

EIGHTY-FOURTH SESSION

In re Geyer (No. 3)

Judgment 1716

The Administrative Tribunal,

Considering the third complaint filed by Mr. Philip Gerhard Geyer against the United Nations Industrial Development Organization (UNIDO) on 17 October 1996, UNIDO's reply of 27 January 1997, the complainant's rejoinder of 12 May and the Organization's surrejoinder of 4 September 1997;

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's career in UNIDO is summed up under A in Judgment 1714 on his first complaint. By a letter of 12 December 1995 he lodged an appeal with the secretary of the Joint Appeals Board against "all the administrative decisions made since August 1995". Those decisions included what he regarded as unlawful termination of his appointment on the grounds of abandonment of post. Among the forms of relief he sought were "appropriate and lawful" termination of his appointment; payment of salary and allowances, including arrears; and payment of various entitlements for himself, his "common-law wife" and his daughter. By a letter of 5 July 1996 to the Board he claimed payment of 100,000 United States dollars in moral damages and of not less than \$43,000 for loss of income; public and individual apologies; and "rectification of fact" in two newspapers and in letters to his bank, to his credit-card company and to others.

In an undated report the Board recommended, among other things, reversing the decision to separate him for abandonment of post and instead terminating his appointment as at 11 September 1995 with payment of one month's salary in lieu of notice and of one week's pay "for each month of uncompleted service plus repatriation entitlements minus proportional adjustment of hardship allowance, assignment allowance and education grant". But the Board recommended dismissing his claims to awards of material and moral damages and to public and individual apologies: it found no evidence that UNIDO had caused him financial or moral injury or damaged his reputation.

In a letter of 21 August 1996, the officer in charge of the Project Personnel Service in the Division of Administration told him that the Director-General had decided to terminate his appointment as at 11 September 1995 and pay him various entitlements but no awards of material and moral damages. That is the decision he is impugning.

B. The complainant submits that UNIDO's treatment of him was improper and he pleads mistakes of fact and of law. He says that its appraisals of his work were "questionable" and it mistook "impressions" and "second-hand" information for facts.

The Organization, he contends, failed to warn him of dismissal and so denied him the opportunity of stating his case. He alleges breach of good faith and of the duty to respect his dignity. Such was UNIDO's "resentment" that it put him under "financial pressure": it stopped paying his salary and gave his bank manager information about his contractual status and whereabouts.

He dwells on the damage it caused to his good name, health and feelings and says that his family suffered too. An apology was the least that the Director-General owed him after wrongfully dismissing him for abandonment of post. He also sustained material injury in the frustration of "solid" expectations of further employment with the Organization.

He is seeking (1) the regrading of his post for the duration of his appointment at L.5, step IV, plus the

payment of interest at the rate of 12 per cent a year on the sums due; (2) awards of \$296,948 in material damages and \$80,000 in moral damages; (3) "public rectification of fact regarding [his] conduct in and departure from the project in letters to all the proposing vendors, all shareholders of ITMIN [the Industrial Technology Market Information Network Ltd] and the UNDP [United Nations Development Programme]"; (4) "individual rectification of fact regarding [his] whereabouts and status during the period 29 August 1995 to 12 January 1996" to be notified to his bank, credit-card company, shipping agents and anyone else to whom UNIDO may have given information about him; and (5) 8,850 Austrian schillings in costs.

C. In its reply UNIDO contends that the complaint is in part irreceivable and in any event devoid of merit. His first claim is a new one and is therefore irreceivable for failure to exhaust his internal remedies. It is also without merit: the letter of appointment he signed stipulated that his salary would be the equivalent of step VI in grade L.4.

His other claims are also devoid of merit. He has failed to adduce any evidence of moral injury greater than the minor misfortunes of everyday life. The only information UNIDO gave to one of his creditors was his address, and that does not warrant moral damages. It denies breach of his right to a hearing. It maintains that he was not fit to be an international expert. Lawful termination of appointment does not entitle an official to material damages. Besides, his letter of appointment said it carried no expectancy of renewal or conversion to another type of appointment. As to public and individual "rectification" of facts, the Organization observes that Article VIII of the Tribunal's Statute does not allow such relief. Nor is there any evidence that any difficulties he may have had with his bank, credit-card company and shipping agents were of UNIDO's making.

D. In his rejoinder the complainant disputes arguments in the reply and enlarges on his own pleas. He denies that his first claim is a new one inasmuch as his internal claim to \$100,000 in moral damages encompassed it. To back up his claim to moral damages he lists some twenty "accusations" UNIDO has wrongfully made against him. As to material injury, he sees breach of the rules on notice in the decision to end his appointment retroactively several months before the scheduled date of expiry. He contends that rectification of misstatements is a proper form of relief. He alters his claim to material damages to have the amount reckoned on the basis of salary for an official with two dependants at step IV of L.5. He invites UNIDO to make various submissions in its surrejoinder and claims another 12,740 schillings in costs.

E. In its surrejoinder the Organization observes that an internal claim to moral damages may not serve as a basis for putting forward new and unrelated claims later. In its submission the termination of the complainant's appointment was lawful and caused him no actionable injury. Nor, it says, are there any factual statements to set right. Besides, international organisations may not be required to make apologies. It observes that the submissions he wants are not relevant to the case and that the Tribunal already has enough evidence to make up its mind.

CONSIDERATIONS

1. The complainant joined UNIDO under a one-year appointment, at grade L.4, step VI, on 13 January 1995, and was assigned to a UNIDO project in Sri Lanka. That appointment ended prematurely in the circumstances set out in Judgment 1714, on his first complaint. In this, his third complaint he asks (a) that his post be regraded to L.5, step IV, and he be paid arrears of salary accordingly, and (b) that he be granted relief for the termination of his appointment in the form of awards of 80,000 United States dollars in moral damages and 296,948 dollars in material damages and "public rectification of fact" within UNIDO and in Sri Lanka regarding his conduct as well as "individual rectification of fact" to be notified to his bank, his credit-card company and his shipping agents.

Regrading

2. The complainant submits that his post should have been graded at level L.5, step IV, but that UNIDO refused his claim through prejudice because it considered him "too young".

3. UNIDO contends that the claim is irreceivable because it is made for the first time before the Tribunal. In reply the complainant says that the second appeal which he submitted to the Joint Appeals Board on 5 July 1996 set out claims which arose from new matters he had discovered in June 1996. One of those claims was

to the payment of 100,000 dollars in moral damages. His contention is that the refusal to give the correct grade to his post fell within that claim because that refusal had resulted from prejudice and it was for prejudice that he claimed such compensation.

4. The appeal of 5 July 1996 made no mention of any refusal to grade his post correctly. That was not a new matter, and since that appeal referred to new matters the claim to moral damages can hardly be treated as covering it. Further, if the complainant was dissatisfied with the grading of his post Staff Rule 112.02 required him to seek review within sixty days of his appointment. Having been made for the first time before the Tribunal, the claim is irreceivable for failure to exhaust the internal remedies.

5. As for the merits, the complainant said in a letter dated 15 December 1994 to the Administration that he understood that his grading on assignment to Sri Lanka would not affect his grading under any subsequent appointment and he accepted the post at the offered grade; however, he asked for a "higher net base salary", and he got it. Since he expressly accepted the grading of his post, his claim fails on the merits as well.

Other relief

6. The complainant claims 80,000 dollars in moral damages on account of injury to his professional reputation, good name, social standing and feelings, as well as to his physical and mental health.

7. As is recounted in Judgment 1714, when he left Sri Lanka on 29 August 1995, UNIDO treated him at first as having resigned and later as having abandoned his post. Finally, accepting the recommendations of the Joint Appeals Board, the Director-General treated him as having resigned and gave him his entitlements accordingly.

8. In dealing with his claim to moral damages the Tribunal must consider whether in the circumstances the termination had any effect on his reputation, feelings and health that was appreciably greater than the ups-and-downs of everyday life: see judgment 565 (*in re* Ali Khan No. 2).

9. One important consideration is that, although UNIDO erred in treating him as having abandoned his post on 29 August 1995, he had by then ceased to be able to discharge his duties under his contract for extraneous causes for which UNIDO was clearly not responsible.

10. He says that he was caused moral injury by unfounded allegations of corruption made against him by officers of the implementing agency of the project, Industrial Technology Market Information Network Ltd. (ITMIN), before he left Sri Lanka and that UNIDO did not respect his right of defence.

11. Yet at no stage did UNIDO associate itself with those allegations. On the contrary, the chief technical adviser of the project repudiated them and protested to ITMIN. UNIDO also requested the executing agency, the Sri Lankan Ministry of Industrial Development, not to make a formal request for the withdrawal of the complainant from the project as it was making attempts at conciliation between him and ITMIN. The Tribunal holds that UNIDO was not responsible for any injury to his reputation and that it made efforts to minimise the effects of ITMIN's conduct. What set off the chain of events which ultimately brought his contract to an end was his memorandum of 20 June 1995 to ITMIN questioning its decision to award a contract and thereby overstepping his advisory role under the project.

12. The complainant contends that in late July and early August 1995 he suffered severe stress, difficulty in sleeping, collapse and injury to mental health.

13. While there is evidence that he spent two or three days in hospital, that is not sufficient to show either that he suffered problems of health beyond the ordinary or that, if he did so, any act of UNIDO was the cause.

14. The complainant further alleges that after he had left Sri Lanka unnamed officials of UNIDO had made statements to his credit-card company, to his bank in Vienna and to his shipping agent that he had abandoned his post leaving no trace of his whereabouts, and those statements had a devastating effect on his good name and creditworthiness. In his submission UNIDO failed to respect his dignity and reputation.

15. The credit-card company wrote to UNIDO in January 1996 saying that he had left Austria and Sri Lanka without giving them any address and that his account remained unpaid. All that UNIDO did was to give his address. It refused the company's request that remuneration due from UNIDO to the complainant be remitted to it. That UNIDO was not to blame is clear from a letter which the company wrote to the complainant on 9 May 1997 apologising for the mistakes that its employees had made.

16. In June 1996 the complainant's bank manager said that he had made a telephone call to "the UNO" in mid-December 1995 and then been told that the complainant had left his place of work one-and-a-half months early, that his address was unknown and that he owed money. In April 1996 the complainant's shipping agent reported that when he had telephoned UNIDO he was told that the complainant had disappeared months before and nobody knew where he was. In neither case did the complainant ask for the name or position of the person who had allegedly made those statements. The Tribunal holds that there is no evidence to suggest that the statements had been made by responsible officers of UNIDO acting in the course of their employment.

17. The complainant has therefore failed to show that UNIDO caused him any moral injury.

18. Since his plea that he suffered moral injury fails, so do his consequential claims to apologies and to the publication of "rectifications of fact".

19. He says that he had expectations of receiving further similar contracts from UNIDO but that at a meeting on 20 June 1996 the officer in charge of the Project Personnel Service made it clear that the Organization would never consider employing him for another expert mission. He claims material damages for injury to his career and loss of future income, in a sum of 296,948 dollars, which he says he could have earned from missions over the next three years.

20. He states that no specific allegations were brought to his notice at the meeting of 20 June 1996 but only extremely vague accusations such as that he had "attitude problems" and was "reluctant to adapt". He says he was also allowed to see the chief technical adviser's statement that ITMIN had "accused [him] specifically of corruption and abuse of position".

21. To the Organization's reply is annexed the version given by the officer in charge of the Project Personnel Service of the meeting in question. He says:

"This meeting was arranged on my initiative in order to provide Mr. Geyer with an opportunity to reply to various allegations made against him and contained in his file in connexion with his mission in Sri Lanka. I informed Mr. Geyer that, if he would not provide UNIDO a satisfactory explanation on various allegations, his candidature most probably would not be considered for future assignments with our technical co-operation programme ... I did not communicate any decision to exclude Mr. Geyer's candidature for consideration for future assignments and so far no decision has been taken. Mr. Geyer's name continues to appear in the UNIDO computerized roster of experts. ... as to Mr. Geyer's conduct in the field, UNIDO received negative information on this matter from various sources, e.g. the [chief technical adviser], Mr. Geyer's counterparts, other experts in the project etc. [At the meeting] on 20 June 1996 I requested him to provide an explanation for his defence. However, Mr. Geyer considered various allegations as being too general and unworthy of comments. In fact some of those allegations are very concrete. *Inter alia* Mr. Geyer proposed and insisted on the purchase of over-dimensional and too costly computer hardware which was inappropriate for the needs of ITMIN. UNIDO Headquarters had to intervene in this matter and, when much cheaper computer hardware was selected, Mr. Geyer protested though his function should only have been advisory ... It is difficult to assume that Mr. Geyer acted in good faith or [that] this could be a technical error as he was fully qualified for such a job. No explanation was received from Mr. Geyer on this matter."

22. Since UNIDO had, as is explained in 11 above, rejected ITMIN's charges of corruption and misconduct, those charges should not have been raised with him again on 20 June 1996. Nor was UNIDO entitled to rely on such allegations in considering his suitability for future contracts.

DECISION

For the above reasons,

1. The Tribunal orders that UNIDO shall not rely on ITMIN's charges of corruption and misconduct in considering the complainant's suitability for future contracts.
2. The Organization shall pay him 500 United States dollars in costs.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Mella Carroll

Mark fernando

James K. Hugessen

A.B. Gardner

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