

EIGHTY-SEVENTH SESSION

In re Natarajan (No. 2)

Judgment 1875

The Administrative Tribunal,

Considering the second complaint filed by Mr Krishnan Natarajan against the International Labour Organization (ILO) on 10 September 1998, the ILO's reply of 22 December 1998, the complainant's rejoinder of 29 January 1999 and the Organization's surrejoinder of 25 March 1999;

Considering Articles II, paragraphs 1 and 6, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, 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, an Indian national who was born in 1940, entered the service of the Organization in March 1963. At the time of the material facts of the present case, he was Deputy Director of the ILO Office in Manila in the Philippines, at grade P.4. Following the transfer of his immediate superior in December 1994, he was put in charge of the Office until April 1995, when the new Director took up his duties.

In a fax letter dated 30 August 1996 addressed to the Deputy Director of the ILO's Regional Office for Asia and the Pacific, in Bangkok, the Director of the Manila Office complained of the attitude of the complainant and reproached him for his insubordination, animosity towards him, negligence in his work and accused him of wishing to "oust" him from his post and of tarnishing the image of the Organization. The Director attached to his letter various documents, including a "note for the file" dated 3 October 1995, in which he stated that on that day he had discussed with the complainant his work and conduct. He accused him of encouraging a locally recruited staff member to disobey instructions, of having attempted at the last minute to cancel a training session on gender issues and equality, of using Office cars to come to work, of allowing his friends to benefit from special privileges reserved for the Office (and particularly of having certified that a staff member was travelling on official business to avoid paying certain taxes and of offering the use of the Office car to a staff member from headquarters for a tourist visit) and finally of being aggressive towards his colleagues. He indicated that as a consequence he had decided to entrust the complainant's administrative and financial responsibilities to another staff member.

On 5 September 1996, the Resident Co-ordinator of the United Nations in the Philippines wrote to the Director of the Regional Office, with copies to the Deputy Regional Director and the Director of the Personnel Department at headquarters. He recalled that he was about to leave his post and wished to congratulate the Director of the Manila Office on his work. He also indicated that he had had occasion to discuss the behaviour of the complainant with the Director of the Manila Office and wished to corroborate his allegations. He criticised the complainant for not having the necessary "intellectual profile" and recommended that prompt action should be taken.

Summoned to the Regional Office at the beginning of October, the complainant was given the two documents mentioned above and met the Director of the Office and her Deputy. The Organization states that "no further action was taken on this matter".

In letters dated 4 and 22 October 1996, the complainant requested the Director of the Regional Office that the matter be reviewed in accordance with Article 13.1 of the Staff Regulations. In two other letters, dated 21 October and 4 November, he responded in detail to the accusations levelled against him. He affirmed that the Resident Co-ordinator had written his letter at the request of the Director of the Manila Office and accused the latter of wishing to harm his reputation and of having violated the conduct expected of an international civil servant and Article 1.1 of the Staff Regulations by discussing an internal ILO problem with a person outside the Organization. He regretted that no action had been taken in response to a request for a transfer on health grounds which he had made in February 1996. He expressed surprise at not having received a copy of the note for the file in October 1995 and submitted that its contents and the coincidence of its transmission with the letter from the Resident Co-ordinator gave grounds for believing that it was not prepared on that date, but in August or September 1996, with the sole objective of maligning him.

With regard to the contents of the note for the file, the complainant denied all the accusations made against him. He stated that he had been opposed, not to the training session, but to the use of the financing allocated for that session for other purposes; that the travel exemption certificate had been signed by the Director of the Office himself while the complainant was on mission in Thailand; and that the headquarters official who was on mission had not had the time to make the alleged visit. Finally, he accused the Director of the Office of having made racist remarks about him, particularly in the presence of constituents of the Organization at a conference on 22 September 1995. He indicated that the Director had apologised to him on 4 October 1995 in the presence of a representative of the Staff Union and that he had believed the incident closed until the production of the note for the file. He also accused the Director of having sent him work while he was convalescing from a stroke in January 1996.

By a letter of 1 November 1996, after consulting the Director of the Personnel Department, the Director of the Regional Office rejected his request for review.

On 24 February 1997, the complainant lodged a complaint under Article 13.2 of the Staff Regulations reiterating his accusations against his immediate superior. He requested early action on the complaint.

The observations of the Director of the Manila Office were transmitted to the complainant on 28 April 1997. He admitted having many discussions with the Resident Co-ordinator concerning the functioning of the Manila Office in general and the attitude of the complainant in particular, but denied having incited him to write the letter of 5 September 1996. He also admitted having signed the travel exemption certificate, but maintained that the complainant had instigated the procedure. He specified that the use of an official car for a tourist visit by an official on mission had not taken place because he had prevented it. He denied being a racist and stated that remarks concerning nationality were made as jokes by all staff members, including by the complainant concerning him. The complainant had only become offended after the quality of his performance had been criticised. Finally, he submitted that the complainant himself had requested that work be sent to his home during his convalescence.

The complainant replied to these observations by letter of 14 May 1997. He reiterated his reproaches and accusations, stated that he never joked about nationality and denied that he had asked for work to be sent to him, as his doctors had prescribed complete rest.

The complainant left the service of the Organization on 31 May by mutual agreement. This agreement indicated that the termination payments which would be paid to him were agreed as full settlement of all entitlements or claims under the Staff Regulations.

After receiving a fax letter sent by the complainant on 5 September 1997, the Personnel Department replied by letter of 13 October, which he only received on 29 December, that his complaint would be examined "as rapidly as possible". Not having received a reply, the complainant lodged a first complaint with the Tribunal on 27 March 1998 against the implicit decision to reject his internal complaint. He withdrew this complaint when he received the decision of the Director-General, of which he was informed by a letter from the Director of Personnel dated 19 June 1998.

The Director-General noted that relations between the Director of the Manila Office and his Deputy had not been good from the beginning, but observed that the explanations put forward by the Director in support of his allegations of insubordination by the complainant had not been considered sound justification and that no measures had been taken. The Director-General considered that the discussions held by the Director with the Resident Co-ordinator were normal between colleagues within the United Nations system. Furthermore, it was difficult for him to believe that the Director would have sent work to the complainant during his convalescence without his agreement. With regard to the note for the file, he stated that the reasons provided were not sufficient to serve as a basis for the serious accusations that it contained and that certain statements, such as those relating to the use of the official car and the privileges reserved for the Office, were baseless and unjustified. The Director-General informed the complainant that he had decided to draw the attention of the complainant's immediate superior to the need for accuracy in recording events and to the procedures to be followed in managing staff. With respect to the accusations of racism, the Director-General affirmed that this constituted the most serious incident. Therefore, despite the apologies which had been made, he had instructed the Personnel Department to remind the Director of the Manila Office of the conduct expected of international civil servants. The Director-General concluded that, in these circumstances, the complaint filed by the complainant did not call for any further action. This letter is the impugned decision.

B. The complainant reiterates the pleas made in his internal complaint. He expresses surprise that the Director-General, having recognised the allegations of racism, did not take more severe measures than merely reminding the official concerned of the conduct expected of him. He submits that the Organization had the responsibility to defend him against unfounded criticisms from outsiders and, as such, should have responded to the Resident Coordinator of the United Nations. He considers that his departure by mutual agreement, which was signed after his complaint had been filed, did not dispense the ILO from following up the complaint and that the reference in the agreement to the settlement of all his entitlements or claims under the Staff Regulations only related to his entitlements under the articles of the Staff Regulations cited in the agreement. The complainant contends that the attitude of his immediate superior caused "irreparable" moral and material damage, harmed his health and caused him to leave the service of the Organization.

He asks the Tribunal to recognise that the Director of the Manila Office did not treat him correctly, made racist remarks against him and violated the Staff Regulations and that the Director-General failed to consider his complaint properly, thereby exacerbating the harm caused to him. He claims 100,000 United States dollars in damages, 15,000 dollars in compensation for medical costs and 9,000 dollars in costs.

C. In its reply, the Organization contests the receivability of the complainant's claims relating to the injury suffered and the financial compensation on the grounds that the complainant has not exhausted the internal remedies. The Organization states that the complainant made no such claim, even by implication, in his internal complaint. It adds that the mutual termination agreement should be understood as the settlement of all outstanding and future claims under all the provisions of the Staff Regulations. Finally, it states that the Organization cannot be held responsible for acts committed by the Director of the Manila Office which were officially condemned by the Director-General in his reply to the complainant's internal complaint.

On the merits, the Organization reiterates the conclusions of the Director-General and considers that the necessary measures have been taken. It states that the complainant, who had not made specific claims in his internal complaint, could not expect more. It submits that the complainant had already had difficult relations with the previous Director of the Manila Office and observes that it gave him the opportunity to defend himself against the criticisms made against him. Finally, it produces a memorandum from the Director of the Manila Office dated 20 July 1998 in which he contests that the remark on the nationality of the complainant was made at a conference attended by ILO constituents. According to him, the remark was made in the Office in the presence of two colleagues and a visitor. The Organization recalls that the complainant was informed that an "official rebuke" had been made to the Director of the Manila Office and emphasises the seriousness of such action.

D. In his rejoinder, the complainant submits that he has exhausted the internal remedies since the Organization rejected his request for review and since he had referred on several occasions, and particularly in his internal complaint, to moral and material damages. He contends that the ILO's interpretation of the mutual termination agreement is in violation of Article II, paragraph 6, of the Statute of the Tribunal, which states that officials shall have access to the Tribunal even if their employment has ceased. Finally, he observes that he is not aware of the terms in which the Director-General rebuked the Director of the Manila Office for his action, or the sanctions taken against him.

On the merits, the complainant contends that he enjoyed good relations with his previous immediate superior. He accuses the Organization of partiality and submits that its reply is in contradiction with the compliments addressed to him in writing by the Director-General on 21 May 1997 on the occasion of his departure. He adds that his immediate superior did not stop his racist insults, even after he had apologised.

E. In its surrejoinder, the ILO affirms that the complainant has not been deprived of access to the Tribunal, but that the mutual termination agreement prevents him from submitting claims with financial implications. It recalls that the Director-General had concluded that several allegations were unfounded, that the Director of the Manila Office had made offensive remarks and that he should carry out his functions with greater prudence and rigour, but that the complainant also had some degree of responsibility for the atmosphere at work in the Office. With regard to the disciplinary measures envisaged by the Staff Regulations, it states that these are at the discretion of the Director-General.

The Organization produces a memorandum of 25 March 1999 to the Legal Adviser from the previous Director of the Manila Office, indicating the minor but repeated problems that he had experienced with the complainant. However, the ILO specifies that it "is not seeking to affirm that [these] allegations, often unsubstantiated ... were

necessarily well-founded" and that it does not deny the contribution made by the complainant to the work of the Organization. Finally, it observes that the complainant's statement that the racial abuse never stopped is not consistent with his previous statements.

CONSIDERATIONS

1. The complainant, an Indian national, joined the General Service category of staff of the ILO in March 1963 and worked at its Office in New Delhi. In 1969 he was given an indefinite appointment. In 1985, after an internal competition, he was promoted to the Professional category (P.3), and was posted as Programming Officer to the ILO's Caribbean Office. In 1988 he was transferred to the Occupational Health and Safety Department (SEC/HYG) at headquarters in Geneva. After another internal competition he was promoted to P.4 and was transferred to the Manila Office as Deputy Director in April 1994. His appointment came to an end on 31 May 1997 by mutual agreement.

2. In 1994 the Director of the Manila Office was Mr Paul Bailey. He was transferred to Dhaka with effect from January 1995, and was succeeded in April 1995 by Mr Richard Szal. In the meantime, from January to April, the complainant was in charge of the Manila Office. In this complaint, he alleges that Mr Szal, the Director at the material time, subjected him to unjustifiable and unfair treatment during the period from 1995 to September 1996.

3. When transferred to Manila, the complainant had served the ILO for over thirty years with, he says, "distinction and exemplary conduct" as his performance appraisals would show. Even upon the termination of his employment in 1997, despite the events which gave rise to this complaint, the Director-General expressed unqualified appreciation of his loyalty and devotion to the ILO and his valuable contribution to its work. In its pleadings, the Organization does not dispute that record of service.

4. There was one matter, which undoubtedly would have seriously affected the working relations between the Director and the complainant, as to the truth of which there is little dispute. The complainant says that from July 1995 the Director began using particular expressions with racial connotation "used in the Philippines by the local population to refer to Indians in a derogatory manner". When the Director used that expression at a conference held on 22 September 1995, in the presence of the ILO's tripartite constituents, he was forced to complain to the Staff Union representative, in whose presence the Director later apologised on 4 October 1995.

5. On 14 April 1997, responding to a request from the Personnel Department following Mr Natarajan's 13.2 "complaint", the Director did not deny the use of that expression (either before or at a conference in September 1995) or its derogatory connotation, and pointed out that he had apologised. His only defence then was that it was the common practice, at the Manila Office, to joke about each other's nationality; that the complainant made fun of the Director's nationality; and that in the same spirit he too joked with the complainant. However, the Director submitted another explanation in a minute dated 20 July 1998 (which the ILO annexed to its reply). There he claims that he used a different expression ("my Bombay Deputy"); that on 22 September 1995 it was not used at a conference, but only in the corridor of the Office; and that he only did so when the complainant introduced him to a friend as "our Gringo Director". Not only does the belatedness of that explanation weigh heavily against its acceptance, but its inconsistency with his previous position reveals a grievous lack of care by the Director in stating the facts relevant to a serious allegation.

6. The complainant claims that the Director's behaviour affected his health. He was admitted to hospital in November 1995 for hypertension and a heart problem. Although he resumed duties after treatment, he was again hospitalised in January 1996 after a "blackout", and returned to work only at the end of March.

7. In June 1996 there commenced the evaluation of the complainant's performance for the two-year period 1 October 1993 to 30 September 1995, which consisted of four periods: October 1993 to April 1994 when he was at SEC/HYG; April to December 1994 when his Director was Mr Bailey; January to April 1995 when he was in charge of the Manila Office; and April to September 1995 when Mr Szal was his Director.

8. Mr Szal rated the complainant's performance as "satisfactory". His comments and observations were favourable, except one: that the complainant "needs to exercise more caution and judiciousness in the allocation of Office resources, particularly when he is Officer-in-Charge [and] should also maintain a calm demeanour in dealing with his colleagues". On 11 June 1996, the complainant noted his objections to that comment. He also complained that Mr Szal - though responsible for only six months of a two-year period - had refused to request the evaluation of

SEC/HYG and Mr Bailey; and he pointed out errors and shortcomings in the way Mr Szal had completed the evaluation. He asked for a review by the Reports Board. It was only then that the observations of SEC/HYG and Mr Bailey were obtained by the Regional Office for Asia and the Pacific: those were, without exception, favourable. The Assistant Director-General in charge of the Regional Office, as the higher level chief, noted on 15 November 1996 that the complainant's performance had been under continuing review during the past few months; that the complainant had come to Bangkok for discussions; and that both Mr Szal and he had made "extensive further comments in writing". In response, the complainant observed that only events from October 1995 - which were beyond the period of review - had been discussed in Bangkok, and not his performance appraisal. If Mr Szal did make comments to the Regional Office about that performance appraisal, those were not disclosed to the complainant or the Tribunal.

9. The Reports Board had to determine whether the impugned comment was justified. It merely expressed concern about the developments which led to an untenable situation in the Manila Office and urged the Regional Director to find a solution. Nothing was said about the appraisal itself. The observations of the Reports Board were communicated to the complainant only on 13 May 1997, by which time termination had been mutually agreed upon.

10. Apart from that comment in his performance appraisal, prior to September 1996, neither Mr Bailey nor Mr Szal (or any of the complainant's superiors, colleagues or subordinates) had expressed any dissatisfaction in writing about any aspect of the complainant's work and conduct.

11. In early September two letters reached the Regional Office almost simultaneously.

12. The first was a letter dated 30 August 1996 from the Director of the Manila Office, faxed on 9 September to the Deputy Director of the Regional Office. He referred to previous telephone conversations regarding his problems with the complainant which, he said, had begun about a year before, and went on to make several very serious general allegations against the complainant: that he had stopped communicating with him and most other staff, that his conduct was divisive and insubordinate, that his negative activities and smear campaign against him even extended outside the Office, and that he was damaging the effectiveness of the ILO's work programmes inside and outside the Office. He annexed a "note for the file" dated 3 October 1995 (which he had prepared) containing further general allegations: that the complainant had exceeded his authority, that he had misused Office resources and property to suit himself and his friends, and that he had harassed certain staff members. That note contained five specific allegations, but made no reference to the discussion and the apology relating to the racial remarks made by the Director.

13. The second was a letter dated 5 September 1996 from Mr McGrath, the United Nations Resident Co-ordinator in Manila, to the Assistant Director-General in charge of the Regional Office, praising the Director's performance highly, and severely criticising the complainant's:

I have over the last year had several lengthy discussions with Mr Szal regarding the behaviour of his deputy ... The Regional Office in Bangkok is aware of a number of actions taken by the latter which have not contributed to a harmonious atmosphere within the office. ... I have been able to corroborate Mr Szal's concerns which are shared by several of the local staff. ... [the complainant] lacks the intellectual profile which ... [the] ILO Manila requires ..."

14. The Assistant Director-General summoned the complainant to Bangkok for discussions, and it was only then - on 2 October 1996 - that those two letters and the note for the file were disclosed to him.

15. The complainant submitted detailed observations in respect of both letters, in particular, during any discussion of the issues mentioned in the note for the file. The Regional Office did not tell him either that his explanation had been accepted or that no action would be taken in respect of the allegations made against him.

16. A request for review having been refused, the complainant filed a formal "complaint" on 24 February 1997. He alleged that the Resident Co-ordinator's letter had been instigated by the Director to injure his moral and professional character unfairly; that the latter's letter of 30 August had been faxed on 9 September so as to arrive at the same time as the Co-ordinator's: that it was a wrongful attack on his professional conduct and character; and that his supervisor had thus subjected him to unjustifiable and unfair treatment under Article 13.2 of the Staff Regulations.

17. Responding to these allegations, the Director stated by letter of 14 April 1997 that from the time he assumed

duties in Manila he had several discussions with the Resident Co-ordinator about numerous problems concerning the complainant's competence and conduct: that he understood that the Co-ordinator had "sought independent confirmation of [the Director's] complaints from other colleagues in the Area Office" before writing to the Assistant Director-General and that he had not instigated that letter. To that the complainant gave a detailed and reasoned response on 14 May 1997.

18. In the meantime, on 21 April 1997 it was mutually agreed that the complainant's appointment would come to an end, in accordance with Article 11.16 of the Staff Regulations, on 31 May 1997, and that he would then be entitled to various terminal benefits under the Staff Regulations (a repatriation grant, repatriation travel and removal expenses, reimbursement of accrued annual leave and an indemnity, under Articles 11.15, 9.7, 7.5(b), and 11.16 respectively). Those payments were agreed "as full settlement of all entitlements or claims that [he] may have under the Staff Regulations".

19. Six months having elapsed without a decision upon his "complaint", in September the complainant informed the ILO that he proposed to file a complaint with the Tribunal - which he did on 27 March 1998. The Director-General's final decision dated 19 June 1998 was thereafter communicated to him, whereupon he withdrew his first complaint. On 10 September he filed the present complaint, impugning that decision.

20. It is necessary for the Tribunal to scrutinise the five specific allegations made by the Director of the Manila Office.

(a) First he alleged that the complainant improperly "certified that a staff member was travelling on official ILO business ... to help her avoid paying the departure tax ...". When the complainant pointed out that it was the Director who had signed that staff member's travel exemption certificate on 18 September 1995, while he himself was away in Bangkok, the Director prevaricated, saying that if his note for the file was read carefully, it would show that he had never accused the complainant of signing the travel exemption certificate, but only of instigating it - which he reiterated. The complainant justifiably dismissed that as a pathetic response, because the Director had clearly stated earlier that the complainant had signed it.

(b) His second allegation was that the complainant "offered the use of the Office car to Mr X during his mission to the Philippines for a personal sightseeing trip ... when [the Director] was away from the Office". The complainant replied that Mr X had arrived in the Philippines on 22 July 1995, went to Cebu the next day, returned to Manila only on 27 July at 12.15 p.m., and left for Geneva the very same day at 7.55 p.m. The Director then claimed, in reply, that "Mr X returned from Cebu on Friday 27 July, and even came to [the Director's] Office to brief [him]"; that Mr X was due to depart "in the evening of Saturday 28 July"; that he left the Office "at around 5.30 p.m. on Friday" but later returned and found that steps were being taken to arrange a sightseeing trip for Saturday prior to departure. The complainant countered that the Director's version was wholly unacceptable because 27 July was a Thursday; that Mr X had in fact left Manila on that day, and not on the Saturday as the Director claimed; and that he could not have met him in the Office on the Friday.

(c) The third allegation was that the complainant was using an Office car to bring him to work every day; however, he did not tell him to stop that practice. The complainant maintained that he used the Office car only when he was entitled to do so. The Director then changed his position, alleging that when he joined the Manila Office he found that it was "standard operating procedure" for the complainant to use an Office car to pick him up and take him home every day; and that it was only after he questioned the complainant that the latter stopped that practice. He thus conceded that any improper use of the car had stopped long before 3 October 1995.

(d) The Director's fourth allegation was that the complainant had "encouraged" a staff member to request a briefing trip to Bangkok, despite refusal by both him and the Regional Office, and that he went so far as to have him telephone the Director, while on home leave, in Chicago. The complainant said that such a briefing trip had never been discussed. He said that in September 1995 he had turned down the staff member's request to be included in a training programme in Bangkok, in accordance with a decision taken by the Director. The latter again changed his position, saying that he had made it clear to the complainant that it was not possible for the staff member to participate in that programme, and that he had expected the complainant to deal with the situation; adding that it was "very strange" that the staff member had telephoned him in Chicago.

(e) the last allegation was that the complainant had attempted on the eve of the "Gender Training" programme to cancel that programme. The complainant explained that a "Team Building" exercise had been arranged for the

Manila Office from 27 to 30 September 1995; as the budgeted funds were inadequate, it was combined with a "Gender Training" programme; and when it was suddenly proposed to use funds from the Gender Training Budget to meet the shortfall, he informed the Regional Office. When the Director persisted with this charge, the complainant pointed out, further, that the Manila Office was substantially subsidised using funds meant for the entire Asian region.

21. The Director-General's reasoning and conclusions in his letter of 19 June 1998 may be summed up as follows.

(a) He made two general observations. He noted that "the allegations on which [the Director's] action was based were not considered to be a sound justification for disciplinary procedure", and that "while [in the note the Director] makes serious general statements, none of the reasons he provides for these statements lends weight to their seriousness". Further, before considering the merits he stated that "According to the Regional Office, from the very beginning ... relations between the two ... were not good. This situation, ... was of public knowledge; both ... had made representations to the then Deputy Director of the Regional Office". At no stage was it disclosed, either to the Tribunal or to the complainant, what information the Regional Office had given the Director-General and what representations the Director had made to that Office (besides his comments on the performance appraisal).

(b) He concluded that "By far the most serious incident was the remarks made [by the Director during the conference] in front of constituents of the Organization. ... The Director General has instructed the Personnel Department to bring the matter to the attention of [the Director] and to remind him of the conduct expected of international civil servants".

(c) As for the three allegations discussed at 20(a), (b) and (c) above, he held that the Director's statements "in his note for the file were indeed baseless", "no action was, or could have been taken, based on them"; and that he had, however, "decided to draw [the Director's] attention to the need for accuracy in recording events and to the procedures to be followed in managing staff". He also said - incorrectly - that the Regional Office, after hearing the complainant, had decided that no action was warranted: in fact, it had never communicated such a decision to the complainant.

(d) The Director-General concluded that the allegations at 20(d) and (e) above were "not entirely devoid of merit". While he noted that the Director had "rectified" his allegation by no longer alleging that the complainant had encouraged the staff member mentioned above to go to Bangkok, nevertheless he held that the circumstances, given his relationship with the complainant, may have caused his perception that there had been such encouragement. In coming to that conclusion, the Director-General relied on information from the Regional Office - not previously disclosed to the complainant - that the complainant had continued to press for the staff member's inclusion even after the programme had begun. As for the alleged attempt to cancel the "Gender Training" programme, the Director-General unequivocally held that since the complainant was the official in charge of the follow-up of financial questions, he was "justified in raising objections to such a use of funds which had a very specific allocation"; nevertheless he expressed the view that the complainant, instead of informing the Regional Office, should have discussed the issue with the Director and found ways of settling the matter with him.

(e) Finally, the Director-General observed that the Regional Office explained that the Resident Co-ordinator's letter was a confirmation of previous representations made by him; that his views were expressed on the basis of initiatives taken by him and experience of working with the complainant; and that the admitted discussions with the Director were about the "difficulties" he was encountering in his "relationship" with the complainant. Such discussions were normal among colleagues within the United Nations system; the Director did not go beyond seeking advice, and did not ask the Co-ordinator to make representations to the Regional Office. He concluded that the Director did not "instigate" that letter, and there was no unfair treatment in that respect.

22. The Director-General did not give the complainant a copy of the communication which he sent to the Director; and the ILO does not say that any communication whatever was sent to Mr McGrath in response to his letter of 5 September 1996.

23. The complainant claims that:

(a) the Director treated him inconsistently with the provisions of the Staff Regulations and his contract, and subjected him to unjustifiable and unfair treatment;

(b) the Director violated Articles 1.1 and 1.4 of the Staff Regulations in discussing his conduct and behaviour with an outsider, namely the Resident Co-ordinator, and in inciting him to write a letter to the Regional Director in order to malign his professional and moral conduct;

(c) the Director repeatedly racially abused him;

(d) the Director-General, in violation of Article 13.2 of the Staff Regulations, failed to consider properly and thereby acted erroneously with respect to the issues raised in his complaint to the Director-General;

(e) the Director-General in failing promptly to consider his complaint exacerbated the harm caused to him, including damage to his health;

(f) in consequence he suffered professional, moral and material damage, including health problems, and the expense of medical treatment;

(g) that there has been non-observance of the terms of his appointment and the Staff Regulations, for which he claims 124,000 United States dollars - consisting of 100,000 dollars for professional, moral and material damage, 15,000 dollars on account of medical expenses, and 9,000 dollars in costs.

Receivability

24. The ILO argues that claims (e), (f) and (g) are irreceivable because these claims were not made in the internal complaint; that the complainant is estopped from asserting them because by accepting the terms of the letter of 21 April 1997, he accepted the termination payments as full settlement of all his claims under the Staff Regulations, including the claims (e), (f) and (g); and that claims (a), (b) and (c) are irreceivable because they ask the Tribunal to make findings that were not requested in the internal complaint "and show no cause of action insofar as they seek to hold the Organization responsible for acts committed by the Director which were officially condemned in the Director-General's reply".

25. In his internal complaint the complainant stated that certain previous letters should also be treated as part of his complaint. Claim (a) was expressly made in that complaint. Not only are claims (b) and (c) specific instances of the unfair treatment alleged in claim (a), but they are also expressly mentioned in the complainant's letters of 4 October, 21 October and 4 November 1996. Further, the complainant's grievance is that the Director-General failed to condemn some of the Director's impugned acts, and failed to take proper action in respect of those which he did condemn. As for the plea of estoppel, the Tribunal recalls that even after 21 April 1997 the ILO asked the complainant for his comments on the Director's observations; and when the complainant inquired about the delay in the Director-General's decision, the ILO said that a decision would soon be sent. Throughout, the ILO acted on the basis that the agreed termination did not affect the complainant's rights relating to his internal complaint. The Tribunal holds that claims (a) and (c) are receivable.

26. Claim (d) is not objected to. The Tribunal holds that the claims (e), (f) and (g), insofar as they relate to professional, moral and material damage consequential to claims (a) to (d), are receivable, but not insofar as they relate to health problems and medical treatment, as that aspect was not included in the internal complaint.

Merits

27. The ILO made no attempt to justify the serious general allegations made by the Director. The Director-General concluded that, out of five specific allegations, the three most serious - involving misconduct of one kind or another - were "baseless". Further, the Director was found to have made racial remarks. Nevertheless, the Director-General did not come to a finding that he had subjected the complainant to unjustifiable or unfair treatment inconsistent with his contract or the Staff Regulations, nor did he direct that any disciplinary measure be taken against the Director. Although the ILO's reply emphasises the "extraordinary seriousness of the action taken, namely an official rebuke to a superior in front of his subordinate", in fact the Director-General neither ordered a rebuke nor even gave the complainant the satisfaction of receiving a copy of the communication sent to the Director.

28. Further, the Director-General ignored material facts in concluding that the other two allegations were not entirely devoid of merit, relying on the new positions taken up by the Director, although it was plain that the original allegations - that the complainant gave encouragement to a staff member in respect of a briefing trip and

that he had attempted to cancel the Gender Training programme - were both false in material respects.

29. Thus the five allegations that the Director made by means of his letter of 30 August 1996 were all false. If the note for the file was prepared on 3 October 1995 - as the Director claims - when the events were relatively fresh in his memory, it is most improbable that he would have made mistakes in regard to all five. The conclusion is that he either, deliberately or recklessly, made false allegations or the note was prepared much later, when his recollection had faded. The fact that the Director's comments in the complainant's performance appraisal do not even hint at any of those five allegations lends support to the complainant's contention that the note was prepared much later.

30. The Director-General's conclusions as to the Resident Co-ordinator's letter are seriously flawed in several respects. There was no evidence that he had made previous representations, and if there had been any, they were not disclosed to the complainant. The Director-General failed to take into consideration the fact that if the Director had any "difficulties" in his relationship with the complainant, they were entirely due to his own conduct. Although the Director-General referred to "discussions" which the Director had, with a view only to getting "advice" from the Co-ordinator, the Director's statement made it clear that he had made "complaints" about which the Co-ordinator went on to seek "independent confirmation" from the complainant's colleagues. The Director-General ignored the fact that the Director did not disclose those "complaints" either to his superiors or to the complainant. In those circumstances, it is clear that but for the Director's complaints to him, the Co-ordinator would not have written to the Regional Office; and even if the Director did not directly ask him to write that letter, he must have known that the Co-ordinator would probably communicate his complaints to the Office. It was therefore wholly unreasonable to conclude that what took place between the Director and the Co-ordinator was normal among colleagues in the United Nations system.

31. With its surrejoinder of 25 March 1999 the ILO has produced a memorandum of the same date addressed by the former Director in Manila to the Legal Adviser, in which the former makes new allegations about the complainant's conduct during 1994. These had never been brought to the complainant's notice. The complainant submitted a further statement in relation to this memorandum. Since neither is relevant to the issues to be decided the Tribunal will ignore them.

32. An international organisation is liable for the material and moral damages resulting from the injury caused to a staff member by his superior (acting in the course of his duties and not in a private capacity) by treatment that is an affront to the staff member's personal and professional dignity (Judgment 1609, *in re Souza* and others, under 16); and for victimisation consequent upon improper treatment (Judgment 1376, *in re Mussnig*, under 16 and 19). A staff member is entitled to have his good name vindicated by the organisation when a superior makes false allegations against him and to redress for the harm caused (Judgment 1340, *in re Vollerling* No. 3, under 13 and 14; see also Judgment 1344 *in re Angius* No. 2, under 19). When a third party makes false allegations against a staff member, the organisation should communicate its view that the allegations are without foundation (Judgment 1376, under 16).

33. The Tribunal holds that the Director used racial expressions about the complainant, made false allegations against him to his superiors without any excuse and discussed his conduct with an outsider - the Resident Co-ordinator - intending, or knowing it to be likely, that he would convey his allegations to the Regional Office. The action taken by the ILO in respect of the Director did not adequately protect the complainant's good name or repair the affront to his personal and professional dignity. Further, the ILO failed to take any action to inform the Co-ordinator that his allegations were unfounded, and thereby failed to protect the complainant's reputation. Consequently, the ILO is liable to compensate the complainant for the moral injury suffered by him.

DECISION

For the above reasons,

1. The ILO shall pay the complainant 20,000 United States dollars in damages.
2. The ILO shall pay him 2,000 dollars in costs.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr Mark Fernando, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Michel Gentot
Mella Carroll
Mark Fernando

Catherine Comtet

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