Registry's translation, the French text alone being authoritative.

SIXTY-NINTH SESSION

In re DOUGLAS

Judgment 1040

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Henry Douglas against the Pan American Health Organization (PAHO) (World Health Organization) on 12 September 1989 and corrected on 25 October, the PAHO's reply of 29 January 1990, the complainant's rejoinder of 8 March and the Organization's surrejoinder of 12 April 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 335.1 and 1230 and WHO Manual provision II.2.270;

Having examined the written evidence;

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

A. The complainant, a Guyanese who was born in 1946, was tested and interviewed in 1986 for a grade P.3 post at PAHO headquarters in Washington D.C. as a translator into English. One duty of the post, the editing of "machine-translated" texts, required typing on word-processing equipment. The examiners thought him the only worthwhile candidate though he was poor at typing. He was offered a three-month appointment, which he accepted on 24 February 1987, the purpose being - so wrote the Chief of the Conference and General Services Department (ACG) - "evaluation of his adaptation to the requirements of the machine translation component of the post".

The complainant took up duty in the Language Services Department (ACG/L) on 13 April 1987. As a "personnel action form" of 1 August 1987 stated, his appointment was extended, by three months, to 9 October 1987. In a letter to him of 28 September the Chief of Personnel confirmed "the completion of your temporary assignment" at 9 October 1987. The next day he wrote back asking what the reasons were. The Chief of Personnel's reply, dated 1 October, was that "the Technical Unit concerned has completed its need for your services, and consequently, the contract terminates as scheduled".

Meanwhile, on 29 September, the complainant's first-level supervisor had sent the Chief of ACG/L a memorandum praising his performance - he showed "every sign of becoming, by dint of his talents, knowledge and assiduity, the kind of English translator that can be an asset to the Organization" - and recommending a six-month extension to let him "prove himself". The Chief of Machine Translation (ACG/LM) had also reported on him in a memorandum to the Chief of ACG/L on 30 September; she said that though his translations were very good his typing was still too slow, being far short of the norm of 6,000 words a day and even of the 4,000 expected at the outset; she made no recommendation.

The complainant got copies of the evaluations on 1 October. He wrote again to the Chief of Personnel on the 2nd saying that he had not been given the training in typing he had been led to expect and claiming another three months' contract on the grounds that he had not had the two weeks' notice his contract demanded. The Chief of Personnel replied on 7 October extending his appointment by five days to make up the period of notice. On 25 November he appealed to the Board of Appeal under Staff Rule 1230. In its report of 18 April the Board held that for want of due notice his appointment had by implication been renewed and he should be awarded three months' "salary". By a letter of 14 June 1989, the decision he impugns, the Director of the PAHO told him that he disagreed with the Board's report but "in a spirit of conciliation" was willing to pay him the three months' salary. Having claimed three months' "total emoluments", a sum that came to twice as much, he sought clarification on that score, but the Chief of Personnel confirmed that only salary was due.

B. The complainant observes that according to the case law failure to give due notice entails renewal of the contract for another term. Since he was not given the two weeks' notice his contract entitled him to, his appointment was by implication extended by three months. The Organization may not just make up the period of notice, an

expedient the Tribunal has declared inadmissible.

The PAHO did not keep its promise to give him training in typing and the chance to take part in a process for the selection of translators if he turned out well. The reason why in one lesser respect he was below par was that he got no training. That he was promised training is clear from his being put on trial: without training the trial period served no purpose. The promise came from someone competent to make it, the Chief of the Manpower Planning and Staffing Unit of the Personnel Office. Failure to keep it has cost him the six months he spent learning how to work at the PAHO and the prospect of a career.

The Organization failed to treat him with respect and has stained his career record. The short time he spent at the PAHO will discourage others from employing him. His weak point was known before he took up duty, he was promised help in getting over it and he was dropped because of it. The notice of termination came before he had even seen the appraisals. The PAHO's explanation was in bad faith since another temporary translator was brought in at once in his stead.

He seeks a ruling that his appointment should have been extended by three months and an award of full pay for that period. He claims another trial period, to include training in typing, or damages amounting to six months' full pay at P.3; moral damages amounting to another six months' full pay at P.3; and costs.

C. In its reply the PAHO denies that the Chief of the Manpower Planning and Staffing Unit promised the complainant training in typing. It appends a statement signed by that official on 29 January 1990 that neither he nor, to his knowledge, anyone else in the Personnel Office made such a promise; he merely pointed out the complainant's weakness in typing, encouraged him to make it good and spoke of "facilities" he might find at the PAHO if he wanted to use them.

The reason why the PAHO did not train him in typing was that it had not promised and had no duty to do so. Being aware of his shortcomings, he ought to have sought training himself so as to keep his job.

A "personnel action form" sent to the complainant on 1 August 1987 informed him of the extension of appointment to 9 October 1987 but under the heading "Other conditions and remarks" added the words "and termination". It therefore gave him much more than the two weeks' notice his contract stipulated. So there are no grounds for inferring an extension. Besides, on the Board's recommendation the Organization offered him three months' salary ex gratia.

It did treat him with respect. He took up the appointment in the hope that he would find favour; since he did not he had to go, and there is no injury to his dignity in that. He had already held short-term contracts as a free-lance translator; that there is now one more is no blemish on his record. He had no right to take part in any selection process since his work had not come up to standard.

He is not entitled to anything but salary in the reckoning of compensation. Allowances are variables and due only to someone under contract and actually working in Washington; the complainant, who has left, does not qualify for them.

D. The complainant rejoins that a personnel action form cannot serve due notice of termination. The purpose of notice is not just to remind the official of the date of expiry of his current appointment but to tell him what the Organization intends after that date. Since a similar reference to termination appears in every short-term contract as a matter of routine it does not convey the PAHO's intentions. An earlier personnel action form appointing the complainant for the first three months also included the words "and termination"; yet he still got the extension. If that form had been taken at its face value he should have left at 12 July 1987, the date of expiry of his original appointment, and not come back until he got the extension, on 1 August. The PAHO did not treat the words "and termination" as giving notice; otherwise the Chief of Personnel would neither have given notice on 28 September nor granted a few days purportedly to make up the period.

The statement by the Chief of the Manpower Planning and Staffing Unit is inconsistent: he says he made no promise of training, yet admits he spoke of facilities for improving the complainant's typing. That must mean the Staff Training and Development Unit; but the Unit told him that temporary staff did not qualify for training.

His record does show a blemish. His part-time jobs were in 1981-85 when he was at the university, and it would make sense to an employer that he accepted such employment in his student years.

The argument against paying him allowances as well as salary is mistaken; salary, too, is due only to someone under contract. The purpose of redress being to make him whole, he should have the full amount he would have earned had he been kept on.

E. In its surrejoinder the PAHO enlarges on its objections to the complainant's contentions that there was implied renewal of his contract, that it had promised to train him in typing and that its decision caused him undue distress. It maintains that he has admitted his own lack of initiative and has only himself to blame for the outcome. It submits that it is in no way liable for his status as a self-employed translator. As to the redress he claims, payment of the allowances depends on where the employee's duty station is: since the complainant is not an employee and has no duty station there are no grounds for paying him anything over and above a sum corresponding to salary.

CONSIDERATIONS:

The defendant's application for oral proceedings

1. The PAHO's application for oral proceedings is rejected: there is ample material in the case records to allow of a ruling.

The facts

2. Before the PAHO recruited the complainant it had him undergo tests in June 1986. On 15 January 1987 the Chief of the Conference and General Services Department (ACG) recommended giving him a temporary appointment for six months, the purpose to be the "evaluation of his adaptation to the requirements of the machine translation component of the post". On 24 February he signed a contract for a period of three months that was to start on 13 April 1987. On 1 August 1987 he was granted an extension from 13 July to 9 October.

On 24 September the Chief of ACG told the Bureau of Personnel that his appointment should end at the scheduled date, 9 October. On 1 October the Chief of Personnel sent him a letter saying that ACG had "completed its need" for his services. In a letter of 2 October in answer he pointed out that he had not been given the notice his contract stipulated and that the inference was that his contract was renewed for another three months. On 7 October 1987 he was granted a five-day extension up to 14 October 1987. He appealed. In its report of 18 April 1989 the Board of Appeal recommended paying him "three months of salary for the non-timely notification of termination". On 14 June 1989 the Director of the PAHO endorsed that recommendation.

The complainant having asked the Board to explain what it had meant by "salary", the Board answered that it assumed that "the Organization's rules covered what sort of payment will be granted". He put the question to the Chief of Personnel, who answered in a letter of 5 July 1989 that "salary" meant just that, "exclusive of allowances and fringe benefits". The complainant is impugning the decision of 14 June 1989.

Notice of termination

3. The complainant seeks a ruling that he did not get due notice of termination and that his appointment was therefore, by implication, extended by three months. He claims payment of his "total emoluments" for those three months, that is, the per diem allowance and the cost of living supplement as well as basic salary.

Precedent is clear: even when someone has just a temporary appointment a decision not to renew it must be taken when the contract period is expiring; the Administration's decision not to renew must be notified to the employee within the prescribed time limit; and if due notice is not given there will be implied renewal for a further period.

The complainant's three-month appointment was to end at 9 October 1987 and according to a clause in his contract he was supposed to be given two weeks' notice of non-renewal, i.e. by 24 September 1987 at the latest. Since he did not get notice until 28 September there was an implied extension of his contract to 9 January 1988. Extending his contract by five days up to 14 October 1987 to make up the required period of notice - something the complainant never accepted anyway - had no effect because notice had been given too late.

The Organization points out that a personnel action form which the complainant got at recruitment on 13 April 1987 and another which he was given when he had his appointment extended on 13 July 1987 referred not just to "appointment" and "extension" but to "termination" as well. Besides being to some extent self-contradictory, such

references did not relieve the Organization of its contractual obligation to give the complainant at least two weeks' notice of non-renewal.

As a matter of fact the Organization seems to have acquiesced in that view because on 14 June 1989 the Director said that he was willing to follow the Board of Appeal's recommendation and pay the complainant three months' salary on the grounds that renewal was to be inferred from the late giving of notice.

The complainant's entitlements

4. The complainant claims all the emoluments corresponding to the three-month extension, including not just monthly salary but also the per diem allowance due under the contract of service and under WHO Manual provision II.2.270. Moreover, as holder of a contract with the Organization for the further period he claims entitlement under Staff Rule 335.1, which provides for the payment of a cost-of-living supplement.

The PAHO points out that the per diem allowance and the cost-of-living supplement are due only if the holder of the contract is actually performing services in Washington D.C. and it observes that the complainant was not.

He, for his part, neither challenges the validity of the rule, nor even alleges, let alone proves, that he satisfied the requirement. The conclusion is that insofar as the PAHO's offer has impliedly acknowledged his entitlement to salary his claim has no substance and insofar as he claims further amounts he cannot but fail because he shows no grounds for payment.

The alleged breach of promise

5. The complainant alleges that the Organization made him a promise of training in machine translation but did not keep it.

Judgment 782 (in re Gieser) explains the circumstances in which the Tribunal will enforce a promise by an international organisation to one of its employees. The conditions that have to be met need not all be set out here; but one is that the promise should be substantive and another that it should have come from someone competent or deemed competent to make it.

Neither of those two conditions was met in this case.

The complainant's argument is that at the time of recruitment, when the tests had showed up his weakness in machine translation, the promise of training was to be inferred not only from the way in which he came to be recruited but also from a letter the Chief of the Manpower Planning and Staffing Unit wrote him on 5 March 1987. The PAHO answers that it never expressly or by implication made any such promise.

There is no evidence to suggest any intent on the Organization's part to give the complainant training, and indeed the complainant never even asked for it. Contrary to what he contends, the letter of 5 March 1987 makes no promise of training. Indeed a memorandum the Chief of ACG sent on 15 January 1987 to the Chief of Personnel belies any intent to give training. The memorandum shows that, as was stated in 2 above, the very purpose of giving the complainant the temporary appointment was "evaluation of his adaptation to the requirements of the machine translation component of the post", and the memorandum gave no instructions for training him. The making of a substantive promise is not proven.

The fact of the matter is that, as the Board of Appeal held, the complainant seems just to have presumed on recruitment that, having found him wanting in some respects, the PAHO would be training him up. That is not what the evidence shows.

Since the complainant's pleas as to the promise are mistaken his claim to damages on that score and his claim to another trial period with training must fail.

The allegations of mistreatment

6. Lastly, he alleges breach by the Organization of its duty to treat him with dignity and avoid causing him unnecessary distress; its treatment of him has impaired his career prospects.

That contention, too, is unfounded.

The complainant was put on six months' probation and at the end of that period was given notice of non-renewal. From the outset he had consented to temporary appointment. He did not object to the stated reason for non-renewal since the only grounds on which he sought the quashing of the decision were the procedural error over the period of notice. The executive head of an organisation has broad discretion in the matter of renewal and his decisions are subject only to limited review.

The Tribunal is satisfied that the PAHO abided by the principles that govern non-renewal. It finds nothing in the evidence to suggest that either the non-renewal or the procedure followed was harmful, or even intended to be harmful, to the complainant's dignity. Whatever his curriculum vitae may say about his fairly short encounter with the Organization it need only record the fact that the PAHO did employ him; more than that is not necessary, let alone compulsory.

Actually his misgivings are inconsistent since the record of his career shows that he has always worked as a freelance translator and that his contacts with organisations have been for short periods.

The plea is again devoid of merit and no smart-money is due.

Costs

7. Since he has won on one issue the complainant is awarded 2,000 United States dollars towards costs.

DECISION:

For the above reasons,

1. The Director's decision of 14 June 1989 is quashed insofar as it refused the complainant renewal of contract for three months from 9 October 1987, and his entitlements shall be determined accordingly, in particular the award to him of salary at the rate of $1,800 a month.

2. The decision is upheld on all other points.

3. The PAHO shall pay the complainant $2,000 towards costs.

4. His other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the afore-mentioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

(Signed)

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.