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

TWENTY-FIRST ORDINARY SESSION

In re SEGERS

Judgment No. 131

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by M. Louis-Gérard Segers on 23 November 1967, brought in conformity with the Rules of Court on 25 December 1967, the reply of the Organization dated 13 March 1968, complainant's rejoinder dated 30 April 1968, and the Organization's reply thereto dated 10 June 1968;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and sections 940, 950 and 970 of the Staff Rules of the Organization;

Oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the facts of the case are as follows:

A. M. Segers, an entomologist of Belgian nationality, entered the service of the World Health Organization on 16 April 1962. His contract was renewed for a year on 1 September 1962, for two years on 1 September 1963, and for a further two years on 1 September 1965. The contract accordingly was due to expire on 31 August 1967. Complainant was appointed to grade P.2 on 1 September 1962 and was assigned to Inter-Regional Project No. IR-172 as from 1 October 1964, with his duty station at Kankiya in Northern Nigeria.

B. Although M. Segers' competence and work were fully satisfactory, the Organization took him to task on several occasions for his unsatisfactory relationships with his colleagues in his successive posts in Cameroon and at Kankiya. M. Segers did not deny the facts, but claimed that the fault lay with certain of his colleagues and expressed the opinion that the difficulties would not arise at other duty stations. On 29 July 1966, when M. Segers was on home leave in Belgium, the Organization sent him a written warning to the effect that unless his relationships with his colleagues and with the local national staff showed marked improvement within three months after his return from home leave, the Organization would be obliged to terminate his contract under Staff Rule 970 relating to unsatisfactory service.

C. M. Segers fell ill during his home leave, and as he continued to be unfit for work the Organization appointed another expert to replace him in his post in Africa. At that time it was contemplated that on his return to work complainant would be assigned to a post at Lagos. However, as it proved necessary to extend his sick leave to the end of February 1967 on the recommendation of the Organization's medical Adviser, and as the latter had also expressed the view that it would be preferable to assign complainant to a post in a French-speaking country, arrangements were made to assign him to Lomé instead of Lagos on his return to work. This assignment did not take place, however, because complainant did not report for duty on the expiry of his sick leave at the end of February 1967. The Medical Adviser and the Administration wrote to him on several occasions, requesting him to clarify his situation. By registered letter of 16 March 1967, the Chief of Personnel requested him to reply to these repeated communications, drawing his attention to Staff Rule 980 concerning abandonment of post. On 29 March 1967 the Medical Adviser at last received from M. Segers' doctor in Belgium a medical report stating that a further extension of his sick leave, up to 10 April 1967, was necessary. In the light of this report, the medical Adviser at once recommended that the Administration should agree to such an extension.

D. Nevertheless, in a letter dated 6 April 1967, the Administration informed complainant that in spite of the report of the Medical Adviser stating that he would be fit to return to work on 10 April 1967, the Organization was obliged to terminate his appointment as from 10 April 1967 because no post corresponding to his qualifications was available for his reassignment. The letter stated that complainant would receive the indemnities laid down by Staff Rule 950.4, namely one week of salary in lieu of notice, and six weeks of salary as indemnity for the unexpired period of his contract from 10 May to 31 August 1967.

E. On 20 April 1967 complainant objected to the above- mentioned decision on the ground that it had been taken not under Staff Rule 950 (Abolition of post and Reduction in Force), but under Staff Rule 970 (Unsatisfactory Service). On 28 April 1967 the Organization confirmed that its action had indeed been taken under Staff Rule 950, but added that complainant's appointment would be extended until further notice because of his state of health. The payments on account of notice and indemnities specified in the letter of 6 April were accordingly suspended. Having exhausted his right to sick leave on full pay, complainant was on half pay from 1 April 1967. On 26 June 1967 he was informed that his appointment had terminated on 1 June and that the payments specified in the letter of 6 April would accordingly be made. Meanwhile, however, M. Segers had filed an appeal with the Organisation's Board of Inquiry and Appeal on 6 May 1967. The Board found: (1) that Staff Rule 950 was not applicable, since complainant's post had not been abolished and there had been no reduction in the staff assigned to the malaria programme; (2) that Staff Rule 970 was also inapplicable because the period of three months within which complainant was required to show improved conduct under the terms of the letter of 29 July 1966 had not begun to run because of the termination of his appointment; (3) that the Administration had not shown sufficient diligence in seeking a reassignment for complainant although it had been informed that he would be able to resume work as from 10 April 1967. Accordingly the Board recommended that the Director-General should rescind the notice of termination issued to M. Segers on 6 April 1967 and should pay complainant his salary up to 31 August 1967, the date at which his contract would normally expire, together with the usual termination benefits should it be decided that his fixed-term contract would not be renewed.

F. On 21 August 1967 the Director-General notified M. Segers that in accordance with the recommendations of the Board of Inquiry and Appeal his appointment would be terminated at the normal date of its expiry, namely on 31 August 1967, in accordance with the terms of Staff Rule 940 (Completion of Fixed-Term Appointment), since no post was available for his reassignment in his specialised field of work. The letter specified further that complainant would receive his full salary from 2 June to 31 AUGUST 1967 without any termination indemnity.

