

Registry's translation, the French text alone being authoritative.

FORTY-NINTH ORDINARY SESSION

In re KARAKALOS

Judgment No. 513

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Polychronis Karakalos on 23 September 1981, the WHO's reply of 22 December 1981 and the letter of 12 February 1982 from the complainant's counsel to the Registrar of the Tribunal stating that the complainant did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Articles 7, 10, 11.1 and 12.1 of the Rules of Court, WHO Staff Regulations 4.1 and 4.2 and WHO Staff Rules 110.8, 410.1, 1075.1, 1110.1, 1120 and 1130;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a Greek citizen, joined the staff of the WHO in Geneva on 1 March 1980 under a one-year appointment as a messenger. On 26 November 1980 26 staff members entrusted him with 61,000 Swiss francs of their own money with instructions to convert it into French francs at the best prevailing rate of interest. Instead the complainant gambled away the entire amount at the Casino at Divonne-les-Bains, in France. The staff members gave him until 2 December to repay them. On that date they reported him to the WHO and to the police of Geneva and he was arrested. On 9 December the Chief of Personnel informed him that he was suspended from duty in accordance with Staff Rule 1130, and on 30 December that he was dismissed for misconduct in accordance with Rules 110.8 and 1075.1. On 4 March he was convicted of embezzlement and given a suspended sentence of 15 months' imprisonment and five years' expulsion from Swiss territory. He asked the Director-General to reconsider the decision of 30 December 1980, but it was confirmed on 16 March 1981. On 30 March he went to the Board of Inquiry and Appeal. On the Board's recommendation the Director-General rejected his appeal on 25 June, and that is the decision he impugns.

B. The complainant observes that the decision was taken in accordance with Rule 110.8.2, which defines "misconduct" as "any conduct by a staff member, unconnected with his official duties, tending to bring the Organization into public discredit". He contends that his conduct did not bring the WHO into public discredit. Since the sentence of imprisonment was suspended he is free to resume employment with the WHO, and that indeed is the only way open to him to repay the sums he lost, since he has no financial means of his own and the grant of his application for a Swiss work permit is unlikely. He accordingly invites the Tribunal to quash the impugned decision.

C. In its reply the WHO contends that if what the complainant wants is reinstatement his claim is not admissible since his one-year appointment was to expire anyway on 28 February 1981. If the Director-General's decision were quashed the only effect would be to reinstate him for the remainder of his appointment. If, however, what he is claiming is a new appointment the WHO is obviously under no obligation to offer one, and its refusal to do so falls within the Director-General's discretion. Besides, the complainant cannot challenge the dismissal in the context of a dispute over his claim for a new appointment. The complaint is therefore irreceivable. Moreover, it is devoid of merit. Rule 1075.1 reads: "A staff member may be dismissed for misconduct as defined in Rule 110.8 and subject to the notification of charges and reply procedure required by Rule 1130 The procedure set out in Rule 1130 was fully respected. The complainant committed misconduct within the meaning of Rule 110.8. The penalty was proportionate, the lesser sanctions permitted under Rule 1110.1 being inappropriate for a criminal offence. Nor was the WHO obliged to await his conviction: the facts were not contested and the WHO had a right to dismiss him forthwith. Besides, he was in prison and so unable to serve it. Lastly, there are no reasons other than his own interests why it should reappoint him. The Director-General is required to bear in mind the WHO's interests, and

Staff Regulation 4.2 and Staff Rule 410.1 refer to the "necessity of securing the highest standards of ... integrity" in the staff.

CONSIDERATIONS:

The preliminary application

The Tribunal sees no reason to allow the complainant further time in which to supplement his submissions nor to order him to appear in person nor to hear witnesses. The merits of the complaint may be fully examined on the written evidence, and the Tribunal accordingly disallows the complainant's preliminary application in accordance with Articles 10, 11.1 and 12.1 of the Rules of Court of the Tribunal.

The substance of the complaint

Under points 6 and 11 of the complaint form filed as required by Article 7 of the Rules of Court, the complainant seeks the quashing of decisions taken on 3 June and 25 June 1981. The former is the report of the headquarters Board of Inquiry and Appeal. The complainant had filed an internal appeal against the WHO's refusal of reinstatement after his dismissal for misconduct. The Board recommended rejecting his appeal, and in the second decision, on 25 June 1981, the Director-General decided to accept that recommendation.

It is only the latter decision, the final one, which in accordance with Article VII of the Statute, may be impugned before the Tribunal.

The merits

The complainant was dismissed for misconduct under Staff Rule 1075.1. The Tribunal holds that the dismissal was decided on in full compliance with the procedure laid down in Staff Rule 1130, to which Rule 1075.1 expressly refers.

To satisfy Rule 110.8.2, to which Rule 1075.1 also refers, it is not necessary for the Organization to prove that the conduct of the staff member has actually brought the Organization into public discredit. The section in which the rule appears is headed "Standards of conduct for staff members" and is concerned with the standards with which the staff member must comply irrespective of whether his non-compliance with them is or is not publicly known. If the Organization kept on its staff persons whose standards of conduct covered embezzlement, the credit of the Organization might well suffer. So what the complainant did tended to bring the Organization into discredit and it is therefore immaterial that he was dismissed before his conviction for embezzlement was publicly known.

Moreover, the facts which led to the complainant's dismissal may be correctly treated as misconduct. Although not committed in his official capacity, his act came within the ambit of Staff Rule 110.8, which is to be construed in the light of Article 4.2 of the Staff Regulations, that is, with due regard to the "standards of efficiency, competence and integrity" expected of a staff member.

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. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

(Signed)

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.