

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

FIFTY-THIRD ORDINARY SESSION

In re FARGALY

Judgment No. 613

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Hassan Fargaly on 28 July 1983, the WHO's reply of 31 August, the complainant's rejoinder of 4 October and the WHO's surrejoinder of 3 November 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 440.1 and 3, 460 and 1310.2;

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 is a citizen of the United States. In 1981 he went from his home in the state of New York to visit Alexandria, in Egypt, where he was born. There he approached the Regional Office of the WHO and accepted a short-term appointment as a technical assistant in statistics in the General Service category. His appointment was extended. In March 1982 he applied for a vacancy advertised in the Egyptian press for a senior assistant in statistics. On 8 June the Personnel Officer sent him an offer of a one-year appointment which, he explained in a covering letter, "would be made on the basis of local recruitment". He signed notification of his acceptance on 11 June, but on the 14th he wrote claiming the benefits of non-local recruitment. The Personnel Officer refused, and he appealed to the Regional Board of Appeal. In its report of 29 September the Board recommended rejecting his appeal, the Regional Director did so, and he went to the headquarters Board of Inquiry and Appeal on 9 November. In its report of 26 May 1983 this Board unanimously recommended rejection and by a letter of 13 June the Director-General informed him that he accepted the recommendation. That is the decision he is challenging.

B. He contends that the WHO failed to apply Staff Rule 460: "At the time of appointment of a staff member, the Organization shall determine, in consultation with him ... his residence prior to appointment, for purposes of establishing entitlements under these Staff Rules. Unless there are reasons to the contrary, and except as provided by Rule 1310.2, the residence shall be determined to be the place in the country of the staff member's nationality where he was residing at the time of appointment..." Rule 1310.2 reads: "All posts in the general service category are subject to local recruitment and, therefore, shall be filled, as far as possible, by persons recruited in the local commuting area of each office. The recognized place of residence for such locally recruited persons, irrespective of their nationality ... shall be ... the place where the office concerned is located." But, says the complainant, 1310.2 does not apply since when appointed he was resident in the United States and therefore not "recruited in the local commuting area". There being no definition of local recruitment in the rules, it is the place of residence which should determine whether recruitment is local or not. According to Rule 440.3 the contract of appointment arises when the offer of appointment is accepted. It was only the Personnel Officer's covering letter of 8 June which spoke of "local recruitment", and that letter does not form part of his contract. He invites the Tribunal to decide that for the purpose of establishing his entitlements under the rules the place of his residence is in the United States, and that he was internationally recruited. He claims 4,000 United States dollars as costs.

C. In its reply the WHO observes that its policy is to grant non-local status to General Service category staff only if recruited from outside the area of the duty station; those who are living in the area, even temporarily, get local status. This is reflected in 1310.2, which also applies to short-term staff. When the complainant joined the WHO he was recruited locally since his contract said that the provisions on travel allowance did not apply: they would have done if he had been recruited in the United States. When his short-term appointment was turned into a fixed-term one his status did not change. In any event the post had to be filled by local recruitment, and he was not recruited

in the United States. His local status was made clear in the Personnel Officer's letter of 8 June 1982, which formed part of his contract since under Rule 440.1 the "offer of appointment" includes "information on the proposed appointment". That he would be locally recruited was clearly indicated by the WHO at the time, and he accepted the offer without reservation on that understanding. The WHO cites cases in which the Tribunal rejected similar claims and invites it to dismiss the complainant's.

D. In his rejoinder the complainant submits that it is not at all clear he was recruited locally when he joined the WHO: that could not be deduced from the contract's saying travel provisions did not apply. All that that meant was that he could not go home at the WHO's expense before taking up his appointment. Even if the Personnel Officer's letter were part of his contract, it would have no effect on any of his previous appointments, and he claims non-local status from 29 July 1981. Rule 460 says that the WHO must consult him on the place of his residence; it never did so. The cases cited by the WHO related to FAO officials and are quite different.

E. In its surrejoinder the WHO submits that the initial terms of appointment were perfectly clear. In any event the complainant is challenging a decision relating to his new appointment. Rule 460 applies only if recruitment is non-local. The material issue in the previous cases is the same.

CONSIDERATIONS:

1. The complainant is challenging the Director-General's final decision of 13 June 1983, made on the headquarters Board's recommendation of 26 May, to dismiss his internal appeal of 9 November 1982.

The material issue is whether, as required by Article II, paragraph 5, of the Statute of the Tribunal, that decision was in breach of the terms of the complainant's appointment or the Staff Regulations.

The complainant's case is that the rejection of the claim advanced in his letter of 14 June 1982 and the decision to declare him locally recruited were in breach of the relevant provisions of the Staff Regulations.

2. On the strength of the findings set out below the Tribunal holds that there was no such breach.

The complainant was locally recruited while he happened to be on a visit to Alexandria and at the outset he was granted a short-term appointment for two months as a technical assistant in statistics in the General Service category of staff. He was granted, on the same terms, a further appointment which was extended on 2 March and then on 3 May 1982.

The WHO advertised a vacant post for a technical assistant in statistics, the complainant applied for it on 3 May 1982, and he was offered, and signed on 11 June, a fixed-term appointment for one year.

On 8 June the Personnel Officer, writing to say he was offered the post, declared: "Your appointment would be made on the basis of local recruitment and by conversion of your temporary contract from 29 July 1981."

The text of a further letter of 25 June from the Personnel Officer also shows that it had been explained to him on several occasions before he signed the offer on 11 June that the appointment would be "made on the basis of local recruitment".

What was the effect of the contract of 11 June 1982? As from 29 July it converted into a fixed-term appointment the short-term one which had begun on 23 November 1981 and been extended on 2 March and 3 May 1982. The contract of 11 June specifies that the appointment is made "by conversion of the short-term contract with effect from 29.7.1981 (Man.II.5.480)" and that his allowances shall be those "applicable for all staff members in the General Service category".

Conversion of a short-term into a fixed-term appointment is provided for in WHO Manual provision II.5.730, which applies to this case and which reads: "If a short-term staff member or consultant, in the course of an appointment made under Staff Rules 1320 or 1330, is offered and accepts a fixed-term appointment, the Organization may convert the short-term appointment as described below".

Thus the contract of 11 June converting the original, extended, appointment bears out the complainant's status as a locally recruited member of the General Service staff.

3. On receiving the letter of 8 June offering appointment to the post and stating on what basis he was to be recruited, the complainant did not challenge the reference to local status. Nor did he raise the question when he signed the contract on 11 June, although he did comment on another matter. At the time of signing he was aware of the Organization's position that he had local status. Yet he made no objection; it was not until after the contract had come into force that he submitted his claim of 14 June which has culminated in the present complaint.

In the light of the foregoing the Tribunal finds that the contract of 11 June 1982, converting the earlier contracts and their extensions, maintained the local status he had held thereunder, that he was aware of that throughout the period preceding the conclusion of the contract of 11 June, and that at the time he expressed no objections or reservations on the matter.

4. Nor was it in breach of Staff Rule 1310.2 to grant the complainant local status. Indeed on the facts there was no text which required the Organization to allow him non-local status.

The rule reads: "All posts in the general service category are subject to local recruitment and, therefore, shall be filled, as far as possible, by persons recruited in the local commuting area of each office. The recognized place of residence for such locally recruited persons, irrespective of their nationality and of the length of time they may have been in the area, shall be determined as the place where the office is located."

The Tribunal holds that the rule was correctly applied. To reach that conclusion there is no need to dwell at length on the meaning of the term "persons recruited in the local commuting area of each office". The construction put on the provision by the WHO was a literal one which took due account of the context, the purpose of the rule and all the material facts, and the Organization acted correctly.

The rule indeed reflects the criteria for recruitment set by the Executive Board of the WHO in January 1979 on a proposal submitted to it by the Director-General in document EB/63/48, Annex 8, which reads:

"Non-local status is granted only to staff members of the general service category who are actually recruited outside the area of the official station. Persons residing in the area of the official station, even temporarily, are to be recruited as local staff. This change is also made to conform to the implementation of the same Joint Inspection Unit recommendation by the United Nations Office at Geneva..."

That the complainant is a United States citizen and has lived in the United States is no bar to granting him local status since he was recruited in Alexandria and had been living there since July 1981, when he joined the WHO under the various contracts of appointment and their extensions, which stated that he was locally recruited. There is nothing in WHO rules to oblige the Organization to grant non-local status to someone recruited in the General Service category merely because he is a citizen of a country other than that of the duty station or has been resident in the country of his nationality.

Lastly, Staff Rule 460 does not cover cases governed by Rule 1310.2, the material provision in this case.

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 Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1984.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

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