

## **EIGHTY-FIFTH SESSION**

### ***In re* El Mahjoub (No. 6)**

#### **Judgment 1744**

The Administrative Tribunal,

Considering the sixth complaint filed by Mr. Mohamed El Mahjoub against the International Labour Organization (ILO) on 9 July 1997 and corrected on 12 August, the ILO's reply of 16 October, the complainant's rejoinder of 12 November and the Organization's surrejoinder of 5 December 1997;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

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

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

A. The complainant, a Libyan who was born in 1936, was on the staff of the International Labour Office from 1 January 1985 until 31 December 1991. Information on his career with the ILO is set out, under A, in Judgment 1213 of 10 February 1993. In that judgment the Tribunal dismissed his claim to an appointment without limit of time.

He got an estimate dated 3 January 1993 from a removal company in Switzerland for shipment from Geneva to Tripoli of his household goods and other belongings, estimated at a volume of less than thirty cubic metres. The cost of shipment was to be 11,800 Swiss francs plus 2.5 per cent for insurance. By a letter of 10 February 1994 the Permanent Mission of the Libyan Arab Jamahiriya at Geneva asked the removal company to send it the bill.

In a letter of 28 February 1994 he sent the Director of Personnel a claim to refund of the cost of a shipment of sixty cubic metres of goods. The Permanent Mission made a payment to the Swiss company on 20 June 1994 of 11,800 francs. On 28 June 1994 the company gave the complainant a cheque for 9,800 francs by way of "refund for part of shipment not made".

There followed correspondence between the complainant and the ILO. An officer of the Personnel Planning and Career Development Branch (P/PLAN) told him in a letter of 18 October 1994 that he would have to submit the "necessary supporting documents" before the Administration would meet his removal expenses. On 15 November 1994 he submitted a copy of a "receipt" dated 25 September 1993 from a Libyan company for shipment and insurance. The amount was 5,445 Libyan dinars, which he reckoned at about 27,500 Swiss francs. By a letter of 20 January 1995 the personnel officer asked him for evidence of actual shipment. When he failed to produce any the personnel officer explained in a letter of 18 April 1995 that a "detailed bill from the shipping company, insurance certificate, proof of payment and the bill of lading" would do. In a letter of 8 June the personnel officer told him that the documents he had submitted were "not sufficient".

By a letter of 21 October 1995 the complainant told the Administration that "the bill from the shipping company, the insurance certificate and the bill of lading were lost". In his reply of 10 November the personnel officer asked him to supply, instead of the missing documents, the name of the company that had removed his belongings from Geneva, the date of removal and the name of the insurance company.

By a letter of 4 April 1996 the chief of P/PLAN told him that unless he gave that information within three months he would lose his entitlement. After further investigation by the Administration, and for want of evidence of actual removal, the chief of P/PLAN informed him in a letter of 19 September that the Office had "closed the file".

On 20 February 1997 he lodged a "complaint" with the Director-General under Article 13.2 of the Staff

Regulations. In the absence of a reply he is challenging the implied rejection of his claim.

B. The complainant submits that the ILO has broken the rules in Article 9.7 of the Staff Regulations and Annex III on payment of removal expenses. According to paragraph 34 of Annex III claims to reimbursement, when "accompanied by vouchers", are payable within three months of the date of removal. Since he had submitted a voucher from the Libyan company the ILO was wrong to refuse reimbursement. It "continuously" disregarded the Staff Regulations: his dispute with it has a "long history" and was fuelled by the Director-General's unlawful refusal to extend his contract by two years as from 1 July 1991.

He wants the Tribunal to quash the decision that "froze the reimbursement of removal expenses".

C. In its reply the ILO contends that the complaint is irreceivable under Article VII(1) of the Tribunal's Statute. It says it never "froze" the reimbursement of the complainant's removal expenses. Indeed it made plain that it would meet any claim he duly substantiated and its personnel officer informed him in the letter of 8 June 1995, which he got on 15 July, that what he had sent would not do. Since that is the decision he is objecting to, he had six months under Article 13.2 in which to lodge an internal "complaint". Having tarried until 20 February 1997, he failed to exhaust his internal remedies.

On the merits the Organization disputes his construction of the rules. It gave him three years to supply evidence of removal even though the rules required him to exercise his right within six months of termination. The document he relies on is from an unknown Libyan company and is not really a receipt anyway since it affords no evidence of payment of the stated amount or of the services rendered. Where such evidence has been "lost" the burden lies on the claimant to prove that the removal did take place.

The ILO came to doubt his claim. The Swiss Government told the Organization that because of the economic sanctions applied by the United Nations to the Libyan Arab Jamahiriya no lorry from there could have entered Switzerland; nor could a shipment have left for that country without help from a Swiss shipping agent. The amount he claimed was exorbitant, being even higher than Swiss rates, which are steep. Above all, the date of his alleged removal in 1993 does not square with the various documents provided by the complainant, the Libyan Mission and the Swiss company.

If the Tribunal holds that the complainant is seeking unjust enrichment, he should pay the defendant's costs, which it puts at 2,000 Swiss francs.

D. In his rejoinder the complainant seeks to refute the reply and makes out that his complaint is receivable. He sees himself as a "victim unprotected against misuse of administrative authority". Dwelling at length on the embargo against his country, he blames the ILO's treatment of him on "political reasons". He says that the Swiss removal company "could not manage" to transport the shipment to Tripoli, though it did collect 2,000 francs for packing, an amount he now claims. He presses his other claims.

E. In its surrejoinder the ILO says there is nothing new in the complainant's rejoinder to make it change its stance. The crucial issue for receivability is not its decision to close the file on his claim but its refusal to treat the document from the Libyan company as sufficient evidence of a removal, and he got notice of that refusal on 15 July 1995. On the merits it points out that far from producing proof of removal he is contending that the Administration's demand for evidence is improper. The Swiss company has told the Organization that it cancelled the shipment on 22 March 1994 at his own request.

## CONSIDERATIONS

1. The complainant, a Libyan who was born in 1936, joined the staff of the ILO in January 1985. Before leaving he reached step 7 in grade P.4. There is further information on his career under A in Judgment 1213 on his first complaint.

2. In a letter of 20 February 1997 he filed a "complaint" with the Director-General claiming the reimbursement of his removal expenses under Article 9.7(2) of the Staff Regulations of the International Labour Office and Annex III thereto. According to paragraphs 34 and 35 of Annex III such claim must be "accompanied by vouchers".

3. The complainant says that he has produced all the required evidence and that he got an implied refusal to meet his claim to reimbursement. He wants the Tribunal to set aside what he sees as an unlawful decision that "froze the

reimbursement of removal expenses" he incurred in Libyan dinars. He says he qualifies for the refund under the Regulations.

4. On 15 November 1994 he sent off two letters, one to the Personnel Department, the other to the Travel Section, with a copy of a document dated 25 September 1993 from a Libyan company which neither the ILO nor the Swiss removal company, which he had previously engaged, had ever heard of. The document purported to be a receipt for 5,445 dinars - the equivalent of some 27,500 Swiss francs by the complainant's own reckoning - spent on removal from Geneva to Tripoli.

5. The Organization answered the complainant that the receipt alone did not prove actual shipment from Switzerland to his home country. It warned him that it could not meet his claim unless he let the Travel Section have the proper vouchers.

6. It asked him several times to submit the required evidence in support of his claim - a detailed bill from the shipping company, an insurance certificate, proof of payment and the bill of lading - and explained each time that the papers he had offered would not do. But he merely went on arguing and claimed reimbursement on the strength of another copy of the receipt from the Libyan company.

7. It is plain on the evidence that all that the complainant has produced to bear out his claim is copies of the receipt. That does not amount to sufficient evidence. Besides, it does not stand up to scrutiny since it neither looks like a proper receipt nor takes the form of one. Nor is there any substance to the complainant's attempts to explain why he cannot offer any other valid and adequate evidence by saying that the Libyan company lost it.

8. The conclusion is that in the absence of proper vouchers he has offered no worthwhile evidence in support of his claim to repayment.

9. The ILO has made a counterclaim to an award of costs against him, but in the particular circumstances of the case the claim is not allowed.

#### DECISION

For the above reasons,

The complaint and the ILO's counterclaim are dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

*(Signed)*

Michel Gentot  
Julio Barberis  
Seydou Ba

A.B. Gardner