

***In re* JOYET**

**Judgment No. 318**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Philippe Joyet on 23 June 1976 and brought into conformity with the Rules of Court on 29 June, the WHO's reply of 31 August, the complainant's rejoinder of 1 November and the WHO's surrejoinder of 30 November 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 430.1, 430.2, 960, 1010.2 and 1040;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. In July 1974 the complainant, who is of Swiss nationality and was forty years old at the time, applied for a post in the WHO. From 10 March 1975 he was employed by the WHO as an administrative assistant at grade G.6 in the Registry under a two-year contract, with one year's probation.

B. Even in the first few months of the period of his appointment he disagreed with his supervisors as to how the work of the Registry should be done. The WHO says that his attitude was obstinate and gives several examples. Because of the difficulties caused by his attitude his supervisors, Mr. Sayour, Mr. Martens and Mr. Morgan, were in favour of terminating his appointment at the end of the one-year probationary period. Mr. Martens and Mr. Sayour told him so on 15 December 1975. On 13 January 1976 Mr. Sayour wrote a probation report in which he recommended that the complainant should not have his appointment confirmed.

C. The complainant objected to the probation report and attributed the evaluation of his performance to "personal motives". But Mr. Sayour's supervisor, Mr. Martens, upheld the evaluation on 9 February 1976. The complainant referred the matter to the WHO Ombudsman, who in a report of 13 February recommended extending the probationary period by six months. On 16 February, however, Mr. Morgan, the supervisor of Mr. Sayour and Mr. Martens, endorsed the proposal to end the complainant's appointment; on 17 February the Director of the Division of Personnel and General Services approved that proposal; and the complainant was so informed by letter of 23 February. On 8 March he made an appeal to the Director-General, who dismissed it on 26 March. After several short extensions of his appointment the complainant left on 7 May. It is the Director-General's decision of 26 March 1976 which he now impugns.

D. The complainant argues, among other things, that his supervisors "made no serious criticism of his conduct or performance". "Although at the end of the initial probationary period the WHO is entitled in law to resile from the contract instead of confirming it", in his case "the WHO's decision is challengeable and appears to be arbitrary". In his view that decision is all the more open to criticism in that his work was found satisfactory" and the decision was taken "at a time when someone of the complainant's age finds it very hard to get a job".

E. In his claims for relief, as elaborated in his rejoinder, the complainant asks the Tribunal to order his reinstatement as a member of the WHO staff from 8 May 1976 or, failing that, to award him fair damages for the financial prejudice which he has suffered, and which should be equivalent to at least the amount of the salary he would have received for the period from 7 May to 30 October 1976, plus compensation for moral prejudice in an amount to be determined by the Tribunal.

F. The WHO points out that the impugned decision was taken in accordance with Staff Rule 960, which provides that if during a probationary period a staff member's performance or conduct is not satisfactory, or if he is found unsuited to international service, the appointment will not be confirmed but terminated. The WHO contends that the

decision falls within the scope of the Director-General's discretionary authority and is not tainted with any of the flaws which entitle the Tribunal to interfere. It accordingly asks the Tribunal to dismiss the complaint in its entirety.

#### CONSIDERATIONS:

Staff Rule 960 provides that if the performance of a staff member on probation is not satisfactory his appointment will not be confirmed but terminated.

According to this text and the general principles of international public service, the provisional nature of his position denies a probationer the safeguards enjoyed by an established official or by the holder of a fixed-term appointment or of one without limit of time. In particular, since the purpose of probation is to find out whether the probationer is suited for service and should have his appointment confirmed, the Director-General may dismiss him if satisfied that he does not have the right qualifications.

The Tribunal is competent to review the lawfulness of any decision by the Director-General to terminate a staff member's probation. In particular it may determine whether that decision is based on errors of fact or of law, or whether essential facts have not been taken into consideration, or whether clearly mistaken conclusions have been drawn from the facts, or, lastly, whether there has been abuse of authority. The Tribunal may not, however, replace with its own the executive head's opinion of a staff member's performance, conduct or fitness for international service.

The main grounds for the impugned decision are that the complainant, who would brook no challenge to his views, proved unable to obey his supervisor's instructions and adapt to the methods of the Organization.

It is clear from the dossier that those grounds are factually correct and are not tainted with any of the flaws mentioned above which would entitle the Tribunal to interfere. In particular, the complainant has quite failed to bear out either the criticisms of his direct supervisor or his allegation that Dr. Burton, the WHO Ombudsman, was not fully informed of the case.

It appears from the foregoing that the complaint is unfounded and should be dismissed.

#### 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 21 November 1977.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet