

EIGHTY-SECOND SESSION

In re Comlan (No. 2)

Judgment 1585

The Administrative Tribunal,

Considering the second complaint filed by Mr. Guy Comlan against the World Health Organization (WHO) on 27 February 1996 and corrected on 15 March, the WHO's reply of 26 June, the complainant's rejoinder of 8 July and the Organization's surrejoinder of 17 October 1996;

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. As was said in Judgment 1167 of 15 July 1992 on his first complaint, the complainant is a citizen of Benin and joined the WHO in 1969 as a doctor at grade P.4. The Organization gave him a career appointment in 1975.

After several postings in Africa it appointed him in 1988 director of studies at grade P.6 for the Faculty of Medical Sciences (FACSS) at the University of Bangui in the Central African Republic. He took up duty there in December 1988.

On 6 February 1991 the WHO's Regional Director for Africa, who was his first-level supervisor, wrote to him finding fault with the Faculty's training of doctors and asking for reform. In a report on his performance from 1 December 1990 to 30 June 1991 the WHO's Representative in the Central African Republic took him to task for poor initiative, a hum-drum approach to work and frequent absence from the country for reasons of health. The complainant rejected the charges in writing. In a memorandum of 29 November 1991 the Regional Director cited the report and called upon him to "act more responsibly so as to meet the Government's expectations".

In a report on his performance from 1 July 1991 to 30 June 1992 a new Representative commented that he did not get on well enough with other staff at the FACSS and there was poor coordination in running the Faculty between the WHO and the competent national departments. In a report covering the period from 1 July 1992 to 30 June 1993 the Representative said he had no comments to make on the complainant's work.

By a letter of 26 August 1993 the Minister of Health of the Central African Republic asked the Regional Director to have the complainant replaced on the grounds that: (1) he was unable to get on with the other staff and the students; (2) over half his work had not been done; and (3) he was absent so often on medical grounds that the work of the Faculty was suffering.

By a memorandum of 27 September 1993 the Director of the Support Programme of the Regional Office for Africa informed the complainant of the Government's strictures and asked him to submit comments to the Organization's Representative at Bangui and to leave the country as soon as possible. The complainant answered on 6 October. On 5 November he received through the office of the magazine *Jeune Afrique* in Paris a memorandum that the Director of the Support Programme had sent him on 22 October. It said that the Regional Director had recommended terminating his appointment under Rule 1070.1 for unsatisfactory performance and unfitness for international service. By a letter of 11 February 1994 a personnel officer of the Regional Office told him that the Director-General had decided to end his appointment at 1 June 1994.

On 24 May he appealed to the WHO's regional Board of Appeal at Brazzaville. In its report of 30 November the Board recommended rejecting his appeal. In a letter to him of 15 December 1994 the Regional Director endorsed the recommendation. On 15 February 1995 he sent notice of appeal to the headquarters Board of Appeal and on 9 March he submitted his brief. In its report of 30 November 1995 the Board recommended rejection. By a letter of 4

January 1996, the impugned decision, the Director-General informed the complainant that he endorsed the recommendation.

B. The complainant submits that the termination was wrongful. To send him the memorandum of 22 October 1993 through *Jeune Afrique* was an expedient intended to undermine his candidacy for the post of Regional Director, for which the Government of Benin was backing him. The WHO sent his personal file to the leaders of the African countries that were to elect the holder of that post. He denies that his work at the Faculty was below par. He is diabetic; the termination was unlawful because it was taken on grounds of his ill health, and was therefore discriminatory.

He seeks the quashing of the decision of 4 January 1996, reinstatement at the same grade, an award of a token "franc" in damages, and costs.

C. The WHO replies that it was in its own interests to end the complainant's appointment. It could not keep on someone whose work both his supervisors and the Government of the Central African Republic found "so wretched". His failure to get on with other staff shows that he was unfit for international service. The WHO had no malice in sending him the memorandum of 22 October 1993 through *Jeune Afrique*. In any case his difficulties in working in an international milieu came to light long before the election of the Regional Director for Africa; so there can have been no move to keep him out. He offers not a tittle of evidence in support of his plea of discrimination on grounds of health.

D. The complainant rejoins that the WHO offers no argument to gainsay his case, and he presses all his pleas.

E. In its surrejoinder the WHO contends that the termination of his appointment was in line with Rule 1070.1: his work was poor and he was unfit for international service. The decision served its interests and was actuated by no prejudice against him.

CONSIDERATIONS

1. The complainant joined the WHO in 1969 as a doctor at grade P.4. He served in several African countries. In 1975 it granted him a career appointment at P.5 and assigned him to the School of Medical Sciences of the University of Niamey in Niger. In October 1979 the foreign ministry of that country asked it to replace him. In September 1980 it sent him to its Regional Office for Africa (AFRO) at Brazzaville. In 1985 it made him its representative in Gabon at grade P.6. In 1988 the foreign ministry of Gabon asked it to recall him after he had been accused in a television broadcast in that country of unlawful behaviour. On 28 December 1988 it appointed him professor and director of studies at the Faculty of Medical Sciences of the University of Bangui in the Central African Republic.

In a report dated 6 February 1991 the WHO's Regional Director for Africa said that doctors were being poorly trained at the Faculty. He called upon the complainant to do better. There was a report on his performance from 1 December 1990 to 30 June 1991. The Regional Director warned him on 29 November 1991 that his work was below par. In another appraisal report, signed in July 1992, he recommended withholding a within-grade salary increment from the complainant, but in one of June 1993 he recommended granting it. In a letter of 26 August 1993 the Minister of Health of the Central African Republic asked the Regional Director to replace the complainant on the grounds that he could not get on with the other staff and the students and had left half his work undone, and that his frequent absences from the country on medical grounds were disrupting courses. Having been asked to comment, the complainant denied the allegations. The Regional Director advised ending his appointment under Staff Rule 1070.1. On 11 February 1994 the Director-General accordingly gave him notice of termination.

In a report dated 30 November 1994 the regional Board of Appeal, to which he had appealed, recommended rejection. The Regional Director endorsed the Board's recommendation on 15 December 1994, he went to the headquarters Board, and it too in a report of 30 November 1995 recommended rejecting the appeal. By a letter of 4 January 1996 the Director-General told the complainant he was endorsing that recommendation.

2. The complainant wants the Tribunal to quash the Director-General's decision, order his reinstatement at a grade no lower than the one he had before and award him "one franc in token damages" and costs. He pleads misuse of authority on the grounds that his work was up to standard. He says he fell foul of a plot to keep him from standing for Regional Director, a post for which his own country was willing to back him. He says that the memorandum of

22 October 1993 from the Director of the Support Programme notifying the recommendation of termination came to him in an unsealed envelope through the Paris office of the magazine *Jeune Afrique*. The purpose was, he submits, to undermine his candidacy, which was already public knowledge. The WHO's representative in Benin sent a "strictly confidential and personal" letter to the Minister of Health of that country, of which the President let him have the text in May 1994. To that letter were appended copies of "letters about [him] from the Governments of Niger, Gabon and the Central African Republic". The Regional Director said he thought them "worth bearing in mind". The complainant says that the same letter was sent to the heads of state and government and health ministers of the countries that were to be voting for the new Regional Director. The gist of his argument is that the Organization resorted to wrongful termination merely to get rid of a troublesome candidate. His work was good, he says; the impugned decision rested on plainly mistaken conclusions and offended against the Organization's own rules. That is evident from the commendation he got -- for example in his report of June 1993 -- just about the time of termination. The University of Bangui was happy with him and it was wrong to condemn his work as "wretched" without even asking the university people what they thought. It was an offence against French law -- and the law of the international civil service must say the same -- to dismiss someone in poor health: he needed treatment for diabetes. The state of his health also exerted an unfair influence on the appraisal of his performance.

The WHO replies that the only reason for termination was the poor quality of his work, in which many warnings elicited no improvement. His ambition of becoming Regional Director is immaterial. His allegations of a plot do not square with the order of events: the television broadcast in Gabon was in 1988, long before the election of the Regional Director, and the information about him went out in 1994, after termination. It was just an oversight that he got the memorandum of 22 October 1993 through *Jeune Afrique*. He was not discriminated against on grounds of his health, which was good enough for him to pursue his career and had no bearing on the impugned decision.

3. The complainant held a career appointment.

WHO Staff Rules 1070.1 and 2 read as follows:

"1070.1 A staff member's appointment may be terminated if his performance is unsatisfactory or if he proves unsuited to his work or to international service. It shall be considered unsatisfactory performance if the staff member does not or cannot perform the functions of the post to which he is assigned, and unsuitability for international service if he fails to establish satisfactory working relationships with other staff members or with nationals of other nations with whom he is working.

1070.2 Prior to termination action, a staff member shall be given a written warning and a reasonable time to improve. If there is reason to believe that the unsatisfactory performance results from assignment to duties and responsibilities beyond the capacity of the staff member, consideration shall be given to reassignment to a post more suited to his abilities."

4. Any termination calculated to get rid of an unwanted candidate for a position would offend against the Organization's interests and amount to misuse of authority.

But the complainant's contention on that score is gratuitous. He offers not a jot of worthwhile evidence to suggest that anyone on the Organization's staff sought to persuade the governments of the three African countries where he had served to state their disapproval of him. Though it is a pity that the memorandum of 22 October 1993 reached him through *Jeune Afrique*, he has proved neither malice on the part of anyone in the WHO nor actual injury. The forwarding of correspondence about the complainant to one or more African governments in 1994 may have been a questionable procedure. But it may be set down to a wish to let the electors have full information about one of the candidates. Whether the communication of such information was deliberate or not, there are in any event no grounds for inferring that the termination of the complainant's appointment rested on anything but his professional shortcomings and the WHO's requirements. No plot is proved.

5. The complainant argues that he needed treatment for diabetes. Since he is not saying that he was too ill to work, the treatment cannot in any event warrant extending his appointment: see Judgment 1494 (*in re Mossu*) under 5 and 6. What he seems to be contending is that the real reason for termination was his frequent absences for the purposes of the treatment and that the termination was wrongful on that account. But again his plea fails on the evidence. His ailments had nothing to do with the shortcomings that the Organization found in his performance. It is not even plausible, let alone proved, that the state of his health or the treatment were the cause.

6. (a) The complainant offers several pleas in rebuttal of the assessment of his performance.

It is true that he got a fairly good report in June 1993. But that did not preclude a less good one based on

information that the WHO came by later. He was not working under tight and constant supervision by WHO officers but was on secondment to the University of Bangui as director of studies. So there was neither inconsistency nor bad faith in the WHO's relying on information that it got from the local authorities after the writing of the report of June 1993.

Though the WHO got no appraisal of his work from the management, faculty or students of the University, that was no fatal flaw that prevented it from forming an opinion of him. And though it was the views of the Government of the Central African Republic that prompted the termination, there is no reason to doubt that they reflected the truth and the views of the health ministry.

(b) There were in fact many charges against the complainant. The Central African Republic was the third country to seek his recall on the grounds of unsatisfactory performance or conduct; the reports on his work in Bangui in 1990-91 and 1991-92 were poor; he had had written warnings from the Regional Director; and the Government of the Central African Republic based its request on a detailed report.

The complainant has rejected all the charges against him. But there is no need to go over all the allegations on which the WHO founded its decision. The Tribunal is satisfied on the evidence, in particular the reports of the regional and headquarters Boards of Appeal, that the Director-General acted on the strength of reliable material and made proper use of his discretion in concluding that the complainant's performance was below par and that the Organization's interests required termination. After three unsuccessful postings in African countries there was plainly nothing wrongful in the WHO's ending the threat to its interests in that way.

(c) An appointment may ordinarily be terminated for unsatisfactory performance only if the organisation has issued a warning to no avail. One example of such a requirement is WHO Staff Rule 1070.2. But there is no need for the warning to point out the danger of dismissal or for the shortcomings that prompted it to be the same as those that may appear later: see Judgment 1546 (*in re Randriamanantenasoa*) under 18.

The WHO did issue warnings to the complainant and dismissed him only when they had proved of no avail.

7. Since his main claims fail, so must his claims to damages and 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 30 January 1997.

(Signed)

William Douglas
Michel Gentot
Egli
A.B. Gardner