

FORTY-FOURTH ORDINARY SESSION

In re SCHOFIELD (No. 4)

Judgment No. 411

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Francis Donal Schofield on 1 June 1979 and brought into conformity with the Rules of Court on 5 July, the WHO's reply of 30 October, the complainant's rejoinder of 14 December and the WHO's surrejoinder of 7 February 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 565.2, 565.4 and 570.1;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. In 1975 the complainant was put in charge of a new Expanded Programme for Immunisation (EPI) in the WHO, but he continued to perform his duties in the Division of Strengthening of Health Services (SHS). He was later promoted to grade P.6. In January 1977 an announcement was made that the Director of SHS having resigned, the complainant would take over as Acting Director. That announcement was superseded, however, on 1 February 1977, when Dr. Zahra became Acting Director, and on 25 February the complainant was relieved of his duties under EPI. In his first complaint, which he filed on 19 December 1977, he impugned those decisions. In Judgment No. 361, dated 13 November 1978, the Tribunal held that, although the decisions had caused him moral and professional prejudice for which he was entitled to damages, they were not in themselves unlawful and should not be quashed.

B. On 2 December 1977 the complainant had received a new post description for a P.5 post of Chief Medical Officer in the SHS Division. He was to keep his personal grade P.6. He objected to his new assignment, saying that he would willingly accept neither a post which was not equivalent to the one he had lost nor an assignment which was not accompanied by a suitable statement indicating that he had been duly rehabilitated. On 3 March 1978 the Director-General instructed him to take up his new duties and he did so, though under protest. On 8 January 1979 he appealed to the headquarters Board of Inquiry and Appeal against the decision of 3 March 1978. On 2 April 1979 the Board recommended giving him a new post description and assignment, "bearing in mind his de facto status as a result of the 4 July 1975 post description" in order that he could be "professionally rehabilitated and his experience, competence and abilities be best used in the interests of the Organization". By a letter dated 7 June 1979 the Director-General informed the complainant that he endorsed that recommendation and stated that in his view he had found a reassignment which would be satisfactory to the complainant. Meanwhile, however, on the sixtieth day following the date of the Board's report, the complainant had filed the present complaint, impugning the decision of 5 March 1978. The complainant is asking the Tribunal: (1) to quash the decision of 3 March 1978; (2) to award him compensation for the moral and professional harm which he believes he has suffered because of that decision; (3) to declare, if it has not already done so in an earlier judgment, that his 1975-77 assignment was administratively and professionally valid; and (4) to award him costs. On 11 September 1979, after filing his complaint, he resigned from the WHO, and he informed the Registrar of the Tribunal by a letter dated 28 September that he withdrew a further application, namely for an order from the Tribunal to the Director-General to give him an assignment at least equivalent in status and responsibility to the one from which he was removed in 1977.

C. The complainant argue that his assignment was unlawful: it constituted a breach of his right to be given responsibilities at least equivalent to his P.6 grade and matching his earlier positions. In his view the impugned decision downgraded him and was not preceded by the application of the procedure laid down in Staff Rule 570.1 relating to reduction in grade. Moreover, it constituted a disguised form of penalty. The complainant further argue that although, according to Staff Rule 565.2, "A staff member may be reassigned whenever it is in the interests of the Organization to do so", he was not in fact reassigned since he held the same post, No. 1.2029, from April 1973, as indeed the Board of Inquiry and Appeal found in its report. It was the post bearing that number which was regraded P.6 in 1975, with the title of "Associate Director". He points out that the Board of Inquiry and Appeal also found that to put a competent staff member in the position of having little or nothing to do is harmful both to him

and to the Organization. According to the Rule 565.4, a staff member may be required, without formal reassignment and in the interests of the Organization, to perform duties of a post other than his own. The Board stated in its report that it had been understood that rule, which came into force on 1 January 1978, would not be applied to the detriment of staff members' interests. The complainant believes that he has adduced evidence which shows that the Administration of the WHO misconstrued the facts, misapplied the Staff Rules and administrative procedures and concealed its ill-will against him by resorting in bad faith to a distorted application of the Staff Regulations and Staff Rules.

D. In its reply (paragraphs 12 and 15) the WHO contends that the Tribunal is not competent to make a declaration of the kind sought by the complainant in his third claim for relief since the Organization owes him no obligation in that respect on which he may rely. Besides, such a declaration would serve no purpose since the Organization has never sought to deny that from 1975 to 1977 the complainant was the senior responsible officer of EPI and at the same time held a senior post in SHS. The Tribunal recognised that in Judgment No. 361 and has already given its opinion on the assignment given to him on 3 March 1978, which it held did not restore his position in the eyes of WHO staff and of others in the medical profession. The WHO points out, however, that in an international organisation, since it is smaller than a national civil service, rehabilitation through reassignment may not be possible and in any event takes time. The reason why the complainant has little to do in his new assignment is that, having accepted it under protest, he is not on terms with his supervisors which make for effective co-operation. Lastly, the WHO's repeated and genuine attempts to find him a new assignment show the error of his contention that the assignment given him on 3 March 1978 was a concealed form of penalty. As to his first claim, quashing the decision of 3 March 1978 would serve no practical purpose since he has resigned. Even if his duties in his new assignment were less responsible than his earlier ones, there was nothing humiliating about them and the assignment was not in itself contrary to the Staff Regulations and Staff Rules. The injury he has suffered derives from earlier treatment for which the Tribunal ordered compensation in Judgment No. 361. There are no grounds for awarding further damages and the WHO therefore asks the Tribunal to dismiss all the complainant's claims.

E. In his rejoinder the complainant points out that he resigned because of the fruitlessness of carrying on, since the WHO's intransigence left him no hope of its admitting its wrongful acts. In his view it is significant that it was on 12 September 1979, the day after he had resigned, that the Chief of Personnel at last sent him the WHO's official declaration that there had never been any grounds whatever for charge; that he had displayed racist, colonialist or other prejudiced personal attitudes - the charge to which his third complaint partly relates. That decision is, however, immaterial to his first claim for relief since the injury caused to him by the decision of 3 March 1978 lasted for eight months. If the Tribunal deems fit, it may award him damages instead. As for his third claim, the WHO does owe him an obligation: that of laying bare the true facts and restoring his professional reputation, which the Organization has damaged by refusing administrative recognition of the post description dated 4 July 1975 which accompanied his promotion to P.6. Such refusal is tantamount to a mistake of fact. Staff Rule 565.4, on reassignment, is a new rule which has impaired his acquired rights and is at variance with the guarantee of such rights in Staff Regulation 12.1. Considering his ample qualifications and the sheer size of the Organization, the Administration cannot properly maintain that it was unable to find him a new assignment. Its reply provides no evidence to show that its treatment of him was prompted by the interests of the Organization or that it made genuine efforts to give effect to the Tribunal's decision that he should be found an appropriate assignment. The only explanation for its attitude is its determination to "punish" him for misdemeanours which he never committed and, though it has realised it was wrong, to refuse to remedy the serious consequences.

F. In its surrejoinder the WHO states that the post description dated 4 July 1975 is immaterial to the complaint. In his rejoinder, it points out, the complainant merely re-opens once again matters which were settled by Judgment No. 361 or which form the subject of his second and third complaints. The only question now in dispute is whether he is entitled to any damages whatever over and above the compensation awarded to him in Judgment No. 361. The WHO takes the view that the decision of 3 March 1978 was correct and that its efforts to find him another assignment are evidence of its reasonable willingness to settle his continuing claims.

CONSIDERATIONS:

1. On 25 February 1977 the assignment on which the complainant was working was terminated. On 3 March 1978 he was given a new assignment which it is convenient to call the March assignment. He appealed against both decisions, i.e. the decision to terminate and the decision to reassign, but in separate proceedings. The first proceedings were concluded in this Tribunal by Judgment No. 361 delivered on 13 November 1978. The present appeal derives from the second proceedings relating to the March assignment.

2. In Judgment No. 361 the Tribunal held that, while the old assignment had been validly terminated, the termination and other actions taken in relation to the complainant at about the same time had been effected in a manner which conflicted with the Administration's obligation to have a care for the complainant's dignity and reputation and not to cause him unnecessary personal distress. On this ground the Tribunal awarded to him compensation amounting to Swiss francs 30,000. The nature of the March assignment, though not directly an issue, was relevant to the assessment of compensation, as is shown in paragraph 39 of Judgment No. 361. The Organization contended that if the complainant's reputation and standing had been damaged, they were restored by the importance of this new appointment. The Tribunal rejected this contention and held that the new appointment was not to a position of such prestige as to undo the harm done to the complainant. This of course does not mean that the Tribunal was treating the March assignment as invalid. A new assignment must be suited to the status of the staff member, but it need not be as important or as attractive to him as his former assignment.

3. The obligation of the Organization, as indicated above, is to do all that is practicable to see that a staff member is given work and responsibility appropriate to his grade. The question is therefore whether the March assignment was appropriate in this sense; and, if it was not, whether the Organization has shown that it had nothing better to offer. The complainant's previous assignment was in a post graded at P.5, but in the circumstances set out in paragraphs 11 to 14 of Judgment No. 361, the complainant had been promoted to P.6 and had held this grade for a year before the assignment ended. Moreover, the grade, although described as on a personal basis, was given to him because of the increasing importance of the job and pending a decision as to whether it should be classified at P.6 or D.1. In these circumstances, he was, in relation to work and responsibility, entitled to expect reassignment to a P.6 post. The March assignment, though the complainant kept his personal grade P.6, was nominally to a P.5 post: it is necessary to say "nominally" because the complainant contends, and it does not seem to be seriously contested, that there was little or no work for him to do. He returned to his old unit and to his old place as second in command of it (see paragraphs 4 to 6 of Judgment No. 361) but in the interval this unit had been severely squeezed; see paragraph 34 of Judgment No. 361.

4. The complainant remained in this inappropriate assignment for a little over a year during which time there is no satisfactory evidence that the Administration made any effort to improve his position. But following upon a recommendation made by the Board of Inquiry and Appeal on 2 April 1979 the Administration made very considerable efforts to find a suitable assignment for him. The Tribunal considers that the period during which the Organization was at fault should be limited to the 13 months from March 1978 to April 1979.

5. The complainant had greatly enjoyed his job and the responsibilities that went with it. The chief element in the compensation to which he is entitled is the loss of that enjoyment. True, the new job was a "comedown" and as such might have damaged him professionally if the damage had not already been done by the events recorded in Judgment No. 361: for such damage compensation has been paid. The job did not involve any humiliating duties. The complainant was left with all his emoluments and a great deal of time on his hands; some people might have liked that, but not the complainant.

6. On the other hand it must always be remembered that the complainant is being compensated, not for the lack of a worth-while job - the Organization does not guarantee that - but for the slackness and delay on the part of the Administration in looking for one for him. P.6 jobs cannot be plentiful and, to the extent that it was unlikely that the Organization would have found one for him, the compensation must to that extent be diminished. Moreover, it is doubtful whether, if they had found one, the complainant would have taken it; his view of the positions that were found for him after April 1979 shows the extent of the doubt. His attitude throughout has been that he must be given a job equal in status to the promotion which he felt that he had been deprived of: this is not the test. In all the circumstances the Tribunal considers that Swiss francs 3,000 is the appropriate sum to cover the second claim for relief.

7. The first claim for relief is for the rescission of the assignment of 3 March 1978. Since the complainant has now resigned from the Organization, the Organization submits that no purpose would be served by quashing the March assignment. However, the complainant protested strongly at the time against the assignment as unworthy of him and he is entitled to file formal order if he wishes it. The third claim is manifestly inadmissible for the reasons given in paragraphs 12 and 13 of the Organization's reply. The fourth claim is for reimbursement of legal costs. The complainant retained the services of a lawyer but evidently did not invite him to prepare the statements in the dossier. The Tribunal does, however, in suitable cases make an award of costs to cover time and money expended by the complainant himself in the presentation of his case. Both have doubtless been expended here but only s

minute part of the results is relevant. For the most part the complainant has indulged himself in irrelevant and unbridled criticism of the Organization and its high officers, and the Organization ought not to be ordered to reimburse him for that.

DECISION:

For the above reasons,

It is ordered that

1. The decision of 3 March 1978 be quashed.
2. The Organization should pay to the complainant as compensation Swiss francs 3,000.
3. The other claims for relief be dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

André Grisel
Devlin
H. Armbruster

Bernard Spy