

EIGHTY-EIGHTH SESSION

In re Sondo

Judgment 1946

The Administrative Tribunal,

Considering the complaint filed by Mr Moussa Sondo against the World Health Organization (WHO) on 9 October 1998 and corrected on 20 July 1999;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. On a date which it has not been possible to determine, the complainant, a citizen of Burkina Faso, born in 1943 and a former staff member of the World Health Organization (WHO), posted an unregistered letter in Ouagadougou containing a complaint bearing the date 10 September 1998, addressed to the United Nations Administrative Tribunal and made out on an official form of the Administrative Tribunal of the International Labour Organization (ILOAT). He challenged the non-renewal of his contract, which had expired in March 1990, and alleged discrimination by the Organization in the classification of his post. He produced a copy of a decision of the Director of the Onchocerciasis Control Programme in West Africa on 14 January 1998 refusing to grant him damages. When correcting his complaint, he produced a receipt for mail sent on 15 April 1998 to the "WHO post BAG n°. BE 773 Belvédère Harare - Zimbabwe"; in which he stated that he had appealed to the regional Board of Appeal. However, he stated that he had not received any reply and was therefore turning to the Tribunal. At a later date, he produced a copy of his appeal to the regional Board of Appeal, dated 22 March 1998. The letter accompanying the complaint, dated 10 September 1998, is addressed to the "Registrar of the United Nations Administrative Tribunal, Palais des Nations Unies ... Geneva". This communication, which was really intended for the ILOAT, reached the Palais des Nations in Geneva, which transmitted it to the United Nations Administrative Tribunal in New York. As certified by the Registrar of that Tribunal, the complainant's communication was received on 9 October 1998. The complaint was then forwarded to the ILOAT. It was not possible to relocate the original envelope containing the complaint, nor was it possible to determine when the complaint was posted in Ouagadougou, nor when it reached the United Nations Office at Geneva. Invited to provide evidence of the date of despatch of his envelope in Ouagadougou, the complainant admitted that he was unable to do so.

2. Under Article VII, paragraph 1, of the Statute of the Tribunal, "a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". On this point, Section 12 of the WHO Staff Rules (Staff Rules 1210 to 1250) indicates the manner in which a staff member may appeal against a decision taken by a Regional Director, by making an appeal at the regional level and then, if necessary, by appealing to the headquarters Board of Appeal, which makes a recommendation to the Director-General for a final decision. The Staff Rules also indicate precisely the time limits within which staff members must appeal to the Board of Appeal concerned (Staff Rules 1230.8.3 and 1230.8.5). The Board of Appeal must report its recommendations (Staff Rule 1230.3.3) to the appropriate director, who must reach a decision on them (Staff Rule 1230.3). In the present case, the complainant invokes the alleged failure to act of a lower body in the Organization's hierarchy. As he did not raise that issue during the internal appeal procedure he has not exhausted the internal means of redress. The implicit decision to dismiss his internal appeal was not therefore final: see, on this subject, Judgments 1404 (*in re Rwegellera*) and 588 (*in re Ido*). Consistent precedent has it that only in exceptional circumstances may the requirement to exhaust the internal remedies be set aside, and only in cases where on the evidence the Organization seems unlikely to reach a decision within a reasonable time. However, it is neither alleged nor demonstrated that such is the case and that the steps taken by the complainant to obtain a response would have been certain to fail. The complaint

is, therefore, clearly irreceivable and must be dismissed in accordance with the summary procedure in Article 7 of the Rules of the Tribunal.

3. It is not therefore necessary to examine whether it was filed in time, under Article VII, paragraphs 2 and 3, of the Statute of the Tribunal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

Catherine Comtet