

EIGHTY-THIRD SESSION

In re Ciaffei

Judgment 1638

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Laura Ciaffei against the World Health Organization (WHO) on 23 August 1996 and corrected on 1 October 1996, the WHO's reply of 24 January 1997, the complainant's rejoinder of 17 March and the Organization's surrejoinder of 17 April 1997;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, an Italian who was born in 1939, joined the staff of the World Health Organization on 21 March 1983 under a short-term appointment. She had it renewed several times. On 19 December 1984 she was granted a fixed-term appointment for one year. She continued to have the status of a fixed-term employee until 28 February 1994, when she took early retirement.

By a letter of 24 February 1994, which the Organization says it did not get until 7 February 1995, the complainant asked what her status was in the Staff Health Insurance plan. By a letter dated 9 February 1995 an officer of the Insurance plan told her that she would not have coverage after retirement since she had been a participant for only nine years and two months, the period of her fixed-term appointments, and the minimum period required was ten years.

By letters of 21 February 1995 and 8 January 1996, to which she appended a certificate from the Personnel Office of the United Nations, the complainant asked that by analogy with the United Nations Joint Staff Pension Fund the reckoning of her years of contribution to the Staff Health Insurance plan should include the period she had spent in the employ of the United Nations from 19 January 1981 to 30 October 1982. The Organization refused that request in letters of 1 March 1995 and 7 February 1996 on the grounds that there had been too large a lapse of time between her employment with the United Nations and her appointment at the WHO. On 15 May 1996 the headquarters Surveillance Committee rejected an appeal she had filed on 5 April. That is the decision she is impugning.

B. The complainant contends that the Surveillance Committee ought to have counted the period of her short-term contracts, since that was the only sort of appointment that the WHO could afford to give her at the time. She says that the Organization's asking her to supply evidence of her employment by the United Nations shows its bad faith since the details were already in her personnel file. The difficulty she had in obtaining a certificate from the United Nations accounts for the lapse of one year between her two applications for review of the decision of 9 February 1995.

The complainant seeks reinstatement in the "United Nations Joint Sickness Insurance Fund" or, failing that, the refund of all her health insurance contributions since 1981. She claims 5,000 Swiss francs in "legal and medical costs" incurred since leaving the WHO.

C. In its reply the WHO contends that the complaint is irreceivable on the grounds that the complainant has failed to exhaust her internal remedies. The Surveillance Committee's decision was an administrative one and not final. Article 550 of the rules of the Staff Health Insurance plan afford the possibility of appeal against that decision to the Director-General within sixty days of receiving it. The complainant failed to file any such appeal.

In subsidiary argument the Organization contends that the complaint is devoid of merit. Article 60 of those rules says that someone who wants to remain a participant after retirement must have been contributing for at least ten years as a staff member holding an appointment of one year or more. That clearly precludes taking account of short-term contracts. The period in which the complainant was a participant in the health insurance scheme of the United Nations cannot count because Article 70 of the WHO's Staff Health Insurance rules requires that termination of employment in another organisation should coincide with appointment by the WHO. The Organization says that the complainant is not entitled to claim from the WHO contributions paid while in the employ of the United Nations. Nor may she claim reimbursement of her WHO contributions because there is no provision for that in the rules, and in any event the contributions afforded her actual coverage. Nor is she entitled to costs.

D. In her rejoinder the complainant contends that other employees of the WHO so harassed her that she had to take early retirement. She says that the Administration customarily allows staff to continue to participate in the Staff Health Insurance plan if they pay up any missing months of contributions. She says that there is no information available about sickness insurance. The Surveillance Committee only briefly discussed her case and thereby denied her "right to health". Article 550 of the rules allows but does not require her to appeal to the Director-General. She presses her claim to the repayment of her contributions, should her main claim be disallowed, on the grounds that she did not "make use" of them and they therefore remain "her property".

E. In its surrejoinder the WHO presses its objections to receivability on the grounds of the complainant's failure to exhaust the internal means of redress. She has, it says, failed to afford any evidence of different treatment in like cases, of harassment by other staff or of cavalier handling of her case by the Surveillance Committee. It points out that she accepted the terms of her short-term contracts and that it is precisely because the period of such contracts does not confer entitlement to coverage after retirement that the contributions are lower.

CONSIDERATIONS

1. The complainant joined the staff of the World Health Organization on 21 March 1983 under a short-term appointment. On 19 December 1984 she obtained a fixed-term appointment for one year and she had it renewed several times to 31 August 1992. She then applied for leave without pay, although she kept her status of fixed-term employee until 28 February 1994, when she took early retirement.
2. She says that she also worked for the United Nations, in Geneva, from 19 January 1981 until 30 October 1982.
3. In a letter of 24 February 1994 she asked the WHO to say what her status in the Staff Health Insurance plan would be after she left. The Organization told her in a reply of 9 February 1995 that to remain a participant after retirement a staff member must have been a participant for at least ten years and that she did not fulfil that requirement. In a letter of 21 February 1995 she asked the Organization to reckon the period of her participation from 1 February 1981, the date of her first contribution to the United Nations Joint Staff Pension Fund. On 1 March 1995 the Organization pointed out that there were rules for reckoning the period of participation and it confirmed that, not having the ten years required, she would lose coverage on retirement.
4. On 8 January 1996 she asked the Organization to add to the period of her service the time during which she had been working for the United Nations. The Organization rejected her request in a letter of 7 February 1996.
5. On 5 April she submitted to the headquarters Surveillance Committee an appeal against the decision of 7 February 1996. On 15 May the secretary of the Committee told her that it had rejected her appeal.
6. The complainant is impugning the Committee's decision of 15 May 1996 and seeks: (a) her reinstatement in the "United Nations Joint Sickness Insurance Fund"; (b) failing that, the refund of all her health insurance contributions since 1981; and (c) an award of 5,000 Swiss francs in "legal and medical costs" incurred since leaving the WHO.

7. In its reply the Organization submits that the complaint is irreceivable and in any event devoid of merit.

8. Article 550 of the rules of the Staff Health Insurance plan says that the decisions of the headquarters Surveillance Committee are subject to appeal to the Director-General, whose decision shall be final. Moreover, Article VII, paragraph 1, of the Tribunal's Statute says that "A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations".

9. In this case the Surveillance Committee's decision was not "final" since appeal still lay to the Director-General. The complainant filed no such appeal. Her complaint is therefore irreceivable under Article VII(1) of the Tribunal's Statute.

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. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

(Signed)

**William Douglas
Michel Gentot
Julio Barberis
A.B. Gardner**