

EIGHTY-THIRD SESSION

In re Visanji

Judgment 1656

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Marcia Visanji against the European Molecular Biology Laboratory (EMBL) on 18 October 1996, EMBL's reply of 8 January 1997, the complainant's rejoinder of 30 January and the Laboratory's surrejoinder of 7 February 1997;

Considering Articles II, paragraph 5, and VII 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, who is British, joined the Laboratory's staff on 1 May 1990 under a three-year fixed-term appointment as a technical assistant at grade 5. She was assigned to its outstation at Hamburg and after a period of probation was promoted to grade 6. On 1 May 1993 EMBL granted her a 20-month extension of appointment, which it described in its offer as the "last possible extension" it would give her. She left on 31 December 1994, on the expiry of her appointment.

By a letter of 7 October 1993 the complainant's counsel told the management of the Hamburg outstation that his client might have contracted serious ailments from exposure to toxic chemical substances on the Laboratory's premises. He said that the safety precautions there were inadequate. He asked the management to improve them and to enable the complainant to consult a specialist of her own choosing. In letters of 15 December 1993 and 10 March 1994 she again complained to the head of the outstation about the inadequacy of the safety precautions. On 24 March 1994 her sister told the head of the outstation, among other things, that she was suffering from an eye infection due to a chemical substance, and asked him to take action.

In a memorandum of 11 April 1994 the Director General told the complainant that, having examined her various letters and grievances, he had decided to put her case to the Joint Advisory Appeals Board. On 28 July he told her counsel that he had convened the Invalidity Board in accordance with Article R.B.4 of the Staff Regulations and Article 13 of the Pension Scheme Rules applicable to Laboratory staff, and that the Laboratory had appointed a doctor to sit on the Invalidity Board. He asked counsel to name a doctor as soon as possible to represent her too on the Board. He added that the convening of the Board obviously took priority over the convening of the Joint Advisory Appeals Board.

The complainant thereupon named a doctor to represent her on the Invalidity Board.

In the ensuing months, however, she never acted on the Administration's repeated requests that she should say whether she wanted the Invalidity Board to continue the proceedings or not.

By a letter of 21 November 1996 she told the Director General that she had put her case to the Tribunal in the absence of any reply to her "letter of 26 August or that of 13 May 1996". The Administrative Director's answer of 24 November 1996 was that EMBL had no record of either letter.

B. The complainant impugns the implied rejection of claims that she says she made in the letter of 26 August 1996. She says that her health went into decline in the course of her appointment because of her working conditions. The Laboratory asked her to use chemical substances "that were considered too toxic to be handled by the rest of the staff". She says that she was exposed to substances that other staff had left on the premises. She complains of the treatment she received at the hands of the head of the Hamburg outstation. She accuses him of having isolated her from the other staff members by assigning her to a building where she was constantly on her own. He was guilty of harassment, intimidation and breach of medical privilege. He threatened not to renew her contract.

She says that belongings of hers were stolen from the premises and that another staff member physically assaulted her.

She submits that two months before the expiry of her first appointment, which was for three years, she got notice of renewal of her appointment for only twenty months. She accuses the Laboratory of destroying her reputation in the scientific community and frustrating her search for employment elsewhere.

She wants the Tribunal to award her (1) 70 per cent of her final salary "as long as necessary" in damages for the injury to her health; (2) 750,000 German marks in moral damages; (3) 2,154.64 marks to cover the costs of removal and "storage"; (4) 10,000 marks in unpaid indemnities; (5) 25,500 marks by way of unemployment benefit; and (6) 27,500 marks in costs. She claims the return of "private property".

C. EMBL contends that her complaint is irreceivable because of her failure to exhaust her internal remedies. For want of an express decision she is impugning the implied rejection of claims the Administration never received.

In any event her complaint is devoid of merit.

D. In her rejoinder the complainant disputes allegations of fact in the reply and enlarges on her pleas.

E. In its surrejoinder the Laboratory says that there is nothing in the rejoinder to suggest that her complaint is receivable.

CONSIDERATIONS

1. The EMBL recruited the complainant as a technical assistant on 1 May 1990 under a three-year fixed-term contract and extended it until 31 December 1994.

2. During that period the complainant stated many grievances, and they fall into two broad categories: the lack of proper safety measures, which she said had affected her health, and various acts of personal harassment. Details are set out under B above.

3. The relevant provisions of Section 6.1 of the EMBL Staff Regulations read:

"R 6.1.03: Appeals shall be addressed in writing to the Director-General ...

R 6.1.04: Appeals shall be lodged within thirty calendar days from the date of notification of the disputes decision ...

When the Director-General does not take action within 60 calendar days in response to a written claim, the above-mentioned period shall run from the sixtieth day ...

R 6.1.05: The Director-General shall judge the appeal. Before making his decision, he shall consult the Joint Advisory Appeals Board ..."

4. Article 13.1 of the Pension Scheme Rules applicable to Staff of the EMBL provides:

"an invalidity pension shall be payable to a staff member who is under the age limit laid down in the Staff Regulations and who, at any time during the period in which pension rights are accruing to him, is recognized by the Invalidity Board ... to be suffering from permanent invalidity which totally prevents him from performing the duties attached to his employment in the Organization."

5. By a letter dated 11 April 1994 the Director-General told the complainant that, having considered her several letters and complaints, he had referred them to the Joint Advisory Appeals Board. By a letter dated 28 July 1994 he told her that he had convened the Invalidity Board, which, he said, "obviously takes priority over the convening of the Joint Advisory Appeals Board".

6. During the next fourteen months there was protracted and acrimonious correspondence between the complainant and the EMBL about the disclosure of information and medical reports to be put to the Invalidity Board. By a letter dated 16 October 1995 the Administrative Director told her that she was out of time because Article 13 of the Pension Scheme Rules required recognition of permanent invalidity by the Board "during the period in which pension rights are accruing"; but the Director gave her "a final chance"

to submit, through the doctor she had nominated to the Board, a formal claim identifying her permanent invalidity. She took no further action.

7. One year later, on 18 October 1996, she filed this complaint claiming (a) compensation for damages to her health resulting from the breach of health and safety regulations, for breach of confidentiality and for defamation; (b) the return of her belongings; (c) the reimbursement of removal and storage expenses; (d) the payment of unpaid termination indemnities and unemployment benefits; and (e) costs. Pleading that the EMBL has not taken any express decision, she states that she notified her claims to it on 26 August 1996.

8. The complainant has not supplied a copy of those claims with her complaint and, even though the EMBL states in its reply that it never received them, has not supplied it with her rejoinder either. The only basis on which she invokes the Tribunal's jurisdiction is that the EMBL has failed to take a decision upon her alleged claims of 26 August 1996. Even assuming that those claims were not by then time-barred, she has failed to establish that she did make them and that they related to the matters which form the subject of this complaint. Her complaint is therefore irreceivable.

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. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

William Douglas
Michel Gentot
Mark Fernando
A.B. Gardner