

FORTY-FIRST ORDINARY SESSION

In re SCHOFIELD

Judgment No. 361

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Dr. Francis Donal Schofield, on 19 December 1977, the WHO's reply of 29 March 1978, the complainant's communication of 30 May, the WHO's letter of 5 June in reply thereto, the complainant's rejoinder of 16 June, the WHO's surrejoinder of 11 August and its communication of 6 September 1978;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 35 and 37 of the WHO Constitution, the WHO Staff Regulations, particularly Regulations 1.1, 1.2, 1.3, 1.10, 4.2, 4.3 and 4.4, the WHO Staff Rules, particularly Rules 320.4, 410.1, 460.1, 460.2, 460.3, 465.1, 465.2, 465.3, 490.2, 520(c), 565.4 and 1030.8(b), and the WHO Manual, particularly provisions II.1.40 and 60, II.2.270, II.3.150, 170 and 180, II.5.75, and III.3.140-180, 340 and 490;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings for the hearing of witnesses (or the taking of written evidence under oath);

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

A. In November 1964 the WHO gave the complainant a two-year appointment at grade P.4 in Addis Ababa. On 1 December 1966 it extended his appointment to 30 November 1967 and on 16 October 1967 sent him to Nairobi. On 1 December 1967 it gave him a five-year appointment up to 30 November 1972. On 1 December 1969 it promoted him to grade P.5 and on 1 July 1971 gave him a career service appointment. On 19 September 1972 he applied for a P.5 post as medical officer and was appointed to that post on 15 November 1972, taking up his new duties on 1 April 1973.

B. In 1975 the WHO launched an Expanded Programme of Immunization (EPI) and in October 1975 appointed the complainant Senior Responsible Officer for that programme with the title of Associate Director of the Division of Strengthening of Health Services (SHS). He acted in that capacity until February 1977, mainly under Dr. Cockburn. Meanwhile, on 1 December 1975, he was granted personal promotion to grade P.6, although his post continued to be graded P. 5.

C. In January 1977 Dr. Tejada-de-Rivero, the Assistant Director-General in charge of SHS, announced at a division meeting that, Dr. Newell having resigned, the complainant would be Acting Director of SHS. That announcement was later cancelled, on 1 February 1977, when Dr. Zahra became Acting Director, as the complainant was informed orally.

D. With effect from 25 February 1977 Dr. R. Henderson was appointed Programme Manager of EPI and the complainant was relieved of his duties under the programme. On 14 March he drew the attention of the Ombudsman to his position. In his report of 31 May 1977 the Ombudsman recommended the Director-General, among other things, to rehabilitate the complainant professionally and in the eyes of his colleagues. On 6 and 16 May the complainant appealed to the headquarters Board of Inquiry and Appeal against the decisions to appoint a new Programme Manager to EPI, to retract his appointment as Acting Director of SHS and to prevent him from carrying out his contractual duties under the division programme. In its report of 19 August 1977 the Board recommended to the Director-General, among other things, that negotiations should immediately take place between the Administration and the complainant to provide a new post description which should clearly define his functions and be appropriate to his qualifications and experience.

E. On 22 September 1977 the Director-General wrote to the complainant referring to the report of the Board of Inquiry and Appeal and saying that he had instructed the responsible

Assistant Director-General to have the post description drawn up. On 2 December the Assistant Director-General, Dr. Tejada-de-Rivero, sent the complainant a memorandum enclosing a new post description for a P.5 post of

Chief Medical Officer in the SHS Division. According to the memorandum the Director-General had approved the complainant's appointment to that post on the understanding that he would keep his personal grade P.6. He was invited to make suggestions for improving the post description or, where necessary, clarifying the duties pertaining to his new assignment. The complainant sent his comments to Dr. Tejada-de-Rivero and to the Director-General on the post description. On 19 December 1977 he filed the present complaint. On 21 February 1978 the Director-General informed him that he had approved the post description submitted to him on 2 December 1977 and invited him to take up his new duties on 27 February.

F. In his claims for relief, as set out in his rejoinder, the complainant asks the Tribunal: (1) to order the Director-General to offer the complainant a new post equivalent in responsibility, status and duties to the post of Senior Responsible Officer of EPI held until his removal, or, if that is not possible, to grant him full pension benefits in Swiss francs on the assumption of normal promotion by steps as well as full pay until 30 November 1981 and to maintain his membership in the WHO group life insurance scheme until the same date (to cover the capital sum of the mortgage repayment on his house for his wife should he predecease her) and full repatriation rights and leave; (2) to order the Director-General to provide him with the true explanation in writing for all three decisions; (3) to order the Director-General to pay him 200,000 Swiss francs as damages for the moral and professional prejudice he has suffered; and (4) to order the Director-General to reimburse all his costs, including legal fees.

G. The WHO asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

Preliminary

1. In a special application annexed to the rejoinder and made under article 14 of the Rules of Court the complainant has indicated the names and descriptions of 16 witnesses whom he desires to reply in writing to the questions he has framed; he has divided these names into three categories. The Tribunal refuses the application - in respect of the witnesses in categories A and B for the reasons which will appear from paragraphs 26 and 31 respectively below, and in respect of those in category C because the questions framed are not relevant to any issue which the Tribunal has to decide.

2. The complainant has also in the rejoinder applied for an order requiring the Organization to produce certain documents or further information relating to them. This application has been sufficiently dealt with in the surrejoinder.

The complaint in general

3. The complaint arises out of three decisions of the Director-General alleged to have been taken by him on 19 December 1976, 1 February 1977 and in April 1977. The complainant contends that these decisions constitute a series of punitive measures taken against him without justification and that they must be considered together as such.

4. In 1976 the complainant, who was an Australian national in his middle fifties, was serving in the SHS (Strengthening of Health Services) Division at the grade of P. 5. He was chief of the CHP (Country Health Planning) Unit and had held this post since 1 April 1973. He had been in the service of the Organization since 1964 and had been granted a career service appointment (permanent) in 1971. His appraisal reports had always been excellent. His direct superior was the Director SHS, Dr. Newell, whose superior was Dr. Tejada-de-Rivero, an Assistant Director-General.

5. Since early in 1975 the complainant had also been responsible for the development of a new programme called EPI (Expanded Programme of Immunization), to which from the start he was devoting about half his time, increasing in 1976 to 80 per cent. For this he was under the supervision of the Director CDS (Communicable Diseases) who was Dr. Cockburn.

On 1 December 1975 the complainant was given the personal rank of P.6.

6. In 1976 the complainant's prospects of advancement looked good. Both his direct superiors thought well of him. The EPI was expected to be put on an established basis in 1977 and a full-time post, perhaps at D.1, created for the head of it. Further, the complainant was generally regarded as second-in-command at SHS, from which Dr. Newell

retired on 1 February 1977.

7. Things turned out differently. On 19 January 1977 the complainant was designated to be Acting Director of SHS on Dr. Newell's retirement. On 1 February, when he had already begun to take up his duties, he was summarily dismissed as Acting Director without any explanation in what the Board of Inquiry and Appeal described as "an off-hand and inconsiderate manner"; the Director of another Division was put in his place. This is the subject of the second specific complaint. Two days later he was replaced in the EPI programme in what the Board described as "a humiliating manner" and as resulting "in quite unnecessary distress". This is the first specific complaint. In the third specific complaint the complainant alleges that he was deprived of opportunities for carrying out his duties in SHS, and in particular was deliberately excluded from important discussions concerning its future in which his juniors were taking part.

8. The Organization, while it admits deficiencies in management practice and "profoundly regrets the misunderstandings", submits that none of the complaints, taken separately or together has any substance: "no blame, either oral or written, was ever imputed to him". Certainly, it is true that if one tests the substance of each claim by asking oneself to what extent the complainant has suffered materially by the action taken, as distinct from the way in which it was taken, the answer must be that he has not suffered much. His "dismissal" as Acting Director meant only the end of additional duties without additional remuneration. In relation to the EPI programme, the complainant was generally referred to as Programme Manager; he claims and the Organization denies that this was a post from which he was dismissed; the Organization contends that this also was no more than an assignment of duties. Whichever it was, the complainant knew that it was part time and temporary in its nature. As to the third complaint, if it is well founded, it is difficult to see what could now be done about it; it cannot have caused any material damage.

9. The substance of the complaint is undoubtedly about the way in which the complainant was treated. This is the way he puts it himself. Throughout the dossier he repeats that he was undeservedly humiliated and disgraced in the Organization, that his reputation in his profession has been gravely insured and that what he is asking for is some form of rehabilitation. In the opinion of the Tribunal this claim, if it can be made out on the facts, is good in law irrespective of whether or not the decisions complained of were valid. Just as it is implicit in every contract of service that the staff member shall be loyal, shall treat his superiors with due respect and shall guard the reputation of the Organization, so it is implicit that the Administration in its treatment of staff members shall have a care for their dignity and reputation and shall not cause them unnecessarily personal distress. Often distress and disappointment cannot be avoided but, where it can be, it should be. As in all organisations, the staff member must take the rough with the smooth and there are bound in management to be pieces of clumsiness or tactlessness which can be sufficiently smoothed over by apology or explanation. The Tribunal is not likely to concern itself with cases other than those of grave injury which has been left unredressed. But where such injury has occurred it is not the decision to take the action that is relevant - in substance it may be correct or incorrect - but the decision as to the form in which it should be taken and as to how it shall be executed.

10. However, since in this case the decisions are challenged as invalid, they must be examined in the first place from that angle. It is not disputed that they are all three decisions which lie within the discretion of the Director-General, but it is submitted that they can all be successfully attacked on the ground that the decisions were tainted by prejudice or by errors of law or by manifestly false conclusions drawn from the facts.

First complaint: EPI Programme

11. In April 1975 the Director-General reported the setting up of a small team to handle EPI. It was decided that the complainant, notwithstanding that he was apparently fully employed in SHS should head the team. It is not clear who took this decision nor when, but in June 1975 Dr. Cockburn as the Director CDS, to which EPI was evidently intended to be added as a unit, and Dr. Newell as the complainant's existing Director were engaged in drawing up a revised post description for him. This was founded on his existing post description in SHS and retained the existing post number. It altered his title to Associate Director SHS and his grade from P.5 to P.6. It retained virtually all of his existing duties in SHS and added to them duties under four new heads for which the complainant was to be responsible to Dr. Cockburn and not to Dr. Newell. The new duties were generally described as: "Additionally, and initially for 1975 and 1976 (to be renewed or modified after that time) to be the senior responsible officer for the development of EPI and, as such, to...", etc.

12. This post description was on 4 July 1975 sent by Dr. Newell to the Chief of Personnel with the concurrence of

Dr. Cockburn. In an accompanying letter Dr. Newell wrote that the complainant "has been fulfilling a crucial leadership role", which should be recognized by upgrading the post.

13. While the complainant continued to fulfil his dual role, nothing was done for some months about the new post description. Eventually the matter was considered by the Senior Staff Selection Committee and on 10 October 1975 a recommendation to the Director-General was made by the Secretary of the Committee who appears also to be the Chief of Personnel. The recommendation was that for the present the promotion to P.6 should be on a personal basis; the title, i.e. Associate Director, should be considered by the Director-General and, if it was considered favourably, a decision would be required on whether the post should be P.6 or D.1. On 8 November the Director-General minuted approval and asked for a draft of the job description for D.1, but with the title of Assistant Director. This required only the alteration of "Associate" to "Assistant".

14. On 1 December a Personnel Action notice was issued recording the complainant's promotion to P.6 "on a personal basis". No further action was taken on his post description until on 10 February 1976 the Director-General minuted: "After reflection I am not ready to move on this at the present juncture of recruitment/distribution problems". Drs. Cockburn and Newell were told that the Director-General had approved the new post description and the promotion to P.6, but not the change of title. In subsequent appraisal reports the additional duties were treated as part of the complainant's post. In memoranda and minutes, etc., he was usually referred to as the Programme Manager EPI and he signed himself as that.

15. At Atlanta in the United States there is an Institution called the Centre for Disease Control, said to be sponsored by the United States Government. In the WHO there was a department SME (Smallpox Eradication) which was mainly, if not wholly, staffed by medical officers recruited from the Centre; the Director SME was Dr. D.A. Henderson from the Centre. EPI and SME had similar objectives; they were both concerned with the spread of methods of immunization, especially in the developing countries. By 1976 SME programmes had already achieved a considerable success in the field. Dr. Henderson was also a member of a body called the EPI Steering Committee (as was also of course the complainant), of which Dr. Cockburn was chairman.

16. Early in 1976 plans were being discussed for the restructuring of CDS. On 9 July Dr. Cockburn prepared the draft of an information circular which proposed inter alia the merger of SME and EPI into a single unit (SPI) of CDS. Dr. D.A. Henderson also considered that the merger was logical; he regarded SME support as essential to EPI and thought that as SME's activities declined, much more of its staff time could be devoted to EPI.

