

SEVENTEENTH ORDINARY SESSION

***In re* JURADO**

(Nos. 11 and 16 - Compensation for overtime)

Judgment No. 104

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado on 27 December 1965 and the reply of the Organisation of 12 April 1966, together with the complaint of 14 July 1966 and the letter of 16 August 1966 in which the Organisation reiterates the conclusions contained in its reply to the complaint of 27 December 1965;

Considering Articles II and VI of the Statutes of the Tribunal and Articles 7.1, 7.2 and 13.1 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

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

A. Complainant had been assigned to the secretariat of the Preparatory Technical Conference on Problems of Fishermen held from 18-24 October 1965, and during this period had been required to work 29 hours of overtime, including six hours on a Saturday. He was granted two days of additional leave in compensation. Mr. Jurado contented, on the one hand, that Saturday should be regarded as a holiday, and that he should accordingly have been granted time off equal to the overtime worked on that day, and on the other hand, that overtime should in any case be compensated by the same amount of time off, or even a longer period.

B. Complainant's claim having been refused by decision of 1 December 1965, complainant has made the following submissions to the Tribunal:

"As to form

1. To declare receivable the present complaint, the brief summary of facts and arguments and the five documents appended in evidence.

As to substance

1. To hold that the administrative decision of the I.L.O. dated 1 December 1965 and confirmed by decisions of 7 and 14 December 1965, granting complainant two days of compensatory leave for 29 hours of overtime, of which six were worked on a holiday, is contrary to Articles 7.1, 7.2 paragraph (b) and 13.1 of the Staff Regulations.

2. To rescind the aforesaid administrative decision.

3. To order the performance of the obligation relied on, and to this end to rule that, any compensatory leave for the purpose of rest and relaxation being objectively and subjectively impossible in the circumstances of the case, having regard to the kidnapping and captivity of the child Jurado since 1960 and to the fact that it has been totally impossible for him to see his father since 9 December 1962, a situation for which the I.L.O. is contractually responsible, the Organisation should pay complainant an amount equivalent to 29 hours of overtime calculated at his normal salary rate plus 25 per cent.

4. To order the Organisation to pay compensation assessed *ex aequo et bono* for the work performed by complainant in connection with the preparation and drafting of the present complaint, this work representing an

additional injury caused to complainant by the illegal decision.

5. To order the Organisation to pay 200 francs on account of copying and miscellaneous expenses."

The Organisation submits that the complaint should be dismissed.

C. During the 50th Session of the International Labour Conference Mr. Jurado was assigned to the secretariat and worked 32 hours of overtime between 1 and 23 June 1966, for which he was granted two days of compensatory leave by decision of 30 June 1966. This decision having been the subject of a complaint to the Tribunal, both parties have repeated the submissions set out above in respect of it.

CONSIDERATIONS:

1. The eleventh and sixteenth complaints of Mr. Jurado submit the same question for judgment. They are therefore joined together to be disposed of by a single judgment.

On the legality of the decision of 1 December 1965:

2. Article 7.1 of the Staff Regulations lays down the principle that the normal working week at Geneva shall be 40 hours, "while the right of the Director-General to call on the services of officials is unrestricted", and Article 7.2(b) goes on to provide for compensatory time off for officials of the professional category who have been required to work overtime in accordance with the right of the Director-General referred to above.

3. In this connection a clear and precise distinction is laid down in Article 7.2(b). In the case of overtime worked on a Sunday (or the equivalent day of rest) or on an established holiday, officials are entitled to compensatory time off equal to the amount of overtime worked; in other cases, and subject to the exigencies of the service, they are entitled to compensatory time off the duration of which is not laid down in the Staff Regulations but is left to the Director-General's discretion.

4. In the case at issue it is clear that the overtime for which compensatory leave was granted to Mr. Jurado by the decision impugned was not worked on a Sunday or one of the established holidays specified by the Director-General, which do not include Saturdays. It follows that the Director-General was free to fix the amount of compensatory leave. The submissions impugning the decision of 1 December 1965 are therefore unfounded.

On the legality of the decision of 30 June 1966:

5. For the same reasons the submissions regarding the decision of 30 June 1966 granting two-and-a-half days of compensatory time off, in the same circumstances, for 32 hours of overtime worked between 1 and 23 June 1966 in connection with the 50th Session of the International Labour Conference must also be dismissed.

On the submission claiming payment of compensation or 2 hours of overtime:

6. This submission, which is based on gratuitous and insulting accusations, is plainly devoid of substance.

On the other submissions:

7. In support of his other submissions Mr. Jurado has simply reverted to arguments already dismissed by the Tribunal in Judgments Nos. 70 and 83, without adding any new element.

DECISION:

For the above reasons,

The above-mentioned complaint of Mr. Jurado is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 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, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine

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