

EIGHTIETH SESSION

In re GILL

Judgment 1480

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Nirmal Gill against the United Nations Industrial Development Organization (UNIDO) on 8 April 1994 and corrected on 14 February 1995, UNIDO's reply of 1 June, the complainant's rejoinder of 12 July and the Organization's surrejoinder of 4 October 1995;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

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, who was born in 1952, joined UNIDO in April 1980 as a shorthand typist at grade G.4. In June 1983 she resigned for personal reasons. On 29 October 1991 she returned to the Organization on a short-term appointment. It assigned her as a secretary at grade G.5 to the Industrial Operations Support Division of the Department of Industrial Operations. On 25 March 1992 it granted her a fixed-term appointment at grade G.4, which it renewed several times, the last time until 31 December 1993. In June 1992 it transferred her to the Industrial Operations Technology Division.

On 15 July 1993 the Director of the Technology Division told her, it seems, that the Division was unable to keep her on. In a memorandum of the same date to a personnel officer the complainant said that she would resign on 31 August 1993. By a memorandum of 21 July 1993 she withdrew her resignation on the grounds that the circumstances that had prompted it had changed.

On 4 November the chief of the Personnel Administration Section spoke to her about claims from people who had lent her money. According to her own record of their meeting in a memorandum of 8 November he said that she "had abused the confidence of the Organization" and that her appointment would expire at 31 December 1993.

By a memorandum of 11 November 1993 she told the Director-General of her plight and asked him to see her and to intercede.

In a letter of 17 November to the chief of Personnel Administration the head of the Staff Administration Section of the International Atomic Energy Agency (IAEA), which had formerly employed her, said that the Agency was trying to recover a debt from her, and asked for UNIDO's help.

On 24 November a personnel officer saw her and warned that her appointment would expire at 31 December 1993. She challenges the implied rejection of what she calls her "complaint" in her memorandum of 11 November 1993 to the Director-General.

B. The complainant submits that the decision not to renew her appointment is unlawful because UNIDO stated no reasons for it. The allegations that prompted the interview of 4 November 1993 were false and afford no proper grounds for the decision. And if the Administration intended to make use of the IAEA's letter of 17 November 1993 it should have followed the right procedure.

She asserts that the Director of the Technology Division promised her orally that her appointment would run into 1994.

She contends that the Organization plotted to get rid of her because it could not rely on staff retrenchment or the quality of her own performance as reasons for its decision.

She asks the Tribunal to quash the decision not to renew her appointment and to award her damages consisting of compensation for breach of promise in an amount equivalent to what her pay would have been for 1994, 1 million

United States dollars for injury to reputation and another \$1 million for material and moral damages. She seeks \$5,000 in costs.

C. The Organization replies that the complaint is irreceivable. For one thing, there was no challengeable administrative decision on 4 November 1993, when the complainant saw the chief of Personnel Administration: not until 24 November was she told that her appointment would not be renewed. Besides, she failed to exhaust the internal means of redress. Her memorandum of 11 November to the Director-General was not an appeal within the meaning of Staff Rule 112.02, just a request for an interview with the Director-General.

On the merits the Organization denies terminating her appointment, which it says simply expired in accordance with Staff Rule 110.05. According to Rule 103.10 a fixed-term appointment, such as she held, carries no expectancy of renewal or of conversion to another type of appointment.

Besides, the Director-General may exercise discretion over renewal. The reason for the decision not to renew the complainant's contract was her conduct, which fell short of the standards expected of an international civil servant.

D. In her rejoinder the complainant presses her pleas. She denies that her conduct fell short and submits that UNIDO judged it solely on the strength of her debts. Yet her indebtedness did not impair her ability to work.

E. In its surrejoinder UNIDO maintains that her complaint is irreceivable and in any event devoid of merit. Having received claims from no fewer than a dozen of her creditors, it had "objective" reasons for not extending her appointment.

CONSIDERATIONS:

1. The complainant first worked for UNIDO from 1980 until 1983. She entered its service again in October 1991 as a secretary at grade G.5. Her fixed-term appointment expired on 31 December 1993; she is challenging the Organization's decision not to renew her appointment beyond that date, and her claims are as set out in B above.

2. There is dispute over the date at which the Organization took that decision. The complainant states that it was taken by the chief of the Personnel Administration Section at a meeting with her. The purpose of the meeting was to discuss her indebtedness to colleagues and others. She alleges that when she refused to say what she had done with an advance of salary the chief's answer was: "It's goodbye then". For its part UNIDO maintains that according to him any conclusions she has drawn from their meeting are quite unrelated to what was said. The Organization further submits that according to a "note for the record" dated 24 November 1993 a personnel officer had told her orally on that day that "she would receive a final certificate clearance within the next few days, as her appointment would be allowed to expire on 31 December 1993".

3. The reason put forward by the Organization for its decision is that the complainant's indebtedness was causing problems for staff from whom she had borrowed money and for her supervisors, who were being approached by people and institutions to whom she owed debts, and that her behaviour thus fell short of the standards expected of an international civil servant. The Organization cites what the Tribunal said in Judgment 53 (in re Wakley):

"... defaulting on financial obligations and incurring debts beyond the debtor's capacity to repay within a normal period are incompatible with the standards of conduct required of an international civil servant and ... likely to bring the Organisation and its officials into public disrepute."

The complainant admits that she had incurred private debts and that there had been trouble over them as early as 1992. For its part the Organization took the quite proper view that, though it would not become involved in personal affairs, it expected a staff member to honour any financial obligations and would act if standards of conduct were such as to impair its own demonstrable interests or discredit it and its officials.

4. In a memorandum of 11 November 1993 to the Director-General she wrote:

"On 4 November 1993 the Chief of Personnel Administration ... summoned me to her office and on a matter concerning my personal affairs, she levelled unsubstantiated allegations against me, interrogated me, and then informed me that my employment with UNIDO is being terminated effective December 1993.

Even as late as 8 November no official justification was provided in support of the actions taken against me.

In the absence of documentary evidence and in breach of contractual obligations it would appear that the decision to terminate my services was motivated by malafide intentions."

She went on:

"I hope that you will consider what I believe is an unusual situation that unfortunately will require your personal intervention, and I would like to meet with you at your earliest convenience to discuss the matter."

5. She contends that since the Director-General did not reply to that memorandum she may come to the Tribunal in accordance with Staff Rule 112.02(b)(ii). Rule 112.02 reads:

"(a) A serving or former staff member who wishes to appeal an administrative decision under the terms of regulation 12.1, shall, as a first step, address a letter to the Director-General, requesting that the administrative decision be reviewed. Such a letter must be sent within 60 days from the date the staff member received notification of the decision in writing.

(b)(i) ...

(ii) If no reply has been received from the Director-General within 60 days from the date the letter was sent to the Director-General, the staff member may, within the following 30 days, submit his or her written appeal against the original administrative decision to the Secretary of the Joint Appeals Board; alternatively, the staff member may, within the following 90 days, apply directly to the Administrative Tribunal of the International Labour Organisation in accordance with the provisions of its Statute."

6. In several respects the complainant has failed to follow the correct procedure. Though her memorandum of 11 November 1993 spoke of termination, the Organization never took any decision to terminate her appointment: its decision was simply not to renew her contract on expiry at the end of 1993. Nor did she make any request in that memorandum for review of a final administrative decision: she merely sought a meeting with the Director-General. Actually no administrative decision was notified to her on 4 November 1993. The decision not to renew her contract was not notified to her until 24 November, and it was the only decision the Organization took in respect of her contract. Having made no challenge to it, she has failed to exhaust the means of redress available to her under the Staff Rules, and her complaint is therefore irreceivable under Article VII(1) of the Tribunal's Statute insofar as she is challenging the decision not to renew her appointment.

7. By July 1993 the complainant's debts to other staff had made for a situation at work in which Personnel Administration felt it had to intervene. By a memorandum of the fifteenth of that month to a personnel officer she tendered her resignation at 31 August 1993 and she alleges that, though she withdrew it in a memorandum of 21 July to the personnel officer, she did so only on the strength of an oral promise by the Director of the Industrial Operations Technology Division to see that her "contract was renewed till the end of 1994". The Organization denies that there was any such promise.

8. The complainant's memoranda of 15 and 21 July do not support her plea. In tendering her resignation she stated:

"Due to personal reasons, it will not be possible for me to continue working for UNIDO beyond 31 August 1993."

In withdrawing her resignation she explained:

"There has been a reversal of my personal circumstances since [15 July], and I shall now be able to adhere to the original period of employment, i.e. till 31 December 1993."

She said nothing of any possibility or prospect of employment beyond 31 December 1993; indeed the language of the memorandum of 21 July is quite inconsistent with her having received the promise she alleges of employment up to the end of 1994. Her plea fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Mark Fernando, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

William Douglas
Mark Fernando
Julio Barberis
A.B. Gardner

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