

EIGHTY-EIGHTH SESSION

***In re* Almazán-Aguirre (No. 3), Carrillo (No. 3)
and Rubiano-Lisiewski**

Judgment 1939

The Administrative Tribunal,

Considering the third complaints filed by Mrs Miriam Magaly Almazán-Aguirre and Miss Maria Teresa Carrillo, and the complaint filed by Mrs Clara Rubiano-Lisiewski against the Pan American Health Organization (PAHO) on 11 October 1998 and corrected on 25 November 1998, the PAHO's reply of 17 March 1999, the complainants' rejoinder of 3 May and the Organization's surrejoinder of 10 August 1999;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Considering the applications to intervene filed by:

M. Araujo

L. Beckner

L. Callaghan

I. C. Arp Campero

E. Chambers

C. M. Chand

J. M. Claudio

C. De la Barra

M. De Orio

A. T. Ellauri

G. Etori

M. E. Fárjam

A. G. Freeman

L. Fuller

O. M. Glorioso

G. Gómez de la Torre

N. Hernández

O. Herrada

A. Huaman-Schmahmann

R. Leiva

M. M. Linares

S. M. Morán

L. A. Nédjar

R. M. Noda

A. Pomé

C. A. Ponze

C. I. Rodríguez

L. Rossignuolo

R. Sánchez

S. Sánchez

C. Tejada

N. Toro

M. D. Suere Valdés

C. F. Vargas

O. Willemstijn

Considering the PAHO's observations of 28 October 1999 on these applications;

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. The complainants who are employed at the PAHO's headquarters in Washington, D.C. are in the General Services category.

In 1991, the Director of the PAHO decided to adopt the United Nations Global Classification Standard for Non-Headquarters Duty Stations (hereinafter "the Standard"). The application of the Standard implied the conversion of the salary scale for the General Services category from an eight-grade to a seven-grade scale. For this purpose, job description questionnaires for all General Services positions had to be completed by each department. In 1995, in its capacity as "lead agency" for the duty station, the Organization was charged with implementing the Standard for all General Services staff in United Nations institutions with their headquarters in Washington, D.C.

In a letter of 11 April 1995 the Chief of Personnel of the PAHO informed the Chairperson of the Staff Committee of the Washington Local Organization⁽¹⁾ that she would appreciate the designation by the Staff Association of two representatives and two alternates to participate in a working committee to implement the conversion process.

By a letter of 1 May the Chairperson of the Staff Committee informed the Chief of Personnel that the Committee declined her invitation on the grounds that the participation of representatives of the Staff Association was contrary to the provisions of the PAHO/WHO Manual. By a letter of 19 May to the Chairperson of the Committee, the Chief of Personnel once again invited the Staff Association to designate participants to observe or collaborate in the process. By a letter of 30 June, the Chairperson of the Committee replied that the Committee accepted the offer to participate as observers and, in a letter of 31

July, he informed her of the names of two observers and an alternate. One of the observers was an external consultant. In a letter dated 8 August, the Chief of Personnel told the Chairperson of the Committee that observers had to be staff members and that she was not able to accept the participation of the consultant.

In an information bulletin dated 11 August, the Washington Local Organization indicated that it had decided to entrust the external consultant with the task of reviewing the classification of General Services posts.

In a letter of 13 November, the Chairperson of the Committee requested the Director of the PAHO for a copy of the final report on the salary scale compression exercise. In a communication dated 19 December, the Director replied that he could not comply with the request, which he felt was inconsistent with the Staff Association's decision not to become part of the process.

On 20 December 1995, the Department of Personnel issued General Information Bulletin No. 95-58, informing headquarters staff of the conversion of the salary scale. It also indicated that new job descriptions would be distributed during the first quarter of 1996.

Fifty-seven staff members filed appeals concerning the results of introducing the Standard. Their counsel wrote to the Chief of Personnel on 15 March 1996 to inform her that each appellant requested, inter alia, the old post description existing prior to the introduction of the Standard, the new post description resulting from the implementation of the Standard and the point rating worksheet used by the classification officers. By a letter of 25 April the Chief of Personnel sent the counsel the post descriptions which existed prior to the application of the Standard and a blank copy of the worksheet. She indicated that the new job descriptions were being finalised. In a letter dated 2 May the counsel asked the Chief of Personnel to provide him with the worksheets containing the values awarded and the comments made by the classification officers. The Chief of Personnel advised him in a letter of 20 June that she would not provide them because they were confidential documents.

In a communication to the Director dated 25 November 1996, the President of the Executive Committee of the Staff Association observed that 82 per cent of the posts had received different classifications by the Department of Personnel and the Washington Local Organization's consultant. The Staff Association took the case to the headquarters Board of Inquiry and Appeal, which issued its opinion on 18 May 1998. Its recommendations to the Administration included providing the Washington Local Organization with a table, taken from the report to the Director on the application of the Standard, and each General Services staff member with an up-to-date post description. In a letter of 9 July 1998, which is the impugned decision, the Director provided each appellant with a copy of the table. He added that the vast majority of new post descriptions had already been provided to the General Services staff members.

B. The complainants contend that the PAHO failed to provide reasons for its classification decisions. Citing the case law of the Tribunal, they assert that a discretionary decision must be explained sufficiently well to enable staff members to defend their interests and an appeals body and the Tribunal to exercise the power of review. In the present case, they say that the Administration failed to provide the complainants with the necessary information to enable them to verify that the classifications had been made correctly, namely the final report on the compression exercise, the new post descriptions and the worksheets.

Once again citing the Tribunal's case law, they allege that the Organization was in breach of the principle of good faith and the principle that staff members have the right to be kept informed of any action which may affect their rights or legitimate interests. They say that the PAHO used the non-participation of the Staff Association in the compression exercise as a pretext to deny staff members the information which they were claiming.

The complainants submit that the PAHO violated WHO Manual paragraph II.5.40 under which, in their view, a staff member is entitled to have a copy of an up-to-date post description at all times.

Finally, they suspect the Organization of being in violation of the Standard. The fact that post descriptions were still being prepared even after the conversion exercise had been completed implies that the tasks and responsibilities had been evaluated before they were final and official. The extent of the discrepancies between the classifications made by the Department of Personnel and by the Washington Local

Organization's consultant is an additional reason for fearing that the process was flawed.

The complainants request the Tribunal to order the PAHO to provide them with a copy of the point rating worksheet actually filled out by the Department of Personnel and to repeat the classification study for their posts. As the PAHO acted unlawfully they claim compensation for the moral damages suffered. They also claim costs.

C. In its reply the PAHO submits that, under the terms of Staff Rule 210, the Director enjoys broad discretion in the establishment of classification plans. It adds that, in accordance with its case law, the Tribunal only exercises a limited power of review in this respect. By aligning the system applicable to the General Services staff of the PAHO with that of their colleagues on the rest of the continent, the Director was merely applying a recommendation intended to cover the whole of the United Nations system.

The Organization asserts that it fully complied with the Staff Rules and Regulations and the general principles of law. It says that it kept its staff informed of all decisions regarding the application of the Standard and the reasons for them. Nevertheless, it contends that giving reasons for a decision does not entail the disclosure of all the documents produced on a given subject, which would paralyse the work of any organization. Since the questionnaires and the results of applying the Standard were communicated to all the staff, the complainants had sufficient information at their disposal to defend their interests. Based on the case law of the Tribunal, the PAHO contends that it is entitled to withhold confidential documents.

The Organization asserts that it was under no obligation to invite the Staff Association to participate in the negotiations. Its offer to do so was made in good faith.

It says that WHO Manual paragraph II.5.40 has no bearing on the implementation of the Standard. The complainants cited it out of context.

The PAHO argues that it applied the Standard correctly. The sole document used to prepare the list of tasks and responsibilities was the "Model Job Description Questionnaire", and not the post description itself. It adds that interviews were arranged between staff members and their supervisors to clarify the nature of their duties. These were then evaluated and the point values recorded on the worksheets.

It asserts that the Staff Association's expert lacked a thorough understanding of the Standard, since he had virtually no knowledge of the Organization or its structure. This may explain the discrepancies between his classification and the classification made by the Department of Personnel.

Since the complainants do not show any injury resulting from the implementation of the Standard, the PAHO wonders why they filed a complaint.

D. In their rejoinder the complainants add that official reasons for individual classification decisions only appear in the worksheets. Nevertheless, they offer to withdraw their complaints if the Administration provides them with an official document containing the same information as the worksheets. They assert that the injury which they are suffering lies in the fact that they have been denied information to which they are entitled.

Citing WHO Manual II.3.290, they refute the PAHO's argument and assert that post descriptions are indeed taken into account for the classification of posts.

E. In its surrejoinder the PAHO presses its arguments and recalls that the headquarters Board of Inquiry and Appeal deemed that the table taken from the report to the Director was "equivalent" to the worksheets.

CONSIDERATIONS

1. Despite the size of the pleadings generated by this complaint, there is basically only one single issue to be determined, namely, whether the complainants are entitled to the production of the actual worksheets used by the classification officers in the implementation by the Organization of the new United Nations Global Classification Standard for Non-Headquarters Duty Stations (hereinafter "the Standard"). It is the implementation process of that Standard for the General Services posts in the PAHO's headquarters in Washington, D.C. which is the subject of this case.

2. The relief sought in the complaint is to order the Organization:

- (1) To provide each of the complainants with a copy of the point rating worksheet actually filled out by the Personnel Department in order to attribute points to each complainant's post.**
- (2) To repeat the exercise of classification of the complainants' posts.**
- (3) To pay moral damages for the PAHO's "violations of the law".**
- (4) To pay legal costs.**

3. The origin of the dispute lies in the decision of the Organization to implement the Standard through an ad hoc committee, set up by the Director of the PAHO, in which the Staff Association refused to participate as full members. After the results of the exercise had been completed and made known to individual staff members, fifty-seven staff members appealed to the headquarters Board of Inquiry and Appeal.

4. In its report the Board found as follows:

"7. Post descriptions were not provided to staff within a reasonable amount of time after completion of the exercise. According to the appellants' brief, approximately a year and a half after completion, appellants still did not have their new post descriptions.

...

10. Table 4 of the Report to the Director on the Application of [the Standard] contains point-factor ratings and the total scores assigned to every post for the compression exercise. The information contained in this table is equivalent to that included in the individual score sheets prepared for each post, and was not found by the Board to be confidential in nature.

...

12. There is no evidence that the appellants suffered moral damages."

5. The Board recommended, inter alia, that:

"1. The Administration provide [the Washington Local Organization] with Table 4 of the Report to the Director on the Application of [the Standard] containing only the information for the appellants.

2. The Administration provide each [General Services] staff member with an up-to-date post description.

...

5. The Administration not pay moral damages."

6. In his final decision of 9 July 1998, which is the decision impugned, the Director said inter alia:

"1. In light of the unique nature of the compression exercise, which involved the application of [the Standard] I exceptionally agree to this recommendation. Therefore, Table 4 of the report, as applied to the Appellants, is provided as Attachment 1.

2. As you are aware, the process of reviewing post descriptions is on-going and reviews are performed at the request of staff members and/or supervisors. The vast majority of post descriptions involved in the entire exercise have already been provided to General Services staff members, and we are making every effort to complete the few that remain by the end of July 1998. Post descriptions that are pending completion either due to changes in the functional structure of specific units or are in the process of reclassification will be finalized in due time."

The Director further agreed that no moral damages should be paid.

7. The complainants have four pleas.

(1) By not producing the point rating worksheets used by the classification unit the Organization has failed to provide the necessary complete information. This makes it impossible for them to defend their interests and for the Tribunal to review the classification decisions.

(2) Referring to the fact that the Organization did not accept the Staff Association's alternative proposals to

the compression exercise, they contend that the PAHO was in breach of the duty of consideration it owed the staff: it failed to act in good faith and failed to keep staff informed about important matters affecting their rights and interests. The treatment of staff was demeaning and there was a deliberate denial of information.

(3) The Organization has violated WHO Manual paragraph II.5.40 which the complainants claim requires that a staff member should be entitled to have a copy of an up-to-date post description at all times.

(4) The Organization is in violation of the Standard because, in the announcement of the completion of the conversion exercise, the staff were told they would each receive a form giving their grade under the new scale "within the next few weeks" and that the new post descriptions were "being prepared and [would] be distributed during the first quarter of 1996". The complainants say that the implication is that tasks and responsibilities were evaluated before they were "final and official".

8. The three complainants were confirmed at their respective grade levels and maintained their salaries, benefits and responsibilities. The Organization contends that they were unaffected by the exercise and therefore have no cause of action.

9. As to the claim of the complainants to receive the actual point rating worksheets, the Organization submits these are confidential. They are, say the PAHO, the "opinion work-product" of the classifiers and are not person-specific. The Organization gave all the worksheets to the Board of Inquiry and Appeal and the Board did not order that they be made available. The Organization is willing to submit all the worksheets to the Tribunal if so requested.

10. The PAHO states that the rating on each worksheet could change over various stages in the course of the working committee's review process. The application of a new classification standard to posts in the Organization is a management measure which has no relation to individuals but rather to posts within a formal organisational structure.

11. The Board found that the information contained in Table 4 of the Report to the Director was "equivalent to that included in the individual score sheets prepared for each post", and it was subsequently made available to the complainants.

12. Ordinarily, the complainants would not be entitled to internal working management documents. In this case, however, they have been provided with sufficient information to enable them to pursue their interests. Their suspicion that the "tasks and responsibilities were evaluated before they were final and official" is without foundation.

13. The complainants base their allegations that the Organization failed to show consideration for the staff, failed to act in good faith and failed to keep the staff properly informed on two factors: (1) a deliberate denial of information and (2) the "demeaning" treatment of staff resulting from the Organization's original proposal for Staff Association participation in the working committee, which they say violated the rules of the Organization, and the Organization's failure to accept the Staff Association's alternative proposals.

14. The Tribunal is satisfied that there was no deliberate denial of information and does not accept that there was any demeaning treatment of staff.

15. The Tribunal is satisfied that the Organization did not fail to provide all the information necessary for the complainants to pursue their interests and accordingly will not order the production of the actual worksheets or a repetition of the classification study of each complainant's post. None of them suffered moral injury.

DECISION

For the above reasons,

The complaint and the applications to intervene are dismissed.

In witness of this judgment, adopted on 11 November 1999, Mr Michel Gentot, President of the Tribunal,

Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

**Michel Gentot
Mella Carroll
James K. Hugessen**

Catherine Comtet

1. The PAHO/WHO Staff Association is organised on two levels. At the level of duty stations, a Local Organization may be formed whose elected leadership makes up the Staff Committee. An organization of this nature exists in Washington - the Washington Local Organization. The supreme authority of the Staff Association is the Council, which is composed of the presidents of all the Local Organizations and meets once a year. Between meetings of the Council, an elected group of seven members, called the Executive Committee, implements its decisions and deals with employment issues.

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