

FIFTY-FOURTH ORDINARY SESSION

Judgment No. 627

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. F. C. T. on 17 October 1983 and corrected on 4 November, the ILO's reply of 7 February 1984, the complainant's rejoinder of 26 February and the ILO's surrejoinder of 27 April 1984;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 13 of the ILO Staff Regulations;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a Norwegian citizen born in 1922, first joined the ILO in April 1960 and, with some breaks, was employed until June 1976 in training supervisors in several countries in Asia, Africa and the Caribbean. From July 1977 to early 1979 he served in Iran as an expert in training. In a letter of 16 March 1979 he informed the Chief of the Training Department that he wanted to work out a system of training supervisors. Late in 1979 he went to Pakistan as an ILO expert and his contract expired on 31 March 1983, the Government not agreeing to renewal. On 10 February 1983 he had written to the new Chief of the Training Department describing the system he had been working on -- which by then he was calling "modules for the training of supervisors" (MTS) -- and the success it had had in Pakistan. At about the same time the question of the copyright in MTS came up and there was discussion with the ILO office in Islamabad and with headquarters. On 30 April the complainant wrote a long minute to headquarters: he asserted his copyright in the system, which, by what he termed a "very generous" gesture, he had let the ILO use in Pakistan; he alleged unfair termination of his contract; and he offered his services as a consultant. Having got no answer, he wrote again on 1 June submitting a request for review under Article 13(1) of the ILO Staff Regulations. The Director-General rejected it as unfounded on 24 June. On 2 July he replied enlarging on his grievances. These claims were treated as a "complaint" under Article 13(2) and were rejected in a letter dated 18 August from headquarters, which was misdirected but of which a copy reached him in early September, and which is the final decision impugned.

B. The complainant alleges dilatoriness in answering his letters, or disregard of them, and distortion of his claims. In support of these he cites correspondence with the ILO, which he appends to his complaint. He says that the Chief Technical Adviser of the training project in Pakistan, Mr. Sigl, has banned him from using MTS -- in which he has the copyright -- in that country. He alleges serious misapplication of MTS. He asks the Tribunal to order the ILO not to interfere with his private MTS work in Pakistan and to pay him compensation

equivalent to his total remuneration until the ban is lifted; to have "MTS chief trainers" in Pakistan trained by him "according to procedures laid down in the MTS scheme"; and to confirm the statement in its letter of 24 June 1983 that it is not interested in using MTS in other countries. He applies for oral proceedings and wishes to call several witnesses.

C. In its reply the ILO questions whether under Article II(1) of its Statute the Tribunal is competent to hear claims for relief relating to the nature of ILO training activities and the complainant's freedom to work in Pakistan as a private citizen. The ILO further submits that his claims are devoid of merit. He did most, if not all, of his work on MTS while he was an ILO employee and on the strength of experience gained as such. An official has no rights in the results of the work he does on the Organisation's behalf, within the scope of his duties, at his supervisors' request, during working hours, and with means provided by the Organisation. The complainant's claim to copyright fails on all counts. The rule is so widely acknowledged as not to need writing into ILO rules. By his past attitude he is estopped from denying the ILO's rights in the system. The ILO has forbidden interference with his private work in Pakistan, and there is no evidence of any. Although the ILO is not intending to use MTS elsewhere, it will not surrender its rights in the system on that account. There is no question of employing him to train MTS trainers since he has no copyright in the system. Nor does he have any right to reappointment. The facts of the dispute are clear, and oral proceedings are unnecessary.

D. In his rejoinder the complainant contests the ILO's version of the facts. He rejects the contention that he gained

experience of training supervisors only from ILO programmes; he had nearly four years' breaks in appointments between 1960 and 1979, and he had sixteen years of relevant experience before joining the ILO. He did most of the work on MTS when not in the ILO's employ. He does not see why the ILO should assert copyright in a system it has no intention of using. It uses MTS in Pakistan only by special licence from him. Its offer of MTS free of charge in Pakistan has caused him financial loss. He is not seeking reappointment with the ILO: he has merely offered his services for training in Pakistan. He presses his claims and application for oral proceedings.

E. In its surrejoinder the ILO seeks to correct what it regards as mistaken allegations of fact in the rejoinder. Over a span of 23 years the complainant held contracts with the ILO for 19 as a full-time specialist in training and that experience served as the main basis for MTS, not the short periods between contracts. The ILO believes his rejoinder raises no new issue, and it enlarges on its pleas. It observes that he has been holding MTS courses in Pakistan since leaving the ILO and has provided no evidence of any injury he may have suffered because of the alleged interference with his work in that country.

CONSIDERATIONS:

The application for oral proceedings

1. The Tribunal considers that the complainant's case, to the extent that it falls within the Tribunal's competence, is adequately set out in the documents before it and it does not accede to the application for oral proceedings.

The merits

2. The complainant alleges breach of his contract of employment in the rejection by the ILO of three separate complaints, viz.

(i) unjustifiable treatment by an ILO official in connection with the renewal of his contract;

(ii) refusal by the ILO to accept the complainant's offer to work as a consultant for periods totalling 12 months between 6 May 1983 and 30 June 1985; and

(iii) failure on the part of the ILO to acknowledge the complainant's right to copyright in the Modules for Training of Supervisors (MTS) scheme.

3. The gravamen of the first complaint is that the Chief Technical Adviser, Pakistan, an ILO official, threatened to have the complainant deported from Pakistan if he tried to do any work or meet any of his former contacts. Apart from the absence of credible evidence to support the complaint, there has been no deportation, which in any event is an act of a sovereign State into which the Tribunal will not enquire. In the circumstances, the Tribunal considers that the complaint is without foundation.

4. The complainant's offer to work as a consultant was made because he was displeased that a former student of his had been appointed by the ILO as a specialist in MTS training and that harm might be done to the scheme. The refusal by the ILO to accept the complainant's offer to work as a consultant is an act within the discretion of the Organisation as employer and cannot amount to any non-observance of any term of the complainant's employment.

5. The complainant seeks relief by way of a legal document formally stating that the ILO is not interested in using MTS in other countries.

In a letter dated 24 June 1983 the Chief, Technical Co-operation Branch, Personnel Department, pointed out that the complainant's job description included the training of officers and other staff involved in training, the developing of training programmes and media for various types of in-plant courses, the conducting of pilot training courses and the training of national counterparts on in-plant training activities. The official went on to say that the complainant could not claim exclusive property in training programmes developed by him and in any event the ILO was not interested in using MTS in countries other than Pakistan.

The complainant first joined the ILO on 5 April 1960 under a fixed-term contract as an expert in supervisory training. Thereafter, with short periods between contracts, he carried out various ILO assignments. Between 4 July 1977 and 20 April 1979 he held a contract as an expert in modules of employable skills (MES), stationed in Iran until early 1979. On 1 November 1979 he took up an assignment in Pakistan as an expert in vocational training

with responsibility for the design and implementation of training programmes based on MES principles for line foremen and middle or second-level supervisors. This latter contract came to an end on 31 March 1983, thus terminating 19 years of service by the complainant as a full-time ILO specialist in training.

According to the complainant the MTS scheme consists of 621 pages of text and illustrations on basic principles for supervisors and managers, and his claim to copyright is based on the fact that most of the development of the MTS scheme took place in 1979 during a period when he was not under contract with the ILO.

The incorporation by the complainant of original material in the MTS scheme which the ILO applied in Pakistan does not confer ipso facto copyright on him. As a general principle copyright in respect of work carried out on behalf of the employer within the scope of the official's duties at the request of his supervisors, during working hours and with the means provided by the employer vests in the employer. In the instant case the complainant was merely doing what he was under contractual obligation to do. The complainant speaks about "a shared copyright between ILO and myself". Although the complainant says he worked out MTS at a time when he was not in the ILO's employ, he did then use experience he had gained as an ILO official and later he went back to work with the ILO. There is nothing in the dossier which lends support to any entitlement on the part of the complainant to either exclusive or shared copyright in the MTS scheme and the relief sought must be refused.

DECISION.

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner