

Case Law of ILOAT

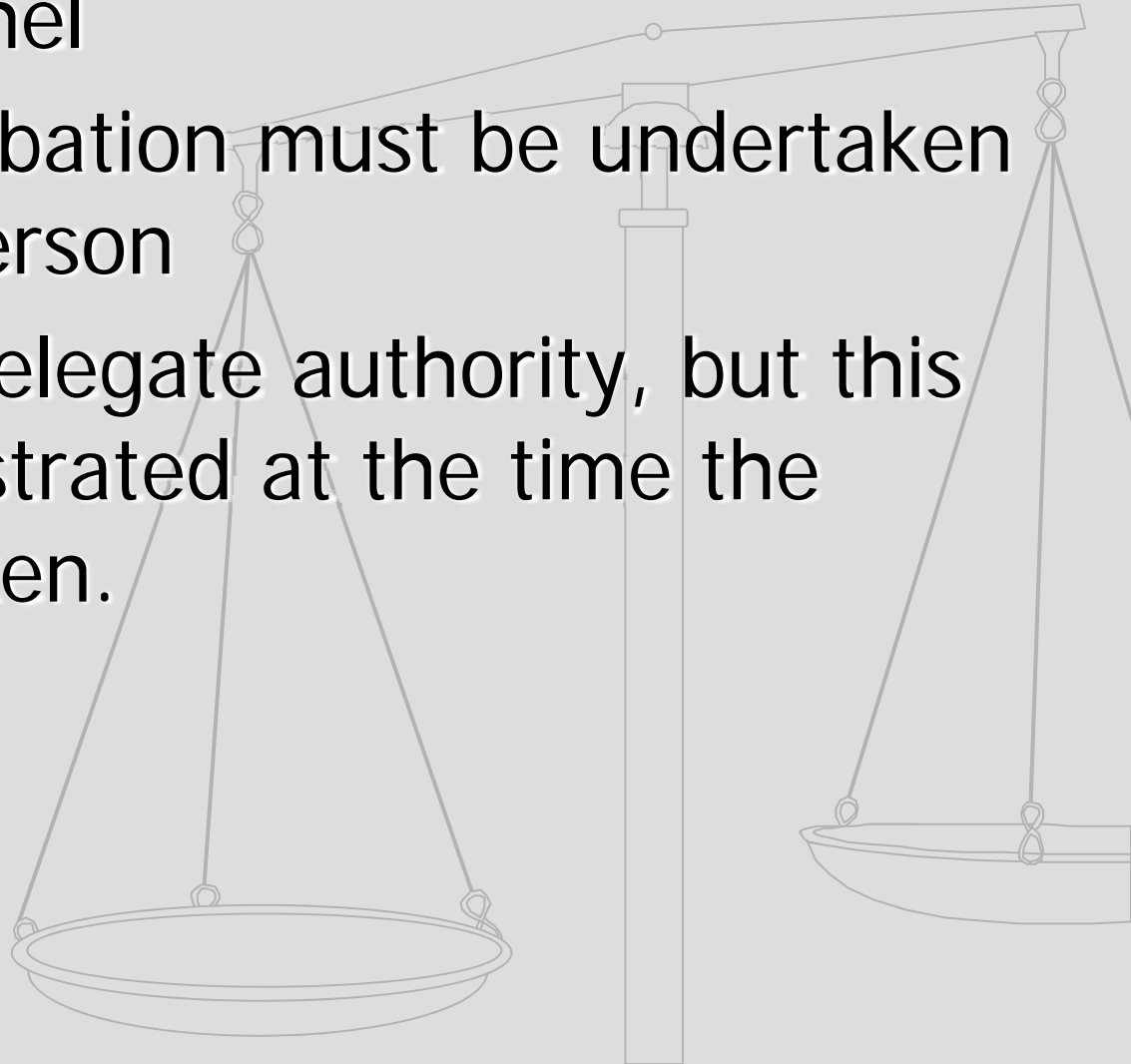
Termination of employment



Non Renewal

2558 Rogler-Mochel

- Extension of Probation must be undertaken by authorised person
- President may delegate authority, but this must be demonstrated at the time the decision was taken.



Non Renewal

2531 consideration 9

"Precedent has it that staff on short-term contracts are entitled, before any decision is taken not to extend or renew their appointment, to 'reasonable notice', particularly so that they may exercise their right to appeal and take whatever action may be necessary.

It is true that in this case the short-term Staff Rules do not require any notice ... Account should be taken, however, of the fact that the complainant was employed uninterrupted by the Organization for more than three years.

*He was officially notified of the non-renewal of his contract - which until then had been regularly renewed - ... **three days prior to the expiry.***

The defendant Organization suggests that he was well aware that his contract would not be renewed

The Tribunal considers that it was only through the non-renewal decision received on 28 January 2004 that the complainant was able to know for certain that he would be leaving the Organization and that he would not be offered any other employment, See also Judgment 2104 [...]

*Awarded 3 months salary as compensation - **no specific performance***

Non Renewal - fair notice

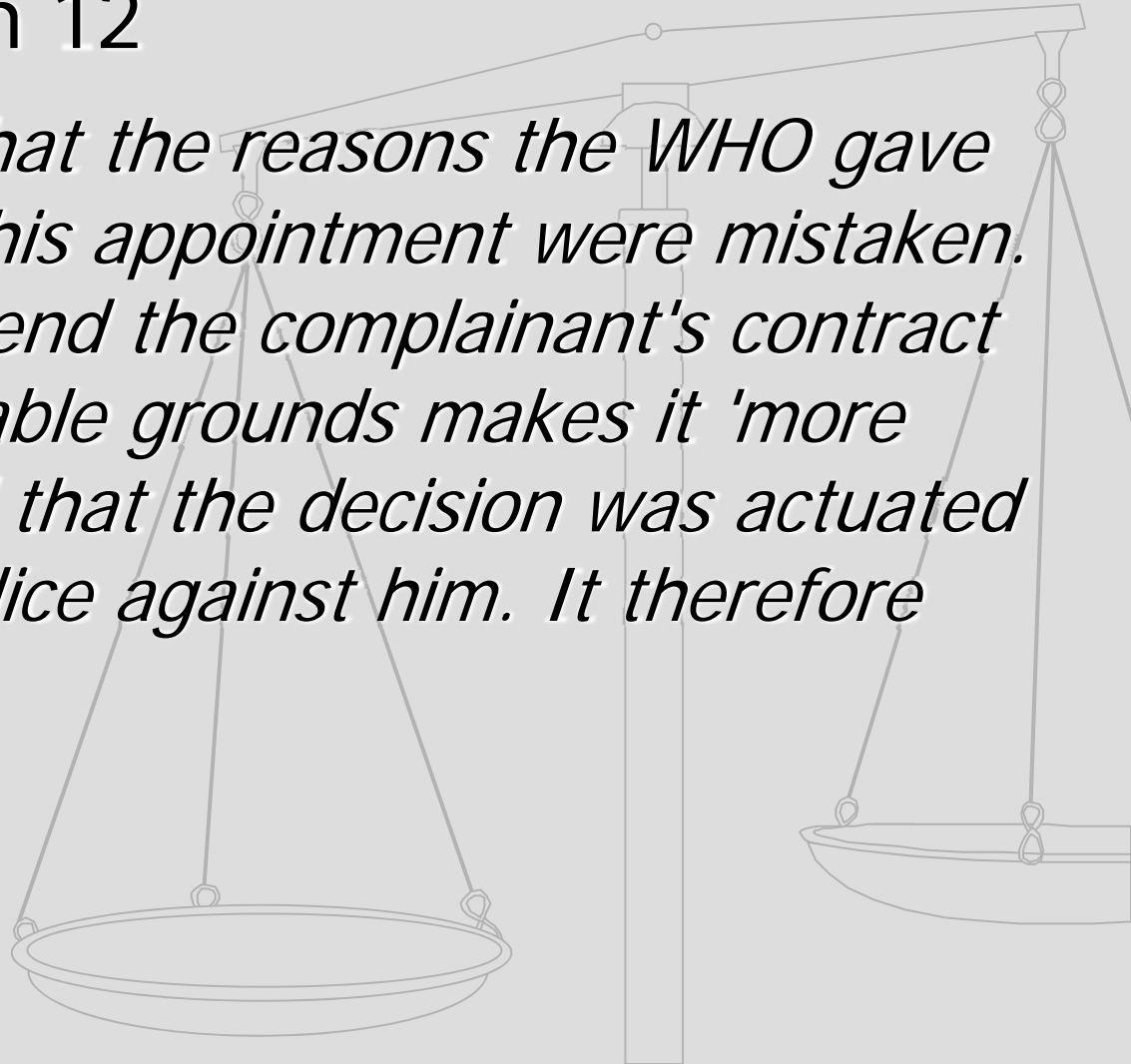
2104 Consideration 6

"AN INTERNATIONAL ORGANIZATION HAS A 'DUTY TO WARN THE [STAFF MEMBER] ABOUT THE NON-RENEWAL [OF HIS CONTRACT] LONG ENOUGH IN ADVANCE TO ENABLE HIM TO EXERCISE HIS RIGHTS AND TAKE WHATEVER STEPS HE SAW FIT.' THE PRESENT CASE CONCERNED A SHORT-TERM APPOINTMENT WHICH WAS RENEWED SEVERAL TIMES."

Non Renewal - reasoning

1342 consideration 12

"There is evidence that the reasons the WHO gave for not extending his appointment were mistaken. 'The refusal to extend the complainant's contract on patently untenable grounds makes it 'more probable than not' that the decision was actuated by personal prejudice against him. It therefore cannot stand."



Extension (arbitrary decision)

2513 Consideration 10

*"The Tribunal recalls its case-law according to which a provision such as Staff Regulation 4.05 gives the Director General a **wide measure of discretion and the Tribunal will not interfere in the exercise of that discretion except in extremely limited circumstances.** (see also Judgment 2377).*

However, the power to extend appointments beyond normal retirement age cannot be exercised arbitrarily.

The Tribunal concluded that the decision was made for some undisclosed or purely arbitrary reason. Therefore, it cannot stand."

Extension (Retirement)

*"The complainant's request to have his contract extended beyond retirement age was not allowed. ... The director general has discretion in the matter, over which the tribunal has only a limited power of review. ... His **decisions must be based on clear and coherent reasons**.*

In this case, the reason given - that the request for an extension contained no indication as to whether any of the criteria had been satisfied - is not valid,

*The reason based on '**rejuvenation**' of the staff is too general to constitute a sufficient justification for the refusal of the complainant's request.'*

The tribunal considers that 'this reason is not in itself reprehensible, but it could be used to justify a systematic refusal to depart from the rule [By setting out the criteria] the iaea established for itself a number of rules which it must apply.'

Dismissal

2261 consideration 15

"Dismissal for misconduct based on the following three charges: (1) external commercial activities and misrepresentation, (2) disloyalty, and (3) insubordination.

The appeals committee recommended the three charges be dismissed

The tribunal set aside the impugned decision because 'the director-general entirely failed to give any reason whatsoever for disagreeing with the committee's recommendations respecting the second and third charges'.

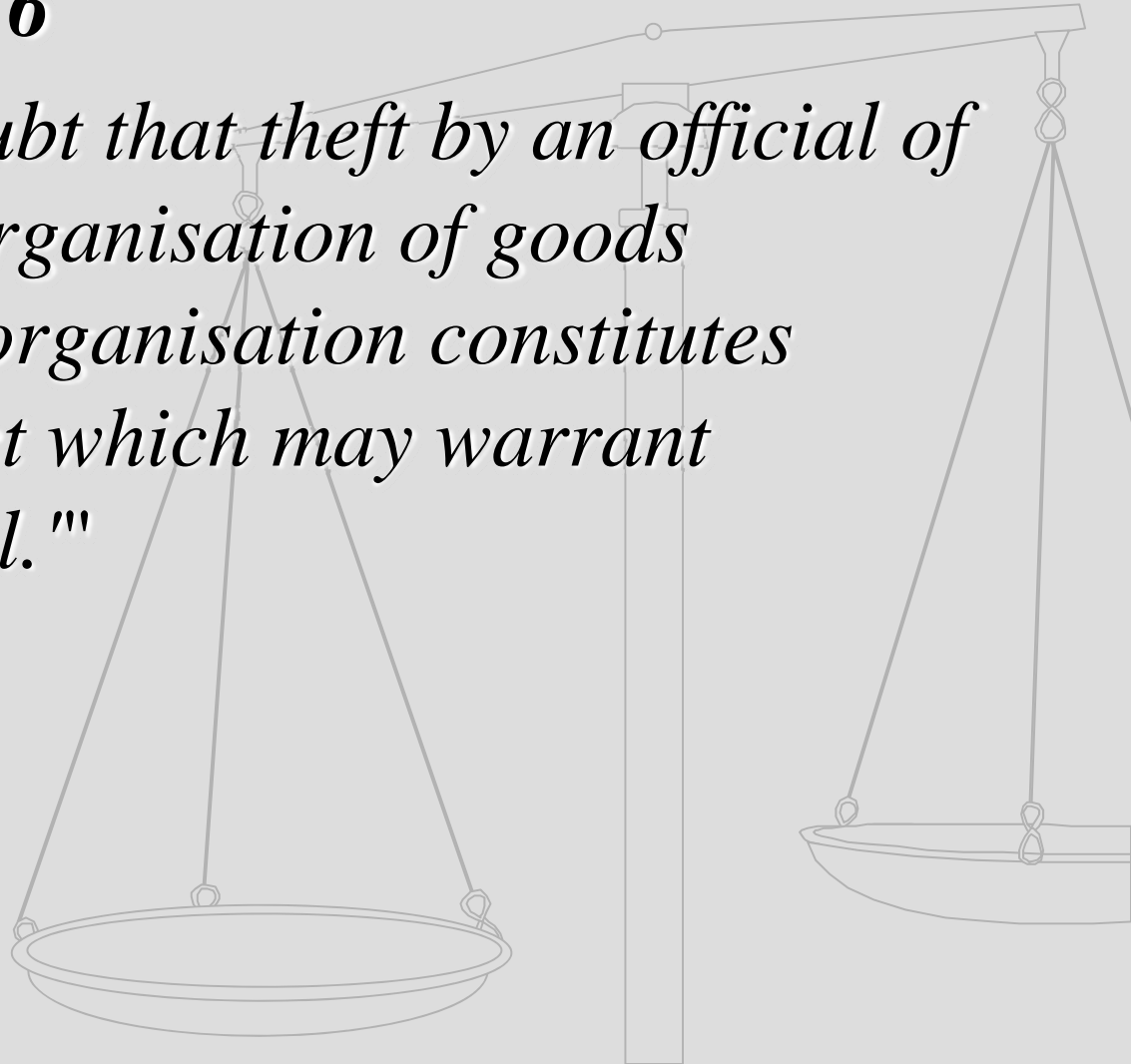
The tribunal adds that 'it is not for ... itself [to] examine the evidence to find justification for the unmotivated decision of the director-general. ... Nor should it condone the organization's failure to bring the internal appeal process to a timely and proper conclusion effectively depriving the complainant of both his remedy and his employment for over three years.

Accordingly, it will quash the penalty on the first charge only and refer the matter back to the director-general for a new decision on the penalty after giving the complainant full opportunity to make representations."

Summary Dismissal

1925 Consideration 6

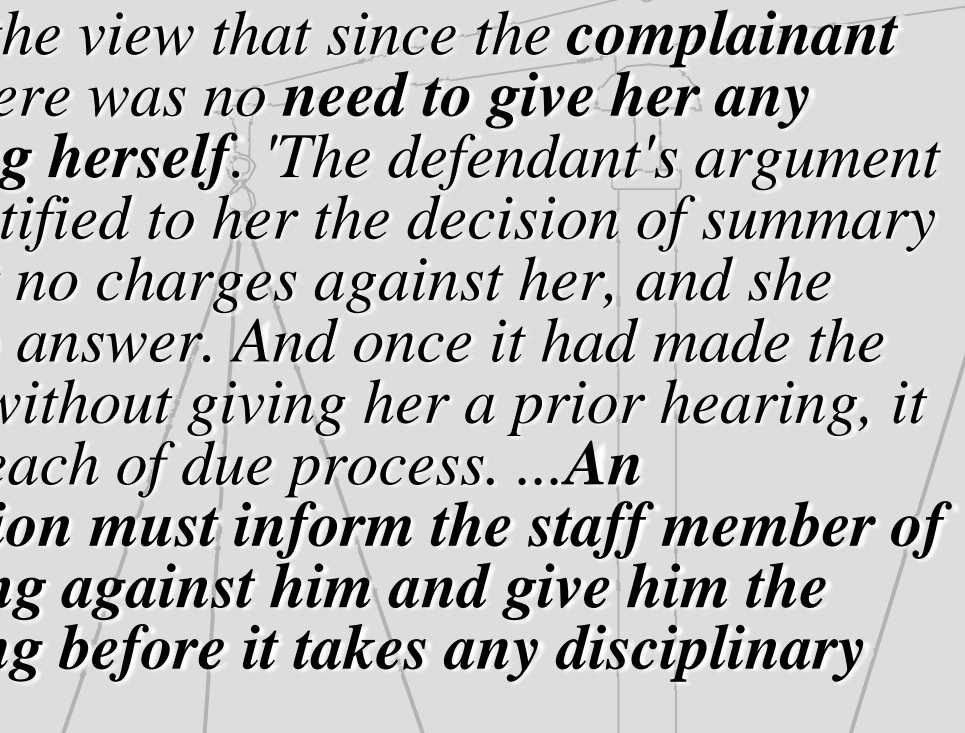
'There can be no doubt that theft by an official of an international organisation of goods belonging to that organisation constitutes serious misconduct which may warrant summary dismissal.'"



Summary dismissal

1639 Consideration 11

*The director-general took the view that since the **complainant admitted misconduct** there was no **need to give her any opportunity of defending herself**. 'The defendant's argument is mistaken. Before it notified to her the decision of summary dismissal it had brought no charges against her, and she therefore had no case to answer. And once it had made the decision to dismiss her without giving her a prior hearing, it had already acted in breach of due process. ...An **international organisation must inform the staff member of any charges it is levelling against him and give him the opportunity of answering before it takes any disciplinary action**:*



Summary dismissal

1878 Consideration 30

"The complainant called her supervisor a fascist while giving the nazi salute. She was dismissed summarily. 'In the tribunal's view while the complainant's conduct was not such as to be expected from an international civil servant, nevertheless it was not so serious as to warrant summary dismissal. Her words were intemperate, spoken in the heat of the moment to a superior. That is unacceptable. There was an insulting gesture, that is unacceptable.

But on the other hand an apology was offered the same evening and again the next morning and a written acceptance given by [the supervisor].

In the opinion of the tribunal qualifying the incident as serious misconduct justifying summary dismissal would be a clearly mistaken conclusion to draw from the facts. Therefore, the disciplinary measure imposed was so disproportionate as to amount to a mistake of law."

Constructive Dismissal

- ILOAT 2602 (consideration 13)

"... *'Constructive dismissal'* is a phrase used to signify that an organisation has breached the terms of a staff member's contract in such a way as to indicate that it will no longer be bound by that contract. A staff member may treat that as constituting **constructive dismissal** with all the legal consequences that flow from an unlawful termination of the contract, even if he/she has resigned. Harassment, which goes unchecked, is a breach of those fundamental principles requiring an organisation to treat its staff members with dignity, to observe the principle of equality and to provide a safe and secure workplace."

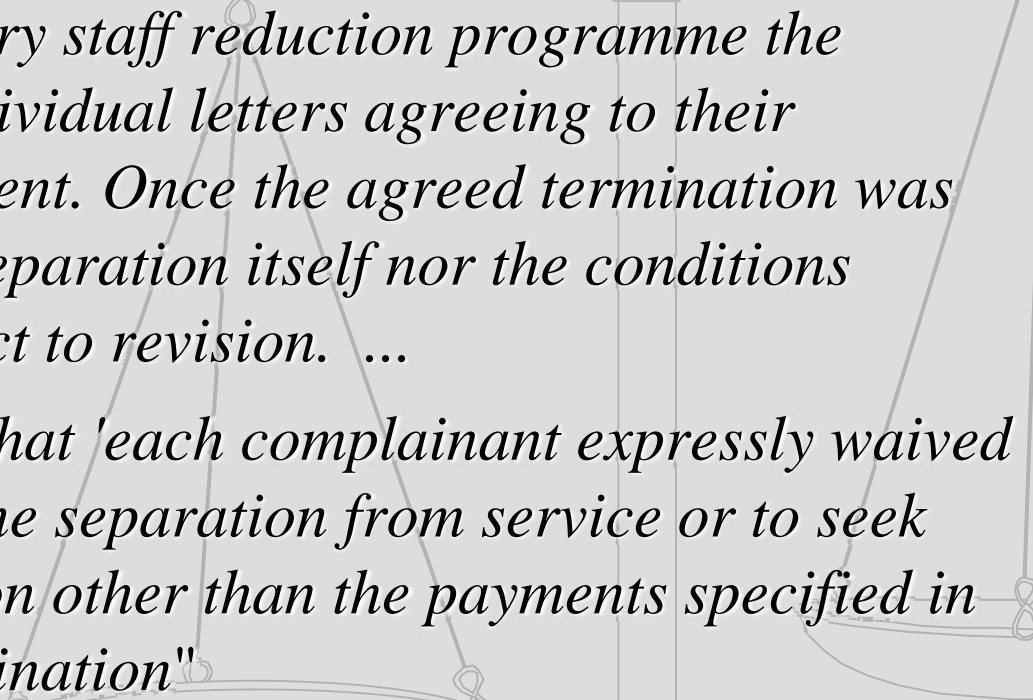
7 cases all lost – in effect you must demonstrate harassment

Agreed Termination 9 cases

ILOAT 2368 (consideration 7)

"In the context of a voluntary staff reduction programme the complainants signed individual letters agreeing to their termination of appointment. Once the agreed termination was concluded, neither the separation itself nor the conditions agreed upon were subject to revision. ...

... The Tribunal considers that 'each complainant expressly waived his/her right to appeal the separation from service or to seek any form of compensation other than the payments specified in the letter of agreed termination"



Agreed Termination

2142 (consideration 16-18) Organisation is permitted to keep best staff

2098 and 1818 - agreed termination can take place during sick leave (overrules 938)

1706 (Consideration 16) retain rights under service regs up to termination date

Resignation

To whom must a resignation be addressed?

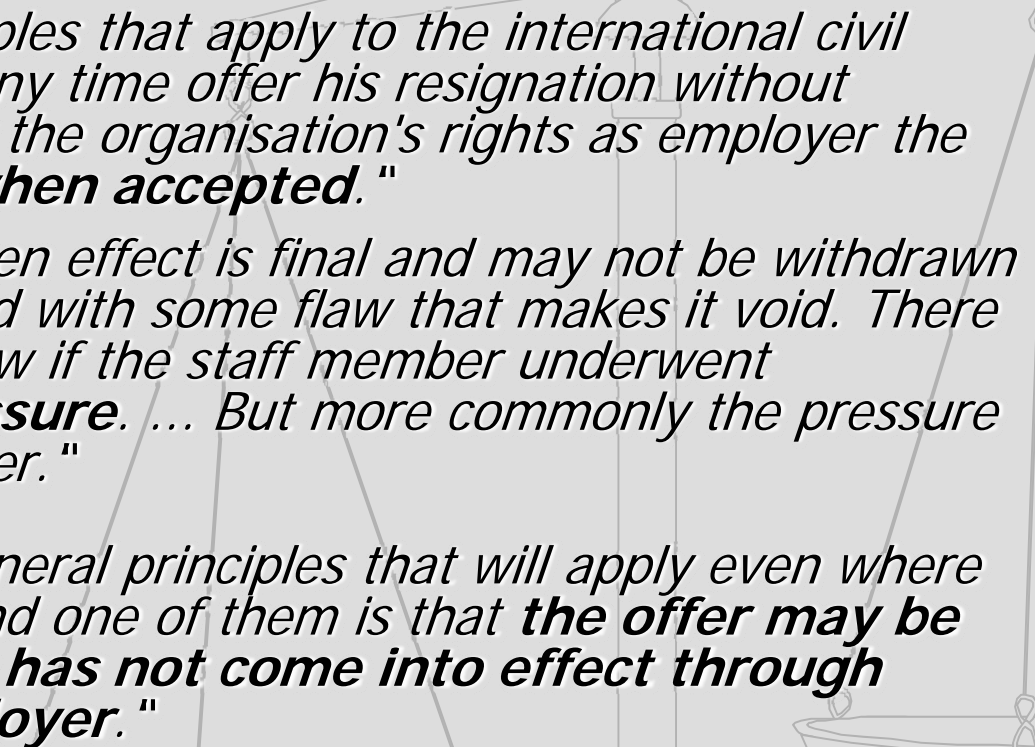
1509 to the appointing authority

Consideration 11

"The complainant was assigned to a joint service of the united nations and unido at vienna. The service was under unido management. But 'it was the united nations that offered him both the appointments which he had while he was at vienna, and it was to the united nations that he addressed his acceptance of each offer, thereby concluding a contract of employment with the un. Indeed that is why he addressed his letter of resignation to the secretary-general of the un. True, he addressed it to the director-general of unido as well, but that was merely in recognition of unido's supervision of his work and did not mean that the un had ceased to be his employer. In sum, he was an official, not of unido, but of the un."

Resignation

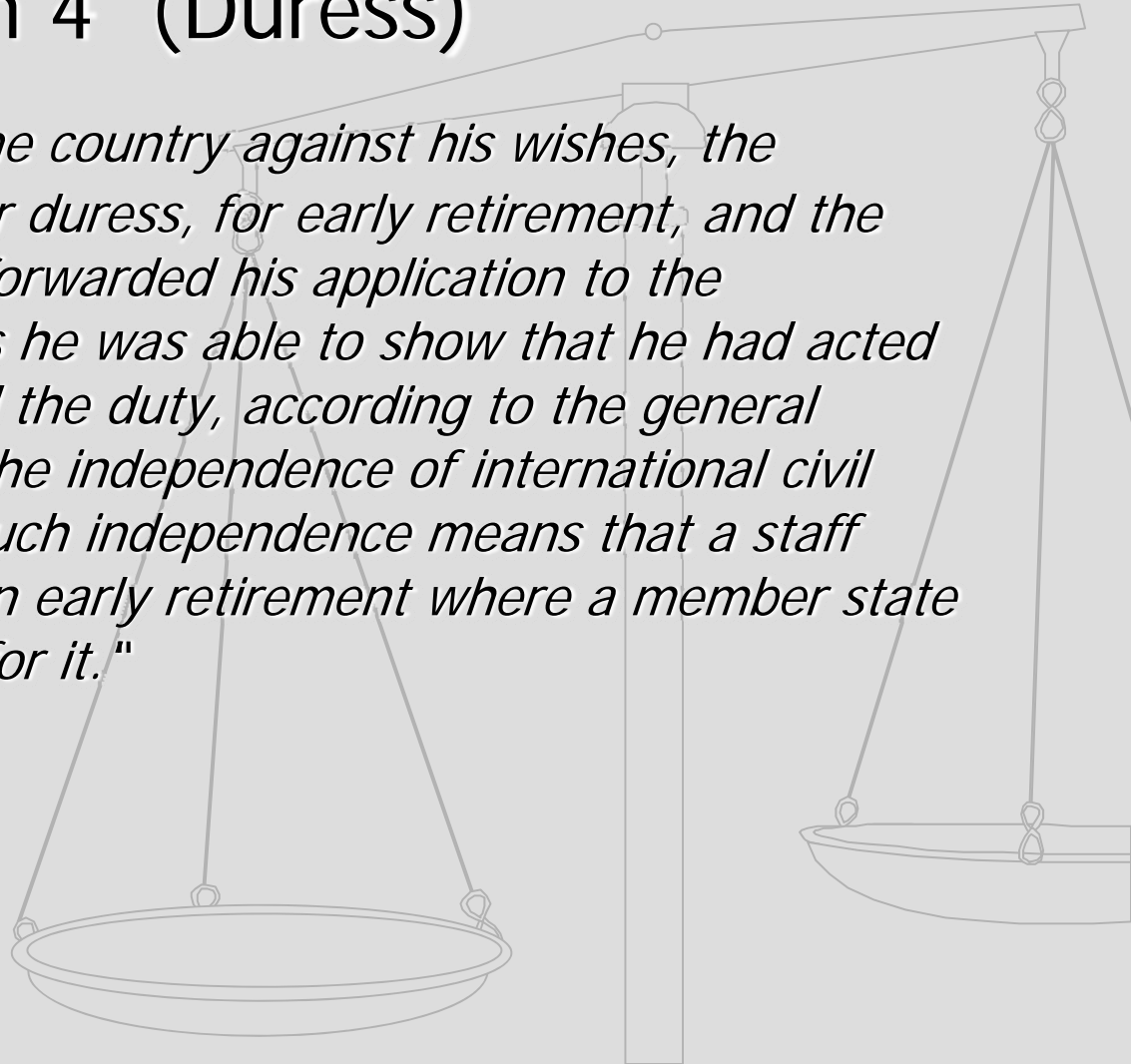
856 Consideration 3 - Conditions for resignation to be binding

- " 'according to general principles that apply to the international civil service an official may at any time offer his resignation without explanation. but to protect the organisation's rights as employer the offer **takes effect only when accepted.** "*
- " '...A Resignation that has taken effect is final and may not be withdrawn unless the offer was tainted with some flaw that makes it void. There will ordinarily be such a flaw if the staff member underwent **compelling outside pressure.** ... But more commonly the pressure will come from the employer. "*
- " 'There are also several general principles that will apply even where there is no express rule, and one of them is that **the offer may be withdrawn so long as it has not come into effect through acceptance by the employer.** "*
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Early Retirement

1232 Consideration 4 (Duress)

"*Having been held in his home country against his wishes, the complainant applied, under duress, for early retirement, and the authorities of his country forwarded his application to the organization. '...As soon as he was able to show that he had acted under duress UNESCO had the duty, according to the general principles that guarantee the independence of international civil servants, to grant relief. Such independence means that a staff member may not be put on early retirement where a member state has ordered him to apply for it.'*"



You have to prove Pressure

686 *The complainant claims to have acted under pressure. In the view of the tribunal, she had ample time to consider whether or not to resign. Her resignation is therefore valid."*

309 *"The complainant's resignation, 'which he gave of his own free will and without duress, was fully valid in law. It may have been given somewhat lightly, but the complainant is alone responsible and that fact does not vitiate its legal validity.'"*

Transfer

1020 Consideration 13

" ... a matter like the transfer of its headquarters. A decision of that kind is inherently immune to review. "

" (the Tribunal will) determine whether the arrangements for carrying out the move were properly objective. Since the transfer did disrupt the lives of its staff the organization had a duty to ensure that there was no undue or pointless detriment to their interests. The consequences of the change which the transfer brought in the conditions of their employment are to be gauged against cardinal principles such as equality of treatment, good faith and the rule against retroactivity... "

Don't Forget

- The appeals process is slow – it can compensate retrospectively but it does not really provide protection against unlawful dismissal.
- try to be aware of the case law and try to “convince” managers that they are likely to lose the case.

