

NINETY-FIRST SESSION

In re D'Arcangelo

Judgment No. 2077

The Administrative Tribunal,

Considering the complaint filed by Mr Raffaele D'Arcangelo against the International Training Centre of the International Labour Organization (ILO) on 6 October 2000, the Centre's reply of 15 December 2000, the complainant's rejoinder of 12 January 2001 and the Centre's surrejoinder of 13 February 2001;

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, an Italian citizen who was born in 1949, joined the International Training Centre of the ILO in Turin in 1971. He was recruited as an administrative assistant at grade G.3 on a fixed-term contract, which was regularly renewed until 1 November 1994, when he was granted a contract without limit of time. In the meantime he had been promoted to grade G.4 in December 1973, and to grade G.5 in March 1980.

Between 14 June and 31 December 1995, the complainant was assigned as a programme assistant at grade G.5 to the Small Enterprise Development Programme. In the appraisal of his performance drawn up in July 1995, in the section "Personal career goals and expectations", he indicated his wish to be transferred and gradually incorporated into the teaching staff of the Training Department. In a confidential letter of 27 November 1995 he complained to the Director of the Centre that his current job offered no prospects for his becoming a teacher and asked for the situation to be remedied. On 15 January 1996 a career development plan, divided into three stages and covering the period from January 1996 to December 1997, was sent to the complainant. Attached to it was a job description for a post as junior programme officer at grade P.2 in the Training Department. The first stage of the plan (January-June 1996) was defined as a trial and training period consisting of a secondment to the Regional Programme for Africa. Thereafter, a written appraisal would determine any modifications needed to complete training during the second stage (July 1996-September 1997). A final progress appraisal would determine whether or not he embarked on the third stage, when he would be given an assignment as a training programme officer.

On 7 March 1997 the Senior Personnel Officer sent the complainant for comment the interim performance appraisal drawn up as part of his career development plan. In its conclusions the appraisal indicated that during the period in question the complainant had displayed an attitude which was not "really adapted to teamwork and made it difficult for him to acquire the basics for becoming a trainer". In a minute of 25 March 1997 the complainant sent his comments to the Senior Personnel Officer, challenging the appraisal on all points. In his reply of 9 June 1997 the latter informed him that he would not be completing the career development plan because he lacked the profile of a trainer. He therefore proposed to contact the Training Department to find him a post involving duties and responsibilities that were better suited to his profile.

On 23 April 1998 the complainant, the programme officers and the Senior Personnel Officer signed a document entitled "Terms of reference regarding training in the Regional Programme for Africa". The document, which concerned the continuation of the complainant's training listed his duties and envisaged an appraisal by the programme officers in December 1998. Between 14 January and 9 July 1999, the programme officers sent their appraisals to the Senior Personnel Officer. The complainant challenged one of them in a minute of 13 July. On 23 September the matter was referred to the Reports Committee. In the context of a reorganisation of the Training

Department the Director of the Department asked the complainant, in a minute of 22 October 1999, to accept a temporary assignment as a programme assistant in one of the Department's technical or regional programmes. The complainant replied on 28 October, informing him of his wishes - namely to be attached to the Technical Programme on Enterprise Development. On 1 December 1999 the Director of the Department informed the complainant that he could not accede to his wishes and offered him a temporary six-month assignment within the Training Department, starting in January 2000. After a further exchange of correspondence, the complainant filed an internal complaint on 28 February 2000 with the Director of the Centre, challenging the decision of 1 December 1999 to transfer him temporarily.

In the meantime, on 8 February 2000, the Reports Committee recommended to the Director of the Centre that the complainant be maintained in a position where he could "maximise his capabilities and minimise his weaknesses" or remain in the Training Department in a support function where he could put into practice the points that he had already learnt. On 27 March the Director asked the Committee for a supplementary report, which was sent to him on 14 April. On 12 May he informed the complainant that he endorsed the recommendations of the Reports Committee. He then asked the complainant's direct supervisor to propose how best to implement the recommendations; that proposal would serve as a basis for his decision as to where the complainant would ultimately be assigned. In a minute of 15 June, entitled "Your definitive assignment", the Director offered the complainant a post as programme assistant at grade G.6 in the Training Department as from 1 July 2000. The complainant replied on 20 June that he would take up his new post on the date envisaged. However, he said he was maintaining his internal complaint of 28 February 2000 against the decision of 1 December 1999 concerning his temporary transfer and was filing another one challenging the decision concerning his definitive assignment. His claims included the setting aside of the two decisions and the pursuit of his career plan with a view to his subsequent appointment as a programme officer at grade P.2. By a letter of 18 August 2000, which is the impugned decision, the Director of the Centre rejected both internal complaints.

B. The complainant contends first that Article 0.5(a) of the Staff Regulations of the Centre was breached because the decisions concerning his temporary transfer and his definitive assignment took account neither of his professional profile nor of the qualifications he had acquired with a view to being appointed to a post at grade P.2. He adds that the Administration may not order "authoritarian transfers": it must obtain the consent of the official concerned except in the event of emergency or *force majeure*, which was not the case here. Moreover, his definitive assignment was decided upon without his consent, in breach of the commitments made previously by the Director of the Centre.

Furthermore, the Centre failed to honour its commitments regarding training and promotion. The career development plan of January 1996 was not completed, not by any fault of his but due to the "failings" of the Centre.

The complainant also asserts that he was the victim of discriminatory treatment. By way of illustration he explains that unlike other officials he had to abide by a career development plan, and that the procedure for the appraisal of his performance was flawed: subjective and "unfavourable bias" carried more weight than the very favourable appraisals from some of his supervisors. Moreover, the Centre wilfully ignored some important professional initiatives he had taken, thereby overlooking significant facts.

Lastly, by refusing to provide him with the two reports of the Reports Committee in full the Centre deprived him of information essential to his defence.

He concludes that his career was blocked at grade G.6, which prevented him from entering several competitions for posts in the Professional category. He adds that the offending decisions also harmed his good name, as he was suspected of professional incompetence.

The complainant asks the Tribunal to set aside the decisions of 1 December 1999, 15 June and 18 August 2000 and to order his appointment to a post as programme officer at grade P.2. He also claims material and moral damages, and costs.

C. In reply the Centre submits that the decisions concerning his temporary and definitive assignments were taken in accordance with the Staff Regulations and took due account of his qualities, skills and experience. Appraisals of his performance were carried out regularly. The Centre affirms that assessment of an official's performance is at the discretion of the Director and that, in accordance with its case law, the Tribunal's power of review over such

decisions is limited: it will interfere only on specific grounds, which are absent in this case, since the Director was careful to ensure all the procedural guarantees in reaching a "just and equitable" decision. Career plans and terms of reference always involve an element of uncertainty, and whether or not their ultimate objective is attained depends on how well the official fares. If performance appraisals are negative and there is no flaw in the reporting procedure - which was so in the complainant's case - the expected outcome will not be achieved. The Centre adds that, under the terms of Article 0.5 of the Staff Regulations, the consent of an official is not required in the event of a new assignment. Such decisions are at the Director's discretion.

The complainant has adduced no conclusive evidence of any flaw in the reporting procedure. Nor can the Centre be held responsible for the failure of the 1996 career development plan.

If the complainant believed he had fallen foul of discrimination, he could have challenged the lawfulness of his career development plan. But he in fact agreed to it freely, having negotiated its terms. His position in law is, therefore, unlike that of the officials he cites and for whom no career plan was developed. The Centre points out it did not overlook his initiatives and that they could have led to disciplinary sanctions, as he established contacts outside the Centre without having the authority to do so.

Lastly, the Centre observes that it agreed to divulge the reports of the Reports Committee in their entirety and that the Tribunal is not competent to order the appointment of the complainant to grade P.2.

D. The complainant rejoins that although the Director has discretion over the assignment and promotion of officials, he ought not to have exercised that authority in disregard of essential facts such as, in this case, the favourable appraisals from at least three of his supervisors. He indicates that the consent of an official to a new assignment is not compulsory but "desirable", and that the terms of reference of 23 April 1998 stated that he had responsibilities regarding the design, promotion and negotiation of activities on behalf of the Centre. He adds that, in providing him with the reports of the Reports Committee in their entirety, the Centre met his request.

E. In its surrejoinder, the Centre presses its pleas and observes that the complainant was not authorised to exercise the responsibilities in question.

CONSIDERATIONS

1. The complainant joined the staff of the International Training Centre of the ILO on 1 February 1971 as an administrative assistant at grade G.3. Having occupied several posts, including one at grade G.4 and then two at grade G.5, he informed his employer in July 1995 that he would like gradually to transfer to the Centre's Training Department as a member of its teaching staff.

On 8 January 1996 he was told that as from 9 January he would be assigned at the same grade to the Regional Programme for Africa for six months. He replied on the same day that he would agree neither to that assignment nor to any other unconditional and temporary transfer and that he was awaiting written proposals for a "future professional career plan".

2. The upshot was that on 15 January 1996 he and the management of the Centre agreed on a three-stage career development plan. The first stage consisted of a trial and training period from January to June 1996, which involved transferring the complainant to the Regional Programme for Africa. Upon completion of stage one the complainant's work, particularly his administrative tasks, was to be assessed in a written report. During the second stage (July 1996 to September 1997), which would focus more specifically on training, he was to familiarise himself with the work of managing training programmes. A final appraisal of his progress in the design and management of such programmes was to be made in September 1997. If it was favourable he would go on to the third stage, when he would be given an assignment as training programme officer at grade P.2.

3. In March 1997 the complainant's performance was assessed at the end of the first stage of his career development plan, and he challenged the appraisal on all points. The appraisal having found that his attitude had not been "really adapted to teamwork and made it difficult for him to acquire the basics for becoming a trainer", the Administration decided against completing the plan and chose instead to look for a post with duties and responsibilities better suited to his profile.

4. On 23 April 1998 the complainant and the management of the Centre signed a document entitled "Terms of reference regarding training in the Regional Programme for Africa". It set out the tasks, including the design and management of training programmes, that the complainant was to carry out under the responsibility of and in association with the programme officers. It also envisaged that in December 1998 the latter would prepare an appraisal and send it to the complainant and to the Administration in order to complete the documentation needed for the classification of his post pursuant to the procedures in force.

On 14 January, 30 March and 9 July 1999 the programme officers submitted their appraisals, which, according to the Centre, taken individually covered the terms of reference only in part. In a minute of 13 July 1999 the complainant challenged one of the appraisals.

The Administration then decided to refer the matter to the Reports Committee, the statutory body competent for matters concerning performance appraisals and promotion. The Committee was to review the three appraisals and make recommendations as to the classification of the complainant's job, having obtained any additional information it might need from the complainant and the three programme officers.

5. At the end of 1999, before the Reports Committee made recommendations the Training Department, where the complainant worked, was reorganised and the complainant was assigned temporarily at the same grade as a programme assistant pending a final decision in the light of the Committee's report.

After a further exchange of correspondence with his supervisors, the complainant lodged an internal complaint on 28 February 2000 "against the decision to transfer him to another service" taken by the Director of the Training Department on 1 December 1999.

The Reports Committee issued a first report on 8 February 2000 and, at the request of the Director of the Centre, a supplementary report on 14 April 2000.

In its reports, the Committee concluded that the complainant's duties corresponded more to those of a competent programme assistant, than to those described in the terms of reference. It made the following recommendations:

"At this stage, the Committee cannot but recommend that Mr D'Arcangelo:

(a) be maintained in a position where he can maximise his capabilities and minimise his weaknesses. The Centre could probably use his education and intellectual and conceptual capabilities in one of the upstream activities, or, alternatively,

(b) be maintained in the Training Department in a support function where he could put into practice the points that he has already learnt and improve them until such time as a favourable appraisal suggests that [the level of] his job be reviewed, in accordance with the Centre's procedures in force."

The Director of the Centre endorsed the Reports Committee's recommendations and informed the complainant on 15 June 2000 that, having ascertained what suitable posts were available in the Centre, he was in a position to offer him a post as programme assistant at grade G.6 in the Training Department.

On 20 June the complainant indicated that he was maintaining the internal complaint filed on 28 February 2000 against the decision of December 1999 concerning his temporary assignment, and was filing another one against the decision of June 2000 on his definitive assignment. On 18 August 2000 the Director of the Centre rejected both internal complaints. It is this latter decision which is impugned in the present complaint.

6. The complainant requests the Tribunal to set aside the decisions of 1 December 1999, 15 June and 18 August 2000 and to order his appointment to a post as programme officer at grade P.2. He claims compensation for the material injury caused by the "delay" in implementing the training plan, which was to have resulted in his promotion and for the moral injury caused by the discriminatory treatment to which he says he was subjected. He also claims costs. In support of his claims he contends that there was a breach of Article 0.5 of the Staff Regulations, that the Centre failed to comply with the commitments it had made to him, that he was subjected to discriminatory treatment and that information was withheld.

Withholding of information

7. This plea no longer shows a cause of action, since in his rejoinder the complainant recognises that his demands have been met, the Centre having produced the Committee's reports.

Breach of Article 0.5 of the Staff Regulations

8. It should first be recalled that, according to a steady line of precedent (see in particular Judgment 810, *in re* Najman No. 5, under 5) the Tribunal will quash decisions respecting appointments only if they were taken *ultra vires*, or show some formal or procedural flaw or a mistake of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence.

9. The complainant alleges breach of Article 0.5 of the Staff Regulations in that the Centre's decisions about his temporary assignment and his definitive assignment overlooked both his professional profile and his qualifications, despite the provision in paragraph (a) of Article 0.5 that: "The director shall assign an official to his duties and his duty station subject to the terms of his appointment, account being taken of his qualifications." The complainant observes that over the past five years he has followed training modules intended to qualify him for a post of programme officer and has obtained a master's degree in economics, but that the decision of 1 December 1999 to assign him temporarily to a post of programme assistant stated neither the grade of the post nor what was required in terms of training, experience, language skills and personal aptitudes. Moreover, the duties he was to perform were purely administrative and involved no activities relating to the preparation, implementation or evaluation of training programmes. Consequently, they matched neither the qualifications he had acquired, nor his wishes, nor his career development plan.

10. The Centre asserts that the decision about the complainant's temporary assignment was taken in accordance with the Staff Regulations and took due account of his qualities, skills and experience without in any way impairing his position in law.

11. With regard to the decision of 1 December 1999, the Tribunal, in line with its case law, will not replace the Centre's assessment with its own. It finds that, since the career development plan was not completed and the Reports Committee had not yet made its recommendations, there is no objective evidence that the Centre overlooked the complainant's aptitudes or offended against Article 0.5 of the Staff Regulations. The above decision, consisting as it did in a temporary assignment at the same grade following a reorganisation of the Department in which he worked, in no way impairs the complainant's position in law and must therefore stand.

12. The complainant contends that the definitive assignment of 15 June 2000 is of the same nature as the temporary one: it involves no duties relating to programme preparation, implementation or evaluation; the work is essentially technical and administrative with no direct and personal involvement in training programmes.

The complainant submits that although the Director of the Centre has discretion over the assignment and promotion of staff, he must not overlook essential facts such as, in this case, the favourable appraisals of at least three of his supervisors. He asks whether the "majority appraisals" should not have prevailed over "certain minority, subjective and marginal criticisms".

13. The Centre notes that the decision of 15 June 2000 on his definitive assignment was taken after a long appraisal process to which the complainant agreed, and that the post of programme assistant in the Training Department was offered to him on the strength of appraisals by the people responsible for supervising him under the terms of reference negotiated in April 1998 and the Reports Committee's recommendations about the classification of his work. The Centre adds that the impugned decision took into account lawfully obtained information, the complainant's observations and the suitable posts available.

14. The decision is, as the complainant concedes, discretionary and as such may be set aside only on specific grounds as indicated under 8 above. Such decisions are subject to only limited review and the Tribunal will not substitute its own assessment for that of the Administration.

15. The Tribunal finds no breach of Article 0.5(a). The decision of 15 June 2000 was taken following appraisals by the persons responsible for supervising the complainant under the terms of reference that he had negotiated and agreed to sign, and after recommendations made by the Reports Committee at the outcome of a procedure untainted by any flaw. As to the complainant's plea that his supervisors' appraisals differed, the case law says that it is a safeguard for any staff member to be evaluated by more than one supervisor and to have them bring possibly

different views to bear (see Judgment 1444, *in re* Moosai, under 11). In this case the complainant's aptitude for a teaching post was found to be wanting and nothing in the evidence shows any error of fact or any wrong conclusion, his supervisors being best placed to assess such aptitude.

16. The complainant submits that, even if the staff member's consent to a temporary or definitive assignment is not mandatory, it is desirable in the interests of both the organisation and the person concerned. He adds that the Director himself emphasised in a speech that transfers carried out against the will of staff members are contrary to the principles of the ILO and that the Centre must assign employees to suitable posts that offer professional fulfilment and career prospects.

17. Apart from the fact that Article 0.5(b) of the Staff Regulations is immaterial, as the complainant concedes, the Tribunal agrees with the Centre that in his case it is not a question of transferring him from one position to another, but of seeking a suitable post for him taking into account his aptitude.

The complainant's observations on the need to obtain his consent are therefore irrelevant, nor can he cite the Director's speech in support of his argument. The plea therefore fails.

The Centre's failure to comply with its commitments to the complainant

18. The complainant objects that the Centre failed to honour the commitments to train and promote him which it made in the career development plan of 15 January 1996 and the terms of reference of 23 April 1998 with a view to helping him acquire the necessary skills and knowledge to perform the duties of a programme officer. He also objects that no post was envisaged for him upon the completion of his training. He adds that the plan was not completed - not by any fault of his own, but due to the failings of the Centre.

19. The Tribunal observes that the complainant has not proved that the Centre was in any way to blame for the non-completion of the plan. Moreover, it appears that what the Centre undertook through the plan was to afford him the means of acquiring the knowledge he needed to become a programme officer, but that it was unable to guarantee success since the outcome depended on several conditions, some of which concerned his abilities and aptitude.

Furthermore, the fact that the complainant agreed to negotiate and conclude terms of reference on being told that the career development plan could not be completed, rendered null and void both the plan and the commitments that it implied.

The decision under challenge was taken following an appraisal procedure which was properly conducted, and supplemented by the work of the Reports Committee. The Centre cannot, therefore, be accused of not honouring its commitments.

Discriminatory treatment

20. The complainant contends that he is the only staff member at the Centre to have been subjected to a three-stage career development plan involving specific tasks and appraisals, requiring the obtention of a postgraduate degree, and imposing satisfactory completion of the plan as a condition for his assignment as a programme officer. He cites the cases of two staff members who were transferred without such a plan, and without any specific conditions or requirements.

In his submission he fell foul of a discriminatory and subjective attitude on the part of some of his supervisors, who wilfully disregarded the positive appraisals he received and initiatives he undertook that were important for African countries and the Centre, thereby ignoring significant facts.

21. His plea of discrimination cannot succeed: he freely negotiated and accepted the career development plan and did not challenge it as unlawful.

Moreover, he offers no evidence that the staff members he cites were in an identical position to his own.

Finally, nothing in the evidence on file, particularly the information provided by the Centre, shows that the supervisors betrayed bias by overlooking significant facts, the more so as his initiatives for African countries were

undertaken without the authorisation of the Centre or the Director's express consent.

22. The conclusion is that his claim to the quashing of the impugned decisions cannot succeed. The complaint must therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

(Signed)

Michel Gentot

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet