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

EIGHTY-FOURTH SESSION

In re Bedrikow (No. 2)

Judgment 1687

The Administrative Tribunal,

Considering the second complaint filed by Mr. Roberto Bedrikow against the International Labour Organization (ILO) on 20 November 1996 and corrected on 30 December, the ILO's reply of 23 April 1997, the complainant's rejoinder of 30 July, corrected on 21 August, and the Organization's surrejoinder of 24 October 1997;

Considering the further submission filed by the Organization on 3 November 1997 at the Tribunal's request, the complainant's comments of 6 November thereon and the ILO's final brief of 14 November 1997;

Considering articles II, paragraphs 1 and 6(a), and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant, a Brazilian who was born in 1962, was employed by the International Labour Office, the secretariat of the ILO, under short-term contracts from 1988 until 1995. His last one, for the period from 1 July to 31 December 1995, came under Rule 3.5 of the Rules governing conditions of service of short-term officials, known as the "Short-term Rules". He accordingly had most of the conditions of service prescribed under the Staff Regulations for a fixed-term appointment.

The Personnel Planning and Career Development Branch (P/PLAN) wrote him a minute on 30 August 1995. It told him that the Organization could not afford to extend his contract. But the Director of the International Labour Standards Department (NORMES) spoke to him and then, in a minute of 21 November 1995, asked for an extension until 30 June 1996.

On 14 December 1995 the complainant went on leave. On 21 December the Personnel Department drafted an offer to extend his contract until 31 March 1996 and sent it for the chief of the Application of Standards Branch (APPL) to forward to him. On 3 January 1996 the chief of APPL put his initials on the offer and left it in the office that the complainant had been using. On 18 January the complainant sent a fax message asking the chief of APPL to say whether he had any offer for 1996 and, if so, to send it. By a fax of 26 January the chief of APPL told him that the Personnel Department would "be in touch very soon". The complainant sent another inquiry on 30 January and the chief answered on 1 February that his case was with the Personnel Department.

By a letter of 6 February 1996 the Director of the Personnel Depart-ment told the complainant that the Office had tried more than once, to no avail, to get an offer of extension to him. She said that he ought not to have left the matter until 18 January, that he had taken unauthorised leave on 20 and 21 December 1995 and that his appointment had, as P/PLAN had warned him on 30 August 1995, expired on 31 December 1995.

After correspondence with the Director of the Personnel Department he lodged a "complaint" on 27 June 1996 with the Director-General under Article 13.2 of the Staff Regulations objecting to "covert and wrongful dismissal", contending that three competitions he had entered showed procedural flaws and claiming payment of repatriation grant and compensation for overtime. On 26 August 1996 the chief of the Personnel Administration Branch (P/ADMIN) replied that because of a backlog his "complaint" was still pending but he would be sent the comments of everyone involved and would then be given the Director-General's final decision. Having received neither comments nor decision, he filed this complaint on 20

November 1996 challenging the rejection he inferred. He was sent the text of the Director-General's final decision on 10 June 1997.

B. The complainant explains that, as was the practice in APPL, the chief of the service gave him informal permission to take 20 and 21 December 1995 off by way of compensation for overtime days. Before leaving he asked the chief of APPL "to send him in Brazil word of any offer of appointment from the ILO".

He submits that by virtue of Rule 3.5 he had what was tantamount to a fixed-term appointment. No-one who has such an appointment may, in his view, be dismissed for reasons other than unsatisfactory performance or serious misconduct or redundancy or lack of funds. There were no financial reasons, since the Office had offered him an extension and then took on someone else in his place; nor was there any of the other grounds for dismissal. So he suffered "wrongful dismissal".

The ILO ought to have given him a hearing before taking the decision. Besides, he says, the decision is not properly accounted for, and the penalty is out of proportion to any offence. The ILO was out to get rid of him for filing his first complaint. The chief of APPL was in bad faith. And so was the whole Organization: it made no real effort to let him have its offer, and then denied ever making it.

He entered two competitions to fill posts in APPL. The ILO did its utmost to get someone else appointed instead, even though he was the Selection Board's choice. There were also several formal flaws: as to the first competition there was no restriction of nationality for entry; written tests were held after the Selection Board had reported; and he was not allowed to write in Spanish; and as to the second competition mistakes by the ILO kept him from taking the test.

It was discriminatory to hold a competition to fill a post in the Freedom of Association Branch (LIBSYND). Having come second in an earlier one for a post in that branch, he was entitled, in keeping with ILO practice, to direct selection. The ILO was wrong not to let him write in Spanish and to put unlawful pressure on the Selection Board, which he says had picked him for the job.

His claims read :

"1. My reinstatement and payment as from 1 January 1996 until reinstate-ment in APPL of salary unpaid since that date, plus interest at the rate of 5 per cent a year as from 20 January 1996.

2. Subsidiarily, failing reinstatement in APPL, payment of moral damages in the amount of 200,000 United States dollars plus interest at 5 per cent a year as from 28 June 1996.

3. Payment of moral damages in the amount of $65,000 ... plus interest at 5 per cent a year as from 28 June 1996 even if the claim to reinstatement under 1 above is allowed.

4. Payment in full of expenses attributable to dismissal.

5. In the event of my reinstatement full repayment to the complainant of my and the ILO's contributions which on my dismissal I had to claim back from the United Nations Joint Staff Pension Fund, plus interest at 5 per cent a year from the date of reinstatement or, failing reinstatement, payment of an amount equivalent to what the ILO would have paid by way of contributions into the Fund on my behalf, plus interest also at 5 per cent a year as from 28 June 1996.

6. Payment of moral damages in the amount of $8,500 for each full month or part of a month from 1 January 1996 until the completion of competition No. V/APPL/4/95.

7. Payment of moral damages in the amount of $8,500 for each full month or part of a month from 1 January 1996 until the completion of competition No. V/APPL/5/95.

8. An order that the ILO should not appoint [a named official] or any other candidate who fails to meet the requirements as to nationality (i.e. only citizens of under-represented countries on the list appended to notice V/APPL/5/95 or Spain) and qualifications as stated in notices V/APPL/4/95 and V/APPL/5/95, and the quashing of any such appointment that may have been made.

9. My appointment to a post in APPL in the above competitions.

10. Subsidiarily, my appointment to a post in APPL by any procedure intended for the purpose.

11. Payment of damages in the amount of $100,000 for moral injury attributable to the attitude of the Personnel Department (or other

departments, branches or anyone else) intended to malign and traduce me in the eyes of members of selection boards and others.

12. Quashing of the appointment of [another named official] to a post in LIBSYND in competition No. V/LIBSYND/14/95.

13. My appointment to the post at present held by [the named official in 12] and payment of an amount equivalent to full monthly pensionable remuneration, plus interest at 5 per cent a year as from the date of [her] appointment.

14. Payment of moral damages in the amount of $100,000 should the Tribunal be satisfied on the evidence that competition V/LIBSYND/14/95 was tainted with unlawful pressure by the ILO

15. Payment of the repatriation grant under Article 11.15 of the Staff Regulations, account being taken of the period of continuous service outside my home country since 4 October 1993.

16. Payment in full for the overtime I did at the tripartite maritime meeting held in November/December 1994 and set out in an appendix to my claim dated 27 June 1996 and submitted on 28 June.

17. Payment of a total of 60 hours' overtime as set out in the statement I submitted to [a named personnel officer] on 16 April 1996.

18. The cost of making photocopies."

C. In its reply the ILO declines to discuss what sort of appointment the complainant had since that issue was disposed of in his first complaint. But it objects to his speaking of "dismissal". It withdrew the offer of extension before he got notice of it; so the only material issue is whether it had a duty to extend his short-term appointment. The accompanying letter of 19 July 1995 made it plain that the contract he was being offered carried "no expectation of any longer term of employment" and would end "at the date of expiry, without notice, unless before that date an offer of renewal was made and accepted". All that was said again in the minute of 30 August 1995.

The secretary to the chief of APPL and the complainant's supervisors maintain that he did not tell them he would be off work on 20 and 21 December 1995. "The contract offered was to start at 1 January 1996 and at that date his whereabouts were unknown. That fact alone voided the offer ...". Knowing as he did what APPL's workload was and that there was "a good chance that his [request for extension] would be accepted", he behaved cavalierly.

The Tribunal is not, says the ILO, competent to entertain his claims relating to the competitions for posts in APPL: until the results are out the claims are premature and therefore irreceivable. In any event the flaws he pleads are "sheer humbug", and the defendant "utterly denies" what he says about the competition in LIBSYND.

The ILO will not pay him repatriation grant until, as the Staff Regulations require, he comes up with evidence to show that he is no longer living in the country where he was last stationed. His claim to compensation for overtime is out of time.

D. In his rejoinder the complainant submits that the initialling of the text of the offer by the chief of APPL on 3 January 1996 shows that his absence on 20 and 21 December 1995 was above board. The ILO has never been willing to treat the issue as the mere misunderstanding it really was. Besides, since he had already agreed to the extension, the offer signed by the Personnel Department and the initialling of it by the chief of APPL were all that the conclusion of the contract called for.

Although the result of the first competition in APPL was not out when he filed his complaint, what he feared came to pass: the staff member backed by the ILO got the post even though he did not have the degree in law required in the notice and the appointment of that staff member offended against the fair geographical distribution of staff.

As for the LIBSYND competition, the reason why there was a written examination was that there were three of the applicants whom the Selection Board could not rank. Since he came top in the test and the Director-General nevertheless picked the applicant who came last he presses his charge of unlawful pressure.

As to the repatriation grant, he says he offered a copy of the employment log-book he has in Brazil, where it amounts to proof of residence, but the ILO has never answered. His claim to payment of overtime was not

out of time.

E. In its surrejoinder the Organization points out that the complainant cannot have accepted an offer it had not yet made. So there was of course no contract. His behaviour was "feckless" and "unseemly in someone looking for a job in the international civil service", and it wanted nothing more to do with him.

As to the competitions, his claims are irreceivable because they assume that a decision not yet taken may cause him injury. It is quite wrong to try to interfere in the outcome of a competition, and the Tribunal will not order the ILO to appoint one of the applicants. The outcome of one of the competitions in APPL was that the Director-General appointed a former colleague of the complainant's. In so deciding he took account of the complainant's behaviour as well as of objective assessment of the candidates. The one chosen did have the required degree. As for the competition in LIBSYND, written tests are just one method of assessment. Even though the Selection Board recommended the complainant, he was ineligible because he did not have the number of years of university education in law that the notice had stipulated.

F. At the Tribunal's request the ILO produced on 3 November 1997 the text of notice V/LIBSYND/14/95, the personal-history form submitted by the complainant with his application and the Selection Board's report .

G. The complainant observes that according to its report both the Selection Board and the Freedom of Association Branch found him eligible: he had "the required education and proficiency in languages". The purpose of the written test was, said the report, to rank the three best applicants. Though the complainant came first, the chief of LIBSYND stepped in, and the Board picked the candidate with the lowest score. What happened was that the chief heard the results of the test and so as to rescue that candidate, who was already in his branch, made new stipulations at odds with the notice. Requiring that French should be the appointee's "mother tongue" was an inadmissible form of discrimination.

In the complainant's submission, the ILO is taking a "pedantic" view of his qualifications. It is setting greater store by the duration than by the substance of education. It misled him for years by suggesting, for example in his performance reports, that he was "fit to win a competition".

It gave him only two-and-a-half days' notice - on 15 August 1995 - of the test, though the Board's report says that the decision to hold it had been taken on 6 June. The Tribunal does have competence to order the appoint-ment of a particular candidate.

H. In its final brief the ILO repeats that the Selection Board never said that its choice would turn on the examination alone. The results showed that any one of the three candidates would do, and in making the choice it was only reasonable to consult the chief of LIBSYND. It is quite in keeping with the case law for an organisation to eliminate a candidate who is not fully qualified.

"The chief of APPL's use of the term 'mother tongue', though strictly mistaken, was intended in its usual connotation of 'command' of the language." But of course someone who, like the appointee, is a native French-speaker would know the language better than the complainant.

CONSIDERATIONS

1. The complainant joined the International Labour Office in 1988 and left it on 31 December 1995. As was said in Judgment 1666, on his first complaint, he held short-term contracts. At first they were intermittent, but from October 1993 onwards they were more regular. Under the last one, concluded in July 1995, his appointment was extended until 31 December 1995 and he came under Rule 3.5 of the Rules governing conditions of service of short-term officials, known as the "Short-term Rules". That Rule conferred on him some of the entitlements of the holder of a fixed-term appointment, but the other terms of his contract remained the same: in particular it was to expire at the scheduled date without notice and carried no expectation of further employment.

Late in 1995 his supervisor, the chief of the Application of Standards Branch (APPL), told him he might get an extension of his short-term contract. The ILO agreed on or about 14 December to letting him have another three months, from 1 January to 31 March 1996. The Personnel Department drew up and signed the offer on 21 December. The chief of APPL initialled the text on 3 January 1996. Being unable to reach the complainant, the ILO left it in the office he had been using.

He obtained formal permission to take leave from 14 to 19 December 1995. Although according to the entry he had signed on his leave sheet he was to be at work on 20 and 21 December. He failed to turn up on those days. On 18 January 1996 he sent a fax to the chief of APPL to ask whether the ILO was extending his appointment. He gave no return address, just a fax number. The chief of APPL sent a reply to that number on 26 January 1996 to say that the Personnel Department would be answering soon. Another fax came from him dated 30 January. On 6 February the department sent him a letter at his address in Geneva to say that the ILO had dropped its offer of an extension; it had been trying to reach him since 15 December 1995 both in Geneva and at his mother's address in Brazil; it had been expecting him to report for duty on 20 December; and, having kept silent until 18 January 1996, he had left the Office in the dark.

The complainant's answer is that on 15 December 1995 he left Geneva for a holiday in Brazil. He was, he says, entitled to leave in compensation for overtime work. He talked about the matter with his supervisor and got his consent, even though there was no formal record of it; in keeping with the usual informal practice the leave was to be properly recorded later. The chief of APPL demurs. The ILO says it had someone telephone the complainant's mother in Brazil and ask that he get in touch at once. He says that it did nothing of the kind; it did not try very hard to reach him. Though he says that the Administration or at least some staff knew where to write to him in Geneva and São Paulo, and had his parents' address in São Paulo, he does not deny failing to tell the Office where it could reach him, in Geneva or in Brazil. Although it did not write to him at the time it did try to reach him by telephone, as indeed it managed to reach others in like circumstances.

2. On 27 June 1996 the complainant submitted a "complaint" to the Director-General claiming reinstatement and a new contract; appoint-ment to one of three posts for which he had applied in competitions V/APPL/4/95, V/APPL/5/95 and V/LIBSYND/14/95; repatriation grant; and compensation for overtime.

He got no answer within the time limit of two months. A representative of the Director-General vouchsafed him a reply on 10 June 1997. The gist of it was:

He had no right to any extension of his short-term appoint and, owing to his conduct while on leave, the ILO would no longer be offering him the extension that would have begun on 1 January 1996.

The Director-General had authorised short-term staff to enter competitions. Being lodged before competitions for posts V/APPL/4/95 and V/APPL/5/95 were over, his "complaint" was premature. Though over, competition V/LIBSYND/14/95 showed no procedural flaws and there was no call to cancel the appointment made. The complainant's having to write in French rather than Spanish caused him no injury: Spanish was not his mother tongue either; he had a command of French; and French was more important for the post anyway.

The ILO would pay him the repatriation grant as soon as he had proved residence in Brazil.

His claim to compensation for overtime arose from work he had done at a meeting in 1994. It was rejected because by making it on 16 April 1996 he had missed the prescribed deadline. It was no longer possible to check his assertion and grant him compensatory leave. On the strength of the written records the ILO accepted his claim to compensation for overtime in 1995 but was docking the two days' leave he had taken without permission in December 1995.

3. His complaint impugns the implied rejection of his claims and is largely a recasting of his arguments. After getting the Director-General's reply, summed up in 2 above, he withdrew his claim to compensation for overtime in November and December 1995.

The ILO asks the Tribunal to dismiss his complaint on the merits insofar as it is receivable. It observes that he never got notice of the offer of extension. In any event it withdrew the offer before he accepted it; so there was no contract. His being a short-term appointment, the Organization had no duty to extend it. There was nothing wrong with its refusing an extension inasmuch as through his own fault he was unable to accept it, let alone report for duty, in time. The competitions for two posts in APPL were not over when he filed his internal "complaint" and, having suffered no injury, he showed no cause of action. For the reasons set out in

2 above the ILO says that the competition for the post in LIBSYND was beyond reproach. It does not rule out the repatriation grant altogether but says he must prove residence in another country, and he has not yet done so. As to overtime it stands by what it has already told him and adds that under Article 7.2 b) of the Staff Regulations the only sort of compensation he can get for overtime in 1994 is time off.

The ILO having raised in its surrejoinder new issues of fact and of law about the post in LIBSYND, the Tribunal invited comments from the complainant and a final brief thereon from the defendant.

4. The complaint was filed within the time limit set in Article VII(3) of the Tribunal's Statute for impugning an implied decision. The Tribunal takes up the other issues of receivability below.

Non-renewal

5. (a) The complainant argues that the parties concluded a contract on the same terms as were set out in the ILO's offer.

There will be no contract unless an offer is made and accepted, and both offer and acceptance take effect upon notification to the other party.

Here the ILO's offer was in law no more than an intention since it was never notified to the complainant himself nor sent to his address before being withdrawn. His former office was not the place for giving notice of it: his appointment had expired by the time it was left there and so the office was no longer his.

He is mistaken in pleading implied acceptance on the grounds that the ILO knew that he would agree to its offer. There could be no implied acceptance unless he had an offer, and none had been notified to him. Besides, tacit acceptance would not have done since the text required express acceptance in writing.

So the parties concluded no contract in January 1996.

(b) The complainant submits that he was entitled to a new contract on the grounds that the non-renewal was unlawful.

According to precedent non-renewal is a discretionary decision that may be set aside only if it is *ultra vires* or shows a formal or procedural flaw or a mistake of fact or law, or overlooks a material fact, or draws an obviously wrong inference from the evidence, or amounts to misuse of authority. Review by the Tribunal will be especially cautious in the case of a probationary appointment, the purpose of which is to let both sides see whether a longer one is desirable: see, for example, Judgment 1418 (*in re* Morier). Review will be cautious in the case of short-term appointments too, which are obviously not intended to make for long-lasting relations: see Judgment 1560 (*in re* Ndédi) under 4 and the precedents it cites. Yet the organisation may not act arbitrarily; it must bear in mind, among other things, the staff member's seniority, the quality of his work and its own real needs.

By those lights there was nothing wrong with the ILO's intention of extending the complainant's appointment. But difficulties then arose. For one thing, it could not reach him to get his formal acceptance of its offer of the extension from 1 January to 31 March 1996. Worse, he failed to provide the services it required of him from 1 or 2 January 1996 since it had no word of him until the 18th. The behaviour of someone who, far from apologising, levelled criticism raised doubts about his fitness to work for the Organization.

He says that the ILO might have written to him in Geneva or São Paulo and he might then have answered soon enough. But it is not at all sure that that would have done since the extension was to start on 1 January 1996 and the Office was shut from 22 December 1995 until that date. So the ILO's wish to get in direct touch with him is understandable. Some senior officers were expecting to do so on 20 or 21 December. That, he says, was a misunderstanding since he had said he would be absent until the new year. But the entry in his leave sheet suggested nothing of the kind and he ought to have taken care not to create such confusion.

The conclusion is that it was a proper exercise of discretion by the Director-General or management to decide thereupon to withdraw the offer.

(c) The complainant's other pleas are immaterial.

Non-renewal was not in his case a hidden form of disciplinary action; so the rules on such action do not apply.

The impugned decision was properly substantiated.

There was no breach of his right to a hearing: he had the opportunity of stating his case without hindrance before the decision he is challenging could be inferred.

(d) He argues that failing the renewal of his appointment he should be granted priority in the filling of any future vacancy.

Under Article II6(a) of its Statute the Tribunal may entertain a complaint from a former official that arises from his status as such. If it does not so arise, the Tribunal will not entertain it. The complainant fails to show how someone who has had no extension of appointment may be entitled to a new appointment later on. There is no need to determine whether such a right may arise under special circumstances, for example where the refusal of extension was attributable to some short-lived problem: in general there is no such entitlement. The complainant must bear the consequences of his own behaviour and may not rely on any exceptional entitlement.

The competitions

6. The complainant objects to the procedure followed in three competitions he entered.

The ILO having opened the competitions to the complainant and other such holders of short-term contracts, the Tribunal may, under Article II6(a) of the Statute, entertain objections from them, even if they have since left the Organization's employ.

(a) Since a complainant must first exhaust his internal remedies the Tribunal will entertain objections only to the Organization's final decision, be it express or implied.

For the two posts in APPL the process of selection was not completed and no appointment had been made when the complainant raised his objections. Having suffered no injury on that account, he had no cause of action and his complaint is irreceivable under that head.

(b) But for the third post, in LIBSYND, the process of selection was completed and an appointment made by the time the complainant raised his objections.

(i) The ILO says for the first time in its surrejoinder that the reason why the complainant could not be appointed to the post was that he lacked one of the basic requirements stated in the notice of vacancy, namely, a minimum of five years' university education in law. The text of his personal-history form shows that he was not qualified on that score, and the Selection Board said so in its report.

On the evidence that fact is proven.

According to the case law on appointment made after a competition will be fatally flawed if the successful candidate fails to meet any of the essential requirements set out in the notice of the competition: see Judgments 1158 (*in re* Vianney), 1223 (*in re* Kirstetter No. 2), 1497 (*in re* Flores) and 1646 (*in re* Pinto). Since the complainant did not qualify, he could not have been appointed and, if he had been, the other candidates would have been entitled to seek the quashing of his appointment.

It was no doubt odd and regrettable that the ILO had him take the same tests as the best candidates. That is not a matter for which the other candidates may be held to account, and no reason for relieving the Organization of applying the rules of the competition.

The complainant submits that the requirement of five years' university education in law is unreasonable since the University of Geneva, where he studied law, and other universities let someone take the course in three years: so the requirement favours the least gifted or laziest students. Though well taken, the point does

not make the requirement invalid.

In any event his objections cannot be sustained.

(ii) In his final submissions the complainant sees a breach in the rules on competitions in that, whereas the notice required mere proficiency in French, the Organization later went further and required that French should be the mother tongue.

To lay down a further requirement that is not in the notice may indeed amount to breach of procedure. But there was no such breach: the ILO did not make a native grasp of French an essential requirement. In appointing someone whose mother tongue was French to a post that called for a command of that language it demanded no more than the notice had required, namely a "command of French".

(iii) The complainant sees another procedural flaw in the fact that the three top candidates had to take a written test in French that was not provided for in the notice. That, he submits, put him at a disadvantage because French was the mother tongue of the two other candidates. His own is Portuguese, and he would rather have drafted in his second language, Spanish.

The ILO's answer is that it wanted someone whose language was French and that the test caused him no injury because his French is very good.

The Selection Board's report bears that out. His grasp of French is sound because he has lived for years in Geneva and there obtained his main education in law. Besides, he came first in the written test; so having to write in French put him at no disadvantage. The ILO was looking for someone to work mainly in French; so it was right for the Selection Board to examine proficiency in that language.

(iv) The complainant suspects that the Selection Board committed a breach of procedure by giving in to undue outside pressure to reject him, having been told that, if he won the competition, the post would be "frozen" and no appointment made.

The Selection Board's report, though detailed, reveals no such interference. The majority put the successful candidate top on the strength of formal qualifications, just ahead of the complainant, though one member ranked him first. In the written test he came first. But what proved decisive was the opinion of the chief of LIBSYND, who said his branch needed someone with perfect French and very good English and, if possible, a grasp of English law. After deliberations that took three sittings the Board agreed and unanimously recommended, with the consent of the chief of LIBSYND, someone equally at home in English and in French.

The complainant has not adduced a shred of evidence of the interference he alleges. So the Tribunal will order no further submissions and will reject the plea: see Judgment 1436 (*in re* Sala No. 2) under 6.

The complainant is under the mistaken impression that the Selection Board and the Director-General were bound by the results of the written tests. Paragraph 12(e) of Annex I to the Staff Regulations, on the filling of posts by competition, says:

"the selection will be made after the remaining candidates have been interviewed or tested or both, where desirable, and after the chief concerned has been consulted."

Such consultation, which is compulsory, serves to identify what the Organization needs. So the Selection Board did not go beyond its terms of reference in consulting the chief of the Branch and giving his opinion due weight.

The criteria that the Board and the Director-General applied are plainly in keeping with the Organization's requirements and suggest no misuse of authority.

(v) The complainant submits that the Organization failed to give him notice of the outcome of the competition and thereby acted in breach of paragraph 23 of circular 246 in series 6, which says:

"A register will be kept of officials placed second and third in competitions who shall be so informed. Other candidates not selected

shall be informed."

Paragraph 20 of Annex I to circular 209 in series 6 further stipulates that "The results of a competition shall be publicly announced".

Since the complainant's plea has no bearing on the lawfulness of the appointment there is no need to determine whether the complainant was given proper notice of the outcome. His plea fails.

The claim to repatriation grant

7. Article 11.15(c) of the Staff Regulations reads:

"The payment of the [repatriation] grant shall be subject to the provision by the former official of documentary evidence satisfactory to the Director-General that the official has taken up residence in a country other than that of the last duty station."

What is at issue under this head is proof of his taking up residence in Brazil.

He says that no residence papers are officially issued in Brazil, but he offered the ILO a copy of his employment log-book. The ILO takes the view that he has failed to supply the evidence required.

Here again there is nothing wrong with the impugned decision. The complainant may avail himself of the possibilities open to him under Brazilian law for proving residence. He may in particular offer evidence to show place of residence and employment status and how long he has been living and working in Brazil. He may thereby dispel any doubts the ILO may have on that score.

The conclusion is that at the time when the ILO provisionally rejected his claim its refusal was not unwarranted.

Overtime

8. (a) His claim to compensation for overtime in 1995 discloses no cause of action, the ILO having allowed it.

(b) In his internal "complaint" he cited a statement he had submitted to the ILO on 16 April 1996 about overtime he had done in 1994. It said:

"Over and above [overtime in 1995] please add the overtime I did for the Tripartite Meeting on Maritime Labour Standards (28.11.94 to 9.12.94) as shown on the sheet of which I attach a copy. I submitted the original just after the last sitting. I got no leave in compensation and, having left, may no longer get any."

The representative of the Director-General answered:

"As for your claim to compensation for overtime at the meeting in 1994, you took until 16 April 1996, or over a year to submit the form; so the Director-General considers that the Office need not entertain your claim."

There followed a passage about time limits, the purport of it being that, to succeed, his claim to compensation ought to have been made forthwith.

In his complaint he again says that the ILO neglected his claim even though he supplied his overtime sheet at the end of the meeting and brought the matter to the attention of the people in charge, including his supervisor, who was not in favour of compensation. The Office never let him have an answer.

In its reply the ILO says no more than that it "did not see his overtime sheet until 16 April 1996" and that his claim was "plainly time-barred and unacceptable".

In his rejoinder he presses the matter. He says that just after the meeting he handed the sheet

"to [the official] in charge of overtime, who told me that it had gone to [the chief of APPL]. In my minute of 25 July 1995 I asked [the chief] to grant me compensatory leave, but [he] refused ... I sent [the sheet] to [the official in charge], who recently confirmed that it went to [the chief of APPL], who refused on 25 July 1995 ... it is not true that I waited until 16 April 1996 ... What I did at that date was provide a copy."

So the matters at issue are whether he submitted an overtime sheet in 1994 and, if so, what became of it. Though the ILO has not said anything

much of substance on his allegations, it has a duty to check what he says and give him a new decision. To that extent his complaint succeeds.

DECISION

For the above reasons,

1. The impugned decision is set aside insofar as it relates to the complainant's claim to compensation for overtime in 1994, the case being sent back to the Organization for review and a new decision.

2. The ILO shall pay him 500 Swiss francs towards costs.

3. His other claims are dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Julio Barberis
Jean-François Egli

A.B. Gardner

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