

SEVENTH ORDINARY SESSION

***In re* ROUX**

Judgment No. 36

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. René Roux on 29 March 1957, received and registered in the Registry on 17 April 1957 under No. 57.20;

Considering the reply drawn up by the respondent organisation;

Considering the special application for the hearing of witnesses deposited by complainant, the additional written statement by complainant and the reply of the organisation to the additional written statement;

Considering the Statute of the Tribunal and the Staff Regulations of the International Labour Office, particularly Articles 11, 33, 37, 74 and 89 of those Regulations;

Considering that complainant applied for an adjournment of his case until the Seventh Session of the Tribunal and that this request was granted;

Considering that complainant applied for oral proceedings and the hearing of witnesses whereas the organisation requested the Tribunal to consider the case on the basis of the documents;

Considering that the written statements of complainant and the organisation together with the documents duly included in the dossier provide the Tribunal with sufficient evidence for it to arrive at a decision on the basis of a full knowledge of the facts and that the Tribunal therefore considers it to be unnecessary to open oral proceedings or hear witnesses;

Considering that the facts of the case are the following:

1. At the beginning of 1956 complainant was credited with 38 1/2 working days of leave accumulated in earlier years, in addition to 33 working days of leave to which he was entitled in respect of the calendar year 1956. From January to March 1956 complainant was granted leave amounting to 19 working days of annual leave. He submitted an application for further leave in the summer or autumn of 1956 and this was authorised for the month of September. This authorisation was subsequently withdrawn owing to the fact that complainant had to take the place of his supervisor during the month of September because the latter fell ill.
2. In October 1956 complainant applied for an authorisation to take leave and submitted in support of his application a medical certificate stating that he was suffering from general fatigue and an anxiety state, and urgently prescribing rest. Complainant's supervisor then informed complainant that if complainant applied for ordinary leave he would, in view of the requirements of the service, be unable to grant him leave even on the basis of the medical certificate, whereas if he applied for sick leave he would have to produce a medical certificate to the effect that he was temporarily unable to carry on his duties.
3. On 8 October 1956 complainant's supervisor received through the post a medical certificate issued on 4 October and posted on 6 October stating that an examination of complainant's symptoms had led his physician to conclude that he was suffering from functional disorders for which the only remedy was four weeks' leave. This certificate was accompanied by no explanation and complainant, who could not be reached at his home, did not return to his office and reported for duties on 5 November 1956 only.
4. Complainant's absence from 8 October to 5 November 1956 was regarded as sick leave on the basis of the medical certificate of 4 October 1956.

5. In preparing complainant's annual report on 31 October 1956 his supervisor, after praising the quality of complainant's services, stated that his confidence in him and his opinion of his loyalty and devotion had been shaken by the above-mentioned circumstances.

6. On 5 November 1956 complainant submitted to the Director-General, in accordance with Article 11 of the Staff Regulations, a complaint alleging that the refusal to grant him the leave he had applied for constituted treatment incompatible with the provisions of the Staff Regulations as well as unjustified and unfair treatment by a higher official; he also submitted a second complaint alleging that the observations made in the annual report of 31 October 1956, asserting that complainant had obtained leave for reasons of personal convenience by means of a medical certificate, constituted treatment incompatible with the provisions of the Staff Regulations because it was not for complainant's superior to challenge the validity of a medical certificate, besides which the unfavourable opinions expressed by complainant's supervisor on his loyalty and devotion, which were based on complainant's having obtained leave under proper conditions, constituted in themselves unjustified and unfair treatment.

7. On 13 November 1956 the Chief of Personnel acknowledged receipt of the first complaint and stated that a reply would be given in due course. On 19 November 1956 the Chief of Personnel acknowledged receipt of the second complaint and stated that because the complaint was appended to complainant's annual report a decision on the complaint would be taken after the Reports Board had examined the annual report to which the complaint related.

8. On 29 March 1957 complainant submitted to the Tribunal a complaint requesting the rescinding of two implicit unfavourable decisions deduced from the fact that the Administration had given no reply for over 60 days after the lodging of the two complaints of 5 November 1956, and asked that it might please the Tribunal (1) to declare that complainant was entitled to take the annual leave applied for in 1956 and to order that he might, notwithstanding any provisions to the contrary, carry over such leave, and that an application by him for such leave under the conditions in which he would have taken it, as he was entitled to, should be given priority; and (2) to declare that complainant had acted properly in submitting a medical certificate in October 1956, to find that his superior had contravened the provisions of the Staff Regulations by challenging the validity of that certificate in the report on complainant, and that his treatment of complainant had been unjustified and unfair in that complainant's superior had derived from this fact detrimental opinions with regard to complainant's devotion and loyalty; to order that any mention of the subject should be stricken from the annual report; and to grant complainant such compensation as might please the Tribunal in respect of the damage suffered owing to the unjustified refusal of complainant's application for annual leave and owing to the damaging evaluation wrongly made in his annual report.

9. On 11 April 1957 the Chief of Personnel informed complainant in reply to his first complaint that the Director-General had noted that as a result of the fact that complainant had taken sick leave for the purpose of rest at the time when he intended to take ordinary leave and that he could carry over to the year 1957 the annual leave still accruing to him in respect of the year 1956 the decision of his supervisor not to authorise him to take the leave requested had not been in any way injurious to him and that consequently the Director-General considered that his complaint was unfounded.

10. In a separate communication of the same date the Chief of Personnel informed complainant in reply to the second complaint that, having considered the opinion of the Reports Board, arrived at after studying the report of 31 October 1956 and complainant's observations, the Director-General was granting him a salary increment and that in respect of this second complaint he had consequently suffered no damage. If complainant so desired, however, the Director-General offered to refer his complaint to the Joint Committee and to consider on the basis of that Committee's report whether the treatment of complainant by a higher official had been unjustified or unfair.

11. On 16 April 1957 complainant acknowledged receipt of the reply to his first complaint and asserted that it confirmed the implicit rejection deduced from the Administration's prolonged failure to reply. By a separate communication of the same date complainant acknowledged receipt of the reply to his second complaint, confirmed that he had lodged a complaint with the Tribunal on 29 March and stated that only a settlement out of court could lead to its withdrawal.

Considering that although Article 74 of the Staff Regulations provides that every official must be given an opportunity of taking the annual leave due to him, the sole object of this provision is to ensure that an official will not lose his right to take the annual leave accruing to him at the rate of 33 working days per calendar year; that the refusal to grant in October 1956 the 14 days of leave outstanding in respect of the year 1956 did not have the effect of reducing the number of days of leave to which complainant was entitled since he was free to take these days of

leave in subsequent years because the number of days carried over exceeded neither the annual limit for carrying over leave due, which is 16 1/2 days, nor the absolute limit on the total amount of leave which may be accumulated, which is 66 working days, whereas complainant had in this case accumulated only 57 1/2 working days of leave by 1 January 1957; that the decision complained of, far from violating Article 74 of the Staff Regulations, correctly applied that article and that consequently the decision complained of is not injurious to complainant;

Considering that although leave is granted on a request approved by the supervisor such approval is subject to the requirements of the service; that the supervisor's discretionary power to determine such requirements is not a matter subject to control by the Tribunal, and that far from proving the excès de pouvoir which he alleges, complainant's case on this point is devoid of substance; that the refusal to grant the leave requested by complainant therefore appears justified;

Considering that in drawing up complainant's annual report his supervisor did not deny the validity of the medical certificate submitted by complainant to justify his absence but justly criticised the discourteous manner in which he had made use of a medical certificate to remain away from work; that the evaluation expressed in that report was made within the exercise of a discretion and constituted only an opinion preliminary to a decision by the Director-General relating to the grant of an annual increment, and there can be no recourse to the Tribunal in relation to this evaluation; that, finally, in view of the grant by the Director-General, after consideration of the said report and of the concordant opinion of the Reports Board, of the annual increment for the year to which the report related there has been no decision within the meaning of Article VII of the Statute of the Tribunal which is injurious to him;

Considering that in the absence of a decision injurious to complainant his complaint is quite unfounded;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares the complaint to be receivable in form but not well founded.

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