

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

## FIFTY-FOURTH ORDINARY SESSION

In re RUDIN (No. 3)

Judgment No. 630

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Miss H el ene Rudin on 27 October 1983 and corrected on 30 November, the ILO's reply of 9 March 1984, the complainant's rejoinder of 31 May and the ILO's surrejoinder of 31 August 1984;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 6.7, 13.1 and .2 of the Staff Regulations of the International Labour Office;

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. The complainant, a Swiss citizen, has been employed in the ILO since 1962, and information on her earlier career and on her first two complaints appears in Judgments Nos. 377 and 405. From November 1973 she was employed in the Editorial and Document Services Department of the Office as a programming officer; from 13 November 1978, in the same department, as assistant to the head of the Document Services Branch, known as DOC. Her duties were stated to include drawing up programme proposals and "monitoring" the work and financing of the branch, and her grade is G.7. There was much delay over her performance reports for 1977-78, 1978-79 and 1979-80. She challenged the right of the head of DOC to fill up the report forms, and she did not return them. In a minute of 31 July 1981 the then chief, Mr. Longerich, summed up her performance as "marginal" and said her judgment had become "clouded by her overriding preoccupation" with her grievances. She detailed formal and substantive objections to the reports in minutes of 26 October 1981 and 22 November and 2 December 1982. Meanwhile a Swiss citizen, Mr. Petitpierre, took over as head of DOC on 14 September 1981. On 12 October he informed her that he would give her no more work. The complainant's report for 1980-81 fell due, and she received his draft early in December 1981. Appended was a letter of 1 December from Mr. Longerich, who had been her supervisor for much of the report period, repeating his criticisms. Mr. Petitpierre's comments were no more favourable: he said he was garrulous, slow and negative and he too described her performance as "marginal". "I would no longer call on her", he concluded, "to assist me in programme and budget matters". She appended comments dated 8 December 1981. On 6 April 1982 she submitted a request under Article 13.1 of the Staff Regulations for review of her "entire position" and on 20 May saw the head of the Personnel Policy Branch (P/POL). According to his minute of 24 June she had told him she had no work to do and wanted a new programming job in the department at grade P.3, or elsewhere at P.4, with retroactive effect from 1974. He offered her a short assignment in the Bureau of Programming and Management, still at grade G.7. This lasted two months. About this time there began a long exchange of minutes about her various grievances, the head of P/POL declaring the correspondence closed by his minute of 8 December 1982. In the report for 1981-82, which Mr. Petitpierre signed on 11 January 1983, he said he had given her no work and he made no new appraisal. She appended her comments in a minute of 19 January. On 3 June 1983 she submitted a "complaint" to the Director-General under Article 13.2, alleging that Mr. Petitpierre's appraisals were unfair and unsubstantiated and she had no suitable work to do. By a minute of 2 August 1983, the impugned decision, the chief of Personnel informed her that her claims were rejected as time-barred and therefore irreceivable.

B. The complainant seeks to refute the ILO's objections to the receivability of her claims. The unfair treatment of her being continuous, she may, she submits, protest at any time. It is mistaken to say that her appraisal reports for 1980-81 and 1981-82 are now unchallengeable because she appended her comments. The purpose of appeals under Article 13 is to secure an official's rights, and she observed the time limits in the article. As to the merits, she recounts the facts and develops her accusations of arbitrary and unfair treatment. Despite her admitted grasp of programme and budget matters Mr. Petitpierre decided only a month after taking over DOC to give her no more work. Not knowing why, she has never been able to defend herself. The ILO has not shown her due consideration.

It is for the Personnel Department, not the head of DOC, who exceeded his authority, to decide whether the ILO's interests require him to have an assistant and whether she is fit for the post. She cannot show her professional skills and her idleness is humiliating. She seeks damages for moral injury and costs.

C. The ILO replies that the complainant's version is tendentious. It gives its own, adding that to get her transferred from DOC Mr. Petitpierre in 1982 offered her services together with her post for three years, but no one else would take her. It submits that her complaint is not receivable. (1) The procedure in Article 6.7 of the Staff Regulations for performance appraisal excludes an appeal under Article 13.2. Since her report for 1980-81 became final in 1982, she failed to appeal in time to the Tribunal. (2) The report for 1981-82 gave rise to no new time limit. Since she had done no work no new appraisal could be made; besides, the report was returned to her on 18 July 1983, and so she again failed to appeal in time to the Tribunal. (3) She did not file an internal appeal in time against the decision to give her no work. That decision was taken on 12 October 1981; yet she did not challenge it under Article 13 until 6 April 1982. Besides, her continuing idleness is her own fault not Mr. Petitpierre's. As to the merits, the ILO rejects her allegations. (1) Mr. Petitpierre amply explained to her the reasons for giving her no work. (2) His position, much the same as that of her other supervisors, was neither prejudiced nor arbitrary. (3) He did not exceed his authority; he merely thought she would be better employed elsewhere and he suggested to Personnel that her transfer would be in the ILO's interests. (4) Her grade and salary are not affected. (5) She has not been humiliated, and it is her own obstructiveness that has checked her career. All things considered, the ILO has been indulgent.

D. In her rejoinder the complainant challenges as distorted and malicious many points in the ILO's account of the facts. She observes that the ILO tried to reassign her only after keeping her idle for nearly a year, and its efforts soon petered out. As to receivability, she contends that the appraisal reports and the giving her no work are inextricably linked; a comprehensive appeal therefore lay under Article 13, and in fact she appealed in time. The report for 1981-82 made a challengeable appraisal, even if it was the same as for the year before. She enlarges on her submissions on the merits. She presses her claims in full, repeating her allegations of unfair treatment by a supervisor and consequent grave and irrevocable damage to her career and reputation.

E. In its surrejoinder the ILO rejects any imputation of malice or distortion in its account of the facts, which it discusses further. It alleges that she never showed any interest in a transfer; she merely complained of not getting a post at a higher grade. The ILO enlarges on its submission that her claims relating to her reports for 1980-81 and 1981-82 and the giving her no work are irreceivable and contends that the rejoinder, which distorts the facts in an attempt to convince the Tribunal of the contrary, offers no answer which is sound in law. The ILO also develops its submissions on the merits, adding that the complainant cares more about assuaging her desire for vengeance than about getting down to work and that she therefore incurs the risk of the ILO's making use of the provisions of the Staff Regulations.

#### CONSIDERATIONS:

1. In the complaint she filed with the Registry of the Tribunal on 27 October 1983 the complainant says she is challenging a decision of 2 August 1983 by the chief of the Personnel Department of the International Labour Office and she invites the Tribunal to hold that she has been subjected to unjustifiable and unfair treatment by a superior official. Her principal claim is to fair compensation for moral injury. The impugned decision of 2 August 1983 was the answer to an internal appeal she had submitted on 3 June 1983.

2. The first issue is to delimit the dispute. As is common enough when a dispute drags on, the issue is one on which neither side helps to shed much light.

The ILO distinguishes two heads of claim in the complainant's appeal of 3 June 1983: one about the assessment of her performance in her annual report for 1980-81, and the other about her assignment.

It is those claims and those alone that determine the scope of the dispute, and in fact they are quite clear. What the complainant is seeking is damages for moral injury due to "unjustifiable and unfair treatment", and in support of her claim she has two pleas, one about the Administration's stand when the report for 1980-81 was drafted, and the other about the position of her supervisors, who have kept her idle since October 1981.

3. The Tribunal comes to the following conclusions.

The first is that since the complainant is not seeking the quashing of her report for 1980-81 the Tribunal need not rule on the ILO's plea that such a claim is time-barred and therefore irreceivable.

The complainant argues that the unfair treatment lies in her being kept idle for so long. Accordingly the time limit for filing an appeal did not begin on the date on which her supervisor decided, while keeping her on her post, to give her no more work: the injury occurred only with the passage of time.

Thus, although it was only after being kept idle for a considerable lapse of time that the complainant appealed to the Director-General, and then to the Tribunal, for compensation for the injury she alleged, her claims are not time-barred and her complaint is receivable.

4. The complainant alleges that it was in October 1981 that the head of branch informed her of his decision to give her hardly any work to do. Although she continued to be paid her salary, from that date she did no more than attend the office, except for a short interval of two months in 1982 during which she was transferred to another branch.

The ILO does not deny the facts, and the Tribunal therefore takes them as established. But the ILO maintains that the reason why she had scarcely anything to do was "as much -- or even more -- her own fault as that of her supervisor in deciding to find some other way of getting her work done". She refused another post in the branch, says the ILO, and would not apply for a post in any other branch. It was because of her reputation that the Personnel Department's efforts to place her elsewhere proved of no avail. Lastly, the ILO observes that she was often on sick leave.

5. The rights and duties of international officials are not determined exclusively by the Staff Regulations. Custom and usage matter as well, and indeed they do no more than consecrate general principles which are embodied in the law in most countries. Examples are the right to payment for services rendered, freedom of association, respect for acquired rights, and equality of treatment.

Another general principle is the right of the employee of an organisation to a proper administrative position. What that amounts to is that the staff member should both hold a post and perform the duties pertaining thereto.

The principle will not in practice have the effect of impairing the legitimate authority of the head of branch. Work requirements will determine how staff are to be assigned, and the result may be that a staff member has some of his duties taken away from him or is set to work that does not quite match his inclinations or even his talents. The supervisor is also entitled to propose that a staff member be moved to some other branch. But so long as the staff member remains in a particular branch the head must see to it that he is given real work. Only where the staff member's behaviour makes the situation intolerable may the Administration contemplate giving him no work at all, and the decision will still be subject to judicial review. The same is true where a staff member commits gross misconduct, but for that provision is made in the Staff Regulations in the form of suspension with pay pending administrative investigation.

6. The difficulties which arose over the complainant's performance report were not taken into account in reviewing her position. It may be that she is not an easy person to get on with. But the Reports Committee took the view that she was not the only one to blame and it also rebuked her supervisor. In any event the problems which arose over her performance report had no direct effect on the decision not to give her any more real work.

7. The ILO refers to her frequent absences on sick leave. In fact she suffered injury in an accident which kept her off work for just under three months at the end of 1982 and the beginning of 1983. When she went back to the office she worked half time. The Tribunal cannot allow that her absence made the ILO's attitude justifiable. Indeed if the complainant was ill the ILO was under a duty to grant her her rights under the Staff Regulations.

8. The complainant joined the ILO in 1962. She was promoted fairly rapidly and her work was apparently found fully satisfactory until 1976. Difficulty then arose, when someone new took over her branch. But the Reports Committee, as was said above, believed that the temperament of the head of branch may have caused the strain between him and the complainant.

Matters grew worse in 1981 with the appointment of another new head of branch, who one month later decided, without having her transferred, to stop giving her any real work.

9. Only gross misconduct could have accounted for such a harsh decision. Yet what the head of branch says by way of explanation is not very forthright. He does not question the complainant's professional competence; all he says is that for four weeks he tried hard, without success, to get her to improve. After seeking, to no avail, to have her transferred, he simply lost interest in her and left her in idleness.

The head of branch did not try for very long to get her to improve. However busy he was, he was wrong to mete out such cavalier treatment to a competent official who had been on the staff for many years and whose behaviour, though she was perhaps not easy to deal with, did not make the situation intolerable. He owed her at least some consideration, and his obligation was not fulfilled by devoting only one month to attempts to reach an understanding with her.

The manner in which she was deprived of her duties was sudden and discourteous. Her position has remained unaltered for some years. And not only did her supervisor fail in his responsibility towards her; the ILO, too, since she had committed no misconduct, ought to have done its utmost to find proper duties and responsibilities for her.

10. The Tribunal holds that the ILO caused serious injury to the complainant's feelings and reputation and was in breach of its obligations. It shall pay her compensation for moral injury.

Inasmuch as it finds the ILO at fault the present judgment itself affords a remedy, but she is also entitled to damages for the serious prejudice she has suffered, and the Tribunal sets the amount at 10,000 Swiss francs.

It also awards her 3,000 francs as costs.

#### DECISION:

For the above reasons,

1. The ILO shall pay the complainant 10,000 Swiss francs.
2. It shall also pay her 3,000 francs as costs.

In witness of this judgment by Mr. Jacques Ducoux, Vice-President of the Tribunal, the Right Honourable Lord Devlin, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

Jacques Ducoux

Devlin

William Douglas

A.B. Gardner