

FORTY-SECOND ORDINARY SESSION

In re HUNEKE-LOGAN

Judgment No. 376

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mrs. Barbara Huneke-Logan on 6 April 1978 and brought into conformity with the Rules of Court on 12 May, the WHO's reply of 26 June, the complainant's rejoinder of 25 July and the WHO's written statement of 28 July that it did not wish to file a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the WHO Staff Rules in force at the material time, in particular Rules 650.3, 720, 930.5, 1020.1 and 1020.2 and the WHO Manual, particularly provision II.7, Appendices C and E;

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. On 1 September 1965 the WHO appointed the complainant as a statistician under a two-year contract to a post which was later graded P.2. On 1 September 1967 she had her appointment extended by five years. On 5 June 1968 she obtained sick leave up to 15 July, when she resumed work half time. From 1 August she worked three-quarters time and from 9 August full time. Thus she took 35 days' sick leave in 1968. From 12 to 18 March 1969 she was given seven days' sick leave and on 28 March began a further period of absence on grounds of health which lasted until 26 January 1970. Thus she took 286 days' sick leave in 1969. In 1970, apart from the days off in January, she took 18½ days' sick leave. In 1971 she took 21½ days' sick leave. In March 1972 she asked for a five-year appointment. On the advice of the Medical Service she was given only a two-year appointment expiring on 31 August 1974. In 1972 she took 7 days' sick leave, in 1973 18 days and in 1974 20 days.

B. The WHO contends that the complainant's working relations with her colleagues were unsatisfactory. The complainant does not deny that, but blames her immediate supervisor. "Moreover", says the WHO, "for some time she had been complaining of pains in her arms which she said were due to overwork and prevented her from doing her work properly". In November 1975 the chief of her branch and the Director of the Medical Service (who had already suggested reorganising the work in her branch so that she would not have to perform certain arm movements) proposed transferring her. The WHO states that there was no vacancy and that she could not be transferred. She took 17 days' sick leave between 1 January and 30 August 1975 and was then absent 17 times for reasons of health between 30 August and 25 November. She applied for leave without pay for six months from 20 January 1976 and for another six months from 21 June 1976.

C. In the circumstances, says the WHO, "because of the medical aspects of Mrs. Huneke-Logan's case, which prevented her from doing her work, and because no suitable post could be found for her the Administration had no choice but to apply the text of Staff Rule 930.5 in force at that time, in the Organization's interest". On 27 July 1976 the complainant was accordingly informed that her appointment was terminated. She then made three claims in turn. First, on 21 April 1976 she asked that her ailments - epicondylitis and epitrochleitis - should be regarded as service-incurred. The Director-General dismissed that claim on the recommendation of the Compensation Claims Committee. Secondly, by a letter of 4 August 1976, which she confirmed on 29 August, she appealed against the administrative decision, taken on medical grounds in accordance with Staff Rule 930.5, to terminate her appointment. Thirdly, on 20 September 1976 she claimed compensation for total disability. That claim was dismissed on 6 January 1978 by the insurance administrator.

D. All the claims mentioned in C arose from the complainant's state of health and the WHO therefore decided to set up a medical board of review in accordance with the text of Staff Rule 1020.1 then in force. After review of the

complainant's medical file, medical examinations and two interviews between the chairman of the board and the complainant, a medical report was made which, says the Organization, confirmed "the medical limitations which were the grounds for terminating" her appointment. On 18 January 1978 the Director-General therefore upheld his decision to terminate that appointment with effect from 6 September 1976. The complainant thereupon filed her complaint.

E. The complainant maintains that the WHO's attitude is utterly inconsistent. Either she is no longer able to perform her official duties because of pain attributable to her work "and so her dismissal is warranted by the medical findings", or else the pain does not prevent her from doing her work and so her dismissal is unwarranted. If the former alternative is correct, she is entitled to the compensation provided for in Staff Rule 720 - "because the pain is wholly attributable to the performance of her official duties" - and in Manual provision II.7 (Appendix C). On neither hypothesis, however, can it be said that her medical condition warrants dismissal without proper compensation.

F. The complainant asks the Tribunal: "principally: to declare that there are no medical grounds which warrant termination by the WHO of Mrs. Huneke-Logan's appointment on the basis of Staff Rule 1020.2; to declare accordingly that the termination of her appointment is unwarranted and therefore null and void; to order the WHO to reinstate her; to order the WHO to pay her as compensation for loss of salary the amount which she would have been paid in salary from 6 September 1976, the date of termination; subsidiarily: should the Tribunal nevertheless uphold the Director-General's decision of 18 January 1978, to quash the insurance administrator's decision of 6 January 1978; to award her compensation for her disability: and accordingly to order the medical board to establish the degree of her disability".

G. The defendant organisation points out that the medical board found that the complainant was no longer fit to perform her duties, and it proved in practice impossible to employ her elsewhere both because there was no suitable post and, subsidiarily, because of the medical board's reservations. It was therefore in the WHO's interests that the Director-General should uphold the decision he had formerly taken in accordance with Staff Rules 930.5 and 1020.2.

H. The Organization considers that it acted in its own best interests and strictly applied the rules in force. It therefore asks the Tribunal to dismiss the complainant's claims outright and in their entirety.

CONSIDERATIONS:

At the material time the text of WHO Staff Rule 930.5 stated: "When on the advice of the Staff Physician, a staff member is unable to continue his present functions because of physical limitations, although he would be suitable for another assignment in the Organization, but for whom no such assignment can be found, the staff member or a physician designated by him will be informed of the medical conclusions as outlined in Staff Rule 1020.1 and his appointment shall be terminated. He shall be entitled to a notice period equivalent to that specified in Staff Rule 950.3 and to an indemnity equivalent to that specified in Staff Rule 950.4."

It appears clearly from the report of the WHO medical board that, first, the pains suffered by the complainant were not attributable to her work in the WHO and that, secondly, they did not prevent her from doing that work, provided certain arrangements were made.

On the first point, the Tribunal will accept the unanimous opinion of the medical board, which consisted of three especially well-qualified physicians, including one designated by the complainant herself. It appears quite pointless to order any further examination.

As to the second point, it appears from the documents in the dossier that the WHO was unable to find any post which the physicians felt would have suited the complainant.

The complainant's performance was not beyond criticism and was partly to blame for the reluctance of chiefs of branch to take her on their staff. But the main reason why the WHO could not find a post for her was that her duties were highly technical and so there were few posts suitable for her. The WHO applied Staff Rule 930.5 correctly and its position was quite proper. The impugned decision is therefore correct and the complainant's claim for compensation unfounded.

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, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 June 1979.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy