

THIRTY-NINTH ORDINARY SESSION

In re REITAN

Judgment No. 316

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Mr. Harald Arne Reitan on 11 June 1976, the ILO's reply of 9 November 1976, the complainant's rejoinder of 19 January 1977 and the ILO's surrejoinder of 7 March 1977;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Article 9, paragraphs 4 and 5, of the Constitution of the ILO, Articles 4.6(d), 6, 7.6(j), 13.1, 13.2 and 13.3 and Annex I, paragraph 1, of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the International Labour Office on 14 February 1973 on a one-year appointment at grade P.4. He later had the appointment extended to 28 February 1976. In May 1975 he asked whether it could be extended by one or two years but was told that that was unlikely. To enable him to take home leave, however, his appointment was extended to 30 April 1976.

B. On 25 November 1975 the complainant received confirmation of the decision not to renew his appointment. In an exchange of letters with the Administration he then sought to have the decision reviewed. The decision was upheld and under Article 13.2 of the Staff Regulations he lodged a "complaint" with the Director-General asking to have the matter referred to a Joint Committee. The Director-General investigated the "complaint" and decided to dismiss it, taking the view that there was no need to refer it to a Joint Committee. The Director-General's decisions were notified to the complainant by a Deputy Director-General in a letter of 25 March 1976. The complainant's appointment accordingly ended on 30 April; but he was paid salary and allowances for the month of May so that dental treatment he was undergoing could be completed. On 11 June he lodged a complaint with the Tribunal impugning the decision of 25 March.

C. The complainant believes that the decision not to renew his appointment was based on mistaken and prejudiced reports by him, supervisor, a Mr. Kanawaty. The decision not to set up Joint Committee to consider his case was a denial of justice since it prevented him from establishing a case of unfair treatment. He has a wife and five children and is seriously handicapped by poliomyelitis, and the ILO overlooked the human side of his case and the difficulties loss of employment would cause him.

D. In his claims for relief the complainant asks the Tribunal: (a) to quash the Director-General's decision not to renew his contract, on the grounds that, being based on errors of fact, it was arbitrary and constituted a wrongful exercise of power and an abuse of rights causing him prejudice; (b) to order the ILO to make good the prejudice resulting from that decision by reinstating him in a post in the International Labour Office for a period of not less than three years at the grade which he would normally have been expected to attain had his contract been extended, or alternatively, to grant him compensation amounting to three years' salary and statutory allowances for the moral prejudice he has suffered as a result of the non-extension of his contract and the particular difficulties he has encountered in finding alternative suitable employment; and (c) to order the ILO to pay 5,000 Swiss francs or such sum as the Tribunal thinks reasonable as costs.

E. The Organisation points out that according to Article 4.6(d) of the Staff Regulations fixed-term appointments carry no expectation of renewal and shall terminate without prior notice on the termination date. It contends that there were two reasons why the complainant's appointment was not extended: one was lack of resources and the other the fact that his performance had not always been judged entirely satisfactory.

F. The Organisation takes the view that the impugned decision was taken by the competent authority, did not violate any rule of form or of procedure, is not based on any error of fact or of law, did not overlook essential

facts, is not tainted with abuse of authority, and did not draw any mistaken conclusions from the facts. It therefore asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

The reasons given for the non-renewal of the complainant's contract are primarily the lack of resources and secondarily that his work performance "had not always been judged as entirely satisfactory". The complainant says that the true reason was the ill will of his branch chief, who over a considerable period committed a whole series of discriminatory acts against him. These allegations are set out in detail in the complaint and are contested in equal detail in the Organisation's reply. It is not the function of the Tribunal to review all the issues and to determine whether or not the allegations are well founded. The decision to renew or not to renew a contract falls within the discretion of the Director-General; his conclusion that the allegations are not well founded must be accepted by the Tribunal unless he has misused his discretion. The Tribunal has examined the very full dossier in order to see whether the Director-General has based his decision on manifestly incorrect facts or failed to take into consideration essential facts or drawn clearly false conclusions, and as a result of its examination is satisfied that he has not. No formal irregularities have been shown, and in particular there is no ground for questioning the Director-General's decision in his discretion not to refer the complaint to the Joint Committee for observation and report.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 November 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet