

SEVENTY-FOURTH SESSION

In re KOUTA-LOPATEY

Judgment 1205

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Anani Enyonam Kouta-Lopatey against the World Health Organization (WHO) on 16 October 1990 and corrected on 15 November 1991, and the WHO's reply of 19 March 1992;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and WHO Staff Rules 1230, 1240 and 1250;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. After retirement WHO staff may remain in the Organization's staff health insurance scheme provided they pay contributions. On the grounds of the scheme's worsening finances the Organization revised the regulations in 1990 and so informed members by a circular of 16 January 1990.

Under the new regulations retired staff members' contributions were reckoned on the strength of a notional minimum period of thirty years rather than actual service. So those who served for just a few years had to pay much more than before. Some of the retired staff having protested, the Director-General decided that the new rates should be brought in gradually over five years and that the resulting excess paid in 1990 would be set against contributions for 1991. All members were so informed by a circular of 22 April 1991.

The complainant, a citizen of Togo who was born in 1919, used to work in the office of the Organization's representative for Dahomey and Togo from 1 December 1965 to 31 December 1979. He was a shorthand typist at grade G.6. He retired in 1979 and chose to remain in the health insurance scheme.

In April 1990 he received from the WHO's Regional Office for Africa, in Brazzaville, notice of the amount of his yearly premium and realised that it had risen from 25,405 in 1989 to 88,952.49 CFA francs. By a memorandum of 14 May 1990 he asked the regional health insurance board for an explanation and he sent a copy of his memorandum to an insurance officer at headquarters in Geneva. The officer sent him a letter on 1 June 1990 explaining how his premium had been worked out, and that is the impugned decision.

B. The complainant objects to having his premiums based on thirty years' service when in fact he served for only about half as long as that. It is an unfair and heavy burden for someone on such a low income to bear. The change was arbitrary and the association of former staff members was never consulted.

He asks that the basis of reckoning his premiums be reduced to 15 years' service.

C. The Organization submits that the complaint is irreceivable. The complainant has not used any of the internal means of redress provided for in Staff Rules 1230 to 1250. What he is challenging is not a decision but the explanatory letter of 1 June 1990 from the insurance officer. Nor has he complied with the ninety-day time limit in the Tribunal's Statute for filing a complaint. The circular announcing revision of the scheme's regulations is dated 16 January 1990 and his complaint was received by the Registry of the Tribunal on 16 October 1990.

As to the merits the Organization sets out the reasons for the change. In its submission the decision was in line with the rules: an actuarial report and various options were discussed with the health insurance board, on which retired staff were represented. The recommendations were approved unanimously by a joint meeting of the board, the Staff Association and representatives of former staff.

By deciding on 22 April 1991 - after discussion with representatives of retired staff - to stagger the increase over five years the Director-General lightened the impact of it.

CONSIDERATIONS:

1. The complainant, who was born in 1919, retired from the service of the Organization in 1979 and opted to continue his membership of the staff health insurance scheme. The demand he got in April 1990 for his yearly premium showed a substantial increase. When he asked for an explanation an insurance officer at headquarters replied on 1 June 1990 showing how the amount had been reckoned and referring to the staff circular of 11 April 1990 sent to all retired staff and giving particulars of the revision of the regulations that had already been announced on 16 January 1990. The revision provided for a change in method which entailed assessing premiums on thirty years' notional pensionable service. It is the officer's letter of 1 June 1990 that is the decision impugned.

2. The Organization contends that for three reasons the complaint is not receivable.

(1) It challenges a letter of explanation dated 1 June 1990, not the general decision notified on 16 January 1990 to revise the regulations.

(2) The complainant has not exhausted the means of internal appeal available to him under the Staff Regulations and Rules: he did not appeal to the Regional Board of Appeal and then to the headquarters Board of Appeal in accordance with the procedure set out in Rules 1230 to 1250.

(3) He failed to lodge his complaint within ninety days of the date of notification of the decision impugned. He did not lodge his complaint until some time in October 1990. Whether the decision to be impugned is the general revision notified by the circular of 16 January 1990 or the letter of 1 June 1990, he filed his complaint too late.

The complainant has not answered any of those pleas because he has filed no rejoinder.

3. The complaint is irreceivable because the decision impugned is not a final one: the complainant has failed to exhaust the internal means of redress, in breach of the requirement in Article VII(1) of the Tribunal's Statute.

That being so, there is no need to rule on the Organization's other objections to receivability.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
Mella Carroll
E. Razafindralambo
A.B. Gardner