

EIGHTY-EIGHTH SESSION

In re Laperrière

Judgment 1930

The Administrative Tribunal,

Considering the complaint filed by Miss Nicole Laperrière against the World Health Organization (WHO) on 25 January 1999 and corrected on 4 March, the WHO's reply of 7 June, the complainant's rejoinder of 30 July and the Organization's surrejoinder of 13 October 1999;

Considering Articles II, paragraph 5, and VII 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, who is a French national and was born in 1949, joined the staff of the WHO on 1 April 1974 as an Administrative Assistant at grade G.6 in the Special Programme of Research, Development and Research Training in Human Reproduction (HRP). She was first employed under two-year contracts, then five-year contracts, the last of which was due to come to an end on 31 March 1999.

Following the decision to abolish posts in the Programme for financial reasons, the Administration informed the complainant by a memorandum of 23 April 1996 that her post would be abolished and that her appointment would be terminated on 31 July 1996, in accordance with Staff Rule 1050.1. She subsequently obtained leave without pay in place of termination and maintained her status as a member of the staff until 31 January 1997, the date on which the termination of her appointment took effect.

On 21 June 1996, she lodged an appeal with the headquarters Board of Appeal against the decision to terminate her appointment. By a memorandum of 25 September 1996 she withdrew her appeal.

On 21 October 1997, an information circular informed the staff of the WHO that, pursuant to Judgments 1624 to 1631 (*in re* Clements, Gray, Lewis, Ratcliffe, Sato, Schopper, Stoneburner and Wabitsch), delivered by the Tribunal on 10 July 1997, a reduction-in-force exercise was being undertaken from which former staff members of the Global Programme on AIDS (GPA) could benefit if they were in the same situation as the staff members whose rights had been recognised in the above judgments. The document also outlined the elements on which the size and extent of the above exercise would depend.

In a letter of 14 November 1997 to the Director of the Division of Personnel, the complainant, referring to the above circular, requested to benefit from the so-called "GPA" judgments. By a letter of 19 November 1997, the Chief of the Contract Administration and Information Unit replied that the provisions of the circular only applied to former GPA staff members.

On 23 March 1998 the complainant appealed to the headquarters Board of Appeal. In its report of 23 August 1998, the Board of Appeal concluded that the complainant was in the same factual situation as the staff members of the former GPA whose entitlement to the reduction-in-force exercise had been recognised by the Tribunal in the above judgments, since her post was not by its nature a "fixed-term" post. The Board recommended that the judgments be applied to her case. By a decision of 23 October 1998, which is the impugned decision, the Director-General rejected this recommendation.

B. Citing the circular of 21 October 1997, the complainant argues that Judgments 1624 to 1631 are applicable to her.

She contends that, according to the Tribunal's interpretation of the WHO Rules applied to GPA staff members, her post was not fixed-term. The termination of her appointment based on Staff Rule 1050.1, respecting the termination of a temporary appointment of a staff member engaged for a post of limited duration, was therefore unlawful.

She submits that during the reduction-in-force exercise, carried out following the above judgments, staff members in a like contractual situation to her own, before the abolition of her post, had been included in the competition. She says that this implies the existence of a "right" to the reduction-in-force exercise. She claims the same treatment.

The complainant requests the Tribunal: (1) to set aside the Director-General's decision of 23 October 1998; (2) to quash the decision to terminate her appointment on 31 July 1996 and order her reinstatement in a post that is commensurate with her previous situation, or the application of the reduction-in-force exercise which was applicable at the time of the facts; (3) to grant her redress for all the losses suffered, including "salary, language allowance, merit increments, leave, pension fund, health insurance fund, etc.", since 1 August 1996, subject to the deduction of her earnings during that period, plus interest of 8 per cent per annum; and (4) to grant her 2,000 Swiss francs in costs.

C. The Organization contests the receivability of the complaint. It argues that, if the complainant intended to challenge the termination of her appointment, she should have appealed within sixty days of the receipt of her notification thereof, that is by 24 June 1996 at the latest, in accordance with Staff Rule 1230.8.3. She only lodged her internal appeal on 23 March 1998. The complainant was therefore time-barred and her complaint is irreceivable. The WHO adds that she also withdrew an appeal filed earlier challenging the termination of her appointment.

The Organization explains that it decided in accordance with the Manual that the post occupied by the complainant was fixed-term and that its abolition did not therefore require the application of a reduction-in-force exercise. If the complainant intended to challenge this position, nothing prevented her from pursuing her claims. But she did not do so.

With regard to the circular of 21 October 1997, the Organization explains that it clearly only intended to extend the application of the GPA judgments to former GPA staff members, provided they fulfilled the necessary requirements, and not to all the members or former members of the staff of the WHO. For this reason, only former GPA staff members received a communication informing them that they were free to submit an application to this effect. The complainant was in an entirely different situation. She was not assigned to the GPA and the decision to terminate her appointment had not yet been taken. None of the considerations which could justify the application of the GPA judgments to former staff members of that Programme is, therefore, applicable in the present case. If the complainant considered that she was in a like situation of fact and of law to a GPA complainant, nothing prevented her from filing an application to intervene. But she did not do so.

The WHO adds that in Judgment 1727 (*in re* Curina), delivered on 29 January 1998, and therefore later than the GPA judgments, the Tribunal dismissed a complaint filed by a staff member whose situation was identical in all major respects to that of the complainant in the present case. In both cases, the choice of the post to be abolished from among other posts of the same grade and nature was based on the quality of the performance of the staff members in those posts. ⁽¹⁾ In Judgment 1727, the Tribunal found that the decision to abolish the post of the staff member concerned and to terminate her appointment without applying the reduction-in-force exercise was not flawed, in view of the limited duration of the post.

Finally, the WHO recalls the Tribunal's ruling in the GPA judgments that the decision to terminate the appointments of GPA staff members was invalidated by the absence of a specific decision to abolish each post in question. In the present case, a specific decision was indeed taken to abolish the post occupied by the complainant.

D. In her rejoinder the complainant indicates that she does not contest the termination of her appointment, as she had no choice but to accept the interpretation then given to the Staff Rules. However, she calls for the new interpretation of the concept "fixed-term" to be applied to her in an equitable manner. In this respect, she contends that the Tribunal's definition of the "concept" of the duration of posts has "quashed and

invalidated" all the Administration's previous acts.

She does not deny that the Organization did not undertake to extend the application of the GPA judgments to other staff members. Nevertheless she "calls on it to do so out of a concern for equity between the staff members of the same Organization, irrespective of the unit in which they work".

She argues that her situation was totally different from that of the staff member whose complaint was dismissed in Judgment 1727.

She refutes the "allegations made slyly in the form of annexes" in notes which she says have no legal value.

The complainant makes a new claim for compensation for moral injury in view of the annexes produced by the Organization, but withdraws her claim for costs.

E. In its surrejoinder the WHO rebuts the complainant's statement that the Tribunal's definition of the "concept" of the duration of posts has quashed and invalidated all the Organization's previous acts. It adds that the GPA judgments had the effect of quashing the decisions detrimental to GPA staff members, based on the evidence produced by them and their pleas. They were not generally applicable to all similar cases.

The WHO denies making allegations against the complainant. The facts of the case would not have been complete if it had not explained the reasons which led to the abolition of the post which she occupied.

CONSIDERATIONS

1. The complainant entered the staff of the WHO on 1 April 1974 and was employed under successive contracts, the last of which was due to come to an end on 31 March 1999. In 1995, the Special Programme of Research, Development and Research Training in Human Reproduction (HRP), where she was employed, experienced financial restrictions and it was decided to abolish several posts, including that of statistical assistant which she occupied in the Statistics and Data Processing Unit. The complainant's post was abolished as of 1 August 1996 and her appointment was terminated as of 31 July 1996. The Administration subsequently converted the termination of her appointment into leave without pay, allowing the complainant to retain her status as a staff member until 31 January 1997.

2. On 21 June 1996, the complainant lodged an internal appeal with the headquarters Board of Appeal against the decision to terminate her appointment. However, on 25 September 1996, after receiving the Organization's reply, she informed the secretary of the Board of Appeal that she had "decided to withdraw [her] appeal for reasons and considerations unrelated to the merits of the case".

3. On 10 July 1997, the Tribunal delivered Judgments 1624 to 1631, in which it ruled that the posts of staff members of the WHO's Global Programme on AIDS (GPA) had been abolished unlawfully. The Organization subsequently issued an information circular, dated 21 October 1997, in which it informed the staff that a reduction-in-force exercise would be conducted and that "former GPA staff who consider that they have the same claim and are in the same fact situation as a complainant remain free to make a claim to the Director of Personnel, stating the full particulars of their claim, including its factual basis, and the remedy requested". The circular added that it was "essential that any fully justified written claims from former GPA staff be received by 21 November 1997".

4. Considering that she was in the same situation as the former GPA staff members whose posts had been abolished, on 14 November 1997 the complainant requested the application in her case of the provisions of the above circular; she sought the setting aside of the termination of her appointment, full compensation for her loss of earnings and a post commensurate with her previous situation, taking into account her experience and qualifications.

The Chief of the Contract Administration and Information Unit replied on 19 November 1997 that, since she had never been a member of the staff of the GPA, she could not benefit from the Tribunal's judgments, nor from the circular of 21 October. The complainant lodged an appeal with the headquarters Board of Appeal against this decision. The Board of Appeal, in a report dated 23 August 1998, recommended that the Director-General accede to her claims. The Board considered that the post occupied by the complainant continuously for over twenty years, without any specified duration, should not be deemed a "fixed-term"

post, and that the complainant was, therefore, in the same factual situation as the former GPA staff members, whose right to a reduction-in-force exercise had been recognised by the Tribunal.

5. In a decision of 23 October 1998, the Director-General of the WHO refused to accept this recommendation. It is this decision which is being referred to the Tribunal for review. The complainant presses the arguments, which she put to the headquarters Board of Appeal, in support of her claims for the quashing of the decision terminating her appointment, her reinstatement or the application of the reduction-in-force exercise, and the compensation of the losses which she has suffered. She contends that, out of a concern for equity, the WHO should apply to her the favourable rules developed for GPA staff, since there are no grounds for maintaining that her contracts of appointment were fixed-term contracts. She therefore says that she was in a like legal situation to the former GPA staff members, whose right to benefit from a reduction-in-force exercise was recognised by the Tribunal.

6. On the issue of whether the decision to terminate the complainant's appointment as of 31 July 1996 was lawful, the Tribunal finds certain contradictions in the complainant's pleas. While in her initial submissions the complainant explicitly requested the quashing of this decision, she states in her rejoinder that she "does not contest the termination of her appointment", while at the same time adding that she was "a victim of her own weakness" for accepting "at face value the Administration's statements concerning her rights".

On this point, it must be recalled that the complainant withdrew the appeal which she had filed against the decision to terminate her appointment. She is now time-barred from challenging this decision, even if she should wish to do so. Moreover, she does not establish that she accepted the termination of her appointment under the influence of constraint, inadmissible pressure or false information.

7. Although the complainant cannot, therefore, challenge the decision to terminate her appointment, she may challenge the validity of the decision to refuse the application in her case of the provisions of the circular of 21 October 1997, by which the Administration, as an *ex gratia* measure and out of a concern for equity, undertook to re-examine the situation of former GPA staff members who were in the same situation as the officials whose claims had been recognised by the Tribunal in Judgments 1624 to 1631. However, the provisions of the above circular were clearly reserved for GPA staff members whose posts had been abolished and did not concern staff members in other programmes administered by the WHO, irrespective of the similarities of their situation. The Organization had not undertaken by any statement or act to extend the scope of the measures adopted for GPA staff to other members of the staff, or to re-examine earlier decisions affecting them in the light of the circular of 21 October 1997. It was not, therefore, under any obligation in law to re-examine the situation of the complainant, who was not covered by the above circular and who was, moreover, in a different situation in law and in fact to the staff members whose claims the Tribunal had recognised in its judgments of 10 July 1997, and whose situation the WHO had undertaken to re-examine. Any new fact deriving from these judgments was not such as to require the reopening of the cases of all staff members whose posts had been abolished, nor to confer new rights upon them.

8. The complainant takes the Organization to task for having annexed to its reply certain documents, which are unrelated to the case. These documents, which are not necessary to the outcome of the present case, have not been disclosed and are not to be divulged. Their submission, which was moreover of no avail, does not give rise to any prejudice for which the complainant would be entitled to seek redress.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot

**Jean-François Egli
Seydou Ba**

Catherine Comtet

1. On this point, the WHO provides a series of documents as annexes..

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