

EIGHTY-SECOND SESSION

In re Pennisi

Judgment 1611

The Administrative Tribunal,

Considering the complaint filed by Mr. Giuseppe Pennisi against the International Labour Organization (ILO) on 8 January 1996 and corrected on 15 February, the ILO's reply of 23 May, the complainant's rejoinder of 24 June and the Organisation's surrejoinder of 31 July 1996;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal and Article 6, paragraph 2, of its Rules;

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

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

A. The complainant, an Italian, joined the staff of the ILO in February 1992 under a two-year appointment as director of the Organization's branch office in Rome. After extending his appointment by one year the ILO came to hear of a conversation which he had had in May 1994 with a senior Italian civil servant and in which he had allegedly criticised management practices in the Organization's International Training Centre at Turin.

Relations between the complainant and the Centre soured and the Administration offered him a final six months' extension of appointment on terms that the parties agreed to on 30 January 1995. According to the agreement he was to go on special leave with pay and the parties undertook to "refrain, unless the other party has previously agreed otherwise, from any declaration, value judgment or comment" on his activities or the performance of his duties as director of the Rome office.

In a memorandum of 31 July 1995 to the Director-General he accused the Director of the Centre of financial improprieties. He levelled similar accusations in a document he addressed on 4 August 1995 to the Italian ministers of foreign affairs, finance and labour.

From 24 July until 4 December 1995 he and the ILO were in correspondence about a claim he was making to payment of compensation for 15 days' annual leave which he said had accrued while he was on the paid leave provided for in the agreement. His counsel pressed that claim in a letter of 30 November 1995 to the Legal Adviser of the International Labour Office, who promised in a reply dated 4 December 1995 to notify the Organization's decision as soon as it was taken. The complainant is impugning the rejection that he infers from the ILO's failure to notify by 8 January 1996 any such decision.

B. The complainant submits that the ILO's withholding of sums due to him in lieu of accrued annual leave is in breach of the rules on special leave in Article 7.7 of the Staff Regulations. In his view the Organization is wrong to accuse him of breach of the agreement of 30 January 1995: he was, he contends, under a "legal and ethical obligation" to inform the Italian Government of matters "that might have criminal relevance".

He charges ILO officials with "misleading" him about his pension entitlements and seeking to besmirch his good name.

He seeks payment in lieu of accrued leave under Article 7.7 of the Staff Regulations and "compensation" -- including the publication at the ILO's expense of formal apologies in five newspapers and two periodicals -- for the "faulty and misleading information" it gave him in correspondence; for failure to apply Articles 6.7 (on performance appraisals), 12 (on sanctions) and 13 (on appeals) of the Staff Regulations; for the "disregard" of two ILO circulars and two of the Tribunal's judgments; and for "the smearing campaign conducted" by the Director of the Turin Centre against him. He also claims costs.

C. In its reply the ILO contends that the complaint is irreceivable. The complainant lodged it only 39 days after submitting the claim of which he is inferring rejection under Article VII(3) of the Tribunal's Statute: so at the date of filing there was not yet any implied rejection against which appeal might lie. His other claims are about matters

he failed to mention in his internal appeal and are in any event time-barred.

In subsidiary argument on the merits the ILO submits that there was nothing improper in its withholding payment for accrued annual leave: the complainant's breach of the agreement of 30 January 1995 invalidated the agreement. Even if the agreement still held good, the harm he caused the Organization would warrant non-payment. His other claims too are devoid of merit.

D. In his rejoinder the complainant presses his claims. By the time he submitted what he calls his "drastically" revised complaint the ILO's objection to receivability was no longer valid.

E. In its surrejoinder the Organization presses its pleas and observes that the material date of filing is the one that the Registry of the Tribunal stamped on the complaint form: 8 January 1996.

CONSIDERATIONS

1. The complainant joined the ILO on 1 February 1992 as director of its branch office in Rome on a two-year contract. He had his appointment extended by one year.

2. Although the office in Rome had no direct responsibility for the ILO's International Training Centre at Turin, he had some functions in relation to the Centre. It is not in dispute that in 1994 he persistently criticised the management, operation and costs of the Centre. The ILO says that it received reports that he had voiced similar criticisms to Italian civil servants as well, and he has admitted to at least one such instance.

3. After inquiry the Director of the Personnel Department wrote the complainant a letter on 24 November 1994. She said:

" ... it would not be useful to take a position on the extent to which the allegations of improper action are well-founded (which would have possible consequences from a disciplinary point of view), it is unfortunately clear that your apparent lack of confidence in the Centre is matched by the Centre's total lack of confidence in yourself as an independent international civil servant, for which your attitude is largely to blame. ...

It is recognised that you are a capable official and that you have been of real service to the Office and also to the Centre in a number of respects. ... But [there is] a risk of running into the kind of conflicts experienced in the past. Whatever your shortcomings and merits, this is a serious handicap that precludes the continuation of your association with the ILO as Director of the Rome Branch Office ..."

4. After some months' negotiation the ILO concluded with the complainant an agreement dated 30 January 1995 whereby it extended his appointment by only six months, to 31 July 1995; during that period he was to be on special leave with pay but at the ILO's disposal for missions or other services. The agreement further provided for:

"(i) waiver by [both parties] of any action, or continuance thereof, inside the Organization or outside it, against anyone with respect to any issue or fact that may relate or be taken to relate to [the complainant's] activities or to the performance of [his] duties as director of the Rome office; (ii) an undertaking [by each of the parties] to refrain, unless the other party has previously agreed otherwise, from any declaration, value judgment or comment on such issue or fact."

5. The complainant was in fact kept on leave with pay for most of the six months. In a letter of 24 July 1995 to the Director of Personnel he claimed payment of compensation for 15 days' annual leave that he said had accrued to him from 1 February to 31 July 1995, and he cited Article 7.7 of the Staff Regulations, which reads:

"(a) Special leave, with full or partial salary or without salary, may be granted by the Director-General to an official for advanced study or research in the interest of the Organization, or for other exceptional or urgent reasons. ...

(b) Periods of special leave without salary of one month or more shall not count as service for the purpose of calculating entitlement under the Staff Regulations to annual leave, sick leave ..."

The Director replied in a letter of 31 August that at the time of negotiation on the extension it had been agreed that annual leave should not accrue. She added:

"If, however, you can assure me on your honour that you have no recollection of such discussion, I will give instructions to have the accrued leave paid for the period ..."

She then asked him for an explanation on another matter: although the ILO had strictly abided by the agreement it

had heard from several sources that he had submitted to various authorities in Italy a "document" repeating "defamatory allegations" about the Turin Centre of a kind precluded by that agreement as well as by Articles 1.1 to 1.3 of the Staff Regulations.

6. There ensued a lengthy exchange of letters between the ILO and the complainant's counsel. In the meantime the ILO got hold of a copy of a memorandum dated 4 August 1995 which the complainant had addressed to the three Italian ministers. Not only did it contain serious criticisms of the Centre but it revealed that since 1994 he had been addressing repeated criticisms of the Centre to Italian civil servants.

7. By November 1995 he had given no assurance that he did not recollect any discussion about waiver of annual leave; but he continued to demand prompt payment on the grounds that such waiver must be express and in writing. Although at first -- says the ILO -- it was inclined to accept his claim because "it was not in a position to prove this gentleman's agreement", it later decided against the claim on receiving evidence that he had acted disloyally and in breach of the agreement of 30 January 1995. Despite its repeated requests he failed to provide particulars of even a single example of the improprieties he was alleging.

8. The correspondence concluded with a letter that his counsel wrote on 30 November 1995 to the Legal Adviser pressing his claim to payment of compensation for accrued annual leave.

9. Counsel lodged his complaint on 8 January 1996, purporting to act under Article VII(3) of the Tribunal's Statute on the grounds that the ILO had not yet taken any express decision on the claim notified to it in the letter of 30 November 1995. The complaint consisted of the complaint form, duly filled up in its essential points and signed, and of a brief; there were, however, no items of evidence but just a reference under point 4(b) of the complaint form, which requires a list of such items, to "documents available in the ILO files". In a letter of 15 January 1996 the Registrar told counsel that the Tribunal did not have access to those documents and in accordance with Article 6(2) of the Tribunal's Rules gave him thirty days from the date of receipt of the letter in which to correct the complaint by filing any items he believed to be material and by making references to them in his brief. Counsel sent the corrected version of the complaint on 15 February 1996.

10. Besides claiming compensation for accrued leave the complainant alleges various other breaches of the terms of his appointment and of the Staff Regulations: that the ILO gave him no appraisal of his performance in 1994; renewed his contract for only six months in January 1995 and not after July 1995; gave him incorrect information about his pension entitlements; and waged a campaign to smear him.

Receivability

11. The ILO contends that the complaint is irreceivable because it is premature and because of the complainant's failure to exhaust the internal means of redress as to some of his claims.

12. The complainant is impugning the implied rejection of the claims notified in his letter of 30 November 1995. The only claim notified in that letter was to payment of compensation for accrued annual leave. All his other claims are therefore irreceivable under Article VII(1) of the Tribunal's Statute because he has failed to have recourse to his internal remedies.

13. As for his claim to compensation for leave, only where the Administration has failed to take a decision upon any claim within sixty days of the notification thereof does Article VII(3) of the Statute allow direct complaint to the Tribunal. The complainant argues that he lodged his complaint after the lapse of the sixty days: although he filed what he calls an "initial" complaint on 8 January 1996, before such lapse, he points out that his counsel drastically revised it, added written evidence and supplied a new complaint form on 15 February.

14. It was open to the complainant to withdraw the obviously premature complaint of 8 January and lodge a new one which complied with the time limit in Article VII(3). What his counsel supplied on 15 February was no new complaint but merely a version of the original one corrected in compliance with the Registrar's instructions. So for the purpose of a ruling on his observance of the time limit his complaint is still the one filed on 8 January. His claim about annual leave is therefore premature and for that reason it too is irreceivable.

The merits

15. Article 14.6 of the Staff Regulations provides:

"No exception may be made to these Regulations unless the official concerned consents, and only if such exception does not prejudice the interests of any other official ..."

The ILO maintains, and the complainant has never denied, that in January 1995 they agreed that annual leave would not accrue. That agreement, though not in writing, constituted an exception to Article 7.7, and the complainant was bound by it. His claim about annual leave is therefore in any event devoid of merit.

16. The conclusion is that the complainant's claims fail in their entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner