

EIGHTY-FOURTH SESSION

In re Broere-Moore (No. 3)

Judgment 1704

The Administrative Tribunal,

Considering the third complaint filed by Mrs. Sylvia Broere-Moore against the United Nations Industrial Development Organization (UNIDO) on 16 August 1996 and corrected on 15 October, UNIDO's reply of 20 January 1997, the complainant's rejoinder of 30 April and the Organization's surrejoinder of 11 August 1997;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, 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's career at UNIDO is summed up under A in Judgment 1483, which dismissed her first complaint. Among the texts the Organization appended to its final brief on that complaint was a "list of comparative amounts" showing how much she received upon agreed termination and how much she would have had if she had stayed on until 18 May 1994, when her appointment would have expired. It suggested that the agreed termination brought her some 29,000 United States dollars more, including its own contributions to the United Nations Joint Staff Pension Fund, than staying on would have done.

By a letter of 17 August 1995 she asked the Director-General to review, among other matters, "the Administrative decision" to use the list "as an illegal base for terminating my contract and for miscalculating the payments put forward". In a reply dated 8 September 1995 the Director of the Personnel Services Division told her on the Director-General's behalf that since she had already put to the Tribunal "most of the issues" she was raising it would be "inappropriate" to comment further. In a letter of 31 October 1995 she lodged her appeal with the Joint Appeals Board.

In its report of 4 April 1996 the Board recommended rejection on grounds of irreceivability: it was, it said, not competent to advise the Director-General in the absence of an appealable administrative decision. By a letter of 2 May 1996 the Director-General told the secretary of the Board that he had decided to endorse its recommendation. She got notice of that decision on 20 May, and it is the one she is challenging.

B. The complainant submits that the amounts in the table are incorrect and betray UNIDO's intent to terminate her appointment "fraudulently". The figures included an option not open to her - namely, serving out her appointment - and this, she says, was how the Organization used "blackmail" to make her sign a termination agreement she had wanted no part of. Having threatened to end her appointment with one month's notice if she did not agree to his terms, the Director-General misused his authority. Since the Administration withheld a detailed statement of the amounts due, the termination was unlawful.

She invites the Tribunal to set aside the decision to use the list to back up "its blackmail threat to terminate [her] contract"; grant her the difference between what UNIDO paid her in January 1994 and what she would have got under the terms of her appointment; and award her compensation for UNIDO's "improper blackmail threat" and "redress the situation so that I am in an equivalent situation I would be in, had the blackmail not taken place". She also claims costs.

C. In its reply UNIDO contends that the complaint is irreceivable. The submission of evidence to the Tribunal does not constitute an appealable administrative decision within the meaning of the Staff Rules. If the complainant wished to challenge the reckoning of a payment, she had only to act within the time limit set in Staff Rule 112.02. But what she plainly seeks is the quashing of her agreed termination, and that is *res judicata*, the Tribunal having held that she had agreed not to contest it.

On the merits UNIDO points out that the figures in the comparative table are correct and that she got her due under the terms agreed to. In any event she was fully aware at the material time of the exact amounts she could have by way of compensation and entitlements. Most of her complaint is just an attempt to reopen a case that the Tribunal has already dismissed.

D. In her rejoinder she disputes UNIDO's reply and enlarges on her own pleas. Her complaint is about new evidence which UNIDO produced and which warrants review of Judgment 1483. Having agreed under duress to the Organization's terms, she was free to challenge them. She presses her claims.

E. In its surrejoinder the Organization maintains that her complaint is irreceivable and explains that the termination indemnity it paid her in January 1994 matched the amount it gave in the list.

CONSIDERATIONS

1. The complainant joined UNIDO on 19 May 1992 as the chief of its Public Relations and Information Section under a fixed-term appointment for two years. The Organization prematurely terminated her appointment in the course of a staff-reduction exercise and by virtue of an "agreed termination" dated 30 November 1993 under Staff Regulation 10.3(c). The complainant challenged that termination in her first complaint on the grounds, among others, of breach of due process, abuse or misuse of procedure, deception, duress and the suppression of material information.

2. The terms of "agreed termination" suggested by UNIDO had been the subject of discussions and letters in the six weeks preceding 30 November 1993. The correspondence also contains reference to the payments which the complainant would have received if she had served the full period of her fixed-term appointment.

3. In the surrejoinder it filed on 12 June 1995 on her first complaint UNIDO submitted that a "table prepared by the Personnel Services shows that the payments received by the complainant under [the agreed termination] were superior to those she would have received had her contract run its full course"; it produced a document showing what it called the "Amount received by complainant in accordance with agreed termination" and the "Amount which would have been received by complainant had she worked until the end of her appointment on 18 May 1994".

4. Judgment 1483 ruled that the first complaint was irreceivable and that the complainant's claims must fail. The Tribunal did not consider that document or the complainant's motives for agreeing not to contest the termination of her appointment or the financial consequences of such termination.

5. The complainant says that only on receiving the surrejoinder did she become aware of the document, which she describes as a "list of comparative amounts". Within 60 days, by a letter of 17 August 1995, she asked the Director-General:

"to review the Administrative decision to use this list as an illegal base for terminating my contract and for miscalculating the payments put forward."

The Director-General replied on 8 September 1995 that her first complaint referred to most of the issues contained in her letter and that it would be "inappropriate" to make additional comments at that stage.

6. On appeal the Joint Appeals Board held that the "decision to use allegedly wrong or misleading tables of actual and hypothetical payments" was not an administrative one within the meaning of Staff Rule 112.02(a). It recommended rejecting her appeal and the Director-General did so.

7. In this, her third, complaint she is seeking the redress set out in B above.

8. She contends that she was not paid the amount due to her as shown in the list, that the amount she would have received had she worked until 18 May 1994 was understated, and that she was thereby misled into not contesting the termination.

9. The amount due to the complainant in terms of the "agreed termination" consisted of (a) her pay for December 1993; (b) an aggregate sum of 49,543 United States dollars made up of compensation for accrued annual leave, termination indemnity, three months' pay in lieu of notice, health insurance and repatriation

and education grants; and (c) UNIDO's contributions for her to the United Nations Joint Staff Pension Fund for the period from 1 January 1994 to 31 March 1995, amounting to 19,405.50 dollars.

10. As to the first two items UNIDO has produced the complainant's pay slip for December 1993 and the relevant vouchers, which show that the sums were paid in full, less only an outstanding sum of 5,041.58 dollars, the balance due on a loan she had obtained from the Staff Assistance Fund.

11. As for the third item, the "agreed termination" provided for putting her on special leave without pay until 31 March 1995. But in September 1994, and at her own request, UNIDO brought the date of expiry of her special leave without pay forward to 31 July 1994 so as to let her withdraw her own Pension Fund contributions; and so it stopped making contributions after that date. She raises no objections on that score.

12. However, the list shows a reduced amount of 9,055.90 dollars as UNIDO's share of Pension Fund contributions. That reflects the adjustment made in September 1994 and confirms that the list was prepared only thereafter. Since that was long after the "agreed termination", the list obviously cannot have influenced the termination in any way.

13. UNIDO's decision to cite that list - whether the figures were correct or not - in the proceedings on the first complaint was not an administrative decision notified to the complainant within the meaning of Staff Rule 112.02(a). The complaint is therefore irreceivable.

14. It also fails on the merits. The payments due to the complainant were made, and there was no miscalculation. Even assuming that there might have been some inaccuracy in the list, the complainant cannot have been misled by it since it came into existence only after the "agreed termination".

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Mella Carroll
Mark fernando
James K. Hugessen

A.B. Gardner