

SEVENTEENTH ORDINARY SESSION

***In re* JURADO**

(No. 7 - Transfer)

Judgment No. 100

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado on 20 August 1965, the reply of the Organisation of 4 October 1965, the two additional documents produced by complainant on 15 December 1965 and the Organisation's comments of 22 December 1965 on these documents, and the additional documents produced by complainant on 12 April 1966 and the Organisation's comments of 25 May 1966 on these documents;

Considering Articles II and VI of the Statute of the Tribunal and Article 1.9 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings and hearing of witnesses requested by complainant having been disallowed;

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

A. By a service memorandum of 14 May 1965 the Chief of the Editorial and Translation Service of the International Labour Office transferred Mr. Jurado from the Legislative Series Section to the Translation Section. This transfer within the same service, in which officials are primarily required to use their skill as translators, was made at the request of the Chief of the Legislative Series Section because of friction between Mr. Jurado and his chief.

B. While admitting that he was satisfied both with the kind of work assigned to him in the Translation Section and with his working relations with his new chief, complainant asked that the decision to transfer him should be rescinded on the grounds that it was a punitive measure and was illegal. This appeal having been rejected, Mr. Jurado brought his case before the Administrative Tribunal to which he makes the following submissions:

"That it please the Tribunal

As to form:

1. To declare the present complaint and its annexes receivable.
2. To agree that Judges Maxime Letourneur, President; André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge, should not try the case.
3. To place complainant's protest on formal record and to reserve his right to appeal to the Administrative Tribunal even in the event of the expiry of the time limit for appeals, in view of the coercion, intimidation and threats of the I.L.O. against complainant designed to prevent him from exercising his rights to appeal to the Tribunal against the illegal administrative decision of 31 May 1965.
4. To order that the following persons should appear as sworn witnesses for questioning before the Tribunal: L. de los Cobos, J. Connolly, E. Copson, M.O. Vachha, J. Vichniac, M. Amo, C. Neuenschwander and O. Frank, all members of the Legislative Series Section.

As to substance:

1. Because of the more than five years' of captivity imposed by Switzerland on the child Jurado, with the direct and

active complicity of the I.L.O., depriving him by pure violence of his religion, his country, his national language, his father and all his Spanish family, to hold that the I.L.O. has violated the articles of the Staff Regulations as a whole and to order the I.L.O. to pay damages to the amount of 5 million Swiss francs.

2. To hold that the reports by Mr. Chapman and Mr. Boutineau, chiefs of the Editorial and Translation Service and of the Legislative Series Section respectively, and the punitive measure of complainant's transfer, are irregular in form and illegal in substance and are in violation of Articles 12.2, 12.3, 12.4, 12.5 and 13.1 of the Staff Regulations.

3. To order the rescinding of the aforesaid punitive measure of transfer, but only in so far as it is a punitive measure, and having done this:

(a) If the Administration complies, to order the I.L.O. to pay 0.05 francs as damages.

(b) If the Administration does not comply with the legal decision, to order the I.L.O. to pay 0.10 Swiss francs on the same count.

4. To hold that the illegal transfer of the complainant is an illegal measure preparatory to his termination, and as such, an act of direct and active complicity in the kidnapping and captivity of the child Jurado, and to order the I.L.O. to pay 5 million Swiss francs on this count.

5. To hold that the I.L.O. Administration violated Articles 7.5 and 7.6 of the Staff Regulations by its decision of 21 July 1965 and to order the I.L.O. to pay 10,000 Swiss francs on the first count and 250,000 Swiss francs on the second.

6. To order the I.L.O. to pay 1 franc for the work performed by complainant in preparing and drafting the present complaint and 100 francs for miscellaneous expenses."

C. The Organisation submits that the complaint should be dismissed.

CONSIDERATIONS:

On the objection to the composition of the Tribunal

1. Neither the fact that two of the Judges that sat in the case brought before the Administrative Tribunal by Mr. Jurado and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a further case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits on the Supreme Court of his own country, can in itself be regarded as valid grounds for objection to these Judges. Moreover, since Judge Armbruster is not called upon to try the present case, the objection against him is in any event irrelevant.

On claims Nos. 2, 3 and 4 concerning the substance:

2. Under Article 1.9 of the Staff Regulations, "the Director-General shall assign an official to his duties and his duty station subject to the terms of his appointment, account being taken of his qualifications".

It is not denied that Mr. Jurado was recruited for a post in the Editorial and Translation Service.

It follows that in transferring Mr. Jurado on 14 May 1965 from the Legislative Series Section to the Translation Section, both being within the same Editorial and Translation Service, the Director-General was simply exercising his right under the above-mentioned Article 1.9 while at the same time conforming to the terms of complainant's appointment. It appears from the evidence in the dossier that this decision was taken in the interests of the service, and that it was not accompanied by any reduction in salary, and that it in no way affected the statutory rights of the complainant.

3. Consequently Mr. Jurado's contention that the decision of 14 May 1965, confirmed on 19 July 1965, is illegal and, in particular, is in the nature of a penalty, is not well founded, nor is his claim for compensation as a result of it.

On the other submissions:

In support of his other submissions, Mr. Jurado has simply reverted to arguments already dismissed by the Tribunal or has put forward arguments unrelated to the decision complained of.

DECISION:

For the above reasons,

The complaint of Mr. Jurado is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine