

THIRTY-FIRST ORDINARY SESSION

In re GAUSI (No. 1)

Judgment No. 223

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) drawn up by Mr. René Antony Gausi on 19 October 1972, the Centre's reply of 12 March 1973, the complainant's rejoinder of 6 May 1973 and the Centre's surrejoinder of 17 August 1973;

Considering Article II, paragraph 1, of the Statute of the Tribunal and articles 6.4(h), 9.3, 11.1 to 11.9, 12.1 and 13.2 to 13.4 of the Staff Regulations of the Centre;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. Mr. Gausi, who was born on 22 October 1909, was first appointed to the staff of the Centre on 7 April 1966 for the period from 1 April 1966 to 31 March 1967. His contract contained the following clause: "period of notice in case of termination of appointment or resignation: one month". His appointment was successively renewed from 1 April 1967 to 31 March 1968 and from 1 April 1968 to 31 March 1969. On 17 March 1969 the Director of the Centre told him that since he would reach the retirement age of 60 on 22 October 1969 the Centre could extend his appointment from 1 April only to 22 October 1969, in keeping with the practice in the International Labour Office. The complainant's appointment was nevertheless later renewed from 23 October 1969 to 31 October 1970, from 1 November 1970 to 31 October 1971 and from 1 November 1971 to 31 July 1972. Each renewal of contract stated that the terms of his original appointment of 1966 continued to apply. The Centre's financial period is from 1 August to 31 July. Its budget for 1971-72 provided for three P.1 posts in the External Training Section, in which Mr. Gausi was employed at that grade, and its 1972-73 budget for only two P.1 posts.

B. At the beginning of 1972 irregularities came to light in the evaluation reports on external training courses followed by holders of Centre fellowships. Mr. Milne, the Chief of the Research and Studies Department, who was in charge of the fellowship programme, made inquiries to discover the origin of those irregularities. In doing so he saw the complainant, among others, several times. At one interview the complainant signed a statement promising not to ask for the renewal of his appointment on its expiry on 31 July 1972. Immediately afterwards he suffered a nervous breakdown. On 13 April he went on sick leave and supplied a medical certificate signed by Dr. Marocco of Turin and recommending a fortnight's rest. His sick leave was extended to 14 May 1972 on the strength of a certificate signed by Dr. Finaz of Geneva on 25 April 1972 and to the end of May and to 25 June on the strength of certificates signed by a Bologna doctor on 12 and 31 May 1972. He then took annual leave, while still convalescent, until the end of July.

C. In the meantime, on 4 April 1972, he had sent the Director of the Centre a minute giving his own explanation of the irregularities in the evaluation reports, which he believed to be a trick intended to harm him, and asking the Director to reconsider the case so as to exculpate him. Having received no reply, on 31 May 1972 he told the Chief of Personnel that in his view Mr. Milne's treatment of him had been inconsistent with article 12.1 of the Staff Regulations, and he asked for an answer to his minute and for fair treatment. On 6 June 1972 the Chief of Personnel told him that the Director had decided to take no further action while he was still on sick leave. On 31 July 1972 he received a letter dated 26 July stating that his appointment would end on 31 July - that very day - and enclosing a cheque for \$3,125.58 in payment of salary, allowances and benefits due. On 4 August 1972 he wrote to the Director complaining of the lack of response to his letters of 4 April and 31 May and of the infringement of the clause in his contract requiring one month's notice of termination of appointment. On 23 August he was told that the Director had decided to pay him one month's salary in lieu of notice.

D. The complainant contends that he was subjected to fierce and unjustifiably suspicious questioning about the irregularities in the evaluation reports and that no attempt was made to ascertain the truth of the matter. In these circumstances, and because he felt seriously upset, his promise not to ask for a renewal of appointment was obtained from him under duress. In his opinion this chain of circumstances was the cause of his nervous breakdown. He protests at the way in which his appointment was terminated: he was not told of the decision not to renew it until the very day it expired, even though he had been given to understand that it would be renewed. The Centre has made no reply to his claims, has carried out no really thorough inquiry and indeed has not imposed on him any of the sanctions set out in Chapter XI of the Staff Regulations.

E. Since he has ceased to be a staff member and therefore cannot, in his view, seek redress under the internal procedure, the complainant is appealing directly to the Tribunal. His claim reads as follows:

"(a) Considering the unwarranted and unfair treatment I have received and its serious effects on my health and that of my wife;

(b) Considering that my appointment was terminated without notice in disregard of the terms of my appointment;

(c) Considering that the payment of one month's salary cannot possibly compensate me for the serious prejudice I have suffered owing to the late notification of the decision;

I appeal to the Administrative Tribunal of the ILO to award me damages

1. amounting to one year's salary and allowances for the serious effects on my health and that of my wife; and

2. amounting to six months' salary and allowances for reducing my prospects of finding new employment owing to the late and untimely notification of the decision not to renew my appointment."

F. The Centre observes that the complainant bases his claims on two arguments: first, that the "unjustified and unfair treatment" which he suffered injured his health and that of his wife and, secondly, that the decision not to renew his appointment was unlawful because of the way in which it was notified to him. As to the first argument, the Centre maintains that unjustified and unfair treatment affords no grounds for a receivable complaint unless it is also unlawful. The Tribunal is competent to hear only complaints alleging nonobservance of the terms of appointment of officials or of provisions of the Staff Regulations. It may therefore review only the lawfulness of administrative decisions. In the present case the alleged unfair treatment consisted in a conversation between a chief of department carrying out an investigation and his subordinate. No decision was taken and no unlawful act committed, even supposing that the grounds for the investigation were mistaken. If the complainant is contending that unfair treatment made him ill and that his illness was attributable to his employment, then this is the first time he has claimed compensation for impairment of health due to his employment at the Centre. He has never asked for a decision on such a claim and has therefore failed to exhaust the internal means of appealing against refusal to compensate him. His claim for compensation for the alleged "unjustified and unfair treatment" is therefore irreceivable. As for his claim for compensation for the decision not to renew his appointment, the Centre points out that he failed to appeal against that decision to the Staff Relations Committee. "True, his failure to do so was an error of law, since a former staff member is obviously not relieved of the obligation to exhaust the internal means of redress before appealing to the Tribunal. But he must bear the consequences." The Centre therefore maintains that this claim, too, is irreceivable because of his failure to exhaust the internal means of redress.

G. The Centre further maintains that the complaint is ill-founded. In its view, the fact that in the course of the investigation carried out by his superior the complainant signed a statement promising not to seek renewal of his appointment shows that he felt condemned by the facts and unable to exculpate himself. He was not compelled to sign the statement. Indeed it had no value since an official has no right to renewal of his appointment and therefore cannot surrender any such right. The Centre believes that it cannot be accused of any unlawful act in that respect. As for its failure to answer the complainant's letters of 4 April and 51 May, it was only reasonable to postpone further action since he was demanding an inquiry which, being on leave, he could not himself attend. On his return there was no longer any call to meet his request since his appointment was to expire. As to his contention that the interview with his superior affected his health, it was for him to prove that his illness was attributable to the performance of his official duties. Yet he has never produced any evidence to support his contention. The decision not to renew his appointment was notified to him on behalf of the Director by a competent official, the chief of the Director's cabinet. It was regular in form, since the clause requiring one month's notice was to be interpreted as

applying only to termination of an appointment before its expiry by one of the parties. In any case the Centre paid financial compensation in lieu of notice even though it was not legally bound to do so. The decision was not tainted with any procedural irregularity since no procedural requirements are laid down. Nor was it based on an error of law or on incorrect facts. The principle that staff members do not generally have any right to renewal of their appointment applies a fortiori to staff members, like Mr. Gausi, who have passed the normal retirement age. The Centre's budget for 1972-73 provided for a reduction of one P.1 post in the complainant's section and it was therefore only reasonable that his appointment should be the one not renewed.

H. The Centre accordingly asks the Tribunal to declare the complaint irreceivable and, subsidiarily, to dismiss it on the merits.

CONSIDERATIONS:

As to the receivability of the complaint

On 4 August 1972 Mr. Gausi addressed a complaint to the Director of the Centre against the decision of 26 July 1972 terminating his appointment. He thus complied with the rule that an official must make a complaint to the director of the organisation before filing a complaint with the Tribunal.

The Director of the Centre, who under article 12.1 of the Staff Regulations had the option of referring the complaint to the Staff Relations Committee, replied to Mr. Gausi's complaint by a decision of 23 August 1972 which gave the complainant only very partial satisfaction. The complainant was then entitled to submit to the Administrative Tribunal, as in fact he did, a receivable complaint clearly impugning the decisions of 26 July and 23 August referred to above.

As to the legality of the decision impugned

Article 13.3 of the Staff Regulations reads as follows:

"An official shall retire upon reaching his sixtieth birthday. In special cases the Director may retain an official in service until he reaches his sixty-fifth birthday. The Staff Relations Committee shall be consulted before a decision is taken to retain in service an official below the grade of P.5 and this Committee shall be informed of any decision to retain in service any other official."

In accordance with the above provision, officials of the Centre are retired at the age of sixty, but in exceptional cases the Director may retain an official in service until the age of sixty-five.

The text of article 13.3 allows the Director full discretion in determining the special cases in which an official may be retained in service beyond the normal age limit.

The Director thus enjoys discretionary power in this respect, and the Tribunal's competence to review the legality of the decision is confined to determining, among other things, whether the impugned decision is tainted by misuse of authority.

Although no reasons were given for the decision of 26 July 1972 indicating that Mr. Gausi's appointment with the Centre would end on 31 July and thus refusing to renew his appointment beyond that date, it appears from the evidence as a whole that the Director's decision was not based on the physical or mental inability of the complainant to carry out his duties, or on his unsatisfactory performance to date, or on the necessities of the service; that its sole purpose was to remove the complainant from the Centre in consequence of certain irregularities that had come to light in his service at the beginning of the year, without any serious inquiry giving all parties an opportunity of putting forward their views having been held to determine who was responsible, and without any disciplinary proceedings providing proper safeguards having been undertaken; that the decision, moreover, was based on mere suspicions unsupported by the slightest evidence, and is therefore tainted by misuse of authority and must be quashed

As to the amount of compensation

In assessing the compensation due to Mr. Gausi, account must be taken both of the extent of the material and moral prejudice he has suffered as a result of the decision of 26 July 1972 and, on the other hand, of the fact that

he could not in any event have been retained in service beyond 22 October 1974. It would therefore be a fair assessment of the circumstances as a whole to award Mr. Gausi compensation in an amount of 35,000 Swiss francs, less the sum already granted to him by the decision of 23 August 1972.

DECISION:

For the above reasons,

1. The decisions of the Director of the Centre dated 26 July and 23 August 1972 are quashed.
2. The International Centre for Advanced Technical and Vocational Training shall pay Mr. Gausi a sum of 35,000 Swiss francs, less the sum already granted to him by the Director's decision of 23 August 1972.
3. The other claims in the complaint are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet