

FORTY-THIRD ORDINARY SESSION

***In re* RUDIN (No. 2)**

Judgment No. 405

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Miss Helen Rudin on 29 November 1978, the ILO's reply of 22 February 1979, the complainant's rejoinder of 30 July, the ILO's surrejoinder of 5 September 1979, the additional documents filed on 5 October 1979 by the complainant and the ILO's comments of 23 November 1979;

Considering Article II, paragraph 1, of the Statute of the Tribunal and 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. On 26 November 1973 the complainant was assigned to the Editorial and Document Services Department of the International Labour Office as Department Programme Planning Officer. According to the post description given in the notice of appointment she was to assist the chief of the department in the preparation of papers relating to the planning and supervision of programmes, including statistics, the supervision of the department's resources and liaison with other Office departments. In the performance appraisal reports for 1973-74, 1974-75 and 1975-July 1976 her supervisor described her performance as being "of a high standard". On 31 July 1976, however, that supervisor left the Office and, after some months in which the deputy chief served as acting chief, was replaced in October. The complainant soon had difficulties with her new chief and on 4 July 1978 she submitted a "complaint" to the Director-General. On 30 August 1978 the Director-General instructed that a minute be written in reply to the complainant. That minute, which she now challenges, said that the "complaint" was time-barred in so far as it related to the withdrawal of some of her former duties and to her temporary assignment to less responsible duties, that her objections relating to abolition of her post and her performance appraisal reports ought to have been referred to other bodies, and that her allegations of unfair treatment by her chief were immaterial, since he had resigned.

B. The complainant alleges: (1) Unfair and improper curtailment of the duties pertaining to her post. In March 1977 her post was bereft of much of its content by the removal of certain duties; she was refused documents which she needed to perform her duties; and, finally, the abolition of her post was not even formally notified to her. (2) Unfair and harmful treatment by her supervisor. Her supervisor failed to answer her minutes, gave her irksome minor duties, had her performance appraisal reports drafted by officials who were not responsible for the administration of the department, and failed to approve those reports within the prescribed time limits. In view of the favourable appraisals by her previous supervisor the Director-General ought to have had a Joint Committee make inquiries into the criticisms by her new supervisor. He refused to do so and therefore based his decision on mistaken information - for example on confusion between her post of programming officer and the post of personal assistant to the chief of the department - and on misinterpretation of the facts. Those flaws taint the decision to dismiss her "complaint". She asks the Tribunal to quash that decision and to invite the Director-General to review her case with a view to reinstating her in her duties as programming officer and to find that she has suffered moral prejudice, or else to invite the Director-General to review his decision in the light of the findings of a Joint Committee appointed with full powers of investigation.

C. As to questions of fact, the ILO maintains in its reply that there was no confusion between posts. At the time of the complainant's transfer to the Editorial and Document Services Department the budget provided for only one assistant to the chief of the department, and so her former department, the Financial Department, agreed that she should take her post with her on transfer. The ILO wanted to correct that anomaly and provide for a second post of assistant to the chief of the department under the budget for 1978-79, but it was just then that the United States

withdrew from membership of the Organization. One result was that in November 1977 the Governing Body abolished the post of programming officer. The chief of the department did take away some of the complainant's main duties and distribute them among the chiefs of the branches of the department; but he was impelled to do so because he was dissatisfied with the quality of her work. It is true, too, that she was given temporary duties in branches of the department; but that was only reasonable: she was on provisional secondments, as needed, which had no effect on her career. After the abolition of the post of programming officer every effort was made to find her another assignment and she was appointed assistant to the Chief of the Document Services Branch in charge of planning and monitoring of staff resources. Lastly, the ILO does not deny that there was delay in drafting the annual reports, which, despite reminders from the Personnel Department, the chief of the complainant's department did not sign until 21 February 1978.

D. As to questions of law, the Organisation deals with three points in its reply: (1) the change in the complainant's duties, (2) the abolition of her post and (3) her annual reports. As to the first, it observes that in a minute of 13 October 1977 the complainant objected to having duties taken away from her. In fact the duties had been taken away from her over six months earlier, in March 1977, and so her objections were not made within the time-limit of six months and are therefore time-barred. Her temporary assignment to duties which she regards as inferior caused her no wrong. Moreover, the chief of the department was authorised to change her duties, and her argument that such a change ought to have been accompanied by notification of a new post description is not borne out by any provision of the Staff Regulations. In a minute of 24 October 1977 to the Deputy Director-General the chief of department justified his decision on the grounds that he had wanted to rationalise the work of the department and the complainant's work was unsatisfactory. He said that whenever she was given any work to do there was such a voluminous exchange of notes and minutes that he found it easier to do the work himself. He said that she was self-satisfied, believed that only others could make mistakes, and had little sense of proportion in judging the importance of detail. The Organisation admits, however, that the dispute is partly due to incompatibility of temperament between a supervisor who was businesslike and cared little about bureaucracy and an official who paid too much attention to detail. Secondly, as to the abolition of her post, the ILO argues that the complaint is irretrievable since the abolition was a policy decision, not a personnel decision: besides, she was given a new assignment and so it caused her no prejudice. The complainant has no grounds for objecting to the fact that she was given no official notification of the abolition of her post. The ILO deliberately refrained from notifying the abolition of posts to the incumbents since it did not necessarily mean that their appointment would be terminated. The complainant contends that the post abolished was not hers but that of the personal assistant to the chief of the department. That contention is mistaken since the Governing Body paper specified that it was the post of the programming officer and that the decision was the logical outcome of the reallocation of programming duties between the various branches of the department. As for the third point, the ILO observes that the complainant's grievances about her annual performance reports were considered by the Reports Committee after the minute of 30 August 1978 to which the complainant objects. Acting strictly *intra vires*, the Committee deplored the delay in preparing the reports, expressly declined to take account of assessment by a third party to which the complainant objected, expressed surprise at the disparities between the favourable reports by her former supervisor and the somewhat adverse reports by her new supervisor, and expressed the hope that matters would be put right in future. Those conclusions mean that the complainant suffered no wrong. It is true that the Committee did not accept her allegation of prejudice on the part of the chief of the department, but it did admit that his personality might be the cause of the strain between him and the complainant. The ILO accordingly asks the Tribunal to dismiss the complaint.

E. In her rejoinder the complainant observes, with regard to the abolition of her post, that the post of programming officer existed in the department before she was assigned to it, but that the chief of the department used the resources pertaining to that post to finance a post for a personal assistant - in fact a translator - not provided for in the budget. After she joined the department her post as programming officer was improperly financed with resources released from elsewhere. The new chief of the department continued to finance the post of personal assistant with the resources provided for the post of programming officer since the Administration had refused to make official provision for the post of assistant. The complainant says that it was because of that decision by the Administration that her supervisor wanted to abolish the post of programming officer so as to have the post of personal assistant made official. That is why her duties were taken away from her and she was assigned to less responsible work in other branches. She maintains that the post of assistant for which provision is made under the present budget and under the budget for 1980-81 must in fact be the post of programming officer because the post of personal assistant never existed officially. As for her new assignment, which she has accepted only subject to the outcome of the present dispute, she maintains that it is much less responsible and important than her former post. The Director-General exceeded his authority in transferring her to such a subordinate post when there was no need

for it. As for her second grievance, namely that she is unfairly treated, she observes that all the measures which were taken in her case were the outcome of plotting by the chief of the department, which unfortunately the Administration backed up. She takes the view that her complaint is not time-barred since it was not until 12 January 1978 that she knew for certain that her supervisor intended to remove her from her post. Moreover, it was in January 1978, too, that she at last got her annual reports, which gave her confirmation of his intention. Where there is unfair treatment, the time-limit does not run from any specific date as it does when there is a decision. So long as the treatment continues, the staff member may appeal against it. On the one hand, there is the authority of a supervisor; on the other, there are the safeguards and rights enjoyed by the subordinate, such as the right to do the work pertaining to the post and the right to be kept informed by means of annual appraisal reports of the supervisor's opinion of his work, on which his hopes of promotion depend. The supervisor may not dispense with those rights by giving the staff member temporary assignments, and the action which he takes should be exclusively in the interests of the Organisation. In the present case what was described as rationalisation was just a pretext. What the supervisor had in mind was something quite different, namely to have the post of his personal assistant made official. There was therefore abuse of authority. The complainant finds it deplorable that, for want of arguments to refute the evidence, the ILO has seen fit to bring up matters which hark back to a time long before the dispute arose and which have no bearing on the case and, from a desire to discredit her, to put a false construction on those matters, which smacks of slander.

F. In its surrejoinder the ILO categorically denies that there was any post for a programme planning officer in the office of the Director of the Editorial and Document Services Department before the complainant joined the department. Under the budget for 1970-71 the only post in the Director's office was for a grade P.4 assistant to the chief of the department. Because of a dispute between her and her former branch the complainant whose grade was G.7, was transferred to the department to carry out some of the programming work. The way in which the chief of the department financed the post of assistant was quite proper. It is not true to say that it was only on 12 January 1978 that the complainant was told that he had taken over some of her duties. Nor did he transfer programming work to the chiefs of branch since they were already doing it and to a large extent the complainant's work overlapped with theirs. The ILO points out that in itself the abolition of a post constitutes no wrong to its incumbent. The abolished post was indeed the one for a programme planning officer which had been regraded in the Professional category. It is also untrue to say that the Programme and Budget for 1980-81 includes credits for the abolished post. The credits are for the post of assistant to the chief of the department, and that post has survived because the chief of the department, having to surrender one or the other of the two posts, preferred to keep that one. As for her new assignment, she did after all accept it, and it is the result not of a transfer but of a reassignment required by the abolition of her post. The chief of the department was therefore in no way guilty of the abuse of authority with which the complainant charges him.

CONSIDERATIONS:

The complainant contends that unwarranted and improper changes were made in the content of her post and that she was unfairly and wrongfully treated by the chief of the department to which she belonged.

It appears from the evidence in the dossier that the wrongs which the complainant alleges raise three points: improper modification of her duties; irregularities committed in abolishing her post; and the circumstances in which her annual reports were prepared.

Modification of the complainant's duties and the abolition of her post:

1. The complainant contends that the chief of the department steadily curtailed her normal duties, without notification to her and without having any change made in the official description of her post. It is, however, inherent in the supervisor's authority that he is free to employ his subordinates in the best interests of the department or branch, and with due regard to their abilities, and the Director-General exercises the same authority in the interests of the Organisation. Accordingly, provided that he does not alter the grade, reduce the salary or show lack of consideration, the Director-General is free to assign provisionally to staff members the duties of officials holding a lower grade if that is in the Organisation's interests.

It appears from the dossier that the sole reason for the action taken with regard to the complainant was the desire of the chief of the department to employ his subordinates more efficiently. The Tribunal will not review the supervisor's appraisal of the complainant's performance provided that, as in the present case, he acted solely in the interests of the Organisation.

The circumstances in which the complainant's annual reports were prepared

2. Although the delay in preparing the complainant's annual reports was unfortunate, it does not taint those reports with any impropriety, especially since it caused the complainant no wrong.

Moreover, it appears from the dossier that Mr. Boukreev, the chief of the complainant's department, acted in the department's interests and, as is clear from the wording of her annual reports, showed perfect objectivity in writing them. That they were less favourable than the ones written by his predecessor is no proof of any prejudice against the complainant.

It appears from the foregoing that the complaint is unfounded, that oral proceedings would serve no purpose, and that the complaint should be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy