

SEVENTY-SIXTH SESSION

In re MOSCOSO

Judgment 1319

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Pilar Moscoso against the World Health Organization (WHO) on 31 December 1992 and corrected on 25 February 1993, the WHO's reply of 15 April, the complainant's rejoinder of 10 May and the Organization's surrejoinder of 16 June 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 510.1, 1040 and 1230 and paragraph 27 of the Rules of Procedure of the headquarters Board of Appeal of the Organization;

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. The complainant, a Peruvian citizen born in 1942, joined the staff of the WHO on 19 August 1989 under a fixed-term appointment for two years, the first on probation. She was stationed at headquarters in Geneva and held the post of finance officer at grade P.3 in the Treasury Unit of the Finance Section of the Division of Budget and Finance. On 29 August 1990 the WHO confirmed her appointment and granted her a within-grade salary increment.

In her second year her health declined and she was granted 23 days' sick leave. In a memorandum of 26 April 1991 to the Contract Administration Unit the director of the Joint Medical Service endorsed her own doctor's view that a change in her working conditions might help. The chief of that unit referred the matter on 30 April to the Chief of the Finance Section, who by a memorandum to her of 3 May 1991 gave her a temporary assignment under his own direct supervision. She took up her new duties on 6 May.

On 8 May the Chief of the Finance Section warned her that he was recommending letting her appointment run out on 18 August. She protested in a letter of 23 May to the Director of the Division of Personnel and applied for transfer to any suitable post in the Organization. She talked the matter over with the Director of the Division of Budget and Finance and with officials of the WHO's Regional Office for South East Asia (SEARO), in New Delhi. The upshot was that in a letter of 22 July the Administration offered her a temporary assignment at SEARO until 31 December 1991: she would have "travel status", which would entitle her to net basic salary and daily subsistence allowance, and unless she was reassigned her contract would end at 31 December 1991.

In her reply of 26 July she said she would go to SEARO only on the terms which the Director of the Division of Budget and Finance had offered her orally, namely under an appointment with six months' probation, post adjustment allowance at the Geneva rate and subsistence allowance.

In a letter of 2 August 1991 the Director of Personnel told her he saw no reason to pay her the post adjustment allowance at the Geneva rate while she was on assignment to New Delhi and he warned that her contract would end on 18 August with payment of three months' salary in lieu of notice if she did not accept the offer. In a letter of 8 August she turned it down. The Director thereupon confirmed in a letter of even date that her appointment would end on 18 August under Staff Rule 1040, on the completion of temporary appointments.

Also on 8 August the Administration sent her a report appraising her performance since 19 August 1990. It contained a recommendation by her second-level supervisor to withhold her salary increment.

On 19 August she lodged an appeal with the headquarters Board of Appeal against the non-renewal of her appointment. In a memorandum of 13 March 1992 the chairman of the Board sought further information under paragraph 27 of the Board's Rules of Procedure from one of her former supervisors, who replied in a memorandum of 27 March that he could not give it until he had seen the evidence before the Board. In its report of 28 May 1992 the Board held that it could not determine whether there had been "incomplete consideration of the facts" within the meaning of Staff Rule 1230.1.2 but, giving her the benefit of the doubt, it recommended paying her 10,000 United

States dollars in damages and costs.

In a fax of 9 September 1992 the Director of Personnel told her on the Director-General's behalf that "recommendations were submitted to the Director-General but they were considered incomplete and the Board was requested again, in view of the additional information provided, to review and make appropriate recommendations to the Director-General". In a letter of 16 September the complainant asked the Director for copies of the report and of the "additional information" he had mentioned. In a fax of 29 September he told her that once the Administration had "obtained" the "supplementary written information" it had sought from her first-level supervisor under Rule 27 the Board would let her comment before it concluded its "deliberations". In a letter of 7 October to the Director she objected to what she saw as an attempt to reopen the appeal proceedings.

In a letter of 9 November 1992, the impugned decision, the Director-General informed her that he rejected the Board's recommendation that she should get the benefit of the doubt in respect of Staff Rule 1230.1.2 but granted her \$4,000 in damages for "undue delay" and \$1,000 towards costs.

B. The complainant submits that the Organization failed to take full account of the facts. She points out that on 8 May 1991 - long before her supervisors had written her last performance report - the Chief of the Finance Section recommended letting her contract run out.

She describes as "gravely improper" the Administration's attempts to resume the internal appeal proceedings after the Board had submitted its report; such resumption would have constituted a fatal flaw in the appeal proceedings.

She claims a total of \$10,000 in damages and costs.

C. In its reply the WHO concedes that the procedure followed was "somewhat unusual" inasmuch as "the proceedings of the Board of Appeal were interrupted and a final decision taken before the completion of those proceedings".

The reason for the termination of the complainant's contract was not the shortcomings of her performance but her refusal to accept the reassignment "reasonably offered" to her under Rule 510.1, which declares officials in the Professional category to be subject to assignment "to any activity or office of the Organization throughout the world". The Organization made a "genuine effort" to place her and warned that she would have to go altogether in accordance with Rule 1040 if she refused its offer.

The WHO asks the Tribunal to "ratify" the payment to her of \$5,000 in compensation for "delays arising out of the internal appeal process and for costs".

D. In her rejoinder the complainant points out what she sees as mistakes of fact in the WHO's reply. She contends that the internal appeal proceedings were not interrupted: the Board's recommendation of 28 May 1992 was final and served as the basis for the Director-General's final decision. As for the cause of termination, the Administration has shifted ground since it told the Board that its decision was "justified by the appraisal of her services during the second year of her appointment". In any event its offer of assignment to New Delhi was hardly a reasonable one: accepting it would have drastically reduced her income and uprooted her at a time when her health was poor.

E. In its surrejoinder the WHO maintains that the only reason why her appointment was not renewed was her refusal to accept reassignment to New Delhi. The WHO's earlier reference to her performance appraisal came in answer to an earlier objection of hers to the lawfulness of its offer. But that was quite reasonable: after all, her doctors had recommended a change, she had asked for it, and the Organization was to give her the benefit of travel status. But for her refusal, she would have been kept on at least until 31 December 1991 and might then have been promoted to grade P.4 as regional budget and finance officer.

CONSIDERATIONS:

1. The complainant joined the WHO at headquarters in Geneva on 19 August 1989. She was a finance officer at grade P.3 in the Treasury Unit of the Finance Section of the Division of Budget and Finance and she held a fixed-term contract for two years in the first of which she was on probation. She had her appointment confirmed on 29 August 1990 on the strength of a good first appraisal report.

2. In December 1990 she had to get medical treatment and was granted 23 days' sick leave. On 26 April 1991 her

doctor prescribed a change in working conditions and accordingly she was temporarily assigned from 6 May 1991 to checking the leave records of headquarters staff and was given a different office. On 8 May the Chief of the Finance Section informed her that her appointment would end on 18 August 1991. In detailed comments dated 19 June 1991 appended to a report appraising her performance since 19 August 1990 her supervisor, the Chief of the Treasury Unit, said that she had carried out only "a small portion of her duties" and that her "inability to establish and maintain satisfactory working relationships" also made her work "ineffective". The complainant stated her objections at length in observations dated 29 July 1991.

3. In a letter of 22 July 1991 the Chief of Manpower Resources Administration offered her a "temporary assignment" at the WHO's Regional Office for South East Asia in New Delhi, up to 31 December 1991, saying that she would be granted "travel status". After correspondence she refused the offer.

4. On 19 August 1991 she lodged an internal appeal with the headquarters Board of Appeal under Staff Rule 1230 against the decision not to renew her contract, alleging personal prejudice on the part of her supervisor, incomplete consideration of the facts and failure to observe or apply correctly the provisions of the Staff Regulations or Staff Rules or the terms of her contract.

5. The Board did not report until 28 May 1992. In its report it said that so as to shed light on some of the incidents that had preceded the non-renewal it had on 13 March 1992 written to the Chief of the Treasury Unit asking him to answer several questions. On the same day it had also written to the Director of Personnel to ask what was meant by the "travel status" the complainant had been offered on assignment to New Delhi. The Board said that it had put those inquiries in accordance with Rule 27 of its Rules of Procedure. It explained that in a memorandum of 27 March the Chief of the Treasury Unit had said he declined to answer in the meantime. The Board concluded on the issues that the complainant had raised that there was no proof of personal prejudice and that the Staff Regulations and Staff Rules and the terms of her contract had been correctly applied; but it recommended granting her 10,000 United States dollars in compensation and costs on the grounds that there were in the case "grey areas on which the information at its disposal failed to shed light".

6. On 29 August 1992 the complainant wrote to tell the Director-General of the hardships she was suffering and entreat him to inform her of his decision on her case "as soon as possible". By a fax of 9 September the Director of Personnel replied that the Board had submitted recommendations to the Director-General but they "were considered incomplete" and the Board had to meet again "to review and make appropriate recommendations".

7. After further correspondence the Director-General wrote the complainant a letter dated 9 November 1992 saying that he agreed with her that there had been "undue delay" in dealing with her case and that he would base his decision on the Board's report of 28 May 1992; he appended a copy of that report; he said he accepted the Board's recommendations except on the matter of damages; and he granted her \$4,000 in compensation for the delay and \$1,000 in costs.

8. The only redress the complainant seeks from the Tribunal is an order that the WHO pay her the \$10,000 recommended by the Board. The Organization invites the Tribunal to "ratify" the payment to her of the total of \$5,000 in compensation and in costs.

9. It is difficult to understand why there was such undue delay in this case or why the Administration, which had the power to prevent much of it, did not do so. By causing or allowing such delay and by denying the Board of Appeal the information which would have enabled it to give a timely and complete opinion on the complainant's case the Organization fell short of the requirements of due administrative process and of the standards of care it must apply to its staff. In the circumstances the complainant is entitled to the sum of \$10,000 she has claimed in damages and costs. **DECISION:**

For the above reasons,

The Organization shall pay the complainant 10,000 United States dollars in damages and costs.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

William Douglas
P. Pescatore
Mark Fernando
A.B. Gardner

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