

FORTY-FIRST ORDINARY SESSION

In re CHEN

Judgment No. 356

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Yao-Kuei Chen on 21 October 1977, the WHO's reply of 23 November 1977, the complainant's rejoinder of 28 April 1978 and the WHO's surrejoinder of 14 July 1978;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, the WHO Staff Regulations, particularly Regulation 11.1, the WHO Staff Rules, particularly Rules 940, 1010, 1030.1 to 3, 1030.8(a), (c) and (d) and 1040.2, and the WHO Manual, particularly provision II.9.340;

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. On 10 August 1962 the complainant was given a two-year appointment at grade P.2 in the West Pacific Regional Office of the WHO (WPRO). On 1 September 1963 he was promoted to P.3. On 1 September 1964 his appointment was extended for two years, on 1 September 1966 for another two, on 1 September 1968 for five, on 1 April 1973 for two, and on 1 July 1975 for two further years expiring on 31 August 1977, a date later extended to 30 September 1977. The complainant worked in the WHO under the malaria eradication programme in the Republic of Korea, for two periods in Malaysia, and in Cambodia. On the expiry of his last fixed-term appointment his services terminated in accordance with Staff Rule 940, as he was informed on 17 June 1977 by the personnel office of the WPRO. The Regional Director confirmed that decision on 16 July 1977.

B. The substance of the complaint is that the complainant did not have his appointment extended after 15 years' service although he was only two years short of retirement age and his post was free until the end of 1977. He also says that for some time he had been doing P.2 work although his grade was P.3. Lastly, he objects to the fact that his last performance report was unsatisfactory whereas all the previous ones had been good. In his claims for relief he asks the Tribunal to order the withdrawal from his dossier of remarks written by Dr. C.T. Ch'en, acting Operational Officer of the malaria unit in the WPRO; reimbursement to him of the difference in salary between the P.2 and P.3 grades for January and February 1976; payment to him of three months' salary for the period from October to December 1977 inclusive; and calculation of his pension as if his services had continued to the end of 1977.

C. The Organization contends that the complaint is irreceivable on the grounds that the complainant failed to exhaust the internal means of redress as Article VII, paragraph 1, of the Statute of the Tribunal requires him to do. It therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The complainant was at the material time working for the Organization under a contract which expired on 31 August 1977. On 17 June 1977 he was advised that the contract would be extended to 30 September, but not beyond; on 16 July this decision was confirmed in writing by the Regional Director; on 9 August he appealed to the Regional Director to reconsider his decision and on 1 September this appeal was rejected. On 30 September the complainant wrote to the President of this Tribunal complaining about the decision and on 21 October he signed a formal complaint against the decision to "terminate my service".

The Organization objects to the complaint as irreceivable under Article VII of the Tribunal's Statute. Under the Staff Regulations the complainant had the right to appeal against the

Regional Director's decision to a Board of Inquiry and Appeal, which he did not exercise; and Article VII provides that "a complaint shall not be receivable unless ... the person concerned has exhausted such other means of resisting

it as are open to him under the applicable Staff Regulations". The complainant does not provide any answer to this objection and it is clear that no proceedings were taken before the Board. The complaint is therefore irreceivable.

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 13 November 1978.

M. Letourneur
André Grisel
Devlin

Roland Morellet