

NINETY-FIRST SESSION

In re Grover

Judgment No. 2071

The Administrative Tribunal,

Considering the complaint filed by Mr Vinod Grover against the International Labour Organization (ILO) on 20 October 2000, the ILO's reply of 19 January 2001, the complainant's rejoinder of 15 February, and the Organization's surrejoinder of 30 March 2001;

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 party has applied for;

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

A. The complainant, an Indian national born in 1954, joined the International Labour Office, the ILO's secretariat, in 1980 as a Finance Assistant at grade L.5 in the General Service category in the ILO Area Office at New Delhi. He received several promotions and special merit increments and from 1984 to 1993 he occupied the post of Senior Finance, Personnel and Administration Officer. In the latter half of the 1980s he reached the level of Senior Programme Administrator Support Officer (SPASO), a grade which is between the General Service and Professional categories.

Up until 1989 his performance appraisal report acknowledged his professional competence, but after that time the complainant's responsible chief, in particular, found his work to be lacking in certain respects. A fact-finding mission took place in November 1991 to investigate allegations made against the complainant. On 5 November 1993 the Director of the Personnel Department informed him that no evidence of fraud or dishonesty had been found; however, some shortcomings in the way that he performed his duties had been noted as well as a lack of confidence in him by his responsible chief and other senior officials in the Region. As a result the complainant was transferred, with effect from 1 December 1993, to the position of Programming Officer (Monitoring and Evaluation) at the New Delhi Area Office. He retained the same grade. His work was described as satisfactory in that position, but in April 1996, because of the financial crisis affecting the ILO at that time and the establishment of a new policy, it was necessary to transfer him to the post of Senior Programming Officer in the South Asia Multidisciplinary Advisory Team which was also based in New Delhi. The complainant's work performance in this post began satisfactorily but then started to deteriorate in 1997. His supervisor gave him repeated warnings, in particular about punctuality.

In the meantime, the complainant was considered for an appointment without limit of time ("titularization") in early 1993. However, the Administrative Committee felt it necessary to have the conclusions of the fact-finding mission before making a decision and consideration of the matter was postponed. Again, in 1997 he was to be considered for "titularization". However, the Committee lacked a recent performance appraisal report on the complainant and his appraisal report for 1995-1996 had not yet been established. At its meeting in April 1997, therefore, it called for an ad hoc performance appraisal report to be completed on the complainant. This, however, was not done at the time. Due to increasing concerns about the quality of the complainant's work, on 10 October 1997 the complainant's responsible chief sent him a minute informing him that an ad hoc appraisal would be produced to evaluate his performance for the period from January 1997 to May 1998. He was also informed that his contract, which was expiring at the end of 1997, would be extended for only one year, instead of the normal two years, and that any future extensions would depend on the results of the appraisal. In this appraisal, prepared by the responsible chief in August 1998, the complainant's performance was characterised as "less than satisfactory". It was noted that his professional strengths lay in administrative and financial matters and that he would need to "adapt and re-orient himself" in order to perform well as a programming officer.

Relying on observations made by the complainant and the result of the ad hoc performance appraisal, on 12 May

1999 the Reports Board concluded that the complainant "had not fulfilled the requirements of a Senior Programming Officer" and recommended to the Director-General that his contract not be renewed upon its expiration in July 1999. On 14 July 1999 the Chief of the Personnel Planning and Career Development Branch informed the complainant, on the Director-General's behalf, that his contract would not be renewed. It was nevertheless extended for one month, until 31 August 1999, in order for him to complete any outstanding assignments. He was also informed that he would be paid an indemnity equivalent to six months' salary - calculated using the table included in Article 11.4 of the Staff Regulations - and that the Organization would pay for him to consult with a career counsellor.

By a letter dated 2 August 1999 the complainant appealed to the Director-General against the decision not to renew his contract. His appeal was treated as an internal complaint under Article 13.2 of the Staff Regulations. In March 2000 the Director-General referred the internal complaint to a Joint Committee, the composition of which is fixed by Article 10.5 of the Staff Regulations.

The Committee conducted oral hearings in the Regional Office for Asia and the Pacific, in Bangkok. In its report dated 14 July 2000 it considered that the complainant "had a reasonable expectation of becoming titularized after 1993" and found procedural flaws in the "titularization" exercise as well as the launching of the ad hoc performance appraisal by his responsible chief. It noted a marked deterioration in the appreciation of the complainant's performance from 1997 onwards but that the management style of the complainant's responsible chief might have contributed somewhat to such a deterioration. It did not find evidence of a pattern of bias on the part of the Personnel Department or other senior managers involved in the case. The treatment the complainant received was not deemed unjustified. Despite these facts, it unanimously recommended not to reinstate the complainant. It found that he was "entitled to an amount of US\$135,000, which takes into account the payment already received by him upon dismissal". Regarding a claim to costs it was of the opinion that the expenses incurred by the complainant since his "dismissal" had "been covered adequately by the Office", but recommended paying a lump sum of 2,000 dollars to the medical practitioner who accompanied the complainant to the Joint Committee hearings in Bangkok.

By a letter of 31 August 2000 the Director of the Office of the Director-General informed the complainant that the Director-General had decided to maintain his decision not to renew his contract with the following modifications: the complainant would be given retroactively a one-year extension of contract (until 31 August 2000) entitling him to the salary and all benefits he would have received if he had continued with the Organization until that date. He would also be paid 30,000 United States dollars in compensation for administrative mistakes made by the Organization and, in accordance with the Joint Committee's recommendation, 2,000 dollars in costs. The separation indemnity that he was awarded in 1999 was maintained. That is the impugned decision.

B. The complainant argues, first, that the Director-General's decision demonstrated an abuse of power in that he did not accept all the Joint Committee's recommendations, which was tantamount to altering its report. It also shows partiality in that by referring the matter to the Joint Committee the Director-General created a legitimate expectation that the Committee's recommendations would be observed. He contends that "[i]n no other instance in which a matter has been referred to a Joint Committee in terms of Article 13.2 of the Staff Regulations has its conclusions not been followed". Furthermore, the complainant's one-year extension of contract is not valid as it was made unilaterally by the Director-General without seeking the complainant's agreement.

There were also procedural flaws that resulted in the infringement of his rights. By referring his case to a Joint Committee the ILO prevented the complainant from filing a complaint with the Tribunal as he had no final decision that he could impugn. Referral to the Joint Committee also offended against the Staff Regulations inasmuch as Article 13.2 allows such a procedure for officials in service only and not for former officials, as the complainant then was. Therefore, it was inappropriate to continue the procedure once his contract ended. He suffered material injury because he had to wait before he could submit his complaint to the Tribunal.

Secondly, the complainant claims that the process whereby he was considered for "titularization" was "unfair, improper and damaging", and that his status as a result of this was adversely affected and contributed to the unjustified termination of his contract. He was up for consideration twice, but due to delays and other administrative matters the process was not concluded.

Thirdly, he argues that the termination of his employment was procedurally and substantively unfair and flawed. The relevant procedures for termination of fixed-term appointments and termination for unsatisfactory services, as

set out in Articles 11.4 and 11.8 of the Staff Regulations, were not applied. He impugns the termination "in substance".

The complainant seeks: the quashing of the "challenged decisions", reinstatement, and restoration of his rights and entitlements in respect of "titularization"; alternatively, he requests compensation in respect of loss of earnings and benefits from the time of his separation up to the age of retirement, and for loss of pension entitlements thereafter. He claims damages for "material injury suffered" under two heads: as a result of medical treatment that became necessary and "losses resulting from the unconscionable delays" that prevented him from presenting his complaint before the Tribunal. He also claims: moral damages; punitive damages for defamation of character by ILO officials; and costs for his present complaint as well as for legal representation in the Joint Committee proceedings.

C. In its reply the ILO asserts that its concern was to respect the complainant's rights at all times: it was for this reason that his case was referred to a Joint Committee. The Director-General endorsed the Committee's recommendations except those that were based on "a manifestly erroneous assumption concerning titularization". It points out that the complainant's contract was not renewed; nonetheless, the Organization allowed him to benefit from the procedural safeguards which apply in cases of termination for unsatisfactory performance under Article 11.4 and granted him the discretionary termination indemnity provided for therein.

It had been explained to the complainant that former officials are not barred from lodging internal complaints under Article 13.2. If the complainant truly believed that the referral to the Joint Committee was not proper after he was no longer a staff member then he should have lodged a complaint with the Tribunal as an alternative measure. In his appeal to the Director-General dated 2 August 1999 the complainant had written: "for consideration or reference to the Joint Committee". The Organization considers that it would have been irresponsible in this case for the Director-General to take a final decision without referring it to a Joint Committee; not only was it appropriate in view of the complainant's length of service with the ILO but it corresponded to his own wishes at the time.

Although the complainant might not have been satisfied with the manner in which certain aspects of his internal complaint were handled, the Organization asserts that nevertheless the relevant rules and procedures of the ILO were followed and his rights were properly respected. If he considers that there was a violation of due process then he must provide concrete examples of the violation. The Organization states that the Committee's report was an adequate basis for the Director-General's final decision and that the report was transmitted to the complainant without "alterations" in the way he infers. It says that the Director-General holds the recommendations of the Joint Committee in the highest regard, but its role is only advisory. Therefore, the Director-General was correct to accept the recommendations that were based on fact and reject in part those based on erroneous assumptions. For example, as a result of the findings in the Committee's report the Director-General learned that the complainant's responsible chief might have been partly responsible for the situation; that was one reason why he granted the complainant a one-year retroactive extension of contract. The Director-General disagreed, however, with the finding that the complainant "had a reasonable expectation of becoming titularized after 1993". The Committee overlooked the fact that the complainant did not fulfil all four of the conditions on for "titularization" set out in circular 452, series 6; so he could have had no "reasonable expectation".

The ILO submits that the complainant had been given adequate warning that his performance needed improvement and that failure to improve would result in the non-renewal of his contract. Rather than show a willingness to improve, he adopted an attitude of confrontation. It asserts that the decision not to renew his contract was taken in line with the Tribunal's case law; as a discretionary decision, it can only be set aside under certain conditions, none of which apply in this case.

Lastly, the Organization notes that one of the complainant's claims to material damages relates to what he characterises as "unconscionable delays and unjust restrictions" preventing him from coming to the Tribunal. It points out that it took less than thirteen months from the time the internal complaint was lodged to convene the Joint Committee - away from headquarters - hold hearings, and come to a final decision. In its view this accusation is exaggerated. The claims for material and punitive damages, and the cost for representation before the Joint Committee have never been presented to the Organization and are therefore irreceivable for failure to exhaust all internal remedies.

D. In his rejoinder the complainant contests the ILO's assertion that it was correct to continue the internal complaint procedure under Article 13.2 and maintains that he should have been allowed to appeal directly to the Tribunal when his contract ended. He says that the ILO "compounds the confusion between an appeal in terms of

Article 11.8 and a referral under Article 13.2".

The complainant submits that correspondence to him contained misleading information as regards the procedure to be followed. When he tried to lodge an appeal to the Joint Committee in terms of Article 11.8 of the Staff Regulations he was informed by the Personnel Department that he was not entitled to do so. Therefore, he says, his right to appeal to the Committee directly was not guaranteed, as his case was referred to it by the Director-General under Article 13.2.

He takes issue with the fact that the Organization tried to continue to treat him like a staff member by allowing the Joint Committee proceedings to go forward while at the same time denying him all privileges and benefits of being an official, as he was no longer paid a salary. He also contends that termination of contract is not the same as non-renewal.

The complainant asserts that as far as the rules of procedure for the Joint Committee hearing are concerned, the Committee failed to observe these rules until his representative prevailed upon it to do so.

He reiterates that the Director-General's unilateral retroactive renewal of his contract was illegal and presses his plea regarding the non-observance of the Joint Committee's recommendations. He denies having adopted a confrontational attitude and says that he was not given "a clear warning of non-renewal" as required by the Staff Regulations.

Taking up the matter of costs for representation before the Joint Committee he says that a request was made to the Organization. It was submitted immediately after the hearings.

E. In its surrejoinder the ILO maintains that the decision impugned was based on the recommendations of the Joint Committee, but that the latter drew "a clearly mistaken conclusion ... from the facts" which in turn played a role in the recommendations. For that reason, not all of the Committee's recommendations were endorsed by the Director-General.

It presses its argument that, under the relevant staff rules, it was correct to allow the internal complaint procedure to continue even after the complainant's contract ended and reiterates that it was the complainant who raised the question of referring his case to the Joint Committee. The Director-General's decision to grant the complainant a one year's retroactive extension of contract is not illegal. Final decisions of this kind are taken without consulting a complainant. In addition, the ILO points out that such decisions are to a complainant's advantage as the benefits are immediately received without prejudice to any right to contest the decision before the Tribunal.

As far as the reasonableness of the compensation awarded by the impugned decision, the Organization submits that the termination of the complainant's appointment was not illegal; it had the right not to renew his contract. The complainant had been warned that his performance was lacking. It also contends that he has been adequately compensated for the non-renewal of his contract.

CONSIDERATIONS

1. The complainant joined the staff of the ILO in 1980 in the ILO Area Office in New Delhi. He was informed on 14 July 1999 that his contract would not be renewed upon its expiration; he appealed against this decision to the Director-General. Unsatisfied with the Director-General's final decision, he has filed this complaint with the Tribunal.

2. The decision not to renew the complainant's contract was based on the recommendation dated 12 May 1999 of the Reports Board, which in turn had relied in part on the ad hoc performance appraisal report ordered by the complainant's responsible chief in October 1997 following concerns about the complainant's performance. A fact-finding mission sent to the New Delhi Area Office in 1991 revealed that there were shortcomings in his performance and that his chief and other senior officials lacked confidence in him. As a result, he was transferred in 1993 to the position of Programming Officer at the Area Office. In 1996 he was transferred to the South Asia Multidisciplinary Advisory Team. After receiving notification of his non-renewal, he sent an appeal to the Director-General on 2 August 1999 stating that it was "for consideration or reference to the Joint Committee" but without prejudice to his right to appeal the decision to the Administrative Tribunal. It was treated as an internal

complaint pursuant to Article 13.2. That article reads:

"Any complaint by an official that he has been treated inconsistently with the provisions of these Regulations, or with the terms of his contract of employment, or that he has been subjected to unjustifiable or unfair treatment by a superior official shall, except as may be otherwise provided in these Regulations, be addressed to the Director-General through the official's responsible chief and through the Personnel Department, within six months of the treatment complained of. The Director-General may refer any such complaint to the Joint Committee for observations and report."

3. It is clear from the above-cited provision - from the use of the word "shall" - that the complainant had no choice but to address his complaint to the Director-General before coming to the Tribunal. Had the complainant's contract been terminated prior to its expiry on the grounds of unsatisfactory services, he would have had the right to appeal directly to a Joint Committee pursuant to Articles 11.4 and 11.8 of the Staff Regulations and other statutory procedural safeguards would have been applicable, but this was not the case here. The Director-General nonetheless exercised his discretion under Article 13.2 to refer the matter to the Joint Committee.

4. The complainant seeks to draw some argument from the fact that by the time the Director-General exercised his discretion to refer the matter to the Joint Committee, the complainant's contract had already expired. The argument is not only without merit, but it cannot possibly benefit the complainant. In the first place, it cannot be assumed that the fact that the non-renewal actually took effect means the Director-General's decision of 14 July 1999 had become final. If that were the case, the complainant would now have no available remedy against that decision, since he did not file any appeal of that decision directly before the Tribunal. Likewise, the fact that the matter was referred to the Joint Committee even though the contract had already expired clearly indicates that the Director-General's decision was subject to being revised following the recommendation of the Joint Committee, as in fact it was. If the right of appeal created by Article 13.2 is to have any meaning it clearly implies that the Organization's decision may be altered as a result of such appeal and it is simply incoherent for the complainant to argue otherwise.

5. Contrary to the complainant's assertions, nothing in the relevant provisions suggests that the Joint Committee had the power to issue recommendations binding on the Director-General. In fact, paragraph 13(b) of Part B of Annex IV (which deals with the procedure of the Joint Committee) of the Staff Regulations clearly indicates that the Director-General merely has to give consideration to the Joint Committee's findings:

"The Committee shall hear first the complainant and then the superior official concerned; both may be accompanied by another official if they so desire. The Committee may then proceed to such other hearings and inquiries as it may deem necessary. It shall forward its conclusions and the reasons therefor to the Director-General, who, after considering the conclusions of the Committee, shall communicate his decision, with a statement of the reasons for it, to the complainant and to the superior official concerned."

6. Thus, the final decision is really the decision of the Director-General that was communicated to the complainant on 31 August 2000, after consideration of the Joint Committee's findings. Such a discretionary decision is subject to limited grounds of review. According to the Tribunal in Judgment 1262, (*in re* Scherer Saavedra):

"The case law has made it consistently plain that a decision not to renew a fixed-term appointment, being discretionary, may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority. Moreover, when the reason given for non-renewal is unsatisfactory performance the Tribunal will not replace the organisation's assessment of the complainant's fitness for his duties with its own."

7. Likewise, in Judgment 628, (*in re* Lingham), the Tribunal held that:

"The Director-General has a duty to ensure that the Organisation is efficiently run. If in seeking to preserve efficiency he exercises his discretion not to renew a contract, it must be taken, unless the contrary is proved, that he is acting in the best interests of the Organisation. Such a decision will not be reviewed by the Tribunal unless it is shown to be flawed by lack or absence of authority, the violation of a procedural rule, a basic error of fact or of law, or a clearly mistaken conclusion drawn from the dossier."

8. The complainant's criticisms fall under two categories which will be used to address the two following questions: Was the confirmation of the decision not to renew justified? Are there grounds for interfering with the amount of the compensation awarded to the complainant?

The confirmation of the decision not to renew

9. The Director-General's decision of 31 August 2000 regarding non-renewal was based partly on the conclusions of the Reports Board and of the Joint Committee. In May 1999 the Reports Board based its conclusions largely, but not solely, on the ad hoc performance appraisal requested by the complainant's responsible chief. The complainant has contested the fairness and legality of such an ad hoc appraisal. The Joint Committee judged that the launching of the performance appraisal was procedurally flawed in several respects. The Administrative Committee, responsible for making recommendations on "titularization" to the Director-General, endorsed a recommendation by its working group to request an ad hoc performance appraisal report. The working group's recommendation was erroneously dated 29 April 1997, one day after the date it was endorsed by the Administrative Committee. The Joint Committee did not believe the Organization's explanations for the discrepancy although it appears to the Tribunal to be nothing more serious than a clerical error.

10. The complainant also alleges bias on the part of the Chairperson of the Administrative Committee and believes that misleading statements contained in a document headed "Brief regarding New Delhi matters", improperly influenced the decision as to whether he should be given an appointment without limit of time. There is, however, no evidence that that Brief was ever presented before the Administrative Committee. As for the Chairperson, he was not the one who had decided that the complainant could no longer be trusted with administrative and financial responsibilities. That decision was taken by the Director of the Personnel Department. Furthermore, pursuant to Article 10.2(b) of the Staff Regulations, the Chairperson has no vote except on questions of procedure. Lastly, there is no evidence that the Chairperson in this case was partial or that he had sought to influence the Committee.

11. In any event, no further action was taken pursuant to the recommendation of the Administrative Committee to establish an ad hoc performance appraisal report until 10 October 1997. At that date, the complainant's responsible chief advised the complainant of his decision to establish an ad hoc performance appraisal report and at the same time, advised him that his contract would only be renewed for one year, instead of the usual two years. Any further renewal would depend on the result of the performance appraisal. The Joint Committee noted that while the Administration believed that the two ad hoc performance appraisals had become merged into one, the complainant received a misleading fax dated 22 January 1998 and was not notified of this "merger" until very much later. The Joint Committee wrote that it "could understand [the complainant's] strong reaction to his responsible Chief's notification of a second ad hoc performance appraisal at a time when he had reason to believe that he could be titularized". The Joint Committee in fact found that the complainant "had a reasonable expectation of becoming titularized after 1993, and this not only on grounds of seniority". The Joint Committee assumed that the complainant's performance appraisal report for 1995-1996 would have been "a perfectly adequate basis for judging whether or not to titularize him" and noted that while it was issued on 11 July 1996, its completion was unduly delayed until 1998. It is plain that this delay was caused by the mix-up pertaining to the ad hoc appraisal.

12. The defendant Organization took issue with the finding of the Joint Committee with respect to "titularization" and accordingly the Director-General disregarded some of the conclusions of the Joint Committee. This is why the (discretionary) amount of compensation to be awarded to the complainant was reduced from 135,000 dollars to 30,000 dollars. Under paragraph 7 of circular 452, of series 6, four conditions must be met in order for an official to be considered by the Administrative Committee for "titularization". While the complainant clearly met the seniority criterion (at least five years of service), it is not at all certain that he met the three others which are: (1) "good conduct", (2) "satisfactory performance as consistently reflected in several performance appraisal reports" and (3) "capacity to pursue a career having regard to his/her field of competence and the prospective needs of the Organization".

13. Contrary to what the Joint Committee seems to have believed, the condition relating to satisfactory performance does not appear to have been met by the complainant, since the 1991 fact-finding mission uncovered some shortcomings with respect to the way in which he had performed his duties over the years. Furthermore, the complainant's field of competence lay in the financial and the administrative sphere. But he was removed from such duties in 1993 because of the Organization's lack of confidence in his fitness to hold a position "in which trustworthiness, discretion and the ability to form good working relationships at all levels are of paramount importance". The Organization is right to assert that "[u]ntil the complainant had been favourably appraised in

another field of competence - which the transfer gave him an opportunity to be - or had reestablished confidence in his fitness to resume his initial field of competence, he could have no reasonable expectation of titularization". The complainant never lodged an appeal against the decision to transfer him.

14. In the Tribunal's view, the procedural flaws that have occurred cannot be construed as vitiating the final decision. The conclusion of the Reports Board in its report of 12 May 1999 was based largely on the ad hoc performance appraisal but also on other evidence. It reads as follows:

"The Reports Board considered that [the complainant] had not fulfilled the requirements of a Senior Programming Officer. In particular, his attitude has affected his performance. The Board considered that he had received all help from his responsible chief had he wished to attain the required standard. There was evidence that [he] had received adequate warning of the concerns, of the establishment of the performance appraisal process and of the reasons for it, he had also been given opportunities to express his views and improve his performance, including advice as to what was required of him. [His] unfortunate attitude to his work and towards [his responsible chief] impaired his performance to such an extent that it was impossible for the Reports Board to believe that there had been any improvement in the period under review or that any improvement was likely in the future. The Board considered that the voluminous papers gathered on this file illustrated that [the complainant] was incapable of accepting instruction in his work, let alone criticism of his performance, without creating an adversarial atmosphere between him and his responsible chief that unavoidably became disruptive. The principles of loyalty and respect for hierarchy are fundamental to the good functioning of the international civil service. This, of course, does not exclude legitimate and legal challenges where sufficient grounds exist, but in the current case, none does."

15. In addition to the views expressed in the ad hoc performance appraisal report, some evidence of the complainant's shortcomings existed and was also considered by the Reports Board. It follows that the Director-General was entitled to rely on the recommendation of the Reports Board. This was confirmed by the Joint Committee. To the extent the Director-General did not agree with the findings of the Joint Committee, the least that can be said is that there was material in the dossier which supported the view that he took.

16. The complainant also attacks the fairness of the procedure followed before the Joint Committee. In his opinion, the procedure was established without consulting him and the Committee approached his witnesses without his knowledge and before he had a chance to do so himself. This contention is devoid of merit. There is ample evidence on the file that the complainant had every opportunity to present his objections and observations on the procedure that was to be followed by the Joint Committee.

17. In conclusion, and notwithstanding some relatively minor procedural irregularities, the Director-General did not err in exercising his discretion not to renew the complainant's contract. There was no evidence of abuse of authority or of a pattern or practice of bias on the part of the Personnel Department or other senior managers involved in the case. The transfer of the complainant to another post in 1993 was a supportive rather than a punitive career move. The Tribunal has no grounds to intervene on this aspect of the decision.

The compensation awarded to the complainant

18. In the letter of 14 July 1999 the Chief of the Personnel Planning and Career Development Branch informed the complainant, on the Director-General's behalf, that his contract would not be renewed, that he would benefit from a one-month's extension as a "notice period", and that the Organization would pay for him to consult with a career counsellor. The letter also stated that, considering the complainant's long service with the ILO, it was appropriate to pay an indemnity of an amount equivalent to six months' salary. The letter mentioned that the indemnity and the notice had been calculated according to the table included in Article 11.4 of the Staff Regulations. Some confusion might have been caused by this latter statement. While the indemnity initially awarded was calculated according to guidelines applicable in cases of termination of employment, it is quite clear in the letter that what was being considered here was non-renewal of the expired contract.

19. Once the Joint Committee released its report, the Director-General, in his discretion, saw fit to change the terms of the compensation, taking into account the recommendations of the Committee. The Committee had recommended that the complainant should be paid "an amount of US\$135,000 [in moral damages], which takes into account the payment already received by him upon dismissal". As regards costs, the Committee was of the view that the expenses incurred by the complainant since non-renewal had adequately been covered by the ILO, but recommended that a one-time payment of 2,000 dollars be made to cover the costs of the complainant's doctor who

accompanied him to the hearings in Bangkok.

20. The Director-General, in his discretion, maintained his decision to grant the complainant an indemnity equivalent to the maximum amount provided under Article 11.4 of the Staff Regulations in the event of termination for unsatisfactory services. The Director-General accepted the Committee's recommendation to grant 2,000 dollars in costs.

He also agreed to award the complainant a further sum of 30,000 dollars to take account of the possibility, uncovered by the Joint Committee, that the complainant's unsatisfactory professional conduct could, to some extent, have been prompted by mistakes or misleading communications made in his respect. The complainant believes he was entitled to a larger amount. It is to be noted that, as discussed above, the Director-General was not bound by the Joint Committee's recommendation.

21. The complainant has not shown that the Director-General's decision is flawed. The assumption of the Committee regarding "titularization" must have played a significant role in its conclusion that the complainant was entitled to as large an amount as 135,000 dollars in moral damages. Considering the Director-General's view that the Joint Committee had erred with respect to "titularization", a view with which the Tribunal can find no ground for interfering, it was well within his discretion to allow payment to the complainant of a sum of 30,000 dollars, representing more than one year's salary, to compensate for the fact that the complainant's responsible chief might have been partly responsible for the situation.

22. As an additional compensatory measure, the Director-General retroactively allowed the complainant's contract of employment to continue for a further year until 31 August 2000, so that the complainant was paid the salary and other entitlements that he would have received, "had the Director-General allowed the case to be reviewed by the Joint Committee before taking a final decision on [the complainant's] employment with the Office". The complainant argued that the Director-General could not retroactively extend his contract without seeking the complainant's assent, since fundamental contract law applies to employment contracts. It is impossible to see on what basis this aspect of the impugned decision can give rise to any grievance on the complainant's part. It resulted in his being paid a year's salary and benefits to which he would not otherwise have been entitled and for which he did no work. In effect it amounts to additional compensation being paid to him and has the result of bringing the ultimate award closer to the amount which had been recommended by the Joint Committee.

23. There remain a number of aspects of his claims for redress which are clearly irreceivable. He refers to medical treatment undergone allegedly as a result of strain and stress, but no related claim has ever been presented to the Organization. Thus, his claim to material damages for health reasons is irreceivable. The same goes for his claim for punitive damages in respect of defamation of character which has never been presented.

24. The complainant requests costs incurred in presenting the complaint and the costs associated with his representation at the hearing of the Joint Committee. It is to be noted that the Committee was of the view that the expenses incurred by the complainant had been adequately covered by the ILO, but recommended the payment of 2,000 dollars to cover the costs for the complainant's doctor. No request was ever made to cover the additional costs now being demanded. While the complainant refers to a letter from the Director of the Human Resources Development Department in which it is stated that some of the costs associated with the complainant's representation before the Joint Committee will be covered by the Organization, there is nothing in this letter indicating that the actual fees of the representative (amounting to 13,000 dollars) would be covered.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 27 July 2001.