

FIFTEENTH ORDINARY SESSION

***In re* BARAKAT**

Judgment No. 89

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation, drawn up by Mr. Aziz Barakat on 19 February 1965, the Organisation's reply dated 30 March 1965, complainant's rejoinder dated 29 June 1965, the Organisation's surrejoinder dated 10 September 1965, together with complainant's rectifications dated 5 October 1965, and the Organisation's observations thereon, dated 26 October 1965;

Considering articles II, VII and VIII of the Statute of the Tribunal, and articles 1.2, 1.8, 11.2, 12.1, 12.2, 12.8, 12.9 and 13.1 of the Staff Regulations of the International Labour Office, together with Annex IV to the said Regulations;

Having examined the documents in the dossier, whereupon the oral proceedings and the hearing of witnesses prayed for by complainant, and the hearing of witnesses requested by the Organisation in a subsidiary plea, were found without relevance to the disposition of the case and were therefore disallowed;

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

A. Complainant having requested, on 8 September 1965, a waiver of his immunity from jurisdiction in order to institute judicial proceedings relating to the refusal to make available a substantial financial contribution which he considered to have been pledged for the purposes of a transaction of a commercial character, the investigation of his request led to an inquiry as a result of which the defendant Organisation felt satisfied that complainant was engaging in unauthorised outside activities which, moreover, were incompatible with his status as an international civil servant.

B. On 13 October 1964, complainant was advised that the Director-General deemed that, the outside occupations in the sense of article 1.2 of the Staff Regulations in which complainant had engaged without permission, the fact that complainant had made use of his position as an international official in Switzerland for personal purposes foreign to the reasons for his presence in the country; and the risk of public discredit that the size of his financial operations placed on the Organisation, constituted serious misconduct liable to the sanction of summary dismissal. However, before submitting to the Joint Committee a proposal for summary dismissal, in accordance with the prescribed procedure, complainant would be allowed the option to resign within 48 hours, failing which disciplinary proceedings would be initiated. On 15 October 1964, complainant submitted a resignation without conditions or restrictions, to take effect on 15 November 1964, which resignation was accepted forthwith.

C. On 13 November 1964, complainant submitted a complaint under article 13.1 of the Staff Regulations, relating to the unfair and unjustifiable treatment to which he had been subjected when confronted with the choice between resignation and summary dismissal, which complaint he wished to be referred to the Joint Committee. On 24 November 1964, complainant was advised that, in fact, he had been offered a choice between resignation and the initiation of disciplinary proceedings leading to the consideration of a proposal for summary dismissal by the Joint Committee, following whose opinion a final decision would have been taken, and that in resigning, complainant had himself forfeited the opportunity to have the case referred to the Joint Committee, so that his request had become without purpose. On 19 February 1965, complainant lodged the afore-mentioned complaint with this Tribunal.

D. Before the Tribunal, Mr. Barakat submits that the financial operations he had engaged in and, in particular, that for the purpose of which he had requested a waiver of immunity, were aimed at investing his private estate, the management of which could not be regarded as an outside activity, all the more so that these investments, which he alleges were known to high officials, would have given rise to no adverse comments on their part; he further submits that, as the operations he engaged in were in no way contrary to law, and did involve no financial risks that

were not secured by real property collaterals, these operations involve no risk of throwing the Organisation into public discredit, and were not incompatible with his status as an international civil servant. In the circumstances, the decisions of 13 and 24 November 1964, which in his view resulted in obtaining his resignation under duress, and to depriving him of the opportunity to rebut the charges preferred against him, were illegitimate and arbitrary and should be held to be so by the Tribunal, which, according to complainant's last submission, should quash them, in so far as appropriate, and prays for the award of an indemnity for the prejudice suffered as a consequence of these decisions.

E. The defendant Organisation first challenges, in *limine litis*, the competence of the Tribunal to entertain the complaint, on the ground that, in objecting to the alternative between resignation and the initiation of disciplinary proceedings which was offered to him, complainant fails to advance any violation of his terms of appointment or any relevant regulation, while the Tribunal is competent only to pass upon such violations, and that complainant fails to indicate any genuine relationship between the complaint and the statutory provisions invoked. Subsidiarily, the defendant Organisation submits that the complaint is not receivable under four heads: firstly, the lack of any administrative decision adversely affecting complainant, since neither the initiation of disciplinary proceedings, nor a resignation separately or taken together, were such as to cause in themselves any damage; secondly, the tardy submission of the complaint which was lodged after the expiry of the time limit for recourse to the Tribunal, which should run from 13 October 1964; thirdly, the financial nature of the prayer for relief, since where it finds a complaint to be well founded, the Tribunal is to order the quashing of the decision complained of or the performance of the obligation relied upon; and fourthly, the lack of definition of the points at issue, in so far as the complaint treats as one two separate decisions taken on different dates. More subsidiarily, the defendant Organisation submits that the complaint should be dismissed as not well founded, in that the option offered to complainant was legitimate. Even more subsidiarily, should the Tribunal wish to review possible errors in fact or in law in respect of the charges made against Mr. Barakat, the defendant Organisation prays for the previous consideration of further evidence.

CONSIDERATIONS:

1. On the competence of the Tribunal:

Under article II, paragraph 1 of its Statute, the Tribunal is 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. In the present case, the complainant has not confined himself to alleging infringement of articles 1.2 and 12.1 of the Staff Regulations, but has also complained that undue influence was brought to bear upon him to secure his resignation, thus implying infringement by the Director-General of a general rule of law which is equally applicable to the international civil service. On this reasoning, the present complaint is among those that the Tribunal is competent to hear.

It being unnecessary to consider the administration's submission to the effect that the complaint is not receivable:

2. On the merits:

It appears from the documents in the dossier that the allegations against Mr. Barakat were of such a nature as to justify initiating disciplinary proceedings. The Director-General was therefore entitled to institute these proceedings. Consequently, in offering Mr. Barakat the choice between voluntary resignation and appearing before the Joint Committee, the Director-General, far from bringing any kind of pressure to bear, was simply offering him a solution which he was in no way obliged to offer.

Moreover, it was open to Mr. Barakat in the course of the proceedings, if he so desired, to defend himself against the charges preferred against him. The choice that lay before him was therefore entirely free.

Furthermore, in the circumstances, the time allowed to the complainant to choose between the alternatives put before him was not unduly short, having regard to the fact that the complainant was a man of experience and that if he had thought it necessary to reflect further or to take legal advice, it was open to him to ask for an extension of the time limit, which he did not do. It follows that the complainant's appointment was terminated as a result of his own resignation, freely tendered, and that his complaint is therefore not well founded and must be dismissed.

On these grounds

DECIDES:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine

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