

THIRTY-THIRD ORDINARY SESSION

In re RILEY

Judgment No. 243

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Oscar Winston Riley III on 21 March 1974 and brought into conformity with the Rules of Court on 26 March 1974, the Organisation's reply of 22 April 1974, the complainant's rejoinder of 7 June 1974 and the Organisation's surrejoinder of 27 June 1974;

Considering Article II, paragraph 1, of the Statute of the Tribunal, and International Labour Office Staff Regulations 1.9, 4.6(d), 4.8, 6.11, 10.1(c), 13.1 and 13.2;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. On 15 May 1970 Mr. Riley signed a one-year appointment at grade P.5 as head of the Management Information Systems Programme Unit in the Management Development Branch (MAN DEV) of the Human Resources Development Department of the International Labour office. On 9 July 1970 his appointment was replaced by a two-year appointment at the same grade and with the same duties. His annual report for the period from 5 July 1970 to 31 March 1971 signed by his supervisor, Mr. Hindle, acknowledged his high qualifications and technical competence but said he found difficulty in adjusting to the nature of the work in his branch. His annual report for the period from 1 April 1971 to 31 March 1972, also written by Mr. Hindle, made the same criticism and added that his output had not been fully satisfactory. In March 1972 Mr. Hindle informed him that it was doubtful whether his appointment could be extended. It was nevertheless extended on 27 June 1972 by decision of the Director-General for twelve months from 1 July 1972. On 15 August 1972 Mr. Hindle sent a minute to members of the branch informing them, among other things, that a Mr. Dey would take over the complainant's duties. On 17 August Mr. Hindle wrote a minute to the complainant listing the assignments which, according to Mr. Dey, he had left uncompleted, asking him to explain the delay and telling him that he would report in future directly to Mr. Hindle and be given special assignments with stated deadlines.

B. On 4 and 19 September 1972 the complainant asked the Personnel Department to examine his case in the light of Staff Regulation 13.1, and contended that he had received treatment incompatible with the terms of his appointment. The Personnel Department dismissed his contention on 21 September 1972. On 9 October 1972 he lodged a complaint under Staff Regulation 13.2 alleging infringement of his contract of appointment and of the Staff Regulations, particularly Staff Regulation 1.9 on transfer of staff members. The Director-General dismissed that complaint on 21 November 1972. The complainant did not appeal to the Administrative Tribunal.

C. In February 1973 a Management Development and Career Opportunities Branch was set up as part of a reorganisation of the department and a Mr. Kanawaty was put in charge of it. The complainant was assigned to the new branch. His annual report for the period from 1 April 1972 to 31 March 1973, written by Mr. Kanawaty, said that his output had been low and his progress less than satisfactory. Mr. Hindle, who had been the complainant's supervisor until the beginning of March 1973, stated in a postscript to the report that the complainant's contribution "to MAN DEV activities fell far short of what is expected of a senior official at P.5 grade". On 10 May 1973 the complainant was told that because of his unsatisfactory reports the Director-General had been reluctant to extend his appointment beyond 30 June 1973, but had nevertheless decided to grant him a further extension to 31 December 1973 to give him a last opportunity to show improvement. On 1 November 1973 the Chief of the Personnel Department informed the complainant that he had shown no improvement and for that reason, and owing also to the savings which the Human Resources Development Department would have to make in 1974, it had been decided not to extend his appointment beyond 31 December 1973. On 18 December 1973 the complainant lodged a

complaint with the Director-General under Staff Regulation 13.2. The Director-General dismissed that complaint on 21 December 1973. For compassionate reasons, however, the complainant's appointment was extended first to 28 February 1974 and, for the second and last time, to 15 April 1974. The complainant is now impugning the Director-General's decision of 21 December 1973.

D. In his complaint the complainant maintains that an official on a fixed-term appointment is entitled to have that appointment renewed. He then contends that under the terms of his appointment and as head of his unit he was required to work independently and that supervision of him by Mr. Hindle should have been administrative and not technical. Mr. Hindle exceeded his competence and constantly interfered in the complainant's technical work. He believes that the criticisms in his annual reports reflect his disagreements with his immediate supervisor. Finally, he believes that the refusal to extend his appointment damages his professional reputation and hence causes him moral prejudice.

E. The complainant asks the Tribunal:

(a) to quash the Director-General's decision of 21 December 1973;

(b) to reinstate him in a post at a grade and with duties suited to his professional qualifications;

subsidiarily,

(a) to quash the Director-General's decision of 21 December 1973;

(b) to award him damages equivalent to two years' salary for the material and moral prejudice suffered by him; and to award him costs.

F. In its reply the Organisation points out that the sole purpose of the complaint is to determine whether the International Labour office lawfully allowed the complainant's fixed-term appointment to lapse at the end of December 1973. It then observes that his argument rests on a basic error of law; his contention that the holder of a fixed-term appointment is entitled to have his appointment renewed is contrary not only to the case law of the Tribunal but to the whole concept of a fixed-term appointment. The Organisation refers to Staff Regulation 4.6(d), which states that "While a fixed-term appointment may be renewed, it shall carry no expectation of renewal or of conversion to another type of appointment, and shall terminate without prior notice on the termination date fixed in the contract of employment".

G. As to the procedural propriety of the impugned decision, the Organisation points out that the decision was notified to the complainant by the Chief of the Personnel Department on behalf of the Director-General and was therefore taken by the competent authority. As to the form of the decision, although Staff Regulation 4.6(d) stipulates that fixed-term appointments shall terminate automatically on expiry without any procedural requirement, the complainant was informed of the Director-General's decision two months before his appointment expired. As to the substantive lawfulness of the decision, the Organisation observes that the decision was not based on any mistake of law or of fact; all the essential facts were taken into consideration and no clearly mistaken conclusion was drawn from the dossier. Though technically competent, the complainant never adapted to the methods and rhythm of work in his branch. In answer to the complainant's contention that Mr. Hindle abused his authority as chief of branch by giving the complainant instructions on how to perform his work, the Organisation maintains that a chief of branch clearly has the right to give such instructions and can hardly be denied that right. There is no doubt that the complainant did not give the office the services which it was entitled to expect of him in view of his professional qualifications and that on that ground alone the decision not to extend his appointment was warranted. Moreover, the Human Resources Development Department suffered budgetary cuts in 1974. It could not therefore afford to keep on a staff member whose output was quite inadequate.

H. In sum, the Organisation maintains that the Director-General's decision not to extend the complainant's appointment is not tainted with any of the flaws which entitle the Tribunal to interfere. On the contrary, the Office showed great forbearance in that it kept the complainant in its service despite his shortcomings, by giving him a last opportunity in 1973 and granting him several months' employment in 1974 on compassionate grounds. The Organisation therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

1. It is not contested that the complainant was appointed to the service of the ILO on 15 May 1970 under a one-year appointment which was extended several times to 15 April 1974.

The complainant is impugning the Director-General's decision not to offer him a further extension. A staff member on a fixed-term appointment has no right to expect extension of his appointment, as is clear from Staff Regulation 4.6(d).

The question whether such an appointment may or may not be extended therefore falls within the Director-General's discretionary authority.

Consequently, the Administrative Tribunal may interfere with a decision by the Director-General refusing to extend a fixed-term appointment only if that decision was taken without authority, is irregular in form or tainted by procedural irregularities or by illegality, or is based on incorrect facts, or if essential facts have not been taken into consideration, or if conclusions which are clearly false have been drawn from the documents in the dossier, or, finally, if authority has been exercised for purposes foreign to the Organisation's interests.

As to the formal propriety of the impugned decision:

2. In the present case consultation of the Joint Committee is not required by the Staff Regulations, and it is for the Director-General to determine whether or not such consultation is desirable.

As to the lawfulness of the impugned decision under the internal procedure:

3. The complainant first contends that his immediate supervisor, Mr. Hindle, should have exerted purely administrative control over his work, and not the technical supervision which actually deprived him of his independence and initiative and reduced his productivity. That contention runs quite counter to the basic principles to be observed in the public service: in such a service a supervisor should exercise supervision and control over all the activities of his subordinates.

Such authority is exercised exclusively in the interests of the organisation and in particular its exercise should not impair the efficiency of work. The extent to which it is exercised therefore varies from one staff member to another. If a staff member is a newcomer his supervisor has a duty to help him, give him full explanations and guidance and keep a close watch on his work.

If a staff member is competent, fully understands the nature of his duties and performs work which on the whole is not open to criticism, his supervisor should, in order not to hamper unnecessarily the work of the branch or of the organisation, exert merely general supervision and in particular check that his instructions are being properly carried out.

If a subordinate has already served as an official for some time but is having difficulty in adapting to his duties, a head of branch has a duty to keep a close watch on him, guide him and carefully supervise his work, or even, where the staff member has difficulty in adapting, to take over himself.

The last instance is relevant to the present case. It appears from the documents in the very full dossier before the Tribunal that, although the complainant's technical skills are unquestionable and not questioned, before joining the ILO he had performed managerial duties solely in private firms and that he failed to adapt to the special conditions of work and the requirements of public service.

The Tribunal observes that the complainant was unable either to produce work regularly or to do a particular job of work by a reasonable deadline.

All the complainant's criticisms of Mr. Hindle suggest that in fact Mr. Hindle was perfectly aware of his duties as head of branch, and none of those criticisms is warranted.

Besides, even under the supervision of another head of branch, Mr. Kanawaty, the complainant proved no better able to adapt.

4. Secondly, the complainant alleges that the nature of his duties did not match the description in his contract of appointment. It is inherent, however, in the nature of his supervisory authority that a head of branch should be free

to employ his subordinates in the best interests of his branch with due regard to their qualifications. At the highest level, moreover, the Director-General enjoys similar authority, expressly conferred on him by Staff Regulation 1.9, to safeguard the interests of the Organisation.

It is not contested that, in view of the complainant's inability to perform his duties and the inadequacy of his output, Mr. Hindle, Mr. Kanawaty and the Director-General tried to give him different and varied assignments within the branch and later in a related branch. Those changes in the complainant's duties were made exclusively in his own interests and in any case fell within the authority enjoyed at different levels by Mr. Hindle and the Director-General. There is no proof that the complainant's final assignments were of a less demanding standard than those normally given to staff members of his grade.

5. Thirdly, the complainant maintains that he should have been released from some of his regular duties to perform his trade union activities. It appears, however, from a letter from the Chief of the Personnel Department dated 1 November 1973 that the Office expressly took account of those activities in agreeing that he should be "released for one quarter of [his] time".

6. Fourthly, the complainant alleges that he was discouraged by lack of understanding of his difficulties and that the unfair assessment of his performance in his third annual report dealt him a severe emotional blow. It appears, however, from the dossier that although his supervisors expressed a justifiably low opinion of his work, their assessments were expressed in perfectly proper language in no way calculated to cause him any emotional upset.

7. It appears from the foregoing that the impugned decision is not tainted with any of the flaws which entitle the Tribunal to interfere with it.

On the contrary, instead of terminating the complainant's services as soon as it realised his inability to work in an international organisation like the ILO, the office found him other work; but again he proved incompetent. It offered him field posts; but he refused them. It is clear therefore that he was treated with consideration.

8. Since the impugned decision is lawful the complainant cannot properly claim damages for the refusal to extend his appointment.

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 October 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet