*Registry's translation, the French text alone being authoritative.*

**TWENTY-NINTH ORDINARY SESSION**

**Judgment No. 192**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. L. B. on 20 September 1971, brought into conformity with the Rules of Court on 26 January 1972, the Organization's reply of 23 February 1972 and the complainant's rejoinder of 5 March 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 960, 1020.1 and 1020.2;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. Mr. B. joined the WHO in November 1970 and was assigned to a project for the sanitation of the city of Bangui in the Central African Republic. His appointment was for two years with a probation period of one year, and his job was to put into operation tractors and excavating machines for the project and to train local manpower. On arriving at his duty station on 21 November 1970 he claims that he immediately encountered serious technical difficulties in operating the machines. He maintains that they were not suited to the terrain and that he did not obtain from his colleagues all the co-operation he might have expected. On 7 December 1970 one of the machines became bogged down and it took the complainant several hours to extricate it. Next day he was admitted to hospital suffering from a nervous breakdown. On 15 December he resumed work but at the beginning of January encountered the same difficulties and had a relapse. The two doctors who examined him decided that he should be repatriated. On his arrival in France on 13 January he was admitted to a special section of the Arles Hospital.

B. The Medical Adviser of the WHO Medical Service interviewed the complainant in Geneva on 4 May 1971, i.e. after some four months' sickness leave, and informed the Personnel Department that it would be ill-advised to reassign Mr. B. to Africa before several months had elapsed. The Organization then decided not to confirm his appointment and gave him one month's notice that this decision, taken under Staff Rule 960, would take effect on 14 June 1971.

C. Mr. B. impugned this decision under Staff Rule 1020.1 and a Medical Board was set up, consisting of the WHO Medical Adviser, the complainant's own physician and a Geneva doctor, a specialist in nervous diseases, appointed by the two others. Two of the doctors found that the medical reasons invoked for not confirming the appointment were valid and on 13 October 1971 the Director-General informed Mr. B. that his decision stood.

D. In his complaint Mr. B. invites the Tribunal to order his reinstatement in his post under the sanitation project in the Central African Republic and the payment of financial compensation for breach of contract. In support of his claim he points out that he did not undergo any medical check-up at the time of his appointment. He also pleads the exceptionally difficult conditions which he had to face during his assignment in Bangui and the fact that the decision not to confirm his appointment was taken before the Medical Board gave its opinion. He maintains, further, that two of the members of the Board failed to take account of the opinion of his own physician, who certified that he was fit to resume work in Africa, and that they reached their conclusions without having seen him, that is, without having examined him or even given him a hearing. He complains that the Organization has no sufficient grounds for disrupting his career, especially since the conditions of the sanitation project have greatly improved in the meantime and his reassignment would therefore have posed no threat to his health.

E. In its reply the Organization points out that experts undergo a medical check-up on appointment only if the information given by the expert's own doctor in the report supplied to the Organization at the time of recruitment reveals unusual features which make such an examination desirable. That was not Mr. B.'s case. The decision not to confirm his appointment was taken quite properly on the opinion of the Medical Adviser after the latter had seen Mr. B. A Medical Board is set up only when such decision is impugned by the person concerned. The Board was

not bound to examine the complainant; it could legitimately form an opinion on the basis of the dossier. The Organization points out that according to the Medical Adviser the difficulties encountered at work by Mr. B. "could not be regarded as the determining factor of a pathological condition which became apparent three weeks after his arrival and which led to about four months' incapacity for work". In its own interests the Organization felt obliged, albeit reluctantly, not to extend the complainant's appointment because of the risks which that would entail. As regards the complainant's request for compensation the Organization refers to Staff Rule 960, which states that in the case of non-confirmation of a staff member's appointment during the probationary period no compensation is payable. It therefore asks that the complaint be dismissed.

F. In his rejoinder, to which the Organization has not replied, the complainant maintains that the ailments from which he was suffering at the beginning of his assignment in Bangui were due to physical exhaustion and not to any nervous defect and in support of this adduces the fact that in the first instance he spent only four days in hospital before resuming work. He consider that the Medical Adviser was wrong in sending the Chief of Personnel, on 26 January 1971, without having examined the complainant, a memorandum stating that it was already almost certain that the complainant's return to Africa was ill-advised. Had he then undergone a medical examination it would have been found that he was suffering from physical exhaustion and not from any supposed nervous breakdown. It would be unfair to make him bear the consequences of this mistake and also of the technical mistakes in the organisation of the project and the choice of certain machines before his appointment to the WHO.

CONSIDERATIONS:

1. Under WHO Staff Rule 960 provision is made for termination of the appointment of a staff member who during his probationary period proves unsuitable for his post on medical grounds. Any decision taken under this provision lies within the Director-General's discretion, and can therefore be set aside by the Tribunal only if it was taken without authority, is irregular in form or tainted by procedural irregularities or by illegality, or is based on incorrect facts, or if essential facts have not been taken into consideration, or if there has been a misuse of authority, or if conclusions which are clearly false have been drawn from the dements in the dossier.

2. As the decision impugned is based on the Staff Rule cited above, the complainant's claims must be considered to fall within the bounds of the Tribunal's limited powers of review.

In the first place, the complainant charges the Organization with having failed to give him a medical examination before he took up his post. While it is true, as the Organization itself admits, that the complainant was recruited on the basis of a report by his own physician, subject merely to checking his vaccinations, this procedure is in accordance with a practice which neither infringes the applicable regulations nor is in any way damaging to the interests of the complainant, who cannot properly object to the fact that he was recruited on the recommendation of a doctor of his own choosing. Moreover, in all probability the breakdown which was the reason for the complainant's termination was due to causes which would not have been revealed by a further examination at the Organization's headquarters.

Further, the complainant's argument that he was not seen by the Medical Board to which his case was referred for consideration under Staff Rule 1020.2 is ill-founded. Under that Rule the Medical Board is authorised to carry out such examinations in the present case. At the time when the Board met it had apparently recovered some months earlier from the consequences of his breakdown, to undergo a further examination which would probably have been unnecessary. The Board was therefore justified in making its recommendation in the light of the dossier.

The complainant lays the blame for the breakdown which led to his repatriation and to the subsequent termination of his appointment on inefficient organisation and unsuitable equipment. The Director-General did not, however, exceed his discretion in failing to inquire into the working conditions prevailing at the complainant's place of employment. Whether or not the complainant's criticisms are justified, the fact remains that he reacted to the alleged difficulties in an abnormal manner which gave plausibility to the possibility of a relapse and appeared to justify his termination under Staff Rule 960.

It appears, therefore, that the decision impugned is tainted by none of the irregularities which the Tribunal is competent to review and the claim for reinstatement must accordingly be dismissed.

3. The same applies to the claim for damages. As specifically stated in Staff Rule 960, termination under its provisions does not in itself confer the right to an indemnity. It follows that the complainant's claim for financial

compensation could be accepted only if his contract had been terminated illegally, which is not the case.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 13 November 1972.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy

Updated by PFR. Approved by CC. Last update: 13 October 2004.