

FORTY-EIGHTH ORDINARY SESSION

In re BEAUDRY-DARISME

Judgment No. 494

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mrs. Micheline Beaudry-Darismé on 16 October 1980, the PAHO's reply of 19 December 1980, the complainant's rejoinder of 17 February 1981 and the PAHO's surrejoinder of 7 April 1981;

Considering the memorandum dated 27 July 1981 provided at the Tribunal's request by the PAHO Staff Association and the organization's memorandum dated 1 September 1981 making observations on the Staff Association's memorandum;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 440, 510, 530, 580, 910, 920 and 1230 and WHO Manual section II.5.195;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. After several short-term appointments as a consultant the complainant joined the staff of the Pan American Sanitary Bureau, the secretariat of the PAHO, in Washington in 1975 as a regional adviser on nutrition education. Her appointment, having been renewed several times, was to expire on 31 January 1979. In 1977 she was elected to the Staff Committee and became its Vice-Chairperson. On 10 March 1978 she was informed by her supervisors, Dr. Daza and Dr. King, that her post was to be transferred to the Institute of Nutrition of Central America and Panama, known as INCAP, in Guatemala City, from 1 January 1979. She was later informed, on 7 April 1978, that that letter was not a formal notification. There were several meetings about the transfer. In June 1978 she was asked to draw up proposals for a programme of education in nutrition to be carried out by INCAP and other bodies. On 24 August she wrote a minute to Dr. King recommending that her post remain at headquarters, in Washington. The proposal was not discussed in later conversations with Dr. King. Dr. King informed her on 11 December that her post would be transferred to INCAP and that he had asked for the renewal of her contract for the purpose of the transfer. By a memorandum addressed to her on 15 December 1978 the Chief of Personnel confirmed the change of duty station with effect from 1 February 1979 and the extension of her appointment to 31 January 1981. On 18 December 1978 the complainant wrote to the Chief of Personnel asking for a post description and for other items of information about her proposed assignment. Meanwhile, a "task force" chaired by Dr. Daza had been considering the matter of proposals and resources for an INCAP programme and had reported. Its report did not discuss the administrative structure, nor were the administrative arrangements settled during a mission to INCAP which Dr. Daza and Dr. King carried out in February 1979. After an exchange of views between the Staff Committee and the Administration it was agreed to postpone the transfer. In a memorandum of 18 January 1979 the Chief of Personnel confirmed that agreement: the new date of transfer would be set after the Administration had reviewed the report of the task force on reorganisation. On 8 February he informed the complainant that the post description was not yet ready, that the title of her post would remain unchanged and that for administrative purposes the post would remain in the same division. She was officially informed on 25 April that the technical division had sought, and the Director approved, the transfer of her post to Guatemala City on 1 May and her own reassignment on 1 June 1979. In a memorandum addressed to the Chief of Personnel she then asked for further information about the transfer and the technical division of which her post would form part. As a result of a reorganisation Dr. de Villiers took over from Dr. King on 1 May, and Dr. King informed the Chief of Personnel of his opinion that, pending a decision on the complainant's future duties, it would be premature to reassign her on 1 June. The Staff Committee also made several requests for further information on the matter. On 25 May 1979 the Chief of Personnel informed the complainant that the date of transfer had been finally set at 4 June. On that date she received a draft post description. On 13 June she wrote to the Chief of Personnel stating that, not having the information which she had been trying for months to obtain, she found it extremely difficult on professional

grounds to accept the transfer. A meeting took place with the Chief of Personnel and others on 19 June and she was told she must set the date of her own departure or else expose herself to action under the rules. She was given an unsigned post description, later replaced by another document signed and dated the day before. She asked for and was promised a reply to her memorandum of 13 June. On the day after the meeting, 20 June, the Chief of Personnel wrote to her that he had already answered her questions and that her refusal to comply with instructions would force him to take action under the Staff Rules. The complainant received his letter on 21 June. Also on 21 June the Staff Committee wrote to the Director informing him of her difficulties in obtaining the information she needed. On 22 June, a Friday, the Chief of Personnel handed over to her a letter terminating her appointment from Monday, 25 June 1979 on the grounds that she was in breach of duty by failing to go to Guatemala City as instructed in the memorandum of 25 April 1979. The complainant appealed to the PAHO Board of Inquiry and Appeal, which reported to the Director on 22 May 1980. The Director's decision, dated 14 July 1980, reached her on 21 July. The Director endorsed the Committee's recommendation to reinstate her in her former post, but with Guatemala City as the duty station. That is the decision she impugns.

B. The complainant contends that the transfer was in breach of Staff Rules 440, 530 and 580, which stipulate, among other things, that the candidate selected for a post shall be given a post description. Four times she asked for information, and her questions were evaded, at least in part. The Board found that she had been given only general information and there was confusion over the line of authority and supervision. Her repeated requests for full information were wilfully ignored; the post description was given to her very late, at her own insistence, and in breach of all the rules; and in her view the Administration committed an abuse of authority. The decision was inspired by personal prejudice. Her working relations with her immediate supervisor, Dr. Daza, were adequate at first. With Dr. King, the chief of the division, they were less congenial. On hearing that he was a distributor for a company which sold vitamin food products the complainant, as a nutritionist, expressed doubts about their worth and from then on her relations with Dr. King were strained. She also got on less well with Dr. Daza. According to the complainant the two plotted to oust her. She acknowledges that the transfer was at the Director's discretion, but she challenges the decision because of lack of a post description and uncertainty over her duties and the administrative structure. While still awaiting the information she was summarily dismissed. Her dismissal was not in the Organization's interests; besides, it did not comply with the rules. In particular the Chief of Personnel's letter of 22 June 1979 suffered from many irregularities, which the complainant sets out in detail. The stated grounds - behaviour constituting a breach of duty - prove that there was prejudice underlying the decision. The Organization's attempts to transfer her and then its dismissal of her in breach of the material rules constitute a breach of contract. The complainant further contends that she was so treated because of her Staff Association activities. As Vice-Chairperson of the 27th and 28th Staff Committees she had to deal with the Director and the personnel managers. There was at the time and still is keen animosity between the Staff Association and the Administration. The Director made private and public onslaughts on the Association and described the staff representatives as "bad apples" whom he would weed out. The complainant had to replace the chairman of the Staff Committee, who was often absent. She was therefore much in view. The events leading up to the transfer, the uncertainty and vagueness of the decision, and the lack of the precise information on the post she had asked for time and again, convinced her that there was eagerness to get rid of her because of her activities as Vice-Chairperson of the Staff Committee. Nor was the Staff Committee able to obtain the information required. She was not the only one to suffer from the Administration's ruthless attitude towards Staff Association activists, and she names others. The transfer was a punitive act and the reasons for it were trumped up afterwards. In endorsing the Board's recommendation to reinstate her in her former post and in deciding to transfer her to Guatemala City the Director was simply doing what he had intended all along - stopping her Staff Association activities by sending her far from headquarters. Her professional integrity and competence are unassailable. The abuse of the procedure for summary dismissal was blatantly repressive and connected with her position on the Staff Committee which made her firmly opposed to any policy in breach of PAHO rules. The Administration has failed to establish that her transfer was required by the reorganisation. Her abrupt dismissal leaves a stain on her professional reputation and reduces her opportunities for further employment. She therefore claims (a) reinstatement in her former position as an adviser on nutrition education; (b) payment of salary and benefits for the remainder of her contract; and (c) full damages for the Director's wrongful decision, including the cost of relocating the complainant and her family. She also claims compensation for moral prejudice, and costs.

C. In its reply the organization accepts the chronology of events as described by the complainant and admits that they are evidence of a lack of co-ordination between the technical and personnel divisions and confusion over responsibility for decisions. Like the Board of Inquiry and Appeal, however, it believes that on the whole the decision was not tainted with errors such as would warrant setting it aside. Nor is there anything to suggest that the transfer injured her dignity or professional reputation. It is wrong to say that the sole purpose of transferring her

programme was to get her out of Washington. The programme for decentralising the PAHO rests on fundamental policy decisions of the World Health Assembly designed to transfer real resources to countries and so to meet their genuine needs more directly. The Organization cites programmes for education in nutrition which were published in January 1979 and January 1980 in pursuance of earlier decisions. The decentralisation called for in those decisions bears out the technical reasons for the transfer and the absence of personal prejudice. Besides, the grounds given by the complainant herself for refusing the transfer were that the Administration could not explain how nutrition education activities were to be reorganised and what her special duties were to be after transfer. She said that what she was refusing was not the transfer but the conditions of transfer, since she did not see how she could make the programme more effective or more responsive to the countries' needs. There was therefore disagreement between the parties over the purpose of the transfer and the reasons for it. It is true that her Staff Association activities would not afford proper grounds for administrative action against her, but neither do they make her immune to measures of reorganisation. Recruitment for a particular assignment does not relieve a staff member of the duty of serving elsewhere. She took plenty of time to make up her mind about the transfer. She never expressly refused it, but by 22 June the Administration took her failure to report for duty at her new duty station as evidence of an implied refusal. Her appointment was therefore terminated. There is no rule which specifically covers such a situation. She contends that the disciplinary procedure ought to have been applied, but she was not dismissed for unsatisfactory performance of duties or for misconduct: there was never any question of that. She had known for nearly a year that she might be transferred and it was proposed that she should work on draft proposals for reorganising the decentralised activities. She cannot therefore allege that she was not consulted or that the procedural formalities were not complied with. The Organization therefore invites the Tribunal to dismiss the complaint.

D. In her rejoinder the complainant objects to what the Organization says about decentralisation. In particular, she points out that the staff of INCAP in Guatemala City has been halved since 1978, and that hardly suggests a desire to meet the countries' needs. She cites other evidence to demonstrate that the transfer did not form part of a general plan of decentralisation. Although the post in Guatemala City was filled, a vacancy was announced for the post of regional adviser on nutrition in Washington. The Administration cannot explain away either the refusal to consult her or the administrative irregularities and the breaches of the rules. She sees a link between her activities with the Staff Association and the Staff Committee and the Director's description of the staff representatives as "bad apples" to be weeded out. These two facts make the Administration's motives suspect. Besides, no other transfer was planned to give effect to the alleged decentralisation.

E. in its surrejoinder the Organization maintains that no post was planned, let alone announced, for a nutritionist at headquarters. It points out again that in 14 months' discussion there was never any evidence of the complainant's willingness to accept the transfer. It presses its original arguments.

F. The Tribunal invited the PAHO Staff Association to state whether, in its view, the Administration followed a policy of penalising staff members because of their activities in the Association. In a memorandum dated 27 July 1981 the Association replies that in its view the Administration is indeed following such a policy and has committed serious breaches of the right of association. In support of its contention it cites a comprehensive report on a mission of the Federation of International Civil Servants' Associations to the PAHO in September 1979, as well as many other items of evidence. It alleges that the decline in relations with the staff dates back to the Administration's ineffectual response to the abduction of a staff member in Argentina in 1976. Since then the Administration has taken a combative attitude towards the Staff Association by systematically hampering its operations. The Association gives many examples of the repressive policy it alleges and under four main heads, namely the limitation of consultations between staff and management; administrative interference with internal activities of the Association, including encouragement of a splinter union in the Pan American Center of Zoonoses in Argentina (CEPANZO), the packing of the Staff Committee in 1979, and restrictions on meetings; the withholding or restriction of facilities, such as office space, the use of telex and other communication services; and the elimination of staff leaders by taking abusive personnel action such as transfer and non-renewal of appointment on the grounds of a reorganisation of the PAHO. It gives examples of such elimination.

G. In a memorandum dated 1 September 1981, also accompanied by many items of evidence, the PAHO makes observations on the Staff Association's memorandum. It firmly denies the existence of any policy of penalising staff members because of their activities in the Association. The Association used the disappearance of the staff member in Argentina as a pretext for making new demands, despite all the efforts made to improve staff relations. The Administration does consult the staff representatives on a wide range of matters and it gives examples. It has not interfered with the internal activities of the Staff Association. In fact the Staff Association does not necessarily

have the monopoly of staff representation, and the staff may join any type of association provided membership is not incompatible with their status as officials. The creation of a professional staff association in CEPANZO was not an unfair labour practice. The Staff Committee in 1979 was duly elected. As to the alleged elimination of staff leaders, the transfer of a staff representative does not rob the staff of the benefits of his leadership: a staff member is not immune from the normal incidents of service just because he is a staff representative, and in any case he may still carry on staff activities in his new duty station. Furthermore, not all the staff members mentioned by the Staff Association were dismissed, as might be inferred from the Association's memorandum. The reorganisation of programmes and budget constraints have led to staff cuts. There has been no ouster or purge of staff leaders on the grounds alleged by the Association. Since 1973, apart from those who retired or resigned, only one member of the Staff Committee, the complainant, has had her appointment terminated and many staff representatives have been promoted or taken part in staff training. For years relations with the staff have been difficult, but there is no evidence of any deliberate attempt to deny the right of association.

CONSIDERATIONS:

Decision impugned

1. This arose out of a letter dated 22 June 1979 in which Dr. Ortega, Chief of Personnel, terminated the complainant's appointment. The ground for termination was breach of duty, being the failure of the complainant to comply with a notice of change of official station given to her on 25 April 1979 and requiring her to report for duty at Guatemala City. The complainant appealed from this decision. The Board of Inquiry and Appeal found that by 19 June 1979 the Administration had provided the complainant with all the pertinent information she required in order to decide whether or not she would accept the assignment to Guatemala City and that by that date she had neither accepted nor refused the transfer. The Board, however, considered that "breach of duty" was not per se a cause for dismissal or termination of contract, that none of the causes for termination contained in the Staff Rules had been specifically alleged and that, if they had been, it would have been necessary before termination to comply with the procedures prescribed by the appropriate rules. Accordingly, the Board recommended that she should be reinstated in her post. By a letter of 14 July 1980 the Director accepted this recommendation and offered to reinstate the complainant in her post with duty station at Guatemala City. This is the decision impugned. The complainant has refused reinstatement in Guatemala City. The question of substance in this complaint is therefore whether, as the Board concluded, the assignment to Guatemala City was lawful.

Relevant facts

2. The complainant was appointed in January 1975 as a P.4 regional adviser on nutrition education. She worked at headquarters in Washington in the Family Nutrition Unit (FNU) of which Dr. Daza was the chief and in the Division of Family Health of which Dr. King became chief in September 1977. The Organization has responsibility for the administration of a body called INCAP, which is an institute for promoting and encouraging the development of the science of nutrition. INCAP is established at Guatemala City and its staff serve under the Organization's regulations.

3. On 10 March 1978 the complainant received a memorandum from Dr. King stating that Dr. Daza and he "have decided to transfer your post to INCAP ... I presented this matter to the Director this morning, and he has agreed to the transfer ... effective 1 January 1979". The complainant was naturally surprised that the transfer should have been put to the Director and settled without any previous discussion with her. On 6 April there was a meeting between Dr. King and the complainant at which Dr. Daza and Dr. Ortega were present for the Administration and the complainant was accompanied by two representatives of the Staff Association, of which she was the Vice-Chairperson. It appeared that the transfer was part of a scheme of decentralisation. The complainant said that she was not concerned with the transfer as such nor about job security, but that she was concerned about the programmes she had been involved in and about how the duties and responsibilities of her post could be carried out at INCAP. Dr. García, one of the staff representatives, said that the hypothesis could be developed that the action was punitive in view of the complainant's position as Vice-Chairperson; Dr. Ortega said that Dr. García was not treating the subject seriously. Dr. King concluded the meeting by saying that the complainant could make written suggestions and recommendations which he would take into account before he either changed his decision or confirmed it.

4. This was the beginning of a series of discussions lasting for more than a year and from which it appears that the new arrangements had not been completely thought out. On 2 June 1978 Dr. Daza requested INCAP to develop a

programme of nutrition education in which the complainant would be "the technical resource" and on 21 June he made a similar request to the complainant. Dr. King in August 1978 recommended a two-year extension of the complainant's contract. The complainant's proposal, in which she recommended that her post should remain in Washington, was ready on 24 August; and INCAP's proposal was presented on 5 October. Then on 23 October a task force was created with Dr. Daza as Chairman to develop "a single programme proposal". The complainant's assignment was delayed until after the Administration had reviewed the report of the task force. This report was filed in March 1979 and on 23 April the Director on Dr. King's recommendation authorised the establishment of the programme at INCAP and the transfer of the complainant. Effect was given to this by the notification of 25 April 1979 referred to in paragraph 1 above. Since December 1978 the complainant had been pressing without success for a new post description. In May 1979 a new division called Comprehensive Health Services was created with Dr. de Villiers as the Director and to which INCAP was to report. On 4 June Dr. de Villiers told the complainant that the post description was still being worked on.

5. On 13 June the complainant sent a memorandum to Dr. Ortega in which she recorded her conclusion that "there is no apparent evidence that this transfer responds to the needs of PAHO's nutrition programme nor of the reorganisation and it rather appears to have been designed for other purposes". She added that she found it "extremely difficult from a professional point of view to accept the transfer" and asked what her options were in the sense of Staff Rule 1230, thus indicating that she might challenge the decision. At a meeting on 19 June she was at last given the post description and on 20 June Dr. Ortega sent her a memorandum stating that the decision was final and that she had already been asked "to provide a date as to when you were going to be able to comply". This was followed by the letter of 22 June in which Dr. Ortega said that his efforts to obtain compliance with the memorandum of 25 April had not achieved results, and that her appointment was terminated as from 25 June.

Validity of the transfer

6. The principal ground on which the decree to transfer is impugned is that it was a punitive measure taken against the complainant by the Director, or by Dr. King and Dr. Daza in the hope and expectation that it would gratify the Director. In 1977 and thereafter the Director was being extremely critical of the activities of the Staff Committee, considering it as an unrepresentative minority of the Staff Association, and he did not conceal his antagonism. The suggestion made by the complainant that the transfer was designed to impede her activities as Vice-Chairperson by removing her from headquarters and to punish her for the Committee's attitude is therefore one that must be seriously examined. A thorough examination offers in the end no support for it. Even if it were to be assumed that the Director was in general pursuing a policy of handicapping or penalising staff activities, he did not in this case carry it through. Had action been taken on the abrupt notification of 10 March 1978 it would have been different. But thereafter the dossier unfolds a story of an organisational change cautiously developed in which it was genuinely hoped to secure the co-operation of the complainant. There is no evidence of any personal hostility of the Director to the complainant or of any activities of hers that had particularly excited his disapproval. The transfer was a transfer of a programme rather than of a person. The initiative was taken by Dr. King though of course it required the approval of the Director. From the first the complainant had fought the change because she thought that the programme ought to remain in Washington. The prolonged discussion shows that her opposition was among the factors carefully considered. But in the end the issue was simply whether the Director with his principal officers and advisers should decide where the programme was to be centred or whether they should defer to the complainant's views. From this issue there could only be one outcome. Accordingly, the complainant is reduced to arguing that the whole scheme was from the first devised simply as a measure of getting rid of a single officer of a committee which had as a body antagonised the Director. There is nothing in the dossier to make this even plausible.

7. The decision is impugned also on the ground that the complainant was given only three days before her dismissal to study her post description. If this is insufficient time, then there would be a procedural irregularity affecting the decision to dismiss. But this is not now the decision impugned. That is the decision to transfer confirmed in the Director's letter of 14 July 1980. By that time the complainant had had ample time in which to study the post description and she does not raise any point on it.

Compensation

8. Accordingly, there can be no claim for compensation based on the invalidity of the transfer. There can however be a claim for compensation for damage done by the decision to dismiss on 22 June 1978 to the extent that such damage was not made good by the offer of reinstatement. The complainant claims loss of salary and also the costs

of her removal from Washington consequent upon the termination of her employment there.

9. The complainant is manifestly a person of high integrity who, as she made clear from the very beginning, would prefer to lose her job rather than keep it under conditions in which she did not feel that she could properly discharge her responsibilities. By June 1979 it had become inevitable that she would have either to resign or to be dismissed. There is no indication in the dossier that if the proper procedure had been observed before termination the complainant would have made use of it to change her attitude; and she has in fact declined reinstatement. She has not therefore shown any financial loss that she would not have incurred anyway.

10. The complainant seeks also compensation for moral prejudice. It can be said, though the complainant does not say it expressly, that the precipitate and illegal manner of her dismissal deprived her of the chance of formally offering her resignation. It may well be that, as she alleges, "because of the abrupt manner in which she was terminated, there has been speculation that she was engaged in some wrongdoing". She is entitled to a sum sufficient to mark the fact that her dismissal was illegal.

DECISION:

For the above reasons,

1. The Organization is ordered to pay US\$1,000 as compensation for the moral prejudice caused by the illegal termination on 22 June 1979 of her appointment and to cover the legal costs of her appeal against the said termination; and

2. All the other claims of the complainant are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

André Grisel

J. Ducoux

Devlin

A.B. Gardner