

In re GRENET

Judgment No. 295

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Michel Albert André Grenet on 24 December 1975 and brought into conformity with the Rules of Court on 4 February 1976, the ILO's reply of 25 March 1976 and the complainant's rejoinder of 12 May 1976;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 3.10 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. On 24 August 1973 the International Labour Office offered the complainant a one-year appointment in Cameroon as an expert at grade P. 4, step 1, with effect "if possible from 1 October 1973". The offer was stated to be subject to clearance by the Medical Adviser, the complainant's secondment from the French Ministry of National Education, under which he was employed, and approval by the Government of Cameroon. On 31 August 1973 he accepted the offer, but said he would not be free until 22 October. On 12 September he informed the ILO that the Ministry of National Education had agreed to second him from 15 September, no secondment being allowed after that date in any year. Since he would be unpaid from that date, he asked whether the ILO could not put him on its pay-roll at least from 1 October. On 26 September the Medical Adviser gave him medical clearance and on 28 September the Government of Cameroon consented to his being assigned. It was not until the latter date that his appointment was confirmed by a telegram in which he was also asked to say when he could come to Geneva for briefing. On 30 September he replied suggesting 16 October but by letter of 4 October suggested for personal reasons starting on 22 October, the very date he had originally proposed. As it turned out his appointment began on 21 October.

B. On 27 October 1973 and in later communications the complainant contended that promotion he had obtained in the French civil service warranted upgrading his ILO post from step 1 to step 4 of P.4. On 8 November and again later he claimed an installation allowance of 447,000 CFA francs and a supplementary allowance of \$300. On 17 November 1973 and again later he pointed out, among other things, that for two months he had had no salary because of the delay between the date of his secondment from the French civil service and the start of his ILO appointment. In a letter of 6 December he repeated his claim for regrading, acknowledged receipt of 447,000 CFA francs paid as installation allowance and asked for an additional allowance amounting to 223,500 CFA francs. By letter of 7 December the

Office dismissed his claim for regrading on the grounds that promotion in a national civil service did not entail automatic promotion in the Office and that his grade and step matched his experience and qualifications. In a Letter of 12 December he accepted that decision but again pointed out that he had lost two months' salary because of "delay" in his appointment to the Office and claimed one month's compensatory leave. By letter of 21 December the Office reminded him that he himself had determined the starting date, told him that annual leave could not be taken on the expiry of the appointment and that each compensation was paid for any leave not taken, and confirmed the grading of his post

C. In a letter of 5 February 1974 and later communications the complainant raised the question of payment of a housing allowance. Under a scheme introduced by the Consultative Committee on Administrative Questions he had been paid 28 000 CFA francs as housing allowance for the period from 1 November 1973 to 31 January 1974. From 1 February 1974 this allowance was reduced to 21,000 CFA francs because he had moved into cheaper accommodation. At the beginning of September 1974 he said he had been misled about his secondment from the French civil service; it ought, as the Office must have known, to have begun on 15 September, whereas his ILO

appointment did not start until 21 October, the date on which he had expected his secondment to begin. He therefore claimed payment of 5,000 French francs for the period from 1 to 20 October 1973. By letter of 9 October 1974 the Office again pointed out that he himself had fixed the starting date of his appointment and that he could have started on 1 October 1973 had he so wished; as an exceptional measure, however, he would be paid 2,145 French francs as compensation for the period from 15 to 30 September 1973. By letter of 16 October 1974 the complainant thanked the Office for its "generous gesture" but he pointed out that the compensation should also cover the period from 1 to 10 October 1973. He also made a claim to additional installation allowance under Article 3.10(d) of the Staff Regulations. After a lengthy correspondence, on 10 March 1975 the Office refused to apply Article 3.10(d) and upheld its earlier decisions on all the other claims.

D. By letter of 30 March 1975 the complainant acknowledged notification of that decision and asked to have the matter put to the Joint Committee. He went on: "As regards the sum of 2,145 francs paid in compensation for my loss of salary ... I am willing to treat the matter as settled so as to improve relations between us and in particular dispose of our dispute over refund of my expenses for board and lodging for the period from 26 October to 15 November 1973". In further correspondence the complainant pointed out that, because of the state of the furnishings, he had been unable to move into the flat rented from 1 November 1973, that the additional rent allowed by the United Nations Development Programme (UNDP) was unlawful and not taken into account in calculating the housing allowance and that he had not been compensated for inflation in Cameroon. He also repeated his claim to regrading at P.4, step 4. The Office held to its position and on 14 July 1975 the complainant asked that the Joint Committee should hear his claims for compensation for the alleged delay in his appointment, refund of his board and lodging expenses, and payment of additional rent.

E. By letter of 8 August 1975 the Chief of the Personnel Department replied that the matter could not be referred to the Joint Committee since the complainant had left the Office and the internal appeals procedure was open only to serving officials, and in any case only within six months of the treatment or decision complained of. The letter confirmed the position stated by the Office in earlier letters. On 30 August the complainant appealed to the Director-General asking him to reconsider his case and refer it to the Joint Committee for review of the three claims mentioned at the end of paragraph D above. By letter of 30 September 1975 signed on the Director-General's behalf the complainant was told that the case would not be referred to the Joint Committee and that the Office's earlier position was confirmed. That is the decision now impugned.

F. The complainant makes the following claims: "(1) Because of the professional negligence of the Director of the ILO Office [in Paris] in requesting my premature secondment before my actual appointment to the International Labour Office I claim full compensation for salary lost for the period from 16 September to 20 October 1973 or 5,000 francs [plus interest at 12 per cent] instead of the sum of 2,145 francs allowed by the Office ...; (2) full refund of the excessive rents" paid to landlords (135,000 CFA francs to one and 180,000 plus 62,500 CFA francs to another); "(3) full refund of hotel expenses from 26 October to 14 November 1973 amounting to 215,000 CFA francs ...; (4) recognition of my right to promotion in the Office to P.4, step 4, by reason of my promotion in the French Ministry of National Education from 3 July 1973".

G. In its reply the Organisation takes the view that the first three claims are receivable but that the last one is not. The complainant did not raise the question of "promotion" in the course of the internal appeals procedure and so he has failed to exhaust the internal means of redress in pursuing that claim. As to his arguments about his secondment, according to the wording of the original offer his appointment was not to start until 1 October 1973. The Office could not be held liable simply because it was the policy of the French Ministry of National Education not to agree to any secondment starting later than 15 September. The complainant clearly cannot expect the Office to pay him for a period during which his services were neither contracted for nor required. His secondment began fifteen days before the earliest date on which his ILO appointment could start and the starting date he himself chose was actually twenty-one days later than that date: the Office cannot on that account be held liable for any negligence or unlawful act. The ILO therefore sees no validity in his claim for compensation over and above the 2,145 French francs already paid to him "ex gratia". As for the payment of "excessive rents" the rules governing all technical co-operation experts throughout the world were properly applied and he can lay no claim to compensation for loss of any "de jure" or even "de facto" benefit. As to his claim for hotel expenses, when an official arrives at his duty station he is paid an installation allowance in accordance with Article 3.10 of the Staff Regulations to meet his own expenses and those of members of his family who accompany him and that allowance is intended to meet any expense incurred on arrival at a new duty station and any extra expenditure. The complainant was paid allowances for himself and his family in accordance with Article 3.10(b) and (c) and \$600 in accordance with Article 3.10(e). Article 3.10(d) (exceptional housing difficulties) on which he relied in earlier

proceedings, is not applicable. His claim for payment of additional installation allowance is therefore unfounded. As to his claim to "promotion", should the Tribunal hold it to be receivable, his only argument in favour of his regrading from step 1 to step 4 of P.4 is that he was promoted in the French civil service on 3 July 1973. He was so informed on 7 September 1973, i.e. before his ILO appointment had even been confirmed. The argument is clearly irrelevant: the grading of ILO staff is governed by autonomous rules and in no way affected by a decision by some other authority. The claim to "promotion" is therefore unfounded.

H. The ILO asks the Tribunal to dismiss the first three claims and to declare the fourth claim irreceivable or, subsidiarily, to dismiss it.

CONSIDERATIONS:

On 24 August 1973 the International Labour Office offered the complainant a one-year appointment in Cameroon at grade P.4, step 1, with effect "if possible from 1 October 1973".

On 28 September 1973 the Government of Cameroon consented to his appointment and on the same day the Office told him that its offer held good and asked him to come to Geneva.

The complainant took it upon himself to postpone coming to Geneva and so did not sign his contract of appointment until 21 October. On 25 October he left Geneva and on the morrow he arrived in Yaoundé, his duty station.

As to the complainant's secondment:

The complainant was granted secondment by his employer, the French Ministry of National Education, with effect from 16 September 1973 in accordance with French Government rules for which of course the Office bears no responsibility.

The ILO was willing to sign the contract with the complainant as early as 1 October 1973. The postponement to 21 October was due entirely to the attitude of the complainant, who of his own accord and for personal reasons delayed coming to Geneva.

It appears from the foregoing that the Office, which did its utmost to have the complainant's contract ready by 1 October, was not to blame for any delay and was not at fault. The complainant alone was responsible for postponement of the signing of his contract to 21 October and on no grounds whatever can he properly claim any compensation in respect of the period prior to his appointment.

By decision of 9 October 1974 the Office paid the complainant compensation amounting to 2,145 French francs. But that payment was made entirely ex gratia and so bestowed no right on him. It merely shows that he was treated with consideration.

As to the "excessive" rents:

It appears from the documents in the dossier that, though he had no such entitlement under his conditions or contract of appointment, the complainant was paid a special housing allowance on the terms applicable, according to international rules, to all technical co-operation experts posted to Cameroon.

As to the hotel expenses:

When an official first arrives at his duty station he receives an installation allowance both for himself and for accompanying members of his family on the conditions laid down in Article 3.10 of the Staff Regulations.

That allowance goes towards expenses incurred on arrival at the duty station and precludes any refund of hotel expenses.

It appears from the documents in the dossier that the complainant received installation allowances for himself and his family under Article 3.10(b) and (c) of the Staff Regulations and \$600 under Article 3.10(e). Those payments were in accordance with the rules in force.

The Office was not required to pay the additional installation allowance laid down in Article 3.10(d). Having arrived in Yaoundé on 26 October 1973, the complainant signed a lease which took effect on 1 November, and so it is clear that at the time there were no exceptional housing difficulties in Yaoundé.

As to the complainant's promotion:

The fact that the complainant was apparently promoted in the French civil service on 3 July 1973 has in any event no bearing on the terms of his contract with the ILO.

It appears from the foregoing that none of the complainant's claims is founded and that the complaint must therefore be dismissed.

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 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet