

THIRTY-THIRD ORDINARY SESSION

***In re* SANTONI**

Judgment No. 241

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health organization (WHO) drawn up by Mrs. Nelly Santoni on 28 February 1974 and brought into conformity with the Rules of Court on 25 March 1974, and the Organization's reply of 26 June 1974;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 940, 950 and 1030.1;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. The complainant was appointed by the WHO as an office clerk in the International Agency for Research on Cancer at Lyons for six months, from 4 March to 3 September 1968. On the expiry of that appointment she received a two-year appointment on 4 September 1968 as an operator of duplicating machines, to expire on 30 September 1970. That appointment was extended for two years to 30 September 1972 and then for a further year to 30 September 1973. During that period the complainant was transferred to employment as a telephone operator on 1 September 1972 and then back to her original post on 1 April 1973. In May 1973 the Agency informed the complainant that it intended to allow her appointment to lapse on the scheduled date of 30 September. She made an informal appeal to the Chief of Administration and Finance. By letter of 24 May 1973 he upheld the decision. She then lodged a formal appeal with the Director of the Agency, who dismissed it by letter of 1 June 1973. On 19 June she appealed to the Headquarters Board of Inquiry and Appeal. The Board reported to the Director-General on 12 November 1973 recommending conversion of her one-year appointment into a two-year one. By letter of 4 December 1973 the Director-General informed her that he could not accept the board's recommendation and upheld the decision to allow her appointment to lapse on the scheduled date of 30 September 1973. That is the decision the complainant is now impugning before the Tribunal.

B. The complainant maintains that she had grounds for believing that her appointment would be extended since she had already received several extensions. She contends, moreover, that her functions did not match her qualifications and that those qualifications were not put to proper use and indeed were compromised for the future, to her consequent possible prejudice. Lastly, she maintains that the decision is based on erroneous grounds (unsatisfactory service).

C. In her claim for relief the complainant asks the Tribunal to quash the impugned decision and, should the Director-General of the WHO refuse to follow the recommendations of the Board of Inquiry and Appeal, award her compensation equivalent to two years' payment "corresponding to her final grade and step in the Organization".

D. In its reply the Organization states that although the complainant received a series of appointments from 1968 it is mistaken to infer that her last appointment would have been extended. Staff Rule 940, which relates to the termination of fixed-term appointments, expressly states that "in the absence of any offer and any acceptance of extension fixed-term appointments terminate automatically on the completion of the agreed period of service". The Organization points out that it did no more than apply an unequivocal staff rule and that the decision is not based on any error of law. In reply to the complainant's allegation that she was unsuitably employed and that her functions did not match her qualifications as a shorthand typist, the Organization observes that, as appears from the job description, the post for which she had applied and to which she had been appointed comprised the following functions: using and ensuring the daily maintenance of the duplicating machine, using the photocopying machine and maintaining the telephone service throughout the lunch hour. In reply to the complainant's contention that the refusal to renew her appointment was not based on valid grounds, the Organization refers to her annual reports,

which speak of mediocre performance and indicate that she received several reprimands and warnings about her work performance.

E. The Organization maintains that the Administration had perfectly lawful grounds for letting the complainant's appointment expire on the scheduled date without seeking to extend it, since her performance was not good enough to prompt the Agency to offer her a further extension. That decision was taken by a competent authority and does not infringe any rule of form or procedure, nor is it based on any error of fact or of law, nor tainted by abuse of authority; the Director-General did not draw mistaken conclusions from the dossier nor did he fail to take essential facts into account. The case does not reveal any of the flaws which the Tribunal might invoke to justify quashing the administrative decision taken by the Director-General in the exercise of his discretionary authority.

F. The Organization therefore prays that the Tribunal dismiss the complaint outright.

CONSIDERATIONS:

1. A decision not to extend a staff member's appointment is a matter of discretion. Hence the Tribunal may interfere with such a decision only if it was taken without authority, is irregular in form or tainted by procedural irregularities, or is based on a mistake of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if conclusions which are clearly false have been drawn from the documents in the dossier.

2. In the present case the question arises whether the impugned decision by the Director-General upholding the termination of the complainant's appointment is tainted with any irregularity which entitles the Tribunal to interfere.

The complainant does not question the Director-General's competence, nor allege the infringement of any formal or procedural rule.

She does maintain, however, that the impugned decision was taken on mistaken grounds in that it was based on incorrect facts. In concluding that the complainant had not been the victim of prejudice, that her case had been fully examined and that despite written and oral warnings her work performance had not improved the Director-General took account of facts which are not proved to be incorrect. It does not appear from the dossier that the complainant was the victim of any prejudice or that her case did not receive proper examination. Moreover, not only did she receive a written reprimand on 15 December 1971 and sign several annual reports criticising her lack of interest in her work, but she does not deny having received the warnings and held the conversation mentioned in the letter sent to her on 24 May 1973 by the International Agency for Research on Cancer.

The decision not to extend her appointment does not infringe any provision of the Staff Regulations or any term of her appointment. It is indeed in accordance with the provision in Staff Rule 940 that "Fixed-term appointments terminate automatically on the completion of the agreed period of service in the absence of any offer and acceptance of extension". Moreover, the complainant cannot properly maintain that she was never assigned to work which matched her abilities. In fact she was required to perform the duties specified in her contract of appointment and knowingly accepted by her.

It is not proved that the Director-General failed to take essential facts into consideration. In particular, far from overlooking the length of the complainant's service, the impugned decision actually makes express reference to her five years' service.

Nor is there any question of misuse of authority. On the contrary, there is no reason to suppose that in terminating the complainant's appointment the Director-General was actuated by motives foreign to the Organization's interests.

Lastly, in deciding to terminate the complainant's appointment no clearly false conclusions were drawn from the documents in the dossier. The complainant's annual reports may not be entirely unfavourable to her; and it is true that the Board of Inquiry and Appeal held that she had not been guided and encouraged with the required diligence. Nevertheless, in view of her immediate supervisors' criticisms, in taking the impugned decision the Director-General did not misuse his power to form an opinion from the documents in the dossier.

3. It appears from the foregoing that the Tribunal may not interfere with the decision. Hence the complainant's claim for replacement of her final contract by a two-year appointment and her alternative claim for compensation

are unfounded.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 October 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet