

FORTY-FIRST ORDINARY SESSION

***In re* PIBOULEAU**

Judgment No. 351

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mrs. Marie-Anne Pibouveau on 8 September 1977, the WHO's reply of 15 November, the complainant's rejoinder of 28 November and the WHO's communication of 15 December 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 680 and 940;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant was appointed on 25 September 1970 to the personnel branch of the WHO Regional Office for Africa in Brazzaville as a shorthand-typist at grade BZ 5 (non-local). From January 1974 to July 1976 she held the post of administrative assistant in the registry branch at grade BZ 9. Her appointment was to expire on 30 September 1976. On 28 June 1976 she was told that her appointment would not be renewed. At that time she was with child and expected to be confined in the second half of October. She was, however, prematurely confined on 9 August.

B. On 9 July 1976 she appealed to the Regional Board of Inquiry and Appeal on the grounds that, for all her appeals, she had been given no sound reason for the decision not to renew her appointment and no information on her rights to maternity leave or "on how a decision may be taken not to renew an appointment of a staff member who is pregnant". On 3 August the Regional Office extended her appointment to cover the period of maternity leave, which on 23 September was set at 12 weeks. The Regional Board of Inquiry and Appeal reported on 11 October. It recommended extending her appointment for another month, i.e. to the end of November, "since when she left the child resuscitation unit the doctor thought it necessary for her to stay constantly with her son during the first three months of his life". The Board also recommended the Regional Director to accept the complainant's claim and grant her nine months' full salary in compensation. By a letter of 5 November 1976 the Regional Director told the complainant that he could not accept the Board's recommendations and upheld his decision to end her appointment.

C. On 17 November 1976 the complainant appealed to the headquarters Board of Inquiry and Appeal. In its report of 22 April 1977 the Board recommended the Director-General: "(1) to award Mrs. Pibouveau, over and above the additional four months' salary proposed by the headquarters administration [on 22 December 1976], the amount of six months' full salary

as compensation for the injustice and emotional suffering which the Administration inflicted on her by its disregard from the outset of the provisions of Staff Rule 680; (2) to award Mrs. Pibouveau, over and above the compensation mentioned in (1), compensation equivalent to 12 months' full salary for the arbitrary and unwarranted decision not to offer her an extension of appointment". The Director-General took note of the Board's report and, "taking account in part of its recommendations", decided to award the complainant total compensation equivalent to 12 months' salary, including non-resident allowance and child allowance and the four months' additional salary proposed by the headquarters administration. The Director-General informed her of that decision by letter of 15 June 1977. She did not accept the decision and on 8 September 1977 filed the present complaint.

D. The complainant contends that the decision not to renew her appointment was taken in breach of the WHO Staff Rules and of the Conventions and Recommendations of the International Labour Organisation on maternity protection, and in reprisal for her joining in a strike at the WHO Office in Brazzaville in May 1976: "I claim the

equivalent of six years' full salary, including all allowances, in compensation for the injustice committed by the WHO Administration and the moral and material prejudice which I have suffered, and which is none the less shameful for having been caused by an international organisation with lofty humanitarian aims".

E. The WHO formally denies that the complainant has suffered any prejudice: she was granted the full maternity leave she asked for. The international Conventions to which she refers are binding only on States which have ratified them, not on any international organisation to which those States may belong. Besides, even under the Conventions which the complainant says apply to her case she would not have been entitled to an extension of appointment and "it would have been quite lawful to inform her of the decision not to renew it". As to her plea that her "dismissal" was an abusive measure of reprisal for her part in a work stoppage, she produces not a shred of proof and indeed admits that she cannot do so. Lastly, the decision not to renew her appointment was neither arbitrary nor unwarranted. Her post "was not one of those which it was imperative to preserve, as is clear from the fact that it was abolished several months after" the termination of her appointment "on the grounds that it was felt that savings could be made on that post", in keeping with broad WHO policy laid down by the World Health Assembly in several resolutions. The WHO therefore asks the Tribunal to dismiss the complaint outright.

CONSIDERATIONS:

As to the plea that the complainant's dismissal constituted an abuse of authority inasmuch as she was pregnant at the time:

The complainant was appointed to the personnel branch of the WHO Regional Office for Africa in Brazzaville. She was employed as an administrative assistant in the registry branch at grade BZ 9. On 28 June 1976 she was told that her appointment, which was to expire on 30 September, would not be extended. On 30 June she acknowledged receipt of that information and, expecting her confinement on 22 October, applied for prenatal and postnatal leave.

On 3 August 1976 the personnel department of the Regional Office informed her that the Regional Director saw no objection to extending her appointment to the date of expiry of her maternity leave.

It appears from these facts, which are borne out by the evidence in the dossier, that, contrary to what the complainant says, when the Regional Director wrote to her on 28 June to say that her appointment would not be renewed he did not know that she was pregnant, but learnt that only from the letter which she sent him on 30 June. Although it was not until 3 August that he consented to her application for maternity leave his delay in replying was by no means unreasonable, especially since her application meant interpreting Staff Rule 680 and therefore consulting headquarters.

The complainant was prematurely confined on 9 August 1976. On 23 September the Organization took account of that new fact by granting her 12 weeks' postnatal maternity leave and accordingly extending her appointment to 31 October 1976. In other words, it acted promptly and settled without delay a somewhat difficult matter.

Thus, contrary to what she alleges, the complainant suffered no prejudice by reason of the behaviour of the Organization, which not only committed no impropriety but correctly applied the provisions of Staff Rule 680 and took account of her interests as best it could.

The complainant further contends that her dismissal was a breach of the Maternity Protection Convention (No. 103) and Recommendation (No. 95) of the ILO. Those instruments do not apply to the WHO, however. Besides, they were not infringed.

As to the plea that the complainant's dismissal constituted an abuse of authority inasmuch as the real reason was that she had taken part in the work-stoppage of May 1976:

There is no evidence in the dossier to establish or even imply that the dismissal was based on reasons extraneous to the interests of the Organization or was tainted with abuse of authority. On the contrary, the Organization maintains that she was dismissed solely because it now has to make savings. The Tribunal may neither pass judgment on a policy which falls within the sole competence of the WHO authorities nor review action taken in pursuance of that policy.

It appears from the foregoing that the complaint is unfounded. The complainant has even less cause to object to the Organization's action inasmuch as by his decision of 15 June 1977 the Director-General awarded her generous

compensation.

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 13 November 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet