Registry's translation, the French text alone being authoritative.

FORTY-FIFTH ORDINARY SESSION

In re A'ADAL

Judgment No. 434

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) by Mr. Fazlollah A'Adal on 23 January 1980, the Centre's reply of 29 April, the complainant's rejoinder of 6 June and the Centre's surrejoinder of 27 August 1980;

Considering Articles II, paragraph 1, and VII, paragraphs 2 and 3, of the Statute of the Tribunal and Articles 0.7, 10.3, 12.1, 13.4 and 13.5 of the Staff Regulations of the Centre;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. After holding several short-term contracts the complainant, an Iranian citizen, was given a one-year appointment on 1 October 1977 as a grade G.5 "technician". His appointment was extended to 30 September 1979. On 2 December 1977 he applied for the up-grading of his post and, his duties having increased since May 1978, did so again in September 1978. On 16 March 1979, however - before his application came up for review - the Chief of Personnel informed him that because of savings approved by the Board of the Centre his appointment would not be extended. On 20 April 1979 he appealed against that decision, citing Articles 0.7, 10.3, and 13.5 of the Staff Regulations and asking to have his appeal referred to a joint committee. On 26 April 1979 he was told in reply that no appeal lay against a decision not to renew a contract and that the case could therefore not be referred to the Staff Relations Committee, which serves as the joint committee at the Centre. The complainant fell ill and his appointment was extended to 14 October 1979. On 18 October, the Staff Union having tried unsuccessfully to help him, he appealed to the Director under Article 12.1 of the Staff Regulations seeking extension of his appointment. On 22 October the Director replied that the new appeal added nothing to the one dated 20 April and that he was therefore confirming his reply of 26 April: under the Staff Regulations no appeal lay against a decision not to renew a short-term appointment which had expired.

B. In his complaint impugning the decision of 22 October 1979 the complainant points out that the working party set up to consider applications for the regrading of posts broke off work when the Board of the Centre decided to abolish a number of posts. He thus found himself, when his post was abolished, with a lower grade than other staff members who were no better qualified. The Centre ought to have finished the grading exercise before enforcing the savings. He would thus have been regraded G.7 like the other staff members and could have been transferred more readily to some other branch. Failure to carry through the regrading caused him financial loss. As regards the decision not to renew his contract, it was wrong for the Staff Relations Committee not to hear his appeal: it was not an ordinary case of expiry of an appointment but in fact an abolition of post. Seen in the context of the measures for reduction of staff, the decision not to renew his fixed-term contract was tantamount to termination of an appointment without limit of time. Thus he was denied the benefit of the rules on reduction of staff set out in the Staff Regulations, which require that due consideration be given to competence, efficiency and official conduct, to length of service and to the factor of geographical distribution. Moreover, the Board of the Centre had made it plain that the cuts were to be made "with the greatest possible objectivity, equity and humanity", and the Director was bound to respect its instructions. He did in some cases, but not in that of the complainant, the only official who was not transferred to another branch. Yet he could have been, particularly since another staff member had taken special leave without pay and so left a vacancy. Being Iranian, the complainant was in a grave predicament, and it would have been only humane to settle the matter in his favour.

C. In his claims for relief the complainant seeks an order that the Centre proceed with the regrading of his former post and pay him the difference between the salary pertaining to the grade which he is granted and that pertaining

to grade G.5. He also asks the Tribunal to set aside the decision of 22 October 1979 and thereby annul the proceedings which culminated in the decision not to extend his contract. Subsidiarily, he asks the Tribunal to order the Centre to grant him a short-term appointment, as it did to all the other officials affected by the economy measures.

D. In its reply the Centre contends that the complaint is irreceivable. The claim for regrading did not form part of the appeal which prompted the impugned decision. The complainant has therefore failed to exhaust the internal means of redress. Any appeal relating to his application of 28 September 1978 for regrading is time-barred. So too is his claim for the quashing of the decision not to renew his contract. Although his original appeal dated 20 April 1979 did not cite Article 12.1 of the Staff Regulations, its purport was such that in law it could be treated only as a "complaint" within the meaning of that provision; because of the nature of his appointment he had no access to the other procedures for seeking redress (Articles 13.4(b) and 13.5(e)) in respect of termination of an unexpired contract. The Director's reply of 26 April 1979 was therefore a final decision and the complainant ought to have impugned it within 90 days. The Director's reply of 22 October merely upheld the decision of 26 April. Moreover, only a serving official may rely on Article 12.1, which the complainant cites in his appeal dated 18 October 1979. The complainant had ceased to be a member of the Centre staff on 14 October 1979.

E. The Centre puts forward subsidiary arguments on the merits. The complainant's claim for regrading of his post must fail since it is far from certain that the review of his post would have led to his promotion. Since his post had been abolished, there would have been no point in regrading it and, with the Centre in a critical position, the decision to suspend the grading exercise cannot be described as arbitrary or wrong. As regards the decision not to renew the complainant's contract, his case was reviewed, after the abolition of his post, by the working party on the staffing consequences of the economy measures. The working party recommended that his appointment should not be extended on expiry if by then the amount of work no longer warranted keeping his post. There is no merit in the complainant's argument that a decision not to renew a contract because the post has been abolished is tantamount to termination. Contrary to what he alleges, Article 0.7(a) of the Staff Regulations does not mean that Article 13.5 applies also to fixed-term officials. All that Article 0.7(a) says about Article 13.5 is that in calculating indemnity on reduction of staff all continuous service shall be taken into account. There were no funds to pay for employing the complainant. Besides, it is not true to say that there was a vacancy because a staff member had taken leave without pay since his post too had been abolished. Nor is there any truth in the assertion that the complainant was denied the objective, fair and humane treatment urged by the Board: he was kept on seven months after his post had been abolished. Although he was the only official in his branch to lose his job, he was not by any means the only one in the Centre as a whole. The Centre did try to find him alternative employment, for example with the International Labour Office and with Fiat, but his qualifications, which are in technical design, were too highly specialised. The Centre invites the Tribunal to declare the complaint irreceivable and, subsidiarily, to dismiss it on the merits.

F. In his rejoinder the complainant argues that the appeal he made on 20 April 1979 came under Article 13.5 of the Staff Regulations and was not a "complaint" within the meaning of Article 12.1: such a "complaint" was submitted later, on 18 October 1979. It was not time-barred since, although he had left the Centre by the time he filed it, he did respect the time-limit set in Article 12.1. It was indeed open to him to submit a claim for regrading, but that claim forms part of the dispute and it is only right to refer it to the Tribunal together with the main subject in dispute. The complaint is therefore receivable. As for the regrading of his post to G.7, the Chief of Personnel himself had acknowledged that he was entitled to it: the Director had graded technician posts G.7 and he was no less entitled to that grade than the other two staff members who were performing the same duties as he. The abolition of several posts was not a valid reason for discontinuing the grading exercise. That argument overlooks the fact that regrading has a retroactive effect on pay. Regrading would have entitled him to additional pay from 1 November 1977. He did suffer discrimination since the other two technicians were kept on whereas he was terminated, and for no good reason. Besides, the duties pertaining to his post have not been abolished but redistributed. The purpose of Article 0.7 is to reduce the adverse effects of holding fixed-term appointments, and it is therefore clear that the complainant ought to have been granted the safeguards provided in the event of abolition of a permanent post. He reaffirms that he was the only staff member affected by the economy measures who did not have his appointment extended. Yet the working party, after its meeting of 12 January 1979, pointed out to the Director that there was a vacancy for a technical assistant in the reproduction service. In ignoring that suggestion and the urgent appeals addressed to him by the Staff Union Committee on 23 October 1979, the Director failed to show the objectivity, equity and humanity enjoined by the Board.

G. The Centre contends that the complaint is irreceivable, the complainant having failed to exhaust the internal means of appeal against the grading of his post. As for the decision not to renew his appointment, it is true, as he

says, that his application of 20 April 1979 was not a "complaint" within the meaning of Article 12.1 of the Staff Regulations and that he did not submit such a "complaint" until 18 October 1979. But his complaint to the Tribunal is still irreeeivable since he thus failed to file his appeal, as he ought to have done, not later than six months after the decision of 16 March 1979. As to the merits, the contention that his duties were of a continuing nature carries no weight since the point is not material. Besides, because of the way in which the Centre is financed and the need for it to adapt constantly to new training needs, there are no continuing duties. The complainant's performance is also immaterial since this is a case of abolition of post. Nor is there merit in the argument that the guarantees which applied to permanent posts ought also to have applied to temporary appointments in the event of abolition of post. It was quite reasonable to allocate many of the complainant's duties to other staff members after the abolition of his post. It is quite plain that the abolition of a post need not entail the abolition of the duties of the post. It is a mistake to put the complainant on a par with the other G.7 officials in his branch: his main job was to prepare and produce teaching materials, theirs to design them. In other words, he put their ideas into practice. Article 13.5 of the Staff Regulations relates to the effect of abolition of post on the employment of holders of appointments without limit of time. It was therefore inapplicable, since the complainant's appointment was not terminated but expired in the normal way. The funds available for the post of a technical assistant, to which the complainant refers, were used to finance the continued employment of a G.3 official in the same branch. The complainant was not the only official to leave against his will. He was not treated unfairly since he was kept on the staff for over six months after his post had been abolished. Lastly, the reason why the Director did not respond to the appeals from the Staff Union Committee was that what the Committee wanted simply could not be done at a time when the Director had to retrench.

CONSIDERATIONS:

The complainant's claim for regrading

1. On 1 October 1977 the complainant, an Iranian citizen, began a one-year appointment as a grade G.5 "technician" at the International Centre for Advanced Technical and Vocational Training. His appointment was extended to 30 September 1979. He fell ill, and was given a final extension to 14 October 1979, when he left the Centre staff.

2. By a letter dated 2 December 1977, about two months after joining the staff, and again on 28 September 1978, he applied for the regrading of his post.

The Chief of Personnel having informed him on 16 March 1979 that his short-term appointment would not be extended, the Centre gave his application no further consideration.

3. The complainant did not take the matter up again until 23 January 1980, when he filed his complaint, asking the Tribunal in his claims for relief to order the Centre to proceed with the regrading of his former post. Under Article 12.1 of the Staff Regulations he should first have pursued his claim by bringing a "complaint" within the organisation. He failed to do so.

Since he has failed to exhaust the internal means of redress provided under the Staff Regulations, his claim for regrading is irreceivable under Article VII, paragraph 1, of the Statute of the Tribunal.

Even if his letter dated 28 September 1978 repeating his claim were to be treated as lodging an internal appeal within the meaning of Article VII, paragraph 3, of the Statute, he ought to have respected the prescribed time-limit and filed his complaint within 150 days, or not later than 25 February 1979. In fact he did not file it until 23 January 1980.

The claim for regrading is therefore irreeeivable on both counts.

The termination of the complainant's appointment

4. On 16 November 1978, at its 28th Session, the Board of the Centre decided, because of its precarious finances, to cut back on staff by abolishing some fifty posts and gave the Director instructions to that effect. Under Articles 13.4 and 13.5 of the Staff Regulations the Director is authorised to terminate appointments in certain circumstances. For officials like the complainant with one-year appointments he could simply decide not to renew the contract. That is what he did in the case of the complainant, who was informed by a letter dated 16 March 1979 from the Chief of Personnel that the Centre did not intend to renew his contract and that his appointment would

accordingly expire on 29 September 1979. The complainant is asking the Tribunal to set aside the Director's decision of 22 October 1979.

He is not challenging the main decision, taken on 16 March 1979 and notified to him on 18 April, not to renew his contract.

The Director's letter of 22 October 1979, to which the complainant alludes in his claims for relief, is in fact merely a reply to a letter which the complainant wrote on 18 October citing Article 12.1 of the Staff Regulations, repeating his case against the non-renewal and again asking for an extension of his appointment. If it is a decision, it merely confirms the decision of 16 March 1979 and does not therefore set a new time limit.

5. The Tribunal must determine whether the letter of 16 March 1979 from the Chief of Personnel notifying the non-renewal to the complainant was the final decision. The complainant argues that it was not; that in fact the decision was first notified in the Director's letter of 22 October 1979, which is the decision he wishes to have set aside.

The letter of 16 March 1979 was sent only a few months after the approval of reforms by the Board of the Centre. The decision not to extend the complainant's appointment was taken under the policy of staff retrenchment. The terms of the letter are clear and explicit enough: the appointment was to end on 29 September 1979. Indeed the letter cannot be read in any other way, and the exchange of letters between the complainant and the Director and the Chief of Personnel made no change whatever in the original decision of 16 March. That is the only decision which could have been impugned within the meaning of Article VII, paragraph 2, of the Statute of the Tribunal. Under that Article the claims should have been filed within ninety days of the notification of the decision, i.e. in September 1979. The complaint being dated 23 January 1980, the claim is irreeeivable. There is no need to consider whether the complaint is irreeeivable on other grounds, for example under Article 12.1 of the Staff Regulations: it is irreceivable under Article VII, paragraph 2, of the Statute.

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 11 December 1980.

(Signed)
André Grisel
Devlin

H. Armbruster

Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.