

FIFTY-SECOND ORDINARY SESSION

In re SHEFFEY

Judgment No 601

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Pan American Health Organization (PAHO) (World Health Organization) by Mr. Frank Sheffey on 7 April 1983, the PAHO's reply of 13 May, the complainant's rejoinder of 18 August and the PAHO's surrejoinder of 6 September 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal and PAHO Staff Rules 380.7, 1040, 1050 and 1230.8;

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 United States citizen, joined the PAHO in 1973. He was assigned to Georgetown in Guyana. In 1980 he held P.3 post 3724 as administrative officer. By a telex of 22 April 1981 the PAHO informed him that his contract would terminate on the date of its expiry, 31 July 1981, in accordance with Staff Rule 1040, on "Completion of temporary appointments", unless another assignment was found. By a letter of 4 June the Chief of Personnel confirmed his termination, and he left on 31 July 1981. On 9 June 1982 his counsel wrote to the Chief of Personnel saying that his contract had been wrongly terminated under Rule 1040 because his post had been wrongly terminated under Rule 1040 because his post had been abolished and the correct rule was 1050, on "Abolition of post and reduction in force"; he therefore claimed payment of the indemnity due under 1050.4, observing that under 380.7 such a claim might be made up to twelve months from the date when payment would have been due. The Chief of personnel rejected the claim in his reply of 28 June 1982 and on 23 August the complainant appealed to the Board of Inquiry and Appeal. The Board reported on 12 November. The majority thought that the claim was time-barred, but the consensus was to recommend negotiating with the complainant. In a letter of 7 January 1983 to the complainant, which is the decision he challenges, the Director said that he accepted the conclusion of the majority that the case was time-barred.

B. The complainant submits that for want of funds his post had to be abolished on 31 July 1981 and that if it had not been he would have kept it. He is therefore entitled to the indemnity for abolition of post prescribed in 1050.4. It is immaterial that his fixed-term appointment expired at the same time as his post was abolished. The Tribunal has in previous cases rejected the argument that 1050 does not apply in such circumstances. The claim was not time-barred, having been submitted on 9 June 1982 or under eleven months from the date on which the indemnity was due, i.e. within the twelve-month limit set in 380.7. It was only when he was informed that that claim was refused that the sixty-day time limit for an appeal set in Rule 1230.8 started to run, and he respected it. He is not challenging the actual termination, against which an appeal would indeed be time-barred. He seeks payment of the indemnity, interest at 12 per cent a year from the date on which it should have been paid, and costs.

C. The PAHO replies that the complaint is irreceivable. The complainant failed to follow the internal procedure for appeal against his termination under Rule 1040. All he challenges is the consequences of that decision, but his internal appeal on those grounds was time-barred under 1230.8, and he has therefore failed to exhaust the internal means of redress. To claim the 1050.4 indemnity he has to show that his termination under 1040 was incorrect. As he failed to challenge it in time, the decision of 4 June 1981 holds good, and he is not entitled to any more than was due on account of a termination under 1040. His reliance on 380.7 is mistaken: the purpose of the rule is merely to establish a period of limitation for claims based on an already acknowledged right, it does not enable an official to evade the time limit for appeal against an administrative decision. The complaint is in any event devoid of merit. The complainant held a post under a project for the development of health services in Guyana. Project posts carry no expectancy of constant renewal since the project may be altered or ended as required. Since the complainant was serving under a temporary appointment on a post of limited duration he was correctly terminated

under 1040. Rule 1050.1 says: "The temporary appointment of a staff member engaged for a post of limited duration may be terminated prior to its expiration date if that post is abolished." Thus 1050 would have applied only if the complainant's appointment had been terminated before expiry. The Tribunal's earlier ruling related to the applicability of 1050.2, which covers posts of indefinite duration, whose existence does not depend on project requirements.

D. In his rejoinder the complainant maintains that the complaint is receivable: there is nothing in the wording of 380.7 to suggest that the right to an indemnity must be established within a shorter time limit than that which governs the lodging of the actual claim. As to the merits, he submits that his post was not of limited duration since he had held it for eight years and did have expectancy of constant renewal. His termination therefore properly came under 1050.2 and the Tribunal's previous ruling is relevant: the consequences of abolition of his post must be determined by that rule. In any event, where the rules are not entirely clear equity requires giving the complainant the benefit of the doubt.

E. In its surrejoinder the PAHO argues that 380.7 covers no more than payments due because of an obligation arising under some other rule. The complainant should have appealed within the time limit against the decision to terminate his appointment under 1040. His post was always of limited duration -- however long it may in fact have lasted -- since continued employment in project posts can never be guaranteed, their existence depending on government needs and often on government funds. The only purpose of 1050.1 is to provide compensation for the unexpired part of the contract period. In this case the contract actually expired, and termination under 1040 was therefore the correct procedure.

CONSIDERATIONS:

1. The following sections of the Staff Rules are relied on in this case.

Section 3 is headed "Salary, Post Adjustment, Allowances and Grants". It does not include specifically the termination indemnities which are provided by section 10. But Staff Rule 380.7, the last in the section, provides: "The Organization will not accept a claim in respect of an allowance or entitlement of any kind that is submitted beyond twelve months of the date when the initial payment would have been due."

Section 10, entitled "Separation from Service", deals with the various ways in which an appointment may be terminated. Staff Rule 1040 provides that temporary appointments shall terminate automatically on the completion of the agreed period of service; the rule makes no provision for any indemnity. Staff Rule 1050 provides for the termination of such appointments prior to the expiration date if the complainant's post is abolished; this rule provides for an indemnity.

Section 12 is entitled "Appeals". Staff Rule 1230.8.1 provides that no appeal shall be brought until the action complained of has become final: "An action is to be considered as final when it has been taken by a duly authorized official and the staff member has received written notification of the action". Staff Rule 1230.8.3 provides that an appeal must be brought within sixty days after receipt of such notification.

2. The complainant was employed by the Organization for what was described by the Organization as "more than eight years of dedicated service" in a hardship duty post at Georgetown, Guyana, in a project in which the Organization was co-operating with the Government of Guyana. His appointment, unless renewed, was due to expire on 31 July 1981. On this date the project was nearing its end. The complainant was the Administrative Methods Officer in the project. On 20 February 1981 the Project Director wrote that the complainant's specific responsibilities should be completed by June 1981 and that there seemed to be no necessity for him to continue thereafter on a full-time basis. On 26 February the Country Representative advised that his position should not be filled from 1 August 1981. On 4 June the Organization wrote to the complainant in Georgetown to confirm his termination, "effective 31 July 1981 in accordance with Staff Rule 1040". It is not disputed that the letter was a "final action" within the meaning of Staff Rule 1230.8.1. The Board of Inquiry and Appeal attributed the complainant's failure to appeal within sixty days to "an apparent lack of knowledge of Staff Rules".

3. About a year later the complainant consulted a lawyer in Washington with the result that on 9 June 1982 a claim was made for an indemnity under Staff Rule 1050. A claim of this form cannot possibly succeed. An indemnity is payable under Staff Rule 1050.4 to "a staff member whose appointment is terminated under this Rule". Rightly or wrongly, wrongly as the complainant contends, the appointment was terminated not under Staff Rule 1050 but

under Staff Rule 1040. If Staff Rule 1040 was not the correct rule to apply, the termination would be unlawful and the complainant would have a claim for compensation for the unlawful termination of his appointment. No such claim has been made, doubtless because if it had been made in June 1982, it would clearly have been irreceivable, not having been made within sixty days of the decision to terminate.

4. For the same reason Staff Rule 380.7 on which the complainant relies as allowing him twelve months within which to claim an indemnity, is of no help to him. Whether brought within two months or twelve, the claim must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 12 April 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner