

ELEVENTH ORDINARY SESSION

***In re* PRESS**

Judgment No. 66

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization, drawn up by Mr. Jean M. Press, Doctor of Science, on 31 January 1962 and brought into conformity with the Rules of Court on 20 February 1962, and the Organization's reply dated 30 April 1962;

Considering Articles II and VIII of the Statute of the Tribunal and the provisions of the Staff Regulations and Staff Rules of the World Health Organization, taken as a whole;

Considering Decision No. 57 of the Tribunal of 2 May 1962 on the preliminary conclusions put forward in the above-mentioned complaint;

Having heard, in public sitting on 18 October 1962, Mr. Jean Dutoit, Counsel for complainant, and M. Claude-Henri Vignes, agent for the Organization, as well as Mr. René Regamey who testified under oath;

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

A. Complainant who was appointed by the Organisation on 1 September 1954 as a scientific expert, was instructed to experiment on insecticides used in malaria eradication and to study their effects on the indigenous populations of Nigeria. Complainant fell ill in February 1961 and left the service of the Organization on 31 May of the same year.

B. In May 1961 the Organization decided to produce a paper on insecticides and entrusted its preparation to Messrs. Barnes and Elliot. Complainant asserted that the paper could be produced only thanks to the work he had undertaken and the data he had collected, and requested that his name should be mentioned as that of a co-author, together with those of Messrs. Barnes and Elliot. The Organization did not assent to this request. Complainant lodged an appeal before the Headquarters Board of Inquiry and Appeal, which recommended that, should the Organization publish the aforementioned paper, complainant should be asked whether he wished to participate in the preparation of a final document for publication, and, if so, that his name should be included as co-author. On 16 November 1961 the Director-General rejected the recommendation of the Board and complainant's request.

C. Complainant requested the Director-General to reconsider his decision. By letter of 26 December 1961, the Director-General confirmed his earlier decision, but agreed that the name of complainant should be mentioned in a footnote to the title of the article reading as follows: "Chemical data supplied by J.M. Press". On 31 January 1962 complainant lodged a complaint before the Tribunal in which he prayed for the following relief:

Preliminary submission: that the Tribunal should order that the publication of document WHO/Insecticides/125 in the Bulletin of WHO be suspended pending a judgment on the legality of the decision impugned;

Principal submissions: that the Tribunal should quash the Organization's decision of 16 November 1961;

that the Tribunal should rule that the name of Dr. Jean M. Press be mentioned together with those of Messrs. Barnes and Elliot as authors of document WHO/Insecticides/125, which was to appear shortly in the Bulletin of WHO;

that complainant be awarded costs;

Subsidiary submission: that the Tribunal should order the production of the monthly reports addressed by complainant to WHO through Mr. J.W. Wright, Chief of the Department of Environmental Sanitation, and that such reports should be included as evidence in the dossier.

E. By decision of 2 May 1962, the Tribunal rejected complainant's preliminary conclusions.

IN LAW

On the Tribunal's Competence

1. Under Article II, paragraph 1 of the Statute of the Administrative Tribunal, "the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case" and under the provisions of paragraph 5 of the said Article, "the Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the Jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure".

Complainant claims to be entitled to be mentioned as one of the authors of the paper on the use of organo-phosphorous insecticides in malaria eradication in Nigeria (WHO/Insecticides/ 125) which the Organization has decided to publish and that in denying complainant the right he claims, the Director-General failed to observe the provisions governing complainant's status.

While complainant does not rely on any specific provisions of the Staff Regulations and Rules, which do not specifically refer to the matter in issue, his submissions, aimed at securing recognition of rights to which he lays claim by virtue of his position as an international civil servant and relying on a violation of these rights, appertain exclusively to his statutory position in regard to the Organization. Hence the complaint is amongst those which it falls to the Administrative Tribunal to entertain by virtue of Article II, paragraph 5, cited above.

On Complainant's Submissions

Regarding the submission that the Tribunal should order the production of the monthly reports addressed by complainant to WHO, to be included as evidence in the dossier:

2. The true object of this submission is to enable complainant to adduce proof in support of his claim. The production of complainant's monthly reports, the contents of which are not disputed, would serve no useful purpose. On the other hand, the Tribunal requested the Organization to produce the general reports submitted by complainant, and the paper prepared by Messrs. Barnes and Elliot. Complainant was invited to view and identify these documents before the Registrar and in the presence of the agent of the Organization.

Regarding the prayer for the quashing of the Director-General's decision of 16 November 1961:

3. An official of an international organisation has no rights whatsoever in the results of such work as he performs and such studies as he carries out on behalf of this organisation within the scope of his duties, at the request of his supervisors, during hours of work and with the means provided by the administration. In particular, where the organisation decides to publish the work and studies he has conducted or to which he has contributed, the official concerned is not entitled to require that they be published under his name. However, where the organisation decides of its own volition that the publication shall bear the name of its authors, the organisation is bound to respect the principle of equality as between officials in the same position and, consequently, to mention the name of all those who can claim authorship.

4. In the present case, the Organization decided that the study on insecticides should be published under the name of its authors. In the circumstances, the Tribunal is therefore called upon to consider whether complainant should, as he asserts, be regarded a co-author of this study together with Messrs. Barnes and Elliot, in which case he is entitled to have his name mentioned alongside theirs on the title page of said publication, or whether complainant, as the Organization submits, merely supplied to the authors technical data which they collated and interpreted and from which they drew general conclusions, in which case complainant has no rights to claim authorship, while the Director-General remains, of course, free to decide, as a matter of grace, whether and in what manner complainant's name might be mentioned.

5. On the one hand, It is not disputed that, owing to illness, complainant took no part in the drafting of the paper in question. On the other hand, a comparison of the text of the paper on insecticides with that of the general report

sent by complainant from Nigeria discloses that complainant's contribution was limited to supplying part of the data used by Messrs. Barnes and Elliot in their study of one of the aspects (namely the chemical aspect) of a general problem they had been invited to consider in all its aspects. In the circumstances of the case and whatever the undisputed scientific value of complainant's work and its usefulness for the substance and presentation of part of the paper, complainant cannot be regarded as co-author of the said paper.

6. At the end of their report, Messrs. Barnes and Elliot acknowledge complainant's contribution, and the Director-General decided that there should be inserted on the title page of the document a footnote reading "Chemical data supplied by J.M. Press". The said acknowledgment and said footnote are justified by considerations which, although a matter of grace, carry very considerable weight. However, the acknowledgment is a matter of fairness on the part of the authors, and the footnote is one within the discretion of the Director-General, and it is not for the Tribunal to review the manner in which they are framed.

Regarding the prayer that the Tribunal should rule that the name of Dr. Jean M. Press shall be mentioned together with those of Messrs. Barnes and Elliot as authors of document WHO/Insecticides/125, to appear shortly in the Bulletin of WHO:

7. In the light of the foregoing, this claim must also fail.

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 26 October 1962 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine