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

FIFTY-SEVENTH ORDINARY SESSION

In re KASSLER

Judgment No. 688

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) by Mr. Reinhard Kassler on 27 February 1985, as supplemented on 12 March and corrected on 27 March and 15 April, the Centre's reply of 10 May, as corrected on 30 May, the complainant's rejoinder of 10 June and the Centre's surrejoinder of 17 July 1985;

Considering Articles II, paragraph 1, VII, paragraph 3, and VIII of the Statute of the Tribunal and Articles 1.5, 3.1 and 12 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 facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of the Federal Republic of Germany, has been on the staff of the Centre in Turin without break since January 1976, and under fixed-term contracts since August 1976. On 25 October 1984 the Chief of Personnel offered him a new fixed-term contract, to run from 1 January to 31 December 1985. On 27 November he filed an internal "complaint" under Article 12.2 of the Centre Staff Regulations alleging that the staff were protected by Italian law: he believed that under that law he qualified for an appointment of indeterminate duration. On 30 November the Chief of Personnel replied on behalf of the Director of the Centre rejecting the complaint. On 12 December the complainant signed the offer of contract and returned it. At the same time he wrote a minute to the Director asking for review of the matter. The Centre did not reply, and under Article VII(3) of the Statute of the Tribunal the complainant is challenging the implied decision to reject his claims.

B. The complainant says that in a statement to the staff on 6 September 1984 the Director of the Centre declared that the agreement concluded concerning the Centre between the ILO and the Italian Government in 1964 had never been properly ratified, that the Centre had no special status in law in Italy, and that its staff had no privileges or immunities. This the complainant believes to be confirmed by a minute of 5 March 1985 from the Chief of Personnel. He concludes that since only Italian legislation governs the staff of the Centre he is entitled to benefit under Act 230 of 18 April 1962, of which sections 1 and 2 normally confer a right on the employee to an appointment without limit of time. The Centre's offer of a fixed-term appointment was therefore unlawful. It was also in breach of international labour standards. He alleges other procedural flaws in the offer and concludes that he is holding his present appointment under an invalid contract. He seeks conversion of his fixed-term appointment into one of indeterminate duration.

C. The Centre replies that the Tribunal is not competent to apply Italian law. The complaint is also irreceivable: the complainant is estopped from challenging the latest offer of a fixed-term contract because he was employed under similar contracts and on similar terms from August 1976. Besides, his complaint is devoid of merit. He has misconstrued the Director's statement to the staff. The Centre does enjoy the immunities and privileges set forth in the Convention on the Privileges and Immunities of the Specialised Agencies, ratified by Italy and embodied in Act 1740 of 1951. This was confirmed by the headquarters agreement signed in Rome on 24 October 1964 and embodied in Act 930 of 1965. What the Director meant was that the Centre and the Italian Government were negotiating a protocol to facilitate the application of the headquarters agreement. The complainant has never before challenged the validity of the immunities of Centre staff, in particular their exemption from tax. His allegations of procedural flaws are groundless. International labour standards are addressed to member States of the ILO not to International organisations. Conversion of a fixed-term appointment into one without limit of time is at the Director's discretion. The complainant's status is quite clear since he accepted the offer of renewal. Besides he is actually performing his duties under his appointment and accepting payment of his salary.

D. In his rejoinder the complainant dwells at length on his original submissions and seeks to refute the Centre's. In particular he maintains that Italian labour law does govern his relations with the Centre and observes that his consent to the offer was subject to his earlier stated reservations about the validity of his status.

E. The Centre submits in its surrejoinder that the complainant's arguments are either irrelevant or ill-conceived and in no way weaken its arguments as to competence, receivability and the merits which it develops. In its view Italian law cannot and does not apply; there are neither formal nor substantive defects in the Director's decision; and the complainant may not protest against an extension of his contract to which he freely consented.

CONSIDERATIONS:

The application of Italian law

1. The complainant contends that the Centre's legal status is obscure that the agreement to which it owes its existence has never been fully ratified and that its staff have no privileges and immunities. On these grounds he argues that he is subject to Italian law and that it forms part of his contract.

The Centre replies that it enjoys privileges and immunities under a Convention which was incorporated into Italian law on 24 July 1951 and an agreement likewise incorporated on 26 June 1965.

The Tribunal need not rule on these contradictory pleas, neither of which is borne out by any of the evidence before it. If and in so far as Italian law does apply, it is for the Italian State alone to enforce it, and the Tribunal has no power to review. The Tribunal is ordinarily competent to review no more than the application of the Staff Regulations of the defendant organisation and the terms of the complainant's appointment. The Tribunal will take account of national law only in exceptional circumstances where such law embodies general principles, and it will not do so in this case.

The application of the Staff Regulations

2. Where national law validly derogates from the Staff Regulations or the terms of the complainant's appointment, the Tribunal may not review the application of the regulations or the contract; it will merely acknowledge the competence of the State to enforce its own law.

But there is no need in this case to consider whether national law takes precedence over the Staff Regulations and the contract even if it does not, the Tribunal holds that the Staff Regulations and the contract were correctly observed.

3. The complainant's contention that the impugned decisions are unlawful under the Staff Regulations is incorrect.

(a) According to Article 1.5(b) of the Staff Regulations a contract of employment shall consist of an offer of appointment signed by the Director or a representative of the Director authorised for the purpose and a declaration of acceptance signed by the official. Alleging breach of that article the complainant observes that the offer of 25 October 1984 was sent to him by the Chief of Personnel, who had not been "authorised for the purpose". The argument fails. By the very nature of his duties the Chief of Personnel is deemed to hold authority from the Director to sign an offer of appointment. The presumption arises in many other organisations and the complainant never questioned it on earlier occasions when he had his contract extended.

(b) Headed "Amendment of Contract of Employment", Article 1.5(c) provides that the terms of a contract may be "modified", where certain conditions are met, so as to bring them into line with any measure relating to conditions of employment which the Board of the Centre may adopt. Contrary to the complainant's view, there is no question of any breach of that rule, which relates to the modification of a contract, viz. the alteration of its substance, not to the extension of its duration. Besides, in his rejoinder the complainant concedes the soundness of the distinction.

(c) Article 1.5(e) stipulates that no appointment shall be made until the medical adviser has certified that the person concerned is fit to discharge his duties. On any reasonable interpretation the rule applies only to the original appointment granted on recruitment. When a staff member has done his work properly and his fitness is not in doubt, there is no advantage to the parties, each time the contract is extended, in having a certificate drawn up which merely repeats what they know already. Besides, the complainant did have check-ups, on 9 February 1976 just after he joined the Centre and again on 14 June 1983, even though the latter had nothing to do with the offer of

extension of 25 October 1984.

(d) Article 3.1(d) says that the staff of the Centre shall comprise officials appointed for a fixed term and for not less than one year "when the period of service can be determined by the Director". The complainant seems to infer from that provision a rule that a fixed-term appointment may be granted only where the nature of the duties warrants limiting the duration of the contract. Even supposing that is so, there was no breach of the provision. As the Centre maintains and the Tribunal accepts, the complainant is working on programmes which depend on technical progress and are therefore subject to alteration. That being so, it was quite understandable that, like other staff members with similar duties, he should be appointed for a fixed term.

Application of ILO Recommendation 119

4. In support of his claim for conversion of his fixed-term appointment into one of indeterminate duration the complainant cites Recommendation 119 of the International Labour Organisation. Though he does not contend that the instrument is directly applicable, he asks the Tribunal to take account of it in interpreting the Centre's Staff Regulations.

ILO Recommendations are addressed to member States not to the ILO itself nor to affiliates like the Centre, and the Centre is not bound, even by analogy, to comply with the terms of Recommendation 119.

Admissibility of the Centre's reply

5. The complainant submits in his rejoinder that the reply is inadmissible because it was signed by a Centre official without express authority from the Director. In an appendix to the surrejoinder the Director declares that the reply was written under his authority. Even if there was originally a defect, it has thus been removed.

DECISION:

For the above reasons,

The complaint is dismissed.

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 signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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