FIFTY-FIRST ORDINARY SESSION

In re RAPOPORT

Judgment No. 584

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Leonard Rapoport on 11 March 1983, the PAHO's reply of 3 June, the complainant's rejoinder of 18 August and the PAHO's surrejoinder of 3 October 1983;

Considering the application to intervene filed by Mrs. Sara Espinola on 28 September 1983 and the PAHO's observations thereon of 26 October 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, PAHO Staff Rules 1040, 1050 and 1230.8 and WHO Manual sections II.9.250, 260, 270, 280, 320, 340 and 360;

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. Born in Buenos Aires, the complainant joined the PAHO's Pan American Zoonoses Center, known as CEPANZO, at Ramos Mejía in 1975 on a fixed-term appointment as a senior clerk and assistant in statistics at grade G.5. His appointment was renewed each year and at the material time was to expire on 31 December 1980. In November 1979 recruitment was stopped for all vacancies in the General Service category at CEPANZO. On 30 September 1980 the Directing Council of the PAHO decided to cut CEPANZO's budget. A working group set up at headquarters in Washington by the Executive Committee, reporting on 31 October, recommended abolishing 22 posts, including the complainant's. A joint working group appointed by the Director and comprising staff representatives studied the recommendations and, reporting on 7 November, found no alternative, there being no post similar to the complainant's. His appointment was accordingly terminated on 10 December 1980 under Staff Rule 1050 ("Abolition of post and reduction in force"). Under Rule 1230.8 he appealed, in vain, to the Area Board of Inquiry and Appeal and then to the PAHO Board of Inquiry and Appeal in Washington. On a recommendation made on 5 October 1982 by the majority the Director rejected the appeal in a decision of 3 December 1982 which the complainant received on 13 December and which he impugns.

B. The complainant submits that the PAHO acted hastily and did not follow properly the rules on reduction in force. (1) Under Manual section II.9.250 "the authorised number of posts may be reduced because the available funds have been reduced". PAHO abolished more posts than the cuts warranted. The savings were to be US$1,368,000 but some $876,000 was saved anyway by not recruiting for 24 vacancies, and so 14 of the 22 abolished posts could have been spared. (2) Under 260 "... offices must ... determine which posts are to be abolished", and other matters. The decisions were in fact taken in Washington. The purpose of having the local office decide is to make sure that all factors -- and they are best known on the spot -- are borne in mind. (3) There was also breach of 270: determining the posts to be abolished falls to "the officer responsible for the operation of the office". (4) 280.1 says: "Staff in posts subject to local recruitment compete only with similar staff in the same commuting area." Since there is also in Buenos Aires an Area Office of PAHO and the complainant's post was subject to local recruitment, all similar posts in the "commuting area" should have been taken into account. (5) 340 says that satisfactory employees must, if possible, be offered reassignment. None of the 24 vacancies was offered to the 22 staff made redundant. (6) Under 360, redundant staff must be preferred to outside candidates for suitable vacancies for twelve months after termination. New posts were advertised and filled within a year, and none of the 22 was offered one. (7) The classification of posts should first have been reviewed. In 1977 a classification committee recommended reclassifying his post G.6; yet nothing was done. If his post had been regraded G.6 his employment might have been spared. He seeks reinstatement and back-pay, or adequate financial compensation, and also damages, costs and any other relief the Tribunal thinks fit. He asks that "relief be granted to all 22 staff members at CEPANZO who were victims of illegal reduction-in-force".

C. The PAHO replies that it had to abolish many posts, mainly because of an unexpected rise in running costs, and to carry out policy decisions by its Directing Council. Under Article II(5) of its Statute the Tribunal is not competent to review policy. The complainant could have been terminated under Rule 1040: "Temporary appointments ... shall terminate automatically on the completion of the agreed period of service...", or even 1050.1: "The temporary appointment ... for a post of limited duration may be terminated prior to its expiration date if that post is abolished." Aware of the hardships the cuts would cause, however, the Director chose to apply the rules on reduction in force (Rule 1050.2, 3 and 4 and Manual section II.9) although they normally apply only "when a post of indefinite duration, which is filled, is abolished" (1050.2). The complainant had a post "of limited duration", CEPANZO being a project, established by agreement with a government and receiving contributions from it, and his post a "project" one, which no one may expect to continue. He settled for an indemnity under 1050 -- $9,047 -- which he would not have got otherwise, and cannot go back on that. In any event, there was neither breach of the rules nor defect in the Director's exercise of his discretion. The procedure safeguarded the staff's interests: there were, for example, PAHO and CEPANZO staff representatives in the joint working group. Both knew of the vacancies and indeed recommended abolishing some of them. There could be no comparison of the complainant's seniority and performance with those of other officials, since, as the joint group found, there were no similar posts in the same category. For the same reason no reassignment was possible under II.9.340. Argument (7) in B above is irrelevant because there is no claim relating to reclassification. The PAHO invites the Tribunal to dismiss the complaint as devoid of merit.

D. The complainant develops his case in his rejoinder. The failure to reclassify CEPANZO posts is relevant since some of the terminated staff, and particularly he, might have been spared. The complainant had had a contract for over five years and therefore had a "post of indefinite duration" within the meaning of Rule 1050.2. It is absurd to say he had no expectation of continuity. CEPANZO posts which have existed for years are not "temporary" whether they come under a project or not. The Tribunal's case law supports this view. If unclear, the rules should be interpreted in the official's favour. The rules on reduction in force applied, and they were not respected. There is no evidence of lack of a post similar to the complainant's in the commuting area: in fact the Administration erred in treating his as unique. That the Director was carrying out PAHO policy did not relieve him of his duty to look for alternative employment. Acceptance of an indemnity does not discharge the Administration of its duty to apply the rules fairly. The joint working group merely lent legitimacy to the action it had predetermined.

E. In its surrejoinder the PAHO enlarges on its arguments and answers the rejoinder. In particular it maintains that the reduction-in-force procedure, though not strictly applicable, was correctly and fairly followed. Careful thought was given to each abolition of post by two working groups including elected CEPANZO staff representatives, who unanimously endorsed the recommendations. The duties of a senior clerk and assistant in statistics were not comparable to those of any other post in the area. The complainant was given ample notice and generous compensation. The decision was a discretionary one and shows none of the defects which would entitle the Tribunal to set it aside. The claims are devoid of merit.

CONSIDERATIONS:

1. The complainant seeks relief by way of an order that the PAHO reinstate him in his former position as senior clerk/statistics assistant with retroactive salary from December 1980 until the present, or, in the alternative, monetary compensation; compensation for moral and professional injury and for emotional stress, and costs.

2. The complainant was employed by the PAHO on successive fixed-term contracts from 3 February 1975 as a senior clerk/statistics assistant, grade G.5, at CEPANZO, Ramos Mejía, Argentina. As a result of budgetary considerations, his post, 4281, was terminated on 10 December 1980.

The applicability of Staff Rule 1050.2

3. The complainant contends that the termination of his employment was illegal as being in contravention of Rules 1050.1 et seq. and Manual sections II.9.250 et seq. The PAHO, on the other hand, contends that inasmuch as the complainant was not the holder of a post of indefinite duration, Rule 1050.2 does not apply to him. Having considered the submissions of the parties, the Tribunal has come to the conclusion that Rule 1050.2 applies for the reasons set out in Judgment No. 581.

The merits

4. As to the other issues raised in these proceedings, the complainant has been unable to show that he has been deprived of the benefit of the relevant Staff Rules and Manual provisions. The complaint therefore fails for the reasons set out in Judgment No. 581.

The application to intervene

5. Since the complaint is dismissed, so too is the application to intervene, and there is no need to consider whether it is receivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable Lord Devlin, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Devlin

William Douglas

A.B. Gardner

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