

## EIGHTY-FOURTH SESSION

### *In re Stjernswärd*

Judgment 1732

The Administrative Tribunal,

Considering the complaint filed by Mr. Jan Erik Eyvind Stjernswärd against the World Health Organization (WHO) on 17 January 1997 and corrected on 18 February, the WHO's reply of 21 May, the complainant's rejoinder of 30 June and the Organization's surrejoinder of 29 September 1997;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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 Swede who was born in 1936, joined the staff of the WHO in 1980 as a "Medical Officer (Chief of Unit)" at grade P.5 in the Cancer Unit, later known as the Cancer and Palliative Care Unit. From 1992 to 1994 he served as chairman of the Staff Committee. He retired on 30 June 1996.

His complaint is about what he describes as "systematic vexation and harassment", which he traces back to the early 1980s, when the Director-General, then Director of the Regional Office for the Western Pacific, began finding fault with his work. In 1990 the Director-General called in a consultant, Dr. H. Danielsson, to conduct a review of the Cancer Unit. After 18 months' study he submitted a report to the Director-General on 22 January 1992. The report praised the Unit for its contributions - particularly its work on the early detection of cervical cancer - and suggested ways of expanding the programme.

By information circular 45 of 25 June 1993 the Director-General announced reform and asked senior officers to review the organisation of their divisions. In June 1994 the chief of the Oral-Health Unit became Associate Director of the Division of Noncommunicable Diseases (NCD), which the Cancer Unit belonged to. The complainant's relations with the new Associate Director soured and they disagreed over duty travel, staffing and other administrative matters. On 24 August 1994 the Associate Director submitted to the Director-General a timetable for reform of NCD. In October 1994 the complainant protested to the Director-General against improper treatment by the Associate Director.

From September to November 1994 another consultant, Dr. S. Fujita, reviewed the cancer programme under instructions from the Director-General. In his report to the Director-General of 11 January 1995 Dr. Fujita dismissed as "scientifically incorrect" and "misleading" the term "downstaging" attributed by the Cancer Unit to a technique which purportedly allowed nurses and other paramedical workers to detect cervical cancer at a stage when the disease was "still curable". He recommended, among other things, doing away with the complainant's unit.

On 21 April 1995 the complainant lodged an internal appeal with the headquarters Board of Appeal alleging discriminatory treatment and breach of the rules on supervision, reassignment and right of association.

By circular 46 of 17 May 1995 the Director-General announced reforms of NCD as from 15 May 1995. The units were replaced with "programme areas" and the title "chief of unit" with "senior professional officer" or "responsible officer".

By a memorandum of 20 June the Associate Director gave the complainant a written reprimand accusing him of "obstructive actions" and "insubordination" such as late submission of documents, a "blatantly deficient response to a specific request", "repeated refusal to comply with requests" and "repeated derisory comments" at staff meetings about the reform and management of the Division.

On 22 June the complainant filed a second appeal objecting to the reforms on much the same grounds as

those he had put forward in his first appeal. On 4 September 1995 he lodged a third appeal, against the reprimand.

By a memorandum of 22 January 1996 he protested to the Director of the Division against the removal of three references to him by name from the draft programme of a meeting on cervical cancer which the WHO was holding with the European Research Organization on Genital Infection and Neoplasia (EUROGIN). On 6 February the Director added at the end of the memorandum a handwritten note of apology for what he admitted was "a vexing oversight".

In its report of 31 July 1996 the Board took the view that his first two appeals were not receivable: the first because it could not be taken "in isolation" and the second because general reforms could not be seen as "directed" against any one staff member. As to the third, it recommended withdrawing the reprimand; removing it from his personal record; awarding him 5,000 Swiss francs in costs; and rejecting his claims to reversal of the decision to restructure the Division and to moral damages. By a letter of 18 October 1996 the Director-General decided to withdraw the reprimand and strike it from his personal record; granted him 2,500 francs towards costs; and rejected his other claims. That is the challenged decision.

**B. The complainant submits that the WHO treated him unlawfully. He objects to the Board's treating his first two appeals as irreceivable: it had a duty to examine them. He has two main pleas on the merits.**

The first is breach of his status and contractual rights in the removal of his title and duties as "chief medical officer". Citing precedent, he observes that loss of responsibility may be as harmful as lowering of grade and a change in title may cause moral injury so grave as to warrant compensation.

Secondly, he pleads "systematic vexation and harassment". Though the Director-General plainly had a long-standing dislike of him, the more bitter for his staff union work, he says the harassment became constant towards the end of his career. The Administration kept him out of important policy decisions and meetings and refused his requests for staff. Dr. Danielsson's review having found no fault with the cancer programme, the Director-General called on Dr. Fujita, who had no experience of the prevention, detection or treatment of cancer in the developing world, to get rid of the complainant's unit. Though the complainant lodged protests against the unfair treatment, the Administration failed to keep its promises to carry out a proper investigation. Tampering with an official document for the EUROGIN meeting was yet another example of wrongdoing that the WHO did not see fit to look into.

He claims moral damages in an amount to be set by the Tribunal and 8,000 Swiss francs in costs, less any sums already paid by the WHO under that head.

**C. In its reply the Organization contends that the complaint is devoid of merit. It denies depriving the complainant of his "professional functions" or title. He was its "primary authority" on cancer and palliative care throughout his career in the Organization and had the same title - "medical officer" - from recruitment to retirement. It treated him in the same way as the other chiefs. The reforms were, it submits, in keeping with recommendations from its governing bodies and in its interests. The Associate Director did not harass the complainant, who "refused to cooperate".**

**D. In his rejoinder the complainant infers from the Organization's silence on receivability that it concedes that the Board's treatment of his first two appeals was mistaken. He enlarges on his pleas and observes that the WHO has not said why it failed to investigate the charges of harassment. Nor has it seen fit to comment on the EUROGIN "incident".**

**E. In its surrejoinder the defendant presses the arguments in its reply and rebuts the main points in the rejoinder. Although the Board of Appeal rightly regarded his first two appeals as irreceivable it nevertheless took account of the facts and pleas he put forward in them. Instead of confining its comments to the subject of his third appeal the Organization answered the issues he raised in all three. It denies promising a formal investigation into his supervisor's treatment of him and dismisses the EUROGIN incident as a "simple mistake".**

## CONSIDERATIONS

**1. The complainant appeals from a decision of the Director- General of the World Health Organization**

(WHO) dated 18 October 1996 by which the recommendations of the headquarters Board of Appeal were in part accepted and in part rejected. In its report the Board had recommended that the written reprimand given to the complainant be withdrawn and that he be awarded the sum of 5,000 Swiss francs to cover his legal costs, but that no other redress be considered. The Director-General agreed to the withdrawal of the reprimand but allowed a payment of only 2,500 francs on account of costs.

2. It should be noted that the Board's report examines the substance of three separate appeals by the complainant. Even though it takes the view that the first two appeals were not receivable in isolation, it considers them as part of the background to the third appeal and as support for the complainant's allegation that he was the victim of a campaign of harassment. The Organization having conceded that the Tribunal has jurisdiction to review the Director-General's decision in its entirety, there is no issue of receivability before the Tribunal.

3. The substance of the complainant's claim is that he was the victim of harassment and of a concerted plan to degrade him and to downgrade the importance of the work he did. This was allegedly done through the reorganisation of the division in which he worked, the removal of some of his responsibilities and the restriction of his professional activities. The complainant ascribes this to personal prejudice on the part of the Director-General and his first-level supervisor, the Associate Director of the Division of Noncommunicable Diseases (NCD), Dr. Barmes.

4. In a separate but closely related plea the complainant, who retired from the WHO on 30 June 1996, alleges that he was deprived of his title as chief of the Cancer and Palliative Care Unit (CPL) as a result of the reorganisation and that many of his former functions were assigned to others. He asserts that this, in effect, amounts to reassignment by the Administration.

5. His final plea, again clearly related to the foregoing grounds of complaint, is that from the time that Dr. Barmes became Associate Director of NCD he subjected the complainant to a campaign of "systematic vexation and harassment"; this consisted of a disproportionate emphasis on administrative tasks, serious obstacles to his duty travel, restrictions on conference participation, staffing and workload difficulties, a degrading incident with regard to a meeting the WHO was to hold with the European Research Organization on Genital Infection and Neoplasia (EUROGIN) and, finally, a written reprimand which was placed on his personnel file.

6. Like the Board of Appeal, the Tribunal considers that all three facets of the complaint, being interrelated, need to be considered together. The complainant's plea that the Administration's actions with regard to him were motivated by personal prejudice against him colours and underlies both of the other pleas; if the actions complained of in the second and third parts of the complaint were in fact taken in good faith and for proper motives, there can be no doubt that they are beyond the scope of the Tribunal's review.

7. Thus, while the Organization admits that some of the duties of the complainant changed over time and in particular as a consequence of the restructuring and reorganisation of NCD, his official title of "medical officer" and his grade and post remained unchanged throughout the relevant period. The former designation of "chief" was replaced throughout NCD with "senior professional officer" or "responsible officer"; in this respect the complainant was treated no differently from anyone else. The removal of direct responsibility for cancer screening and treatment from the complainant can be seen as a perfectly legitimate part of a restructuring in which, in the interests of better organisation and administration, responsibility for those areas was separated from responsibility for palliative care, which remained under the complainant's direction.

8. It is likewise with the allegation regarding harassment. It is clear that the complainant was fiercely opposed to the reorganisation and restructuring of NCD and was determined, no doubt in perfect good faith and in what he conceived to be the best interests of the Organization, to prevent it from taking place. It is also clear that the complainant did not get on with Dr. Barmes and that the appointment of the latter, in June 1994, to be Associate Director (later Director) of NCD sat ill with him. The relations between the two men were tense and conflictual and the atmosphere was not conducive to good communications. The Board of Appeal found that there was fault on both sides in this situation although it attributed the larger share of the responsibility to the Administration for its failure to take action "to prevent or interrupt the development of a conflictual working atmosphere". The Tribunal can find no fault with that finding. In such

an atmosphere, it is hardly surprising that the complainant perceived every bureaucratic requirement of him and every restriction on his absolute freedom to run things as he wanted as a personal affront and an attack upon his dignity. It remains, however, that unless the complainant can establish improper motivation the Administration has both the right and the duty to organise itself and to supervise the expenditure of its funds and the movements of its staff in ways which it conceives to be in the best interests of the Organization as a whole. No staff member, even a senior one such as the complainant, has the right to refuse to comply with administrative requirements which are generally applicable throughout the Organization.

9. This leads to the question of personal prejudice. The Tribunal is, of course, conscious of the fact that an allegation of personal prejudice will rarely be susceptible of direct proof and must usually be established by inference: see Judgment 495 (*in re Olivares Silva*) under 14. Where there is a rational and legitimate explanation for a decision, however, the Tribunal should not be overzealous to infer bad faith or improper motive simply because the individuals concerned do not enjoy good personal relations.

10. The complainant's evidence of personal prejudice against him on the part of the Director-General is thin in the extreme. He suggests that his role in the Staff Association, where he served on the Committee and, for a time, as chairman, caused the Director-General to be biased against him. The existence of conflicts and disagreements between the Staff Association and the Administration - surely not an abnormal feature - and an off-hand comment in dubious taste by the Director-General himself are far too flimsy a foundation on which to base such a serious allegation.

11. The same is true of a number of professional disagreements between the complainant and the Director-General going back over the years almost to the time when the complainant first joined the WHO in July 1980. It is possible, and indeed quite normal, to disagree profoundly or even passionately with another person's opinion and to express such disagreement in strong terms without being prejudiced or biased against that person.

12. This brings the Tribunal to what appears to be the real source of the conflict between the complainant and his immediate supervisor, Dr. Barmes, and senior management as a whole. Not only was the complainant, as found by the Board of Appeal, vigorously opposed to the restructuring of NCD and the division of his responsibilities for WHO cancer policies, but he seems also to have been in serious professional disagreement with senior management. This centred on a particular method of early screening for cervical cancer, known as "downstaging", in the development and promotion of which he had been very active. The scope and extent of this disagreement can best be seen in a report commissioned by the Director-General in 1994 and prepared by Dr. Fujita. This report, while extremely complimentary of the complainant's work in the field of palliative care, is scathingly critical of "downstaging", which it describes as "not only scientifically incorrect but also misleading". At another point in the report "downstaging" is described as "a dangerous venture or even a deceit".

13. The Tribunal stresses that it is not competent to assess the merits of the Fujita report or to rule on the rights and wrongs of the professional disagreement which it so clearly highlights. Indeed, the circumstances in which the report was prepared clearly lay it open to criticism on the grounds that the complainant, the head of the unit most intimately concerned, was only minimally consulted by Dr. Fujita. That, however, is quite beside the point. Whether it is correct or deeply flawed, there can be no doubt that the report shows the existence of a profound professional disagreement between the complainant and members of senior management.

14. This disagreement lies at the very heart of virtually all the incidents underlying the complainant's allegations. In particular, restrictions on duty travel and limitations on attendances at conferences where the complainant might be expected to promote "downstaging" are not only rationally explained by such disagreement, but can even be seen as a positive duty on the part of the Administration. It is likewise with the removal of cancer screening and treatment from the complainant's responsibilities and the ultimate transfer of that part of the functions of the Cancer and Palliative Care Unit from Geneva to Lyons.

15. There is a world of difference between personal prejudice against a staff member and a belief, whether mistaken or not, that that member's professional opinion is wrong. Furthermore, where a staff member is as highly placed as was the complainant, so that his views might naturally be taken as those of the Organization, the Administration must have the ability to prevent such staff member from degrading its

reputation. While there can be no doubt that the Organization has a duty to respect its staff members' professional dignity and reputation, that duty is limited by the Organization's corresponding right to require staff members not to promote policies or theories which it believes to be wrong or mistaken.

16. In the final analysis, and since neither the Tribunal nor any other body can give a final and binding decision as to who is correct in a professional difference of opinion over policy, the last word must rest with the Administration to determine its own policy.

17. The Tribunal concludes therefore that the complainant has failed to establish that the actions of the Organization were infected by personal prejudice. Since this is the main ground and essential underpinning of the complaint, it follows that the claim for compensation must fail.

18. That is not the end of the matter, however. As indicated earlier, the Board of Appeal found that there had been serious failures in communications and that, while there was blame on both sides, the greater share of it must rest on the shoulders of senior management, whose responsibility it was to prevent conflictual situations from getting out of hand in the way that this one did. The Tribunal agrees with that finding and adds that the Administration was also seriously at fault in not being more open and frank in its dealings with the complainant, particularly with regard to the professional disagreement identified above. While that cannot excuse, it serves to explain the complainant's insubordination. The Board's recommendation that the written reprimand be removed from his file was clearly appropriate and was accepted by the Director-General. In the Tribunal's view the Board was also right in the circumstances to recommend the payment of the complainant's costs in the amount of 5,000 Swiss francs. The Director-General's refusal to accept that recommendation in its entirety is not justified.

19. It follows that the complainant's recourse to the Tribunal for the purposes of claiming the amount recommended by the Board is fully justified. Likewise, his request for a further sum of 3,000 Swiss francs is also well-founded and should be allowed.

## DECISION

For the above reasons, the Tribunal:

1. orders the WHO to pay to the complainant the sum of 5,000 Swiss francs, less any sum previously paid, and to pay him 3,000 Swiss francs in costs;
2. dismisses his other claims.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Michel Gentot  
Julio Barberis  
James K. Hugessen

A.B. Gardner