

M. (No. 3)

v.

WHO

126th Session

Judgment No. 4031

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr N. M. against the World Health Organization (WHO) on 8 July 2015, WHO's reply of 16 October and the complainant's email of 17 December 2015 informing the Registrar that he did not wish to file a rejoinder;

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 challenges the step level he was placed in upon implementation of a new local salary scale for General Service staff in New Delhi, India.

The complainant was employed at WHO's Regional Office for South-East Asia (SEARO) in New Delhi as a General Service staff member from April 1982 until his retirement in August 2013. Following an initial temporary appointment, he was granted a fixed-term contract at grade ND.03 (hereinafter "grade 3") in March 1983. He was promoted to grade 4 in June 1983 and to grade 5 in June 1992. By June 2003, he had reached step 17 in grade 5. He was then granted a two-step within-grade increase for meritorious service. This brought him to the highest step in his grade (step 19). In accordance with Section III.3.3.370 of the

WHO Manual, he subsequently received two further within-grade step increases, in August 2003 and August 2004 respectively. These salary steps beyond the maximum step on the salary scale were referred to as “extra steps”. Thus, the complainant’s grade and step as of 1 August 2004 was grade 5, extra step 2.

On 1 June 2010 SEARO introduced a new local salary scale for General Service staff in New Delhi. The revised salary scale reduced the number of within-grade steps in the General Service staff salary scale from 19 to 10. By a letter of 5 October 2010 the complainant was informed by the Regional Personnel Officer (RPO) that he had been placed in grade 5, extra step 1, under the new salary scale with effect from 1 June 2010. The complainant signed the letter indicating that he accepted the new step placement.

Beginning in August 2011 an exchange ensued between the complainant and the RPO in which the complainant challenged his step allocation under the new salary scale. By a memorandum of 24 April 2012 the RPO informed the complainant that the Administration had applied Section III.3.3.110 of the Manual to determine his step level under the new salary scale and that it considered it had answered his questions in full.

On 7 May 2012 the complainant filed an appeal with the Regional Board of Appeal (RBA) challenging the decision contained in the memorandum of 24 April 2012. In its report of 15 October 2012 the RBA concluded that the appeal was time-barred and thus not receivable. By a decision of 30 November 2012, the Regional Director dismissed the appeal in its entirety on the merits.

The complainant lodged an appeal with the Headquarters Board of Appeal (HBA) on 13 December 2012 in which he challenged the decision of 30 November. In its report, which was transmitted to the Director-General on 5 March 2015, the HBA found that both the appeal to the RBA and the appeal to the HBA were receivable. On the merits the HBA concluded that the Administration had taken into account all relevant facts in determining the complainant’s salary under the revised salary scale; it had provided him with adequate explanations regarding the method and normative basis used in making its decision, and it had

correctly applied the relevant provisions of the Manual. The HBA recommended that the appeal be dismissed in its entirety.

In a letter of 16 April 2015 the Director-General informed the complainant that she accepted the HBA's analysis and conclusions regarding the receivability and merits of his appeal and she endorsed the recommendation that the appeal be dismissed in its entirety. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He requests to be placed at grade 5, extra step 2, with effect from 1 June 2010. He claims payment with interest of the resultant difference in his salary and other entitlements from 1 June 2010 until the date of payment. He seeks 10,000 United States dollars in moral damages, 5,000 dollars in costs, and any other relief that the Tribunal considers just and fair.

WHO submits that the complainant's claims are devoid of merit and asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. On 6 October 2010 the complainant signed a letter dated 5 October 2010 issued by the RPO. He thereby accepted his placement at grade 5, extra step 1, in a new salary scale for General Service staff members in the New Delhi Office. He was informed that this was his step allocation with effect from 1 June 2010. The complainant's grade and step in the prior 19-step salary scale was grade 5, extra step 2. The complainant had two extra steps because he had been awarded a two-step meritorious increase in 2003.

The complainant subsequently challenged the decision contained in the letter of 5 October notwithstanding that he had initially accepted his step allocation. He contended that the Administration had erred in not taking into consideration the two-step meritorious increase which he had received under the prior system and, had this been done, he would also have been placed in grade 5, extra step 2, in the new salary scale.

2. In his appeal before the RBA the complainant challenged the decision concerning his new salary step on two grounds. Pursuant to Staff Rule 1230.1.2, he contended that there was an incomplete consideration of the facts because the Administration had failed to explain the rules under which he was placed in the new 10-step salary scale and had failed to take into consideration the prior meritorious step increase, thereby causing him financial loss both in the salary he received and in his eventual pension benefits. Pursuant to Staff Rule 1230.1.3, he contended that the Administration had failed to observe or to apply correctly the provisions of the Staff Regulations or Staff Rules or the terms of his contract because it failed to consider Manual Sections III.3.3.370 and III.3.3.400. He essentially maintained these grounds in his internal appeal to the HBA.

3. In the decision of 16 April 2015, which the complainant impugns before the Tribunal, the Director-General, dismissing his internal appeal on the recommendation of the HBA, relevantly stated as follows:

“I agree [with the HBA] that the application of the [...] Manual provisions on promotion to the determination of salary arising from a conversion in salary scales would have been unwarranted[,] [...] that your request for clarifications concerning the method used to determine your salary in the revised scale was addressed on multiple occasions [...] that you were provided with sufficient explanations and that the claim that you had not been properly informed of the reasons for the salary determination was unfounded. [...] I agree that the Administration took into account all relevant facts in determining your salary in the revised salary scale, offered you adequate explanations on the method and basis for the salary determination, and that the relevant provisions of the [...] Manual were correctly applied.”

4. Before the Tribunal, the complainant does not maintain his plea that he was not provided with sufficient explanations and that he had not been properly informed of the reasons for the salary determination. He insists that the impugned decision should be set aside because the Administration failed to properly apply Manual Sections III.3.3.370 and III.3.3.400 when it determined his new step within the 10-step salary scale.

5. Manual Section III.3.3.370 is under the rubric “Determination of Salary when Normal Maximum of Grade is Exceeded”. It relevantly states as follows:

“A staff member who has been granted one (1) or more meritorious within-grade increases is entitled to have the salary scale of the grade extended by the number of steps awarded. This applies to any grade subsequently held, not only to the grade in which the meritorious increase was awarded.”
(Emphasis added by the complainant.)

This provision was clearly applicable when the complainant was awarded the two within-grade step increases which, by the terms of this provision, took him above the 19 steps in the prior scale. Section III.3.3.370 is concerned with the determination of salary in cases where a staff member who has obtained one or more meritorious within-grade step increases reaches the last step in the salary scale. It operates to preserve the benefit of the meritorious increase by extending the salary scale by the same number of steps as were granted for merit. By its terms it does not apply to the same effect where a revised salary scale is implemented. The complainant’s assertion that the underlined words must also apply to permit his prior two-step meritorious increase to have the same effect in determining his revised step allocation is therefore misplaced. It overlooks a primary rule of interpretation that words must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgment 3744, under 8). The underlined words cannot be lifted out of their context in provisions which are referable to the determination of salary when the normal maximum in the grade is exceeded and be transported into the context of the introduction of a new salary scale. In this case, preserving the benefit of the complainant’s meritorious step increase simply entailed placing him in a step in the new salary scale that provided him with the same salary as he received immediately prior to the introduction of the new salary scale. It is observed that in the revised scale, the complainant in fact benefited from a small salary increase.

6. Manual Section III.3.3.400 is under the rubric “Determination of Salary on Promotion”. It relevantly states as follows:

“If a staff member has previously been granted a meritorious increase or increases under Staff Rule 555.1 or 555.2, the step in the grade of promotion is calculated as follows: [...]”

7. The complainant recognizes that Manual Sections III.3.3.370 and III.3.3.400 do not specifically provide for their application to the introduction of a revised salary scale. However, he submits that in the absence of specific provisions for the implementation of Section III.3.3.370, there is no reason why the method prescribed by Section III.3.3.400 cannot apply both in cases of promotion and where a revised salary scale is introduced. The Tribunal does not accept this argument as it has no basis in any rule of interpretation. In the foregoing premises, the grounds of the complaint, set out in consideration 4 above, are unfounded.

8. The complainant submits that he suffered injury as a consequence of the “inordinate, inexplicable and inexcusable” delay in the internal appeal process. He seeks moral damages on this account. The Tribunal has relevantly stated as follows in Judgment 3160, consideration 17:

“The amount of compensation for unreasonable delay will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal. Delay in an internal appeal concerning a matter of limited seriousness in its impact on the appellant would be likely to be less injurious to the appellant than delay in an appeal concerning an issue of fundamental importance and seriousness in its impact on the appellant.”

9. The complainant initiated the proceedings in the RBA on 7 May 2012 and the Regional Director’s decision was given on 30 November 2012. The complainant initiated his internal appeal in the HBA on 13 December 2012. WHO’s surrejoinder was filed in those proceedings on 16 July 2013, but the HBA’s report was transmitted to the Director-General on 5 March 2015. This delay in finalizing that report was too long, and, in the circumstances, the complainant will be awarded

1,500 United States dollars in moral damages. He will also be awarded 150 United States dollars in costs as he succeeds in part.

DECISION

For the above reasons,

1. WHO shall pay the complainant moral damages in the amount of 1,500 United States dollars.
2. WHO shall pay the complainant 150 United States dollars in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 3 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