

## FIFTY-FIRST ORDINARY SESSION

In re SADEGHIAN

Judgment No. 577

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) by Mr. Mostafa Sadeghian on 26 August 1982, the Centre's reply of 13 December 1982, the complainant's rejoinder of 19 January 1983 and the Centre's surrejoinder of 7 March 1983;

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, an Iranian born in 1952, joined the Centre in Turin in 1975 and obtained a fixed-term contract as a watchman at grade G. 3 in 1978. The appointment was extended to 30 June 1981. But the Centre was in financial straits, and one saving the Director made, early in 1981, was to contract out watchmen's duties. This put the complainant's employment in jeopardy. He took annual leave from 2 March and went to Iran. From there he cabled on 4 April to say he could not come back. Medical certificates having borne this out, his contract was extended to 10 August, and United Nations staff in Teheran so informed him. They sent Turin a telex on 17 August to explain that he was having difficulty in leaving because he was subject to call-up and the country was at war. The next day the Centre replied that he would remain on annual leave "pending return up to 15 October 1981". In October the United Nations in Teheran let Turin know that, being still unable to come back, he would like one year's leave without pay. The Director put him on unpaid leave up to 31 December, and then up to 30 June 1982. On 26 April 1982 the Centre sent a telex warning that his leave would not be further extended and that he was expected in Turin on 1 July. Late in May, being declared exempt from call-up, he telephoned to say he could return. On 1 June the Centre advised him by telex that his contract would not be extended beyond 30 June. In June he returned to Italy and on 25 June wrote to the Centre seeking immediate employment because of his "critical family situation". On 30 June the Director saw him and then wrote saying there was no suitable vacancy but offering him six weeks' salary ex gratia. In a reply of 7 July he said that he wished to "exhaust all the internal means of redress" before going to the Tribunal and asked for "reinstatement in my former or in other duties, possibly after consultation of a joint committee". In a letter of 29 July the Director told him that, his post being abolished, his services were no longer needed and there was no point in consulting a joint committee. On 26 August 1982 he filed his complaint.

B. The complainant observes that not until 2 June 1982, or just a few weeks after being told to return by 1 July, did the Centre warn him of the non-renewal of his contract. This was in breach of an established rule whereby Centre staff should get at least two months' notice. His return caused him great expense and trouble. All the other former watchmen -- all Italians -- have been found employment in the Centre, except one who retired. Yet the Director assured the Board in November 1981 that probably all staff on abolished posts could be redeployed. His case was not referred, as the others were, to the Staff Relations Committee or to the joint working party which advised on the consequences of economy measures to the staff. There was breach of ILO standards on termination of employment, which require a minimum period of notice and forbid discrimination. The complainant seeks the quashing of the decision, an extension of contract and payment of remuneration from 1 July 1982, reasonable compensation for moral and material prejudice, and costs.

C. In its reply the Centre submits that the complaint is irreceivable because the complainant has failed to exhaust the means of redress under Article 12.1 of the Staff Regulations. Only his letter of 7 July 1982 to the Director might be regarded as an Article 12.1 complaint, but neither in form nor in substance did it suffice to lodge an appeal. His complaint is also devoid of merit. The decision was a discretionary one and his objections are

groundless. There is no rule requiring two months' notice, only a practice, which confers no rights. The ILO instruments are not material because only the Staff Regulations and the terms of appointment govern employment at the Centre and in any event the instruments apply only to dismissals. The working party mentioned by the complainant was defunct by 1981. He was not discriminated against. The utmost was done to find work for the watchmen -- most of whom have only provisional employment anyway -- but he was not qualified, one drawback being his poor Italian. The non-renewal can have come as no surprise, and he returned to Italy at his own risk. The Centre treated him with rare consideration, even paying him six weeks' salary though not bound to do so.

D. In his rejoinder the complainant rejects the objections to receivability: he put his case to the Director on 30 June 1982, and his letter of 7 July made clear his intention of challenging the decision. It is in bad faith to suggest that the Director neither knew he was making an appeal nor had any opportunity to review the case. He points out what he regards as mistaken or inconsistent allegations of fact in the reply. When he left for Iran he was not worried about his contract, having been assured it would be renewed. The Centre's telex of 11 August 1981 referred to his "return up to 15 October", and the one of 26 April 1982 said he was "expected one July": both led him to believe that his services were still needed. To argue that the special leave was a fiction implies that he needed shielding from unlawful pressure by the Iranian Government, whereas his difficulties were due to his liability for military service. He was discriminated against because he got less than the normal period of notice of non-renewal and his case was not referred to any joint body.

E. The Centre develops its arguments in a surrejoinder and again invites the Tribunal to dismiss the complaint. Although the complainant's interview with the Director could not constitute an internal complaint and his letter of 7 July 1982 failed to indicate, as Article 12.1 requires, in what way non-renewal would infringe the Staff Regulations or the terms of his contract, the Centre does not press the plea of irreceivability. It challenges some of his allegations of fact. It maintains that he well knew that its financial difficulties were the reason for not giving him longer contracts, and he must have been anxious all along about losing his job. Whether or not he needed protection in Iran, the grounds for the fiction of special leave were compassionate. There were no formal irregularities since there is no special procedure for non-renewal. An assurance of renewal -- though there was none in this case -- does not require an organisation to keep on redundant staff.

#### CONSIDERATIONS:

1. The complainant asks the Tribunal to quash the Director's decision not to renew or extend his contract of employment.
2. Between 25 August 1975 and 30 June 1982 the complainant was employed by the Centre under a succession of short-term contracts. On 2 March 1981 he went on a month's leave to Iran. By reason of illness and subsequently because he was a soldier in the reserve of his country he was unable to resume his duties at the Centre. On 26 April 1982 he was informed that the Centre would not grant a further period of special leave and that "re-entry Turin therefore expected one July". On 2 June 1982 the Centre informed the complainant that his contract which was due to expire on 30 June 1982 would not be renewed, and that he should indicate where his "cessation payments" should be made.
3. In extending the complainant's contract during his absence the Centre was clearly motivated by humanitarian considerations. As stated in the reply, the Centre felt itself morally responsible for what might befall the complainant if his contract was not renewed, thus enabling him to enjoy, as an international civil servant, the protection of the United Nations office in Iran. As stated in the surrejoinder, the "method chosen by the Centre was the maintenance of a fictional contractual link with it. This fiction obviously gave rise to inconveniences and to serious risks from the legal point of view...".

The decision not to renew

4. The complainant contends that the decision to terminate his services was discriminatory in that the other watchmen who are all of Italian nationality have been assigned to other positions. The decision not to renew the complainant's contract was taken in the framework of economy measures requiring the abolition of certain posts. The complainant was not qualified to hold any of the vacant posts available at the Centre and his language skills were insufficient to enable the Centre to obtain alternative employment for him. His allegation of discrimination is, in the circumstances, unfounded.

## Receivability

5. In its surrejoinder the Centre states that it will not pursue its objection taken in its answer that the complaint is irreceivable. The question of receivability is in any case a matter for the Tribunal, but it would appear that the complainant's interview with the Director on 30 June 1982, taken together with his letter of 7 July 1982, amounted to a formal complaint.

## The merits

6. The Tribunal will review a decision such as the one in this case only if it was taken without authority, or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if essential facts were left out of account or if there was abuse of authority or if clearly mistaken conclusions were drawn from the evidence. Here the complaint is that the Centre failed to give the complainant reasonable notice of the non-extension of his contract. It is conceded on behalf of the Centre that the practice is to give at least one month's, and up to two months', notice. The Centre contends, however, that there is no Staff Rule to that effect and, therefore, the practice does not give rise to any contractual rights.

7. As the Tribunal pointed out in *Haghgou v. ILO* (Judgment No. 421) the question whether the action of the administration of the Centre was intended to have a contractual effect must be determined in the light of the circumstances in each case. In regard to the non-renewal of fixed-term contracts it seems to the Tribunal that staff members would, in view of the practice, have come to rely on receiving reasonable notice as part of their contractual rights, and the administration would have accepted that the failure to give reasonable notice might cause inconvenience and financial loss to staff members. In these circumstances the Tribunal holds that the giving of reasonable notice of non-renewal was a term of the complainant's contract of employment, the non-observance of which is a proper subject of inquiry by the Tribunal.

8. It must be said that the two messages sent to the complainant were confusing. He was not aware of the elaborate fiction devised by the Centre for his protection, it was not unreasonable for him to interpret the first message as an ultimatum to return to Turin by 1 July 1982 and he was not told in clear and unambiguous language that the first message was being countermanded by the second. In these conditions it must be said that the notice given to the complainant by the Centre was inadequate.

## DECISION:

For the above reasons,

1. The Centre is ordered to pay the complainant as compensation the sum of 6,000 Swiss francs.
2. The other claims are dismissed.
3. The complainant is awarded 1,000 Swiss francs as costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner