

## SEVENTY-FIRST SESSION

### *In re* HUTFLESS

#### Judgment 1098

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Julianne Hutfless against the United Nations Industrial Development Organization (UNIDO) on 6 July 1990 and corrected on 30 July, UNIDO's reply of 17 October, the complainant's rejoinder of 25 October and the Organization's surrejoinder of 14 December 1990;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Regulation 10.3 and Rules 112.01 and 112.02 of the UNIDO Staff Regulations and Staff Rules;

Having examined the written evidence and decided not to order oral proceedings, 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 Austrian citizen, joined the staff of UNIDO in 1968 at grade G.4. Over the years she worked as a shorthand typist, secretary and information clerk. She reached grade G.6 in 1974.

By a letter of 6 February 1990 the Chief of the Personnel Administration Section informed her that, being unfit for further service, she was entitled to a disability benefit from the United Nations Joint Staff Pension Fund, starting on 25 April 1990; the Director-General had also decided to terminate her appointment under Regulation 10.3(a) for reasons of health at 24 April 1990.

By a letter of 6 March to the Chief of Personnel Administration she accepted "the decision as definite" and asked what compensation she would get in lieu of notice. Her final pay slip dated 8 June 1990 included eleven days' pay in compensation under that head. After an exchange of correspondence with her in which it appeared that what she was challenging was not a final decision, the Secretary of the Joint Appeals Board told her by letter of 7 May 1990 that there was no ground for appeal. By a letter of 8 May 1990, the decision impugned, a personnel officer confirmed that the entitlements due to her would be paid into her account as she had asked, but he did not say how much. In her complaint she states, under point 11 of the complaint form, that its purpose is to determine whether the settlement is "legally correct".

B. The complainant invites the Tribunal to determine whether the decision to separate her is lawful and her terminal entitlements are correct. She submits that further delay in payment would be to her detriment. She points out that her last promotion was in 1974 and she qualified for further advancements in grade. She invites the Tribunal to grant her such redress as it deems fit.

C. In its reply UNIDO contends that the complaint is irreceivable. What the complainant appears to be challenging is the personnel officer's letter of 8 May 1990 and the decisions which set out her entitlements for disability, termination and compensation in lieu of notice, as well as the timing of payment. She further alleges failure to comply with the Organization's rules on promotion. But the letter of 8 May 1990 is not a "final" decision within the meaning of Article VII(1) of the Tribunal's Statute, and she has failed to exhaust the internal remedies provided for in Rule 112.01. The amount of her disability benefit is set by the United Nations Joint Staff Pension Fund, and if she objects to it she must put her claim to the United Nations Administrative Tribunal. The termination indemnity and compensation in lieu of notice have been remitted to her and she has put forward no arguments to suggest that the material decisions are unlawful. There was no unusual delay in making the sums over to her and she had been told anyway what they would be. On 11 June 1990 advance payment was made against the termination indemnity, disability benefit and end-of-service allowance. If she is claiming payment of interest on the grounds of late payment, she is mistaken. As for her claim to compensation for denial of promotion, the grant of promotion is at discretion and she has given no evidence of arbitrariness or prejudice in withholding it from her. Her further vague and unsubstantiated claims should also fail: the Tribunal does not make inquiries of the kind she seems to expect of it.

D. In her rejoinder the complainant acknowledges that what she is challenging is not an "administrative decision as such" but the lack of a precise statement of how much she may expect in compensation. She is not challenging the disability benefit notified to her by the Secretary of the United Nations Joint Staff Pension Fund; nor does she "insist on" any charge of arbitrariness and prejudice in refusing her promotion.

E. In its surrejoinder UNIDO develops its objection to receivability.

#### CONSIDERATIONS:

1. The complainant joined the General Service category of staff of UNIDO in Vienna in 1968. When she left, in 1990, she was serving as an information clerk at grade G.6.

2. By a letter of 6 February 1990 the Chief of the Personnel Administration Section informed her that since she was unfit for further service the Director-General had decided to terminate her permanent appointment under Regulation 10.3(a) for reasons of health at 24 April 1990 and that she would be entitled to a disability benefit from the United Nations Joint Staff Pension Fund from 25 April.

In a letter of 6 March to the Chief of Personnel Administration she accepted "the decision as definite" and asked what compensation she would be getting in lieu of the three months' notice required by Regulation 10.3.

By a letter of 22 March a personnel officer told her that the notice of termination given her was eleven days short of the usual three months' notice period and that she would be paid compensation amounting to eleven days' salary less staff assessment, the amount to be approximately 14,000 Austrian schillings, which as requested would be paid into her bank account.

By a letter of 8 May the personnel officer told her that her entitlements would be paid into her bank account, but did not say what the amounts would come to. That is the decision which in point 6 of the complaint form she identifies as the one she wants to impugn, and under point 11 of the form she explains that the purpose of her complaint is to determine whether the settlement is "legally correct".

3. Both before and after termination the complainant wrote several letters to the Organization. In one which she sent on 6 March 1990 to the Secretary of the Joint Appeals Board she cited the Director-General's decision to terminate her appointment, as well as various provisions of Austrian law, and she asked, among other things, "whether the compensation corresponds to my entitlements".

In his reply of 5 April the Secretary said that it was not clear what she wanted and asked her to state her "precise intention, i.e. whether you wish to appeal against an administrative decision concerning your terms of appointment". He cited Rule 112.02 of the UNIDO Staff Rules, which sets out the appeal procedure, and observed that he understood that she had been granted compensation. The complainant replied by letter of 9 April that her intention was to find out how much she would be getting.

4. By a letter of 18 April the Secretary answered that though he understood she intended to appeal

"... it remains unclear which administrative decision you wish to appeal against. I assume that you intend to appeal against an administrative decision in which you allege the non-observance of your terms of appointment ... or against disciplinary action."

The Secretary went on: "In this connection I should like to draw your attention to the procedure for initiating an appeal as set forth in Rule 112.01", which he correctly explained as follows:

"(a) As a first step, you must address a letter to the Director-General requesting that the administrative decision be reviewed. Such a letter must be sent within 60 days from the date you received notification of the decision in writing;

(b) If you wish to appeal against the answer received from the Director-General, you have to submit your appeal in writing to the Secretary of the Joint Appeals Board within 60 days from the date of receipt of the answer;

(c) (i) If you have not received a reply from the Director-General within 60 days from the date your letter mentioned under (a) above was sent to the Director-General, you may, within the following 30 days, submit your

written appeal against the original decision to the Secretary of the Joint Appeals Board; or, alternatively:

(ii) You may, within the following 90 days, apply to the Administrative Tribunal of the International Labour Organization in accordance with its Statute."

The Secretary quite reasonably asked the complainant to provide three texts: the administrative decision she wished to appeal against (Rule 112.01 of the Staff Rules), her request to the Director-General for review of the decision (Rule 112.02(a)) and his reply.

5. The complainant provided none of those texts. Instead she filed this complaint with the Tribunal on 6 July 1990 and it is plain that none of the documents sought exists or has ever existed.

That being so, the letter of 8 May 1990 did not constitute a final decision and the complainant has failed to comply with the requirement in Article VII(1) of the Tribunal's Statute that she exhaust all means of redress available to her under the Organization's Staff Regulations. Her complaint is therefore irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner