

SEVENTY-SIXTH SESSION

***In re* COE**

Judgment 1304

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Edward Coe against the World Tourism Organization (WTO) on 30 December 1992 and corrected on 21 January 1993, the WTO's reply of 30 March, the complainant's rejoinder of 6 July and the Organization's surrejoinder of 29 September 1993;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and WTO Staff Rule 29(4);

Having examined the written submissions and decided not to order hearings, 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 citizen of the United States born in 1944, was employed by the WTO under a "consultancy contract" as chief technical adviser to a project for tourism planning and training, in Mozambique. The project, which the United Nations Development Programme (UNDP) was funding, was based in Maputo, where the complainant reported for duty in October 1991. His contract was to run from 21 October 1991 to 31 October 1993 and either party might terminate it by giving three months' notice. The complainant's rights and obligations were expressly limited to the terms of the contract, which provided for the referral of any dispute to the Tribunal.

By a letter of 23 March 1992 the Deputy Secretary-General of the WTO asked the UNDP's Resident Representative in Maputo to report on the complainant's performance in the light of information from the Deputy Resident Representative that he had taken unauthorised leave. In his reply of 7 April the Resident Representative said that, although the complainant maintained he had been working at home and on the Mozambican island of Inhaca "talking to local small-scale entrepreneurs", his "counterparts" in the Ministry of Tourism had not seen him since mid-February and had "no idea what he does with his time".

In a telex of 2 April he had applied for leave from 10 April to 1 May. Having submitted to the Ministry on 6 April "a draft master plan" for the development of tourism in the country, he left Maputo on 8 April. In a telephone conversation from New Jersey on 10 April he told the WTO's technical cooperation officer for Africa at headquarters in Madrid that he was in the United States for medical treatment and would not be going back to Maputo until his health was better; he had left a copy of the draft plan to be picked up at Barajas airport in Madrid.

In a fax of 20 April the technical cooperation officer asked him to provide a copy of the master plan and for the quarterly progress report he was required to submit under the terms of his contract, and also to explain why he had left his duty station two days before the date he had applied for.

By a letter of 24 April 1992 the Secretary-General told the complainant of his suspension without pay as from 1 April 1992 "in conformity with rule 29.4 of WTO Staff Rules" pending investigation of charges of improper behaviour and called upon him to account for his unauthorised "absence from duty for several weeks" and to supply the draft master plan.

In a letter dated 30 April to the Resident Representative the national director for tourism recommended ending his contract as from 8 April 1992, and in a telex of 6 May to the Deputy Secretary-General of the WTO the Resident Representative agreed.

In a fax of 5 May to the technical cooperation officer at headquarters the complainant sought the reversal of the decision to suspend him on the grounds that it was in breach of contract; he explained why he had been away from the office and refuted the allegations of misconduct in the Secretary-General's letter of 24 April.

On 18 May the technical cooperation officer sent the complainant in Washington D.C. copies of recent correspondence about him and invited written comments. The correspondence alleged drunkenness, unruly behaviour, failure to meet deadlines and general unsuitability for the international civil service.

The complainant returned to Mozambique on 25 May. Charges of excessive and unsubstantiated claims to the refund of expenses were made against him at a meeting which the Resident Representative had on 3 June with him, national officials and the technical cooperation officer, who was in Maputo on mission at the time. In a fax of 10 June from Madrid the Chief of Personnel gave him until 13 June to send comments on the charges against him. Replying by a fax of 12 June, he said that, failing more specific requests for clarification, he believed his statement of 5 May answered most of the material points and that the Administration already had enough information to be able to lift the suspension.

On 16 June the Resident Representative published a notice in the national press of Mozambique stating that the complainant had ceased on 31 March to be adviser to the tourism development project and was "no longer a UNDP staff member" and that the Programme would not be responsible for any debts he might incur.

By a fax of 17 June the Chief of Personnel ordered the complainant to report to Madrid on 22 June 1992 or else face summary dismissal. In his reply of 18 June the complainant said that he would come if the Administration made proper travel arrangements for him and met his expenses. In a telex of 24 June the Resident Representative informed the Chief of Personnel that the complainant had refused to leave Maputo on the ticket for travel by air to Madrid which the UNDP had put at his disposal.

In a letter of 24 June 1992 the Secretary-General told the complainant that his misconduct warranted summary dismissal and he was terminated as from 8 April 1992 "without any notice or indemnity". On 6 August the Resident Representative and the government officials saw him and agreed that the UNDP should seek leave from the WTO to let him have 2,000 United States dollars and repatriate him. In a memorandum of 18 August to the Secretary-General he alleged breaches of his contract by the WTO and asked whether the Secretary-General wished to seek a settlement "in a cooperative spirit".

On 31 August the Deputy Resident Representative informed him that the Organization agreed to pay him the \$2,000 on condition that he acknowledged the termination of his contract with the WTO on 8 April 1992 and waived any further claims against the WTO or the UNDP. Having refused the offer in a memorandum of 4 September to the Resident Representative, the complainant left Maputo on 9 September. In a fax of 22 September the complainant again asked the Secretary-General whether he would settle. By a letter of 6 October 1992, the impugned decision, the Secretary-General confirmed the decision of 24 June to terminate the complainant's appointment on 8 April 1982.

B. The complainant submits that the impugned decision was in breach of his contract. If the WTO was dissatisfied with his services it had only to give him three months' notice; but there was no provision in his contract for summary dismissal with retroactive effect and without payment of repatriation benefit.

In any event the WTO has never cited any examples of misconduct or substantiated the Mozambican authorities' "false allegations", although he denied all of them promptly and invited the WTO to identify points on which it needed more information.

It also ignored his requests for information on how to fill in medical insurance claims and thereby deprived him of insurance benefits.

He claims the amount of his pay up to 30 September 1992, one month's salary and the cost of travel from Maputo to Washington as repatriation entitlements; the refund of the travel costs he has claimed, of the costs of transporting his personal effects to his home and of the expenses he incurred for telecommunications in April and May 1992; moral damages in an amount equivalent to six months' pay; assistance in processing his health insurance claims; a letter from the WTO retracting its charges of misconduct; and costs.

C. In its reply the WTO submits that the complaint is irreceivable. Although the complainant says he is challenging a decision of 6 October 1992 it merely confirmed the Secretary-General's decision of 24 June, which he had received on 29 June. That that was a final decision is plain from the fact that it contains the phrase "final decision" and gave him notice of summary dismissal. Since the time limit set in Article VII(2) of the Tribunal's Statute

accordingly ran out on 28 September 1992, he filed too late.

In subsidiary arguments on the merits the Organization contends that his summary dismissal shows no procedural flaws and was warranted. It disputes his account of the facts, correcting what it sees as inaccuracies and listing his "blatant omissions". In its submission the evidence shows that he was in dereliction of duty and discredited the Organization through his bouts of drunkenness, misbehaviour in public and piling up of debts.

The gravity of his misconduct makes it "pointless" to ask whether or not summary dismissal is at the Secretary-General's discretion. He confuses the issue by arguing that the WTO had only to give him three months' notice of termination: that is the "normal procedure" to be followed when the parties want to sever contractual relations "for personal reasons". But, his "repeated misdemeanours" having already put him "outside the contractual framework", the Secretary-General had a duty to get rid of him at once in the Organization's interests.

D. In his rejoinder the complainant contends that the decision to terminate his contract in the letter of 24 June was not final. The Organization kept on negotiating the terms of his departure throughout July and August. In late August it invited him to sign a document conceding that his contractual relations with it had ended on 8 April. So it still did not consider the decision to terminate his contract as final at that time. In keeping with his duty under Article VII(1) to exhaust the available means of resisting the decision he asked the Secretary-General in his fax of 22 September to say whether he would settle. What set off the time limit was the Secretary-General's letter of 6 October - which he got on 23 October - refusing to negotiate any further.

On the merits he points out that there was no clause in his contract nor, for that matter, any other provision in law that might empower the WTO to terminate his appointment retroactively and abandon him in Mozambique. Its charges of misconduct are not backed up by a shred of evidence anyway.

E. In its surrejoinder the Organization develops its earlier pleas. It denies that there was any negotiation or further examination of his case during the material period: all it discussed at the time were the debts he had run up. As to the absence of a provision governing dismissal the WTO says it would be "absurd to consider that consultants are governed solely by the terms of their contracts". As the case law bears out, the Secretary-General is empowered under general principles of law to terminate employment on the grounds of unsatisfactory service.

CONSIDERATIONS:

1. The complainant signed a contract of appointment as a consultant with the WTO in October 1991. It said that he was to be in charge of drawing up and carrying out a project for the development of tourism in Mozambique and that his appointment was to run from 21 October 1991 to 30 October 1993, though either party might terminate the contract before the date of expiry by giving three months' notice.

2. After several incidents which are described in A above the Secretary-General of the Organization decided on 24 April 1992 to suspend the complainant from duty in accordance with Rule 29.4 of the Staff Rules pending a detailed report from him about the charges against him and his "absence from duty for several weeks". The explanations he gave were found unsatisfactory, and on 24 June the Secretary-General wrote to him again stating the charges and saying in conclusion that there was "no alternative but to terminate [his] contract without any notice or indemnity, as from 8 April 1992, date of [his] effective cessation of work". After further correspondence the Secretary-General wrote him a letter of 6 October 1992 confirming the decision of 24 June. That is the letter he is now impugning.

3. The WTO submits that the complaint is irreceivable because the complainant has not filed it within the time limit in Article VII(2) of the Tribunal's Statute:

"To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned ..."

The Organization's case is that the decision to terminate the complainant's appointment was the one of 24 June 1992 and that his complaint, not being filed until 30 December 1992, was out of time.

4. In reply the complainant pleads Article VII(1) of the Statute, which says that a complaint shall not be receivable unless the impugned decision is a final one. In his submission the decision of 24 June 1992 was not to be treated as final, as is clear from the negotiations that took place from July to September 1992 between him and the

Organization to seek a settlement out of court of the dispute arising under his contract.

5. The complainant is wrong. He admits to having received the letter of 24 June 1992 on 29 June. It set out explicitly the background to the case, described the efforts the Organization had made to get information and explanations before reaching a "final decision" and concluded with the express decision to terminate his appointment without notice or payment of indemnity. The further action he took and any proposals that may have been made to him did not cause the Organization at any time to go back on the final decision which it had taken, and for which indeed it had stated solid grounds. So the material date is 29 June 1992, when he had notice of that final decision, and that is when the ninety days began. The decision of 6 October 1992 did no more than confirm the earlier one and set off no new time limit for his appeal. Since he filed his complaint out of time it is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda
E. Razafindralambo
Michel Gentot
A.B. Gardner