

THIRTY-FIRST ORDINARY SESSION

***In re* ZAMUDIO**

Judgment No. 212

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Victor Zamudio on 17 October 1972, the Organization's reply of 15 February 1973 and the complainant's rejoinder of 10 May 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 310.1, 430.3, 970.2 and 1030.1;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 1 February 1966 Mr. Zamudio, who is of Colombian nationality, was appointed by the WHO as a messenger at grade G. 2 step 1 on a two-year contract. His contract was renewed for one year and then for two further two-year periods until 31 January 1973. During his period of service with the Organization he received several written and oral warnings accusing him of many faults and deficiencies in his work. In November 1971 he was absent for reasons of health and, according to the Organization, did not resume work until several weeks after the expiry of his sickness leave. His salary was therefore suspended from 1 January 1972. On 17 January, however, he produced a photocopy of a medical certificate dated November 1971 of which he claimed that he had duly submitted the original, and the Organization thereupon withdrew the decision to suspend his salary. He resumed work on 25 January 1972 suffering from disability estimated at 50 per cent until 22 February. He received a very bad appraisal report for 1971 and payment of his within-grade salary increment was therefore postponed for six months from 1 February 1972. He objected in writing to his appraisal report and was told on 24 March 1972 that his comments had been appended thereto and formed part of his file, and that he could appeal against the withholding of his salary increment.

B. On 20 April 1972 Mr. Zamudio appealed to the Board of Inquiry and Appeal, The Board recommended that the appeal be dismissed but that the terms of the appraisal report should be carefully examined by the Administration and amended if necessary. By letter of 19 July 1972 the Director-General dismissed Mr. Zamudio's appeal and informed him that the report by his supervisor respected the requirements of WHO Staff Rule 430 and need not therefore be reviewed.

C. After several months' sickness leave Mr. Zamudio resumed work on 4 October 1972 at 50 per cent of his normal capacity. Since his health did not improve, the Director of the Joint Medical Service advised the Administration that on medical grounds the WHO could not make further use of Mr. Zamudio's services. The Staff Pension Fund Committee then examined his file to determine whether to award him a disability pension. It decided to award him a pension payable by the Pension Fund on the expiry of his contract on 31 January 1973. On 1 February 1973 the complainant ceased to be employed by the WHO. In October 1972, when he lodged his complaint with the Tribunal, he was still a WHO staff member.

D. The complainant maintains that a systematic policy of discrimination against him as a national of a developing country, Colombia, underlies all the sanctions mentioned above (bad appraisal reports, suspension of salary and withholding of salary increment) and the other adverse measures allegedly taken against him, of which he gives examples in his complaint. In his claims for relief he demands an end to the policy of discrimination against him, his transfer to a post suited to his abilities, the deletion of his appraisal report for 1971, and the payment of the salary increment which he claims was due from February 1972.

E. The defendant Organization contends that the complainant's second claim is now without substance since he is

no longer a WHO staff member. So, too, is his first claim, at least in part, since it is now impossible to end the alleged "policy of discrimination" against him. The Organization considers his third and fourth claims (deletion of the report and payment of the salary increment) to be connected. It maintains that the bad report, which led to the withholding of the salary increment, showed the unsatisfactory nature of his performance. It therefore prays that the Tribunal dismiss the complaint outright.

CONSIDERATIONS:

In the claims stated in his complaint, which have not subsequently been amended or completed, Mr. Zamudio impugns the Director-General's decision of 19 July 1972 rejecting his request for the reasons set out in the findings of the Board of Inquiry and Appeal, and prays:

- (1) an end to the "policy of discrimination" against him;
- (2) his transfer to a post suited to his abilities;
- (3) the deletion of his appraisal report for 1971; and
- (4) the payment of the salary which he claims was due from February 1972.

As to the first point:

A thorough examination of the evidence in the dossier reveals no trace of any "policy of discrimination" followed in respect of the complainant because of his nationality. His allegation appears wholly improbable in the case of an organisation which is by its very nature international and which employs staff members of all nationalities. A policy of discrimination is blameworthy and objectionable only if it aims at the exclusion of certain persons as a matter of principle or account of their nationality, race or opinions. It is normal and even desirable if it is based on the professional qualifications and merits of the persons concerned.

In the case at issue it is established by the documents in the dossier that the decision impugned was based on the way in which the complainant performed his duties and there is no evidence that it was based on incorrect facts or was a misuse of authority.

As to the second point:

Responsibility for the assignment of a staff member to a specific post lies with the Director-General, who as the responsible head of the Organization has full discretion in the matter. It does not appear from the evidence in the dossier that the Director-General's decision in the present case was tainted by any of the irregularities which the Tribunal is competent to censure.

As to the third and fourth points:

The report to which exception is taken is based on facts which have not been proved to be incorrect and which are such as to provide legal justification for withholding the complainant's increment.

The other considerations set forth by the complainant in his memorandum and rejoinder are irrelevant to the decision impugned, and the Tribunal will take no note of his offensive, and even defamatory allegations against the Organization.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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