

The Administrative Tribunal,

Considering the complaint filed by Mr J.N. against the World Health Organization (WHO) on 5 November 2004 and corrected on 16 February 2005, the Organization's reply of 1 June, the complainant's rejoinder of 4 August and the WHO's surrejoinder of 13 September 2005;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, an Indian national born in 1947, was employed from December 1984 until November 2004 as a Maintenance Worker in the Organization's Regional Office for South-East Asia (SEARO).

Between February 1994 and March 1996 he was absent without authorisation on three occasions totalling approximately seven weeks. Although he received a written reprimand in April 1996 concerning his absence from work, three months later he was again absent for a week without authorisation. The Personnel Officer wrote to him on 22 July 1996 requesting that he return to work immediately and warning him that unless he reported for duty by 5 August at the latest or submitted an acceptable written explanation for his absence, he would be separated from the Organization with effect from 14 July 1996. Having returned to work, the complainant submitted a medical certificate on 2 August. He explained that he had been ill and that he had left a message with the receptionist on the first day of his absence. However, since the complainant had not reported his illness to the Regional Staff Physician, the latter did not accept his medical certificate and refused to certify his sick leave. The Administration decided to withhold his salary for the period in question.

The complainant was again absent without authorisation from 27 August to 8 September. The explanation he submitted on 13 September, namely that he had been ill, was not accepted by the Administration because, as on the previous occasion, he had failed to notify the Regional Staff Physician in due time. By a letter of 24 September 1996 the Personnel Officer gave the complainant a "final warning", stating that the next unauthorised absence on his part would result in the immediate termination of his appointment.

From 7 to 18 May, and from 29 July to 20 August 1997, the complainant was absent without authorisation. By a letter of 13 October 1997 the Personnel Officer, referring to the final warning he had issued in September 1996, informed the complainant that the Organization intended to terminate his appointment with effect from 1 November 1997 for unsatisfactory performance, in accordance with Staff Rule 1070.1. He invited the complainant to submit his comments by 24 October, after which a final decision would be taken. The complainant explained, in a letter dated 31 October 1997, that he had been ill, that he had informed his supervisor on 29 July, that he had sent in a leave application together with a medical certificate covering the period from 29 July to 5 August, but that he had then been ill again, until 20 August, during which time he had not been in a fit state of mind, "owing to illness and certain other domestic problems", to notify the Regional Personnel Officer.

By a letter of 10 November 1997 the Personnel Officer informed the complainant that although his reply had been carefully reviewed, the Regional Director had confirmed the decision to terminate his appointment. He pointed out that, contrary to his assertions, the complainant had neither informed his supervisor of his absence nor submitted a leave application. Furthermore, no medical certificate had been provided until 29 August. In short, he had "once again disregarded the prescribed rules [...] dealing with absences from duty" as well as the repeated instructions given to him. The effective date of termination would be 1 November 1997 and he would be paid three months' salary in lieu of notice.

A courier company engaged by SEARO to deliver the termination letter to the complainant reported that the latter

had refused to accept delivery of it at his home on 11 November. The complainant has consistently denied that version of events. He took delivery of the letter on 29 November 1997.

The complainant produces a letter dated 23 January 1998, addressed to the Secretary of the Regional Board of Appeal (RBA), in which he stated: "I hereby give my intention to appeal against the decision [to terminate my appointment]". However, the Board indicated that it had not received that letter. On 27 June 1999 the Secretary of the RBA received the complainant's statement of appeal dated 18 June 1999. On 27 July he wrote to inform the complainant that his appeal was clearly time-barred, since neither his intention to appeal nor his statement of appeal had been lodged within the 60-day time limit stipulated in the Staff Rules. Nevertheless, referring to Rule 4 of the Board's Rules of Procedure, the Secretary allowed the complainant a period of ten days in which to submit an explanation as to why his appeal had been filed late.

On 30 May 2001 the complainant wrote to the Secretary of the RBA to enquire about the status of his appeal. He asserted that he had sent an explanation, as requested, on 4 August 1999 regarding the late filing of his appeal, but that he had received no response. He enclosed a postal receipt which, he said, showed that his letter of 4 August had been received by the Central Registry of WHO SEARO on 5 August 1999. The Secretary of the RBA replied, on 27 June 2001, that it appeared that the Board had not received the letter in question, but that further enquiries were being made. In the meantime, he invited the complainant to send him a copy of his explanation. The complainant did so on 4 July 2001.

In its report issued on 17 October 2003, the RBA found that there was no record of its having received the notice of intention to appeal allegedly sent by the complainant on 23 January 1998. Thus, the first communication from the complainant received by the Board was his full statement of appeal, which had been received on 27 June 1999, clearly beyond the prescribed time limit. The Board also noted that, although the complainant had been given ten days from 27 July 1999 in which to submit an explanation regarding the late filing of his appeal, he had not done so until 30 May 2001, when he had written to it alleging that he had already provided an explanation by letter of 4 August 1999. However, the Board considered that the postal receipt he had produced in respect of that letter could not be authentic, since the Central Registry of WHO SEARO had informed it that its staff did not ordinarily sign receipts for courier deliveries and that the signatures on the receipt in question appeared to have been forged. The Board concluded that since the complainant had failed to comply with the time limits prescribed under the Staff Rules and the Rules of Procedure of the RBA, his appeal was irreceivable.

By a letter of 21 October 2003, the Regional Director informed the complainant of the Board's conclusion. On 15 January 2004 the complainant appealed to the Headquarters Board of Appeal (HBA). In a report dated 17 June 2004, the HBA recommended that the appeal be dismissed as irreceivable because his initial appeal against the decision to dismiss him had not been submitted to the RBA within the time limit of 60 days provided for in Staff Rule 1230.8.3.

The Director-General decided to accept that recommendation and informed the complainant accordingly in a letter dated 12 August 2004. That is the impugned decision.

B. The complainant denies that he refused to accept delivery of the termination letter on 11 November 1997. In his opinion, the courier was unable to locate his address and gave a false report to his employer. He argues that since there is reliable evidence of his receipt of the termination letter on 29 November 1997, the time limit for filing his appeal with the RBA should have been calculated from that date. He maintains that he sent his notice of intention to appeal on 23 January 1998 and that he had still not received any reply to that communication when, on 18 June 1999, he submitted his statement of appeal.

The complainant also contends that the Organization violated Staff Rule 1050.3 because it did not give him three months' notice of termination. Lastly, he asserts that the decision to terminate his appointment was tainted with prejudice.

He asks the Tribunal to set aside the impugned decision and to order his reinstatement, with retroactive effect in terms of salary and benefits, including pension rights. He also claims "adequate compensation" and costs.

C. In its reply the Organization contends that the complaint is time-barred and hence irreceivable. Citing Judgment 2152, it submits that even though the complainant refused to accept delivery of the letter of termination on 11 November 1997, the time limit for lodging his appeal with the RBA should nevertheless run from that date,

so that his appeal had to be filed by 11 January 1998, in accordance with Staff Rule 1230.8.3. Thus, it argues, even if the complainant's unproven assertion that he filed his notice of intention to appeal on 23 January 1998 were assumed to be correct, his appeal would still be irreceivable, because more than 60 days elapsed between the notification of termination on 11 November 1997 and the date when he filed his appeal with the Board.

The WHO also points out that the complainant did not pursue his appeal with due diligence, since long periods went by without him enquiring about the status of his appeal. It considers that in view of his failure to comply with the applicable time limits, the Tribunal should reject his complaint as irreceivable under Article VII(1) of its Statute.

Subsidiarily, the WHO submits that the complaint is devoid of merit, since the complainant received numerous warnings regarding his absences from duty and was given the opportunity to improve his performance in that respect. It emphasises that the procedure governing termination was duly followed. Contrary to the complainant's assertions, he was paid three months' salary in lieu of notice.

D. In his rejoinder the complainant reiterates his arguments and invites the Tribunal to refer to the brief and annexes that he submitted to the HBA.

E. In its surrejoinder the Organization maintains its position.

CONSIDERATIONS

1. The complainant, who at the material time was a Maintenance Worker at SEARO, received a written reprimand by a letter of 8 April 1996 from the Personnel Officer, because of his frequent, unannounced absences from duty. It was considered that the explanations he had given were not satisfactory and it was pointed out to him that between 1991 and 1994 he had missed a substantial number of working days. He was advised that such absences would not be tolerated in future. The Personnel Officer went on to say: "[...] we expect that this type of conduct will not happen again. If it does, we will be constrained to take further disciplinary action including, if necessary, termination."

The complainant was again admonished for unannounced absences from duty by letters of 22 July and 24 September 1996. His explanations were again not deemed satisfactory, and he was informed that the corresponding salary would be withheld. The letter of 24 September stated that: "Although termination would have been an appropriate measure, we have decided to give you one last opportunity to redress your conduct and to remain in the employment of the Organization." The complainant was thus given a "final warning" and also the "written warning" required under Staff Rule 1070.2.

After yet another absence, for which his explanation was also considered unsatisfactory, the complainant was informed on 13 October 1997 that it was the Organization's intention to terminate his appointment for unsatisfactory performance. A tentative date of termination was fixed as 1 November 1997, but he was invited to submit his written comments by 24 October. On 10 November 1997 he was informed that the decision to terminate his appointment had been confirmed, effective 1 November, as previously announced. He was further advised of his right to appeal within 60 calendar days.

2. The complainant contends that he filed a "letter of intention to appeal" in good time, but the receipt which he offers as proof was considered by the Central Registry of WHO SEARO to be a possible forgery. The Organization, for its part, argues that even if the complainant's version of the date of submission of the said letter of intention to appeal were accepted, his appeal would still have been inadmissible as time-barred because, notwithstanding his refusal to receive notification of the termination decision on 11 November 1997, that is the date from which the 60-day period for initiating his appeal began to run.

3. It cannot be established on the basis of the evidence on file whether, as the defendant contends, the complainant refused delivery of the termination letter on 11 November 1997, or indeed whether, as the complainant contends, he filed a notice of intention to appeal on 23 January 1998. However, the Tribunal considers it unnecessary to rule on the issue of receivability since the complaint is devoid of merit.

4. The complainant challenges the decision of termination, yet that decision was the culmination of a number of earlier reprimands and fair warnings issued in response to a very long pattern of unauthorised and repeated

absences for substantial periods of time. Those prior decisions, which time and again held him accountable for that pattern of reprehensible non-attendance, were not contested by the complainant. They, in turn, provide more than ample justification for the impugned decision, which was not taken unlawfully.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet