

FORTY-FIFTH ORDINARY SESSION

In re DICANCRO

Judgment No. 427

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Miguel Dicancro on 28 February 1980, the PAHO's reply of 10 June, the complainant's rejoinder of 16 July and the PAHO's surrejoinder of 15 September 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 1 of the PAHO Staff Regulations, PAHO Staff Rules 110.8, 650, 1030, 1040, 1110.1, 1110.4, 1120, 1130 and 1230.1.2 and Manual section II.9.230-240 of the World Health Organization;

Having examined the written evidence, 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 16 February 1965 the complainant joined the staff of the Pan American Sanitary Bureau, the Secretariat of the PAHO, as a grade P.4 medical officer. His initial two-year appointment was renewed in 1967. He resigned in May 1967, but was re-engaged at grade P.5 in June 1968 and received several extensions of his appointment. He was at first stationed at headquarters in Washington. From 1973 to June 1975 he served as PAHO/UNICEF liaison officer in Chile, from July 1975 to June 1977 as programme co-ordinator in Peru and lastly, after the abolition of that post, as medical officer in the Lima office. He declined an offer of a transfer to El Paso in Texas. Meanwhile, with the election of the Director of the PAHO drawing near, the complainant's name was put forward by the Government of his own country, Uruguay, and on 31 August 1978 he and four other candidates for the Directorship sent a cable to the governments of the 32 member States proposing a programme, referring to a "crisis" in the administration and advocating new management. The Director was re-elected. On 16 October 1978 he wrote to the complainant accusing him of misconduct.

Having considered the complainant's explanations the Director informed him on 8 December 1978 that the position he had taken precluded all possibility of a fruitful working relationship between him and the management and that it would not be in the PAHO's interests to continue to employ him. The Director therefore put him on special leave with full pay from 15 December 1978 to 30 June 1979 and informed him that his appointment would not thereafter be renewed.

B. The complainant appealed to the Board of Inquiry and Appeal against the decision of 8 December 1978. He alleged personal prejudice, error of law, incomplete consideration of the facts and abuse of authority. The Board unanimously rejected his allegations, but three of its members recommended reinstating him without compensation, paying his costs and withdrawing the charges made on 16 October 1978. They also suggested that "clear guidelines should be developed for staff members nominated as candidates" for the post of Director. The other two members of the Board took the view that the Director-General had correctly applied Staff Rule 1040 ("Completion of temporary appointments") and that the appeal should be dismissed, save that the charges made on 16 October 1978 should be expunged from the file. The Board also held that it had been a misapplication of Staff Rule 650 ("Special leave and leave without pay") to put the complainant on special leave with full pay. By a letter dated 23 November 1979, which is the decision impugned, the Director informed the complainant that he confirmed his decision not to renew the appointment but agreed to withdraw the charges of misconduct made in his letter of 16 October 1978 and to contribute \$1,250 towards the complainant's costs.

C. The complainant puts forward the following pleas. (a) The reprimand, the special leave and the decision not to renew his appointment can be explained only by the Director's personal prejudice towards him. The complainant's career went well until the present Director was appointed in 1975. Then everything went wrong and the new Director began to harass him because of his staff union activities, "exiled" him from headquarters, abolished his post and finally accused him of misconduct simply because he had stood for Director - even though his candidature, pursued in moderate terms, had been quite proper. (b) The impugned decision was not preceded by

complete consideration of the facts. It was taken in breach of Staff Rule 1230.1.2 and constituted a denial of due process and a misuse of authority. Lastly, there were several facts left out of account by the Director: that the complainant had informed the Director of his candidature; that the telegram of 31 August 1978 came strictly within the context of his campaign for election; and that he had had satisfactory performance reports. The complainant's attempts to defend himself were hampered in various ways. The Director was so prejudiced against him as to commit a misuse of authority by terminating his appointment. (c) It was a misapplication of Staff Rule 650 to put the complainant on special leave since the rule does not allow the imposition of special leave as a penalty.

D. The complainant asks the Tribunal to order (1) his reinstatement in a P.5 post on a five-year contract; (2) the payment of compensation equivalent to the amount of the earnings he has forfeited because of the interruption of his career, and restoration of his pension rights during that period; (3) the award of costs; (4) compensation for damage to his personal and professional reputation; and (5) compensation for the moral prejudice he has suffered.

