

EIGHTH ORDINARY SESSION

***In re* MILOUS**

Judgment No. 42

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization drawn up by Mr. Pantelis Toffalis Milous on 5 May 1959, and brought into conformity with the Rules of Court on 3 June 1959, the Organisation's reply of 8 July 1959, the additional memorandum by the complainant of 7 August 1959 and the Organisation's reply to that memorandum of 24 September 1959;

Considering Staff Regulations 1.5, 1.6 and 1.10, and Staff Rules 320.3 and 960 of the Organisation;

Having heard Mr. Jean Poncet, counsel for complainant, and Mr. A.H. Zarb, agent of the Organisation, in public sitting on 5 September 1960;

Considering that the pertinent facts at issue are the following:

A. Complainant was appointed by the Organisation to serve for two years from 11 May 1958 as a sanitarian in a malaria eradication project in Jordan. He took up his duties on 14 June 1958.

He soon came into conflict with his immediate supervisor, Dr. Pek, whom he considered to have a hostile attitude towards the King of Jordan. In an interview with the King himself, on 10 December 1958, the complainant gave a detailed account of Dr. Pek's alleged conduct.

B. Having been informed of this conversation, the Minister of Health of Jordan wrote to the competent Regional Director of WHO on the next day to request that complainant be transferred. The Minister stated that the presence of the official in question in Jordan was undesirable and that it was not in his interest, or in the interests of the Organisation, that he should remain in the country.

By a telegram of 19 December 1958 the Regional Director ordered the transfer of complainant from Jordan to Alexandria. On 5 January 1959 he gave complainant notice of the termination of his appointment as from 5 February 1959, without compensation.

On 7 January 1959 complainant appealed to the Director-General of WHO against this decision. He enclosed a detailed account of what had occurred with his application, which he supplemented on 9 January 1959.

On 5 February 1959, the Director-General confirmed the termination against which the complainant had appealed and made it effective as from 9 March 1959.

C. Complainant appealed to the Administrative Tribunal of the ILO against the Director-General's decision.

He prayed for -

reinstatement as from 9 March 1959 and the payment of the sum of \$2,350 as compensation for damage suffered as the result of his transfer from Jordan to Alexandria, (cost of medical treatment undergone by his wife and loss on sale of a car and furniture);

alternatively, failing reinstatement, the payment of the sum of \$7,366.03 as compensation comprising his salary until the end of his contract and the above-mentioned sum of \$2,350;

subsidiarily, if the termination of the contract seems justified, the sum of \$2,350 as compensation. WHO prayed that the complaint be dismissed.

IN LAW

1. Complainant wrongly submits that his appointment was terminated without his having been given a proper hearing. First, it is clear from his letter of 5 January 1959 that the Regional Director terminated the appointment of complainant on the basis of a report signed by the latter and on the basis of discussions complainant had with Dr. Farid. In addition, complainant was given the possibility of stating his case in his appeal to the Director-General of WHO. Moreover, in his letters of 7 and 9 January 1959 and in the account of events appended to the first of these letters, he took full advantage of the opportunity of putting forward the arguments which in his opinion supported his case. The fact that he had no opportunity of speaking to the Director-General is immaterial; so long as complainant was enabled to state his case either orally or in writing his right to be heard was not denied.

2. Under Staff Rule 320.3, any full-time appointment of more than one year shall be subject to a period of probation which shall be of at least one year. Complainant was given a full-time appointment for a term of two years as from 11 May 1958, and his appointment was terminated on 5 February 1959. He was therefore still on probation when the latter decision was taken.

Staff Rule 960 provides that if during a probationary period the staff member's performance or conduct is not satisfactory, if he is found unsuited to international service or if he fails to qualify medically, the appointment will be terminated. This provision is applicable to complainant. By speaking to the King of Jordan about the alleged hostility of Dr. Pek towards the King, complainant could impair the relations between the agencies of WHO and the Jordanian authorities. This is confirmed by the fact that the Minister of Health of Jordan immediately asked for complainant to be transferred. Complainant's attitude was therefore such as to make WHO lose confidence in him. It was incompatible with the oath to which he had subscribed and which required him to act "with the interests of the World Health Organization only in view" (Staff Regulation 1.10), to avoid any action which might adversely reflect on his status (Staff Regulation 1.5) and laid on him the obligation to show discretion according to which officials are prohibited from communicating to any person any information known to them by reason of their official position (Staff Regulation 1.6). In effect, complainant's conduct was not satisfactory and he showed himself unsuited to international service. The termination of his appointment is therefore justified under Staff Rule 960, and his request for reinstatement must fail.

The fact that before approaching the King of Jordan complainant applied to Dr. Pek's superior, that is to the competent Regional Director, and received no reply from the latter, is irrelevant. Whatever the attitude of the WHO authorities complainant had no right whatsoever to reveal to a person outside the Organisation facts that were of concern to the Organisation only. It is therefore unnecessary to consider whether complainant would have been entitled to submit his complaint to the Regional Director's superiors.

It is also immaterial that complainant relies on a letter addressed to the Director-General of WHO by the representative of Jordan to the United Nations in accordance with instructions of his Prime Minister, to the effect that the services of complainant in Jordan were quite satisfactory and that he had succeeded in establishing good relations with the Jordan authorities. WHO was in no way bound by this opinion. Even if there had been no complaints from the Jordan authorities concerning complainant's attitude, that attitude was still incompatible with the duties of a member of the staff of WHO. That alone is decisive.

3. Although it is not specifically provided for in Staff Rule 960, it is permissible to terminate the appointment of a probationer official in the course of his period of probation with the result that he ceases to be entitled to his salary provided that one month's notice is given. If on the conclusion of the probationary period the appointment of a member of the staff of WHO may be terminated with one to three months' notice (Rule 970), a probationer official cannot have more extensive rights. Therefore, if the conditions for the application of Staff Rule 960 are fulfilled, the official cannot claim that he should retain his appointment and receive his salary until the end of his probationary period. In this particular case, therefore, the request for the payment of complainant's salary up to the date of expiry of his contract must be rejected.

4. If the termination of complainant's employment was justified owing to his breach of duty, the same applies a fortiori to his transfer from Jordan to Alexandria, so that WHO is not responsible for the detrimental consequences to complainant of that transfer, these consequences arising exclusively out of his own fault. The application for the payment of damages for medical expenses and for loss on the sale of a car and furniture is therefore unjustified. Moreover, far from being based on any particular provision, it is in contradiction with Staff Rule 960, which provides that no indemnity is payable for non-confirmation of appointment. In addition, the refusal to grant the

damages applied for is in accordance with the precedents of this Tribunal (Judgment No. 25).

DECISION

The complaint is rejected.

In witness of this judgment, delivered in public sitting on 13 September 1960 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine