

FOURTEENTH ORDINARY SESSION

***In re* LINDSEY**

(Failure to execute Judgment No. 61)

Judgment No. 82

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Telecommunication Union drawn up by Mr. R.V. Lindsey on 22 October 1963, the reply of ITU dated 9 January 1964, the additional statement of the complainant dated 28 February 1964 and ITU's further reply dated 4 May 1964;

Considering the applications to intervene that were lodged by Messrs. Matthey and Millot on 2 April 1965;

Considering the applications to intervene that were lodged by Messrs. Balfroid, Chapuis and Roig acting on their own behalf and on behalf of the Staff Association of ITU and also dated 2 April 1965;

Considering articles VI and XII of the Statute of the Tribunal and article 17 of its Rules of Court;

Having heard Mr. Jean-Flavien Lalive, assisted by Mr. C. Bénar, legal advisers to the complainant and intervenors, and Mr. Charles-Edouard Muller, agent of the International Telecommunication Union, in public sitting on 6 April 1965;

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

As a result of the refusal by ITU to give effect to item 7 of the operative part of the judgment delivered by the Administrative Tribunal on 4 September 1962 on the complaint submitted by Mr. Lindsey, Mr. Lindsey has laid before the Tribunal a new complaint praying it to:

- (1) state that Judgment No. 61 of 4 September 1962 is and has been since 4 September 1962 immediately operative as regards its item 7;
- (2) direct the International Telecommunication Union to pay to the complainant immediately the amount of 13,095.47 Swiss francs to be transmitted to his legal adviser, including interest on the sum overdue at the rate of 5 per cent. annually from 30 October 1962;
- (3) order that the costs of the present case, together with fair compensation, shall be paid by the International Telecommunication Union.

The International Telecommunication Union submits that the complaint should be dismissed on the grounds of the incompetence of the Tribunal, of the lack of interest on the part of Mr. Lindsey and because, in any event, the complaint is not well founded.

CONSIDERATIONS:

On the competence of the Tribunal:

1. The three points of the complaint as defined above are aimed at remedying the damage suffered by Mr. Lindsey through the delay on the part of ITU in giving effect to item 7 of the operative part of the aforementioned judgment. They thus bear upon the rights devolving directly from this judgment, delivered within the bounds of the competence of the Tribunal. The Tribunal is therefore competent to examine the new complaint submitted by Mr. Lindsey and, in particular, to judge whether it is appropriate to award compensation to remedy the damage caused by an infringement of those rights.

On the receivability of the complaint:

2. The above-mentioned judgment of 4 September 1962 was delivered, as stated above, on the complaint submitted by Mr. Lindsey and it awarded to him personally reimbursement of the expenses incurred by him. Mr. Lindsey has therefore an interest and is consequently qualified to lodge a complaint based on the submissions described above.

On the receivability of the interventions:

3. The intervenors Matthey and Millot, to whom Judgment No. 61 had awarded reimbursement of the expenses incurred by them, are holders of rights liable to be affected by the present judgment; their intervention is therefore receivable. On the other hand, the intervenors Balfroid, Chapuis and Roig, in so far as they are acting on their own behalf, do not enjoy any right of that kind, and the Staff Association has no cause to intervene in the present proceedings. Their interventions are accordingly not receivable.

On the request made by ITU that the legal opinion given by Professor Guggenheim and Professor Marek, submitted to the Tribunal on 2 April 1963, be omitted from the dossier:

4. This legal opinion, instigated by Messrs. Matthey and Millot who are allowed to intervene in the present proceedings, was sent to the organisation on 2 April 1965 and reached it on the following day. While it is stipulated in article 17, paragraph 4, of the Rules of Court of the Tribunal that applications to intervene may be made at any stage, that does not necessarily mean that intervenors are entitled to invoke up to the day of the proceedings any facts, evidence and new documents. In the present instance, however, it may be noted that the legal opinion submitted deals solely with points of law and raises no new points. Consequently, the counsel of the organisation, who learned of this legal opinion three days before the oral proceedings began, has been able usefully to discuss the arguments and the conclusions. The conflicting character of the procedure has thus been respected and the above-mentioned request cannot be accepted.

On the substance:

In regard to items 1 and 2 of Mr. Lindsey's submissions:

5. In accordance with a well-established and generally recognised principle of law, any judgment compelling one party to pay to the other party a sum of money implies in itself, the obligation to pay that sum without delay. It could be otherwise only in the event that the judgment expressly mentioned that this sum would be payable only at a later date and where the statutes of the court concerned make provision for the right to appeal against the judgments delivered by it and formally state that exercise of that right of appeal carries suspensory effect on execution of those judgments.

6. In the present case, on the one hand, Judgment No. 61 delivered on 4 September 1962 did not indicate that the sum mentioned in item 7 of its operative part would be payable only at a later date. On the other hand, according to article VI, paragraph 1, of the Statute of the Tribunal, its "judgments shall be final and without appeal"; while, in fact, ITU, by virtue of article XII of the aforementioned Statute, has the option of asking the International Court of Justice for an opinion, which is binding, on the validity of judgments delivered by the Tribunal, this option, which can moreover be used without any restriction as to time, does not affect, in the absence of any explicit provisions in the above-mentioned article XII, the immediately operative character of those judgments. With regard to the opinion which the organisation may possibly request from the Court by virtue of article VII of the Agreement between the United Nations and ITU, this opinion is only of an advisory character and could not, in any event, have any influence on the execution of the judgment of the Tribunal.

7. Secondly, the fact of the organisation giving effect to a judgment of the Administrative Tribunal could not, under any circumstances, be considered as acceptance of the said judgment and, in particular, could not divest it of its right to submit the judgment to the International Court of Justice for a statutory or advisory opinion.

8. Finally, without there being any occasion to consider whether ITU could have requested the Tribunal to order a stay of execution for payment of the sum fixed in giving effect to item 7 of the operative part of the judgment dated 4 September 1962, by order of the President of the Tribunal dated 30 October 1962, it is sufficient to note that no such request has been made.

9. It follows from what has been stated above that item 7 of the operative part of the judgment dated 4 September

1962 was, in itself, immediately operative; consequently, no explicit declaration to that effect is required.

In regard to item 3 of Mr. Lindsey's submissions:

10. Mr. Lindsey is entitled to an indemnity compensating him for the damage he has suffered through the delay on the part of ITU in giving effect to item 7 of the operative part of the aforementioned judgment.

It emerges from all the evidence in the dossier that this damage will be equitably remedied by deciding that the sum of 13,095.47 Swiss francs fixed by the aforementioned order of the President of the Tribunal shall bear interest at the rate of 5 per cent. payable to Mr. Lindsey as from the thirtieth day after notification to ITU of the said order.

Although Mr. Lindsey also claimed the allocation of an additional indemnity, he has not, at the time of the present judgment, produced justification of any damage which would not be remedied by payment of the interest mentioned.

DECISION:

1. The intervention of Messrs. Matthey and Millot is stated to be receivable.
2. The intervention of Messrs. Balfroid, Chapuis and Roig, and that of the Staff Association of ITU, are dismissed as not receivable.
3. No ruling is necessary on items 1 and 2 of Mr. Lindsey's submissions.
4. The amount of 13,095.47 Swiss francs fixed by order of the President of the Tribunal on 30 October 1962 in implementation of item 7 of the operative part of the judgment of the Administrative Tribunal dated 4 September 1962 shall bear interest at the rate of 5 per cent. as from 1 December 1962.
5. The remainder of the submissions of Mr. Lindsey's complaint are dismissed.
6. The request made by ITU that the legal opinion given by Professor Guggenheim and Professor Marek be omitted from the proceedings is dismissed.
7. The costs incurred by the complainant and by the intervenors Matthey and Millot in connection with the present appeal, the amount of which shall be fixed by the President of the Tribunal, shall be borne by the organisation.

In witness of this judgment, delivered in public sitting in Geneva on 10 April 1965, by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine