

SIXTY-FOURTH SESSION

In re PARKINSON (No. 2)

Judgment 904

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Peter Gath Lindsay Parkinson against the Intergovernmental Council of Copper Exporting Countries (CIPEC) on 1 July 1987 and corrected on 30 July, the Council's reply filed on 29 September, the complainant's rejoinder of 18 November 1987 and the Council's surrejoinder of 18 January 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Regulations 5.1.1, 7.1.1, 7.1.2, 7.2, 7.2.1 and 9.4 of the CIPEC Staff Regulations;

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

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

A. When recruited by the CIPEC in 1972 the complainant was living in England. From 1984 the terms of his appointment were as set out in the letter the Secretary-General wrote him on 30 March 1984. His contract ended in 1987 in circumstances that are set out, under A, in Judgment 903 and form the subject of his first complaint. The Secretary-General asked his staff to sort out the complainant's terminal entitlements. On 18 May the head of the Administrative and Financial Division wrote to him to say that the CIPEC would pay into his bank account in Andorra the sum of 90,734 French francs, which covered travel expenses and the cost of moving 40 cubic metres of personal effects, reinstallation allowance and compensation for 17 1/2 days' accrued leave. The complainant wrote back on 2 June objecting to the amount and he is now impugning the decision of 18 May.

On 15 July 1987 he moved from Louveciennes, near Paris, to Beaumont-le-Roger, some 60 miles away in Normandy. He later moved to Ordino, in Andorra, some 150 miles to the north of Barcelona.

B. The complainant contends that the amount of his entitlements is wrong. On his recruitment the CIPEC paid for the removal of 60 cubic metres of personal effects to Paris, where the organisation has its headquarters. He should be granted (1) the cost of moving 60 cubic metres of goods and (2) reimbursement of the cost of his own travel from Beaumont-le-Roger to Ordino, his present home. Since he was working full time he should be paid (3) the reinstallation allowance at the full rate of pay for the six weeks prescribed by Regulation 9.4 of the Staff Regulations. (4) His accrued leave came to 27 1/2 days, not 17 1/2. He claims a total of 169,550 French francs.

C. The Council replies that the four claims are unfounded.

Regulation 7.1.1 entitles staff to reimbursement of expenses incurred "c) on separation from service, for their travel from the Organisation's Headquarters to the place where they were living when taking up duties ...". Under Regulation 7.2.1 staff are further entitled, "in the circumstances provided for" in 7.1.1c) to reimbursement of "expenses incurred for removal of their personal effects", up to 40 cubic metres transported by land or sea for an official who is single and up to 60 for one who is married. Since the complainant was divorced, and therefore single, by the time he left, he was entitled to no more than 40 cubic metres. Under 7.1.1c), moreover, he was entitled to the cost of travel from Paris to London, where he had been recruited, and under 7.2.1 to the cost of removal from Paris to London. Some years ago the complainant changed his home to Ordino, and, though London is nearer, the CIPEC agreed to that and to his removal from Paris to Ordino. It got an estimate of the cost of moving 40 cubic metres to Ordino and added the amount to his entitlements. There being no air service between Paris and Andorra, it allowed him the cost of travel by air from Paris to Barcelona and by land from there to Ordino.

True, he was entitled to six weeks' pay as reinstallation allowance; but since the allowance is based on the last monthly salary it reckoned the amount at the rate of pay due for three days' work a week, the rate he had been paid at since 1984.

Regulation 5.1.1 prescribes annual leave at the rate of 2 1/2 working days for every month "in full pay status". Since he was on a three-day week his leave was reduced pro rata and the figure of 17 1/2 days was correct.

His entitlements have been settled in full.

D. The complainant presses his claims in his rejoinder. As to his claim to removal expenses, he observes that he was divorced in 1967 and therefore single also when he joined the CIPEC. Moreover, he was then living in Liverpool, not London, and the cost of removal from Paris to Liverpool is much the same as to Ordino. The notice of account does not say whether the amount allowed is for removal to Barcelona or to Ordino, and it says nothing of his own travel by land from Barcelona to Ordino. Regulation 7.2.1c) empowers the Secretary-General to authorise a greater volume of personal effects, and it would be only fair to do so in this case. As to the reimbursement of his accrued leave, he was on duty full time and his entitlements should be worked out accordingly.

So far he has been paid nothing whatever, and any award by the Tribunal should therefore take account of inflation.

E. In its surrejoinder the CIPEC accepts that the complainant was divorced in 1967 but observes that at the time of recruitment he had a dependent daughter who went to live with him in France; she was no longer his dependant when he left and so the maximum allowance was 40 cubic metres. The Secretary-

General enjoys full discretion under 7.2.1c). As to the cost of travel to Andorra, he was granted more than the air fare for travel from Paris to Barcelona: the surplus was intended to cover the cost of overland travel from Barcelona to Ordino. Whether he worked full time is irrelevant: his contract said he would work for only three days a week and might be employed for more only by agreement, and there was no such agreement. Lastly, the CIPEC admits it has made no payment, but says it has settled his entitlements in that it has determined the amount. Besides, he has not yet supplied the "transportation estimate" which Regulation 7.2.1 requires.

CONSIDERATIONS:

1. The complainant's post as general adviser was abolished by the Executive Committee of the CIPEC at its 166th meeting on 16 December 1986 with immediate effect and his contract expired on 31 March 1987.

In his second complaint arising out of the termination of his employment the complainant impugns a decision of the Secretary-General communicated in a letter dated 18 May and received on 21 May 1987. In that letter the total amount of terminal payments he is entitled to is calculated at 90,734 French francs. He submits that the figure should be 169,550 francs.

2. He says that the calculation is faulty for four reasons.

(1) He took up his appointment with the organisation as a family man and was then paid for the transport of 60 cubic metres of personal effects from England to France. His present home being at Ordino, in Andorra, he says he should be paid for the transport of 60 cubic metres of personal effects from Beaumont-le-Roger, in Normandy, to Ordino; yet the organisation has provided for the cost of moving only 40 cubic metres from Paris to Barcelona.

(2) He claims the cost of transport for himself from Beaumont-le-Roger to Ordino, not just the cost of air travel from Paris to Barcelona.

(3) He contends that he worked full time and that the amount of his reinstatement allowance should be calculated accordingly.

(4) He says that his accrued leave amounted to 27 1/2 days, not 17 1/2.

The claim to removal expenses

3. Regulation 7.1.1. of the CIPEC Staff Regulations provides:

"Staff members are entitled, in accordance with the present regulation, to reimbursement for travel expenses incurred:

...

(c) on separation from service, for their travel from the Organisation's Headquarters to the place where they were living when taking up duties, always provided that such travel takes place and that the request for reimbursement is submitted within a time limit of one year counting from the time of separation."

Regulation 7.1.2 reads:

"In accordance with Regulation 7.1.1 staff members who are heads of family are entitled, where pertinent, to reimbursement of travel expenses incurred for their spouse and for their dependent children."

Regulation 7.2 states:

"Subject to the following limits and conditions, the Organisation pays staff members' removal expenses."

And Regulation 7.2.1:

"Staff members are entitled in the circumstances provided for under Regulation 7.1.1., paragraphs a) and c), to reimbursement for expenses incurred for removal of their personal effects.

For this purpose, they must obtain prior consent to a transportation estimate and are only entitled to reimbursement within the limit of the amount approved as follows:

(a) cost of transportation by sea/land:

Single staff member 40 cu.m.

Married staff member 60 cu.m.

...

(c) The Secretary-General may increase the weight/ quantity depending on the merits of each case."

When the complainant was appointed he was living in England and was paid removal expenses as head of family because at the time he had a dependent daughter. He transferred his official place of residence to Ordino in Andorra, and the organisation accepted Ordino as the destination for his personal effects on removal. But it submits that as a divorced man he is entitled only to a single person's allowance, transport being from Paris, where it has its headquarters, to Ordino. Since the complainant no longer has any dependants and is divorced, the organisation is correct and he is entitled to the cost of removing only 40 cubic metres of personal effects from Paris to Ordino. This claim fails.

The claim to travel expenses

4. The organisation has provided for payment of the sum of 1,600 francs to cover the complainant's travel expenses. It observes that the cost of travel by air from Paris to Barcelona came to less than that and that the difference meets the cost of transport by land from Barcelona to Andorra.

There is no evidence submitted by the complainant to suggest that the amount provided for travel expenses was inadequate. The claim therefore fails.

The claim to increased reinstallation allowance

5. A reinstallation allowance is payable in accordance with Regulation 9.4:

"Staff members who, upon separation from service for reasons other than disciplinary ones, have served at least two years outside the country in which they are officially resident, shall be entitled to a reinstallation allowance. The amount of this allowance shall be equal to four weeks' remuneration after two years' service, five weeks' remuneration after three years' service, and six weeks' remuneration after four years' service or more."

The complainant's contract dated 30 March 1984 provides in clause 5: "You will be employed three days per week but, if necessary, from time to time, by mutual agreement, you may be employed for additional days with salary pro rata."

In accordance with that clause the complainant was paid three-fifths of full salary. The CIPEC reckons the reinstatement allowance at six times his actual weekly remuneration and disputes his claim to six weeks' full salary. It denies that there was any mutual agreement to employ him for additional days and observes that no additional remuneration was in fact paid during the last year of his employment.

The complainant's claim to be treated as a full-time employee forms the subject of his third complaint against the organisation, and the Tribunal dismisses it in Judgment 905. His claim to an increased reinstatement allowance therefore fails as well.

The claim to increased compensation for accrued leave

6. The complainant reckons that he is entitled to 27 1/2 days' leave rather than 17 1/2 and he bases his reckoning on the same contention that he was employed full time.

Regulation 5.1.1 provides:

"Annual leave shall be granted to staff members at the rate of two and one-half working days for each calendar month of service (or fraction thereof pro rata) in full pay status."

That provision was applied to the complainant with effect from 1984. He himself acknowledges that if he took one full week's leave of five days the organisation charged him only three days in its records. As the Tribunal rules in Judgment 905, he was employed for only three days a week, and the organisation's calculations are correct. The claim again fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner