

## SIXTY-FOURTH SESSION

### *In re* PARKINSON (No. 4)

#### Judgment 906

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Peter Gath Lindsay Parkinson against the Intergovernmental Council of Copper Exporting Countries (CIPEC) on 21 September 1987 and corrected on 26 September, the Council's reply of 23 October 1987, the complainant's rejoinder of 13 January 1988 and the Council's surrejoinder of 7 March 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Regulations 6.1, 6.2 and 6.2.1 of the CIPEC Staff Regulations;

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. Regulation 6.1 of the CIPEC Staff Regulations states that, in accordance with the headquarters agreement between the Council and the French Government, staff are registered with the French social security scheme. Regulation 6.2 provides for supplementary pension insurance in France but 6.2.1 adds that staff who are not French may forgo it and instead "participate in a blocked savings scheme under conditions laid down by the Secretary-General". The savings scheme is known as the "Provident Fund", and the complainant opted for membership of it. The circumstances of his leaving the CIPEC are set out, under A, in Judgment 903 on his first complaint. As is stated, again under A, in Judgment 905 on his third complaint, he sent the Secretary-General a letter on 4 June 1987 claiming arrears of pay. His letter also had a section headed "social security arrangements and pension provisions". Citing the above rules he alleged breach of the headquarters agreement in that the CIPEC was understating to the French authorities its salary payments to him and its other executive officers and so curtailing his pension rights. He further objected to the CIPEC's making "unauthorised payments" to officials, before they left its employment, of sums credited to them in the Provident Fund. He claimed "pension provisions appropriate to an international civil servant of my status, age and level of salary, comparable to those provided in the [United Nations] system". The Secretary-General rejected his claims by letter of 16 June, the decision impugned.

B. The complainant observes that the CIPEC's executive officers get lower pensions than other senior international civil servants. The CIPEC is not fully abiding by the headquarters agreement. Each month it issues two pay slips, one that gives the true figure of pay and another that shows the lower figure reported to the French authorities. Because of underpayment of contributions his pension from the French scheme is below what it should be.

The Staff Regulations do not provide for payment out of the Provident Fund to a staff member before he leaves of any sums that have accrued. Yet such sums are often paid out. He asks that the full amount that had accrued in his favour be paid over to him on termination of his employment, notwithstanding any unauthorised payments made to him earlier. In fact the CIPEC has failed to pay what is due to him from the Fund, either because it refuses or because it regards him as being still on its staff.

The purpose of his complaint is to "establish the principles on which pension provisions should be calculated and made" and he claims "appropriate pension arrangements" consistent with the headquarters agreement, the Staff Regulations, his status as a senior international civil servant and his citizenship of a Member of the European Economic Community.

C. The CIPEC replies that the complaint is devoid of merit. Staff may contribute either under Regulation 6.2 to supplementary pension insurance or, if not French, to the Provident Fund as provided for in 6.2.1. The complainant opted for the Fund. In accordance with its rules he was given quarterly statements of accounts showing his entitlements. The last one shows a balance in his favour of 18,034.50 United States dollars as at 31 March 1987. Since he has rejected the settlement of his entitlements and failed to say into what account the sum should be paid, the CIPEC has put it on deposit at interest. That cannot imply that he is still on its staff.

His charge that the CIPEC makes unauthorised payments from the Fund is all the odder in that he himself sought and got an advance from the Fund for the purposes of investment. There is nothing in the Fund rules to forbid such payment, and he is in bad faith if he is claiming payment of any sum he has already been paid.

As for his pension claims, the rules of other international organisations and his citizenship are immaterial: the CIPEC has its own rules and has applied them properly.

D. The complainant develops his case in his rejoinder. He says he told the CIPEC to make payment into his bank account in Andorra and sees no reason why it should not have done so. It has ignored his charge, on which he enlarges, that his pay was misstated to the French authorities. His citizenship is material because there are special provisions on the pension rights of a national of one Member of the Community arising out of employment in another. He develops his comments on the CIPEC's failure to provide him with a pension befitting a senior international civil servant: pensions fall short of what the Staff Regulations require because contributions to the French scheme are too low. He seeks the payment of further appropriate contributions to that scheme; payment of compound interest on the sums due at the rate of 15 per cent a year; and adjustment of any amount due to him in dollars to take account of movement in the rate of exchange between the dollar and the French franc.

E. In its surrejoinder the CIPEC develops its earlier submissions and seeks to refute the arguments in the complainant's rejoinder. It observes in particular that only on getting the rejoinder did it learn that he wants payment to be made into his account in Andorra. He may not object to the smallness of his French pension when he opted out of the supplementary pension scheme. The declared amounts of his salary payments never fell below the maximum allowed under the French social security scheme, and his gratuitous and unfounded allegations betray ignorance of how the scheme works. The rate of interest he claims far surpasses the rate of inflation in France.

#### CONSIDERATIONS:

1. The complainant's post as general adviser to the CIPEC was abolished by the Executive Committee at its 166th meeting on 16 December 1986 with immediate effect and his contract expired on 31 March 1987. This is his fourth claim arising out of the termination of his employment and it relates to the provisions for his pension.
2. In a letter of 4 June 1987 to the Secretary-General the complainant cited Regulations 6.1, 6.2 and 6.2.1 and alleged that each month the organisation's executive officers received two pay slips, one showing the greater amount actually paid, the other the lesser amount reported to the French social security authorities. He alleged that his pension rights were diminished on that account.

He also observed in his letter that there was no provision in the Staff Regulations for payment to a staff member before he left the organisation of any sum accumulated in the Provident Fund. Yet payment had been made to him and the organisation was liable to make over the full sum without the deduction of any earlier unauthorised payments.

3. The Secretary-General replied in a letter of 16 June 1987:

"... Regulation 6.2.1 of the Staff Regulations, which you quote, is very clear and you can scarcely purport, more than two months after no longer belonging to our Organisation, to change a situation for which you opted. Similarly, as regards the Provident Fund, CIPEC has its own rules and sees no reason to apply those of other Organisations, no matter how reasonable those may be."

4. That is the decision impugned, and the relief sought by the complainant is that the CIPEC "make appropriate pension arrangements for me consistent with the headquarters agreements, staff regulations, my status as a high level international civil servant and citizen of an EEC country".

5. The material provisions of the Staff Regulations are as follows:

"6.1. In accordance with the Headquarters Agreement, all members of CIPEC's staff are registered with the French Social Security and all the provisions thereof, mainly in respect of sickness, maternity, accident, death or disablement, automatically apply under the terms laid down by that body.

- 6.2. The Secretary-General also takes out an additional provident and pension scheme with French Pension and

Provident Societies, a copy of which will be given to each staff member. Such a scheme shall correspond to that from which employees on a similar level in public or private administrations benefit.

6.2.1. Notwithstanding the provisions of Regulation 6.2, non-French personnel may forgo benefiting from the supplementary pensions scheme in order to participate in a blocked savings scheme under conditions laid down by the Secretary-General, and on the understanding that the resultant contributions for the Organisation shall not exceed those of the scheme described under Regulation 6.2 for personnel of an equivalent rank."

6. The complainant opted for the blocked savings scheme provided for in Regulation 6.2.1 and known as the Provident Fund. At the end of each quarter he was given a statement of account. According to the Fund rules the balance in his favour at 31 March 1987 was to be paid over within three months of that date. The organisation contends that the complainant did not say in what account it was to be deposited and it has been keeping the amount in an interest-bearing account. But what this complaint is about is not his not having received his entitlements from the Fund but the calculation of the amount due.

#### Pension entitlements

7. His first allegation is that the organisation made an incorrect return to the French social security authorities and thus reduced the amount of his pension benefits.

Insofar as he says that his pension contributions should have been based on full salary and not on the part-time salary paid to him for working for three days a week, he fails. The Tribunal dismisses that contention in Judgment 905 on his third complaint: he was not employed full time.

Again, insofar as he is pleading that he was employed in April and May 1987 and contributions ought to have been made for those months, he fails. In Judgment 903 on his first complaint the Tribunal dismisses as irreceivable his contention that his employment was not duly terminated on 31 March 1987.

8. As to the difference between the pay slips, the CIPEC explains that in accordance with Regulation 6.1 it affiliates staff to the French social security scheme. Everyone affiliated to the scheme is required under Regulation 6.2 to contribute to a supplementary retirement pension scheme. French law makes it compulsory for a French wage-earner to contribute to an approved insurance company, and in the case of CIPEC it is the Union de prévoyance des salariés. But for staff members who are not French the CIPEC has established the Provident Fund under Regulation 6.2.1, which enables them to opt out of the supplementary pension scheme and contribute to the Fund instead.

Not being French, the complainant was free to choose between the supplementary scheme and the Fund and he chose the Fund.

A maximum is set on the amount of yearly salary on which contributions to the French social security scheme are calculated and the complainant's declared salary at no time fell below that maximum.

The Tribunal is satisfied that no reduction in pension is attributable to the difference between the two pay slips.

#### Payments from the Provident Fund

9. The complainant's second allegation is that the Provident Fund must make over to him the full sum credited to him without the deduction of any earlier unauthorised payment. The organisation denies that the earlier payments were unauthorised, first, because the Fund rules do not prohibit the payment of advances and, secondly, because the complainant requested the advance himself. The claim fails not just because the payments were authorised but also because to let the complainant obtain the same sum twice over would be unjust enrichment.

10. Since the arrangements made for the complainant's pension are in accordance with the organisation's obligations, his complaint fails.

#### DECISION:

For the above reasons,

The complaint is dismissed.

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 30 June 1988.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner

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