

TWENTY-EIGHTH ORDINARY SESSION

***In re* JAKESCH**

Judgment No. 187

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Atomic Energy Agency (IAEA) drawn up by Mr. Anton Jakesch on 25 August 1971 and the Agency's reply of 6 December 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal and IAEA Staff Regulations 12.01 and 12.02;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. Mr. Jakesch joined the IAEA on 14 August 1957 and obtained a permanent appointment on 1 December 1957. He thus became a member of the Agency's Provident Fund, but remained a compulsory member of the Austrian Pension Scheme. In 1950, on the Agency's admission to the United Nations Joint Staff Pension Fund, he became a full participant in that Fund and with effect from 1 October 1958 ceased to be a member of the Austrian Pension Scheme. Under section 25 of the Headquarters Agreement of 11 December 1957 between IAEA and the Austrian Government, the Agency "shall be exempt from all compulsory contributions to, and officials of the IAEA shall not be required by the Government to participate in, any social security scheme of the Republic of Austria".

B. Mr. Jakesch took exception to this change in his pension rights, and challenged the Agency's interpretation of the Headquarters Agreement of 11 December 1957 and of the supplementary Agreement on pension insurance of 12 February 1959. In 1957 and 1962 he wrote to the Austrian Ministry of Social Affairs setting out his case, and sent copies of his letter to the IAEA. In his view he ought to have continued to be a member of the Austrian Pension Scheme after the Agency's admission to the Joint Staff Pension Fund. Having broached the matter with his superiors on several occasions he lodged a formal complaint with the IAEA on 5 March 1963 asking that he be allowed to resume compulsory membership of the Austrian Pension Scheme. The Director of Division of Personnel refused on 9 August 1963, and the Director-General confirmed this decision on 3 October 1963.

C. The complainant resigned on 31 August 1970, a few months before the age of 60, and on his request received a cash withdrawal settlement from the Joint Staff Pension Fund. He then paid the Austrian Pension Scheme a sum to validate thereunder the period of his service with the Agency.

D. On 18 September 1970 Mr. Jakesch sued the Agency before the Labour Court of the City of Vienna for payment of 143,415 schillings as damages for interruption of his membership of the Austrian Pension Scheme and for his having been obliged to resign in order to validate his service under that Scheme. The Agency refused to waive the immunity from legal process which it enjoyed under Article VIII (section 19) of the Headquarters Agreement of 11 December 1957. By judgment of 8 July 1971 the Labour Court of the City of Vienna accordingly held that it was not competent to hear the case.

E. In his complaint of 25 August 1971 the complainant states that the decision which he impugns before the Tribunal is the decision of the Labour Court of the City of Vienna concerning his action of 18 September 1970. As to the substance, he repeats the arguments he invoked before the Austrian court and simply asks the Tribunal to "settle the claim".

F. The defendant organisation replies that the complainant is not impugning a decision of the Director-General of the IAEA. Moreover, he has not exhausted the internal remedies provided for in Staff Regulation 12.01 and has thus failed to observe Article VII, paragraph 1, of the Statute of the Tribunal. The only relevant decision of the Director-General is that of 3 October 1963, but an appeal against that decision would in any case be time-barred by

virtue of Article VII, paragraph 2, of the Statute of the Tribunal. Finally, the Tribunal is not competent to hear appeals from decisions of the Labour Court of the City of Vienna. The Agency accordingly maintains that the complaint is irreceivable and reserves its defence as to the substance.

CONSIDERATIONS:

The competence of the Tribunal to hear complaints made by officials of the International Atomic Energy Agency is defined by its own Statute and Rules of Court and by the Staff Regulations and Staff Rules of the Agency. Article VII, paragraph 1, of the Statute of the Tribunal provides that "a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". In addition, IAEA Staff Rule 12.02.1 gives staff members the right to appeal to the Administrative Tribunal, in accordance with the provisions of the Statute of the Tribunal, against administrative decisions and disciplinary action taken after reference to the Joint Appeals Committee, and even, in agreement with the Director-General, without previous reference to the Committee. It follows from these provisions that the Tribunal can hear only complaints made against decisions of the Director-General, as a general rule after all internal remedies have been exhausted.

The complaint under consideration, which is expressly directed against the decision of the Labour Court of the City of Vienna dated 8 July 1971, is lodged with a tribunal which is not competent to hear it because it does not impugn a decision of the Director-General. Even if Mr. Jakesch had sought to impugn a decision of the Director-General, that decision could only be the one by which the Director-General confirmed on 3 October 1963 his refusal to reinstate the complainant as a compulsory member of the Austrian Pension Scheme. In that event the present complaint would be time-barred, not having been submitted within the time-limit of ninety days prescribe by Article VII, paragraph 2, of the Statute of the Tribunal. It would also be irreceivable because of the complainant's failure to exhaust all the internal remedies available to him, the Director-General not having agreed to waive the requirement of prior submission to the Joint Appeals Committee.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. 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, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 15 May 1972.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy