

## EIGHTH ORDINARY SESSION

### *In re* LAMMING

#### Judgment No. 40

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Norman Goodwin Lamming on 7 March 1960, the reply of the respondent organisation of 29 April, the further communications of the complainant of 20 June and 4 July 1960 and the Comments thereon of the organisation of 20 July 1960;

Considering Articles 11, 16, 108 and Annex V of the Staff Regulations of the organisation and Article XI of the agreement between the United Nations and the organisation of 14 December 1946;

Having heard Mr. D.N. Pritt, Q.C., counsel for complainant and Mr. Francis M.S. Peel, agent of the organisation, in public sitting on 2 September 1960;

Considering that the pertinent facts at issue are the following:

A. In September, 1956, the Co-operation and Handicrafts Service of the International Labour Office of which complainant was serving as Chief, was raised to the status of a Division. At the same time, Mr. S.N. Roy, formerly Assistant Chief of the Manpower Division was designated Chief of the newly-created Co-operation Division and complainant designated Assistant Chief retaining the grade of counsellor in which grade he had been previously serving.

B. After the formation of the new Division, differences of opinion arose between complainant and his superior, Mr. Roy, principally related to the division of responsibilities between them and the description of complainant's duties in the Division.

C. Efforts made within the Division to resolve these differences did not satisfy complainant who, on 16 November 1959, filed a complaint with the Director-General under Article 11 of the Staff Regulations, alleging:

(a) that a statement in complainant's last annual report that complainant had no specific duties in the Division, combined with the absence of an official description of the duties attaching to his grade, adversely affected an objective evaluation of complainant's work and conduct, and amounted to treatment inconsistent with the Staff Regulations; and

(b) that the attitude of Mr. Roy undermined complainant's prestige and authority and made it impossible for him to perform satisfactorily his duties and constituted unfair or unjustifiable treatment by a superior official.

D. The Reports Board having recommended that complainant be given an annual increment, the Director-General decided on 11 December 1959 that this intervening award settled the complaint of treatment inconsistent with the Staff Regulations. The complaint of unfair or unjustifiable treatment by a superior official was however referred to the Joint Committee for observations and report.

E. The Joint Committee was accordingly established for this purpose and met in January and February 1960. After examining the complaint the Committee concluded that there had been failings on the part of both complainant and Mr. Roy, but that complainant had not been subjected to unjustifiable or unfair treatment on the part of Mr. Roy. The Director-General accepted this finding and communicated his decision to complainant on 10 March 1960.

F. In the complaint filed on 7 March 1960, complainant requested the Tribunal to order and direct that a proper description of the duties and responsibilities of complainant's grade of counsellor be issued in accordance with Article 16 of the Staff Regulations and that after such a description had been issued, complainant be given full opportunity in accordance with that description to engage fully in the work of his Division. Subsequently, by a communication dated 20 June 1960, complainant formally requested the Tribunal to take cognisance of that part of his earlier dispute with the organisation which concerned the allegation of unfair or unjustifiable treatment and which had been referred by the Director-General to the Joint Committee, on the grounds that complainant had

become apprised of certain irregularities in the selection of the members of the Joint Committee to be appointed by the Staff Union Committee.

G. The text of Article 16 of the Staff Regulations was elaborated in 1951 in the course of a revision of the Staff Regulations made in consultation with representatives of the staff. It was approved by the Governing Body in March 1952.

H. In Article XI of an agreement between the United Nations and the organisation of 14 December 1946, the organisation as a Specialised Agency in relationship with the United Nations had committed itself to the development of a single unified international civil service and to the development of common personnel standards.

I. In 1953 the Consultative Committee on Administrative Questions endeavoured to formulate common standards for the professional category. For this purpose a working party met in Rome and submitted tentative standards for grades P.1 and P.5., the latter including the grade of counsellor to which complainant belongs.

J. In 1955, the General Assembly of the United Nations set up a committee of experts known as the Salary Review Committee to undertake a comprehensive review of the salary, allowances and benefits system of the United Nations and the Specialised Agencies, and in June 1956 the organisation submitted to that Committee an analytical account of the structure of its staff. This account contained a description of the various professional grades in the organisation, included amongst which was the grade of counsellor, and with some modifications this analysis is valid as a statement of the position today.

K. The report of the Salary Review Committee to the General Assembly of the United Nations was made at the 1956 session. The Committee expressed itself as not being satisfied with the common grading standards which had been applied in all the organisations concerned to posts at the professional level and above and it recommended that the organisations should consult together to develop common grading standards with advice from the International Civil Service Advisory Board or outside experts if thought desirable. Further, it recommended that the conclusions of the organisations regarding common grading standards should be examined by the International Civil Service Advisory Board.

L. In 1956, the Administrative Committee on Co-ordination agreed that the advice of the International Civil Service Advisory Board should be sought on the general principles which had guided the development and establishment of the common system of grading. This study was begun by the International Civil Service Advisory Board in February 1958 and in that month the organisation submitted to it a study entitled "Classification Standards for Professional and Director Categories". At the same time the organisation intimated that it would support any effort to further inter-organisation co-ordination in the field of classification standards.

M. In March 1958 the International Civil Service Advisory Board in a preliminary report on its investigations stated that it required further information on present grading standards and practices in the United Nations and the Specialised Agencies.

It suggested that the most effective way of assembling this material might be to appoint an official or officials to the task. Accordingly, a United Nations official was so appointed. In conformity with this suggestion, the Director-General of the organisation established an internal working party, which included representatives of the staff, to assemble material on the present position. This material was forwarded to the above-mentioned United Nations official whose report was the subject of consideration by the Consultative Committee on Administrative Questions at a meeting which recently ended.

IN LAW

#### Regarding the submission of complainant in his complaint dated 7 March 1960

1. Article 16 of the Staff Regulations provides that a description of the duties and responsibilities attaching to each grade shall be established by the Director-General after consulting the Administrative Committee.

2. Complainant submits that there exists no justification for the failure of the Director-General to comply with the provisions of Article 16 and to define the duties and responsibilities of each grade including that of complainant in accordance with that Article and that the Tribunal should now direct him so to do.

3. The organisation admits that the Director-General has not so far discharged his obligation under the Article but observes that the Article is silent as to any dates by which it must be effectively complied with.

4. In the absence of any specific time limit for the implementation of the Article, the Director-General is nevertheless bound to give effect to this Article within a reasonable time.

5. In view of the obligations undertaken by the organisation to assist in the development of a single unified international civil service and the development of common personnel standards and the perplexities arising by reason of the number and varying character of organisations similarly concerned and the inevitably protracted consultations which would necessarily be required to be undertaken, it could not have been envisaged that a decision in accordance with Article 16 by the Director-General could have been given either immediately or at an early date. Negotiations for an ultimate settlement of the grading problem by all the parties interested are at present proceeding and it is hoped will be brought to finality without further undue delay, but until such settlement is reached the action of the Director-General in deferring to make Article 16 effective is not unreasonable. Pending the promulgation of grade descriptions complainant cannot require that he be assigned duties and responsibilities corresponding to such future descriptions. Consequently his claims under this head must fail.

Regarding complainant's request of 20 June 1960 that the Tribunal take cognisance of that part of his original dispute with the defendant organisation relating to unfair or unjustifiable treatment

6. Complainant's plea in this respect, which does not have the same object nor the same basis in law as his original pleas, was submitted for the first time in a communication transmitted to and received by the Registry on 20 June 1960, that is to say after the expiry of the time limit of ninety days laid down for the lodging of complaints in Article VII, paragraph 2 of the Statute of the Tribunal. The circumstance that irregularities in the composition of the Joint Committee, on which complainant relies, became known to him only after the event, cannot have the effect of extending the ninety day time limit to his benefit, the said time limit being binding upon the court. Article 18 of the Rules of Court authorises the Tribunal to extend only those time limits provided in the Rules and not those provided in the Statute. Complainant's plea under this head is therefore out of time and not receivable.

#### DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 13 September 1960 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Gutteridge, Assistant Registrar acting as Registrar of the Tribunal.

Forster of Harraby  
Maxime Letourneur  
André Grisel  
Frank Gutteridge