

FIFTY-FOURTH ORDINARY SESSION

In re LINCHAM

Judgment No. 628

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Herbert Patrick Lingham on 8 December 1983 and corrected on 7 February 1984, the ILO's reply of 17 April, the complainant's rejoinder of 20 July and the ILO's surrejoinder of 21 August 1984;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 1.1, 1.2, 1.4(c), 4.6, 6.7.2, 7.5, 7.7, 11.4.1 and .2, 11.8, 12.8.1, 13 and Annex IV, Part A, of the Staff Regulations of the International Labour Office;

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. The complainant, an Indian born in 1938, joined the ILO office in New Delhi in 1976 as a "sales promotion officer" at a local grade known as L.4. He was promoted to L.5 on 1 January 1980. Yet the then Director of the office, Mr. Neck, found his work unsatisfactory and on 14 October 1982 wrote to headquarters in Geneva proposing not to renew his contract beyond the date of its expiry, 31 December. Mr. Gatti, the senior personnel officer for the Asian region, talked the matter over with Mr. Neck and the complainant had his contract extended on trial to 30 June 1983. On 9 March Mr. Neck wrote Mr. Gatti a minute describing the complainant as a poor salesman, unco-operative and hard to get on with. In agreement with Mr. Neck, who was absent, the acting Director, Mr. Bangasser, told the complainant on 11 April that his contract would not be renewed and he must take his accrued leave of some 60 days. On 12 April the complainant wrote to Mr. Bangasser and to the Personnel Department in Geneva alleging unfair treatment and requesting review of his case under Article 13.1 of the Staff Regulations. From 12 to 20 April a policeman was posted at the entrance to the office with instructions to escort the complainant, if he turned up, to Mr. Bangasser's office. He protested. Geneva ordered Mr. Gatti to make an inquiry. On 20 May Mr. Gatti showed the complainant two severely critical texts that were to be appended to his annual report for 1982 and told him that instead of taking annual leave he would be on special leave with pay until 30 June. He again protested. Mr. Gatti advised Geneva against renewal. On 20 June the complainant submitted to the Director-General a "complaint" under Article 13.2. The Chief of Personnel himself went out to New Delhi and reported to the Director-General. By a minute of 3 October 1983, the challenged decision, he informed the complainant that the Director-General had rejected his Article 13.2 appeal but offered six months' pay as compensation for "the manner in which you were asked to leave the office in April last", agreed to be "in many ways unfortunate". He rejected the offer as too little and too late.

B. The complainant accuses the ILO of handling his case in an "unprincipled" way. Mr. Bangasser's constant breach of ILO rules and procedures caused him professional and personal harm. For years his work was rated good and he got his annual increments right up to 1983. Mr. Bangasser unlawfully barred him from the office premises: that was tantamount to summary dismissal which, according to Article 12.8.1 of the Staff Regulations, only the Director-General may authorise. He was falsely accused by Mr. Bangasser of dishonesty in handling the proceeds of sales. By calling in the police Mr. Bangasser submitted to outside authority, in breach of 1.1, 1.2 and 1.4(c). It was in breach of 7.5 to make him use up his annual leave and of 7.7 to put him on special leave. The reasons for the non-renewal were not duly notified to him beforehand; he was not given a proper hearing; and he was denied access to records to prepare his case: that was in breach of 11.4.2 and 11.8.2. In breach of 6.7.2 he was not allowed to comment fully on the libellous texts handed to him by Mr. Gatti, which were concocted just to support Mr. Bangasser's attitude. His Article 13.1 request for review was not dealt with in accordance with Annex IV, Part A. There was breach of a promise by Mr Gatti that he would get monthly extensions until his case was settled. There was interference in the communication of his Article 13.2 "complaint" to the Director-General. Some of the reasons for non-renewal were notified to him only on 20 May 1983, and at the urging of the Staff Union Committee; others not at all. His record is more than satisfactory. The ILO has acted in disregard of his rights, dignity and reputation and of international labour standards. He seeks (1) reinstatement under a fixed-term contract for at least one year, (2) payment of the salary and benefits due since termination (3) moral damages amounting to 20,000 United States

dollars, (4) compensation for the performance of duties warranting grade ND.X from February 1980, (5) compensation amounting to \$500 for the confiscation of his personal effects on ILO premises, (6) the imposition of a sanction on Mr. Bangasser and (7) the award of \$4,000 as costs.

C. In its reply the ILO denies that the Article 13.1 request for review was mishandled: in particular, the complainant's interests were vigorously defended by the Staff Union Chairwoman in accordance with paragraph 1(b) of Annex IV. He fails to distinguish between termination of contract for unsatisfactory performance, governed by Articles 11.4 and 11.8, and non-renewal, governed by 4.6(d): a fixed-term appointment "shall carry no expectation of renewal ... and shall terminate without prior notice on the termination date fixed in the contract of employment". He was not dismissed: by April 1983 it was too late to dismiss him since, among other things, he could not be given the required three months' notice before 30 June. Making him take special leave preserved his rights, caused him no prejudice and left the Director-General free to change the decision, if necessary, after further inquiry. The ILO was under no legal duty to account for non-renewal or invite him to comment. In any event his shortcomings were pointed out to him orally and in minutes of 16 February and 16 December 1982 from Mr. Neck. Mr. Bangasser and Mr. Gatti made similar criticisms, and the Chief of Personnel also referred to them. The complainant was slow, untidy, neglectful, disobedient, aloof, aggressive and insubordinate. The Director-General examined the full dossier, including his own comments, and rightly concluded that his faults, though not warranting dismissal, made renewal inadvisable. The decision shows no fatal defect. The ILO admits mishandling of the case in New Delhi and injury to the complainant's dignity. But it observes that the order to take accrued annual leave was reversed and caused him no prejudice; in the circumstances the posting of a policeman was a reasonable measure; Mr. Bangasser did not accuse him of anything and Mr. Gatti merely suggested that his methods of work were not strict enough to prevent misappropriation; the two appendices to the appraisal report repeated criticisms he was already aware of; and his detailed comments were sent to Geneva and taken into account in the final decision. He did get copies of all the relevant documents, as the text of his comments shows; his Article 13.2 "complaint" was not intercepted; and he was given ample opportunity to prepare his case. For a matter of non-renewal the official has no right to full access to office records. Mr. Gatti was not authorised to promise monthly renewals, and there must have been a misunderstanding. The offer of six months' pay -- 22,175 rupees -- as compensation holds good. The Tribunal is not competent to order the imposition of a sanction on Mr. Bangasser. The complainant does not say what personal effects he has lost. His claim to payment for more demanding duties is irreceivable because he has failed to exhaust the internal means of redress. The amount he claims in costs is excessive.

D. In a lengthy rejoinder the complainant enlarges in detail on his arguments and seeks to refute those put forward in the reply. He contends that despite poor working conditions his performance was good and his relations with other staff did not preclude renewal: essential facts were overlooked. He develops his submission that the decision was tainted with procedural flaws. He restates his claims: he asks the Tribunal to quash the non-renewal and order his reinstatement on full pay from 1 July 1983, and he seeks \$20,000 in moral damages, \$500 for loss of personal effects and \$4,000 in costs.

E. In its surrejoinder the ILO elaborates its main contentions. Though regretting that the complainant failed to respond to repeated and valid criticism from his supervisors and that an administrative mistake caused him hardship -- for which he has been offered compensation -- the ILO submits that the Director-General exercised his discretion correctly and in its interests. It invites the Tribunal to reject the claims.

CONSIDERATIONS:

1. The complainant was appointed a sales promotion officer in the New Delhi office of the ILO on 1 December 1976. On 11 April 1983 the acting Director informed the complainant in writing that his contract would not be renewed beyond 30 June 1983. On 3 October 1983 the complainant was informed that the Director-General upheld the decision not to renew, and that is the decision impugned in this case.

The non-renewal of the contract

2. In the performance appraisal report on the complainant's work dated 13 August 1980 the Director of the New Delhi office stated that his work performance was fully satisfactory and that he made a devoted and determined effort to obtain results. He recommended that the entire sales and sales promotion work should be better integrated and that the complainant should be given the opportunity of becoming familiar with the wider activities of the ILO in the sub-region. On 28 July 1981 his performance appraisal report included the observation that he showed steady

progress and a willingness to work hard.

These assessments changed drastically when on 16 February 1982 the then Director in a confidential note to the complainant found serious shortcomings in his performance and established a task force to correct what was described as an undesirable situation. In an annex to the performance appraisal report issued on 5 January 1983 -- prepared at some date in April 1983 -- the acting Director evaluated the complainant's work as having the following shortcomings: (i) decline in real terms of sales; (ii) tremendous work backlog and poor service; (iii) ineffectiveness and inability to solve simple problems; (iv) absence of work plan or sales projection; (v) failure to take inventory and to keep proper records; (vi) refusal to follow directions of senior officials; (vii) absence from duty without authorisation; (viii) inability or unwillingness to work with the senior official supervising his section; and (ix) unbecoming and improper conduct. In a further annex attention is drawn to delays on the part of the complainant in dealing with correspondence.

The complainant denied that there was substance in these complaints, but both the Senior Personnel Officer from the Regional Office in Bangkok and the Chief of the Personnel Department in Geneva carried out an on-the-spot investigation and were satisfied that the decision not to renew the complainant's contract was correct. There is no reason to believe that these experienced officers would not be able to assess, quite dispassionately and accurately, the work performance of the complainant or that their advice was not fair and unprejudiced.

The Director-General has a duty to ensure that the Organisation is efficiently run. If in seeking to preserve efficiency he exercises his discretion not to renew a contract, it must be taken, unless the contrary is proved, that he is acting in the best interests of the Organisation. Such a decision will not be reviewed by the Tribunal unless it is shown to be flawed by lack or absence of authority, the violation of a procedural rule, a basic error of fact or of law, or a clearly mistaken conclusion drawn from the dossier. In the present case the Director-General considered the complainant's submissions in the light of adequate reports from his specialist staff. No procedural defect in regard to the non-renewal has been shown and the proved facts support the decision which he reached. It follows that on this aspect of the complaint the claim must be dismissed.

The other claims for relief

3. The ILO concedes that the complainant's case was mishandled at the New Delhi office. The acting Director's order that the complainant should take his accumulated annual leave immediately was without authority and had to be countermanded. He was refused access to his office and interdicted from carrying out his duties. Police were summoned "because serious trouble was expected in the ILO office". There was every sign that the New Delhi administration had allowed the situation to get out of control. These matters were very properly taken up by the Chairwoman of the Staff Union Committee, who lodged a strong protest against the treatment of the complainant. The response of the Organisation was to acknowledge that the complainant had been put to unnecessary hardship and to offer him an indemnity equal to six months' salary.

The complainant claims 20,000 United States dollars as material compensation for moral damages and grave defamation of character. This is quite disproportionate to the damage suffered by him. In the opinion of the Tribunal the ILO's offer is fair, and a sum equivalent to six months' salary and family allowance, that is to say the sum of 22,175 rupees, is reasonable compensation.

DECISION:

For the above reasons,

1. The Organisation is ordered to pay to the complainant compensation in the sum of 22,175 rupees.
2. The remaining claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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