THIRTY-NINTH ORDINARY SESSION

Registry's translation, the French text alone being authoritative.

***In re* FANO**

Judgment No. 315

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Mr. Pier Paolo Fano on 10 May 1976, the ILO's reply of 2 August, the complainant's rejoinder of 15 October and the ILO's surrejoinder of 10 November 1976;

Considering Article II, paragraph 1, and Article VII of the Statute of the Tribunal and Article 13.2 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant joined the staff of the International Labour Office on 5 December 1945. By 1959 he had roached the rank of chief of division, which corresponded to what is now grade D.1. On 10 August 1959 the Director-General decided to offer him a position as director of the ILO Branch Office in Rome. On 14 August 1959 he was told that his employment would be interrupted for one day so that he could be paid, as he wished, a "withdrawal benefit" representing capitalisation of his pension rights. He was to be readmitted te membership of the United Nations Joint Staff Pension Fund immediately after the one-day interruption. He was also told that he would be paid cash compensation for any unused annual leave, a repatriation grant and repatriation expenses, but not an allowance for his installation in Rome. As had been agreed, on 14 April 1960 he resigned. His contract of appointment as director of the Rome office was dated 14 April 1960 and took effect on 19 November 1960. As to remuneration, it provided for payment of an annual salary and for membership of the sickness and pension funds, but, according to the ILO, stipulated that "no other amounts will be paid to him". It was to be governed by the general principles of law and not subject to the law of any country.

B. On 6 July 1962 the complainant received in his official capacity the text of new rules which had come into force on 1 July 1962 governing conditions of service in branch offices and national correspondents' offices. As was explained in an accompanying note, under the new rules the principle of assimilation to conditions in national civil services would henceforth apply only to remuneration, as to which such conditions would continue to afford guidance. Remuneration would be stated in comprehensive terms as shown in a schedule which was notified to the complainant and "no allowances, indemnities or sums additional to the amounts shown in the schedule" would be paid. On 15 March 1963 the complainant asked the Office how the new rule setting retirement age at sixty would affect him. He was told that his appointment might be renewed yearly until he reached the age of seventy. His appointment was in fact extended up to 31 December 1975 although he had reached the age of seventy on 30 March of that year.

C. The question of retirement age was the only one the complainant had raised when he had asked about the effect of the new rules, and it was not until 16 February 1962 that he first raised the question of payment of a "separation allowance". This forms the subject of the complaint. He pursued the matter in a lengthy correspondence with the ILO and finally, on 8 March 1976, the Office dismissed as time-barred and therefore irreceivable a "complaint" which he had submitted under Article 13.2 of the Staff Regulations. He lodged the present complaint on 10 May 1976.

D. The complainant's main arguments are as follows. His remuneration was originally assimilated to that of an Italian civil servant of comparable rank. As to that the new rules made no change. According to a ruling of the Italian Constitutional Court, a separation allowance was payable to Italian civil servants and formed

part of their salary. The FAO had paid such an allowance as part of the remuneration of General Service category staff members, whose salaries were determined by reference to local rates. The ILO paid the allowance to General Service category officials in the Rome office and in the Turin Centre under a contributory scheme, but the complainant is claiming only the employer's share. His pension, he points out, is small and he paid indirect taxes in Italy.

E. The Organisation holds to its argument that the complainant's remuneration was stated in comprehensive terms and that his contract of appointment stipulated that "no other amounts will be paid to him". His remuneration compares very well with that of Italian civil servants of like rank and, what is more, is exempt from income tax. Salaries in Italy merely afford guidance in fixing salaries of officials in the Rome office, who are not fully and automatically assimilated to Italian civil servants. Separation allowance is payable neither as deferred salary - which it is not - nor as a pension right. The terms of the complainant's contract make it clear that Italian law does not apply. No analogy may be drawn between his position and that of General Service category officials in the Rome office since the remuneration of the latter is governed by quite different rules. Lastly, though his pension is fairly small, that is because at his own request he withdrew a large sum from the pension fund in 1960.

F. The ILO took the view that in his internal "complaint" of 6 February 1976 the complainant was merely repeating old arguments and putting forward no new objection to the decisions dismissing his claim, against which he had not appealed in time. Accordingly on 8 March 1976 the Director-General dismissed the "complaint" as irreceivable and in the belief that, no new case having been made out, substantive review was uncalled for.

G. In his claims for relief, as amended in his rejoinder, the complainant asks the Tribunal: (a) to quash the Director-General's decision declaring the "complaint" of 6 February 1976 irreceivable; (b) to order the ILO to pay him a separation allowance amounting to 10,531,288 Italian lire, a sum based on the full period of his service in the Rome office and his last salary in that office; (c) to order the ILO to pay him damages, to be determined by the Tribunal, for delay in paying the allowance, which fell due on 31 December 1915; and (d) to award him costs, taking account of the circumstances of the case and of two return journeys from Rome to Geneva he has made in connection with his complaint.

H. The Organisation asks the Tribunal: (a) to declare the complaint receivable in so far as it impugns the decision of 8 March 1976, which related solely to the receivability of the internal appeal, and irreceivable as to the remainder in so far as it asks the Tribunal to give a decision on the merits; (b) in so far as the complaint is receivable, to declare it ill-founded; (c) subsidiarily, to declare the claims for relief ill-founded in their entirety; and (d) further subsidiarily, to order payment of separation allowance only for 1975. Lastly, the ILO contends that the fourth claim for relief, which appears in the rejoinder and not in the original memorandum, is the new one and should be treated a irreceivable, since it was filed after the expiry of the time limit laid down in Article VII of the Statute of the Tribunal and has ne bearing whatever on the claims for relief already filed.

CONSIDERATIONS:

There being no need to consider the receivability of the complaint.

According to clause 3 of the letter appointing Mr. Fano as Director of the Office in Rome, signed on 14 April 1960, "Mr. Fano's salary will be 6 million lire a year and no other amounts will be paid to him". According to clause 9, "This letter of appointment and the letter of acceptance constitute a contract governed by the general principles of law, but create no contractual relationship subject to the law of any country".

These clauses are clearly worded and formally establish that the salary stated in the contract was exclusive of any allowance, indemnity or additional sum of any kind.

Hence the complainant may not claim a "separation allowance" since none was provided for in his contract. In any case no such allowance existed at the time the contract was concluded.

Moreover, he does not deny that he was not entitled to the allowance when it was introduced and even claimed as compensation payment of some other benefit. He then relied upon a "principle of assimilation",

which does not apply in the present case. Not until his other claims for salary and pension increases had been dismissed did he again claim the "separation allowance"; and in view of the above terms of his contract the various grounds on which he bases his claim are all invalid.

It appears from the foregoing that the complaint should 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 21 November 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

Updated by PFR. Approved by CC. Last update: 7 July 2000.