

NINETIETH SESSION

In re Aboukrat (No. 2)

Judgment No. 2013

The Administrative Tribunal,

Considering the second complaint filed by Ms Michèle Aboukrat against the World Health Organization (WHO) on 22 January 2000 and corrected on 1 March, the WHO's reply of 26 May, the complainant's rejoinder of 26 June and the Organization's surrejoinder of 26 September 2000;

Considering Articles II, paragraph 5, and VII 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 French national who was born in 1946, joined the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade (ICITO/GATT) on 6 February 1974. On 19 May 1980 she was transferred to the WHO as a supply assistant at grade G.6 in the supplies unit of the Personnel and General Services Division. On 1 March 1985, following the reclassification of her post, she was promoted to grade G.7. By a letter of 25 January 1994 the Director of the Division of Personnel informed her that, in view of her twenty years of service, she would be given two extra within-grade steps as of 1 February 1994.

On 1 March 1999 the complainant applied for a one step increase for her twenty-five years of service under the terms of Staff Rule 555.2, which provides that a staff member whose service with the Organization commenced prior to 1 March 1993 may qualify, with effect from 1 February 1994, for only one increase during the remaining service. Her application was rejected in a memorandum of 16 March 1999 on the grounds that she had been given two extra steps on 1 February 1994 and so was no longer eligible for a further increase. She applied again on 22 March 1999, but her application was again rejected by a memorandum of 12 April. The complainant appealed to the Headquarters Board of Appeal, which recommended in its report of 25 September that the Director-General should dismiss her appeal. By a letter of 21 October 1999, which is the impugned decision, the Director-General endorsed the Board's recommendation.

B. The complainant contends that, since she was granted the within-grade step increase with effect from 1 February 1994, she had completed twenty years of service on 31 January 1994. Moreover, Rule 555.2 provides that the increase shall be granted upon completion of the required period of service "after 1 February 1994". She alleges that the WHO gave the staff contradictory information between April 1993 and March 1994 and adds that the wording of Staff Rules 555.1 and 555.2 is unclear. She notes that the report of the Forty-sixth World Health Assembly, held in May 1993, did not indicate the date on which the amendments to the Staff Rules would apply with regard to long-service step increases.

The complainant asks the Tribunal to set aside the impugned decision, find that she is entitled to long-service step increases and send the case back to the Organization for a new decision.

C. In its reply the WHO submits that the complainant, who was recruited on 6 February 1974, completed her twenty years of service on 5 February 1994, that is after the deadline of 1 February 1994 laid down in Staff Rule 555.2. That she was told of the step increase by a letter of 25 January 1994 in no way alters that fact. Moreover, she was granted the increase as of 1 February because, in accordance with the provisions in force, such a decision comes into effect on the first of the month nearest the date of completion of the service requirement. The

WHO observes that the complainant does not explain in what way the information is contradictory. It adds that the World Health Assembly need not indicate the date on which an amendment to the Staff Rules comes into effect for it to be valid: responsibility for implementing the amendment lies with the Director-General. Lastly, it sees nothing confusing in the wording of Staff Rules 555.1 and 555.2.

D. In her rejoinder the complainant contends that, since she received a step increase on 1 February 1994, the date of her entry into service is no longer relevant in determining the length of her service. She pleads an acquired right to an extra increase under the transitional measures provided for in a resolution of the World Health Assembly and she criticises the Director-General for not amending the Staff Rules in accordance with this resolution.

The complainant changes her claims. She asks the Tribunal "to find that she is still covered by the April 1993 wording of Staff Rules 555.1 and 555.2" and to send the case back to the Organization for a new decision, or else to determine the increase she should have been granted.

E. In its surrejoinder the WHO explains that it is impossible to determine an official's period of service without referring to the date of entry into service. It adds that the complainant never challenged that date and she is no longer entitled to do so. The WHO says that it did introduce a transitional measure in the Staff Rules: a staff member recruited prior to 1 March 1993 may qualify for a single step increase, whereas staff recruited after that date do not. It denies that the complainant has an acquired right to an extra increase; indeed the World Health Assembly resolution states precisely the opposite. Furthermore, eligibility for more than one step increase does not constitute an acquired right within the meaning of the case law.

CONSIDERATIONS

1. By a memorandum of 15 February 1994 the staff of the WHO was informed of the amendment of the Staff Rules with effect from 1 February 1994, and particularly of Staff Rules 550.1, 555.1 and 555.2, the previous version of which provided for the granting, under certain conditions, of extra step increases known as "meritorious increases" or "long-service increases". As the Tribunal found in Judgment 1446 (*in re Agoncillo and others*), this amendment removed additional steps which did not exist in other organisations of the United Nations common system, the aim being to harmonise the pay system, while at the same time including a transitional rule for staff members who entered the WHO's service before 1 March 1993.

The former version of Rule 555 read as follows:

"555. MERITORIOUS WITHIN-GRADE INCREASE

555.1 A staff member whose performance has been especially meritorious beyond that which may reasonably be expected of a normally well-qualified staff member, may be granted one, or exceptionally two, extra within-grade steps. Such increase shall not affect the staff member's eligibility for normal within-grade increases, and the normal maximum shall be extended by the equivalent number of steps.

555.2 A staff member who has completed 20, 25 and 30 years of satisfactory service with the Organization qualifies for a meritorious increase under Rule 555.1. Satisfactory service with other United Nations organizations shall be included if credited under Rule 480.1.4."

The new version of Rule 555 is as follows:

"555. MERITORIOUS WITHIN-GRADE INCREASE

555.1 A staff member whose performance has been especially meritorious beyond that which may reasonably be expected of a normally well-qualified staff member, may be granted one, or exceptionally two, extra within-grade steps. Such increase shall not affect the staff member's eligibility for normal within-grade increases up to the normal maximum step in the grade.

555.2 A staff member whose service with the Organization commenced prior to 1 March 1993 shall qualify, with effect from 1 February 1994, for only one increase under Rule 555.1 during the remaining service in the Organization. Such increase shall be granted upon completion of either 20 or 25 or 30 years of satisfactory service,

whichever occurs first after 1 February 1994. Satisfactory service with other United Nations organizations shall be included if credited under Rule 480.1.4."

2. The complainant, who was born on 4 June 1946 and is a French national, was employed by ICITO/GATT from 6 February 1974 to 19 May 1980, the date of her transfer to the WHO.

Following a short-term contract from 6 to 28 February 1974, the complainant was offered a permanent contract on 1 March 1974 with non-local status; this allowed her to benefit from an assignment grant for fifteen days.

All the documents issued by ICITO/GATT and by the WHO indicate 6 February 1974 as the day of her appointment.

By a letter of 25 January 1994 the Director of the Division of Personnel informed the complainant that, "in accordance with Staff Rule 555.2, [she would] be granted two extra within-grade steps from 1 February 1994 in view of [her] twenty years of service with the WHO".

On 1 March 1999 the complainant applied for another step increase under Staff Rule 555.2 for the completion of twenty-five years of service, deeming that she had completed this period of service on 1 February 1999. Her application was rejected and she appealed to the Headquarters Board of Appeal. On 21 October 1999 the Director-General, following the recommendation of the Board, dismissed her appeal. That is the impugned decision.

The complainant asks the Tribunal to quash the decision of 21 October 1999, find that she is entitled to a further step increase for twenty-five years of service and send the case back to the Organization for a new decision.

The WHO requests that the complaint be dismissed.

3. The complainant's main contention is that, for the reasons discussed below, the increase that she was granted with effect from 1 February 1994 covered a period of service completed before the deadline of 1 February 1994 and the increase was due to her under the former provisions, with the result that she could claim extra steps for the completion of twenty-five years of service under the new version of Rule 555.2. In support of her interpretation of the rules, or in her subsidiary argument, she pleads protection of her acquired rights to this benefit and the rule against retroactivity.

The WHO rejects this argument.

4.(a) The complainant contends that the increase she was granted for her twenty years of service was for the period prior to 1 February 1994, because it was granted to her before that date by the letter of 25 January 1994.

The WHO rightly retorts that, in view of its nature, the decision to award the increase announced in the letter of 25 January 1994 was effective, under the terms of Staff Rule 380.3.1, cited below, only on "the first of the month nearest the date of satisfactory completion of the service requirement", that is 1 February 1994, based on the conditions applying at the time.

(b) The complainant also appears to contend that, as the extra steps were granted with effect from 1 February 1994, it necessarily follows that the qualifying conditions had already been met by 31 January 1994, when the former rules were still applicable. But her argument is not convincing.

Under the terms of Staff Rule 380.3.1, second sentence, which she herself cites,

"The date of entitlement to a within-grade increase shall be the first of the month nearest the date of satisfactory completion of the service requirement."

The granting of the extra step increases with effect from 1 February 1994 could therefore stem from the application of this Rule, and does not in any way prevent the determinative date of the complainant's initial appointment from being 6 February 1974 and the period of twenty years of service from being completed on 5 February 1994.

(c) The complainant appears to be arguing that, since the extra step increases granted in 1994 were effective on 1 February 1994, this would mean, under the terms of amended Staff Rule 555.2, that she did not complete her twenty years of service "after 1 February 1994", but before, or on that date, so the increase was covered by the

earlier provisions.

This argument once again confuses the date on which the twenty, twenty-five or thirty years of service are actually completed and the effective date of the increase.

(d) In the internal procedure, the complainant also endeavoured to show that the determinative date of her initial appointment was not 6 February 1974, but fifteen days earlier since on her appointment she obtained an assignment grant for fifteen days. She quotes Staff Rule 450.1, which reads as follows:

"The effective date of appointment shall be the date the staff member reports for duty if locally recruited. If travel is authorized it shall be the date he enters travel status, provided that this date is not earlier than that required for travel by the route and type of transport designated by the Organization."

In this case, the complainant was resident in Geneva at the time of her appointment, as indicated in the document issued by ICITO/GATT awarding her a fixed-term contract, so she did not have to travel to report for duty. The Headquarters Board of Appeal agreed with the Organization that the assignment grant merely represented a contribution to expenses, and did not affect the original date of her appointment.

She has not retained this argument before the Tribunal. In any case, she has not demonstrated that the original date of her appointment was wrongly determined by ICITO/GATT and then the WHO.

5. The amendment to Staff Rule 555.1 does not violate any general principles of law.

(a) The Tribunal already found in Judgment 1446 that this amendment was not in breach of the acquired rights of complainants who, under the former rules, could have qualified for extra step increases after twenty, twenty-five and thirty years of service. The arguments put forward by the complainant cannot make the Tribunal depart from precedents.

(b) Nor was there breach of the principle that rules which are unfavourable to the person concerned shall not be given retroactive effect. In fact, the new rule was applicable only to facts occurring after it came into force and did not therefore prejudice entitlement to extra step increases for which the conditions had already been met.

6. Having already been granted in 1994 the single increase provided by the transitional provision of the new Staff Rule 555.2, the complainant cannot be granted another one under that same rule.

7. All her pleas are therefore devoid of merit.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2000, 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 31 January 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

