

EIGHTH ORDINARY SESSION

***In re* ELLEN KAHAL**

Judgment No. 44

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Mrs. Ellen E. Kahal on 28 August 1959, brought into conformity with the Rules of Court on 8 October 1959; the Organisation's reply dated 28 April 1960; the complainant's additional written statement dated 23 July 1960; and the Organisation's reply to that additional written statement dated 12 August 1960;

Considering Article VII of the Statute of the Tribunal;

Having heard Mr. Jean-Flavien Lalive, counsel for the complainant, and Mr. A.H. Zarb, agent for the Organisation, in public sitting on 8 September 1960;

Considering that the pertinent facts at issue are the following:

A. Having been informed on 27 April 1959 of the award of a disability pension, on 18 May 1959 complainant was given three months' notice of the termination of her employment. At complainant's request the matter was referred to the Advisory Committee on Compensation Claims, which concluded that since complainant's affection was not attributable to the performance of her duty she was not entitled to compensation. That recommendation was accepted by the Director-General, who so informed the complainant on 14 September 1959.

B. On 12 October 1959 complainant requested that her case be reviewed by a medical appeals board consisting of one physician selected by herself, one selected by the Organisation and one selected jointly by the first two. The physician selected by complainant refused to accept the nominations for a referee submitted to him while the physician selected by the Organisation refused to accept the nomination for a referee of the only physician proposed by his colleague, that physician being of the same nationality and practising in the same town as the physician selected by the complainant, and who, moreover, had previously treated complainant. Having noted the lack of agreement between the two physicians on the appointment of a referee, and the resulting impossibility of constituting a medical appeals board, the Advisory Committee on Compensation Claims confirmed its earlier recommendation on 8 January 1960. On 1 February 1960 the Director-General notified complainant that he accepted the conclusions of the Advisory Committee and confirmed his decision of 14 September 1959 that the complainant's affection was not attributable to the performance of her duties and did not entitle her to compensation.

C. The complaint lodged with the Tribunal on 28 August 1959, which was brought into conformity with the Statute of the Tribunal on 8 October 1959, relates to the decision of 18 May 1959 terminating the employment of the complainant for health reasons.

IN LAW

1. Under Article VII, paragraph 2, of the Statute of the Tribunal, to be receivable a complaint must have been filed within 90 days after the complainant was notified of the decision impugned. This time limit is a binding one; complainants must observe it, and it cannot be extended by the Tribunal.

2. Mrs. Kahal's complaint directed against a decision of the Director-General dated 18 May 1959, which was notified on 19 May 1959, was filed on 28 August 1959, that is after the above- mentioned period of 90 days had expired. It was therefore submitted out of time and is accordingly not receivable.

3. The submissions contained in a letter from Mrs. Kahal dated 1 May 1960, which are directed against a decision taken by the Director-General on 1 February 1960, as well as those contained in the additional written statement

submitted on behalf of complainant on 23 July 1960 and directed against the same decision and against a decision by the Director-General notified on 14 September 1959, constitute submission additional to the original complaint, and since the complaint is not receivable these submissions are not themselves receivable.

4. Although it has been submitted that by her above-mentioned letter of 1 May 1960 Mrs. Kahal had intended to lodge a new complaint distinct from that lodged on 28 August 1959, this assertion is contradicted both by the terms of the said letter and by the fact that complainant, who had already submitted two complaints to the Tribunal, was not unaware of the formalities to be complied with in submitting a case to it. The submission therefore cannot be accepted.

DECISION

The complaint is dismissed as not receivable.

In witness of this judgment, delivered in public sitting on 13 September 1960 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine