

FORTIETH ORDINARY SESSION

In re FRASER

Judgment No. 337

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Mr. Enos Fritzroy Fraser on 27 January 1977, the ILO's reply of 24 March, the complainant's rejoinder of 25 April and the ILO's surrejoinder of 25 July 1977;

Considering Article II, paragraph 1, of the Statute of the Tribunal and the Staff Regulations of the International Labour Office, particularly Articles 1, 4.6(d), 6.4(d), 11.5 and 13.2;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. In June 1974 the complainant, who is Jamaican by nationality, sought employment in the International Labour Office. At the time he was employed in a senior post by Ciba-Geigy in Basle. Also at the time a Mr. Evan, who was in charge of the chemical and petroleum industries in the Industrial Committees Branch of the Office was about to take special unpaid leave, and the complainant was chosen to fill the temporary vacancy. He was offered a one-year appointment at grade P.3 to start on 1 October 1974. The post was later regraded P.4.

B. In September 1975 the complainant had his appointment extended to 30 September 1976. Meanwhile a request was made for a six-month extension of Mr. Evan's unpaid leave, which had originally been granted for two years. At about the same time the Director-General said that because of the ILO's situation appointments of fixed-term officials should be extended only to the end of 1976 pending fuller study of the amount of resources which would be available in 1977. Among other things the Office thought of transferring to Mr. Evan's post a Mr. Canales, an official in the Bangkok Office, and the complainant raises objections to the idea which include criticisms of Mr. Canales. On 18 August 1976 Mr. Reynaud, the head of the branch, filled in a staff requisition form for the extension of the complainant's appointment by three months, to 31 December 1976. The ILO contends that that requisition was made subject to the express condition that Mr. Evan's unpaid leave should be extended beyond 31 October 1976.

C. On 25 November Mr. Reynaud told the complainant that his appointment would not be extended beyond the date of its expiry, 31 December 1976, "on the post for the specialist in the chemical industries in the Industrial Sectors Branch because that post would not be vacant from 1 January 1977". On 29 November the complainant sent a minute to Mr. Reynaud and to the Personnel Department protesting against a decision which had the effect of dislodging him from the post. On 30 November it was decided to extend his appointment by one month, to 31 January 1977 - "so as to give him two months' notice", says the ILO, "from the date on which the decision not to extend his appointment had been notified to him".

D. On 3 December the complainant submitted a "complaint" in accordance with Article 13.2 of the Staff Regulations. On 21 January 1977 Mr. McDonald, the Deputy Director-General in charge of General Administration, dismissed that complaint on behalf of the Director-General but said that the Director-General had nevertheless decided to grant a final extension of appointment to 30 April 1977. It is the decision of 21 January 1977 which the complainant impugns.

E. The complainant takes the view that the ILO gave no sound reason for terminating his appointment. He was given "informal" but "solemn" assurances, he says, that his appointment would be extended, and he believes that the ILO has a duty towards him to honour. He therefore asks the Tribunal to quash the impugned decision inasmuch as it is arbitrary and tainted with abuse of authority and to order either his reinstatement or the payment of compensation equivalent to the salary which he would have received up to 31 December 1978, plus damages for

the prejudice he has suffered. Failing reinstatement, he asks the Tribunal to order the ILO to give him a certificate of service referring to his duties, length of service, competence, efficiency and official conduct.

F. The ILO points out that the last claim mentioned in paragraph E above is new and one on which no decision has been taken "and in regard to which Mr. Fraser cannot allege that he has suffered prejudice". Article 4.6(d) of the Staff Regulations does not set any condition or require any formality for the expiry of a fixed-term appointment except that it should reach its term. The Tribunal's power of review over a decision not to extend a fixed-term appointment is limited to review of the internal and external lawfulness of that decision. In the present case the decision is not tainted with any of the flaws which entitle the Tribunal to interfere. Contrary to what the complainant contends, he was given no promise that his appointment would be extended. Lastly, the reservations expressed by his supervisors about his working relations suggested that in any event it would not serve the ILO's interests to keep the complainant on. The ILO therefore asks the Tribunal to declare the complaint unfounded in so far as it is receivable.

CONSIDERATIONS:

The complainant joined the staff of the International Labour Office on 1 October 1974 on a one-year appointment, which was extended to 30 April 1977. He thus held a fixed-term appointment which automatically came to an end on its expiry, on 30 April 1977. On that date he had obtained no legal undertaking from the Director-General either to extend his appointment once more or to give him a new one. He cannot therefore allege any breach of the Staff Regulations in his case.

The extension of fixed-term appointments is a matter which falls within the Director-General's discretionary authority and the Tribunal may interfere with his decision only in specific and limited circumstances. It appears from the evidence in the dossier that such circumstances are not proved in this case.

In particular the complainant was actually given five months' notice and there is nothing in the Staff Regulations which required the Administration to tell him the reasons for not renewing his appointment. Provided the reasons were not tainted with any of the flaws which enable the Tribunal to interfere, and in particular, on the assumption that the decision not to renew the complainant's appointment was based on the unsatisfactory nature of his working relations, it does not appear from the evidence that that reason was mistaken.

In his pleas the complainant merely contests the judgments of fact made by the Director-General, and so the Tribunal may not interfere.

Lastly, his allegations against Mr. Canales have no bearing on the impugned decision.

It appears from the foregoing that the complaint cannot be allowed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

