

NINETY-NINTH SESSION

Judgment No. 2477

The Administrative Tribunal,

Considering the complaint filed by Mr L.S.O.G.-Z. against the Pan American Health Organization (PAHO) on 3 May 2004 and corrected on 3 June, PAHO's reply of 14 September, the complainant's rejoinder of 28 October 2004 and the Organization's surrejoinder of 7 February 2005;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in 1958 and has American nationality, joined the service of PAHO on 6 August 2000 as an Epidemiologist at grade P.4 under a two-year fixed-term appointment; this appointment was subject to the successful completion of a probationary period of one year. His duty station was El Paso, Texas (United States).

On 20 December 2000 the complainant's first Performance Planning and Evaluation Form rated his performance satisfactory. In April 2001 he agreed with his first-level supervisor on 20 work objectives for 2001, listed in order of priority; by a memorandum of 7 May his appointment was confirmed with effect from 5 August. During his mid-year performance review on 30 July, the complainant was informed by his supervisor that he needed to focus on certain aspects of his work in order to achieve a number of his work objectives. On 7 December 2001 the complainant's supervisor rated his performance unsatisfactory in his Performance Planning and Evaluation Form; he considered that the complainant had failed to meet objectives on which he had been asked to focus during his mid-year performance review and that his productivity and ability to integrate into a team were unsatisfactory. Following this review, his within-grade salary increase was withheld for six months.

In April 2002 the complainant's second-level supervisor travelled to El Paso to review the complainant's performance in the context of the Performance Planning Evaluation System. By a memorandum of 2 May 2002, the complainant was informed by the Chief of Personnel that he would be offered an extension of his appointment until 31 December 2002 as an opportunity to improve his performance and that an extension beyond that date would depend on his ability to meet his objectives. The complainant accepted this extension. On 9 June he submitted a notification of intention to appeal against the decision of 2 May 2002 to PAHO's Headquarters Board of Appeal, followed by a formal Statement on 18 July. By an e-mail of 30 September 2002, the Chief of Personnel offered the complainant a further extension of his appointment until 30 June 2003, which the latter accepted. The complainant left the Organization at that date.

By a letter of 5 February 2004, the Director of PAHO notified the complainant that, following the recommendation of the Board of Appeal dated 24 November 2003, she had decided to reject his appeal, with the exception of his request that all negative memoranda by his supervisor be removed from his personnel file. That is the impugned decision.

B. The complainant submits that he was subjected to personal prejudice on the part of his supervisor, which generated a hostile work environment and had a negative impact on his productivity. He contends that the decision to extend his appointment and not renew his contract was tainted by incomplete consideration of the facts and that his personal dignity and professional reputation have been injured.

Referring to the findings of the Board of Appeal, the complainant states that his supervisor's "managerial style [...] was unacceptable to the standards of PAHO" and that, in preparing his evaluation, the latter did not follow the established procedures. In his view, the documentation submitted by the Organization during the internal appeal process showed bias, in particular a memorandum dated 12 December 2001 which he considers deceitful and "fabricated". Moreover, he submits that his right to be informed about his alleged shortcomings was breached. He

holds that the memorandum of 2 May 2002 referred to a “detailed letter [...] outlining the reasons” for the decision only to extend his appointment. This letter was to have been sent at a later date but he never received it.

According to the complainant, the non-renewal of his appointment led to his being denied the payment of an increase of his assignment grant for working a third year in the same duty station as well as the accelerated within-grade salary increase which he says he would have been granted due to his passing the United Nations Language Proficiency Examination in English. He submits that he informed PAHO about the conflicting situation with his supervisor by a memorandum dated 20 November 2001 but the Organization failed to solve the matter.

The complainant seeks the quashing of the impugned decision, the “[r]estoration of the original contract conditions”, the “[e]xpunction of all negative or derogatory information/memo[ra]nda” produced by his first-level supervisor from his personnel file, the payment of all withheld benefits and letters of apology from his first-level supervisor and another PAHO official. He claims damages and costs. He also requests hearings.

