

## **EIGHTEENTH ORDINARY SESSION**

### ***In re* NOWAKOWSKA**

#### **Judgment No. 115**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organization (W.M.O.) drawn up by Miss Krystyna Nowakowska on 8 April 1967, the reply of the W.M.O. of 30 June 1967, complainant's rejoinder of 31 August 1967, and the Organization's reply to that rejoinder of 20 September 1967;

Considering Article II, paragraph 5, of the Statute of the Tribunal, W.M.O. Staff Regulation 1.2 and Administrative Service Note No. 312 of 27 October 1959;

Having heard in oral proceedings, on 16 October 1967, Mrs. Ludi, official of W.M.O., as a witness under oath, together with Mr. Borgeaud, Counsel for the complainant, and Mr. Gutteridge, Agent of the Organization;

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

A. Miss Nowakowska entered the service of the World Meteorological Organization in January 1962 and was employed as a typist, at first under a temporary appointment and later under a permanent appointment, until 15 September 1964. During this period she was granted the annual increments awarded for satisfactory service and was promoted to Grade G.3.

B. On 15 September 1964, Miss Nowakowska was temporarily transferred to a G.4 post of registry clerk in the Technical Co-operation Division. This assignment, originally made for a period of three months, was subsequently extended on two occasions, and on 1 April 1965, on a recommendation made by Mr. Sebastian, Chief of the Division, and included in the basic report established at that time, Miss Nowakowska was appointed to the post and accordingly promoted to Grade G.4.

C. At the end of the same month an administrative re-organisation took place and Miss Nowakowska was informed that in future she should take her instructions from Mr. Meijer, technical assistant. Shortly before this, she had applied unsuccessfully for a vacancy as librarian in Grade P.1. On 20 May 1965 she submitted to her chiefs some suggestions for improving the organisation of the work within the Division, and on several subsequent occasions she again submitted similar suggestions, in particular in a memorandum dated 10 May 1965. On 18 October 1965, on returning from a mission to New York, the Chief of Division informed the Secretary-General that although the period to be covered by the next performance report on Miss Nowakowska had ended on 1 October 1965, he wished to await her return to work in order to discuss the report with her, she having been on sick leave since 15 October, after an earlier period of sick leave from 7 August to 28 September. Miss Nowakowska returned to work on 24 November and found her post occupied by another staff member. She thereupon sought the intervention of the Chairman of the Staff Association to get her post back. On 6 December Mr. Meijer drew up an unfavourable report stating that her work was unsatisfactory in quantity and in quality and that she evidently felt, mistakenly, that no supervision of her work was necessary, and was consequently unwilling to accept guidance and assistance. This report was discussed at an interview between Miss Nowakowska, Mr. Meijer and the Chief of the Division, and was then transmitted together with complainant's own comments and a minute of the interview drawn up on 13 December 1965 by the Chief of the Division and initialled and annotated by her. In these comments complainant alleged that the report was irregular inasmuch as it contained no entries in respect of several important points on which her Chief ought to have commented; in addition, she stated that she did not agree with the appreciation given of the quality and quantity of her work, explaining further that the undue degree of independence with which she was charged resulted from the nature of the work in the Registry which was such as to require a certain freedom of action on the part of the person performing it. In his comments attached to the report, but not initialled by Miss Nowakowska, the Chief of the Division recommended that the decision in regard to her annual increment should be postponed and that complainant should be transferred to some other post better suited to her qualifications and character. On 22 December 1965 complainant was informed that a decision on her annual

increment had been postponed for six months.

D. At the end of March 1966, following an interview with the Chief of Personnel of the Organization and a memorandum received from him, the Medical Adviser, Dr. Dulac, asked Miss Nowakowska to undergo a neurological examination. On 13 April he informed the Chief of Personnel that this examination had shown Miss Nowakowska to be fully fit for work.

E. On 4 April 1966 a decision concerning the granting of an annual increment was again postponed for three months. On two separate occasions during the following months, on 9 May and 4 July 1966, the Chief of Division asked that Miss Nowakowska should be transferred to another post. On 10 August 1966, she was informed that the Secretary-General had decided not to award her an annual increment. On 8 August a basic report for the period from 7 August 1965 to 31 July 1966 was prepared by Mr. Meijer in accordance with paragraph 6(vi) of Administrative Service Note No. 312 dated 27 October 1959, which lays down that such a report must be prepared when the staff member concerned is about to be transferred to a different post outside the division in which he or she is employed. The report indicated that complainant was to be transferred to the Library. It confirmed the terms of the general appreciation given by Mr. Meijer in his earlier report. In a memorandum addressed to Mr. Meijer and appended to the report, Mrs. Owen, who had acted as Miss Nowakowska's supervisor in the meantime, complained of her careless work, errors of judgment and ill-advised exercise of initiative. In a lengthy memorandum addressed to the Secretary-General on 15 August 1966 Miss Nowakowska contested the statements in the above-mentioned report and in Mrs. Owen's statement point by point, and at the same time drew attention to a number of serious mistakes which she alleged had been made by her colleagues. The Chief of Division, to whom these observations were transmitted, denied in two memoranda dated 23 August and 11 November 1966 that they had any foundation. On 18 August 1966 the Deputy Secretary-General confirmed the decision to transfer complainant to the Library as from 22 August. On the same day, however, Miss Nowakowska was informed that in response to a request made by her on 20 August the Secretary-General had decided to postpone her transfer in order that her case might be reconsidered. On 7 September the Secretary-General confirmed the decision to transfer complainant to the Library as from 12 September 1966. As an annual increment had not been granted for the period covered by the basic report, Miss Nowakowska, by letter dated 25 November 1966, requested the Secretary-General to reconsider this decision, her request being refused on 9 December following.

F. Meanwhile, on 22 September 1966, Miss Nowakowska had submitted an appeal to the Organization's Joint Appeals Board against the decision not to grant her an annual increment on 1 October 1965 and against her transfer to the Library. On 9 December she filed a second appeal against the refusal to grant her an annual increment corresponding to the period from 1 October 1965 to 1 October 1966. The Appeals Board presented its recommendations on 14 December 1966 and 11 January 1967, concluding that the decisions not to award salary increments for the periods ending on 1 October 1965 and 1 October 1966 were not motivated by prejudice or due to extraneous factors, and that the decision to transfer complainant was contrary neither to the terms of her appointment nor to any pertinent regulation or rule. On 10 January and 30 January 1966 the Secretary-General informed complainant that he maintained his earlier decision.

G. In her complaint, and also in her rejoinder to the reply of the W.M.O., complainant contends that the report established in December 1965 was delayed and in form irregular, that it was based on incidents subsequent to the date at which it ought to have been prepared in accordance with the regulations, and that the decision not to award her an annual salary increment taken on the basis of the aforesaid report had been affected by comments attached to it by her Chief and which she herself had not seen or initialled. She complains further of the lack of impartiality shown in the report, which she attributes to ill-feeling resulting from her appeal to the Staff Association, from her criticism of the manner in which the work of her Division was organised and from the unavowed intention to get rid of an official who had been on sick leave on several occasions. In support of this contention she refers to the neurological examination which she underwent at the request of the Personnel Service. Furthermore, she claims that the report of 8 August 1966 is ill-founded and incomplete, and therefore unfair, and she considers that her transfer to the Library is also a vexatious and irregular act, inasmuch as the post was a temporary one which ought not to be held by a permanent staff member. In conclusion she makes the following submissions, praying the Tribunal to be pleased:

1. To quash the decisions of 10 and 30 January 1967 withholding the annual salary increments due to complainant; and accordingly -

To order the respondent Organization to pay complainant's salary on the basis of Grade G.4, Step 2, as from 1

October 1965, and of G.4, Step 3, as from 1 October 1966, with 5 per cent. interest on the sums withheld.

2. To quash the decision of 10 January 1967 transferring complainant to a temporary post in the Library.

Alternatively, if the Tribunal sees fit:

To instruct the respondent Organization to regularise the administrative situation of complainant by assigning her, by means of a letter of appointment, to such established post corresponding to her qualifications and aptitudes as she may have applied for.

3. To order the respondent Organization to pay complainant fair compensation as damages for moral prejudice resulting from the serious accusations contained in the Organization's letter to Dr. Dulac and from the unjustified transfer of complainant.

4. To condemn the respondent Organization to payment of all the costs, including the fees of complainant's counsel.

As a preliminary measure:

To order the W.M.O. to deliver the complete personal file of complainant, including in particular the periodical performance reports of April 1965, December 1965, and August 1966; the so-called confidential file, and in particular W.M.O.'s letter to Dr. Dulac asking for complainant to be subjected to a neurological examination, and Dr. Dulac's report to W.M.O. after receiving the report from Dr. Horneffer.

H. In its reply and rejoinder, the respondent Organization contends that the rules and regulations concerning periodical reports leave a measure of discretion to the supervisors responsible for making them both as regards the date of their establishment and as regards the comments which they consider it relevant to include. It is also contended that there is no rule or regulation obliging the Chief of Division to show complainant the comments which he added to the report of December 1965. As regards complainant's criticism of the organisation of the work of her division, not only was it not pertinent, since it is not for individual officials to substitute their judgment for that of their supervisors, but the claim that this criticism provoked the ill-will of her chiefs is entirely gratuitous, and is moreover contradicted by the consideration with which she was treated by them. Lastly, the Organization claims that the Secretary-General had power to transfer complainant to the Library, and that in so doing he had acted in the interests of the Organization and of complainant herself. The fact that the post was a temporary one is immaterial, since this could not affect the permanent character of complainant's appointment. The Organization accordingly submits that complainant's claims should be dismissed.

#### CONSIDERATIONS:

On the production of evidence:

1. At the request of complainant, made on 9 and 14 October 1967, the Tribunal ordered that Mrs. Ludi should be heard in evidence and that Miss Nowakowska's personal file should be produced. The Tribunal considered, however, that the delivery of complainant's medical file and of a document concerning events subsequent to the filing of the complaint was unnecessary for the disposition of the case.

On the claim relating to the decision not to grant Miss Nowakowska a salary increment as from 1 October 1965

2. Complainant contends that as she was entitled to a within-grade salary increment as from 1 October 1965, a report on her work ought to have been made not later than September 1965, in accordance with paragraphs 7 and 8 of Administrative Service Note No. 312 of 27 October 1959.

While paragraph 8 of the above-mentioned Administrative Service Note provides that "the end of the period covered by the report will normally coincide with the date of the award of the within-grade salary increment, when such increment is due" it is clear from the use of the word "normally" that this provision is not mandatory and allows of exceptions to the rule in specific cases, in particular in a case such as the present one, where complainant's service had been interrupted on account of illness and her Chief legitimately wished to have a discussion with her before making the evaluation of her performance in the report which he had to draw up. Hence the contention based on the late date at which the report was drawn up is ill-founded.

3. Miss Nowakowska claims further that, in default of an annual report made before 1 October 1965, she was automatically entitled to a salary increment in pursuance of paragraph 7 of Administrative Service Note No. 312, a basic report having been prepared on 30 March 1965.

The above-mentioned paragraph provides that: "Annual reports should be prepared when a within-grade increment is due, unless a basic report has been established less than six months earlier and the immediate supervisor feels that there are no substantial changes in the performance of the staff member to be reported". Under this provision the obligation to establish an annual report is waived on two conditions: first, if a basic report has been established less than six months earlier; and secondly, if, in the opinion of the immediate supervisor, there have been no substantial changes in the performance of the staff member since the preparation of that report.

In the present case, although the first of these conditions was fulfilled, it is clear from what has been said above that this was not so in respect of the second. But it does not follow that failure to establish an annual report when it is due automatically confers the right to the award of a salary increment.

4. Contrary to complainant's contentions, the report of 7 December 1965 contained adequate notations under all the headings which were relevant to complainant. Furthermore, no evidence submitted either in the written or the oral proceedings warrants the assumption that this report was based on circumstances subsequent to 1 October 1965, and in particular that it was drawn up, even in part, in the light of incidents which occurred on complainant's return to work on 24 November 1965. Lastly, the alleged irregularities in respect of the signing and communication of the report are immaterial, the responsible Chief of Division having fully discussed with Miss Nowakowska the evaluation of her performance, as is demonstrated by the minute of 13 December 1965 signed and annotated by her.

On the claim relating to the decision not to grant Miss Nowakowska a salary increment as from 1 October 1966

5. Although the report of 8 August 1966 is brief, and even incomplete, the authority responsible for the decision impugned was in a position to appreciate in full knowledge of the facts, in the light of the letters of 4 April, 6 and 9 May and 4 July 1966 written either by the Chief of the Service or by the immediate supervisor of Miss Nowakowska, that the reasons which motivated the decision not to award an increment as from 1 October 1965 were valid also for the following year. In these circumstances, the shortcomings of the report of 8 August 1966 do not affect the legality of the decision impugned.

6. From the examination of the dossier, it appears that the reasons given, which have not been proved to be materially false, in themselves provide legal justification for the decision attacked. Furthermore, it has not been established that complainant's periods of absence on sick leave or her criticism of the manner in which her unit was organised affected in any way her supervisor's evaluation of her work; nor is there any evidence in the dossier casting doubt on their impartiality.

On the claim relating to the decision transferring Miss Nowakowska to a temporary post in the Library

7. Under Staff Regulation 1.2, staff members are subject "to assignment (by the Secretary-General) to any of the activities or offices of the Organization"; and under Staff Rule 1.2.1 a staff member may be assigned by the Secretary-General "to any duties, account being taken of his qualifications". These provisions give the Secretary-General discretionary power to assign staff members in the best interests of the Organization, taking account in particular of the qualifications of the person concerned.

The Tribunal is competent to review any decision of the Secretary-General to transfer a staff member from one post to another, if it is taken without authority, is in irregular form or tainted by procedural irregularities, or if it is tainted by illegality or based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier. But the Tribunal may not substitute its own judgment for that of the Secretary-General in regard to the work or conduct or qualifications of the person concerned.

In the first place, complainant, who had at an earlier date applied for a position in the Library, cannot seriously contend that her qualifications were not suitable for the post to which she was assigned. Furthermore, complainant's transfer, which involved no reduction in her salary, did not affect the nature of her appointment. In spite of her assignment to a temporary post she continued to enjoy all the rights resulting from her appointment as a permanent staff member of the Organization. It follows that the decision impugned is not tainted by illegality.

Secondly, the documents in the dossier do not provide any ground for considering, that the Secretary-General's exercise of his discretionary power is tainted by any of the other irregularities falling within the Tribunal's power of review, and in particular that the decision concerning complainant's transfer was taken for reasons other than the interests of the Organization.

On the claims relating to compensation:

8. The claim for damages with respect to the alleged unjustified transfer to the Library should be rejected in the light of what has been said above. Complainant suffered no harm from the fact that the Organization, having the right to do so, asked the Medical Adviser, in a confidential memorandum, to arrange for a neurological examination.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 18 October 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Bernard Spy