

FORTIETH ORDINARY SESSION

***In re* DIABASANA**

Judgment No. 345

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Miaku-Nsiantima Diabasana on 22 June 1977 and brought into conformity with the Rules of Court on 17 August, the WHO's reply of 14 October and the complainant's rejoinder of 7 December 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 520(d), 530 and 975, and WHO Manual provisions VI.6.240 to 310;

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

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

A. From 21 August 1972 to 31 January 1973 the complainant held a temporary appointment as a clerk in the office of the WHO Representative in Kinshasa. He was then given a two-year appointment at grade KS.8 and on 1 February 1975 a further two-year extension.

B. On 28 January 1975 the WHO Representative in Kinshasa announced that the WHO was putting up for sale two second-hand motor cars, a Peugeot 404 and a Renault 4, and he invited offers. The complainant wanted to buy one of the cars but was told that according to instructions dated 8 January and given to the Representative by the Chief of Administration and Finance of the Regional Office no member of the WHO staff might do so. Four bids were received, one from a Mrs. Ngolé, one from a Mrs. Samba, one from a Mr. Mwango and one from a Dr. Kabamba. Mrs. Ngolé, who later turned out to be one of the complainant's two wives, made the best bid and the committee set up to consider the bids accepted it. The WHO therefore wrote on 7 March 1975 to tell her that she could have the car and ask her to pay the amount of her bid, 990 zaires, to the local WHO cash office not later than 11 March. Mrs. Ngolé did not turn up either on that date or afterwards and on 27 March the WHO decided to let Dr. Kabamba have the car. Although she had not acquired ownership Mrs. Ngolé was paid 200 zaires by a third party, a Mr. Elopika, for an option to repurchase the car, and the complainant himself gave Mr. Elopika a receipt for that sum. Having heard neither from Mrs. Ngolé nor from the complainant, on 15 April Mr. Elopika told the WHO what had happened and claimed the repayment of the sum.

C. The WHO thereupon decided to suspend the complainant in accordance with Staff Rule 530 and on 22 May 1975 the Regional Director decided to end his appointment in accordance with Staff Rules 975 and 520(d) and to pay him one month's salary. The complainant appealed to the Regional Board of Appeal against that decision. The Board acknowledged that the complainant had committed grave misconduct but recommended reinstating him at a lower grade. The Regional Director upheld his original decision and the complainant appealed to the headquarters Board of Inquiry and Appeal, which came to the view that the complainant's conduct "laid him open to sanction" but that the sanction imposed had been too severe. It recommended the Director-General to pay him compensation equivalent to one-half of his salary up to the normal date of expiry of his appointment. Having taken note of the Board's conclusions the Director-General took the view that the complainant's misconduct had warranted his dismissal. By letter of 3 June 1977 to the complainant, however, he proposed paying him, and did in fact later pay, further compensation amounting to three months' salary which, over and above the one month's salary already paid, brought the total compensation to four months' salary. The complainant declined that offer and lodged his appeal.

D. The Organization contends that the complainant was aware of the rule forbidding staff members to acquire goods put up for sale by the WHO and wilfully tried to get round it by having one of his wives make a bid in her own name. He thus broke the rule. By acting as go-between - in dealings with Mr. Elopika, for example - and by making use of his official position for that purpose the complainant, to say the least, went beyond the scope of his

duties and "showed an attitude not in keeping with what may be properly expected of an international official". Lastly, and in any event, it appears from the dossier that his conduct was undoubtedly such as to prove damaging to the WHO. The sanction imposed for his misconduct was proportionate to its gravity. It was imposed by the Director-General in the exercise of that discretionary authority which the Tribunal has consistently acknowledged that he has. The WHO therefore asks the Tribunal to dismiss the complaint outright.

CONSIDERATIONS:

At the beginning of 1975 the WHO put two motor cars up for sale, a Peugeot 404 and a Renault 4.

On 13 January 1975 the complainant, a WHO staff member stationed in Kinshasa, told his supervisor that he was interested in buying the Renault. The WHO issued instructions saying that on no account were the motor cars to be bought by any member of the staff and that no bid from the complainant could be considered. On 20 January a Mrs. Ngolé, who the complainant says is his "second wife", offered 990 zaires for the Peugeot 404. On 7 March the WHO Representative in Kinshasa accepted that bid and she was told to pay by 11 March.

No one came and on 27 March, over a fortnight after the deadline date, the WHO awarded the car to a Dr. Kabamba, as Mrs. Ngolé learnt on 29 March when she turned up at the WHO office after an absence from Kinshasa.

On 15 April a Mr. Elopika, a resident of Kinshasa, wrote asking the WHO Representative to get the complainant to pay back to him a sum of 200 zaires which he had paid him "to buy the Peugeot 404 put up for sale by the WHO office".

In the ensuing proceedings it was found that the complainant, on the strength of his being a "WHO official", had accepted an advance of 200 zaires from Mr. Elopika to buy the Peugeot which was to go to Mrs. Ngolé.

Accordingly, the Regional Director and then the Director-General, on the grounds that the complainant had been guilty of misconduct by becoming improperly involved in a private transaction, terminated his appointment, and the Director-General awarded him four months' salary in compensation.

It appears from the evidence in the dossier that as a WHO staff member the complainant did become involved in a somewhat dubious private transaction between Mrs. Ngolé and Mr. Elopika. He was thus guilty of misconduct warranting a disciplinary sanction. It is not for the Administrative Tribunal to consider the gravity of the sanction imposed on him unless it appears from the dossier that, in view of all the facts recorded therein, the sanction was disproportionate to the misconduct, which is not the case here.

The complaint cannot therefore be allowed.

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 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

