

SIXTIETH ORDINARY SESSION

In re STEELE

Judgment No. 789

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. David Brian Steele against the World Health Organization (WHO) on 5 March 1986 and corrected on 10 March, the WHO's reply of 7 April, the complainant's rejoinder of 23 June and the WHO's surrejoinder of 23 July 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Regulation 4.4, WHO Staff Rules 410.4, 655, 1040, 1050 and 1230.8.3 and WHO Manual provision II.9.375;

Considering the order issued by the Tribunal on 12 June 1986 on the complainant's application of 18 March;

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. In 1971 the WHO and the World Bank signed a memorandum on a programme of co-operation in "pre-investment activities" related to water supply, the disposal of waste and storm drainage. The WHO was to run the programme and provide such staff as the two sides agreed were needed for the purpose. If the Bank wanted to end the programme it would pay the WHO the cost of getting out of commitments to the staff.

The complainant, a British subject, left the service of the International Labour Organisation at the end of 1975 in the circumstances narrated in Judgment 310, under A, B and C. The WHO gave him short-term appointments and, on 16 December 1979 a fixed-term appointment for two years as a technical officer at grade P.5 under the programme. He had his appointment extended to 31 December 1983. In June 1982 the Bank said they wanted the programme to end in two years' time. On 26 July the Chief of Personnel wrote to the complainant saying that his appointment would end on 31 December 1983 under Staff Rule 1040, that the "only reason" was the Bank's withdrawal from the programme, that the WHO had "much appreciated" his work and that they would try to find another assignment for him. On 18 November 1983 he applied for unpaid leave and on 29 November the Chief of Personnel agreed that instead of being terminated under Rule 1040 he should have twelve months' such leave under Rule 655 as from 1 January 1984. At his request the period of leave was extended on 2 January 1985 to 30 June 1985, but with the rider that there would be no further extension unless a post was found for him in the meantime. On 26 June the Chief of Personnel wrote confirming his termination on 30 June under Rule 1040. On 24 July he appealed to the headquarters Board of Inquiry and Appeal. In its report of 15 January 1986 the Board recommended rejecting his appeal as devoid of merit and by a letter of 3 February, the decision he impugns, the Director-General informed him of the rejection of his appeal.

B. The complainant alleges personal prejudice against him, abuse of authority and minor administrative malpractices. His main plea is that the Director-General "has been blocked in promoting my career as he would have otherwise wished by some kind of executive order emanating" from the Tribunal and "following on Judgment 310". His successful career in the WHO was harshly broken off and attempts to find him another post were dropped "when it was clear that the blockage had high-level authority". His humiliation was a public spectacle. The only reason for terminating him being the abolition of his post the material rule was 1050, not 1040. The WHO made no serious effort to carry out its duty under Regulation 4.4 and Rule 410.4 to try to find him another assignment. He believes that the oral evidence heard by the Board misrepresented the facts: the Administration briefed most witnesses on their evidence, and not enough weight was given to evidence by others. He asks the Tribunal to "order the removal of all system-wide blocks to my career and employment" and seeks reinstatement and damages.

C. In its reply the WHO contends that the plea that the applicable rule was 1050 is irreceivable. The complainant should have challenged the application of 1040 within the time limit of 60 days set in Rule 1230.8.3 as reckoned from the date of notification either of the decision to terminate his appointment on the expiry of his unpaid leave -- 29 November 1983 -- or at least of the decision to end it on the expiry of the final extension of his leave -- 2

January 1985. Having missed both deadlines he failed to exhaust the internal means of redress.

In any event the plea is unsound. If 1040 were not applicable the material provision would be 1050.1, on posts "of limited duration". The complainant's was such a post. But 1050.1 does not apply unless the appointment is terminated before the date of expiry, whereas the complainant's was not.

The WHO believes it treated him well. It gave him a long period of unpaid leave and several short-term assignments, and it took many steps to find him employment in the WHO or elsewhere.

He produces not a shred of evidence to support his allegations of a "blocking" of his career and of prejudice against him on the part of WHO officers. On the contrary the WHO went to exceptional lengths to keep him on.

D. In his rejoinder the complainant maintains that his challenge to the application of 1040 is receivable: he challenged in time the decision to terminate which cannot be distinguished from the decision to apply 1040 for the purpose.

As to the merits he enlarges on his plea that 1050 was the applicable rule, observing that he was never told that his post was of limited duration. He develops his allegations of abuse of authority and blocking of his career and submits that oral proceedings will afford the evidence he needs to support them. He presses his claims.

E. In its surrejoinder the WHO enlarges on the pleas in its reply, submitting in particular that the internal appeal was out of time and that the complaint is therefore irreceivable as to the challenge to the application of 1040; that the complainant's appointment was correctly terminated under 1040; and that his unsupported allegations of a blocking of his career, which the WHO describes as "ridiculous" and categorically denies, are belied by his very appointment to its staff. Even if the Tribunal found in his favour his reinstatement would be neither a possible nor an advisable remedy.

CONSIDERATIONS:

1. A preliminary question is whether the complainant's plea that the applicable rule was WHO Staff Rule 1050 and not 1040 is receivable.

2. His fixed-term contract of service was due to expire on 31 December 1983. He was first informed on 26 July 1983 that the contract would come to an end on expiry of the agreed period of service, on 31 December 1983, under Rule 1040. When he was granted leave without pay on 29 November 1983, the Chief of Personnel expressly pointed out that at the end of the leave the appointment would also expire as if the contract had come to an end on 31 December 1983. When the leave was extended on 2 January 1985, until 30 June 1985, the Chief of Personnel stated that it was on the understanding that there could be no further extension unless in the meantime a post had been found for him. On 26 June the Chief of Personnel wrote to him confirming termination on 30 June 1985.

3. It was clear that his appointment was temporary without his being told it was so: he was on contract, each time for two years, and he was employed to do a job related to a programme funded by the World Bank.

It was also clear from the communications from the Chief of Personnel that in the absence of reassignment the contract would terminate by lapse of time under Rule 1040.

4. If the complainant was dissatisfied with the decision to end his appointment he should have appealed first to the internal Board of Appeal. Under Rule 1230.8.3 he should have done so within 60 days of the notification made to him on 29 November 1983 or, at the latest, of the last occasion, 2 January 1985, on which he was informed of the WHO's intent in this regard. This he failed to do, since his intention to make an internal appeal was first notified to the Board only on 24 July 1985, well outside the prescribed time limit.

5. Since he addressed no appeal to the Board in time he has not exhausted the internal remedies, as he is required to do before coming to the Tribunal.

6. In any event the Tribunal is satisfied that Rule 1050 does not apply. Being for a fixed period of two years to do a job related to a World Bank-funded programme, the complainant's appointment was indeed one of limited duration within the meaning of that rule. But for his case to come within the rule his appointment must have been terminated "prior to its expiration date". That was not the case. His contract was not terminated prematurely. On the contrary,

not only was it allowed to run its full course until 31 December 1983: he was also given unpaid leave until 30 June 1985, i.e. for 18 months. This was more generous than the 3 to 6 months' unpaid leave that could have been allowed under Manual provision II.9.375.

7. The complainant pleads that the Director-General has been blocked in promoting his career by some executive order emanating from the Tribunal and following on Judgment 310. He says that his successful career in the WHO was harshly broken off and attempts to find him another post were dropped "when it was clear that the blockage had high-level authority".

The Board of Appeal to whom the same plea was addressed, after meeting on six occasions and hearing fourteen witnesses, reported that it "did not find any evidence in support of this statement either from the written submissions or from the witnesses".

The charge is so plainly unfounded that it calls for no reply.

8. The complainant also alleges personal prejudice and failure to make serious efforts in accordance with Regulation 4.4 and Rule 410.4 to find him another assignment.

During his unpaid leave he was found the following eight short-term appointments:

10 February-30 March 1983 : to assist with developments relating to evaluation of water supply and sanitation;

3-30 March 1984 : to prepare a draft of the internal evaluation of an interregional co-operation programme;

27 April-19 May 1984 : to carry out a mission to Somalia for the same programme;

20 May-1 June 1984 : an extension of the same mission;

22-30 September 1984 : another extension of the mission;

1 October-30 November 1984 : to assist the Ministry of Health of the Sudan;

For one month from 13 March 1985 and for a fortnight from 1 June 1985 : consultancy for the Democratic Yemen.

Moreover as is indicated above he was given three times the maximum period of unpaid leave he would normally have got under Manual provision II.9.375 for the express purpose of finding him another position. It permitted him to maintain his links with the WHO and ensured that he would not be adversely affected by the criterion of nationality if a suitable reassignment was found for him. The leave was maintained for as long as possible, even though no suitable reassignment did come up.

During that period, on 28 March 1983, his name was included in a list of staff members interested in reappointment which was circulated to WHO regional offices. On 14 February 1985 a telex was sent to those offices enquiring about possible openings. A further set of telex messages was sent to the Pan American Health Organization and to the Regional Office for Europe reminding them of the complainant's availability.

9. The Tribunal concludes that the WHO's efforts during the complainant's unpaid leave to find him employment were fair and reasonable and that his charge that the Director-General abused his authority and acted from personal prejudice is totally baseless.

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 Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner

ORDER

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

FIFTY-NINTH ORDINARY SESSION

In re STEELE v. ILO (No. 2)

In re STEELE v. WHO

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. David Brian Steele against the International Labour organisation (ILO) on 5 March 1986 and corrected on 10 March;

Considering the complaint filed by Mr. Steele against the World Health Organization (WHO) on 5 March 1986 and corrected on 10 March;

Considering the complainant's application of 18 March 1986 for a provisional order or, subsidiarily, for an interim judgment allowing his allegations of a general "blocking" of his career in the United Nations system and awarding a remedy;

Considering the ILO's reply of 25 April 1986 and the WHO's reply of 9 April 1986, which invite the Tribunal to dismiss the application;

CONSIDERATIONS:

Being in session, the Tribunal itself will rule on the application.

Insofar as it seeks a provisional order it fails because it does not ask for any measure such as is prescribed in Article 19 of the Rules of Court.

Insofar as it seeks an interim judgment it again fails because the Tribunal cannot rule on the issues until the written proceedings have been completed.

The oral proceedings applied for by the complainant would therefore serve no purpose.

ORDERS:

1. The application of 18 March 1986 is dismissed.
2. The Registrar shall proceed with the pleadings in the usual way.

In witness of this order by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Geneva, 12 June 1986

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

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