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

FIFTY-SIXTH ORDINARY SESSION

In re BONNEAU

Judgment No. 671

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Daniel Maurice Bonneau on 24 August 1984, the ILO's reply of 15 November, the complainant's rejoinder of 30 December and the ILO's surrejoinder of 1 April 1985;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Article 11.40 of the Financial Rules and Articles 3.16 and 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. The complainant, a Frenchman born in 1917, joined the ILO in 1967 and was appointed in 1975 as chief technical adviser at grade D.1 to the African Regional Centre for Labour Administration (CRADAT) in Yaoundé, in Cameroon, where the ILO also has an office. At the material time he was authorised to sign cheques for the ILO office. Early in 1983 headquarters noticed heavy overspending by Yaoundé. The Director of the ILO office made an inquiry and on 26 March a report. On 13 March the Administrative Assistant, one Métozounvé, had confessed that he was the largest shareholder in a firm known as Campeint, which had premises near the ILO in Yaoundé, and had drawn ILO cheques to pay trumped-up or inflated bills from Campeint. The complainant had, he said, signed some of the cheques. Métozounvé was arrested and held in custody. Penal charges were brought in the Cameroon courts and the ILO concurrently filed a civil suit. Two officials from headquarters carried out an administrative inquiry and the police of Yaoundé a criminal one. Their reports agreed that the amount of the fraud exceeded 120 million CFA francs, or over 250,000 United States dollars. While in custody Métozounvé accused the former deputy director of the ILO office and the complainant of complicity and of sharing the proceeds. As to this the police report read: "Bonneau's fairly clumsy denials ... afford no convincing explanation of his readily agreeing to sign the unsubstantiated cheques put before him by Métozounvé". On 19 Apri1 1983 the complainant sent Geneva a brief in his own defence. He was retiring from service with the ILO and on 25 May was allowed to leave Yaoundé. On 30 May he saw the Legal Adviser at headquarters. The Legal Adviser told him that the Director-General had set up a Property Survey Committee in accordance with Rule 11.40(b) of the ILO Financial Rules to determine blame for the loss, that under 11.40(c) an official might be "required to reimburse the loss either partially or in full" and that something must be done to protect the ILO's interests. The complainant protested his innocence but it was contemplated that he should provide as security, in case the Committee's findings should go against him, part of his lump-sum pension benefit. In reply to his letter of 4 June 1983 objecting to the financial inconvenience Mr. Trémeaud, the head of the Director-General's office, wrote on 15 June, to explain the nature of the measure. The sums were withheld from 1 June 1983 and totalled $30,000. On 1 July the Technica1 Co-operation Personnel Branch wrote to him to say that instead of blocking part of his pension benefit the ILO would adopt the "more orthodox" course of holding back some of his end-of-service entitlements. The Property Survey Committee decided to await the outcome of the pena1 proceedings in Cameroon before making findings as to the complainant, and so he was told, on 23 September, that his presence in Geneva was not required for the time being. On 21 February 1984 he wrote to Mr. Trémeaud from Miami to ask why the Committee had not yet summoned him. On 27 March he wrote to the Director-Genera1 asking that the $30,000 be paid or he be told when it would be. Replying on 28 March to his 1etter of 21 February, Mr. Trémeaud said that the Committee was still awaiting the verdict of the Cameroon court. The complainant saw Mr. Trémeaud in Geneva in May. On 7 June Mr. Trémeaud wrote to him to say that the Director-Genera1 would ask the Committee to see whether it cou1d report without delay; the ILO would pay him the $30,000 in return for a guarantee of repayment of any losses for which he might prove liable. The Committee heard him on 17 July but decided again to await the outcome of the trial in Yaoundé. The findings of the inquiry ordered by the Public Prosecutor in Cameroon reached the ILO at the end of July. The complainant filed his complaint on 24 August challenging Mr. Trémeaud's letter of 7 June 1984.

Believing that the findings cast suspicion on the complainant, the Committee asked that the ILO auditor carry out a mission to Yaoundé. On his return the auditor made a report which, as to the complainant, was inconclusive. Early in 1985 the ILO recovered some 66 million CFA francs. After further inquiry the Property Survey Committee concluded that the complainant had failed to observe the Financial Rules and had at least been grossly negligent, but that his complicity could not be determined. It said that, since the complainant had at least been guilty of consistent gross negligence for over a year, the best course would be to maintain the measure until Métozounvé had been tried, but that, since the trial would be long delayed, the Director-General might prefer to deduct two months' salary and release the balance only in return for a guarantee from the complainant. The Director-General preferred the latter course.

B. The complainant submits that there is no provision of the ILO Staff Regulations -- the only text covering relations between the ILO and its staff -- which authorises it to withhold any of his entitlements. Such a drastic measure is warranted only by gross misconduct: yet he himself was given a good testimonial on termination, nor was any sanction imposed on him when the fraud came to light. Part of his entitlements consisted in compensation for accrued leave, which is just a form of deferred salary: the ILO had no right under the Staff Regulations or his contract of employment to withhold salary. Part was his repatriation benefit, an inalienable right. There were procedural flaws. The decision amounted to a sanction, and the disciplinary procedure should have been followed. No specific reason has ever been given for withholding the $30,000. The Committee refused to hear him until 17 July 1984. The ILO has never properly investigated how he came to sign the cheques. All he was required to do was to make sure that the amounts of the cheques and of the bills were the same and that cheques were made out to the senders of bills; it was never his function to see that money was available or goods delivered. He had no reason to doubt Métozounvé's honesty. The decision has caused hin inconvenience, forced him to contract loans, cast doubt on his honour and damaged his health. The proposal in Mr. Trémeaud's letter of 7 June 1984 is no solution because he still has to provide safeguards. He seeks payment of the $30,000 plus interest thereon as from 1 June 1983, damages amounting to $10,000 and costs amounting to $100.

C. In its reply the ILO submits that the offer in Mr. Trémeaud's letter of 7 June 1984 renders the complaint devoid of substance. Besides, it is irreceivable. First, it is time-barred. The complainant was informed of the decision by the letter of 1 July 1983, yet did not raise the matter until February 1984, ask for repayment until 21 March or file his complaint until 24 August. The letter of 1 July 1983 being the final decision, he should have filed his complaint within 90 days; even if it was subject to internal appeal -- which it was not -- the appeal ought to have been lodged within six months under Article 13.2 of the Staff Regulations. Secondly, there is estoppel: the complainant may not go back on his agreement to give the ILO financial safe guards and accept the Committee's findings. His claims are in any event unsound. There is a legal basis for the decision in Financial Rule 11.40 and in Article 3.16 of the Staff Regulations ("The Director-General may provide for the deduction from the total monthly payment due to an official ... of all sums due to the International Labour Office..."), the latter rule being applied by analogy to former officials. Nor was there any procedural flaw. The complainant was given several opportunities to express his views, both in writing and orally. The disciplinary procedure was irrelevant, the sole purpose of the decision being to safeguard ILO interests. The material issue is not whether the complainant was to blame for any losses but whether the ILO was right to take steps to safeguard its interests. His view of the scope of his responsibilities is too narrow, does not fit the facts and is implausible. His very arguments show a cavalier attitude. The decision caused him no serious inconvenience, the $30,000 being put in an interest-bearing account and the equivalent in French francs having since risen by nearly half. Mr. Trémeaud offered to compensate him later if he was exonerated. There was no moral injury since his honour was not publicly impugned. If people know what happened it is because he told them.

D. In his rejoinder the complainant seeks disclosure of the report of 26 March 1983 by the former Director of the Yaoundé office, which he believes absolves him. He seeks to show that his complaint is receivable. His brief is mainly devoted to refuting the reply on the merits, enlarging on his original arguments and reaffirming his innocence.

E. In its surrejoinder the ILO says that the Director's report, a mere statement of opinion made before any inquiry was carried out, is of no value as evidence. The ILO discusses the question of receivability in detail, observing that the complainant implicitly concedes much of the ILO's own case: in particular he never challenged the legal basis of the decision to withhold part of his entitlements, and there is therefore estoppel. The ILO goes further into the merits. It observes that the rejoinder merely reasserts the complainant's innocence and his narrow interpretation of his responsibilities and, being mistaken both in law and in its representation of the facts, is an inadequate and largely irrelevant response to the reply.

CONS1DERATIONS:

1. In 1975 the complainant, a D.1 official of the International Labour Office, was appointed chief technical adviser to the African Regional Centre for Labour Administration in Yaoundé. Having proved an able administrator, in 1981 he was given, besides his main duties, those of Acting Director of the ILO office in Yaoundé in the Director's absence, and he was appointed second signatory of bank cheques made out by the ILO office. The latter responsibility he agreed to take on only after much hesitancy and at the urging of the Director.

In March 1983 the ILO detected heavy overspending in Yaoundé due to the issuance of cheques for amounts surpassing actual expenditure. The Director brought charges of fraud and embezzlement against the first signatory of the cheques, criminal proceedings were introduced, and the ILO concurrently filed a civil suit.

2. At the same time the ILO took several internal measures. The ILO External Offices Manual stipulates that "two signatures by official signatories are required on each cheque, the first usually being that of the Administrative Assistant. Both signatories should satisfy themselves as to the purpose and authenticity of the payment". The ILO surmised that under that rule the complainant might be held liable. Having since reached the age of retirement, he was called to headquarters and on 30 May 1983 told of the Director-General's decision. This was to distrain the bulk of the sums payable to him in the form of repatriation benefit and compensation for accrued leave. He demurred orally and later, on 4 June, in writing. By a letter of 1 July the chief of the Technical Co-operation Personnel Branch reaffirmed the decision, but explained that it was "a measure of distraint" which in no way prejudged the findings of the Property Survey Committee or the Director-General's decision on the strength of those findings. Before he received that formal decision the head of the Director-General's office had written him a letter, more personal in tone, suggesting he lodge an internal appeal.

3. The complainant did not respond. Over the next few months he merely asked that the Property Survey Committee give him a hearing, and on 23 September l9B3 the Committee decided there was no need to do so. But no consent may be read into his passivity.

4. Not until 27 March 1984 did he ask the Director-General to pay him forthwith the sums distrained or at least tell him when payment would be made. On 7 June 1984 the head of the Director-General's office wrote refusing his demands but adding that the ILO would be willing to pay in return for security of some kind. That is the impugned decision.

Insofar as it constituted a decision to withhold payment the letter of 7 June 1984 did no more than confirm the decision notified orally to the complainant on 30 May 1983 and upheld by the letter of 1 July.

Neither the decision of 30 May nor that of 1 July was challenged within the time limit, set in Article VII of the Statute of the Tribunal, of 90 days from the date of notification. As for the "complaint" which might lie under Article 13.2 of the ILO Staff Regulations, even supposing that the letter of 27 March 1984 was such a "complaint", it was not lodged within the time limit of six months and was time-barred. It is therefore immaterial which was the right procedure: the decision of 1 July 1983 is in any event beyond challenge and final.

5. Yet it does not follow that the complaint is time-barred in its entirety. The peculiarity of the decision is that, being "a measure of distraint", it will cease to have effect when the ILO eventually makes a final decision. That decision may be either to keep the sums for good or to repay them with interest, or else a solution which comes somewhere between the two. The complainant will be free to challenge it on whatever grounds he thinks fit, and the whole basis of the dispute will then shift.

Even before that final decision is taken, however, it is open to the complainant to seek review of his position. If it were not he might suffer a grave miscarriage of justice. The Organisation would have to do no more than let its original decision stand over a long period for the complainant to be debarred from action: the element of distraint would then in practice vanish, even though it is the essential attribute of the original decision.

The complainant is nevertheless not free to avail himself of the opportunity to bring a whole run of appeals. Any request by him for review must rest on some change of the position in law or in fact, and he may not simply plead yet again the unlawfulness of the original decision.

6. The claim he submitted to the Director-General on 27 March 1984 may be treated as a request for review. The

fact that the impugned decision did not give a straight answer on the point has no bearing on the receivability of the request. For his request to be treated as receivable it was necessary for him to put forward some plea enabling the Organisation to take up the case on new premisses.

In fact he did not do so. His one new plea was that the Property Survey Committee had not given him a hearing, and it was not tantamount to a new fact warranting review.

7. But new facts have occurred in the course of the proceedings before the Tribunal. Reports have been made and in particular the ILO states in its surrejoinder that by virtue of a final ruling by a criminal court in Cameroon it has recovered some of its losses. It also informs the Tribunal that the Property Survey Committee has managed to estimate more nicely the amount of the losses. These are facts which might warrant a request for review, but since they came to light only on the filing of the surrejoinder the complainant has had no opportunity to address them. Accordingly, the Tribunal cannot entertain the complaint. The complainant is free to submit another complaint to the Tribunal if he so wishes. If he does so the ILO must disclose all the documents at its disposal which have a bearing on the case, the Tribunal taking the view that it would be wrong to withhold any from him.

8. The Tribunal concludes that the complaint fails. It will not take any of the submissions on the merits. Having ruled as it has, it may not go into the merits save insofar as it needs to do so in order to decide on the dispute as at present before it.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 19 June 1985.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

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