

SIXTY-NINTH SESSION

In re ZAYED (No. 6)

Judgment 1043

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Ezzat Faye Zayed against the Universal Postal Union (UPU) on 4 September 1989, the UPU's reply of 6 October 1989, the complainant's rejoinder of 12 February 1990, the Union's surrejoinder of 16 March, the Union's further submissions of 30 April, the complainant's observations thereon of 7 May and the Union's letter of 14 May 1990 to the Registrar of the Tribunal;

Considering Articles II, paragraph 5, and XII of the Statute of the Tribunal, Article 107.2 of the General Regulations of the Union, Regulations 9.1.6, 9.5.2a and 11.2.1 of the Staff Regulations and Rule 111.3 of the Staff Rules of the International Bureau of the Union;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant served as a member of the Arabic translation service of the International Bureau of the Universal Postal Union in Berne and was an official of the Arab Language Group of the Union, an autonomous body headed at the time by a "spokesman", the Secretary-General of the Arab Postal Union, in Dubai. The spokesman appointed, promoted and dismissed the staff of the Group and the Director-General of the International Bureau conveyed his decisions.

By Judgment 868, which it delivered on 10 December 1987, the Tribunal set aside a decision taken on 15 October 1986 to dismiss the complainant on the grounds of unsatisfactory performance and sent the case back to the Union for a new decision.

By a decision of 17 February 1988 the spokesman of the Group refused to reinstate the complainant, but by Judgment 922 of 8 December 1988 the Tribunal quashed that decision too and awarded him damages.

In a letter of 7 January 1989 to the Director-General the spokesman declared that the Group would take no account of any ruling of the Tribunal's as from 9 December 1988. By a letter of 21 February the Assistant Director-General of the International Bureau informed the complainant of the contents of the spokesman's letter and told him that by a telex just received in Berne the spokesman had confirmed his dismissal "on the grounds of unsatisfactory performance".

The complainant filed his fourth complaint on 23 May 1989 saying that the Union had not given proper effect to Judgment 922, and he lodged his fifth complaint on 4 July 1989 objecting to the reckoning of the sums due to him on the grounds that it had left out a salary increment.

In its replies to those two complaints the Union pleaded that because of the spokesman's declaration the Tribunal was not competent to hear them. In Judgment 1013 of 23 January 1990 the Tribunal rejected that plea.

In a letter of 9 March 1989 to the Director-General the complainant had objected on several grounds to the confirmation of his dismissal. Having got no answer, he submitted an appeal to the Joint Appeals Committee under Rule 111.3 of the UPU Staff Rules.

In its report of 4 August 1989 the Committee unanimously held that despite the Tribunal's ruling in Judgment 922 the UPU's rules and practice had still not been followed and that even if they had been the dismissal could not in any event be retroactive; it recommended seeking a settlement with the complainant. But by a letter of 31 August,

the decision impugned, the Director-General informed him that, having noted the Committee's report, the spokesman had "confirmed the impossibility of settlement", the dismissal being final.

B. The complainant addresses the issues of the Tribunal's competence and the International Bureau's obligations in the case.

As to the merits he contends that the confirmation of his dismissal is unlawful. It rests on grounds that the Tribunal has already declared invalid. Being retroactive from 8 December 1989 it defies a ruling in Judgment 922 under 5: "Whatever decision the Union may now take, it will not be retroactive". It does not comply with the Staff Regulations, in particular the requirement of three months' notice in Regulation 9.5.2a. The Joint Advisory Committee was not consulted and the complainant was not received and given his say, despite what had been said in Judgment 922 under 4. The spokesman's purported denunciation of the Tribunal's competence shows his bad faith and abuse of his authority.

The complainant asks the Tribunal to quash the decisions conveyed to him in the letters of 21 February and 31 August 1989, order the Union to pay what is due to him up to the age of 60, and award him 50,000 Swiss francs in damages and a sum in costs.

C. In its reply, filed before the Tribunal delivered Judgment 1013, the Union challenges the Tribunal's competence for reasons which the Tribunal rejected in that judgment.

D. In his rejoinder the complainant observes that Judgment 1013 affirms the Tribunal's competence.

He enlarges on the merits. He further alleges breach of Regulation 9.1.6 of the Staff Regulations, which says that "The Director-General shall report all cases of termination to the Executive Council". He criticises the high-handed attitude and inadmissible behaviour of the spokesman in this and other matters. He describes the distress which successive dismissals and his long struggle for justice have caused him. He presses his claims, amending the claim to compensation to an award either up to the age of 60 or up to whatever the age of retirement may be by the time the Tribunal gives judgment.

E. In its surrejoinder the Union invites the Tribunal to dismiss the complaint as devoid of merit.

F. In further submissions the Union states that the Arab Language Group is to enter into negotiation with the complainant and it therefore asks the Tribunal to adjourn the case so that the parties may reach agreement.

G. In his observations on those submissions the complainant says that, though he is willing to negotiate, the Union has not even sought to show its good faith by reversing the decision to dismiss him. He invites the Tribunal not to adjourn the case.

H. In a further letter the Union restates its position and presses its application for adjournment.

CONSIDERATIONS:

The application for adjournment

1. Since the Tribunal is able to rule on the case it sees no reason to allow the Universal Postal Union's application for adjournment.

The Tribunal's competence

2. The Union cites the objections it put forward at the outset of the dispute to the Tribunal's competence. The Tribunal explicitly rejected them in Judgments 868, on the complainant's first complaint, and 1013, on his fourth and fifth ones.

In its reply to this complaint the Union again observes that it may not compel the Arab Language Group to comply with any ruling of the Tribunal's. The Director-General of the International Bureau refers to Article 107.2 of the General Regulations of the Union about the establishment of language groups and to the decision - CE 7/1966 - which the Executive Committee of the Union took in 1966. That decision says in clause 3 that translation services are autonomous and in clause 11 that the "fixing of the status and conditions of service of the translation services"

is a matter solely for the language groups. The Director-General points out that it was the Arab Language Group that, in keeping with those provisions, recruited the complainant and dismissed him and that the Bureau was a mere agent. Moreover, being an autonomous body and competent in the matter, the Arab Language Group decided that its staff should no longer have access to the Tribunal under Article 11.2.1 of the Staff Regulations and that it would take no account of any ruling of the Tribunal's as from 9 December 1988.

3. It appears that the Union is no longer denying that, as Judgment 122 (in re Chadsey) ruled, its recognition in 1965 of the Tribunal's competence applies to the Arab and other language groups.

But the Director-General seems to believe that the Arab Language Group may deprive its staff of access to the Tribunal from 9 December 1988.

As Judgment 1013 pointed out, under 5, though the language groups do enjoy some autonomy they lack legal personality of their own and only the Union may recognise the Tribunal's jurisdiction, which applies to the groups as well.

The Union may always denounce its recognition of the Tribunal's jurisdiction, though in keeping with the rule that similar acts require similar procedures the same authority

must denounce the recognition, and by the same process, as originally declared it.

The language groups of the Union, over which the Tribunal has jurisdiction by virtue of the acceptance by the Governing Body of the International Labour Office of the declaration by the competent UPU authority, may not unilaterally revoke that declaration. Although clause 11 of decision CE 7/1966 allows them some freedom to act they may not act in breach of the constitutional rules of the organisation they form part of.

To be sure, the Director-General states that as agent of the spokesman of the Arab Language Group he informed the Director-General of the International Labour Office by a letter of 14 February 1989 of the spokesman's decision of 7 January 1989 to denounce the Tribunal's competence. That letter merely reproduces the wording of the spokesman's decision.

But mere notification is not valid denunciation. It was not the Union but the spokesman himself that took the decision. Even supposing that the Director-General's intent was to inform the ILO of an implied denunciation - which would in law be an objectionable approach by the Union anyway - it is not proven that the competent authority of the Union took the decision in keeping with its constitutional and administrative rules.

In any event only if the Governing Body of the International Labour Office has taken note of denunciation and so informed the Tribunal will denunciation be binding, and the Tribunal has had notification of no such decision.

As Judgment 1013 said, the letter the Arab Language Group sent to the Director-General on 7 January 1989 is merely an internal paper of the Union and of no concern to the Tribunal, which, subject only to Article XII of its Statute, delivers judgments that are binding. Should some component of an international organisation refuse to comply with a judgment the organisation has the duty to ensure compliance.

In the circumstances there is no need to consider whether partial denunciation of the UPU's recognition of its jurisdiction would be valid. The Tribunal is competent to entertain the complaint before it.

The merits

4. Judgment 922 of 8 December 1988 set aside a decision of 17 February 1988 by the spokesman of the Arab Language Group to dismiss the complainant. On 19 December 1988 he again asked for reinstatement, but by a decision of 16 February 1989, which the Director-General of the International Bureau conveyed to him by a letter of 21 February and which he thus received on 23 February, the spokesman maintained his dismissal "in the interests of the Group because of his professional shortcomings". On 9 March 1989 he appealed to the Director-General against that decision. The Union having failed to answer, he appealed to the Joint Appeals Committee. The Committee reported on 4 August 1989. By a letter of 31 August the Director-General informed the complainant that on 28 August the Arab Language Group had rejected the Committee's recommendations, and that is the decision he is impugning.

5. By a letter of 14 May 1990 the Union invites the Tribunal:

"1. to take note of the defendant's statement that it reverses the decision of 21 February 1989 to dismiss the complainant;

2. to note that the defendant undertakes to grant him compensation equivalent to the amount of his pay from 9 December 1988 up to the date of a new decision to dismiss him;

3. to declare that his third claim [to the quashing of the decisions conveyed in the Director-General's letters of 21 February and 31 August 1989] is therefore devoid of substance; and

4. to reject all his other claims."

6. That letter deprives the complaint of substance insofar as it seeks the quashing of the decision conveyed in the Director-General's letter of 21 February 1989 and of the decision of 28 August 1989, conveyed in the Director-General's letter of 31 August, on his internal appeal.

7. The Tribunal takes note of the Union's statement but reserves the issue of the lawfulness of any further decision to dismiss the complainant.

8. The Union acknowledges by implication that the successive decisions to dismiss him were, as the Tribunal has held, unlawful. Since he has suffered injury he must be granted redress, and for all the forms of injury he has sustained he is awarded 10,000 Swiss francs in damages.

9. The Union shall also pay him 1,000 francs in costs.DECISION:

For the above reasons,

1. The Tribunal takes note of the Union's statement in point 1 of its letter of 14 May 1990 quoted in 5 above that it reverses the decision notified in the Director-General's letter of 21 February 1989 to dismiss the complainant.

2. Such reversal entails reversal of the decision of 28 August 1989 conveyed to the complainant in the Director-General's letter of 31 August 1989.

3. The Tribunal takes note of the Union's undertaking in point 2 of its letter of 14 May 1990 to grant the complainant financial compensation.

4. The Union shall pay him 10,000 Swiss francs in damages.

5. It shall pay him 1,000 francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

(Signed)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner