

FIFTH ORDINARY SESSION

(Part II)

***In re* HARTMANN**

Judgment No. 20

THE ADMINISTRATIVE TRIBUNAL,

Having had referred to it a complaint submitted against the World Health Organization on 20 May 1955 by Grethe Hartmann, M.D. of Danish nationality, an official of that Organization from 19 November to 23 December 1950, and from 9 February 1952 to 28 February 1953, the said complaint seeking that the Tribunal be pleased to follow the recommendation of the Board of Inquiry and Appeal of the defendant Organization of 28 February 1955, and to permit the complainant to appeal as to the substance against the decision to terminate her, and to permit the taking of evidence and allow witnesses to be heard;

Considering the memorandum of reply to the said complaint submitted by the defendant Organization dated 24 June 1955, the said memorandum setting forth the following principal conclusions: "To declare that the appeal brought by the complainant before the Board of Inquiry and Appeal of the Headquarters of the World Health Organization is not receivable as being out of time,

To declare that the complaint does not show due cause for rescinding the decision by which her contract was terminated, which decision was duly notified to her and confirmed,

To pronounce therefore that the present complaint is not receivable and not founded and must be dismissed,";

Considering the pleadings exchanged by the representatives of the parties during the hearings;

Considering that the complaint is receivable in form;

Considering that the facts of the case are the following:

1) Having been granted on the first occasion a temporary appointment from 19 November to 23 December 1950, the complainant was offered by the defendant Organization a fixed-term contract of two years as a "Medical Specialist" beginning on 9 February 1952. The duty station was Rotterdam;

2) From 19 September to 5 October 1952 the complainant was away from her post for health reasons. Called to Geneva at the end of October she submitted to a medical examination, as a result of which the medical adviser declared her unfit to carry out her duties;

3) Having contested the opinion given in the medical report, the complainant submitted on 10 November 1952 to a further examination before a medical board consisting of three practitioners of whom one was appointed by the complainant herself in accordance with the Staff Rules. The report drawn up by the said board contained the following passage:

"Mlle H. is at present incapable of performing her duties satisfactorily. The board recommends that she be assigned to office work of a medical and scientific character, which she is capable of performing, for a period of six months at the term of which period her fitness to take up the duties set forth in her contract be reconsidered.";

4) On 14 November 1952 the defendant Organization officially notified the complainant that her appointment would be terminated on 31 December 1952, but that at the same time the administration would search for a suitable possibility for continuing her services;

5) In fact the administration succeeded in transferring the complainant to a temporary post at the Geneva

headquarters of the Organization, which post she occupied from 1 January to 28 February 1953. Since she could not return to the post to which she had been appointed in the first place, and for which she had been expressly engaged, and in the absence of any further possibility of transfer, her appointment terminated on the latter date;

6) The complainant submits that at that time it was specifically agreed with the medical adviser of the defendant Organization, that the new examination referred to in the above-mentioned report of the medical board dated 10 November 1952 could take place in Copenhagen and be carried out by a member of the said board, namely by the member who had been appointed by the complainant herself and who resided in Copenhagen, as well as by a psychiatric specialist of Danish nationality. An examination was carried out in Copenhagen and the results communicated to the defendant organisation in June 1953.

7) The complainant having however ceased to be an official as from 28 February 1953, the administration confirmed in a letter dated 1 September 1955 that her appointment had terminated in February by reason of the fact that she could not return to the post to which she was appointed, and that there was no possibility of transfer to another post;

8) One year later only, on 4 September 1954, the complainant made known for the first time her intention to appeal to the Board of Inquiry and Appeal in a letter addressed to the Staff Association; in fact, the appeal was brought before the said Board on 1 November 1954,

9) By reason of the considerable delay in her seizing the Board of Inquiry and Appeal, the Director-General of the defendant Organization notified the complainant of his intention to request the said Board to meet in order to examine the question of receivability in the light of the provisions of Rule 1030.8 (b) of the Staff Rules;

10) The Board of Inquiry and Appeal in its report dated 28 February 1955 declared as follows:

"...

4. Some discussion on the position of sick staff members took place and it was the general view that circumstances could exist in which a sick staff member would be unable to be responsible for the observation of time limits laid down in the Staff Rules. It was also felt to be possible that the appellant, having exchanged considerable correspondence with the administration, had some reason to consider that final administrative action had still not been taken.

...

6. IN CONCLUSION : The Board was unable to decide as to the receivability of Dr. Hartmann's appeal from a procedural standpoint. With a view however of avoiding in case of doubt any attitude that might be interpreted as unfair to the appellant owing to a vice of procedure,

THE BOARD UNANIMOUSLY RECOMMENDS:

That the Director-General instruct the Board to ignore any time-limits laid down that might be held to be applicable in the case of Dr. Hartmann and proceed to hear the appeal."

11. However, on 17 March 1955, the Director-General of the defendant Organization notified the complainant that he was unable to accept the recommendation of the Board of Inquiry and Appeal. His decision was motivated as follows:

"I find myself unable to accept the recommendation of the Board since it is not based upon a finding that there were any circumstances clearly justifying the acceptance of an appeal two years after the act which is being appealed. To accept the recommendation of the Board under these circumstances would, it seems to me, be tantamount to abolishing the time-limit for appeals. While I am desirous of taking into maximum account the interests of the staff, I must ensure that the administration of the Secretariat is governed by sound and stable rules, particularly in the case where decisions of the Administration are to be impugned within specific time-limits; if it was not so, the incertitude created would render sound administration extremely difficult, if not impossible."

ON THE SUBSTANCE

A. Considering that Rule 532.3 of the Staff Rules of the defendant Organization in force at the time when the said Organization gave notice of termination to the complainant - which Rule corresponds in substance to the present Rule 1030.8 (b) - was in the following terms:

"A staff member wishing to appeal against such an action [a final action taken by the administration] must do so in writing within fifteen days after he has been notified thereof. Insofar as practicable the Board [the Board of Inquiry and Appeal of the defendant Organization] will open its proceedings within ten days after receipt of the appeal.";

Considering that the complainant had already been notified on 14 November 1952 that her appointment was terminated for health reasons with effect from 31 December 1952 in the following terms:

"In accordance with the provisions of Staff Rule 957.3, a Medical Board was constituted to examine the state of your health. You have been informed of the decision taken by the Board at its meeting on 10 November, 1952, that you are presently unfit to carry out the duties of your post.

The Board suggested that you might be assigned to a desk-job of a medical and scientific nature with a possible re-examination after six months.

In view of the Medical Board's recommendations, I have looked into the possibility of giving you work as indicated above in the Regional Office for Europe but I have no suitable assignment which would make it possible for me to keep you on the strength of this office beyond 31 December, 1952. I have also discussed with Headquarters what possibilities there might be on the Headquarters' staff. Unfortunately, at this moment there appears to be no suitable post to which you could be re-assigned. It is necessary, therefore, that I advise you officially that your contract with WHO will have to be terminated on 31 December 1952, and you should regard this letter as official notice of your termination. We shall, of course, continue to search diligently for a suitable possibility for continuing your services but I cannot at this moment be at all encouraging.";

Considering that whatever the circumstances might be, the complainant could not plead ignorance at that time of the Staff Regulations and Rules which were applicable to her, especially as a copy of these documents had been handed to her at the time of her appointment and her attention drawn thereto;

Considering that if, as the complainant submitted, she had believed that she had the right to claim that she undergo a new medical examination at the term of a six-months period running from the date of the medical examination in November 1952, she should in any event have brought her recourse at that time in the event of a new examination not being accorded;

Considering in addition that the termination of her appointment was confirmed in subsequent correspondence by a letter from the defendant Organization dated 1 September 1953 in the following terms:

"To make the matter more clear, may I remind you that:

- 1) The Medical report of 10 November 1952 placed a limitation on your work except for office employment for a period of 6 months and subject to review thereafter;
- 2) A serious attempt was made by the Organization to find suitable work for you within this limitation but was successful for only part of the period. You will recall that this office kept you on its payroll until end December and that you were then transferred to Headquarters as from 1 January 1953 for a period of 2 months;
- 3) Your contract was terminated because it was not feasible for you to return to the post for which you had been engaged and no other suitable assignment was available.";

Considering finally that the complainant herself in a letter of 11 December 1952 had already admitted that she knew that her appointment had been terminated since she expressly stated therein: "the state of my health is the official reason for my termination";

B. Considering that it is to no purpose that the complainant relies upon certain correspondence - in particular the correspondence exchanged by her with the administration, and the correspondence which was exchanged between the complainant's medical adviser who had participated at the medical examination of November 1952 on the one hand, and one of his colleagues who participated at this same examination on the other hand, as well as the

administration of the defendant Organization - to show that the decisions which had been notified to her were not of a final nature as required by the Staff Rules;

That the said correspondence does not show more than efforts brought to attempt to persuade the administration to reconsider its decision, efforts which have nothing in common with the proceedings for rescission which the complainant was entitled to bring and of which she did not take advantage,

C. Considering that the decision taken by the Director-General of the defendant Organization was preceded by a referral to the Board of Inquiry and Appeal competent to advise the Director-General;

That the opinion given by the said Board in no way binds the Director-General and even if the Board had the right to modify certain time limits no complaints can be laid against the Board for not having exercised such option;

That it was for the Director-General to appreciate whether the opinion as formulated sufficed as a basis for his decision,

D. That the complainant takes issue with the administration for not having drawn her particular attention to the period for submitting an appeal to which she was subject;

That it would indeed have been desirable for the administration to have so acted, but that no provision of the regulations or rules imposed such a requirement;

ON THE GROUNDS AS AFORESAID THE TRIBUNAL

Declares that there are no grounds for rescinding the decision of the Director-General dated 17 March 1955;

Dismisses the complaint.

In witness of which judgment, pronounced at the Palais des Nations, Geneva, in public sitting on 24 October 1955, by His Excellency Mr. Albert Devèze, President, Jonkheer van Rijckevorsel, Judge, Acting Vice-President, and Mr. Iasson Stavropoulos, Deputy Judge called upon to sit owing to the inability of a titular judge to attend, the aforementioned have hereunto subscribed their signatures as well as myself, Wolf, Registrar of the Tribunal

Albert Devèze.
A. van Rijckevorsel.
Iasson Stavropoulos.
Francis Wolf.

(Unofficial translation)

Ordinary Session of October 1955

In the matter of: Madame Grethe Hartmann

Against: World Health Organization

At the commencement of the public sitting of 17 October 1955 Me Mercier, Counsel for Mme Hartmann, requested the Tribunal that Mr. Meyer-Morton be permitted to speak - the precedents of the Tribunal establishing that only counsel being regular members of a Bar and staff members duly authorized by the President are permitted to plead.

After a short consultation, the Tribunal pronounced the following judgment:

PRELIMINARY JUDGMENT

Considering that Me Mercier, a member of the Paris Bar, is acting as Counsel for the claimant;

Considering that Me Mercier requests the Tribunal that Mr. Meyer-Morton be permitted to comment before the Bar in the name of his client, for which comments Me Mercier takes responsibility;

Considering that as an exceptional measure and by reason of the special circumstances in the case, the Tribunal is

of opinion that this request should be taken in consideration;

ON THE GROUNDS AS AFORESAID

The Tribunal permits Mr. Meyer-Morton to give a statement before the Bar in the presence and with the assistance of Me Mercier.

(Signatures)

A. Devèze

A. van Rijckevorsel

I. Stavropoulos