

SIXTY-FOURTH SESSION

In re RISELEY

Judgment 892

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Susan Fenella Riseley against the International Office of Epizootics (OIE) on 27 July 1984 and corrected on 6 August, the OIE's reply of 22 October, the complainant's rejoinder of 20 November and the OIE's surrejoinder of 22 December 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 40.6, 40.14 and 80.1 of the Staff Rules of the OIE;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a British subject, joined the staff of the OIE in Paris on 1 August 1984 under a three-year appointment as drafting secretary and translator in the publications service at grade 3 in category III. The reports by her immediate supervisor, Mr. Meissonnier, on her performance in 1984 and 1985 were largely favourable and on 1 August 1986 she was granted a within-grade salary increment. A new supervisor, Miss Dilmitis, having taken over in January 1987, it was the Director General himself who on 12 March 1987 assessed her performance in 1986. He wrote that her usefulness was limited by her shortcomings in French and especially by the need to revise her texts, which was holding up publication of the OIE Review. In her comments of 7 March she said that since her work was to revise texts written in English her knowledge of French was irrelevant. In a letter of 28 April, the Director General said that her appointment would expire on 31 July 1987 and would not be renewed. There being no right to lodge an internal appeal, that is the final decision and the one impugned.

B. The complainant describes her duties and produces an attestation from her former supervisor dated 13 April 1987 which says that she was conscientious and efficient. She points out that Mr. Meissonnier's annual reports on her work were good and that she was awarded the salary increment. Miss Dilmitis, who was unqualified and difficult to get on with, relegated her to typing, and the work of the publications service declined in quality and quantity. She alleges that when she was recruited the head of Personnel told her that though everyone was appointed under a three-year contract there was automatic renewal. She accepted the offer of appointment only on that understanding, and there was breach of a promise. But for that promise she would not have accepted the offer since other employment in France carries greater safeguards and benefits.

The decision also overlooked the fact that, as former colleagues and employees bear witness, she got on well with others, was competent and had an excellent work record. The decision was actuated by the hostility of Miss Dilmitis, who was her supervisor for only a few months.

Pointing out that she is not entitled to unemployment benefit in France, she claims at least six months' pay in damages for material and moral injury.

C. In its reply the OIE observes that, according to 40.6 of the Staff Rules, a fixed-term appointment "shall, unless extended or renewed, expire according to the terms, without notice or indemnity". The decision the complainant is impugning was not tainted with any fatal flaw. Not only did her appointment duly expire but she got written notice. She offers no evidence of the promise she alleges. The head of Personnel categorically denies making it and indeed would have been acting in breach of the rules: the Director General has discretion in the matter, and no assurance of renewal can be made until the employer has had time to assess performance. It is untrue that other similar jobs in France are more attractive. Pay in the OIE is higher and is tax free. The allegations of delays in work on the Review are also untrue. Though not bad her performance was not up to standard; indeed all her annual reports

called on her to respect the schedule for publications. She was not fully qualified and others had to revise what she did. Her weaknesses became more evident when Miss Dilmitis, an experienced translator into English, took over.

Under an agreement concluded in May 1984 between the OIE and the French Government its staff do not get French unemployment benefit: their entitlements are as prescribed by its own rules and in the complainant's case were fully respected.

D. The complainant contends in her rejoinder that the avowed reason for the non-renewal, unsatisfactory performance, was quite mistaken. Her shortcomings are merely alleged, not proven. She cannot be blamed for the fact that the first issue of the Review for 1987 did not go out until November, three months after she had left. One reason for the delay in publications was a colleague's frequent absences, another was her own heavy workload. If dissatisfied with her, the OIE should have withheld her step increment in accordance with Article 40.14 of the Staff Rules. The sums she received were quite inadequate to protect her against the consequences of unemployment. She presses her claims.

E. In its surrejoinder the OIE seeks to refute the complainant's pleas and enlarges on its own submissions. It observes that the Tribunal does not replace the Director General's assessment of a staff member with its own but merely checks abuse of discretionary authority. It produces translations done by the complainant in support of its allegations that she was not up to standard. It reaffirms that the delay in publication of the Review was largely her fault. It discusses at length the nature of staff benefits and the rules governing them.

CONSIDERATIONS:

1. On 5 June 1984 the International Office of Epizootics granted the complainant an appointment for three years from 1 August 1984 to 31 July 1987 as drafting secretary and translator.

By a letter of 28 April 1987, the decision she impugns, it told her that her appointment would not be renewed on expiry but that if she did not find other employment by then she would be offered an ex gratia extension of up to two months.

She found the offer inadequate and said she would do her utmost to challenge it, whereupon in a letter of 26 May 1987 the Office withdrew it and confirmed the non-renewal.

2. She has two pleas. One is breach of an oral promise of automatic renewal which she says that, like most staff of the Office, she was given on appointment; the other is that the decision was arbitrary because it overlooked her professional competence and good record.

3. Her pleas are unsound for the following reasons.

4. In support of her contention that the head of Personnel made her an oral promise she cites testimony by another staff member. The Office retorts that the head of Personnel denies it outright.

There is no reason to accept one version rather than the other and the burden of proof is on the complainant. All she offers as proof is the allegation that but for such a promise she would have found a better job somewhere else. That is mere conjecture, not material evidence. For one thing, there is no reason to suppose that she could have obtained other employment; for another, the want of unemployment insurance and other benefits is, as the Office says, offset by higher pay and the widely acknowledged prestige of international public service. Even supposing she were right and the head of Personnel had said that fixed-term appointments were automatically renewed, there would not necessarily be a binding rule but just a common practice which would neither require the Director General to employ her nor confer on her any right to renewal.

Her first plea fails.

5. So does her plea that the decision was arbitrary.

She accuses the Office of overlooking her professional competence and good work record, which she says were acknowledged by her supervisors and in her being promoted on 1 August 1986.

6. According to Article 40.6(a) of the Staff Regulations a fixed-term appointment ends "on the date specified in the

letter of appointment". Under 40.6(b) it may be extended or renewed at the Director General's discretion, but it shall not carry any expectation of, nor imply any right to, such extension or renewal. Article 80.1 also says that it shall expire automatically, without notice or indemnity, on the date stated in the letter of appointment.

When the Director General has discretion not to renew a fixed-term appointment and to give neither notice nor indemnity precedent implies that the exercise of his discretion will be in the organisation's interest. The Tribunal may interfere with the discretionary decision not to renew only if it was taken without authority or tainted with a formal or procedural flaw, or there was a mistake of fact or of law, or some essential fact was overlooked, or there was abuse of authority, or a plainly mistaken conclusion was drawn from the facts. Since the Staff Regulations do not require that any reason be given for the decision and since none was given in this case, the Tribunal will determine from the circumstances whether there was any of the above flaws.

7. The flaw the complainant pleads is arbitrariness. To show that her work was good she cites the praise of her by her supervisors, Mr. Welte and Mr. Meissonnier, and mentions her "promotion" on 1 August 1986.

The Office replies that although her work was "not bad" - else she would not have got the step increment, which she is wrong to describe as "promotion" - she did show shortcomings in the main areas of translation and drafting; indeed her new supervisor thought poorly of her performance from 1 January 1987.

8. Since the assessments of her varied the Director General was free, in exercising his discretion in the Office's interest, to take account only of the factors that he thought ruled out renewal. Provided that it finds no mistake of law or fact or any other fatal flaw the Tribunal will not replace the Director General's assessment of an official with its own. The plea fails, and the impugned decision stands.

The complainant's claim to damages is therefore also dismissed as unfounded.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner