

## SIXTH ORDINARY SESSION

### ***In re* HOEFNAGELS**

#### **Judgment No. 25**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint submitted by Dr. Louis H.A. Hoefnagels against the World Health Organization, received by the Registry and registered under No. 5608 on 5 September 1956, and the reply of the defendant organisation, dated 9 October 1956, received by the Registry and registered under No. 5609 on the same date;

Considering the Staff Regulations and Staff Rules of the defendant organisation, particularly Articles 1.2 and 4.5 of the said Regulations and Staff Rules 320.1, 410, 465.1, 465.2, 520, 850, 940 and 1140;

Having heard the parties in public hearing on 27 June 1957;

Considering that the facts of the case are the following:

The complainant entered into the service of the Organization on 3 January 1951 and remained on duty until 2 January 1956 to the entire satisfaction of his superiors, who have unanimously recognised his technical ability, the integrity of his conduct and the uprightness of his behaviour. He could have continued for at least one year had he felt it advisable to accept the transfer to Jordan for that period of time.

After having served first in Karachi and subsequently at the headquarters of the Eastern Mediterranean Regional Office, and having been appointed team leader for the anti-tuberculosis control project in Iran, he himself requested his transfer to a country other than Iran, but the Director of the Organization's Regional Office to which he was attached declared that he could offer him a post in Jordan only as from January 1956. This was accepted by the complainant on condition that his engagement be renewed for a period of at least two years. The annual report prepared on 17 November 1955 by the complainant's immediate superior, covering the period from 2 January 1955 to 1 January 1956, contained a criticism which had not been communicated to him and according to which "Dr. Hoefnagels, in his dealings with the Government, is not always as tactful as might be desired". This criticism, while not in any way detracting from prior appreciative comments, suggests that a certain tension, probably due to the non-delivery of the supplies promised, which were necessary for the accomplishment of the task entrusted to the complainant, had arisen between the complainant and the local government.

Finally, in spite of repeated entreaties by the Organization, no agreement was reached between the complainant and the Director-General, to whom he had appealed, that his assignment to Jordan be for a period of at least two years, and the Director-General gave the complainant the choice between either a one-year extension or non-renewal of his contract;

The complainant appealed against this decision to the Regional Board of Inquiry and Appeal, which rejected the appeal purely and simply on 3 February 1956 and, on 5 March 1956, to the Board of Inquiry and Appeal at Headquarters. The latter recommended, on 8 May 1956, that an effort be made to offer the complainant a two-year contract in a post acceptable to him; that a letter, clearly expressing the Organization's satisfaction with his work and technical competence, be sent to him; that the attention of the Eastern Mediterranean Regional Office be drawn to the "unfortunate mishandling of the various steps taken in this case"; and that if a two-year contract could not be offered to the complainant, he should at least be granted, by way of compensation, three months' notice before the expiration of his contract.

On 5 June 1956, the Director-General informed the complainant that his salary and dependants' allowance would be paid to him up to 6 March 1956. He further advised him that there was not at the time any post to which he could be appointed. Finally, he assured him once again that his professional competence was not in question and that his departure from the Organization could in no way harm his reputation. The Director-General thus took a position in keeping with the opinion of the Headquarters Board of Inquiry and Appeal;

Considering that the complainant nevertheless requests:

(a) damages to the amount of US\$13,710 to cover payments to his servants, the liquidation of his furniture and car, his temporary housing and his loss of earnings;

(b) the sum of US\$25,000 as compensation for damage to his professional reputation as a result of the cancellation of his contract; and,

(c) additionally, the reimbursement of legal costs;

Considering that the complainant maintains that the offer of an appointment in Jordan for only one year constituted a measure implying doubt as to his abilities, inasmuch as it represented an unusual measure, described as such by the Administrative Manual of the Organization and tantamount to a disciplinary measure, and that the said measure should have been notified to him before taking effect (Staff Rule 940);

Considering that the Organization submits that the Director-General's decision to pay the complainant's salary and dependants' allowance up to 6 March 1956 is fair and equitable, that the said Organization requests the Tribunal to state that the complainant received full satisfaction and concludes that the complaint is unfounded;

Considering that the Organization puts forward the following arguments: the Director-General enjoys discretionary powers to assign staff members to different posts and refusal to accept a transfer may entail the termination of an appointment; in view of the fact that an offer had been made to appoint the complainant to another post, it was not necessary to give notice of the expiration of his appointment. The appointment was not renewed because the complainant did not accept renewal under the conditions offered. The Staff Regulations and Staff Rules provide for the renewal of appointments for periods ranging from one to five years (Article 4.5 of the Staff Regulations and Staff Rule 320), and the renewal of an appointment for one year does not have the character of a disciplinary measure but constitutes a measure dictated by administrative or budgetary requirements. In consequence, no damage has been done to the professional reputation of the complainant. Lastly, the payment of three months' notice fully discharged the obligations of the Organization towards the complainant;

A. Regarding the validity of the non-renewal of the appointment of the complainant and the claim for damages in the amount of US\$13,710 on various grounds connected with the said non-renewal:

Considering that the Director-General of the Organization enjoys discretionary powers in respect of the transfer of staff members to posts other than those to which they are initially assigned;

Considering that a refusal to accept a transfer may raise obstacles to the extension of an engagement beyond its original date of termination;

Considering that the offer of a new appointment, coupled with a transfer, exempts the Organization from having to give advance notice of the expiration of the current appointment;

Considering that an offer was made to the complainant to extend his appointment and to transfer him to Jordan, and that the complainant made his acceptance of this offer subject to conditions the Director-General felt unable to accept;

Considering, further, that the offer of a new appointment, limited to a one-year period, was in no way in the nature of a disciplinary measure and that the complainant's misgivings on this point are unfounded;

Considering, therefore, that non-renewal of the complainant's appointment did not violate any of the clauses of his contract nor any of the relevant provisions of the Staff Regulations and Staff Rules;

Considering that the claim submitted by the complainant in respect of losses incurred in the sale of his furniture and car, separation pay for his servants, his temporary housing, and the loss of earnings which he sustained is not warranted by any irregularity in the procedure applied to him, that no provision of the Staff Regulations and Staff Rules of the Organization provides for the payment of an indemnity on such grounds, and that the said claim is therefore devoid of any foundation in law or in fact;

B. Regarding the damage suffered by the complainant's professional reputation as a result of the non-renewal of his appointment:

Considering that the facts of the case show all of the complainant's apprehensions concerning a prejudice to his professional reputation due to the non-renewal of his appointment to be totally unfounded; that, on the contrary, it is established that he continued to enjoy the esteem he deserved, and that the Organization wished to pay to his competence and conduct a tribute with which the Tribunal fully associates itself;

C. Regarding the costs of defence:

Considering that the opinion expressed by the Headquarters Board of Inquiry and Appeal concerning "the unfortunate mishandling of the various steps taken in this case" was likely to encourage the complainant to submit his complaint to the Tribunal and that having regard to the particular circumstances of the case it appears justified, as an exceptional measure and without contravening the jurisprudence of the Tribunal, to grant the complainant an indemnity as a share in the costs incurred by him;

ON THE GROUNDS AS AFORESAID

Rejecting any wider or contrary conclusions,

THE TRIBUNAL

Rejects the complaint,

Orders the defendant organisation to pay the sum of US\$200 as a share in the costs of defence claimed by the complainant.

In witness of which judgment, pronounced in public sitting, on 12 July 1957, by His Excellency Albert Devèze, President, Professor Georges Scelle, Vice-President, and Sir John Forster, K.B.E., Q.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze  
Georges Scelle  
John Forster  
Jacques Lemoine