

THIRTY-SECOND ORDINARY SESSION

***In re* SLETHOLT**

Judgment No. 231

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the General Agreement on Tariffs and Trade (GATT) drawn up by Mr. Erik Sletholt on 2 March 1973, the organisation's reply of 17 April 1973 and the complainant's rejoinder of 15 May 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. On 1 December 1970 the complainant joined the staff of the International Trade Centre, a body jointly administered by the United Nations Conference on Trade and Development (UNCTAD) and GATT. He was seconded to the Centre for two years from the Norwegian Agency for International Development, NORAD. Although he had been given to understand that his appointment to the Centre would be extended for a year, it was in fact extended for only three months. His secondment to the Centre therefore came to an end on 28 February 1973. In the meantime, on 20 July 1972, the Director of the Centre wrote a memorandum, of which he sent a copy to a director of NORAD in Oslo, summing up his views on the complainant and his work. The complainant protested to the Director of the Centre, who dismissed his protests, and then to the Director-General of GATT, which was jointly responsible for running the Centre. He asked for payment of nine months' salary as compensation for the refusal to extend his appointment for more than three months, plus suitable compensation for the material prejudice he had suffered, due, among other things, to the surrender of the lease of his flat in Norway. He also demanded that the memorandum of 20 July 1972 of the Director of the Centre, which in his view contained false and libellous statements, should be expunged from the official records. In a letter of 16 February 1975 the Director-General of GATT told the complainant that having been seconded to the Centre from NORAD he was clearly under contract with NORAD, and GATT could not therefore meet his claims. The complainant is now appealing against that decision of 16 February 1973.

B. The complainant argues, as to his contractual relationship, that NORAD acted merely as a recruiting agency for GATT and he was therefore in fact a GATT official while working at the Centre. Having been given clearly to understand that a request would be made for a one-year extension of his secondment, he refused an offer of employment in Oslo and did not renew the lease of his flat in Norway. For those two reasons he suffered serious material prejudice since in the event his secondment was extended for only three months. Finally, the memorandum by the Director of the Centre on him and his work performance contains unfounded and libellous statements; it was sent to NORAD and is included in its files, which are accessible to the public. Since in his view it makes a serious attack on his professional reputation it has caused him grave moral prejudice.

C. In his claims for relief the complainant asks the Tribunal (a) to decide that he has been a bona fide staff member of GATT; (b) to grant him material damages amounting to US\$16,275 for the direct losses due to his unexpected removal and anticipated loss of income for a protracted period of time; and (c) to award him damages amounting to US\$15,000 for the moral prejudice resulting from the unfounded and libellous statements contained in a memorandum indirectly made public.

D. In its reply GATT states that, in addition to temporary and permanent staff members under contract with GATT, the Centre has employees who do not fall within those categories but are recruited by foreign agencies or departments which second them to the Centre. In the present case NORAD, with which the complainant was under contract, seconded him to the Centre under an agreement between the two organisations. The complainant never

had any contractual relationship with the Centre or with the organisations which run it (UNCTAD and GATT). On 3 November 1970 he signed a contract with NORAD appointing him from 29 November 1970 to 28 November 1972 as an assistant editor of the Centre's magazine. NORAD determined his salary and allowances for that period in accordance with the Norwegian Government's scales of remuneration, and they were expressed in Norwegian crowns. On taking up his appointment he was given a medical check-up by a doctor designated by NORAD and not by the Joint Medical Service in Geneva. The only administrative control exercised by the Centre over the complainant related to his hours of work, leave, and so on. The complainant therefore never had the status of a Centre staff member. He received neither a letter of appointment from the Centre, nor a copy of the Staff Regulations which accompanies such a letter, nor the identity card given to Centre Staff members. He did not contribute to the Joint Staff Pension Fund, although regular staff members are required to do so.

E. The Centre maintains that the complainant never had the status of a Centre staff member and that the complaint therefore falls outside the scope of Article II of the Statute of the Tribunal.

CONSIDERATIONS: According to Article II, paragraph 5, of the Statute the Tribunal hears complaints drawn up against organisations which have recognised the competence and alleging non-observance of terms of appointment or the provisions of Staff Regulations. The complainant was seconded by NORAD to GATT, which is one of the above-mentioned organisations and the defendant in the present case. Hence the Tribunal is competent to hear the complaint only if the complainant concluded a contract of appointment with GATT or was subject to the Staff Regulations of GATT, two conditions which in practice coincide.

In 1966 NORAD proposed to GATT that the officials whom it seconded to GATT should become members of its staff. GATT opposed that proposal and suggested instead establishing contractual relations between such officials and NORAD, and NORAD accepted GATT's suggestion.

Accordingly, when the complainant was seconded NORAD and GATT adopted the approach suggested by GATT in 1966. It was NORAD itself which appointed the complainant in November 1970 for two years under a contract signed by both parties. Under that contract it was to pay the complainant's remuneration. In 1972 it agreed to a three-month extension of his secondment to GATT. GATT did not directly conclude a contract with the complainant, who did not receive the letter of appointment and other documents given to all GATT officials and who, unlike such officials, was not a member of the Joint Pension Fund.

It is true that in order to establish that he was a GATT staff member the complainant relies on clause 2 of the contract of November 1970, which he translates from the Norwegian as follows: "The recruited party shall during his term of duty be under the jurisdiction of the Director of the GATT Trade Centre and shall be subject to the applicable staff regulations of that organisation." As GATT points out, however, the complainant's translation is not an accurate rendering of the original. In particular the words "staff regulations" should read "working conditions". The fact that the complainant was subject to the working conditions of GATT did not mean that he was subject to its Staff Regulations. Indeed, had that been the intended meaning, it would have been pointless to state that the complainant was subject to the working conditions of GATT.

During the complainant's appointment NORAD and GATT agreed to replace the system of recruitment adopted in 1966 with another whereby contractual relations would be established between GATT and the officials seconded to it. As appears, however, from the correspondence between the two organisations, the new system was not to apply to the complainant, who continued to be subject to the rules in force when he took up his appointment.

It appears from the foregoing that, notwithstanding his secondment to GATT, the complainant did not conclude a contract of appointment with it and was not subject to its Staff Regulations. The Tribunal is therefore not competent to hear the complaint.

DECISION:

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 May 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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