

EIGHTY-FIRST SESSION

***In re* BAIGRIE**

Judgment 1526

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Bernadette Joan Baigrie against the World Health Organization (WHO) on 6 July 1995 and corrected on 17 August, the WHO's reply of 21 November 1995, the complainant's rejoinder on 26 February 1996 and the Organization's surrejoinder of 30 April 1996;

Considering Articles II, paragraph 5, and VII, paragraph 1, 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 held a permanent appointment with the World Intellectual Property Organization (WIPO) when, in 1985, she applied for transfer to the WHO under an inter-organisation agreement. On 1 August 1986 she was transferred to the WHO on a two-year appointment at grade G.5 as a secretary in the Division of Information Systems Support (ISS).

The Organization extended her appointment by two years on 1 August 1988 and by five on 1 August 1990. At 1 December 1990 she was put on a new post at grade G.6 as a technical assistant in the Organization's Global Programme on AIDS (GPA).

In March 1995 the WHO offered to extend her contract, which was due to expire on 31 July 1995, by five months, the reason for the shorter extension being the abolition of the Programme and her post. On 22 March she accepted the offer but said she did so "without prejudice to my rights as set out in my letter of today to the Director-General". In that letter she protested against the decision to extend her appointment by only five months. On the same day she gave the Board of Appeal notice of her intent to appeal.

On 27 March the secretary of the Board told her that her appeal was incomplete since the offer to extend her appointment was not a decision within the meaning of Staff Rule 1230.8.1; only notice of extension on a "personnel action" form constituted such a decision. The WHO confirmed its offer in such a form dated 7 April 1995. By a letter of 10 May she told the Director-General she had given the Board notice, also on 7 April, of her intention to appeal against the decision in the form and asked him to treat it as a final decision under Rule 1240.2 so that she might go straight to the Tribunal. By a letter of 28 June 1995, which she impugns, the secretary of the Board told her that the Director-General had given her leave to go to the Tribunal. In a letter of 2 January 1996 the Administration offered to extend her appointment by six months. She accepted but described her acceptance "Without prejudice to my rights as set out, mutatis mutandis, in my letter of 20 [recte 22] March 1995 to the Director-General".

B. The complainant accuses the WHO of bad faith. It misled her about the nature of the post she had had with the GPA since 1 December 1990: only in March 1995 did she learn that it was of limited duration. Contrary to the Organization's consistent practice, neither the notice of vacancy nor the description of the post revealed that the duration was limited. What is more, the post was treated from the outset as a permanent one, as is plain from the text headed "Notification of decision on position request" and provided by the Budget Division in 1989. Had she known the post was one of limited duration she would never have applied for it.

The WHO ignored her rightful expectations. The case law of international administrative tribunals says that an organisation which so treats an employee as to arouse his hopes has a duty to fulfil them. Having had her appointment extended by two years and then by five, she was entitled to another five years, not five months, especially since the appraisals of her performance had been consistently good.

She seeks the quashing of the impugned decision, the grant of a permanent appointment or at least a five-year extension, moral damages and costs.

C. In its reply the WHO denies misleading her into thinking her post was a permanent one. It had no "consistent practice" of indicating the duration of appointment in notices of vacancy or post descriptions. She would certainly have applied for the post even if she had known its duration was limited because the appointment carried promotion to G.6. What is more, in 1990 the WHO was expecting the Programme to grow because the disease was spreading. Whether or not a post is of fixed-term duration has nothing to do with the nature of the appointment. A post of indefinite duration offers advantages only in the context of the reduction-in-force procedure and as to end-of-service entitlements.

The WHO has not frustrated her legitimate expectations: she has no right, be it under the Staff Rules, the terms of her appointment or the case law, to a five-year extension or to a permanent appointment. The length of an extension of appointment and the grant of a permanent appointment are at the Director-General's discretion, and the Tribunal's power of review over such matters is limited. The only reason why she got a five-month extension was the impending demise of the GPA, at 31 December 1995.

D. In her rejoinder the complainant observes that the WHO has shirked its duty under Manual paragraph II.9.260 to make it clear in vacancy notices and post descriptions that posts are of limited duration. Making out that the GPA was a long-term programme with prospects of growth confirms her view that her post with the Programme was one of indefinite duration. She never said that the nature of the post determined the nature of the appointment. But someone who is on a post of indefinite duration has a better chance of extension than does the holder of a post of limited duration, since he is entitled to the reduction-in-force procedure in the event of abolition.

E. In its surrejoinder the WHO presses its pleas. It denies that someone on a post of indefinite duration is more likely to get an extension than someone on a post of limited duration. At the material time, the practice was not to give the duration of the post in the notice of vacancy or in the description. Some of its programmes, even older and major ones, consist mainly of posts of limited duration. The challenged decision was not arbitrary but rests on Manual paragraph II.5.540, which says that an appointment may be extended on several conditions, one being "the availability of funds".

CONSIDERATIONS:

1. The Director-General having waived, in accordance with Staff Rule 1240.2, the complainant's obligation to go through the internal appeal procedure, she has exhausted the remedies open to her within the Organization, as Article VII(1) of the Tribunal's Statute required her to do.

2. Her first objection is that the WHO failed to tell her that the post she applied for in August 1990 and was appointed to as from 1 December 1990 was one of limited duration. It thus made her more vulnerable - she says - to termination. The Organization stated the duration of other posts it put up for competition; but only in March 1995 did she find out what sort of post she had. Had she known in time she would never have applied. The grant of a permanent appointment would, she contends, afford her redress.

The WHO replies that at the material time its practice was not to tell candidates officially whether the post was of limited or indefinite duration but that the issue has no bearing on the nature of the appointment. Here, it says, the duration of the post did not matter to her because at the time the appointment promised her interesting work at a grade she wanted and the Programme seemed unlikely to end soon since AIDS was spreading and the campaign against it growing.

Good faith must govern relations between administration and official, as the Tribunal declared in Judgment 1479 (in re Gill No. 2) under 12. It requires each party to a contract to let the other have beforehand any material information on points that may reasonably be seen as decisive. Whether a post is of limited or unlimited duration need not be a matter of indifference to the candidate since the duration may affect stability of employment.

The Tribunal is not satisfied, however, and indeed doubts that the want of information influenced the complainant one way or the other. Since she never asked at the time the matter seems not to have troubled her. She left a permanent job with the World Intellectual Property Organization for a fixed-term appointment at the WHO, and so she showed that the prospects of advancement meant more to her than security of employment. And presumably

she felt the same when she applied for the job with the Global Programme on AIDS. Since the campaign against the disease was already one of the main issues of health policy, the end of the GPA was hardly in the offing. So there are sound reasons for supposing that even if she had known about the duration of the post she would still have applied for it. At all events she knew full well from the very terms of her contracts what sort of appointments she was to have. The WHO did not mislead her on that score: in particular she knew they were limited in time.

Her plea fails.

3. She pleads that the WHO ignored her rightful expectations of extension. A long record of good performance - she argues - gives rise to reasonable hopes of continued employment, and an organisation must not disappoint them when the time comes to renew the contract.

The decision under challenge was not to renew her fixed-term appointment, and though the complainant had already been granted an extension, it is of course the rules on non-renewal that apply.

According to Staff Rule 1040 a fixed-term appointment carries no entitlement to renewal. According to a strong line of precedent, a decision not to renew it, being discretionary, may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority. See for example Judgment 1052 (in re James) under 4.

The WHO observed the formal rules on non-renewal: there is no dispute on that score.

The material decision was taken in the Organization's interests. The discontinuance of the GPA entailed abolishing the posts that came under it. Keeping on those who had been on the posts meant finding them jobs elsewhere in the WHO so far as its budget allowed. And it says it had no other post to offer the complainant.

An organisation owes its staff a general duty of care, and must not cause them undue hardship. A case of non-renewal is no exception. The duty may entail avoidance or reduction of injury that termination may cause - see for example Judgments 675 (in re Pérez del Castillo), under 11; 1317 (in re Amira) under 30; and 1450 (in re Kock), under 23 - at least when it was not a short-term appointment, when the record of service was long, and when the official had reasonable expectations of making a career in the organisation.

The WHO does not demur but says it did its utmost to help the complainant. It told everyone who was affected as soon as it could. It extended her appointment by five months, to 31 December 1995, and then found it had no suitable post to offer her. There being no evidence to the contrary, the Tribunal is satisfied that the Organization's account is true. Besides, despite the challenged decision it managed to fund another six-month extension of her appointment under the United Nations Programme on AIDS.

The conclusion is that it was not in breach of its obligations and did not misuse the discretion it has according to the case law. The complainant's second plea fails too.

4. Since her main claims fail so do her claims to moral damages and to costs.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas
Michel Gentot

Egli
A.B. Gardner

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