

## EIGHTY-NINTH SESSION

*In re Yoshida*

Judgment No. 1960

The Administrative Tribunal,

Considering the complaint filed by Mr Tokuo Yoshida against the World Health Organization (WHO) on 15 June 1999, the WHO's reply of 15 September, the complainant's rejoinder of 18 October 1999, and the Organization's surrejoinder of 14 January 2000;

Considering Article II, paragraph 5 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 Japanese national born in 1943, holds a P.5 post at the WHO. At the material time he was Chief of the Regulatory Control Unit (RCU) under the Programme on Substance Abuse (PSA), which came under the Division of Mental Health and Prevention of Substance Abuse (MSA). The RCU was involved in recommending whether certain pharmaceuticals should be classified as addictive.

In July 1995 the Management Development Committee (MDC) was asked to evaluate how the Organization could cut costs. One of its recommendations was to "regroup" the RCU under the Division of Drug Management and Policies (DMP). Although this recommendation was endorsed by the Director-General on 24 July 1995, it was not immediately implemented.

In October 1997 the complainant sent three faxes to his technical counterparts outside the WHO. Two of these faxes were sent to donor pharmaceutical companies and the third was sent to a non-governmental organisation "in official relations with WHO". In these faxes he raised the issue of possible impropriety insofar as these pharmaceutical companies also fund programmes in the same Division of the WHO which oversees the Unit on drug regulatory control of products produced by those companies. The faxes were on WHO letterhead, signed by the complainant in his official capacity and were sent without the knowledge or approval of his supervisors. He also wrote to the Director of the Division of Budget and Finance, questioning the acceptability of such contributions from pharmaceutical companies.

On 31 October 1997 an information circular announced the "regrouping" of RCU under DMP.

On 18 February 1998 the Assistant Director-General in charge of activities concerning drug management and policies informed the complainant of the possibility that disciplinary action could be taken against him as a result of the communications he had sent, and asked him to provide a written explanation. The complainant responded on 23 February that "the overall objective of [his] communications ... was to expedite the implementation of the MDC recommendation concerning the regrouping of [his] unit" and that he also wanted to "protect the good name of WHO as a reliable institution within the UN drug control system". On 30 April the Assistant Director-General issued him a written reprimand for violating the conduct outlined in Article 1 of the Staff Regulations and Staff Rule 110.

On 17 August the complainant appealed against the written reprimand to the headquarters Board of Appeal. In its report of 13 December 1998 the Board of Appeal, finding that the complainant had acted in good faith and had not violated any staff rules or regulations, recommended the reprimand be withdrawn. On 26 March 1999 the Director-General upheld the reprimand on the grounds that the complainant had sent the communications without the prior knowledge or approval of his Director and that staff members have an obligation to uphold the Organization's policy, regardless of personal views. That is the impugned decision.

B. The complainant disputes the written reprimand on the grounds of incomplete consideration of the facts. First, he submits that in rejecting the recommendation of the Board of Appeal the Director-General has disregarded its findings and has merely restated the allegations of the Administration. He argues that sending the three faxes without seeking the approval of his Director did not violate any staff rules since the faxes were nothing more than correspondence with his technical counterparts "on matters within his area of responsibility".

Secondly, he contends that the Organization's failure to apply its own "policy" and "decision" led to an apparent conflict of interest. He considers that the immediate implementation of the management decision of 24 July 1995 to "regroup" his Unit under DMP would have prevented any appearance of impropriety. The Director of the Division overseeing his Unit was permitted to solicit contributions from pharmaceutical companies for other WHO programmes. Therefore, he argues, the transfer of his Unit would have resulted in removing that Director from the decision-making process concerning the international classification of addictive drugs manufactured by those same companies, thereby avoiding any appearance of a conflict of interest. He contends that allowing the Director to block the transfer of the RCU for more than two years is just one example of the "special treatment" he was granted.

The complainant asserts that the reasons given in the Director-General's letter of 26 March 1999 upholding his reprimand are without merit, particularly since a policy regarding donations from private enterprise did not exist at the time he sent the faxes. He acted on the basis of a memorandum of 15 October 1990 from the WHO Legal Counsel which advised him and his immediate supervisor to avoid even an "appearance" of a conflict of interest when dealing with pharmaceutical companies.

He asks that the decision refusing that the reprimand be removed from his personnel file be set aside.

C. In its reply the Organization argues that the communications sent by the complainant "implied improper action on the part of WHO in accepting the contributions, and on the part of the contributors in having made the donations". Furthermore, it would not have been unreasonable for anyone who read the faxes to conclude that the funds should not have been donated.

In issuing the written reprimand it properly exercised its discretionary authority and complied with the Organization's Staff Regulations and Rules. As a senior WHO official with many years of experience, the complainant knew that it was improper to send these faxes without clearance. His action violated the administrative procedures of PSA which requires that "correspondence with financial implications ... be cleared by the Director PSA". The complainant sent the faxes in order to put pressure on the Organization to hasten the internal reorganisation which had been envisaged since 1995.

His reliance on the 15 October 1990 memorandum was flawed; that memo addressed a different set of facts than those at issue here. It denies that the Director was granted any special treatment which allowed him to block the transfer of the Unit.

D. In his rejoinder the complainant contends that his actions protected the reputation of the WHO. He refutes the Organization's argument that the faxes could be construed as damaging to the WHO's reputation since they were sent to only three people, who were collaborating partners of the WHO with a vested interest. Given the fact that the faxes were sent to such partners, they represented an "internal" solution to the problem of the perception of a conflict of interest. It was not necessary to clear the faxes with his Director because they did not financially obligate the WHO in any way.

E. In its surrejoinder the Organization notes that the complainant does not dispute the material facts and maintains that by sending the faxes he breached the duty of loyalty and discretion owed to the WHO. It points to the Tribunal's case law to refute the complainant's arguments, reiterating that the complainant's actions merited disciplinary action. His actions had less to do with protecting the best interests of the Organization than with trying to expedite an internal reorganisation. In addition, it is for the WHO, and not the complainant, to decide what is in its best interests.

## CONSIDERATIONS

1. The complainant contests a written reprimand which was issued to him by an Assistant Director-General of the WHO on 30 April 1998. The complainant appealed the reprimand to the headquarters Board of Appeal which, in a

report dated 13 December 1998, recommended the withdrawal of the reprimand. The Director-General rejected that advice and on 26 March 1999 upheld the written reprimand. That is the impugned decision.

2. The complainant was reprimanded for sending facsimile communications on official letterhead to two employees of large pharmaceutical firms and one employee of a non-governmental organisation. In those communications, the complainant expressed concern about the propriety of certain contributions made by them to the WHO. These communications had not been authorised by the complainant's supervisor and did not represent WHO policy.

3. The complainant submits that his actions did not contravene any WHO policy regarding the acceptability of funding from private enterprises but rather that he was giving effect to a policy for which there was precedent in the Organization's own practice. In this latter respect, the complainant refers to an incident in 1990 when he had expressed concern over a contribution made by a pharmaceutical company to support activities in the study of the rational use of psychoactive drugs. On that occasion, the Organization's legal advisor had agreed with the complainant and had stated in a memorandum that: "the receipt of financial contributions from the pharmaceutical industry for the Organization's work in psychoactive drugs creates an unacceptable conflict of interest ... For this reason, such offers of contributions have to date been declined".

4. In the complainant's view, the situation on which he was commenting in October 1997 was similar to that which had existed in October 1990. He further believes that if a planned regrouping of his unit - the Regulatory Control Unit into the Division of Drug Management and Policies - had in fact been carried out as had been mooted in 1995, the appearance of a conflict of interest in respect to the donations in question could have been avoided. He alleges that the failure to carry out the regrouping in a timely manner was due to "special treatment" granted to the Director of the MSA who, he alleges, had engaged in illegal activities.

5. Finally, the complainant claims that the Director-General, in her decision, did not adequately explain how and why she had rejected the recommendations of the headquarters Board of Appeal.

6. The complainant is wrong. In the first place, it is not the complainant's role to decide whether or not the situation which he thought he observed in 1997 was identical to that which had been adjudged a conflict of interest in 1990. Indeed it is clear that the complainant understood the proper course to follow when he perceived a possible conflict situation, for he had in fact followed it in 1990 when he had written a memorandum which had found its way to the legal department which had, in due course, issued its opinion. Secondly, whether or not there was a conflict in 1997, it was not the complainant's role to write to potential contributors with respect thereto; the administrative procedures manual of the PSA is specific in requiring that: "Correspondence relating to contributions or potential contributions to PSA" should be signed by the Director of PSA. The complainant's intemperate action was in breach of this provision. Thus even if the complainant was acting in good faith and in what he perceived to be the best interests of the Organization, as was found by the Board of Appeal, that does not minimise the nature of his misconduct. Given that the complainant wrote without authorisation on official letterhead to financial contributors to the Organization, thereby possibly endangering relations with and funding from such donors, it is impossible for the Tribunal to say that the relatively mild sanction imposed, that of a written reprimand, was disproportionate.

7. The complainant's attempt to link his actions with the Organization's alleged failure to carry out the regrouping of the RCU into the DMP is simply irrelevant as are his slanderous and unproven allegations against the Director of MSA.

8. Finally, the complainant's allegations that the Director-General failed to give reasons for rejecting the Board of Appeal's recommendation is without foundation.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 25 July 2000.