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

FIFTY-THIRD ORDINARY SESSION

In re SIKKA (No. 3)

Judgment No. 622

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint dated 17 August 1983 and filed against the World Health Organization (WHO) by Mr. Ram Dyal Sikka, the WHO's reply of 18 October, the complainant's rejoinder of 11 January 1984 and the WHO's surrejoinder of 23 February 1984;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, WHO Staff Rules 625, 1230 and 1310.2, WHO Manual provisions II.6.70, 75 and 90 and provision II.5.110 of the Handbook of the South East Asia Regional Office of the WHO;

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, an Indian official of the WHO, is employed in its Regional Office for South East Asia, known as SEARO. WHO Staff Rule 625 reads: "When authorized by the appropriate supervisor a staff member may be required to work overtime[(1)] and may be compensated as follows subject to procedures established by the Director: ... 625.2 Staff in posts subject to local recruitment shall be given compensatory leave or monetary compensation." By circular No. 4/81 of Manual provision II.6.70 defines "overtime" as "time worked in excess of 8 hours a day or 40 hours a week". 31 December 1981 the Regional Director of SEARO announced his decision to amend provision II.5.110 of the SEARO Handbook to lay down the conditions on which overtime in SEARO might be authorised. The provision states in particular: "Authorised overtime of up to 25 hours can be performed by a GS [General Service] staff member (ND.3 to ND.7) in SEARO during a month..." The complainant, who holds grade ND.X and is therefore not covered by the new text, appealed under Staff Rule 1230 against the decision to the Regional Board of Appeal and then to the headquarters Board of Inquiry and Appeal, both of which recommended dismissing his claims. He states that he challenges a letter of 6 June 1983 from the Director-General notifying acceptance of the headquarters Board's recommendation.

B. The complainant alleges flaws in the internal appeal proceedings: the boards' reports were defective, and neither the Regional Director nor the Director-General gave the case proper thought before taking their decisions. As to the merits, he alleges incomplete consideration of the facts within the meaning of Rule 1230.1.2 and misapplication of the Staff Rules and of the terms of his appointment within the meaning of 1230.1.3. The circular deliberately excludes ND.X staff in SEARO and is therefore in breach of 625.2, the higher rule, which entitles all "staff in posts subject to local recruitment" to proper compensation for overtime. That ND.X staff should benefit under 625.2 is clear from 1310.2, which says that all posts in the General Service category, i.e. including ND.X, are subject to local recruitment. The circular unfairly discriminates against ND.X staff, who may be and are required to do overtime. It is also in breach of Manual provision I1.6.75: "General Service staff required to work overtime may be granted either compensatory leave or overtime pay". The complainant invites the Tribunal to order that the circular bo withdrawn and that he be entitled to compensation for the overtime work he was authorised to do and in fact did in the course of authorised travel. He also seeks costs.

C. In its reply the WHO submits that it is the Regional Director who is competent to take measures relating to the working of overtime and compensation for it in SEARO. The reason why his circular did not cover ND.X staff is that there is no need for such staff to do overtime. Thus the circular merely reflects longstanding practice in SEARO and indeed in other United Nations organisations in New Delhi. Since it is not in breach of any WHO rule and does not alter the complainant's rights or entitlements he has no cause of action. Most of his arguments are irrelevant. It is clear from the wording of Rule 625 that the authorisation of overtime is at the supervisor's

discretion: only if he considers it necessary is compensation due. Nothing in the rules confers on any staff member the right to do overtime. The circular is therefore not in breach of Rule 625, nor of any other rule the complainant cites, nor for that matter of the terms of his appointment. There is no evidence to suggest that any overtime work he may have done was authorised by his supervisor, as he is required by Manual provision II.6.90 to show. He has not established that he has suffered or is likely to suffer any injury because of the circular.

D. In his rejoinder the complainant elaborates on his pleas. In his view the circular constitutes an amendment of Rule 625 and in issuing it the Regional Director acted ultra vires: he is not empowered to exclude any category of staff from the benefit of the rule. ND.X staff are being required to do overtime -- and he cites examples -- and because of the circular are denied the compensation the rule entitles them to. He produces evidence, in the form of certification by his supervisors, designed to show that overtime work he did in 1982 was authorised. He does not claim the right to do overtime, but the right to compensation when he is required, as he has been, to do it. There is no such circular in other WHO offices. He presses his claims.

E. In its surrejoinder the WHO submits that the rejoinder raises no new issues of fact or of law. In developing its arguments it asserts that the complainant was never authorised to do any overtime in 1982, and it appends evidence to that effect in the form of a minute addressed by the Administration to the complainant's supervisor. It adds that practice in other WHO offices is irrelevant. It observes that no ND.X staff member at SEARO who has done authorised overtime has been denied compensation for it.

CONSIDERATIONS:

The appeal proceedings

1. The complainant alleges defects in the appeal proceedings in SEARO and at headquarters. In particular he submits that the regional Board of Appeal failed to set out the facts of the case and its findings, that the Regional Director gave his decision before considering the issues and that the headquarters Board did not rule on the merits.

The Tribunal does not consider whether the boards or the regional Director were in breach of the rules: it merely determines whether the impugned decision -- the Director General's -- is valid.

Circular No. 4/81

2. On 31 December 1981 the Regional Director issued Circular No. 4/81 amending provision II.5.110 of the SEARO Handbook so as to allow General Service category staff in grades ND.3 to ND.7 to perform authorised overtime of up to 25 hours a month.

The complainant submits that the new rule is unlawful and should therefore be set aside.

3. The Tribunal hears complaints challenging decisions which are individual acts, not complaints directed against abstract rules of general purport. That its competence is so restricted is evident in particular from Article VIII of its Statute, which sets out the consequences of allowing a complaint. Obviously the article applies only to cases in which an actual decision is challenged. The Tribunal is not on that account precluded from ruling on the validity of any general and abstract rule; but it will do so only by way of exception, viz. when hearing a complaint which challenges an actual decision.

The complaint is presented in the form of a challenge to the Director-General's decision not to withdraw Circular 4/81. In point of fact it is challenging the circular itself, a general and abstract rule, and for the foregoing reasons the claim on this point is irreceivable.

Compensation for overtime done by the complainant

4. The complainant says that while on authorised travel he did overtime for which he got no compensation. There is no need to consider whether he did or not. The material point is that he did not submit to the competent internal bodies the question of compensation for the overtime he alleges he performed. Accordingly on that score he failed to exhaust the internal means of redress at his disposal and his claim is irreceivable under Article VII(1) of the Statute of the Tribunal.

If the complainant is required in future to do overtime he must first submit any claim for compensation to the

competent bodies. Only if he does so will a complaint filed with the Tribunal be receivable.

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

1. Manual provision II.6.70 defines "overtime" as "time worked in excess of 8 hours a day or 40 hours a week".

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