

SIXTY-THIRD SESSION

In re DA

Judgment 873

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Pierre Joseph Jacques Da against the Intergovernmental Council of Copper Exporting Countries (CIPEC) on 3 April 1987, the Council's reply of 12 May, the complainant's rejoinder of 18 June, as corrected on 30 June, and the Council's surrejoinder of 17 August 1987;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal, Article 9(4) of the CIPEC Convention and Regulations 8.2, 9.1(c), 10.1, 10.2 and 11.1 of the CIPEC Staff Regulations;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a French citizen, was born in 1926. The Council, which has its headquarters in Paris, appointed him in 1969 as a statistician. He was promoted to senior administrative officer and in 1975 was made chief of the Documentation Centre. He had his appointment extended on 26 June 1985 by three years, to 30 June 1988.

By 1986 the Council was in financial straits and on 16 December 1986 its Executive Committee ordered cuts in expenditure in 1987, especially on staff. Only essential posts were to be kept, and the complainant's was one of those the Committee declared redundant.

By a letter of 20 January 1987 the Secretary-General of CIPEC informed the complainant that his post had been done away with and that he was dismissed under Regulation 9.1(c) of the Staff Regulations, which allows "suppression of the post to which the person concerned was appointed". The Secretary-General told him orally on 26 January that he would leave at the end of the month, and he did. Disagreement arose over the amount of his terminal entitlements, a matter for which the Staff Regulations made no provision. On 19 February the Secretary-General offered him seven months' gross pay in settlement. In his reply of 24 February he said the offer was too low and asked whether it was final. The Secretary-General saw him on 4 March and in a letter of 6 March raised the offer to nine months' pay. He said that that was final, and that is the decision the complainant is impugning.

B. The complainant alleges breach of the contract he was to hold until 30 June 1988. In his view the Council may not escape its contractual liability by declaring him redundant, and he is entitled to payment up to the date of expiry, or 17 months' pay.

Though entitled to abolish his post, the Council could and should have found him another in one of the many areas he believes he is qualified for. The financial reasons given for dismissing him are suspect since the budget for 1987 is no smaller than the one for 1986, staff costs being lower but the reserve fund larger.

The way in which he was got rid of makes the offer of nine months' pay unfair. He was not given due notice: international organisations customarily give much longer notice to someone like him with over 15 years' service. He served the Council well for years, and he was dismayed to be dismissed so suddenly, the more so since his health was poor. A certificate of 24 March 1987 from his doctor said it had become worse in February. He finds himself with no earnings five years short of the age of retirement, which is 65 at the CIPEC.

The offer is arbitrary. The lack of provision in the Staff Regulations implies that where a fixed-term appointment is ended early pay up to the date of expiry will be due - in his case, 17 months'.

Other international organisations prescribe compensation for dismissal, and there is a customary right to it. Under the Staff Regulations of the International Labour Office, for example, he would have got one month's notice, or pay in lieu, plus 12 months' pay in compensation. He is also entitled to damages for moral injury.

He seeks the quashing of the decision, an award of material and moral damages equivalent to gross pay for 13 to 17 months, and 3,400 French francs in costs.

C. In its reply the CIPEC observes that, though on sick leave, the complainant turned up at the office in the days following 16 December 1986 and must have known of the Executive Committee's decisions. Besides, the acting Secretary-General told him by letter of 7 January 1987 of his dismissal; so he knew of it long before 26 January, when he got the letter of 20 January. The Staff Regulations require no notice of redundancy anyway.

The Council's offer is a fair one. The complainant is mistaken in saying that Regulation 9.1(c) allowed his dismissal only on condition that he was paid up to the expiry of his appointment: that would make the provision meaningless. It authorised the CIPEC to dismiss him before 30 June 1988.

Being founded on the idea that negotiation in good faith is the better policy, the Regulations do not provide for compensation, but there is a general principle of law that a staff member should be compensated and the Executive Committee and the Council want to abide by it.

The complainant's view that the CIPEC could have found him another job is immaterial, the issue being the amount of compensation. Though it is a pity he was unwell at the time, something had to be done at once. The worsening of his health was not caused by the decision and the medical certificate does not suggest it was. Reference to the rules of organisations in the United Nations is irrelevant: the CIPEC, a much smaller organisation, is not bound by them and has not incorporated them in its own. The offer corresponds to what its tiny budget will allow. Actually the rules of the International Bauxite Association prescribe the same amount as is on offer - nine months' pay - for a redundant staff member with over nine years' service.

D. In his rejoinder the complainant points out what he regards as mistakes in the Council's account of the facts and objects to some of its remarks as slighting. Whenever he may have been told of his dismissal, not until 26 January did he hear that he must leave at the end of the month; so he got only five days' notice. Though the Council purports to scorn what other organisations do, it cites rules of the International Bauxite Association. Besides, the Association grants the nine months' pay, not as compensation for breach of contract, but in service benefit, which is naturally a smaller amount. Only misconduct or force majeure warrants dismissal. The complainant's conduct was beyond reproach, and the fact relied on - the need for staff cuts - does not amount to force majeure. His dismissal being wrongful, he is entitled to the full 17 months' pay: to claim only 13 is a concession. The size of the organisation and of its budget is immaterial to his rights; besides, the CIPEC has quite enough money under its budget for 1987 to pay him proper compensation.

E. In its surrejoinder the Council discusses several issues of fact of which it challenges the complainant's account. It observes that his performance was found wanting, and that in any case changes in the structure of the organisation reduced the volume of his work. The termination of his contract was therefore warranted. Though CIPEC's total budget has been nominally constant since 1985 its real value has fallen, while staff credits have fallen even nominally by over 17 per cent. Each international organisation is free to apply its own rules, and CIPEC's were drafted and are applied in good faith.

The CIPEC rejects the complainant's implication that neither party to a fixed-term contract may bring it to an end. Though not strictly bound to pay him any compensation at all, it was willing by way of exception to make him an offer which in all the circumstances is reasonable; to award him any more would be to overlook the Council's limitations.

CONSIDERATIONS:

Receivability

1. The complainant filed his complaint on 3 April 1987 and is challenging a decision of 6 March 1987 which he received on 9 March.

Regulation 11.1 of the Staff Regulations reads:

"The Organisation recognises the competence of the Administrative Tribunal of the International Labour Organisation to settle in the last instance any possible appeals put forward by staff members in respect of a final decision taken by the Executive Director concerning them and in opposition to which they might invoke failure to observe clauses in their contract or any pertinent clause contained in the Staff Regulations. Consequently, staff members are entitled to appeal to this Administrative Tribunal under the circumstances provided for in its Statute and Rules of Court."

The Staff Regulations lay down no internal appeal procedure. There is a Joint Committee referred to in Regulation 8.2, but it may be consulted only on general matters, not on individual cases.

2. What the complainant challenges is a final decision against which he had no internal means of redress within the meaning of Article VII(1) of the Statute of the Tribunal, and he respected the time limit in VII(2). His complaint is therefore receivable.

The merits

3. The Executive Committee of the CIPEC abolished the complainant's post at its 166th Session on 16 December 1986.

The Executive Committee is indeed the body competent to abolish a post, and Regulation 9.1 says that "... the duties of a staff member may be terminated for the following reasons: ... (c) suppression of the post to which the person concerned was appointed".

The Committee abolished the post on adopting the Council's budget in accordance with Article 9(4) of the CIPEC Convention, its purpose being to reorganise the secretariat, for economic reasons, along more rational lines. The posts it declared redundant were the complainant's - chief of the Documentation Centre - and that of an adviser on information, and its chairman summed up the consensus in the following terms:

"The posts of adviser on information and chief of the Documentation Centre serve no useful purpose in reorganising the secretariat. They are therefore abolished and the secretariat will negotiate compensation for the termination of the two appointments. It will be up to the new Secretary General to carry on the negotiations on the understanding that the two cases, being similar, should be dealt with in the same way." The Tribunal holds that the abolition of the complainant's post complied with the Staff Regulations and that the reasons given for it, namely a desire to make savings and to organise the secretariat on more rational lines, were genuine. So there was neither abuse of authority nor any desire to impose a hidden disciplinary sanction in breach of Regulations 10.1 and 10.2.

4. At the date of abolition the complainant held a three-year appointment that was to expire on 30 June 1988.

That an appointment still has time to run does not preclude abolition under Regulation 9.1(c), which is a general and unconditional rule and allows no derogation in favour of the holder of an unexpired fixed-term appointment. The complainant's appointment of 5 May 1981, as confirmed on 20 May 1982 and renewed on 26 June 1985, was governed by the Staff Regulations - so said clause 5 of the letter of appointment - including the rule authorising due abolition of a post held by someone under contract.

5. The Staff Regulations do not say what notice shall be given or how much shall be paid in compensation to the redundant staff member.

Since the CIPEC is an intergovernmental consultative organisation set up under treaty and not affiliated to any other international body, its work and the terms of appointment of its staff are exclusively governed by its own rules. But the fact that there is no provision in the Staff Regulations does not mean that no notice need be given or that no compensation need be paid, the Council being under a duty to adopt a reasonable attitude.

6. When his post is abolished someone with a fixed-term appointment is ordinarily entitled to notice and to fair and reasonable compensation. The amount and the manner of determining it will depend on the particular circumstances of the organisation and an assessment of the staff member's own situation and seniority and the terms of his appointment. The decision must not be discriminatory or tainted with any other flaw.

7. Although the Staff Regulations did not cover the case, the Executive Committee instructed the new Secretary

General to negotiate the amount of compensation to be paid to each of the two staff members who had had their posts abolished and their appointments ended. Since their posts were similar, they were to be treated alike.

Such was the express mandate for the negotiations, but they also had to abide by the general principles that govern the international civil service, including the respect and consideration due to staff members, as well as such criteria as seniority, record of service and qualifications.

Those requirements were not wholly complied with.

After the complainant had turned down several offers the Secretary-General finally offered him, in a letter of 6 March 1987, compensation corresponding to nine months' salary.

Having taken account of the organisation's situation and the complainant's, the Tribunal holds that thirteen months' pay is the fair and reasonable amount.

8. Provided that the complainant is paid thirteen months' salary in compensation, the abolition of his post was not in breach of the terms of his fixed-term appointment or of the Staff Regulations.

But since the Tribunal holds that the compensation should be higher than the amount offered in the impugned decision, the decision is set aside and the compensation increased to thirteen months' salary.

9. Since the amount of compensation was not entirely fair and has been increased, the complainant should be awarded costs.

DECISION:

For the above reasons,

1. The decision of 6 March 1987 is set aside insofar as it relates to the amount of compensation.
2. The Council shall pay the complainant compensation equivalent to thirteen months' salary.
3. It shall pay him 3,400 French francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux
Mella Carroll
H. Gros Espiell
A.B. Gardner