

TWENTY-EIGHTH ORDINARY SESSION

In re SMITH

Judgment No. 189

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Horace Arthur Smith on 4 December 1970, the Organisation's reply of 15 January 1971, the complainant's rejoinder of 19 March 1971 and the Organisation's letter of 7 April 1971;

Considering the letter communicated on 9 July 1971 to the complainant by the Chief of Personnel of the WHO, the complainant's comments of 21 March 1972 and the Organisation's reply of 13 April 1972;

Considering Article II's paragraph 5, of the Statute of the Tribunal and WHO Staff Rule 670.3;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant was a WHO staff member whose contract of appointment was due to expire on 31 March 1970. He accordingly underwent a terminal medical examination on 10 March 1970. He was found to have full working capacity. The next day he fell ill and sent the Staff Physician a medical certificate attesting his incapacity for work until 23 March. On 26 March he submitted a second medical certificate attesting his continued incapacity for work for an indeterminate period.

B. On Thursday, 26 March 1970, the WHO Staff Physician instructed the nurse of the Medical Service to visit the complainant at home. Having rung the bell without receiving any reply, she left in his letterbox on the ground floor a note asking him to get in touch with her. The complainant maintains that when she called he was confined to bed and under sedation. He was also wearing ear-plugs. He claims that he suffered from headaches and dizzy spells (due, he alleges, to a service-incurred accident dating back to 1968) which made it necessary for him thus to go to bed when he had an attack, on his doctor's orders. The complainant adds that he had to rest in this way every day for several months after his attack of March 1970. He further maintains that on the day of the nurse's visit he had put a notice on the front door asking visitors not to disturb him, because he was ill. Since he lived alone with his two children, it was not until that evening on her return from work that his daughter discovered the nurse's note. The following days were public holidays (from Good Friday to Easter Monday). His daughter was therefore unable to telephone the nurse before Tuesday, 31 March 1970, the very day on which his appointment terminated. On 3 April the nurse again went to the complainant's home, but again got no reply. A few days later the Staff Physician approached Mr. Smith's own doctor, who told him that the complainant had not kept an appointment on 7 April and that he was therefore unable to give any information on the complainant's state of health. On the same day the complainant's daughter telephoned the Staff Physician to tell him that her father was ill and not allowed to get in touch with anyone.

C. On 14 April 1970 the Chief of Personnel notified the complainant by letter that since all attempts to reach him had failed the only period which could be treated as sickness leave was 11 to 23 March 1970 and that the working days between 24 and 31 March would be debited to his accrued annual leave. In the absence of any news from him by Friday, 17 April, the Organisation would regard the matter as closed. On 15 April the complainant replied contesting the points made by the Chief of Personnel and informing him that his lawyer would be in touch with the Organisation. Following an exchange of correspondence between the lawyer and the Chief of Personnel it was understood that the complainant would report to the WHO Medical Service on 8 May 1970. The complainant then dismissed his lawyer and himself assumed the defence of his claim. He maintains that his lawyer had mistakenly believed - although he could not be blamed for that - that the case was not urgent. This, he claims, is why he did not report to the Medical Service for examination until 14 May. On 18 May 1970 the Chief of Personnel informed him that the Staff Physician was unable to certify that the period from 24 to 31 March was sickness leave and confirmed that the working days include in that period should be debited to his accrued annual leave. In the same letter the Chief of Personnel rejected the complainant's claim for full salary from 1 April to 17 May and half salary

from that date until the end of his illness, on the grounds that he had ceased to be a WHO official on 31 March 1970.

D. The complainant appealed against this decision to the Board of Inquiry and Appeal. To avoid further trouble the Administration offered to settle the dispute amicably by treating the four days in question as special leave with pay and paying him the equivalent of four days' leave. The complainant replied that the matter was one of principle and not of money and that he would agree only if the Administration admitted that he had been on sickness leave during the four days. The Administration refused and the case continued. The Board noted that under Staff Rule 670.3:

"In any case of illness the staff member shall submit such periodic reports on his condition as the Staff Physician shall require and shall be examined by the Staff Physician if the latter so decides." A nurse representing the Medical Service had twice tried to visit the complainant, but to no avail, and as he had no telephone she had twice left a written note in his letterbox. The Board held accordingly that the Medical Service and Administration had done what they could between 26 March and 8 May 1970 to arrange for the medical examination provided for by Staff Rule 670.3. The complainant for his part had showed little inclination to get in touch himself with the Medical Service and for this reason and because of the other circumstances of the case the complainant was held not to have done what he could to meet the requirements of Staff Rule 670.3. The Board recommended the Director-General to uphold his decision, and the Director-General informed the complainant on 2 October 1970 that he accepted this recommendation.

E. In his complaint to the Tribunal the complainant asks that the Director-General's decision of 2 October 1970 confirming the decision of 18 May 1970 should be quashed and prays the Tribunal that his absence from 24 to 31 March 1970 should be regarded as sickness leave within the terms of the relevant WHO Staff Rule, and that sums should be paid to him accordingly. In support of his claim he puts forward the following arguments. First, the Staff Physician had not asked him to undergo a medical examination; he simply instructed the nurse to pay him a visit. The complainant had not heard her ringing his doorbell and his daughter could not get in touch with her until immediately after the Easter holidays. During the whole of that period he was ill, as is attested by the medical certificate sent to the WHO Medical Service on 26 March. In any case no medical examination subsequent to 31 March 1970 could give any information on his state of health during the period in question. Finally, he denies that he did not do his utmost to co-operate with the Organisation during that period and afterwards. His lawyer's dilatoriness was to blame for the fact that he was not examined until 14 May. Besides, after 31 March 1970 he was no longer a WHO official and accordingly was not obliged thereafter to meet the requirements of WHO Staff Rules.

F. In its reply the Organisation points out that under Staff Rule 670.3 the Staff Physician acted within his authority in seeking to obtain information on the complainant's real state of health. It considers that his evasive attitude towards the Medical Service and the Staff Physician and the fact that, while claiming total incapacity to work, he apparently remained without any medical attention for several weeks justified the Organisation's reasonable doubts as to the claim for sickness leave from 24 to 31 March 1970. Moreover, although the contract of appointment did terminate on 31 March 1970, the Organisation was justified in pursuing its investigations into the complainant's state of health after that date in view of its importance in determining the effect to be given to his claim.

G. The Organisation accordingly prays that the complaint be dismissed.

CONSIDERATIONS:

Staff Rule 670.3 requires that in any case of illness the staff member shall submit such periodic reports on his condition as the Staff Physician shall require and shall be examined by the Staff Physician if the latter so decides. Whether the complainant did all that was reasonable to comply with his obligations under this Rule is open to doubt. In these circumstances and in view of the very small amount at stake, the Organisation on 15 July 1970 offered to credit the complainant with four days' pay described as "special-leave". The complainant refused this offer on the ground that it was not described as "sick leave pay". The offer was a sensible and reasonable one and the making of it left the claim without substance unless it could be said that some question of principle was involved. In the opinion of the Tribunal there is no such question.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. 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.

Delivered in public sitting in Geneva on 15 May 1972.

M. Letourneur
André Grisel
Devlin

Bernard Spy