17. During 1976 the Director-General became increasingly critical of the EPI programme and the way in which it was being handled. The criticism was not solely against the complainant; it was directed as much, if not more, against Dr. Cockburn. There appears to have been a difference between the EPI and SME methods. Dr. Cockburn and the complainant advocated a decentralised country-by-country approach while Dr. D.A. Henderson advocated a centralised approach similar to the smallpox eradication campaign. The complainant noted that at a meeting with the Director-General and the Regional Directors in May 1976 the Director-General spoke very critically of the EPI programme, "but obviously in ignorance".

18. In October Dr. Cockburn presented to the headquarters Programme Committee the budgets for EPI and SME. These were substantially approved and laid before the Director-General. They were on the footing that by 1978 SHE would be merged with EPI (this had been agreed between Dr. Cockburn and Dr. D.A. Henderson) and so only one budget would be required. This provided for a headquarters staff of 12 to be headed by a Programme Director, who was to be transferred from SME, and followed by a Programme Manager "full time instead of 80 per cent; transferred from SHS". The Director-General approved the posts filled from SME but not those filled from EPI. Dr. Cockburn saw the Director-General, but the two men strongly disagreed; the complainant, who was present at the interview, says that he "tried to calm them down".

19. In November on his return from duty travel the complainant met a Dr. Ralph Henderson who had just arrived from the Centre at Atlanta and who said that he had been told by his superiors there that he was to take over the EPI programme.

20. From 1 to 4 December there was a conference in Geneva on the EPI programme which was attended by a number of experts from institutions outside the WHO (two from the Atlanta Centre) as well as from the Regional Offices, all colleagues and friends of the complainant. There were a dozen staff members from headquarters, including Dr. Cockburn, Dr. D.A. Henderson and the complainant, who was described as Programme Manager.

Dr. Ralph Henderson attended as an observer. The complainant says that everyone had been told by "someone" that Dr. Cockburn and he were to be dismissed, which he found very embarrassing.

21. Before this, on 19 October 1976 Dr. Ladnyi, an Assistant Director-General, had succeeded as the Assistant Director-General in charge of the CDS Division. On 14 December the EPI programme was put under Dr. Ladnyi's direct supervision. An information circular of that date confirmed this and announced that the EPI and the SME would be merged over the next 12-18 months. Dr. Cockburn was given no reason for his "dismissal".

22. On 19 December the Director-General decided to dismiss the complainant from EPI. The complainant was given no word of this. On the contrary Dr. Ladnyi was told to instruct him to assist in preparing the material for a conference with UNICEF on 2 February 1977. When that was over the Director-General no doubt intended to replace the complainant by Dr. Ralph Henderson. But it seems that there was a hitch. The post offered to Dr. Henderson was that of "the responsible officer (Programme Manager)" for the EPI unit at the P.6 grade. Dr. Henderson was instructed from Atlanta to insist on the rank of Director, while the Director-General, so it was said, refused to make another Director of United States nationality. Eventually a compromise was reached by which the title in Dr. Henderson's post description remained unaltered but he was given a special delegation of authority. While this was being negotiated there was a period during which his appointment was uncertain. In the last days of December 1976 Dr. Ladnyi, according to the complainant's recollection, told him that the Director-General had agreed that the complainant should remain as senior responsible officer for EPI during 1977 with the grade of Acting Director. It must be doubted, however, whether Dr. Ladnyi said as much as this. On 24 January 1977 the complainant addressed a memorandum to Dr. Cohen of the headquarters Programme Committee about EPI policy on certain issues which he needed to know for the UNICEF meeting. In this he wrote: "I know my own mind on these issues but since that is now irrelevant I want to be sure we say to UNICEF what you think."

23. During January 1977 the complainant worked with Dr. Cohen on a paper for a joint UNICEF/WHO conference. On 2 February, the first day of the conference, the complainant attended as EPI Programme Manager. On the next morning Dr. Ladnyi appeared and without any warning to the complainant introduced Dr. Ralph Henderson as the new Programme Manager. Dr. Henderson then distributed copies of the Cohen-Schofield document and spoke to it. Dr. Henderson did not thereafter immediately displace the complainant, but about 8 March when the complainant returned from a conference in Delhi he found that Dr. Henderson had taken over. Dr. Henderson is described in his post description, which is dated 2 February 1977, as to be recruited on 1 March. No notification, either oral or in writing, that he was relieved of the duties on which he had been spending 80 per cent of his time was ever given to the complainant. When on 9 May he made an inquiry from the Chief of Personnel about his position, he was informed that the Director-General had appointed Dr. R. Henderson as Programme Manager EPI and that his present post was No. 1.2029 to which he had been appointed in 1973.

24. In these circumstances the complainant contends that he was dismissed from his post as Programme Manager EPI. Dismissal is doubtless a useful word as descriptive in a popular sense of what happened. But, as the Organization correctly argues, it is an inappropriate word to use in this case, since in its legal sense it signifies the abrupt termination of a contract of service. In this case, the complainant's contract of service remains unimpaired. What happened was that in the exercise of his discretion the Director-General relieved the complainant of extra duties which had been assigned to him. It is true that they were duties so substantial in character as to justify in a popular sense the title of Programme Manager and that he had been discharging them for two years. But since the complainant does not dispute that this was a discretionary decision, it does not matter whether the duties were as a group large or small; the decision must be accepted unless the exercise of the discretion can be successfully challenged.

25. On the face of it there is nothing challengeable or even extraordinary about a decision taken in 1977 to replace the complainant in EPI by Dr. Ralph Henderson. The complainant's assignment expired at the end of 1976. The amalgamation of SME and EPI was accepted on all sides as desirable. SME had had considerable success with its programme of smallpox eradication and the Director-General, whose personal interest in immunization is well known, evidently preferred its methods to those developed by Dr. Cockburn and the complainant. SME had a close connection with the Atlanta Centre which there could be nothing wrong in the Director-General wishing to preserve, and the Centre's candidate was Dr. Henderson.

26. It is however alleged by the complainant that the decision to appoint Dr. Henderson was taken under political pressure from the Government of the United States applied through officers of the Atlanta Centre. Four of them are the prospective witnesses named in category A (see paragraph 1 above) and their evidence, if relevant, could only

relate to communications made by them on behalf of the United States Government to the Director-General. Such evidence is privileged and the Tribunal will not admit it unless a prima facie case of illegality or prejudice is first made out from other sources. No prima facie case is made out in the dossier. Consequently the contention that the Director-General's decision should be set aside on this ground fails.

Second complaint: Acting Directorship SHS

27. On 19 January 1977 at a divisional meeting of SHS Dr. Tejada-de-Rivero, the Assistant Director-General concerned, announced that on the retirement of Dr. Newell on 1 February the complainant was to be Acting Director. Dr. Tejada-de-Rivero described him as the second-in-command and he was in fact the natural choice; he had previously acted for Dr. Newell on many occasions and Dr. Newell had (see paragraph 11 above) proposed for him the title of Associate Director. The complainant at Dr. Newell's request immediately began a series of meetings with the SHS staff in his capacity as Acting Director. On 26 January Dr. Newell circulated a memorandum to 18 persons, mostly in other divisions, informing them of the appointment and of certain consequential rearrangements in SHS.

28. One of the recipients of the memorandum was Dr. Tejada-de-Rivero. A day or two later he instructed Dr. Newell by telephone to withdraw the memorandum. He gave no reason for the instruction, it involved visiting all the other recipients and asking for it back. On 1 February Dr. Tejada-de-Rivero told the complainant that Dr. Zahra, the Director of another division, was to be Acting Director SHS. The complainant protested but was given no explanation. An information circular, dated 1 February but distributed on 4 February, announced simply that until a successor to Dr. Newell was appointed, Dr. Zahra would be responsible for SHS in addition to his own division.

29. The decision of 1 February by implication terminated the temporary assignment to the complainant on 19 January of the duties of Director SHS. The Organization submits that the Director-General is not to be called upon to justify or to give reasons for such a decision. There is no need to decide whether, in all instances and in the absence of a mandatory text, the Director-General is bound to explain his decisions in accordance with a general principle of law of the international civil service. Be that as it may, if an unexplained decision is also apparently inexplicable, silence will provide a foundation for an inference that there must have been at work in the decision making some element, such as prejudice or a conclusion falsely drawn, which would require the Tribunal to interfere with the discretion. The Tribunal considers that an unexplained decision to remove the complainant after 12 days from an assignment that was clearly intended to last until the new appointment might well justify such an inference. In this sense an explanation is called for.

30. Eventually, the Organization in its reply addressed to the Board of Inquiry and Appeal on 27 May 1977 produced an explanation. This shows that before the announcement on 19 January Dr. Tejada-de-Rivero had obtained what he took to be the approval of the Director-General to the nomination of the complainant as Acting Director. But, it is said, there was a misunderstanding. The Director-General, it is said, already had it in mind to nominate the Director of another division; he thought that what he was approving when he assented to Dr. Tejada-de-Rivero's proposal was the nomination of a person to act for the Acting Director when he was preoccupied with his own division. There is no written evidence from either the Director-General or Dr. Tejada-de-Rivero to support this explanation; equivalent weight cannot be given to a version put forward indirectly by the author of the reply. Moreover, there is no explanation of why the matter was not made clear to the complainant at the time. However, there seems to be no object in pursuing the question of the validity of the decision. It is not the decision itself which has aggrieved the complainant - he says that he had no wish to be Acting Director - but the way the affair was handled.

31. Nor is it worth pursuing the complainant's allegation that the Director-General behaved as he did because he believed the complainant to be a racist. There is in the dossier no evidence worth considering that the complainant was a racist or that he was said to be a racist or that the Director-General ever thought that he was. The Director-General has personally in writing told the complainant that no such suggestion was made to him. The questions framed for the prospective witnesses in category B (see paragraph 1 above) are concerned with alleged occasions on which the complainant was said either to be or not to be a racist and to other imaginary influences of a similar sort; the answers given to such questions could not amount to any substantial evidence of prejudice in the mind of the Director-General.

Third complaint: exclusion from work:

32. In March 1977 the complainant ceased wholly to be employed in the work that had been taking up 80 per cent of his time. Nothing came of the idea (see paragraph 30 above) that he should be made a sort of Acting Sub-Director to Dr. Zahra; it was never mentioned to the complainant. It cannot have been good either for him or the Organization that he should lack responsible duties, but his superiors were apparently unconcerned. It is not that Dr. Tejada-de-Rivero had a low opinion of him. On the contrary he believed him to have "excellent qualities" and told him in May 1977 that he had a high regard for him professionally. Nor can it be that Dr. Tejada-de-Rivero did not realise the situation. On 15 November 1976 Dr. Newell sent him a memorandum on the complainant's future. The complainant had told him, he wrote, that, while he would be pleased to take a full-time post as Programme Manager EPI there was no budget for it in 1977 or 1978 and that it was not certain he would be appointed. If the complainant was not to be transferred, Dr. Newell wrote, "he should be more intimately involved in the proposals you are now preparing for Health Planning".

33. The complainant was of course the Chief of the Health Planning Unit (CHP) in the SHS Division. The proposals to which the memorandum referred originated in September 1976, when the Director-General commissioned Dr. Tejada-de-Rivero to develop proposals for new approaches in planning health development. In November Dr. Tejada-de-Rivero produced a document entitled Planning for Health Development. He decided to obtain informal reactions from staff members whom he selected on a personal basis. He convened a meeting for 13 December to which the complainant and one of the juniors in his unit, Dr. Moday, were invited. There were criticisms of the document by the complainant and others. Dr. Tejada-de-Rivero proposed to continue the work with only two assistants one of whom would be Dr. Moday and the other Dr. Vukmanovic.

34. Dr. Vukmanovic either was or was shortly to become the head of a new health planning unit which some time in December 1976 was established within the Secretariat of the headquarters Programme Committee. It must have been obvious that there would not be room in the Organization for two health planning units, one in the Secretariat and the other in the SHS Division. The discussions on Dr. Tejada-de-Rivero's document soon went beyond its revision. In May the complainant was told by Dr. Moday that on 28 April he and Dr. Tejada-de-Rivero and Dr. Vukmanovic had had a meeting with the Director-General, at which Dr. Cohen of the headquarters Programme Committee had also been present, to discuss the future of the complainant's unit in SHS. He learnt also that Dr. Moday had attended meetings with Dr. Tejada-de-Rivero and each of the six Regional Directors to discuss the same subject. The result of these discussions was the preparation of a draft circular which, the complainant alleges and the Organization does not deny, announced the dissolution of the unit in SHS. The Organization says that there was disagreement on the substance of the draft, which cannot now be traced, and that it was not distributed. The Organization gives no information either about the substance or about the disagreement; the complainant was informed that the circular was abandoned because of the inadvisability of abolishing the complainant's unit while his appeal before the Board was pending.

35. On 12 May the complainant formally protested to Dr. Tejada-de-Rivero against his exclusion from these meetings. The next day there was an interview between them of which there is an agreed record. Dr. Tejada-de-Rivero said that all the meetings were informal and it was wrong for the complainant to make a formal protest. The complainant said that it did not matter whether they were called formal or informal. The Tribunal agrees. The object of the discussions was to change the face of health planning: the effect of the complainant's exclusion must have been to signify to all who knew him, and in particular to all the Regional Directors, that he was no longer of any account, even in the field in which he was most experienced and the unit of which he was chief vitally concerned. There is no reason to doubt the complainant's assertion that after May 1977 he had virtually nothing to do. Whether or not the unit in SHS remained, the responsibility for health planning had been effectively taken out of his hands.

36. The complainant contends that his exclusion was a deliberate decision to complete his disgrace and to punish him for his racism, etc. On the other hand he accepts as honest Dr. Cohen's evidence to the Board in which the latter said that the decision to remove health planning from the SHS Division had been taken by the Director-General some considerable time before and awaited only Dr. Newell's retirement: "Dr. Schofield", he said, "was just unlucky". For its part the Tribunal does not accept that this decision, nor any of the three which the complainant challenges, was motivated by personal prejudice or was otherwise illegal. It accepts that all these decisions were taken in furtherance of the reorganisation which the Director-General had decided upon, observing only that it was a reorganisation in which the interests, the feelings and the reputations of those who were affected by it were treated as of no account. The Director-General is said by the complainant to have remarked at a staff meeting that he knew that he had "failed to communicate with Cockburn and Schofield" and to have talked of

those who would not co-operate with the new chief. If there had been greater sympathy between them, the complainant might have fared less badly in the reorganisation, but this is not the factor which can vitiate the decision. The question which remains to be determined is whether the ruthlessness with which the decisions were applied was so excessive and unnecessary as to amount to a breach of the obligation set out in paragraph 9 above. Before turning to this, the Tribunal will consider a matter which features quite largely in the dossier and decide what its relevance is to the issues before the Tribunal.

Complainant's present appointment

37. By May 1977 the complainant had been all but nominally deprived of his occupations. In its report made to the Director-General on 19 August 1977, the Board of Inquiry and Appeal recommended that "negotiations should immediately take place between the Administration and the appellant for the purposes of providing a new post description which should clearly define the appellant's functions and be appropriate to his qualifications and experience".

On 22 September the Director-General informed the complainant that he accepted this recommendation and that he had instructed Dr. Tejada-de-Rivero to draft the post description. On the same day the new Director of SHS was appointed. On 30 November the complainant received a draft of his new post description. It was for a post in the SHS Division described as Chief Medical Officer (Health Service Planning) at grade P.5, in which he would be responsible to the new Director; he was however to retain his personal rank of P.6. Correspondence followed in which the complainant made it clear (as he does also throughout the dossier) that he would not voluntarily accept any post which was not equivalent to what he had lost or did not by some accompanying announcement achieve his rehabilitation. Eventually on 3 March 1978 the Director-General instructed him to take up the assignment and the complainant accepted it under protest.

38. It appears from the dossier that the Director-General's decision of 3 March is or has been the subject of a second appeal to the Board. Its relevance to this appeal is primarily because in his rejoinder the complainant has sought an order requiring the Director-General to offer Dr. Schofield a new post equivalent in responsibility, status and duties to the post of Senior Responsible Officer EPI. The Organization on the other hand has asked the Tribunal in paragraph 22 of its reply to ratify the offer of the new post as reasonable under all the circumstances. However, the order which the complainant seeks could be considered only if the first complaint had succeeded and the Tribunal had quashed the Director-General's decision to terminate the complainant's EPI assignment. Since this has not happened, the scope and status of the complainant's new appointment is not relevant on this ground.

39. It has however a second relevance to the third claim in the rejoinder for 200,000 Swiss francs as compensation for moral and professional prejudice. The complainant demanded a post that would rehabilitate him, i.e. restore his position in the eyes of WHO staff and of others in the medical profession. The post offered does not do that; judged by the degree of the responsibility conferred, it simply puts him back to the position given to him in 1973. To rehabilitate him he would have to have been given a post with responsibilities at least equal to his P.6 grade. This is not necessarily to question the validity of the Director-General's decision of 3 March 1978. The Director-General must exercise his power of appointment to pick the right man and would normally be precluded from using it as a way of making amends. The fact remains, however, that if he had been able to offer the complainant a distinct promotion and thus to demonstrate his confidence in him, much of the prejudice complained of would have been removed. As it is, if compensation has to be assessed, the nature of the new post is not a factor to be taken into account.

Compensation

40. In this case the Tribunal is called upon to consider for the first time a claim for compensation for moral prejudice notwithstanding that none of the decisions impugned has been held invalid; the complaint of moral prejudice is justified only by reason of the manner in which the decisions impugned were executed. To find moral prejudice in such case and to award compensation for it is to take a very exceptional course and one which can be taken, as the Tribunal has already indicated in paragraph 9 above, only in circumstances in which grave injury of a kind likely to impair a staff member's career has been left unredressed.

41. If there were nothing more to be considered than the manner of the complainant's supersession in the EPI programme, it is doubtful whether there would be a breach of obligation calling for compensation. The assignment was due to finish in 1976 and there had been no public indication either that it was likely to be continued or that the

complainant was designated for the full-time appointment; he himself thought his inheritance uncertain (see paragraphs 22 and 32 above). Naturally his failure to get the job was a disappointment to himself and his friends and the failure may have slightly diminished his reputation; but these would be the inevitable consequences of legitimate acts. The manner of his replacement was brusque but it could not have been shocking, since it had already been widely rumoured: see paragraph 20 above. If nothing else had happened and if the complainant had not himself adopted the mistaken attitude that he had been summarily dismissed from his post, his reputation could not have been seriously affected.

42. But within two days of this incident it became generally known that he had been summarily displaced as Acting Director of his division. Some of those who had thought his brusque treatment two days before to be no more than clumsiness on the part of the Administration must have begun to wonder whether the treatment was not deliberate and deserved. Those who might have supposed that his EPI assignment had been ended because he had important work to go back to in his own division must have thought themselves mistaken. They must have been sure of it when it was found that he was treated as being of no account in his own unit and left without work and responsibility. The effect of these three incidents coming on top of each other must have been calamitous, and only the most astounding insensitivity could have failed to see it. The Tribunal concludes that the injury done to the complainant's feelings and reputation is so grave as to amount to a breach of obligation which calls for compensation. There must also be considered under this head the failure of the Organization to do all that is practicable to see that a staff member is given work and responsibility appropriate to his grade.

43. Much of the distress could have been avoided by the Administration if it had taken any of the opportunities available to it of making it clear that the complainant was a victim of the reorganisation and was, as the Administration itself has throughout contended, in no way to blame. But the Administration's continued silence tended to increase the distress rather than to diminish it. When the complainant could obtain from his immediate superiors no explanation of his abrupt and discourteous treatment, he applied on 14 March 1977 to the Ombudsman. In his report to the Director-General on 31 May 1977 the Ombudsman recommended urgent action to rehabilitate the complainant professionally and in the eyes of his colleagues and detailed six steps which could be taken towards this end. The Director-General ignored the report. In his interview with Dr. Tejada-de-Rivero already recorded (paragraph 35 above) the latter would say nothing beyond urging the complainant to accept the Director-General's decisions "like a soldier". Other attempts by the complainant to obtain a personal explanation were no more successful. Some apology was made by the Administration's representative at the hearing of the appeal before the Board in August 1977, but this had only a restricted audience.

44. Accordingly the claim for compensation for moral damage is allowed. Since money is to be the only form of redress, the amount must be sufficient to mark the gravity of the injury. The Tribunal fixes it at the sum of 30,000 Swiss francs.

45. As to the claim for reimbursement of costs, the sum to be allowed is intended only as a partial reimbursement. The Organization's complete silence inevitably started a spate of gossip and rumours with which unfortunately the complainant has filled the dossier on the issues on which he has failed. Some bitterness and resentment on his part may be allowed for, but not to the extent of the wholly unjustified charges made against the Administration. The Tribunal will award as costs 2,000 Swiss francs.

DECISION:

For the above reasons,

1. The claim for an order requiring the Director-General to offer the complainant a new post is dismissed.
2. The claim for an order requiring the Director-General to provide the complainant with a true explanation in writing is dismissed.
3. The complainant is awarded 30,000 Swiss francs as compensation for moral and professional prejudice.
4. The complainant is awarded 2,000 Swiss francs as partial reimbursement of his costs.

Delivered in public sitting in Geneva on 13 November 1978.

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

Updated by PFR. Approved by CC. Last update: 7 July 2000.