

THIRTY-EIGHTH ORDINARY SESSION

In re HAGLUND

Judgment No. 296

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Birger Haglund on 5 March 1976, the ILO's reply of 26 April 1976, the complainant's communication of 12 June 1976 and the ILO's communication of 12 July 1976;

Considering Article II, paragraphs 1 and 5, and Article VII of the Statute of the Tribunal, Articles 8.5, 9.4, 13.1 and 13.2 of the Staff Regulations of the International Labour Office, and paragraphs 23, 24, 34 and following of Annex III thereto, and ILO Circular 7 - Travel - No. 7 (Revision) of 15 March 1973;

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. The International Labour Office sent the complainant to Kabul on a fixed-term appointment from 28 March 1971 to 27 March 1972. While at Kabul he received a further appointment from 1 February to 31 July 1973. On 3 August he was transferred to Bonaire in the Netherlands Antilles and his appointment was extended in turn to 31 July 1974, 31 July 1975 and 31 July 1976.

B. The complainant travelled from Kabul to Rome on 25 July 1973 to Geneva on 26 July, to Port-of-Spain on 2 August and to Bonaire on 13 August. On the flight from Kabul to Rome a suitcase of his was lost. After a lengthy correspondence between the ILO in Geneva, the complainant in Bonaire, the United Nations Development Programme (UNDP) office in Kabul and Ariana Afghan Airlines, the airline company recognised liability and paid him \$400 in compensation under the Warsaw Convention. In accordance with Article 8.5 of the Staff Regulations the ILO made up the difference between the \$400 and the total amount of the loss he had incurred.

C. Before leaving Kabul the complainant had asked the UNDP office there to ship seven crates to Port-of-Spain and seven to Lidingö, in Sweden, saying that he himself would arrange insurance with the ILO in Geneva. No such arrangement was made with the ILO. With the ILO's authorisation the UNDP instructed the Ariana Packers Company to ship the crates. Ariana Afghan Airlines transported them as far as Beirut and Pan American World Airways was responsible for transporting them to Port-of-Spain. On 8 February 1974 the complainant reported that four crates had arrived in Bonaire in good condition, one contained the debris of damaged articles, one contained articles which did not belong to him and the seventh - later recovered - was missing. On the same day he wrote to the UNDP office in Kabul complaining that the Ariana Packers Company had not insured the shipment. The company denied liability and the ILO informed the complainant that if he did not get compensation from any airline or insurance company it would indemnify him under Article 8.5 of the Staff Regulations for loss of his suitcase and damage to or loss of the crates. On 8 April 1975 the ILO decided in accordance with Article 8.5 to pay him \$309.64, i.e. the difference between the maximum amount of compensation - \$1,000 - allowed under the Staff Regulations and the compensation already paid to him for loss of his suitcase. That decision was notified to him on 8 April 1975. On 5 May he asked to have the matter reconsidered. By word of mouth that request was refused.

D. The complainant points out that his loss exceeds \$5,000 and was due to circumstances beyond his control, namely the failure of the UNDP office in Kabul to insure the consignment. He cannot therefore agree to the amount of compensation paid by the ILO and asks the Tribunal to order the UNDP to pay him the sum of \$5,407 corresponding to the actual amount of his loss.

E. In its reply the ILO points out that, as indeed appears from the complaint form, the complaint is brought against the UNDP. The Tribunal does not have jurisdiction over the UNDP under Article II, paragraph 5, of its Statute and is therefore not competent to hear the complaint. But the ILO admits that the complainant is also impugning a decision by the ILO to award him the compensation permitted under Article 8.5 of the Staff Regulations and to that extent the Tribunal is competent. The ILO contends, however, that since the complaint is time-barred and the

internal means of redress have not been exhausted the complaint is irreceivable. No arguments are called for on the merits. Should the Tribunal take a different view the Organisation asks it to invite such arguments.

F. By communication of 12 July 1976 the ILO stated that since the date on which the complaint had been lodged it had decided to depart from earlier practice and distinguish between the loss due to the disappearance of a suitcase and the loss due to the disappearance or replacement of removal crates. As to the suitcase the amount of actual loss - \$690.36 - has been refunded, and as to the crates a further sum of \$690.36 has been paid "to allow for payment of the maximum indemnification of \$1,000 provided for in Article 8.5 of the Staff Regulations ...".

CONSIDERATIONS:

1. The relief sought by the complainant is an order for the payment by a body called the UNDP of US\$5,407 as compensation for the loss of or damage to his effects on a journey from Afghanistan to the Antilles: the Organisation objects that the complaint is irreceivable.

2. The complainant was an official of the defendant organisation and his effects were being moved because he was being transferred from the one country to the other. It is manifest that in a complaint against an organisation the Tribunal cannot make an order requiring payment by some other body. It appears however from the facts and circumstances set out in the Organisation's reply that the complainant could allege (though in the Organisation's view the allegation would fail) that the UNDP were acting as agents for the Organisation in arranging the removal of the effects and that in this way the Organisation might be made responsible. This being the position, the Tribunal will not decide the question of receivability on this ground.

3. Article VII of the Tribunal's Statute 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. It further provides that where the Administration fails to take a decision upon any claim of an official within sixty days, the person concerned may have recourse to the Tribunal.

4. In 1974 the complainant supplied the Organisation with details of his loss and damage. On 8 April 1975 the Organisation paid him an indemnity which they said was the maximum permissible under the Staff Regulations. On 5 May 1975 the complainant replied that the indemnity was so small that he would like to ask if it was possible to re-examine the case.

No reply was made to this letter and on 5 March 1976 the complainant filed his complaint with the Tribunal. He did not lodge a complaint with the Director-General and he does not state any decision by the Director-General from which he is appealing. He says only that he has made "two years of efforts ... without acceptable resolution".

5. The most favourable way in which the ease for receivability could be put would be to treat his letter of 5 May 1975 as a claim and to contend that the Director-General had failed to take a decision upon it within sixty days. But on this footing the latest date for the filing of a complaint to the Tribunal would be 9 October 1975 and, as stated above no complaint was filed until 5 March 1976. The complaint is therefore time-barred and as such irreceivable.

DECISION:

For this reason,

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

M. Letourneur
André Grisel
Devlin

