

SEVENTY-EIGHTH SESSION

***In re* HERITIER**

Judgment 1388

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Jean-Jacques Hérítier against the Intergovernmental Organisation for International Carriage by Rail (OTIF) on 23 February 1994, OTIF's reply of 28 March, the complainant's rejoinder of 30 April and the Organisation's surrejoinder of 24 May 1994;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the case is about the rejection of the complainant's application for end-of-career promotion and that the parties' claims are as follows:

The complainant:

1. the grant of end-of career promotion due according to the Organisation's practice;
2. an award of damages for injury sustained in its employ.

The defendant:

the dismissal of the complaint.

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

A. The complainant, who joined OTIF in 1957, reached the grade of first secretary in 1986. In June 1993 he applied to the Director General for end-of-career promotion to the grade of assistant counsellor. In August 1993 the Director General referred his request to the Chairman of the Organisation's Administrative Committee recommending rejection. At its 80th Session the Committee held that "the Director General's decision [was] sound". By a letter of 23 November 1993, the decision now impugned, the complainant was informed on the Chairman's behalf that his request was rejected.

B. Citing cases of others with similar duties who got promotion, the complainant pleads breach of equal treatment, misuse of authority and failure to "ensure" him a "reasonable" career.

C. In its reply OTIF denies breach of general principles of law or the provisions of the Staff Regulations on promotion. Officials have no right to promotion, the matter being one in which the Administration has wide discretion. Neither the complainant's qualifications nor his duties warranted promotion. There was no breach of equal treatment. The Organisation's budget and finances required a "tightening up" of staff policy that made end-of-career promotion more difficult.

D. In his rejoinder the complainant maintains that he deserved promotion and suffered unequal treatment.

E. In its surrejoinder OTIF observes that the challenged decision is in line with the Committee's staff policy since 1991 and that neither his workload nor the kind of work he was doing nor the period during which he did it warranted promotion.

CONSIDERATIONS:

1. Mr. Hérítier, a Swiss citizen, eventually reached the grade of first secretary at the Central Office of International

Carriage by Rail (OCTI), the secretariat of OTIF. He is asking the Tribunal to quash a decision taken by the Chairman of the Organisation's Administrative Committee on 23 November 1993 at the proposal of the Director General of the Office not to grant him end-of-career promotion to assistant counsellor.

2. According to the evidence he joined the Office as a clerk. He had a successful career and was promoted six times. The last promotion, in 1986, made him first secretary and gave him the duties of an executive secretary, which included general business, managing goods (CIM) and passenger (CIV) traffic lines, helping to edit the Office's Bulletin and managing its premises.

3. Being due to retire on 1 June 1994, he sent the Director General a handwritten letter on 25 June 1993 asking for "end-of-career promotion to the grade of assistant counsellor" in accordance with the Office's practice. He felt that he deserved such "token of recognition" of 48 years' service to rail transport, 37 of which he had spent at OTIF. He asked the Director General to put his request to the Chairman of the Administrative Committee, the Organisation's governing body.

4. The Director General did so by a letter of 3 August 1993. He told the Chairman that, as he had informed Mr. Héritier, what he wanted was "contrary to sound staff policy, which precludes 'gratuitous' end-of-career promotion", and his duties did not qualify him for the grade of assistant counsellor. He said that the "tightening up" of policy in the last few years had meant abandoning automatic end-of-career promotion and the Organisation must keep to that policy if it was not to lose credit. Lastly, he pointed out what the promotion would cost, particularly the charges to social security. A copy of the letter went to Mr. Héritier.

5. The complainant felt that the Director General had not put his case properly to the Administrative Committee and on 24 August 1993 he sent a letter directly to the Chairman of the Committee as President of OTIF appending several documents. In the letter he challenged the Director General's assertions and cited five other officials who he said had recently got generous send-offs. One of them, a counsellor, had retired on an assistant director's pension, and that had cost the Organisation a great deal more in pay and pension contributions.

6. The Administrative Committee examined the complainant's request and claim at its 80th Session, which it held in Berne on 10 and 11 November 1993. After discussion in which the Swiss and other delegates took part it upheld the Director General's view. "There is", it said, "no right to promotion and the cases cited as grounds for equal treatment are irrelevant". It asked its Chairman to convey its reply to Mr. Héritier.

7. The Committee's position was notified to the complainant on behalf of the President of OTIF in a letter of 23 November 1993. That is the decision he is challenging. On 22 December 1993 Mr. Héritier sent to the President a long letter in which he developed his claim and to which he appended many documents illustrating his career at the Office. He got no answer. Under Article 58 of the Staff Regulations staff members may lodge an appeal with the Administrative Committee against any decision of the Director General or of the Committee itself. The Organisation submits, and the complainant does not disagree, that the internal means of redress have been exhausted.

8. Mr. Héritier submitted his complaint to the Tribunal on 23 February 1994, and there are no objections to receivability.

9. In substance and according to context Mr. Héritier is seeking two things: recognition of his right to end-of-career promotion by the quashing of the decision of 23 November 1993 refusing his claim, and redress for the "grave injury" that the Organisation's abuse and denial of rights have caused him. He refers in this connection to what he sees as lack of support by the Swiss member of the Administrative Committee. He has only one argument: it was established practice for OTIF to give its employees promotion when they retired; yet it belittled him and discriminated against him by refusing such promotion at the end of a fine career.

10. In reply the Organisation puts forward two arguments. First, neither the Staff Regulations nor the principles acknowledged in the case law of international administrative tribunals establish any right to promotion; the administrative authority has wide discretion in the matter, and neither the complainant's qualifications nor his performance reports warranted promoting him to assistant counsellor.

11. In answer to his allegation that it discriminated against him by departing from practice, OTIF submits that the cases he cites are not comparable to his and that in any event it had decided long before he retired to apply a "new

policy" that put a stop to any perquisites it might have bestowed in the past, such as end-of-career promotion. There was no question of going back on the new policy to grant him a benefit he was not entitled to.

12. In answer to the complainant's charge of grave injury the Organisation objects to his abusive language and observes that he has failed to prove any of his accusations against it.

13. The complaint is utterly devoid of merit. According to consistent precedent promotion is at the discretion of the Organisation, which must be free to grant or withhold it in accordance with objective working requirements. It follows that any grant of promotion at the time of retirement is inherently contrary to the Organisation's interests because by then there can no longer be any question of taking on the higher level of responsibility that promotion entails. The Tribunal therefore holds that the Organisation is right to follow the policy of refusing its staff promotion which would have the sole effect of laying a burden of social costs on the institution as a whole without conferring on it any benefit in return.

14. That different ideas may have governed practice in the past affords the complainant no grounds for believing that the Organisation has discriminated against him or subjected him to treatment warranting the abusive language he has used, and particularly the improper remark he has made about his own country's representative on the Administrative Committee.

15. For the reasons stated the complaint must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
E. Razafindralambo
P. Pescatore
A.B. Gardner