FIFTY-EIGHTH ORDINARY SESSION

In re BECHER

Judgment No. 735

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mr. Ernst Becher on 12 August 1985, the WHO's reply of 18 October, the complainant's rejoinder of 12 November and the WHO's surrejoinder of 28 November 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 1050.1, .2 and .4;

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

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of the Federal Republic of Germany, began a two-year appointment with the WHO in 1974 as a technical officer at grade P.5 in the Pre-investment Planning Unit of the Division of Environmental Health. The Unit's function was to administer a Co-operative Programme established by the WHO and the World Bank under a "memorandum of understanding" of 1971. According to clause 5 of the memorandum the Bank could end the arrangements but must then refund the cost to the WHO of cancelling staff commitments. The complainant had his appointment extended to 1981 and then to 31 March 1986. But in June 1982 the Bank told the WHO it wanted to end the Programme in June 1984. The Chief of Personnel wrote to the complainant on 3 April 1984 to say that his appointment would be terminated on 30 June under Staff Rule 1050.1 though he would be kept in mind for any suitable vacancy. If none was found he would be paid a terminal indemnity under 1050.4, repatriation grant, and cash compensation for accrued annual leave. Rule 1050.1 provides that "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". The complainant wrote to the Chief of Personnel on 12 April claiming the application of 1050.2, which relates to abolition of a post of indefinite duration, known as a "reduction in force", and requires "a reasonable offer of reassignment if such offer is immediately possible". On 7 May the Chief of Personnel replied that 1050.2 applied only to posts financed out of the regular budget. Meanwhile some funds had been found and in fact the complainant's last appointment terminated on 9 November. On 31 December 1984 he appealed to the Board of Inquiry and Appeal. The Board reported on 19 March 1985. It found that the complainant had never been informed that the nature of his post would affect his position; that his work had been very satisfactory; and that after ten years at the WHO he would find it hard to start a new career elsewhere. It recommended making him a reasonable offer of reassignment under 1050.2 or else the compensation he had claimed, namely (a) salary and other benefits up to 31 March 1986, (b) compensation for damage to professional reputation and career prospects, and (c) costs. By a letter of 17 May 1985, the decision now impugned, the Director-General informed the complainant that he agreed to (a) and (c), but not to (b).

B. The complainant observes that the Director-General's decision gives him only partial satisfaction. The material rule is 1050.2 because his post should be treated as one of indefinite duration: no time limit was set on the Co-operative Programme, the background to which he describes in detail. In the many months since the original decision was taken the WHO could have made him several reasonable offers of reassignment. He mentions several posts he actually applied for, in vain. He asks the Tribunal to order the WHO to make him a reasonable offer of reassignment as required by 1050.2.5 and to pay him the following sums, plus interest at 10 per cent a year: (1) his salary and allowances from 10 November 1984 to 31 March 1986; (2) the WHO's pension fund contributions; (3) health insurance contributions; (4) education and travel grants; (5) annual and home leave entitlements; (6) end-of-service grant calculated up to 31 March 1986; (7) damages for injury to professional reputation amounting to 25,000 United States dollars; (8) damages for injury to career prospects equivalent to one year's remuneration; (9) compensation for loss of pension benefits; and (10) $3,000 in costs.

C. The WHO replies that posts of limited duration are those financed from funds other than the regular budget and all project posts, which are necessarily of a temporary nature. The complainant's post could not last longer than the Co-operative Programme itself, it was therefore one of limited duration, and the right rule, 1050.1,was applied. Besides, what the complainant is seeking is a "reasonable offer of reassignment" as required by 1050.2.5. In fact

posts in his grade and field are few and far between. His name was circulated in the WHO, though to no avail. The Organization did its utmost to find him a suitable post and will, though under no duty to do so, continue to try to find him one. He himself failed to apply in 1983 for one post that would have suited him, though by then he must have known his position was under threat. As to his claims, the WHO has agreed to (1), (2), (4) and (10). As to (3) it offers to pay half the cost of his contributions to a private insurance scheme up to 31 March 1986. As to (5) it will pay for 41 ½ days' annual leave. As to (6) it will pay him an end-of-service grant amounting to $43,118 if he fails to find suitable employment by 31 March 1986. Claims (7) and (8) are unfounded because the termination of his appointment was lawful. Claim (9) is also unsound.

D. In his rejoinder the complainant observes that, despite his worrying position, the WHO has not even yet paid him the salary and benefits due. He presses his claims, which he seeks further to justify. He objects to several points in the WHO's account and submits that the Co-operative Programme was a project he could reasonably have expected to last; so there was nothing odd about his not applying for another post in 1983. The WHO has done hardly anything to find him another post: yet his qualifications, performance, experience and seniority probably fitted him better than anyone else in the WHO for several posts that have recently fallen vacant.

E. In its surrejoinder the WHO points out that the reason why no payment has been made to the complainant is that he rejected the Director-General's final decision. It discusses his outstanding claims in turn, and enlarges on its earlier submission that it has done more than it is bound in law to do. It believes that no act or omission on its part has done any harm to his reputation or career prospects for which it can be held liable. It submits that reinstatement would not be advisable: it has no suitable post available for him anyway. The complaint should be dismissed as devoid of merit.

CONSIDERATIONS:

1. In 1971 the Organization and the World Bank concluded an agreement for co-operation under which the Organization established a unit called the "Pre-investment Planning Unit". Clause 5 of the agreement provided that either organisation might after reasonable notice terminate the agreement. On 1 April 1974 the complainant was appointed by the Organization to the post of financial analyst in the Unit. His appointment was for two years and was subsequently extended. The last extension was on 1 March 1981 for a period of five years.

2. In June 1982 the World Bank gave notice of termination by the end of June 1984. On 3 April 1984 the complainant was told that his post would be abolished on 30 June 1984 and his appointment terminated under Staff Rule 1050.1. The World Bank subsequently made funds available for the continuation of his post until 31 August 1984. He was given an assignment which in fact lasted until 9 November 1984, on which day he was notified that his appointment would be terminated under Staff Rule 1050.1 with effect from the following day.

3. Staff Rule 1050 provides for the situation in which an appointment is terminated prior to its expiration by reason of the abolition of the post which the appointee holds. It provides for an indemnity and prescribes the manner in which it is to be calculated. Under Staff Rule 1050.1, which applies to posts of limited duration, nothing more is payable. Under Staff Rule 1050.2, which applies to posts of indefinite duration, paragraph 5 provides that the appointment shall not be terminated before the staff member "has been made a reasonable offer of reassignment if such offer is immediately possible".

4. The complainant appealed against the decision to terminate his appointment under Staff Rule 1050.1, contending that the post he held was one of indefinite duration. He demanded a reasonable offer of reassignment: or, failing such an offer, that he should be paid compensation equal to salary and all benefits under his contract until 31 March 1986, the date of its expiry, costs relating to the appeal procedure and compensation for damage to his professional reputation and future career prospects. Staff Rule 1050.2 does not provide for any compensation (other than the indemnity already mentioned) in the event of reassignment not being possible. It is, however, arguable that if the Organization did not make reasonable efforts to find a reassignment the termination would be unlawful and the complainant entitled to compensation accordingly.

5. The headquarters Board of Inquiry and Appeal advised that Staff Rule 1050.2 was applicable. It noted that the complainant had thirteen years' service with the United Nations system, ten being with the Organization, that his service had been consistently appraised as very satisfactory and that at the age of 53 it would be difficult for him to start a career elsewhere. The Board recommended that, if reassignment was not possible, the complainant should be granted the compensation he claimed. The Board made no adverse finding about

the Organization's efforts to provide a reassignment. The Tribunal does not find evidence in the dossier which would justify a conclusion that the termination was unlawful. Accordingly, compensation must in law be limited to the indemnity. The compensation claimed would far exceed it. Moreover, some items in the claim, such as damage to professional reputation, are in any event inappropriate; other items are extravagant. On the other hand, the indemnity, which amounts to eleven months' salary, might well be regarded as ungenerous compensation for the untimely interruption of long and satisfactory service. Evidently the Director-General did so regard it. He based his decision on an acceptance of the spirit of the recommendation and a careful consideration of how far he could go towards meeting each separate claim for compensation. The general effect of the offer embodied in his decision of 17 May 1985 (which is the decision impugned) was to give the complainant much or all of what he would have been paid if his contract had not been prematurely terminated.

6. On 14 July 1985 the complainant replied to the offer. Treating it as "partial financial compensation" and as "a transitional measure of corrective action", he wrote that he had no other choice but to press his claims before this Tribunal. He treated some of his claims as met but he pressed a claim for home leave travel, for end-of-service grant and for damage, put at $25,000, to professional reputation and an amount equivalent to one year's salary for damage to future career prospects.

7. Accordingly this appeal is concerned with the claims which have not been met. The complainant supports them with arguments that might be appropriate (which is not to say that they would be successful) if the Tribunal were competent to impose a fair and equitable settlement. This is not the position. If he does not accept the offer, he must justify each claim as being what is due to him under Staff Rule 1050 or under some other rule or under some other provision of his contract of employment. This he does not attempt to do and indeed it is doubtful that any of his claims, whether accepted by the Organization or not, could be justified in that way.

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 the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

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