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

EIGHTY-FIFTH SESSION

In re Cissé (Nos. 1 and 2)

Judgment 1773

The Administrative Tribunal,

Considering the complaint filed by Mr. Modi Cissé against the International Labour Organization (ILO) on 16 December 1996 and corrected on 21 May 1997 and his second complaint, filed also against the ILO on 23 April 1997 and corrected on 10 June, the ILO's single reply of 30 September, the complainant's rejoinder of 7 November 1997 and the Organization's surrejoinder of 26 February 1998;

Considering Articles II, paragraphs 1 and 7, 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 Mali, concluded a service contract on 20 July 1994 with the United Nations Development Programme (UNDP). The Programme signed on behalf of the International Labour Office. According to the contract the complainant was to be deputy chief of project from 1 July 1994 to 30 June 1995. He nevertheless continued to work beyond the latter date, although he had no new written contract, and was paid the same salary until October 1996.

By a letter dated 12 December 1996, which he got on the 16th, the Resident Representative of the UNDP at Bamako, in Mali, forwarded to him a fax message from the regional adviser of the ILO's Multidisciplinary Advisory Team for North-West Africa at Dakar. The message was dated 4 December and "confirmed the non-renewal" of his contract after 31 October 1996. It said that he had been told of the non-renewal by two earlier fax messages. The same day - 16 December - he filed a complaint with the Tribunal against that decision. On the 17th he sent an appeal to the Resident Representative and a copy thereof to the ILO's regional office at Dakar. He said that he had not got either of the earlier faxes and he claimed payment of several sums including his pay for November and December 1996, compensation for leave accrued from 1994 to 1996 and an amount corresponding to three months' notice, or a total of 6,106,355 CFA francs. He also claimed 12 million francs in damages. By a fax of 23 January 1997 the deputy director of the ILO's office at Dakar pointed out to him that his contract had ended at 31 October 1996 but announced payment of compensation for the accrued leave, of the equivalent of his pay for November 1996 and of sundry costs he was claiming from the UNDP's office at Bamako.

By a letter of 4 February 1997 he asked for arbitration of the dispute over the amount. The deputy director refused in a fax of 21 April. On 23 April he filed a second complaint with the Tribunal against the deputy director's decision of 23 January 1997. By a letter dated 29 September 1997 the Director of the Personnel Department told him that the ILO agreed to pay his salary for December and, in accordance with his service contract, one week's salary in lieu of notice and six and a half in termination indemnity.

B. The complainant observes that from 1 July 1994 to 30 June 1995 he held a fixed-term appointment, not a service contract, with the ILO. Citing ILO Conventions and the Labour Code of Mali, he maintains that the contract is null and void for failing to prescribe his entitlements to yearly leave, to sick leave and to the repayment of mission expenses. He contends that he had a permanent appointment on the grounds that his contractual relationship with the ILO continued indefinitely after the expiry of his original contract. The Organization ought to have given him notice and properly accounted for its decision. He questions the honesty of several people working on the project and charges the ILO with yielding to pressure from some third party to end his appointment. He contends that the Tribunal may hear his case because nothing came of the arbitration procedure provided for under the contract.

In his first complaint he is asking the Tribunal to "declare the termination wrongful and grant him full redress" and

to award him 2,034,390 CFA francs in costs. In his second complaint he claims an award of 3,268,000 CFA francs, on various counts, 12 million in damages, another 153,310 in costs and interest on those amounts in a lump sum.

C. In its single reply the ILO invites the Tribunal to join the two complaints. It maintains that the complainant's contract was tacitly renewed for one year at a time beyond the original period and observes that it makes express provision for arbitration in the event of dispute. So the Tribunal is not competent to hear the case. Besides, the first complaint is obviously premature.

In subsidiary argument the ILO contends that the terms of the contract, which alone are applicable, allowed the parties "great latitude" in ending it without having to explain why. In any event the difficulties the complainant had in getting on with other staff afforded sound reason for termination.

D. In his rejoinder the complainant argues that it was the other staff who were to blame. He presses his claims and asks for the award of another 15,000 CFA francs in costs.

E. In its surrejoinder the ILO presses its pleas and again invites the Tribunal to dismiss the complaints as irreceivable and, failing that, as devoid of merit.

CONSIDERATIONS

1. The complainant signed a service contract at Bamako in July 1994 with the United Nations Development Programme (UNDP), which was acting on the ILO's behalf. Under the contract he was to serve as deputy chief of a project for waterworks in a tract of land called Macina. The contract was to run from 1 July 1994 until 30 June 1995 but contained clauses providing for termination. Clause 10, headed "Dispute settlement", said that "any claim or dispute arising out of the interpretation or execution of this contract which cannot be settled by agreement shall be put to arbitration", and the arbitration board was to consist of an official of the Government of Mali, a representative of the UNDP and a co-opted chairman.

2. Although on the expiry of his contract the complainant went on working, nobody in the office of the UNDP or the ILO's office at Dakar realised that his status needed sorting out. He was paid until 31 October 1996, but after a visit in early October from the ILO's representative at Dakar there came a decision by the ILO "not to renew" his contract after 31 October 1996. Correspondence sent to give him notice of that decision seems not to have reached him until 16 December 1996, although whether it did take as long as that is moot. At all events the ILO is willing to treat 16 December 1996 as the date at which he got notice.

3. He lodged his first complaint on 16 December 1996, i.e. the very date at which he supposedly got notice of the challenged decision by a fax of 4 December from the ILO's regional adviser at Dakar. In that complaint he submits that he held a permanent appointment which the ILO ended for no sound reason and in breach of the formal rules. He claims his pay for November and December 1996.

4. In his second complaint he seeks the quashing of a decision notified in a fax of 23 January 1997 from the deputy director of the ILO's office at Dakar. The fax confirmed that his contract was not renewed beyond 31 October 1996 and told him that he would be paid compensation for accrued leave and the equivalent of one month's pay for work he had done in November 1996. He again makes the same claims as in his first complaint and further seeks the payment of his salary for December 1996, a sum in lieu of three months' notice, compensation for services rendered and for further accrued leave, 12 million CFA francs in damages, and costs.

5. Being closely akin, his two complaints may be joined. The ILO argues that the Tribunal is not competent to hear them. In its submission his contract of employment does not vest competence in the Tribunal but expressly provides for arbitration over any dispute.

6. In the circumstances of the case the plea cannot succeed. The deputy director of the ILO's office at Dakar wrote to the complainant on 21 April 1997 refusing his request for arbitration. Although there was no express provision vesting competence in the Tribunal to hear the dispute between the Organization and the complainant, it employed him, paid his salary and terminated his appointment. There is therefore no denying the Tribunal's competence by virtue of the general terms of Article II of its Statute. Such denial would mean either that no court at all had jurisdiction or that the case must go to the courts in Mali, to whose jurisdiction the ILO declines to submit. Although the Organization seems in its pleadings to be implicitly withdrawing its objections to arbitration, there is no evidence to suggest it has actually done so. The ILO cannot conceivably wish to refuse means of redress to

someone recruited on its behalf and kept on its payroll. So the conclusion must be that the Tribunal is competent to hear the case.

7. The first the Director-General heard of the dispute was when he got the complaints. One wonders indeed whether the ILO can be properly watching over some of its projects. At all events the Director-General took the view that though the complainant had had his appointment extended he could not claim any rights but those he had had under his original contract. His status in law being obscure since 1 July 1995, that view does stand to reason. In any event he may not argue that the ILO's silence turned his appointment into a permanent one.

8. That is how things had stood on 30 April 1997, when the ILO had paid him 2,876,375 CFA francs, a total made up of his pay for November 1996, compensation for 60 days' accrued leave and reimbursement of 1,076,375 francs in "expenses". By a decision of 29 September 1997 the ILO paid him another 2.4 million francs plus interest as from 1 January 1997. It later raised that amount to 2,570,959 francs, a sum equivalent to over four months' salary. It was made up of his pay for December 1996, end-of-service entitlements, compensation in lieu of the period of notice due under his contract, and the costs of his second complaint. All he says in his rejoinder is that those sums were too small and that he properly carried out his duties. He seems to be claiming another 15,000 CFA francs in costs.

9. The ILO was free in the circumstances to terminate the complainant's appointment in compliance with the terms of his original contract: it is plain on the evidence that it had sound reasons for doing so. What is more, the complainant neither explains why the sums he got were too small nor offers evidence of any moral injury attributable to the ILO's alleged mistreatment of him. Nor did he have any right to costs, although the Organization wished, understandably enough, to take account of the mistakes made and of the muddle over jurisdiction by letting him have some of his costs. The conclusion is that he has no grounds for challenging the settlement, which was in his favour.

10. Being premature, the claims in his first complaint are irreceivable. In the context of his second complaint they again fail in their entirety because they are devoid of merit.

DECISION

For the above reasons,

The complaints 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. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

(Signed)

Michel Gentot
Julio Barberis
Jean-François Egli

A.B. Gardner

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