

FOURTEENTH ORDINARY SESSION

In re JURADO

(No. 3 - Grant of Sick Leave)

Judgment No. 85

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado on 12 February 1965 and the reply of the Organisation dated 10 March 1965;

Considering article II of the Statute of the Tribunal and article 8.6 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed;

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

A. After being granted sick leave at his own request with effect from 14 January 1964, the complainant announced in November 1964 his intention of resuming work. Following a medical examination by a specialist designated by the medical adviser of the International Labour Office, the latter recommended the Chief of Personnel to permit a trial resumption of work for one month as a therapeutic measure. On 13 November 1964 the complainant resumed work without being informed, for medical reasons, that it was only for a trial period. On 21 December 1964 the complainant was informed by the assistant to the medical adviser that the trial had not given the results that had been hoped for, that he was unfit for normal work and that his sick leave would have to be extended. This opinion was confirmed in writing on 13 January 1965.

B. In reply to a protest sated 18 January 1965 the Chief of Personnel (who henceforth bore the title of Deputy Chief of the Personnel Department) informed the complainant, in a letter dated 19 January 1965, that in the medical adviser's view his behaviour was such that his state of health could not be regarded as satisfactory and compatible with normal working and that accordingly the Chief of Personnel had no option but to extend his sick leave with effect from 8 a.m. on 21 January 1965. On 21 January the chief of Mr. Jurado's section informed him, at his request and in writing, that as a result of the letter of 19 January he was bound to consider that the complainant's service in his section had temporarily ended and he requested him to hand in any unfinished work.

C. In a letter dated 2 February 1965 the Chief of Personnel, in reply to protests by the complainant, informed him that, in view of the medical adviser's opinion, his sick leave was extended with effect from 21 January, but that if the complainant wished to contest this opinion his own doctor or he himself could still get in touch with the medical adviser. If the disagreement persisted, the matter could then be submitted either to the medical specialist who had examined Mr. Jurado earlier at the request of the medical adviser, or to an ad hoc medical panel composed of a specialist selected by the I.L.O., the doctor treating Mr. Jurado and a third specialist selected by these two doctors. The letter added that if Mr. Jurado decided, against the advice of the medical adviser and that of the specialist or medical panel (if adverse), to resume work, the quality of his work and his assiduousness in the discharge of his duties would be assessed on their merits and that Mr. Jurado would not be able to argue from the medical adviser's opinion on his state of health.

D. In his complaint, Mr. Jurado concludes by challenging the competence of the judges who examined his earlier complaints. In substance he prays that the decision of 19 January 1965 should be rescinded, as should that of 2 February 1965 in so far as it confirms the former, and subsidiarily that various items of cash compensation should be paid for the damage suffered. The Organisation prays that the Tribunal should declare the conclusions of the complaint to be irreceivable and, subsidiarily, that it should be dismissed as unfounded.

CONSIDERATIONS:

As regards the alleged incompetence of the judges:

1. The fact that the judges who sat on the cases previously brought by Mr. Jurado before the Tribunal, which gave rise to Judgment No. 70 by that body on 11 September 1964 and Judgment No. 83 given on the same date as the present judgment, are required to hear the new cases instituted by the same complainant, cannot in itself be regarded as constituting a valid ground for challenging the competence of these judges.

As regards the conclusions directed against the letters from the Chief of Personnel of the I.L.O. dated 19 January and 2 February 1965:

2. The letter dated 19 January 1965, in which the Chief of Personnel informed Mr. Jurado that he was extending his sick leave with effect from 8 a.m. on 21 January 1965, constituted a decision calculated to give the complainant ground for a grievance, which could therefore be attacked before the Tribunal.

But the letter dated 2 February 1965, in which the Chief of Personnel informed Mr. Jurado that he could either take an extension of his sick leave or get in touch with the medical adviser of the I.L.O. and ask for his case to be examined by a medical specialist or an ad hoc medical panel, or terminate his sick leave and resume work entirely at his own risk, had a twofold purpose; in the first place, it effectively rescinded the previous decision of 19 January and therefore invalidated the present appeal in so far as it is directed against that decision and, in the second place, it gave Mr. Jurado an opportunity of choosing between three possible courses of action; on this point the letter itself involved no decision and could not therefore be submitted to the Administrative Tribunal.

It follows that there are no grounds for the present appeal in so far as it is directed against the part of the letter of 2 February 1965 cancelling the letter of 19 January, nor is the appeal receivable in so far as it refers to the part of the letter of 2 February 1965 which confines itself to offering a number of choices to Mr. Jurado.

As regards the conclusions requesting compensation:

3. The said conclusions must be dismissed either as a consequence of the rejection of the previous conclusions or because they are unconnected with the dispute.

DECISION:

1. No ruling is called for on the conclusions of the complaint in so far as the latter is directed against the decision of the Chief of Personnel dated 19 January 1965.

2. The remaining conclusions of the complaint are dismissed.

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 subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine