

**NINETY-SEVENTH SESSION**

**Judgment No. 2348**

The Administrative Tribunal,

Considering the complaint filed by Miss E. T. against the Pan American Health Organization (PAHO) on 25 April 2003 and corrected on 31 May, PAHO's reply of 29 August, the complainant's rejoinder of 9 October, and the Organization's surrejoinder of 15 December 2003;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Peruvian national born in 1955, first worked for PAHO between 1981 and 1988. She rejoined the service of the Organization on 2 January 2001 as a G.4 Office Assistant under a two-year fixed-term contract in the Essential Drugs and Technology Unit. Her contract was subject to the terms of Staff Rule 420.4, which provides for a period of probation of at least one year; this period can be extended up to two years, if necessary, for an adequate evaluation to be made of the staff member's performance.

On 20 July 2001 the complainant's supervisor sent her a Performance Planning and Evaluation Form evaluating her performance over her first six months of service; her overall performance was rated "not satisfactory". In a covering memorandum her supervisor expressed regret that the complainant had chosen not to discuss her performance when given the opportunity to do so earlier that month and added that she had been informed officially of the complainant's request to transfer to another office. Disagreeing with the evaluation, the complainant accused her supervisor of having "abused [her] mentally and physically". Her supervisor denied these allegations in a memorandum dated 3 August 2001.

The complainant was transferred to the Publications Unit, as a Publications Assistant, on 1 August 2001; she was subject to a complete probationary period of one year. She was to coordinate the "editorial" side of the "Pan American Journal of Public Health" and her colleague coordinated the "peer review" side. The skills necessary to perform either job are the same. One month after she had been transferred to the Publications Unit the complainant was reassigned to work on the "peer review" side when her colleague went on maternity leave; a temporary employee was hired to take over the "editorial" side. When her colleague returned the complainant was shifted back to the "editorial" side. The complainant was informed by her supervisor in January 2002 that she had shown signs of an inability to keep up with her duties and she was told that she would need to improve her shortcomings. One of her colleagues even wrote up detailed, step-by-step instructions for the complainant on "what she needed to do, when, and how to do it.". Despite the help given to her, the complainant had "considerable difficulty" in keeping up with the daily work.

On 15 March 2002, in accordance with Staff Rule 540, the Department of Personnel sent a memorandum to the complainant's supervisor, requesting the latter to make a recommendation concerning confirmation of the complainant's appointment at the end of her probationary period. In the performance evaluation of her first year in the Publications Unit, her supervisor encouraged her to find a "professional niche" that was better suited to her skills and aptitudes. However, rather than proposing that the complainant's appointment not be confirmed, she recommended that the probationary period be extended an additional three months and she relieved the complainant of some duties. No improvement having been seen at the end of the three-month period, her probationary period was extended for an additional three months, that is, until the end of her contract. By a letter of 27 November 2002 the Chief of Personnel informed the complainant that her appointment would not be confirmed and that her last day of work would be 31 December 2002.

The complainant appealed against this decision to the Director of PAHO on 19 December 2002. The latter's decision in such matters is final. Subsequent to her appeal her contract was extended for one month, that is, until 31 January 2003. In a letter to the complainant's counsel dated 31 January the Director provided his review of the case. He noted that the complainant's performance had been assessed as unsatisfactory in two different Units by three different supervisors and that there had been no irregularities during her probationary period. Consequently, he was rejecting her appeal and her separation from service would take effect as of that same day. That is the impugned decision.

B. The complainant says that during her previous employment with the Organization her performance evaluations "ranged from good to excellent". She argues that her "good faith expectation" of receiving a fair probationary period in her new employment with PAHO had been betrayed. Her first supervisor abused and harassed her, so that she had to seek a transfer to another post and begin her probation period again. She was placed on a post where she spent nearly half of her probationary period doing the work of a different post. The Organization had hired a temporary employee to cover her post, but, she argues, it would have been more appropriate to allow her to stay in her own post and have the temporary employee cover the post of her colleague on leave. She was given the task of putting the Journal on the website without sufficient training and despite the fact that it was not part of her job description.

She contends that the correct performance appraisal process was not followed. In normal circumstances she should have met with her supervisor at least three times to set objectives, discuss her progress, and then be evaluated at the end. However, all she had was a short meeting at the end of the appraisal period when it was already too late to correct any shortcomings. Furthermore, the deficiencies found were in areas for which she should not have been judged, i.e. for her work while covering her colleague's post and for putting the Journal on the website. She says that the net effect of all these irregularities is a breach of good faith by the Organization, and a violation of certain staff rules.

She claims seven years' salary in compensation and 50,000 United States dollars in moral damages. She also claims legal costs.

C. In its reply the Organization states first that the complainant's performance when she was previously employed by PAHO is irrelevant to the complaint. It submits that the complainant has tried to paint herself as a victim of unfair treatment, but nothing could be further from the truth. The reality is that she was unable to perform the work satisfactorily in either of the two posts she was given. In view of her prior work experience at PAHO, the Organization did all it could to accommodate her and help her to succeed. It points out that it has a right and a duty to expect satisfactory and competent performance from its staff, and that the Tribunal has long held that an organisation has wide discretion to dismiss a probationer, provided that the decision was properly taken. It states that it is evident from her evaluations that the complainant was well-liked by her colleagues, which is presumably why she received so much support throughout her probationary period.

The Organization points out that all appointments are subject to a probationary period, the purpose of which is to ensure that the staff member is able to fulfil the requirements of the job. It is not just a formality, but a period of time in which the staff member must demonstrate his or her ability to execute the functions of the post. The complainant was given several opportunities to prove herself, but she "consistently failed to perform the tasks assigned to her". It questions how the complainant could accuse her first supervisor of harassing her, while at the same time saying that this supervisor was "constantly" on duty travel. PAHO submits that when the complainant realised that she did not have the skills necessary for the first post to which she was assigned, she asked for a transfer. During her first six months she was unable to master her new assignment, despite being given tremendous amounts of training. Her supervisors and her colleagues spent "countless hours" assisting and providing support to her, but to no avail.

The Organization submits that there has been no breach of the Staff Rules, either with regard to probation or to the staff evaluation system. It notes that the complainant has provided contradictory information as to whether she had met with her supervisors to discuss her work objectives and her progress. It submits that the two posts of Publications Assistant are nearly identical in terms of the skills needed to perform the work, and it provides the job descriptions for both posts.

D. In her rejoinder the complainant contends that she was not given proper guidance by her supervisors and her colleagues; they should have given her more guidance if they felt that she was not performing at the necessary

level. She claims that she was harassed by her colleagues thereby forcing her to make mistakes. As proof that she was able to perform her job she relies on the fact that the Journal came out on time during the entire period she worked in the Publications Unit.

Referring to the right to due process as one of the principal rights of staff members, she contends that she has been treated in a manner that cannot, by any standard, be considered as reasonable or acceptable. Even if there was a consensus by all those concerned that she should be reassigned within the Organization, no serious effort was made to do so. She considers that she is entitled to an award for damages not only as a matter of justice, but to prevent other cases of “institutional harassment”.

E. In its surrejoinder PAHO points out that much of the complainant’s rejoinder is devoted to making unsubstantiated allegations that “constitute hearsay”. It takes exception to “the baseless and injurious comments” that she has made about her former colleagues. It submits that they went out of their way to assist and support her. For example, meetings had been arranged for her with her supervisors, so that she might have as much guidance as possible.

It describes the performance evaluation process, and states that this was properly adhered to in the complainant’s case. The fact that she disagreed with the evaluation does not nullify the process itself. It submits that her probationary period was fair. It gave her every benefit of doubt and due process was respected. The Organization maintains that it did not act contrary to its rules by not confirming her appointment.

## CONSIDERATIONS

1. The complainant challenges the Director of PAHO’s decision of 31 January 2003 rejecting her appeal against the non-confirmation of her appointment at the end of the probationary period. She does not seek to be reinstated, but requests that the defendant be ordered to pay her the equivalent of seven years’ salary as well as 50,000 United States dollars for moral injury. After retracing her career in detail, noting that she had always obtained good performance ratings during her first period of employment with PAHO, from 1981 to 1988, and having cast blame on the successive supervisors she worked for after rejoining the Organization, she challenges the validity of the performance appraisal process and the evaluations given of her work. The defendant, on the other hand, contends that the complainant did not perform the tasks she was assigned satisfactorily, that her probationary period was extended several times in order to give her a chance to improve her performance, which she failed to do, and that the applicable rules were scrupulously applied.

2. It may be stated at the outset, as the defendant did, that the complainant’s performance between 1981 and 1988 is irrelevant to the outcome of this dispute, which concerns only her work in 2001 and 2002.

3. Regarding the appraisals made of her work, the complainant makes some extremely serious accusations, including one of harassment against her first supervisor, although her accusations are not backed up by any testimony, nor by any evidence in the submissions. It also appears from the evidence that, far from having shown prejudice against her, the persons in charge of the Publications Unit told her clearly where her shortcomings lay and gave her several opportunities to improve her performance and hence to have her contract renewed.

4. With regard to the performance appraisal process, the complainant is wrong in asserting that the Staff Rules were disregarded. The defendant was entitled to extend her probation beyond one year and the fact that she started a new probationary period when she was transferred to the Publications Unit was in accordance with those Rules. Furthermore, the complainant was regularly told what her objectives were and she was informed of and invited to discuss her successive performance evaluations. On several occasions, moreover, she was informed of her shortcomings and offered help to overcome them.

5. The Tribunal cannot review the defendant’s assessment of the quality of the complainant’s work except to a limited extent, since the Organization must be allowed the widest discretion in its appraisal of a staff member’s performance during probation (see Judgment 1817 and other consistent case law). Even though, in this case, the evidence shows that some of the tasks the complainant was asked to perform, especially when she had to replace one of her colleagues who was on maternity leave, were not suited to her qualifications, that does not mean to say that she can blame her shortcomings on the attitude of some of the Organization’s staff members towards her: her accusation of “institutional harassment” must at any event be dismissed.

6. Since all the complainant's pleas fail, the complaint must be rejected.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 21 May 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet