Registry's translation, the French text alone being authoritative.

EIGHTIETH SESSION

In re BOUCHELAGHEM

Judgment 1487

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed Mr. Aïssa Bouchelaghem against the World Tourism Organization (WTO) on 7 March 1995 and corrected on 28 April, the WTO's reply of 31 July, the complainant's rejoinder of 7 September and the Organization's surrejoinder of 27 October 1995;

Considering Article II, paragraph 5, 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 Algerian who was born in 1938, joined the WTO on 1 October 1981 as an administrative officer at grade P.3. From 1981 until 1991 the Organization gave him various assignments. On 11 November 1991 it made him chief of its Facilitation Department at grade P.4 on an indefinite appointment. He was also active in the Staff Association and was elected its chairman in June 1992.

On 14 December 1993 the Secretary-General saw him and warned that his post might be abolished. In a letter of 28 December to the Secretary-General he questioned the lawfulness of abolition and said it was prompted by his union work and therefore an act of discrimination.

The Secretary-General answered in a letter of 25 January 1994 rejecting the charge: the abolition of the complainant's post was, he said, the outcome of an overhaul of the secretariat and a decision which the Facilitation Committee and the Tourism Safety Committee had taken at a meeting on 12 and 13 July 1993 to join together. But he was, he said, "aware that the abolition of a post need not mean the incumbent must go" and he would see about a new assignment.

By a letter of 25 March 1994 the Secretary-General informed the complainant that his appointment would end because his post had been abolished and there was no other for him. On 25 April he wrote back challenging that decision. By a letter of 27 May the Deputy Secretary-General upheld it and informed him that his appointment would end at 5 June and he would be paid compensation in lieu of notice and a year's remuneration by way of end-of-service indemnity.

On 21 June he went to the Joint Appeals Committee. In its report of 17 October 1994 the Committee recounted the history of the dispute but found for neither side and made no recommendations. The Secretary-General rejected the appeal by a letter of 8 December 1994, the impugned decision.

B. The complainant alleges breach of freedom of association. He submits that his dismissal was an act of discrimination largely prompted by his work for the Staff Association. He is the only official to lose his job because of the structural reforms of the WTO. He produces written testimony from two earlier chairmen of the Staff Association and says that they left because the Organization had made "life and work too hard for them".

The WTO "contrived" reasons for doing away with his post. There was no call for merger of the two committees and the Organization's governing bodies never agreed to it.

He argues from Judgment 1231 (in re Richard) that the abolition of a post need not automatically entail the departure of the holder of it and that the Organization therefore had to find him another post.

Lastly, there was misuse of authority because the Secretary-General took the impugned decisions out of hostility

towards him which he blames on a disagreement they had in 1991.

He seeks the quashing of the decision of 8 December 1994; reinstatement or an award of four-and-a-half years' salary and allowances in damages; and awards of six months' salary and allowances in moral damages and of costs.

C. In its reply the Organization points out that leaders of the Staff Association have to abide by its rules like anyone else. It denies victimising the complainant for staff union work and maintains that it dismissed him in application of stringent financial policy. The same policy dictated the merger of its two committees, which its governing bodies did approve. The incident of 1991 to which the complainant alludes had no bearing on the decision.

It could neither put him on any other post nor keep him on without a proper job to do. So it did not act in breach of the precedent in Judgment 1231.

Nor was there any abuse of authority. The two earlier chairmen of the Staff Association left "for personal reasons".

D. In his rejoinder the complainant develops his arguments. He maintains that the abolition of his post had no basis in law and that the Organization could have kept him on, either by giving him "ad hoc paperwork" or by resorting to "cross transfers". Officers of the Staff Association should enjoy at least as much protection as other employees. The WTO did misuse its authority.

E. In its surrejoinder the Organization objects to the "pointlessly argumentative" tone of the complainant's rejoinder. It says it could not keep his post and his lack of technical qualifications made reassigning him "out of the question". It neither showed him hostility nor got rid of him because of his work for the Staff Association.

CONSIDERATIONS:

1. The complainant joined the WTO in 1981 and his last post there was as chief of the Facilitation Department in the Programme Activities Division. A letter of 25 March 1994 informed him of a decision by the Secretary-General to dismiss him at 5 June 1994 because of the abolition of his post. On 27 May the Deputy Secretary-General upheld that decision, and he went to the Joint Appeals Committee. In its report of 17 October 1994 the Committee made no formal recommendation but expressed the view that "the ILO Tribunal, which will doubtless have to rule on the case, will find in the correspondence between the parties most of what it will need to know". By a decision of 8 December 1994, the one now impugned, the Secretary-General upheld the dismissal.

2. The complainant has four pleas. The first is that the impugned decision was in breach of freedom of association; the second, that it rests on an abolition of post that was unlawful and unwarranted; the third, that abolition need not mean that the incumbent must go, and indeed he is entitled to preference for assignment to other posts; and the fourth plea is misuse of authority. The first and fourth pleas are linked in that the complainant attributes his dismissal to his work for the Staff Association. But the Tribunal will first take up his second and third pleas: in sum, did the Organization give sound reasons for abolishing his post and for not transferring him to another one?

3. Abolition of the complainant's post came after the merger of two bodies, the Facilitation Committee, which the WTO had set up in 1978 and which the complainant's unit was servicing, and the Tourism Safety Committee. On the evidence the two had much in common and were tending to overlap because the safety of tourists and their better protection are priorities of what the Organization calls "facilitation".

4. The complainant admits that it is not for him to say whether the reforms ordered by the Secretary-General were good or bad. He contends that when the committees merged it was wrong to say that merger was what their own members wanted; that the decision should have been put to the Organization's Executive Council for approval; that in any event the merger did not require the abolition of his post, the more plainly so because a non-permanent staff member was assigned to a new section which the merger engendered and which was responsible for the "quality of tourism"; and that the reasons the Organization gave for abolition of his post were fabrication.

5. There was nothing wrong with the Organization's making reforms for the sake of greater efficiency, especially when it was in financial straits that called for cost-cutting. Unfortunately there is no trace of the tape recordings of what was said at the committees' joint meeting on 12 and 13 July 1993. But there is evidence to show that the members did agree to the merger, that the meeting led to administrative reforms by the Secretary-General and that the Executive Council expressly approved them in May 1994.

6. The sequence of events up to merger was as follows. The committees held their joint meeting on the recommendation of the Technical Committee for Programme and Coordination, a body set up by the Executive Council. In a report dated 27 April 1993 to the Council the Technical Committee had said:

"An innovation in the proposed programme is the merging of facilitation and health activities into one area designated as Quality Support Services. This was considered a logical step, taking into account the growing importance of health and safety in tourism and the changing focus of facilitation towards improving the quality of tourism services and reducing the administrative and fiscal impediments facing tourists."

By a resolution of 20 May 1993 the Council approved the general programme that the Technical Committee had proposed. The General Assembly too gave its approval at a meeting in Bali in October 1993. The Secretary-General thereupon submitted a report to the Council in May 1994. It said that responsibility within the secretariat for facilitation had been conferred on the officer already in charge of the health and safety of tourists and facilitation, all under the heading "quality of tourism", the aim being greater efficiency and the more economical use of staff. Lastly, the Council approved at its 48th Session (12-13 May 1994) the administrative reforms described above. So the complainant is wrong to say that the merger went through without approval from the competent bodies and was not in the Organization's general interest.

7. The reforms did mean abolishing the complainant's post as chief of Facilitation since the department itself was to go. But was it also inevitable that the holder of the post should go? He says not: in his submission the Organization should at least have found him another suitable job, even a "fictitious" one of the kind that several other officials have.

8. The plea fails. It is true, and the Organization admits, that the abolition of a post need not mean that the employee on it must go. As the Tribunal held in Judgments 269 (in re Gracia de Muñiz) and 1231 (in re Richard):

"... an organisation may not terminate the appointment of a staff member whose post has been abolished, at least if he holds an appointment of indeterminate duration, without first taking suitable steps to find him alternative employment."

But here it is plain from the evidence - for example the Secretary-General's letter of 25 March 1994 - that the Secretary-General did look thoroughly into the possibilities of reassignment, but he found no suitable post because of the complainant's grade and because there were but few permanent posts, and even fewer that were vacant or likely to become so. And even if the complainant is right in saying that positions devoid of content were not utterly unknown in the Organization, there was obviously no question of putting him on a "fictitious" post.

9. The rest of his case comes down to one plea: misuse of authority. He alleges that the Secretary-General acted from improper motives and dismissed him out of personal dislike because he was chairman of the Staff Association. So the misuse of authority was, in his submission, compounded by breach of freedom of association.

10. As did the Joint Appeals Committee, the Tribunal "can understand that the complainant wonders whether he was discriminated against, being one of the few to have been dismissed in recent years". But there can be no presumption of bad faith or misuse of authority on the Organization's part. And no item of evidence, more particularly not the testimony of earlier chairmen of the Staff Association, suggests that prejudice against officers of the Association led the WTO to commit such a serious breach of their acknowledged rights as staff representatives. Nor is there any evidence that the dispute the complainant had with the Secretary-General in 1991 bred any abiding dislike towards the complainant or that such dislike accounts for the impugned decision.

11. The conclusion is that the decision was taken in the Organization's interests and not for any improper reasons. So the complainant's claims to the quashing of it and to awards of damages and costs must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President,

and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

(Signed)

William Douglas
Michel Gentot
Julio Barberis
A.B. Gardner

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