G. In his complaint to the Administrative Tribunal impugning the decision of 21 August 1967, M. Segers claims reinstatement. He contends that the decision of 21 August 1967 is in violation of Staff Rule 940 and that all possibilities for his reassignment under Staff Rule 950 had not been exhausted. He asks for a full inquiry in respect of the person or persons who had cast doubt on his state of mental health; the exclusion from the Organization's confidential file concerning him of any documents liable to cause him moral prejudice; certified copies of the confidential file in its present form; and damages for the material and moral injury resulting from the premature termination of his career in the Organization. In its reply the Organization contends that M. Segers' appointment was not terminated under Staff Rule 970 (Unsatisfactory Service) or Staff Rule 950 (Abolition of Post) since his contract ended on the normal date of expiry; that the sub-missions relating to complainant's service record are therefore irrelevant, since Staff Rule 940 (Completion of Fixed-Term Appointment) is alone applicable. In his rejoinder complainant contends that Staff Rule 940 provides that a staff member whom it has been decided not to reappoint shall be notified thereof at least one month and normally three months before the date of expiry of the contract. He alleges that as he received only ten days' notice Staff Rule 940 was improperly applied. He claims farther that he was never informed of the Organization's intention of assigning him to Lomé, and that if this welcome news had been communicated to him at the appropriate time it would undoubtedly have contributed to his prompt recovery. He prays that the Tribunal may be pleased to order his reinstatement as entomologist in grade P.2(5) for five years dating from 31 August 1967, having regard to the material and moral injury he claims to have suffered. The Organization submits that the above-mentioned claims should be dismissed, pointing out that the letter of 6 April 1967 by which complainant was informed that his appointment would be terminated was equivalent to the minimum period of notice of one month laid down by Staff Rule 940, and that it could not in any event have acted sooner, since the report of the Board of Inquiry and Appeal was communicated to the Director-General only on 7 August 1967.

CONSIDERATIONS:

As to the request for an inquiry:

1. The inquiry requested by complainant in regard to the persons who east doubt on his state of mental health would be justified only if it would help to establish facts relevant to the disposal of the complaint. That is not the case, since the decision impugned is based on Staff Rule 940, which provides for the termination of fixed-term appointments on the completion of the agreed period of service, without regard to the staff member's state of health.

As to the submissions concerning complainant's personal file (exclusion of documents and production of copies):

2. There is no provision in the Staff Regulations or Rules conferring on complainant any right in respect of the documents in the Organization's file concerning him. He is not entitled to require either that they should be withdrawn or that copies of them should be furnished to him. The submissions on these matters are therefore unfounded.

As to the claim for moral and material damages:

3. It is clear from Staff Rule 940 that in the absence of any offer and acceptance of extension, fixed-term appointments automatically terminate on the completion of the agreed period of service; however, a staff member who has served for one year or more must be notified of the Organization's decision not to reappoint him at least one month and normally three months before the date of expiry. The decision taken by the Director-General under the above-mentioned rule lies within his discretion. It cannot therefore be reviewed by the Tribunal unless it is tainted by procedural irregularities or by illegality, is based on incorrect facts, fails to take essential facts into account, or draws conclusions which are manifestly false from the documents in the dossier.

Complainant concludes from the fact that he was notified on 21 August 1967 that his appointment would terminate at the end of the same month that the minimum period of one month's notice specified in Staff Rule 940 was not observed. In fact, the decision of 21 August 1967 must be considered not in isolation, but as the final step in the termination procedure. As early as 6 April 1967 complainant had been notified that his appointment would terminate on the tenth of that month. Although on 28 April he was notified of the temporary extension of his contract, he was warned at the same time that this was merely a reprieve until his health was restored. Moreover, on 26 June he was notified that his contract had been terminated as from 1 June. In these circumstances, on receiving the decision of 21 August complainant had been aware for over three months that the Organization had decided to terminate his contract. In other words, that decision merely confirmed those taken earlier while altering the conditions for their execution, and consequently it did not defeat the intention of Staff Rule 940, which is to protect the staff member from the consequences of a sudden termination of his appointment. The plea concerning violation of Staff Rule 940 cannot therefore be accepted.

Complainant's allegation that the Organization did not exhaust all the possibilities of reassigning him after filling his former post at Kankiya is also ill-founded. Staff Rule 950.2 stipulating that a staff member's appointment shall not be terminated before he has been made a reasonable offer of reassignment applies only to staff members holding contracts of indefinite duration and in the event of abolition of post. Complainant was serving under a fixed-term contract and his post still existed although it has been assigned to another staff member, and therefore he cannot rely on the above- mentioned rule.

The other submissions made by complainant relate to matters which are not within the competence of the Tribunal as defined above.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 17 March 1969 by M. Maxime Letourneur, President, M. 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, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy