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

SEVENTY-FIFTH SESSION

In re SANCHEZ-PERAL

Judgment 1271

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. José Luis Sánchez-Peral against the World Meteorological Organization (WMO) on 13 October 1992, the WMO's reply of 1 December 1992, the complainant's rejoinder of 12 February 1993 and the Organization's surrejoinder of 17 March 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulations 1.1, 1.2, 1.5 and 10 and Rules 192.1, 193.1, and 193.2 of the WMO Staff Regulations and Staff Rules;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Spaniard born in 1945, joined the WMO on 15 April 1972. At the material time he was an editor at grade P.3 in the Organization's Publications Division.

On 12 October 1990, while he was on sick leave, the chief of the Division made out a "purchase order" for the wife of a colleague to edit a Spanish text by 31 October at a fee of 2,000 Swiss francs. On 26 February 1991 the chief made out a similar order for her to edit a second text by the end of March 1991 at a fee of 3,500 francs. From 1 to 10 March 1991 the complainant was again on sick leave.

On 12 June 1991 the chief of the Language, Publications and Conference Department told the Secretary-General that he believed the complainant had given the name of his colleague's wife for the editing jobs even though she was not fit for them; the complainant had done the work and taken the payment himself; he had confirmed that and said he had often worked at home for nothing.

In a letter of 19 September 1991 the Director of the Department of Administration informed the complainant that there were to be disciplinary proceedings under Regulation 10; the charges against him included breach of trust, misrepresentation, unauthorised use of the Organization's name, behaviour harmful to its good name and signing bad cheques.

In a report it submitted on 28 November 1991 the Joint Disciplinary Committee recommended that the Secretary-General dismiss the complainant for serious misconduct; pay him termination indemnity in lieu of the notice due under Staff Rule 193.1(c); grant him a termination indemnity of not more than one half of the indemnity normally due under Rule 193.2(iii); and allow him repatriation grant, travel and removal expenses. It also recommended that the Organization should recover a sum of 5,500 Swiss francs he should not have been paid.

In a letter of 5 December 1991 the Secretary-General told him that he endorsed the Committee's recommendations, was dismissing him for serious misconduct as from 5 March 1992 and relieved him of the duty to report for work as from 6 December.

By a letter of 18 December 1991 the complainant appealed to the Joint Appeals Board.

In its report of 18 June 1992 the Board recommended that the Secretary-General should review his decision and lighten the penalty on account of the mitigating circumstance that many international organisations resort to similar practices in peak periods or in emergencies.

In a letter of 10 July 1992, which is now impugned, the Secretary-General upheld his decision.

B. The complainant cites the troubles that beset his career at the WMO and blames them on his staff union work. When he was on sick leave, he recounts, the chief of the Publications Division called him in to discuss as a matter of urgency the Spanish version of a report on the Executive Council's latest session. It was quite plain that his supervisor was asking him to do the job at home in someone else's name since he was on sick leave and the work could not be farmed out. He gave the name of his colleague's wife, took the work home and later handed in the finished text. In return he was himself given a cheque for 2,000 Swiss francs bearing the name he had given. The beneficiary cashed it and made over the full amount to him.

In February and March 1991 the same arrangements were made to have him edit a technical report for 3,500 Swiss francs. When he handed it back his supervisor asked him to comment. He wrote "A first-rate job", and his supervisor thereupon approved the text and authorised payment. Both texts, the purchase- order forms and the cheques were handed over to him, and he was sure that the chief of division and the chief of the Finance Division had approved the arrangements.

In a memorandum sent to the Secretary-General on 14 June 1991 the chief of the complainant's division explained what had happened and maintained that the Organization had come out well since the work was good and done in time.

The WMO was at pains to discredit him in the eyes of the Joint Disciplinary Committee: it ferreted out of his personal file grievances about his taking too long to pay bills. The Administration even put the matter to its auditor, who spoke to the Executive Council of "presumed fraud". But the charge is groundless. He was remiss only in his breach of Regulation 1.2, which says that "The whole time of staff members shall be at the disposal of the Secretary-General". The penalty of dismissal was unwarranted and out of proportion to his offence. The Secretary-General utterly disregarded the quality of his work and the sort of penalties the Organization had been meting out before, and that was in breach of equal treatment.

He seeks (1) the quashing of the decision of 10 July 1992 to dismiss him; (2) reinstatement as from 5 March 1992; (3) payment of salary from 5 March 1992 to the date of reinstatement, including within-grade step increments at 1 May 1992 and 1 May 1993; (4) reinstatement in the staff health insurance fund as from 5 March 1992; (5) an award of 25,000 Swiss francs in moral damages; and (6) costs.

C. In its reply the WMO points out that the complainant used someone else's name to secure improperly extra pay for work that came under his own duties. Such conduct is at odds with the duty Regulation 1.1 lays on officials to "regulate their conduct with the interests of the Organization only in view".

From start to finish the operation bore the hallmarks of wilful fraud. It is facile to plead innocence by spreading gossip about improper practices of language services in other international organisations: to produce evidence is another matter, and the complainant offers not a jot. In any event the wrongdoing of others is no excuse for his own.

The WMO denies that the penalty was out of proportion: dismissal with notice is fitting in a case of deception with unlawful intent. Besides, the Secretary-General used his discretion to grant the complainant the termination indemnity under Rule 193.2(iii).

The complainant made matters worse by behaving in a way incompatible with the duties of an international civil servant as laid down in the Staff Regulations. The grumbles that kept coming from his creditors after the disciplinary proceedings had begun and even after his dismissal, harmed the Organization's good name.

Although this is the third time that the WMO has disciplined its officials it is the first known case of fraud. So there can be no similar instance in which it acted differently.

D. In his rejoinder the complainant maintains his version of the facts and insists that, as the Joint Disciplinary Committee acknowledged, the WMO tacitly acquiesced in the practice held against him. He cites the case of a former supervisor who, he says, acted in the same way. He accepts the charge of misconduct, but definitely not that of serious misconduct warranting as severe a sanction as dismissal, because he had no intent to deceive.

It is odd that after granting him within-grade increments each year the Administration should raise the matter of his unpaid bills. It has treated him more harshly than two other staff members whose conduct it punished. As in 1982 and in 1989, when it arbitrarily held up his promotions, the WMO has again discriminated against him.

E. In its surrejoinder the WMO enlarges on the pleas in its reply. It contends that the charges he makes against a former staff member are gratuitous, and even if true would not excuse his conduct.

The Organization dismissed him with notice for misconduct under Staff Rules 192.1 and 193.1; it did not summarily dismiss him for serious misconduct. So it did not treat him as severely as he might have deserved.

The two cases he relies on to show breach of equal treatment are not comparable: one was about the use of office stationery for private purposes and the other about unauthorised acceptance of paid translations from outside the Organization.

CONSIDERATIONS:

1. The complainant joined the staff of the World Meteorological Organization in 1972. Disciplinary proceedings were brought against him and the upshot was that by a decision of 5 December 1991 the Secretary-General of the Organization dismissed him for serious misconduct as from 5 March 1992. He appealed to the Joint Appeals Board. Although the Board recommended a lesser penalty, the Secretary-General confirmed his dismissal on 10 July 1992. That is the decision impugned in his complaint.

2. There being no issue of receivability, he puts forward several pleas. He contends that the penalty lacks a relevant basis in law because, apart from the third sentence of Regulation 1.2, no provision of the Staff Regulations or Staff Rules exactly covers the offences he is charged with. To his mind any misconduct he may have committed was minor and in determining the sort of penalty to be imposed the Organization ought to have taken account of his fine record of service and the usual practice in such cases. He argues that the penalty, being too harsh, offended against the principles of proportionality and equal treatment.

3. Before ruling on those pleas the Tribunal will set out the facts that prompted the impugned decision, as determined from the report of the Joint Disciplinary Committee and other items of evidence. From 1985 to 1991 the complainant's creditors, to some of whom he had given the WMO's address as his own, often approached the Organization to have pressure put on him to pay his debts. But what is more, in October 1990 and February 1991 the Chief of the Publications Division wanted Spanish editing work to be done urgently, the complainant suggested a colleague's wife as suitable and he then used her name as a cover for doing the work himself. He affirmed that she had done it and then had her pass on to him the payments made to her: 2,000 Swiss francs the first time and 3,500 the second. On the Disciplinary Committee's unanimous recommendation the Secretary-General dismissed him on the grounds that the charges against him were founded. The Disciplinary Committee held that his constant failure to pay his bills amounted to conduct that fell short of the standards expected of an international civil servant, harmed the Organization's good name and would have sufficed in itself to warrant a written reprimand. The Board also held that his deceit in saying that someone else had done work that he himself had got payment for amounted to serious misconduct. It was for all those reasons, and in disregard of the mitigating circumstances he had relied on, that the disciplinary authority took the impugned decision.

4. First comes his plea that the penalty had no basis in law. He argues that the only provision he may have infringed is the third sentence of Regulation 1.2, which stipulates that "The whole time of staff members shall be at the disposal of the Secretary-General". But apart from their express obligations under Staff Regulations or Staff Rules international civil servants owe general duties to their employer. One of them - as indeed Regulations 1.1 and 1.5 make plain - is the duty to behave in a way that does not harm the Organization's interests and that respects their own status. As the defendant observes, it is not compatible with his status for an international civil servant to mislead it over who has done a job of work and who has got the payment, and so secure it for himself when the work falls within his own ordinary duties. Such behaviour is plainly damaging to the Organization's interests. So it is wrong to say that there was no basis in law for the disciplinary proceedings brought against the complainant and for the penalty imposed on him.

5. Also unsound is his plea that his misconduct was slight and did not warrant such drastic action as dismissal, especially when there were mitigating circumstances.

There is ample precedent, it is true, to confirm the principle of proportionality. Judgment 1070 (in re Couton) says, for example:

"... a sanction out of proportion to the subjective and objective nature of the offence must be quashed because it is

flawed with a mistake of law. Applying that rule calls for special caution when the sanction is dismissal".

Applying the doctrine to the facts of this case, however, the Tribunal holds that the complainant's behaviour, particularly in using another name as a cover, making false statements and obtaining payment he knew he had no right to, did amount to serious misconduct. It is not a mitigating circumstance - even supposing it were proven - that what the complainant was said to have done had before been done by others or tacitly condoned by management. Nor is his guilt any the less for his hitherto satisfactory record. The parties discuss at length whether his misconduct was "serious" within the meaning of the material rules. That is beside the point in law. Under Rule 192.1 "serious" misconduct warrants summary dismissal, and according to the impugned decision the Secretary-General did declare the complainant guilty of serious misconduct, as the Tribunal holds that he was right to do in the circumstances. But he did not act accordingly. He treated the complainant more favourably by giving notice and in doing so did not act in breach of any rule of the Staff Regulations or of the principle of proportionality.

6. Nor was there any breach of the principle of equal treatment. The complainant alleges on that score that two other staff members were merely downgraded though one was found guilty of theft and the other of doing paid work for another organisation. The Organization replies that those cases were quite different: one of the staff members had used office stationery without permission and the other had, again without leave, taken paid translation work from another international organisation. The most serious features of the charges on which the complainant was found guilty do not appear in those other cases and so in any event there can have been no breach of equality. Nor has it been shown that anyone has ever committed with impunity offences like the complainant's.

7. Lastly, the complainant hints, without actually alleging abuse of authority, that in dealing with his case the Organization may have been swayed by his staff union work. But there is no evidence before the Tribunal to suggest that anything of the kind prompted the impugned decision. The conclusion is that the complainant offers no sound reason for quashing the decision.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

William Douglas
E. Razafindralambo
Michel Gentot
A.B. Gardner

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