

SIXTY-FOURTH SESSION

In re PARKINSON

Judgment 903

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Peter Gath Lindsay Parkinson against the Intergovernmental Council of Copper Exporting Countries (CIPEC) on 1 July 1987 and corrected on 30 July, the Council's reply of 29 September, the complainant's rejoinder of 18 November 1987 and the Council's surrejoinder of 3 February 1988;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and Regulation 4.2 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, who is British and was born in 1925, joined the secretariat of the CIPEC in Paris in 1972 under a three-year appointment as head of the Marketing Division at grade E5. His appointment was extended until 31 March 1984.

The Conference of Ministers of the CIPEC had agreed in 1977 that citizens of member and associate member States, which do not include the United Kingdom, should be given priority for appointment to senior posts. On 1 January 1984 the complainant's post went to a citizen of a member State, and talks ensued with him about his future. On 30 March 1984 the Secretary-General offered him a one-year contract as general adviser from 1 April 1984. The contract was to be renewable by an agreement to be concluded not later than three months before the date of expiry; he was to advise on "marketing, economic studies, promotion, statistics, etc.", to draft reports and to attend meetings; he was to have step 7 in grade E5; and he was to be employed three days a week, or longer, if it was so agreed, with pay pro rata. The period of notice was to be three months. He accepted the offer.

His contract was renewed for one year in 1985 and for another in 1986. But the Executive Committee of the CIPEC decided on 16 December 1986 to "phase out" his post. In a letter to him which is dated 16 January 1987 but which he says he never got the new Secretary-General, who had taken over on 1 January, stated that, as the Legal Adviser and the previous Secretary-General had warned him orally in December, his contract would expire on 31 March 1987 and would not be renewed. On 31 March he answered that there had been "automatic renewal" of his appointment until 31 March 1986 and then to 31 March 1987 for want of notice by the preceding 31 December. "More recently", he added, "in the absence of any contrary notification to me before 31 December 1986 [my appointment] has been automatically extended to 31 March 1988". The Secretary-General's reply of 3 April, which is the decision impugned, repeated that he had been informed of the Executive Committee's decision orally in December and in any event in the letter of 16 January, a copy of which was said to be appended; he would get no extension without the Committee's approval; and he should leave forthwith. He continued to go to work and on 30 April sent a note asking that his salary be paid into a bank account in Andorra. By a letter of 18 May the head of the Administrative and Financial Division answered that he would get no salary because he was no longer on the staff, but that a cheque for 90,734 French francs would be paid in settlement of his entitlements. He refused the cheque. On 2 and 4 June he wrote asking for a final decision but the Secretary-General's reply of 16 June was that the Executive Committee had taken the final decision on 16 December 1986.

B. The complainant observes that for years he had a large hand in shaping CIPEC policy and met the "highest standards of efficiency, competence and integrity" required by Regulation 4.2 of the Staff Regulations, indeed "more so than any other past or present member of the secretariat". He could thus reasonably have expected to stay on until 1990 and his reputation would have earned him consultancy appointments thereafter. But the "hostility" and "denigration" he suffered have put paid to those prospects. In 1985 and 1986 the former Secretary-General constantly harassed and insulted him, led member countries to believe his work had been done by others, and did nothing to check attempts by one member country and an executive officer from that country to discredit him. He was the only executive officer to get part-time pay though he was doing as much as two full-time officials.

The Legal Adviser and the then Secretary-General assured him orally in December 1986 that he would be kept on after 31 March 1987, though with some change of duties, and indeed at a private meeting on 30 March 1987 the new Secretary-General asked him to carry on, albeit at home as far as possible. Provision was made for his post in the budget for 1987. The letter of 18 May 1987 was tantamount to dismissal. He has never seen the Secretary-General's letter of 16 January 1987, which was not appended to the letter of 3 April 1987.

The CIPEC is in breach of contract and under a duty to employ him full time on suitable duties up to 31 March 1988. He claims specific performance of the contract up to that date and two years' salary and allowances as damages for harassment and loss of reputation and of future earnings.

C. In its reply the CIPEC gives its own account of the facts and describes the complainant's as tendentious. It observes that his troublesome refusal to leave prompted incidents and even insubordination among other staff. Yet the Executive Committee's decision was plain enough: his contract was not to be renewed on any account. His own assessment of his duties and merits is overblown: CIPEC policy is set, not by him or even by the Secretary-General, but by the Conference of Ministers. No-one has been appointed to replace him. It was because of the preference for citizens of member countries that he was put on one-year contracts. He knew as early as July 1986 that the Executive Committee had it in mind to get rid of staff and by September that his was one of the posts under threat. Yet when the decision came through in December he feigned never having heard of it and actually denied getting the letter of 16 January 1987 in the fond hope of another automatic renewal.

The Council contends that his complaint is irreceivable because it is time-barred: he filed it well over 90 days after the date on which he was told of the decision not to renew his appointment, in December 1986 or at the latest in mid-January 1987.

Subsidiarily, the CIPEC submits that his complaint is devoid of merit: his post was lawfully abolished - the budget he refers to was only a draft - he was duly informed, and he suffered no actionable wrong.

D. In his rejoinder the complainant restates his version of the facts and challenges the CIPEC's in many points. He submits that the sending of the letter of 16 January 1987 - which he saw for the first time on getting the reply - shows that the CIPEC knew that the oral notice allegedly given in December 1986 would not do. Besides, the letter was sent after 31 December 1986 and so did not prevent automatic renewal for another year. The reply addresses neither the fact that the Secretary-General told him to carry on nor the fact that he did so. It is the Secretary-General, not the Executive Committee, that grants or refuses contracts.

As to receivability, he submits that the 90 days ran from the date on which he got the letter of 3 April 1987 - 8 April - or the one of 18 May - 21 May: in either case he filed his complaint in time.

As for the merits, he submits circumstantial evidence to bear out his contention that he was unaware in December 1986 of the threat of termination. He and other executive officers have been shabbily treated. A secretary at the CIPEC who did typing for him in her own time has been intimidated. He sees political reasons for his dismissal: one member State wanted to undermine the CIPEC, and that meant above all getting rid of him.

He presses his claims, adding that any award of damages should take account of the rate of inflation.

E. In its surrejoinder the CIPEC seeks to refute the pleas in the rejoinder, much of which it regards as immaterial, by enlarging on the submissions in its reply. It supplies a letter from the Paris Monceau post office affirming that the Secretary-General's letter of 16 January 1987, which was registered, was deposited there on 21 January and delivered on 3 February.

CONSIDERATIONS:

1. The Executive Committee of the CIPEC decided at its 166th meeting on 16 December 1986 to abolish the complainant's post as general adviser with effect from the date of the meeting. Since his contract was to expire on 31 March 1987 it was decided to let his contract expire and not to renew it. The Secretary-General was required so to inform him. The Committee observed that the new Secretary-General who was to take over on 1 January 1987 would not necessarily be precluded from deciding to keep the complainant's services under a new contract to be submitted to the Committee for approval.

2. The complainant contends that he had no knowledge of the decision. He says he was told in December separately by the Secretary-General and by the Legal Adviser that his employment would continue beyond 31 March 1987 and at the same time that two other employees were being dismissed. He further submits that he was informed on 11 February 1987 by the new Secretary-General of the intention of continuing his employment beyond 31 March 1987. But at a meeting on 30 March the Secretary-General announced that the complainant would be leaving the following day. He alleges that that was a profound shock to him. He wrote on 31 March 1987 affirming that his contract due to expire on 31 March 1987 had been automatically extended to 31 March 1988 in the absence of contrary notification to him before 31 December 1986. The Secretary-General replied in a letter dated 3 April 1987 that, as the complainant was aware, the Executive Committee had decided in December 1986 not to renew his contract and he had been orally informed of that decision by the former Secretary-General in December 1986, and that since assuming office the Secretary-General had confirmed that notification by letter of 16 January 1987, a copy of which was attached. The complainant says he got the letter of 16 January 1987 neither in January nor by way of enclosure with the letter of 3 April. This letter was posted to him and arrived on 17 April 1987 and he was also handed a copy on 8 April by the head of the Administrative and Financial Division.

3. The complainant identifies the letter of 3 April as the decision impugned and the date of notification as 8 April. But since the letter clearly contains no decision, the decision impugned is the one taken by the Executive Committee on 16 December 1986.

4. Article VII(2) of the Statute of the Tribunal reads:

"To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published."

If the first notification of the decision was the letter of 3 April 1987 delivered by hand on 8 April, the complainant has complied with that time limit, having lodged his complaint on 1 July 1987. If that was not the first notification, he is out of time and his complaint is not receivable.

5. There is conflict of evidence on this point. The organisation states that on 17 December 1986, the day after the Executive Committee's meeting, the Secretary-General sent a telex message to the Chairman of the CIPEC informing him of the decisions taken and that all members of the staff, including the complainant, were aware of the contents of that message. On the same day the Legal Adviser informed the complainant of the decision and he said he already knew of it. The Secretary-General informed the complainant personally of the decision. The incoming Secretary-General sent him a registered letter on 16 January 1987 observing that, as he had already been informed by the previous Secretary-General, the Executive Committee had decided to phase out the post of general adviser and not to renew his contract. That is the letter the complainant says he did not receive either at the time it was posted or as an enclosure in the letter handed to him on 8 April 1987 or delivered by post on 17 April.

6. The CIPEC appends to its surrejoinder a letter from the postmaster of the Paris Monceau post office which says that a registered letter No. 2023 posted on 21 January and addressed to the complainant was delivered on 3 February 1987. In those circumstances the Tribunal is satisfied that the organisation has discharged the onus of proving that the Executive Committee's decision was communicated to him.

7. Since the complainant was informed of the decision more than ninety days before filing, his complaint was not lodged within the time limit in Article VII(2) of the Statute and is not receivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

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