

EIGHTEENTH ORDINARY SESSION

In re **BENEDEK**

Judgment No. 113

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Atomic Energy Agency made by Mrs. Alice Benedek on 11 February 1966, the reply of the Agency on 17 March 1966, the supplemental memorandum submitted in rejoinder by complainant on 26 April 1966, and the reply of the Agency to this memorandum on 21 June 1966;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rule 3.033 of the Staff Rules of the respondent organisation in force up to 1 August 1965;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Mrs. Benedek was born in 1907 in the town of Lugoj, which at that time was within the Austro-Hungarian Empire but since 1920 has been in Rumanian territory. She had her secondary education in Rumania, and several subsequent years of higher education in Paris. From October 1931 to October 1942 she lived in France, where she married Mr. Benedek, at that time Paris correspondent of an Austrian newspaper. In 1943 Mr. and Mrs. Benedek went to Spain as refugees and remained there until 1960.

B. In August 1960 Mrs. Benedek and her husband went together to Vienna, and on the 20th of the same month complainant applied for employment with the International Atomic Energy Agency, Being at that time stateless, she had travelled on a travel document issued by the Spanish authorities. On 26 August 1960 she was given a contract for five days, beginning on 29 August, and this was subsequently renewed without interruption, first from week to week and later for longer periods. On 13 October 1961 she was appointed by the Agency to a post of secretary (G.5) in the French translation section of the Division of Linguistic Services, with effect from the following 1st of November. This new contract was for a period of one year; it was renewed for the same period in 1964 and on 1 January 1965 Mrs. Benedek was promoted to Grade G.6. In the meantime Mr. Benedek, who was born in Budapest in 1889, had been awarded a small Austrian pension although he was not of Austrian nationality.

C. In accepting the appointment running from 1 November 1961 Mrs. Benedek had stated that she reserved her right of appeal in respect of her recruitment as a local staff member, and by letter of 8 January 1962, 15 November 1962, 4 September 1964 and 30 November 1964 she did in fact ask to be given non-local status. On several occasions she was informed orally by the Division of Personnel that her request could not be granted, and this was confirmed in writing on 25 May 1965 by the acting Director of the Division of Personnel. On 11 June 1965 Mrs. Benedek asked the Director-General of the Agency to reconsider this decision, and on his refusal to do so, intimated on 24 June 1965, she appealed on 2 July 1965. The matter was then referred to the Agency's Joint Appeals Committee. In a majority report, two of the three members of the Committee recommended confirmation by the Director-General of the decision appealed against, whereas the third member, in a minority report, recommended that the decision should be annulled. On 15 November 1965 complainant was informed that the Director-General had decided to confirm his decision to refuse to give her non-local status.

D. In her complaint Mrs. Benedek prays that her status as a non-local staff member should be recognised as from 1 November 1961, the date at which she was promoted to Grade G.5 and assigned to the post of secretary to the French Translation Section, and that the non-resident allowance should be paid to her in virtue of her non-local status retroactively from 1 November 1961.

The International Atomic Energy Agency submits that this claim should be dismissed.

CONSIDERATIONS:

1. As a general rule, amendments made to the Staff Regulations by the competent authority apply forthwith to

serving staff members. It is otherwise, however, when the regulations themselves lay down that the status of staff members in any particular respect is finally settled at a specific date.

The provisions of Rule 3.033 of the Staff Rules of the International Atomic Energy Agency taken as a whole show that, save for a limited number of exceptions which do not affect the present case, the attribution to employees of local or non-local status is finally settled at the date of appointment and in accordance with the rules in force at that date.

In consequence, the amendments made on 2 August 1965 to Rule 3.033 are not applicable to Mrs. Benedek, whether the date of her recruitment be considered to be 29 August 1960 or 1 November 1961.

It follows that the dispute between complainant and the Agency must be settled on the basis of Rule 3.033 as it existed before 2 August 1965.

2. Paragraph (A) of Rule 3.033 lays down, at the beginning of subparagraph (i), the general principle that staff members in the General Service category who have been recruited in the country of the duty station shall normally be regarded as having local status.

The remainder of subparagraph (i), the subsequent sub-paragraphs of paragraph (A), and paragraph (B) of Rule 3.033, specify, in a list which is not restrictive, particular cases which illustrate the scope of the above-mentioned principle. In particular, at the end of subparagraph (ii) of paragraph (A) it is stated that persons who are not nationals of the country of the duty station and are brought to the duty station for service with the Agency shall be granted non-local status.

In the present case, it appears from the documents in the dossier that Mrs. Benedek did not come to Vienna with the specific intention of seeking employment with the Agency, but solely in order to accompany her husband, and that, once there, she looked for work and was engaged by the Agency on 29 August 1960 for very short periods (five days, and subsequently several appointments of eight days). She cannot therefore be regarded in any way as having been brought to Vienna for the purpose of service with the Agency, and her case is not covered by subparagraph (ii), paragraph (A) of Rule 3.033 cited above.

Accordingly the case comes under the general principle that recruitment in the country of the duty station normally results in local status, and there are no abnormal factors requiring the Director-General to decide otherwise.

DECISION

For the above reasons,

The complaint of Mrs. Benedek is dismissed.

In witness of this judgement, delivered in public sitting in Geneva on 18 October 1967 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, Bernard Spy, Assistant Registrar of the Tribunal.

M. Letourneur
André Grisel
Devlin
Bernard Spy