

THIRD ORDINARY SESSION

***In re* DESGRANGES**

Judgment No. 11

THE ADMINISTRATIVE TRIBUNAL,

Considering that Mme Micheline Desgranges, formerly a correspondence clerk at the I.L.O. Branch Office in Paris, has filed a complaint against the International Labour Organisation:

Issues the following judgment:

ON THE QUESTION OF RECEIVABILITY

Considering that the dismissal of the complainant in April 1950 was upheld by decision of the Director-General dated 2 June 1951 and transmitted to the Director of the I.L.O. Branch Office in Paris by letter on 12 June 1951;

Considering that the complainant, having exhausted all means of appeal available to her, sent the Registrar a letter on 31 August 1951 which in particular contains the following statement:

"I take the liberty of appealing to the Administrative Tribunal of the I.L.O. ... I should therefore like the case to be placed on the agenda of a forthcoming session of the Administrative Tribunal and would be grateful if you would inform me what documents I must produce in support of my application. Must I prepare a file containing a copy of the letter of dismissal and all subsequent correspondence or is a detailed memorandum enough? What is the final date by which it must reach you? ... I am also writing to the President of the Administrative Tribunal asking him to authorise me to be assisted or represented by an official to be appointed by the Staff Union";

Considering that this letter, as it is formulated, constitutes a complaint submitted within 90 days after the complainant was notified of the decision impugned;

Considering that this complaint did not fulfil the conditions laid down in Article 7 of the Rules of Court of the Administrative Tribunal, and that under the terms of paragraph 4 of Article 7 the Registrar should have called upon the complainant to make the necessary corrections in her complaint within one month and have returned the papers to her for that purpose;

Considering that the Registrar did not apply paragraph 4 of Article 7 of the Rules of Court, but merely sent the complainant, in a letter dated 11 September 1951:

(a) one copy of the Statute and Rules of Court of the Administrative Tribunal;

(b) seven copies of the form mentioned in Article 7 of the Rules of Court of the Administrative Tribunal,

without mentioning the final date by which those documents, after correction, should have been returned to him;

Considering that this letter of the Registrar was extremely brief and did not reply to any of the questions asked by the complainant, but was on the contrary of such a nature as to lead her to assume that her complaint was accepted as it stood;

Considering that after the complainant had written a letter to the International Labour Office in which she stated: "I have appealed to the Administrative Tribunal, which has not yet rendered judgment", the Registrar informed her in a letter of 26 September 1952 that at that time the Administrative Tribunal had not received any complaint from her, and that consequently it was only after receipt of that letter that the form and copies referred to in Article 7 of the Rules of Court, signed and dated 24 October 1952, were communicated to the Registrar;

Considering that in the circumstances described above this communication cannot be considered as untimely;

That the complaint is therefore receivable.

ON THE QUESTION OF COMPETENCE:

Considering that the Administrative Tribunal, by virtue of the very purpose for which it was created, should be considered as governed by general legal principles (instance de droit commun) with the necessary powers to guarantee the security of employment of all officials attached to the International Labour Organisation;

Considering that from the standpoint of equity there is no ground for distinguishing between officials of the International Labour Office properly so-called and persons in the category to which the complainant belongs, that persons in the latter category have all the fundamental characteristics of officials, namely, the continuous devotion of their activities to the agency which employs them; the fact that they are under the authority of the Director-General; the fact that their conditions of service are determined by way of regulation, unilaterally and not contractually; the fact that they have access to the Sickness Insurance and Pension Funds; etc.;

Considering that one of the fundamental tenets of all legal systems is that no court may refrain from giving judgment on the grounds that the law is silent or obscure;

Considering that it is clear from the statements of the Administration and the unanimous opinion of the Special Joint Committee, set up to deal with the case, that the absence of positive legal provisions concerning the employees of the Branch Offices would make their situation extremely precarious and would expose them to arbitrary decisions without allowing them any right of appeal either to national tribunals or the Administrative Tribunal;

Considering that the Staff Regulations in their present form describe persons in the category concerned as officials, only in order to make it clear that they shall be subject to special conditions of service to be provided for them; but that, in the absence of such specific conditions being provided, they cannot be left without any right of appeal;

Considering that it is unthinkable that the International Labour Organisation, which was established to ensure the security of all wage-earners, does not desire to assure that of all its officials, and that the spirit in which the existing legislation should be interpreted is thus quite clear;

That the Tribunal is therefore competent to judge the matter submitted to it.

ON THE SUBSTANCE

Considering that the circumstances show that the two parties seem to agree implicitly that the national legislation of the place in which the I.L.O. Branch Office is situated should by analogy be applied in this case, and that the Director-General has himself stated that this is the procedure normally followed in all the Branch Offices;

Considering, moreover, that the Director-General set up an ad hoc Joint Committee for this case in order to follow as closely as possible the rules of equity governing the dismissal of officials, and that the complainant was represented before that Committee;

Considering that it is therefore necessary to enquire whether French legislation has been respected in this case and to bear in mind the opinion of the ad hoc Joint Committee which unanimously invited the Director-General to consider the possibility of awarding the complainant a sum equal to six months' salary as compensation;

Considering that from this point of view the procedure followed in the dismissal of the complainant is certainly questionable, but that it has not been sufficiently proved to the Court that all the provisions of French legislation concerning the procedure of dismissal could have been applied;

Considering that, therefore, there is no ground for reinstatement;

Considering that, as regards the amount of compensation, Articles 6 ff. of the French Act of 3 September 1947 concerning the conditions of discharge, in connection with general reduction of staff, of magistrates, officials and civil and military agents of the State, provide that an official dismissed as a result of the abolition of his post under conditions similar to those obtaining in the case of the dismissal of the complainant shall first receive four months'

leave with pay plus an indemnity of one month's pay for each year of service;

That the complaint is therefore well founded in so far as it relates to the four months' additional compensation;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL

Declares the complaint to be receivable;

Declares that it is competent;

On the substance of the case, orders the defending party to pay the complainant additional compensation equivalent to four months' salary;

Orders the defending party to pay all costs.

In witness of which judgment, pronounced in public sitting on 12 August 1953 by Jonkheer van Rijckevorsel, President, His Excellency Mr. A. Devèze, Vice-President, and Mr. Georges Scelle, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Wolf, Registrar of the Tribunal.

(Signatures)

A. van Rijckevorsel
Albert Devèze
Georges Scelle
Francis Wolf