

FORTY-SIXTH ORDINARY SESSION

In re HECKSCHER

Judgment No. 461

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) by Mr. Eric Elly Heckscher on 18 July 1980, the Centre's reply of 21 October, the complainant's rejoinder of 23 January 1981 and the Centre's surrejoinder of 13 April 1981;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 12.1 of the Staff Regulations of the Centre;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant joined the staff of the Centre in April 1972 and served until 1980 as a grade P.5 member of the teaching faculty. His original appointment was extended by two years, then from year to year until 31 July 1979, then for five months (from 1 August to 31 December 1979), three months (from 1 January to 31 March 1980), and four months (from 1 April to 31 July 1980). On 22 April 1980 the Director of the Centre informed him that his contract would not be renewed and it was agreed that he should be given special leave with pay from 10 May 1980.

B. In his complaint the complainant impugns the decision of 22 April 1980. He contends that the reason for the decision was that, together with three other staff members and at the express request of his supervisor, he had written a "report" which was severely critical of new courses introduced by the Centre. In a minute addressed on 21 November 1979 to the complainant's supervisor the Director said that he was "deeply shocked" and suggested that teachers who could not adapt to "new technical approaches" would do better to leave the Centre altogether. The complainant observes that he himself was the originator of the new techniques, that he had no need to adapt to them and that the nub of his criticisms was that they ought never to have been introduced without proper preparation. He explained all this to the Director in a conversation on 19 February 1980. His appointment was then extended to July 1980, but he maintains that the reason was that the Centre had no one else to send on mission to Chile. On his return from Chile several pretexts were given for the decision not to extend his appointment. In minutes dated 12 and 27 March 1980 the Director criticised him for failing to follow the normal channels for obtaining approval of a paper he had read at a meeting in Chile, for returning two days late to Rome and for failing to give a lecture as promised to the Chamber of Commerce of Turin. In minutes dated 31 March 1980 and in a second conversation with the Director on 4 April the complainant sought without success to convince the Director that the criticisms in the Director's minutes were unfounded. He explained that he had had no time to get his paper approved, that his late return to Rome had been due to illness - and he had taken no sick leave in eight years' service - and that he had duly warned the Chamber of Commerce on 3 March 1980 that he would be unable to give the lecture because he was on mission. The complainant contends that the impugned decision is unlawful. The Director took it arbitrarily, contrary to the judgment of the complainant's own immediate supervisor and in disregard of his long and excellent record of service. The decision is not substantiated by the facts and was based on groundless allegations at variance with all his performance appraisal reports. It was a breach of an explicit promise that his contract would be converted into an indeterminate one. It is out of proportion to the fault attributed to him. It is tainted with mistakes of law and of fact. Mistaken conclusions were drawn from the facts and there was a gross abuse of authority. The decision put him out of employment and tarnishes his perfect employment record.

C. The complainant asks the Tribunal to quash the decision of 22 April 1980 and order the Centre to pay him his salary from 1 August 1980 to 3 April 1983 (the date of his retirement), including all allowances, benefits and contributions to the pension fund and the sickness insurance fund, damages amounting to six months' salary, and \$10,000 to cover the costs he has incurred in seeking new employment and preparing his case, to remove from his personnel file all documents pertaining to the case and to give him a certificate of employment faithfully reflecting his eight years' service. He is not seeking reinstatement.

D. In its reply the Centre contends that the complaint is irreceivable because the complainant failed to exhaust the internal remedies. He ought to have appealed against the Director's decision of 22 April through his "responsible chief" and the Chief of Personnel within six months. The only communication from the complainant to the Director which could be treated as an internal "complaint" was addressed to him directly on 31 March and it did not expressly relate to the question of non-renewal of contract. The Centre also argues the merits. It observes that the incident over the new courses was not the sole reason for the decision, many criticisms having been levelled against the complainant over the years, even before the arrival of the new Director. He had to be transferred several times because of the animosity and bad relations he caused everywhere he went. He is a man of exceptional professional talent, but he has an "abrasive" manner and is "cavalier in his disregard of his colleagues' feelings and reputations". There are several incidents which show that he also had difficulty in complying with administrative rules and instructions. That is why the more recent renewals of his contract were for shorter periods. He maintains that the new courses were ill-prepared. In fact he was closely associated in theoretical work on the courses for several years before they began, and the practical preparations took months. The criticisms he speaks of were levelled against the very courses he had designed himself, which were found to be too advanced. The Director was therefore understandably "shocked" at the "report" on the courses, of which the complainant was obviously the sole author. That is why the Director warned him in their conversation on 19 February 1980 that if he did not radically change his attitude he would have to look for employment elsewhere. What was at issue was not just his attitude towards the courses but his "aggressive", "sarcastic" and "hurtful" manner. It is quite untrue to say that he had no time to get approval of his paper for the meeting in Chile. As for his late return to Rome, he failed to produce a medical certificate and, worse still, made no proper arrangements - for example by telephoning the day before from Paris to warn his colleagues in Rome and so relieving them of certain embarrassment. It was unquestionably a breach of the Staff Regulations for him to undertake to give a lecture to the Piedmont Chamber of Commerce, but having entered into the commitment it was wrong of him not to honour it and to provoke an official protest from the Chamber. The Chamber never received the warning which he says he sent it. There again he ought to have telephoned to explain that he could not attend. The Director therefore made no errors in appraising the facts. In taking the decision he took full account of the complainant's record, and had given him a warning and a personal hearing. There was no promise to extend his appointment. The decision was not a disciplinary sanction and the question of proportionality therefore does not arise. The Centre therefore invites the Tribunal to dismiss the complaint as irreceivable and unfounded.

E. In his rejoinder the complainant contends that the complaint is receivable since he protested many times to the Director, both in conversation and in minutes in March 1980. Moreover, on 7 May 1980, i.e. after the impugned decision of 22 April, he again submitted through his chief and the Chief of Personnel a minute of protest in which he stated: "I believe that the Director's decision not to renew my contract is unwarranted because the allegations in his minutes of 12 and 27 March and 22 April 1980 are quite unfounded". It is therefore clear that he did exhaust the internal remedies and meet the requirements of the Statute of the Tribunal. Besides, the actual wording of the last paragraph of the impugned decision shows that the Director himself regarded his decision as final: "I therefore must inform you that I maintain my decision not to extend your contract. The decision is arbitrary and tainted with errors of fact and law. There were no earlier incidents; otherwise the Centre would have appended evidence of them to its reply. Nor has it afforded any evidence in support of its quite unfounded allegation that his relations with other staff members were bad. The sole reason why the final extensions of his appointment were for shorter periods was that the Centre was in sore financial straits. He formally challenges the criticisms made against him in the reply and gives a version of the facts which he believes wholly exonerates him. Besides, the criticisms relate to incidents which occurred before the present Director arrived, and, in the absence of proof, are gratuitous, tendentious or unsubstantiated. Nor is there any evidence in support of the charge that he was abrasive; otherwise that would obviously have been mentioned in his annual reports. In fact his reports are uniformly excellent. He infers that these are mere pretexts and that in fact the decision was based entirely on the incident over the new courses and the three later incidents. What the Centre says about the courses is quite untrue. The new method of teaching had indeed been discussed some time before the courses began, but he was put in charge of introducing them only a few weeks before. It was not the substance of the courses that he was criticising but the lack of preparation for them. The Centre unsuccessfully tried to get over the difficulty by buying ready-made courses in Great Britain, and in the end he had to improvise urgently and get the Centre out of its predicament. There was no reason for the Director to be "shocked" at the frank and entirely fair criticism in the report on the courses. The impugned decision is therefore based on an obvious error. Nor is there any substance to the Centre's arguments about the later incidents - over his late arrival in Rome and his commitment to the Chamber of Commerce - which it says bear out the Director's belief that the complainant had not radically changed his attitude. What prevented him from arriving in Rome was a bout of dysentery, but he had no need to see a doctor or to provide a medical certificate for that. He

spent only a few hours in Paris between flights and did not have time to telephone. Besides, his late arrival did not cause any real inconvenience. As for the lecture he was to give to the Chamber of Commerce, all Directors of the Centre authorised him to address the Chamber: he refers to a photocopy, appended to his complaint, of the letter which he wrote on 3 March 1980 to the Chamber of Commerce warning that he could not attend. He believes that he has established that the incidents were exaggerated and used as a pretext to strengthen the mistaken argument about his courses.

F. In its surrejoinder the Centre contends, as to receivability, that the complainant did not correctly follow the internal appeal procedure set out in Article 12.1 of the Staff Regulations, which requires that a complaint shall be addressed to the Director through the responsible chief and through the Chief of Personnel: not one of the documents he cites was so addressed. As to the merits, the burden of proof rests on him to show that some flaw vitiates the decision. There is sufficient evidence to show that the Director had reason to conclude that the complainant was unwilling or unable to adapt to the working conditions of the Centre. There is no evidence to suggest that the Director had conceived a dislike of the complainant and a desire to get rid of him. At least one of the Director's predecessors had hesitated about extending his appointment, notwithstanding his technical competence. The decision was neither arbitrary nor discriminatory. The complainant failed to comply with basic requirements in preparing the paper he was to give in Chile; he failed to carry out his mission in Rome and to warn that he had been delayed; he caused the Centre embarrassment by failing to give his scheduled talk to the Chamber of Commerce, and besides had committed a breach of Article 4.2 of the Staff Regulations by accepting the engagement without the Director's prior approval. The Director committed no error of law; the complainant's appointment was to expire on 31 July 1980 and was allowed to do so. Nor were any mistaken conclusions drawn from the facts. The Director is entitled to expect officials to comply with administrative regulations, and the complainant repeatedly made difficulty by failing to do so, unlike the other three authors of the report on the courses, who performed their duties properly and are still working at the Centre. The Centre accordingly invites the Tribunal to declare the complaint irreceivable or, alternatively, to dismiss it as utterly unfounded.

CONSIDERATIONS:

1. Article 12.1 of the Staff Regulations of the International Centre for Advanced Technical and Vocational Training reads as follows:

"Any complaint by an official that he has been treated inconsistently with the provisions of these Regulations or with the terms of the contract of employment, or that he has been subjected to unjustifiable or unfair treatment by his supervisor shall, except as may be otherwise provided in these Regulations, be addressed to the Director through the official's responsible chief and through the Chief of Personnel within six months of the treatment complained of. The Director may refer any such complaint to the Staff Relations Committee for observations and report."

2. The complainant has failed to respect the procedure set out in this article. There is no need in this case, however, for the Tribunal to consider what may be the consequences of such failure.

3. For there to be an appeal the staff member must have clearly indicated his intention to challenge the decision to which he objects. That decision was given on 22 April 1980. Accordingly, the complainant's reliance on the minute dated 31 March 1980 is misplaced. He can only rely on the minute dated 7 May 1980, and this does not constitute any challenge.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

André Grisel

Devlin
H. Armbruster

A.B. Gardner

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