

EIGHTY-NINTH SESSION

In re Camara

Judgment No. 1974

The Administrative Tribunal,

Considering the complaint filed by Mr Amadou Lamine Camara against the International Labour Organization (ILO) on 8 July 1999 and corrected on 27 August, the ILO's reply of 26 November 1999, the complainant's rejoinder of 6 January 2000 and the Organization's surrejoinder of 8 March 2000;

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 complainant, a Senegalese citizen born in 1945, joined the International Labour Office, secretariat of the ILO, as a Senior Programme and Administrative Support Officer (SPASO) at the ILO Area Office at Dakar on 2 June 1998 under a three-month contract. In view of his wide professional experience he was given three additional within-grade steps.

On 26 August 1998 during a "performance assessment interview" which was later recorded in a note for the file, the Director of the Dakar Office raised objections to the complainant's work and his relations with his colleagues and told him that he expected improvement. On 31 August the Director informed him that his appointment would not be renewed because certain "presumptions" concerning the quality of his work had been "confirmed and had worsened" since the interview. He nonetheless offered the complainant an extension of contract from 1 to 4 September in order for the latter to "settle some matters still pending".

By a letter of 4 September the complainant submitted an internal complaint to the Director-General under Rule 9.1 of the Rules governing conditions of service of short-term officials, consisting of several claims and alleging unjustifiable treatment on the part of the Director of the Dakar Office. Having received no reply within the sixty days prescribed by Article VII(3) of the Tribunal's Statute, on 11 November 1998 he informed the ILO that he would put his case to the Tribunal. The ILO asked him to postpone his application to the Tribunal in order to give it time to complete the examination of his internal complaint. He agreed. The Director of the Dakar Office submitted comments and the complainant had the opportunity to reply to them.

On 9 April 1999 the Director of the Personnel Department replied to the internal complaint on the Director-General's behalf. She noted that the complainant should have been offered a fixed-term and not a short-term appointment; that it could not be concluded from the evidence that his performance was unsatisfactory although there had been some incidents; that he had several times been right to draw attention to proper procedure but that his insistence was misplaced; and that the work certificate submitted by the Director of the Office reflected neither the nature of his duties nor the length of his service. His claim to reinstatement was rejected because the job in question did not "measure up to the aspirations of someone of [his] experience". Instead he was offered compensation in an amount of 20,250 United States dollars, which was equivalent to one year's pay and allowances as from 1 June 1998 plus the amount of one year's contributions by the ILO to the United Nations Joint Staff Pension Fund and the Staff Health Insurance Fund, minus the amounts received during his period of actual service. His claim to the withdrawal of documents from his personal file was allowed in part and the Director of the Dakar Office would give him another work certificate taking account of the observations made in the complainant's internal complaint.

In a memorandum of 22 April 1999 the complainant again claimed reinstatement and objected to the decision to keep in his personal file the note written by the Director of the Office following the "assessment" of 26 August 1998. In a memorandum of 2 June 1999 he said that, in lieu of reinstatement, he was prepared to accept compensation but in a global sum of 63,845 dollars, which is equivalent to two years' salary and allowances, a termination indemnity equal to three months' pay, one month's notice and reimbursement of costs. Having received no reply, he filed this complaint on 8 July. In a fax message of 13 July the Director of the Personnel Department rejected his claims and informed him that the compensation offered originally would be paid into his account. He was also informed by a copy of a letter of 23 July 1999 from the Director of the Personnel Department to the Director of the Dakar Office that the offending note on the performance assessment interview would be withdrawn from his personal file.

B. The complainant submits that in the letter of 9 April 1999 the ILO admitted its mistakes, acknowledged that he was not guilty of misconduct and recognised that his claims were warranted. Furthermore, the only argument adduced to justify the refusal to reinstate him is that his aspirations were higher than the post he held, which he denies. He contends that the ILO refused to find him another assignment. He emphasises the seriousness of dismissal at his age. Lastly, the "malevolent behaviour" of the Director of the Dakar Office caused him moral as well as material injury in that it was an affront to his honour and professional reputation.

He seeks reinstatement with retroactive effect on a fixed-term contract of at least two years in accordance with what he says is the ILO's practice, "professional rehabilitation from an administrative point of view", material and moral damages, and an award of costs.

C. The ILO replies that the complaint is devoid of merit. It refers to a number of incidents and submits that the decision not to renew his appointment, which was substantiated in the letter of 9 April 1999, was taken within "the broad discretionary authority" of the Director-General. The Tribunal reviews such decisions "with particular caution in the case of a staff member on probation". The ILO points out that the complainant was recruited through a local competition to serve in a specific duty station and so may not be transferred elsewhere. It adds that "any reticence about employing someone of his age with professional experience and qualifications such as his can be overcome". It asserts that probationary appointments are initially for one year and that the practice cited by the complainant does not exist. Furthermore, he fails to prove malevolent behaviour on the part of the Director of the Dakar Office or the existence of moral or financial injury since none of the evidence has been made public and the ILO has paid him compensation.

D. In his rejoinder the complainant disclaims responsibility for the quarrels that arose with some of his colleagues. He accuses the Director of the Dakar Office of reacting violently, going so far as to insult him in public for drawing attention to breaches of the rules by some staff members. In his submission the ILO's arguments rely entirely on the note concerning his performance assessment which the Organization agreed to withdraw from his file and which, therefore, is no longer valid. He denies that the normal length of a first appointment is one year and asserts that the External Offices Manual allows a locally-recruited staff member to be transferred to a technical cooperation project. In support of his pleas concerning his age he produces an extract from a vacancy notice of another international organisation indicating a preference for candidates under 55 years of age. He observes that the ILO adduces no evidence that the events in Dakar were kept confidential and presses his pleas of moral and financial injury. He submits that the termination of his appointment was also unlawful because it was in breach of the procedures prescribed in the External Offices Manual.

He informs the Tribunal that on 3 November 1999 the Dakar Office transferred 8,573,753 CFA francs to his account with no explanation although he had rejected the Director of the Personnel Department's offer of 20,250 dollars (12,645,537 CFA francs by his reckoning).

Finally, the complainant indicates the costs he incurred in the present case and presses his claim for costs.

E. In its surrejoinder the ILO acknowledges that the complainant was not responsible for the quarrels at the Dakar Office but explains that relations between the parties had so deteriorated that renewal of his appointment was "unthinkable". It denies that its arguments are based on the note concerning the performance assessment and repeats that, in the circumstances, it could not envisage assigning him to another post. Although the probation period usually corresponds to the first two years of service, the initial appointment is for one year, at the end of which the employment relationship may be terminated. The defendant submits that it is for the complainant to prove breach of confidentiality, which he fails to do. It explains that the amount paid into his account corresponds

to the compensation offered minus the amounts he received from 1 June to 4 September 1998.

Lastly, it objects to the receivability of the financial claim put forward by the complainant on the grounds that all the internal means of redress were not exhausted.

CONSIDERATIONS

1. The complainant was recruited by competition to serve as a Senior Programme and Administrative Support Officer (SPASO) at the ILO's Office in Dakar on 2 June 1998 under a three-month contract. He was given three additional within-grade steps in view of his former professional experience.

He was sent to the Regional Office at Abidjan for training and resumed his duties at the Dakar Office at the end of July.

2. On 31 August, the date on which the three-month contract expired, the Director of the Dakar Office informed him that his appointment would not be renewed and offered him an extension of contract from 1 to 4 September to allow him to "settle some matters still pending".

3. On 4 September the complainant submitted an internal complaint to the Director-General under Rule 9.1 of the Rules governing conditions of service of short-term officials, alleging "unjustifiable and unfair treatment" on the part of the Director of the Dakar Office.

4. In a memorandum of 7 December 1998, submitted during the internal procedure, he asked the Director-General "to declare [his] three-month contract null and void" and to replace it with a fixed-term contract for twelve months with retroactive effect from 1 June 1998, to reinstate him in his duties at the Dakar Office or, failing that, to assign him "elsewhere within the ILO at a grade equivalent to or higher than that of a SPASO -[grade] 3, wherever the ILO deems fit", to remove from his personal file any documents relating to the current proceedings and, lastly, to have the work certificate written by the Director of the Dakar Office corrected to take account of the complainant's comments.

5. By a letter of 9 April 1999 the Director of the Personnel Department told the complainant that in lieu of reinstatement, the Director-General had decided to offer him, in particular, compensation calculated on the basis of one year's pay and allowances as from 1 June 1998 (i.e. the length of the appointment he should initially have been offered) plus the amount of one year's contributions by the ILO to the United Nations Joint Staff Pension Fund and the Staff Health Insurance Fund, minus the amounts he had actually received under his contract of three months and four days. The total amount offered to the complainant was estimated at 20,250 dollars.

That is the decision challenged in this complaint.

6. The complainant seeks reinstatement within the ILO, "professional rehabilitation from an administrative point of view", financial compensation for moral and material injury, and reimbursement of costs.

7. The Tribunal notes that the ILO does not rebut the complainant's plea of injury. In view of the circumstances of his recruitment, he should have been put on a fixed-term appointment as from 1 June 1998. That was why, recognising that the Director of the Dakar Office broke the applicable rules, the Director-General decided to allow partially his internal complaint.

Since the complainant's entitlement to relief is not contested, the Tribunal need only determine what would constitute fair redress.

8. The complainant seeks reinstatement and "professional rehabilitation". Since he served the Organization for only three months and four days as a locally-recruited official, ending in September 1998, and in view of the conflictual situation in which he was involved at the Dakar Office, the Tribunal considers that reinstatement in his post is not appropriate.

As for his claim to reinstatement elsewhere in the ILO, the Tribunal notes that this option is limited by the availability of posts and the interests of the Organization. The complainant fails to prove that any suitable posts were available and that his transfer could be envisaged in the ILO's interests.

The complainant's plea concerning his age fails as immaterial since the ILO has removed from its Staff Regulations the provision setting an age limit for recruitment. The document produced by the complainant indicates only a preference expressed by another organisation for candidates of under 55 years of age but sets no hard and fast rule.

9. Reinstatement being ruled out, all that needs to be determined is the amount to be awarded to the complainant as redress for injury.

The complainant seeks a fixed-term appointment of at least two years pursuant to the provisions of Articles 4.6(d) and 5.1 of the Staff Regulations. He asserts that the ILO's consistent practice is to give officials of his rank such appointments which are renewable by tacit agreement except in exceptional cases.

The material rules provide that:

Article 4.6(d)

"Appointments for a fixed term shall be of not less than one year and of not more than five years ..."

Article 5.1(a)

"An official appointed to a job other than of a temporary nature shall be on probation for the first two years following his appointment ..."

10. The Tribunal observes that, contrary to the complainant's assertion, nothing in the provisions cited above obliged the Organization to give him a tacitly renewable two-year appointment. Furthermore, the complainant adduces no evidence of the practice he cites.

Article 4.6(d) does allow the Organization to give fixed-term appointments for one year notwithstanding the fact that the period of compulsory probation is two years. The ILO was therefore right in its assertion that probationary appointments are initially for one year and may be renewed.

Only after the two-year probationary period may the ILO offer fixed-term appointments of more than one year. That is the intent of the texts cited above and it is confirmed by circular No. 574, series 6, of 21 August 1997.

11. The conclusion is that the complainant was not entitled, at his initial appointment, to a fixed-term contract of more than one year. The Director-General's decision not to renew his fixed-term contract does not interfere with any contractual right but merely disappoints expectation of further employment (see Judgment 1351, *in re Li*, under 13).

12. However, the unlawful decision of the Director of the Dakar Office to give the complainant a temporary appointment of three months in breach of the applicable rules, and the way in which the decision to end the employment relationship between the complainant and the ILO was implemented caused the complainant material and moral injury for which he is entitled to seek redress.

The Tribunal considers that the compensation for such injury should comprise the salary and allowances for the period from 1 July 1998 to 31 May 1999, and the amounts intended as redress for moral injury. Accordingly, the Tribunal considers that the sum of 16,000,000 CFA francs, minus all amounts already paid to the complainant, constitutes fair redress for injury under all heads.

13. The complainant is entitled to reimbursement of costs for the complaint before the Tribunal, which shall be set at 1,000,000 CFA francs.

DECISION

For the above reasons,

1. The Director-General's decision notified on 9 April 1999 is set aside.
2. The ILO shall pay the complainant 16,000,000 CFA francs minus the amounts already paid, in accordance with 12 above.

3. It shall pay the complainant 1,000,000 CFA francs in costs.

4. The complainant's other claims are dismissed.

In witness of this judgment, adopted on 12 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet