

## SEVENTIETH SESSION

### *In re* LEONOR

#### Judgment 1075

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Mauricio Leonor against the International Labour Organisation (ILO) on 30 March 1990 and corrected on 3 April, the ILO's reply of 1 June, the complainant's rejoinder of 6 August and the Organisation's surrejoinder of 12 October 1990;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 6.7, 11.16 and 13.2 of the Staff Regulations of the International Labour Office;

Having examined the written evidence;

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

A. The complainant, a Filipino who was born in 1936, joined the ILO staff at headquarters in Geneva in August 1975 under a fixed-term appointment at grade P.4. He was employed in the Employment and Development Department. He had his appointment renewed from time to time up to the end of 1981, but his branch was then done away with and his position became more precarious. In 1982 and 1983 he carried out several temporary assignments. From February 1984 he held short-term appointments to carry out missions and to serve as an expert under technical co-operation projects in several countries in Africa and Asia. He was seconded to the World Bank for a spell. He took unpaid study leave. From 1 January 1988 he was employed again at headquarters in the Vocational Training Branch (F/PROF) under a fixed-term appointment for one year. He had that appointment extended to 30 April 1989.

His main task in F/PROF was the writing of a paper on how to increase the impact of vocational training on the lot of the "rural poor", and one conclusion he came to in the paper was that for that purpose ILO training projects were obsolete.

F/PROF did not want to keep him after April 1989, but he was granted a short extension of appointment to carry out a mission to the Philippines.

On 28 April and 2 May 1989 his first- and second-level supervisors signed a report appraising his performance in the period from 1 May 1988 to 30 April 1989 in accordance with Article 6.7 of the Staff Regulations. They described his paper as "unacceptable" in substance and in style and, among other rebukes, said that he was not responsive enough to suggestions and criticisms. They recommended not extending his appointment with F/PROF. He wrote a minute on 12 May strongly objecting to the report and saying he would like to comment further on his return from the Philippines. The draft report and his minute were forwarded to the Reports Board. The Board endorsed the recommendation in the report and the Director-General approved the report on 2 June.

His mission being over, the complainant's appointment expired on 11 June 1989 and he went back to Geneva. Though he was not under contract his name was still on the staff list and the formalities of termination were not observed.

In a minute of 13 July to the Reports Board he set out his promised additional comments on the report and asked for review.

In the last week of August he saw the Chief of the Personnel Development Branch (P/DEV), who confirmed that F/PROF did not want to take him back, and they agreed that each would look for some new job for him.

They met again on 4 September according to the ILO, on the 5th according to the complainant. No suitable assignment having turned up, the Chief of P/DEV orally offered him alternatives. One would be to grant him an indemnity - commonly known as the "golden handshake" - in consideration of "agreed termination" under Article 11.16\*(\*"The Director-General may terminate the appointment of an official if such action would be in the interest

of the efficiency of the work of the Office, provided that the official concerned consents to the action.") of the Staff Regulations. That would mean granting him an appointment only to break it off, since 11.16 did not come into play if an appointment merely expired. So he would have his appointment extended as from 12 June up to 31 December 1989 but then cut off at 30 September. The alternative would be to grant him one last extension, again as from 12 June but only up to 31 August 1989, to make up for the ILO's failure to give him the customary two months' notice of non-renewal, and he might challenge the non-renewal if he so wished. He was to make up his mind before the ILO closed down for a local public holiday on 7 September. On 6 September the complainant saw the Chief of P/DEV again and signed a text dated 1 September 1989 constituting an agreement under 11.16 to terminate his appointment at 30 September and granting him sixteen-and-a-half months' salary by way of indemnity.

On 5 October he wrote to the Director-General saying that he had signed the agreement against his will, deploring the way in which his many years' loyal and satisfactory service had ended and asking that the matter be looked into.

On 11 October he wrote again to the Reports Board about the appraisal report. On 1 November the secretary of the Board sent him a letter pointing out that the Board did not normally entertain observations from an official after the Director-General had approved the report, but that on 23 August it had examined his further comments of 13 July and decided not to alter its view.

On 30 October he submitted a "complaint" under Article 13.2 of the Staff Regulations setting out his grievances in detail: he alleged breach of a promise the ILO had made in 1985 to give him an established post after he had completed his field assignments; his supervisors in F/PROF were prejudiced against him because of remarks in his paper on ILO training projects; their appraisal of his performance in 1988-89 was unfair and an abuse of authority; the Reports Board should have awaited his additional comments; and only under duress had he consented to termination.

The Director of the Personnel Department answered on the Director-General's behalf in a letter of 3 January 1990 that his grievances on matters other than the appraisal and the termination were time-barred under 13.2, which required challenge "within six months of the treatment complained of"; that his objections to the appraisal had been duly taken into account before the final approval of it; and that the termination had not been coercive.

The complainant got the Director's letter on 19 January 1990, and it is the decision he is impugning.

B. The complainant observes that when the text of the agreed termination was put to him for signature, in early September 1989, he had not been paid any salary since June and had been left in ignorance of his fate; he was warned that if he did not sign within 24 hours he would be terminated; and the notice of extension of his appointment to 31 December 1989 was not handed over to him until he had signed. From those circumstances it is plain that he signed, not because he gave his consent, but from apprehension and under duress.

It was in any event improper that the ILO should apply 11.16, which it is supposed to follow only "in the interest of the efficiency of the work of the Office". His record of service was outstanding, as the glowing reports on his performance show, until 1988-89. Had his work been poor the ILO would surely not have granted him an extension of appointment as from 12 June 1989 just for the purpose of ending it soon after. Many ILO officials and others from whom he invites the Tribunal to hear evidence can bear witness to his ability to get on with others, to his attainments and to the consistently good quality of his work. For example, his appraisal report for 1986-87 said: "His professional competence is impeccable and his attitudes, behaviour and conduct as an ILO official are beyond reproach". How can the quality of his services have so declined by 1988-89?

His additional comments of 13 July on the report for that period were not given proper study, and the Reports Board thereby denied his right to a hearing and acted prematurely.

He submits that his troubles arose out of his criticisms of training projects in his paper and that he has fallen foul of a "technical dispute" with his supervisors, who found his views heretical. Even if the paper had not been up to standard that would not have been a good reason to refuse to renew his appointment, especially at his age and when he had served the Organisation so well for so long. The ILO did not keep its many promises to give him a proper post.

He asks the Tribunal to declare the "agreed termination" void, order his "reinstatement in his former rights",

declare his appraisal report for 1988-89 void, order the ILO to do its utmost to grant him a permanent appointment in keeping with its rules and practice, and award him costs.

C. In its reply the ILO gives its own version of the facts and submits that the complainant misrepresents his case, which is not about the non-renewal of his appointment but about the validity of the agreed termination.

There is, it maintains, no evidence to suggest that he signed the agreement under duress, even though his position was unusual in the few weeks after 11 June 1989. For one thing, the parties having concluded the agreement over twelve weeks after his last appointment had expired, the ILO was under no further obligation to him anyway; its treatment of him was therefore considerate and generous. For another thing, from his two long talks with the Chief of P/DEV he knew just what the consequences of the alternative offers would be: the offer of the 11.16 indemnity was made ex gratia on account of his many years' service, and he could always turn it down and take a short extension instead. Thirdly, he signed the agreement without reservation or qualification and only several weeks later did he try to get out of it by a half-hearted allegation of "unusual if not downright coercive circumstances". Lastly, though he was asked to make up his mind promptly, that did not amount to irresistible pressure: he knew what he was about and had time to weigh the pros and cons.

Besides, even if the agreement on termination were declared void, that would leave him merely with an appointment that expired at 31 December 1989 and it is too late for him now to challenge the decision not to renew it.

As to his appraisal report for 1988-89, the ILO rejects his charge that the Reports Board denied his right to a hearing. There was no procedural flaw in the Board's failing to await his additional comments since it already had his comments of 12 May 1989. In any event, even if there was a flaw it was put right later since the Board, as the letter of 1 November from its secretary said, did look at his further comments at a meeting on 23 August. There being no procedural flaw, the contents of the report are subject only to strictly limited review by the Tribunal. In any event the complainant cannot properly maintain that the report had anything to do with his termination since he was terminated by virtue of the agreement. The alternative to agreed termination was a short extension, and the reason why he was not offered a longer one was not the poor report, but the ILO's inability to place him: he himself well knew that the Organisation had been trying to no avail since 1983 to find him a lasting assignment.

As to his other claims - to reinstatement in his former rights, whatever that may mean, and to a permanent appointment - they are irreceivable because he has not exhausted the internal means of redress.

D. The complainant presses his claims in his rejoinder. He takes exception, the more so since his livelihood is at stake, to the ILO's narrow view of receivability and to its attempt to withdraw the main issues from review by the Tribunal. He enlarges on his account of the facts and on his earlier pleas. He submits that the evidence belies the Organisation's profession of generosity and its portrayal of him as someone whose services were unusable. For years it had recognised him at his true worth. He actually came top in the competition for one post which he applied for, but which came to nothing.

He reaffirms that the ILO did not keep its promises to give him a proper post: in a minute to him of 28 August 1985 the then Chief of P/DEV said that he was to serve in 1985-86 in Zambia, Swaziland and Kenya and added: "It was also agreed that on completion of your assignment in Kenya, you will revert to the Regular establishment of the ILO". He served well in Kenya; yet on his return the ILO gave him no steady job. His position after 11 June 1989 was not just "unusual"; it was inadmissible. It was grossly unfair to string him along from 1982 with short assignments and vague promises. By May 1989 the ILO had decided to get rid of him altogether and thereafter it made no real attempt to place him; so the alleged prospecting in early September was pretence. He was offered no real alternatives: if he did not agree to termination he would get no worthwhile renewal of appointment. The Chief of P/DEV gave him only one day in which to make up his mind about termination and twice refused his request for a week; he signed against his will because of the sorry plight the Organisation had put him in; the Chief of P/DEV later refused even to see him. He was not "half-hearted" in condemning the Organisation's tactics: he accused it of coercion. It was the appraisal report that caused the ILO not to renew his appointment since his supervisors made a recommendation to that effect; it would be unfair to discount that report, and he develops his arguments about the procedural and substantive flaws that make it invalid. There are several suitable posts available in F/PROF and in his view only the personal animosity of his supervisors has driven him out.

E. In its surrejoinder the Organisation dwells on several issues of fact which the complainant raises in his rejoinder.

It enlarges on its arguments on receivability, rejecting the complainant's charge that it is taking too narrow a view of the matter. It enlarges on its pleas in answer to the objections he puts forward to the agreement on termination and to the intermediate report on his performance. It maintains that as to all other matters his claims are out of time and that in particular his claim to the grant of a permanent appointment is also devoid of merit, being based on a misunderstanding of the material rules.

## CONSIDERATIONS:

### Oral proceedings

1. The complainant's application for oral proceedings and for the taking of oral evidence is refused because the written submissions afford a sufficient basis for a ruling on all the material issues.

### The merits

2. The complainant was recruited by the ILO in August 1975 under a fixed-term appointment which was periodically renewed. He worked in units that belonged to the Employment and Development Department. On reform of the Department in 1981 his branch was abolished. So as to give him a chance to stay on the ILO kept him provisionally in the Department until 1984, though he was not on any post provided for in the budget.

He was granted a series of short-term appointments to carry out missions. He entered competitions for several posts, but was unsuccessful, and he refused offers of appointment as deputy director of ILO offices in Port-of-Spain and in Suva. In response to his pressing demands for reinstatement in a post under the regular budget, and after he had completed a mission to Kenya, he was appointed to the Vocational Training Branch (F/PROF) of the Training Department on probation for one year from 1 January 1988. The period was extended to 30 April 1989 to let him complete his assignment and to 11 June 1989 so that he could carry out a mission in the Philippines.

3. On the strength of an intermediate report of 2 May 1989 on his performance his assignment to F/PROF was officially terminated on 30 April 1989 and, no further employment having been found for him after his mission to the Philippines, his appointment came to an end. After 11 June he got no more pay. But the Administration failed both to follow the usual practice of giving him two months' notice of non-renewal and to take his name off the staff list.

4. Either on 28 August, according to the defendant, or on the 26th, the date the complainant gives, the Chief of the Personnel Development Branch (P/DEV) ran into him and they had an informal chat in a coffee bar. According to the Organisation's version the Chief of P/DEV then told him that, though F/PROF did not want him, the Administration would make a last effort to place him. If they failed they would be willing to offer him payment of an indemnity under Article 11.16 of the Staff Regulations - the "golden handshake" - so that he would get the greatest possible financial advantage on leaving. To enable him to qualify for the 11.16 indemnity he would be granted an appointment for six months which would then be cut short. The complainant's version is that the Chief of P/DEV merely asked him to go directly round the various departments looking for a post. In the event no post was found for him.

5. The complainant met the Chief of P/DEV again a few days later: the ILO says the date was 4 September, the complainant that it was the 5th. The ILO says that this time the Chief of P/DEV told him that if he did not agree to the 11.16 indemnity the alternative would be renewal of his appointment for two months only, to 31 August 1989, a decision which would remedy the failure to give him two months' notice and which he would be free to challenge if he so wished. According to his own account it was on 5 September that he was told for the first time about the 11.16 indemnity and the alternative was non-renewal.

6. The Chief of P/DEV insisted that he make up his mind before the two-day local public holiday, starting on 7 September, that immediately preceded the weekend. By the Organisation's date that left him two days, by his own date only one day, in which to come to a decision. He says that he asked for a week but was refused.

7. On the 6th he signed an agreement for termination of his employment by mutual consent and for the payment to him of the 11.16 indemnity, which came to sixteen-and-a-half months' salary. According to the Organisation he signed without condition or reservation.

8. On 30 October the complainant submitted to the Director-General a "complaint" under Article 13.2 of the Staff

Regulations on the grounds of unjustifiable and unfair treatment. He referred to the treatment which he had received since 1982 and which he said had culminated in an unacceptable appraisal report, premature action on it by the Reports Board and a dubious agreement on termination.

9. Answering on the Director-General's behalf in a minute dated 3 January 1990, the Director of the Personnel Department observed that objections to any matters prior to the appraisal report and the agreed termination were time-

barred under Article 13.2. As to the appraisal report, he said that "the special procedures" involving the Reports Board had been "fully invoked", all the complainant's comments had been "taken into account" and there was "no procedural defect". As to the agreed termination, the Director-General did not agree that the circumstances in which the complainant had signed were "coercive". That is the decision he impugns.

10. The complainant submits that the agreement on termination is null and void because he signed it under duress, that the conditions for agreed termination were not met and that he ought therefore to be reinstated in his rights. He further contends that the appraisal report of 2 May 1989 was unjustified and mistaken, that the procedure for giving him his say was not properly followed and that the report is therefore to be treated as null and void. He asks that the ILO grant him a permanent appointment in keeping with its rules and practice.

The agreement on termination

11. The main issue is whether the agreement of 6 September 1989 should be set aside on the grounds that the complainant signed it under duress.

People are often constrained to make decisions, whether on personal or on financial matters, under pressure of circumstances, but any contractual relations they may enter into while under such pressure will not be void or voidable on that account alone. To succeed in his contention that the agreement may not be enforced against him the complainant must show that the pressure under which he says he acted was unlawful. The pressure he alleges was due to the following circumstances:

(1) he had been paid no salary since the beginning of July 1989;

(2) he was in great uncertainty about his future;

(3) he was required to sign within twenty-four hours; and

(4) he was told that he would not be given the six-month appointment unless he signed the agreement on termination.

12. There is no need to resolve the dispute between the parties over issues of fact since the Tribunal will base its ruling on the version that is more favourable to the complainant. For that reason in particular, there is, as is stated in 1 above, no need to order the oral proceedings and the hearing of witnesses which he has applied for.

13. Circumstances (1) and (2) - the lack of salary and the uncertainty he was in - were to remain unaltered anyway if he made no choice. And circumstance (4) - making the grant of the six-month appointment depend on agreement on termination - did not amount to pressure: that was in fact the essence of the offer.

14. The only pressure the ILO applied was circumstance (3), the setting of the time limit. Setting a deadline is a quite normal approach in negotiation and, though it was rather mean-spirited not to let him have the longer time he asked for or at least until the Monday following the long weekend - which would not have been to the Organisation's disadvantage - it was not unlawful. Even the twenty-four hours he acknowledges that he did get left him time to consult family or friends, a staff representative or legal counsel. Actually he does not say how he spent the twenty-four hours at his disposal; perhaps he did get advice. Be that as it may, he is an experienced and well-educated man, he chose to sign and he must be held to the bargain. The circumstances he faced if he refused the offer would not have made his position any worse: the status quo would merely have continued.

15. He further contends that the Organisation misapplied Article 11.16 in that its purpose is stated to be termination "in the interest of the efficiency of the work of the Office". Citing his excellent record, he submits that if his work had not been found satisfactory the Administration would not have offered him an extension of contract on 31

August 1989 only to end it soon afterwards.

16. His plea is disingenuous and cannot be sustained. It is obvious that the six-month appointment was offered to him, not so that he could do work for the Organisation, but so that it could then be terminated. The offer was a composite one, comprising the grant of a six-month appointment and simultaneous mutual consent to termination after three months. It cannot be treated as two independent offers, the prior grant of the appointment being dependent on the agreement to terminate it.

17. The conclusion is that in signing the agreement on 6 September 1989 the complainant was not subject to unlawful pressure, or duress, on the ILO's part and that by virtue of that agreement the complainant agreed to the termination of his employment.

The appraisal report

18. The complainant further claims redress in the matter of his appraisal report. When completed the report was passed to him for comment. He gave some comments in a minute of 12 May 1989 but asked for time to prepare a fuller statement since he was just about to go on the mission to the Philippines. But the Reports Board endorsed the report on 19 May without awaiting his additional comments and the Director-General approved it on 2 June. On his return from the Philippines he submitted additional comments, on 13 July 1989. The Reports Board considered them on 23 August 1989 but recommended no change in the report.

Although the Board did overlook his request for permission to make further comments, he himself acknowledges that it did so inadvertently. Besides, since the Board did later examine his further comments and decide that there were no grounds for any change in its original position, it corrected the oversight.

19. As to the actual context of the report itself, the complainant submits that it is unfair. In his "complaint" of 30 October 1989 to the Director-General he alleged abuse of authority on the grounds that the report had been drafted in the middle of a dispute with his supervisors and that it contradicted favourable comments in earlier reports.

20. The dispute arose because while drafting a paper on how to increase the impact of vocational training on the rural poor the complainant came to the view that for that purpose ILO training projects were obsolete. His supervisors found his draft unacceptable in substance and in style. One comment in the report was that his reaction to constructive criticism of his manuscript had been "to launch a personal attack (in writing) on his supervisor", which had led to a breakdown in communication and made it necessary to move him to another unit for the last month of his contract.

21. His allegation of abuse of authority is not proven. His second-level supervisor states in the report that it was prepared jointly by himself and two other supervisors. That pre-supposed consultation and joint review by three supervisors before the report was made and such joint participation obviated any danger there would have been in having a report drawn up by a supervisor with whom the complainant had had a clash of personality or other form of conflict.

The claim therefore fails.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner

