

TWENTIETH ORDINARY SESSION

***In re* CHADSEY**

Judgment No. 122

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Postal Union (W.P.U.) drawn up by Mr. John Milton Chadsey on 10 November 1967 and the reply of the World Postal Union dated 15 February 1968;

Considering Article II, paragraph 5 of the Statute of the Tribunal and Articles 38bis and 38ter of the Regulations of the International Bureau of the World Postal Union;

Having heard in public session on 4 October 1968 Messrs. Jacques Mercier, Counsel for complainant, and Jean-Flavien Lalive, Counsel for the World Postal Union;

Considering that the material facts of the case are as follows:

A. I December 1964 the XVth Universal Postal Congress adopted a new provision, Article 108, in the General Regulations of the World Postal Union, entitled "Languages Used for the Publication of Documents, etc.", providing for the creation of several "language groups" within the Union. The Executive Council of the Union, which under Article II of the Final Protocol of the General Regulations of the W.P.U. was responsible for putting this new language system into force, laid down its organisational structure and methods of operation on 25 May 1966 (document C.E.1966-Doc.6a, chap.5). In pursuance of this decision an English translation service was set up, which service is autonomous within the framework of the W.P.U. Its expenses are shared between the Members of the English Language Group, who have appointed a Management Committee which gives instructions to the Director-General of the W.P.U. concerning the working of the service. The staff of the translation service do not belong to the establishment of the W.P.U. International Bureau, but they nevertheless enjoy the same conditions of employment as the Bureau's own officials.

B. Even before the new language system was introduced the International Bureau had set up a temporary British translation service, the staff of which were appointed by the Bureau under fixed-term contracts which specified that the Staff Regulations of the Bureau were not applicable to them. In these circumstances Mr. Chadsey was engaged as English translator on 21 February 1965. His contract expired on 20 August 1965 and was renewed to 31 May 1966. After that date his engagement was tacitly continued on the same terms without any exchange of letters.

C. On 26 September 1966 complainant was informed that the Government of one of the member States of the English Group objected to his appointment as a permanent translator in the English translation service on the ground that he had refused to present himself for military service in that country and had accordingly been deprived of his nationality, being at present a stateless person, and would be liable to prosecution if he returned to the country concerned.

D. On 6 March 1967 the International Bureau of the W.P.U., confirming a notification by the Deputy-Director-General of the Bureau on 6 December 1966, informed complainant that in accordance with instructions received from the Management Committee of the English Language Group he was not in a position to offer complainant a permanent position in the new English translation service, and that his temporary employment would therefore terminate on 30 June 1967. It was further stated in the letter that complainant's work for the W.P.U. had always given full satisfaction and that it was with keen regret that his employment was terminated. On 5 April 1967 complainant wrote to the Director-General requesting him to submit the decision of 6 March to the appeals machinery provided for W.P.U. officials under Article 38bis of the Staff Regulations. He repeated this request on 29 May 1967.

E. In his reply of 15 June 1967 the Chief of Section E of the International Bureau, on behalf of the Director-General, stated that the decision not to offer complainant a permanent post in the autonomous English language

service had been taken by the Management Committee of the English Language Group; that this decision had been transmitted by the International Bureau acting on behalf of the group; that complainant's appeal was accordingly misdirected; that since the expiry of his contract with the Bureau on 31 May 1966 he had been employed on the same terms but without a contract; and that in any event, as he had expressly recognised at the time of his initial engagement that the Staff Regulations were not applicable to him, he could not claim the benefit of the appeals procedure laid down in those Regulations.

F. On 25 June 1967 Mr. Chadsey objected to this interpretation of the position. He considered that as he was automatically a member of the new English translation service, the formal creation of which had merely confirmed an established fact, the rules governing the employment of the staff of this service were applicable to him. The status of this staff having been assimilated to that of the international officials of the W.P.U. Bureau, he was entitled, like them, to the protection of the internal appeals procedure provided for by Article 38bis of the Regulations. In its reply dated 14 August, the Bureau of the W.P.U. confirmed the position it had taken in its communication of 15 June, with a fuller explanation of the grounds on which it was based.

G. The complaint filed with the Tribunal by Mr. Chadsey on 10 November 1967 is directed against the decision of 6 March 1967 and its confirmation on 14 August 1967, and contends that as from the date when the translation service was set up complainant's temporary employment should have become permanent as a result of the regularisation of the position, the satisfactory nature of his service not being in question. This had in fact been the case for several of his colleagues in the same position as himself. The fact that he himself had not received the same treatment was due to the objection raised by the government of one member State. The International Bureau could not claim to be acting as the agent of a group which had no legal personality; this was clearly shown by the fact that the regulations governing the staff of the new translation service were identical with those applicable to the W.P.U. staff. It followed that the decision not to give him permanent employment had been taken by the Director-General as a result of the interference of member States and therefore constituted a misuse of authority. He prays the Tribunal to quash the decision and direct that he be awarded a permanent contract, or in default of this, at least five years' salary. He also claims a sum of 5,860 francs on account of the costs of the case.

H. The Union prays that the Tribunal should rule that it is not competent, that the complaint is irreceivable, and as to substance, that complainant's submissions should be dismissed.

CONSIDERATIONS:

As to the competence of the Administrative Tribunal:

Under Article II, paragraph 5 of its Statute, the Administrative Tribunal of the I.L.O. "shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure." By letter dated 25 May 1965 addressed to the Director-General of the I.L.O., the Director-General of the World Postal Union accepted the jurisdiction of the Administrative Tribunal as defined in the article cited above, and this acceptance is also binding as regards the English Language Group since it is a service within the framework of the W.P.U.

While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognised so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.

In the case at issue, Mr. Chadsey was appointed by the Union in February 1965 under a contract of six months' duration, renewed up to 31 May 1966 and subsequently up to 30 June 1967; moreover, the work to which he was assigned made him a direct participant in one of the permanent services of the Union; in these circumstances, Mr. Chadsey, who can in no way be regarded as merely a casual employee of the Organization, is, whatever the terms of his contract, among those officers who can claim the protection of the provisions of the Staff Regulations

permitting recourse to the Administrative Tribunal.

As to the receivability of the complaint:

The decision not to renew Mr. Chadsey's contract, and consequently not to appoint him to a permanent post, was notified to him on 6 March 1967, and following his request that the decision be reviewed again on 15 June 1967. Complainant addressed a request to the Organization on 25 June 1967 based on new arguments and directed to securing reconsideration of his case. Following this request the Director-General communicated to complainant on 14 August 1967 a decision definitely confirming the preceding decision, but in part on new grounds.

In these circumstances the time limit of ninety days laid down by Article VII, paragraph 2, of the Statute of the Tribunal for the filing of a complaint began to run only from the date of the notification of the decision of 14 August 1967.

The complaint was filed with the Registry of the Tribunal on 10 November 1967 and is therefore receivable.

As to the merits:

While the World Postal Union, which has legal personality, is alone competent to represent the Organization as a whole before the Administrative Tribunal, it appears from the provisions governing its internal relations with the language groups set up within the Union that it is the management committees of the respective groups which are responsible for appointing the staff and that the role of the Director-General of the W.P.U. is confined to notifying the persons concerned, on behalf of the management committees, of the decisions taken by them.

Mr. Chadsey's complaint must therefore be regarded as, in fact, attacking a decision by which the Management Committee of the English Language Group refused to give him a permanent contract.

The appointment of a temporary employee of the W.P.U. to a permanent post in a language group is not a right that can be claimed by the person concerned, but lies within the discretion of the management committee of that group. In exercising its discretion the management committee must take into account all the factors contained in the file of the person concerned, in particular both his professional qualifications and his suitability as an international official from the standpoint of morality, integrity and character.

In refusing to appoint Mr. Chadsey to a permanent post in the English Language Group the Management Committee was motivated only by the objection expressed by the representative of the government of one member State. Such an objection, notwithstanding the special situation of the language groups, cannot be reconciled with the fundamental principle of the independence of an international organisation in relation to its member States; it ought not to form any part of the legal basis of the decision impugned.

In restricting itself to this single reason, which is tainted by illegality, and in omitting to exercise its discretionary power in the circumstances referred to above, the Management Committee misinterpreted its own competence, and the decision impugned must accordingly be quashed.

The Administrative Tribunal may not at any stage substitute its own judgment for that of the competent administrative authority. It follows that the case should be referred back to the Management Committee of the English Language Group for a new decision to be taken, with reasons stated, on complainant's request, after consideration of all the relevant circumstances of the case, including Mr. Chadsey's professional qualifications as indicated by several documents in the dossier, and disregarding the fact, if it remains a fact, that he is a *persona non grata* to one of the States Members.

A decision on Mr. Chadsey's claim for compensation is adjourned until the Management Committee has taken its new decision.

DECISION:

For the above reasons,

1. The decision of the Management Committee of the English Language Group notified by letter of the Director-General of the World Postal Union dated 14 August 1967 is quashed.

2. The case is referred back to the World Postal Union (English Language Group) for a new decision on his application for a permanent appointment in the aforesaid group in accordance with the present judgment.

3. Mr. Chadsey is awarded costs in an amount of 5,000 Swiss francs.

In witness of this judgment, delivered in public sitting in Geneva on 15 October 1968 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy