

SEVENTEENTH ORDINARY SESSION

***In re* TERRAIN**

Judgment No. 109

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Miss Marie-Thérèse Terrain on 15 May 1966, the reply of the Organisation of 27 June 1966, the complainant's rejoinder of 28 September 1966, and the letter of 5 October 1966 in which, subject to the correction of a factual error, the Organisation stated that it did not wish to avail itself of its right to make further comments;

Considering Article II of the Statute of the Tribunal and Article 960 of the World Health Organisation Staff Regulations;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

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

A. Complainant was engaged, from 23 April 1965, as secretary in the Health Services Section of the World Health Organisation Regional Office for Africa at Brazzaville and was assigned to office work under the supervision of a translator. Miss Terrain complained to various authorities about difficulties with her neighbours in the building in which, like other World Health Organisation officials, she occupied a flat provided by World Health Organisation, while at the same time there was friction between her and her immediate supervisor which led to her transfer, from 31 October 1965, to the Finance Section. During this first period a report was made on her work which referred in particular to her difficulty in adapting herself to working conditions and in maintaining harmonious working relations with colleagues, comments to which Miss Terrain formally objected.

B. Complainant's performance of her duties in the Finance Section was not satisfactory to her new supervisor, who on 3 December 1965 made a report for the period 1 November - 2 December 1965 which was critical of the quantity and quality of Miss Terrain's work, citing specific instances, and of her general behaviour. These comments were also formally objected to by complainant who, while not denying the facts, sought to justify her conduct or to give it a different interpretation.

C. On 2 December 1965 complainant was informed that the Organization proposed to terminate her contract under Article 960 of the Staff Regulations. Miss Terrain having made written comments on the reports referred to above, she was informed on 16 December 1965 that after carefully considering her observations and explanations, the Organisation had found no new factors justifying reconsideration of the decision notified to her on 2 December. Her employment would therefore be terminated on the expiry of the statutory period of one month's notice, i.e. on 18 January 1966.

D. Complainant having appealed to the Director-General, her case was examined by Dr. Dorolle, Deputy Director-General of WHO, who personally interviewed her on 11 February 1966. On the same day Dr. Dorolle, on behalf of the Director-General, rejected Miss Terrain's appeal, giving his own reasons for the decision; namely, that after careful consideration of the arguments put forward by complainant and having heard her verbal explanations, which related essentially to an accusation of prejudice on the part of her superiors and the repercussions of her complaints concerning her housing conditions on her working life, and after considering also the reports of 4 November and 3 December 1965, which had led to the termination of her contract, he had come to the conclusion that termination was due to unsatisfactory service and not to the reasons alleged by Miss Terrain. Consequently her employment was finally terminated on 11 February 1966, and complainant has brought before the Tribunal her charge of partiality and personal prejudice in contesting the decision impugned. The Organisation submits that the complaint should be dismissed.

CONSIDERATIONS:

1. Miss Terrain was appointed from 23 April 1965 as secretary in the World Health Organization Regional Office for Africa; her appointment was terminated under Article 960 of the Staff Regulations by a decision of 2 December 1965, confirmed by the decision impugned dated 11 February 1966.
2. Under Article 960 of the Staff Regulations, if, during an initial or extended probationary period, a staff member's performance or conduct is not satisfactory, if he is found unsuited to international service, or if he fails to qualify medically, the appointment will be terminated with one month's notice, no indemnity being payable.
3. While the Tribunal is competent to review any decision of the Director-General terminating the appointment of an official during the probationary period, insofar as it may, on the one hand, have been taken by an authority which was not competent, be in irregular form or tainted by procedural irregularities, or, on the other hand, if it is tainted by illegality or based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier, the Tribunal may not, however, substitute its own judgment for that of the Director-General in regard to the work or conduct of the person concerned or his or her suitability for international service.
4. Although Miss Terrain claims that she has always performed her duties competently and loyally, and that the decision to terminate her is based on facts which are materially false or distorted, she has not adduced a shred of serious evidence in support of her allegations. The decision impugned was taken on the basis, in particular, of the reports of her two successive chiefs; these reports deal with specific points which are not invalidated by any of the evidence in the dossier. From these facts as a whole the Deputy Director-General, acting on behalf of the Director-General, could conclude that complainant's service was unsatisfactory, without exceeding his discretion. However, his decision was taken only after he had personally heard Miss Terrain, who was given the opportunity of fully defending her interests.

DECISION:

For the above reasons,

The complaint of Miss Terrain is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine