

FORTY-SIXTH ORDINARY SESSION

***In re* ZREIKAT**

Judgment No. 459

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Ibrahim Zreikat on 25 August 1980, the WHO's reply of 14 November, the complainant's rejoinder received by the Registry of the Tribunal on 20 January 1981 and the WHO's surrejoinder of 19 February 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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. The complainant, a Jordanian citizen, was appointed by the WHO on 1 July 1976 as a translator. In several documents, including the personal history form which he himself filled up, he gave 25 March 1918 as his date of birth. The livret de famille issued by the Republic and Canton of Geneva when he married in Geneva in 1953 gave the same date of birth. His one-year contract of appointment was extended to 31 March 1978 and at the time the complainant gave the same date. On 10 November 1977, however, he informed the Personnel Office that his date of birth was wrong and he supplied a copy of a birth certificate provided by a Greek Orthodox church in Jordan on 10 October 1977 giving his date of birth as 25 March 1920. The Personnel Office amended his file accordingly. On 15 March 1978 his appointment was extended to 31 March 1980, when he would have reached the retirement age of 60. On 29 May 1979 he asked the Personnel Office to correct his date of birth again providing as evidence a second birth certificate from the same church registrar as before. The new certificate showed his date of birth as 25 March 1925 and his date of baptism as 25 May 1925 instead of 17 June 1920. He later provided a birth certificate from the Ministry of the Interior in Amman and a certificate of the Swiss social insurance authorities showing his date of birth as 25 March 1925. On 14 December 1979 and again on 12 February 1980 the Chief of Personnel informed him that no further change would be made. The complainant appealed to the headquarters Board of Inquiry and Appeal. The Board recommended dismissing the appeal and on 28 May 1980 the Director-General endorsed that recommendation. It is the decision of 28 May 1980 that is now impugned.

B. The complainant states that the WHO would have acted properly had it simply rejected his second application for correction of his date of birth. What was improper was to reply that it would hold consultations on the matter and that 1920 would continue to be regarded as the year of his birth 'in the absence of any evidence that the competent official authorities of the country of your nationality recognise 1925 as your date of birth' and later, when he had supplied such evidence, to refuse to make the second correction. The WHO's stand is illogical because it accepted as valid the first certificate from the church, but not the second one. It is bound to accept, and not competent to pass judgment on the official evidence he has submitted, namely: a certificate from the Ministry of the Interior of Jordan to the effect that the competent court of his native town of Karak had declared his date of birth to be 25 March 1925; (b) a letter from the Permanent Mission of Jordan in Geneva confirming that date; and (c) his Jordanian passport, issued on 16 April 1980 and showing 1925 as the year of his birth. To explain the unusual circumstances of his case he relates that he studied law in Syria from 1942 until 1946. In 1946 he took a degree and came to live in Switzerland. Before that he had spent ten years doing primary and secondary school studies and one year teaching. Had he been born in 1918 he would not have begun school until the age of 12, and that is obviously impossible. The mistaken date of 1918 was due to a fictitious entry which was made in his first Jordanian passport to enable him to go to Syria to carry out higher studies since the minimum age for a passport was 18.

C. In his claims for relief the complainant invites the Tribunal to quash the decision of 28 May 1980 and order the WHO to recognise that his real date of birth is 25 March 1925 and accordingly: (1) to reinstate him in his post and,

should this be impossible, award him financial compensation for the loss of salary caused by a groundless decision; (2) to guarantee his rights to a pension from the United Nations Joint Staff Pension Fund; (3) to award him compensation for the moral injury caused by the WHO's incorrect attitude; and (4) to award him costs.

D. In its reply the WHO observes that in his own writing the complainant attested to the accuracy of the date of his birth when he was originally appointed, and again when the date was corrected for the first time. When he was appointed he knowingly gave a false date, 1918. When the first correction was made he must have known that the new date - 1920 - did not fit any better the history of his life as set out in the complaint. He is estopped by his former bad faith from making any further claim now. Even if the error was made in good faith, his explanations are inconsistent and implausible. If he was born in 1925 he was 17 ½ years old when he went to Syria and therefore only six months below the minimum age for a passport. Why then did he have to make out that he was seven years older? Under the Ottoman Civil Code, which was then in force in Jordan, and the passport regulations he reached the age of majority at 15 years and was entitled to a passport from the age of 16. The WHO is not questioning the correction by the Jordanian authorities, but it believes that they were not aware of the successive changes in the certificate from the Greek Orthodox church and relied merely on the last of those changes. It appears from an inspection of the church register which the Organization had carried out that the register is badly worn and no trace could be found of the birth or the baptism of the complainant between 1918 and 1925. The WHO therefore invites the Tribunal to dismiss the complaint as unfounded.

E. In his rejoinder the complainant states that when he was born there was no registration of births in his country. Declaration of a birth was not compulsory and was made to the religious authorities, so that many do not know the exact date of their birth. He learned somewhat belatedly that he could get a correction of his birth certificate from the Jordanian Ministry of Health or the religious authorities. That 1925 is the true date is borne out by the fact that the date of birth of his foster brother is confirmed as 1925. The WHO has failed to answer his main objection, namely that, having asked for official evidence, it was bound to accept it when produced. The WHO is mistaken in relying on the fact that the Staff Regulations are silent on the subject of date of birth, since such silence cannot be detrimental to the interests of a staff member. International organisations are under a duty to respect the decisions of national authorities and to show proper flexibility in taking account of the great differences between member States. The WHO's charges of bad faith are irrelevant and in any case unfounded. It is bound to accept the date of birth given by the competent Jordanian authorities. Why, instead of rejecting his application outright, did the WHO not explain to him in what respects it considered the evidence to be unsatisfactory? The Swiss authorities rightly accepted the decision of the civil tribunal of Karak in Jordan. The WHO's attitude towards the church certificates is illogical: for no reason whatever it regards the first one as valid and the second as not. The complainant accordingly presses all his claims for relief.

F. In its surrejoinder the WHO, answering the complainant's contention that he has provided proof, states that it will correct a date of birth only very exceptionally - and never twice - provided that the staff member proves to its full satisfaction that an error was made and the correct date of birth can be established with sufficient certainty. Neither of these conditions has the complainant fulfilled. If he is right, then he knowingly misinformed the WHO in 1976, and in November 1977, when he made his first application for correction, he again gave a date of birth which he knew to be false. Lastly, even if, as he maintains, he did not know that he could get a passport at the age of 16 years and his teacher misinformed him that he had to be older, it is inconceivable that he had to add seven years to his age. It is quite clear from all the circumstances that the true date of his birth is 1918 and not 1925.

CONSIDERATIONS:

1. Upon receiving an appointment a staff member is required to give the date of his birth. The date so recorded in the contract of appointment may affect his rights and obligations in a number of ways; certainly it settles the date on which he is due to retire. The date of birth is therefore warranted by the complainant as correct for all the purposes of the contract.

2. There are alternative possibilities in this case.

Either the view is taken that the contract may be amended only by common consent of the parties, and the Tribunal may not require any amendment of the contract. In that case, since the Organization has refused to take account of the third date given by the complainant, the Tribunal may not interfere.

The alternative view is that the Tribunal may have the parties make the amendments required by the application of

the principle of good faith, but the Tribunal finds that the complainant could not rely successfully on the principle since in any case, when the first correction of date was made, he ought to have taken every precaution to determine the exact date of his birth.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, 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, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner