FORTY-NINTH ORDINARY SESSION

In re GOTSCHI

Judgment No. 523

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Jost Gotschi on 22 September 1981, the PAHO's reply of 30 November, the complainant's rejoinder of 24 January 1982, the PAHO's surrejoinder of 8 March, the further information provided at the Tribunal's request by the complainant on 17 September and by the PAHO on 20 September, and the further observations filed by the complainant on 7 October and by the PAHO on 13 October 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 510.1, 1050 and 1230.1.1 and WHO Manual sections II.1.40, 9.270, 9.350 and 9.370;

Having examined the written evidence, 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. The complainant joined the PAHO in 1971 as a technician in the Visual Aids Unit in Washington. At the material time he held a grade G.8 post, 0155, and his appointment was to run to 30 September 1983. On 12 August 1980, however, the Chief of Personnel wrote to him saying that one of the three posts for visual aids technicians in Washington would be abolished at the end of the year and a similar post created in a Publications and Documentation Service in Mexico City, known as SEPU, on 1 January 1981, and asking whether he was interested in the new post. On 24 October his supervisor recorded that he was not. A letter he received on 3 February 1981 from the office of Personnel said that his post was being abolished by a "reduction in force" under Staff Rule 1050 and that his appointment would end on 6 March under Rule 1050.3. He appealed on 10 February to the Board of Inquiry and Appeal. On 28 April the Board recommended rejecting his claims but suspending the termination for ninety days and reviewing the Unit's workload and the possibility of reinstating him. on 24 June the Director informed the complainant that he endorsed the first and third but not the second of the recommendations. The complainant, not being reinstated, impugns the decision of 24 June.

B. The complainant has three main pleas. (1) He alleges misapplication of Rule 1050 in that there was no abolition of his post. WHO Manual section II.9.270 reads: "A post is considered to be abolished either when the work allotted to it ceases or when that work is so changed that the post becomes one of a different type calling for materially different qualifications". The complainant's work neither ceased nor changed: post 0155 just shifted to Mexico. The PAHO was trying to get round Rule 510.1, which precludes the assignment of General Service category staff to another duty station without their consent, and the illegal "abolition" constituted a breach of contract. (2) The post was not one "of indefinite duration" and therefore not governed by the reduction-in-force procedure in Rule 1050.2. The term is not clear and the staff member should be given the benefit of any doubt. In any event post 0155 was a project post, filled by fixed-term appointment, and not part of the headquarters establishment. Moreover, audiovisual techniques change constantly and the need for the post might prove transitory. The proper rule was 1050.1, which applies to posts "of limited duration". By mistakenly relying on Manual section II.9.370, whereby the reduction-in-force procedure applies to staff on a contract of five years or more, the PAHO forced the complainant out because he was the least senior technician in the Unit. (3) There was "personal prejudice" against him within the meaning of Rule 1230.1.1. Another technician was offered the post in Mexico, but at grade P.l: the treatment was not equal and the rules on grading were manipulated. The complainant was not warned in time. Such treatment of someone with nearly ten years' fine service was harsh. He seeks the quashing of the impugned decision and compensation for loss of earnings, moral prejudice and disruption of his life and career; alternatively, compensation equivalent to the salary and benefits for the remainder of his appointment plus five years' salary and benefits for the damage to his career; and costs.

C. The PAHO replies that the complaint is devoid of merit. It explains that SEPU, established in 1978 under the

policy of decentralisation declared by the World Health Assembly, needed a visual aids technician. The post was moved from Washington in April 1981, and it was that of the complainant, whose contract had to be terminated by virtue of the reduction in force. A review of his Unit in September 1981 found that output had kept up and no change in staff was needed. There was a genuine abolition of post 0155, and it is immaterial that the post in Mexico bears the same number. The requirements of Manual section II.9.270 were satisfied. The work in Washington ceased; it changed, one of the material qualifications being willingness to live in Mexico City; and the number of posts in the Unit, and the funds available in Washington, were reduced. The abolition was justified according to the Tribunal's case law. Nor was it a mistake of law to treat it as a reduction in force. The criteria in Rule 1050.2 governing such a reduction were correctly applied. There is no evidence of personal prejudice. No offer of the P.1 grade for the post in Mexico was made to anyone. In December 1980 there was talk of upgrading the post, but by then the complainant had declined it and there was no question of discriminating against him. He was warned of the threat of termination nearly seven months beforehand. He has not proved moral injury. He was treated fairly, and attempts were made to find him employment elsewhere.

D. In his rejoinder the complainant presses his claims and enlarges on his pleas. The review of the Unit in September 1981 was neither timely nor objective. There is no abolition of a post, as defined in Manual section II.9.270, if its location is merely shifted elsewhere. The complainant's work in Washington is still being performed and the Unit's workload has actually increased. The artificial "abolition" was a ruse to permit the transfer of a General Service category staff member to another duty station. The complainant never actually refused the post in Mexico. No real attempt was made to place him elsewhere. The other technician has himself confirmed that he was given an oral offer of grade P.1 in Mexico; thus, in breach of Manual section II.1.40, the PAHO sought to grade the Mexico post by criteria other than the duties pertaining to it and made "differential" offers. The termination was in fact punishment for refusal to go to Mexico.

E. In its surrejoinder the PAHO develops its arguments. it contends that the complainant's post was abolished, and lawfully so, observing in particular that there has been no increase in the Unit's workload. There was no breach of Rule 510.1, which does not preclude the transfer of duties. The complainant indicated in October 1980 that he was not interested in the Mexico post and he gave no sign later of any change of mind. The reduction in force was required by Rule 1050.2 and the criteria were correctly applied. The PAHO fulfilled its obligations towards him, and there is no evidence of personal prejudice or of "differential" treatment, the decision being a fair and impartial exercise of administrative discretion.

CONSIDERATIONS:

1. In September 1971 the complainant entered the employ of the Organization in the General Service category as a Visual Aids technician and was stationed in Washington, D.C. On 5 September 1978 he received an extension of contract for five years until 30 September 1983. At the time of his termination he was at grade G.8.

2. Meanwhile, on 1 January 1978 a unit called SEPU was created and stationed in Mexico City. Its stationing there was part of a long-term policy by WHO and PAHO to decentralise. It was not to be staffed by new recruits but by assignments of personnel from Washington and Geneva. Staff Rule 510.1 provides as follows:

"Staff members in the professional category are subject to assignment by the Director to any activity or office of the Bureau. Those in the general service category are not subject to assignment, except by mutual agreement, to an official station other than that for which they have been recruited."

3. On 12 August the Chief of Personnel wrote to the complainant that, resulting from the decentralisation plan, "a post of Visual Aids Technician is being abolished in Washington at the end of this year while another post of similar responsibility and grade is being established in SEPU as of 1 January 1981". He inquired whether the complainant would be interested, in principle, in a transfer to Mexico City. After some consideration the complainant decided that for personal reasons he was not interested and on 24 October 1980 he so informed Personnel. In a series of three interviews on and after 17 November 1980, Mr. Carbo, a Visual Media Technician in the same unit as the complainant, was offered a transfer to SEPU, first at G.8 grade, then at P.l/VIII grade and finally at P.1/XI grade. He refused all these offers, the last refusal being given on 29 January 1981. On the next day, 30 January, Personnel wrote to the complainant purporting to terminate his contract on 6 March 1981 in accordance with Staff Rule 1050.3. In the same letter the complainant was offered a transfer to SEPU at the G.8 grade. He had been told by Personnel on 15 January that, if no other staff member in the unit would agree to be transferred, he would be terminated because he had the least seniority. Staff Rule 1050.3 provides that one month's

notice of termination may be given to a staff member if his post is abolished. Staff Rule 1050.4 provides for the indemnities which such a member is to receive and which in the complainant's case would amount to $15,117.75.

4. The complainant's post was numbered 0155. No formal documents showing the abolition of this post and the creation of another are exhibited in the dossier. It is not disputed that the post at Mexico City retained the number 0155 and there is no evidence of any change in its functions. The complainant contends that his post was not abolished and that, if it was, the abolition was an abuse of power since its sole object was to deprive the complainant of the right given him by Staff Rule 510.1 to withhold his consent to an assignment to a station other than that for which he had been recruited.

5. The Tribunal concludes that post 0155 was not abolished either in substance or in form and accordingly the complainant's contract of appointment was unlawfully terminated. The Tribunal finds it unnecessary to deal in detail with the arguments presented on this issue since it accepts also the complainant's argument that the abolition of post, if in this case it was effected, would be an abuse of power. If the organization was able to transfer a staff member in the General Service category by means of the device used in this case, the protection given to him by Staff Rule 510 would be destroyed. The rights of staff members in the Professional category would be similarly affected. Such a member has the right to be consulted before he is transferred and to have his interests taken into account and the Organization may not evade its duty by a device such as was employed in this case.

6. The principal remedy sought by the complainant is reinstatement in Washington, where he had for a decade pursued a successful and enjoyable career; the headquarters Board of Inquiry and Appeal considered that his services could be characterised as "almost ten years of outstanding and dedicated work". Since however it is the policy of the Organization to decentralise, the reinstatement of the complainant in Washington would not be an appropriate remedy, which must be found in monetary compensation. He claims an amount equal to the salary he would have received if he had served until the end of his contract, i.e. for a further two-and-a-half years, plus benefits, emoluments, etc. The total amount of salary claimed is $54,250 and in respect of other emoluments a further $19,649. The total of these sums is $73,899 against which the complainant gives credit for $15,117 received as termination indemnity under Staff Rule 1050.4. The complainant asks also for further compensation for prejudice caused to his career as an international civil servant; no doubt he could have expected that, but for the reorganisation, his contract in Washington would have been renewed; nevertheless as things have happened, the reorganisation would have been a good ground for non-renewal.

DECISION:

For the above reasons,

The complaint is allowed and

1. the decision of the Director of 24 June 1981 to reject the remedy of compensation is quashed;

2. the Organization is ordered to pay to the complainant the sum of US$40,000 as compensation for the unlawful termination of his contract; and

3. the Organization must also pay the complainant $6,000 in costs.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner

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