

## SEVENTIETH SESSION

### ***In re SELLEME-BOLANGHA***

#### **Judgment 1089**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Grégoire Selleme-

Bolangha against the World Health Organization (WHO) on 21 January 1990 and corrected on 22 March, the WHO's reply of 15 June, the complainant's rejoinder of 11 July and the Organization's surrejoinder of 23 September 1990;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and WHO Staff Rules 370, 1040, 1050.4, 1230.1 and 1230.8.5;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a citizen of the Congo who was born in 1947, joined the staff of the WHO in 1978 as a technical officer at grade P.2 under a technical co-operation project the Organization was carrying out in Guinea. From 1983 he was employed as a technical officer on a P.3 post under a regional project in the Central African Republic and later under another regional project, AFRO/VDT/001, in the same country. He was transferred in January 1986 to Burundi but was still employed under AFRO/VDT/001. He was on post No. 31490 in Burundi. He held fixed-term appointments, the last of which was to expire at 31 December 1987.

On 28 May 1986 the Director of the WHO's Regional Office for Africa (AFRO) approved his transfer to another P.3 post for a technical officer, No. 32696, under a project in Rwanda, RWA/HMD/001. He took up duty in Rwanda in August 1986. On the grounds that his post No. 32696 was financed only up to the end of 1987 AFRO gave him notice of termination under Staff Rule 1040 by a decision of 11 August 1987 and his appointment accordingly ended at 31 December 1987. The Organization paid him just over nine months' remuneration by way of termination indemnity and the repatriation grant prescribed in Rule 370.

On 16 May 1988 he lodged an appeal with the Regional Board of Appeal under Rule 1230.1 against the termination. In a report it submitted to the Regional Director on 22 December 1988 the Board found that relations between the complainant and the WHO's Representative in Burundi had been poor and that his case was "unfortunate"; it recommended reinstating him as soon as a suitable post turned up. In a letter to him of 10 February 1989 the Regional Director accepted that recommendation and said that AFRO would put his name on the list of candidates for any suitable vacancy. In a letter of 13 February the complainant asked the Director to reinstate him at once. On 24 February the Director answered that there was no suitable post yet but that when one fell vacant the Board's recommendation would be borne in mind.

On 10 April 1989 the complainant appealed to the headquarters Board of Appeal in Geneva under Rule 1230.8.5 against the Regional Director's decision of 10 February.

In its report of 15 August 1989 the headquarters Board held that his termination had not been wrongful and he had no right to damages but that AFRO had not done all it could to reinstate him promptly. It recommended doing the utmost to reinstate him soon, having the Regional Director report after three months and looking into several possibilities of re-employment.

In a letter to him of 17 October 1989, the decision which he impugns, and which he got on 26 October, the Director-General accepted the Board's recommendations.

B. The complainant submits that he fell foul of the personal prejudice against him of the WHO's Representative in Burundi, where he served in the first half of 1986. The Representative falsely accused him of improper trading in goods imported into Burundi duty-free; refused him the use of an office car; declined, though he was the complainant's supervisor, to add comments to the report on his performance in 1985-86; and harassed him in other ways. Such personal prejudice, which falls within the scope of Rule 1230.1.1, tainted the termination of his appointment and made it an abuse of authority.

The sole purpose of transferring him to Rwanda in August 1986 was to favour another WHO official. He was put on the other official's post in Rwanda, No. 32696, which was precarious, and the other got his own post in Burundi, No. 31490.

Though the Regional Director accepted the Regional Board's recommendation he did no more than promise to treat the complainant as a candidate for any suitable post that might arise. As the headquarters Board said, AFRO failed to do its utmost to reinstate him promptly. Its vague promises show its bad faith.

Since reinstatement seems to be out of the question, the complainant claims damages instead: he seeks awards of 500,000 United States dollars for wrongful termination, \$1.5 million for material injury and \$1 million for moral injury.

C. In its reply the WHO rejects the complainant's contention that its Representative in Burundi acted from personal prejudice against him. He adduces no evidence in support of his allegations that the Representative accused him of dealing in duty-free articles and turned the Regional Director against him and that he was denied the use of the office car. As for his performance report for 1985-86, two of his supervisors duly filled it up. The Representative declined to comment: if he had wished the complainant ill he would surely have added adverse comment. The first-level supervisor does mention in the report "social difficulties that have not helped", but the complainant acknowledges them in his own brief.

His termination was not wrongful. His appointment came to an end under Rule 1040.\* (\*"Temporary appointments, both fixed-term and short-term, shall terminate automatically on the completion of the agreed period of service in the absence of any offer and acceptance of extension. However, a staff member serving under a fixed-term appointment of one year or more, whom it has been decided not to reappoint, shall be notified thereof not later than three months before the date of expiry of the contract. ...".) He was given notice on 11 August 1987, over four months before the date of its expiry. The WHO granted him ex gratia the termination indemnity prescribed in 1050.4. The holder of a post under a project cannot expect constant renewal of appointment since the project may come to an end if the country does not need help any more. The complainant's post in Rwanda, No. 32696, was abolished: one of two posts for a technical officer had to go and in accordance with the wishes of the Government of Rwanda and with criteria determined according to WHO policy it was the complainant's that went.

He is mistaken in questioning the earnestness of the WHO's efforts to reinstate him. To be sure, it was sorry to let him go and has done its utmost to find him other work; but the reorganisation of its structure in Africa in 1985-86 led to the abolition of many posts. His reinstatement is the more difficult because government consent is usually needed for appointments to posts of the kind that would suit him. In February 1988, before he appealed to the Regional Board, the Regional Director proposed reinstating him in a project in Burundi, but the Government of that country was not in favour. After the headquarters Board had reported the Director-General had his name put on the list of former staff seeking reappointment. In a memorandum of 10 May 1990 to headquarters AFRO affirmed the Regional Director's willingness to consider the complainant for a post as a laboratory technician "under the AIDS programme in the Sub-Regions" but pointed out that it needed funds to finance the post.

D. In his rejoinder the complainant discusses several issues of fact on which he submits that the WHO's reply is wrong or misleading. He submits that he is not challenging, and has never sought to challenge, the Director-General's decision of 17 October 1989. He enlarges on his allegations of personal prejudice on the Representative's part and submits what he sees as further evidence in support of them. As for his reinstatement, he asks why the WHO did not tell him before of its recent efforts to find him a suitable post and why, if indeed AFRO is willing to reappoint him, he has still got no offer. He continues to doubt the Organization's good faith and the sincerity of its protests of willingness to take him back. He states that he will accept any offer he gets before the Tribunal rules on his case.

He alters his claims: he seeks reinstatement with retroactive effect and reduces to \$300,000 his claim to damages

and to costs.

E. In its surrejoinder the Organization observes that if, as he says in his rejoinder, the complainant is not objecting to the Director-General's decision of 17 October 1989, which is nevertheless the one he impugns in the complaint form, his complaint is pointless and therefore irreceivable. If he concurs in that decision, he has no reason to challenge it before the Tribunal, but must allow the Organization to give it effect.

The WHO also enlarges on its pleas on the merits but observes that, the complaint being irreceivable, they must now be treated as subsidiary.

## CONSIDERATIONS:

### Receivability

1. In its surrejoinder the WHO contends that the complaint is irreceivable on the grounds that in his rejoinder the complainant observes that he has no objection to the Director-General's decision of 17 October 1989: if that is so he is not challenging a "final" decision within the meaning of Article VII(1) of the Tribunal's Statute.

2. Determining the material issues requires a chronological account of the internal appeal proceedings and of the proceedings before the Tribunal.

The complainant joined the staff of the WHO in 1978, he was on a temporary appointment that was to expire on 31 December 1987, and the dispute arose when the Organization declined to renew it. The reason it gave was the expiry of his appointment and a letter of 11 August 1987 gave him notice of termination under Rule 1040, on the completion of temporary appointments. But in token of good faith the Regional Director agreed to pay him *ex gratia* the indemnity prescribed in Rule 1050.4 in the event of abolition of post and reduction in force and to grant him the repatriation allowance provided for in Rule 370. So he was paid a total equivalent to his pay for 9 months and 6 1/4 days.

He went to the Regional Board of Appeal and in its report of 20 December 1988 the Board held that though his appointment had come to an end under Rule 1040 it was really an unfortunate case of abolition; the Board accordingly recommended that the Regional Director take him back as soon as a vacancy arose.

In a decision of 10 February 1989 the Regional Director endorsed the Board's recommendation and promised to have his name added to the list of applicants for any suitable vacancy.

On 13 February 1989 the complainant appealed against that decision, seeking immediate reinstatement on the grounds that the Board's recommendation had acknowledged the justice of his claim.

In his reply of 24 February 1989 the Regional Director, while citing the recommendation, explained that he was unable for want of a vacancy to give the complainant satisfaction.

The complainant went to the headquarters Board of Appeal on 10 April 1989. Believing that he had no hope of reinstatement and had suffered wrongful and arbitrary dismissal, he claimed 500,000 United States dollars in damages, \$1.5 million in compensation for financial loss and another \$1 million in damages for "stress".

In its report of 15 August 1989 the headquarters Board took the view that the non-renewal did not amount to wrongful and arbitrary dismissal and that he was not entitled to any award of damages. But it was "surprised not to see his name on the June 1989 list of former staff despite the Regional Director's promise" and it thought that the Administration had not done its best to take him back reasonably soon. It recommended that the Director-General prevail upon the Regional Director to do his utmost to have him reinstated and "report within three months on the outcome".

3. By a decision of 17 October the Director-General accepted the Board's recommendations in full, and that is the decision the complainant is challenging, as the prescribed complaint form makes plain. In his original brief he points out that, although the headquarters Board found merit in his appeal and the Director-General accepted its recommendations, the African Regional Office has done nothing whatever yet. He infers that he has no hope of reinstatement and he makes the same claims as he put to the Board: a total award of \$3 million in damages for wrongful and arbitrary dismissal, financial injury and stress.

In its reply the Organization observes that he is challenging the Director-General's decision of 17 October 1989, and he rejoins:

"I protest against that groundless assertion. There is no question in my complaint of any challenge to the Director-General's decision. The Director-General endorsed the headquarters Board's recommendations and until I filed my complaint AFRO had told me nothing of action taken on those recommendations."

That is the passage that prompts the WHO to object to receivability, its argument being that, having accepted the decision of 17 October 1989, the complainant ought not to have impugned it but could have asked and may still ask for immediate action on it and, if he gets a refusal or no answer at all, may then file a complaint.

4. Though there is some force in the argument, the case needs to be seen in a broader perspective.

In his submissions to the headquarters Board the complainant maintained that the non-renewal was tantamount to wrongful and arbitrary dismissal. The Board disagreed and recommended no award of damages, and the Director-General's decision of 17 October 1989 endorsed the Board's recommendations in full. The necessary implication was that he thereby disallowed the claim to damages for wrongful dismissal, financial injury and stress.

As he points out in his rejoinder, the complainant's challenge to the decision of 17 October 1989 was not directed against the endorsement of the recommendation of reinstatement, which was in his favour. Notwithstanding the broad terms of the assertion in his rejoinder, what he must be objecting to is the Director-General's implied rejection of his claim to damages for wrongful dismissal, financial injury and stress. The thrust of his original brief and of his rejoinder is indeed that he has suffered injury under those three heads and it would be quite unreasonable to dismiss his argument on the subject as irrelevant.

Only insofar as he is challenging the order of reinstatement in the decision of 17 October 1989 is his complaint irreceivable for want of a cause of action. It is receivable insofar as he is objecting to the implied rejection of his claim to damages under the three heads mentioned above.

The merits

5. In his rejoinder the complainant quotes a statement in the WHO's reply that in May 1990 the Regional Director again promised to treat him as an applicant for the posts for laboratory technicians to be established in the African sub-regions under the AIDS Programme. Seeing the turn things are taking, he says he will accept any proposal the WHO may make him before his case comes up. He wants reinstatement with payment of arrears of salary and of the sum of \$300,000 to cover costs and damages for injury and stress.

6. The Tribunal will not rule on any offer which the WHO may have made the complainant after the date of filing and which is not shown to have a bearing on the complaint.

7. His claims to damages are devoid of merit. Although the complainant has been paid ex gratia a 1050.4 terminal indemnity for abolition of post, his contract in fact duly expired under Rule 1040, on the "completion of temporary appointments", inasmuch as his fixed-term appointment came to an end at the prescribed date, 31 December 1987, and he was given due notice of termination.

His termination having therefore been quite proper, there is no question of abusive or arbitrary treatment entitling him to an award of damages for financial injury or stress. Besides, the Organization is at pains to reinstate him.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner

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