

## NINETY-FIRST SESSION

*In re Samorodov*

Judgment No. 2050

The Administrative Tribunal,

Considering the complaint filed by Mr Alexander Samorodov against the International Labour Organization (ILO) on 22 September 2000, the ILO's reply of 23 November, the complainant's rejoinder of 14 December 2000, and the Organization's surrejoinder of 15 February 2001;

Considering Articles II, paragraph 1, 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, a Russian national born in 1947, joined the ILO in 1986. He holds an appointment without limit of time at grade P.4.

In order to implement four strategic objectives, restructuring took place within the International Labour Office in 1999 which resulted in the creation of four corresponding technical sectors. Most of the existing positions in the Office that were of a technical or operational nature had to be adapted to fit into a relevant sector. The new structure was announced to staff by the

Director-General on 23 September 1999 in circular 561, of series 1. Staff were informed in that circular that each of the Executive Directors had been asked to complete the composition of their sector teams. One of the new sectors was the Employment Sector, into which the Employment and Training Department, where the complainant had been working prior to the restructuring, was absorbed.

On 3 December 1999 the Executive Director of the Employment Sector sent out a minute to all staff in his Sector summarising the progress made in staffing the Sector. Two weeks previously the complainant had been informed at a meeting with a representative of the Personnel Administration Branch and a team leader from the Employment Sector that no position suitable to his skills and experience had, so far, been found for him. After extensive inquiries, made over several months, a post was found for him in one of the units of the Employment Sector and he was to be transferred to it as from 1 June 2000.

The complainant lodged an internal complaint on 7 April 2000 under Article 13.2 of the Staff Regulations seeking the quashing of "the decision to exclude [him] from the Employment Sector", and the assignment of "functions consistent with [his] competence and experience". He also sought moral damages and costs. By the time a decision was taken on the complaint by the Director-General the complainant had already been transferred to his new post; the only outstanding issues were moral damages and costs. In a letter of 10 July 2000 the complainant was informed by the Director of the Human Resources Development Department that the Director-General had rejected the internal complaint. That is the impugned decision.

B. The complainant contends that, as a result of the restructuring exercise, he was deprived of his functions from 1 January 2000 without due warning. He had been passed over in spite of the fact that he had a contract without limit of time, proven linguistic skills and good previous performance appraisals. The Organization showed bias against him on account of his age and gender. Such discrimination also represented abuse of power during

the restructuring exercise. He was made "a scapegoat" by the ILO for its personnel policy mistakes which had resulted in a gender imbalance. He submits that the flaws in the restructuring process resulted in "grave professional and personal damage".

The Administration also stopped responding to the letters he sent to the Human Resources Development

Department, thus "sealing an atmosphere of vacuum around [him]". He states that he was "humiliatingly discredited in the eyes of [his] former colleagues" because he had to wait five months before being reassigned.

He claims an indemnity in respect of the "moral and professional prejudice" suffered and costs.

C. In its reply the Organization does not object to the receivability of the complaint as a whole; however, it objects to receivability insofar as the complaint could be construed as claiming damages for alleged "restructuring flaws". Moreover, the complainant does not cite any specific instance in which he was deprived of an assignment as a result of the discrimination he alleges.

The Organization submits that all relevant staff regulations and rules were observed in the restructuring process. The complainant was given the same information and the same opportunity as other officials to have his preferences and potential taken into account during the restructuring. The task of finding meaningful work for the complainant in the new structure was made more difficult because he would not accept any solution that was not up to his expectations or that was "fill-gap" in nature. In fact he rejected a request to undertake a technical mission on behalf of the ILO because he was not a member of any unit.

The ILO denies humiliating him. He has misinterpreted the minute of 3 December 1999, which was only meant to show the progress made in staffing the Employment Sector.

It regrets that the complainant experienced distress during the months preceding his reassignment but considers that this did not arise from any act or omission amounting to non-observance of the complainant's terms of appointment.

D. In his rejoinder the complainant contends that a female staff member with less experience than he had was brought from the field to headquarters and assigned the same work as him, which eventually led to his *de facto* suspension from duty with salary. He submits that he had valid legal reasons for not undertaking the mission the Organization refers to and claims that this is another example of bias against him.

E. In its surrejoinder the Organization submits that the complainant's plea regarding the female staff member, and any claims arising from it, is irreceivable for failing to exhaust all internal means of redress, this being specified for the first time in his rejoinder.

It reiterates that there was no decision to deprive the complainant of, or suspend him from his functions, and it regrets that it took several months to find him a suitable post after the restructuring. It points out that there was only a minor administrative problem with the proposed mission which could have been resolved by the Administration if the complainant had wished to undertake it. The Organization recognizes that the restructuring caused the complainant stress, but states that it has not breached any obligation towards him.

## CONSIDERATIONS

1. In 1999 the International Labour Office carried out a restructuring exercise. Four strategic objectives had been identified and in the restructuring it put in place four corresponding technical sectors. One of these was the Employment Sector. The Executive Director of that sector convened a meeting on 3 May 1999 for all Professional staff whose units were likely to become elements of the new sector. This was followed by several meetings and officials were encouraged to specify which new unit or units interested them and to be active in seeking contact with them.

2. The new structure was formally announced to the staff in a circular of 23 September 1999. The first appointments at management level were also announced therein. The staff were advised that each of the Executive Directors had been asked to complete the composition of their sector teams. The new units within each sector were listed in an attachment to the circular.

3. On 3 December 1999 the Executive Director of the Employment Sector issued a minute addressed to all staff in that Sector. The minute set out the current staffing of the Sector. The complainant's name was not included. The complainant claimed that, as a result of this document, he was deprived of work as of 1 January 2000 and suffered "moral and professional prejudice".

4. On 7 April 2000 he lodged an internal complaint under Article 13.2 of the Staff Regulations, asking that "the decision to exclude [him] from the Employment Sector" be quashed and that "functions consistent with [his] competence and experience" be assigned to him. He claimed an indemnity to compensate him for "moral and professional prejudice", and costs.

5. There were ongoing attempts and negotiations to find the complainant a suitable position. Eventually, by mutual agreement, he was assigned to a position within one of the units of the Employment Sector, effective as of 1 June 2000.

6. The Director of the Human Resources Development Department notified the Director-General's final decision to the complainant on 10 July 2000. He recalled the different stages of the restructuring process and the consultation that had taken place with the staff. He said that the minute of 3 December 1999 had not excluded anyone. It had listed the names of individuals whose situation was clear at the time; other announcements were to be made later. The complainant was not the only staff member whose name did not appear. He told the complainant that there was no basis to award him compensation for "moral and professional prejudice" or for costs. This is the decision impugned.

7. In this complaint the complainant confines his claim for relief to an indemnity for "moral and professional prejudice" and costs. He claims that he was deprived of work without warning; that he was deprived of his functions solely on the basis of gender and age; that simultaneously the Organization ceased replying to his letters; that, in March 2000, it told him "there was no work"; and that he was thus "humiliatingly discredited" in the eyes of former colleagues. He says that, although he was given work from 1 June 2000, he received no compensation for undue suffering, "public humiliation" and discrimination.

8. For the complaint to be considered receivable under Article VII, paragraph 1, of the Tribunal's Statute the complainant must first have exhausted all means of internal appeal that were open to him. It is plain on the evidence that no issue was raised by the complainant in his Article 13.2 complaint about the restructuring process itself or the appointment of any particular person who was preferred over him on the basis of age or gender. On that basis he cannot now raise issues that were not first set out in his internal complaint.

9. The gist of the case is whether the issuing of the minute of 3 December 1999 deprived the complainant of work and caused him "moral and professional prejudice".

10. As to whether the complainant was deprived of his functions or excluded from the Employment Sector, the Organization points out that he does not allege any specific instance in which he was deprived of an appropriate assignment. It denies that there had been no prior notice or information concerning how the appointments would be made. There had been meetings and officials were asked to make their interest in particular units known. Positions were not open to competition but were filled by transfers in the same grade and by direct selection as the relevant rules allowed. The complainant was provided with all necessary information as to assignments available, and he had the same opportunity as other officials to have his own preferences taken into account. The Organization states that the complainant's skills and specialisation (in transition economies) were not considered as relevant to the needs of the new structure as those of other officials. Two weeks before the minute of 3 December 1999 was issued, the team leader concerned and a representative of the Personnel Administration Branch told the complainant that no position had yet been found for him.

11. The Organization comments that the complainant seems to have adopted a "somewhat passive attitude" to the whole restructuring process. At the same time, it agrees it had to do all that was practicable to see that he was given work and responsibility appropriate to his grade. It says that the task of finding work which the complainant would recognise as meaningful was not easy. He rejected a request to undertake a technical mission in early 2000 on the basis that since he was not in any unit he could not be sent on mission. He turned down a proposed appointment in Moscow because the post was not at grade P.5 and would not have secured him a promotion. He did however, participate in a management course which he stated he found a useful exercise.

12. Contrary to what the complainant claims, the minute of 3 December 1999 does not set out a list of all staff in the employment sector. The Organization asserts that he has misinterpreted the document. The omission of the complainant's name merely meant that he was not one of the staff appointments at the time the minute was circulated.

13. Paragraph 1 of the minute reads:

"The building of teams in our Sector is progressing well and we are now in a position to make further appointments. I am therefore happy to summarize below the current staffing of the Sector. This composition reflects appointments already made as well as new ones. It comprises most, but not yet all, posts which are funded by the Regular Budget and [programme support income]. It does not yet include external recruitments nor transfers from field offices to headquarters."

14. The Tribunal finds that the minute of 3 December 1999 is what it says it is: a summary of the current staffing of the Employment Sector. The complainant was not the only headquarters official in that sector whose name was not included in the list set out therein. The complainant was unreasonable in construing the minute as a decision not to employ him. He had been told two weeks previously that a place had not yet been found for him. Eventually an assignment was identified with which he agreed. The delay was not due to any breach on the part of the Organization of its obligations towards the complainant as a staff member. Neither was there any breach of its duty to do all that was practicable to see he was given work and responsibility appropriate to his grade.

15. The Tribunal does not find any basis for awarding compensation for any perceived humiliation or slight by reason of the fact that the complainant's name was not on the list contained in the minute of 3 December 1999.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2001, 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 2001.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet