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

NINETY-SEVENTH SESSION

Judgment No. 2368

The Administrative Tribunal,

Considering the complaint filed by Ms A. H. against the United Nations Industrial Development Organization (UNIDO) on 16 May 2003, UNIDO's reply of 8 September, the complainant's rejoinder of 14 October 2003, and the Organization's surrejoinder of 22 January 2004;

Considering the complaint filed by Mrs S. P. against UNIDO on 28 May 2003 and corrected on 27 June, UNIDO's reply of 8 October, the complainant's rejoinder of 18 November 2003, and the Organization's surrejoinder of 23 February 2004;

Considering the complaint filed by Mrs B. P. against UNIDO on 14 October 2003, UNIDO's reply of 3 February 2004, and the complainant's letter of 10 March 2004 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

Considering the complaint filed by Mrs C. T. against UNIDO on 28 May 2003 and corrected on 30 June, UNIDO's reply of 8 October, and the complainant's letter of 12 November 2003 informing the Registrar that she did not wish to file a rejoinder;

Considering the complaint filed by Mrs E. W. against UNIDO on 27 May 2003 and corrected on 27 June, UNIDO's reply of 8 October, the complainant's rejoinder of 2 December 2003, and the Organization's surrejoinder of 16 March 2004;

Considering the complaint filed by Mr H. W. against UNIDO on 27 May 2003 and corrected on 30 June, UNIDO's reply of 13 October, the complainant's rejoinder of 21 November 2003, and the Organization's surrejoinder of 25 February 2004;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The complainants are all former General Services staff members of UNIDO, having participated in a staff reduction programme in 1998. The terms and conditions of this voluntary separation programme were set out in Director-General's Bulletin UNIDO/DGB(M).78 of 9 January 1998. Relevant to the complaints are paragraphs 10 and 24, which read in part as follows:

"10. For staff members in the General Service category, either the termination indemnity or the end-of-service-allowance, whichever is greater, will be paid in accordance with the provisions contained in appendix B to the Staff Rules, End-of-service allowance, paragraph (a)(vi).

[…]

24. […] Voluntary separations, including early retirement, will take the form of an agreed termination within the meaning of staff regulation 10.3 (b). Staff members whose application for voluntary separation has been accepted by the Director-General will be required to sign a letter of agreed termination; this means that they will be required to sign a written undertaking not to contest either the separation from service or the terms of the separation package. Once an agreed termination has been concluded between the Organization and the staff member, neither

the separation itself nor the conditions agreed upon are subject to revision."

The complainants all signed individual letters in February 1998 agreeing to their termination of appointment under the conditions specified in the letter. As from 1 March they were placed on special leave without pay for varying lengths, at the end of which they officially separated from service. On various dates between 30 March 1999 and 8 February 2000 they each wrote to the Director *ad interim* of UNIDO's Human Resource Management Branch claiming payment of an end-of-service allowance (EOSA) to which, they said, they were entitled. The Director *ad interim* replied in the first week of July 1999 to five of the complainants that their requests were under review. On 13 August 1999 the Officer-in-Charge of the Field Operations and Administrative Division informed these five complainants that after having looked into the matter it had been determined that each had "been paid completely and in accordance with the terms of the Voluntary Separation Agreement". He added that their termination indemnity had exceeded the EOSA. Drawing their attention to Staff Rule 110.07(c), he said that the Organization had fulfilled the financial conditions set out in the Agreement and no further payment was due. For the sixth complainant, who had claimed her EOSA in February 2000, a similar exchange of correspondence took place.

In September and October 1999 the five complainants wrote to the Director-General, requesting him to reconsider the decision not to pay them an EOSA. The Director *ad interim* replied on the Director-General's behalf in letters sent in November and December 1999 that there were no grounds for paying the EOSA in addition to the termination indemnity. The sixth complainant wrote to the Director-General on 14 April 2000 and she received a similar reply dated 1 June 2000.

The complainants filed appeals with the Joint Appeals Board in January, February and July 2000. The Board issued reports on these appeals in January, February and June 2003. In each it recommended rejecting the appeal. The Director-General did so in memoranda of 24 February 2003 to five of the complainants and a memorandum of 9 July 2003 to the sixth. These are the impugned decisions.

B. The complainants contend that the termination agreement made between them and UNIDO is a "contract" setting forth the duties and obligations; it dealt exclusively with the termination of their appointment and not with their entitlement to an EOSA. It should be interpreted in the light of well-established principles of contract law. They add that Appendix B(a)(ii) of the Staff Rules entitles them to an EOSA.

The "contract" then signed in February 1998 terminated their appointments and informed them of the benefits they would receive. However, it was at the end of their special leave without pay, when they were officially separated from service on early retirement, that they became entitled to an EOSA. Under Staff Rule 106.10 they had one year from that point to claim the allowance. In any event, the "contract" and the Staff Rules are ambiguous on the issue, and therefore must be interpreted *contra proferentem*.

They argue that both a termination indemnity and an EOSA were awarded in a previous voluntary separation programme, and that this has set a precedent applicable to the voluntary separation programme in which they participated. They invoke Judgment No. 766 from the United Nations Administrative Tribunal to support this argument. According to them, the methodology used to calculate the EOSA is questionable. Also, the three-year delay in completing the internal appeal procedure was inexcusably slow and this is "per se negligence".

They request the Tribunal to order UNIDO to pay them the EOSA with retroactive effect and with interest. They each claim moral damages for the "egregious delay" and "wrongful denial" of their EOSA, as well as costs. Five of the complainants also claim compensation for "UNIDO's negligence for the delay" in deciding the appeals.

C. In all six replies UNIDO requests a joinder of the complaints since each one is based on the same set of facts and the complainants have put forth essentially the same pleas and claims for relief.

The Organization states that the complainants failed to exhaust their internal remedies within the time limit. Instead, they contested correspondence which had merely clarified the situation but did not constitute an administrative decision. This correspondence cannot set new time limits to justify "a 23-month late appeal". Furthermore, the one-year time limit for claiming an EOSA applies only when the staff member is entitled to a payment by the Organization, but since the complainants were not entitled to the EOSA, their appeals should have been filed within 60 days of signing the agreed termination letter.

It submits that when each of the complainants signed their termination agreement, they expressly undertook not to

contest or appeal it or to seek payments not specified in the letter. This waiver constituted one of the conditions of the voluntary separation programme. It recalls the Tribunal's case law recognising when rights can be waived. In any event, the complainants' interpretation of the letter of agreed termination is not supported by law. It points out that both the Director-General's Bulletin and the agreed termination letter "stated in unambiguous and intelligible terms" the condition that by agreeing to the voluntary separation the beneficiary relinquished the right either to appeal against the agreement or to seek any form of compensation other than that specified in the letter. The complainants were well aware that under the programme they would be entitled to either a termination indemnity or an EOSA. The letters they signed made reference to the conditions set out in the Bulletin. Furthermore, the staff at large was given complete information on the conditions governing the programme. The Organization contends that the text of all relevant documents is clear and comprehensible; it denies that they might be considered ambiguous.

The complainants have drawn wrong conclusions as to the effect the special leave without pay had on their entitlements upon separation from service. This status did not entitle them to an EOSA in addition to the termination indemnity. It rebuts the complainants' plea that based on precedent they are entitled to both the termination indemnity and the EOSA and it says that in putting forth their argument the complainants have relied on a case decided by the United Nations Administrative Tribunal; that judgment is not binding here.

UNIDO provides the calculations made concerning each of the complainants' entitlements. It points out that in each instance the termination indemnity was greater than the EOSA, therefore the Organization was correct to pay the termination indemnity.

Lastly, it says that the complainants' claim for damages for alleged negligence in deciding the appeals should be rejected. The complainants themselves took almost 20 months to reply to the statement on behalf of the Director-General, thus contributing themselves to the delay. It asks the Tribunal to reject the claim for moral damages.

D. In the rejoinders filed by four of the six complainants they expand on their argument that the agreement they each signed constitutes a "contract", consisting of an offer and acceptance, and governing only the termination of their appointments. It contained only one single reference to the Director-General's Bulletin and this was not expressly incorporated into the letter; thus it is not part of the "contract". If the Administration wanted to make the "contract" subject to all 38 paragraphs of the Bulletin plus its two appendices, it should have so expressly stated. As there is not a single reference to the EOSA in the agreed termination letter, the latter does not limit their entitlement to it. They contend that they have not renounced their right of appeal insofar as the EOSA is concerned.

E. In its four surrejoinders UNIDO states that the complainants' contention that they did not renounce their right of appeal by signing the agreed termination, is untenable. It submits that the complainants' rights were not curtailed by either the voluntary separation programme or the agreed termination letter. The Organization maintains that it carried out a programme of voluntary separation "for which a legal framework was established in accordance with the regulations, rules, principles of international civil service and the guidelines adopted by the governing bodies of UNIDO". The Director-General's Bulletin expressly indicated that it set out the conditions applicable to the voluntary separation programme. The complainants agreed to these conditions by signing the agreed termination letter.

CONSIDERATIONS

1. In January 1998 UNIDO introduced a voluntary separation programme for staff aged 55 and above with 25 or more years of contributory service to the United Nations Joint Staff Pension Fund, as well as for staff members reaching mandatory retirement age during the biennium 1998-99. Director-General's Bulletin UNIDO/DGB(M).78, dated 9 January 1998, determined the financial arrangements offered to staff members wishing to avail themselves of the programme, and provided that some staff members, whose position was such that it was in their interest to top up their pension rights might be granted special leave without pay for a certain period. It also set out the procedure according to which the agreement would be concluded between the Organization and the staff members concerned and specified that staff members whose application for voluntary separation had been accepted would be required to sign a letter by which they undertook not to contest either the separation from service or the terms of the separation package.

2. Six staff members in the General Services category, who had asked to participate in the programme, were

informed, in personal letters dated either 13, 16, 17 or 20 February 1998, that their application had been accepted. The applicants were all told that they would receive in addition to a termination indemnity amounting to 12 months' gross salary, an additional termination indemnity consisting of 50 per cent of the initial termination indemnity and three months' salary in lieu of notice; they were also allowed a variable period of special leave without pay. These individual letters also contained the following provision regarding the period of special leave without pay:

"The Organization will not assume any obligations, financial or otherwise, during the period of special leave without pay […], other than those specified in this letter. It has no further obligations, financial or otherwise, relating to your separation from service."

The recipients of the letters were to indicate their agreement with these terms by signing the following statement:

"I confirm my agreement to the termination of my permanent appointment in accordance with Staff Regulation 10.3(b) under the conditions specified in this letter. I further undertake not to contest or appeal the termination of my appointment nor to seek any other form of compensation in relation to the termination of my appointment other than the payments specified in this letter."

3. Between March 1999 and February 2000, the complainants asked to be paid an EOSA in accordance with appendix B to the Staff Rules. They were informed in reply that, according to Staff Rule 110.07(c), they were not entitled to both the EOSA and the termination indemnity, that the Organization had fulfilled the financial conditions set out in the Director-General's Bulletin and in the letters signed by the complainants, and that UNIDO had no further financial obligation towards them. The complainants filed appeals in January, February and July 2000 with the Joint Appeals Board, which, three years later, recommended rejecting them. The Board found that the Organization had complied with the provisions of Staff Rule 110.07(c) and that the complainants were not entitled to the EOSA.

4. By five decisions of 24 February 2003 and one of 9 July 2003, the Director-General rejected the appeals, endorsing the Board's recommendations. The complainants ask the Tribunal to grant them compensation, in complaints which shall be joined as requested by the defendant.

5. They argue that the letter they signed, which is a form of contract, contains no mention of the EOSA and therefore does not affect their rights under the relevant provisions of the Staff Regulations and Rules, whereby, according to them, staff members in the General Services category are entitled to an EOSA upon separation from service. They refer in particular to Judgment No. 766 of the United Nations Administrative Tribunal, in which it was held that since the EOSA and the termination indemnity served different purposes, staff members could be entitled to both.

6. In reply, the defendant raises several objections to receivability and submits, on the merits, that in accordance with the provisions of Staff Rule 110.07(c), as referred to in the Director-General's Bulletin, staff members could not be entitled to both the EOSA and the termination indemnity, the EOSA being due only if its amount was greater than that of the termination indemnity.

7. The wording of the Bulletin, which lays down the rules applicable to the voluntary separation programme, to which the complainants necessarily agreed, leaves no doubt, as pointed out by the Joint Appeals Board, that the defendant's position is well-founded. The conditions set out in the letters of February 1998 signed by the complainants are perfectly clear, explaining that their voluntary separation from service was authorised under the programme established in the Director-General's Bulletin UNIDO/DGB(M).78 and in accordance with the financial terms specified in the said letters, and that the Organization had no obligations regarding their separation from service other than those stipulated in the letters. In paragraph 10 of the Bulletin, it is stated that: "For staff members in the General Service category, either the termination indemnity or the end-of-service-allowance, whichever is greater, will be paid in accordance with the provisions contained in appendix B to the Staff Rules, End-of-service allowance, paragraph (a)(vi)", which confirms that the two payments mentioned in Staff Rule 110.07 cannot be paid cumulatively. Furthermore, as the defendant points out in its main argument, each complainant expressly waived his/her right to appeal the separation from service or to seek any form of compensation other than the payments specified in the letter of agreed termination. In view of that waiver, the complainants could not contest an overall financial settlement which, regardless of the date at which they actually ceased to belong to the Organization's staff, did not allow them to claim any further indemnity. The Tribunal finds

no misrepresentation on the part of the Organization and considers that the terms of the Director-General's Bulletin and of the letters signed by the complainants – which have acquired contractual status – were clear. It therefore rejects the complainants' claims aiming for the impugned decisions to be set aside.

8. The length of the appeal procedure is undoubtedly regrettable, but it did not, in the circumstances of this case, cause any injury warranting compensation for the complainants. Their claims for compensation and costs must therefore be rejected.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 14 May 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2004.