

**SIXTY-FOURTH SESSION**

***In re* VUKMANOVIC**

**Judgment 896**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Zoran Vukmanovic against the Intergovernmental Council of Copper-Exporting Countries (CIPEC) on 10 March 1988, the Council's reply of 25 March, the complainant's rejoinder of 8 April and the Council's surrejoinder of 26 April 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Regulation 9.1(c) of the CIPEC Staff Regulations;

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, who is Yugoslav, joined the staff of the CIPEC in Paris in August 1979 as head of the Economic Studies Division. His three-year appointment was extended in turn to 30 April 1983 and 30 April 1986. In April 1986 his Division was renamed Economic and Analytical Studies. He got another three-year extension to 30 April 1989.

The Executive Committee of the CIPEC decided on 27 November 1987 to "phase out" his post and by a letter of 28 December the Secretary-General gave him notice of termination at 31 March 1988, 13 months before the date of expiry of his appointment. The material rule was Regulation 9.1(c) of the Staff Regulations, which provides for "suppression of the post to which the person concerned was appointed". Discussion ensued about the amount of compensation he was to get. In a letter of 16 February 1988 the Secretary-General said that, having served for 8 years and 7 1/2 months - a figure that was rounded up to nine years - he was entitled to nine months' salary in compensation. In his reply of 19 February he objected to the termination of his appointment on the grounds that the true purpose of abolishing his post had been to get rid of him; he said that the amount of compensation was too small for a senior executive officer with his experience and record. The Secretary-General wrote back on 23 February confirming the amount. The complainant pressed his objections in a letter of 25 February, but the Secretary-General rejected them in a letter of 26 February, the decision impugned.

B. The complainant observes that his duties, which he describes, were highly responsible and demanding and no one else on the staff has the same specialised knowledge and experience as he. He maintains that the reasons for the Executive Committee's decision to abolish his post were improper: the work he did was so important that it cannot be discontinued; he was an esteemed and hard-working official; and there were no sound financial reasons for abolition. The Secretary-General warned the Committee that his dismissal would impair the quality of the work. He believes that he fell victim to the pressure one member State put on the CIPEC to get rid of him. It disliked him on ideological grounds, did not care for his dynamic approach to policy and wanted to replace him with one of its own citizens. In any case he could have been put on another post until his appointment expired.

The amount of compensation does not take account of his record of service and seniority, the quality of his work, his difficulties in finding employment in another international organisation, the abruptness of the termination and the ideological reasons underlying it, the much lower level of salaries in Yugoslavia, his inability to provide properly for his daughters' higher education, and moral injury. He claims 13 months' salary in compensation for termination and 3 months' salary in moral damages, plus interest, and costs.

C. In its reply the CIPEC submits that it fully complied with the principles set out in Judgment 873 on Mr. Jacques Da's complaint.

The Executive Committee's decision, which formed part of a programme of restructuring that entailed abolishing the complainant's Division, was taken for proper and objective reasons and his allegations of ulterior motives are mistaken.

The Council gave him ample notice of termination in a letter the Secretary-General wrote him in December 1987. In determining the amount of compensation it applied the criteria stated in Judgment 873. The Tribunal held that Mr. Da had not been given due notice, and besides he had spent far longer with the organisation. The complainant is not entitled to as much as the Tribunal awarded Mr. Da, which was 13 months' salary. The CIPEC cites the Staff Regulations of the International Labour Office, and in particular Article 11.4, in support of its contention that the equivalent of nine months' pay is an adequate sum. It observes that the quality of his performance, which it does not deny, was rewarded by promotion to the top of his grade.

D. In his rejoinder the complainant submits that the CIPEC misrepresents the nature of the restructuring: his Division was not done away with but merged with another. He develops his argument that he was dismissed for personal and ideological reasons, observing that the work he was doing still has to be done and that the CIPEC does not deny that one of its member States wished him ill. Since the reasons given for the termination were not the true ones, he is entitled to moral damages as well, and that is why the amount he seeks is warranted. The rules of another international organisation are irrelevant. The termination was, besides, discriminatory in that he could easily have been given a similar post: two posts were created both of which he was qualified for. He believes that he was dismissed because he is from a country that is only an associate Member, not a full Member.

E. In its surrejoinder the CIPEC maintains that the pleas in the rejoinder in no way weaken its reply. It enlarges on its earlier submissions, argues that the complainant's presentation of the facts is tendentious or mistaken, reaffirms that the termination was correct and that in the circumstances its offer is fair and reasonable, and again invites the Tribunal to dismiss the case as devoid of merit.

#### CONSIDERATIONS:

1. The complainant joined the staff of the CIPEC on 16 August 1979 as head of the Economic Studies Division on an appointment for three years. The appointment was renewed several times and was to expire in April 1989. On 28 December 1987 the CIPEC told him that its Executive Committee had decided to abolish his post. The date of his departure was set at 31 March 1988. The Secretary-General offered him a sum equivalent to nine months' pay as compensation for dismissal but he claimed the amount he would have been paid for the remainder of his appointment, i.e. thirteen months. The CIPEC rejected his claim on 26 February 1988, and that is the decision he is impugning, not the Executive Committee's decision of 27 November 1987 (he wrongly dates it 30 November), as is plain from his brief and from the statement of his claims.

2. The CIPEC does not object to the receivability of the complaint, the Staff Regulations making no provision - as was observed in Judgment 873 - for appeal to any internal body.

3. In his claims for relief the complainant invites the Tribunal to order the CIPEC to pay him (a) thirteen months' salary, including all the benefits due under the Staff Regulations, in compensation for the unilateral termination of his fixed-term appointment; (b) three months' salary in compensation for "the moral injury caused through psychological pressure arising from long campaign aimed at destabilising the complainant's position both from within the Secretariat and from one member country"; and (c) "interest that would accrue on all moneys receivable after the termination of the contract until the actual date of payment and all other costs incurred as a result of the proceedings".

4. Thus the complainant is not expressly challenging the lawfulness and does not seek the quashing of the actual abolition of his post, even though, as was said above, he does identify the Executive Committee's decision of 27 November 1987 as the one he is impugning. Under point 8 of the complaint form he says it is the Secretary-General's letter of 26 February 1988 that is the final decision.

5. His argument is that the decision to abolish his post was taken *ad personam* and was discriminatory; that for ideological reasons one member State put pressure on the organisation and that the true purpose was not to achieve savings because the CIPEC already intended to appoint two executive officers; and that the Executive Committee was wrong not to offer him another appointment to cover the remainder of his contract.

6. The decision of 27 November 1987, which was taken by the Executive Committee as a whole, was a collective one, and there is not a shred of evidence to suggest that improper pressure was put on all or even any of the Committee's members. Accordingly, however one member State may regard the complainant, that had no bearing on the Committee's decision. Besides, the decision was neither an isolated nor a discriminatory one since, as the complainant acknowledges and as is clear from Judgment 873, other members of the staff had to leave at the same time and in similar circumstances.

7. The main reason the Committee gave for abolishing the complainant's post was reform of the secretariat. Although it is understandable that the decision should have been prompted by the severe financial crisis affecting all international organisations, that is not the reason the Council actually gave. There are no grounds for believing that the reason the Committee gave was mistaken or that its decision was tainted with abuse of authority or any other flaw. The complainant offers no evidence in support of his allegation of an intention to create two posts, and that greatly weakens his argument that he ought to have been offered another post. Besides, the Staff Regulations do not require the CIPEC to make such an offer in the event of abolition of a post.

The complainant's objections to the abolition therefore fail.

8. The Staff Regulations do not say how much shall be paid in compensation to a redundant staff member.

Though the CIPEC's work and the terms of appointment of its staff are governed by its own rules, that does not mean that no compensation need be paid, the Council being under a duty to adopt a reasonable attitude.

When his post is abolished someone with a fixed-term appointment is ordinarily entitled to fair compensation or other redress. The amount and the manner of determining it will depend on the particular circumstances of the organisation and an assessment of the staff member's own situation, and seniority, record of service and the terms of his appointment. The decision must not be discriminatory or tainted with any other flaw.

9. Although the Staff Regulations are silent on the matter, the Executive Committee decided, when it abolished the complainant's post, to instruct the secretariat to negotiate the amount of compensation to be awarded to him for termination. Such was the mandate for the negotiations, but they also had to abide by the general principles that govern the international civil service, including the respect and consideration due to staff members, as well as the criteria set out in 8 above.

10. Those requirements were complied with in this case.

On 16 February 1988 the Secretary-General offered the complainant compensation equivalent to nine months' pay. The offer referred to the precedent of Mr. Da, on which the Tribunal ruled in Judgment 873. Actually the Secretary-General was mistaken in saying that the legal basis of that decision had been Article 11.4.3 of the Staff Regulations of the International Labour Office. The CIPEC is an intergovernmental organisation set up under a treaty and not affiliated to any other international body and, as was said above, its staff are subject to its own rules.

Even though the decision may for that reason be open to criticism, the amount of compensation offered is acceptable because it was determined according to criteria relating to the position both of the organisation and of the complainant. Nine months' pay is fair compensation. In any event, to allow the complainant's claim to the full amount of the pay that he would have received during the remainder of his appointment would make abolition pointless.

11. Since the complainant's pleas objecting to the abolition of his post and the amount of compensation are rejected for the foregoing reasons, it follows that the CIPEC was not at fault and that the claim to moral damages is unsound. The decisions by the Executive Committee and the Secretary-General complied with the Staff Regulations. The allegations of pressure from a member State do not engage the CIPEC's liability since there is no evidence to suggest that any such pressure did influence its decisions.

Not only did the CIPEC express gratitude to the complainant for the many years of good service he had given it but in its reply it affirms that it always acknowledged the quality of his work and that no-one is questioning his competence, which was indeed rewarded by immediate promotion to the top of his grade.

In the circumstances there cannot have been any moral injury and the claim to damages on that score must fail, as does the claim to the payment of interest and costs.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
E. Razafindralambo  
A.B. Gardner