
ADMINISTRATIVE TRIBUNAL

Judgement No. 474

Case No. 471: COSH

Against: The Secretary-General
of the International
Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, First Vice-President,
presiding; Mr. Ahmed Osman, Second Vice-President; Mr. Samar Sen;

Whereas, at the request of James Alexander Logan Cosh, a former staff member of the International Maritime Organization, hereinafter referred to as IMO, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 June, 15 September and 31 December 1986, 31 March, 30 June, 30 September and 31 December 1987, 31 March and 31 May 1988, the time-limit for the filing of an application;

Whereas, on 27 May 1988, the Applicant filed an application, the pleas of which read as follows:

"II. PLEAS

1. The Tribunal is requested to rule as follows:
 - (a) That the Respondent was consistently unfair to the Applicant, as IMO's Regional Marine Pollution Adviser in Latin America, and discriminated in favour of the Assistant Regional Marine Pollution Adviser, Mr. Vergara, who took up his duties in Santiago, Chile, in October 1978;

- (b) That the Respondent placed the Applicant in a disadvantageous position in relation to Mr. Vergara by not clearly defining the working relationship and division of duties between the two advisers, and between them and the officials to whom they were both responsible at the Headquarters of IMO;
- (c) That the Respondent, by allowing and encouraging Mr. Vergara to act in a manner that was increasingly independent of the Applicant, and by progressively transferring duties to Mr. Vergara that were properly those of the Applicant, deliberately left the Applicant more and more isolated and placed him in an invidious position;
- (d) That the acceptance by the Respondent of notes written by Mr. Vergara which were critical of the Applicant and which the Applicant was given no opportunity to see, and of which he was not even aware at the time, and the placing of such notes in the official files at the Headquarters of the Organization, amounted to a gross failure of good management practice and did the Applicant a grave injustice;
- (e) That the Respondent failed to give the Applicant the support that he needed and was entitled to expect in order to do his work effectively, in particular by not responding to his written and other requests to his supervisors to regulate certain aspects of his professional duties and of the work of the IMO office in Santiago;
- (f) That the Respondent was in breach of the principle of good faith in not explaining to the Applicant more fully and frankly the true reasons for not renewing his contract, in particular in respect of the Organization's interest in UNDP [United Nations Development Programme] funding for the World Maritime University;
- (g) That the abrupt way in which the decision was taken to abandon the plan to transfer the Applicant to the Caribbean and not to renew his contract at the end of 1983, and the failure to explain the circumstances to him frankly and unequivocally, was insensitive and paid insufficient regard to the Applicant's feelings, and was not in accordance with the principles of good management;

- (h) That the interpretation made by the Respondent of the rules relating to home leave and other personnel issues was unduly rigid and formalistic and caused needless and unjustifiable inconvenience to the Applicant;
- (i) That the refusal by the Organization to meet the cost of a family visit by the Applicant's wife in 1981 was a denial of an entitlement accruing to the Applicant and was a clear violation of the staff rules.

2. Accordingly, the Tribunal is requested to order the Respondent to pay to the Applicant a sum equal to two years' net base salary by way of compensation to him for the unsatisfactory aspects of his employment with IMO, including the denial of his entitlement to a family visit in 1981 at the expense of the Organization and the expenses incurred by him for typing, translation and other items, such award to absorb all the specific claims detailed in the present application."

Whereas the Respondent filed his answer on 4 October 1989;

Whereas the Applicant filed written observations on 21 November 1989;

Whereas, on 16 March 1990, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 27 March 1990, the Tribunal put questions to the Respondent, and on 4 April 1990, he provided answers thereto;

Whereas, on 2 April 1990, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

James Alexander Logan Cosh was recruited by IMO on 1 July 1977 as a Marine Pollution Adviser for Latin America. He served initially on two successive one year fixed-term appointments at the L-5 level, on secondment from the Government of the United Kingdom of Great Britain and Northern Ireland, through 30 June 1979. The Applicant's duty station was Santiago de Chile, Chile. His duties were set forth in an attachment to his initial letter of appointment and were identical to those specified in a vacancy announcement

dated 1 January 1977, which had prompted the Applicant's candidature for the post.

In July 1978, IMO appointed Mr. Ignacio Vergara, a Chilean national, as an Assistant Regional Marine Pollution Adviser for Latin America to be stationed as well in Santiago de Chile. The Applicant asserts that this appointment was made by IMO "as a favour to UNDP [United Nations Development Programme], and particularly to Mr. Valdés [Director of the Regional Bureau for Latin America] whom [the Applicant] believes to be a relative of Mr. Vergara, and that, as part of the arrangement, UNDP had agreed to finance an IMO post in Colombia as requested by the Secretary-General". In addition, the Applicant asserts that, although the post of Assistant Marine Pollution Adviser was described by the Administration, in correspondence exchanged related to its establishment, as a "'junior post', the exact status of Mr. Vergara and his administrative relationship to the Applicant was somewhat vaguely defined".

According to Mr. Vergara's terms of reference as Assistant Adviser, he was to "work under the supervision of the Director of Technical Co-operation Division or other as may be designated by the Secretary-General of the Organization ... with, and under the guidance of, the Regional Marine Pollution Adviser for Latin America. ... He [would] assist the Marine Pollution Adviser in the overall aspects related to controlling and/or combatting of Marine Pollution...". The Applicant argues that "the distinction between working 'under the supervision of the Director ... Technical Co-operation Division [TCD]' and 'with, and under the guidance of, the Regional Marine Pollution Adviser for Latin America' proved to be one of the most unsatisfactory aspects of the relations between the Applicant and Mr. Vergara and between them and IMO Headquarters" because the lines of authority were not clearly defined. Mr. Vergara took over a number of the Applicant's functions and did not intend "to act under his supervision but, on the contrary, to

have a considerable degree of independence". Although the Applicant asserts that he made "several requests to IMO to clarify his position ... [he] received no clear guidance or assistance. Consequently ... Mr. Vergara, as he gained confidence, was able to act in an increasingly independent manner while the Applicant became more and more isolated".

In early 1979, the United Kingdom Departments of Industry Trade and Prices and Consumer Protection, Marine Survey Service refused to extend the Applicant's secondment. The Applicant decided to remain an IMO staff member and resigned from the service of his Government.

On 21 June 1979, the Applicant was appointed Special Adviser to the "Marine Safety and Licensing" Project in Panama for a period of one year. The Respondent asserts that early in 1979, the Secretary-General considered the possibility of transferring the Applicant to the Caribbean, since several countries had "expressed an interest in an IMO Adviser being placed in their respective countries". In an undated note for the file, the Regional Programme Officer for Latin America recorded a telephone conversation with the Secretary-General who was then in Jamaica, sometime "in the first five months of 1980", concerning this possibility. At the expiration of his assignment in Panama, the Applicant returned to Santiago de Chile on 13 July 1980.

The Applicant's appointment was subsequently extended as Marine Pollution Adviser for successive fixed-term periods of less than one year, until 30 June 1983. The Applicant asserts that during this period, Mr. Vergara continued to take over a number of his duties and prevented him from seeing incoming correspondence. In addition, he contends that there was an "increasing tendency of the IMO Secretariat to deal with Mr. Vergara rather than with the Applicant" and that "Mr. Vergara's practice of sending communications to IMO on his own initiative and without reference to

the Applicant began quite soon after his appointment". The Respondent admits that when the Applicant returned to Santiago "the [work] situation ... and the fact that the Assistant Adviser had done good work in [the Applicant's] absence presented some friction between both officers, of which TCD was becoming gradually aware and concerned". On 12 August 1981, Mr. Vergara sent a confidential note to the Head of the Latin American Section, TCD, which contained criticism of the Applicant's actions and the quality of his work. This note was not made available to the Applicant, nor was he asked to comment on it. The Applicant asserts that "he became aware of its existence only when he found it in one of the files at IMO Headquarters which he consulted freely on his periodic visits to IMO Headquarters ...". He also asserts that officials at Headquarters failed to reply to his letters, adding considerably to the difficulties of his work.

During 1982, negotiations ensued to formalize the Applicant's transfer as an Adviser to the Caribbean Region. Discussions were held in March 1982, between the UNDP Assistant Administrator and Regional Director for Latin America and the Secretary-General, concerning the Applicant's appointment as Marine Pollution Adviser for the Caribbean and the location of the Regional Office. Furthermore, on 2 September 1982, in three letters sent by the UNDP Assistant Administrator to UNDP Resident Representatives in Jamaica, Barbados and Trinidad, with a view to inquire whether they would agree to serve as host country for the project, it was mentioned that "the Bureau has agreed with the IMO that the duty station of Mr. James A.L. Cosh (U.K.), the Regional Adviser in Marine Pollution, would be changed from Santiago, Chile, to the Caribbean ...". The Applicant asserts that "the intention to transfer [him] to the Caribbean was also confirmed by the Secretary-General of IMO in a conversation with the Applicant on 5 August 1982". In April 1983, the Government of Barbados agreed to provide a headquarters

for the adviser, but contrary to his expectations, the Applicant was not appointed to serve on the post. The Applicant contends that the Administration never informed him officially of this fact.

Although in a letter dated 29 March 1983, the Director, TCD, informed the Applicant that no funds were available at the time for an extension of his appointment, additional funding was subsequently obtained and his appointment was extended for a further fixed-term period until 31 December 1983. The Applicant was advised that it would not be possible to employ three advisers in 1984, and on 10 November 1983, the Director, TCD, informed the Applicant that his appointment would not be extended beyond its expiration date on account of "a drastic reduction in Development Co-operation funds" which "placed in jeopardy the IMO Regional Advisory activities under their present form and strength". On 31 December 1983, the Applicant was separated from the service of IMO.

On 29 June 1984, the Applicant requested review of the decision not to extend his appointment. On 3 September 1984, the Applicant informed the Respondent of his intention to file an appeal with the Joint Appeals Board (JAB). On 19 August 1985, the Applicant submitted his statement of appeal. The Board adopted its report on 24 January 1986. Its recommendations read as follows:

"5. Recommendations

5.1 In the light of the above considerations and conclusions, the Board wishes to submit the following:

5.1.1 The Board recommends that the Appellant's claim for compensation for the loss of pension rights for the period 1 January 1984 to 14 July 1987 be rejected for the reasons set out in ...;

5.1.2 The Board recommends that the Appellant's claim for compensation for the loss of salary and allowances for the period 1 September 1984 to 14 July 1987 be rejected for the reasons set out in ...;

5.1.3 The Board recommends that the Appellant's claim for

reimbursement of the cost of solicitor's fee be rejected for the reasons set out in ...;

5.1.4 The Board recommends that the Appellant's claim for compensation for the losses incurred in selling the contents of his former residence in the United Kingdom (46 Headley Close, Brentwood) be rejected for the reasons set out in ...;

5.1.5 The Board recommends that the Appellant be paid a lump sum of \$500 for the reasons set out in ...;

5.1.6 The Board recommends that the Appellant be awarded a pecuniary compensation in the amount of \$10,000 for the reasons set out in ...".

On 21 February 1986, the Secretary-General informed the Applicant that, having re-examined the case in the light of the Board's report, he had decided to maintain the contested decision.

On 27 May 1988, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent was consistently unfair to the Applicant as Regional Adviser in Latin America and discriminated in favour of the Assistant Regional Adviser.

2. The Respondent did not clearly define the working relationship and the division of duties between the two advisers.

3. The Respondent failed to follow his own rules.

Whereas the Respondent's principal contentions are:

1. The Secretary-General was fully entitled not to renew the Applicant's appointment.

2. No unfair or prejudicial actions were taken during the Applicant's employment.

The Tribunal, having deliberated from 30 April to 14 May 1990, now pronounces the following judgement:

I. In his pleas, the Applicant complained that the Respondent was "consistently unfair" to him and discriminated in favour of the Assistant Regional Marine Pollution Adviser, Mr. Vergara. To substantiate his claim, the Applicant has cited a series of grievances. The Tribunal has examined these grievances to determine whether they are well-founded and could be construed as infringements on his contractual rights.

II. The Applicant's first grievance is an alleged lack of clarity in defining, on the one hand, the working relationship and division of duties between the two advisers and on the other, between them and their superiors at Headquarters, and finally the Respondent's tacit consent to Mr. Vergara's acting in a manner that was increasingly independent of the Applicant, and gradually taking over the Applicant's duties.

In assessing this claim, the Tribunal takes into account the following considerations:

1. With regard to Mr. Vergara's initial appointment, the Tribunal takes note:

(a) That the Applicant himself acknowledged that he was pleased to learn that an assistant would be appointed, since he did not have sufficient time to look after the office routine in Santiago and to fulfil some of his duties as Regional Marine Pollution Adviser for Latin America;

(b) Of the Respondent's statement that the objective of appointing Mr. Vergara was to increase IMO's capability of responding to marine pollution in Latin America and not to damage the Applicant's standing.

The Tribunal finds, therefore, that the appointment of Mr. Vergara was in response to a genuine and objective need of IMO in Latin America.

2. With regard to the relationship between the two advisers

and their superiors, the Tribunal notes that these were defined from the beginning, à propos of Mr. Vergara's terms of reference, as follows:

"The Assistant Marine Pollution Adviser for Latin America will work under the supervision of the Director of Technical Co-operation Division or other as may be designated by the Secretary-General of the Organization. He will work with, and under the guidance of, the Regional Marine Pollution Adviser for Latin America."

The Joint Appeals Board (JAB) has expressed some doubt on the practicability of this rather subtle differentiation between "supervision" and "guidance" and concluded that this created difficulties for the Applicant. In the Tribunal's view, taking into consideration the nature and circumstances of their assignment far away from Headquarters, and their involvement in ongoing projects, having to face unexpected events and being frequently absent on missions, such an arrangement seems reasonable and eventual difficulties arising from it are understandable. The Tribunal does not find this arrangement unfair to the Applicant or vitiated by discrimination in favour of Mr. Vergara.

III. With regard to the working relationship of the two advisers after Mr. Vergara's appointment, the Tribunal finds that it was natural that the Applicant found that his work-load decreased. The Applicant himself recognized that, as Mr. Vergara gained confidence, he was able to act in an increasingly independent manner. The Tribunal notes in this regard the view expressed orally by the Applicant before the JAB, when he stated that he should perhaps have been, on occasions, more forceful and determined in asserting his own position vis-à-vis Mr. Vergara and that he should have raised more promptly any problems at the Santiago Office with TCD.

IV. The Applicant's second complaint is the lack of

administrative support and particularly, his superior's attitude in not responding to his various requests. The Applicant refers to instances when officials at Headquarters did not reply to his requests or queries. The Respondent on his part, provided a number of reasons to explain this situation. While the Tribunal does not ignore the Applicant's frustration in this regard, it considers this issue is more in the nature of an internal administrative matter, than one involving non-observance of the Applicant's terms of appointment.

V. The Applicant's next grievance relates to the acceptance by the Respondent of a note written by Mr. Vergara which was critical of the Applicant and which the Applicant was given no opportunity to comment upon. The note was kept in Mr. Vergara's file at Headquarters. The note in question was sent on 12 August 1981, by Mr. Vergara to the Head of the Latin American Section of TCD. It contained severe criticism of some of the Applicant's actions and the quality of his work. But the Applicant was not only denied any opportunity to comment upon it; the note was not even shown to him. The Tribunal finds that this constitutes unfair treatment and is therefore an unacceptable procedure. Adverse comments of this nature, made against a staff member by another staff member working with him should be communicated to the staff member concerned in order that he might have an opportunity to reply. The only reaction by the Respondent in this case was to reproach Mr. Vergara orally, and the Tribunal deems this insufficient to protect a staff member's rights.

VI. After reviewing the Applicant's claims concerning his alleged unfair treatment and discrimination by the Respondent, the Tribunal finds that, with the exception of the note described in para. V above, these grievances might have caused inconvenience to the

Applicant, but are not such as to be construed either as a violation of his contractual rights, or as constituting unfair treatment on the Respondent's part.

VII. Further in his pleas, the Applicant complains that the Respondent did not explain to him more fully and frankly the true reasons for not renewing his contract. The Tribunal notes that despite the fact that the Applicant, as a holder of a fixed-term appointment had no expectancy of renewal of his appointment, the Respondent, nevertheless provided a full explanation of the reasons for not renewing his contract. The Tribunal finds that as early as 29 March 1983, the Applicant was aware that no funds were currently available for an extension of his post and therefore further appointment at the expiration of his contract on 30 June 1983, was not feasible. Moreover, on 3 September 1983, in a letter to the Director of TCD, the Applicant himself stated that the Regional Programme Officer for Latin America, in meetings in London, informed him that there would not be sufficient funds in 1984 to employ three advisers. In another letter dated 10 November 1983, apprising him of the possibility that his post could be curtailed for lack of resources, the Director of TCD explained fully the unfortunate reality of the possible insufficiency of funds and referred to the strenuous efforts to obtain them to continue support for the Maritime Infrastructure Project, with the full complement of Co-ordinators/Specialists. Thus, the Applicant was aware of the compelling reason for the non-renewal of his contract, namely the insufficiency of funds.

VIII. The Applicant also complains about the abrupt way in which the decision to abandon a proposal to transfer him to the Caribbean was taken.

After reviewing the documents concerning the proposed

Caribbean post, the Tribunal finds that:

1. This issue had a long history and serious efforts were made by IMO to establish the post, but a number of governments and organizations were also involved;

2. The choice of the Applicant to head the Caribbean post was a genuine choice, because of his previous stay and visits in the area, and the conviction of IMO that he could be more effective in the English-speaking countries of the sub-region;

3. The JAB was correct in believing that the complications encountered in this respect by IMO were beyond the Respondent's control and no fault could be attributed to the Respondent.

Therefore, the Tribunal is unable to accept any insinuation that the proposed transfer to the Caribbean was part of a scheme to exclude the Applicant from activity in South America.

IX. The Applicant claims that the Respondent's interpretation of the rules relating to home leave and other personnel issues is unduly rigid and formalistic. In the Tribunal's view, what is important and relevant with regard to the implementation of rules is their correct interpretation and their proper application, and not the Applicant's personal opinion about their rigidity and formalism.

X. In his last plea, the Applicant claims that the denial of the cost of a family visit by the Applicant's wife to the Applicant's duty station in 1981, was a clear violation of the Staff Rules. The Tribunal concurs with the Respondent that the appeal in this regard is time-barred, having arisen well before the submission of his appeal to the JAB.

XI. In the preceding paragraphs the Tribunal has examined the merits of the various claims of unfairness levelled by the Applicant against the Respondent and pronounced itself on each. It notes that

the Applicant asserts that the Respondent was not only unfair to him, but consistently unfair. Contrary to this charge, there is documentary evidence showing recognition by the Respondent of the positive contribution made by the Applicant during various times of his employment in 1978, 1979 and at the end of his service in 1983.

XII. The Tribunal finds that these expressions of appreciation of the Applicant's work later led to tangible proof of good will towards the Applicant. After the letter of 29 March 1983, informing the Applicant of the likely discontinuance of his employment, the Applicant's contract was renewed for a six month-period up to 31 December 1983, as soon as additional funding was obtained. Moreover, when the Applicant was separated from service at the expiration of his contract on 31 December 1983, he was appointed a joint IMO/OAS (Organization of American States) regional consultant. The Applicant initially questioned any credit to IMO for the fact that he received an OAS contract after his separation from service with IMO, since the first approach to the Applicant was made by OAS. Despite the Applicant's statement, the fact remains that the involvement of IMO was necessary to appoint the Applicant jointly with OAS as an IMO/OAS regional consultant; moreover, requests for the Applicant's services had to be addressed to the Secretary-General of IMO.

XIII. For the reasons set forth above, the Tribunal finds that all the Applicant's claims, except the issue relating to critical comments made against him by Mr. Vergara and his claim for reimbursement for typing expenses, must fail.

XIV. The Tribunal decides that the Applicant should be compensated for the Administration's failure to properly handle the critical comments made against the Applicant and for typing expenses incurred

by the Applicant in relation to his work. The Tribunal determines the amount of compensation to be US\$1,500.

XV. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant US\$1,500.

XVI. All other pleas of the Applicant are rejected.

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Ahmed OSMAN
Second Vice-President

Samar SEN
Member

Geneva, 14 May 1990

R. Maria Vicien-Milburn
Executive Secretary