

## SIXTY-SIXTH SESSION

### ***In re* ARABA**

#### **Judgment 954**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Justin Désiré Araba against the World Health Organization (WHO) on 17 August 1988 and corrected on 23 September, the WHO's reply of 25 November, the complainant's rejoinder of 29 December 1988 and the WHO's letter of 2 February 1989 to the Registrar stating that it did not wish to file a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 370.1.1 and 1050.1 and .4;

Having examined the written evidence;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The WHO has a Programme to combat onchocercosis (OCP) which is based in Ouagadougou, the capital of Burkina Faso. The complainant is a citizen of Benin who was born in 1939. On 9 May 1978 he was seconded from the Ministry of Health of Benin for a period of five years to a post with OCP as a technical assistant. He held a temporary appointment at grade OU.6 and was in charge of the Programme's fleet of motor vehicles. In 1979 he was promoted to OU.7. On 1 January 1982 he was transferred to a grade P.2 post, No. 9.3750, as a transport officer.

Since his secondment was to end on 8 May 1983, in a telex dated 7 April 1983 the Director of OCP drew the Benin Government's attention to the matter and the Government extended it by five years. At the material time his temporary appointment was to expire at 31 May 1986. By a letter of 20 November 1985 the Director informed him that since post 9.3750 was to be abolished as part of a policy of staff retrenchment required by structural reforms in the Programme his appointment would end on 28 February 1986 under Staff Rule 1050.1: "The temporary appointment of a staff member engaged for a post of limited duration may be terminated prior to its expiration date if that post is abolished".

On 26 November the complainant wrote to the Director saying that seven of his eight children were attending school and he would therefore like to stay on until the end of the school year. In letters of 27 November 1985 and 27 February 1986 the Director agreed to keep him, on temporary duties, until 31 May 1986. Upon leaving at that date he was granted a termination indemnity under Rule 1050.4 amounting to 7 months' salary and a repatriation grant under Rule 370.1.1 amounting to 20 weeks' salary.

On 10 December 1985 he appealed to the Regional Board of Appeal. In its report of 28 April 1987 the Board, while upholding the abolition of his post, recommended giving him preference if any suitable post fell vacant in OCP or in the WHO's Regional Office for Africa. The Regional Director for Africa approved that recommendation on 20 July.

On 26 September 1987 the complainant appealed to the headquarters Board of Appeal. In its report of 2 May 1988 the headquarters Board recommended confirming the Regional Director's decision and rejecting the appeal, and in a letter of 14 June 1988, the decision impugned, the Director-General informed the complainant that he did so.

B. The complainant contends that the termination of his appointment was in breach of the general principles of law which should apply to his case, and which he expounds. The Organization is mistaken in saying that structural reforms entailed abolition: he was in charge of the garage, and the garage is still there. Since on 7 April 1983 the Director had asked the Government of Benin to extend his secondment, and the Government agreed, presumably at that date the WHO had expected to need his services for some years. It is therefore odd that so soon afterwards the Director should have found any need to abolish his post.

There was in any event abuse of authority: the real reason for his termination was not the abolition of his post but the hostility of his supervisors.

He seeks the quashing of the impugned decision and the payment of the salary and allowances he would have got had he been kept on until the expiry of his secondment in 1988.

C. In its reply the WHO submits that the abolition of the complainant's post was warranted. The board of management of the Programme, on which donor, beneficiary and sponsoring governments are represented, approved a budget for 1986-1991 which severely reduced the amount of funds. The Director of the Programme therefore had to make drastic cuts in expenditure on staff and other items. At his request an official from headquarters in Geneva made an inquiry into what had to be done, and one outcome was a proposal to reassess the provision of transport and replace the transport officer's P.2 post with one for an administrative assistant at a lower grade. In a circular of 15 November 1985 the Director informed the staff that many posts would have to go in 1986-87. The complainant's post proved to be one of them. The decision to abolish it was therefore taken for technical reasons and for the sake of sound management. Besides, he offers no evidence to suggest that the abolition was unwarranted. In the telex of 7 April 1983 the Director merely asked the Government to clear up his administrative status since the first term of secondment was to expire on 8 May 1983; it was the Government, not the Director, that decided to extend his secondment by five years.

Again he offers not a shred of evidence to back up his allegations of hostility on his supervisors' part. Although the grant of his within-grade salary increment was withheld for a year from 1 January 1985 on the grounds of poor performance, his supervisors said in their appraisal of him for 1985 that they were pleased with improvements in his work.

Besides, the Organization treated him considerately: it extended his appointment in his own interests and paid him generous terminal entitlements.

D. In his rejoinder the complainant presses his original pleas and claims and develops his submissions relating to the terms of his appointment and secondment and the real reasons for his termination. As to the former, he maintains that in the civil service of Benin any secondment is for five years unless it is otherwise provided. Accordingly the Director's request for extension was bound to entail another five years' secondment. The WHO's acquiescence in the further secondment and its refraining from asking for a shorter period implied consent and a commitment to extension of appointment up to the date of expiry of the secondment, 8 May 1988. In any event the Government of Benin did not unilaterally determine the period of the further secondment.

As to the reasons for his termination, the complainant observes that the headquarters official who made the inquiry did not report until 17 November 1985; yet the Director had already on 15 November announced the policy of staff retrenchment. Moreover, the complainant got the decision of termination on 20 November, only three days after the official had reported, not long enough to allow time to ponder. The real cause of termination was, he maintains, his supervisors' undoubted animosity. Though an earlier supervisor had thought highly of him, two more recent ones, whom he names, showed hostility by taking many measures to his detriment and questioning his qualifications so as to undermine his position.

#### CONSIDERATIONS:

The complainant's application for oral proceedings

1. The complainant had an opportunity of answering in his rejoinder the case the WHO made out in its reply, while the Organization submits that the rejoinder contains nothing new and calls for no further argument.

The Tribunal concludes that the written submissions suffice and that there is no need to take oral evidence from the complainant.

The merits

2. On 9 May 1978 the complainant was appointed to the WHO's Onchocercosis Programme (OCP) at Ouagadougou on secondment from the civil service of his own country, Benin. The secondment was extended in 1983 until 1988. He held posts as a technical assistant at grades OU.6 and OU.7 and then as a transport officer at grade P.2. By a

letter of 20 November 1985 the Director of the Programme told him that his post was to be abolished and gave him three months' notice of the termination of his appointment, which would be on 28 February 1986. On 26 November he wrote back saying that he did not "mind" the abolition of his post but would like to have the date of termination held over to 31 May 1986, when his contract would be running out anyway. The Organization agreed. Yet on 10 December 1985 the complainant appealed to the Regional Board of Appeal challenging the termination for abolition of post. On the Board's recommendation the Regional Director for Africa rejected his appeal and on 26 September 1987 he went to the headquarters Board of Appeal challenging that decision. On 2 May 1988 the headquarters Board recommended rejecting his appeal and the Director-General did so on 14 June 1988.

3. WHO Staff Rule 1050.1 allows termination of a staff member's temporary appointment before the date of expiry if the post he is on is abolished.

Although the Director-General has discretion in deciding whether to do away with a post his decision is subject to review: the Tribunal will quash it if there has been breach of some procedural or formal rule, or a mistake of fact or of law, or if some essential fact has been overlooked, or if there is abuse of authority, or if some clearly mistaken conclusion has been drawn from the evidence. In particular there will be abuse of authority if the Organization abolishes the post, not on any material and objective grounds, but so as to get rid of someone whom there is no proper reason to dismiss.

4. The complainant's first objection to the abolition is that the grounds given for it are unlawful. In support of that contention he cites precedent that says that when a staff member has had a disciplinary sanction imposed on him the Tribunal will determine whether the factual basis of it is accurate and warrants the action taken.

Since there is not a shred of evidence to suggest that the Organization was taking disciplinary action or that the abolition amounted to any sort of sanction, that plea is rejected on the facts.

5. A more cogent one is that the decision rested on a blatant misunderstanding of the facts: contrary to what the WHO says, the true reason for the abolition and termination was not the redundancy of the complainant's post, but quarrels with his supervisors, and there is therefore abuse of authority.

6. That line of argument fails too.

As the Organization submits, the decision shows none of the flaws the complainant alleges but was taken on proper and objective grounds. It was a measure of reform of OCP and bad blood between him and his supervisors had nothing to do with it.

In support of its case the WHO cites recommendations in a report dated 17 November 1985 by the head of a management unit at headquarters in Geneva who went out to Ouagadougou to make an objective survey of the sort of reforms that were needed. One express recommendation was for changing the P.2 post of transport officer into one for a senior administrative assistant at grade OU.6 or OU.7 who was to help the transport management officer with administrative work and "follow-up".

The Organization is right in saying that the decision of 20 November 1985 to abolish the complainant's post (No. 9.3750) was based on that recommendation. Although it came only a few days after the report was made the complainant is mistaken in finding such haste suspicious or cavalier. In a staff circular of 15 November 1985 the Director announced austerity measures that would entail doing away with several posts. Although, as the complainant points out, the circular did not mention abolition of his own post or his dismissal, that did not mean that such measures were inconceivable or unnecessary, and indeed they were formally recommended later in the management survey report of 17 November. Besides, in the letter he wrote to the Director on 26 November the complainant said that he did "not mind the abolition of his post if it is really in the Organization's interests". So he did not seem to be at all taken aback by the decision.

7. Nor is there any evidence to bear out his contention that the abolition was prompted by his supervisors' hostility towards him. On the contrary, as he himself points out, they had consistently given him "first-rate performance reports since he had joined OCP in May 1978". To be sure, he says that things changed early in 1983 when Mr. Pauquet took over from Mr. Supthut as chief administrative officer and as one of his supervisors, but even in his own submission he continued in 1984 to be highly rated for his experience and qualifications. Moreover, as the WHO observes, his report for 1985 was fully satisfactory: his supervisor recorded a definite improvement in his

work and welcomed his acceptance of orders and of supervision, and his second-level supervisor endorsed that assessment. There is no call to question the Organization's good faith because there is nothing in the complainant's rejoinder or, for that matter, in any of the pleadings to cast doubt on what it says.

There being no need to entertain the complainant's other pleas, which address irrelevant issues, the Tribunal rejects his main submission and holds that the abolition of his post and the termination of his appointment before expiry and before the end of his secondment in May 1988 were needed in the Organization's interests and did not amount to any abuse of authority.

The complainant's application for the hearing of evidence

8. The complainant applies for the hearing of expert evidence on the quantity and quality of his work. But the issue is immaterial since the abolition of his post was in the Organization's interests and since in any event the quality of his work is not at issue.

DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the afore-mentioned have signed hereunder, as have I Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
E. Razafindralambo  
A.B. Gardner