

**EIGHTY-FIFTH SESSION**

***In re Cissé (No. 3)***

**Judgment 1774**

The Administrative Tribunal,

Considering the third complaint filed by Mr. Modi Cissé against the International Labour Organization (ILO) on 25 August 1997, the ILO's reply of 5 December 1997, the complainant's rejoinder of 16 January 1998 and the Organization's surrejoinder of 27 February 1998;

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 United Nations Development Programme (UNDP) employed the complainant as deputy chief of a project in Mali on behalf of the International Labour Office. Judgment 1773, delivered this day on his first two complaints, explains under A how his contract came to an end by virtue of a decision of 4 December 1996.

By letters dated 29 December 1996 and 2 January 1997 the priest of the Roman Catholic parish of Kolongotomo, in Mali, told the director of the National Hydraulics and Energy Department (DNHE) at Bamako that the complainant had failed to return some of the equipment he had hired from the parish to build concrete wells. The priest said that the price of hire and the wages of a trainer that his parish had made available had never been paid and he asked for "full redress". The national director asked for an inventory of equipment bought for the project. Under cover of a fax message of 13 January the acting director of the ILO's office at Dakar forwarded the inventory to the national director, confirming that the items belonged to the Government of Mali and asking him to "report any that had been confiscated or were otherwise missing and the amount of the loss". By a letter dated 11 February to the state prosecutor at Ségou, in Mali, the chief of project filed suit for the DNHE charging the complainant with "embezzlement of government property". After an investigation by the police the tribunal of first instance of Ségou informed the complainant on 25 March 1997 that the charges brought against him by the chief of project had been dropped for want of evidence.

As is stated in Judgment 1773, the deputy director of the ILO's office at Dakar had told the complainant by a fax of 23 January 1997 that he would be paid the equivalent of his salary for November 1996, compensation for accrued leave and repayment of sundry costs. On 30 April 1997 he was paid a total of 2,876,375 CFA francs. By a letter of 30 May 1997 which he addressed to the deputy director but sent to the Resident Representative of the UNDP at Bamako he claimed payment of 66,660 CFA francs in interest for late payment and of 20 million in damages for the filing of the charges. The Resident Representative got that letter on 3 June. The complainant is impugning the implied decision to reject his claims.

B. The complainant contends that the ILO's office at Dakar had the DNHE bring the charges against him and the Organization is therefore liable for the "insulting prosecution and assault on his personal freedom". He says that the DNHE and the UNDP knew full well that there had never been any embezzlement or confiscation. The inventory forwarded by the acting director of the Dakar office to the director of the DNHE on 13 January 1997 included several wrong items and he is dismayed that ILO staff at Dakar did not know more about the equipment bought with the funds they were supposed to be managing.

The sum he was paid on 30 April 1997 is only part of what he is claiming. He is entitled to interest amounting to 66,660 CFA francs on account of the "serious delay" in payment and to 20 million in moral damages. He applies for the joinder of his three complaints. He claims another 61,440 CFA francs in costs.

C. In its reply the Organization contends that the Tribunal lacks competence to hear the case because the complainant's contract contained a clause prescribing arbitration on any dispute.

In subsidiary argument on the merits it observes that not until 8 September 1997 did the Director-General learn of the complainant's claim of 30 May 1997 to payment of interest and that a letter of 5 December 1997 from the Director of the Personnel Department gave him partial satisfaction.

As for his claim to moral damages, the ILO points out that it was merely seeking help from the DNHE in getting the project equipment back. Since it did not itself file the charges it may not be held liable for any moral injury he may have suffered. Nor can any moral injury have arisen under his contract: that is an issue subject to the law of Mali and one that the Tribunal may not entertain. The ILO has already, on the strength of vouchers he has produced, paid him 62,000 CFA francs to meet his costs in going to the Tribunal.

D. In his rejoinder the complainant maintains his claims and seeks another 80,785 CFA francs in costs.

E. The Organization presses its pleas in its surrejoinder. It is against joining the third complaint with the first two on the grounds that the impugned decision and the material issues of fact are not the same. It doubts that the vouchers he offers in support of his claim to costs have anything to do with his third complaint.

### CONSIDERATIONS

1. In Judgment 1773, also delivered this day, the Tribunal dismisses Mr. Cissé's first two complaints and rules on his legal status in regard to the ILO. The Organization used to employ him as deputy chief of a project in Mali. The National Hydraulics and Energy Department of that country filed suit against him for "embezzlement" of equipment that the project had been using. He claims from the ILO the payment of 20 million CFA francs in damages for moral injury he blames on the Organization's office at Dakar: that office was, he says, guilty of "abuse of authority" by exposing him to "insulting prosecution and assault on his personal freedom". He seeks payment of interest on any sums awarded to him in the context of his first two complaints.

2. The ILO is against joining his case with the two others. Since his main claims rest on quite different facts, the Tribunal agrees that there should be no joinder.

3. As to his claim to moral damages, the Tribunal is competent to hear only disputes arising from the contract of employment between Organization and staff. It will not hold the ILO liable for anything the National Hydraulics and Energy Department may have done. Nor has the complainant succeeded in proving that any of the ILO's officials engaged its liability by wrongful instigation of the suit against him. Indeed the evidence refutes his particular contention that the ILO had had the Department file charges of embezzlement. So there is no merit in his claim to moral damages.

4. As for his claim to the payment of interest, the ILO paid him several sums on 30 April, some of them because they were due in law. On the latter sums it decided on 5 December 1997 to let him have interest because of the delay in payment. Though unhappy with the Organization's reckoning, he offers in his rejoinder of 16 January 1998 no explanation of those objections or of his own reckoning. The claim therefore fails, and so does his objection to the amount of 62,000 CFA francs the ILO granted him against the costs of his coming to the Tribunal.

### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

*(Signed)*

Michel Gentot

Julio Barberis  
Jean-François Egli

A.B. Gardner

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