

SEVENTEENTH ORDINARY SESSION

In re JURADO

(No. 14 - Sick leave)

Judgment No. 110

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up on 28 June 1966 by Mr. Cesáreo Jurado and the reply of the Organisation dated 28 July 1966;

Considering Articles VI and VII of the Statute of the Tribunal and Articles 8.3 and 8.6 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings and hearing of a witness requested by complainant having been disallowed;

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

A. Mr. Jurado was granted the following periods of sick leave on full salary: in 1962, from 15 to 17 October; in 1963, from 9 to 10 April, from 7 to 8 November and from 13 to 14 December; in 1964, from 14 January to 7 June and from 7 to 8 November; and in 1965, from 21 January to 15 April. By decisions of 6 and 13 May 1966 Mr. Jurado was granted sick leave on half salary for the periods 16 to 18 March and 9 to 21 May 1966, having regard to the fact that he had had nine months' sick leave on full salary during a period of four years and under Article 8.6 of the Staff Regulations he was accordingly entitled only to sick leave on half salary.

B. In resisting the decisions of 6 and 13 May 1966 complainant has made the following submissions to the Tribunal:

In Procedendo:

1. To declare receivable the present complaint and its annexes (documents 1, 2 and 3).

2. To agree that Judges Maxime Letourneur, President of the Administrative Tribunal, André Grisel, Vice-President and Hubert Armbruster, Deputy Judge, should not try the case for the common reasons set forth in paragraphs 3 to 7 of complainant's Brief Summary; this to be done in virtue of Article X, paragraph (e) of the Statute of the Tribunal together with Article 20 of the Rules of Court.

3. To agree that Judge André Grisel should not try the case, for the specific reasons set forth in paragraph 9 of the aforesaid Brief Summary; this to be done in virtue of Article X, paragraph (e) of the Statute of the Tribunal together with Article 20 of the Rules of Court.

4. To order that Dr. J.F. Dulac shall be heard as a sworn witness on the question as to whether the fact that complainant has suffered the total loss of his son since October 1960 should or might be considered as the effective cause, or at least an important contributory cause, of complainant's sickness which has necessitated periods of rest on medical advice.

In judicando:

1. To find that the I.L.O.'s decision of 6 May 1966, together with the I.L.O.'s decision of 13 May 1966, both signed by the Chief of the Administrative Service of the Personnel and Administrative Services Department of the I.L.O., are in violation of Article 8.6 of the Staff Regulations and also of Annex II, paragraphs 1, 2, et seq. thereof.

2. To order the I.L.O. on this account: (a) to rescind the decisions impugned as set forth above; (b) to refund to

complainant the part of his salary which was wrongfully withheld amounting, if his calculations are correct, to 683.85 Swiss francs; (c) to restore complainant 15 proper entitlement to sick leave, namely nine months on full salary and nine months on half salary, in accordance with Article 8.6 of the Staff Regulations read in connection with Annex II; (d) if appropriate to pay into the Pensions Fund any sums or contributions (by the employer or the official) that may have been withheld by the I.L.O. On account of that part of complainant's salary that was wrongfully withheld. 3. Subsidiarily, in the event of the I.L.O.'s refusal, to order it to pay the sum of 200,000 francs in virtue of Article VIII of the Statute of the Tribunal.

9. To find that the I.L.O.'s decisions of 6 and 13 May 1966 constitute an illegal administrative act designed to perpetuate the captivity of the child Jurado in Switzerland, and order the Organisation to pay complainant the sum of 5 million Swiss francs on this count."

C. The Organisation submits that the complaint is irreceivable, and subsidiarily, that it should be dismissed.

CONSIDERATIONS:

On the objection to the composition of the Tribunal

1. Neither the fact that two of the Judges who sat in the case previously brought by Mr. Jurado before the Administrative Tribunal and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits in the Supreme Court of his own country, can in itself be regarded as valid ground for objection to these Judges. Moreover, as Judge Armbruster is not called upon to sit in the present case, the objection to him is in any event irrelevant.

On the submissions in the complaint

2. Complainant contends that his absences because of ill health which led to the exhaustion of his entitlement to sick leave on full pay were due to the perturbation of his way of life caused by the decisions of the Administration which led to Judgment No. 70 of the Administrative Tribunal. Hence, he argues that his sickness was due to and arose out of his employment, and that he ought to have continued to receive his salary, together with the allowances to which he was entitled, throughout the period of incapacity, in accordance with paragraph 7(b) of ex II of the Staff Regulations, without exhausting his right to sick leave on full salary. In that event, for his periods of absence from 16 to 18 March and from 9 to 21 May 1966 he would have been entitled to sick leave on full salary.

3. Even if it is granted that the disorders complained of by Mr. Jurado made their appearance following the decisions of the Administration which led to the Administrative Tribunal's Judgment No. 70, not only was the legality of the aforesaid decisions confirmed by that Judgment, but the Organisation's treatment of complainant has been blameless. In these circumstances the I.L.O.'s attitude was not one which would normally have affected complainant's state of health. It follows, without any need to hear Dr. Dulac as witness, that the disorders complained of by Mr. Jurado cannot be regarded as attributable to the performance of his official duties. It is established that complainant had previously exhausted his rights to sick leave on full pay, and the decisions of 6 and 13 May 1966 accordingly did nothing but correctly apply the provisions of Article 8.6 of the Staff Regulations. Hence the complaint is unfounded.

4. Moreover, if complainant wishes also to challenge the legality of the decisions granting him sick leave on full pay during the four years preceding his periods of absence from 16 to 18 March and from 9 to 21 May 1966, his submissions, which were not filed within the ninety days following notification of the said decision, would be time-barred.

DECISION:

For the above reasons,

The above 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.