

## NINETY-SECOND SESSION

*In re Goli*

Judgment No. 2088

The Administrative Tribunal,

Considering the complaint filed by Mrs Rivka Cecile Goli against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 February 2001 and corrected on 6 April, UNESCO's reply of 22 May, the complainant's rejoinder of 29 June, and the Organization's surrejoinder of 10 August 2001;

Considering Article II, paragraph 5, 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 is a citizen of Côte d'Ivoire and was born in 1956. She joined the Organization at its headquarters in Paris in 1982. At her request she was appointed in July 1995 to UNESCO's Liaison Office in Washington, D.C., where she held locally recruited status. On 1 November 1997 she was promoted to grade GS-5. Her fixed-term appointment was due to expire on 30 November 2000.

An incident occurred on 25 February 2000 between the complainant and her supervisor. In the scuffle, the complainant injured her ankle. The Director-General asked the Deputy Director of the New York Office to investigate what happened. He did so and produced a report dated 17 March 2000. The acting Director of the Bureau of Personnel wrote to the complainant on 28 March. He referred to the report and told her that the Director-General intended closing the Office in Washington on 30 June 2000, and with effect from 2 May, would be reassigning her to headquarters. In subsequent correspondence, the complainant informed the Organization that she could not travel yet because of her injury. She also requested non-local status. In a memorandum of 24 May, the acting Director of Human Resources Management took note of the fact that the complainant had not returned to headquarters by 2 May and gave her until 19 June to report for duty. She contacted headquarters by fax on 13 June, attaching a letter from a therapist, which stated that she was not yet able to cope on public transport as she still had mobility problems.

By a memorandum of 29 June 2000 the same Director told the complainant that, as she had not taken up the post at headquarters, her contract would not be renewed when it expired on 30 November 2000 and she would be placed on special leave with full pay until that date. By means of a letter of 19 July 2000 to the Director-General she lodged a protest against that decision, requesting an "administrative review". The matter went to the Appeals Board. In its report of 4 December 2000 the Board recommended that the decision leading to the termination of her appointment should be revoked, and that she should be reinstated and paid the equivalent of three months' salary in compensation. The Director-General did not follow that recommendation and by a decision of 30 January 2001, which the complainant now impugns, he rejected her appeal.

B. The complainant states that the notice of non-renewal dated 29 June 2000 was "defective and unlawful". No reason was given for the termination of her employment other than the fact that a post had been kept open for her until 19 June. She can only assume that her appointment was ended because she failed to return to headquarters. She points out that she was partially incapacitated at the time as a result of the incident in February 2000, which meant that she had not been able to wind up her affairs in Washington within the required time-scale. Apart from providing her with a plane ticket the Organization made no provision for her resettlement. The injury was attributable to her employment and UNESCO had failed to compensate her for the actions of her supervisor.

She further submits that the Organization did not respect the rules on termination. It made no provision for paying her the termination indemnity due under the terms of Staff Rule 109.5 [*sic*]. The insistence on her early return was unreasonable and constituted abuse of power. She repeatedly stated through her counsel that she was prepared to

return to headquarters but was physically handicapped and needed additional time to relocate. Furthermore, she provided medical documentation from two sources confirming that.

The complainant seeks the rescinding of the memorandum of 29 June 2000, reinstatement and back payment of salary. The date of her transfer to a new post must be "reasonable and mutually agreed" and she wishes to be consulted in advance about the post she is offered. In the event of reinstatement she wants the Organization to: comply with Rules 107.9 and 107.10 on the transportation of personal effects and the removal of household goods respectively; agree an indemnity to cover the early cancellation of the lease on her apartment in Washington; arrange settlement of medical bills not otherwise covered by medical insurance and an indemnity for the physical injury suffered; and pay her moral damages for injury to her reputation and emotional stress. Alternatively, if reinstatement is not possible, she claims an indemnity under Rule 109.5 [*sic*] in an amount of eighteen months' salary; an indemnity for her medical costs and the physical injury suffered; and compensation for the abuses suffered and the wrongful termination of her contract.

C. The Organization rebuts the complainant's allegation that the decision not to renew her contract was unlawful. Her assignment to headquarters was an "exceptional measure for her benefit" in view of the closure of the Washington Liaison Office and the consequent abolition of her post. Given her length of service the Director-General decided to transfer her to Paris and grant her non-local status. She refused this offer. In the memorandum of 24 May, she was warned that if she did not accept the offer and report for duty by 19 June, the Organization would have no option other than not renewing her appointment. According to precedent, the Organization is not required to substantiate a decision when the staff member concerned has been informed in the past of the reasons for the decision. The complainant knew very well that her contract would not be renewed if she failed to take up her assignment at headquarters by 19 June 2000. There was consequently no need to repeat the reasons for the impugned decision. Besides which, staff members are subject to the authority of the Director-General who may assign them to a particular post.

As to the arrangements for her transfer, the complainant was informed that she was entitled to the transportation of her personal effects. It was she who stalled the transportation of her belongings to Paris. The complainant's allegation of abuse of power is unfounded. In order to ascertain the state of her health, the Organization's Chief Medical Officer arranged for her to be examined by the World Bank's Chief Medical Officer. The latter found that travel posed no significant problem, as long as she avoided prolonged periods of standing or walking. The medical reasons the complainant put forward were but a pretext; she did not intend returning to Paris. The Medical Benefits Fund has regularly reimbursed the costs of the complainant's treatment. Some reimbursements that she claims not to have received either concern invoices not yet submitted to the Organization, or ones received after her separation from the Organization.

Rule 109.5 b) concerns staff on indeterminate appointments, and as the complainant had a fixed-term contract it did not apply to her. In addition, her claim to compensation relating to her injury is premature because she has submitted a claim to the Advisory Board on Compensation Claims and it is currently being processed.

D. In her rejoinder the complainant presses her claims for redress and asks for costs. She submits that she was on official sick leave at the time when the Organization took the decision to end her contract. Furthermore, there were no exceptional circumstances justifying placing her on special leave. In so doing the Organization showed prejudice against her.

She contends that there was hostility towards her on the part of officials within the Bureau of Personnel and the Organization did not treat her fairly. There was, she says, lack of due process in the handling of her request for administrative review and in the ensuing appeal. Moreover, UNESCO failed to consult the relevant personnel advisory board, as required to do when a staff member's contract is not renewed after five years or more of service.

E. In its surrejoinder the Organization states that her complaint is devoid of merit. It fully observed the internal appeal procedures in dealing with her case. It was the complainant herself who did not wait for the expiration of some of the time limits involved.

It points out that the complainant did not formally notify the Administration of any sick leave during the period at issue, and the Medical Service has no record of any relevant medical certificate.

The Organization was justified in placing the complainant on special leave with full pay under Staff Rule 105.2.

There were "exceptional circumstances" within the meaning of that Rule in that the Washington Office was due to close.

Since the complainant was a local staff member in the field there was no need to consult the board that she mentions about the non-renewal of her contract.

## CONSIDERATIONS

1. The complainant was employed, at the material time, in UNESCO's Washington Liaison Office as a secretary with locally recruited status. She held grade GS-5 and was on a fixed-term appointment which was due to expire on 30 November 2000.

2. An incident occurred on 25 February 2000 between the complainant and her supervisor, who gave conflicting accounts of what happened. The complainant sprained her ankle. The Organization requested the Deputy Director of the New York Office to enquire into the incident. He reported on 17 March that he was unable to determine who was responsible for the incident. He concluded that it was not conceivable for the two colleagues to continue working in the same unit and on the same premises, particularly as they were the only two members in that unit.

3. The Washington Liaison Office was due to be closed on 30 June 2000. By a letter of 28 March 2000 the Director-General recalled the complainant to Paris; he intended leaving her a reasonable period to prepare for her removal. He fixed 2 May 2000 as the date when her new appointment would take effect. As she had the status of a locally recruited staff member, this decision was exceptional.

4. The complainant replied on 29 March 2000 saying that it would be impossible for her to move. She said her doctor had prescribed treatment for her ankle for six weeks. She had to use crutches to walk and had to travel by taxi to and from her office and had had to go to a hospital twice a week since 9 March. By a memorandum dated 14 April the complainant was given details of her new position in the Bureau for Support and Services.

5. In a memorandum of even date she sought clarification about her status. She was informed by a memorandum of 24 May that the date for reporting for duty had been extended to 19 June 2000. She was also told that the offer would not be held open beyond that date.

6. On 13 June the complainant forwarded a letter from her physical therapist saying she was unable to use public transportation and was unable to travel because of restricted mobility. She was asked to report without delay to the World Bank's Chief Medical Officer for a consultation. In his report the latter said that he had examined her and had also spoken to the complainant's physician and physical therapist who said travel posed no significant problem provided she avoided prolonged periods of weight-bearing and took common sense precautions. The complainant was informed of this report on 8 June and was further informed on 15 June that her state of health would permit her to travel as long as she took certain simple precautions.

7. She failed to turn up for her new assignment. She was notified by a memorandum of 29 June that her contract would not be renewed and she would be placed on special leave with full pay from 1 July to 30 November 2000, the date of expiry of her contract.

8. On 19 July 2000 she lodged a protest against the decision with the Director-General.

9. Without waiting for his reply she lodged an appeal with the Appeals Board on 27 July. In its report of 4 December 2000 the Board recommended that the decision of 29 June 2000 be revoked, and that she should be reinstated with full payment of medical and transport bills together with three months' salary as compensation for moral and physical prejudice. It recommended a fresh medical examination to determine whether she was fit to take up her duties at headquarters.

10. The Director-General, by a letter dated 30 January 2001, said that having considered the opinion of the Appeals Board he had decided to reject her appeal. That is the decision impugned.

11. The complainant claims:

- (a) Rescission of the memorandum of 29 June 2000 and reinstatement with back pay.
- (b) A mutually agreed date for transfer to a new post on which she should be consulted in advance.
- (c) Administrative decisions applying Staff Rules 107.9 and 107.10 and an agreed indemnity for early cancellation of the lease on her apartment.
- (d) Payment of medical bills not covered by insurance and an indemnity for physical injury.
- (e) Moral damages for injury to her reputation and emotional stress.

Alternatively, if she is not reinstated:

- (i) An indemnity under Staff Rule 109.5 [*sic*] equal to eighteen months' salary.
- (ii) An indemnity for her medical costs and physical injury suffered.
- (iii) A "maximum indemnity" for abuses she suffered and wrongful termination.

12. She contends that when ordered to return by 19 June 2000 she was partially incapacitated, and had not had time to wind up her affairs in Washington and dispose of her apartment. No provision was made for her resettlement and no personnel action form was sent to her; she was only provided with a plane ticket. She claims the application of Rules 107.1(a)(ii), 107.8, 107.9(a)(c)(d) and (f) and 107.10.

13. Rule 107.1(a)(ii) provides that the Organization will pay travel expenses on a change of duty station. Rule 107.8 sets out what is included in travel expenses, such as tickets, subsistence allowance, passport fees or similar and other incidental expenses occasioned by authorised travel. Rule 107.9 concerns the transportation costs of personal effects and Rule 107.10 concerns the removal of household goods.

14. The Tribunal is satisfied that the memorandum of 24 May 2000 informed the complainant that the transportation of her personal effects would be paid for. When the removal experts contacted her on 31 May 2000 she said she was not yet ready. Therefore, it cannot be said that the Organization denied the complainant travel and removal expenses.

This plea fails.

15. The complainant contends that the memorandum of 29 June 2000, which stated that her contract would not be renewed, is defective because it does not give a reason for the termination of her service. She claims that Rule 109.5(b) which deals with termination, has not been respected. Furthermore, the requirement that she return to headquarters before complete recovery from her injury and without sufficient time to wind up her affairs, was unreasonable and an abuse of power. If her service was terminated, under Rule 109.5 [*sic*] she is entitled to an indemnity of eighteen months' salary.

16. The Organization submits that the post the complainant occupied was to be abolished because of the closure of the Washington Office on 30 June 2000. In the ordinary way, as she had locally-recruited status, she would have been separated from service on closure of the Office. Exceptionally, she was given non-local status when the Director-General decided to transfer her to Paris. She was told of her transfer on 28 March 2000 being required to report for duty on 2 May; however, she was then given an extension to 19 June 2000 on the understanding that the position would not be held open beyond that date. On 8 and 15 June the doctors she had consulted said she could travel. The Organization told her on 29 June 2000 that, since she had not reported for duty at headquarters in spite of the precise information she was given, her contract would not be renewed.

17. The Tribunal is satisfied that this is quite clearly the reason given for non-renewal of her fixed-term contract. Therefore, the decision of 29 June shows no flaw.

18. Rule 109.5, dealing with termination, which the complainant claims should have been applied to her only applies to staff members holding indeterminate appointments. She did not hold such a contract.

This claim fails.

19. Concerning the alleged unreasonableness of requiring the complainant to travel in spite of her physical disability, the complainant presented a letter from her physical therapist who said she could not travel because of mobility limitations. But the Chief Medical Officer of the World Bank, who had examined the complainant, spoke with her attending physician and her physical therapist. In a report addressed to UNESCO's Chief Medical Officer he said that the therapist had told him that travel posed no significant problem for the complainant, provided she avoided prolonged periods of weight-bearing. He said that although the therapist had sent an earlier letter to UNESCO recommending that the complainant should not travel, that recommendation applied to travel involving significant distance walking. Therefore, it becomes clear from the above that far from being told she could not travel by air to Paris, the complainant's own physical therapist saw no problem provided sensible precautions were taken.

20. It appears to the Tribunal that the complainant made no effort to comply with the directive to report for duty on 19 June. There are absolutely no details about the type of lease she had on her apartment, or any details in relation to the removal of household or personal effects. No information is given as to why it was impossible to organise this. It was up to her to make arrangements, which she did not do. The Director-General conferred an exceptional benefit on her by offering to give her non-local status which would have entitled her to travel and removal expenses. She did not take up the offer.

The Tribunal is satisfied that the Organization did not behave unreasonably and that there was no abuse of authority.

21. The Organization denies that it has not paid the complainant's medical bills. It says the Medical Benefits Fund regularly reimbursed the cost of her treatment. Any unpaid bills concern invoices not received by the Organization's Medical Service or treatment which took place after she left.

22. As regards the claim to the entitlement to compensation for service-incurred injury, that claim had to be made through the Advisory Board on Compensation Claims and is currently being processed. It is therefore premature, and not receivable.

23. The complainant argues that she has legal rights in the United States.

The references to her rights under United States law do not concern the Tribunal. The Tribunal's competence extends only to complaints alleging non-observance, in substance or in form, of the terms of her employment or the provisions of the Staff Regulations and Rules.

24. In her rejoinder the complainant contends that her service was terminated while she was on official sick leave. The Organization says she was never on sick leave and there is no evidence to that effect. Her claim that she took sick leave is contradicted by her letter of 29 March 2000 which says she had to travel by taxi to and from her office.

This plea fails.

25. She also contends that under Rule 104.1(b) a personnel advisory board should have been consulted about non-renewal. But the Organization explains that under Rule 104.1(c) there is no need to consult such a board on the non-renewal of the complainant's appointment since she was a local staff member in the field. The Tribunal accepts the Organization's argument.

This plea fails.

26. She also submits that the Director-General had no right to put her on special leave under Rule 105.2. But the Administration argues that it is allowed in exceptional circumstances. There were special circumstances in that the Washington Office was due to be closed on 30 June and after that date she could no longer work there.

This plea fails.

27. The complainant is not entitled to any of the relief claimed set out under 11(a) to (e) above. Neither is she entitled to the alternative relief sought at (ii) and (iii). However, she also seeks at (i) a termination indemnity under Rule 109.5 which does not deal with indemnities. These are in fact dealt with under 109.7 which provides (inter alia) that on termination of a fixed-term appointment after six years or more of service, owing to abolition of post,

a termination indemnity calculated on length of service is payable according to the schedule given.

Before the Appeals Board the complainant did make a claim under Rule 109.7. The question of a termination indemnity was not argued before the Tribunal probably because the complainant did not cite the number of the Staff Rule correctly. The Tribunal considers that the question of a claim under 109.7 (mistakenly referred to as 109.5) should be returned to the parties for argument on this single issue, reserving the question of costs.

The Organization shall reply to paragraph 28 of the complainant's pleadings as if it referred to Staff Rule 109.7 within thirty days from notification of the present judgment.

The complainant shall be entitled to file a rejoinder within thirty days of receipt of the reply.

The Organization shall be entitled to file a surrejoinder within thirty days of receipt of the rejoinder.

## DECISION

For the above reasons,

1. The question of a claim for termination indemnity under Rule 109.7 is returned to the parties for argument as set out in paragraph 27, reserving the question of costs.
2. All other claims are dismissed.

In witness of this judgment, adopted on 9 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

Michel Gentot

Mella Carroll

Flerida Ruth P. Romero

Catherine Comtet