

## EIGHTY-FOURTH SESSION

### *In re Broere-Moore* (No. 7)

Judgment 1708

The Administrative Tribunal,

Considering the seventh 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. Judgment 1483 of 1 February 1996, on her first complaint, sums up under A the complainant's career with UNIDO, which she left on 30 November 1993 by "agreed termination". In a memorandum of 22 December 1993 a personnel officer set out her terminal entitlements and said that the Organization would grant her the costs of repatriation either to France, where it had recruited her, or to the Netherlands, where she had been taking home leave, whichever country she might prefer. On 23 December it issued a form authorising her to travel to the Netherlands. But at her request it changed the destination to France and stipulated on another form, which the authorising officer signed on 3 May 1994, that she would have to bear the costs of storing her personal effects and household goods in France.

In a letter dated 3 July 1995 to the Managing Director of the Division of Administration she claimed the costs of travel for her two sons from England, where they had just come down from the university, to France. She also put in a bill for 22,425 French francs for storing personal effects and household goods at Ferney-Voltaire, in France, just over the Swiss border from Geneva, from 1 September 1994 to 14 April 1995: she was claiming that amount as part of her "removal" expenses. By a reply of 11 July 1995 the personnel officer told her that since she had exhausted her entitlement to the costs of removal UNIDO would pay the costs neither of her sons' travel and removal from England nor those of storage, which, as it had told her in May 1994, she herself would have to pay for.

In a letter of 17 August 1995 she asked the Director-General to review the decision to refuse her claims to recovery of the cost of "transport of my family's household goods and personnel effects, including that of my two sons". In a reply dated 8 September the Director of the Personnel Services Division confirmed on the Director-General's behalf that UNIDO would not be paying her the amounts.

In 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 devoid of merit. By a letter of 2 May 1996 the Director-General told the secretary of the Board that he had decided to do so. She received the text of that decision, the one she is impugning, on 20 May 1996.

B. The complainant submits that the impugned decision is unlawful. She pleads breach of promises by the Director-General and by the Director of the Personnel Services Division: they knew that she had no fixed abode and would have to store her things somewhere while looking for another job. She blames the undue hardship she says she suffered on "UNIDO's premature and illegal termination" of her appointment.

She seeks the quashing of the impugned decision and full reimbursement of her removal expenses. She also claims an award of costs.

C. UNIDO replies that her complaint is in part irreceivable and in any event devoid of merit. Her claim to the refund of storage costs is time-barred since she failed, within the 60-day time limit set in Staff Rule

112.02, to seek review of the decision on the travel authorisation form she received in May 1994.

Subsidiarily, the claim is unfounded. There is no provision in the rules for UNIDO to pay storage costs to a company with which a staff member has made private arrangements. Far from promising to do so the Organization expressly said in May 1994 that she would have to bear the costs herself. Her plea of undue hardship rests on her "usual" allegations of unlawful termination of her appointment: it is *res judicata*. As to her claim to the refund of the costs of her sons' travel, she had already exhausted her entitlements.

D. In her rejoinder the complainant seeks to refute UNIDO's pleas on receivability and on the merits. In her submission the Administration knew full well that it would have to make an exception to meet the costs of storage, and it would have been "perfectly reasonable" to do so. The merits of her case against termination are not *res judicata* because the Tribunal's ruling was confined to receivability.

E. In its surrejoinder the Organization presses its pleas and comments on points she raises in her rejoinder. It explains that in the negotiations that resulted in agreed termination it said it would not be paying storage costs.

## CONSIDERATIONS

1. On 19 May 1992 the complainant joined UNIDO as chief of its Public Relations and Information Section at grade P.5. The Organization granted her a fixed-term appointment for two years which it 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). In her first complaint she challenged the termination but Judgment 1483 dismissed her claims.

2. According to Staff Rule 109.01(c) she was entitled to have her household goods and other belongings transported at UNIDO's expense either to the place from which it had recruited her, Divonne-les-Bains, in France, a dozen-or-so miles from Geneva, or to Warmhuizen, in the Netherlands, where she had been taking home leave, or even to some other place of her choice provided that UNIDO would not pay her any more than the costs of transport to Divonne-les-Bains or to Warmhuizen. It issued an authorisation for transport to Warmhuizen, but she then decided to have her belongings delivered to Divonne-les-Bains instead, after having them stored for some time at Ferney-Voltaire on the way. UNIDO issued an amended authorisation on 3 May 1994 for transport to Divonne-les-Bains: it stated that she herself was to bear the costs of storage at Ferney-Voltaire.

3. In May 1994 UNIDO authorised a firm of removers to transport her goods and promptly settled its bill, which came to 55,729 French francs, for delivering them from Vienna to Divonne-les-Bains. Over a year later, by a letter dated 3 July 1995, she claimed the payment of a bill for 22,425 francs from the same firm for several months' storage at Ferney-Voltaire, which she herself had arranged. UNIDO refused; she sought administrative review and, review being refused, appealed to the Joint Appeals Board. The Board recommended rejecting her appeal and the Director-General did so.

4. UNIDO contends that her complaint is irreceivable on the grounds that the grant of the authorisation to her on 3 May 1994 constituted the communication of an administrative decision that the costs of storage would not be reimbursed and if she saw that as a breach of the terms of her appointment she should have sought review within the time limit of sixty days in Staff Rule 112.02. Further, paragraph 3(e) of Appendix H to the Staff Rules provides that the costs of storage shall not be reimbursed "unless, in the opinion of the Director-General, they are directly incidental to the transportation of the consignment". Here the storage, which was for several months, was clearly not "directly incidental to the transportation".

5. The complainant argues that since her belongings were delivered to her only on 15 April 1995 her claim to reimbursement, which she made on 3 July 1995, was timely. The decision she was contesting was the reply dated 11 July 1995. In the correspondence leading up to the "agreed termination" she had repeatedly referred to the provisional storage which the sudden termination of her appointment would require. So UNIDO was fully aware of the need for it and knew that it would have to make an exception in her case.

6. Although she had raised the problem of storage, the "agreed termination" made no provision for the matter and the Staff Rules did not entitle her to the costs. If she wanted the Director-General, in the

exercise of whatever discretion he might have had, to make an exception for her, she should have asked him to do so before she arranged to have her goods stored, not one year afterwards. The conclusion is that she is not entitled to reimbursement of the costs.

7. UNIDO informed her on 3 May 1994 that she was not entitled to them and its letter of 11 July 1995 was no more than confirmation of that decision. Her complaint is therefore irreceivable because she failed to have recourse to her internal remedies in time and so to exhaust the internal means of redress as Article VII(1) of the Tribunal's Statute required her to do.

8. In her letter of 3 July 1995 she also asked for travel and removal costs for her two sons. That claim too was refused on 11 July 1995, but she has not pursued it before the Tribunal.

### 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