

EIGHTY-FOURTH SESSION

In re Broere-Moore (No. 4)

Judgment 1705

The Administrative Tribunal,

Considering the fourth 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 is a former official of UNIDO. Details of her career in the Organization appear under A in Judgment 1483, which dismissed her first complaint.

By a letter of 30 March 1992 the chief of the Recruitment Section offered her on the Director-General's behalf a two-year appointment at step 5 of grade P.5 on transfer from the World Meteorological Organization (WMO). After she had talked the matter over with the Director of the Personnel Services Division, the chief of Recruitment wrote her a letter on 18 May cancelling the original offer and making her a new one of a two-year appointment at step 3 of grade P.5. On 20 May she wrote "offer accepted" at the bottom of the letter and signed it. She signed a correspond-ing letter of appointment the same day.

On 12 June 1995 the Organization submitted to the Tribunal as an annex to its final brief on her first complaint a copy of a fax the officer-in-charge of the Recruitment Section had sent her on 22 April 1992. It said, among other things, that whether she decided to resign from her post at the WMO or not the decision "would not affect the step in the P.5 scale which was offered to her" in the letter of 30 March. That was step 5.

In a letter of 17 August 1995 she told the Director-General that she had first seen the fax in UNIDO's brief and asked him to review what she called the "error" of appointing her at step 3 of P.5. 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 an appeal with the Joint Appeals Board. In its report of 4 April 1996 the Board recommended rejecting her appeal as time-barred. 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 the decision on 20 May, and it is the one she is impugning.

B. The complainant submits that the decision to appoint her at step 3, and not 5, was unlawful. Not until UNIDO produced the copy of the fax of 22 April 1992 did she have any grounds for appeal. She observes that upon reporting for duty in Vienna she "challenged" the loss of steps but a personnel officer told her the Organization was free to offer her whatever step it pleased.

She invites the Tribunal to set aside the "decision to withhold informa-tion" about her step at recruitment and to recruit her "at the wrong Step"; pay her the difference between the sums she received and what she would have had "at the correct step"; and grant her "all other payments in compensation of salary loss from 1 January 1994, reckoned on the salary and allowances of the Step [she] should have been granted". She also claims costs.

C. In its reply UNIDO contends that the complaint is irreceivable for failure to appeal within 60 days of getting notice of her step in the letter of appointment. What is more, her claim to compensation goes further

than her internal claim, which was to payment of "retroactive financial adjustments", and is to that extent irreceivable on account of her failure to exhaust the internal remedies.

On the merits UNIDO observes that she does not put forward any reason why she should have got the higher step. Nor does she say why she signed the letter of appointment if the step was unacceptable.

D. In her rejoinder the complainant recounts the conditions under which she left the WMO and agreed to take up duty "urgently" at UNIDO. She insists that the personnel officer misled her at the time of recruitment and charges the Organization with breach of good faith: it had a duty to tell her she had one year in which to have her step put right. So the delay in lodging her appeal was UNIDO's fault not hers. She presses her claims.

E. In its surrejoinder the Organization comments on the issues she raises in her rejoinder and maintains that the complaint is irreceivable and in any event without merit.

CONSIDERATIONS

1. Having resigned from service with the World Meteorological Organization (WMO) in Geneva, the complainant joined UNIDO on 19 May 1992 at its headquarters in Vienna as chief of the Public Relations and Information Section. She got a fixed-term appointment for two years at grade P.5, step 3. Her complaint is that UNIDO should have given her step 5.

2. By a letter dated 30 March 1992 the chief of the Recruitment Section in the Personnel Services Division had offered her "on transfer" from WMO the fixed-term appointment at step 5 of grade P.5. She accepted by a fax message dated 1 May 1992 and UNIDO asked her to report for duty on 18 May.

3. On 15 May in Geneva there was discussion between her and the Director of the Personnel Services Division of UNIDO. On 20 May she was given a letter dated 18 May 1992 and signed by the chief of Recruitment which said:

"Following your discussion ... on 15 May 1992 ... the offer of appointment made to you on 30 March 1992 is herewith cancelled and superseded as follows."

The letter offered her an appointment at step 3 of grade P.5 as from 19 May 1992. She added the words "offer accepted" and signed that letter, as well as the letter of appointment, on 20 May.

4. She failed to seek review of the decision to give her step 3 within the time limit of sixty days set in Staff Rule 112.02 or indeed at any time before the termination of her appointment.

5. Her appointment was prematurely terminated by an "agreed termination" dated 30 November 1993, which she challenged in her first complaint. The Tribunal dismissed that complaint in Judgment 1483.

6. In the proceedings relating to that complaint UNIDO produced with its surrejoinder of 12 June 1995 a fax letter which the officer-in-charge of the Recruitment Section had sent the complainant on 22 April 1992 and which contained a response to a specific question she had raised:

"Whether or not you resign from WMO would not affect the step in the P.5 scale which was offered to you in [the letter of 30 March 1992], i.e. P.5 step V."

7. The complainant says that she did not receive that fax at the time and indeed became aware of it only when she got the surrejoinder, less than sixty days before 17 August 1995. That was the date at which she wrote asking the Director-General to review the administrative decision to recruit her at step 3 instead of step 5. He refused. On appeal the Joint Appeals Board recommended rejecting her appeal as irreceivable on the grounds that she had not sought review within sixty days of getting her letter of appointment. The Director-General endorsed that recommendation.

8. In her fourth complaint she is asking the Tribunal to "quash UNIDO's decision to withhold information regarding the step at which [she] should have been recruited and recruit [her] at the wrong Step in the Grade" and to award her the additional payments which would have been due if she had been recruited at

step 5.

9. The fax letter of 22 April 1992 restated, quite accurately, the terms of the subsisting offer made to the complainant on 30 March 1992, namely that she would be put at step 5 whether or not she resigned from the WMO. The fax letter had no bearing on the subsequent decision to vary that offer, and the fact that she did not receive it did not mean that any information pertaining to the subsequent offer had been withheld from her.

10. She had duly accepted the offer of 30 March 1992 and she was under no obligation to agree to any variation. If aggrieved by the subsequent decision to put her on step 3, she should have asked for review within the sixty days.

11. The complaint is therefore irreceivable.

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