

## EIGHTIETH SESSION

### *In re* ANNABI

#### Judgment 1481

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Kamal Annabi against the International Labour Organization (ILO) on 1 April 1994 and corrected on 5 April 1995, the ILO's reply of 29 June, the complainant's rejoinder of 4 September and the Organization's surrejoinder of 27 October 1995;

Considering Article II, paragraph 1, 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. The complainant, a citizen of Tunisia who was born in 1940, worked for the Food and Agriculture Organization of the United Nations (FAO) from 1970 to 1987. In April 1987 he joined the International Labour Office, the ILO's secretariat, as chief interpreter at grade P.5 in the Relations and Meetings Department at headquarters in Geneva.

In a telex of 27 March 1987 to the Director of the FAO's Personnel Division the chief of the Office's Personnel Development Branch had said that the ILO would offer the complainant a fixed-term appointment for two years, but "he can expect to receive a without-limit-of-time contract in five to six years". He also said that the chief interpreter's was "one of the most secure posts in the ILO".

The ILO twice extended the complainant's appointment, to 30 June 1990 and then to 30 June 1992. In June 1992 it offered him another year, to 30 June 1993. On 8 June 1992 he saw the Director of the Relations and Meetings Department and asked why he was not getting a longer extension. In a minute of 9 June the Director answered that for financial reasons he had "had to propose" abolishing the complainant's post at the end of the year.

On 27 November 1992 the complainant sent the Director-General a "complaint" under Article 13.2 of the Staff Regulations. On the strength of the telex of 27 March 1987 he sought, among other things, the grant of a contract without limit of time. On 26 January 1993 the Director of the Personnel Department replied on the Director-General's behalf that the telex made no commitment on the Organization's part.

In March 1993 the Organization decided not to abolish the complainant's post and on 29 April it offered him an extension of appointment until 30 June 1995. On 5 May 1993 the chief of the Personnel, Planning and Career Development Branch told him that it was "reasonable to anticipate that [he would] be taken into consideration" the next time there was a review to see who qualified for a permanent appointment. On 23 June he signed, albeit with reservations, the contract drawn up on 29 April.

On 27 October 1993 he filed another "complaint" with the Director-General against the decision of 29 April on the grounds that it refused him an appointment without limit of time. By a letter of 5 January 1994, the decision under challenge, the Director of the Personnel Department informed him of the Director-General's rejection of his "complaint" but promised that he would be "treated equally" with all other staff eligible for a contract without limit of time.

B. The complainant submits that the Organization has failed to show him good faith.

Judgment 782 (in re Gieser) set out, under 1, the conditions in which an official may have a promise fulfilled: it must be substantive; it must come from someone who is competent to make it; breach of it must cause injury to the person who relies on it; and the position in law must not have altered since the date at which it was made. All those conditions being met, the telex of 27 March 1987 constitutes an enforceable promise to grant the complainant an

appointment without limit of time after five or six years' service.

He has a subsidiary plea, which he again founds on precedent, that the ILO thwarted his rightful expectations. The telex of 27 March 1987 swayed him in changing organisations: he would, but for the assurances the ILO gave him, have thought twice about giving up his permanent appointment at the FAO.

He asks the Tribunal to quash the decision of 5 January 1994, to have the Organization give him from 1 July 1993 an appointment without limit of time and to award him moral damages and costs.

C. The ILO replies that the complainant is misreading Judgment 782. The Tribunal set out therein the criteria for determining not whether a promise has been made but whether it may be enforced. Besides, the telex of 27 March 1987 said "he can expect to receive", not "he will receive"; so it made no commitment but merely bred an expectation. What the precedents say about rightful expectations holds good only for termination or non-renewal, not for the grant of a permanent appointment.

Lastly, the complainant can expect such an appointment soon, though not by stealing a march on others.

D. In his rejoinder the complainant enlarges on his pleas. He objects to the Organization's "dilatatoriness". In 1987 it made out that the post he was to take up was "one of the most secure" in the ILO; by 1992 it was mooting abolition. Judgment 782 does set out the criteria for determining the existence of a binding promise, and the words "he can expect to receive" in the telex of 27 March 1987 did amount to a commitment, not just engender an expectation. Else the wording would have been "he may expect to receive". And the ILO is wrong: there may be a rightful expectation also to the conversion of a fixed-term appointment into a permanent one.

E. The Organization presses all its pleas in its surrejoinder, maintaining that there was neither a binding promise nor denial of any rightful expectation.

#### CONSIDERATIONS:

1. The complainant used to serve the FAO as head of its Interpretation Branch. In 1986 the ILO advertised the post of chief interpreter; he applied and won the competition. The ILO granted him a fixed-term appointment for two years from 1 April 1987 and then several extensions. The last of them ran from 1 July 1993 to 30 June 1995. He accepted it only with reservations and lodged a "complaint" objecting to the ILO's refusal to let him have a contract without limit of time. He seeks the quashing of the decision of 5 January 1994 by which the Director of the Personnel Department told him of the rejection of his "complaint"; the grant of a contract without limit of time; and an award of damages for the moral injury he says the impugned decision has caused him.

2. His line of argument is straightforward: that the ILO broke a promise made at the time of recruitment to grant him a contract without limit of time in five or six years. He has a subsidiary plea that the impugned decision disappoints the rightful expectations the ILO's attitude had given him.

3. His main plea rests on a telex which the chief of the Personnel Development Branch of the ILO sent to the Director of the Personnel Division of the FAO on 27 March 1987, i.e. just before he was recruited. The telex confirmed that the ILO would offer him a contract for two years but added that he "can expect to receive" one without limit of time in five or six years and that the post was "one of the most secure" in the Organization. In the complainant's submission those phrases constituted an enforceable promise to convert his appointment in the stated lapse of time. And he draws a parallel with the case the Tribunal ruled on in Judgment 782 (in re Gieser) of 12 December 1986.

4. The Tribunal held in that judgment:

"According to the rules of good faith anyone to whom a promise is made may expect it to be kept, and that means that an international official has the right to fulfilment of a promise by the organisation that employs him."

The promise must - the judgment went on - be substantive, "i.e. to act, or not to act, or to allow"; it must come from someone competent to make it; breach of it should cause injury to the person who relies on it; and the position in law must not have changed between the date of the promise and the date at which fulfilment is due. In that case the Tribunal was satisfied that the complainant might rely on a promise of conversion of his fixed-term appointment into a permanent one.

5. In this case too the wording of the telex denoted a substantive promise to convert the complainant's appointment within five or six years. Not only was it made by someone with authority to speak for the Organization but the obvious intent was that he should see it and be induced thereby to accept the offer.

6. The complainant has sustained injury from the ILO's failure to discharge its promise in time and from the Director-General's decision nearly seven years later to acknowledge no commitment towards him. His employment is the less stable on that account. What is more, there is no evidence of any change, between the time of the promise and the time by which the ILO should have kept it, in the ILO's rules about the seniority that qualifies someone for a permanent appointment.

7. There being no need to entertain the complainant's subsidiary plea about his rightful expectations, the conclusion is that the conditions that precedent requires are met. The Director-General was wrong to refuse him an appointment without limit of time and to grant him only two years from 1 July 1993. His case is sent back to the Organization so that it may take the action this judgment requires.

8. Though he claims moral damages for the ILO's treatment of him, this judgment may be deemed to afford him redress on that count.

9. Lastly, he is entitled to costs, and the amount is set at 5,000 Swiss francs.

#### DECISION:

For the above reasons,

1. The Director-General's decision of 5 January 1994 is set aside.
2. The complainant's case is sent back to the Organization so that it may act on the ruling in this judgment.
3. It shall pay him 5,000 Swiss francs in costs.
4. His other claims are dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

(Signed)

Michel Gentot  
Mella Carroll  
Julio Barberis  
A.B. Gardner