

EIGHTIETH SESSION

In re BEL GHAZI

Judgment 1475

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Rajâ Bel Ghazi against the World Health Organization (WHO) on 13 December 1994 and corrected on 13 January 1995, the WHO's reply of 6 April, the complainant's rejoinder of 12 May and the Organization's surrejoinder of 15 August 1995;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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 citizen of Morocco who was born in 1958, joined the WHO in July 1988 as a secretary in the office of the Organization's Representative in that country. In September 1989 a first probation report said that she must do better. The period of her probation was extended by three months. In December 1989, after a satisfactory second report, she had her appointment confirmed. Her fixed-term appointment was renewed several times, the last up to 30 September 1994.

Her next three yearly performance reports were satisfactory. In March 1990, however, she was given an oral reprimand because of her conduct and failure to get on with a colleague and, in January 1991, a written reprimand calling upon her to comply with the office's administrative rules.

On 27 November 1992 a dispute broke out between her and a colleague. In a fax of 16 December the personnel officer at the WHO's Regional Office at Alexandria sent her a written warning giving her three months in which to mend her ways. She replied in a memorandum of 22 December denying the charges against her. On 14 January 1993 the personnel officer told her that her performance would be assessed towards the end of March 1993.

In a memorandum of 29 January 1993 the WHO Representative said that her conduct was unsatisfactory. On 5 February she answered that the incidents he had described were "minor" and that she was resolved to work "to the best of [her] abilities".

In a report of May 1993 on her performance since July 1992 the Representative recommended dismissal on the grounds that her work was still below par. The complainant objected to both the contents of the report and the recommendation.

By a letter of 11 August 1993 the personnel officer told her that she was to be dismissed on 14 September 1993 and would get three months' pay in lieu of notice.

On 28 September she appealed to the regional Board of Appeal. In its report of 25 November the Board, while finding dismissal "rather harsh", recommended rejecting her appeal. The Regional Director wrote to her on 14 December 1993 endorsing the recommendation. On 20 January 1994 she appealed to the headquarters Board of Appeal. In its report of 26 August that Board too recommended rejection. By a letter of 7 October 1994 the Director-General confirmed her dismissal, and that is the decision she is impugning.

B. The complainant alleges that a fellow staff member was hostile towards her and that the WHO Representative decided to dismiss her to put an end to the "conflict of personality". In her submission so harsh a sanction was unwarranted.

She seeks payment of salary up to the expiry of her appointment at 30 September 1994 and damages for her dismissal, which she attributes to abolition of post.

C. In its reply the Organization maintains that its reasons for dismissing the complainant were her unsatisfactory

performance and unsuitability for international service. Her failure to get on with others was disrupting the office.

It refutes her allegation of prejudice. She got many warnings and reprimands and was always given a chance to comment on them and improve.

Lastly, since her post was not abolished she has no claim to damages.

D. In her rejoinder the complainant contends that the impugned decision does not square with the WHO Representative's assessment of her services, and she produces an attestation from him praising her performance. She denies that she did not get on with colleagues and alleges that she was forced to draft or sign most of the documents the Organization has used in evidence against her. She makes a further claim: since the WHO denies abolition of her post she seeks reinstatement or, failing that, a certificate of good service.

E. To its surrejoinder the Organization appends a letter from its Representative challenging the genuineness of the attestation produced by the complainant. It submits that she was never forced to sign any document and repeats that her performance was poor.

CONSIDERATIONS:

1. The WHO appointed the complainant on 1 July 1988 as a secretary at local grade 5 in the General Service category of staff in the office of its Representative at Rabat. She held a probationary appointment. The first probation report called on her to improve in several respects and the period of probation was extended, by three months, to December 1989. Her next probation report spoke of improvement and the WHO confirmed her appointment.
2. Each of the three reports appraising her performance in the twelve months that ended at 30 June in 1990, 1991 and 1992 was on the whole satisfactory. Nevertheless in March 1990 she was given an oral reprimand after a quarrel with another staff member. In January 1991 she was given written instructions to follow office procedure properly and to forward all correspondence through the administrative assistant. On 27 November 1992 she had words with the assistant. The Representative discussed her future with her on 30 November. In December 1992 her brother, acting on information she had supplied, spoke to the Secretary General of the Moroccan Ministry of Health, who then telephoned the Representative to ask about her employment situation. On 14 December the Representative called the complainant in again and she acknowledged to him that the purpose of the message that her brother had sent through the Secretary General had been to protect her rights. She countersigned the same day a letter he had sent her recording what she had said at their meeting.
3. Two days later the personnel officer sent her a minute by fax from the WHO's Regional Office at Alexandria. The minute said that her supervisor, the Representative at Rabat, had reported her failure "to establish satisfactory working relationships with other staff members" and his own "dissatisfaction with [her] attitude and behaviour". The minute referred to conduct on her part which had led a "senior government official" to "query the internal matters of the Organization". It described her conduct as "contrary to the standard expected of an international civil servant" and gave her three months in which to show "substantial improvements" in her working relations and in acceptance of guidance and daily supervision. Her conduct would be reassessed by the end of March 1993. The minute constituted written warning under Staff Rule 1070.2 that, failing such substantial improvements, "further disciplinary action" against her would be recommended, "including possibly that envisaged by S.R.1070.1". It is Rule 1070.1 that allows termination of appointment for "unsatisfactory performance or unsuitability for international service".
4. By a memorandum of 22 December 1992 the complainant answered the personnel officer's written warning. She denied the allegations against her. She said that the Representative, who had drafted the record of their meeting of 14 December, had been "adamant" that she should sign. She accused him of giving her an ultimatum on 27 November, after the dispute with the administrative assistant, that she should resign by 31 December or face dismissal. Though she had talked to her brother, she had not even been aware of his conversation with the senior government official until the Representative had told her of it.
5. In a memorandum to her of 14 January 1993 the personnel officer acknowledged receipt of her reply but reaffirmed the need for her to improve and sent a copy to the Representative for comment.
6. The Representative sent her a memorandum on 29 January 1993. He said that when he had seen her in November

she had acknowledged that she could not work under the administrative assistant and had insisted she should come under his own direct supervision; if she did not she would have to leave. He had then observed that no member of the General Service category staff but the administrative assistant came under his direct supervision. He denied giving her any ultimatum. Her attitude and behaviour on 27 November 1992 and on other occasions had fallen short of the standards expected of an international civil servant. Despite the personnel officer's written warning of 16 December her reply of 22 December had described events "untruthfully" and given a "bad image" of her supervisor. Moreover, she had not sent him a copy, although the text said that she had. He summed up her behaviour as showing unsatisfactory performance and unsuitability for international service within the meaning of Rule 1070.1 and as constituting misconduct within the meaning of Rule 1075. As her supervisor he was duly giving her notice of the charges and said that unless he received satisfactory written comments from her within eight days she would be subject to further disciplinary action. The complainant's reply of 5 February 1993 dismissed what she called the "unhappy events" he had recounted as "minor office incidents".

7. On 3 May 1993 the Representative gave her a bad report on her performance in 1992-93. His conclusion was that she was "not fit to continue" as a member of the Organization's staff and he recommended "termination of employment". The complainant added her written objections on 6 May 1993. On 19 June the Director of the Support Programme at the Regional Office noted in comments of his own her "resurgent difficulty" in establishing "fully satisfactory working relationships with other staff, including her supervisor(s)". He observed that her difficulty was now so great as to be "disruptive of the proper functioning" of the Rabat office. He agreed with the proposal for termination, which he said should come "as soon as the rules permit".

8. On 27 July 1993 the personnel officer telephoned the complainant to tell her that the Organization believed that it had sufficient grounds to terminate her employment but for compassionate reasons would let her resign. She answered that she wanted to stay on until the end of her contract, on 30 September 1994, but she was told that that was not an option. On 29 July she went to the Ministry of Foreign Affairs to discuss her position with the director of the section of international organisations in the Ministry and with the director of protocol. The Representative was actually summoned to the office of the director of international organisations.

9. The upshot was that on 11 August 1993 the personnel officer sent her a letter informing her that the Regional Director was terminating her appointment under Staff Rule 1070.3 as from 14 September. The reasons the letter states were:

(1) that she had failed to maintain satisfactory working relations with other staff, including her supervisor, and such failure showed her to be unsuitable for international service;

(2) that despite the written warning of 16 December 1992 she had "exhibited unsuitable behaviour and work performance problems" which had caused her supervisor to "lose confidence" in her ability to perform her duties; and

(3) that her conduct, as outlined in the minute of 16 December, had been unsuitable in that it had resulted in a query by a senior government official into internal matters and had been contrary to the standards expected of an international civil servant.

10. She appealed on 28 September 1993 to the regional Board of Appeal. In its report of 25 November the Board held that the decision fell within the Organization's prerogative, though in the Board's view it was a harsh one and her supervisors should have tried harder to build on the three satisfactory appraisals so as "to ensure the smooth running of the office". The Regional Director having on 14 December 1993 confirmed her dismissal, she went to the headquarters Board of Appeal on 20 January 1994. In its report of 26 August the headquarters Board too held that the decision was lawful, though harsh, but recommended giving her a certificate of service that would not jeopardise her chances of finding employment elsewhere. The Director-General accepted the Board's recommendation, rejected her appeal and so informed her by a letter of 7 October 1994, the decision now impugned.

11. The complainant alleges that the WHO Representative was determined to get rid of her in order not to have to resolve a conflict of personality within his office, and he therefore built up a case to victimise her. The administrative assistant found it hard, she says, to deal with her because she had acquired skills from earlier service with other international organisations. As the regional Board of Appeal observed, she did get three good appraisals and her supervisors ought therefore to have done more to ensure the smooth running of the office. In her

submission there were no proper grounds for the termination and in fact her post was abolished. Her claims are as set out in B above.

12. The Organization replies that her appointment was terminated in accordance with the Staff Rules. It observes that on 16 December 1992 it gave her the formal written warning, which referred to the risk of termination under Rule 1070.1, and it allowed her the time to improve which Rule 1070.2 required. She was entitled to three months' notice under Rule 1070.3 and was granted three months' pay in lieu. The office at Rabat being a small one, the administrative assistant was left in charge of day-to-day administration in the Representative's absence, and it was essential that the General Service staff should then get on with each other properly. Yet the complainant constantly failed to establish and maintain satisfactory working relations with other staff in her five years with the Organization.

13. The decision to terminate the complainant's appointment was a discretionary one, and consistent precedent has it that the Tribunal will not set aside a decision of that kind unless it shows a mistake of fact or law or a formal or procedural flaw, or some essential fact was overlooked or a clearly mistaken conclusion drawn from the evidence, or if there was abuse or lack of authority.

14. The regional Board's comment that her supervisors should have done more to ensure the smooth running of the office did not amount to acknowledgement that the Organization's charges against her were unfounded. The regional Board, and for that matter the headquarters Board as well, both acknowledged that the Organization had acted lawfully in dismissing her. What is more, the headquarters Board did not come to the same conclusion as the regional Board about her supervisors' attitude. True, it described the consequences for her as harsh on the grounds that there was no opportunity of deploying her within the office. But that was a comment on a matter of fact: the Board still recognised that the Organization had been right to dismiss her. As for her allegation of victimisation and personal prejudice the headquarters Board actually said it could find no evidence in support. Nor can the Tribunal.

15. The complainant's contention that her post was abolished is also without foundation. She does not challenge, and the Tribunal sees no reason to question, the personnel officer's statement confirming that the duties of the post have continued unchanged and are now being performed by a staff member under a fixed-term appointment for two years.

16. The Organization lawfully dismissed the complainant under Rule 1070.1: it gave her due written warning; it let her have reasonable time in which to improve; it paid her three months' salary in lieu of notice; and it was unable to reassign her locally.

17. Even supposing that, as she makes out, she did not know that her brother was to visit the Secretary General of the Ministry of Health in December 1992, her visit in July 1993 to the director of international organisations at the Ministry of Foreign Affairs was all the more reprehensible in the light of the reprimand she had had on the earlier occasion. It is inadmissible that a staff member should involve government officials in questioning the Organization's internal workings.

18. The complainant's failure to establish satisfactory working relations with superiors is well documented. Not only did she fail to get on with the administrative assistant but the Representative too found her wanting; indeed he described as untruthful her account of their meeting in November 1993.

19. The conclusion is that the impugned decision shows none of the fatal flaws set out in 13 above, and that the complaint must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

William Douglas
Mella Carroll
Julio Barberis
A.B. Gardner

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