EIGHTY-SIXTH SESSION

In re Soltes (Nos. 1 and 2)

Judgment 1833

The Administrative Tribunal,

Considering the first and second complaints filed by Mr. Dusan Soltes against the International Labour Organization (ILO) on 28 November 1997 and corrected on 3 January 1998, the ILO's single reply of 30 April, the complainant's rejoinder of 5 June, and the Organization's surrejoinder of 9 September 1998;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal and Article 8 of its Rules;

Having examined the written submissions and disallowed the complain- ant's application for hearings;

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

A. The complainant, a citizen of Slovakia who was born in 1943, joined the staff of the ILO on 9 July 1996. He was appointed as a computer expert at grade P.4. His contract was for a year under a project funded by the Government of Libya, and he was sent out to Tripoli.

He was granted a fortnight's annual leave from 24 September 1996 and went to Bratislava, in Slovakia. From there he sent a fax letter on 30 September to the chief of the Technical Cooperation Personnel Branch (EXPERTS) at ILO headquarters in Geneva: he asked to have that leave treated instead as sick leave on the grounds of headaches and high blood pressure which he said that drugs prescribed by a Libyan doctor had merely aggravated.

In a fax of 21 October to the chief of EXPERTS he asked for extension of his sick leave on the grounds that he needed further treatment and said that he expected to be returning to Tripoli some time between 14 and 21 November. In a telegram of 12 November the chief of EXPERTS asked him to send his medical reports to the Director of the ILO's Medical Service in Geneva, and on 14 November he did so. On 3 December he wrote a letter to the Director asking that his leaving Libya be treated as "emergency evacuation".

On 15 January 1997 he asked the Director for another four to six weeks' sick leave.

The Director wrote on 27 January granting him sick leave from 24 September 1996 but refusing his claim to "emergency evacuation". The same day the chief of EXPERTS wrote him a letter to say that he had been on annual leave from 23 November and on unpaid leave from 10 December.

On 3 February 1997 he wrote to the Director of the Medical Service objecting to the shortness of his sick leave and appealing under Article 8.6(c) of the Staff Regulations, whereby a medical referee should be named to make a recommendation to the Director.

By a letter of 12 March the Director of the Personnel Department named the medical referee. On 16 March he had a check-up in Vienna. The referee sent the ILO his findings dated 5 May; he said that the complainant had been fit since 7 December 1996 to go back to work and therefore his sick leave should have run up to 6 December 1996.

On 20 May 1997 the Director of Personnel wrote a letter informing the complainant of the referee's findings but saying that, since the Libyan Government no longer wanted him to go back to Tripoli, the ILO was ending his contract under Article 11.4.1(d)[(1)] but letting him have one month's pay in lieu of notice under Article 11.4.3 and a termination indemnity equivalent to six weeks' pay.

In a letter of 10 June to the Director the complainant "objected" to the termination; he claimed payment of his full salary for the period from 16 January to 20 May; and asked to have the period from 10 December 1996 to 14 January 1997 treated as paid sick leave.

In a letter of 27 June the chief of the Personnel Administration Branch told him that the ILO would treat his letter of 10 June as a "complaint" under Article 13.2 of the Staff Regulations.

On 23 July 1997 he wrote to the chief of EXPERTS claiming several sums. On 29 August the chief of EXPERTS wrote him a letter confirming that he had been on sick leave from 24 September to 6 December 1996, on annual leave from 7 December to 26 December, and thereafter on leave without pay. The letter set out his total entitlements, which came to 4,831.98 United States dollars. That is the decision he is impugning in his first complaint.

In a letter of 21 September 1997 to the chief of EXPERTS he maintained that his sick leave should be extended to 15 January 1997 and that the sums were wrong.

On 10 October he submitted an Article 13.2 "complaint" to the Director-General against the termination of his contract, restating the arguments in his letter of 10 June 1997.

On 7 November he wrote to the unit that provides compensation for illness attributable to official duty: he claimed compensation under Annex II of the Staff Regulations on the grounds that he had fallen ill in Tripoli because of poor working conditions and medical treatment.

He is challenging the implied rejection of his 13.2 appeal in his second complaint, which he filed on 28 November 1997.

On 29 April 1998 the Director of Personnel replied on the Director-General's behalf rejecting the claims in his letters of 10 June and 10 October 1997.

B. The complainant says that the conditions he had to work in in Libya were so bad as to make him overwrought and induce a heart disorder and high blood pressure. The medical treatment he got there was wretched and he left in search of treatment in Slovakia, where he was on annual leave until 15 January 1997. Sure as he was that the ILO would let him go back to his duty station, he agreed to be put on unpaid leave up to 9 June 1997, though he was entitled to sick leave. But the chief technical adviser of the project had a mistakenly low opinion of his work, and that was what blocked his going back. The ILO ended his contract prematurely and without notice.

In his first complaint he asks the Tribunal to quash the decision of 29 August 1997 and award him full pay up to 24 December 1996 and half pay from 25 December 1996 to 15 January 1997. He claims full pay from 16 January to 9 June 1997 on the grounds that the ILO kept him in the dark about the possibility of his going back to Libya. He further claims under Article 11.4.3 of the Staff Regulations payment of compensation in lieu of notice of not less than six weeks at the rate prescribed in Article 3.1(d), compensation for six weeks' balance of annual leave; the refund of costs he incurred over "emergency evacuation" to Bratislava for medical treatment; a declaration that his journey to Bratislava should be treated as repatriation; refund of the costs of travel from Slovakia to Libya on 23 August 1996 for his wife and daughter or, failing that, for his daughter at least, together with an education grant for the school year 1996-97; the refund of costs of medical treatment; full recovery of his assignment grant from a bank in Libya and transfer of the sum on deposit to his bank in Bratislava; the financial compensation he claimed on 7 November 1997; and the review of two papers he wrote for the project.

His second complaint impugns the implied rejection of his claim of 10 October 1997.

In both complaints he asks for assessment by independent experts of the project he was assigned to.

C. In its reply the Organization contends that neither of his complaints is receivable.

The claim in his letter of 7 November 1997 to compensation for service-incurred illness is still under review by the Compensation Committee. Since he has failed to exhaust his internal means of redress, the claim is irreceivable under Article VII(1) of the Tribunal's Statute.

His second complaint, too, is irreceivable. He challenged the financial settlement of 29 August 1997 in his "complaint" of 10 October. According to Judgment 1611 *(in re* Pennisi), "only where the Administration has failed to take a decision upon any claim within sixty days of the notification thereof does Article VII(3) of the Statute allow direct complaint to the Tribunal". Since he lodged his second complaint with the Tribunal on 28 November 1997, only 49 days after the notification of that "complaint", it is premature.

As to the merits, the Organization refers the Tribunal to its letter of 29 April 1998 in reply to the complainant's

claims of 10 June and 10 October 1997.

D. In his rejoinder the complainant rebuts the ILO's objections to receivability and maintains his pleas on the merits.

He presses his original claims and adds others. He claims material and moral damages for the ILO's denying him part of his income and harming his good name, a further award of 50,000 dollars in damages for professional injury and affront to his dignity, a written apology and another 1,500 dollars in damages for loss of personal belongings he left behind in Libya. He claims 10,000 dollars in costs.

E. In its surrejoinder the Organization contends that the complainant's further claims are irreceivable because he has failed to exhaust his internal remedies. It rebuts his pleas on the merits.

CONSIDERATIONS

1. By a letter dated 10 June 1997 the complainant submitted a series of financial claims arising out of the decision dated 20 May 1997 by his employer, the International Labour Organization, to terminate his employment with immediate effect. In particular, he asked for salary and related entitlements for the period between 15 January 1997 - the alleged end of his sick leave and the date at which he had, he said, been ready to resume duty - and the date of the employer's decision; he also asked that the period from 10 December 1996 to 14 January 1997 should be treated as sick leave.

2. On 27 June 1997 the ILO acknowledged receipt of the complainant's letter and indicated that it was treating it as a "complaint" under Article 13.2 of the Staff Regulations. On 23 July he provided further information with respect to his claim, as the ILO had requested; in the same letter he made new financial claims.

3. In a letter of 29 August 1997 the defendant informed him of his final payments under his contract. By a letter of 21 September 1997 he disagreed with the calculation of his entitlements and resubmitted some of his earlier claims. The defendant replied to that letter on 21 October 1997.

4. On 10 October 1997 he filed another "complaint" under Article 13.2 of the Staff Regulations. It addressed the same subject as the original claims of 10 June 1997 as well as the financial claims of 23 July and 21 September 1997.

5. In a letter of 29 October the defendant acknowledged receipt of the 13.2 "complaint" dated 10 October, noted some differences between the claims of 10 June and those of 10 October, and stated that it assumed that in the case of conflict between the two the second set would prevail. The complainant replied on 10 November 1997 that they were intended to be mutually complementary and that indeed in the event of any differences, the second should prevail.

6. In the meantime, on 7 November 1997, the complainant had filed an internal claim that the ILO acknowledged that certain health problems experienced by him at the end of 1996 should be considered attributable to the performance of his official duties at Tripoli.

7. On 28 November he filed two complaints with the Tribunal. The first is directed against the decision of 29 August 1997, the second against the implied rejection of the 13.2 "complaint" of 10 October 1997. Apart from this difference and some minor variations in the documentation on the two files the two complaints before the Tribunal are identical and seek the same remedies as follows:

(1) The complainant asks that the project to which he was assigned at Tripoli should be subject to review. He applies for the hearing of witnesses to establish that it was impossible for him to complete his part of the project.

(2) He seeks recognition for compensation purposes of the fact that his state of health was due to the performance of his official duties.

(3) He makes a series of claims to sums with respect to his sick leave, his employment status and the termination of his contract.

8. The defendant wants the two complaints to be dealt with together and both declared irreceivable. As to joinder,

the Tribunal holds that they should be taken together since they raise the same issues of fact and law and seek the same redress.

9. The Tribunal holds that the complaints before it are clearly irreceivable. The complainant has not exhausted his internal remedies and has not given the ILO sufficient time to respond to those matters which have formed the subject of his internal claims. In particular it is clear, and his letter of 10 November 1997 confirms as much, that his 13.2 "complaint" of 10 October 1997 subsumes and displaces the one of 10 June 1997. No other meaning can be given to his assertion that the second should prevail in the event of any difference between the two. His contention that the original claims of 10 June 1997 had gone unanswered for more than 60 days and that his complaint to the Tribunal was therefore receivable under Article VII(3) of the Statute cannot be accepted. A complainant who changes the form and content of his internal claims cannot lay on his employer the responsibility of replying to an original set of claims while still retaining whatever benefits may flow to him from an amended one.

10. Insofar as the complainant is attacking the administrative decision of 29 August 1997 his complaint is irreceivable: his letter of 21 September disagreeing with that decision was incorporated into his internal "complaint" of 10 October 1997.

11. Likewise, to the extent that he is relying on his internal claim filed on 7 November 1997 the complaints are premature and therefore irreceivable.

12. With respect to his other claims for relief which were included in neither the internal "complaint" of 10 October nor the claim of 7 November 1997, they too are irreceivable: he has failed to exhaust his internal remedies as Article VII(1) of the Statute requires.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner

1. Article 11.4.1(d) empowers the Director-General to terminate the appointment of a fixed-term official "if the necessities of the service render impracticable the use of the official in the duties or at the duty station assigned to him".

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