

In re ALMINI

Judgment No. 306

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) drawn up by Mr. Canzio Almini on 10 May 1976 and brought into conformity with the Rules of Court on 22 June 1976, the Centre's reply of 5 August 1976, the complainant's rejoinder of 29 October 1976, the Centre's surrejoinder of 24 January 1977, the complainant's communication of 5 March 1977 and the Centre's communication of 21 March 1977;

Considering Article II, paragraph 1, and Article VII of the Statute of the Tribunal, and Articles 2.3, 3.3, 7.4, 11.1 and 12.1 of the Staff Regulations of the Centre;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the Centre on 15 July 1979 as Chief of Personnel on a renewable one-year appointment. On 5 June 1975 the Acting Director of the Centre expressed dissatisfaction with his performance and on 19 June told him that the Centre could not keep him on as Chief of Personnel and would not extend his appointment, but would be willing to employ him in some other post if a suitable one could be found. On 25 June 1975 the complainant received confirmation of non-renewal of his appointment and an offer of an appointment of not more than four months from 1 October 1975 to carry out assignments within his competence of which "the specifications ... are to be established not later than 30 September 1975". He might withdraw from the contract if he found other employment before 30 September. The complainant did not get in touch with the Centre before that date. On 23 November, however, he told the Acting Director that he was still free to work at the Centre since he had failed in October to find employment. By letter of 16 December he told the Acting Director that under Article 12.1 of the Staff Regulations he was asking for withdrawal of the decision not to extend his appointment. By minute of 5 February 1976 the Acting Director, answering the complainant's letters of 23 November and 16 December 1975, dismissed his claim and told him that no post matching his qualifications was available. The complainant received that minute on 9 February 1976 and filed a complaint on 10 May 1976.

B. The complainant takes the view that the decision of 25 June 1975, upheld on 5 February 1976, should be quashed as being tainted with formal and procedural irregularity, abuse of authority and error of law. He contends that it was neither adequately substantiated, nor preceded by disciplinary proceedings, nor based on an annual report; that it was "at variance with the Acting Director's attitude" and "a breach of good faith"; that it disregarded the "criteria which afford the basis for any impartial assessment", as well as the general standards of the complainant's performance and the fact that his appointment had been "expressly stated to be renewable"; and that it was out of proportion to the faults attributed to him.

C. In his claims for relief the complainant asks the Tribunal: (a) to quash the Acting Director's decisions of 25 June 1975 and 5 February 1976; (b) to order the complainant's reinstatement; (c) to order the Centre to pay him damages amounting to three months' salary and allowances; and (d) to order the Centre to pay him the sums he would have received "had he remained on the staff for one year" and "to pay the Pension Fund (INPS) contributions". In his rejoinder he further asks the Tribunal to order "removal from his personnel dossier at the Centre" of the minute of 25 June 1975 which the Centre mentions in its reply. In its communication of 5 March 1977 he finally withdraws his third claim ((c) above).

D. In its reply the Centre argues, with reference to Article VII of the Statute of the Tribunal, that, since the complaint impugns a decision notified on 9 February 1976 but was not filed until 10 May it is time-barred and therefore irreceivable. Should the Tribunal take a different view, however, at least the claim for relief in paragraph C(c) above is in any event irreceivable because the complainant failed to exhaust the internal means of redress: that

claim did not form part of the appeal of 16 December 1975 and the Centre took no final decision on it. The Centre concedes, however, that his subsidiary claim for damages is receivable "in so far as it replaces his claim for reinstatement". As to the merits, the Centre argues that, having been taken by the Acting Director, the decision not to extend the complainant's appointment was certainly taken by the competent authority; that it is not tainted with any formal or procedural irregularity; that it reveals errors neither of law nor of fact; that there was no abuse of authority; and that no clearly mistaken conclusions were drawn from the dossier.

H. Since in the Centre's view the decision is tainted with none of the flaws which entitles the Tribunal to review decisions of that kind, the Centre asks the Tribunal (a) to declare the complaint irreceivable; (b) subsidiarily, and in any event, to declare the complaint irreceivable in so far as the complainant claims damages over and above reinstatement, on the grounds that no such claim was made in the internal proceedings; and (c) further subsidiarily, to dismiss the complaint.

CONSIDERATIONS:

As to the receivability of the complaint:

According to Article VII of the Statute of the Tribunal a complaint shall not be receivable unless it was filed within ninety days after the decision impugned was notified to the complainant, that decision is final and the internal means of resisting it have been exhausted.

It appears from the documents in the dossier that the decision impugned by the complainant was notified to him on 9 February 1976. The ninety-day time limit expired on 9 May 1976. But 9 May was a Sunday and the complaint, having been registered by the Registrar on 10 May, is receivable.

As to the lawfulness of the impugned decision of 25 June 1975:

On leaving the International Centre for Advanced Technical and Vocational Training in Turin its former Director, on 30 August 1974, made the following report on the complainant: "I have been highly satisfied with Mr. Almini's performance. His work was fairly novel for him, but he has shown all the qualities I was looking for - competence, tact, good humour, understanding of human situations and problems, and loyalty to the Centre. I congratulate him on his first, very promising year, thank him for his services and offer him best wishes for his future career".

On 25 June 1975 the Acting Director of the Centre wrote to the complainant: "This confirms the information I have given you in several meetings earlier this month that I am unable to extend your contract beyond its present expiry date of July 31, 1975."

What makes it all the harder to account for such a difference in assessment within the space of ten months is that there is not a single document in the dossier which reveals the true reasons and no particular fact which explains why the assessment of the complainant was so utterly different.

The representative of the Director of the Turin Centre contends: "In this case the reason for the decision not to renew the appointment is that the Acting Director felt that his Chief of Personnel was unfit for his post, had too low an output and let matters drift so that problems arose in relations with the staff". But that explanation of the impugned decision is belated and amounts to mere allegations which are not borne out by any document in the dossier.

Hence, although the impugned decision cannot be said to have been taken for reasons contrary to the interests of the Centre, it is clear at least that the decision drew clearly mistaken conclusions from the facts and should therefore be quashed.

DECISION:

For the above reasons,

1. The decision dated 25 June 1975 of the Director of the International Centre for Advanced Technical and Vocational Training in Turin and the confirmatory decision of 5 February 1976 are quashed.
2. Mr. Almini is reinstated in his former post in the Centre. Should reinstatement prove impossible or undesirable

in the view of one or other of the parties, the Centre shall pay Mr. Almini a sum equivalent to one year's salary and the contributions to the pension fund for the same period, plus interest on those sums at 8 per cent a year from 10 May 1976, the date on which the complaint was lodged.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet