

FORTY-SIXTH ORDINARY SESSION

***In re* USAKLIGIL**

Judgment No. 463

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Tourism Organization (WTO) by Mr. Resdan Usakligil on 16 July 1980, the WTO's reply of 12 September, the Complainant's rejoinder of 20 October and the WTO's surrejoinder of 24 November 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 36, 43, 44, 56, 57 and 63 of the WTO Staff Regulations;

Having examined the written evidence, 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. On 1 February 1974 the complainant joined the staff of the International Union of Official Travel Organizations (IUOTO) in Geneva. He joined the staff of the WTO when it was founded in 1976 and was stationed at its headquarters in Madrid. His appointment was renewed several times. On 1 January 1978 it was extended to 31 December 1979, and it was agreed that he would retire on that date. In November 1979, however, his appointment was extended by agreement to 31 January 1980. On 13 December 1979 the Secretary General and the complainant, then Director of the Administration and Common Services Division, met to settle a disagreement he had with the Chief of Finance over the promotion of a staff member. The conversation became heated, and the complainant declared that he would forgo the one-month extension of his appointment to 31 January 1980. According to the complainant the Secretary General told him that he could "leave the secretariat of the Organization at once", but in the WTO's reply the Secretary General states that he "said he could leave if he wished". The complainant immediately handed back the letter extending his appointment and left Madrid the next day, 14 December 1979. The same day the Secretary General, learning that he had left, wrote him a letter thanking him for his excellent services. The complainant did not reply. He then received in turn three staff movement notices, the second cancelling the first and the third the second. The first said that his appointment expired on 14 December 1979 and did not specify whether service benefit was payable at the family rate, i.e. the rate payable to officials with dependants. The second stated that the appointment expired on 31 December 1979, that the benefit had been calculated at the family rate and that the period from 15 to 31 December 1979 was treated as leave without pay. The third notice, which was dated 31 January 1980, also said that the date of expiry was 31 December 1979 and that the period from 15 to 31 December was treated as leave without pay, but altered the service benefit by putting after it the words "without dependant" in brackets. On 9 March 1980 the complainant wrote to the Secretary General asking him to review the decision communicated in the third notice so that the period from 15 to 31 December should not be treated as leave without pay - something he had never asked for - and the service benefit should be calculated with due regard to the fact that he had a wife. The Secretary General did not reply, and the complainant appealed to the Tribunal on 16 July 1980 against the decision of 31 January 1980.

B. The complainant contends that he left the WTO on 13 December 1979 on the Secretary General's instructions, that leave without pay is granted only at a staff member's request and not on the employer's own initiative and that Article 56 of the Staff Regulations⁽¹⁾, on the service benefit (misnamed "repatriation grant" in the staff movement notices), explains that "dependant" includes a spouse, the provision being unconditional.

C. The complainant asks the Tribunal to order the WTO to pay him (a) the balance of his December 1979 salary, for the period from 15 to 31 December; (b) the service benefit at the family rate, i.e. another eight weeks' salary; (c) one dollar as damages for the moral injury and inconvenience he has suffered.

D. In its reply the WTO states that on 13 December 1979 the complainant was not obeying an order but leaving for

good of his own free will, taking all his belongings with him. On the following day the Secretary General might have taken the view that he had been guilty of dereliction of duty and might be dismissed - the sanction prescribed in Article 57 of the Staff Regulations - and in that case, under Article 63(b), he would have been entitled neither to notice nor to compensation. Alternatively, the Secretary General might have assimilated his conduct to resignation without notice. The Secretary General took the latter view, which was more favourable to the complainant, on the strength of Article 36, which states⁽²⁾: "The Secretary General may accept a resignation at shorter notice than that specified in this article". The WTO invites the Tribunal to dismiss the complainant's three claims. As to the first, he rendered no service from 15 to 31 December 1979 and may not claim the salary. As to the second, Article 56 does not define "spouse", and the term should be interpreted by reference to Article 44, on "family allowance", which states in (a): "400 dollars in respect of a spouse whose annual occupational earnings are less than step 1 of the salary attaching to grade G.1 of the General Service category". In other words, service benefit is payable to a married staff member at the family rate if a family allowance was being paid in respect of the spouse. The complainant's wife was working for another international organisation and was not living in Madrid. The marriage certificate never formed part of his personnel file, and he did not send it to the WTO until 14 January 1980. True, Article 56 does not qualify the term "spouse", whereas the child must be one "in respect of whom a family allowance is payable", but the reason is that an age limit of 21 years had to be set for a child, but not for a spouse. As to the third claim, the complainant has never spoken of any injury, and he offers no evidence whatever in support of the claim.

E. In his rejoinder the complainant denies that the Secretary General said that he "could leave if he wished". The Secretary General told him that he could leave at once. There is no provision in the Staff Regulations which provides for assimilating his departure to resignation without notice, and such assimilation is in any case at odds with the statement in the staff movement notice that he was on leave without pay from 15 to 31 December 1979. The fact that he is married has always been stated in staff movement notices. The WTO has always known that he is married. It may not properly contend that it changed the staff movement notice because it received his marriage certificate on 14 January 1980. He never intended to resign without notice nor to take leave without pay. His intention was to complete his contract, i.e. to stay until 31 December 1979, and merely give up the one-month extension. The only reason why he left on 13 December 1979 was that the Secretary General formally authorised him to do so. As to the merits, he argues that there is no connection between Articles 44 and 56 of the Staff Regulations. Article 44 defines, not the term "spouse", but the conditions of payment of family allowances: it requires that the spouse's occupational earnings should be less than the salary attaching to step 1 of grade G.1. It is Article 56 that defines "dependant", one dependant being a spouse, and the term being unqualified. The same is true, for example, of Article 43(c), on the installation allowance: a spouse need not be someone in respect of whom a family allowance is payable, and the provision stipulates that installation allowance shall be payable only if the official certifies that the spouse intends to reside at the duty station for at least six months. Lastly, the complainant presses his third claim for relief on the grounds that he suffered moral injury and inconvenience when his employment was terminated.

F. In its surrejoinder the WTO observes that the whole affair arose out of an unfortunate move which the complainant made in the performance of his duties and his bad temper and touchiness. He left his work deliberately and of his own accord and in a way which he intended to be taken as final. He did not work from 14 to 31 December 1979 and cannot claim payment for services he did not render, particularly since, although he had used up more than his accrued leave, the Secretary General decided against deducting the debit from the amount of the terminal settlement. Until 14 January 1980, when the WTO received the complainant's marriage certificate, there was no evidence in his personnel file to show that he was a married man. It was under no duty to take account of a document which he failed to supply while he was still on its staff and which reached it only after he had left. Lastly, there is not a shred of proof in the rejoinder of the moral injury he says he has suffered.

CONSIDERATIONS:

1. The complainant invites the Tribunal to order the WTO to pay him:
 - (a) his December 1979 salary, for the period from 15 to 31 December;
 - (b) service benefit at the family rate;
 - (c) one United States dollar as damages for the moral injury and inconvenience he has suffered.

2. The complainant's appointment, which was originally signed on 22 December 1975, was extended on several occasions and finally up to 31 January 1980. In the course of a disagreement with the Secretary General on 13 December 1979 he said that he would forgo the extension of his appointment to 31 January 1980 and there and then he handed back the contract of renewal. Whatever facts and attitudes may have formed the background to that conversation, it appears that on the next day, 14 December 1979, the complainant took leave of several colleagues and left Madrid.

3. On 31 January 1980 the Secretary General sent the complainant a "staff movement notice" correcting the earlier ones. The complainant is challenging the notice, which set the termination of his appointment at 31 December 1979, stated that he had been on "leave without pay" from 15 to 31 December and indicated that the service benefit was due, but not at the family rate.

4. The parties do not dispute the date on which the complainant's appointment terminated. The only fact to be considered in determining whether he was entitled to payment of salary for the period from 15 to 31 December 1979 is that he was not at the Organization's disposal during that time and therefore rendered it no service.

The general rule is that a staff member is not entitled to remuneration in respect of a period during which he has rendered no service. It is open to the Director-General to relieve the staff member from his duty, without loss of salary, but such relief must be in clear terms. When, as in the present case, there is doubt about what the parties said and about what they may have intended, the rule must be applied. Accordingly, the complainant is not entitled to payment of salary from 15 to 31 December 1979.

5. Article 56 of the Staff Regulations lays down the conditions for payment of the service benefit to officials with dependants. It reads: "A service benefit shall be payable to any official who on leaving the Organization otherwise than by dismissal, or by summary dismissal under Article 63, has completed one year of service. The grant shall be computed in accordance with the schedule below. For the purpose of this article the term "dependant" denotes (a) a spouse, or (b) a child in respect of whom a family allowance is payable."

The schedule in Article 56 has two columns, one headed "Official without dependants", the other "Official with dependants". The parties disagree over the interpretation of the provision. The Tribunal observes that the complainant sent the Chief of Personnel his marriage certificate, though not until 14 January 1980, or one month after the actual termination of his employment, and that after the heading "repatriation" in the staff movement notices appear the words "with wife and child(ren)". The Organization was therefore aware of the fact that the complainant had a wife and child. The only material fact is that he has a wife, whatever the date on which he produced the required evidence.

6. Article 56 does not provide any guidance for interpreting the term "spouse". The complainant cites the article in support of his claim to payment of the benefit at the family rate on the grounds that the term "spouse" under (a) is not qualified. The question is whether reference may be made to other provisions of the Staff Regulations in interpreting the article. Article 44 lays down the conditions for the entitlement of officials belonging to various categories of staff to the annual payment of family allowances. It does not define the term "spouse". The Organization's reply is mistaken in contending that it does. In fact the sole purpose of Article 44 is to lay down rules on the grant of family allowances, and its application to service benefits is neither well founded in law nor relevant, the two matters being basically distinct. Family allowances are intended to provide additional remuneration over and above the official's salary on the grounds of his family situation during employment. Service benefit becomes due after the termination of employment, and is intended to facilitate the transition to other employment or to retirement. The amount of the service benefit due in this instance should therefore be calculated from the column headed "Official with dependants" in the Article 56 schedule.

7. The complainant puts forward no argument in favour of his claim to damages for moral injury, and the Tribunal considers the claim unfounded.

DECISION:

For the above reasons,

1. The decision not to pay the complainant service benefit at the family rate is quashed.
2. The claims for payment of salary due and of damages are dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner

1. The article reads (Registry translation): "Service benefit: A service benefit shall be payable to any official who on leaving the Organization otherwise than by dismissal, or by summary dismissal under Article 63, has completed one year of service. The grant shall be computed in accordance with the schedule below. For the purpose of this article the term "dependant" denotes (a) a spouse, or (b) a child in respect of whom a family allowance is payable."

2. Registry translation.

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