

## SEVENTH ORDINARY SESSION

### *In re* CARDENA

#### Judgment No. 39

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Telecommunication Union drawn up by Mr. Clement Cardena on 9 July 1958, received and registered in the Registry on 11 July 1958 under No. 58.30;

Considering the reply drawn up by the respondent organisation;

Considering the special application for the hearing of witnesses deposited by complainant and the remarks of the organisation regarding the said application;

Considering the Statute of the Tribunal, Articles 5.B.12.i and 9.1.C. of the International Telecommunication Convention, Resolutions Nos. 20 and 23 of the Plenipotentiary Conference of the organisation, Buenos Aires, Resolutions Nos. 366 and 388 and Decision D 195 of the Administrative Council of the organisation, the Staff Regulations of the organisation and in particular Articles 8, 30 and 67;

Having heard Maître Mercier, counsel for complainant, and Mr. Lethbridge, agent of the organisation, in public sitting on 23 September 1958;

Having received the testimony on oath of Mr. Léon Mulatier in public sitting on 23 September 1958;

Considering that the pertinent facts at issue are the following:

1. Complainant entered the service of the organisation on 23 June 1948, on a supernumerary basis, as a translator. He held a series of renewable temporary appointments until 1 April 1953 then he was granted a permanent appointment as a Secretary, Class 2, seniority for salary step advancement running from 1 January 1953.
2. On 11 June 1956 complainant addressed to the Secretary-General a request that he be promoted into Class 1, submitting in support of his request that his duties corresponded to those of a Class 1 post, in that he was required to replace Mr. Moreno, chief of the Spanish translation section, when the latter was absent.
3. On 18 June 1956 the Secretary-General replied to complainant that while he did not consider that the fact that an official might be required occasionally to replace his chief could justify a promotion, he was aware of the nature of complainant's duties in the Spanish section and that he would study the request.
4. On 4 December 1956 the Secretary-General notified complainant that he was promoted to the grade of Senior Secretary, Class 1, step IV, effective on 1 October 1956, thus placing him in the same class as his chief, Mr. Moreno.
5. At the time of his promotion to Class 1 and thereafter, complainant was required to undertake occasional revision work, as part of his normal duties.
6. In May 1957 the Administrative Council of the organisation, acting in accordance with Resolution No. 23 of the Buenos Aires Plenipotentiary Conference concerning a study of the salaries of the staff of the organisation, considered that a change in the basic salary scales as laid down in Resolution No. 20 of the Plenipotentiary Conference was justified on the basis of proposals submitted to the Members and Associate Members of the Union and accepted by a majority and under which the existing eight classes would be reclassified into eleven classes as a first step towards alignment with the United Nations common system. The Council accordingly instructed the Secretary-General to apply new salary scales with effect from 1 January 1958 to all permanent and temporary officials at that date. The Council further indicated, in its Decision No. D 195 that the Secretary-General, in bringing into effect these changes, should compare the posts in each of the existing classes in the light of the responsibilities and duties they carried, so as to enable any unjustified differences which might exist as between posts in any one class to be removed, and that the ultimate objective of complete alignment with the United

Nations common system should be kept in mind.

7. In order to apply these decisions, the Secretary-General established a working group of senior officials which examined the classification of every post. The recommendations of this working group were reviewed by the Secretary-General and discussed in the Co-ordination Committee of the Union before the new classification was put into effect and approved by the Administrative Council in its Resolution No. 388 in May 1958.

8. On 20 December 1957, the Secretary-General notified complainant that in application of the decisions of the Administrative Council, and with effect from 1 January 1958, complainant would henceforward be classified as Language Officer, Class (c), step IV, with ten years seniority in the class, thus placing him in the class below that of his superior, Mr. Moreno, graded in Class (b). As a result of this reclassification, complainant's salary was increased from 25,723 Sw. frs. to 26,760 Sw. frs., with the possibility of advancement after one year to a further step at 28,200 Sw. frs. instead of 27,606 Sw. frs., the figure under the old scale.

9. On 26 March 1958 complainant appealed against his classification to the Appeals Board of the organisation. On 15 May 1958 the Appeals Board drew up its report to the Secretary-General, in which it recommended that he reconsider complainant's classification so that there be no longer any discrepancy between his duties and his position in the administrative hierarchy. The Board, in support of its recommendation, contended *inter alia* that complainant's promotion in December 1956 was practically annulled by his reclassification and that since, in the opinion of the Board, he was effectively carrying out the duties of a reviser, his grading as a language officer only was in breach of the Staff Regulations.

10. On 22 May 1958, the Secretary-General informed complainant that after studying the report of the Appeals Board, he was unable to accept its conclusions and that he had decided therefore to maintain his decision regarding complainant's classification. In the opinion of the Secretary-General, complainant's earlier promotion was granted on a personal basis, and that because owing to the restricted number of grades in the former salary scale, Class 2 of that scale was no longer appropriate for a translator occasionally required to undertake revision. Under the common system complainant could not be classified as a reviser, since this implies the continual supervision of the work of three translators, while in the section in which complainant exercised his duties, there were normally only three officials altogether. Furthermore, complainant had suffered no prejudice, since he would enjoy advancement to a step higher than that to which he would have proceeded had he remained in Class 2.

11. On 9 July 1958 complainant submitted a complaint requesting the Tribunal to annul the Secretary-General's decisions of 20 December 1957 and 22 May 1958 and to order the organisation to pay to complainant by way of damages the sum of 50 Sw. frs. daily until such time as he were reclassified in Class (b), together with costs.

In law:

Considering that in accordance with the legislative provisions in force in the organisation, the Administrative Council determines the salaries of the officials of the organisation, taking into account the basic scales determined by the Plenipotentiary Conference, and that the classification of officials within the scales so fixed is determined by the Secretary-General, acting in accordance with the Staff Regulations and with the guiding principles and instructions issued to him by the Council;

Considering that such functions and duties constitute matters falling within the sovereign authority of these legislative organs and of the Secretary-General, that in the absence of any evidence that a particular decision taken in virtue of such authority was arbitrary or in bad faith, the Tribunal cannot constitute itself as a body competent to scrutinise the classification of officials and thus to assume a hierarchical authority over the organisation and its executive head;

Considering that the adoption of revised salary scales together with a new classification plan, be they part of a common system under the United Nations or some other scheme, cannot in itself be put forward as justification for proceeding to an arbitrary and unfair treatment of officials; that any such system may only be applied in the interest of the organisation and in accordance with the guarantees set out in the Staff Regulations; but that it is only where evidence has been adduced before the Tribunal to show that the organisation failed properly and fairly to observe the terms of an official's appointment and of the Staff Regulations applicable that a claim would be justiciable;

Considering moreover that if officials were to be justified in claiming that by virtue of their being in the same salary class as their colleagues or immediate superior officers under the former scheme they should as of right be entitled under the new classification plan to be placed in a comparable position this would have the effect of destroying the fundamental basis of the plan developed by the organisation and thus would interfere with the authority of the Secretary-General and the administration of the organisation as a whole; that it is inevitable that where officials in posts comprised in eight classes are reassigned to eleven new classes on the basis of their individual responsibilities and duties, then certain posts which were formerly in the same class will be separated into different classes on the new system;

Considering therefore that any complaint relying in substance on an individual appreciation of the relative merits of one official as against another is bad in law and must fail, the Tribunal not having jurisdiction in the absence of evidence showing that complainant was the subject of arbitrary or improper treatment amounting to an illegality under the Staff Regulations.

On the facts:

Considering that although complainant may have from time to time been carrying out the duties of his chief, when the latter was absent, it is to no purpose that he now submits that he has suffered damage through his chief being placed in a class higher than himself under the new classification plan; that whatever specific duties he may be called upon to execute, it is just and reasonable that the superior and the subordinate official be classified in that order in the administrative hierarchy; that there is no evidence that the reclassification of complainant has resulted in his downgrading or his assimilation to junior translators who perform no revision work; that if the Secretary-General, in the light of experience gained by him, should consider that having regard to any duties performed by complainant, complainant's classification requires to be altered, the Secretary-General will no doubt take such action in relation thereto as he, in his discretion, may consider proper;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares the complaint to be receivable but not well founded and therefore dismisses the complaint.

In witness of this judgment, delivered in public sitting on 29 September 1958 by His Excellency Albert Devèze, President, Sir John Forster, K.B.E., Q.C., Vice-President and Mr. Jason Stavropoulos, Deputy Judge acting as Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze  
John Forster  
Jason Stavropoulos  
Jacques Lemoine