Registry's translation, the French text alone being authoritative.

NINETY-FIRST SESSION

***In re* Annabi (No. 2)** **Judgment No. 2067**

The Administrative Tribunal,

Considering the second complaint filed by Mr Kamal Annabi against the International Labour Organization (ILO) on 9 June 2000 and corrected on 29 August, the ILO's reply of 8 December 2000, the complainant's rejoinder of 7 February 2001 and the Organization's surrejoinder of 4 April 2001;

Considering Article II, paragraph 1, 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 complainant's career at the International Labour Office, the ILO's secretariat, which he joined in April 1987, is recounted under A in Judgment 1481 delivered on 1 February 1996 in which the Tribunal ruled on his first complaint. Until he retired in December 2000, he held the post of chief interpreter, at grade P.5, in the Official Relations Branch (RELOFF) of the Relations, Meetings and Document Services Department (RELCONF). Among other things he was responsible for the recruitment of free-lance interpreters.

One of his first tasks was to draw up a list of the interpreters to be hired for the 1988 International Labour Conference. On 18 April 1988 the Treasurer and Financial Comptroller sent a minute to the Director of RELCONF, the complainant's second-level supervisor, objecting to the composition of the interpretation teams recruited for the Conference. In a minute of 20 June 1998 to the Chief of the Personnel Development Branch, the then Director of the Personnel Department, who was appointed to head RELCONF in March 1991, voiced the same sorts of objections. The dispute which was to follow, and which is at the core of this case, focused on two local arabic interpreters whom the complainant refused to hire on the grounds that they were not competent enough. The Administration insisted on their recruitment, in particular for budgetary reasons.

In the years that followed, relations between the complainant and the authors of the two above-mentioned minutes deteriorated steadily, giving rise to a number of incidents perceived by the complainant as "vexations" with the intent of putting "pressure" on him to recruit the two interpreters. In the end he did so, but only after receiving written instructions. For the Administration, all decisions regarding the recruitment of interpreters were based on objective reasons reflecting nothing but the Office's interests.

By a minute of 26 March 1999, the complainant filed an internal complaint with the Director-General under Article 13.2 of the Staff Regulations. The minute stated that he had fallen victim to "administrative harassment" and asked that the necessary steps be taken to put an immediate end to the unwarranted pressure and vexatious conduct on the part of his supervisors, that a letter of apology be addressed to him, that the matter of a grant of within-grade merit increment be reviewed and that a decision be taken on the reclassification of his post. The Director of Personnel replied in a letter of 22 April that the Director-General considered that he could not issue a decision on the internal complaint as it stood and invited the complainant, if he wished, to reformulate it. In a letter of 17 May the complainant answered that he construed the letter of 22 April as notification of the rejection of his internal complaint. However, in response to the Organization's invitation, he sent the Director of Personnel a series of documents to be submitted to the Director-General for the purpose of reconsidering the internal complaint. By a letter of 7 June 1999 the Chief of the Personnel Administration Branch rejected the complainant's analysis and informed him that the Office would hold an inquiry. After reconsidering the internal complaint, the Director-

General would either come to a final decision or determine whether further inquiry was needed. By a letter of 14 March 2000 the Director of the Human Resources Development Department notified to the complainant the Director-General's final decision to reject his internal complaint, having found that it was "not possible to conclude that there [had been] anything improper, insofar as every decision taken by [the complainant's] supervisors seem[ed] to have been based on objective reasons that reflected only the Office's interests". That is the impugned decision.

B. The complainant's first plea is that the decisions whereby he was made to recruit the two interpreters at the core of the dispute are unfounded.

He explains that he has always considered them to lack competence, and that his counterparts in the United Nations system generally agree with him.

He disputes the validity of the reasons the ILO gave for ordering their recruitment. Initially, the Treasurer repeatedly cited budgetary considerations, but only in connection with the two interpreters in question. Besides, the amount supposedly saved - approximately 50,000 United States dollars over five years - is negligible. Then, doubtless because the Treasurer knew full well that his budgetary arguments were weak, he in the end appraised the interpreters' competence himself in total disregard of the limits of his authority. That assessment was later "borne out" by two translators. In the complainant's submission the Treasurer lacks the authority to make any credible assessment of an interpreter's competence, and the evaluation carried out by the two translators cannot be regarded as valid since translation and interpretation require quite different skills.

According to the complainant, the decisions ordering him to recruit the two interpreters clearly constituted abuse and were not based on "objective reasons reflecting only the Office's interests", unless the ILO's own interests were confused with the Treasurer's personal interest in pleasing two interpreters, and his supervisors' interest in pleasing the Treasurer.

His second plea is that the decisions that followed his refusal to recruit the two interpreters without a written order are unfounded. In his submission, the order in which events occurred leaves no doubt: as long as he had the support of his supervisors there was no retaliation for his resistance to the unofficial pressure from the Treasurer. But things were not altogether the same when the former Director of Personnel took over as the complainant's second-level supervisor in March 1991, though his first-level supervisor protected him as far as he could. Nevertheless, the Administration tried to get rid of him by proposing the abolition of his post in 1992 and offering him an appointment for only two years (and not a contract without limit of time) from 1 July 1993. The post abolition proposal was withdrawn at the express request of most members of the Governing Body. As to the ILO's unwillingness to grant him an appointment without limit of time, the complainant had to take the matter to the Tribunal in order to secure recognition of his rights (see Judgment 1481). He considers that he lost his last ally in RELOFF when his first-level supervisor was replaced as from July 1995. From then on things changed radically. His new first-level supervisor, the Director of RELCONF, and the Treasurer were free to resort to more insidious reprisals: absence of performance reports, unfounded allegations, denial of his authority, off-handed treatment, discrimination reflected in the failure to grant him a within-grade merit increment and offensive remarks by a senior official. Lastly, the complainant submits that the defendant caused him unnecessary and undue injury by forcing him to work with one of the interpreters in question, since in a letter of 22 January 1999 to the Director of Personnel, she had seriously impaired his dignity and good name. In conclusion, he considers that he has paid dearly for being "a man of principle".

He asks the Tribunal to quash the impugned decision and award him all consequent redress. He also claims costs.

C. In its reply the ILO challenges the complainant's interpretation of the Administration's decisions.

It submits that his complaint is "a long succession of conflicting views about operational matters" and that "working relationship issues as such are not within the Tribunal's competence".

Even if his allegations were borne out by the facts, that would not be evidence of unwarranted treatment or harassment.

The defendant explains that decisions leading to the recruitment of interpreters fall within the Director-General's authority over the organisation of work and within the principle of hierarchy applied in international organisations

by virtue of which supervisors have a right and a duty to give orders to their subordinates which the latter are bound to obey.

The ILO submits that its reasons for supervising the complainant's work, particularly the financial aspects of it, were objective and consistent with its right and duty to oversee the expenditure of funds entrusted to it. Article 1.50(a) of the Financial Rules says that it is the responsibility of the Treasurer "to ensure effective internal financial control, sound administration of funds, and the exercise of economy".

In 1989 "procedures for recruitment of interpreters for ILO meetings" were introduced and since then responsibility for recruitment has been shared between the Official Relations Branch - in which the complainant served - the Personnel Department and the Finance Department. The complainant appears to have perceived the application of these new rules as an intolerable restriction on his authority as chief interpreter. But the Administration had several quite legitimate reasons for restricting his authority by associating more closely the Personnel Department and the Finance Department with the recruitment of interpreters in order to accommodate both financial considerations and fairness to interpreters who had already worked for the Organization.

In subsidiary pleas the ILO explains that the overriding principles are that local recruitment must be the rule and non-local recruitment the exception, and that priority should be given to hiring interpreters who have already worked for the Organization. The two interpreters concerned clearly met both criteria. Noting that the complainant is not competent to say how large or small a saving of 50,000 dollars is, the ILO expresses surprise that as a manager he should find the amount negligible bearing in mind that the ILO has suffered several financial crises in the period in question. Lastly, it asserts that it had the two interpreters' competence assessed by two independent linguists, who reported that they found their standard good on the whole.

The ILO denies that its proposal of 1992 to abolish his post was an attempt to "get rid" of the complainant. His accusation of bias is belied by the fact that his post was not the only one affected by his chief's proposals for abolition. As to the Administration's refusal to offer him an appointment without limit of time in 1993, that issue, though linked to the previous one, concerned a decision by the Personnel Department and not his supervisors and was settled once and for all by the Tribunal. The absence of any performance report since 1995, though in breach of the reporting procedure, has in the meantime been set right, a report for the period from 1 January 1995 to 31 December 1998 having been written on 6 September 2000. Lastly, there can have been no discrimination against the complainant in the grant of a within-grade merit increment: Article 6.5 of the Staff Regulations states quite clearly that there is no entitlement to such increments.

D. In his rejoinder the complainant asserts that the Tribunal is competent to entertain working relationship issues as such, as it has demonstrated in Judgment 1609 (*in re* Abreu de Oliveira Souza Nos. 1 and 2 and others).

He maintains that the reasons relied on by the ILO do not justify the hiring of the two interpreters. It was never his intention to challenge the decision to associate the Personnel and Finance Departments more closely for the purpose of recruiting interpreters; nor did he at any time deny that an organisation may legitimately wish to save money, particularly in times of crisis. He nonetheless observes that the ILO does not dispute that the alleged savings were "minute" by comparison with the amount spent on interpretation services. As to the competence of the two interpreters, he notes that the ILO does not answer the main pleas in his complaint. In his submission, in view of its silences and concessions, the ILO's occasional "explanations" lose much of their credibility.

As to the "vexations", he considers that *mutatis mutandis* his view echoes that of the Tribunal in Judgment 986 (*in re* Ayoub No. 2 and others), when it referred to a "run of small amendments". In his case, taken individually the vexatious incidents have no decisive significance, but cumulatively they took their toll on his nerves in the context of a general strategy to harass him.

E. In its surrejoinder the ILO says it is convinced that the dispute arose because the complainant found it hard to get on with his supervisors. Regrettable though the resulting annoyances may have been, the case law holds that he had to put up with them and expect no compensation.

As to whether the Tribunal may entertain disputes arising from work relationships, it asserts that the Tribunal will not interfere as a matter of principle. It points out that even if to hire the two interpreters was against the ILO's interests, the complainant's rights suffered no impairment on that account. Lastly, on the performance of the two interpreters it submits that the complainant has no standing to question the competence of the people who took the

decision to hire them.

CONSIDERATIONS

1. The facts of the case are set out under A above.

The salient points are as follows. The complainant, who retired in December 2000, was appointed in 1987 to the post of chief interpreter at grade P.5 in what was then the Relations and Meetings Department of the International Labour Office. As chief interpreter, he was responsible for the recruitment of interpreters to service ILO meetings.

2. By a minute of 26 March 1999, he filed an internal complaint with the Director-General of the Office under Article 13.2 of the Staff Regulations, alleging what he described as "administrative harassment" on the part of some of his supervisors. They were, he says, settling a score because he refused, unless given written instructions, to give in to pressure to hire two interpreters he deemed incompetent. He asked the Director-General to take the necessary steps to ensure: (a) an immediate end to the unwarranted pressure and vexatious conduct inflicted on him by his supervisors; (b) that a letter of apology be written to him; (c) that the question of the grant of within-grade merit increment be reviewed and (d) that a decision be taken about the reclassification of his post.

3. By a letter of 22 April, the Director of Personnel informed the complainant of the Director-General's response. First, the Director-General was unable to come to any conclusion about most of the internal complaint because, as it stood, the allegation of harassment was too vague, had no ground in fact and was backed up by no evidence.

The letter went on to say that staff have no right to the grant of within-grade merit increments and that the delay in reclassifying his post was due to his having lodged an appeal "which ha[d] not yet been settled".

In short, the Director-General considered that, as it stood, the internal complaint could not give rise to a decision, and that if the complainant wished to reformulate it he should take account of his observations.

On 17 May the complainant sent the Director of Personnel more than 130 documents in support of his internal complaint for submission to the Director-General. On 21 May 1999 he produced further evidence because, he says, the officials in question seemed undeterred by his internal complaint and were still harassing him.

Having reconsidered the internal complaint in the light of the complainant's evidence and observations and the comments of the officials concerned, the Director-General took a final decision to reject the internal complaint of 26 March 1999. The Director of the Human Resources Development Department notified this decision to the complainant, in a letter of 14 March 2000. He also informed the complainant that, regarding his allegation of harassment, the Director-General found no evidence of abuse in that every decision taken by the complainant's supervisors seemed to have been based on objective reasons that reflected only the Office's interests. He added that the Director-General nonetheless "deeply regret[ted] that such a working atmosphere could have arisen and lasted so long without the necessary assistance being given to sort matters out". That is the decision the complainant is challenging.

4. He is asking the Tribunal to quash that decision and award him all consequent redress. He also claims costs.

In his complaint he alleges that he was put under pressure, unofficially at first and then officially, by the Treasurer to hire two locally-based interpreters, but he consistently resisted because he deemed neither to be sufficiently competent. However, he had to recruit them in the end on written orders from the Treasurer and his own supervisors. In addition, not content with forcing the recruitment on him, the Administration "punished" his refusal to fall in with the Treasurer's wishes by repeatedly causing him annoyance and vexation. He cites a lack of any basis for the decisions requiring him to recruit the interpreters and the decisions that followed his refusal to hire them without a written order (particularly the proposed abolition of his post, the refusal to give him an appointment without limit of time, the negative decision concerning the reclassification of his post, the absence of performance reports after 1 January 1995 despite their being necessary to qualify for a merit increment and the undue and unnecessary injury caused by his having to work with one of the two interpreters in question, who had seriously impaired his dignity and good name).

Lastly, he asserts that he has been physically and mentally exhausted by the treatment he received from the

Treasurer and his supervisors of the time which, he says, is an obvious breach of the standards of conduct in the international civil service and amounts to nothing less than "administrative harassment".

5. As the Tribunal has consistently held, an allegation of harassment must be borne out by specific facts, the burden of proof being on the party pleading the harassment. In this case a distinction needs to be drawn between the facts pertaining to the period from April 1987 to March 1991 and those pertaining to the period that followed March 1991.

6. In respect of the period from April 1987 to March 1991, the complainant submits that his refusal to act on unofficial advice to be more "flexible" in recruiting interpreters had repercussions on his working conditions in the form of serious accusations against him by a number of interpreters and criticisms from both the Treasurer and the then Director of Personnel. The upshot was that he was called to account for the recruitment of local interpreters and two internal inquiries were held.

However, as he himself concedes, his supervisors of the time supported him and the inquiries cleared him of all blame. That being so, his plea of harassment in respect of the period prior to March 1991 cannot succeed.

By asking him for explanations and holding quite proper inquiries, the Administration gave the complainant an opportunity to defend himself and show that the accusations and criticisms were unfounded. It cannot therefore be accused of harrying him or displaying any bias against him.

7. Concerning the period after March 1991, the complainant states that because, in the absence of a written order, he refused to hire the two local interpreters despite constant pressure from the Treasurer that he felt bound to resist given the poor quality of their work, an attempt was made to get rid of him by proposing the abolition of his post and withholding an appointment without limit of time. Furthermore, he was the victim of regular "vexations": failure to draw up performance reports, unfounded accusations, denial of his authority, offensive remarks by a senior official, off-handed treatment on the part of his supervisors and discrimination in the form of the withholding of a merit increment.

8. It is immaterial whether the ILO's reasons were financial or concerned the competence of the two interpreters, since the decisions to recruit them do not on their own amount to acts of "administrative harassment", even if the complainant deemed them to be unfounded. As the ILO points out, such decisions fall within the Director-General's authority over the organisation of work and within the principle of hierarchy applied in international organisations by virtue of which supervisors have a right and a duty to give orders to their subordinates which the latter are bound to obey while retaining the right to appeal against any decision that causes them injury.

The Tribunal will, therefore, examine what the complainant terms unfounded decisions arising from his refusal to recruit the two interpreters unless instructed to do so in writing, in order to determine whether any measures were taken that caused him injury.

9. The complainant contends that, in order to get rid of him, the abolition of his post was proposed in 1992 and that the Director-General decided to offer him only a fixed-term appointment from 1 July 1993, contrary to what had been agreed at the time of his recruitment.

The ILO retorts that the abolition of the post was proposed for objective budgetary reasons and that the complainant's post was not the only one affected. In any event this proposal was withdrawn at the request of the ILO's Governing Body.

As to the fixed-term appointment, the Organization observes that this calls into question a decision taken by the Personnel Department and not by the complainant's supervisors; and that in any event the matter was settled once and for all by Judgment 1481.

The Tribunal finds no evidence of any harassment insofar as the complainant has had his rights restored and fails to prove bias.

10. The complainant takes the Administration to task for the fact that there has been no appraisal report on his performance since 1995.

The Organization concedes an irregularity in the reporting procedure but gives an unconvincing explanation of it. It

asserts that the omission arose because the complainant's supervisors were anxious to avoid a further confrontation at a time when working relations were strained, preferring to wait for an improvement so that they could produce a more favourable report.

Relations being tense, the ILO had a duty to put matters right without evading its obligation to ensure that appraisal reports were established.

But the absence of such reports cannot be taken as evidence of "administrative harassment" even if it shows that, administratively, things had gone awry, as will be explained below under 17.

11. The Tribunal considers that the criticism of the way the complainant recruited interpreters, which he deems unfounded, is part and parcel of a supervisor's job of overseeing subordinates' work. It is to be noted that since the Office introduced "procedures for recruitment of interpreters for ILO meetings", responsibility for recruitment is now shared between the Official Relations Branch, the Personnel Department and the Finance Department.

12. The remarks by a senior ILO official which the complainant deems offensive are in fact a statement to the effect that the complainant handled the recruitment of interpreters "in a very arbitrary manner". Since the official in question, who was not one of the complainant's supervisors or a member of one of the departments involved in this case, has apologised and explained himself, the statement cannot be regarded as corroborating an allegation of "administrative harassment".

13. The complainant submits that he received no support from his supervisors when an in-house interpreter, one of his subordinates, disregarded his authority as chief interpreter.

The evidence shows that what the complainant saw as a denial of his authority was nothing more than a series of instances in which his supervisors used their own judgment without bias and in the normal course of their duties.

14. The complainant observes that during the internal procedure he submitted various items which, in his view, attest to the off-handed treatment he received from his supervisors. In particular, he cites the content and the "lecturing tone" of a telephone conversation and a minute from the Chief of RELOFF dated 30 September 1999.

Although the tone and terms used by his supervisors may sometimes appear inappropriate, and are unjustifiable notwithstanding the Organization's explanations, the Tribunal cannot regard them as "administrative harassment" given the state of relations in the department and the tone and terms he himself used in communicating with them.

15. The complainant observes that despite his excellent performance, he was not awarded a merit increment, whereas others in his department were, although the difference in their ratings did not warrant such a difference in treatment.

The complainant offers no specific evidence of discrimination and Article 6.5 of the Staff Regulations confers no right to an automatic award of a within-grade merit increment.

Consequently, he may not invoke the withholding of the increment to support his allegation of "administrative harassment".

16. The conclusion is that although, contrary to the ILO's assertion, the complaint is receivable, there being nothing to prevent the complainant from citing an accumulation of events over time to support an allegation of harassment, his plea of "administrative harassment" cannot succeed.

17. The evidence shows, however, that the ILO did fail in the duty incumbent on all international organisations to treat staff members with dignity and avoid causing them undue and unnecessary injury.

As it admitted in the letter of 14 March 2000, the ILO was aware of the unhealthy working atmosphere in the department where the complainant was employed. That atmosphere was allowed to linger "without the necessary assistance being given to sort matters out". Moreover, it failed to draw all the necessary conclusions from the fact that one interpreter had made unfounded accusations against the complainant which had seriously impaired his good name and dignity.

Lastly, the absence of appraisal reports on the complainant's performance since 1995 betrays unsound

administration for which the report written on 6 September 2000, three months before he was due to retire, cannot provide relief. The complainant specifies no amount for his claim to financial compensation. The Tribunal considers that the moral injury he suffered warrants redress in an amount of 3,000 euros.

18. Since his claims succeed in part, he is entitled to costs, which the Tribunal sets at 20,000 French francs.

DECISION

For the above reasons,

1. The ILO shall pay the complainant the sum of 3,000 euros in moral damages.

2. It shall pay him 20,000 French francs in costs.

3. His other claims are dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 27 July 2001.