

FORTIETH ORDINARY SESSION

In re STANKOV

Judgment No. 338

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Svetoslav Kochev Stankov on 11 January 1977 and brought into conformity with the Rules of Court on 28 January, the WHO's reply of 24 March and the complainant's rejoinder of 25 April 1977;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal and WHO Staff Rules 640.2, 640.6, 810(d)-(h), 1030.1 and 1030.8;

Having examined the documents in the dossier, 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. On 31 March 1969 the WHO gave the complainant, who is a Bulgarian citizen, a two-year appointment as a sanitary engineer at grade P.4. It sent him out to Chad. It extended his appointment by three two-year periods and on 1 October 1972 transferred him to Upper Volta. On 3 June 1974, while working in that country, he suffered a service-incurred accident. With the consent of the Regional Office for Africa he took sick leave from 30 July to 20 September 1974 in Geneva, where he underwent an operation on the meniscus and medical treatment. His doctor recommended him to take the waters in a warm dry climate and the complainant asked the Regional Office to let him use the rest of his annual leave - 22 days - to go to Spain at his own expense to convalesce. He was told that he might take the 22 days' leave, that his travel on medical grounds would be converted into home leave travel and that he should therefore go to Bulgaria. He felt that the climate in Sofia in the autumn would be harmful to his health and decided instead to go straight back to Ouagadougou without taking the authorised leave.

B. On 23 September 1974 the complainant proposed to the Regional Office that he should take his home leave later. On 11 November he was told that, as he had already been informed, the Regional Director had decided, in accordance with Staff Rule 810(h), to regard the sick leave he had taken in July-September 1974 as home leave. On 22 May 1975, after his appointment had been extended, he wrote to the Regional Director asking him to reconsider the decision to convert his sick leave into home leave. On 3 July he was told that the decision notified to him on 11 November 1974 held good. On 18 July he again asked the Regional Director to reconsider, and on 13 August his request was again dismissed. He wrote a final letter to the Regional Director on 28 November but did not receive any "satisfactory reply".

C. On 6 January 1976 the complainant appealed to the Regional Board of Appeal against the Regional Director's decision to convert his sick leave into home leave. The Board declared the appeal irreceivable on the ground, among others, that it was time-barred. On 30 July the Regional Director endorsed the Board's conclusion. The complainant then appealed to the headquarters Board of Inquiry and Appeal against the decision that his appeal to the Regional Board was irreceivable. On 30 November the headquarters Board recommended that his appeal should be considered receivable. By a letter of 15 December the Director-General dismissed the Board's recommendation and the complainant thereupon lodged the complaint.

D. In the memorandum appended to his complaint the complainant asks the Tribunal "to confirm the recommendation of the headquarters Board of Inquiry and Appeal". His claims for relief read as follows:

"The conversion of sick leave into home leave is improper for the simple reason that I did not qualify for home leave at the time, my appointment not yet having been extended.

The sole reason for my absence from 30 July to 20 September 1974 was the grant of leave on grounds of health

after a service-incurred accident.

Since I was not granted the home leave to which I was entitled I believe that I should retain my right to it."

E. The WHO abides by the arguments which it put forward in the internal appeal proceedings and which the Director-General upheld for the last time on 15 December 1976 in deciding that the complainant had not appealed on the merits within the prescribed time limits. In so far as the complaint impugns the Director-General's decision that the original appeal was irreceivable it is unfounded; and in so far as it impugns that decision on the merits it is irreceivable because the internal means of redress were not exhausted in time. Should it prove necessary to argue on the merits, the WHO would contend that it committed no impropriety with regard to the complainant's travel expenses in 1974 since it bore them on the sole condition that he should not be entitled to home leave during the two-year period in which he travelled to Geneva - a condition expressly laid down in Staff Rule 810(h). The WHO therefore asks the Tribunal to declare the complaint irreceivable or, subsidiarily, to dismiss it.

CONSIDERATIONS:

The decision to treat as home leave the complainant's visit to Geneva for medical purposes from July to September 1974 and the leave which he needed for convalescence afterwards was taken and notified to him on 11 November 1974. It was upheld on 3 July 1975 after his appeal of 22 May and on 13 August after the one of 10 July.

Even if it is assumed that those appeals were not time-barred, he should in any event have appealed to the Regional Board of Appeal not later than thirty days after 13 August 1975 against the decisions to dismiss them.

He did not appeal to the Regional Board until 6 January 1976, i.e. after the time limit had expired. The Director-General was therefore right to dismiss his appeal.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet