

TWENTY-SECOND ORDINARY SESSION

In re BRACHE

Judgment No. 137

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr Guillermo-Rafael Brache on 21 December 1967, and brought into conformity with the Rules of Court on 27 February 1968, the reply of the Organization dated 5 June 1968, complainant's rejoinder of 15 September 1968, and WHO's reply to that rejoinder dated 11 October 1968;

Considering the explanations given by the Organization in a memorandum dated 12 February 1969, in reply to questions put by the Tribunal, and the observations submitted in reply thereto by the complainant in a memorandum dated 24 February 1969;

Considering Article II, paragraph 5 of the Statute of the Tribunal; considering the Staff Rules and Regulations of the World Health Organization and the Staff Rule 1040 of the PASB;

Having heard in public session on 24 October 1969 Mr. Jacques Mercier, Counsel for the complainant, and Mr Frank Gutteridge, Agent of the Organization;

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

A. Mr. Brache entered the service of the Pan American Sanitary Bureau on 16 March 1967 as a technical assistant in the Visual Aids Section of the Professional Education Branch. His contract of service was for a period of two years, the first being probationary. On 19 September 1967 his appointment was terminated on the ground of unsatisfactory performance.

B. The Pan American Sanitary Bureau is the administrative organ of the Pan American Health Organization and serves as the Regional Office of the World Health Organization. It is the direct successor of the International Sanitary Bureau, a permanent body founded in 1902 with competence in sanitary questions in the American region and subject to general control by the International Sanitary Conference. The Pan American Sanitary Code, adopted by the Conference in 1924, serves as the legal basis of the Bureau, which, also in 1924, was renamed the Pan American Sanitary Bureau (PASB).

C. Early in 1947 a new organisation called the Pan American Sanitary Organization - renamed in 1958 the Pan American Health Organization (PAHO) - was set up with PASB as its secretariat. A great deal of controversy arose over its relationship to the World Health Organization, which was founded in 1948 and whose Constitution provided in article 45 that "Each Regional Organisation shall be an integral part of the Organization." The formula agreed on and embodied in article 54 provides that "the Pan American Sanitary Organization, represented by the PASB ... shall in due course be integrated with the Organization." As a first step towards such integration, an agreement between the Director-General of WHO and the Director of PASB came into effect on 1 July 1949. Under the agreement, PASB was to serve as the Regional Office of the WHO for the Western Hemisphere and its Director was to assume the post of Regional Director of WHO. In deference to tradition PASB retained its name, the title "Regional Office" being simply added. Moreover, from 1949 PASB no longer employed and paid all of its staff. In pursuance of the agreement WHO transferred most of its New York staff to the PASB office in Washington, although it kept them on the WHO payroll.

D. Complete functional and administrative integration of the WHO and PASB staffs has been achieved. The two groups of staff work side by side in the same premises and no clear demarcation can be made between work done by PASB as Regional Office and that done by it as an organ of PAHO. According to a statement of the Director submitted to the Executive Board of WHO in 1950: "Interspersed throughout the office are mixed personnel in the pay of either organization performing their functions without regard to the source of the funds that support their respective activities." The PASB staff association, moreover, is open to all staff members, whatever the source of their remuneration.

E. Integration has been carried still further under agreements concluded in March 1950 and January 1951 between WHO and PASB on the appointment of staff and the preservation of their rights of transfer. Although PASB is to be run as a unit, separate provision must be made for the appointment of each group of employees. All members of the staff of the WHO Regional Office are employed in accordance with WHO Staff Rules; although the Regional Director has delegated authority to make appointments, certain types of staff are to be appointed only in agreement with the Director-General. PASB staff are also appointed by the Regional Director, but in his capacity as Director of PASB and in compliance with PAHO Staff Rules. The Director-General is to be consulted on the appointment of senior staff members in supervisory positions. Finally, administrative arrangements have been made under an agreement concluded in 1951 between the Director of PASB and the Director-General of WHO, to enable PASB staff to participate in the United Nations Joint Staff Pension Fund.

F. PAHO Staff Rules and Regulations have been assimilated to those of WHO with a few minor difference to meet local problems. Article 11 of both the PAHO and the WHO Regulations deals with the settlement of staff disputes: paragraph 1 provides for the establishment of administrative machinery to advise on appeals by staff members against administrative decisions; paragraph 2 states that any dispute which cannot be resolved internally shall be referred to the United Nations Administrative Tribunal. The Executive Board of WHO having resolved in 1948 to make temporary use of the ILO Administrative Tribunal pending arrangements to give effect to article 11.2 of the WHO Regulations, the Director-General made the declaration conferring on the Tribunal the jurisdiction in respect of WHO staff which it continues to exercise. The Directing Council of PAHO, on the other hand, decided in October 1951 that article 11.2 of PAHO Regulations should not become operative until the arrangements with the United Nations Administrative Tribunal had been completed. Since 1951 all appeals involving PASB staff have been dealt with by the PASB Board of Inquiry and Appeal; a footnote to article 11.2, whose terms are reproduced in PAHO Staff Rule 1040, states: "The PASB has no Administrative Tribunal, the Board of Inquiry and Appeal being the final recourse in appeals".

G. The offer of appointment received by complainant on 16 March 1967, confirmed by letter of 22 March, referred to an appointment in "PASB, Regional Office of WHO", and stated that PAHO Staff Rules, a copy of which was attached to the offer, would form an integral part of his contract of employment. During his employment his remuneration came entirely from PAHO funds. The termination of his employment on 19 September 1967 was alleged to be by virtue of PAHO Staff Rules.

H. Complainant requests admission of his complaint in recognition of his status as a regular WHO staff member, annulment of the termination of his employment, and his reinstatement with effect from 19 September 1967 pending full consideration of his case by the Director-General of WHO. The Tribunal, he claims, has jurisdiction by virtue of the declaration made by the Director-General of WHO. On entering the service of PASB, he maintains, he became subject to WHO Staff Rules and Regulations, since PASB is the Regional Office of WHO for the Americas, and his status was that of a regular WHO staff member, the source of his remuneration being irrelevant. As evidence of this he refers to his admission to the United Nations Joint Staff Pension Fund, of which only persons on the staffs of member organisations may become participants; WHO, but not PAHO, is a member organisation.

I. WHO contests the jurisdiction of the Tribunal. It alleges that the application of the declaration made by the Director-General is restricted to WHO officials. Complainant was not a WHO official and was subject to the Staff Rules and Regulations, not of WHO, but of PAHO. Despite the practical arrangements made to give effect to article 54 of the WHO Constitution, full integration of PAHO and WHO has not yet taken place and PASB merely serves as WHO's Regional Office. The fact that PASB officials have been assimilated to WHO staff for the purpose of social security benefits cannot alter their essential status. Moreover, WHO could not ensure performance of any judgment made in respect of PASB staff, the Director-General not possessing hierarchical authority over the Director of PASB.

CONSIDERATIONS:

1. It appears from the evidence in the dossier that Mr. Brache was an employee of the Pan American Sanitary Bureau and held a contract under which he was covered by the Bureau's Staff Regulations. However, although the aforesaid organization had established close links with WHO, and in particular its Washington office serves as the WHO Regional Office, it is nonetheless an independent body with its own staff under its sole authority.

In the absence of any agreement on this point between the two organizations at the present time, the officials of the

Pan American Organization cannot enjoy the benefits guaranteed to WHO officials under Staff Rule 1040.1 in respect of legal remedies.

Moreover, Staff Rule 1040 of the Pan American Sanitary Bureau states that "the Pan American Sanitary Bureau has no administrative tribunal, the Board of Inquiry and Appeal being the final recourse in appeals".

It follows that WHO's contention that the Administrative Tribunal is not competent to hear the appeal of Mr. Brache is well founded.

2. The Tribunal recognises that as a result of holding that it lacks jurisdiction complainant is thereby regrettably deprived of any means of judicial redress against the injury sustained as a result of the alleged breach of his contract. However, the Tribunal, being a court of limited jurisdiction, is bound to apply the mandatory provisions governing its competence, and it is for the Organization concerned itself to determine whether it is desirable to provide its employees with a safeguard which is enjoyed by the great majority of international officials at the present time.

As to costs:

In view of the reasonable doubts that the complainant may have had on the question of jurisdiction, the Tribunal, which itself ordered additional measures of investigation, considers it equitable, in spite of the dismissal of the complaint, to award Mr. Brache costs in the amount of 3,000 Swiss francs.

DECISION:

For the above reasons,

1. The complaint is dismissed.
2. Mr. Brache is awarded costs in an amount of 3,000 Swiss francs.

In witness of this judgment by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 November 1969.

M. Letourneur
André Grisel
Devlin
Bernard Spy