

The Administrative Tribunal,

Considering the complaint filed by Mr S. C. against the World Health Organization (WHO) on 4 October 2005, the WHO's reply of 5 January 2006, the complainant's rejoinder of 10 March and the Organization's surrejoinder of 11 April 2006;

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

Having examined the written submissions;

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

A. The complainant, a Djiboutian national born in 1956, worked for the WHO under short-term contracts between 1982 and 1986. As from 1990 he was employed by the Organization on an almost continuous basis, but still under short-term contracts. In July 2002 the Director-General decided that appropriate mechanisms should be established to review the contractual situation of "long-term short-term" (LTST) staff members and consider the possibility of a transition to fixed-term status. Since the complainant met the criteria to be considered as a LTST staff member, he was encouraged to apply for vacant fixed-term posts. Thus on 10 July 2003 he applied for the post of Clerk, grade G.5, in the Records, Mail and Security Unit.

By a letter of 11 November 2003 a Human Resources Officer informed the complainant that he had been selected for the post of Clerk and asked him to supply a copy of any educational certificates and diplomas obtained, together with originals for purposes of verification. The complainant accepted the post on 19 December 2003. Three days later the Human Resources Officer again asked him to provide the originals of the educational certificates listed on his personal history form as well as his birth certificate and passport. That request was reiterated in February and April 2004.

Several discrepancies were noted in the documents produced by the complainant, some of which were merely photocopies. Since his contract was due to expire on 5 May, the Administration offered him further temporary contracts, first until 30 June and then until 16 July 2004, to allow him time to supply the originals of the requested documents. In the meantime, it began the process of verifying the information he had already provided. By a letter of 8 July 2004 the Director of Human Resources Services notified the complainant that allegations of misconduct had been made against him in connection with the information provided on his personal history form, some of which "appeared to be false and/or supported by falsified documents". He asked the complainant to reply to these allegations within eight days. The complainant did so on 12 July. His short-term contract came to an end on 16 July.

By a letter of 11 August 2004 the Director of Human Resources Services informed the complainant that, following an investigation into the charges against him, it had been concluded that he had made false statements on his personal history form and had supplied falsified documents. He stated that had the complainant been a staff member, he would have faced dismissal for misconduct, or perhaps even summary dismissal for serious misconduct but that since his contract had expired on 16 July, no disciplinary measure could be imposed on him. However, his appointment to the post he had applied for would no longer be pursued and no further appointment with the Organization would be offered to him.

The complainant filed an appeal with the Headquarters Board of Appeal on 6 October 2004 contending that the decision to dismiss him was motivated by the desire to remove him and was not based on lawful grounds. The Board met on 4 May 2005 and recommended that the appeal be dismissed. It held that the complainant had demonstrated poor judgement in falsifying documents and considered that the action taken by the Administration was justified and the punishment proportionate. By a letter of 6 July 2005 the Director-General accepted the Board's recommendation and rejected the complainant's claims for redress. That is the impugned decision.

B. The complainant contends that the decision to terminate his contract on the grounds that he had falsified documents is a disproportionate disciplinary measure. He points out that the post he applied for did not require a diploma. Moreover, a number of mitigating circumstances, such as his exemplary service record for 19 years, were not taken into account. He considers that the offence itself was “low-level” or “extremely minor”, and submits that, according to the Tribunal’s case law, where a staff member did not intend to cause damage through his actions, he shall not be disproportionately penalised by them.

According to the complainant, the WHO did not carefully consider his contractual situation and thus breached its obligation to treat him with dignity. He was given no notice, nor any termination payment, and no attempts were made to come to a compromise regarding “the discrepancy between [his] situation in fact and in law”. He points out that his contract was terminated just at the moment when his contractual situation was about to be regularised, and that the diploma issue was raised suddenly. He therefore suggests that the WHO’s investigation may have been motivated by bias, prejudice and racial discrimination. He acknowledges that in presenting his diploma he made an error of judgement, but emphasises that this was driven by stress, mostly due to the lack of long-term employment prospects.

The complainant also alleges unequal treatment as he was one of the very few LTST staff members to be kept on “irregular contracts”. He contends that the Organization has been unjustly enriched, since it has not paid him the “compulsory long-term benefits” to which any staff member for over three months is “ordinarily entitled”. Lastly, he expresses the view that as a result of “ongoing discrimination and unequal treatment”, the Headquarters Board of Appeal failed to consider his plea carefully.

He requests an oral hearing in which to call witnesses. He claims reinstatement in a “permanent” post at a level the Tribunal deems appropriate, retroactive payment of all salary, benefits, adjustments and other emoluments, at grade G.5, backdated to the date of expiry of his last contract together with interest. He also seeks compensation for moral damages due to physical and psychological injury occasioned by the Organization’s failure to accord him a “permanent” contract throughout 19 years of service, including “compensation for pension entitlements otherwise accumulated and other accrued benefits”, in the amount of 200,000 Swiss francs. Lastly, he claims costs.

C. In its reply the WHO states that the complainant’s submission is a succession of false and unsubstantiated assertions, which demonstrate that the complainant has a clear tendency to misrepresent facts. It explains that the complainant’s appointment was not terminated but came to an end at the contractually agreed date of expiry. It rejects the complainant’s assertion that the issue of diplomas was raised as an excuse to discontinue his recruitment on a fixed-term appointment. Indeed, verification of diplomas is required by Staff Rule 440.1 when appointing a staff member. It acknowledges that, according to the vacancy notice for the G.5 post of Clerk, no university degree was required, but since the complainant stated on his personal history form that he had obtained university degrees, it had to verify his statement.

Concerning the alleged disproportionality of the disciplinary measure, the Organization contends that it has correctly applied the Staff Rules and Staff Regulations. It points out that the complainant was aware of the possible consequences of a false declaration since the personal history form he had submitted with his application for the post bore his signature under the following statement:

“I certify that the statements made by me on my Personal History Form are true, complete and correct. I understand that any false statement or required information withheld may provide grounds for the withdrawal of any offer of appointment or the cancellation of employment with the Organization.”

The WHO notes that the complainant admits that he does not have a diploma from the University of Toulouse Le Mirail in France, but stresses that on his personal history form the complainant stated the opposite. He also indicated therein that his date of birth was 27 January 1961 whereas he was born five years earlier. In its view the complainant’s false declarations and falsification of documents were aimed at misleading the Organization and defrauding the United Nations Joint Staff Pension Fund. Further to Staff Rule 110.8 the WHO submits that failure to meet the standards of conduct as expressed in the Staff Rules and Staff Regulations constitutes misconduct and may result in disciplinary measures being taken. A procedure for alleged misconduct was initiated and it was concluded on 11 August 2004 that the complainant had committed misconduct. However, since he was no longer a staff member, no disciplinary measure was taken against him so the issue of proportionality is consequently irrelevant. It adds that given the gravity of the offence the WHO was fully justified in concluding that the complainant had committed misconduct, in discontinuing his recruitment on a fixed-term appointment and in not

offering him any prospect of future employment within the Organization following the completion of his last short-term appointment.

In addition, the WHO draws attention to the fact that the falsification of diplomas was not an isolated minor offence and that the complainant had shown a “recurrent lack of integrity towards the Organization and outside authorities”. It asserts that he falsified an official document in order to obtain a visa for his nephew and as a result he received a written reprimand; he also submitted to the President of the Staff Association an altered version of the above-mentioned letter of 11 August 2004.

Rejecting the allegation of unequal treatment, the Organization reiterates that the complainant’s contractual situation was thoroughly reviewed. Thus, he was considered as a LTST staff member and was subsequently selected for a fixed-term appointment, which was discontinued because he was found guilty of misconduct. It rejects the complainant’s claim for a termination payment, explaining that in accordance with Staff Rule 1040 his short-term appointment came to an end at the contractually agreed date, i.e. 16 July 2004. It further expresses the view that the complainant’s unsubstantiated allegation of unequal treatment on the part of the Headquarters Board of Appeal should be rejected since the procedure for reviewing internal appeals had been followed by the Organization.

Referring to the Tribunal’s case law, it explains that since the employment contracts offered to the complainant complied with the Organization’s Staff Rules and Staff Regulations, the complainant’s accusation of unjust enrichment on its part must be rejected.

Lastly, it submits that the allegation of prejudice is not supported by any evidence. Indeed, the complainant’s departure from the WHO is related to his dishonest behaviour and is, therefore, entirely of his own making.

D. In his rejoinder the complainant contends that the non-renewal of his contract amounted to constructive dismissal prior to the full investigation of his case and maintains that that sanction was disproportionate to the minor nature of the offence. With regard to his plea of “physical injuries of psychological stress”, he asserts that he was under great stress because of the non-renewal of his contract and he produces a medical certificate in support of his contention.

E. In its surrejoinder the WHO maintains its position. It stresses that the Organization properly applied the disciplinary procedure as provided for under the statutory provisions. In particular, it notes that the complainant was informed of the charges against him and was given the opportunity to respond.

With regard to the medical certificate supplied by the complainant it submits that, in accordance with Staff Rule 730, a specific procedure has been established concerning compensation for service-incurred illness, and that since that procedure has not been followed, the complainant cannot rely on the medical certificate to prove a link between his work and his medical condition.

CONSIDERATIONS

1. The complainant has applied for oral proceedings to explain “through the calling of witnesses his claim, as disputed, in part, by the respondent organization”. He does not say what aspects of the claim require further explanation nor does he state why the same information cannot be set out in his written submissions. His application is therefore rejected.

2. The complainant worked at the WHO on a series of short-term contracts initially from 1982 to 1986 and then from 1990 on an almost continuous basis until his last contract came to an end on 16 July 2004.

3. In March 2003 the WHO confirmed that the complainant met the criteria of a “long-term short-term” (LTST) staff member and, as part of the contractual reform process, he should be eligible for fixed-term status if possible. On 10 July 2003 the complainant applied for a post of Clerk at grade G.5. As part of the application process, he completed a personal history form in which he provided, amongst other information, the following information that is relevant to this proceeding. First, he stated his date of birth to be 27 January 1961. Second, he claimed to have earned certain university diplomas from the University of Toulouse Le Mirail in France between 1984 and 1990.

4. In November 2003 the Organization informed the complainant that he had been selected for the post and that he was asked to submit copies of his educational certificates and to produce the originals of these plus his birth certificate, at his convenience, for verification purposes. In the latter part of December 2003, he was asked once again to submit the originals of his birth certificate, passport and educational certificates listed in his personal history form. The same request was repeated in February 2004. He was reminded again, in April, that he had not submitted the originals of his higher education diplomas.
5. The complainant's contract expired on 5 May, but it was extended until 30 June to provide him additional time to supply the original documents requested.
6. On 29 June the WHO informed the complainant that discrepancies had been observed on the documents he had submitted. During the course of further investigation, his contract was extended to 16 July 2004.
7. The University of Toulouse confirmed on 1 July 2004 that contrary to the complainant's assertion he had not been enrolled between 1985 and 1990 and could not have earned the diplomas listed.
8. By a letter dated 8 July 2004 the Organization formally informed the complainant of the results of its investigation. In particular, it noted that the date of birth listed was incorrect and that the university diplomas had allegedly been obtained while the complainant, according to the information provided on his personal history form, continued to reside in the Geneva area. It identified this conduct as not being in accordance with Article I of the Staff Regulations, and afforded him an opportunity to respond within eight days.
9. The complainant responded that he had been advised by "an individual in the Personnel Department" to alter his date of birth so that he could enhance his pension entitlements. As well, he claimed he had finished and earned the diplomas but he had given them to his brother so that his brother could study and live in France. For this reason, when he contacted the university to obtain copies of his diplomas, he was told that his name did not appear in their records whereas his brother's name did. However, he maintained that he was the one who actually attended the university. The Organization concluded that these explanations were not credible and the complainant did not counter the allegations of misconduct.
10. On 11 August 2004 the WHO informed the complainant that his recruitment to a fixed-term appointment would not be pursued and that no other appointment with the Organization would be offered to him in the future in view of his false declarations and falsified documents, which were deemed to constitute misconduct as defined in the Staff Rules and Staff Regulations. As the complainant's final contract had come to an end on 16 July 2004, the Organization stated that it could not impose disciplinary measures.
11. On 6 October 2004 the complainant notified the Organization of his intention to appeal the decision to the Headquarters Board of Appeal. At the request of the complainant, the Board considered the appeal *in camera* on the basis of written materials only. In its report of 16 May 2005 to the Director-General, the Board concluded that it "was not convinced with the arguments presented by the [complainant]. As for the proportionality of the punishment, the Board felt that the action taken by the Administration was justified." As a result, it recommended that the appeal be dismissed.
12. On 6 July 2005 the Director-General of the WHO accepted this recommendation and dismissed the appeal.
13. At the outset, it should be noted that although there are a number of facts in dispute between the parties, the complainant does not deny that he falsified the university diplomas. In apparent contradiction to his earlier explanation to the WHO that he had completed his diploma and had merely given the document to his brother, he states he only partially completed the programme. Other than the explanation noted earlier, the complainant made no further submissions in this proceeding regarding the incorrect date of birth.
14. The complainant advances a number of arguments, the primary ones being that the decision not to renew his contract constitutes, in effect, dismissal on the grounds of misconduct. He argues that his "dismissal" violates the principle of proportionality and fails to take into account his mitigating circumstances.
15. The WHO stresses that the complainant was not dismissed, his contract had expired. It takes the position that since no disciplinary action was or could have been taken in these circumstances, the question of proportionality is irrelevant. Further, given the serious nature of the complainant's misconduct, the defendant Organization submits that it was fully justified in discontinuing the recruitment for a fixed-term post and in

denying him any prospect of future employment.

16. With regard to the termination of the recruitment process, since the complainant's own statement of his qualifications could not be verified as required by the appointment procedure found in Staff Rule 440.1, the Tribunal finds that the Organization's action in this respect was clearly justified.

17. The Tribunal also finds that the complainant was not dismissed as such, since his contract had come to an end at the time the decision was made on 11 August 2004. The jurisprudence of the Tribunal establishes that it is within the discretionary authority of the executive head of an international organisation to decide whether to renew a short-term contract. In this case the discretionary power was properly exercised.

18. Throughout the process, the WHO acted in accordance with the Staff Rules and Staff Regulations relating to dismissal for misconduct. As required by Staff Rule 1130, the complainant was notified in writing of the charges made against him and was given the amount of time required by the Rule to reply. Furthermore, throughout the investigation process, the WHO continued to extend the complainant's contract.

19. Throughout his pleadings, the complainant characterises his conduct as a "one-off" lapse in judgement on the part of an otherwise exemplary staff member. It is in this context that he maintains that the falsification of the diplomas is not sufficiently serious to warrant dismissal. However, this characterisation fails to acknowledge the falsification of his date of birth in the personal history form and an earlier written reprimand in connection with the falsification of the date of validity on a document from the Federal Department of Foreign Affairs of Switzerland in order to enable his nephew to obtain a Swiss visa.

20. Misrepresentation and falsification of documents are serious matters that do not reflect the standard of integrity that is expected of staff members of international organisations. As the Tribunal has stated, "[c]ommon decency, good faith and honest dealing lie at the root of relations between employer and employee. Whoever ventures to ignore that does so at his own peril" (see Judgment 1764). In these circumstances, having regard to both the objective and subjective criteria it cannot be said that the measures taken by the Organization are out of all proportion to the complainant's misconduct.

21. Further, with regard to the complainant's assertion that the WHO failed to consider in mitigation the fact of his unblemished record of outstanding service for 19 years, it is evident from the letter of 11 August 2004 that his lengthy service to the Organization was in fact considered. Of greater consequence, however, is the fact that the earlier incident involving the falsification of the date of validity of a document from the Swiss authorities belies his factual assertion that this was a "one-off" incident. It is also worth noting that when confronted with the discrepancies instead of an acknowledgment of the wrongdoing, the complainant offered explanations that were wholly lacking in credibility. This also calls into question the complainant's submission that the falsification of the diplomas was a minor mistake in judgement.

22. The complainant also makes allegations of discrimination. Although care must always be taken when considering allegations of discrimination and personal prejudice having regard to the difficulties in proving such allegations, in the present case, the complainant has adduced no evidence to take these claims beyond the level of unsupported allegations.

23. With regard to the complainant's claim of unjust enrichment, as stated in Judgment 2097 "the existence of a valid contract between the parties, covering the very matters which are the subject of the claim, excludes any claim of unjust enrichment".

24. The complainant's submission that his treatment as a short-term staff member violates the principle of equal treatment also fails. As the Tribunal has held in the past, "the principle of equality of treatment is infringed when staff members in an identical or comparable position in fact and in law receive different treatment from the employer organisation" (see Judgment 2198).

25. Lastly, the complainant's submissions that he was unjustifiably denied pension rights and access to other social welfare benefits are equally without foundation. The evidence adduced indicates that he did have some pension entitlements since at least 1992. As well, the complainant stated by way of explanation that he changed his date of birth on his personal information form to increase his pension entitlements. As to the allegation of being deprived of other social welfare benefits in contravention of an agreement between the WHO and the Swiss Federal

Council, in the absence of any evidence or other analysis from the complainant, the Tribunal will not consider this submission.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet