

ELEVENTH ORDINARY SESSION

***In re* RONALD STANLEY MORSE**

Judgment No. 65

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Ronald Stanley Morse on 25 January 1962, the Organization's reply of 30 April 1962, complainant's additional memorandum of 21 September 1962, in lieu of oral arguments, and the Organization's reply to the latter memorandum, dated 15 October 1962;

Considering Article II of the Statute of the Tribunal, Articles 1.5 and 1.6 of the Staff Regulations and Article 430 of the Staff Rules of the World Health Organization;

Having examined the documents in the dossier, the Tribunal having ruled that there should be no oral proceedings;

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

A. Complainant entered the service of the World Health Organization on 12 July 1949 on probation as an Information Officer. On 3 July 1950 his appointment was confirmed and he was assigned to Geneva. On 15 April 1951, he was transferred to the Regional office for the Western Pacific as a Regional Information Officer, grade P.3, and on 12 September of that year he was given a five-year extension of his appointment. On 4 August 1954, he was transferred to the Liaison office of WHO with the United Nations in New York where he remained until the expiration of his fixed term of appointment of 11 September 1961.

B. During the latter period of his service his immediate superior was Dr. R.L. Coigney, Director of the WHO Liaison office with the United Nations, and from complainant's appraisal reports for the years 1954 to 1957 inclusive, all of which bear the signatures of Dr. Coigney and complainant, it would appear that complainant's work was regarded as satisfactory. Complainant's appraisal report for 1958, which was not prepared by Dr. Coigney and signed by complainant until 25 August 1959, must also be regarded as satisfactory.

C. On 18 September 1959, the Secretary-General of the United Nations gave a dinner party in honour of Mr. Khrushchev. The dinner party marked an occasion of great importance but by inadvertence on the part of United Nations Protocol Office an invitation intended for Mr. "David Morse", the Director-General of the International Labour office, was addressed "R. Morse, WHO". Complainant made no mention of his receipt of this invitation either to his superior or other colleagues in the Liaison office. He accepted the invitation in the name of "R. Morse, WHO"; attended the dinner, at which a large number of ambassadors, foreign ministers and top officials were present; was seated between the representative for Malaya and the UN Legal Counsel; conversed with Mr. Khrushchev; and exchanged greetings with Mr. Cabot Lodge, with whom he was not acquainted and who appears to have thought he was speaking to Mr. David Morse, Director-General of the ILO.

D. On 21 September 1959, complainant, in the course of his duty as Information Officer, had occasion to see Dr. Coigney. He states that it was his intention on that day to inform Dr. Coigney of his attendance at the dinner and to enquire why Dr. Coigney had not been present, but that pressure of work had deprived him of the opportunity. It would appear that the first occasion upon which complainant mentioned the matter of the dinner to Dr. Coigney was on 22 September 1959, at which date, according to the correspondence, it had already been brought to his notice by the office of the Secretary-General of the United Nations. On 23 September 1959 Dr. Coigney wrote to complainant protesting inter alia at his conduct in the matter of the dinner incident, drawing attention to his failure to make any mention of the matter and complaining that the "incident had created an unpleasant and embarrassing situation to him (Dr. Coigney) as the head of the office and could not contribute to the good relations which the staff were endeavouring to promote between UN and WHO." He stressed his disappointment also over complainant's failure to exercise better judgment.

B. On 25 September 1959, complainant replied to Dr. Coigney's letter of 23 September. He stated, inter alia, that he

had no way of knowing that the invitation addressed to him as "Ronald Morse, WHO" by UN Protocol, had been sent in error and was intended for Mr. David Morse, and that the fact that in acknowledging the invitation to UN Protocol he had used his own name and mentioned the Organization to which he belonged and that this had produced no reaction from Protocol, removed any possible doubt which he might have had as to whether the invitation could be for himself. He expressed surprise that Dr. Coigney, whom, he alleged, had referred during their meeting on 21 September to the dinner incident "as the best joke he had ever heard", should later that day have asked him to write a letter of apology to Mr. Morse, a course which he alleged he had convinced Dr. Coigney "would place WHO in an unwarrantably abject light".

F. On 7 October 1959, the dinner incident, up to then a private and somewhat painful affair so far as UN and WHO were concerned, was featured in the daily press, for the New York Times published the whole story. As a consequence Reuter's UN correspondent, to whom along with other press correspondents, complainant had given an interview, decided that he, too, must publish the story. Reuter's correspondent's story contained substantially the facts as they appear in paragraph 3 above. It had, however, one significant addition, for it referred to Dr. Coigney's request to complainant to write an apology to Mr. David Morse. The complainant's interview with the correspondents must, therefore have been on or after 22 September 1959 for, as complainant's letter of 25 September 1959 to Dr. Coigney clearly shows, it was at the interview with Dr. Coigney which took place on 22 September 1959 that the suggestion of an apology was made and turned down by complainant.

G. Dr. Coigney prepared complainant's appraisal report for the year 1959 on 27 October 1960 and in it stated: "Mr. Morse's performance has been irregular during the period under review but there seems to have been some improvement in recent months". In a letter of 18 November 1960, complainant protested against the 1959 appraisal report and recalled the substance of a conversation he had had with Dr. Coigney a week earlier in connection with the appraisal report. Complainant indicated that he understood Dr. Coigney to say that his evaluation was unconnected with the Khrushchev dinner incident, outlined the arguments he had used to challenge the basis on which Dr. Coigney was alleged to have formed his unfavourable opinion, and expressed the hope that Dr. Coigney would reconsider his views and that a pleasant working relationship could be resumed. In a reply on 25 November 1960 Dr. Coigney stated that he was sorry to see that complainant had misinterpreted conversations which had taken place between them; that he had neither the time nor the wish to enter into details of complainant's confidential letter of 18 November 1960; that he would like to draw complainant's attention to the fact that it was the Reuter despatch incident and not the Khrushchev dinner which had made him lose confidence in complainant and rendered their collaboration difficult; that this did not, however, release complainant from the obligation to send monthly progress reports - the one for October being now long overdue.

H. In a letter dated 30 November 1960 to Dr. Coigney and referring to Dr. Coigney's letter of 25 November 1960, complainant drew attention to a letter of 5 January 1960 in which at the request of Dr. Coigney he had given his explanation of the interview with Reuter's correspondents relating to the dinner incident. While protesting against the release of the Reuter story and some minor inaccuracies in it, complainant did not deny that he had informed the Reuter correspondent and others of what had passed between him and Dr. Coigney on 22 September 1959. He informed Dr. Coigney that he had despatched the public information progress report for which Dr. Coigney had asked to the Director, Division of Public Information, and that he did not accept the 1959 appraisal report and requested that Dr. Coigney should find time to deal with the contents of his (complainant's) above-mentioned letter of 18 November 1960. On 21 December 1960 complainant wrote again to Dr. Coigney. In this letter he referred to the fact that there had been no reply to his letter of 30 November 1959 and stated, inter alia, that his appraisal report for 1958 had been written at the end of August 1959 and the report for 1959 was already twelve months overdue. This matter, he stated, he regarded as serious and he earnestly requested a valid appraisal or a firm reply to his letters before Dr. Coigney went on a projected tour. The 1959 appraisal report was eventually signed and returned to the Chief of Personnel by complainant on 30 January 1961 "on the understanding that his signature did not imply acceptance of the appraisal".

I. On 21 December 1960 Dr. Coigney signed the appraisal report for 1960 in which he indicated that complainant's performance had deteriorated in the last months, that he had adopted an increasingly unco-operative attitude, and that, unless the situation improved and as he (Dr. Coigney) had already occasion to doubt complainant's suitability for his post, he would not be in a position to recommend a prolongation of his assignment to the Liaison office. On 29 December 1960 complainant wrote to the Director-General contesting the allegations made by Dr. Coigney in his 1960 appraisal report and expressing the hope "that a just appraisal can be made so that I may be enabled to continue my work under more normal conditions". On 9 January 1961, the Chief of Personnel sent complainant his appraisal report for the period ending 31 December 1960, with a request that complainant should sign it. Under

Staff Rule 430.3 complainant was required to sign the report, his signature was merely meant to indicate that he had seen the report and discussed it with his immediate superiors and he was entitled to attach to the report a statement concerning any part thereof with which he disagreed, which statement would become part of complainant's performance report file. Finally, complainant was invited to return the signed report together with any comments he might wish to make. On 20 January 1961, complainant returned his appraisal report, duly signed, but pointed out that he had not discussed it with his immediate superior, that his comments upon it had been sent to the Director-General on 29 December 1960 and that his signature which he attached to the report "did not imply acceptance of the appraisal".

J. By letter of 28 January 1961, Dr. Coigney sent to the Chief of Personnel detailed comments on the letter which complainant had addressed to the Director-General on 29 December 1960 and which had been communicated to Dr. Coigney for observations. In these comments, Dr. Coigney stated, inter alia, that in his letter of 28 November 1960, he had expressed his loss of confidence in complainant as a result of his action in revealing to a group of newspaper correspondents the contents of a confidential and very delicate discussion which had taken place between them and which should have concerned solely two WHO staff members. On 9 February 1961 Dr. Dorolle, Deputy Director-General of WHO and complainant's next higher supervisor above Dr. Coigney reviewed the appraisal report and appended to it the comment that in the light of complainant's letter of 29 December 1960 and Dr. Coigney's comments thereon of 28 January 1961, he considered that complainant's performance and conduct in the past year had not been satisfactory.

K. On 13 February 1961 the Chief of Personnel sent to complainant for his review his appraisal report for 1960, which included the unfavourable review comments of Dr. Dorolle intimating to him that he would "have an opportunity of discussing the report with Dr. Coigney on his return to New York., although we understand from him that he tried to do this before he left for New Delhi, but you did not wish to do so". Also enclosed was a copy of Dr. Coigney's letter to Chief of Personnel dated 28 January 1961 containing his comments upon complainant's letter of 29 December 1960 and complainant was invited if he so desired to make further comments upon it or upon the review comments of Dr. Dorolle. Complainant's attention was drawn, too, to the fact that the renewal of his contract, due to expire on 11 September 1961, was now under review. On 7 March 1961 complainant wrote to Chief of Personnel returning his appraisal report for 1960, which included the review comments of Dr. Dorolle, and stating that he "did not wish to comment on the report at this stage".

L. By letter dated 6 June 1961, complainant was informed officially that on the basis of the unsatisfactory appraisal report for the year ending 31 December 1960, it had been decided that his appointment would not be renewed and would therefore terminate automatically on 11 September 1961 in accordance with the provisions of Staff Rule 940.

M. Complainant thereupon lodged an appeal with the Headquarters Board of Inquiry and Appeal against the decision not to renew his appointment. On 13 October 1961, the Board found that complainant's professional work performance had been satisfactory, that the last two appraisal reports and other evidence reflected personal prejudice towards complainant on the part of his immediate supervisor and unanimously recommended that (a) the administration formally recognise that the professional work performance of complainant as a WHO Public Information officer was satisfactory; and (b) the administration make further attempts to find an assignment for complainant within the Organization other than in its New York office. On 1 November 1961, the Director-General communicated to complainant the report of the Board of Inquiry and Appeal whose recommendations he could not accept. The claim that the decision not to renew complainant's appointment was tainted by personal prejudice was supported neither by the evidence produced by complainant nor by the Board's reasoning. The fact that relations between complainant and his supervisor were not satisfactory was obvious and this was one of the main reasons for complainant's unsatisfactory appraisal report. Whether complainant's supervisor might have handled the matter more expertly was not in issue, nor was the question of complainant's professional competences which no one had ever contested. However, what the Director-General found relevant was complainant's conduct of his official affairs and while the Board might not feel satisfied with the reports it could not substitute a positive conclusion of its own with regard to the over all performance of a staff member. Finally, the possibilities of reassignment were examined before the decision was taken not to renew complainant's contract and the Director-General had concluded there were none because of complainant's difficulties in conducting himself properly.

N. On 26 January 1962, complainant instituted proceedings before the Tribunal and prayed for the quashing of the Director-General's decision of 1 November 1961 not to renew complainant's appointment on the basis of the unsatisfactory appraisal report prepared by his supervisor for the year ending 31 December 1960, on the following grounds:

(1) The failure of the Administration to comply with the provisions of Staff Rule 430.2, 430.3 and 430.4 evaluating the performance and conduct of complainant for the years ending 31 December 1958, 31 December 1959 and 31 December 1960, and that the annual appraisal report made in respect of each of these years was invalid.

(2) The Headquarters Board of Inquiry and Appeal reported that it was convinced that the annual appraisal reports for the years ended 31 December 1959 and 31 December 1960 were prepared eight weeks apart, were contradictory and therefore that they do not constitute a valid appraisal, and further that these reports and the other evidence presented to it reflect personal prejudice towards the complainant on the part of his immediate supervisor who made the evaluation.

(3) That by reason of the aforesaid non-compliance with the Staff Rules there was no admissible evidence before the Administration upon which it was entitled to base its decision of 6 June 1961 not to renew complainant's fixed-term contract upon its expiry.

(4) That the decision of 6 June 1961 (as subsequently confirmed on 1 November 1961) was invalid and contrary to law in so far as it was not made in accordance with the provisions of Staff Rule 430.4 and for the other reasons aforesaid. The Organization prayed that the complaint be dismissed.

IN LAW

1. Having regard to the Advisory Opinion of the International Court of Justice of 23 October 1956, the I.L.O. Administrative Tribunal is competent to hear complaints relating to the non-renewal of fixed-term appointments (I.C.J.: Reports. 1956, p.77). Although this opinion concerns UNESCO officials, it applies by analogy to the staff of other organisations falling within the Tribunal's Jurisdiction. Therefore, the Tribunal is competent to entertain complainant's prayer for the quashing of the decision not to renew his appointment. The WHO does not, for its part, challenge the Tribunal's Jurisdiction.

2. The extent to which the Tribunal is empowered to review is not, however, unlimited. In taking the decision complained of, the Director-General exercised his discretion. A decision of this nature can be quashed only if, on the one hand, it is taken by a person without authority or in an irregular form, or if there has been failure to comply with recognised procedure, or, on the other hand, if it is tainted by an error of law or based upon materially incorrect facts or if essential material elements have been left out of account, or if obviously wrong conclusions have been drawn from the evidence in the dossier. It falls, therefore, to be considered whether such of the said conditions as are relevant to the present case have been fulfilled, and this review must be all the more searching as complainant was granted two five-year appointments after serving for two years in a temporary capacity and discharged duties of a continuing nature.

3. The decision not to renew complainant's appointment is based essentially on the appraisal report for the period 1 January to 31 December 1960, which was regularly drawn up in accordance with Staff Rule 430, and the comments thereon contained in complainant's letter of 29 December 1960, Dr. Coigney's letter of 28 January 1961, Dr. Dorolle's evaluation of 9 February 1961 and complainant's letter of 7 March 1961, all of which form part of complainant's performance report file. Such a decision, taken on the basis of 8 single unfavourable reports after a long period of satisfactory services, would leave out of account essential material elements and would constitute an obviously wrong conclusion drawn from the record unless the appraisal report and the comments thereon disclosed sufficiently serious deficiencies in the work or conduct of the official concerned to justify by themselves the decision not to renew the official's appointment.

4. Article 1.5 of the Staff Regulations provides that staff members shall conduct themselves at all times in a manner compatible with their status as international civil servants and that they shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status and shall at all times bear in mind the reserve and tact incumbent upon them, while Article 1.6 requires them to exercise the utmost discretion in regard to all matters of official business. In attending the dinner given by the Secretary-General of the United Nations in honour of Mr. Khrushchev, complainant, although he might have shown greater prudence and tact, did not breach these obligations, neither was his conduct in refusing to tender an apology which was not due open to real criticism. However, even if it is admitted that by reason of his functions as a public information officer, he could not avoid any mention of an incident which had aroused interest and comments, in disclosing to press correspondents the details of a conversation with his chief, complainant violated the obligations recalled above, having regard both to the fact that the information related to a matter of official business which should have

remained privy to the Organization and to the fact that the information so disclosed was such as might harm the prestige of the Organization and affect adversely its relations with the United Nations. This breach of obligations, which was one such as might have justified immediate disciplinary proceedings was one which in any event justified the conclusion that complainant's conduct as an international civil servant was unsatisfactory and that he could not be relied upon to exercise the reserve, tact and discretion required of him by Article 1.5 and 1.6 of the Staff Regulations.

5. Furthermore, after a full review of the facts and the advice of the Board of Inquiry and Appeals, the Director-General confirming his earlier decision, relied essentially on complainant's difficulty in conducting himself properly, a conclusion which in the light of the foregoing was fully justified. Complainant's conduct was specifically referred to in Dr. Coigney's reply to complainant's comments on his appraisal report, in support of Dr. Coigney's statement that he had had occasion to doubt complainant's suitability for his post. A distinction must be drawn between administrative decisions taken on the basis of and relating solely to a given reporting period, such as the award of an increment, and decisions of a more general nature, as for example that relating to an official's suitability for further employment. With respect to the first type of case, there may be doubt as to whether an incident occurring prior to a given reporting period can be validly relied on in support of an evaluation of work and conduct during the reporting period, except in so far as it may be related to further events occurring within the reporting period. In the latter type of case, of which the present is an instance, the decision may be based on all the facts properly disclosed by the record. The reference to complainant's conduct was properly part of the record incorporating the appraisal report and was not objected to as such by complainant, so that the Director-General could properly take notice thereof in deciding whether, in the light of the facts disclosed in the 1960 appraisal report and comments thereon, complainant's appointment should be extended.

6. It follows that the decision not to renew complainant's appointment is not in breach of any of the conditions set out in paragraph 2 hereof and the complaint must therefore fail.

7. In the light of the foregoing, it is not necessary for the Tribunal to decide whether complainant could properly pray in aid of a claim of prejudice, the contents of earlier appraisal reports which he had not challenged before the decision not to renew his appointment was taken; whether the administration could properly rely on the contents of earlier appraisal reports to demonstrate the unsatisfactory character of complainant's services where such reports had not prevented the award of annual increments which were subject to satisfactory services; whether the late submission of earlier appraisal reports, in violation of Staff Rule 430, or the alleged contradiction between two reports prepared at short intervals invalidated such reports; and whether or not Dr. Coigney's attitude to complainant was in fact tainted by personal prejudice towards complainant.

DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 26 October 1962 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine