

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

FORTY-NINTH ORDINARY SESSION

In re TARRAB (No. 9)

(Judgment on the merits)

Judgment No. 534

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Nazmi Tarrab on 2 September 1981;

Considering Judgment No. 499 of 3 June 1982, whereby the Tribunal ordered the ILO to file a reply on the merits of the complaint;

Considering the ILO's memorandum of 2 July 1982, the complainant's rejoinder of 20 July and the ILO's surrejoinder of 27 August 1982;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Articles 13.1 and 13.2 of the ILO Staff Regulations and ILO Circular No. 180 (Series 6);

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. The substance of the complaint was summed up in Judgment No. 499 under A. The complainant is challenging his transfer from the International Labour Standards Department to the Arabic Unit of the Editorial and Translation Branch of the International Labour Office.

B. The complainant's arguments were summarised in the judgment under B. His main plea is that his transfer takes no account of his qualifications and constitutes downgrading. He asks the Tribunal to set aside the transfer with effect from 1 May 1981.

C. In its reply on the merits the ILO observes that the complainant's transfer to the International Labour Standards Department was in any event provisional and subject to the financing of his post. Moreover, though not a translator, he was qualified to do work which was worthwhile and suited to his qualifications in his new post. In the particular circumstances of the case the transfer was reasonable and in the complainant's interests. A further transfer was by no means ruled out if more suitable vacancies occurred. The post of deputy director of the ILO Office in Beirut, which became vacant in May 1982, might suit him better. The ILO is willing to consider the possibility to demonstrate its good faith and its desire to bring an end to the proceedings introduced by the complainant before the Tribunal. It invites the Tribunal to dismiss the complaint as devoid of merit.

D. In his rejoinder the complainant alleges that two posts were vacant in the International Labour Standards Department at the time of his transfer, and the post of deputy director in Beirut, which he held in 1966-67. The transfer constituted harassment. He maintains that he has no knowledge or experience of translation and observes that he has been given no translation work in the last fifteen months. He takes note, however, of the ILO's conciliatory attitude and says he is willing to consider its proposal.

E. In its surrejoinder the ILO explains that one of the vacancies the complainant mentions carried a higher grade than his and that he could therefore not be put on that post without taking part in a competition. The other post did not fall vacant until December 1981 and in any case required close familiarity with social security matters. As for the Beirut post, it was still occupied in April 1981. Besides, the complainant showed no interest in any of those posts. His transfer neither involved any downgrading or cut in salary nor precluded further reassignment. He

appears to find acceptable the idea of a transfer to the Beirut Office.

CONSIDERATIONS:

1. The head of an international organisation is responsible for the sound administration Of its secretariat. For the purpose he is vested with executive authority to assign staff to different posts, with due regard to their particular qualifications, so as to maintain the highest possible standards of efficiency. When the organisation is, for example, financial straits, his duty is to ensure its continuous operation and find ways of keeping on any staff whose posts may have been abolished. Transfers then have to be considered to keep down the number of dismissals. The Director-General has discretion in exercising his authority, but he must always abide by the Staff Regulations and the terms of the contract between organisation and staff member. The executive head may not of his own accord alter the staff member's grade, reduce his salary or injure his dignity.

2. The complainant was employed in the International Labour Standards Department of the International Labour Office in Geneva. On 27 April 1981 he was informed that after consulting the Administrative Committee the Director-General had decided to transfer him, as of 1 May and without change in his terms of employment, to a new Arabic Unit in the Editorial and Translation Branch of the Office.

Though thoroughly familiar with English and French, the complainant believes that he is not suited to be a translator because he lacks the right qualifications.

He will indeed never be a professional translator. Yet it was reasonable for the Director-General to expect him to be able to do worthwhile work in his new assignment. It was in the Director-General's discretion to make the transfer, and the decision was neither detrimental to the complainant's dignity nor in breach of his rights under the terms of his appointment.

3. That being so, the Tribunal will determine whether this is a case in which it was open to the Director-General to assign a staff member to duties different from those he normally performed.

It is clear on the evidence that the Director-General's purpose in putting him on a translator's post was to keep him in paid employment until he could be offered something more in line with his qualifications and wishes.

The ILO has had to make big cuts in staff since 1978 because of a decline in its resources. Under his programme of retrenchment, however, the Director-General has sought, with the Governing Body's agreement, to find ways of avoiding dismissals as far as possible.

This was the policy which determined the complainant's appointment as a translator, and the decision was in no way flawed.

The complainant alleges that in the early months of 1981 there were vacancies for administrators and lawyers. The ILO says that there was no vacancy at the complainant's grade when the impugned decision was taken. He does not disprove that, and his contention is not borne out by the evidence. Even supposing the Director-General could have found him some other assignment - though that is not established - the decision would have been made in the exercise of discretionary authority.

4. The complainant retorts that he was discriminated against on the grounds of his nationality and religion. There is no evidence in what the ILO did of any such abuse of authority. Besides, pending the hearing of this case by the Tribunal the ILO has offered the complainant alternative employment which he seems willing to accept.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., 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

Jacques Ducoux

William Douglas

A.B. Gardner

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