

EIGHTY-FOURTH SESSION

In re Broere-Moore (No. 6)

Judgment 1707

The Administrative Tribunal,

Considering the sixth complaint filed by Mrs. Sylvia Broere-Moore against the United Nations Industrial Development Organization (UNIDO) on 16 August 1996 and corrected on 15 October, UNIDO's reply of 20 January 1997, the complainant's rejoinder of 30 April and the Organization's surrejoinder of 11 August 1997;

Considering Articles II, paragraph 5, 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's career in UNIDO is summed up under A in Judgment 1483 of 1 February 1996 on her first complaint. By a letter of 6 January 1995 to the chief of the Recruitment Section she applied for the post of Director of the Organization's Office in New York, announced in notice of vacancy, No. LVA 94/033. In a letter of 29 June 1995 a recruit-ment officer told her that she had not been successful.

By a letter of 17 August 1995 she asked the Director-General to review the decision not to appoint her. In a reply dated 8 September the Director of the Personnel Services Division told her on the Director-General's behalf that review was unwarranted because the rejection of her candidature was unrelated to the terms of her appointment.

By a letter of 31 October she lodged an appeal with the Joint Appeals Board. In its report of 4 April 1996 the Board recommended rejecting her appeal as irreceivable for want of an "administrative decision" on the terms of her appointment. By a letter of 2 May the Director-General told the secretary of the Board that he had decided to endorse its recommendation. She got notice of that decision on 20 May 1996, and she is challenging it.

B. The complainant submits that rejecting her candidature was unlawful. She relies on the text of "binding instructions" which the Secretary-General of the United Nations sent to its senior officers on 27 March 1995 about enhancing the status of women. As a qualified inside candidate she was entitled to priority over the man who was appointed.

She wants the Tribunal to order UNIDO to "comply with the binding instructions, declarations and resolutions concerning employment of senior women in the Common UN system by compensating its administrative decision to appoint a male candidate to Post No. LVA-94/033 and not to offer [her] the post or equivalent employment". She also claims costs.

C. UNIDO replies that her complaint is irreceivable. Her appointment having expired on 31 July 1994, she had already left the Organization at the material time and so it was no breach of the terms of her appointment to reject her candidature. That was not an appealable decision within the meaning of Staff Rule 112.01.

On the merits UNIDO observes that the "binding instructions" she relies on do not confer on her any right to appointment. Besides, they apply only to serving staff of organisations in the common system, whereas she was no longer in UNIDO's employ.

D. In her rejoinder the complainant submits that the Organization's arguments on receivability and the merits rest on the mistaken assumption that neither the provisions for appeal in Rule 112.01 nor special measures to achieve sexual equality in the United Nations applied to former officials. It would be "logical

and just" for the Tribunal to rule on cases of discrimination according to "general principles" of international law and regardless of "local administrative practice, discretionary decisions, and staff reduction".

E. In its surrejoinder the Organization presses its pleas, the complainant's rejoinder being just a restatement of her earlier arguments. Instructions issued in the United Nations and other organisations are not binding on UNIDO, which is a distinct entity in law.

CONSIDERATIONS

1. The complainant joined UNIDO as chief of its Public Relations and Information Section at grade P.5 on a fixed-term appointment that began on 19 May 1992. Her appointment, which was for two years, was prematurely terminated in the course of a staff-reduction exercise and by an "agreed termination" dated 30 November 1993 under Staff Regulation 10.3(c). She challenged the termination in her first complaint, which the Tribunal dismissed in Judgment 1483.
2. One of the terms of termination was that she was to be on special leave without pay from 1 January 1994 to 31 March 1995. But because she wished to withdraw earlier her contributions from the United Nations Joint Staff Pension Fund, she asked that the date of expiry of her special leave be advanced to 31 July 1994. On 13 September 1994 UNIDO informed her that it agreed to that change in date.
3. On 13 December 1994 UNIDO advertised the post of Director of its Office in New York, which was graded D.1. The complainant applied on 6 January 1995. Having become aware that UNIDO had appointed a man instead, she asked in a letter of 17 August 1995 for review of the appointment. On 8 September the Director-General refused review on the grounds that selecting someone else for the post did not involve any breach of the terms of her own appointment.
4. On appeal the Joint Appeals Board held that the complainant was no longer a staff member, that she was entitled neither to reinstatement nor to re-employment within the meaning of Staff Rule 103.03, and that her appeal was irreceivable because it did not challenge an administrative decision within the meaning of Staff Rule 112.01.
5. In this, her sixth complaint, she is asking that UNIDO be ordered "to comply with the binding instructions, declarations and resolutions concerning employment of senior women in the Common [United Nations] system by compensating its administrative decision to appoint a male candidate to post No. LVA-94/033 and not to offer [her] the post or equivalent employment, when [her] qualifications matched those of this post and other vacant posts".
6. The Organization contends that, having ceased to be a staff member by the time the post was advertised, the complainant was not entitled to preference as an internal candidate under Rule 103.12(a)(ii). She is relying, however, on a statement which the Administrative Committee on Coordination (ACC) made on 27 March 1995 under the heading "Status of Women in the Secretariats of the United Nations System" and in which it said that consideration would be given to "the feasibility of treating all women staff members of common system organizations as internal candidates in applying for vacant posts in any organization of the system". In support of her claim to preference over men she also quotes extensively from an administrative instruction, No. ST/AI/412 dated 5 January 1996, issued to the staff by the Under-Secretary-General of the United Nations for Administration and Management and headed "Special measures for the achievement of gender equality".
7. Having ceased to be a staff member long before the competition, the complainant was not an internal candidate, and so her complaint does not raise any issue relating to the observance of the terms of her appointment. Her complaint is therefore devoid of merit.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

**Mella Carroll
Mark fernando
James K. Hugessen**

A.B. Gardner

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