

## FORTIETH ORDINARY SESSION

### *In re* SAVIOLI

#### Judgment No. 346

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Meteorological Organization (WMO) by Miss Lea Savioli on 11 August 1977, the WMO's reply of 14 October, the complainant's rejoinder of 12 January 1978 and the WMO's surrejoinder of 10 February 1978;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WMO Staff Regulations 9.2, 9.3, 11.1 and 11.2 and WMO Staff Rules 181.1, 192.1, 193.1, 193.2, 193.3, 1111.2,

1111.3 and 1112.1;

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. The complainant was first appointed to the staff of the WMO for eleven days on 11 April 1963 and on 28 November was given a one-year appointment as a registry clerk at grade G. 4. Her appointment was later extended for two years. On 20 December 1965 she received a letter of appointment as a G.4 administrative clerk in the Technical Co-operation Department under a permanent contact which took effect on 1 January 1966. On 3 May 1966 she was promoted to senior administrative clerk at grade G.5. In January 1970 her section was done away with and she was transferred to the Personnel Section, in which she was promoted to G.6 on 1 January 1971. On 1 January 1976 she was transferred to the Fellowships Branch of a new Education and Training Department.

B. The complainant's post and two others in the Fellowships Branch were financed with technical co-operation credits from the United Nations Development Programme. Being in financial straits the Programme asked the Director of the Technical Co-operation Department to do his utmost to cut administrative costs of the projects financed by the Programme and for that purpose to consider making do with fewer General Service category staff. The Administration found that the complainant was not needed in the Fellowships Branch because the "desired expansion" in the Education and Training Department had been "uneven", and it accordingly decided to abolish her post.

C. The Administration then wrote to all the department directors asking whether they had or would soon have a suitable vacancy for the complainant. It wrote letters to the same effect to the heads of personnel of the United Nations in Geneva, the International Labour Office, the World Health Organization, the International Telecommunication Union, the World Intellectual Property Organization, the General Agreement on Tariffs and Trade and the International Trade Centre. In accordance with Staff Rule 192.1 it also asked the Chief of Personnel of the WMO what posts, if any, would suit the complainant even if they were already filled. But nothing came of all this and the WMO felt it had no choice but to dismiss the complainant. It therefore sent her a letter of dismissal on 16 December 1976.

D. The complainant applied for review of the decision of 16 December 1976 and then appealed against it to the Joint Appeals Board of the WMO. In its report of 5 May 1977 the Board recommended upholding the decision. Its report was given to the complainant on 13 May and she was told that the Secretary-General had endorsed it. In its reply the WMO says that by an oversight the payments made to her on termination covered only nine months and not the eleven stipulated under a scheme brought into effect in 1977, but that the oversight was later made good and on 6 October 1977, after she had lodged her complaint, which is dated 11 August 1977, she was paid 10,344 Swiss francs. The complainant is impugning the final decision of 13 May 1977 confirming her dismissal.

E. The complainant argues that the only purpose of abolishing her post was to dismiss her, that her dismissal was

otherwise unwarranted, that the WMO did not do its utmost to find her another post, and that she was not given a prior hearing. She therefore asks the Tribunal - preliminarily, to declare her complaint receivable and allow her to prove her allegations by all legal means; principally: to quash the decision to dismiss her; to order her reinstatement in a new post corresponding to her qualifications and grade; to order that she shall be entitled to salary from 1 April 1977 up to the date of her reinstatement; to record her offer to subtract from her salary entitlements the amount of the compensation paid to her on dismissal, apart from the sums corresponding to her salary for the period of notice from 1 January to 31 March 1977 and to accrued annual leave; subsidiarily: to order the WMO to pay her compensation for all the prejudice she has suffered, including loss of pension rights, equivalent to five times her gross salary for the period from 1 April 1976 to 31 March 1977, plus interest at 5 per cent a year from 11 August 1977, the date on which she lodged her complaint; to record her offer to subtract from that sum the amount of any dismissal compensation paid to her, apart from the sums corresponding to her salary for the period of notice from 1 January to 31 March 1977 and to accrued annual leave; further subsidiarily: to order the WMO to pay her further compensation for dismissal calculated in accordance with Staff Rule 193.2 in force since 1 January 1977 (in her rejoinder she notes that the WMO accepts this particular claim: see D above); lastly, whatever the Tribunal may decide, to award costs against the WMO, including part of her lawyer's fees.

F. The WMO points out that in the circumstances the abolition of the complainant's post was required by the necessities of the service. She was dismissed in accordance with the rules in force; it did its utmost to find other employment for her, and her contention that she was not given a hearing is mistaken since she argued her case in the course of the review proceedings and the proceedings before the Joint Appeals Board. The WMO therefore asks the Tribunal to dismiss the complaint and, subsidiarily, should the Tribunal decline to do so, to rule that the complainant's reinstatement is neither possible nor desirable and to set damages by reference to the prejudice which she has actually suffered, and "the amount of which she has failed to establish".

#### CONSIDERATIONS:

As to the Tribunal's power of review:

1. According to Regulation 9.2 of the Staff Regulations and Staff Rules the Secretary-General may terminate the appointment of a staff member if, among other things, "the necessities of the service require ... reduction of the staff". Being a measure of administrative organisation, the decision to abolish a post and then dismiss the incumbent falls within the scope of discretionary authority. Hence the Tribunal may interfere with that decision only if it was taken without authority or violated a rule of form or of procedure or was based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority or if clearly mistaken conclusions were drawn from the facts.

As to the abolition of the complainant's post:

2. A decision to abolish a post is not in conformity with Regulation 9.2 unless required by the "necessities of the service", i.e. for objective reasons relating to the operation of the Organization. It will be justified, for example, on grounds of savings or rationalisation. If, however, the Organization merely wishes to get rid of a staff member whose performance is prompting criticism, it cannot properly abolish his post and contend that the necessities of the service require it to do so. Instead, as the regulation provides, it is bound to show that the staff member's services were unsatisfactory. On the other hand, a decision to abolish a post which is required by the necessities of the service will not be tainted simply because it leads to the dismissal of an unqualified staff member.

3. In the present case, from 1 January 1976 the complainant was employed as a senior administrative clerk in the Fellowships Branch of the Education and Training Department. The expenditure of the branch was met out of credits under the United Nations Development Programme (UNDP). In a letter of 9 August 1976 the Director of the finance division of the UNDP told the Director of the Technical Co-operation Department that because of financial difficulties the UNDP had to cut administrative costs and he asked the Organization to make do with fewer General Service category staff. On 1 October 1976 the Director of the Technical Co-operation Department answered that the Organization's staff would be kept to the strict minimum. On 25 October the Director of the finance division of the UNDP again recommended the Organization to practice strict economy. In a report of 8 November the complainant's immediate supervisor expressed the view that the Fellowships Branch had no further need of her post. The complainant herself admits in her complaint that her post was unnecessary and should be abolished.

The decision to abolish the complainant's post therefore appears to have been in keeping with Regulation 9.2. It was required for an objective reason, namely the position of the UNDP, which was financing the branch to which the post belonged. There is no need to consider whether the criticisms of the complainant in the report of 8 November 1976 were warranted or would in themselves have warranted dismissing her. Provided the decision was required by the necessities of the service, and it appears from the facts of the case that it was, the Tribunal may not interfere.

As to the dismissal of the complainant:

4. Regulation 9.2 is supplemented by Staff Rule 192.1(b) of which the first sentence reads: "If the necessities of the service require that the appointment of staff members be terminated as a result of abolition of posts or reduction of staff, staff members with permanent appointments shall as a general rule be retained in preference to those holding other appointments, subject to the availability of suitable posts in which their services can be effectively utilised." The rule that permanent staff members whose post is abolished should enjoy preference puts obligations on the WMO. In what do those obligations consist?

First, the Secretary-General shall ask all department directors about any posts which are either already vacant or will become so within a period which will vary with circumstances. As a rule he shall carry on consultations for several months before dismissing a staff member who has given the organisation long and satisfactory service.

Secondly, he shall find out what posts the holder of the abolished post is qualified for and are held by staff members belonging to his grade. If, however, the staff member is willing to accept a post at a lower grade than the Secretary-General shall broaden the scope of his inquiries.

5. In the present case the Secretary-General took the following action to keep the complainant on the staff. On his instructions the Director of the Administration, Conferences and Publications Department wrote to department Directors on 8 December 1976 asking whether they had or would soon have any suitable post in their departments. He appended to his minute the complainant's curriculum vitae and a description of the duties she had performed in her last two posts. On 10 December he told the head of personnel that his consultations had come to nothing. On the same day he addressed to several international organisations the same requests that had already come to nothing within the Organization. In the light of a report dated 14 December, on 15 December the Secretary-General decided to abolish the complainant's post. On 16 December the Director of the Administration, Conferences and Publications Department sent the complainant a letter which he asked her to regard as "giving the three months' notice required by Staff Rule 193.1". The complainant was also told that her appointment would end on 31 December 1976 but that she would be paid compensation calculated on the basis of the salary and allowances payable to her up to the end of the period of notice, i.e. 31 March 1977. On 10 January 1977 the Secretary-General dismissed her application for review of her case.

6. The complainant is mistaken in alleging procedural improprieties.

It is true that she was not given a hearing between 8 December 1976, when the Director of the Administration, Conferences and Publications Department started to look for another post for her, and 16 December 1976, when she was told of her dismissal. But it was open to her to defend her interests shortly afterwards in an application for review and then before the Joint Appeals Board. Hence, supposing that her right to a hearing was indeed denied, the flaw may be regarded as having been removed. Moreover, in November 1976, when the usefulness of her post was being questioned, she had been invited to discuss the matter with her supervisors, but seems to have declined to do so.

Contrary to what the complainant contends, the Secretary-General was free to dismiss her and even to abolish her post without consulting the Staff Committee beforehand. According to Staff Rule 181.1(a) the Staff Committee shall be consulted on questions of policy and not on individual cases like the complainant's.

7. The WMO did, however, commit a double breach of its obligations under Staff Rule 192.1(b).

First, it did not pursue its inquiries as long as the circumstances required. The Secretary-General based his decision to end the complainant's appointment on the list of posts which were vacant in mid-December 1976 or which then appeared likely soon to become vacant. He overlooked the fact that circumstances might change sooner or later for such unforeseen reasons as resignation, illness or death. Doubtless he is not to be taken to task for declining to

appoint the complainant to one of the posts held by staff members who, like herself, held permanent appointments. According to Staff Rule 192.1(b) staff members with permanent appointments shall be preferred only to "those holding other appointments". Nevertheless the WMO should not have based its decision on an ephemeral state of affairs but should have pursued its inquiries at least until 31 March 1977, when the period of notice expired.

Secondly, the Director of the Administration, Conferences and Publications Department merely sent the other department directors the complainant's curriculum vitae and the description of her last two posts. Because of her age, continuing adaptability to new kinds of work and the quality of the services she had given since 1963 in her previous post - which, despite reservations expressed after transfers, had been considered good enough to warrant regular promotion - the Director was under the duty of suggesting to the other directors the possibility of appointing her to posts more or less different from those she had recently held, even if they were normally held by staff members belonging to a lower grade.

The WMO cannot rely on the argument that it tried to find the complainant a post in some other international organisation. However appropriate its efforts may have been, they do not make up for the failure to make proper inquiries within the WMO itself.

As to the complainant's claims:

8. Because of the nature of the complainant's relations with some of her supervisors her reinstatement is undesirable. She should, however, be awarded in compensation the amount of the salary which she would have received during three years, plus the sums to which she was entitled up to 31 March 1977, including her salary for the leave days which she had not yet taken, but less the amount of the dismissal compensation to which the WMO admits she is entitled. Even if the WMO had done everything it ought to have done, the complainant's appointment to a new post would still have been a matter of chance. Hence there are no grounds for awarding her larger compensation.

DECISION:

For the above reasons,

1. The impugned decision is quashed.
2. The WMO shall pay the complainant compensation corresponding to the amount of the salary which she would have received during three years, plus the sums to which she was entitled up to 31 March 1977, including the salary for the leave days which she had not yet taken, but less the amount of the dismissal compensation to which the Organization admits she is entitled.
3. The complainant's other claims are dismissed.
4. The WMO shall pay the complainant 6,000 Swiss francs as costs.

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 8 May 1978.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet