Registry's translation, the French text alone being authoritative.

FIFTY-FIFTH ORDINARY SESSION

In re QUDDUS

Judgment No. 655

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Abdul Quddus on 21 July 1984 and corrected on 17 August, the ILO's reply of 1 October, the complainant's rejoinder of 10 November and the ILO's surrejoinder of 17 December 1984;

Considering Articles II, paragraphs 1 and 2, VII, paragraphs 1 and 2, and VIII of the Statute of the Tribunal and Articles 4.6, 8.3 and 13 and Annex II of the Staff Regulations of the International Labour Office;

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 Bangladeshi born in 1938, worked for the United Nations in Dhaka from 1971. He joined the ILO office there on 1 January 1980 as a cleaner and messenger. On 1 July 1980 he signed his first fixed-term appointment, which was thrice extended, up to 31 December 1983. But on 18 October 1983 the director informed him in writing that his appointment would not be renewed after the end of the year. On 23 October he wrote asking the director to change his mind, but the director said in a reply of even date that, as he had already been told orally, the funds for his post were needed elsewhere. On 1 November he wrote to the ILO Regional Office in Bangkok and on 18 January 1984 to a Deputy Director-General at headquarters seeking renewal of his appointment. On 21 February the Senior Personnel, Administrative and Finance Officer in Bangkok wrote to inform him that there was no suitable vacancy. On 26 April he sent the Director-General a letter headed "An appeal for restitution of service and payment for in-service accident compensation". In this text he claimed for the first time from the ILO compensation for injury to his right eye which he had sustained while employed and on duty as a driver with the United Nations in 1971. A letter of 17 May 1984 from the Personnel Development Branch in Geneva -- the impugned decision -- said that the ILO could not compensate him for injury suffered before he joined the staff and confirmed that he could not be reappointed.

B. The complainant believes that he has been punished, like other ILO manual workers in Dhaka, for signing a petition addressed to the Director-General in March 1982 on behalf of a former ILO driver (see Judgment No. 654, under A). It was an abuse of authority to terminate the appointment of someone who had served the ILO and other UN organisations well for many years and who, worn out and half blind, can no longer earn a living. He could have been found a suitable post. Moreover, having taken him over from other UN bodies, the ILO was liable to pay him compensation for his accident in 1971. He seeks (1) reinstatement, (2) "appropriate action against ILO local administration", (3) a pension for life as compensation for loss of his eye and (4) any other relief he may be entitled to.

C. In its reply the ILO submits that the Tribunal is not competent to hear claim (3) because it arises out of the complainant's employment with the United Nations. The complaint is irreceivable under Article VII(1) of the Statute of the Tribunal because the complainant failed to exhaust the internal means of redress: he should have appealed under Article 13.2 of the Staff Regulations "within six months of the treatment complained of", in this case the director's letter of 18 October 1983. He did not lodge anything resembling an Article 13.2 "complaint" until 26 April 1984, when he wrote to the Director-General, and so he was out of time. In any event his complaint is devoid of merit. Though at first he passed muster, in his report for 1982-83, which he signed without comment, his supervisor described his performance as only "marginal": he organised his work badly, made mistakes and was indiscreet and inquisitive. By mid-1983 the office needed an administrative clerk and it decided to use his post for the purpose, contract out his cleaning duties and reallot the rest. He himself, being unfit for the new post, was told he would have to go. He poses as the victim of a grudge for having signed a petition, but the petition was made 21 months earlier and if the director had wanted to be vindictive he would presumably have acted sooner by refusing to renew the complainant's contract at the end of 1982. According to article 4.6 of the Staff Regulations a fixed-

term appointment carries "no expectation of renewal". The complainant shows no fatal defect in the decision not to renew his appointment. His performance, conduct and seniority did not warrant making an exception on compassionate grounds to the normal practice of non-renewal in such circumstances.

D. In his rejoinder the complainant develops his case and seeks to refute the arguments in the reply. He believes he did exhaust the internal means of redress as best he could and that any omission on his part is the fault of the ILO for not warning someone with his limited education. The ILO's treatment of him was vengeful and cruel since it could have shielded him from the consequences of reorganising the office in Dhaka. The Tribunal is competent to hear claim (3): the ILO is liable for having ruined his health by imposing on him heavier duties than his injury should have allowed. It did not even give him a medical examination when he joined the staff.

E. In its surrejoinder the ILO enlarges on the arguments in its reply, maintaining that by 26 April 1984 action under Article 13.2 was too late and that the complaint is therefore irreceivable for failure to follow the internal procedure correctly. As to the merits, it observes that the complainant got medical clearance from the UN Joint Medical Service in 1980 for joining the ILO and was then declared to have full sight in both eyes. The plea that work with the ILO ruined his health is the harder to prove in that he refused a medical check-up when he left. Besides, it is irreceivable because it is made for the first time in the rejoinder and the internal means of redress were therefore not exhausted. The ILO seeks to correct what it sees as misrepresentations of fact in the rejoinder. It describes the complainant's arguments as misdirected and inconsistent: he demands treatment on compassionate grounds merely because he has no case in law.

CONSIDERATIONS:

The application for oral proceedings

1. The Tribunal sees no need to order oral proceedings under Article 12 of its Rules of Court. The ILO's reply gives enough information to shed full light on the issues on which the evidence it is invited to hear would have had a bearing.

Receivability and competence

2. The complainant asks the Tribunal to order the ILO:

(1) to reinstate him by continuing his fixed-term appointment;

(2) to take appropriate action against the local administration of the ILO for violation of the "principles of priority and equity" in refusing to put him on one of the vacant posts which were filled by external collaborators, in disregard of the principles of the United Nations Charter;

(3) to grant him a pension for life in compensation for the service-incurred accident which caused the loss of his right eye; and

(4) to grant him any further relief he is entitled to under the rules of law and equity embodied in the ILO staff rules.

3. In his rejoinder the complainant adds to claim (3) a further claim under Article 8.3 of the Staff Regulations to "compensation from ILO for causing deterioration to his physical illness on the wounds of the lost eye by giving him excessive overburden some physical works" (*sic*).

4. A preliminary question is whether the new claim is receivable. The general rule is that a claim put forward in the rejoinder will be receivable only if it comes within the ambit of the claims in the complaint.

Claim (3) is based on the service-incurred accident "causing total loss of [the complainant's] right eye", the claim in the rejoinder on alleged aggravation of his condition by an excessive burden of work.

What, then, is the purport of the new claim? The material point is that the accident occurred at a time when the complainant was employed by a United Nations body, whereas the "deterioration" is alleged to have been caused by his employment with the ILO.

The claim in the rejoinder and claim (3) being based on quite different facts, the former is a new and, on that account, irreceivable claim.

5. It is, besides, irreceivable on other grounds.

It appears for the first time in the rejoinder and did not form the subject of an earlier claim submitted to the Director-General as required by Article 23 of Annex II to the Staff Regulations -- to which Article 8.3, the legal basis of the claim in the rejoinder, refers.

Such an internal claim is a means of redress within the meaning of Article VII(1) of the Tribunal's Statute, its purpose being to secure a final decision by the Director-General.

This being the first time the claim has been made, the failure to exhaust the internal means of redress is a further reason for declaring it irreceivable.

6. The Tribunal turns now to the claims in the original complaint: is the Tribunal competent to hear them, and are they receivable?

Claim (2) is for appropriate action against the local administration for violation of the principles of priority and equity.

In cases coming under Article II of its Statute the Tribunal is competent, by virtue of Article VIII, only to "order the rescinding of the decision impugned or the performance of the obligation relied upon, except that if such rescinding or execution is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him".

Claim (2) therefore falls outside the Tribunal's competence and may not be entertained.

7. Claim (4) is for performance by the ILO of its obligations under the Staff Regulations and under the rules of law and equity. The formulation of the obligations is so vague and general that their performance cannot form the subject of judicial review. The claim is irreceivable.

8. There remain claims (1) and (3).

Claim (1) challenges the refusal to reverse a decision of 18 October 1983 not to renew the complainant's fixed-term appointment.

The ILO pleads irreceivability on the grounds that the complainant is in fact impugning a decision of 17 May 1984 and that that decision, taken on the Director-General's behalf by the Chief of Personnel, was the answer to a claim made on 26 April 1984, by which date the six-month time limit for appeal set in Article 13.2 of the Staff Regulations had expired.

9. The Staff Regulations afford two means of redress:

(a) Under Article 13.1 any official who considers that he has been treated inconsistently with the provisions of the Regulations or with the terms of his contract, or subjected to unjustifiable or unfair treatment, may request that the issue be reviewed with a view to its settlement. But the decision on such a request is not final and does not necessarily put an end to the dispute. Indeed it does not preclude submitting a "complaint" to the Director-General under Article 13.2. The request for review is not a means of redress within the meaning of Article VII(1) of the Statute and is not a prior condition of the receivability of a complaint to the Tribunal.

(b) Under Article 13.2 any official who considers that he has been treated inconsistently with the provisions of the Regulations or with the terms of his contract, or subjected to unjustifiable or unfair treatment, may address a "complaint" to the Director-General within six months of the treatment complained of.

Unlike the decision on a request for review the decision on a 13.2 "complaint" is final in that it is taken by the executive head and is not subject to further internal review. Accordingly the 13.2 "complaint" is a means of redress within the meaning of Article VII(1) of the Statute, and the complaint to the Tribunal will be irreceivable unless an internal "complaint" was filed within the six-month time limit.

10. The complainant was informed on 18 October 1983 of the decision not to extend his appointment after 31 December 1983.

On 23 October he addressed to his responsible chief, the Director of the Dhaka office, what he called a "Representation against the decision of non-renewal of Fixed term Contract".

The Director rejected it the same day.

As the ILO contends, it could not be treated as a 13.2 "complaint" because it was not addressed to the Director-General. It is more closely akin to a 13.1 request, its purpose being to obtain review by the responsible chief.

11. This is borne out by two texts: the complainant's letter of 1 November 1983 to the Regional Director for Asia and the Pacific and his letter of 18 January 1984 to a Deputy Director-General.

The latter was headed "Prayer for renewal of Fixed Term Contract": it was not a 13.2 "complaint".

That the intention of the letters was not to lodge such a "complaint" is also plain on a reading of the letter he wrote on 26 April 1984, this time to the Director-General.

Both in form and in content this letter does clearly come under 13.2.

It is headed differently: "An appeal for restitution of Service and payment for in-service accident compensation"; what is more, it was addressed, as 13.2 requires, to the Director-General "through Chief of Personnel Department".

It concludes with three claims which are much the same as those before the Tribunal.

It is therefore beyond doubt that the letter of 26 April 1984 is the only one to qualify, in form and content, as a 13.2 "complaint".

It is not disputed that by that date the six months prescribed in 13.2 had expired: the complainant was challenging the decision of 18 October 1983 and should therefore have acted not later than 18 April 1984.

His complaint accordingly fails to satisfy the requirement in Article VII(1) that the internal means of redress should have been exhausted and it is therefore irreceivable.

The complainant observes in his rejoinder that, as required by Article VII(2), his complaint was filed -- on 21 July 1984 -- within ninety days of the date of notification of the decision of 17 May 1984. That is immaterial, his complaint being in any event irreceivable under VII(1).

12. Claim (3) is for payment of an annuity in compensation for the accident which caused the loss of the complainant's right eye.

The accident occurred in February 1972 when the complainant was still on the staff of the United Nations and his first fixed-term appointment with the ILO did not start until 1 July 1980.

Under Article II of its Statute the Tribunal is competent to hear complaints alleging non-observance of the terms of appointment of ILO officials (paragraph 1) and to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of his employment (paragraph 2).

Accordingly the Tribunal may not hear a claim to compensation for an accident which occurred while the complainant was with the United Nations.

Besides, it appears from the evidence that the United Nations duly paid the complainant the full compensation he was entitled to for the accident and that at the time he was told he might apply later for review.

13. Since the complaint must be dismissed as irreceivable the Tribunal need not go into the merits.

It will observe, however, that non-renewal is a discretionary decision over which the Tribunal will exercise only a limited power of review. In fact it will set the decision aside only if it was taken without authority, or was based on

a mistake of fact or of law, or if essential facts were disregarded, or if there was abuse of authority or a procedural irregularity, or if some mistaken conclusion was drawn from the evidence.

The Tribunal does not find in the decision any flaw which would warrant setting it aside.

In particular, there is no evidence to suggest that it was mistaken to declare that there was no suitable vacancy in the Dhaka office, or that any essential fact was disregarded in taking the decision.

DECISION:

For the above reasons,

The complainant is dismissed.

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

Delivered in public sitting in Geneva on 18 March 1985.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner

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