C. In its reply PAHO states that staff members appointed on a fixed-term basis cannot expect automatic renewal. The impugned decision was reasonably based on the complainant’s unsatisfactory performance record and undisputed inability to meet his “core work objectives”. The Organization submits that the impugned decision was not tainted by bias. The complainant was informed of the reason for it in the memorandum of 2 May 2002. Moreover, it holds that the decision was made following a thorough review of all the facts and within the proper exercise of its discretionary authority. On the contrary, the complainant was offered an extension as an opportunity to bring his performance to a satisfactory standard.

PAHO contends that all negative correspondence has already been removed from the complainant’s personnel file following the recommendation of the Board of Appeal. It explains the circumstances in which the memorandum dated 12 December 2001 was drafted but states that the issues it raised cannot be disputed.

According to the Organization, the complainant was not eligible for the assignment grant increase since one of the criteria required to obtain it is that the staff member has to be assigned to an official duty station in categories A to E on PAHO’s Mobility and Hardship Matrix, but El Paso does not have that status. Moreover, he was not entitled to a within-grade increase because, although he passed the United Nations Language Proficiency Examination, he did not meet the requirement of satisfactory performance laid down by the Staff Rules. PAHO asserts that the terms of the complainant’s original appointment were not affected by the extension except with respect to the termination date and considers that the complainant is not entitled to letters of apology, damages or costs.

D. In his rejoinder the complainant asserts that, despite being officially informed of the situation since November 2001, PAHO did not, in a timely manner, address the issue of the hostile work environment he was subjected to and did not take into account difficulties he was encountering in his technical activities. He notes that the expression “core objectives” is not used in the Performance Planning Evaluation System Manual and considers that the second extension of his appointment demonstrates his performance was satisfactory.

The complainant holds that his supervisor used double standards in judging his actions and those of other employees and made erroneous and undocumented allegations, that his behaviour was unethical and unfair and that he abused his power. Therefore, his supervisor’s prejudice against him was designed to favour another staff member and have him appointed to his position. He cites case law in support of his pleas.

E. In its surrejoinder PAHO requests the Tribunal to join the present case with a second one initiated by the complainant. The Organization submits that the second extension of the complainant’s appointment does not demonstrate that his performance was satisfactory; it was merely a last opportunity to allow him to improve. The Organization maintains that all the facts were considered and that there is no basis for the complainant’s allegations concerning a hostile work environment; on the contrary, he was encouraged by his supervisors to complete his work objectives.

Furthermore, all the essential requirements of the Performance Planning Evaluation System were fully met. The complainant’s argument concerning the expression “core objectives” is irrelevant as he had been informed of what objectives he was to focus on and had agreed thereto. PAHO’s search for another epidemiologist after the complainant left does not demonstrate bias.

CONSIDERATIONS

1. The complainant commenced employment with PAHO on 6 August 2000. He was employed, subject to a one-year probationary period, on a two-year fixed-term contract as an Epidemiologist stationed in El Paso. His appointment was confirmed in May 2001.
2. In a memorandum dated 2 May 2002, the complainant was informed that because his “productivity and contribution ha[d] not been satisfactory”, his appointment would be extended until 31 December of that year in order to “provide [him] with an opportunity to bring [his] performance up to satisfactory standard”. The memorandum also informed him that “[any] further extension [would] depend on [his] performance, conduct and ability to meet [his] work objectives”.
3. The complainant commenced proceedings with the Headquarters Board of Appeal with respect to the decision of 2 May 2002, contending that it resulted from “personal prejudice on the part of [his] supervisor” and an “incomplete consideration of the facts”. In those proceedings, he sought nullification of the decision and “restoration of the original contract conditions”. He also sought payment of a within-grade salary increase which would have been payable had his performance been satisfactory. Additionally, he asked that his supervisor present him with a written apology and that memoranda written by the latter be expunged from his personnel file.
4. By a majority the Board of Appeal recommended that the complainant’s claims be dismissed, save for the expunging of the memoranda written by his supervisor. With respect to the memoranda, the Board concluded that “the supervisor used inappropriately strong language”.
5. The Director of PAHO accepted the recommendations of the Board and the complainant was so informed on 5 February 2004. It is that decision which is the subject of the complaint.
6. The complainant raises the same matters as were raised before the Board of Appeal but asks, additionally, for material and moral damages. No issue is raised as to the receivability of the complaint.
7. The complainant’s appointment was extended for a further six months from 31 December 2002 but was not thereafter renewed or extended. The decision then taken was also challenged by the complainant before the Board of Appeal and is the subject of a further complaint before the Tribunal. The respondent requests that both complaints be joined. The pleadings in the second complaint are not yet complete and, thus, the application for joinder is refused. So, too, the complainant’s application for oral hearings is refused, the complainant having stated no grounds for it.
8. The substance of the complainant’s pleas is that his performance should have been assessed as satisfactory and, thus, he should have been awarded a within-grade salary increase and his contract should have been renewed for a further two years.
9. The complainant’s first performance assessment was completed in December 2000. It was noted in the Performance Planning and Evaluation Form that he either fully or partially met the specified objectives. His first-level supervisor reported that the complainant was adjusting well to PAHO but required an orientation at headquarters to understand better PAHO’s technical and administrative procedures. Later, in May 2001, the same supervisor recommended that the complainant’s appointment be confirmed and commented positively on his performance, skills and ability to work with others.
10. Relations appear to have deteriorated between the complainant and his supervisor from June 2001 onwards. However, in July, the supervisor completed a mid-year review of the complainant’s performance in which it was noted that the complainant had fully met a number of his work objectives. However, his supervisor noted that, although the complainant was adjusting well, he needed to focus his activities to achieve five identified objectives, namely, objectives 1, 2, 3, 5 and 7. Subsequently, his supervisor complained, quite tersely, as to the complainant’s disrespectful attitude, especially in meetings. On 20 November 2001 the complainant sent a long memorandum to his supervisor, expressing his “disagreement with the judgments and accusations [the latter had made] against [him]”.
11. An end-of-year performance assessment was completed by the complainant’s first-level supervisor on 7 December 2001. In that Performance Planning and Evaluation Form it was recorded that the complainant had fully or partially met a number of objectives, but had not met others, including objectives 1, 2, 5 and 7 which had been

raised in his mid-year assessment. His supervisor recommended the withholding of a within-grade salary increase for six months in order to give the complainant an opportunity to initiate activities regarding epidemiological information and to integrate into the technical team.

12. The complainant attached a statement to the form, disagreeing with his first-level supervisor's evaluations and recommendation and stating that he considered that he had met the objectives "to a larger degree" than assessed. He claimed, inaccurately, that his supervisor had not provided reasons for his recommendation and, on that account, he raised the possibility of personal prejudice.

13. In April 2002 the complainant's second-level supervisor travelled to El Paso to review the complainant's end-of-year 2001 Performance Planning and Evaluation Form. He had lengthy discussions with the complainant and his first-level supervisor and considered each of the objectives specified in the form. He noted that objectives 1, 2, 5 and 7, which had been assessed as "not met", were "especially important for the performance of the duties contained in the post description". He also noted that there was "tension and disagreements" between the complainant and his supervisor and made recommendations to improve "professional interaction". In the result, he agreed with the assessment made by the complainant's supervisor and recommended an extension of the complainant's appointment to enable him to fulfil his 2001 objectives and to "show positive changes in attitude compatible with the post of international epidemiologist". A copy of the second-level supervisor's report was e-mailed to the complainant. He complains, however, that he was not given a hard copy, as impliedly promised in the memorandum of 2 May 2002 informing him of the decision to extend his appointment.

14. Consistent precedent has it that a decision whether or not to renew a fixed-term contract is discretionary and may be set aside only on limited grounds, including that some essential fact was overlooked or that there was an abuse of authority. The complainant seeks to invoke those grounds by his claims that there was incomplete consideration of the facts and personal prejudice. However, he raises no fact which was overlooked. Given that the decision of 2 May 2002 was based on the recommendation of his second-level supervisor whose impartiality is not contested and not his first-level supervisor whose impartiality he challenges, the complainant failed to establish that the decision was motivated by personal prejudice.

15. Ultimately, the complainant's case raises only the contention that, in his view, his performance merited a satisfactory assessment and, thus, the awarding of a within-grade salary increase and the renewal of his contract. However, as stated in Judgment 1262, where the reason for non-renewal of a contract is unsatisfactory performance, the Tribunal will not replace an organisation's assessment of a complainant's fitness for his duties with its own. Certainly, it will not do so where, as here, the organisation has indicated to the complainant those aspects of his or her performance that are in question and has provided an opportunity for improvement by granting an extension of his appointment.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

