

EIGHTY-EIGHTH SESSION

Judgment 1902

The Administrative Tribunal,

Considering the complaint filed by Ms R. N. M. against the International Labour Organization (ILO) on 7 January 1999 and corrected on 2 February, the ILO's reply of 13 May, the complainant's rejoinder of 22 June and the Organization's surrejoinder of 31 August 1999;

Considering Articles II, paragraph 1, 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. In June 1995 the ILO decided to set up an area office in Pretoria, South Africa, which would become operational in mid-1996. The complainant, a South African born in 1953, was working for a magazine in Cape Town in 1995; she was an experienced librarian and had previously worked for the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). The ILO recruited her on an "external collaboration" contract to organise files received from various ILO offices and set up a registration system for correspondence. Her contract ran from 27 November to 26 December 1995, during which period she was on unpaid leave from her employer in Cape Town. At that time the staffing needs of the area office were not clearly known but it was expected that a position of librarian would be created and the complainant expressed interest in it. Meanwhile the ILO appointed her as a registry clerk at grade L5 on a short-term contract for three months, from 4 January to 31 March 1996, and she resigned from her previous employment.

On 19 February 1996 the Director of the area office had occasion to tell the complainant that her attitude towards other officials, as well as her language, were not acceptable. On 22 February he sent her a minute warning her that her contract would not be extended on the ground that her attitude was "incompatible with the team spirit" that he wanted to foster in the office. Following an intervention by the Deputy Director of the area office and the Staff Union he gave her a second chance and extended her contract to 30 June 1996, subject to satisfactory performance.

The complainant addressed a memorandum to the Director-General on 15 April 1996 expressing dissatisfaction with her conditions of work and alleging unjustified treatment by the Director. On 30 April the Chief of the Personnel Administration Branch requested her to make her grievances the subject of a complaint under Article 9.1 of the rules governing conditions of service of short-term officials. She did so in three memoranda dated 5, 6 and 10 June. She alleged that she was treated inconsistently with the rules and the terms of her contract and was "subjected to unjustifiable treatment by a superior official". These memoranda were treated by the Organization as having been received on 19 April 1996, the date it had received her initial communication.

The Director of the area office then wrote to her on 19 June 1996 to say that there had been no improvement in her performance and there would be no renewal of her contract on its expiry. She replied on 20 June expressing surprise and saying that as she had heard nothing about her performance since 20 February she assumed it was satisfactory. She asked for "urgent action" from headquarters to resolve the situation.

The Director of the Personnel Department wrote to her on 27 June 1996 acknowledging receipt of her complaint under Rule 9.1 and informing her that copies would be communicated to the four officials cited therein for comments. The Director also pointed out that her contract would still expire on 30 June. The comments received were subsequently notified to her and she duly replied.

By a detailed letter of 8 May 1998 the Director of Personnel informed the complainant of the decision of the Director-General to reject her internal complaint. The complainant wrote a further letter of appeal to the Director of Personnel on 21 May, asking for reconsideration of that decision. The Chief of the Personnel

Administration Branch confirmed to her in a letter of 10 July 1998 that the decision of the Director-General was a final one and said that her only recourse was an appeal to the Tribunal within ninety days from receipt of the decision as stipulated in Article VII(2) of the Statute of the Tribunal. It became clear from correspondence, however, that she did not receive the letter despatched in July, as she continued to press for an answer. The Director of Personnel wrote to her on 29 September reiterating what the letter had said, and a copy of it was e-mailed to her on 29 October 1998. It is the letter of 10 July that the complainant cites as the impugned decision.

B. The complainant contends that the Director of the area office "maltreated" her by the minutes he wrote to her, and took advantage of his position of authority over her. She maintains that the ILO did not identify what she had failed to do in her job of setting up the registry.

She submits that when offered the position of registry clerk she was led to believe that it would become a permanent position, and understood that she had been placed on a three-month short-term contract while medical clearance was sought from headquarters in Geneva. She resigned from her job in Cape Town and relocated to Pretoria at her own expense. Performing her duties was rendered difficult as she lacked the appropriate equipment to do her job: she had no computer until two weeks before the end of her contract.

The loss of her appointment at the ILO "destabilised" her finances and she blames the ILO for her precarious financial situation. She asks for the quashing of the decision of the Director-General and claims a total of 82,382.92 South African rand to meet sundry debts, bills and expenses incurred that she lists.

C. In its reply the Organization holds that her complaint is clearly irreceivable. It is directed against the letter of 10 July 1998 from the Chief of the Personnel Administration Branch, but there is nothing in the wording of that letter that can be construed as a final decision. Appeal lay only against the decision of the Director-General contained in the letter of 8 May which the complainant is known to have received on or before 21 May 1998. Under Article VII(2) of the Statute of the Tribunal she had ninety days from receipt of the decision in which to lodge a complaint with the Tribunal. In no way did her subsequent requests for review set a new time limit: it lapsed on 20 August, about five months before she filed her complaint.

Ignorance of appeal procedure could not excuse her non-compliance with the time limit and in any event the complainant was to blame for frustrating the efforts of the Organization to make her aware of her rights. The two copies of the letter of 10 July which the complainant did not receive were returned to the ILO by the postal services, marked "unclaimed", because she had refused to collect them from the post office.

Inasmuch as the complainant claims compensation for expenses indirectly related to the non-renewal of her contract, it could be construed that she is challenging the decision not to renew it, which she received on 19 June 1996. Her complaint, however, would still be irreceivable since she failed to exhaust the internal remedies open to her. It would further be devoid of merit as Article 3.4(b) of the Short-term Rules provides that: "appointments shall expire automatically and without prior notice". The complainant was aware that renewal hinged on satisfactory performance. She had also received written confirmation that her contract would not be renewed beyond 30 June.

Further, on the merits, the Organization argues that she has given no indication in her complaint filed with the Tribunal that the Director of the area office was biased against her or subjected her to unfair treatment. In the Organization's view he acted in a "legal and legitimate" manner.

D. In her rejoinder the complainant additionally claims a total of 4,750,000 United States dollars in moral damages for "emotional torture" and "mental harassment" that she accuses the ILO and its officials of inflicting on her.

She points out that she did contest the non-renewal of her contract. She did so before it expired in the minute of 20 June 1996 to the Director of the area office, a copy of which was sent to the Director of Personnel in Geneva. As she is "still on the payroll of ILO Pretoria" the complainant claims "what is due" to her regarding the original assurances of the Organization that her short-term contract would be followed by a fixed-term one.

She acknowledges receiving the Director-General's decision of 8 May on 21 May 1996, but there was no

accompanying information about recourse to the Tribunal. The letter of 10 July 1998 from the Chief of the Personnel Administration Branch was not received by her because it was wrongly addressed.

In her opinion the Director should have given her a performance report in line with labour law requirements: she considers that she was the victim of unfair treatment.

E. In its surrejoinder the Organization presses its objections to receivability. It observes that the complainant's new claims to financial redress did not form part of her internal appeal.

It holds that the despatch by the Administration of the letter of 10 July to the wrong address does not relieve the complainant of her responsibility to file a complaint within the time limit. The appeal process is clear from Rule 9.2 of the Short-term Rules of which she had received a copy. It was for the complainant to ensure that correspondence would reach her when she changed address. Because of the complainant's "lack of minimum courtesy" the ILO restricted its correspondence to just what was necessary to fulfil its duty towards her.

In no way can her minute of 20 June 1996 be construed as challenging the decision of 19 June 1996 not to renew her contract.

Moreover, the complainant has not substantiated her allegations that she received assurances of an established position. She accepted the contract at Pretoria at her own risk. The Director of the area office extended the complainant's short-term contract by three months which was evidence of a comprehensive attitude towards her personal situation.

CONSIDERATIONS

1. In the complaint she lodged with the Tribunal on 7 January 1999, the complainant impugns the letter of 10 July 1998 that she says she did not receive until 29 October 1998, when a copy was e-mailed to her from headquarters. In that letter the Chief of the Personnel Administration Branch confirmed that the Director-General's decision of 8 May 1998 to reject her internal complaint for unjustified treatment was final.

2. The relief the complainant seeks is the payment of the sum of 82,382.92 South African rand to pay outstanding debts and bills which she lists. These appear to result from her inability to pay due to the decision of 19 June 1996 not to renew her contract against which she never appealed. She interpreted the Director-General's decision rejecting her internal complaint to mean that she "deserved to be maltreated" and asks for it to be quashed. However, she grossly misrepresents that decision.

3. While the question of receivability is raised by the Organization the Tribunal prefers to reject the complaint on the merits and will treat the decision of 8 May 1998 as being the decision impugned.

4. First of all, in relation to the decision not to renew her contract beyond 30 June 1996, the complainant refers to her memorandum dated 20 June 1996 to the Director in Pretoria saying she failed to understand why her contract had not been extended and asking for urgent action from headquarters to resolve the situation. The Director replied the same day saying he had nothing to add to his letter of 19 June in which he refused to extend her contract further in view of her performance.

The complainant failed to take any further action. Therefore, the decision of non-renewal was not challenged.

5. In her internal appeal the complainant contends: that she was told she would get a fixed-term contract after the short-term one, subject to a medical examination; that she was "being singled out as if being punished" by being deprived of certain benefits and allowances from which other colleagues benefited; that she was not provided with a copy of the Short-term Rules or with documentation she needed to guide her in the performance of her duties; and that the Director subjected her to "intimidation, threats, mental harassment [and] emotional torture".

6. Before any decision was taken on her appeal extensive interviews were held and the results were communicated to the complainant who was given an opportunity to comment.

7. In the Director-General's reasoned response of 8 May 1998 it was pointed out that the decision not to renew her contract was justified because of her difficult working relationships with several of her colleagues and her unsatisfactory performance. There was no breach of equality of treatment since she was employed under different conditions from the other staff members she mentioned in her internal complaint. As to lack of documentary guidance, the Director-General pointed out that she was assigned tasks within her competence and had shown that she was able to perform them correctly. She had the possibility of asking for guidance from staff members who were assigned to the office to train local staff. He, therefore, said he failed to see how lack of written material could have affected her performance. He also said that she failed to establish that she had suffered any injury from not having been supplied with a copy of the Short-term Rules. He reviewed the evidence relating to the allegation of unjustifiable treatment by the Director and concluded that he had not treated her unfairly: he had even agreed to give her a second chance if her performance improved.

8. In her pleadings the complainant revisits her original complaints.

9. The Organization points out that renewal depended on satisfactory performance, a condition the complainant did not meet. There is no evidence to indicate that the Director acted with bias against the complainant.

10. Having reviewed the various enquiries conducted by the Organization, the Tribunal finds no flaw in the Director-General's decision of 8 May 1998.

11. The complaint is dismissed on the merits without deciding on the several issues on receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

**Michel Gentot
Mella Carroll
James K. Hugessen**

Catherine Comtet