

SIXTEENTH ORDINARY SESSION

***In re* DESCHAMPS**

Judgment No. 91

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Roger Deschamps, dated 30 July 1965 and actually despatched, accordingly to the postmark, on 9 August 1965, the reply of the ILO dated 10 November 1965, the rejoinder of the complainant dated 15 February and 31 March 1966, and the observations of the ILO on this rejoinder, dated 26 April 1966;

Considering Article VII, paragraph 2, of the Statute of the Tribunal, together with Article 6, paragraph 3 of the Rules of Court of the Tribunal;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal and the complainant's offer to appear personally being unnecessary to the disposition of the case;

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

- A. After discharging the duties of textiles handicraft expert in Morocco for the ILO, the complainant, whose original appointment, made for one year on 12 April 1959, had been extended on successive occasions, was appointed on 1 December 1962 for a period of 11 months as principal textiles expert in a project for training textile and leather-work instructors which was an extension of the project to which he had previously been assigned.
- B. Differences arose between the complainant and the head of this new project, who had taken up his appointment in March 1963, as a result of which Mr. Deschamps addressed a memorandum to the Resident Representative of the Technical Assistance Board at Rabat on 2 May 1963, setting out his grievances and indicating his intention of submitting a complaint to the Director-General of the ILO and, possibly, of requesting its transmission to the Administrative Tribunal. The Resident Representative advised Mr. Deschamps not to institute proceedings and no further action was taken on the matter by either party.
- C. On 10 May 1963 the complainant was informed that the ILO did not propose to renew his appointment, and when the complainant expressed surprise at such a decision which appeared to indicate lack of confidence in him, whereas reports on his work had never been anything but favourable and the project was to continue for several years longer, he was informed, on 14 June 1963, that under Article 4.6 (d) of the ILO Staff Regulations, while fixed-term appointments were renewable, "an official thus appointed is not entitled to assume that his contract will be renewed or that it will be converted into a different type of contract", and that "fixed-term appointments terminate without notice at the date specified in the contract of employment". The complainant's service came to an end on 31 October 1963, and although he states that in the course of a visit to Geneva he handed a copy of his note of 2 May to the Chief of the Technical Service to which he was responsible, he made no formal appeal.
- D. On 28 January 1965 the complainant wrote to the Director-General of the ILO stating that after having accepted the decision taken, he had learnt that the Chief of the Mission and one of his former colleagues had been relieved of their duties after a year's service, and that this afforded a presumption of the falsity of the slanderous reports made by those persons in respect of the complainant, to which reports he attributed the non-renewal of his appointment. Consequently he asked for a review of his case and requested "that his file should be purged of the dishonest statements which had been the cause of an unfair decision". On 25 February 1965 he was sent a reply pointing out that the documents in his file, and particularly his last annual report, contained favourable evaluations, so that the reference to "dishonest statements" of which Mr. Deschamps' record should be "purged" was difficult to understand.
- E. On 15 April 1965 the complainant pressed his request and mentioned his wish to bring the matter before the

Tribunal, and on 30 April 1965 he was informed of the procedure to be followed for that purpose. Following a letter addressed to the President of the Tribunal on 23 May 1965 setting out the complainant's grievances and his desire to submit them to the Tribunal, the Statute and Rules of Court of the Tribunal and the forms for submission of complaints were sent to the complainant on 28 May, and a complaint was filed, dated 30 July 1965 and actually despatched on 9 August 1965. The complainant prays the Tribunal to recognise that he had given notice of his case on 2 May 1962, that the absence of offers of further appointments which he had hoped to receive confirmed that he had been arbitrarily dismissed, that this dismissal was in contradiction with the favourable evaluation of his services made on 25 February 1965, and asks that the points raised in his letter to the President of the Tribunal be considered. The International Labour Organisation prays that the complaint be dismissed as irreceivable, both because of the nature of the relief sought by the complainant and because of the late submission of the complaint.

CONSIDERATIONS:

1. Article VII, paragraph 2 of the Statute of the Tribunal provides that to be receivable a complaint must have been filed within 90 days after the complainant was notified of the decision impugned.
2. The complaint was drawn up on 30 July 1965 and despatched on 9 August 1965, the latter date alone being taken into account for the application of Article VII, paragraph 2 of the Statute of the Tribunal, as provided by Article 6, paragraph 3 of the Rules of Court. It follows that, whatever may be the decision actually impugned, the complaint was filed more than 90 days after the notification of the last of these decisions, and accordingly is not receivable.
3. The complainant's statement of his grievances against his Chief which he submitted to the Resident Representative in Rabat on 2 May 1965 could not have the effect of bringing the matter before the Tribunal, since it referred only to a possible intention and, moreover, was not meant for the Tribunal itself.
4. In so far as the complaint might relate to the legality of the non-renewal of the complainant's appointment, the decision not to renew his appointment was communicated to the complainant on 10 May 1963 and took effect on 31 October 1963.
5. In so far as the complaint might relate to the ILO's letter of 25 February 1965, even assuming that this might have implied a new decision relating to the request for the removal of certain documents from the complainant's personal file, rather than confirmation of the decision not to renew his contract which, being a confirmatory decision, could not have formed the starting point for the time limit within which an appeal must be filed, it is sufficient to note that any such time limit ran from 25 February 1965.
6. It is likewise to no purpose that the complainant pleads ignorance of the conditions governing the filing of appeals to the Tribunal, since he had been furnished at the time of his appointment with a copy of the ILO Staff Regulations, Article 13.2 of which provides for appeal to the Administrative Tribunal "as provided in the Statute of the Tribunal". Moreover, when provided with a copy of the Statute of the Tribunal itself, the complainant still allowed more than 90 days to elapse before filing his complaint.
7. As regards the arguments based on equity which the complainant puts forward in favour of a review of his grievances, the Tribunal cannot take these arguments into account since the time limit provided for in the Statute of the Tribunal is mandatory; it is binding on the complainant and cannot be extended by the Tribunal.

DECISION:

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 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, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel

Devlin
Jacques Lemoine

Updated by PFR. Approved by CC. Last update: 7 July 2000.