

THIRTY-SECOND ORDINARY SESSION

***In re* HRDINA**

Judgment No. 229

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Miss Jeanne Hrdina on 30 April 1973 and brought into conformity with the Rules of Court on 2 June 1973, the Organisation's reply of 20 September 1973, the complainant's undated rejoinder received by the Registrar on 17 December 1973, and the Organisation's surrejoinder of 15 February 1974;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 4.6(d) and 13.2 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. Miss Hrdina was appointed to the staff of the International Labour Office (ILO) on 1 June 1967 at grade G.5 in the Public Information Branch under a contract expiring on 31 August 1967. She received a further appointment from 1 September to 30 October 1967 at grade P.1 in the Policy Reports Branch. The second appointment was extended to 30 November 1967. She was then given a contract from 1 December 1967 to 29 February 1968 and transferred to the Co-operative, Rural and Related Institutions Branch, where she remained until 15 March 1969 under contracts expiring on 31 December 1968 and 30 June 1969. On 15 March 1969 she moved to the General Conditions of Work Branch, where she remained until 1 July 1972 under successive contracts expiring on 31 December 1969, 31 December 1970, 30 April 1971, 31 August 1971 and 31 August 1972. On 1 July 1972 she was "lent" to the International Telecommunication Union (ITU) for three months. As her contract at the time did not cover the month of September 1972 it was extended for a month. Her secondment to the ITU was prematurely terminated on 4 September 1972 - at the ILO's request, according to the complainant, but at the ITU's request according to the defendant Organisation. On returning to the ILO she was assigned to the Industrial Committees Branch where she received successive contracts expiring on 31 October 1972, 30 November 1972, 31 December 1972 and 31 January 1973. Her contract was not further extended. On 12 February 1973 she asked the Director-General for an interview, which she was not granted, and to review the decision not to renew her contract. By letter of 19 March 1973 the Director-General informed her that the decision must stand. Before the Tribunal she is impugning the confirmation of the decision not to renew her appointment in the Director-General's letter of 19 March 1973.

B. The complainant maintains that the decision not to renew her appointment after nearly six years of satisfactory continuous service was tainted with procedural irregularities: the Personnel Department and her chief in her final assignment made contradictory and misleading statements about the renewal of her contract and gave her false hopes of its extension; she was harassed by being given only one-month extension whereas a six-month extension would have been possible; and the two months' notice of separation promised by the Director-General in his address to the staff on 2 August 1972 was not respected. She further maintains that the decision not to renew her appointment was tainted with illegality in that the officials of the Personnel Department told her that any claim which she might base on Article 13.2 of the Staff Regulations would be regarded as irreceivable. She contends that the decision was unfair in that no account was taken of her sixty-eight months' service, and the statements of her last chief that her work was not fully satisfactory - which she contests - determined the decision not to renew her appointment. Finally, she maintains that the efforts allegedly made to find her a post in the ILO and mentioned by the Director-General in his letter of 19 March 1973 were at best insincere a suitable post could quite easily have been found for her.

C. The complainant asks the Tribunal to grant her the following relief: to quash the decision of 19 March 1973 not

to renew the contract; to order payment of arrears of salary and allowances up to the date of reinstatement; to order her assignment to a suitable P.2/3 post of indeterminate duration, without loss of career prospects, financial benefits or continuity of service; to order payment of US\$20,000 for moral damages; failing reinstatement, to award damages corresponding to three years' pensionable salary and allowances; and to award costs.

D. In its reply the Organisation first points out that in 1970-73 it was passing through a financial crisis due to the failure of a member State to pay its budget contribution and to changes in the exchange rates of several currencies. It describes the personnel policy which it adopted during the crisis and points out that the complainant benefited from the policy of "en bloc" renewal of fixed-term appointments from 1 January to 31 August 1971. On 1 September 1971, it observes, she benefited from one of the exceptional measures announced by the Director-General on 2 August 1971 and received an extension for one year. In June 1972 she was lent to the ITU to ease the financial difficulties of her department. When the loan did not prove successful, she was given another chance in the ILO, where she received two successive short-term appointments. Her chief concluded that she was not suitable for any of the assignments which might become available in his branch and in November 1972 she was told by the Personnel Department that the extension of her appointment beyond 31 January 1973 was very doubtful indeed. As to her work performance, the Organisation observes that her technical qualifications were generally recognised as good, but her annual reports suggested that she had personality difficulties which became apparent, for example, in her relations with her chiefs and various staff members. During her last assignment even her work was not regarded as fully satisfactory. Her applications for posts were rejected by several branches and, finally, by the Vocational Training Branch in January 1973.

E. The Organisation contends that, strictly speaking, no decision is needed to terminate a fixed-term appointment. Article 4.6(d) of the Staff Regulations provides that "while a fixed-term appointment may be renewed, it shall carry no expectation of renewal or of conversion to another type of appointment, and shall terminate without prior notice on the termination date fixed in the contract of employment". Nevertheless the letter of 19 March 1973 signed by the Director-General himself does contain a decision taken by the competent authority. Neither is there any irregularity in the form of the decision, since no particular form is required by Article 4.6(d) of the Staff Regulations; nor can there have been any procedural irregularities, since the Staff Regulations do not prescribe any procedure for the non-renewal of fixed-term appointments. The Organisation admits that in his speech of 2 August 1971 the Director-General referred to a two-month period of notice; but that was not a rule, simply a practice to be followed under general personnel policy. In any case the complainant was told in November 1972 that the extension of her appointment beyond 31 January 1973 was very doubtful indeed. The Organisation rejects the complainant's allegation that she was warned that any complaint she might submit under Article 13.2 of the Staff Regulations would be treated as irreceivable. It observes that in alluding to the refusal of her request for an interview with the Director-General she implies that her right to a hearing was denied. It points out that she stated her case fully in a minute appended to her letter of 12 February 1975 to the Director-General and that her argument that she was denied an opportunity to plead her case is untenable. Lastly, by further arguments the Organisation rejects her allegations that the explanations given for the decision not to renew her appointment were contradictory, that she was given false hopes of an extension and that every attempt to find her a post was not made.

F. In summing up the Organisation states that the reasons for the decision not to renew the complainant's appointment during the financial emergency were her personality difficulties, her lack of technical qualifications for certain work and the unsatisfactory nature of her services in the branch which, after a long search, was found to accept her services. Since she was never promised any extension of her appointment, the Organisation asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

1. The impugned decision, whereby the Director-General confirmed the refusal to renew the complainant's appointment, was taken by him in the exercise of his discretion. Consequently, the Administrative Tribunal may interfere with that decision only if it was taken without authority, is irregular in form or tainted by procedural irregularity or by illegality, or is based on incorrect facts, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if conclusions which are clearly false have been drawn from the documents in the dossier.

2. In judging the complainant's claims the question arises whether the impugned decision is tainted with any of the irregularities which enable the Tribunal to interfere with it.

(a) The Director-General's competence to confirm the termination of the complainant's appointment is beyond dispute.

(b) The decision not to renew a staff member's appointment need not take any particular form. The impugned decision was communicated in writing and its form is not open to any formal criticism.

(c) The complainant wrongly alleges infringement of the rules of procedure.

Contrary to what she alleges, she was not deprived of the right to a hearing. She in fact exercised that right on 12 March 1973, when she sent the Director-General a letter accompanied by an account of her position. She has no grounds for complaining that the Director-General did not interview her personally since the right to a hearing does not imply any right to plead one's case orally before the Director-General.

According to the complainant she was dissuaded from appealing to the Director-General and asking him to consult the Joint Committee. Nothing prevented her, however, from exercising her rights under the Staff Regulations, of which she does not claim to have been unaware.

The complainant also criticises the Organisation for terminating her appointment without giving her two months' notice. It is true that, in a speech to the ILO staff on 2 August 1971, the Director-General, referring to the renewal of appointments, said: "The decision will be taken in each case not less than two months in advance, so that the situation in which people may have some uncertainty in regard to their position until almost the last moment will no longer exist." Whatever the legal weight of that statement, however, it plainly did not apply to staff members whose appointment was renewed from month to month. The complainant's last appointment ran from 31 December 1972 to 31 January 1973, and she cannot therefore use the Director-General's words as an argument.

(d) The complainant maintains that the impugned decision was based on incorrect facts, namely a false assessment by one of her supervisors. Not only is that charge not borne out by the documents in the dossier, but it is all the more implausible in that her work was consistently resorted to be satisfactory, apart from some criticism of her relations with other staff members. The alleged evasiveness of some of her supervisors, far from casting doubt on their impartiality, is evidence of their desire to keep her in the various posts to which she was successively assigned.

(e) Article 4.6(d) of the ILO Staff Regulations provides for the automatic expiry of fixed-term appointments and expressly states that they carry no expectation of renewal. Being in conformity with this provision the impugned decision is not based on any error of law. The duration of her appointment does not invalidate this finding, since there is no provision of the Staff Regulations or of her contract of appointment requiring the Organisation to take account of the duration of the appointment.

(f) It is not proved that the Director-General failed to take essential facts into consideration. On the contrary, having himself examined the complainant's case, as was stated in the impugned decision, he certainly paid heed to all relevant matters.

(g) Nor does it appear from the dossier that the Director-General acted from improper motives. Misuse of authority is not at all likely.

(h) Finally, the Director-General did not draw conclusions which are clearly false from the facts brought to his attention. Over and above the various criticisms, couched in more or less veiled terms, of the complainant's relations with other staff members, the Organisation's financial difficulties, which were due, among other things, to irregularity in the payment of contributions and to currency instability, warranted the decision to terminate the appointment of a staff member whose services appeared no longer necessary.

3. Examination of the complainant's arguments does not reveal any of the irregularities which entitle the Tribunal to interfere. Her claims for the quashing of the impugned decision and for financial compensation should therefore be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 May 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet