

FORTIETH ORDINARY SESSION

***In re* CUVILLIER**

Judgment No. 333

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Mrs. Rolande Cuvillier on 12 April 1977 and postmarked 18 April, the ILO's reply of 26 August, the complainant's rejoinder of 25 November, the ILO's surrejoinder of 30 January and the complainant's communication of 14 April 1978 applying for adjournment;

Considering Article II, paragraph 1, and Article VII, paragraph 1, of the Statute of the Tribunal, Articles 13.1 and 13.2 of the Staff Regulations of the International Labour Office and the other relevant texts, particularly administrative circular No. 105/6 of 31 December 1974;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. After working for the United Nations in New York the complainant joined the staff of the International Labour Office in 1959 at grade P.3. She worked in turn as translator, editor, in the Employment Policy Branch and in the Policy Reports Branch and then, in 1969, was promoted to P.4 and transferred to the Non-Manual Workers Unit.

B. In 1974 the Office introduced a new system of grading Professional category posts (P.1 to D.1). A grading survey was completed at the end of that year and on 31 December the complainant was told that her post would continue to be graded P.4. On the same day the staff was informed by administrative circular No. 105/6 that an appeals procedure was to be established - details of which were given - and a "Professional Grading Appeals Committee" set up, to which an appeal would lie against the grade given to a post as a result of the survey. On 13 January 1975 the complainant appealed to the Committee against the decision that her post should continue to be P.4.

C. On 23 January 1975 she herself was appointed chairman of the Appeals Committee. She asked whether it was proper for her to be chairman when she had herself lodged an appeal, and was told that it was. Her appeal was therefore forwarded with all the others to a body of which she herself was chairman. The Committee heard her own appeal in the autumn of 1975. She of course did not attend but she was represented at the hearing by her immediate supervisor. After hearing her case the Committee made a recommendation to the Director-General on the grading of her post, but she says that she was told nothing of the Committee's findings or conclusions.

D. For reasons which have no bearing on the complaint the members of the Committee resigned in November 1975. On 23 March 1976, and again on 23 April, the complainant asked the Director-General to take a decision on the Committee's recommendation. The Director-General answered on 4 May 1976 that he had decided to hold over his decision on all the cases on which he had not received the Appeals Committee's reports until after its members had resigned. The staff was informed by an administrative circular of 12 July 1976 that a new Appeals Committee had been formed. The Director-General then referred to the new Committee the cases on which he had not yet taken a final decision. The Committee recommended confirming the grade of the complainant's post at P.4. The Director-General endorsed the recommendation and notified his decision to her on 16 November. On 14 December she asked to see the text of the Committee's final recommendation. Her request was refused and she was given only the reasons for the Director-General's decision. On 12 January 1977 she wrote to the Director-General asking him, among other things, whether the decision to confirm her post at grade P.4 was final. In a letter which she received on 27 January the Director-General confirmed that it was. She then lodged her complaint.

E. The complainant takes the view that the Director-General's decision is improper in that it disregarded the provisions of administrative circular No. 105/6 of 31 December 1974 - which in her view has undoubtedly the force

of rules - first, because the Appeals Committee studied her case twice - something the circular does not provide for - and, secondly, because it did not give her a hearing before making its recommendation to the Director-General. The ILO was also wrong to refuse the request she made on 14 December 1976 and 10 January 1977 for notification of the Appeals Committee's recommendations.

F. In her claims for relief the complainant asks the Tribunal to quash the Director-General's decision received by her on 27 January 1977 and to order the notification of the two recommendations made by the Appeals Committee on her appeal. In her rejoinder she admits that the latter claim serves little purpose since in its reply the ILO reveals that the Appeals Committee's first recommendation was that the Director-General should upgrade her post to P.5. Lastly, she asks for payment of costs amounting to 8,000 Swiss francs.

G. The ILO maintains that the Director-General's letter of 27 January 1977 did not contain any decision since it merely confirmed that the decision notified to the complainant on 16 November 1976 was indeed final. The period of ninety days laid down in Article VII of the Statute of the Tribunal therefore started to run on 16 November 1976, and expired in mid-February, and so her complaint, which is dated 12 April 1977, is irreceivable. The main purpose of the complaint is to have The Director-General's decision quashed on the grounds that her case was heard twice. The ILO believes that the grounds of complaint are "quite ambiguous and notional, and it is difficult to see how she can have suffered prejudice on account of the 'double hearing' which she believes to be a flaw in the Director-General's decision". The claim for communication of the Appeals Committee's two reports is irreceivable because she failed to exhaust the internal means of redress available to her under Articles 13.1 and 13.2 of the Staff Regulations. The Director-General grades a post on the Appeals Committee's recommendation and his decision cannot be referred to any other internal appeals body. But a distinction may be drawn between matters of evaluation and elements of the procedure and of the decision which do not actually turn on matters of evaluation - for example the decision not to communicate the Committee's reports, which is quite separate from the actual evaluation of the post and is a measure which can be distinguished from such evaluation. As to such elements she should have exhausted the internal means of redress. But she did not. As to the lawfulness of the decision, the ILO says that there was no "double hearing" as the complainant contends. The possibility of sending a recommendation back to the Committee for further consideration is "implicit in the texts in force and in the very nature of the Committee's advisory function". The complainant's allegation that she was denied her right to a hearing is based on a mistaken notion that the Appeals Committee carried out a second full review of her appeal; in fact it merely "resumed consideration of the grading". "It is therefore quite plain", concludes the ILO, "that the Director-General's decision did not disregard the relevant rules and indeed showed his desire for fully objective and coherent application of the grading criteria. He would have been quite entitled to set aside the Committee's first recommendation had he thought it unfounded, and clearly he cannot be taken to task for having decided instead to refer back to the Committee itself the moot points that recommendation had raised. If his final decision did not take proper account of the complainant's actual duties and was therefore a misapplication of the grading criteria, it was open to her to prove it by contesting the grounds for the decision."

H. The ILO asks the Tribunal (a) to declare the claim for the quashing of the Director-General's decision time-barred and therefore irreceivable, and in any case pointless; or subsidiarily, to dismiss it outright as unfounded; (b) to declare the complainant's claim for notification of the Appeals Committee's reports irreceivable on the ground that she failed to exhaust the internal means of redress; and (c) accordingly to make her no award for costs.

CONSIDERATIONS:

As to the application for adjournment:

The complainant has applied for postponement of consideration of the case. Her application is not based on any relevant grounds and is disallowed.

As to whether the complaint is time-barred:

1. The decision not to upgrade the complainant's P.4 post was notified to her on 16 November 1976. On 12 January 1977, i.e. within the time limit for disputed claims, she appealed to the Director-General affording grounds for her appeal. The Director-General dismissed her appeal by a letter of 27 January, which was not merely confirmatory.

The complaint impugning that decision was registered by the Registrar of the Tribunal on 19 April 1977, was filed within the time limit and is therefore receivable.

As to whether the decision of 7 January 1977 was regular:

There being no need to consider the complainant's other pleas.

2. A staff circular of 31 December 1974 set out the procedure for appeals against the grading of Professional category posts. It provided, among other things, for setting up an Appeals Committee the Committee was set up on 13 January 1975 and started work at once, but because of a disagreement with the Administration resigned on 6 February 1976.

3. A new Committee, of which the chairman and some members were different, was set up on 12 July 1976 and proceeded to review the cases of all the staff members concerned, including the cases already referred to the original Committee, The Director-General based his decisions, including the one impugned, on the new Committee's recommendations.

4. It was open to the Director-General to take decisions forthwith on the cases on which the first Committee had made recommendations. It was also open to him not to follow those recommendations and to ask the Committee for any explanations he thought necessary.

But he did not take decisions on the recommendations already made; he set up a new Committee with a somewhat different membership. He was therefore bound to start the proceedings all over again before that Committee, put to it the entire cases of the staff members concerned and ask for its recommendations on the entirety of those cases.

Moreover, the new Committee committed a breach of the general principles of law in making recommendations without giving the staff members a hearing.

It is established that when the Committee considered the complainant's case it did not give her a hearing.

Her plea that the procedure followed in her case was improper is therefore sound and so she may claim the quashing of the Director-General's decisions, which he based on unlawful recommendations.

DECISION:

For the above reasons,

1. The Director-General's decisions of 16 November 1976 and 27 January 1977 are quashed.
2. The case is referred back to the Director-General for a new decision, to be taken after due consultation of the Professional Grading Appeals Committee.
3. The complainant is awarded 3,000 Swiss francs as costs.

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 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

