

FORTIETH ORDINARY SESSION

In re OSUNA SANZ

Judgment No. 343

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation by Mr. Jesús Osuna Sanz on 19 July 1977, the ILO's reply of 19 September, the complainant's rejoinder of 18 November and the ILO's surrejoinder of 20 December 1977;

Considering Article II, paragraph 1, of the Statute of the Tribunal, and the Staff Regulations of the International Labour Office, particularly Articles 2.1, 4.6(c), 4.6(d), 6.1, 11.8 and 13.2;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. The complainant joined the staff of the International Labour Office in August 1973 and was appointed to a post as research assistant (programmer) at grade G.6, step 6. His original one-year appointment was twice extended for one year and twice for four months. His last appointment expired on 30 April 1977. Apart from a few short secondments to meetings he worked throughout in the Employment and Development Department - first in the World Employment Programme Research Branch (August 1973-August 1975), then in the Rural and Urban Employment Policies Branch, and from 19 July 1976 in the branch later known as the Emergency Employment Schemes Unit. He was regularly granted his yearly salary increments. On 1 November 1974 his post was regraded and he was appointed to grade G.7, step 5. By the end of his appointment he had reached G.7, step 7.

B. On 2 November 1976 Mr. Griffin, who was then head of the Rural and Urban Employment Policies Branch, informed the complainant in writing that his appointment would be extended to 30 April 1977 and that it "is expected that your contract would not then be extended for a further period unless you are able ... to contribute in a satisfactory way to the work of the Department". On 3 March 1977 the Personnel Department officially informed the complainant that his appointment would not be extended after 30 April. On 4 April he asked that a Joint Committee be established "to review the merits of the decision not to renew his appointment". That application was dismissed on 25 April. That decision confirmed the termination of his appointment and it is the one impugned.

C. The complainant takes the view that the grounds given by the ILO for not extending his appointment - unsatisfactory performance - in fact conceal the desire of his immediate supervisor - a Mr. Costa, against whom he levels various criticisms - to replace him with someone else, for reasons extraneous to the ILO's interests. The Staff Regulations and normal ILO practice were either overlooked or misapplied. The decision did not take account of such essential facts as his record of service throughout his ILO career. He asks the Tribunal to quash the Director-General's decision of 25 April 1977; to order the ILO to pay him two years' salary at the final rate as damages for the "unlawful interruption" of his "professional career and the moral and material prejudice he has suffered"; subsidiarily, "to order the ILO to reconsider extending his appointment, which would normally have been extended, and reinstating him in his post on a two-year appointment without prejudice to the benefits which accrued to him on the termination of his last appointment; to order the ILO to pay him compensation equivalent to the amount of the salary which he would have received from 1 May 1977 up to the date of his reinstatement in the ILO plus the equivalent of ten months' salary at the final rate for the serious wrongs and the moral and material prejudice he has suffered; and to award all costs against the ILO". In his rejoinder he further asks the Tribunal to order the ILO to remove "any reference to the present proceedings from his personal file".

D. The ILO points out that according to Article 4.6(d) of the Staff Regulations a staff member, such as the complainant, who holds a fixed-term appointment shall have no expectation of its renewal. That provision leaves the matter of renewal to the Director-General's discretion. It is true he must exercise that discretion within certain limits of external and internal legality, but in the present case he respected those limits and there are no grounds for

quashing the impugned decision. The ILO therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The complainant joined the staff of the International Labour Office on 14 August 1973 on a fixed-term appointment for one year. It was twice renewed and then he was given another fixed-term appointment, for four months, which was once renewed. He left the Office on 30 April 1977.

According to Article 4.6(d) of the Staff Regulations, although the holder of a fixed-term appointment may have it renewed he may not expect its renewal or its conversion into any other type of appointment.

It appears from that provision that the complainant, who held a fixed-term appointment, may not rely on the provisions of the Staff Regulations which relate to officials or employees who hold an appointment without limit of time; that the Director-General was bound neither to extend his appointment, even for short periods, nor to transfer him, nor to assign him a new project; and that the Director-General's authority over staff on fixed-term appointments is discretionary.

Hence the decision not to renew a fixed-term appointment which expires may be quashed only if the decision was taken without authority, or if it violates a rule of form or of procedure, or is based on a mistake of fact or of law, or if essential facts were overlooked, or if the decision is tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

The complainant alleges that the Director-General based the decision which he impugns on a distorted and often mistaken version of the facts and on clearly mistaken conclusions. He does not embark on any serious proof of his allegations, however. In particular his criticisms of and insinuations against his former supervisor, Mr. Costa, have no solid foundation of fact, are not borne out by a reliable allegation and are refuted by the evidence in the dossier.

Moreover, on joining the staff the complainant professed a command of Spanish and French and a sound knowledge of English. He cannot therefore properly complain of Mr. Costa's urging him to write in English a report for which he was to find most of the material in Great Britain or in papers published in London.

It appears from the foregoing that none of the complainant's pleas is founded and that the complaint 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 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet