

THIRTY-SECOND ORDINARY SESSION

In re HARROD

Judgment No. 236

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Jeffrey Harrod on 30 March 1973, the Organisation's reply of 25 April 1973, the complainant's rejoinder of 4 July 1973, the Organisation's surrejoinder of 31 August 1973, and the complainant's further memorandum of 26 April 1974;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Article 1.9 of the ILO Staff Regulations and Article V, paragraph 1, of the Regulations of the International Institute for Labour Studies;

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

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

A. On 6 October 1969 the complainant received an appointment for nine months to the staff of the International Institute for Labour Studies. On 1 July 1970 his appointment was extended from 6 July 1970 to 5 July 1972, and on 1 September 1971 to 31 December 1975. During 1972 differences of opinion arose between the complainant and Mr. Walker, the acting Director of the Institute, who has since become its Director. These were expressed, in particular, in a minute dated 7 November 1972 addressed to the Director by the complainant. The Administration then thought it advisable to transfer the complainant to a branch in the International Labour Office itself. By a minute of 17 November 1972 the complainant was told of his transfer to a post in the same grade. He accepted the transfer under strong protest and with reservations about its lawfulness. By mutual consent between the Administration and the complainant he left on 31 December 1972.

B. In his complaint the complainant alleges that his transfer was unlawful; it was, he maintains, tantamount to an abuse of authority owing to the real reasons underlying it. It implied a change in the legal status of Institute officials on fixed-term appointments, as appears from the ILO staff list published on 1 January 1973, which named all Institute officials, whereas officials on fixed-term appointments had not appeared in previous lists. The complainant objects to the Organisation's decision not to answer certain articles on the Institute which appeared in the press and which he regards as libellous of the Institute and hence of its officials. In his complaint he therefore impugns the decision of 17 November 1972 to transfer him, coupled with the publication on 1 January 1973 of the ILO staff list. He also impugns what he alleges to be a decision of 19 January 1973 which he appears to infer from the Administration's failure to comment on the press articles published on 1 December 1972.

C. In his claims for relief he asks the Tribunal to declare unlawful his transfer of 17 November 1972 and the change of status implicit in the staff list dated 1 January 1973, to recommend that a statement should be made to protect the reputation of certain staff members, and to award damages for the prejudice he has suffered.

D. The Organisation maintains that in so far as the complaint impugns the decision of 17 November 1972 to transfer the complainant, since it was filed with the Registrar of the Tribunal on 30 March 1973 the complaint is time-barred and therefore irreceivable. Insofar as it is directed against the ILO staff list published on 1 January 1973, the Organisation observes that the list does not constitute a decision and merely enumerates the names of employees of the ILO, including, in accordance with Article V, paragraph 1, of the Regulations of the Institute, the names of the Institute's employees. In any case, the Organisation contends, since the complainant ceased to be a staff member on 31 December 1972 he may not refer subsequent occurrences to the Tribunal. As to the alleged decision of 19 January 1973, the Organisation maintains that it took no decision on that date. It is true that the Administration did not react to the press articles to which the complainant alludes, but in such cases it is for the Director-General to determine whether it is in the Organisation's interests to intervene. In any case a complainant may not lodge a complaint in abstracto but only against a decision which affects him directly and constitutes a breach of the terms of his appointment, the applicable provisions of the Staff Regulations or any general rule of law. The Organisation therefore asks the Tribunal to declare the complaint irreceivable.

CONSIDERATIONS:

As to the request for an oral hearing:

1. The Tribunal has already denied the complainant's request for oral proceedings. Nevertheless, it has reconsidered its decision in the light of the arguments advanced by the complainant in his letter of 26 April 1974.
2. The Rules of Court of the Tribunal provide in the first instance for written proceedings to "be followed by oral proceedings if the Tribunal so decides" (Rule 12). It has for many years past been the practice of the Tribunal to allow oral proceedings only in exceptional cases. In the present case it is plain from the above-mentioned letter that the argument which the complainant wishes to advance at an oral hearing relates to criticisms of the Organisation which are outside the Tribunal's competence and which do not touch upon the issue of receivability upon which, as appears below, the Tribunal decides this case. The request is therefore refused.

As to the receivability of the complaint:

3. The complaint was filed on 30 March 1973. To be receivable it must impugn a decision which runs contrary to the terms of the complainant's appointment or to some provision of the Staff Regulations, and which was notified to the complainant not before 30 December 1972.
4. The first decision impugned is a decision notified on 17 November 1972 "coupled with" a decision notified on 1 January 1973. The decision on 17 November 1972 was the decision to transfer the complainant. If this decision is taken by itself, the complaint against it is clearly out of time. The publication on 1 January 1973 of a list of the officials of the ILO neither revives the decision of 17 November 1972 nor creates any new decision. The complaint against the first decision is therefore irreceivable.
5. In the minute dated 7 November 1972 and addressed to the Director of the Institute with copies to the Deputy Directors-General of the ILO and other officers in the organisations, the complainant commented on "interpretations of and omissions in" the Report of the Director of the Institute dated September 1972. The complainant noted that the Report did not refer to the Director's "role in the Imperial Chemical Industries opinion survey on staff attitudes towards trade unions of April 1971": the complainant wrote that he presented this and other points for the Director's "information and consideration" and that he did not raise them in a critical way or make any charges.

The complainant now says in his complaint that the Director's role was criticised in a widely read journal in his country of citizenship in a way which adversely affected the reputation of the Institute; and argues that the Organisation should have made a public statement thereon. What is alleged to constitute the decision of 19 January 1973 is the failure of the Organisation to issue any such statement by that date.

The Organisation neither took nor was asked to take any decision in relation to this matter and, if it had, it would not have been a decision which affected its obligations to the complainant. The complaint against the so-called decision of 19 January 1973 is therefore irreceivable.

DECISION:

For the above reasons,

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 May 1974.

M. Letourneur
André Grisel
Devlin

