

## TWENTY-FIRST ORDINARY SESSION

### ***In re* TARRAB**

#### **Judgment No. 132**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Nazmi Tarrab on 24 November 1967 and brought in conformity with the Rules of Court on 11 December 1967, the reply of the Organisation dated 30 January 1968, complainant's rejoinder of 14 March 1968, the Organisation's reply thereto dated 6 May 1968, complainant's supplementary memorandum of 22 July 1968 and the Organisation's note in reply thereto dated 20 August 1968;

Considering Articles II and VII of the Statute of the Administrative Tribunal, Articles 1.9 and 13.1 and Annex IV of the Staff Regulations of the International Labour Office, and the Director-General's Instruction 60(1) of 26 May 1954, reproduced in paragraph 210© of section 1 of Part IV of the Office Manual;

Considering the report on the mission carried out in Beirut and Istanbul by the Assistant to the Legal Adviser of the ILO, produced by the Office on 24 October 1968 in response to a request made by the Tribunal on 17 October, the observations of complainant dated 18 November 1968 on that report, and the letter dated 29 November 1968 from the Director-General of the International Labour Office in reply to those observations;

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

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

A. Mr. Tarrab, who is of Syrian nationality, was appointed to the Manpower Division of the International Labour Office on 28 December 1957 as Assistant Member of Division (P.1) and promoted to Grade P.2/P.3 on 1 January 1961; on 1 October 1962 he was transferred at his own request to the Organisation's Istanbul Office, which at that time was known as the "Field Office for the Near and Middle East", and continued to be employed there until the beginning of May 1966. In August 1965 he requested a transfer to the office which the ILO had decided to set up in Beirut. In December 1965 he applied for a P.4 post in the International Labour Standards Division at the Geneva headquarters of the ILO; and in March 1966 he applied for the post of Deputy Director of the Istanbul Office, which had meanwhile fallen vacant. Of these various applications, that for transfer to Beirut was granted, and Mr Tarrab took up his post there on 3 May 1966.

B. The Director of the new Beirut Office, Mr Ribeiro, took up his post on 15 June 1966, Mr. Tarrab having been in charge pending his arrival. Both officials were under the authority of the ILO Regional Co-ordinator at Istanbul. On 30 July 1966 Mr. Tarrab was given the title of Deputy Director of the Beirut Office without change in grade. Between June 1966 and April 1967 differences of opinion arose between complainant and the Director of the Beirut Office on minor matters of internal management. As a result of these differences the Director of the Office submitted a memorandum to his hierarchical chiefs informing them of the "difficulties" which he said that complainant was causing and of the atmosphere of tension which he had created in the Beirut Office. This memorandum, however, merely listed a number of complaints and did not ask for any action to be taken against Mr. Tarrab. Moreover, the complaints did not extend to the quality of complainant's work; indeed in two annual reports on his work performance his chief recognised that he was a hard working and intelligent official who took great pains to fulfil his assignments promptly and satisfactorily. Mr Ribeiro found fault with Mr. Tarrab mainly on the grounds that he wanted tact in dealing with his colleagues and had created an atmosphere of tension and constant friction.

C. As a result of this memorandum the Assistant to the Legal Adviser of the ILO was sent on a mission to Beirut and Istanbul for the purpose of "clarifying the Tarrab case". He visited Beirut from Sunday, 16 April to Wednesday 19 April 1967, and Istanbul on Wednesday, 19 and Thursday 20 April 1967. During this mission he did not see

complainant, who was himself on a mission to Damascus. In his report dated 24 April 1967, the Assistant to the Legal Adviser concluded that, though complainant's conduct had not always been compatible with his position as Deputy Director of an ILO Regional Office, the allegations against him did not in themselves warrant any sanction still less his summary dismissal; in view of the situation prevailing in the Beirut Office, however, it was obvious that either the Director or the Deputy Director must be withdrawn and that the more convenient alternative was to withdraw Mr. Tarrab.

D. On 14 July 1967 the Chief of the Employment Branch of the Personnel Department of the ILO informed complainant that the Director-General had decided to transfer him as from 1 October 1961 to the Human Resources Department at ILO headquarters. On 21 July Mr. Tarrab wrote through the official channels to the Assistant Director-General in charge of personnel matters, asking that the decision to transfer him should be reconsidered. The Assistant Director-General replied on 7 August 1967 that the Director-General considered the transfer necessary in the interests of the Organisation because of the unsatisfactory personal relations which had prevailed for some time in Beirut, particularly between complainant and his immediate chief. On 17 August 1967 complainant addressed a long memorandum to the Director-General, through the official channels, in which he maintained that the decision to transfer him was irregular and that the accusations against him were groundless, and requested cancellation of the decision to transfer him. According to Mr. Tarrab, he despatched this memorandum before receiving the Assistant Director-General's reply to his earlier protest. On 22 August 1967 he again wrote to the Director-General to inform him that he had just received the Assistant Director-General's letter of 7 August and that he confirmed his request that the decision should be cancelled. A telegram despatched from Geneva on 25 August in answer to complainant's memorandum of 17 August confirmed the communications of 14 July and 7 August and stated again that the transfer had been decided upon solely in the interests of the Organisation. On the same day a second telegram was sent to complainant acknowledging his memorandum of 22 August and confirming the earlier telegram. It was later decided that complainant would be transferred not to the Human Resources Department but to the International Labour Standards Department, where he took up his duties on 22 November 1967.

E. In his complaint impugning the decision of 14 July 1967 and in additional memoranda complainant contests, point by point, all the allegations against him, namely that he was unable to get on with his colleagues, that he had committed various administrative irregularities, and that his conduct had been incompatible with his position as Deputy Director. He contends that the complaints against him are grossly exaggerated or entirely fictitious and are motivated by the resentment of the Administration, which had never forgiven him for insisting on what he regarded as his rights on various occasions in the past, and by its desire to remove him from the Beirut Office so that another person might be appointed to his post. Complainant contends that for those founded reasons a disguised sanction had been imposed on him in the form of a transfer decided upon without consulting him. He alleges further that the decision was irregular because it was based on allegations made by the Assistant to the Legal Adviser as a result of his mission without complainant having been given an opportunity to be heard and to refute them. Furthermore, complainant alleges that the decision is tainted by illegality in that it is contrary to the spirit of the Director-General's Instruction No. 60(1) of 26 May 1954, which states that assignments to a duty station away from headquarters shall normally be for a minimum of three years, whereas complainant was recalled from Beirut after fifteen months. Complainant points out that the Instruction further states that posts at duty stations away from headquarters "shall normally be filled by officials having experience of work at headquarters and a knowledge of the main language of the area to which they are being posted". He claims that his withdrawal from the Beirut Office, where he was the only official of his category having a knowledge of Arabic, was contrary to the principles laid down in the Instruction. Accordingly, complainant makes the following submissions to the Tribunal:

"As to form:

the decision impugned is irregular in form; it was taken in disregard of complainant's right to defend himself although it was in the nature of a sanction, and consequently the plea to quash it is receivable as to form;

as to merits:

(1) the decision impugned is contrary to the provisions of Director-General's Instruction No. 60(1) of 26 May 1954 providing for a minimum period of assignment of three years, and the plea to quash is therefore receivable on its merits;

(2) the aforementioned decision is based on materially incorrect facts and was taken in the light of an incorrect

appreciation of the facts, and on this ground also the plea to quash is receivable on its merits;

(3) the real reasons for the decision lie in feelings of intolerance and resentment against an official who has dared to claim the rights laid down in the Staff Regulations, and in a desire to forestall a further complaint against the promotion of a new official decided upon in violation of the provisions of the Staff Regulations. This constitutes a misuse of authority, the decision impugned having been taken for a purpose other than that laid down in Article 1.1 of the Staff Regulations, for which purpose the powers available to the Administration under Article 1.9(a) of the Staff Regulations had been conferred upon it. On this ground also the plea to quash is receivable on its merits.

Subsidiarily, if the Tribunal were to hold that it is impossible or undesirable to quash the decision, complainant prays that it may please the Tribunal, in accordance with Article VIII of its Statute, to award him damages amounting to US\$200,000 for the material and moral damage resulting from the decision."

F. In its replies to complainant's memoranda, the Organisation contends that it was entirely legitimate to decide to transfer complainant to a post in the service to which he was originally appointed, and subsequently to transfer him to a service in which he had himself expressed in December 1965 the desire to be employed, by applying for a P.4 post in that service; that this action could not be regarded as a disguised sanction since it had in no way prejudiced Mr. Tarrab's interests; that complainant's right to defend himself had not been violated since the report of the Assistant to the Legal Adviser had not concluded that he was blameworthy, but merely that it was impossible to keep him in the same service as his supervisor; and, finally, that complainant's argument based on the Director-General's Instruction in regard to the period of assignment to duty stations away from headquarters and to the language qualifications of officials at such duty stations was ill-founded, since the Instruction in question did not lay down a mandatory rule.

G. The Organisation further contends that the complaint is irreceivable because it is out of time. It claims that the time limit of ninety days specified by Article VII, paragraph 1 of the Statute of the Tribunal began to run from 22 August 1967, the date at which complainant received the reply to his request of 21 July 1967 for reconsideration of the decision. Complainant's second appeal of 22 August 1967 merely reiterated the first, and according to the Tribunal's jurisprudence the time limit cannot be held to run from the date of confirmation of a preceding decision. Mr. Tarrab contests this interpretation of his appeal: the first, dated 21 July, was addressed to the Assistant; Director-General in charge of personnel matters and requested him to reconsider the decision. The second appeal, dated 17 August and repeated on 22 August, was addressed to the Director-General through the official channels and asked for the cancellation of the decision in a form indicating that he intended to follow the procedure laid down in Article 13.1 of the Staff Regulations. The time limit had thus begun to run from the date of receipt of the reply to this second appeal, namely Monday, 28 August 1967, and the complaint was therefore not time-barred.

H. The International Labour Organisation prays that the Tribunal may be pleased to hold Mr. Tarrab's complaint irreceivable, and subsidiarily, to dismiss it as unfounded.

#### CONSIDERATIONS:

As to the plea for the production in full of the report of the Assistant to the Legal Adviser.

The report in question was communicated to the Tribunal by the Organisation at the request of Mr. Tarrab, with the exception of certain passages regarded as confidential.

Complainant has asked that the above-mentioned document should be produced in full.

In the circumstances of the case the Tribunal considers it unnecessary for the establishment of the fact to order that the omitted passages should be produced.

As to the plea to quash the decision of 14 July 1967.

Mr. Tarrab was appointee by the ILO as from 1 January 1958 as an Assistant Member of Division and assigned to a post at headquarters. He was promoted on 1 January 1961 to the grade of Member of Division and was assigned at his own request to the Field Office for the Near and Middle East at Istanbul, where he took up his duties on 1 October 1962. Again at his own request, he was appointed to the Beirut Office a few days before it had been set up on 3 May 1966. In asking the Administrative Tribunal to quash the decision of 14 July 1967 by which he was transferred as from 1 October of the of the same year to ILO headquarters, Mr. Tarrab contends that the decision he

is resisting constitutes a disciplinary sanction; that it is irregular because it was not preceded by the formalities laid down in the Staff Regulations for such cases; and that it is ill-founded since none of the complaints against him afforded legal justification for any such measure.

The Organisation claims that the decision of 14 July 1967 was a measure taken purely in the interests of the Organisation under Article 1.9 of the Staff Regulations.

As to the nature of the measure taken:

Although Mr. Tarrab alleges that the decision was merely a consequence of the Organisation's persistent animosity towards him, it appears from the documents in the dossier that since entering the service of the ILO he has received normal promotion and that his wishes to be assigned to Istanbul, and later to Beirut, were met. His allegation therefore is unfounded.

Moreover, the decision of 14 July 1967 did not in any way prejudice Mr. Tarrab's career, in respect either of remuneration or of his right to promotion. Furthermore, the headquarters post to which Mr. Tarrab was assigned was appropriate to his qualifications. Lastly, the decision was based not on any specific complaint, but, as is clear from the explanatory letter of 7 August 1967, on the need to ensure harmony among the officials serving at a duty station away from headquarters.

This reason, which because of its very vagueness excludes any suggestion of a disciplinary measure, is in fact one of the reasons justifying transfer in the interests of the Organisation in accordance with Article 1.9 of the Staff Regulations.

As to the alleged irregularity of procedure:

It appears from the foregoing that the decision was not a disciplinary measure and that the procedure laid down in the case of imposition of sanctions was not applicable.

Whereas complainant had to be informed beforehand that his transfer was contemplated, since this was a measure affecting him personally and entailing a major change of residence it is clear from the dossier that all the circumstances on which the competent authority based its decision were already known to Mr. Tarrab, that he had commented on them at length, and that his chief had already warned him in April 1967 that continuation of the existing situation could not but seriously impair the satisfactory operation of the Office.

As to the internal legality of the decision impugned:

The Director-General, who is responsible for the satisfactory working of the Organisation, enjoys wide discretion in deciding upon a transfer in the interests of the Organisation in accordance with Article 1.9 of the Staff Regulations, and the Tribunal cannot review any decision taken by him on the basis of Article 1.9 except insofar as it may have been taken without authority, is in irregular form or tainted by procedural irregularity, or is tainted by illegality or based on incorrect facts, or essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier.

Examination of the evidence shows that incidents involving Mr. Tarrab had created a situation in the ILO Office at Beirut prejudicial to its satisfactory operation. Consequently, regardless of where the responsibility for the incidents in question might lie, the Director-General on becoming aware of this situation was entitled to act under the authority derived from Article 1.9 of the Staff Regulations, without being bound by his Instruction of 26 May 1954, which does not lay down any mandatory rule; and his decision is not tainted by any of the faults that the Tribunal is competent to review.

It follows that the complaint must be dismissed, there being no need to decide on the Organisation's plea of irreceivability.

**DECISION:**

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 17 March 1969 by M. Maxime Letourneur, President, M. Andre Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.