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

SIXTY-EIGHTH SESSION

In re SEMANAZ

Judgment 1005

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Micheline Semanaz against the International Labour Organisation (ILO) on 21 December 1988 and corrected on 6 January 1989, the ILO's reply of 10 February, the complainant's rejoinder of 28 April and the ILO's surrejoinder of 1 June 1989;

Considering Articles II, paragraph 1, and VII, paragraph 2, of the Statute of the Tribunal and Articles 11.16, 13.2 and 14.8 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

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

A. As was stated, under A, in Judgment 767 (in re Cachelin) Article 11.16 of the Staff Regulations of the International Labour Office reads:

"The Director-General may terminate the appointment of an official if such action would be in the interest of the efficiency of the work of the Office, provided that the official concerned consents to the action. The DirectorGeneral may pay to an established official terminated under this Article an indemnity not more than 50 per cent higher than that payable under Article 11.6 (Indemnity upon Reduction of Staff) ..."

The indemnity is commonly known as the "golden handshake".

The complainant, a French citizen born in June 1930, joined the ILO in 1956. On 4 December 1984 she wrote to the Chief of the Personnel Policy Branch (P/POL) saying that she wanted to leave at the age of 55 and to be paid the 11.16 indemnity. After correspondence on the subject the Chief of the Personnel Development Branch (P/DEV) refused her claim in a minute of 29 June 1985.

She gave notice of resignation on 31 January 1986 and left the ILO at the end of June 1986.

On 12 December 1986 the Tribunal delivered Judgment 792, which set aside the ILO's decision to refuse the indemnity to Miss Odette Cachelin.

On 5 February 1988 the complainant's counsel wrote to the Personnel Department to say that her case was the same as Miss Cachelin's and to claim payment of the indemnity to her by virtue of Judgment 792. The Director of the Personnel Department answered in a letter of 26 February that her claim was irreceivable and in any case unfounded since she was not in the same position in law as Miss Cachelin. Counsel repeated the claim on 24 May and sent a reminder on 21 July. The Chief of P/POL answered on 29 July that the ILO had nothing to add to its letter of 26 February. On 2 August counsel lodged an internal "complaint" under Article 13.2 of the Staff Regulations. He sent a reminder on 10 October. A letter of 21 October from the Office of the Director-General stated that the letter of 29 July had set out the Organisation's position. Counsel pointed out that his letter of 2 August had been his reaction to the letter of 29 July and he called for a reply. By a letter of 18 November 1988, the decision impugned, the Director-General's Office stated that the claim was rejected as out of time.

B. The complainant explains that not until the second half of January 1988 did she come to hear of Judgment 792, and it prompted her to put her claim again to the ILO in her counsel's letter of 5 February 1988. Her position is the same as that of Miss Cachelin, of the six other former officials mentioned in the judgment and of Miss Simone Bénazéraf, whose claim the ILO allowed on the strength of the judgment. The Tribunal's ruling made it plain that the ILO's decision to refuse her the indemnity had been unlawful, and on receiving the judgment the Organisation

should of its own accord have gone back on its decision. Instead it hoped that if she failed to hear of the Tribunal's ruling it could shirk its obligation.

She claims payment of 99,432 Swiss francs, interest at the rate of 5 per cent a year from 1 July 1986 and an award of costs.

C. In its reply the ILO observes that its letter of 18 November 1988, which the complainant purports to impugn, was mere confirmation of its letter of 26 February 1988, which is the decision she ought to have impugned before the Tribunal within the time limit of 90 days. She cannot evade the consequences of her omission by trying to bring her claim up again under Article 13.2 of the Staff Regulations, a course that is, besides, available only for challenge to a decision applied to a serving staff member.

The ILO's original refusal of the complainant's claim was in its letter of 29 June 1985. She should have filed a 13.2 "complaint" within six months, and reliance on Judgment 792 does not remedy her omission to do so.

As to the merits, her case is utterly misconceived. Judgment 792 affected only the parties to the case - res inter alios judicata aliis nec nocet nec prodest - and conferred no benefit on her. What was at issue was the lawfulness not of any general rule, but of the individual decision on Miss Cachelin's case.

Even supposing the judgment did confer any right on her she should have asserted it, within twelve months of the date of publication, by 12 December 1987: Article 14.8 provides that no claim under the Staff Regulations "shall be entertained if it is submitted after the expiry of 12 months from the date on which the right to bring it forward accrued to the person concerned".

The complainant's position in law is not the same as Miss Cachelin's or Miss Bénazéraf's: whereas she gave unqualified notice of resignation one year after the refusal of it they pursued their claims with diligence. The complainant saw the golden handshake as a mere "windfall" and desultorily set about trying to get it even though she had made up her mind to leave anyway.

D. In her rejoinder the complainant observes that she never waived her claim. The ILO agreed to await the Tribunal's ruling on Miss Cachelin's complaint before taking a decision on the similar claim by Miss Bénazéraf. Yet it is taking the complainant to task for having awaited the outcome too. Judgment 792 made clear the ILO's duty to reverse its earlier decision to refuse her claim.

She contends that she could not properly have challenged the decision of 26 February 1988 in a complaint to the Tribunal because the ILO had failed to substantiate it.

In her submission she respected the time limit in Article 14.8 since she acted within twelve months of coming to hear of Judgment 792, which the ILO ought to have brought to her notice anyway. Being itself guilty of inadmissible passiveness and bad faith, the Organisation may not properly accuse her of lack of diligence.

E. In its surrejoinder the ILO submits that the complainant's rejoinder either ignores its pleas altogether or retorts with blunt and unproven allegations. Her charges of passiveness and bad faith are groundless as its correspondence about her claim shows. Its letter of 26 February 1988 was explicit enough to allow of challenge. Her counsel knew all along that her claim was irreceivable and was merely seeking to get the Organisation to go into the merits. She has not even tried to get round the principle of res inter alios judicata. She likens her case to that of Miss Bénazéraf, though Miss Bénazéraf had filed a timely complaint to safeguard her rights whereas she did not. The ILO had no duty to inform her of Judgment 792: it was for her to pursue her claim diligently; besides, the judgment was a matter of public knowledge and by her own argument she was waiting for it. The interpretation she puts on 14.8 is contrary both to the text and to its purpose, which is to ensure stability in law.

CONSIDERATIONS:

Receivability

1. The complainant is challenging what she describes as a "decision" of 18 November 1988. That text, a letter from the Office of the Director-General, merely confirmed the substance of a letter which the Director of the Personnel Department had written to her counsel on 26 February 1988 and which the Chief of the Personnel Policy Branch had confirmed in a letter of 29 July.

The Director's letter of 26 February 1988 was the ILO's answer to the complainant's own letter of 5 February asking the Organisation to grant her the benefit of the Tribunal's ruling in Judgment 792 on Miss Cachelin's complaint. The Director said:

"It appears from the records that Mrs. Semanaz is not in the same position in law as the other two staff members you mention and that her claim is irreceivable for reasons there is no need to go into here."

2. That was the "final decision" within the meaning of Article VII(1) of the Tribunal's Statute, and the complainant was required to file a complaint against it within the time limit, set in Article VII(2) of the Statute, of ninety days from the date at which she received notice of it. She failed to do so. Instead she sent the ILO another letter, dated 2 August 1988 and headed "Article 13.2 complaint", challenging the letter of 29 July 1988 from the Chief of the Personnel Policy Branch. But the letter of 29 July did no more than confirm the final decision of 26 February 1988.

3. The decision she does impugn, the letter of 18 November 1988, was also mere confirmation of the final one.

4. Her complaint is irreceivable under Article VII(2) of the Tribunal's Statute because she filed it out of time.

The merits

5. The complaint being irreceivable, there is no need to go into the merits.

In any event she stated no reservations or conditions on tendering her resignation on 31 January 1986 or on actually leaving the service of the ILO at the end of June 1986.

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. 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
Mohamed Suffian
H. Gros Espiell
A.B. Gardner

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