

EIGHTY-SIXTH SESSION

In re Weber

Judgment 1830

The Administrative Tribunal,

Considering the complaint filed by Miss Christine Weber against the United Nations Industrial Development Organization (UNIDO) on 13 January 1998 and corrected on 30 January, UNIDO's reply of 11 May, the complainant's rejoinder of 29 July and the Organization's surrejoinder of 5 October 1998;

Considering Article II, paragraph 5, 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 background to the case is much as described in Judgments 1772 (*in re Tueni*) and 1782 (*in re Zaunbauer*).

The complainant is an Austrian who was born in 1944. In April 1974 she joined the staff of UNIDO, which at the time was a subsidiary body of the General Assembly of the United Nations. The Organization appointed her to a post as secretary at grade G.5, which would nowadays correspond to G.4. In 1978 it granted her a permanent appointment and in 1986 transferred her to the Public Relations and Information Section which later became the Public Information Section. It reformed its structure and reduced staff. On 1 January 1994 it transferred the complainant to the Small and Medium Enterprises Branch. In February 1994 it converted her appointment to a half-time one. She appealed to the Joint Appeals Board, to which went Miss Zaunbauer's appeal as well. The Board recommended reinstating her in full-time employment, the Administration cancelled its decision and the complainant withdrew her appeal.

In August 1995 the Organization was again in financial trouble, the United States having slashed its contribution. It made further cuts in staff. It declined to renew any short-term contract or any fixed-term appointment for less than one year. It then brought in a scheme for "voluntary departure" and some compulsory measures. The complainant did not apply for termination. By a memorandum of 26 February 1996 the Managing Director of the Human Resource, Enterprise and Private Sector Development Division told her that her post was to be abolished and that it would be up to the Advisory Group on Human Resource Planning, which had been at work since August 1995, to recommend to the Director-General whether to transfer or dismiss her.

By a memorandum of 20 May 1996 the chairman of the Advisory Group told her that the Group was to recommend ending her appointment at 21 June 1996. By a letter of 21 May she exercised her right of "informal recourse" under the procedure to ask the Advisory Group to reconsider. By a letter of 19 June the Director of Personnel Services informed her of the Director-General's decision to dismiss her at 28 June 1996. On the 26th she appealed against that decision to the Director-General and by a letter dated 19 August 1996 the Director of Personnel Services answered on the Director-General's behalf that the decision was confirmed.

The complainant appealed against that decision in a letter of 14 October 1996. In its report of 15 October 1997 the Joint Appeals Board recommended rejecting her appeal but proposed that both Organization and complainant should continue to pay contributions to the United Nations Joint Staff Pension Fund until she qualified for early retirement, i.e. up to 31 January 1999. In a letter which the Director-General sent to the secretary of the Joint Appeals Board on 13 November 1997 he accepted the recommendation for rejecting the appeal and the proposal for making contributions to the Pension Fund. That is the impugned decision, which the alternate secretary of the Board conveyed to the complainant on 14 November.

B. The complainant submits that her post was never abolished, her duties simply being reshuffled among other members of the staff. She says that the Director-General took no precautions on her behalf, and even intended to dismiss her, in transferring her on 1 January 1994 to a "vulnerable post" in the Small and Medium Enterprises Branch.

The Organization acted in breach of Staff Rule 110.02(a) since, although she had a permanent appointment, it gave her no priority over holders of fixed-term ones. It overlooked the special circumstances of her case, such as her age and poor prospects of getting another job. It made use of the procedure for the reduction of staff to keep down the number of permanent appointments.

The complainant seeks the quashing of the impugned decision, her retroactive reinstatement in employment, and payment of full salary and allowances less the terminal indemnities she has already been paid. She has a subsidiary claim to payment of an amount in damages equivalent to the salary and allowances she would have earned from the date of termination up to 31 January 1999, the date at which she was to qualify for early retirement. She also seeks costs.

C. In its reply the Organization dwells at length on the procedure which the Advisory Group on Human Resource Planning went through and says that the complainant's case was given full consideration. It points out that the redistribution of her duties shows that her post had been abolished. It did not deliberately put her on a vulnerable post. Staff Rule 110.02(a) does not forbid dismissal of holders of permanent appointments. The Organization does give them priority for employment but does not guarantee it. The complainant's circumstances were taken into account but were not such as to warrant cancelling the dismissal. The procedure was to the benefit of holders of permanent appointments, and that disproves the charge of attempting to reduce them in number.

D. In her rejoinder the complainant cites Judgments 1772 and 1782. She maintains that the Advisory Group considered her for only seven posts whereas there were ninety posts held by G.4 staff on fixed-term appointments. In her submission that amounts to breach of Staff Rule 110.02(a). She challenges the reasons for rejecting her application for four of the posts. She maintains that the Organization failed to take account of the "extreme hardship" that the impugned decision caused her. She was discriminated against in that staff members who applied for voluntary departure fared far better.

E. In its surrejoinder UNIDO contends that the complainant's case differed from those that the Tribunal ruled on in Judgments 1772 and 1782. It explains that it had to renew the fixed-term appointments of ninety staff so as to keep the Organization going, although there were three times as many on such appointments at the start of 1996. It again describes in detail the procedure which led it to reject the complainant's application for the four posts she mentions. It contends that it was unable to treat the dismissed staff as well as those who left voluntarily.

CONSIDERATIONS

1. The complainant joined UNIDO in 1974 and held a permanent appointment from 1978. She contests the Director-General's decision of 13 November 1997 confirming one of 19 June 1996 to abolish her post and terminate her appointment on 28 June 1996.

2. The complainant submits that the Advisory Group on Human Resource Planning made insufficient efforts to redeploy her and failed to comply with Staff Rule 110.02(a). She refers especially to the Advisory Group's failure to consider her for "bumping" fixed-term staff members.

3. On that point it is useful to turn to two of the Tribunal's recent judgments, 1772 (*in re* Tueni) and 1782 (*in re* Zaunbauer). In those cases both the complainants had held permanent appointments in UNIDO and their posts had been abolished in the 1996 staff reduction exercise. Both relied on the Advisory Group to redeploy them and the Advisory Group eventually told both of them that their appointments would be terminated. The Tribunal held that UNIDO's decisions to terminate were in breach of Staff Rule 110.02(a) as the efforts made to redeploy the complainants had not been sufficient.

4. Mrs. Tueni was interviewed for four posts but nothing resulted. Both before and during the informal appeal procedure she asked to be considered for a post within her own unit, identical to her own, which had not been abolished and which was held by a more junior staff member. Although the Organization did subsequently consider and reject her for that post, the Tribunal held that it had not dealt with her case with thoroughness and fairness. The Advisory Group and the Joint Appeals Board had disregarded material facts in its appraisal of her in comparison to the junior staff member. Further, instead of initially considering her for the post most suitable for her the Advisory Group had sent her for interviews for four posts, three of which were either at a lower grade or required qualifications not similar to hers.

5. In Judgment 1782 the Tribunal held that Miss Zaunbauer's rights under Rule 110.02(a) had not been respected in that UNIDO had failed to ask her if she was willing to be considered for a post at a lower grade and had failed to consider her for such a post. The Tribunal further concluded that UNIDO had overlooked a material fact in that interviewers for two posts had failed to consider her latest appraisal.
6. The search for a post for the present complainant shows similar flaws. While there are of course differences of detail between the three cases the principles to be applied are the same. In particular there were flaws in the consideration of the complainant's candidature for three posts.
7. First, with regard to the complainant's interview for a post in the Public Information Section, the situation is similar to the one identified in Mrs. Tueni's case. The complainant was considered for a post in a section in which she had a great deal of experience and was compared against a more junior staff member with a fixed-term contract due to expire on 30 June 1996, just two days after her own appointment had been terminated. She had more than seven years' experience in a variety of support functions in the Public Information Section whereas the junior staff member had no more than two-and-a-half years' experience limited to secretarial duties. Her reports on her performance during her time in the Section were very positive and she exceeded the requirements stated in the original announcement of the vacancy.
8. Furthermore, the reasons provided by the chief of section for turning down the complainant's application for the position in the Public Information Section were invalid. The complainant denies the comment by the chief of section that she had "relegated the routine secretarial duties to junior colleagues", and the Organization does not refute her denial. Likewise the chief of section's observation that the complainant "does not enjoy a reputation of being an easy person" is meaningless and is belied by the consistently favourable reports on her performance in the section. Finally, the suggestion that she did not possess fluency in French is contradicted by her having passed all relevant proficiency examinations in that language.
9. In short, not only were the complainant's objective qualifications at least equal to those of the junior staff member with whom she was compared but the reasons given for rejecting her include some that were clearly unjustified.
10. Secondly, the complainant's interview for the position in Investment Services was also flawed in a manner similar to what had occurred in both Mrs. Tueni's and Miss Zaunbauer's cases. The interviewer considered immaterial facts when he reported that "the candidate's last periodic report was not encouraging"; his report was at the time in the process of being contested and the Advisory Group itself noted that for that reason the report "cannot at the present time be considered part of the record". Notwithstanding that observation the Advisory Group ended up by accepting the report as a valid rationale for the dismissal of the complainant's candidature for the post.
11. Finally, as to her candidature for the post of project secretary in Investment Services, the Advisory Group interpreted the memorandum dated 24 May 1996 from the Managing Director of the Investment and Technology Promotion Division as stating that he had himself interviewed all four candidates. But the complainant states, and the defendant does not refute, that she had never met the Managing Director or spoken to him while she was with UNIDO. The defendant's suggestion that the Advisory Group misunderstood the memorandum in question is not only implausible but, even if true, does not help the defendant's case. On either hypothesis the Advisory Group proceeded on a patently mistaken factual basis.
12. The Tribunal concludes, as in Judgments 1772 and 1782, that the Advisory Group's efforts to redeploy the complainant were seriously flawed and violated her rights under Staff Rule 110.02(a).
13. For the foregoing reasons the decision to end her appointment is flawed and must be quashed, there being no need to take up any of her other pleas. The Tribunal will order her reinstatement as from 29 June 1996 up to 31 January 1999 - the last day of the month in which she qualifies for early retirement - and payment up to the latter date of full arrears of salary, allowances and other benefits - including employer contributions to health insurance and to the Pension Fund - less any amounts paid to her on termination and any net earnings received by her from other employment during the period from the date of termination to 31 January 1999. On account of the moral injury she has suffered the Tribunal awards her the sum of 30,000 United States dollars in damages. She is also entitled to 2,000 dollars in costs.

For the above reasons,

1. The decisions of 19 June 1996 and 13 November 1997 are quashed.
2. UNIDO shall reinstate the complainant as from 29 June 1996 to 31 January 1999 and pay her the sums due in accordance with 13 above.
3. It shall pay her 30,000 United States dollars in damages.
4. It shall pay her 2,000 dollars in costs.
5. All her other claims are dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner