

**In re PINTO DE MAGALHAES**

**Judgment No. 311**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Constantino Pinto de Magalhaes on 25 May 1976, the ILO's reply of 3 August 1976, the complainant's rejoinder of 29 September 1976, the ILO's surrejoinder of 29 December 1976, the complainant's further memorandum of 10 January 1977 and the ILO's reply thereto of 28 January 1977;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Articles 1.1 to 1.7, 1.9, 2.4, 4.2, 6.11, 12.1 to 12.9, 13.1 and 13.2 of the Staff Regulations of the International Labour Office, and Appendix IV to those Staff Regulations;

Having examined the documents in the dossier and disallowed the oral proceedings requested by the complainant;

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

A. The complainant joined the staff of the International Labour Office in 1963 and was employed in turn in the Library, the Registry Branch, the Personnel Department and the Finance and General Administration<sup>4</sup>Department. On 1 April 1965 he was given a permanent appointment. Just before lodging his complaint and indeed before the events which led him to lodge it, he was assigned to the Budget and Finance Branch of the Finance and Central Administrative Services Department, where he held a G.5 post in the Payment Authorisation Section as member of a "group" responsible for sending out claims for payment. The "group" consisted of himself and Mr. Geiger, who was graded G.6.

B. At the end of 1975 the complainant and Mr. Geiger, at the latter's suggestion, considered opening a joint bank account into which Mr. Geiger's salary would be paid and from which withdrawals could be made only if the signatures of both account holders were obtained. The complainant says that Mr. Geiger "tended to be spendthrift" and wanted in this way to check his own spending. The complainant asked Mr. Mégevand, the Chief of the Payment Authorisation Section, what he thought of such an arrangement. Mr. Mégevand informed Mr. von Mutius, the Chief of the Budget and Finance Branch, who in turn told his superior, Mr. Denby, the Chief of the Finance and Central Administrative Services Department. According to the ILO Mr. Denby took the view that the complainant should be transferred within the Department. It was thought improper that in a financial branch a staff member should be unable to draw his own salary "but should have to ask a subordinate to pay out money to him"; it was therefore in the Office's interests to "separate" the two officials, "who, even if the proposed arrangement was not made, had shown such close links of interdependence, and to transfer the complainant forthwith".

C. The decision to transfer the complainant was notified to him on 15 December 1975, with an explanation that it was not a sanction. The Personnel Department confirmed it on 23 December. On 9 January 1976 the complainant submitted to the Director-General a "complaint" within the meaning of Article 13.2 of the Staff Regulations. He contended that it was as a staff union delegate that he had wished to consent to Mr. Geiger's request that "without his wife's knowledge, he manage his salary so as to prevent him from making too large withdrawals and put his finances on a sound footing"; he complained that his trade union rights had been infringed, that he had not been given his new job description and that his transfer had been abrupt and not substantiated. On 8 March 1976 Mr. McDonald, Deputy Director-General, told the complainant on the Director-General's behalf that the decision had been taken in the Office's interests that it had no bearing on his activities as a staff union delegate, that his new duties - in the Office Supply Section - matched his qualifications and that he had been informed orally of the reasons for his transfer. Mr. McDonald added that the Director-General "would have liked the decision to take effect after somewhat longer notice so as to make it clear that it implied no censure of the complainant's work or any sanction whatever" and that if the complainant wanted another transfer the Director-General would give his application priority. Lastly, Mr. McDonald said that the Director-General had decided not to refer the "complaint" to the Joint Committee. On 25 May 1976 the complainant lodged the present complaint.

D. The complainant contends that the suddenness of his transfer bred such damaging rumours about him in the Office that his health has suffered. His career prospects, which once looked highly promising, are impaired. The arrangement he had in mind with Mr. Geiger never came to pass and the decision to transfer him was taken from motives which had nothing to do with the running of the Office and is therefore a covert disciplinary measure tantamount to misuse of authority.

E. In his claims for relief, as amended in his rejoinder, the complainant asks the Tribunal (a) to declare that the Director-General's decision of 8 March 1976 upholding the decision of 15 December 1975 is unlawful because it was tainted with formal and procedural flaws, took account of false allegations of fact, was based on a misinterpretation of facts and constituted a misuse of authority; (b) to find that on account of Mr. von Mutius's animosity towards him neither the quashing of the decision of 8 March 1976 and his reinstatement in the post which he held up to 15 December 1975 nor his transfer to some other branch in the Office would compensate him for the wrong done to him; and (c) to order accordingly that the ILO should pay him the sum of 200,000 Swiss francs as damages for the material and moral prejudice he has suffered because of the decision of 15 December 1975 and the way in which it came to be taken.

F. The ILO replies that the decision that the complainant should be transferred from one branch to another within the same department was taken on 15 December 1975 by the chief of that department, that it was confirmed on 23 December by the Personnel Department, that the Director-General's decision of 8 March 1976 on the internal "complaint" made it final and that it was therefore not taken by an authority lacking the competence to take it. The decision is not tainted with any formal or procedural flaw since the Staff Regulations lay down no special procedure for the transfer of staff members on the instructions of the Director-General or any chief. There is mistake neither of law nor of fact, nor misuse of authority nor have clearly mistaken conclusions been drawn from the dossier. The complainant was transferred because it is not in the Office's interests, especially in a financial branch, "that a supervisor and his subordinate should maintain such close relations that the former depends on the latter's consent for drawing his salary". The reason why the complainant was transferred, and not Mr. Geiger, was that he had not served so long in the branch and "held a lower grade, which made it easier to transfer him, while Mr. Geiger, being the head of the group, had longer experience and more important duties". Lastly, the ILO maintains that the claim for damages is not receivable since it did not form part of the internal "complaint" and the internal means of redress were therefore not exhausted.

G. Since the decision to transfer the complainant is not tainted with any of the flaws which entitle the Tribunal to interfere and the complaint is therefore unfounded the ILO asks the Tribunal to dismiss it.

#### CONSIDERATIONS:

The complainant worked in the Payment Authorisation Section of the Budget and Finance Branch and belonged to a group consisting of Mr. Geiger and himself. In November 1975 he asked the Chief of the Section whether one staff member could have his salary paid to another - in other words, whether Mr. Geiger's salary could be paid into a joint account to be opened with another staff member.

The Chief of the Section informed the Chief of the Budget and Finance Branch, who in turn told his superior, the Chief of the Finance and Central Administrative Services Department.

This senior official spoke to the complainant and decided to transfer him forthwith to the Office Supply Section, in the same department.

It appears from the documents in the dossier that the impugned decision to transfer the complainant was a preventive measure taken on the grounds that he had asked that the salary of another staff member, Mr. Geiger, should be paid into a joint bank account, that request afforded clear proof of the close dependence of one staff member on another belonging to the same group, and such a relationship was inadmissible between officials responsible for applying financial controls.

But at the date when the decision was taken the complainant had merely asked whether it was possible to open a joint bank account with Mr. Geiger. Consequently the decision to transfer him was made upon a hypothesis which never in fact matured since all that the complainant did was, quite correctly, to ask the opinion of his superiors upon what was at most a proposal and to drop the matter when they expressed disapproval. Hence it appears that that decision drew clearly mistaken conclusions from the facts and should therefore be quashed.

The circumstances in which the complainant was transferred are such as to warrant payment of damages for the moral prejudice he suffered. Damages will be fairly set at 10,000 Swiss francs.

DECISION:

For the above reasons,

1. The Director-General's decision of 8 March 1976 is quashed.
2. The ILO shall pay the complainant the sum of 10,000 Swiss francs as damages.

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.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet