

EIGHTY-NINTH SESSION

In re Elsayed

Judgment No. 1958

The Administrative Tribunal,

Considering the complaint filed by Mr Ibrahim Mohamed Khater Elsayed against the International Atomic Energy Agency (IAEA) on 27 August 1999, the IAEA's reply of 10 January 2000, the complainant's rejoinder of 3 March, and the Agency's surrejoinder of 20 April 2000;

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, an Egyptian national born in 1946, joined the IAEA in 1983 in the Division of Languages. He was initially engaged on a short-term contract and in due time he held longer, fixed-term contracts. At the time he filed his complaint he was the Supervisor of the Arabic Typing Unit and held grade G.6.

On 29 January 1998 his fixed-term appointment was extended for a period of three years - up to 28 February 2001. Upon signing the contract on 26 February he made reference to a letter he had sent to the Director of the Division of Personnel on 19 February in which he had asked for a five-year extension. On 8 April the Director informed the complainant that he was unable to accede to his request: the reason that the complainant had received only a three-year extension was unrelated to his work performance but was instead based on the fact that there was an ongoing review of the work in the Division of Languages. He was also informed that he might be considered for a five-year extension when his current contract expired.

On 30 November the complainant again wrote to the Director of Personnel asking that the length of his contract be reconsidered. The Director replied on 8 December 1998 reiterating what had been previously communicated to the complainant.

On 20 January 1999 the complainant appealed to the Director General against the decision not to reconsider him for a five-year contract extension. He also asked for "an award" for merit. On 12 March the Director General informed him that he considered the appeal to be time-barred. He added that recommendations for merit awards were made at divisional level. On that same day the complainant appealed against the decision to the Joint Appeals Board which determined that his appeal had not been lodged within the time-limit stipulated in Staff Rule 12.01.1(D). On 31 May 1999 the Director General informed the complainant that he was upholding the Board's opinion. That is the impugned decision.

B. The complainant contends that throughout his career with the IAEA he has been subjected to harassment and unfair treatment. On the issue of harassment, the complainant has provided numerous documents in support of his allegations that his subordinates in the Arabic Typing Unit and others working in the Arabic Section were encouraged by the former Director of the Division of Languages to act unprofessionally and display a lack of respect for the complainant's supervisory position. This has "seriously harmed [his] morale, career, normal life and social standing and also had a physical effect on [his] health leading to a breakdown in the office" which required the intervention of the Agency's Medical Service in 1996.

He also contends that this harassment has resulted in unfair treatment in the way his contract renewals have been handled. In 1988 he signed a three-year extension that was cancelled a few days later without explanation in favour of a two-year extension. In 1990 and 1991 he was given only one-year extensions in order for the new head of section to evaluate his performance. In 1992 his extension was for only two years, despite the fact that the head of section recommended five years. In 1994 he was given a three-year extension, again despite his section head's

recommendation for a five-year one. Then on 29 January 1998, one month before his contract was to expire, he was offered only a three-year extension, which he argues was in breach of the Staff Rules and "did not follow the normal pattern". He also says that he was discriminated against over a ten-year period.

He seeks compensation for damage to his morale, social standing and health as well as for "damage to career (promotion)". He also seeks the "security of [his] post" and a five-year extension when his contract is next renewed, or "amendment of the current contract to five years".

C. In its reply the Agency objects to the receivability of the complaint. It submits that it is time-barred as the complainant did not challenge the Director of Personnel's decision of 8 April 1998 within the requisite time limit.

The defendant asserts that the complainant's allegations of long-standing discrimination should not be entertained. Instead of substantiating his allegations he merely refers to numerous documents which for the most part are internal and confidential Agency documents. It says that at no point over the last ten years has the complainant challenged any decision in connection with what he terms "discrimination".

It argues that the three-year renewal was in line with a policy that was applied to all staff members in the complainant's Division and that this represented the most favourable length of extension possible at that time.

D. In his rejoinder the complainant contests that his complaint is time-barred. He accepted in good faith that as there was on-going verbal communication, it meant that the subject of extending the length of his contract to five years was still under consideration. He points out that in his letter of 30 November 1998 he had reminded the Director of Personnel of a conversation they had had on 28 September. During that conversation the Director had told him that the matter of his contract was being looked into and that details had been forwarded to the relevant person. Therefore, it was the Director of Personnel's reply of 8 December that constituted a decision against which he could appeal to the Director General, and he did so in a timely manner.

He reiterates that his colleagues were encouraged by his supervisors to treat him without respect, which hindered the quality of the work in the Typing Unit that he supervised.

E. In its surrejoinder the IAEA contends that there is no evidence to support the complainant's claim that he has been discriminated against by his colleagues and supervisors. The only issue in this case is his request for a five-year contract extension, which is time-barred and also unfounded.

CONSIDERATIONS

1. The complainant has been a member of the staff of the IAEA since 1983. He has held a series of short-term and fixed-term contracts, none of a duration longer than three years. In January 1998 he was offered a three-year extension to his contract which was due to expire on 28 February 1998. Before accepting this offer, he wrote on 19 February 1998 to the Director of the Division of Personnel to complain that he had not been offered a five-year extension. He stated that he had been treated unfairly and referred to "long-lasting suffering" in the course of his employment with the Agency. The Director of Personnel responded in writing on 8 April stating that he was unable to alter the three-year extension to the complainant's fixed-term contract.

2. On 30 November the complainant wrote again to the Director of Personnel requesting reconsideration of his case. That request was refused by a written communication dated 8 December 1998.

3. The complainant appealed to the Director General in a letter dated 20 January 1999. In that letter he sets out in detail a series of grievances and instances of alleged mistreatment extending over a period of many years and resulting in his being "victimized" by the granting of contract extensions which were shorter than normal. He refers in particular to the most recent three-year extension. The two concluding paragraphs of the letter read as follows:

"In view of the above facts, I appeal to you to reconsider the administrative decision taken in my case and to rectify the extension period of my contract to five years, which I would normally have been awarded seven years ago.

I would also greatly appreciate it if you would agree to grant me an award [for merit], which I feel would be a great morale boost, and acknowledgement of my good deeds since I started working with the Agency."

4. In a letter dated 12 March 1999 the Director General, while stating that he considered the complainant's request to be time-barred, went on to reject it on the merits. The complainant's request for a merit award was also refused. An appeal to the Joint Appeals Board was unsuccessful and the Director General confirmed the decision by a letter dated 31 May 1999. That is the impugned decision.

5. In his complaint to the Tribunal the complainant asserts two alleged grounds of complaint, the first being harassment over many years of his employment with the Agency and the second being the refusal to extend his contract for the five-year period to which he considers that he was entitled.

6. The claim to compensation for harassment is clearly irreceivable on the grounds that the complainant has failed to exhaust his internal means of recourse. It appears for the first time as a separate cause of action in the complaint to the Tribunal. While the facts alleged to constitute harassment do, for the most part, appear in the appeal to the Director General, they do so only as supporting material for the complainant's claim to a longer extension of his contract. They could be relevant to that claim since the decision to renew for a shorter term, like the decision to renew or not renew, is discretionary and may only be reviewed on limited grounds: see Judgment 1617 (*in re* Lebtahi). But, as appears from the quoted paragraphs of his letter of appeal, he did not claim any specific remedy in that regard.

7. As regards the claim to a longer contract extension, the Agency is clearly right in its view that the appellant's recourse to the internal appeals procedure was time-barred. The relevant Staff Rule, 12.01.1(D), provides that appeal to the Director General against an administrative decision must be submitted within two months from the date of communicating such a decision in writing to the staff member. In the present case, the decision of the Director of Personnel was dated 8 April 1998 and he appealed to the Director General only on 20 January 1999. Clearly, the complainant's request to the Director of Personnel on 30 November 1998 to reconsider the earlier decision could not have the effect of reviving a right of appeal which by that time had long since expired. Likewise, the complainant's assertion (unsupported by any evidence other than a self-serving statement in the letter of 30 November 1998) to the effect that the Director of Personnel had verbally agreed to look into the matter in September 1998 is of no avail; such an undertaking, even assuming that it was given, is far from amounting to a renunciation of a prescription already acquired.

8. The complainant having failed to exhaust his internal means of redress, the complaint is irreceivable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet