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

SIXTY-THIRD SESSION

In re CACHELIN (No. 2)

Application of the ILO in re CACHELIN

Judgment 874

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Miss Odette Cachelin against the International Labour Organisation (ILO) on 30 March 1987, the ILO's reply of 16 July, the complainant's rejoinder of 31 July and the ILO's surrejoinder of 1 September 1987;

Considering the application filed by the ILO on 19 February 1987, the complainant's reply of 30 March, the ILO's rejoinder of 26 June and the complainant's surrejoinder of 31 July 1987;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 11.16 of the Staff Regulations of the International Labour Office;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. This case is the sequel to the complainant's first complaint dated 17 July 1985 on which the Tribunal ruled in Judgment 792 on 12 December 1986. It set aside the ILO's decision of 19 April 1985 rejecting her claim to the indemnity provided for in Article 11.16 of the Staff Regulations. Also on 12 December 1986 the complainant's counsel wrote to the ILO saying that she had been entitled to 18 times her final gross monthly salary since 31 December 1985, the date of her retirement. She claimed interest on that sum at the rate of 5 per cent a year from 1 January 1986. On 7 January 1987 the ILO sent her a cheque for 120,288.50 Swiss francs: 5,000 in costs and 115,288.50 as the indemnity. On 12 January her counsel wrote to the ILO seeking payment of the interest from 1 January 1986 to 9 January 1987, the date of payment of the principal, or 5,908.50 Swiss francs. Having got no answer, counsel sent a letter of reminder on 23 January and telexes on 10 February. On 19 February the ILO filed its application inviting the Tribunal to add to or to explain Judgment 792 as to the matter of the interest. On 23 February counsel sent another telex. By a letter of the same day the Director of the Director-General's Office answered that the matter had been referred to the Tribunal by the ILO's own application.

The complainant filed on 30 March her present complaint and her reply to the ILO's application.

B. The complainant contends both in her complaint and in her reply to the ILO's application that the payment of interest on a sum overdue is a universally acknowledged principle. Since the 11.16 indemnity is due from the date of retirement, she is entitled to payment of interest from the date on which the principal fell due, namely 1 January 1986. Since she did not get the principal until 9 January 1987 the ILO is bound to pay interest for the period from 1 January 1986 to 9 January 1987, and it is in breach of good faith to refuse to do so. Withholding the indemnity for over a year unjustly enriched the Organisation. The ILO's application for clarification of the judgment serves no purpose since its obligation to pay interest is beyond doubt anyway. She seeks joinder of her complaint with the ILO's application; payment of the sum of 5,908.50 Swiss francs plus interest thereon at 5 per cent a year from 9 January 1987; and costs.

C. In reply to the complaint the ILO submits that it is irreceivable because it is the same in substance as the complainant's reply to its own application and serves no separate or useful purpose.

As to the merits the Organisation argues, both in the rejoinder in the proceedings relating to its own application and in its reply to the complaint, that the main issue is the interpretation to be put on the absence of reference in

Judgment 792 to the matter of interest. The reasonable assumption, it argues, is that the Tribunal intended that no interest should be paid, and in any event, there being no express decision on the point, there was no foundation in law for allowing the complainant's claims. Precedent suggests that when the Tribunal believes interest to be due it says so. There is no universally applied principle of law about the payment of interest. In many countries the rule is that where there is no express text no interest will be due in the case of late payment on sums due from or to the inland revenue. For its part, the ILO never seeks interest on sums owed to it by a staff member. The plea of unjust enrichment is unsound.

D. In the rejoinder in the complaint proceedings the complainant develops her earlier submissions. She states in particular that there is nothing superfluous about her complaint: the receivability of the ILO's application being in doubt, it is only reasonable that she pursue her claim in the ordinary way prescribed by the Statute of the Tribunal, especially in view of the ILO's disdainful attitude towards her and its dilatoriness. She addresses the Organisation's pleas on the merits. She seeks to correct what she sees as its misrepresentations of fact and she enlarges on her pleas. She observes that Article 11.16 of the Staff Regulations provides that the indemnity shall be due on the date of retirement.

E. In its surrejoinder in the complaint proceedings the ILO observes that the rejoinder does not weaken any of its earlier pleas, which it reaffirms. It comments further on the reasons why its application is receivable. It points out that the indemnity is not due on the date of retirement: 11.16 makes it plain that the amount of the indemnity and the terms of payment depend on mutual agreement between the two sides.

CONSIDERATIONS:

1. In Judgment 792 of 12 December 1986 the Tribunal set aside the Director-General's decision of 19 April 1985 to refuse the complainant the indemnity payable under Article 11.16 of the ILO Staff Regulations.

The Organisation promptly made over the indemnity to the complainant. She accepted it unreservedly and the amount is not at issue.But the complainant claimed interest on the principal, and the ILO refused to pay on the grounds that it had no clear duty in law to do so and that a ruling was required from the Tribunal, which had not taken the point. It filed an application on 19 February 1987 seeking a further ruling or else an explanation of the judgment.

On 23 February 1987 the Director of the Director-General's Office wrote the complainant's counsel a letter saying that the Organisation was under no duty to pay interest and had put the matter to the Tribunal. The complainant lodged a complaint on 30 March 1987 challenging that letter. Although the letter does not take the common form of a decision it rejects the complainant's claim, it causes her injury, and the challenge to it is receivable.

2. The Tribunal will ordinarily join cases only if the purpose of the suit, the issues of fact and the defendant are the same. It is true that the conditions are plainly not met here: the cause of action is not the same and the two sides take a different approach. But the sound administration of justice demands joinder. Though there may be differences, the purpose of both suits is to get a ruling by the Tribunal on a dispute that has arisen over the consequences of its earlier judgment, and the unusualness of the case warrants a derogation from the rules on joinder.

3. A debt of moneys is to be discharged by the date of payment stipulated either in the contract or by some general provision. Where payment is late the rule is that there shall be a compensatory award of interest, the amount being set without making the creditor show specific injury.

But in general interest will not automatically accrue as from the date on which the principal is due. Save where there is express provision in a clause of a contract or in some general text, interest will not be payable until a formal demand for payment of the principal has been made. The demand may be addressed directly by the creditor to the debtor, or it may be implicit in an application for a court order, in which case the creditor need not have asked originally for payment of interest over and above the principal: his application puts his claim beyond doubt.

There are many precedents for applying these rules, and it is immaterial that the Organisation claims no interest from a staff member who owes it money.

The ILO further submits that, having made no award of interest, the Tribunal may be deemed to have declined to do so. The plea is mistaken. To allow it would be to infer legal effect from the Tribunal's refusing or failing to rule.

That would be quite wrong since there can be no implied decision to dismiss a claim when dismissal is not the necessary outcome of the judgment. What is more, the Tribunal did not refer the complainant to the ILO for payment of the 11.16 indemnity; yet that did not prevent the Organisation from making due payment.

The Tribunal might have given an explicit ruling on the financial consequences of its judgment. The reason why it did not do so is that at the date of filing the original complaint the 11.16 indemnity was not due.

4. This raises another matter.

Interest will not be awarded on an application for a court order unless payment of the principal is due. As was said in 3 above, the principal was not due when the original complaint was filed on 17 July 1985. At the time the complainant was still a staff member on the ILO payroll. Not until 1 January 1986 did she take retirement and become entitled to payment of the indemnity. She recognises as much in claiming interest on the amount only as from that date.

Since the Tribunal had not given judgment by 1 January 1986, the claim in the original complaint held good even though at the date of filing no interest had yet been due, and the application for an award of interest implicit in the original complaint also held good up to the date on which the Tribunal gave judgment.

The ILO observes that the indemnity is not necessarily paid at the date of retirement. But that is true only where it is paid under a "mutual agreement", not where it is paid in execution of a ruling by the Tribunal.

The conclusion is that the complainant is entitled to interest at the rate of 5 per cent a year on the 11.16 indemnity for the period from 1 January 1986 up to 9 January 1987, the date of payment of the principal.

5. As she asks, she is further entitled to interest on the amount so reckoned, also at the rate of 5 per cent a year, from 10 January 1987 to the date of payment.

6. For the reasons set out above there is no need to consider the receivability of the Organisation's application.

7. The sum of 1,000 Swiss francs is awarded in costs.DECISION:

For the above reasons,

1. The ILO shall pay the complainant interest at the rate of 5 per cent a year on the indemnity it paid her under Article 11.16 of the Staff Regulations for the period from 1 January 1986 up to 9 January 1987, the date of payment of the principal.

2. It shall pay her interest at the rate of 5 per cent a year on the sum due under 1 from 10 January 1987 to the date of payment.

3. It shall pay her 1,000 Swiss francs in costs.

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

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

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