

## NINETY-FOURTH SESSION

Judgment No. 2171

The Administrative Tribunal,

Considering the first complaint filed by Mrs R. C. G. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 February 2001;

Considering Judgment 2088, on her first complaint, in which the Tribunal ruled that the question of a claim for termination indemnity under Rule 109.7 was to be returned to the parties for argument;

Considering UNESCO's reply of 20 February 2002 on that one issue, the complainant's rejoinder of 2 April and the Organization's surrejoinder of 29 April 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

A. This case first came before the Tribunal at its ninety-second Session in 2001. The material facts and the parties' pleadings are summed up in Judgment 2088, delivered on 30 January 2002. The complainant was separated from the Organization on 30 November 2000.

In paragraph 28 of her initial complaint she contended that UNESCO should have paid her a termination indemnity under Staff Rule 109.5 [*sic*]. In ruling on that case the Tribunal took the view that because she had referred to the wrong Rule, the relevant one being 109.7, <sup>(1)</sup> the question of the indemnity was not argued by the parties in their submissions. It therefore decided that the question of a claim under Rule 109.7 was to be returned to the parties for argument on that single issue.

The Tribunal asked the Organization to reply to paragraph 28 of the complainant's initial pleadings as if it referred to Rule 109.7, and set time limits for the filing of the complainant's subsequent rejoinder and the Organization's surrejoinder. It dismissed all other claims and held over the question of costs.

B. In its reply the Organization holds that in not paying the complainant termination indemnity it has not infringed any applicable texts. No termination indemnity is due to her and her claim has no basis in law. According to precedent, entitlement to such indemnity arises only in cases of separation for abolition of post. The complainant's separation, however, did not result from the abolition of the post she occupied in Washington. The Director-General decided to transfer her to headquarters in Paris, and because she failed to report for her new assignment her contract was not renewed when it expired in November 2000. Moreover, in Judgment 2088 the Tribunal found that the decision of 29 June 2000 announcing the non-renewal of her contract was not flawed. A fixed-term appointment expires without notice or indemnity, and separation resulting from expiration of any such appointment is not deemed to be termination within the meaning of the Staff Regulations and Rules.

C. In her rejoinder the complainant holds the view that she is nonetheless entitled to the indemnity. She is of the opinion that her post was abolished, and that it was unjust and unreasonable on the part of the Organization to abolish it and continue her contract for a few months in order to avoid paying her a termination indemnity. It was for health reasons that she could not go to Paris, and because of the way she was separated from service, termination occurred and she should be paid the indemnity.

She submits that upon termination under Regulation 9.1, a staff member on a fixed-term contract is entitled to an indemnity calculated according to the number of years and months of service. In her case, having served the Organization for 18 years she could expect an indemnity equal to 12 months' salary. That amount could be increased by 50 per cent if, in accordance with its long-standing practice, UNESCO applied Staff Rule 109.7(e)

which confers on the Director-General the authority to grant that increase. She claims the equivalent of 18 months' salary "in termination indemnities", as well as her legal costs.

D. In its surrejoinder the Organization takes issue with the way the complainant calculated her 18 years of service. Her career, it points out, included two periods: 13 years of service in Paris from 1982 to 1995, followed by just five years in Washington. The schedule referred to in Rule 109.7(a) makes no provision for a termination indemnity after only five years of service. Moreover, Staff Rule 109.7(e), which provides for a possible 50 per cent increase of the indemnity, is not applicable to her case: her appointment was not terminated within the meaning of Regulation 9.1.2 to which it refers.

It reiterates that her separation resulted not from abolition of her post, but from non-renewal of her fixed-term contract. No indemnity is due to her and she has no grounds for saying that non-payment of the indemnity was unreasonable.

## CONSIDERATIONS

1. In Judgment 2088 the Tribunal dismissed all but one of the complainant's pleas but called for further submissions on the remaining one because it had been improperly argued by the complainant and not taken up by UNESCO in its submissions. Under 27 the Tribunal said:

"The complainant is not entitled to any of the relief claimed set out under 11(a) to (e) [...]. Neither is she entitled to the alternative relief sought at (ii) and (iii). However, she also seeks at (i) a termination indemnity under Rule 109.5 which does not deal with indemnities. These are in fact dealt with under 109.7 which provides (inter alia) that on termination of a fixed-term appointment after six years or more of service, owing to abolition of post, a termination indemnity calculated on length of service is payable according to the schedule given.

Before the Appeals Board the complainant did make a claim under Rule 109.7. The question of a termination indemnity was not argued before the Tribunal probably because the complainant did not cite the number of the Staff Rule correctly. The Tribunal considers that the question of a claim under 109.7 (mistakenly referred to as 109.5) should be returned to the parties for argument on this single issue, reserving the question of costs."

2. Upon receipt and consideration of the parties' further submissions, the Tribunal concludes that it is clear that no termination indemnity is due to the complainant. While her post was eventually abolished, it is evident that such was not the reason for her termination, and that in fact her contract was never formally terminated at all.

3. As Judgment 2088 makes clear, rather than terminate the complainant's appointment, the Organization instead offered her an advantageous transfer to a post in Paris. It was her unjustified refusal to take up that post and her failure to report for duty which then prompted the Organization to notify her that her fixed-term contract which was due to expire a few months later would not be renewed.

4. The non-renewal of a fixed-term contract is not the same thing as termination and does not give rise to any termination indemnity. Staff Rule 109.3 provides that a fixed-term appointment "shall expire automatically and without notice or indemnity on the expiration date specified in the letter of appointment" and separation as the result of the expiration of any such appointment "shall not be deemed to be a termination within the meaning of the Staff Regulations and Rules".

5. There is nothing in the evidence to suggest that the Organization's actions were an elaborate stratagem or were designed in any way to prevent the complainant from claiming a termination indemnity. On the contrary, it was a move designed to put an end to what was for the complainant a difficult situation and to allow her to continue her long service with the Organization at headquarters in Paris, where she had worked before. Since the Tribunal has already found that the complainant was not justified in invoking alleged medical reasons for her refusal to move, she must bear the unfortunate consequences of her actions. Consequently, her claim for termination indemnity fails.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2002, Mr James K. Hugessen, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

James K. Hugessen

Seydou Ba

Florida Ruth P. Romero

Catherine Comtet

1. Staff Rule 109.7(a) reads as follows:

"Upon termination under Regulation 9.1 of an indeterminate appointment, or of a fixed-term appointment after six years or more of service, owing to the abolition of a post or reduction of staff, a termination indemnity calculated on the basis of a number of years and months of service completed, shall be payable in accordance with [the schedule given]".