

EIGHTIETH SESSION

In re LOJPUR

Judgment 1474

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by M. Milorad Lojpur against the United Nations Industrial Development Organization (UNIDO) on 21 June 1994 and corrected on 13 July, UNIDO's reply of 5 October 1994, the complainant's rejoinder of 16 March 1995 and the Organization's surrejoinder of 16 June 1995;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a citizen of the former Yugoslavia who was born in 1941, joined UNIDO in August 1991 on an appointment for three-and-a-half months as a consultant in Antananarivo, in Madagascar. His work proved satisfactory, and by a letter of 10 February 1992 the head of the Project Personnel Recruitment and Administration Service offered him a six-month appointment as from 1 December 1991. He was to be chief technical adviser at grade L.5, step V, to a project that UNIDO was carrying out with the United Nations Development Programme (UNDP). He accepted the offer on 11 April 1992.

Although his appointment ended on 31 May 1992 he apparently carried on working for UNIDO thereafter in the hope of getting an extension of contract for another UNDP project. Though he got no such extension, he carried out a mission for the Organization in June 1992.

In a form dated 17 July 1992 and headed "Internal Travel Authorisation", he applied to UNIDO for leave to carry out a mission by motor car in Madagascar from 20 to 22 July. Though leave was not granted he set off in a UNDP vehicle. He had an accident on 20 July.

By a letter of 18 January 1993 the UNDP's Resident Representative in Madagascar informed him that he was in the country "as a private person and at [his] own expense", and asked him to report on any work he had done after the expiry of his appointment and to have the damage to the vehicle repaired at his own expense. He was also to send back any papers and supplies still in his possession, and he did so at the end of January 1993.

In May 1993 he sent a work report to the Resident Representative, who forwarded it to the Organization's headquarters in Vienna. On 15 July the head of the Africa Unit of the Industrial Investment Programme Section at headquarters wrote a letter to the Representative. He sent a copy to the complainant. He said that the report mentioned no new projects and that UNIDO had concluded no further contract with the complainant after the expiry of his appointment in May 1992. But he suggested considering "the possibility of payment" under the project the complainant had been recruited for in February 1992 "if there was still money for the purpose".

In a memorandum of 30 August 1993 to the head of the Africa Unit the complainant objected in writing to the terms of that letter. By a letter of 3 November 1993 he asked the Deputy Director-General of UNIDO to "look into" the memorandum of 30 August. And on 25 February 1994 he applied to the Director-General for "a ruling on payment for services to UNIDO from June to November 1992". He got no reply.

B. The complainant submits that the reason why he continued to work for UNIDO after his contract had expired was that he had oral promises from the Director of UNIDO's office in Madagascar. The Director assured him in discussions in November 1992 that his "services from June to November 1992 [would] be made official".

He asks the Tribunal to order the Organization to pay him the salary at grade L.5, step V, to which he considers he

is entitled for the period from 1 June to 30 November 1992, and his entitlements under appointments for at least one year, including contributions to the United Nations Joint Staff Pension Fund, plus interest; to award him 250,000 United States dollars in damages and \$30,000 against "the irrecoverable costs of law enforcement"; and to grant him costs.

C. In its reply the Organization submits that the complaint is irreceivable. The complainant's appointment ended on 31 May 1992 and, despite several warnings in 1992 and 1993, he failed to meet the time-limit in the Staff Regulations and Staff Rules for appealing against the decision not to extend his appointment.

On the merits it submits that the complainant adduces no evidence of the work he says he did for the Organization from June until November 1992. Besides, the requirements were not met for extension of his appointment, particularly the grant of approval by the Government of Madagascar.

It denies that the Director of its office in that country asked him to stay on or promised any extension of appointment. In any event an oral promise does not constitute a contract.

D. In his rejoinder the complainant maintains that he did work for UNIDO in the period in question and he produces several items in support.

E. In its surrejoinder the Organization presses its pleas.

CONSIDERATIONS:

1. UNIDO appointed the complainant as a consultant at Antananarivo for three-and-a-half months from 16 August 1991. It then granted him a contract of appointment as chief technical adviser, still in Madagascar, for six months up to 31 May 1992. That contract, which he did not sign until 11 April 1992, said that if he had his appointment extended beyond the date of expiry without any break in service the extension would start at 1 June 1992. Although he never had his appointment officially extended he did, in circumstances that are not wholly clear from the evidence, continue after 31 May 1992 to regard himself and to be regarded by others as engaged in UNIDO business. He asked several times that his status be made official by the conclusion of a contract of service for the period from 1 June to 30 November 1992. In a letter of 25 February 1994 to the Director-General he claimed recognition of his rights and payment for his services in that period. He is asking the Tribunal to set aside the implied rejection of his claims.

2. The Organization pleads first that since its contractual relationship with the complainant ended on 31 May 1992, the date of expiry of his short-term appointment, he was not free thereafter to go to the Tribunal. It is thereby confusing issues of receivability and the merits. As an employee of the Organization the complainant is plainly entitled to claim the extension of his appointment. If the claim is unsound his complaint will fail, but the issue bears on the merits, not on receivability.

3. The Organization further pleads that his letter of 25 February 1994 to the Director-General was out of time because several decisions affecting him adversely were notified to him in 1992 and early in 1993 and, in line with the material provisions of Rule 212.02(a), he should have sent it within sixty days of receiving notice of the decision he was impugning. But the Tribunal is satisfied on reading those texts that he had no reason to treat any of them as final and that indeed they suggested that his status would be made official. So the Organization's objections to the receivability of the complaint fail.

4. In support of his claims the complainant alleges that he was given oral promises of extension and actually worked for UNIDO from 1 June to 30 November 1992.

5. As UNIDO contends, the evidence he cites may not be construed as promising extension. A "Unidogram" that the Project Personnel Recruitment and Administration Service sent him on 10 April 1992 did speak of extension beyond 31 May 1992, but the language it used was cautious and made no commitment on the Organization's part. Again, though the correspondence shows that some UNIDO officers did want to sort out a very obscure state of affairs, he adduces no real evidence of any intention on the part of the Organization of keeping him on. Nor is there evidence to suggest that any competent UNIDO officer promised him an extension. There was no contract, no commitment and no promise for the period at issue.

6. Yet the execution of the project he had been recruited for went on after 31 May 1992 and the evidence is that he

did carry out a three-day mission in June 1992 for the purposes of the project. Although the mission came under a project that was supposed to be completed, it is plain from the local UNIDO officers' consent to the mission that they were still treating him as answerable to them. Indeed the whole case shows much delay in clearing up the complainant's situation and a striking carelessness in handling the case. So it seems only fair to acknowledge that the complainant had good reason to believe that in June 1992 he was still in the Organization's employ.

7. The conclusion is that UNIDO must pay him damages equivalent to the one month's pay he would have earned had his contract been extended until 30 June 1992, plus interest to be reckoned at the rate of 10 per cent a year up to the date of actual payment. His other claims are disallowed save that he is entitled to an award of 1,000 United States dollars in costs.

DECISION:

For the above reasons,

1. UNIDO shall pay the complainant damages to be reckoned as set out in 7 above.
2. It shall pay him 1,000 United States dollars in costs.
3. His other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

(Signed)

William Douglas
Michel Gentot
Julio Barberis
A.B. Gardner