service Centre (GSC) in Malaysia on a two-year fixed-term appointment. The GSC forms part of the General Management Cluster (GMG) at Headquarters. On 1 July 2008 she was reassigned to a post of National Professional Officer at the NO-B level under another fixed-term appointment, which was then extended from 17 March 2010 to 16 March 2012.

A wide-scale restructuring was initiated at WHO Headquarters in 2011. In January WHO issued Information Note 03/2011 informing all

staff at Headquarters that the Director-General had decided to establish a Road Map Review Committee (RMRC) to review proposals for the abolition of a significant number of longer-term positions and, in February, it issued Information Note 05/2011 that established a reprofiling process in order to allow staff to be matched to positions in the new structure.

In July 2011 the Director of GSC held a meeting with all staff in the GHR team who would participate in the reprofiling process explaining the process and the reasons for it. A few days later an email was sent to all staff in the GSC presenting the new structure that had been submitted to and reviewed by the RMRC. At that point it was also announced that five staff members in the GSC would lose their positions. Further emails were exchanged during that month with staff members who would take part in the reprofiling process and explaining the steps to be followed.

The complainant was notified on 18 October 2011 that it had been decided to abolish her post and that she had not been matched to a post in the reprofiling process. Consequently, her appointment would be terminated and her last day of service would be 17 January 2012. On 31 October 2011 she was informed that she would be placed on special leave with full pay (SLWFP) as from 5 November until the end of her appointment. Shortly after she challenged the decision notified to her on 18 October 2011 before the Headquarters Board of Appeal (HBA), alleging inter alia that she was not given a proper explanation for the abolition of her post, that the Ad Hoc Review Committee (AHRC) based its assessment on incomplete criteria, that her supervisors were prejudiced against her, that the reprofiling process was not valid, that WHO had failed to observe the terms of her contract and that the SLWFP was offered in bad faith. She asked that the decision to abolish her post be reversed or annulled and, in her statement of appeal, she specified that she “wish[ed] to redress the situation to the Administration requesting that in lieu of reinstatement, compensation [...] be paid to her”. In its report transmitted on 13 December 2013 the HBA recommended that the Director-General award the complainant damages in an amount she deemed appropriate for the inappropriate way in which the SLWFP was offered to her. It recommended that all other claims be dismissed.

By a letter of 13 February 2014 the Director-General informed the complainant that she considered that the restructuring was properly motivated by financial and organisational considerations, that the decision to abolish her post was justified and legally valid and that the reprofiling process had been conducted objectively. She nevertheless awarded her 2,000 Swiss francs on the ground that the offer of SLWFP could have been handled more sensitively. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to quash the Director-General's "implicit decision to abolish her post" and to order WHO to reinstate her to her previous post with full retroactive effect. She also seeks moral damages and costs.

WHO asks the Tribunal to consider the claim for reinstatement or damages in lieu to be irreceivable as it is a new claim which was not made before the HBA. It submits that the complaint is otherwise devoid of merit.

CONSIDERATIONS

1. The complainant commenced employment with WHO in March 2008 as a Human Resources Assistant in the GHR team, in the GSC within the GMG. She was based in Cyberjaya, Malaysia. In July 2008, she was reassigned to a post of National Professional Officer at the NO-B level under a fixed-term appointment. On 17 March 2010 her appointment was extended for a further period of two years, expiring 16 March 2012. Commencing in early 2011, reviews were undertaken of WHO's structures and staffing. In the result, by letter dated 18 October 2011, the complainant was informed that her post had been abolished and that her employment was terminated. Ultimately she was separated from service on 17 January 2012.

2. The abolition of the complainant's post arose from a review of the structure of departments within WHO by the RMRC whose report, in relation to GSC, was approved by the Director-General on 1 July 2011. Earlier, on 1 February 2011, Information Note 05/2011 was issued outlining the process which would be followed in order to allow staff

to be matched to positions in a new structure. Information Note 05/2011 contemplated the creation of an AHRC to undertake a matching process to review the position of each member of staff affected by the restructuring and assess their suitability for matching to positions within the new structure. As part of this process, staff could provide an expression of interest in positions in the new structure. The complainant did so on 19 July 2011, expressing interest in three positions.

3. On 30 September 2011 the AHRC provided the Assistant Director-General of GMG with its recommendations arising from the reprofiling exercise. It did not recommend that the complainant be matched to any of the positions in the new structure. The recommendations were approved by the Assistant Director-General on 11 October 2011.

4. As noted earlier, the complainant was informed on 18 October 2011 that a decision had been made to abolish her post and that it had not been possible to match her to a position in the new structure. She was told her employment would be terminated. She was given three months' notice expiring 17 January 2012. Later that month, on 31 October 2011, the complainant was told that a decision had been made to place her on SLWFP for the remainder of her period of service, namely until 17 January 2012 when she was due to separate from service.

5. On 14 December 2011 the complainant lodged an internal appeal against the decision to abolish her post and terminate her employment. The HBA provided the Director-General with a report on the complainant's internal appeal on 13 December 2013. It noted certain anomalies or inconsistencies in the Road Map process. Nonetheless it concluded that the reasoning behind the decision to abolish the complainant's post complied with Staff Regulations and Staff Rules and the WHO eManual and was based on objective grounds. It did not accept that there had, in relation to a consideration of the complainant's circumstances, been personal prejudice on the part of the complainant's supervisor or any other responsible officer nor an incomplete consideration of the facts. It also found that there had been an adequate consideration of the complainant's expression of interest for the positions she has identified.

As to the conduct of WHO in relation to the complainant going on SLWFP, the HBA concluded it was not carried out “properly and sensitively”. The HBA noted that the letter of 18 October 2011 advising the complainant that her post had been abolished had not advised her of her right to appeal. The HBA recommended that the Director-General award the complainant damages for the way in which the complainant had been told of the decision to place her on SLWFP but that otherwise all her other claims should be dismissed.

6. On 13 February 2014 the Director-General wrote to the complainant indicating that she agreed with the recommendation of the HBA to dismiss all her claims save for the claim concerning SLWFP. In relation to this last mentioned matter, the Director-General indicated that she had decided to pay the complainant 2,000 Swiss francs as compensation. This decision of 13 February 2014 is the decision impugned in these proceedings.

7. Much of the complainant’s pleas traverse the merits of the decision to abolish her position and the decision not to match her with a position in the new structure. These decisions are within the discretion of the Organization and it is not the role of the Tribunal to reassess whether her post should have been abolished or whether she should have been matched with a position in the new structure (see, for example, Judgments 2800, consideration 22, 2933, considerations 10 and 11, and 3582, consideration 6) though the Tribunal notes that after what appears to have been a detailed and comprehensive consideration of the entire process, the HBA was satisfied that the abolition of the complainant’s post was based on objective grounds and that she had been adequately considered for the posts for which she expressed interest.

8. That is not to say the complainant cannot legitimately raise procedural or other defects in the process which taint the outcome. This includes an allegation of personal prejudice which the complainant advances in her pleas. But as WHO points out in its reply, the complainant bears the onus of demonstrating personal prejudice (see Judgment 1775, consideration 7). It is unnecessary to detail the many and varied matters

identified by the complainant in her pleas as demonstrating personal prejudice. Having reviewed this material, the Tribunal is not satisfied that either individually or collectively these matters reveal personal prejudice against the complainant either in relation to the decision to abolish her post or not to match her to a position in the new structure. Nor is the Tribunal satisfied that the involvement of a staff representative as an observer in the workings of the AHRC had an adverse impact on its consideration of the position of the complainant.

9. However one matter of detail about the process identified by the complainant in her pleas is not adequately answered by WHO. The Tribunal notes that at paragraph 25 of its report, the HBA observed that in the letter of 18 October 2011 the complainant was not informed of the specific reasons why she had not been matched to one of the NO-B positions in the new structure. Nor was she informed of the specific reasons why her post had been abolished. Having regard to the terms of the letter provided in October 2011, this is correct. In its reply, WHO argues that “it [is] misleading for this letter to be presented as a stand-alone notification of the basis for the decision to abolish the post that she held, following the failure to match her in the re-profiling exercise”. WHO refers to the detailed chronology of events leading to the review of its structures and the creation of new structures with the consequential abolition of existing positions together with the need to fill positions in the new structure. The import of its argument is that these matters were well known to WHO staff including the complainant. WHO also argues that, in relation to the specific decision not to match the complainant with a newly created position, the complainant had been made aware that her 2009 and 2010 Performance Management Development System reports were considered in the decision-making.

10. However it was not for the complainant to have to discern from all surrounding circumstances known to her the reason why her post had been abolished and the reason why she had not been matched to a new position. It was incumbent on WHO to provide those reasons both as a matter of fairness and also to safeguard the complainant’s right to contest the decision (see Judgment 3041, consideration 8). WHO’s failure to provide those reasons entitles the complainant to moral damages.

The Tribunal assesses those damages in the sum of 10,000 Swiss francs. However all other claims should be dismissed. Given her partial success, the complainant is entitled to costs in the sum of 700 Swiss francs. She was not represented by a lawyer.

DECISION

For the above reasons,

1. WHO shall pay the complainant 10,000 Swiss francs by way of moral damages.
2. WHO shall pay the complainant 700 Swiss francs in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 26 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