E. In its reply the PAHO observes that under Staff Rule 1040, as supplemented by WHO Manual section II.9.230 to 240, a fixed-term appointment is terminated by giving notice at least one month and normally three months before the date of expiry of the contract. The Organization is not bound to give the staff member any explanation, but the first-level supervisor shall give him one if he asks for it. A decision not to renew an appointment therefore falls within the Director-General's discretionary authority. The essential facts which prompted the decision in the present case were the terms of the cable of 31 August 1978, which make it plain that fruitful co-operation between the complainant and the administration was out of the question, and the complainant's sending a copy of the cable criticising the administration to the Staff Committee, which had nothing to do with the election. In 1976 the complainant had refused to fill up his annual performance report and had thus been guilty of insubordination. He was warned on 8 December 1978 that his appointment would not be renewed when it expired on 30 June 1979, and that decision is fully in keeping with the material provisions of the Staff Rules. As regards the special leave, Staff Rule 650 states that it may be granted "in the interest of the Bureau, or for other valid reasons". The PAHO maintains that in this case it was necessary to protect its interests against the complainant's "adverse position towards the Secretariat". He is mistaken in contending that he was reprimanded: no disciplinary action was taken against him, and there was mere notification to him of charges of misconduct. Nor is there any truth in his allegation that the Director was prejudiced against him: it was the Director's predecessor who decided to "exile" him to Chile. As for his later assignments, the Board of Inquiry and Appeal held that they were based on objective considerations of internal policy and budgetary constraints. It is quite untrue to say that there was any repression of the complainant's staff union activities; besides, he was never a staff representative. The PAHO did not overlook any essential facts. It is immaterial and irrelevant that the complainant informed the Director of his candidature - a fact which has no connection with the communication of 16 October or with the decision of 8 December 1978. What was material was his hostility towards the administration, which was apparent from the cable. The Director did not draw any mistaken conclusions, since the cable contained harsh criticism of the PAHO's administration and regional health policy. Nor was he mistaken in believing that the cable exceeded the legitimate bounds of an election campaign since he drew the complainant's criticisms and demands for new management to the attention of the heads of state, foreign ministers and ministers of health of the 32 member States, and of the staff association besides. The Director took the complainant's seniority and performance reports into account: had he not, he would have taken even sterner action. Lastly, the PAHO rejects as utterly unfounded the complainant's allegations that there were breaches of due process of law: he had every opportunity to plead his case, for example before the Board of Inquiry and Appeal, and he had access to the written evidence he required for preparing it. Nor has there been any abuse of authority, since the Director merely exercised his discretionary power. The PAHO therefore invites the Tribunal to dismiss the complaint.

F. In his rejoinder the complainant contends that the fact - alluded to by the PAHO - that a copy of the cable was sent in confidence to the Staff Committee is immaterial since the Committee were acting as the complainant's advisers on his case. Underlying the Organization's whole reply is a reactionary desire to restrict freedom of speech. A careful reading of the report of the Board of Inquiry and Appeal reveals that the Staff Committee fully realised that the Director was wreaking revenge. True, Staff Rule 1040 confers discretionary authority on the Director, but he is not free to exercise it arbitrarily or unfairly. If, as the Director says, the sending of the cable was the only reason for his decision, then he overlooked essential facts - for example, that there was nothing malicious or insulting about the cable, and that a candidate should be free to criticise management when he wishes to take over himself. It is quite gratuitous to say that fruitful co-operation was no longer possible. It is idle to contend that there was a valid reason for granting the complainant special leave: that argument overlooks an essential condition for applying Staff Rule 650, namely the staff member's consent. The clearly stated purpose of leave is to enable the staff member to do advanced study or research. As regards his "exile" to Chile, his assignment to that country was

temporary as long as the last Director held office and it became permanent only under the present Director. However much a staff member may respect the country of assignment, to be sent, by way of penalty, far away from the place where the main decisions are taken is in fact a form of banishment. The letter of 16 October 1978 was in fact a reprimand, if not in form, at least in spirit. Though never an elected staff representative, he always played an active part in staff union affairs. The Director has overlooked essential facts, for example the complainant's extremely satisfactory performance reports and his reply to the Director's letter of 16 October 1978. Lastly, it is wrong to treat the cable as evidence of hostility towards the Organization and harsh criticism of management. The cable was couched in moderate terms, was given only limited circulation and did not exceed the normal bounds of an electoral campaign. Once the Director had been re-elected, the complainant was quite willing to bow down and to co-operate with him. The Organization's arguments on the matter of due process are unconvincing: there is no doubt that no thorough investigation was carried out. The complainant believes he has established that the decision was taken on wrongful grounds, tainted with prejudice and not preceded by any objective review of the facts. The Organization is mistaken in contending that there was no breach of its expired contract with him. The contract was accompanied by the safeguards prescribed in the Staff Regulations and Staff Rules, and the failure to respect them constituted a breach of the contract.

G. In its rejoinder the PAHO denies any desire to wreak vengeance. It rejects the complainant's argument that there was a connection between the letter of 16 October 1978 charging him with misconduct and the decision of 8 December 1978 confirming the non-renewal of his appointment. It was not the complainant's candidature for the Directorship which prompted the decisions but his animosity, which precluded his co-operation with management. The complainant claims freedom of speech, but forgets the obligation of an international civil servant to regulate his behaviour constantly so as to respect the organisation's interests above all. The cable he sent shows that he subordinated the PAHO's interests to his own and thus acted at variance with the recommendations in paragraph 36 of Chapter IV of the Report on Standards of Conduct in the International Civil Service. The PAHO believes that there was justification for not extending his appointment and that the decision was in no way incompatible with human rights and dignity, which it fully respects. The Board of Inquiry and Appeal did not uphold his allegations of prejudice. The construction he puts on Staff Rule 650 is mistaken. One of the "valid reasons" for granting leave mentioned in that article is the need to protect the Organization's interests. The complainant is also mistaken in treating the letter of 16 October 1978 as a reprimand: it merely notified the charges against him and stated that, if they were proved, Staff Rule 1110.1 and 1110.4 would be applied; in other words, that his appointment would be terminated by dismissal for misconduct under Staff Rule 1130. The procedure for imposing a reprimand is quite different and does not require prior notification of charges to the staff member. The complainant's reply of 26 October 1978 indeed shows that he did not treat the Director's letter as a reprimand and in the light of his reply the Director decided not to terminate his appointment but merely let it expire. The complainant's allegation that his staff union activities were curbed is not only unfounded but irreceivable since it was not made in the internal appeal proceedings. His allegation that there were breaches of due process of law is also groundless: the fact is that he was given a full hearing, and his objections, including those set out in his letter of 26 October 1978, were thoroughly reviewed and taken into account. Nor was there any abuse of authority, the decision not to renew his appointment being a measure permitted under the Staff Rules. Lastly, there was no breach of his contract of appointment since it was allowed to expire in the normal way, without any reduction in grade, salary rights or seniority.

CONSIDERATIONS:

1. The complainant, who is a national of Uruguay and is now aged about 53, was first employed by the Organization in February 1965 on a fixed-term contract for two years as a medical officer at the rank of P.4 in the post of Country Representative in Haiti. He resigned in May 1967 and in June 1968 took up a new appointment at the rank of P.5 as Country Representative in Panama; this also was on a fixed-term contract. Since then he has held several similar posts, his appointment being extended on several occasions until on 8 December 1978 he was notified that, when it expired on 30 June 1979, it would not be renewed. By the same letter he was informed that he would be relieved of his duties and placed on special leave with full pay as from 15 December next. These are the decisions that are the subject matter of the complaint.

2. The first of them, the non-renewal, is a decision within the Director's discretion and subject therefore only to a limited power of review by the Tribunal. The reason for it, given in the letter of 8 December, was that the position which he is said to have taken "precludes all possibility of the continuation of a fruitful working relationship between yourself and the management". This reason, on the face of it conclusive, is attacked by the complainant on the ground that the decision resulted from personal prejudice on the part of the Director or from incomplete consideration by him of the facts. These grounds, which are taken from Staff Rule 130, fall within the Tribunal's

limited power of review and are such, if they are established, as to authorise and require the Tribunal to quash the main decision not to renew. The Tribunal will deal separately and in its appropriate place with the decision to relieve the complainant of his duties while his appointment was still current.

3. The Director, Dr. Acuña, was elected to his office in 1975. The complainant alleges that from the start the Director displayed prejudice against him. He alleges that the Administration made efforts to diminish the importance of the post he was then holding and also to transfer him to posts of lesser importance; the Administration pleads policy considerations and budgetary constraints. The Tribunal will not review the incidents in detail. While it seems that the complainant was treated with much less sympathy than he had received from the previous Director, the Tribunal does not find in these incidents, looked at by themselves, evidence of prejudice or incomplete consideration.

4. Dr. Acuña's term of office was due to expire on 31 January 1979 and he was standing for re-election. In July 1977, over a year before the 20th Pan-American Health Conference, at which the election would take place, the Government of Uruguay proposed the complainant as a candidate. Five of the candidates, including the complainant, the four others being those nominated by the Governments of Jamaica, Ecuador, Panama and Venezuela, took up a joint position. On 31 August 1978 they sent a cable to the 32 member governments whose vote would decide the election. In this they requested the support of each government "in face of the necessity for a change in the direction" of the Bureau. They said that they were "deeply worried about the consequences of the present confrontation between the authorities and the staff". The most striking of their five specific proposals (the Tribunal will consider later the other four) was a guarantee of "mutual respect between the authorities and the staff based on strict fulfilment of the Staff Rules and Regulations". The Tribunal infers from the dossier that this criticism of Dr. Acuña played a significant part in the election which was held on 27 September 1978. Dr. Acuña was re-elected but only by 18 votes to 14. After the election the representative of the Uruguayan Government was concerned about the possibility of reprisals against the complainant. Several other representatives urged Dr. Acuña to set aside any possible recriminations and bring peace and stability within the ranks of the Secretariat.

5. Article 1 of the Staff Regulations sets out in general terms the duties, obligations and privileges of a staff member. The following paragraphs may be separately noted.

"1.5 Staff members shall conduct themselves at all times in a manner compatible with their status as international civil servants. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status...

1.6 Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Director-General. At no time shall they in any way use to private advantage information known to them by reason of their official position...

1.8 Any staff member who becomes a candidate for a public office of a political character shall resign from the Secretariat."

Staff Rule 110.8 defines "misconduct" as

"1. any improper action by a staff member in his official capacity;

2. any conduct by a staff member, unconnected with his official duties, tending to bring the Bureau into public discredit;

3. any improper use or attempt to make use of his position as a staff member for his personal advantage;

4. any conduct contrary to the terms of his oath or declaration."

6. On 16 October 1978 the Director sent a letter to the complainant in which he said in effect that the complainant's participation in the cable of 31 August made it "of the most urgent necessity to take disciplinary action against you". In the light of Article 1 a staff member who wished to present his candidacy must, the Director said, "resign if he wishes to employ the procedures utilized by you to influence member governments". The letter continues:

"Considering that there are no mitigating circumstances to lessen the gravity of your conduct and there existing no justification for the non-application of appropriate sanctions and termination of your services on the basis of misconduct ... we are hereby notifying you of the charges mentioned above and the action which will be taken in that respect."

The letter concluded by notifying the complainant that he had eight days "to present a reply to these charges".

There are three comments to be made on this letter.

7. The first is that the letter does not call in question the complainant's behaviour as a candidate. It may be assumed therefore that it is quite proper for candidates to solicit support from member governments; it is said by the complainant, and not denied, that the Director was himself doing so. On that footing it must be in order for a candidate to issue what may be called an election address. If he wishes to appeal to the voters on the ground that a change of direction is necessary, he must be free to criticise the existing direction. But may not this be very embarrassing, it may be asked, if one of the candidates is the retiring Director and another is a member of his staff? The answer is that this must be a matter for the Staff Regulations. They might forbid staff members from standing as candidates or restrict their activities if they do stand. But, in the absence of an express regulation, a staff member is entitled to think that he is bound only by those standards of propriety to be observed by the candidates generally; otherwise the electoral processes would be unfair. The contention in the letter of 16 October that the complainant should have resigned is not supported by the Organization's argument in the dossier. No such suggestion had previously been made to him by the Director or anybody else and in the opinion of the Tribunal the office of Director is not "a public office of a political character" within the meaning of Article 1.8. The proceedings after the election, as recorded in paragraph 4 above, do not suggest that any of the 32 electors thought that the complainant had acted improperly. There is indeed no evidence in the dossier that anyone other than the Director himself took that view.

8. The second comment is that Article 1, which is the only article that can be relied on as restricting the complainant's behaviour during the election, describes a general attitude and is not designed to deal with behaviour in particular situations. It is unnecessary for the Tribunal to say more about the application of the Article to the circumstances of this case than that, whether or not the admonitions in the Article were strictly observed, the complainant's signature of the cable of 31 August cannot reasonably be regarded as misconduct of any sort; and the suggestion that it was misconduct so grave as to justify dismissal appears in the circumstances as almost ridiculous. The letter of 16 October does not specify under which of the four heads in the definition of misconduct the complainant's activity is alleged to come. It appears to the Tribunal that the only one which can be thought to be applicable is the second head, conduct "tending to bring the Bureau into public discredit". The complainant contends that the cable was not "addressed to any particular criticism of the Organization, or the governing bodies or the person of the Director" but "was aimed at expressing a desire for the perfecting of the Organization". This is not altogether convincing. The cable is in the opinion of the Tribunal critical of the Director; at the least it implies that his failure to fulfil strictly the Staff Rules and Regulations was the cause of a confrontation with the staff. But criticism of the Director is not necessarily criticism of the Organization and, even if it were, the assumption that an organisation cannot be criticised without being discredited is not maintainable. The second head of the definition of misconduct is not designed to prevent criticism of the Organization; it is aimed against acts by a staff member in his private capacity which are so disgraceful as to bring into public discredit the organisation to which he belongs.

9. In this connection the Administration in its argument relies strongly on the fact that on 5 September 1978 a copy of the cable of 31 August was sent by the complainant to the Committee of the Staff Association. As the Organization rightly contends, this "cannot be justified as part of the electoral process". But neither can it be said to be contrary to Article 1, and without the aid of the Article there is not even a shadowy basis for a charge of misconduct. There can be nothing wrong in the complainant making known to the Staff Committee what issues were being raised in the election, particularly since the principal issue was about staff relations. It is not suggested that the Committee publicised the cable.

10. The third comment is that the letter of 16 October was highly improper and the Director ought not to have sent it. It is described in the Administration's argument as "a mere notification of charges of misconduct". This is a description of what it should have been, not of what it was. The passage quoted in paragraph 6 above is enough by itself to show that the Director had, without hearing what the complainant had to say, made up his mind, not only

that there had been misconduct but also that there was nothing to mitigate the extreme penalty of dismissal.

11. The Director thus entirely disqualified himself from giving a valid decision on the issue of misconduct. He was not, however, required to do so. The complainant, having on 26 October replied suitably to the charge, the Director wrote on 8 December a letter in which he said that "in lieu of any other actions, I have decided to relieve you of all duties and to place you on special leave with full pay as from 15 December 1978 until the expiry of your current fixed-term appointment, i.e. 30 June 1979, and to let that appointment expire on that date". So the attempt to dismiss was dropped. Instead, the Director achieved a result which must have been almost as satisfactory to him as if the attempt had been successful, the only difference being that the Organization had to pay six months' salary for nothing. The question is therefore whether the Director had disabled himself from reaching an unprejudiced decision in the alternative course which he was now pursuing of terminating the appointment by non-renewal.

12. The Tribunal concludes that he had so disabled himself. The reasonable inference to be drawn from his acts is that he strongly resented the fact that the complainant had stood against him in an election in which he, the Director, had only quite narrowly escaped defeat. What was said after the election (see paragraph 4 above) is evidence that his resentment was revealed at the time and noted. The charge of misconduct is so preposterous and the Director's eagerness, before hearing the defence to the charge, to use it as a ground for dismissal is so manifest that resentment is the only explanation. Accordingly the Tribunal cannot view the letter of 16 October as that of a man who would be able to take a detached view of the conduct of the complainant whether in relation to a disciplinary charge or to an assessment of his future usefulness to the Organization. The two decisions in the letter of 8 December are linked and are both defective as vitiated by prejudice.

13. In separate examinations of the two decisions each has been attacked on an additional ground - the decision to place on special leave on the ground that it is based on an incorrect interpretation of Staff Rule 650 and the decision not to renew on the ground that it is based on an incomplete consideration of the facts. The Tribunal will now consider these grounds, since the matters which they bring into consideration are relevant to the relief which the complainant seeks.

14. Staff Rule 650 says: "Special leave with full, partial or no pay may be granted for training or research in the interests of the Bureau or for other valid reasons". The word used is "grant", not "impose". As the Board of Inquiry and Appeal rightly concluded, the "intent is one of granting a petition to a willing recipient". The rule does not give authority to the Director to order special leave for any reason he considers to be valid; the reason must be advanced by the staff member and only then is the Director empowered to judge its validity. The decision to "place you on special leave", as it is put in the letter of 8 December, must therefore be quashed on this ground also. This of course does not mean that the Director has no power to suspend from duty. Such a power is expressly conferred by Staff Rule 1120 pending investigation of alleged misconduct. The Director by his use of Staff Rule 650 was seeking to do illegally what he could properly have done under Staff Rule 1120 if he had not dropped the charge of misconduct.

15. On the larger matter of non-renewal a serious question arises. While a candidate who is standing against an incumbent Director must be free to criticise in moderate language his opponent's record, it may well be argued, as it is in this case, that his proclaimed opposition to the Director who is re-elected may interfere with fruitful co-operation. So an assessment that was objective and unprejudiced might have arrived at the same conclusion as the Director's. Such a conclusion would substantially affect the relief for which the complainant is asking. It is therefore necessary to consider objectively whether in December 1978 there was a reasonable likelihood of non co-operation.

16. When at the hearing of the appeal the Board asked the Administration whether, in alleging the impossibility of a fruitful working relationship, the Administration was relying only on the cable of 31 August, the answer was in the affirmative. In its submission to the Tribunal, however, the Administration relies also on the fact that the complainant did not complete the yearly performance appraisal report which was sent to him on 15 April 1977. On 14 July 1977 the complainant wrote to the President of the Staff Committee asking for his advice in the matter, saying that he had withheld the report "because I consider that my present supervisor, in view of the circumstances we are going through, is probably not in a condition to submit a fair judgment on this issue". The "circumstances we are going through" is a reference to the difficulties mentioned in paragraph 3 above: rightly or wrongly, the complainant felt that already at this time he was the victim of prejudice and that his immediate chief was one of those working against him. The complainant does not appear to have been pressed to complete the report. As evidence of non co-operation the Tribunal does not regard this as at all significant. What is significant is that it is

the best that can be produced from a service of 13 years; and that during this final period of difficulty there is no evidence forthcoming of any failure by the complainant to carry out instructions given to him or any evidence that he was acting halfheartedly.

17. So what is left is the cable and nothing but the cable. The Administration submits "that the cable contained a public declaration of basic disagreement with the Director's application of regional health policies as well as strong criticism of the Administration of the Organization". In the opinion of the Tribunal this is an exaggerated view of it. Generalities about a "change of direction" and "better implementation" are to be expected in a document of this sort. Of the five specific proposals in the cable, the first and fourth are not concerned with policy. There is nothing in the dossier to explain what is involved in the third proposal. The "basic disagreement with the Director's application of regional health policies" boils down to the third proposal's advocacy of decentralisation. Except in the area of staff relations, the fifth proposal, there is no acute criticism. There is of course the implication inevitable in an electioneering document that the writers or one or other of them would order things much better if he was Director. But it is not very uncommon to find subordinates who think that and who are yet giving loyal and co-operative service. As to the fifth proposal, this would certainly in an objective assessment be a factor to be weighed. If the complainant had been concerned with Personnel, it might have weighed quite heavily against him; but he was not, nor likely to be. There has not been demonstrated any point where sympathy might have clashed with duty; or any trait in the complainant's character or exhibited in his record which would have prevented him from accepting in a proper spirit the result of the election. This was what, in his reply to the Director's letter of 8 December, he had in effect promised to do. In a letter to the Director of 15 December he wrote that the position he had taken was as a candidate, that the election was over and that he considered that he could have a fruitful working relationship with the Administration. This letter was not answered.

18. Prima facie it was in the interests of the Organization that the complainant's contract should be renewed. As the Board of Inquiry and Appeal stated, his experience and expertise "may still be a valuable asset to the Organization". It would not be in the interests of the Organization, as the Board also pointed out, that staff members who are free to run for the office of Director should not also feel free to do so without fear of suffering adverse consequences. There was a need to bring peace and stability within the ranks of the Secretariat; this had been emphasised at the Conference. There was the promise by the complainant to co-operate. In the opinion of the Tribunal it would be impossible on any objective assessment of the situation to justify as in the interests of the Organization a decision to pay the complainant for six months for doing nothing rather than to give him the opportunity of making good his promise. Furthermore, the Tribunal considers that on the evidence the high probability is that the complainant would have given useful and loyal service to the Organization for the rest of his career.

19. The complainant asks for the following remedies.

(a) First, reinstatement to a P.5 post under a contract for five years. In adjudicating upon this request the Tribunal has to consider not only the justice of the case but also the practical effect of a reinstatement under existing circumstances. The Tribunal concludes that a reinstatement now would not be in the interests of the Organization.

(b) Second, compensation "based on the amount he would have earned through regular contract renewal". This is not a basis usually taken in cases of non-renewal, for it has always to be remembered that in such a case a complainant has been deprived not of a contractual right but only of an expectation. In the present case, however, the expectation was very solid, being secured by a substantial period of excellent and useful service; and the Tribunal has given its reasons for thinking that, had the complainant's career not been destroyed by an act of personal revenge, it would have continued to the end with equal advantage to himself and to the Organization. In these exceptional circumstances the Tribunal concludes that full financial compensation should be given on the basis claimed. The complainant must support his claim with detailed figures and he must also give credit for any financial gains which he has or could have made from other employment. The complainant asks also under this head "that the wrongful suspension from duty should not affect his pension rights". The Tribunal is not competent to make an order in that form, but the complainant may claim compensation for loss or diminution of pension rights as for loss of salary and emoluments.

(c) Thirdly, the complainant's claim for reimbursement of legal fees should be allowed.

(d) The fourth and fifth heads both in effect claim compensation for moral prejudice over and above the compensation for financial loss. Such a claim is justified by the circumstances of this case. It is not a simple case of

non-renewal. The complainant was the victim of a misconceived charge of misconduct of which the Director pronounced him to be guilty. The letter dropping the charge contained no withdrawal or apology and was composed as if the dropping was an act of lenience; indeed in its reply at paragraph 5.5(d) the Organization states that in dropping the charge the Director took the complainant's seniority into account. The illegal use of Staff Rule 650 made it appear as if the complainant had been summarily dismissed. The letter of 16 October containing the Director's finding of misconduct was not withdrawn until after a recommendation to that effect had been made by the Board of Inquiry and Appeal. By these acts the complainant must have been caused deep distress. On the natural assumption that this course of action was pursued by a Director exercising wisdom and impartiality the interested public would inevitably conclude that the complainant had in some way disgraced himself in his conduct of the election campaign.

DECISION:

For the above reasons,

The complaint is allowed, the Director's decision of 23 November 1979 is quashed and it is ordered:

1. that the complainant deliver to the Organization his claim for compensation with details as indicated in paragraph 19(b) above, that the Organization reply within thirty days and that within that period the Organization pay to the complainant such sum, if any, as under the terms of this judgment it admits to be due, and that the balance, if any, be submitted to the Tribunal for assessment;
2. that the complainant deliver to the Organization an account of legal fees reasonably incurred, that within thirty days the Organization pay to the complainant all such fees as it admits to have been reasonably incurred, and that the balance, if any, be submitted to the Tribunal for assessment;
3. that the Organization pay to the complainant forthwith the sum of US\$20,000 as damages for moral prejudice.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy 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 11 December 1980.

André Grisel
Devlin
H. Armbruster

Bernard Spy