

## SEVENTIETH SESSION

### ***In re* LIEGEOIS**

#### **Judgment 1082**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Françoise Liégeois against the Intergovernmental Council of Copper Exporting Countries (CIPEC) on 10 May 1990 and corrected on 5 June, the Council's reply of 3 August, the complainant's rejoinder of 7 September and the Council's surrejoinder of 25 October 1990;

Considering Articles II, paragraph 5, and VII, paragraph 2, and VIII of the Statute of the Tribunal and the Staff Regulations of the CIPEC;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a French citizen, joined the CIPEC's staff in 1972 as a shorthand-typist. After a trial period she was granted a permanent appointment at grade B.3, step 4. She got several special promotions and reached G.7, step 6, by May 1983 when she was put in charge of the library and archives section.

The Secretary-General issued a service minute - No. 353 - on 18 July 1989 ordering everyone on the staff to submit a description of his job, an explanation of his day-to-day duties and an estimate of the time they required. Another service minute of the same date - No. 354 - invited staff to let the Secretary-General have by 30 August 1989 their suggestions for revision of the CIPEC Convention and Staff Regulations. The complainant answered minute 353 on 5 September 1989 and minute 354 on 6 September. On 1 December 1989 the Secretary-General wrote to everyone to say that anyone who wanted to leave in 1990 and applied for release by 31 December 1989 might be awarded compensation equivalent to salary for half a month for each year of service up to a maximum of four months.

By a letter of 22 December 1989 to the Secretary-General the complainant declined that offer. In a letter of 24 January 1990 the Secretary-General told her that because of the financial straits the CIPEC was in he had decided to do away with her post as from 1 March 1990 and to offer her four months' severance pay. Service minute 360 of 29 January 1990 announced provisional reforms of the CIPEC to take effect as from 1 February 1990, and they included turning the library and archives into a centre for technical documentation and making the complainant's duties over to someone else. In a letter of 9 February she asked for review of the decision to terminate her appointment. The Secretary-General rejected her request in a letter of 12 February 1990 and that is the decision she is challenging.

B. The complainant submits that her termination shows flaws.

One is that the Council denied her right to a hearing, a right she has whether or not the rules say so, and there was therefore gross breach of due process.

Secondly, she strongly suspects that her post was never really abolished. She was simply supplanted by an assistant of the Secretary-General's who is helped, and may be replaced, by a new employee recruited at the time of the complainant's dismissal.

Besides, the CIPEC failed to fulfil its duty to allow her preference for reassignment, as is clear from its not mentioning any attempt to find other work for her. So it disregarded such essential facts as her seniority, work record and qualifications, the nature of her appointment and her status as a staff representative.

At all events the amount she was paid is no compensation for the material injury she has sustained and which she

sets at the equivalent of at least three years' pay. In Judgment 873 (in re Da) the Tribunal ordered the CIPEC to grant 13 months' pay to a staff member though he had lesser seniority than the complainant and had held only a fixed-term appointment.

The notice of a month and a week she was given was too short, and discriminatory as well, inasmuch as another staff member with lesser seniority got two months and a week.

She maintains that the circumstances of her termination further entitle her to an award of damages for moral injury.

She asks the Tribunal to set aside the Secretary-General's decision of 12 February 1990 confirming her termination and order the Council to pay her damages for the material and moral injury and 25,000 French francs in costs.

C. In its reply the CIPEC gives an account of the financial troubles that forced it to dismiss three-quarters of its executive staff and to abolish the complainant's post. For want of up-to-date equipment the library never worked efficiently, and there was nothing for it but to save the pointless expenditure entailed. It proved impossible to reassign the complainant because there was no vacant post.

There was nothing improper about the complainant's dismissal. The period of notice she was given was as prescribed in all contracts of General Service category staff. Despite the absence of provision in the Staff Regulations she was paid far more in compensation than she would have been entitled to under the French Labour Code. Judgment 873 is irrelevant: Mr. Da was not appointed for the same length of time as the complainant; he belonged to the Council's executive staff, not the General Service category; unlike the complainant, he was neither terminated in pursuance of the terms of his appointment nor entitled to unemployment compensation.

There was no breach of the complainant's right to a hearing. She had foreknowledge of the measure, in particular from the Secretary-General's letter of 1 December 1989, yet never took up the opportunity of asking for a meeting with her supervisors.

The Secretary-General has a duty to make whatever appointments he deems necessary to carry out the CIPEC's work. It was in order to meet the urgent need of drafting amendments to the Staff Regulations that he appointed the new official the complainant mentions, at a salary only two-thirds of hers.

The complainant is not the only one to have borne the brunt of the financial crisis: several others also had to leave.

D. In her rejoinder the complainant points out that, though like all other General Service category staff she got the letter dated 1 December 1989 from the Secretary-General, her seniority, qualifications, record of service and status as a staff representative gave her cause to believe that she would not be among those dismissed. No-one offered to see her. The abolition of her post was a fiction and the new recruit is no better qualified than she. Executive staff get social security benefits and family allowances over and above benefits due to non-resident status, and some are entitled to unemployment compensation as well.

Others fare much better on termination. Where there is a lacuna in staff regulations, the proper source of law is not national law but, as Judgment 873 affirmed, general principles of international administrative law. Holding a permanent contract should have entitled the complainant to larger compensation than Mr. Da got. It makes no difference whether the dismissed employee had executive duties or was in the General Service category: the amount of compensation depends on the injury sustained.

She presses her claims.

E. In its surrejoinder the CIPEC contends that the complaint is time-barred: the only decision which the complainant was free to challenge was the one of 24 January 1990 notifying her dismissal, the grounds for it and the amount of compensation she was offered, and she failed to challenge that decision in time.

The Council enlarges on its pleas on the merits and seeks to refute the pleas in the complainant's rejoinder. It again observes that at no time did she seek a hearing to defend her rights. Nor is there any evidence that she is qualified to carry out duties other than those she has already discharged; indeed her two applications for employment as a translator have proved unsuccessful. The new recruit had the essential qualifications for carrying out the work that had to be done, whereas the complainant did not. Executive and General Service category staff are not in the same position, the former not being entitled to unemployment benefit.

## CONSIDERATIONS:

1. The complainant, a Frenchwoman who was employed at the CIPEC's headquarters in Paris, is seeking the quashing of the Secretary-General's decision to terminate her appointment or, failing that, an award of damages for the material and moral injury she attributes to termination.

2. She was locally recruited on 2 February 1972 as a shorthand-typist with proficiency in three languages. After a trial period the executive head gave her a permanent appointment at grade B3 by a decision of 30 March 1972. She worked well and was promoted several times. On 18 May 1983 she was put in charge of the library and archives section at grade G.7.

3. As was recounted in Judgment 873 (In re Da) of 10 December 1987, the Council was in sore financial straits from 1986 because some States had withdrawn from membership and the others were in arrears in paying their dues. By the start of 1989 it was insolvent. The Conference of Ministers had elected a new Secretary-General at its 25th Session in 1988, and his first task on taking up duty was to overhaul the administration and sort out the finances. The Conference of Ministers debated what was to be done at its 26th Session at Lusaka in June 1989.

4. Acting on instructions from the Conference the Secretary-General issued two service minutes on 18 July 1989. No. 353 called upon the staff to draw up detailed descriptions of their duties and work; No. 354 asked them to suggest improvements in the provisions of the CIPEC Convention and Staff Regulations.

5. The complainant showed no great eagerness to respond and only after a reminder did she at last write a description of her duties. But she did not answer one question, which service minute 353 had made much of, about how she spent her working hours. She said that she had found the archives in a dreadful state on taking over and explained what she had had to do to put things right. She complained of disgraceful working conditions and outdated office equipment. She hoped that the Secretary-General would agree to review her position and give her the promotion her work deserved.

6. In her answer to service minute 354 she said what she thought was needed to give effect to the Staff Regulations: a return to automatic 4 per cent increments in pay as prescribed in Article 3.1.1, a new scale of grades and steps, better prospects of promotion and "career advancement" and payment of compensation on dismissal. She commented that staff were worse off at the CIPEC than in other international organisations and in private firms: unlike other international civil servants General Service category staff at the CIPEC had to pay tax, and private firms granted benefits such as payment of a thirteenth or even a fourteenth month, profit-sharing, access to co-operatives and fare and holiday discounts.

7. The upshot of his inquiry was that by a circular of 1 December 1989 the Secretary-General informed the staff of arrangements for the voluntary termination of staff, who in return for agreeing to leave were to be offered half a month's salary for each year of service up to a maximum of four months.

8. By a letter of 22 December 1989 the complainant told the Secretary-General that she was not interested in the offer and that if she had her appointment terminated because of the structural reforms she wanted her entitlements to be determined solely by reference to the Staff Regulations.

9. The Secretary-General wrote her a letter on 24 January 1990 to say that her post as head of the library and archives section would be abolished at 1 March 1990 and to offer her four months' pay in compensation for dismissal. Another seven staff members were likewise dismissed at the same time. Service minute 360 of 29 January 1990 announced the new structure of the secretariat, the library and archives being merged to form a technical documentation centre.

10. On 9 February the complainant sent the Secretary-

General a letter seeking review of her dismissal and saying that if it was upheld she claimed a larger amount in compensation.

11. In a letter to her of 12 February the Secretary-

General explained things at some length. He spoke of the Council's financial crisis, the crushing expenditure on

staff, the limited usefulness of the library, her failure to give detailed information about what she was doing and her exorbitant claims to all kinds of benefits. As to the amount of her indemnity he pointed out that the CIPEC had taken the precaution of giving her health and unemployment coverage under French law, which would give her protection for a long while. For all those reasons he upheld the decision.

12. The complainant filed on 10 May 1990. Her principal claim is to the quashing of the decision to dismiss her and her subsidiary claim to a larger amount in damages for the material and moral injury the decision caused her. She claims costs.

13. The gist of her case is that her post was not really abolished; her duties were transferred to another staff member and, her post having become vacant, the Secretary-General was able to put on it someone he already had available. He failed to give her a hearing before dismissing her. The CIPEC made no efforts to find her another assignment before dismissing her. There was breach of the rules of the international civil service on notice and on compensation for dismissal.

14. The CIPEC retorts that the work of the unit the complainant was in charge of, insofar as it still exists, has been taken over without undue strain by someone else. The recruitment of a new secretary when the complainant left had nothing to do with her former duties. She was well aware of the need for restructuring. It was up to her to state her case to her supervisors and indeed it would have been easy in such a small organisation. Reassignment was out of the question when the staff were so few. She fared far better on dismissal than she would have under French law, and the relevance of that law cannot be gainsaid because she is a French citizen and had local status.

#### Receivability

15. The Council objects to receivability for the first time in its surrejoinder ("in limine litis", it says). Its argument is that the dismissal was decided on 24 January 1990: since the Staff Regulations do not provide for internal appeal the time limit for a complaint ran out, according to Article VII(2) of the Tribunal's Statute, ninety days after the date of notice of the dismissal and, not having filed until 10 May 1990, she is out of time.

16. This last-minute objection fails. For one thing, it is in bad faith to enter a new objection in the surrejoinder when the complainant may not reply.

17. But even if the Tribunal took the point proprio motu it would conclude that the complaint is receivable. Although, as Judgment 873 (in re Da) observed, the Staff Regulations provide no internal means of redress there was nothing to prevent the Council from following the common practice of international organisations and entertaining an appeal from her ex gratia. The usual form such appeal takes is a claim put to the decision-making authority. The complainant submitted such a claim before the expiry of ninety days from the date of the original decision and the Secretary-General's answer was to uphold that decision. So it is fair to take the ninety days as running from the date of confirmation and treat the complaint as filed in time.

#### The merits

18. One of the complainant's arguments is that the Secretary-General ought to have given her a hearing before he decided to dismiss her. The Tribunal holds that the Secretary-

General did fail in his duty to inform the complainant of his intention and to let her have her say before dismissing her. By virtue of their contractual relationship and the trust that therefore prevails between them, an organisation owes its employee a duty to declare its intention of dismissing him and to let him plead his case. The principle is asserted in Judgment 907 (in re Pereira da Cruz No. 2) under 4. Although the complainant presumably knew of the CIPEC's plight and the need for reform she was never told of the intention of dismissing her. What the Secretary-General said in service minutes 353 and 354 did not discharge the duty of giving each employee specific information on what was intended in his own case.

19. The decision to dismiss the complainant must therefore be set aside, and there is no need to take up her other pleas.

20. Since reinstatement appears out of the question an award of damages will be made under Article VIII of the Tribunal's Statute. A fair award will be the grant of eight months' pay, to be reckoned as set out in the letter of 24 January 1990, over and above the four months' severance pay already paid.

21. Since the complainant wins her case she is awarded 20,000 French francs in costs.

DECISION:

For the above reasons,

1. The Secretary-General's decision to dismiss the complainant is set aside but she is not reinstated.
2. The CIPEC shall pay the complainant the equivalent of eight months' pay, to be reckoned in the same way as the amount of severance pay she has already received.
3. It shall pay her 20,000 French francs in costs.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux  
Mella Carroll  
P. Pescatore  
A.B. Gardner