*Registry's translation, the French text alone being authoritative.*

**NINETY-SECOND SESSION**

***In re* Geiger** **Judgment No. 2098**

The Administrative Tribunal,

Considering the complaint filed by Mr Roland Geiger against the International Labour Organization (ILO) on 21 November 2000 and corrected on 11 January 2001, the ILO's reply of 10 April, the complainant's rejoinder of 23 June and the Organization's surrejoinder of 18 July 2001;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Swiss citizen who was born in 1941, joined the staff of the International Labour Office, the ILO's secretariat, in 1965 on a G.4 post in the Finance Department. In 1968 he was given an appointment without limit of time. He rose through all the grades and steps of the General Services category in that department and in 1984 reached the top grade: G.7, step 12.

Citing "serious medical problems" the complainant informed the Administration by a letter of 8 October 1997 that he was prepared to accept a termination by mutual agreement as from 31 May 1998. After various formalities the Chief of the Personnel Planning and Career Development Branch informed him in a letter of 8 July 1998 that his termination would take effect as from 31 July 1998. Pursuant to Article 11.16 of the Staff Regulations he would be paid an indemnity equal to nine months' salary. He was to sign and return the appended copy of the letter which constituted "full and final settlement" of the conditions of his separation.

On 14 January 1999 the complainant wrote to the Director of the Personnel Department claiming an indemnity equal to eighteen months' salary. Having noted that his personal file was far from complete, he requested in a fax message of 7 May all documents concerning him as from January 1998. The Director of Personnel replied on 25 May that everything that should be in his file was there. In response to several phone calls from the complainant asking for a signed copy of the agreement terminating his appointment, she sent him a letter on 21 September stating that the original should be in his possession and that a signed copy of it had certainly been put in his personal file, but was no longer there.

On 15 November 1999 the complainant sent to the new Director of Personnel a medical certificate stating that in July 1998 he had probably been incapable of grasping the consequences of his actions. In his reply of 17 January 2000 the Director pointed out that the complainant had failed to prove that he had not consented to it freely and the agreement had become final on expiry of the time limit for appeal provided for in Article 13.2 of the Staff Regulations. The complainant wrote back on 20 June asking for a signed copy of the agreement. In a letter of 25 August 2000 the Director informed him that the matter was closed. The complainant is challenging a decision of 31 July 1998 which he alleges was notified to him on 25 August 2000.

B. The complainant denies having signed an agreement for the termination of his appointment. He argues that he is entitled to compensation because there is no proof that such an agreement was ever concluded. Besides, he was on sick leave at the time when it was supposedly signed.

He claims reinstatement - in which event he would reimburse the amount already paid to him - or an additional

indemnity equal to nine months' salary: 90,000 Swiss francs.

C. In its reply the ILO submits that the complaint is irreceivable because the complainant should have impugned the decision of 17 January 2000 - within ninety days of its notification. That is the only decision that may be construed as final within the meaning of Article VII, paragraph 1, of the Tribunal's Statute. The letter of 25 August was a mere confirmation and could set off no new time limit.

Returning to the facts that prompted the dispute the Organization observes that, throughout his career, the complainant's performance was satisfactory until the late 1980s, when health troubles started to affect the quality of his work. From then onwards his health got worse. His supervisor supported his request for an agreed termination because his ailments were affecting his work not only in the Office but in his dealings outside, with banks for example.

The ILO contends that he did agree to the termination of his appointment on 14 July 1998. It maintains that he does have the original of the agreement. The Office is unable to provide him with the signed copy since it is missing from his personal file, and suspects that he is responsible for its disappearance. Even supposing he never signed the agreement, there is no denying that the consent was mutual as it was he who originally proposed an agreed termination. The agreement need not have been in writing - although in fact it was - and since the parties had consented to it freely only the legal incapacity of one of them could have invalidated it. The evidence submitted by the complainant affords no proof that his judgment was impaired at the time of signing. Lastly, when he agreed to the indemnity he knew that it was not the maximum the Director-General could have granted. He may not now go back on his acceptance simply because he later changed his mind.

D. In his rejoinder the complainant alleges that many of the Organization's points in its reply are "inaccurate and misleading". He contends that he was always commended on his performance. He underwent no end-of-service medical examination although, he says, the ILO had a duty to ensure that he did. Moreover, for eight years he had had no performance appraisal. He attributes his illness to professional harassment on the part of the ILO. He seeks hearings.

E. In its surrejoinder the ILO observes that the complainant has submitted no evidence on which to refute the position it held in its reply. His "new claims" concerning harassment and the absence of performance reports - for three years and not eight as he asserts - are irreceivable under Article VII(1) of the Tribunal's Statute. It sees no reason to hold hearings.

## CONSIDERATIONS

1. The complainant joined the staff of the International Labour Office in 1965 and served in the Finance Department. His work was always found satisfactory until the late 1980s, when health problems began to affect his attendance and performance.

On 8 October 1997 the complainant informed the Administration that he was ready to accept an agreed termination of appointment in view of his "serious medical problems", in the interests of the "greater efficiency ... of the office". He proposed leaving on 31 May 1998, the date as from which he would be entitled to an early retirement pension.

Asked for its opinion by the Administration, the Medical Service advised against keeping him on.

Since the complainant's case was covered by none of the criteria for agreed termination provided for in the rules, the ILO decided to extend the conditions justifying termination to accommodate his case. After discussing the matter with him, the Chief of the Personnel Planning and Career Development Branch wrote to him on 8 July 1998 setting out the procedure and conditions of his termination. A copy of that letter, which the complainant does not challenge, has been produced by the Organization. The letter informed him that:

"Your appointment with the International Labour Office will be terminated by agreement on 31 July 1998 in accordance with Article 11.16 of the Staff Regulations.

... upon leaving the Office you will receive an indemnity equal to 9 (nine) months of the remuneration specified in

Article 3.1(d) of the Staff Regulations and repayment of your accrued annual leave (Article 7.5(b) of the Regulations).

...

I should be grateful if, in order to confirm your agreement, you would sign and return the attached copy of this letter which shall constitute full and final settlement of the conditions of your separation from the Office, without reservation or qualification by either party."

The ILO contends, and the complainant denies, that it sent him the letter and that he duly signed and returned the copy of it.

In any event, his appointment was terminated on 31 July 1998. It is neither alleged nor established that he raised any objection or denied having assented.

It would appear that on 11 January 1999 the complainant went to see the Director of Personnel of his own accord saying that he had signed the termination agreement while he was on certified sick leave and that he wanted to renegotiate it in order to obtain more favourable terms.

In a letter of 14 January 1999 he asked for "an 18 month [indemnity] like everybody else".

Having consulted the Medical Service, the Director of Personnel informed the complainant in a letter of 25 March 1999 that his allegation of incapacity to grasp its meaning when he signed the agreement on 14 July 1998 was unacceptable. She advised him to write a letter stating the reasons for his objection to the validity of the agreement, pointing out that it was in his interest to supply medical proof of his incapacity.

In a letter of 25 May 1999 she repeated her advice: he should provide proof that at the time of negotiating and concluding the agreement, i.e. between April 1998 and 14 July 1998 (when it was signed), he was suffering from so serious an illness that he was not in a position to take such an important decision or grasp its consequences.

In answer to several requests from the complainant for a signed copy of the agreement, the Director of Personnel told him on 21 September 1999 that the original should normally be in his possession. The copy he signed had been put in his personal file - as he must have seen when he consulted it - but she had just realised that it was no longer there. She nonetheless certified that it had been and that the complainant had signed it on 14 July 1998.

2. After a fruitless exchange of letters with the Director of Personnel, the complainant filed a complaint with the Tribunal on 21 November 2000. According to the complaint form, he is impugning a decision of 31 July 1998 which was supposedly notified to him on 25 August 2000. In that letter the new Director of the Personnel Department - which had by then become the Human Resources Development Department - informed the complainant that the case was closed but that if he wished to pursue matters further the competent body was the Tribunal. The complainant claims reinstatement - in which case he would be prepared to reimburse what he has already been paid - or an additional indemnity equal to nine months' salary: 90,000 Swiss francs. He alleges that his appointment was terminated unilaterally.

The Organization seeks the dismissal of the complaint as irreceivable. It asserts that its final decision was given in its letter of 17 January 2000; the later ones merely confirmed it. Having been lodged on 21 November 2000, the complaint is therefore outside the statutory ninety-day time limit. On the merits and subsidiarily it argues that the complaint is unfounded. The termination of his appointment was properly concluded in a written agreement. Even if that had not been the case, a written agreement was not an obligation and both parties manifested their agreement when the termination took effect.

In his rejoinder the complainant submits that his performance has always been found satisfactory and that the Organization did not comply with procedure in terminating his appointment. He pleads professional harassment, alleging that the ILO is "responsible for [his] illness", but makes no formal claim in this connection. The facts and pleas that the Organization presses in its surrejoinder are in any event immaterial.

*Procedure*

3. After the written pleadings the complainant applied for leave to enter a further brief. The Tribunal sees no reason

to allow the brief since it would raise an issue that has no bearing on the outcome of the case.

Nor is there any reason to allow the application for hearings, both the parties having had ample opportunity to state their positions on the main issues.

*Receivability*

4. Even supposing there were a new claim in the rejoinder - to a finding of illness attributable to harassment - it would in any case be irreceivable for failure to exhaust the internal means of redress.

5. The receivability of the complaint would appear to be doubtful on several counts.

Had he wished to appeal directly to the Tribunal against the termination of his appointment, the complainant had the statutory ninety days in which to do so. Assuming that the decision was duly notified to him in July 1998, he would be time barred.

Even in the event of the termination being unilateral, he was bound to impugn it immediately, within the prescribed time limit, which started from the day on which it was notified to him. In this hypothesis too he would be time barred.

What is more, the letters the Administration sent after 31 July 1998 do not constitute decisions that can set off a new time limit.

However, the Tribunal need not rule on the ILO's objections to receivability, having no doubts about the outcome as to the merits.

*The merits*

6. In essence the complainant is arguing that the ILO ought to have produced written proof that there was an agreement terminating his appointment. There being no signed copy to disclose, it is unable to do so. That could indicate that his appointment was terminated unilaterally. It must be noted, however, that the complainant pleads both that the ILO could not produce a signed copy of the agreement and that he did not sign it.

The ILO maintains that the original was in the complainant's possession and that a copy bearing his signature was placed in his personal file but disappeared after the complainant had consulted the file. The Organization is adamant that there was an agreement and that it was concluded in writing. In support it produces numerous items of evidence and cites in particular the fact that it was put into effect by both parties with no objection from the complainant.

The reasoning is sound.

The facts show beyond all doubt that the complainant accepted the ILO's offer. His attitude, particularly towards the Director of Personnel, and his failure to respond to the written confirmation sent to him more than once are tantamount to an admission that he did agree to the termination of his appointment. This is further borne out by the fact that he raised no objection when the agreement was implemented. The concurrence and reciprocity between the parties would in itself constitute sufficient evidence that a contract existed even in the absence of proof of a written agreement.

7. The complainant alleges that at the time of concluding the agreement his judgment was impaired.

He has produced a medical certificate attesting to pathologies "with severe anxiety, in all likelihood leading to an incapacity to grasp the consequences of his acts, particularly in July 1998". The ILO finds the certificate inconclusive, and it is right on that score. Drawn up by his general practitioner, it is not compelling and, more importantly, makes no mention of any impairment of his judgment at the time when he supposedly signed the agreement. Furthermore, it was the complainant himself who mooted the agreed termination and before it took effect there were protracted negotiations from October 1997. He therefore had ample time, despite "severe anxiety", to realise what the consequences of such a termination would be and act accordingly. He has produced no other evidence indicating that his judgment was impaired at that time. Indeed, he did not plead lack of judgment until it occurred to him to renegotiate the terms of his separation.

The plea fails.

8. The complainant also appears to object that the Organization terminated his employment while he was on sick leave.

Although the Tribunal held in Judgment 938 (*in re* Hill No. 2) that a staff member cannot be separated while on sick leave, it later pointed out that its ruling was to be seen in context and could not be applied in any circumstances whatever (see Judgment 1494, *in re* Mossu, under 6). The rule being intended to protect the staff member, it cannot be applied where the termination is the subject of an agreement, particularly when it has been mooted by the staff member concerned as is the case here.

The plea therefore fails.

9. When the complainant asked to renegotiate the terms of the agreement he pleaded breach of equal treatment on the grounds that other staff members had been better treated than he. However, he has produced no evidence of any other official faring better in a similar case.

The complainant has not put forward such a plea in this complaint. He has also failed to show that there are instances of review of such agreements which he might rely on.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2001, 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 30 January 2002.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2002.