

FIFTY-FOURTH ORDINARY SESSION

In re GO

Judgment No. 631

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Frank Go on 11 January 1984 and corrected on 3 April, the WHO's reply of 28 June, the complainant's rejoinder of 6 August and the WHO's surrejoinder of 13 September 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Regulations 1.1 and 1.10 and WHO Staff Rules 565.2, 570 and 1230;

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, a citizen of the United States and a sanitary engineer, has served the WHO in the Far East since 1965. His record being very good, in January 1979 he was appointed Director of the Western Pacific Regional Centre for the Promotion of Environmental Planning and Applied Studies, known as PEPAS, in Kuala Lumpur, at grade P.6. He was responsible to the Regional Office for the Western Pacific in Manila. WHO senior staff soon expressed dissatisfaction, however, with his management of the staff of PEPAS, in particular the Director of Programme Management (DPM) and the Director of the Support Programme in conversation with him in December 1979. The appointment of an administrative officer and other steps were taken to ease the staff problems. In June 1980 the complainant wrote to the DPM to say that a subordinate, Mr. Yoshimoto, was not qualified for his post as an "environmental engineer". There was constant friction between the two, as appears from many minutes written at the time, and the complainant gave him a bad report. In his own performance report for 1981 his supervisor, the Director of Environmental Technology (DET), said he could not get on with his staff. The complainant retorted in writing that the trouble lay in the staff's own shortcomings. Correspondence followed on the subject. Early in 1982 it was decided to transfer the complainant to a WHO project in Fiji. He was told of this by a minute of 31 March 1982 from the Regional Director. Though his new post rated only P.5, the Director-General agreed to let him remain P.6. He objected to the assignment, but his objections were overruled on 30 July and he was ordered to report for duty in Fiji. He did so in November, but on 8 September had appealed under Staff Rule 1230 to the Regional Board of Appeal. In its report of 12 January 1983 the Board found no personal prejudice but held that the procedure for reduction in grade ought to have been followed; otherwise the appeal was devoid of merit. The Regional Director rejected the appeal, and the case went to the headquarters Board of Inquiry and Appeal on 21 March 1983. The Board held oral hearings, at which the complainant presented his own case, on 24 October. It reported on 25 November 1983. Three members recommended rejecting the appeal; two thought the WHO had not shown the complainant's transfer to be in its interests and recommended transferring him to headquarters or putting him on paid leave until a suitable vacancy occurred, and awarding him costs. By a decision of 29 December 1983, the one he impugns, the Director-General rejected his appeal.

B. The complainant observes that things began to go wrong shortly after a Japanese, Dr. Nakajima, became Regional Director for the Western Pacific, in July 1979. Dr. Nakajima himself picked Mr. Yoshimoto, a fellow Japanese, for a PEPAS post. Mr. Yoshimoto soon proved thoroughly unsuitable, and, not considering his appointment in the WHO's interests, the complainant said so in mildly worded minutes to Manila late in 1980 and early in 1981. The complainant's performance appraisals are evidence of the Regional Director's animosity. Mr. Yoshimoto's "obstreperous" behaviour was upsetting PEPAS staff and sapping morale; he hinted that he had the ear of the Regional Director and sent him private reports. When Dr. Nakajima visited PEPAS in March 1982 the complainant spoke to him again of Mr. Yoshimoto, but the Regional Director's attitude was quite irresponsible: it was indeed in breach of Articles 1.1 and 1.10 of the Staff Regulations, which make the Organization's interests paramount. Shortly thereafter Dr. Nakajima decided to move him to Fiji. As he said in a minute of 24 May 1982 to Manila, the transfer, of which he had had no inkling, was arbitrary and punitive and actuated by personal bias and malice on the part of the Regional Director. The post was not even budgeted for after 1983, and its importance was inflated to mask the reduction in grade. Staff Rule 570, on reduction in grade, ought to have been applied. His new

post is humiliating. He has fared far worse than Mr. Yoshimoto, who now holds a P.5 post in Manila, despite obvious incompetence. His career and professional reputation have suffered. He has no use in Fiji for his many talents, even though PEPAS still has no director. He seeks the quashing of his transfer and his reassignment to a P.6 post at headquarters in Geneva, or paid leave until such a post falls vacant, and awards of 250,000 United States dollars as damages for moral and professional prejudice and of \$1,710.95 and 5,174.60 Swiss francs towards costs.

C. In its reply the WHO contends that the complaint is devoid of merit: its true interest did lie in moving the complainant to Fiji because of the staff problems in PEPAS. The Regional Director rightly took the view that it was for the complainant as Director of PEPAS to sort them out, whoever might have been to blame in the first place. There is no evidence to suggest that Manila acted for reasons unconnected with the Organization's interests. The complainant's report for 1967-60 already betrays dissatisfaction with his performance as a supervisor. He is intolerant of incompetence -- and there is nothing wrong with that -- but he lacks tact and forbearance. Though it proved a mistake to appoint Mr. Yoshimoto there were sound enough reasons for picking someone from Japan, a large contributor to the budget with few citizens on the staff. The complainant was too rigid: with some patience he could have got things put right. Mr. Yoshimoto was not given more favourable treatment: he was moved to Manila in a reorganisation of regional staff. The complainant was correctly transferred under Staff Rule 565.2: "A staff member may be reassigned whenever it is in the interest of the Organization to do so." Such decisions are at the WHO's discretion, and in this case there was no defect in the decision, and in particular no personal prejudice. Nor was there any procedural flaw: in an exchange of minutes the complainant was allowed to comment on the transfer. Since he kept grade P.6 Rule 570.1 did not apply. His new post, though lower in grade -- there being few P.6 posts -- was suited to his status, even if not so attractive to him. There was therefore no injury to his dignity or reputation. The relief he seeks does not come within the scope of Article VIII of the Statute of the Tribunal. To put him on leave would be a waste of his talents and of resources. His application for damages is speculative: he has suffered no material injury.

D. In his rejoinder the complainant seeks to correct certain distortions in the WHO's version of the facts. He maintains that his position in Fiji is untenable: his post is not provided for in the budget for 1986-87; it involves no useful work whatever; all he does is give ad hoc advice to unskilled labourers; and his attempts to do worthwhile work are constantly thwarted by Dr. Nakajima and his immediate subordinates. He is subjected to petty acts of harassment. His transfer was contrary to the WHO's true interests. The only difficulty in PEPAS was created by the disruptive presence of Mr Yoshimoto which was a waste of WHO money. There was no blot on the complainant's record until the trouble arose over Mr. Yoshimoto: in particular, he did not have a reputation as an unforbearing supervisor. PEPAS, still without a Director, has gone into decline. The Tribunal is empowered by Article VIII of its Statute to award him damages for moral injury and indeed full compensation for the injury to his career and career prospects.

E. In its surrejoinder the WHO contends that the project on which the complainant is now working is an important and challenging one and in no way demeaning to him. Although the project in Fiji does not appear in the WHO budget for 1986-87, nor did it appear in the budget for 1984-85, yet credits were subsequently approved for it for 1984-85 under the regular budget. It maintains the arguments in its reply, contending that the complainant's transfer was not punitive but an administrative decision correctly taken in the light of all the circumstances. He has suffered no prejudice in his WHO career and is not entitled to any damages.

CONSIDERATIONS:

BACKGROUND

1. One of the concerns of the Western Pacific Regional Office of the Organization, whose headquarters are in Manila in the Philippines, is Environmental Health. In 1978 the then Regional Director, Dr. Dy, decided to set up in Kuala Lumpur a project to be known as PEPAS (Centre for the Promotion of Environmental Planning and Applied Studies). His choice as the Director of the project, a P.6 post, was the complainant, who was appointed in January 1979, being promoted from P.5. The choice seemed an excellent one. The complainant, a sanitary engineer who was now 47, had been on the staff of the Organization for 13 years during which he had been given glowing appraisals. He had directed the feasibility study which led to the creation of PEPAS.

2. The very good appraisals continued. At the end of the first year, his supervisors wrote of "a most creditable programme of achievement to date" and "an excellent job in initial programme development and implementation in

spite of difficulties and constraints". At the end of the second year the supervisors wrote:

"The Centre has been growing smoothly and rapidly and has become more and more mature. That means that Mr. Go, as the Director of PEPAS, together with his team, has made tremendous contributions. I have no hesitation to say that Mr. Go is technically highly competent and his overall performance is appreciated."

3. At the end of the third year, the first-level supervisor wrote: "PEPAS has made many achievements through the efforts of all PEPAS staff including the Director". This was on 18 February 1982. On 6 April, before the second-level supervisor had time to agree or to disagree, the complainant received a letter dated 31 March informing him that the Regional Director had decided to assign him to post 8.0951 in Suva, Fiji. It was a P.5 post, the letter said, but the Director-General was being asked to authorise the retention of the complainant's present grade on a personal basis. If he had any queries, he was not to hesitate to let the writer know.

4. There is really no dispute about the effect of the letter. It was equivalent to relieving the complainant of his command in the field on a day when the battle was apparently going well and relegating him to a job in the back lines. The proposed change had never been discussed with him. The appraisal of 18 February, after its reference to the "many achievements", went on to mention "some human relationship problems ... bound to affect the work and efficiency" and said that the complainant should establish and/or improve a harmonious working relation with his colleagues. The complainant took this to be a reference to a Mr. Yoshimoto. He appended to his report a note of dissent in which he referred to Mr. Yoshimoto as one staff member whom he had reprimanded. There had also been earlier in March a conversation between the complainant and the Director in which it is alleged in the Organization's reply (paragraph 9) that the Director referred to "the possibility of staff movements", but not that he gave any indication that this applied to the complainant.

5. The complainant leapt to the conclusion that the Director had been prejudiced against him by Mr. Yoshimoto. He wrote immediately refusing the new assignment. When asked for his reasons, he concluded his statement of them by saying that the action against him showed personal prejudice and malice. Eventually, he decided to accept the new assignment and at the same time to appeal. He notified the Organization of this on 10 August and lodged his appeal on 8 September 1982.

6. There is set out below for easy identification the names of the Organization's officers involved in the story:

RD: Dr. NAKAJIMA succeeded Dr. DY as Regional Director on 1 July 1979.

DPM: Director, Programme Management. This was Dr. HAN who was throughout the complainant's second-level supervisor.

DSP: Director, Support Programme, Mr. DONALD.

DET: Director, Environmental Technology. When the complainant was appointed this was Dr. EMERY who was also the first-level supervisor who wrote the first of the appraisals referred to in paragraph 2 above. He was succeeded in April 1980 by Dr. LIU, who wrote the subsequent appraisals.

RPO: Regional Personnel Officer Mr. MANI.

AO: The Administrative Officer at PEPAS. At first this was Ms CARNELLY, who was succeeded by Mrs HAY.

MR. YOSHIMOTO

7. Dr. Kirov an engineer held the P.5 post in PEPAS of Air Quality Management Adviser. In June 1980 he vacated this post. The Regional Director, without consulting the complainant or it seems anyone else, recruited in his place Mr. Yoshimoto who had qualifications in pharmacy and law his speciality being food safety but none in engineering or air pollution The Organization in its reply is very frank about this. It states:

"The appointment of Mr. Yoshimoto to PEPAS which appears as the greatest single element of disagreement was undoubtedly a mistake on the part of the regional Administration; Mr. Yoshimoto was not qualified as an engineer and therefore could not have carried out the duties of the post described no matter what efforts he made to attempt this. The complainant was also treated in somewhat cavalier fashion in not being consulted prior to having a new staff member assigned to his supervision."

8. On 20 June 1980 the complainant expressed his misgivings to Dr. Han and asked for his advice and guidance Dr. Han replied that he fully appreciated the complainants concern. He said that Japan was one of the countries from which recruitment was being encouraged. He suggested a review after the first few months. On 18 December 1980 the complainant wrote again to Dr. Han. Mr. Yoshimoto was very willing and conscientious, he said, but he was just not a technical expert. Moreover, his ability to communicate in English was very limited. The complainant suggested the funding of a post for him in food safety. The suggestion remained unanswered, but informally Mr. Yoshimoto's work was shifted to that sphere. In due course the complainant formed a very poor opinion of his work there.

9. The circumstances in which Mr. Yoshimoto was appointed and the fact that he and the Director were both Japanese led almost inevitably to the speculation that he was under the protection of the Director. It was an idea that Mr. Yoshimoto did nothing at all to discourage. On the contrary he let it be supposed that he was making reports direct to Dr. Nakajima. He made demands on the office administration which Mrs. Hay found it difficult to satisfy. In a letter written direct to Mr. Mani on 12 June 1981 she said that all three of the secretaries had independently approached her to express concern about Mr. Yoshimoto's inconsiderate and demanding attitude. She continued:

"The secretaries have my sympathy and support. Mr. Yoshimoto has regularly come into my office threatening to report me to the Regional Director, openly telling staff members that he makes a report to the Regional Director each week of all the incidents that have taken place in the office and squarely lays the blame on me for any ill-feeling or lack of communication which exists among the office staff..

If this situation continues, staff morale will sink to an all-time low and we may soon be faced with the resignation of at least our best secretary, if not several staff...

I would like to add that I have received the complete support of Mr. Go. On several occasions Mr. Go has reprimanded Mr. Yoshimoto and has clearly stated that he has delegated me the authority to handle all administrative matters. This only seems to rub salt in the wound, and after each counselling session with Mr. Go, Mr. Yoshimoto only becomes more aggressive towards me ... if you have any advice, I would be most pleased to receive it."

This letter was unanswered.

10. Matters came to a head in November 1981. On 6 November the complainant wrote to Dr. Han to ask for a discussion with him and Dr. Liu about Mr. Yoshimoto. He said:

"He feels he has a special relationship with the Regional Director and he uses it to intimidate the administrative officer and even insinuated to me, more and more ... I told him that I want to maintain our relationship but I don't care for the intimidation and that he can do what he likes with his special relationship with the Regional Director but it will not affect my dealings with him. As you can imagine, I got pretty mad with him and told him to go to hell when he said he would write to Dr. Nakajima to report."

On 12 November, after Mrs. Hay had reported a scene between herself and Mr. Yoshimoto, the complainant gave the latter a written instruction that he was to cease from interfering with the work of the administrative officer and to stop involving himself in areas of responsibility which were within her terms of reference.

11. On this aspect of Mr. Yoshimoto's behaviour the Organization's reply is as frank as before. In December 1981, the reply says, after Dr. Liu's visit, Mr. Yoshimoto "was criticised for having given the impression that he was mandated by the Regional Office to report to it the operations of PEPAS ... and for over-reacting to minor matters and with inundating the DET's office with copies of lengthy and rhetorical correspondence". But none of these criticisms was conveyed to the complainant.

12. In these circumstances it was not unreasonable that the complainant should interpret the Director's apparently inexplicable behaviour in banishing him to Fiji as a measure of reprisal for his audacity in reprimanding the Director's favourite. After the order to transfer there followed correspondence with Mr. Mani in which the complainant tried to discover what other reasons there could be. In this way the allegation of his breach of "human relationships" was relied upon. The complainant, since he was manifestly unconscious of having offended in this way (the Tribunal will later consider whether or not he did), treated the allegations as further examples of

prejudice. In due course he presented this case to the headquarters Board of Inquiry and Appeal. On this point, while they differed on others, the members of the Board were unanimous in rejecting the complainant's accusation of personal prejudice and malice. By the time they came to consider it, more facts had emerged which showed that the decision to transfer was not simply and solely the act of the Director: Dr. Han and Dr. Liu played a considerable part, if indeed they did not initiate it.

THE COMPLAINANT'S REPUTATION

13. If the Director in making the transfer acted out of personal revenge, there would have been wickedness and dishonesty as well as prejudice. But the motive that has to be proved when prejudice is relied on to invalidate a discretionary decision need not be wicked and dishonest. An honest prejudice can prevent a decision-maker from taking a fair view of the facts. The Tribunal must consider whether there was a prejudice of this sort in the complainant's case sufficient to prevent Dr. Han and Dr. Liu as well as the Director from taking a detached view of the complainant's activities.

14. Paragraph 2 above contains a quotation from the first appraisal report at the end of 1979 which referred to a most creditable programme of achievement. The full sentence reads as follows:

"However, Mr. Go with his high degree of technical competence and his usual dynamic and forthright manner has managed to "bulldoze" his way from a successful launching of PEPAS to a most creditable programme of achievement to date."

Dr. Emery, who wrote this, cannot be considered an unfair critic. The image of the bulldozer suggests that the complainant might be sacrificing "human relationships" to efficiency. This is the suggestion made in the Organization's reply, namely, that the complainant, being himself of the highest efficiency, was too rough in the exaction of similar standards from others. It is put that "his attitudes were not entirely above reproach". He would, it is suggested, have brought with him to PEPAS a "reputation as a somewhat unforbearing supervisor".

15. If he had such a reputation, one would expect to find signs of it in the 13 appraisal reports that preceded the report of 1979. The Organization goes back over a decade to an appraisal report in 1968 to find an example. His then supervisor, Mr. Tomassi, after noting that the complainant's performance had been very good, wrote:

"He expects a high level of performance, which is commendable. In some instances, however, his methods for achieving this have not been conducive to a harmonious relationship with his fellow workers."

The complainant added to this report a note of disagreement. His willingness to state his position, he said, though sometimes contrary to the feeling of a staff member, had not caused any disharmony; he always considered the views of the staff member before expressing his own.

16. Two years later in his appraisal report in 1970 Mr. Tomassi, after noting that the complainant's performance continued to be very good, wrote: "I also have pleasure in reporting that a good team spirit prevailed." In 1976 the complainant was promoted to the post vacated by Mr. Tomassi. In his evidence in 1983 before the headquarters Board Mr. Tomassi said that the complainant tended to defend his staff and received in return an exceptional loyalty from them.

17. To add to the complainant's reputation as "an unforbearing supervisor" the Organization in its reply mentions an incident that occurred during his first year in PEPAS. In December 1979 Dr. Han and Mr. Donald spent two or three days in Kuala Lumpur, leaving on 13 December. On 17 December they reported to the Director and there is in the dossier a note of what was then discussed. One topic was an appeal to the Director from a decision by the complainant to terminate at the end of their probation periods the appointments of two locally recruited secretaries. It seems that the appeal raised some unusual personal questions about which the note is obscure and which the complainant told the visitors he had not been briefed on how to handle. The Director decided to extend the probationary period for another six months so that a second opinion could be obtained from the administrative officer. (The second opinion confirmed the complainant's view and the appointments of the two secretaries were in due course terminated.) The note says in another paragraph that what was discussed was the question of the complainant's "shortcomings as a manager". The Director is reported as saying that these were to be mentioned in Dr. Han's appraisal, which in fact he wrote on the next day, 18 December. Possibly the shortcomings relate to the complainant's handling of the above incident. If they do, they were more accurately referred to in the appraisal as

"some problems in personnel management". If they do not, the alleged shortcomings are unidentified in the dossier. The significance of this incident is that it is relied upon by the Organization as showing bad relations with the staff in the complainant's first year and before the arrival of Mr. Yoshimoto. Such details as are available show that this reliance is misplaced.

ORIGIN OF THE TRANSFER

18. The difficulties with Mr. Yoshimoto and the circumstances in which they came to a head in November 1981 have been stated in paragraph 10 above. It may or may not have been a coincidence that at a meeting in November 1981 the Director expressed the wish that the Environmental Health programme should be "reoriented, strengthened and brought into line with the current and foreseen needs of the countries in the Region". This initiated a review, carried out by Mr. Novick, Programme Officer for Basic Sanitary Measures at WHO headquarters. It was not completed until 12 May 1982. Meanwhile, on 19 February in discussion with Dr. Liu among others the Director asked for "concrete proposals". On the previous day Dr. Liu had signed his appraisal of the complainant (see paragraph 4 above) which referred to "human relation ship problems" and the need "to improve harmonious working relations". As a concrete proposal he decided as a first step to review the staffing situation. On 24 February he submitted a memorandum to Dr. Han.

19. In this memorandum Dr. Liu reviewed nineteen posts and proposed six changes. In one of them the project was ending in May 1982 and so a replacement was required. Of the remaining five posts one was Mr. Yoshimoto's. According to the memorandum, he had only just started his new duties in Food Safety in January 1982, an activity which Dr. Liu thought could be better developed from Manila. The transfers proposed for the other four were all linked and would commence with the transfer of the complainant to Suva in Fiji. "Very competent sanitary engineer", Dr. Liu remarked in the memorandum, but not "particularly successful as a team manager". The memorandum continues: "Whomsoever's fault it may eventually be established, the present situation in PEPAS has deteriorated to a point whereby its smooth functioning is seriously hampered and thereby jeopardises this very important aspect of the WPR/EH programme". Mr. Dekel had been at Suva for eight years and wanted a transfer. He could replace Mr. Lauriault, who was well suited for a new project to be started in Laos. Suva, Dr. Liu wrote, was "one of the most important South Pacific projects", but not one which required "team management skills". (The "team" consisted of two full time staff members, Mr. Dekel being one.) The complainant could go to Suva, the memorandum went on, and could be replaced at PEPAS as sanitary engineer, but "not as Director", by Mr. Bradbury from Malaysia. Mr. Bradbury could continue to render assistance as required to the Malaysian Government. The memorandum made no proposal for the Directorship of the PEPAS team.

20. The memorandum was dated 24 February. On the next day Dr. Han noted his support for the proposed action which he said he would discuss with the Director. On 2 March he noted that the Director had agreed. Running alongside this procedure was the processing of the complainant's appraisal report. It was while the complainant was preparing his comment on the appraisal and without waiting for it that Dr. Liu and Dr. Han made their recommendation and the Director took his decision. He took it without waiting for any comments which the complainant might have to make on the appraisal report and without reference to the complainant, whom he was due to meet in the next few days. When they met, which was some time between 7 and 10 March, their talk, according to the complainant's recollection, related only to Mr. Yoshimoto, a subject on which he got no satisfaction. According to Mr. Mani the Director told the complainant that "he was envisaging certain movements" and that the complainant would be included among them. Mr. Mani said further that on the next day Dr. Liu told the complainant that there would probably be a "restructuring" which would involve him. The complainant strongly denies this.

21. On 22 March the complainant wrote his comment on Dr. Liu's appraisal. It was written before he knew of the decision to move him and therefore at a time when caution rather than resentment would have governed his words. He referred to the staff member whom he had reprimanded and to his own "sustained and patient attempt to arbitrate differences between him and his colleagues". He agreed that there were "gripes" and said that they were to a large degree due to covert encouragement by senior staff in the Regional Office, or at least to a belief by PEPAS staff that they should voice "gripes" about any problem they encountered. Actions or misplaced attitudes by senior staff, he said, had tended to undermine his position in the eyes of some staff members.

22. When Mr. Novick's investigation was completed his report of 18 May 1982 referred to the "impressive performance of PEPAS", saying "the output of PEPAS has been substantial, relevant to the needs of member States and generally scientifically and technically creditable".

THE ISSUES

23. The following Staff Rules are relevant.

565.2 Provides that a staff member may be reassigned "whenever it is in the interests of the Organization to do so".

570.1 Provides that a staff member's grade may be reduced as a consequence of reassignment to a different post of lower grade. The reassignment may result (1) from the staff member's own request, (2) from unsatisfactory performance or misconduct, (3) as an alternative to termination in a reduction in force.

570.2 "A staff member shall not be reduced in grade for unsatisfactory performance or misconduct until he has received written notification of the proposed action and of the reasons, and has had an opportunity to reply."

1230.1 Sets out grounds of appeal against administrative decisions, including

1.1 personal prejudice on the part of any responsible official; and

1.3 failure to observe or apply correctly the provisions of any Staff Rules, or the terms of the contract of employment.

24. The complainant's main case is brought under Rule 1230.1.1 and alleges the personal prejudice of the Director. The complainant argued unsuccessfully before the Regional Board and the headquarters Board that his transfer was a punitive and malicious act by the Director immediately following the reprimand of Mr. Yoshimoto. The Tribunal does not accept this argument. It is clear that the pressures against the complainant antedate the reprimand and that the Director himself. There is insufficient evidence to show that the three men were in a conspiracy to punish an affront to the Director. This does not exclude the possibility that there was an honest but unjustified bias against the complainant which led the three men to the false conclusion that his transfer was in the interests of the Organization. This possibility is more conveniently considered under Rule 1230.1.3. The complainant's case under that rule contains two allegations. The first is an allegation of failure to apply correctly Rule 570.2 in that the notification required by that rule was not given; to this the Organization replies that this rule does not apply at all since there was no reduction in grade. The second is an allegation of the incorrect application of Rule 565.2 in that the transfer was not in the interests of the Organization.

25. On the first allegation the Tribunal concludes that there was a breach of Rule 570. Contrary to the argument of the Organization, the letter of 31 March 1982 (paragraph 3 above) did reduce the complainant's grade. It was not a proposal to reassign but an immediate and unconditional decision to reassign made irrespective of whether or not the Director General would permit the retention of the P.6 grade on a personal basis. Such a decision could lawfully be made only on the ground of the complainant's unsatisfactory performance or misconduct. In breach of Rule 570.2 the decision was given without reasons and taken without having given the complainant an opportunity to reply.

26. The Organization's argument treats the decision of 31 March as if it were combined with the Director-General's decision, not conveyed to the complainant until 11 May, to permit his retention of his P.6 grade. Even if it were so treated, Rule 570 applies. The rule is not concerned with the personal grade of the staff member but with the grade of the post; the rule refers to reassignment to a different post of lower grade"; the Suva post was and continued to be a post of P.5 grade as compared with the Kuala Lumpur post of P.6.

27. What is in effect the same point is put in the complainant's argument that the decision of 31 March was a de facto demotion and that therefore Rule 570.2 ought to apply by analogy. The Tribunal agrees that the decision was in substance a demotion. This follows almost automatically from the fact that it was a transfer from a P.6 to a P.5 post with lower responsibility. The PEPAS Director was responsible direct to the Regional Office while the sanitary engineer in Suva was responsible to the WHO representative there. Moreover, the PEPAS post was a continuing post while the Suva post was not. To be diminished in responsibility and effectiveness can be just as hurtful as to be lowered in grade.

28. There is also much to be said for the argument that whether or not there is a specific provision in the Staff Rules, as a matter of contractual obligation the Administration ought not to take a decision injuriously affecting a staff member's career without first, as a matter of natural justice, giving him the reasons for the decision and getting

his response. But likewise it can be said that the Director ought not to conclude that a transfer is in the interests of the Organization without first hearing what the transferee has to say about it. The whole point is therefore best considered together with the second allegation under Rule 565.2. This rule must be considered anyway since a decision in favour of the complainant under Rule 570 would give him only a limited relief.

THE INTERESTS OF THE ORGANIZATION

29. The Director-General took the impugned decision in the exercise of his discretion. This means that the Tribunal will not interfere with it merely because they think it to be wrong. They must be satisfied, to put it briefly, that it was not only wrong but wrongly motivated or based on an error of law or a complete misapprehension of the facts. Moreover, where, as here, the interests of the Organization form the sole criterion for the decision, the Tribunal will be reluctant to interfere since the Director-General must normally be regarded as the best judge of what those interests are.

30. On the other hand there is in the present case a most unusual feature. This is that on the face of it the decision appears as one that is plainly contrary to the interests of the Organization. The effect of it is to remove from his position an admittedly competent manager who was together with his team admittedly getting excellent results on the ground that he lacked the art and skill of team management. The complainant argues forcefully that it is impossible to get good results from a team without being able to manage it. But, if there was faulty management, surely the next step after the complainant's removal should be his replacement by a man who had the skill which he is deemed to have lacked. Yet the decision impugned provides no successor for the complainant as team manager. It seems that the cure for faulty team management is to ensure that in the future there shall be no management at all. In this situation the Tribunal must itself examine the evidence said to prove the complainant's lack of skill in team management and consider the relevance of such a lack to the interests of the Organization. The examination falls into two periods, that is, before and after the appearance of Mr. Yoshimoto.

31. For the earlier period, there is evidence that the complainant was a hard taskmaster. If it amounts to no more than that, it does not adversely affect the interests of the Organization. If the methods he employed were objectionable, if, for example, he was a tyrant or a bully, it would not be in the interests of the Organization that he should continue to exercise authority. But there is no suggestion of that. No doubt the supreme managerial skill is to hold the balance exactly even between strictness and laxity. But that is not always attainable. Where it is not, it is in the interests of the Organization that the manager should be too strict rather than too lax. Where he is too strict, he can be corrected by superior authority and that is why there is provision in the rules for appeal from a supervisor. Where he is too lax, the interests of the Organization suffer without the possibility of comparatively speedy correction.

32. As to the second period, the solid evidence that there was trouble of some sort, though not that it was due to bad management, begins with Mrs. Hay's complaint in June 1981 (paragraph 9 above) about Mr. Yoshimoto's behaviour. It is not until 18 February 1982 that the first suggestion of bad management is made. Dr. Liu's comment then (paragraph 4 above) is that "some human relationship problems" have arisen which, he implies, are caused by the complainant's failure to establish a harmonious working relationship with his colleagues. Six days later, this is amplified into an assertion that the situation has deteriorated to a point whereby "the smooth functioning of PEPAS is seriously hampered" (paragraph 19 above). On 4 May Dr. Liu gives as his basis for this assertion "objective and imperative observation repeatedly confirmed by almost all PEPAS staff". No one is named. No details are given. No incidents are recounted. It is not supported by any direct evidence by any member of the staff. There is no explicit allegation that any lack of harmony was caused by anything said or done by the complainant. "Whomsoever's fault it may eventually be established" is how Dr. Liu prefaces his statement that the situation had deteriorated. There were problems, he writes on 4 May, and it was the complainant's responsibility to solve them. Yet the men and women who, according to Dr. Liu on 4 May were almost unanimously of the opinion that there was in effect a lack of team spirit, were those who composed the team who, according to Dr. Liu on 18 February, had during the year "made many achievements through the efforts of all PEPAS staff including the Director" (paragraph 3 above).

33. The Tribunal's analysis of the situation at PEPAS as it is reflected in the dossier is as follows.

(a) The years 1979, 1980 and 1981 were for PEPAS admittedly years of achievement. There is no evidence of any trouble which could be attributed to bad management until towards the end of 1981. It is possible that if no action was then taken, the trouble would have increased to the point when it became a threat to achievement. The person

who had to decide what action should be taken was the Director assisted and advised by Dr. Han, Dr. Liu and Mr. Mani. All these men were in November 1981 and thereafter in a situation in which it was virtually impossible for them to take an unprejudiced decision. They were prejudiced in the sense that they could not or would not admit, even to themselves, that the main if not the sole, cause of the trouble was Mr. Yoshimoto.

(b) There is clear and independent evidence in Mrs. Hay's statement (paragraph 9) that Mr. Yoshimoto was a trouble maker and in the fact (paragraph 11 above) that he was creating unrest and undermining the authority of the complainant.

(c) There is likewise clear evidence that the Regional Office was turning a blind eye to this situation. Mr. Mani completely ignored Mrs. Hay's plea. Dr. Han ignored the complainant's plea (paragraph 10 above) and the Director would not discuss it (paragraph 20 above). At the same time the Administration was receiving a flow of reports from Mr. Yoshimoto. It is not clear in the Organization's reply that the flow was stopped even as late as December 1981. It seems from the reply, paragraph 4(iii), that the official criticism of Mr. Yoshimoto was not so much for reporting as for having given the impression that he was mandated to report.

(d) The Administration ignored the problem because it had been created by the Director himself with his questionable appointment of Mr. Yoshimoto. The removal of Mr. Yoshimoto, who was contributing nothing to PEPAS anyway, was the obvious solution, but could not be adopted without a criticism, at least implied, of his appointment. Nor without at least implied criticism could the problem be discussed frankly by Dr. Han or Dr. Liu with the complainant.

(e) The transference of Mr. Yoshimoto to Manila under a face saving formula would seem to be the obvious solution and was in fact adopted in March 1982. The simultaneous transfer of the complainant is inexplicable except upon the wholly unjustified assumption that he was so bad a team manager that, even after the removal of the thorn in his flesh, he could do more harm than good by remaining at his post.

(f) The Tribunal concludes that no unprejudiced person could on 31 March 1982 have believed that the removal without replacement of an efficient director, whose achievement over three years had not been challenged even by his critics, was in the interests of the Organization.

REMEDY

34. As to reinstatement, the complainant asks for the relief recommended by the minority on the headquarters Board. This is that the complainant should be reassigned to a post at WHO headquarters which was fully commensurate with his grade, experience and abilities: or, should such a post not be available, that he should be placed on study leave or leave with pay until such time as a suitable post became available. The Tribunal considers this solution to be appropriate. The Tribunal would find it difficult to believe that such a post either at WHO headquarters or elsewhere could not be found for a man in the early fifties with an unbroken record of achievement in the service of the Organization for nearly twenty years.

35. As to compensation, the complainant has sustained moral damage in that he has been denied the satisfaction of continuing to work in a job of high interest and responsibility which he had himself helped to create and been relegated to a position of lower responsibility and declining importance. This should be marked by a moderate award of money. There is no evidence that he has suffered in reputation. For those who know something of the facts, he was a sacrifice to the Director's errors. For those who go by appearances, he left a position, in which he was not replaced and which therefore would be taken as redundant, for another position in which he retained his status.

DECISION:

For the above reasons,

The appeal is allowed and it is ordered that

1. The decision of the Director-General of 29 December 1983 be quashed;
2. The complainant be assigned as soon as possible to a post in the Organization commensurate with his grade, experience and abilities and that if he be not so assigned within three months he be placed on study leave or leave

with pay;

3. The Organization pay to the complainant as compensation the sum of 25,000 United States dollars; and

4. The Organization further pay to the complainant \$1,711 and 5,175 Swiss francs as partial reimbursement of his costs.

In witness of this judgment by Mr André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner