Registry's translation, the French text alone being authoritative.

SIXTIETH ORDINARY SESSION

In re CACHELIN

Judgment No. 792

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Odette Cachelin against the International Labour Organisation (ILO) on 17 July 1985 and corrected on 1 October, the ILO's reply of 29 November 1985, the complainant's rejoinder of 6 February 1986 and the ILO's surrejoinder of 11 April 1986;

Considering Judgment 767 of 12 June 1986 ordering further submissions;

Considering the memorandum of 4 July 1986 from the Director of the Personnel Department of the International Labour Office, the complainant's further brief of 15 August and the ILO's observations thereon of 8 September 1986;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 11.2 and .16 and 13.2 of the Staff Regulations of the Office;

Having examined the written evidence;

Considering that the facts of the case and the further pleadings may be summed up as follows:

A. The gist of the complaint was given in Judgment 767 under A: the complainant is challenging the refusal of the indemnity provided for in Article 11.16 of the Staff Regulations. Her original brief and rejoinder are summed up in B and D, the ILO's reply and surrejoinder in C and E, of the earlier judgment.

B. The Director of the Personnel Department of the Office explains that up to 1985 the policy was to grant the indemnity to encourage staff to leave early either because their work was poor or else to make savings. The United States having left the ILO in 1977, a shortage of money required staff cuts and 11.16 made it easier to treat with the many who had to go. Though the United States came back in 1980 funds were still short for several reasons, and the ILO started each of the biennia 1980-81, 1982-83 and 1984-85 with too many staff. That was why it continued to pay the indemnity, by the same criteria as before, to get people to leave. Some were urged to go, even though they were productive, so that others could stay on. At the end of 1984 came easier days and fewer indemnities were being paid. Circular 6/330 of 20 May 1985, which set out the criteria for granting the indemnity, was meant to point up, not a change in policy, but "the new implications of the same policy in a changing financial environment". By then the only officials who were ready to go early were those who worked well but were tempted by the indemnity. The circular sought to scotch hopes that could not be met. There was no longer any need to entertain every application for agreed termination though the indemnity might still be paid "to solve a specific overstaffing problem linked to resources, or a problem arising out of a mismatch of an official's capabilities with revised requirements of his job".

The Director gives information on the early retirement of permanent staff members in 1981-85. Of the 136 who resigned 73 got an indemnity. The chief was consulted each time to see whether the official's departure was in the ILO's interests. In some cases the initiative, often oral and unrecorded, came from the official, in others from the Personnel Department or the chief. After the circular went out it had to come from the Organisation.

An annex to the memorandum explains how each of the six former officials listed in Judgment 767 came to be granted the indemnity.

C. The complainant submits that the Director's memorandum beclouds the facts, is often irrelevant, fails to answer the Tribunal's questions and confirms that practice was inconsistent. No clear and constant criteria were ever applied. The circumstances in which the indemnity was granted to some were the same as those in which it was refused to the complainant or at least not so different as to warrant different treatment. From the end of 1984 she was unable because of her mother's ill health to pay proper heed to her work and she was declared invalid for an

indefinite time from April 1985. Indeed she never worked again. By the ILO's own criterion of efficiency it would have been in its interests for her to leave, however well she had worked before. The six cases show that it does not matter who took the initiative; indeed the ILO goes back on its assertion that the indemnity was refused if the initiative came from the staff member. The cases also show that the chief's opinion is not decisive and that reports on performance are immaterial. What matters is the official's capacity for work in the past few months and how useful he is likely to prove in future.

The complainant goes over each of the six cases and observes that what the Organisation says about them bears out her charge of unequal treatment. It gives no evidence in support of its submissions.

She appends written testimony she has obtained from the six former officials.

D. In its further brief the ILO submits that it is hard to detect any new plea in the complainant's further submissions, of which it finds the tone sometimes offensive, the substance sometimes misleading and often irrelevant. It discusses, with reference to the six cases, the main issues dealt with in the Director's memorandum, namely the side that takes the initiative, the quality of the official's work, the state of his health, the chief's views and the Organisation's financial position. It observes that in all cases in which it granted the indemnity it consistently took account of the ILO's interests at the time.

The complainant's claim it refused, not because she took the initiative, but on substantive grounds. She went on sick leave only the day after; the ILO medical adviser never doubted she was fit to work; and there is no evidence to suggest her leaving was in the interests of her department or of the ILO in general. Lastly, it objects to her putting in papers, including internal minutes, which were confidential and, it suspects, obtained improperly.

CONSIDERATIONS:

1. The further submissions the Tribunal ordered on 12 June 1986 in Judgment 767 bring out several material facts.

2. The memorandum from the Director of the Personnel Department says that of the 136 permanent officials who retired early in 1981-85 73 got an indemnity under Article 11.16 of the Staff Regulations.

The Tribunal asked the Director how many staff members had been granted the indemnity at their own instance. The ILO cannot give a figure, nor even a rough percentage, the reason being that the original contacts between staff and Administration were mostly oral and informal and there are no written records. Before the circular went out on 20 May 1985 limiting the grant of the indemnity, the initiative came from the Personnel Department, from the staff member or from his chief. In "some cases" staff who left without the indemnity were granted it later.

How many were refused it the ILO does not say.

3. The Tribunal has also before it written evidence from the six former staff members the complainant has cited.

4. All six themselves applied for early retirement; all six were paid the indemnity. They say they applied because they knew that indemnities were being handed out lavishly.

Four of them resigned before 1 January 1984. Two left the ILO and received the indemnity after the issue of the circular on 20 May 1985. One left without the indemnity but got it later.

They all had good performance reports. In two cases the chief was against paying. In the other four he was in favour but mooted transfer instead.

They left for different reasons. Two of them, says the ILO, got the indemnity because it wanted them to go so that it could reshuffle their units. They not only left but were paid after the circular had gone out.

Two wanted to retire on grounds of health. To begin with, their chiefs objected to their having the indemnity but in the end they got it. In neither case is any reason but health given.

One left early for unstated reasons and was replaced at once.

One was a case of hardship and the Director-General wanted to help him. He was a good worker and was later

taken back to carry out short missions once things went better for him.

5. Such are the main facts that emerge from the further submissions, and the Tribunal will look at them against the principles it set forth in Judgment 767, one of them being that an international organisation's staff policy must be objective.

6. On the ILO's own admission its application of 11.16 was indulgent, even loose, at least until the last few months of 1984. But it maintains that even then the yardstick was its own interests, which it sees in two ways. They may be sufficient to warrant letting a staff member go, or they may be insufficient to prevent his leaving where it is broadly desirable, for example if the Organisation is in sore financial straits and wants to retrench staff.

The Tribunal will not set aside the Administration's view of staff policy in favour of its own. But as it said in Judgment 767, under 8, the Administration's authority is not unfettered. For one thing, if an organisation throws over its own rules and applies subjective criteria it is hard to tell on what grounds distinctions are being drawn. Yet that is just what the Tribunal must do if it is to make sure there has been no abuse of authority.

7. The complainant applied for the indemnity because of family worries and because, as the ILO medical adviser found, her health was not good, even though she was still able to work. (Indeed that is probably why her supervisor did not want her to go.)

The Tribunal holds that her case is akin to that of several of the staff members who have given evidence in writing. Any differences there may be are trifling. Nor do the Organisation's interests as the Tribunal sees them in this case appear to be any different from its interests in the case of other staff who did get the indemnity. The bestowal of it was too liberal for any proper distinction to be made. The plea of breach of equality therefore succeeds.

8. In answer to the Tribunal's query about policy in 1981-85 the Director of the Personnel Department explains that fewer were paid off from the last quarter of 1984 on because the Organisation could afford to be "more selective", having found "some relief from the kind of financial pressure which had led it in earlier years to encourage even productive officials who wanted to leave to do so in order that others might be able to hold onto their jobs". That, says the ILO, is why it put out the circular to remind the staff of the wording of 11.16 and point out that only the Director-General might take the initiative, and for the sake of efficiency. The circular -- the argument runs -- did not breed any new right but merely reported a practice brought in a few months earlier.

None of this helps the Organisation's case. As was said in Judgment 767, it may change its construction of a rule provided it does not offend against any provision of the Staff Regulations. But the change must be properly made known and may not be retroactive. The Organisation cites no official announcement of a change by February 1985, when the complainant was refused the indemnity. Her plea that the refusal was wrongful is a sound one.

9. She is awarded 5,000 Swiss francs in costs.

DECISION:

For the above reasons,

1. The impugned decision is quashed.

2. The ILO shall pay the complainant 5,000 Swiss francs in costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.