

SEVENTY-SEVENTH SESSION

***In re* GONZALEZ, LARRANAGA,
MANZANELLI, RUGERONI
and TRENCHI**

Judgment 1374

THE ADMINISTRATIVE TRIBUNAL,

Considering the common complaint filed by Mr. Carlos Hector González, Mr. Carlos Norberto Larrañaga, Miss Maria Rosa Manzanelli, Mr. Miguel Rugeroni and Mr. Arnaldo Trenchi against the Pan American Health Organization (PAHO) on 10 November 1992 and corrected on 25 November 1992, the PAHO's reply filed on 25 April 1993, the complainants' rejoinder of 15 April and the Organization's surrejoinder of 29 May 1993;

Considering the applications to intervene filed by;

M. Arbor

G. Areitio

J.C. Areitio

I. Arenas

G. Becco

N. Bezenzette

L. Bulgarini

W. Caputti

M. Farioli

R. García

C. Graziano

A. Gutierrez

L. Lázaro

A.M. Loisi

N. Lucero

A. Martínez

M. Molina

M. Montanelli

A. Nebel

N. Perdomo

J. Pettinati

L. Pollizo

W. Smid

E. Soler

A. Tau

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Regulation 9.2, Staff Rules 1040 and 1050 and paragraphs II.9.250 to 375 of the Manual of the World Health Organization as applicable to PAHO staff;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

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

A. Staff Rules 1050.2 to .4 of the Pan American Health Organization read as follows:

"1050.2 When a post of indefinite duration - or any post held by a staff member with a career-service appointment - comes to an end, a reduction in force shall (if the post was filled) take place, in accordance with procedures established by the Director, based upon the following principles:

1050.2.1 competition for retention shall be limited to staff holding relevant posts at the same grade as the post to be abolished, or one grade lower;

1050.2.2 if the post is in the professional category and above, competition shall extend to all offices; if the post is subject to local recruitment, competition shall be limited to the locality in which the post is to be abolished;

1050.2.3 staff members holding career-service appointments shall be given priority for retention. The Director may establish priorities among the temporary staff;

1050.2.4 within any priority group, preference for retention shall be based first upon performance, and, when this is not decisive, upon seniority of service;

1050.2.5 a staff member's appointment shall not be terminated before he has been made a reasonable offer of reassignment if such offer is immediately possible.

1050.3 Termination under this rule shall require the giving of at least three months' notice to a staff member holding a career-service appointment or a confirmed fixed-term appointment of one year or more and at least one month's notice to any other staff member.

1050.4 A staff member whose appointment is terminated under this Rule shall be paid an indemnity ..."

More detailed rules on the reduction-in-force procedure are set out in the Manual of the World Health Organization as it applies to the PAHO, the material paragraphs being II.9.250 to 375.

The complainants all joined the staff of the PAHO in the General Service category between 1968 and 1977. They held two-year appointments at first and had them regularly extended. The last extension granted to all of them but Mr. González was to expire at 31 December 1990; his was to expire at 31 August 1991. They served in the PAHO's Pan American Zoonoses Center, known as CEPANZO. The Center was set up in 1956 under an agreement with the Government of the host country, Argentina, to help member States in checking the transmittal of disease from animals to human beings. Its headquarters were at Azúl, which was Mr. González's duty station, and it had a field station at Martínez, where the other complainants were assigned.

The 1956 agreement split the costs of running the Center between the Organization and the Government of Argentina, which was to pay, among other things, the salaries of most of the staff. Clause VII(2) of the agreement allowed either party to terminate it on the last day of any year following one in which that party had given the other written notice of termination.

In 1982 the Government began to fall behind in its contributions to the Center. By 1985 it was over 90,000 United States dollars in arrears. In 1986 the national press reported that the Center was carrying out potentially hazardous tests of a vaccine against rabies without leave from the competent Government authorities. In the same year the Government's arrears soared to \$750,000 and by November 1989 they were over \$4 million.

By fax messages of 27 September 1990 the Chief of Personnel of the PAHO gave each of the complainants notice of termination as from 31 December 1990 under Staff Rule 1050 on abolition of post and reduction in force; he said that the decision was due entirely to the Center's financial plight.

In a letter of 30 October the Chief of Personnel asked the president of the Staff Association to name two staff representatives and two alternates to sit on a committee being set up under the reduction-in-force procedure provided for in the Staff Rules; he also consulted the president about the chairing of the committee. In a memorandum of 6 November the president asked the Chief of Personnel to say, in light of the negotiations going on with the Government, which posts if any were to be abolished and whether the reduction-in-force procedure was necessary.

In a letter of 7 November the Chief of Personnel answered that the reduction-in-force procedure would have to go ahead but that if ample funds became available the Organization would "cancel all termination notices already given". On 14 November he provided a list of 42 posts to be abolished, the complainants' among them. The president informed him in a memorandum of 20 November of the Staff Association's nominee for chairing the committee and of its appointment of two regular and two alternate staff representatives.

On 21 November 1990 the complainants lodged appeals with the Headquarters Board of Appeal at Washington.

In December 1990 the Council of the Staff Association had adopted a plan to save jobs through voluntary surrender of up to a fifth of salary. Mr. González, Mrs. Manzanelli and Mr. Trenchi signed affidavits pledging such contributions and on 6 December the president passed the texts on to the Director of the Center. In a letter to the president of 14 December the Chief of Personnel rejected the plan on the Director's behalf on the grounds that it was at odds with the Staff Regulations and Staff Rules.

By fax messages of 21 December 1990 the Chief of Personnel told each of the complainants that because the Government had promised to make a payment early in 1991 their posts and appointments were being extended by three months but the notice of termination held good. On 26 December the Chief of Personnel extended their appointments to 30 April 1991, the extension again being without effect on notice.

In a memorandum of 27 December 1990 the Chief of Personnel divided the posts to be abolished into two groups and asked the chairman of the reduction-in-force committee to carry out a separate procedure for each list; he said he wanted the committee to report on the first group of posts "related to non-priority programs in CEPANZO" by 31 January 1991. Three of the complainants' posts were marked for "priority reduction".

In a telex of 24 January 1991 the president of the Staff Association asked the chairman of the committee to put off a meeting scheduled for 30 January until 4 February or later so that both the regular staff representatives could attend. But the committee met on 30 January anyway, and the alternate staff representatives replaced them.

In memoranda dated 1 February 1991 the complainants challenged the lawfulness of the extensions notified on 26 December 1990: Mr. González observed that he already had an extension to 31 August 1991 and the others inferred tacit renewal until 31 December 1992 from what they saw as the unlawful notice of termination given on 27 September 1990. In replies dated 13 February 1991 the Chief of Personnel doubted whether their contracts could be honoured after 30 April unless the Government made over the funds.

In a memorandum of 13 February to the chairman of the reduction-in-force committee the president of the Staff Association asked the chairman to let a regular representative take part in the committee's work in keeping with Manual provision II.9.320. On 21 February the chairman refused so as "to avoid further delays".

On 5 March 1991 the committee sent the Director of the Organization its report, which no staff representatives had signed. It recommended terminating all General Service category staff at the Center but four, who could go to the office of the Organization's representative at Buenos Aires. In letters of 27 March to each of the complainants the Chief of Personnel confirmed termination under Staff Rules 1040 and 1050 at 30 April 1991.

On 30 April - the complainants' very last day of work - the Government of Argentina made a payment of \$1.5 million and on 10 May another of the same amount.

On 27 September 1991 the Directing Council of the PAHO founded the Pan American Institute for Food Protection and Zoonoses, known by the initials of its title in Spanish as INPPAZ. The Institute moved into CEPANZO's old premises.

The Headquarters Board of Appeal reported to the Director on 15 June 1992 on the complainants' appeals. One member commented that the records of the reduction-in-force committee's debate had been destroyed. The Board's unanimous recommendation was that the complainants should get preference for "national contract posts" at INPPAZ. Three of its members made no other recommendations because of the "complexity of the case" and the "lack of clarity" of the issues; the other two recommended rejecting the appeals.

In letters of 11 August 1992 the Director informed each of the complainants that he endorsed the Board's recommendation about filling "national contract posts" and the recommendation from the two Board members who had favoured rejection. Those are the decisions impugned.

B. The complainants submit that the abolition of their posts and the termination of their appointments were unlawful.

Though the reason given for abolition was lack of funds such grounds no longer held good by December 1990, when the Staff Association came up with a sound plan for cutting the Center's running costs and became even less plausible in April and May 1991, when the Government of Argentina made over \$3 million. So the decisions overlook essential facts. What is more, they show bad faith since the real reason for abolition of the posts was a wish to bring in cheaper "national contract staff" for INPPAZ.

The abolition being unlawful, so too were the terminations it entailed.

The terminations show procedural flaws as well. The complainants cite several defects in the reduction-in-force procedure, including breach of Rule 1050.2.4 on the criteria for retention and breach of WHO Manual paragraph II.9.320 on the composition of the committee. According to 1050.2.4 performance should be given priority over seniority, but the committee ignored it. By preventing a regular staff representative from taking part it overstepped its authority. The complainants see no basis in the rules for taking posts in two batches. They charge the Organization with preventing them from competing for two posts it planned to create in May 1991.

As the Tribunal held in Judgment 1045 (in re Mitastein) the rules "preclude termination of an appointment until the reduction-in-force procedure has been completed". So the notice the complainants were given on 27 September 1990 of simultaneous abolition and termination was invalid. For want of proper notice they infer extension of their contracts by two years.

They seek reinstatement as from 1 May 1991 or, failing that, a negotiated settlement "with each complainant equivalent to salary and allowances through age 60 plus the difference in pension through age 60 for having had one's career cut short". They ask the Tribunal to "recommend" that the calculation of pay for each period be made in United States dollars at the prevailing rates of exchange, the total amounts to be converted back into local currency at the rate prevailing at the date of payment. They claim moral damages in an amount equivalent to three times the monthly salary and allowances "that would be due" to them at the date of payment and costs amounting to one-third of the total amount paid to each of them.

C. In its reply the PAHO submits that the abolition of the complainants' posts and termination of their appointments were lawful and responsible. Regulation 9.2 empowers the Director to terminate an appointment "if the necessities of the service require abolition of the post" and he did so in this case only after taking all possible action to avoid closing down the Center.

Though some staff were willing to forgo a fifth of salary to save the Center their offer was unrealistic: it was neither enough to make up the deficit nor consistent with long-standing aspirations for higher pay. Even when the Government did pay, in April and May 1991, the money served only to cover the debts of CEPANZO and the costs of winding it up.

The PAHO denies that INPPAZ was set up to save money on pay while pursuing the same aims: CEPANZO was

"totally different" from INPPAZ and zoonoses were not a prime concern of the new Institute.

As to the reduction-in-force procedure the Organization complied with the material provisions in 1050. It could not offer the complainants other posts in Argentina as there was none. Nor was it easy to find suitable positions for staff like them with highly specialised laboratory experience. The dispute over the composition of the reduction-in-force committee was unnecessary and made its job the more difficult. In giving the committee two lists of posts the Organization was merely seeking to simplify its work and there was nothing wrong with that. The posts it created in May 1991 had nothing to do with the reduction-in-force procedure started in October 1990.

The financial crisis made notices of termination essential. There is no parallel to be drawn between the complainants' case and the one ruled on in Judgment 1045.

The complainants' inference of extension of their appointments by two years is "far-fetched": CEPANZO no longer exists, there are no suitable posts elsewhere and they have already accepted terminal indemnities.

The reduction-in-force procedure caused them no moral injury.

D. In their rejoinder the complainants seek to refute the PAHO's pleas in the reply. They trace the financial crisis back to 1986, when the PAHO prompted a "huge scandal" by agreeing to a dangerous experiment without seeking the Government's approval even though such experiments were banned in Europe and the United States. The financial crisis was not inevitable.

The staff contributions would have greatly lowered the Center's operating costs, of which salaries were the lion's share. But with INPPAZ in mind the PAHO rejected the plan out of hand. On its own admission the Institute was to carry on CEPANZO's work: INPPAZ was just a cheaper re-embodiment of CEPANZO.

E. In its surrejoinder the Organization disputes the complainants' arguments in the rejoinder and deplores their cavalier attitude to CEPANZO's financial plight. Allusions to events long past, it submits, are a ruse to divert attention from the severity of the crisis. INPPAZ was concerned with wider issues of food protection, not just the transmittal of disease from animals to people.

CONSIDERATIONS:

1. The Pan American Zoonoses Center (CEPANZO) was set up in 1956 under an agreement between the Pan American Health Organization and the Government of Argentina to give technical assistance to the countries of the Americas in checking zoonoses, i.e. diseases that can pass from animals to man. The agreement said that the Organization should provide managerial staff, certain facilities, and grants for study and training; the Government was to supply the premises and funds to cover maintenance, utilities and the salaries of other staff. In the later years the Government was financing some 45 per cent of the Center's budget.

2. From 1982 the Government was in arrears with its contributions and by 1989 it owed the Center over \$4.2 million. After lengthy negotiation the Directing Council of the PAHO authorised the Director to take by 31 December 1990 the legal and administrative action required to give effect to clause VII(2) of the 1956 agreement, which empowered either party to terminate it on the last day of any year following one in which it had given written notice of termination to the other. On 26 December 1990 the Director gave the Government notice that the agreement would end at 31 December 1991.

3. The five complainants and the 25 intervenors used to belong to the General Service category of staff of CEPANZO and they held fixed-term appointments. On 27 September 1990 the Organization served each of them written notice that their appointment would terminate at 31 December 1990. The notice promised separate correspondence about the abolition of each of their posts under Staff Rule 1050, which is about abolition of post and reduction in force and of which the material provisions are reproduced in A above.

4. On 30 October 1990 the Chief of Personnel wrote to the president of the Staff Association about setting up a reduction-in-force committee, asking him to name staff representatives to it and to state a preference for chairman. The president observed in his reply of 6 November that negotiations with the Government were still in progress and that he had not yet received a list of the posts to be abolished. Although the Chief of Personnel had stated in his letter that the reduction-in-force procedure would go ahead in the first fortnight of November, not until 26 November was the committee constituted. In its report, submitted on 5 March 1991 to the Director of the

Organization, it recommended transferring four members of the support staff of CEPANZO to the PAHO representative's office in Argentina but terminating the complainants' appointments.

The notices of termination of 27 September 1990

5. On 21 November 1990 - before the committee had been set up - the complainants filed internal appeals with the Headquarters Board of Appeal of the PAHO, in Washington, challenging the notices of 27 September 1990 on the grounds that "reduction in force has not taken place". They put forward the same plea in the present complaint.

6. The plea is upheld. The PAHO purported on 27 September 1990 to terminate the appointments of holders of posts that were to be abolished. Only then did it follow the prescribed reduction-in-force procedure to determine which staff members, if any, would be kept on and have their contracts renewed. As the Chief of Personnel wrote on 7 November 1990:

"Needless to say that we will be agreeable to cancel all termination notices already given, including reduction-in-force arrangements, if funds are made available, to obviate the need for the reduction of posts and staff in the Center."

That approach offended against the material provisions of the Staff Rules on reduction in force. As was said in Judgment 469 (in re O'Connell) under 7, "the abolition of a post does not automatically terminate the holder's appointment". Judgment 1045 (in re Mitastein), which was also explicit on that score, said in 3: "the Rules preclude the termination of an appointment until the reduction-in-force procedure has been completed". In other words, the procedure must be followed before, not after, notice of termination is given. In line with the Rules and the case law, therefore, the notices of termination served on the complainants on 27 September 1990 were premature and so unlawful and without effect. For that reason and in accordance with the case law, of which Judgment 1045 again affords an example, their contracts must be deemed to have been extended by implication.

The reduction-in-force procedure

7. The complainants further contend that the reduction-in-force procedure was flawed in several respects.

8. By a memorandum of 27 December 1990 the Chief of Personnel sent the chairman of the reduction-in-force committee a list of staff members at CEPANZO whose posts were "related to non-priority programmes" and therefore called for "definite and priority reduction". He asked the committee to take up that list first and report by 31 January 1991. He suggested that it might consider in February 1991 a second list comprising the other staff and report on them later.

9. The Tribunal holds that there was no authority for proceeding in that way. Indeed the Administration pleads none: it merely says that the two lists were intended "to facilitate and to rationalize the work of the [reduction-in-force] Committee". The rules on reduction in force in the Manual - in particular paragraph II.9.340 - do say that "candidate[s] for retention" are to be "placed in different priority groups". But the criteria for determining priority relate to "the type of their appointment" and to "the total number of years they have served or are deemed to have served", not to the priority of the programmes in which they have been engaged. The PAHO's applying the wrong criteria to determine the "priority groups" flaws the reduction-in-force procedure because it means that the staff whose posts had been abolished were not put in the order of priority prescribed in the Manual for retention.

10. The Headquarters Board of Appeal unanimously recommended giving the complainants preference in filling "national contract posts" at the new Institute. Though a minority of two further recommended refusing the redress sought, the majority of three declined to make any other recommendations; they said that "in view of the complexity of the case, and ... lack of clarity concerning Regional Center staff policy versus national agreements governing the structure and functioning of Centers which have activities of international scope, they prefer[red] only to raise the issues that derive from the findings and conclusions". Letters of 11 August 1992 from the Director - the decisions now impugned - denied the remedies that the complainants had sought although he did endorse the recommendation for giving them preference for posts at INPPAZ.

The notices of termination of 27 March 1991

11. Rule 1050.3 requires that holders of confirmed fixed-term appointments of one year or more should be given at least three months' notice of termination. The complainants held such fixed-term appointments. The letters dated 27

March 1991, sent to each of them for the purpose of confirming the termination of their appointments, did not in fact constitute confirmation at all since the notices that they had been sent on 27 September 1990 were, for the reasons set out in 6 above, unlawful. Even if the reduction-in-force procedure had been properly carried out the letters of 27 March 1991 did not give valid notice of termination. They gave the complainants only just over one month's notice, to 30 April 1991, not the three months to which they were entitled under Rule 1050.3. For that reason too the complainants' contracts must be deemed to have been extended by implication.

The relief

12. Because of the foregoing flaws alone, and there being no need to entertain the complainants' other pleas, the impugned decisions of 11 August 1992 by the Director must be set aside and the complainants are entitled to the following relief.

(1) The reduction-in-force procedure must be carried out anew and applied to each of the complainants.

(2) Since they have never received valid notices of termination their contracts of appointment are deemed to have been extended and to remain in force. On that account they are entitled to payment from the Organization of salary, allowances and any other benefits due under those contracts as well as of interest thereon to be reckoned at the rate of 10 per cent a year as from the dates at which each amount fell due. The Organization may, however, deduct from the totals thus reckoned any termination indemnities or occupational earnings they may have received since 1 May 1991.

As to the "recommendation" which they seek from the Tribunal in the complaint forms as to the rates of exchange to be applied in reckoning the sums due, and which they do not seek to justify, that is not a formal claim which the Tribunal will entertain.

13. CEPANZO having been closed down in the circumstances described above, no question of moral injury to the complainants can arise and the complainants' claims to damages under that head are therefore disallowed.

14. Their claims to awards of costs in amounts equivalent to one-third of the total amounts due to them are also misconceived. Costs are awarded against legal fees and other expenses incurred in litigation. Though the Tribunal will make awards under this head, the complainants are entitled to no more than 500 United States dollars each.

15. The applications to intervene are allowed, and the interveners are entitled to the same relief as the complainants, save in the matter of costs, insofar as they are in the same position in law and in fact.

DECISION:

For the above reasons,

1. The Director's decisions of 11 August 1992 are quashed.

2. The complainants are reinstated as from the date of separation from service.

3. The PAHO shall make to each of them payments to be reckoned as set out in 12 above.

4. The cases are sent back to the Organization so that it may carry out anew the reduction-in-force procedure as prescribed in the material rules.

5. The Organization shall pay each of the complainants 500 dollars in costs.

6. Their other claims are dismissed.

7. The applications to intervene are allowed.

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

Delivered in public in Geneva on 13 July 1994.

José Maria Ruda
William Douglas
Mark Fernando
A.B. Gardner

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