

## NINETY-SIXTH SESSION

**Judgment No. 2285**

The Administrative Tribunal,

Considering the complaint filed by Mrs F. J. D. against the International Labour Organization (ILO) on 11 December 2002 and corrected on 16 January 2003, the ILO's reply of 20 May, the complainant's rejoinder of 18 August and the Organization's surrejoinder of 17 September 2003;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, who was born in 1947 and is of Philippine nationality, joined the International Labour Office, secretariat of the ILO, in 1975. At the material time she was Chief of the Conditions of Work Branch (CONDI/T), at grade D.1, a position she had held since 1994.

In April 2002 she received a Notice of Investigation from the Ombudsperson, informing her that three staff members under her supervision had lodged harassment-related grievances against her. In response to her request that the matter be resolved through dialogue the Ombudsperson told her that the claimants had refused any such dialogue. Her further suggestion that a facilitator be designated was also rejected on the grounds that that aspect of the procedure was not yet "operational".

The Ombudsperson's investigation took place over the following three months. From 27 May until 27 June 2002 the complainant was on sick leave. In a final report of 29 July the Ombudsperson proposed that the complainant should voluntarily relinquish her management responsibilities in CONDI/T by 2 August. The complainant chose not to take that course of action, and by a minute of 6 August the Director of the Human Resources Development Department informed her that the Director-General was releasing her from her position as Chief of CONDI/T with effect from that same day. Meanwhile, she was to continue to report to the Executive Director of the Social Protection Sector.

By a minute of 12 August 2002 to the Director-General, the complainant notified her wish to contest the decision of 6 August under chapter XIII of the Staff Regulations. She requested a meeting with him, indicating that the main objective would be to discuss redress for the injury caused by that decision.

The complainant received a minute, dated 11 October, specifying her functions in her new position of Special Adviser to the Executive Director of the Social Protection Sector. She wrote to the Executive Director on 28 October 2002, pointing out that Circular 588, in series 1, which was published on 18 October 2002 and announced staff movements, gave the name of the person who had replaced her in her former position, but made no mention of her new functions. She asked for that omission to be rectified. She went on to say that specifying her new functions did not compensate for or redress "the moral injury to [her] professional standing, reputation and dignity, as well as the effects on [her] health" resulting from the decision to release her from her previous functions which, she claimed, was "tainted by irregularity". The Executive Director acknowledged receipt of her minute on 31 October.

On 19 November 2002 the complainant wrote to the Legal Adviser's Office requesting a waiver of the requirement

to submit her case first to the Joint Panel in order that she might file a complaint directly with the Tribunal. By a minute of 8 December 2002, she was informed that the Director-General had authorised her to appeal directly to the Tribunal. She has filed her complaint challenging the implied rejection of her claim for compensation of 28 October 2002.

The three officials in CONDI/T who had brought harassment claims against the complainant filed a grievance with the Joint Panel on 17 February 2003. In a report issued on 13 May 2003 the Panel considered it to be time-barred and therefore irreceivable.

B. The complaint is directed against the failure of the Organization to respond to the complainant's claim for damages. She objects to the manner in which the decision of 6 August 2002 to release her from her duties was taken, principally arguing the following.

First, the decision was taken without any prior intimation to her in disregard of her right to be heard. Although it affected her adversely she was denied the opportunity to present her comments. Secondly, no reasons were given for removing her from her position. Thirdly, the decision was arbitrary. No clear assignment had been identified for her and she remained in ignorance of what her future duties would be. This constituted an affront to her dignity. Fourthly, the complainant states that the hasty way she was removed from CONDI/T amounted to a disciplinary sanction and she was denied the statutory safeguards applicable in a disciplinary process. Lastly, she alleges that there were irregularities in the procedure before the Ombudsperson, noting that despite those irregularities the Director-General's decision of 6 August 2002 appears to have been taken on the basis of the Ombudsperson's report of 29 July. During the investigation conducted by the latter she was deprived of due process and fair treatment. In particular, she contends that the facts alleged by the three claimants were never set out in writing and, contrary to her expectations, she was denied the chance to reply to their allegations in writing. Furthermore, the decision of 6 August 2002 was based on an unsubstantiated assertion by the Ombudsperson and caused grave damage to her professional reputation.

The complainant seeks compensation in an amount of 50,000 United States dollars for moral injury, and also claims costs.

C. In its reply the Organization points out that any pronouncement by the Tribunal on the procedure for harassment-related grievances would not be appropriate given that the Joint Panel's conclusions of 13 May 2003 on the case filed by the three CONDI/T officials were still before the Director-General for possible action. Nonetheless, replying to the complainant's comments regarding the harassment-related grievance procedure, the ILO states that it cannot interfere in an investigation taken up by the Ombudsperson. The latter is autonomous, being empowered under Article 13.7(4) of the Staff Regulations to "act in complete independence". Moreover, the complainant was able to make her views known during the grievance procedure and there was no breach of due process during the investigation.

It states that, as the complainant did not relinquish her management responsibilities of her own volition, the Organization had no other recourse but to transfer her. That decision was not taken lightly. It was a discretionary one, taken in the interests of the proper functioning of the service, and was not a punitive measure. Its purpose was to protect the three General Service staff members who had lodged grievances against her. Contrary to her allegations, she was informed by the Director of the Human Resources Development Department of the reason why she was being released from her duties in CONDI/T. She was told at a meeting which took place on 5 August 2002, that is prior to her transfer. Therefore, she had an opportunity to be heard.

The two-month delay in notifying her officially of her new duties was unavoidable. It was due partly to the prolonged absence of her line manager and partly because of the need to identify a suitable post for her. Her responsibilities have not been diminished; she has suffered no injury to her career and no loss in pay or grade.

D. In her rejoinder the complainant expresses the view that the Joint Panel's summary conclusions of 13 May 2003 do not appear to have any bearing on her case to the Tribunal. Her complaint is directed against the procedural irregularities that tainted the Ombudsperson's report of 29 July 2002 and hence the Director-General's decision of 6 August. She holds that the Office failed to take appropriate measures to protect her reputation and dignity. In addition, it failed in its duty to guarantee due process and in its responsibility to ensure that internal procedures functioned properly. Taking up the matter of her meeting with the Director of the Human Resources Development Department on 5 August 2002, she says that at that point the decision to remove her from her duties had already

been taken; indeed, she was handed the minute dated 6 August at that meeting.

E. In its surrejoinder the ILO states that the measure taken on 6 August 2002 was not of a disciplinary nature and rather than being to the complainant's detriment was intended to protect her interests. In taking that measure the Organization protected her dignity and reputation. It points out that her subsequent duties were defined only after several discussions had taken place between the complainant and her line manager and agreement on the terms of reference had been reached.

## CONSIDERATIONS

1. The complainant was Chief of the ILO's Conditions of Work Branch (CONDI/T), at grade D.1, when harassment-related grievances were lodged against her by three staff members under her supervision. The dispute was referred to the Ombudsperson in accordance with new procedures introduced by the Organization following collective negotiations which had led to a complete redrafting of chapter XIII of the Staff Regulations. The Ombudsperson informed the complainant, on 19 April 2002, that she would be conducting an investigation into allegations by the claimants that they had been subjected to repeated and persistent aggression in connection with their work, as a result of their supervisor creating a hostile working environment, humiliating them and causing injury to their dignity. That same day, the complainant asked the Ombudsperson if the matter could not be resolved informally through dialogue with the claimants. The Ombudsperson replied, however, that the claimants had refused any such dialogue. Furthermore, the complainant's suggestion that a constructive solution might be found with the help of a facilitator was not followed up, since the latter function, which is provided for under the new procedures, was not yet "operational".

The Ombudsperson's investigations therefore began and gave rise to procedural incidents recounted in detail by the complainant. On 29 July 2002, after several postponements, the Ombudsperson signed a report which was communicated to the complainant on 30 July, from which it emerged that the claimants had indeed been subjected to harassment, within the meaning of Article 13.10 of the Staff Regulations. Referring to Article 13.15.6 of those Regulations, which provides that "[t]he Ombudsperson's report [...] shall, if possible, make proposals for resolution", the Ombudsperson proposed that the complainant voluntarily relinquish management responsibilities in CONDI/T, by 2 August 2002, until such time as a final decision could be taken.

2. On 1 August the complainant rejected this proposal. In a minute dated 6 August 2002, apparently received by the complainant on 5 August, the Director of the Human Resources Development Department informed her that the Director-General had decided to release her from her position of Chief of CONDI/T, with effect from that same day, and that her new assignment would be determined after the return of her line manager. That occurred on 11 October 2002, on which date she was appointed Special Adviser to her line manager, the Executive Director of the Social Protection Sector.

3. On 12 August 2002 the complainant had informed the Director-General that she wished to avail herself of the provisions of chapter XIII of the Staff Regulations to contest the decision of 6 August, which she considered had been taken without any reasons being given and in breach of her right to be heard. She requested a meeting with the Director-General. On 28 October 2002, after being notified of her new assignment, and following a meeting with the Executive Director, she indicated that she was satisfied that the question of her new functions had been settled, but emphasised that, while these had been specified, that did not compensate for or redress "the moral injury to [her] professional standing, reputation and dignity [...] caused by the grave breaches of due process" which had occurred. The Executive Director merely replied, on 31 October, that her request to meet the Director-General had been forwarded, that he hoped that a "satisfactory solution" would be found and that he congratulated her on her "cooperative spirit". The complainant, accordingly, filed a grievance with the Joint Panel on 22 November complaining at the manner in which she had been released from her position and claiming compensation for the moral injury she had suffered. Prior to that, on 19 November, she had asked for permission to submit her complaint directly to the Tribunal, and this was granted on 8 December 2002.

4. The complainant does not seek the withdrawal of the decision of 6 August 2002. She admits that she can no longer claim reinstatement in her previous position in view of the fact that it has been filled and that she herself has been reassigned to another position. However, she claims compensation for moral injury, in an amount of 50,000 United States dollars. She also claims costs.

5. The complainant criticises at some length the procedure followed by the Ombudsperson, alleging that the latter breached the rules of adversarial proceedings, reached hasty conclusions without discussing or explaining them and, throughout the investigation and even subsequently, showed clear bias in favour of the claimants. On this point, the Tribunal considers that it need not ascertain whether procedural irregularities were committed by the Ombudsperson, since the latter merely put forward a proposal which did not constitute a decision and which was addressed exclusively to the complainant, inviting her to relinquish her management responsibilities, that is, to resign. The only decision the complainant can challenge is precisely that which she alleges was unlawful, namely the decision of 6 August 2002, which was independent of the Ombudsperson's proposal. Even though there is no doubt that it was the outcome of the Ombudsperson's investigations which led the ILO authorities to take the challenged decision, the lawfulness of that decision must be assessed independently of the Ombudsperson's proposal.

6. On this point, the complainant maintains that her abrupt removal from a senior position amounted to a disciplinary sanction, without allowing her the benefit of normal procedural safeguards, and that the decision in question also disregarded her most basic rights, since it gave no reasons, was taken without allowing her a hearing and without offering her an alternative assignment.

7. The ILO argues that the decision of 6 August should be seen as a transfer, made necessary by the circumstances and taken by the competent authority, which is best qualified to look after the Organization's interests. In support of its reasoning, it cites the Tribunal's case law, and particularly Judgments 1972 and 2229, which lay down the principles applicable in the case of transfers made in the interests of the service.

8. It emerges clearly from the evidence that although the decision taken after the Ombudsperson had submitted her report was probably based on the wish to put an end to a situation which - owing to the antagonism between the complainant and the staff members who had filed harassment grievances against her - adversely affected the proper functioning of the service, it was also based on criticism, justified or not, of the complainant's behaviour. The transfer was therefore for mixed reasons, possibly "dictated by the interests of the organisation but [...] also disciplinary in nature", and it should clearly have complied with "the specific rules protecting staff members in the case of disciplinary decisions", as specified in Judgment 2229, in a passage which the defendant omitted in its quotation from consideration 3. There is reason to doubt, in fact, whether it is possible to speak of a "transfer", since the impugned decision consisted essentially in relieving the complainant of her functions and postponing the determination of her new assignment. Not only was no disciplinary procedure followed, but the decision of 6 August 2002 gave no reasons and the complainant was not informed of the Administration's intentions until 5 August. On that date, she was received at her request by the Director of the Human Resources Development Department, who, according to allegations which have not been challenged by the defendant, handed her the decision dated the following day, a decision which had, therefore, already been taken. The fact that during the Ombudsperson's investigation of grievances the complainant was informed of the charges against her and could reply to them does not amount to adversarial proceedings; such proceedings would have enabled her to defend her case prior to the challenged decision - which was not in fact envisaged by the Ombudsperson - being taken.

9. These procedural irregularities, the abruptness with which the decision was taken, notified and executed, and the delay in giving the complainant a new assignment breached both her rights and her professional dignity. Moreover, the fact that grievances alleging harassment had been filed against her - on which the Organization has not given an opinion - could clearly not justify the way she was treated. In the circumstances, the Tribunal considers that the complainant is entitled to compensation for the moral injury she suffered, and that in the circumstances of the case, it would be fair to award her 25,000 Swiss francs under this head.

10. The complainant is also entitled to an award of 2,000 francs in costs.

## DECISION

For the above reasons,

1. The ILO shall pay the complainant the sum of 25,000 Swiss francs in compensation for the moral injury she suffered.

2. It shall also pay her 2,000 francs in costs.

In witness of this judgment, adopted on 13 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

*(Signed)*

Michel Gentot

James K. Hugessen

Seydou Ba

Catherine Comtet