

SIXTY-EIGHTH SESSION

***In re* LARIBI (No. 2)**

Judgment 1003

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Ahmed Abdelkader Laribi against the African Training and Research Centre in Administration for Development (CAFRAD) on 8 March 1989, the Centre's reply of 25 May, the complainant's rejoinder of 29 June and the Centre's surrejoinder of 2 August 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 5.4(g), 5.7, 8.1, 9.2 and 9.3 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. Article 5.7 of the CAFRAD Staff Regulations reads:

"(a) Any unauthorized absence of an official, including an unannounced absence for reasons of illness or injury, shall require a full written explanation to the Director-General within eight days following the absence. ...

(b) An unauthorized absence of more than 15 days shall automatically incur Summary Dismissal (Article 9.2), without recourse."

Article 9.2 provides:

"(a) Sanctions shall consist of:

...

(v) Summary Dismissal, without notice and without terminal indemnity.

...

(c) Before the application of any sanction other than warning, a proposal to apply it, stating the reasons for which it is made, shall be communicated in duplicate to the official concerned, who shall sign and return one copy within eight days of its receipt, adding to it his observations if he wishes, and the proposal shall then be communicated to the Representative Committee (Article 8.1) for observation and report to the Director-General. ..."

As is recounted in Judgment 1002, under A, the complainant joined the staff of CAFRAD in Tangier in 1975. He was seconded from the Tunisian agency for technical co-operation and held a series of fixed-term appointments. He was put on a post in the General Service category and from the outset pressed his claim to regrading in the Professional category. He was employed as an assistant documents clerk.

The complainant was granted annual and sick leave in 1988. On his return, on 26 September, he found two minutes from the Director-General. One informed him that he was promoted to grade P.1 as from 1 July 1988 and it forms the subject of his first complaint. The other, dated 22 September, pointed out that his leave had expired on 30 August, that his absence since that date was unauthorised and that the Director-General intended to dismiss him in accordance with Articles 5.7 and 9.2 of the Regulations.

On 27 September the complainant wrote asking the Director-General to reverse the dismissal on the grounds that he had been ill while on leave and under Article 5.4(g) of the Staff Regulations ("Days upon which an official is sick

during Annual Leave shall not be counted as days of annual leave") the days of illness should not be docked from his annual leave; he had enough annual leave to allow of the extension of his absence until 18 September; on that day his wife had given birth to a child in a clinic at Tangier and he had had to look after their other children; and on 19 September his brother-in-law had explained to the Director-General's secretary the reasons for his absence.

The Representative Committee, the joint advisory body provided for in Article 8.1 of the Regulations, met on 2 November. In its report of 3 November it observed that the meaning of Article 5.4(g) was unclear and it could make no recommendation.

On 11 November the Director-General wrote the complainant a minute which he says he did not get until 16 January 1989. The minute stated that he had not complied with the rules about leave but that, though he deserved dismissal, the sanction was reduced on compassionate grounds to a "reprimand" under Article 9.2(a)(ii).

On 20 October the Director-General had written a letter to the Tunisian agency for technical co-operation to say that he was dismissing the complainant, and the agency wrote the complainant a letter dated 9 December saying that he would leave the Centre on 31 March 1989 and asking him to apply for termination of his secondment.

On 30 December 1988 the complainant received from the Centre a "personal action" form, authorised by the Director-General and dated 10 November, which stated that as from 1 July 1988 he was promoted to grade P.1, step 9, in a post for a "documents clerk" in the documents division, and that his "present contract" would expire on 1 July 1989. In a letter of 3 January 1989 to the Director-General he alleged breach of the Staff Regulations; he sent back the form. On 18 January he received another form with his title changed to "documents clerk". He returned that form too, on 24 January, with a letter iterating his objections.

In an undated reply he objected in detail to the Director-General's minute of 11 November 1988 and to the reprimand. He addressed further letters about his grievances to the Director-General, to the Chairman of the Governing Board, to the head of the agency and, on 17 February 1989, to the Chairwoman of the Representative Committee.

He impugns the "decision" in the Director-General's letter of 20 October 1988 to the agency.

B. The complainant points out that he sought to exhaust the internal means of redress by writing on 17 February 1989 to the Chairwoman of the Representative Committee, but that he got no answer and that the rules in Article 8.1 of the Staff Regulations about the Committee's procedure have not been followed. He submits that his appeal has been suppressed. He observes that the termination of an appointment is a matter of concern only to the Centre and to the official and has nothing to do with any third party such as the agency. He accuses the Centre of consistently unfair treatment of him.

He states that he does not intend to remain in the Centre's service after 31 March 1990. He claims the payment at that date of various end-of-service and other entitlements which he sets out in detail and an award of 228,995 United States dollars in damages for moral injury over and above the figure claimed under that head in his first complaint. Failing that, he claims the payment as from 1 April 1990 of allowances totalling 2,100 dirhams a day and of interest on any arrears to be reckoned at the rate of 10 per cent a year as from 1 July 1990.

C. In its reply the Centre contends that there is no cause of action. The Director-General's letter of 20 October 1988, which the complainant purports to impugn, was not followed up and his appointment has not ended.

D. The complainant rejoins that the quashing of the decision of 20 October 1988 and of all the other decisions to his detriment, including the reprimand, is the only way of restoring his good name at the agency. He objects to the Centre's failure to address the substantive issues he raises in his complaint, in particular his charges of repeated breach of the Staff Regulations.

E. In its surrejoinder the Centre presses its case.

CONSIDERATIONS:

The complainant filed on 17 February 1989 an internal appeal in writing in accordance with Article 9.3 of the Centre's Staff Regulations against a decision of 20 October 1988 to dismiss him. He has put forward the same claims in his complaint to the Tribunal.

The decision of 20 October was replaced by a reprimand before he filed his complaint. Since it has been withdrawn and has had no effect on his career there is no cause of action and his complaint is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 23 January 1990.

(Signed)

Jacques Ducoux
Mella Carroll
H. Gros Espiell
A.B. Gardner