

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

FIFTY-FIFTH ORDINARY SESSION

In re BISWAS

Judgment No. 654

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Abdur Rahman Biswas on 7 July 1984 and corrected on 8 August, the ILO's reply of 20 September, the complainant's rejoinder of 19 October and the ILO's surrejoinder of 22 November 1984;

Considering Articles II, paragraph 1, VII and VIII of the Statute of the Tribunal and Article 13 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a Bangladeshi, joined the ILO's office in Dhaka in November 1976 as a driver. ILO drivers did a great deal of overtime -- up to 150 hours a month -- and used to be compensated in cash. But early in February 1982 the office decided to reward overtime exceeding 40 hours a month with time off instead. The decision was conveyed to the drivers by an administrative assistant, Mr. Zakaria, on 11 February 1982. Early the next day the complainant, who was active in the Staff Union, and another staff member protested to Mr. Zakaria on the drivers' behalf. There was a violent dispute. The outcome was that the complainant, whose contract was to end on 31 December 1982, signed a letter of resignation in return for compensation amounting to several months' wages and testimonials from the director and deputy director of the office. He later held a job for some time with the United Nations Development Programme in Dhaka. In the month following his departure local ILO staff addressed an undated petition on his behalf to the Director-General and to the ILO Regional Office in Bangkok, while he himself sent the Director-General a "prayer for immediate investigation and ... reinstatement". Apparently he got no answer in writing. On 16 January 1984 he wrote to a Deputy Director-General at ILO headquarters alleging that he had resigned under duress. On 19 April he sent the Director-General a letter entitled "Application under Article 13.2 of ILO Staff Rules" in which he alleged coercion by ILO management in Dhaka and asked for reinstatement, among other things. In a letter of 2 May the chief of the Personnel Department told him that his appeal was time-barred and therefore irreceivable, and that is the decision he impugns.

B. The complainant contends that at the encounter on 12 February 1982 with Mr. Zakaria he was "manhandled" and that the ILO director forced him out of malice to resign. He had to do so because he feared worse vengeance. He at once took his case up with headquarters and with the Staff Union in Geneva and for long tried to get redress before at last submitting his Article 13.2 appeal. He alleges gross abuse of authority and breach of his rights as a Staff Union member. He says he cannot hold down a job in Dhaka because ILO people there speak ill of him. He seeks an order for an inquiry into what happened on 12 February 1982, payment of the "accrued gratuity" due for his ILO service in Dhaka, cancellation of his "resignation", reinstatement, or else payment of remuneration for the remainder of the period of service under his contract, an injunction on ILO management staff in Dhaka not to report unfavourably on him to prospective employers, financial damages and any further relief he may be entitled to.

C. The ILO replies that the complaint is irreceivable. Article 13.2 of the Staff Regulations requires that the internal appeal be lodged "within six months of the treatment complained of". Since the events occurred in February and March 1982 the complainant ought to have appealed by October. He therefore failed to exhaust the internal means of redress as required by Article VII(1) of the Statute of the Tribunal. Besides, his claims -- or at least those specific enough to be receivable -- are devoid of merit. His resignation was voluntary -- a Staff Union representative was actually present -- and he was granted generous payments *ex gratia*. An inquiry was made in March 1982 by the Senior Personnel, Administrative and Finance Officer (SPAFO) from the Regional Office in Bangkok, who did not recommend any action against management staff. ILO staff in Dhaka are not disparaging the complainant: no prospective employers have approached them anyway.

D. In his rejoinder the complainant withdraws his application for an injunction against unfavourable comments on him. He enlarges on his allegations of conspiracy to silence him for his defence of staff interests and of vengeful and unlawful treatment. He maintains that he did avail himself properly of the internal means of redress: he addressed his grievances promptly to the Director-General and was kept waiting for an answer. The ILO was obviously trying to smother the whole matter so that it could later plead the time-bar. He goes into his grievances in detail, observing that no proper inquiry was made and he was never allowed his say. He asks why, if he was guilty of an offence, the ILO got him to resign and offered him compensation instead of imposing a disciplinary sanction. He reaffirms that he did not willingly resign.

E. In its surrejoinder the ILO contends that, however the course of events is looked at, the complainant did not file his Article 13.2 appeal in time. It goes over his version of the facts, observing that he offers no evidence in support of his allegation of coercion and discrimination on the grounds of union activities. The SPAFO did talk to him before reporting on the incident; besides, since he had left the staff and was not threatened with any sanction there was no reason to involve him in any inquiry. No submission in the rejoinder weakens the force of any argument in the reply, on which the ILO enlarges. It points out that there was nothing in law to preclude an ex gratia payment to the complainant on compassionate grounds.

CONSIDERATIONS:

The application for oral proceedings

1. The Tribunal sees no need to order oral proceedings under Article 12 of its Rules of Court. The ILO's reply gives enough information to shed full light on the issues on which the evidence the Tribunal is invited to hear would have had a bearing.

Receivability and competence

2. The complainant asks the Tribunal to order the ILO --

(1) to investigate the incident which occurred at the ILO Office in Dhaka on 12 February 1982 in which the complainant was manhandled and to take appropriate action against the management;

(2) to pay him an "accrued gratuity" for years of service at the ILO office and cancel his so-called "resignation letter", his signature having been extorted;

(3) to pay him for the remainder of the period of service provided for in his contract unless he is reinstated;

(4) to "absorb" him in the ILO staff in Bangladesh by putting him on a vacant post corresponding to his grade;

(5) to stop supplying unfavourable information about him to any prospective employer who asks for information about his service record;

(6) to pay him damages for the serious financial injury the ILO's unlawful acts have caused him;

(7) grant any further relief he is entitled to under the ILO Staff Regulations and the rules of equity and justice.

3. The Tribunal notes the complainant's statement in his rejoinder that he withdraws claim (5).

4. The ILO appends to its reply the findings of an inquiry carried out in March 1982 by the Senior Personnel Administrative and Finance Officer (SPAFO) of the ILO Regional Office in Bangkok into the incident that occurred on 12 February 1982.

The inquiry was carried out by a senior official for the sole purpose of reporting to the Director-General exactly what had happened. This is what the complainant himself had asked for in an undated letter to the Director-General, and the Tribunal holds that the first part of claim (1) has therefore been satisfied.

The Tribunal will not entertain the claim for action against ILO management. In cases coming under Article II of its Statute it is competent, by virtue of Article VIII, only to "order the rescinding of the decision impugned or the performance of the obligation relied upon, except that if such rescinding or execution is not possible or advisable,

the Tribunal shall award the complainant compensation for the injury caused to him".

The second part of claim (1) is therefore outside the Tribunal's competence.

5. The Tribunal will next consider the receivability of claims (2), (3), (4), (6) and (7).

Claim (7) is for performance by the ILO of its obligations under the Staff Regulations and under the rules of equity and natural justice. The formulation of such obligations is too vague and general for their performance to be subject to judicial review. The claim is irreceivable.

6. In a "complaint" which he submitted on 19 April 1984 under Article 13.2 of the Staff Regulations the complainant alleged that his resignation of 12 February 1982 had been extorted by threats and violence. Claims (2), (3), (4) and (6) challenge the decision, taken on the Director-General's behalf on 2 May 1984, to reject that "complaint" as time-barred.

The ILO contends that an appeal against the decision of 2 May 1984 is irreceivable, and the nub of its case rests on Article 13.2.

The Staff Regulations afford two means of redress.

(a) Under Article 13.1 any official who considers that he has been treated inconsistently with the provisions of the Regulations or with the terms of his contract, or subjected to unjustifiable or unfair treatment, may request that the issue be reviewed with a view to its settlement. But the decision on such a request is not final and does not necessarily put an end to the dispute. Indeed it does not preclude submitting a "complaint" to the Director-General under Article 13.2. The request for review is not a means of redress within the meaning of Article VII(1) of the Statute and is not a prior condition of the receivability of a complaint to the Tribunal.

(b) Under Article 13.2 any official who considers that he has been treated inconsistently with the provisions of the Regulations or with the terms of his contract, or subjected to unjustifiable or unfair treatment, may address a "complaint" to the Director-General within six months of the treatment complained of.

Unlike the decision on a request for review the decision on a 13.2 "complaint" is final in that it is taken by the executive head and is not subject to further internal review. Accordingly the 13.2 "complaint" is a means of redress within the meaning of Article VII(1) of the Statute and the complaint to the Tribunal will be irreceivable unless an internal "complaint" was filed.

7. The facts on which the complainant founds his claims occurred in February and March 1982. The time limit for his 13.2 "complaint" therefore expired not later than the end of September 1982.

Yet it was not until much later, on 19 April 1984, that he submitted his 13.2 "complaint" to the Director-General. He cannot therefore be deemed to have exhausted the internal means of redress provided in the Staff Regulations, and his present complaint is irreceivable.

8. His rejoinder advances a new plea: that it was his letter of 16 January 1984 to a Deputy Director-General that constituted his 13.2 "complaint".

Although the plea falls within the scope of the original claims, since it has the same purpose, it is unsound. The difficulty is that it was obviously by his letter of 19 April 1984, addressed as it was to the Director-General "through Chief of Personnel" and expressly based on Article 13.2, that he first intended to submit a "complaint" under that provision.

In fact the sole purpose of his letter of 16 January 1984, which was headed "Prayer for restitution of service", was to request review of his case under 13.1. The complaint must therefore fail as irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 18 March 1985.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner

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