

EIGHTY-FOURTH SESSION

In re Rossi

Judgment 1676

The Administrative Tribunal,

Considering the complaint filed by Mrs. Christiane Rossi against the International Labour Organization (ILO) on 26 September 1996 and corrected on 31 October 1996, the ILO's reply of 6 February 1997, the complainant's rejoinder of 12 March and the Organization's surrejoinder of 17 June 1997;

Considering Articles II, paragraph 1, and VII 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 Frenchwoman who was born in 1938, joined the ILO in February 1991 as a secretary on a short-term appointment which was regularly renewed. In May 1992 she was assigned to the Application of Standards Branch (APPL) at grade G.4. On 26 January 1994 the ILO granted her a fixed-term appointment as from 1 January 1994, and Article 5.1 of the Staff Regulations thereby became applicable to her. It says that "An official appointed to a job other than of a temporary nature shall be on probation for the first two years following his appointment".

In three reports the complainant's supervisors appraised her performance from 1 November 1992 to 31 January 1994, from 1 February 1994 to 31 January 1995 and from 1 February 1995 to 30 September 1995. Although they found her professionally competent, they said that she failed to get on with some of her supervisors and fellow staff. They took her to task for quarrelling with another staff member in May and June 1993 and for treating her chief in a way he saw as "quite inadmissible".

On 15 August 1995 the secretary of the Reports Board asked her supervisors whether they recommended extending her appointment. They replied on 12 October 1995 that they did not because she was unable to get on with other staff. On 3 November the Reports Board endorsed their opinion. On 20 December the chief of the Personnel Planning and Career Development Branch (P/PLAN) told her that her appointment would not be renewed beyond 29 February 1996. On 8 January 1996 she filed a "complaint" against that decision under Article 13.2 of the Staff Regulations. On the strength of the Reports Board's comments the chief of P/PLAN sent her official notice of non-renewal in a minute of 29 January 1996. But on compassionate grounds she got one last extension until 30 November 1996.

By a letter of 26 June 1996, the impugned decision, the Director of the Personnel Department told her that the Director-General rejected her "complaint" as devoid of merit.

B. The complainant submits that the reproof in her performance reports is overdone. Her professional competence is not at issue and for all her alleged difficulty in getting on with others, the ILO still renewed her contract and on 26 January 1994 appointed her as a secretary in APPL. She just has "a forceful personality and a keen sense of her own worth". She cites a minute which the staff welfare officer wrote on 20 November 1995 at the suggestion of her second-level supervisor and which says that "there is no objective proof that Mrs. Rossi gets on badly with others".

Secondly, she contends that her fixed-term appointment was not probationary and the Organization was in breach of Article 6.7 of the Staff Regulations, which is about performance appraisals. The reporting procedure "showed several flaws": for example, her supervisors missed the time limit and for the third report got her to sign a blank form. It was all "a put-up job ... done just to get rid of her by the end of

1995".

She asks the Tribunal to quash the impugned decision and award her the extension the rules entitle her to or else the equivalent in damages and redress for "the injury sustained".

C. The ILO replies that the complaint is irreceivable on two counts: the complainant filed no internal appeal alleging flaws in the reporting procedure, and her complaint is one or two days out of time. She must have had notice of the impugned decision by 27 June 1996; yet she did not file until 26 September, thereby missing the ninety-day deadline in Article VII(2) of the Tribunal's Statute.

The Organization's pleas on the merits are subsidiary. Precedent has it that renewal is at the Director-General's discretion and that everyone has a duty to get on properly with others at work. The complainant was -- says the ILO -- "never left in any doubt that her fixed-term appointment was probationary". The flaws she sees in the reporting procedure have no bearing on the impugned decision. The welfare officer's findings are mistaken, being "rather prompted by sympathy ... than grounded in fact".

D. With her rejoinder, and in answer to the ILO's plea about the time bar, the complainant produces evidence to show that she filed in time. On the merits she rebuts all the Organization's pleas and presses her claims.

E. In its surrejoinder the Organization submits that, though she has complied with Article VII(2) of the Statute, her objections to the reporting procedure are irreceivable. It points out that her rejoinder challenges none of its arguments on the main issues. It presses its pleas on the merits.

CONSIDERATIONS

The facts

1. The complainant worked for the International Labour Office under short-term contracts from February 1991. On 26 January 1994 the Office granted her a fixed-term appointment from 1 January 1994 as a secretary in the Application of Standards Branch (APPL) of the International Labour Standards Department .

2. On 15 August 1995 the secretary of the Reports Board sent the head of the Branch a form headed "Probationary Report" which he was to fill up and send back by 30 September 1995. He returned it on 11 October recommending against extending the complainant's appointment. The Director of the Department agreed.

So did the Reports Board and, lastly, the Director-General.

3. By a minute of 20 December 1995 the Office told the complainant that her appointment was extended, by two months but for the last time, until 29 February 1996. On 8 January she filed a "complaint" under Article 13.2 of the Staff Regulations. In a letter of 26 June 1996 the Director of the Personnel Department rejected it on the Director-General's behalf. That is the decision that she is now impugning, though she did get an extension of appointment until 30 November 1996 on compassionate grounds.

4. She seeks (1) the quashing of the Director-General's decision not to renew her appointment; (2) an extension of appointment no less favourable than those granted to other staff in the same position in law, or an equivalent and fitting sum in damages; (3) redress for the injury she has sustained; and (4) costs.

Receivability

5. In its reply the Organization argues that, if she got the text of the impugned decision on 27 June 1996, her complaint was filed one day late. But in her rejoinder she shows that the date stamped on the envelope by the post office at Divonne-les-Bains, in France, was 28 June and so she could not have got the letter before that date. The ILO does not contest that in its surrejoinder. Her complaint is therefore receivable.

The merits

6. The complainant submits that the Director-General's decision rests (a) on wrong or tendentious allegations that, though her work was good, she failed to get on with other staff of the branch; and (b) on a misreading of Article 6.7 of the Staff Regulations and the consequently mistaken assumption that her appointment was probationary.

The grounds for non-renewal

7. A steady line of precedent has it that whether to renew a fixed-term appointment is a discretionary decision that is subject to only limited review. So it will ordinarily be set aside only if it was taken *ultra vires* or broke some rule of form or of procedure, or if there was a mistake of fact or of law, or if a material fact was ignored, or if there was abuse of authority, or if an obviously wrong inference was drawn from the evidence.

8. The reason for the non-renewal was that the complainant "did not get on with others at work" and so, "unfortunately", her services could "not be put to good use".

9. In her submission that decision was misconceived: the reports written up to March 1993 did not say that she had an awkward personality or failed to get on with others at work; the former criticism is in the report written in December 1994, the latter in the one of October 1995; and it was because the report of December 1994 made such a comment that the matter went to the Reports Board.

10. The plea fails. The complainant herself admits that all the reports written after March 1993 refer to poor relations with others at work, and the decision of 26 June 1996 merely confirms the Reports Board's recommendation.

11. It is plain on the evidence that an unaccommodating disposition had embroiled the complainant in tiffs at work. And the welfare officer's report, on which she relies, set no restriction on the discretion of the Director-General, who had to heed all the material records.

12. So there is nothing in the evidence to suggest any mistake of fact in the decision not to renew the complainant's appointment.

The reporting procedure

13. The complainant submits that the Organization failed to comply with the procedure in Articles 5.5 and 6.7 of the Staff Regulations for writing performance reports.

14. She was on a fixed-term appointment as from 1 January 1994. She says that she was not on probation after that date and the Organization was wrong to write what it called a "first report" on the period from 1 February 1994 to 31 January 1995 and a "probationary" one on the period from 1 February 1995 to 30 September 1995: two of her earlier reports -- she points out -- had borne those headings, for the periods from 2 May 1991 to 31 January 1992 and from 1 February 1992 to 31 October 1992.

15. The reports written before she got her fixed-term appointment are immaterial since Article 5.1(a) of the Staff Regulations says:

"An official appointed to a job other than of a temporary nature shall be on probation for the first two years following his appointment. After the first 18 months of service the official's performance and official conduct shall be evaluated by his responsible chief in accordance with the procedure established in article 5.5."

And 5.5(2):

"The probationary performance appraisal will be considered as the second appraisal for the purpose of article 6.7."

The rules governing conditions of service of short-term officials, which applied to the complainant before 1 January 1994, required no probation. The only possibility of treating any prior period of service as probationary is, according to Article 5.3, where it is so treated "on the recommendation of the responsible chief endorsed by the Selection Board or on the recommendation of the Board". The complainant adduces no evidence of any such recommendation.

16. The upshot is that the ILO was right to treat her as being on probation from January 1994.

17. She pleads flaws in the reporting procedure. Though the Organization acknowledges the delay in writing the reports, it submits that on that score her 13.2 "complaint" of 8 January 1996 was obviously out of time -- a point that she does not rebut in her rejoinder -- and so her present complaint is irreceivable because she has failed to exhaust her internal remedies.

18. At all events the delay was too trifling to cause her any actionable injury. The reports did serve the purpose of keeping her aware of her supervisors' disapproval of her behaviour. She knew of it by the time she saw the report of 2 December 1994 and so had plenty of opportunity for improvement before there came the recommendation of October 1995 on which the Director-General acted. And she fails to prove her charge of tampering with the texts and indeed any of the other flaws she is relying on.

19. The conclusion is that the Director-General's decision was in line with the Staff Regulations and the ILO's interests and the complaint must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

**Michel Gentot
Jean-François Egli
Seydou Ba**

A.B. Gardner