

EIGHTY-EIGHTH SESSION

In re Reis-Ekelund

Judgment 1907

The Administrative Tribunal,

Considering the complaint filed by Mr Patrick Reis-Ekelund against the International Office of Epizootics (OIE) on 6 April 1999, the OIE's reply of 21 June, the complainant's rejoinder of 9 September, and the OIE's surrejoinder of 21 October 1999;

Considering Article II, paragraph 5, 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, a citizen of the United States and Sweden who was born in 1968, entered the service of the OIE in Paris on 9 December 1997 as an administrative assistant, at grade 4 in category III, in the Administrative and Financial Department on a two-year fixed-term appointment.

Part of his duties involved reviewing the administration, finance and activities of the OIE regional offices. On 27 October 1998 he informed the Head of the Administrative and Financial Department of certain accounting discrepancies that he had identified in the accounts of the regional office for the Americas. The Head of that Department had a meeting with the complainant on 26 November 1998 and criticised aspects of his work and behaviour. On 7 December 1998 the Deputy Head of the Department sent the complainant a letter, of which copies were sent to the Head of Department and the Director-General, which contained criticisms of the complainant's preparations for two meetings.

Those negative comments were put into his annual professional appraisal report which was produced in early 1999. On 12 February the Director-General noted on the report that those "difficulties" called into question the complainant's future with the Office. On 15 February the complainant contested the report, adding on the appraisal sheet that he might "have to draw the entire matter to the attention of other bodies".

The Director-General decided to refer the matter to the OIE's Administrative Commission. On 18 February the complainant had a brief meeting with the President of the OIE's International Committee who also presides over the Administrative Commission. He met him again the next day when the President told him that he would be asked to submit to the Director-General a summary in writing of his observations on the financial discrepancies.

Also on 19 February the complainant received a letter from the Director-General saying that the matter of his appraisal report had been put before the Administrative Commission in conformity with Article 40.12(d) of the Staff Rules and it had expressed its "confidence in the position taken by the Director-General". He also asked for a note on the anomalies found in the accounts. The complainant submitted his comments on 24 February 1999.

On 26 February the Director-General handed the complainant a letter informing him of his decision to terminate his employment on the ground of unsatisfactory service under Article 8.1 of the Staff Regulations. His duties ceased the same day and he received an indemnity equal to three months' pay in lieu of notice under Article 80.2 of the Rules. In a letter he wrote to the Director-General on 26 March the complainant indicated his intention to submit his case to the Tribunal, which he understood the Director-General had agreed to during their meeting on 26 February. The Director-General's decision of 26 February, which is the one impugned, was confirmed in a letter of 6 April.

B. First, the complainant submits that his complaint is receivable. Article 10.1 of the Staff Regulations

provides that:

"The parties may agree that the case will be submitted to an independent person, designated by the President of the Administrative Tribunal ... to recommend a solution for the case."

He is not asking for an independent person to be appointed and has therefore filed his complaint pursuant to Article 10.2 which allows access to the Tribunal regarding a controversy "which could not be solved on the application of Article 10.1".

Secondly, he submits that the decision to terminate his employment is tainted with procedural irregularities and he did not get a fair hearing. The procedure followed after he had objected to his appraisal report did not conform to that laid down in Article 40.12(d) of the Staff Rules whereby if, within ten days of receiving the staff member's contesting comments the Director-General is unable to resolve the matter "in such a way that the staff member withdraws in writing his objections" then he should refer the matter as quickly as possible to the Administrative Commission. The Director-General consulted the Commission too soon. The complainant says that he contested his appraisal report on 15 February 1999. The Office received his comments on 16 February, and so the earliest date for consulting the Commission was 2 March 1999. In sending him the letter of 7 December 1998 containing negative criticisms of his work the Deputy Head of his Department did not respect the appraisal procedure laid down in Article 40.12(a).

He points out that by virtue of Article 1.9 of the Staff Regulations the Director-General is bound to "respect the provisions of the Basic Texts of the Office". Also, the OIE has a duty to respect the rules protecting the rights of international civil servants and to treat the complainant with "consideration and fairness".

Thirdly, the decision was based on incorrect facts. The only reason given for dismissal was that his services had ceased to be satisfactory: he did not receive information on what his shortcomings were. His services were considered satisfactory until he mentioned the accounting anomalies. In his opinion his dismissal was a hidden disciplinary measure and the way the OIE managers treated him in the last four months of his appointment amounted to harassment.

If the Tribunal does not order reinstatement he seeks: (1) the quashing of the impugned decision; (2) two years' salary in material damages; (3) one year's salary in moral damages; (4) a written apology signed by the Director-General; and (5) 25,000 French francs in costs. If the Tribunal does order reinstatement he seeks the same relief, but instead of material damages he asks for the immediate payment of all outstanding salaries and benefits due from the date of dismissal up to reinstatement.

C. In its reply the OIE raises no objections to receivability. It observes that the decision to dismiss the complainant was not flawed and that according to the Tribunal's case law the Director-General has a margin of discretion in deciding to dismiss a staff member on the grounds of unsatisfactory service. Since July 1998, there was a marked deterioration in the manner in which the complainant performed his duties, and the quality of his work and his professional relations were the subject of comment, complaints and discussions. The decision to dismiss him was taken in the interests of the Office: the complainant had been notified in writing and reasons had been given in various interviews and notes. Termination with an indemnity in lieu of notice under Article 80.2(b) was necessary for the smooth running of the support service for the regional offices. He was remunerated as though he had been in service up to 26 May 1999. His services and behaviour did not justify dismissal on disciplinary grounds.

Article 40.12. of the Staff Rules prescribes the procedure to follow when annual reports are contested. The OIE followed that procedure, the matter was submitted to the Administrative Commission as soon as possible and the decision of the Commission was communicated to the complainant. The terms of that article do not preclude a supervisor from sending a member of staff other written comments such as those of 7 December 1998 from the Deputy Head.

As shown by reports of an internal and external auditor the allegations of anomalies in the accounts of the regional office for the Americas proved to be unfounded which in turn cast doubt on the complainant's competence.

D. In his rejoinder the complainant presses his claims. Many of the OIE's statements against him were put for the first time in its reply and he refutes its claim that his work was lacking in any way. He could not

produce the corroborative details concerning the accounts at issue because he did not have access to the relevant file after 9 November 1998. The evidence produced by the Office to disprove that there were any accounting discrepancies dates from April 1999, after his dismissal.

Contrary to the procedure allowed for in Article 40.12(b) of the Rules, he was not given an opportunity to read and countersign the Deputy Head's comments of 7 December 1998 criticising his performance. Furthermore, the two "interviews" with the President of the OIE's International Committee did not constitute a fair hearing: his discussion with him centred on the accounting issue and not on his appraisal. The memorandum which the Director-General wrote to him on 19 February 1999 stated that the Administrative Commission had expressed confidence in the position adopted by the Director-General, but its conclusion was reached without the Commission having seen his own comments of 24 February to the Director-General, which he had been asked to draft.

The OIE considered that his employment had ceased on 26 February 1999, instead of 31 May 1999 at the end of the three-month notice period. The complainant considers that to be "blatantly unfair". He suffered financial loss and his coverage under the French social security system was affected.

E. The OIE maintains the arguments put forward in its reply and points out that it is clear from his rejoinder that the complainant kept copies of documents related to his professional activities with the Office. It respected the maximum periods allowed for each step in contesting an appraisal as set out in Article 40.12 of the Rules. Within ten days of the complainant's contesting his report the Director-General, who was aware of the diverging opinions, referred the matter to the Administrative Commission.

The OIE points out that the complainant was in charge of liaison with the regional offices. He was not responsible for the monitoring of their income and expenditure "at a more technical and operational level". That remained the responsibility of the accountant. There were certain known difficulties in the office concerned and the discrepancy identified "was the result of errors made by the complainant".

At the time of his dismissal disciplinary proceedings were not applicable as he was dismissed through his "unsuitability ... to provide the services expected of him", and not for intentional breach of a rule of conduct to be respected by international civil servants.

CONSIDERATIONS

1. The complainant attacks a decision of the Director-General of his former employer, the International Office of Epizootics (OIE), dated 26 February 1999, which was confirmed on 6 April, terminating his employment on the grounds of unsatisfactory service.

2. The complainant joined the OIE on 9 December 1997 on a two-year contract as an administrative assistant. His first few months of service appear to have been entirely satisfactory but in the autumn of 1998 a number of difficulties began to become apparent in his performance and his relations with his supervisors and fellow employees. In September and October the Head of the Administrative and Financial Department wrote to him concerning problems with his work and on 26 November 1998 he called him for an interview at which he was told that his work did not respect the Office's standards, that his attitude and behaviour towards colleagues were unsatisfactory, and that he lacked experience in certain aspects of his duties. On 7 December 1998, the Deputy Head of the Administrative and Financial Department wrote to him about further problems and expressed criticisms of his work. On 10 December the complainant was convened by the Director-General to give him an opportunity to explain himself.

3. On 29 December 1998, the complainant's Head of Department sent him a note outlining their discussion of 26 November and expressing dissatisfaction with the complainant's services. He was asked "to amend [his] working practices".

4. On a report form completed by the Director-General on 12 February 1999, the latter indicated that the various criticisms of the complainant's services called into question his future with the Office. At the initiative of the Director-General, the complainant was accorded an interview with the President of the International Committee of the OIE, who also presides over the Administrative Commission, on two successive days, 18 and 19 February 1999. At those meetings the complainant continued to insist, as he had

on a number of previous occasions, that he had discovered irregularities in the accounts of the Office's regional office for the Americas, notwithstanding the fact that those accounts had been examined by both the internal and external auditors of the OIE and had specifically been found to be in order.

5. Finally, in a meeting with the complainant on 26 February 1999, the Director-General, considering that the complainant's services had ceased to be satisfactory and were no longer compatible with the interests of the Office, handed him a letter which stated that his employment was terminated in accordance with Article 8.1 of the Staff Regulations. That decision, confirmed by the Director-General on 6 April 1999, is the one impugned.

6. The complainant was given an indemnity equal to three months' pay in lieu of notice and no separate issue arises in that regard.

7. The complainant argues that the decision is procedurally flawed as being in breach of Article 40.12 of the Staff Rules and that he was not given a proper opportunity to respond in person to the charges against him. He also alleges breach of procedural fairness and affront to his dignity and reputation. He says the impugned decision was based on inaccurate facts, reflects a pattern of bias against him and was a form of hidden disciplinary action.

8. There is no substance to these arguments. The record shows clearly that the complainant was given ample opportunity to respond, and did respond, to the complaints made about his services.

9. As the Tribunal recently affirmed in Judgment 1817 (*in re J.*) an international organisation has broad discretionary powers to determine whether a staff member is fit for employment and the Tribunal will only intervene in such decisions on limited grounds. No such grounds have been established here. The complainant was given ample notification of the decision and of the reasons for it. He was also given an opportunity to be heard and to provide his comments during the entire process.

10. The argument based on Article 40.12 of the Staff Rules is also untenable. The relevant part of that article reads:

"If, within ten working days ... the Director-General is unable to resolve the matter ... [it] shall be placed as soon as possible before the Administrative Commission."

Manifestly, this text does not require the Director-General to wait ten days before referring the matter, but rather allows him up to ten days to resolve the question on his own before making such a referral.

11. The allegation that the complainant was a victim of bias is unsupported by any evidence whatever.

12. Finally, as to the substance of the decision, the evidence, far from showing that the decision was based on a wrong or improper appreciation of the facts, indicates that the complainant's actions, in particular with regard to the accounts of the OIE's office in the Americas, were wholly unjustified.

13. There being no basis for interfering with the impugned decision, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 28 September 2004.