

Registry's translation, the French text alone being authoritative.

FORTH-NINTH ORDINARY SESSION

In re TARRAB (No. 8)

Judgment No. 524

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Nazmi Tarrab on 31 August 1981, the ILO's reply of 18 December, the complainant's rejoinder of 1 June 1982 and the ILO's surrejoinder of 13 August 1982;

Considering Articles II, paragraph 1, and VIII of the Statute of the Tribunal, Articles 4.2 and 13.2 and Annex I, paragraphs 1, 2 and 12(a) of the Staff Regulations of the International Labour Office, and the Director-General's Instruction No. 16 of 26 April 1950;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. On 24 April 1981 the International Labour Office announced a competition for a grade P.5 post in the Application of Standards Branch, known as APPL, the function of which is to supervise the application of international instruments on labour matters. The announcement required "an excellent command of English, French or Spanish and a good working knowledge of the other languages" and said that specialisation in social security would be "an advantage". The complainant has a contract of indefinite duration and a grade P.4 post in the Official Reports and Records Section. His mother tongue is Arabic. He applied for the post in APPL on 14 May. By a minute of 21 May, however, he submitted a complaint under Article 13.2 of the Staff Regulations objecting to the requirement of the above-mentioned qualifications. By an undated minute which he states that he received on 24 July the Chief of the Personnel Department informed him of the Director-General's rejection of his Article 13.2 complaint. That is the decision he impugns.

B. The complainant argues that by requiring the same language qualifications for all applicants the announcement is in breach of Article 4.2(a) ⁽¹⁾ and Annex I, paragraph 1, ⁽²⁾ of the Staff Regulations and favours those whose mother tongue is a working language as against candidates from Third World countries. It is no defence to say that the post requires knowledge of the three working languages: APPL must respect the Staff Regulations. Similar posts in APPL did not have the same requirements in the past, the announcements of vacancy being tailored to suit candidates chosen in advance. The Director-General's Instruction No. 16 of 26 April 1950 - which requires of APPL officials a fully satisfactory knowledge of one working language, a good knowledge of another and willingness to learn the third - is no longer in force, invalid because it is at odds with the Staff Regulations, and out of date because in 1950 only one member State was Arab. APPL is not functioning properly because it lacks staff who can communicate with Arab and other countries in their own language. The preference for someone with a knowledge of social security is also objectionable. The duties of the post cover the full range of APPL work, and no similar announcement in the past has given preference to a candidate with specialist knowledge. The Administrative Committee's approval of the announcement merely shows its subservience to the Administration. The complainant asks the Tribunal to order that (1) the language qualifications and (2) the statement of preference for candidates versed in social security be struck out and that (3) any decision based on the announcement be set aside.

C. The ILO questions whether the Tribunal is competent under Articles II and VIII of its Statute to allow the claims and, besides, whether any wrong arises out of the mere announcement of a vacancy for which the complainant may not qualify anyway. Claim (3) should fail since the impugned decision relates to the announcement, not to the results of the competition. The ILO explains that the system of supervision of the observance of ILO instruments requires of APPL staff at least a working knowledge of English, French and

Spanish. The announcement was not in breach of the Staff Regulations: Annex I, paragraph 1, sets minimum requirements and does not preclude more; otherwise paragraph 12(a) would not provide for the rejection of candidates lacking the language qualifications for a particular post. The Director-General's instruction of 1950 is still in force and has been consistently followed in announcements of APPL vacancies. Nor is there breach of the principle of equal treatment. The general career opportunities of officials whose mother tongue is not a working language are not impaired since only some units require knowledge of several working languages. A knowledge of others, such as Arabic, may indeed prove an asset, as it has to the complainant himself. His charges of inefficiency against APPL are immaterial. The Tribunal is not competent to censure the internal organisation and methods of the Office; besides, if APPL officials needed to know only one working language, costly translation work would have to be done and efficiency would suffer. The incumbent of the vacant post has to work in all three working languages and cannot be expected to know another, such as Arabic, equally well. The preference for someone with a knowledge of social security comes from the duties of the post, and lack of such knowledge does not disqualify anyway. The attack on the Administrative Committee is unfounded and deplorable in that its members cannot defend their integrity.

D. In his rejoinder the complainant asserts the Tribunal's competence to hear his claims: it is only right to challenge an unlawful exercise at the outset and in fact, not having been appointed - of the stated qualifications - he has suffered a material wrong. The announcement and the Director-General's instruction of 1950 reflect a racist policy which is harmful to citizens of poor countries in Africa, Asia and the Middle East and has hampered his own career. The wording of paragraph 1 of Annex I shows that knowledge of another working language should be a rare and exceptional requirement. If paragraph 1 set minimum requirements, paragraph 2, which sets additional ones for translators, would be superfluous. Besides, the language requirements for APPL have not been consistent. There is no need for the holders of APPL posts like the one announced to know all three working languages since the members of the Committee of Experts on the Application of Conventions and Recommendations, for whom they are doing preparatory work, themselves seldom know more than one. Nor may the ILO eschew basic principles by protesting the cost of respecting them.

E. In its surrejoinder the ILO maintains that the complaint is devoid of merit and observes that the complainant fails to address most of its arguments. He overlooks the distinction between language requirements for staff in general and those for particular posts, which, under the rules, may be greater. His restrictive interpretation of Article 4.2 is refuted by its wording, by the instruction of 1950, by consistent practice, as borne out by notices of APPL vacancies, and by common sense. The requirements match the duties of the post and are what they are precisely because many members of the Committee of Experts know only one working language. The policy does not discriminate against the developing world; indeed citizens of, say, French- or English-speaking countries in Africa may fare better than Germans or Scandinavians.

CONSIDERATIONS:

Receivability

According to point 6 of the complaint form submitted by the complainant in accordance with Article 7 of the Tribunal's Rules of Court he is impugning an undated decision which was notified to him on 24 July 1981 and which rejected his internal appeal of 21 May 1981.

Being filed on 31 August 1981, long before the expiry of the ninety-day limit set in Article VII of the Statute, the complaint is receivable.

The cause of action

(a) In his appeal of 21 May 1981, rejected in the undated decision, the complainant had sought the deletion from a vacancy notice, No. V/APPL/12/81, of certain language requirements and of a sentence stating a specialisation in social security to be an advantage in a candidate for the vacant post.

The appeal was rejected by the Chief of the Personnel Department on the Director-General's behalf, and that is the final decision now impugned before the Tribunal.

In his claims for relief as set out under point 11 of the complaint form the complainant seeks the elimination of the part of the vacancy notice which sets out the language qualifications, the quashing of any action or decision taken

on the basis of the notice and the deletion of the statement that a specialisation in social security is an advantage.

It thus appears that the complainant's purpose in seeking the quashing of the final rejection of his appeal is to have the notice set aside and any action or decision taken on it quashed.

(b) It is unnecessary for the Tribunal, in settling this case, to determine whether the definition of its competence in its Statute enables it to set aside a decision which is general in character or effect.

Even if the Tribunal declares itself competent to set aside an announcement of a vacancy, it will in this particular instance reject the complainant's claim.

The merits

The Tribunal holds that the final decision which the complainant is challenging is not in breach of any provision of the Staff Regulations or of the principle of equality.

To stipulate particular language qualifications and a specialised knowledge of social security - as does vacancy notice No. V/APPL/12/81 - is not contrary to Annex I, paragraph 1, of the Staff Regulations. This sets out merely the minimum requirements, and such others may be added as may be desirable for any particular vacancy. Nor is it in breach of the principle of equality of treatment to demand any particular language qualifications or specialised knowledge for a vacancy. The principle requires equal treatment and absence of discrimination only where the circumstances are similar. Where the very nature of the post to be filled makes special qualifications necessary, it is reasonable and right for the Organisation to require that candidates possess them.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

(Signed)

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner

1. " ... Every official shall be required to possess a fully satisfactory knowledge of one of the working languages of the Organisation."

2. "... Officials in the Professional category whose mother tongue is one of the working languages shall normally be required to have a good working knowledge of a second working language and may be required to acquire a knowledge of a third working language." Other Professional staff "shall be required to possess a fully satisfactory working knowledge of one of the working languages ... and may be required to acquire a knowledge of a second working language".