SEVENTY-EIGHTH SESSION

In re PEARSON

Judgment 1379

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Margaret Ann Pearson against the General Agreement on Tariffs and Trade (GATT) on 22 February 1994 and corrected on 21 March, the GATT's reply of 9 May, the complainant's rejoinder of 5 June and the GATT's surrejoinder of 21 June 1994;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Rule 105.2(a) of the United Nations Staff Rules, which apply to the staff of the GATT, reads:

"(i) Special leave may be granted for advanced study or research in the interest of the [GATT], in cases of extended illness, for child care or for other important reasons for such period as the [Director-General] may prescribe. In exceptional cases, the [Director-General] may, at his initiative, place a staff member on special leave with full pay if he considers such leave to be in the interest of the [GATT].

(ii) Special leave is normally without pay. In exceptional circumstances, special leave with full or partial pay may be granted."

The complainant, a British subject who was born in 1949, joined the staff of the GATT in Geneva in 1984 as a secretary at grade G.5, having been transferred there from the Food and Agriculture Organization of the United Nations in Rome. She held an indefinite appointment and had non-local status. From June 1985 she was employed in the Economic Research and Analysis Unit (ERAU).

On 13 May 1987 she gave birth to a son, Stanislas, who was and is deaf. On the expiry of her maternity leave she applied for and was granted permission to work half-time in ERAU up to 31 December 1987. At her request she was allowed to go on working half-time until 31 December 1988, but with the English typing pool instead of ERAU. She had her status as a half-time employee extended to 31 December 1989.

In accordance with Rule 105.2(a) and her successive applications, and on the ground that she needed time to look after her son Stanislas, the GATT granted her special leave without pay from 4 March to 3 September 1990, then to 31 December 1991, and to 31 December 1992.

n a letter of 11 December 1992 she applied for further extension. In his letter of 22 December in reply the Chief of Personnel told her:

"GATT policy allows normally for not more than two years of absence without pay. In view of your particular circumstances, however, we are prepared to apply a more generous criterion and grant you six months more. This will have given you three full years of leave without pay and bring us up to 30 June 1993, by which time you will have to decide whether you want to return to your post or to resign your appointment with GATT."

In a letter of 12 June 1993 the complainant nevertheless applied for yet another extension. In his fully argued reply of 16 June the Chief of Personnel refused it, but said he would wait until 1 August to fill her position in the English pool and she had until then to go back; if she failed do so she would be taken to have resigned on 30 June.

On 23 June she sent the Chief of Personnel a request under Rule 111.2(a) for review of the decision. In a letter of 23 July the Chief of Personnel rejected her request on the Director-General's behalf. She lodged an appeal under 111.2(c) with the Joint Appeals Board in a letter she sent the Director-General on 26 July.

Acknowledging receipt of that appeal in a letter of 29 July, the Chief of Personnel told her that the Director-General was confirming the terms of the letter of 23 July but "as an entirely exceptional measure" gave her until 31 October to go back to work.

In its report of 25 October 1993 the Board held that the Director-General's decision had not been in breach of the material rules. By a letter of 29 October the Chief of Personnel informed her that the Director-General had "concluded that considerations of sound management in the interests of the organisation" precluded further extension, but as "a final gesture" was postponing until 1 December 1993 the deadline for her return to work; if she did not return, her contract would end on 30 November 1993.

The Chief of Personnel wrote to her again on 22 November to say that he understood she intended to return to work on 1 December and that she would be assigned to the Text Processing Section.

In her letter of 25 November, however, she told the Chief of Personnel that she wanted instead a position in which she could "work from home". In his reply of 30 November, which she is now impugning, the Chief of Personnel refused and told her that if she was not back at work the next day her contract would end. She did not go back, and by a letter of 6 December he notified to her the termination of her appointment at 30 November.

B. The complainant recounts at length the background to the dispute. She explains that her son Stanislas needed and still needs her constant attention and that although she did not want to lose her job she could not jeopardise his future by going back to work. She observes that the Staff Rules do not restrict the duration of leave without pay to two years. The Organisation's ultimatum could not have come at a worse time. As the Chief of Personnel well knew, her son had just started primary school in France after three years' intensive preparation and so much was at stake that she could not have contemplated work then. She nevertheless intended to take up full-time work as soon as she felt sure that her son could keep up at school. The Chief of Personnel never really grasped what looking after a handicapped child entailed and he flatly refused to look at possibilities other than full-time work. She asks the Tribunal to set aside the decision not to grant her further leave without pay and the decision to terminate her contract.

C. In its reply the GATT submits that the complainant has failed to file her complaint within the time limit of ninety days in Article VII(2) of the Tribunal's Statute. The final decision by the Director-General was the one which he based on the Appeals Board's report and which the Chief of Personnel notified to her in his letter of 29 October 1993. Since she got that letter the same day, that was when the ninety days began and they ran out before 22 February 1994, when she filed her complaint. The Chief of Personnel's letter of 22 November 1993 merely told her where she was to be working and so did not alter the terms of the final decision. Neither did his letter of 30 November, which merely rejected a suggestion she had made. So her complaint is out of time and irreceivable.

In any event it is devoid of merit. According to Rule 105.2 special leave without pay is not an entitlement. The Director-General grants it at his discretion when exceptional circumstances so warrant. The rule gives "child care" as one valid reason for granting it and the Director-General has indeed acknowledged as much in the complainant's case by granting her special leave. All that is at issue is the duration of it, and the Director-General is free to treat each case on merit, striking a balance between the staff member's and the Organisation's interests. In this case he came to the conclusion that granting leave for nearly four years out of six was as much as could reasonably be expected. He committed no abuse of discretion. Although the funds allocated for the complainant's post could be used to employ temporary staff the post could not be filled. There is no question of keeping on indefinitely someone who is not willing to do any work.

D. In her rejoinder the complainant argues that her complaint is receivable, the final decision being the Chief of Personnel's letter of 30 November 1993.

She develops her pleas on the merits, contending in particular that the GATT overlooked an essential fact by failing to distinguish between the needs of a normal child and those of a handicapped one.

E. In its surrejoinder the Organisation maintains that the complaint is irreceivable because it challenges out of time the final decision of 29 October 1993.

As to the merits it observes that it recognised the distinction she advocates by granting her unusually favourable treatment.

CONSIDERATIONS:

1. The complainant held a non-local permanent appointment with the GATT at grade G.5. She took maternity leave in 1987. Having given birth to a son who was profoundly deaf, she asked for and was granted permission to work part time. She was again on maternity leave from October 1989 to January 1990 and on part-time work from 1 February to 3 March 1990. From 4 March 1990 until 30 June 1993 she was at her own request put on special leave without pay in accordance with Regulation 5.2 and Rule 105.2 of the United Nations Staff Regulations and Staff Rules, which apply to the GATT. In a letter of 12 June 1993 to the Chief of Personnel she sought extension of the leave by "a few years - say five". The Chief of Personnel refused her request in a letter of 16 June.

2. On 23 June 1993 the complainant asked for review of her case by the Director-General. In a letter of 23 July the Chief of Personnel confirmed that her leave was not being extended after 30 June. On 26 July she filed an appeal with the Joint Appeals Board. On 29 July the Director-General granted an exceptional extension of her leave until 31 October 1993.

3. In its report of 25 October 1993 the Joint Appeals Board recommended rejecting her appeal on the grounds that it found no reason to question the Director-General's exercise of his discretion. By a letter of 29 October 1993 the Chief of Personnel informed the complainant of the Director-General's final rejection of her case and sent her a copy of the Board's report. The Director-General gave her until 1 December to go back to work. But she did not do so, and the GATT terminated her appointment as at 30 November 1993.

4. The GATT contends that the final decision was contained in the letter of 29 October 1993, which notified to the complainant the Director-General's conclusion that "considerations of sound management in the interests of the organisation prevent him from envisaging any further extension of leave without pay". The refusal to extend her leave was the subject of her request to the Director-General for review and of her internal appeal. The decision of 29 October was, moreover, the one that endorsed the recommendation by the Joint Appeals Board, and so it was the final challengeable decision. The complaint was not filed until 22 February 1994, outside the time limit of ninety days set in Article VII(2) of the Tribunal's Statute, and is therefore irreceivable.

5. The defendant's reasoning is correct. The complainant seeks to get round the objection by arguing that the decision which she is impugning in this case is a letter of 30 November 1993 from the Chief of Personnel rejecting a request from her for leave to work at home. But she has neither asked for review of that decision nor lodged an internal appeal against it. So she has not exhausted the internal means of redress which were available to her, and her complaint is, if directed against the refusal of 30 November 1993, irreceivable under Article VII(1) of the Tribunal's Statute.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner

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