

NINETY-THIRD SESSION

Judgment No. 2148

The Administrative Tribunal,

Considering the complaint filed by Mrs K. K. against the International Labour Organization (ILO) on 9 May 2001, the ILO's reply of 19 July, the complainant's rejoinder of 18 September, and the Organization's surrejoinder of 30 November 2001;

Considering Article II, paragraph 4, of the Statute of the Tribunal;

Having examined the written submissions and decided not to allow the complainant's application for hearings;

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

A. The complainant, a citizen of Pakistan, was born in 1953. She began working at the ILO Area Office in Islamabad in September 1997 on an external collaboration contract. From 1 January to 31 December 1998 she worked there under a special service agreement as National Programme Coordinator of the ILO's International Programme on the Elimination of Child Labour (IPEC). In December 1998 the agreement was renewed until 31 December 1999.

In November 1999, IPEC at ILO headquarters in Geneva informed her by telephone that, because of doubts about her performance, the agreement would only be renewed for six months pending further evaluation of her work. The new agreement was to expire on 30 June 2000. By a letter of 14 June 2000 the Director of the Area Office told her that the agreement would be renewed for two months, but not beyond 31 August.

The complainant appealed to the Director-General on 26 June 2000 seeking a review of that decision on the grounds that she was entitled to know the reasons for the decision, and had not been given a fair hearing before it was taken. She wrote to him again on 10 July protesting that the preceding day the Area Office had advertised her position in the press, as a vacant post, which had caused her embarrassment.

IPEC's Director for Operations, at ILO headquarters, provided the reasons for the non-renewal of the complainant's contract of employment in a letter to her dated 13 July 2000, criticising aspects of her performance and professional conduct. He also told her that when he had received further comments from her, IPEC would review its decision with regard to her contract. Because of delays in completing the review the special service agreement was extended several times. It was first extended to 31 October 2000, and thereafter to the end of January, February and then March 2001.

In a letter of 28 March the Director of the Human Resources Development Department notified the Director-General's final decision to the complainant. He said that her special service agreement would not be renewed beyond 31 March 2001, that she would be paid one month's salary in lieu of notice and one month's salary "for any harm done by the advertising of [her] position". He told her that the Director-General was not referring the matter to the Joint Committee, such a referral being discretionary, and that the review carried out by the ILO had thus resulted in the "amicable solution" sought by her in an earlier letter. The complainant impugns the decision of 28 March 2001.

B. The complainant has five pleas. First, she alleges breach of the special service agreement governing her employment. That agreement, she argues, was signed by herself and the Director of the Area Office, representing the ILO in Islamabad, yet her employment had been ended on the basis of a performance evaluation made by the Director for Operations of IPEC in Geneva without him having the authority to carry out that evaluation. Neither the agreement nor the accompanying "terms of reference" defining the tasks of the National Programme Coordinator conferred authority on that director to assess her work. If it was intended that he should assess her

work, the agreement would have contained a mention to that effect. She worked under the guidance and supervision of the Director of the Area Office in Islamabad and reported to him; as her supervisor, it was he who had to evaluate her performance. Moreover, in a fax of 8 May 2000 he rated her performance as satisfactory, yet despite that satisfactory rating the ILO put an end to her employment.

Secondly, she contends that the ILO underestimated the amount of compensation due to her as a result of its advertising her position - as a vacant post - in a national newspaper while she was still the incumbent of the post. Its action was tantamount to "harassment in the workplace" and caused her mental distress and moral injury. Her professional reputation suffered, as did her health.

Thirdly, she objects to the fact that the Office has so far not offered her any compensation for the damage done to her health.

Fourthly, she believes that according to ILO practice she should have received three months' salary in lieu of notice whereas she was paid only one.

Lastly, she says that she was given to understand that the termination arrangements would be made on the basis of an "amicable solution" but the ILO settled matters unilaterally.

She seeks the following redress: reinstatement; payment of 18 months' salary in damages to compensate, inter alia, for the loss of her job, harmed reputation and harassment; 25,000 United States dollars in damages for mental stress; three months' salary in lieu of notice; and costs.

C. In its reply the Organization observes that even though the complainant is challenging the decision of 28 March 2001, she does not contest the findings regarding her performance. She thus accepts that it was not satisfactory and her argument that it was not assessed by the proper body consequently becomes nugatory. Although the terms of reference defining her tasks did not provide for any formal assessment procedure, and referred to supervision by the Director of the Area Office in Islamabad, they did not exclude supervision from Geneva. Unlike that director, the complainant was working for IPEC in Geneva, which controlled the technical services that she provided. As mentioned in the letter of 28 March, IPEC was in a position to judge her work and was entitled to expect satisfactory performance from her. The Organization thus concludes that the decision not to renew the service agreement was not tainted by a flawed evaluation of the complainant's past service. The decision was moreover a proper exercise of the Organization's discretionary authority.

It considers that the payment of one month's salary in lieu of notice was appropriate. By the terms of the special service agreement, in the event of termination the amount of compensation payable would depend on the unexpired duration of the agreement, with a maximum payment of three months' salary. However, the complainant's case does not involve termination; the agreement expired and there could be no formal expectation of renewal and she knew sixteen months before her separation from the ILO that the continuation of her employment was in jeopardy.

Commenting on the subsidiary issues involved, it says that the timing of the advertisement in the local press was unfortunate. It went out at a time when IPEC thought she would be leaving the job in the near future. However, the ILO paid her one month's salary by way of compensation. As for the health issue, the complainant has failed to provide any evidence of a causal link between her work situation and her medical condition.

D. In her rejoinder the complainant emphasises that the central issue turns on violation of her contract of employment with the ILO, and not professional performance and non-renewal of the service agreement. By the terms of the agreement, IPEC in Geneva had no authority to conduct the performance evaluation.

She submits that the ILO has admitted causing her a health problem stemming from harassment. In her view, in its letter of 28 March 2001 the Organization admitted that advertising her post was tantamount to harassment; indeed, it granted her one month's salary as compensation for any harm caused to her. Having found no alternative employment, she puts forward an additional claim for six months' salary because of lost income.

E. In its surrejoinder the Organization says that while it regrets that the complainant has not found employment, it cannot accept responsibility in that respect. Although she alleges that the publication of the advertisement adversely affected her health, the ILO has not admitted that. She has still failed to show a causal link between her work conditions and her state of health.

It emphasises that even though it expressed doubts about her performance as early as November 1999 it finally extended the complainant's special service agreement to 31 March 2001 to allow a series of reviews to take place to ensure that her performance had been properly evaluated. No notice at all was required by the terms of the agreement.

CONSIDERATIONS

1. The terms of the special service agreement under which the complainant worked as National Programme Coordinator for IPEC, in Islamabad, provided that the agreement "may be extended for one or several additional periods, but carries no expectation of extension or renewal". The "terms of reference" attached to the agreement, specified that the National Programme Coordinator reports directly to the Director of the ILO Area Office in Islamabad.
2. On 14 June 2000 the Director of the Area Office informed the complainant that the agreement which was to expire at the end of June 2000 would not be renewed except for a period of two months, that is, up to 31 August 2000, as "transitional arrangements" to permit her to seek a new job.
3. The complainant wrote to the Director-General on 26 June 2000 asking for a review of that decision on the grounds that while the special service agreement does not carry any expectation of extension or renewal, she was entitled to know the reason for the decision; she also claimed that she had not been given a fair hearing before it was taken. On 10 July she again wrote to the Director-General noting that the Area Office had advertised her position in the local press, thereby causing her difficulties and embarrassment.
4. By a letter of 13 July 2000 IPEC's Director for Operations, at ILO headquarters, gave the complainant the reasons for the decision not to renew the agreement, namely her work performance and conduct. He also invited her to submit her comments so that IPEC in Geneva could review the decision. She did that on 10 August.
5. At the end of August, the complainant was informed by the Human Resources Development Department that her service agreement would be extended to 31 October 2000. It was later extended to 31 January 2001, and then to the end of February so as to ensure a "thorough and fair" review before the Director-General reached a decision. She was to be given the possibility to comment on the ILO's conclusions. A set of "interim" conclusions was sent to the complainant on 13 February 2001 for her comments. She submitted her comments on 15 March 2001.
6. Pending the decision of the Director-General, the complainant's agreement was finally extended to 31 March 2001.
7. In the meantime, on 17 February, the complainant wrote to the Director-General informing him about her state of health and mental stress; she made particular reference to an allergy she had developed and held IPEC at ILO headquarters responsible for the "irreparable damage" to her health.
8. On 28 March 2001 the Director of Human Resources informed the complainant of the Director-General's decision not to renew her special service agreement beyond 31 March 2001, and gave her reasons. He said that her performance had been found wanting in respect of core functions pertaining to her position as National Programme Coordinator and she had not always conducted herself in a manner befitting her relationship with the ILO. He pointed out that she had "received due warning in November 1999 of [her] hierarchy's dissatisfaction with [her] performance" and therefore "knew full well that the quality of [her] work, in respect of the country programmes, would be a determining factor in the assessment of [her] performance". The letter informed her that she would be paid one month's salary in lieu of notice and another month's salary for any harm done by the advertising of her position.
9. Invoking paragraph 23 of the special service agreement, which provides that: "Any claim or dispute relating to the ... execution of the present [agreement] which cannot be settled amicably will be referred to the Administrative Tribunal of the ILO...", the complainant filed the present complaint on 9 May 2001.
10. Her pleas are the following. First, that the ILO's decision to discontinue her services on the basis of a performance evaluation made by IPEC's Director for Operations at ILO headquarters, who was not authorised to assess her performance, is a violation of the special service agreement she signed with the ILO as represented by

the Director of the Area Office in Islamabad. Secondly, that despite her satisfactory performance as evaluated by her supervisor in Islamabad, the ILO not only terminated her services, but also underestimated the amount of damages due to her since it paid her compensation equal to only one month's salary for the harm done by advertising her position. Thirdly, that the ILO failed to address the serious damage to her health, by not offering any compensation. Fourthly, that it paid her only one month's salary in lieu of notice whereas in normal practice it would pay three months' salary. Lastly, that the ILO called the above arrangement an "amicable solution" and "executed it unilaterally" without consulting her or obtaining her consent.

11. The complainant seeks the following relief: her reinstatement as National Programme Coordinator in the Area Office in Islamabad, with immediate effect; payment of 18 months' salary, i.e. 29,412 United States dollars in indemnification; 25,000 dollars in damages "due to tremendous mental stress caused by the ILO"; a total of three months' salary, i.e. 4,900 dollars, in lieu of notice; and costs.

12. The ILO avers that the non-renewal of the complainant's service agreement was a proper exercise of the Organization's discretionary authority and was not "based on an erroneous evaluation of her service". The payment of only one month's salary in lieu of notice was also appropriate.

13. The complainant's principal claim is that under both the agreement and the "terms of reference", the only official entitled to assess her work was the Director of the Area Office under whose guidance and supervision she worked and to whom she reported directly.

14. While the agreement and the "terms of reference" are silent regarding the official who shall evaluate the complainant's work, it was IPEC at ILO headquarters which was in a position to judge the technical aspects of her work. IPEC was managed from Geneva, and as a National Programme Coordinator she was implementing action programmes in Pakistan, under the strategic objectives defined by IPEC at ILO headquarters. She also submitted proposals for action programmes to the latter to obtain technical and financial clearance. Consequently, IPEC in Geneva was in the best position to judge her work and was entitled to expect satisfactory performance from her and express its views thereon. Hence, it had an ample basis on which to judge the quality of the complainant's performance of her core functions. It identified serious shortcomings. Moreover, nothing in the "terms of reference" excludes guidance and supervision from IPEC at ILO headquarters.

15. The Director of Human Resources' letter to the complainant dated 28 March 2001 informing her of the non-renewal of her service agreement beyond 31 March details the grounds for the dissatisfaction with her performance.

16. The Tribunal considers that the issue is not so much the violation of her contract of employment due to an evaluation performed by an unauthorised official, as the non-renewal of her service agreement for reasons of unsatisfactory performance and conduct.

17. It is to be noted that the special service agreement which expired on 31 December 1999 was renewed only for a period of six months - up to June 2000 - because of IPEC's dissatisfaction with her performance. The agreement categorically gave notice that it may "be extended for one or several additional periods" but that it carried "no expectation of extension or renewal".

18. Thus, in spite of repeated short-term renewals of the service agreement pending a "thorough and fair" review of the situation by the Director-General, the complainant was aware that her performance was being assessed and would be a determining factor when a decision was taken to renew or not to renew the agreement.

19. The ILO could not be faulted for advertising the complainant's position in the local press on 9 July 2000 as her contract of employment was due to expire on 31 August 2000 and arrangements had to be made to avoid a hiatus. In any case, she knew that she had been given the two-month extension up to the end of August purely as a "transitional arrangement" to permit her to seek a new job.

20. The decision to pay her one month's salary for any harm done by the advertising of her position may be viewed as an act of liberality on the part of the Organization. The complainant has supplied no proof of the alleged harm done to her person and reputation.

21. Similarly, the Organization was under no obligation to pay her one month's salary in lieu of notice. It was as a result of dissatisfaction with her performance that as from 1 January 2000 her service agreement was renewed only for six months and thereafter for short periods. That was tantamount to notice that further renewal of the agreement

was unlikely.

22. It is to be stressed that the case is one of non-renewal of a contract of employment and not termination. The Director-General's decision not to renew her service agreement was a proper exercise of his discretionary authority and one over which the Tribunal has only a limited power of review.

23. When the reason given is unsatisfactory performance, the Tribunal will not replace the organisation's assessment of a complainant's fitness for his duties with its own (see Judgment 1262, under 4). A decision not to renew a fixed-term appointment, being discretionary, it may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority (see Judgment 1052, under 4). Clearly none of these circumstances was present to vitiate the decision of non-renewal.

24. In view of the foregoing, the complainant may not be reinstated in her former position of National Programme Coordinator for IPEC. It follows also that there are no grounds for allowing her claims to indemnification, damages or costs.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet