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

FORTY-EIGHTH ORDINARY SESSION

In re TARRAB (No. 7)

Judgment No. 498

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Nazmi Tarrab on 3 February 1981, the ILO's reply of 30 April, the complainant's rejoinder of 14 July and the ILO's surrejoinder of 26 August 1981;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 13.2 of the Staff Regulations of the International Labour Office;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. On 12 March 1980 a circular from the Personnel Department of the International Labour Office informed the staff that further to the decisions taken by the Governing Body at its 212th Session, in February-March 1980, the family allowances of General Service category officials (known as "G") at headquarters were increased with effect from 1 January 1979. A scale gave the amount of the increases, the allowance being raised at the top from 1,360 to 2,040 Swiss francs a year for each dependent child. On 16 September 1980 the complainant lodged a "complaint" under Article 13.2 of the Staff Regulations alleging discrimination against Professional category officials (known as "P") like himself, for whom the family allowance was set at 450 United States dollars a year for each dependent child, or, at a fixed exchange rate, 1,147 Swiss francs. By a letter of 13 October 1980, which the complainant states that he received on 5 November, the Chief of the Personnel Department rejected his complaint on the Director-General's behalf explaining that his position was not assimilable to that of G officials and that the principle of non-discrimination was therefore irrelevant. That is the decision now impugned.

B. The complainant observes that the allowance payable for the dependent child of a P official now amounts to only 56.25 per cent of that payable for the dependent child of a G official. That, in his view, makes for gross inequality between officials employed in the same organisation and at the same duty station. The Tribunal has held that what the principle of equality requires is that officials in the same position should be treated in the same way. For the most part P officials have left home to serve the ILO, particularly at headquarters. G officials, on the contrary, are usually nationals of the host country or neighbouring countries and therefore do not suffer the consequences of expatriation or the additional costs it entails. The complainant therefore asks the Tribunal to order the Director-General to take steps to ensure, with retroactive effect from 1 January 1979, equal treatment for officials of both categories in respect of family allowances for dependent children.

C. In its reply the ILO points out that the complainant is indirectly challenging the lawfulness of the decision of a legislative body and the distinction which that body has drawn between the two categories. The Tribunal is competent only to determine the lawfulness of an individual decision alleged to be contrary to the terms of appointment, the Staff Regulations or general principles of law. As to the receivability of the complaint, the ILO questions the date on which the challenged decision was notified to the complainant. The decision which prompted the internal "complaint" was notified to the whole staff by a circular distributed on 12 March 1980. Being then in Geneva, the complainant had an opportunity to read the circular at the same time as anyone else at headquarters. Under Article 13.2 of the Staff Regulations he had six months in which to submit a "complaint" to the Director-General. In fact he did not submit it until 16 September 1980, a few days after the time limit expired. His internal appeal being irreceivable, so is the present complaint. Turning to the merits, the ILO argues that the position of P officials in this matter is not comparable to that of G officials. it explains the differences in detail, and in particular the system of remuneration for each category. For G officials the criterion is the best prevailing local rates, which

apply to salary and to all social benefits and which served as the basis for calculating the increase in the child allowances. For the salaries of the P category the criterion is the level of remuneration in the best paid national civil service. The family allowances payable to P officials are based on the average between the seven countries where the international organisations have their headquarters and are much higher than they would be if the criterion of the rates prevailing in the best-paid national civil service, that of the United States, were strictly applied. The distinction between the two staff categories rests on a difference in their factual situation and on the service requirements for each of them. In any case the difference between the allowances for the two categories cannot be challenged unless the distinction between the categories themselves is as well, and the complainant does not appear to challenge this distinction. Nor is he objecting to the fact that he belongs to the P category. He cannot therefore properly allege any discrimination. The ILO therefore invites the Tribunal to declare the complaint irreceivable and, subsidiarily, to dismiss it as unfounded.

D. In his rejoinder the complainant maintains that lie is challenging the rejection of his internal appeal, not the lawfulness of the decision of a legislative body. Since the rejection of his internal appeal was at odds with the general principles of law relating to equal treatment and nondiscrimination, the Tribunal is competent. He is appealing against the final decision in the Chief of Personnel's letter of 13 October 1980, and, having been filed within 89 days of the date of notification, his complaint is receivable. He enlarges on his arguments on certain points relating to the merits. He points out, among other things, that child allowances for P officials, most of whom are expatriates working at headquarters, should be higher than those paid to G officials, who are local staff working in Geneva.

E. In its surrejoinder the ILO presses in their entirety the arguments in its reply. In its view what the complainant really wants is the higher rate of each of the allowances he is entitled to, whichever category gets that rate. Such a claim is at variance not only with the terms of appointment to which he consented on joining the ILO as a P official but also with the principle of equality, since this principle does not warrant identical treatment for officials who are not in a comparable position.

CONSIDERATIONS:

1. The complainant is challenging the Director-General's decision of 13 October 1980 to refuse his claim for determining the family allowances he receives, and in general the family allowances of Professional category ("P") officials 1 at the same rate as those payable to General Service category ("G") staff.

The ILO Governing Body decided at its 212th Session, with retroactive effect from 1 January 1979, to increase the amount of family allowances payable to G officials in Geneva. The allowances of other categories were unchanged.

There is a reason for the difference. G staff are recruited largely in Switzerland or neighbouring countries. It is therefore only right that as an incentive to recruitment their pay, including family allowances, should be in line with pay scales in Switzerland. Officials in other categories, however, may come from and be required to serve anywhere in the world. For them there is no reason to follow pay scales in Switzerland, and the ILO takes as its standard of comparison the best-paid national civil service. Consequently the allegation of unlawful discrimination fails.

When there are two parallel systems there are bound, with shifting circumstances, to be variations between them.

In any event the Governing Body has never aligned the two systems. Nor indeed is the complainant contending that its decision should be directly applied to his own case, and from this point of view the Director-General's rejection of his claim is not unlawful.

2. To support his case that the impugned decision is unlawful the complainant has two arguments.

The first is that the whole system is discriminatory and in breach of the ILO's Social Policy (Basic Aims and Standards) Convention (No. 117), which, in Article 14, provides that workers from one country engaged for employment in another country may be granted in addition to their wages benefits in cash or in kind to meet any reasonable personal or family expenses resulting from employment away from their homes.

The Tribunal observes that in this case there is no substance to the allegation of a breach of Convention No. 117. The amount of the family allowances paid to the complainant is based on the average amount of benefits paid for dependent children in the seven countries where the international organisations have their headquarters. At present

it may be lower than in Switzerland, but it does enable an official to meet the reasonable family expenses resulting from his employment, say, in Geneva.

The system which the complainant wants might - if his argument were taken to its logical conclusion - result in determining the amount at the rate prevailing in the country of the duty station.

The Tribunal will likewise observe that the principle of equality is applicable only between officials in the same circumstances, and is therefore clearly inapplicable here.

3. Secondly, the complainant also relies on a statement by the Director-General that whenever the United Nations common system was at odds with commonsense and equity he would feel free to propose a departure. The statement does not amount to any commitment. The Director-General is merely explaining that he will put before the competent bodies amendments to the ILO Rules whenever he thinks it necessary or right to do so. This is an area in which he has discretion, and the Tribunal cannot review his exercise of that discretion.

For all these reasons the complainant's claim must fail, and there is no need to consider the plea of irreceivability put forward by the Director-General's representative.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner

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