SIXTY-FIRST ORDINARY SESSION

In re GROVER

Judgment 803

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Darshan Singh Grover against the International Computing Centre (World Health Organization) on l7 September l986, the Centre's reply of l7 November, the complainant's rejoinder of 30 December l986 and the Centre's surrejoinder of 10 February l987;

Considering Article II, paragraphs 4 and 5, of the Statute of the Tribunal;

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

A. The International Computing Centre (ICC) is a "common facility" which was set up in Geneva in l97l to provide computer services for the United Nations agencies. The World Health Organization, whose premises it shares, provides it with administrative services and the appointment of its staff members is governed by the WHO Staff Regulations and Rules.

The complainant, a computer programmer, was employed at the Centre under a six-month contract from 27 February to 26 August l984. His contract was with the Centre although his services were at the disposal of the United Nations Office in Geneva (UNOG). At the end of the contract he was offered a second one, a consultancy from 28 August to 26 September, by UNOG itself, but still for work as a programmer at the Centre. The Centre refused to extend its contract with him because that would entitle him to benefits it did not want him to have. On 28 September, after the second contract had expired, he received from the Director of the Centre an offer dated 27 September of a third contract, this time with the Centre again. Seeing that the salary was to be lower and he was not to have the status of a staff member, the complainant said that the text would have to be changed. Meanwhile he continued to work at the Centre. His salary was increased but his status was not altered. A work plan antedated 27 September was then appended to the contract and communicated to him on l0 October. According to the plan the payment of his salary, in three monthly instalments, was declared to be "subject to the satisfactory completion of the work assigned ... on receipt by the ICC of notification each month from UNOG". On the same day the complainant wrote back making comments on the plan, in particular pointing out that some of the work was ill-defined or its completion depended on things beyond his control, and objecting to the deadlines. He nevertheless signed the contract and returned it. In a letter of ll October the Centre said that because he had "changed the appendix" to the contract UNOG would have to agree before the contract could come into force. In a letter of l2 October he protested, alleging an oral promise that the terms of the contract would be the same as those of the first one. On l5 October a UNOG official, Mr. Jusseaume, told him that he was not entitled to a three-month appointment with the Centre: he must choose between a contract for one month from 27 September and leaving immediately without any pay at all. The complainant declined to make the choice and from l6 October he was forbidden access to the work premises. Further correspondence failed to achieve agreement.

B. The complainant maintains that when the second contract was concluded there was an oral agreement between him and two UNOG officials, Mr. Jusseaume and Mr. Spadola, that he would be granted a third appointment on the same terms as those of the first one except that it would be for three months. There was breach of that agreement in that the terms of the offer proved to be different. All along he was given to understand that the Centre was bound by the oral undertakings of the UNOG officials. Indeed not only was that implicit in his talks with those officials, but the Centre led him to believe it. To alter the terms of the written offer was therefore a breach of good faith.

He submits that the work plan was not an essential part of the contract. Contracts for consultancy do not have to be accompanied by any work plan. His second appointment for example, the one with UNOG, was not. Nor was any work plan necessary: he was simply to carry on with the same work and on the same premises as before. Moreover, he did not make radical changes in the plan: he merely sought information on some of the assignments, particularly those which he could not complete unless action was taken by his employer. To make payment subject to conditions was arbitrary and unfair. He seeks an award of l2,825 United States dollars representing the salary for the three-month appointment offered to him in the Director's letter of 27 September, which he accepted on l0 October l984, plus interest at l0 per cent a year; $5,OOO as moral damages; and $4,000 towards his costs.

C. In its reply the Centre enlarges on the factual background to the dispute. It points to what it regards as misrepresentations in the complainant's account of the facts. It explains that his services, though made available to UNOG, were provided by the Centre, that it was consistently impressed on him in the talks that his contract was with the Centre, and that UNOG could not make any commitment binding on the Centre. He cannot have believed that UNOG officials were competent to promise him specific terms of an appointment with the Centre, and indeed the facts show that they never intended to do so. He fails to adduce any evidence - and the burden of proof is on him - of the existence of any oral agreement or of the UNOG officials' purporting to bind the Centre. The amendment of the terms of the third contract to increase the salary is no evidence of prior oral agreement.

No written contract was concluded. The complainant's reservations about the timetable in the plan made uncertain the date of completion of his assignments, which was an essential term of the contract. There had been a work plan from the outset, and the reason why it was not incorporated in the first contract was that under that contract he was a staff member and therefore subject to his supervisor's authority. The third contract, however, was to be a "technical services agreement" under which he would not be a staff member, and a timetable for his assignments was therefore essential. His pay was not to depend on action by an employer since he was not to have the status of an employee. Besides, it was reasonable to lay down a timetable to ensure that the work was done in time and that no further contract would be needed. The complainant appears to believe he was entitled to three months' pay whether the work was done or not. Since he never accepted the work plan, his acceptance of the offer was qualified and therefore invalid; the contract never came into force and the Centre is under no liability.

The Centre submits that for the foregoing reasons the claims should fail. Though he was offered payment for the first month because he agreed to the timetable for that period, he refused. Any award of damages to him should be limited to the equivalent of salary for the days on which he actually worked. The claim to moral damages is unsound because no contract ever came into force and any hardship he may have suffered is his own fault, not the Centre's.

D. In his rejoinder the complainant gives his own version of certain facts which he submits the Centre presents tendentiously or mistakenly. He maintains that, whatever the legal authority of the Centre and UNOG, the latter's officials played a predominant part in the matter and he was entitled to rely on their oral assurances. Any reasonable man in his position would have gathered that, though the Centre concluded the contract, UNOG decided on its terms. Though he cannot prove he was given oral promises, several circumstances lend credence to his contention that he was, for example a letter of l2 September l984 to the Director of the Centre from the head of the budget service of UNOG asking the Centre to provide the complainant's services for three months "under the same conditions". In fact the Centre did in this instance sign a contract whose terms UNOG had approved. There was no essential term of the contract - the definition of the work to be done, the salary and benefits, and the type of contract - that both parties had not accepted, and the Centre must be held liable for its refusal to let the complainant complete performance of the contract.

Lastly, as to his claims, which he presses, he says that the Centre has never actually offered to pay him for the nineteen days during which it accepted his services: in fact both the Centre and UNOG have denied his right to any payment at all for the work he did.

E. In its surrejoinder the Centre enlarges on its pleas. It contends that the parties' behaviour raised no presumption that UNOG had authority to bind the Centre in advance. That being the material issue, passages in the rejoinder about the nature of the work the complainant was to take on are beside the point. His contention that the essential terms of the new contract had been agreed to is simply not borne out by the facts, which the Centre goes over again in detail.

In a letter of l8 October l984 a representative of UNOG informed him that they would be willing to propose to the Centre paying him for the period from 27 September to l6 October l984, but without acknowledging any liability to

do so. The complainant has not taken up that offer.

CONSIDERATIONS:

Competence

1. According to Article II, paragraph 4, of its Statute the Tribunal is competent to hear disputes arising out of

contracts to which the organisation is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.

The Tribunal is competent to hear this case under that provision and because the International Computing Centre, which is party to the dispute, is administered by the World Health Organization, which has recognised the Tribunal's jurisdiction.

The merits

2. The main issue in this case is whether a contract was concluded as a result of the exchanges between the complainant and the International Computing Centre regarding the offer dated 27 September 1984 by the Director of the Centre of a third contract.

3. As the Tribunal observed in Judgment 621 (in re Poulin), no contract can conceivably arise unless there was an unquestioned and unqualified concordance of will on all the terms of the relationship. A contract is concluded only if both parties have shown contractual intent, all the essential terms have been worked out and agreed on, and all that may remain is a formality of a kind requiring no further agreement.

4. The Tribunal holds that in this case no contract was concluded between the parties.

5. The Director of the Centre wrote to the complainant offering a third "contract". The complainant objected to the amount of his salary on the grounds that it was lower than it had been under the first contract, and to his status on the grounds that he was not to be a staff member. The Centre increased his salary but did not alter his status. It appended a work plan to the intended contract which was communicated to the complainant on 10 October 1984. Although the complainant signed the contract he did not accept the plan, finding some of its features objectionable. In a letter of 11 October the Centre told him that because he had changed the appendix to the proposed contract the United Nations Office in Geneva (UNOG) - for whom the work was to be done - would have to agree before the contract could come into force. The complainant protested in a letter of 12 October, alleging an oral promise that the terms of the contract would be the same as those of the first one. Three days later a UNOG official told him that he was not entitled to a three-month appointment with the Centre: he must choose between a contract for one month as from 27 September and leaving immediately without any pay at all. The complainant declined to make the choice and from 16 October he was forbidden access to the work premises. Further correspondence failed to achieve agreement.

6. It is clear on the evidence that his acceptance of the offer was neither unquestioned nor unqualified and that no contract was ever concluded. The Centre therefore cannot be held liable.

7. The complainant contends that when the second contract was concluded there was an oral agreement between him and two UNOG officials that he would be granted a third appointment on the same terms as those of the first one, except that it would be for three months.

The Tribunal finds no evidence to bear out the contention. In any event the other party to the contract was to be, not UNOG, but the Centre, as the Centre consistently made clear to the complainant. No-one in UNOG was competent to make commitments that would be binding on the Centre.

8. While the exchanges on the third contract were going on the complainant did do work at the Centre from 27 September until mid-October. For that he should be paid pro rata, as the Centre has agreed.

DECISION:

For the above reasons,

1. The complaint is dismissed.

2. The Centre shall pay the complainant pro rata for the period during which he worked at the Centre.

In witness of this judgment by Mr. André Grisel, President of theTribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 13 March 1987.

André Grisel
Jacques Ducoux
Mohamed Suffian
A.B. Gardner

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