

**NINETEENTH ORDINARY SESSION**

***In re JURADO***

**(No. 18 - Certificate of Service and Appeal to the Governing Body of the I.L.O.)**

**Judgment No. 118**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (I.L.O.) drawn up by Mr. Cesáreo Jurado on 20 February 1967 and the Organisation's reply of 21 April 1967;

Considering Article II of the Statute of the Tribunal and Antilles 11.17, 13.2 and 14.6 of the Staff Regulations of the International Labour Organisation;

The oral proceedings requested by complainant having been disallowed;

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

A. By its Judgment No. 96 given on 11 October 1966 the Tribunal dismissed the complaint made against the International Labour Organisation by Mr. Jurado on 10 August 1966, in which Mr. Jurado prayed the Tribunal to quash the decision of 29 July 1966 by which the Director-General of the International Labour Office terminated complainant's appointment as from 31 August 1966 and awarded him compensation equivalent to three months' notice. Complainant subsequently requested the Director-General, on 12 December 1967, to give him a certificate of service as prescribed in Article 11.17 of the I.L.O. Staff Regulations. This certificate was given to him on 20 December 1966. As it contained an error in respect of a date, however, the Chief of the Employment Branch of the Personnel and Administrative Services Department of the I.L.O. subsequently transmitted a corrected certificate to Mr. Jurado, dated 6 April 1967, together with a second certificate concerning his competence, efficiency and official conduct as an I.L.O. official, in case he preferred to avail himself of a certificate of that kind. Under Article 11.17 of the Staff Regulations such a certificate may be given at the official's own request.

B. The submissions made to the Tribunal by Mr. Jurado are in the following terms:

"As to form:

1. To declare receivable the present complaint against the administrative decision of the I.L.O. dated 20 December 1966, in so far as it provided complainant with an illegal certificate of service.
2. To declare receivable the present complaint against the administrative decision, implied in the silence of the Administration, rejecting his request that the question of the legal validity of the form of Judgment No. 96 of the Administrative Tribunal should be submitted to the Governing Body for reference to the International Court of Justice, the aforesaid judgment being vitiated by more than 15 faults in respect of essential rules of procedure.
3. To agree that Judges Maxime Letourneur, President, André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge, should not try the case, for the eight reasons of fact and law set out in complainant's brief summary, and in accordance with Article X, subparagraph (a) of the Statute of the Tribunal and Article 20 of the Rules of Court.

As to substance:

1. To rule that the certificate of service given to complainant on 20 December 1966 is in violation of Articles 11.17 and 14.6 of the Staff Regulations; to order that it be rescinded; to order that it be replaced by a legal certificate; in default of this, to order that the sum of Sw.Frs.100,000 be paid to complainant; to order further that the sum of Sw.Frs.500 be paid to complainant on account of his expenses in connection with the present complaint, and the

sum of Sw.Frs.5,000 as professional fees.

2. To rule that the administrative decision impugned which dismissed, by administrative silence, complainant's request that the question of the legal validity of Judgment No. 96 of the Administrative Tribunal should be transmitted to the Governing Body of the I.L.O. for reference to the International Court of Justice, the aforesaid judgment being vitiated by more than 15 faults in respect of essential rules of procedure, is in violation of Article 13.2 of the Staff Regulations, and of Article XII of the Statute of the Administrative Tribunal.

3. To order that the aforesaid administrative decision impugned be quashed; to order, in accordance with Article VIII of the Statute of the Tribunal: (a) the performance of the obligation relied upon, namely transmission to the Governing Body for reference to the International Court of Justice of the question of the legal validity of the form of Judgment No. 96, the aforesaid judgment being vitiated by more than 15 faults in respect of essential rules of procedure; (b) subsidiarily, the payment of compensation for the injury suffered by complainant.

4. To declare that as the purpose of the refusal to comply with the aforesaid request was to impose the irregular and void Judgments Nos. 70, 83 and 85 of the Administrative Tribunal on complainant as valid judgments, and in general to relieve the I.L.O. of its legal and contractual responsibility in respect of the abduction and captivity of the child Jurado, son of complainant and exclusively Spanish, by the Swiss Confederation, the I.L.O. should pay complainant the sum of Sw.Frs. 5 million as compensation for the loss of his son during the exercise of his functions; and the sum of Sw.Frs.500,000 as compensation for the illegal loss of his appointment as an official.

5. To order the I.L.O. to pay the sum of Sw.Frs.500 on account of legal costs in connection with this violation of law, and the sum of Sw.Frs.5,000 on account of professional fees.

6. To reserve any other rights whatsoever of complainant and his son."

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

#### CONSIDERATIONS:

On the objection to the composition of the Tribunal:

1. The facts alleged by Mr. Jurado cannot in themselves 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 irrelevant.

On the submissions impugning the refusal of the Director-General of the I.L.O. to submit to the Governing Body, for reference to the International Court of Justice, the question of the "legal validity" of Judgment No. 96 of the Administrative Tribunal:

2. The Administrative Tribunal is not competent to receive submissions of this nature.

On the submissions impugning the Director-General's decision refusing to amend the certificate of service given to Mr. Jurado on 20 December 1966:

3. After being notified of the complaint the Director-General withdrew the certificate of service issued on 20 December 1966, which contained a purely material error of date, and on 6 April 1967 issued two certificates, the first merely recording the period for which Mr. Jurado had been employed by the I.L.O. and the nature of his duties, and the second including also a reference to his competence, efficiency and official conduct. The submissions in the complaint impugning the aforesaid decision of the Director-General are thus now irrelevant and do not call for a ruling.

The complaint may, however, in the final version of complainant's submissions, be regarded as impugning the Director-General's new decision of 6 April 1967.

(a) In respect of Article 14.6 of the Staff Regulations:

This provision plainly has no relevance to the issue of a certificate to officials leaving the I.L.O.'s service.

(b) In respect of Article 11.17 of the Staff Regulations:

When issuing a certificate under the terms of Article 11.17, the Director-General makes an assessment of the performance of the person concerned which is not open to discussion before the Administrative Tribunal; the Tribunal can only check whether all the particulars specified in the aforesaid Article have been supplied, and ascertain that the assessment made by the competent authority is not based on materially incorrect facts or on obviously wrong conclusions drawn from the evidence in the dossier.

In the case at issue, the two certificates issued on 6 April 1967 include all the prescribed particulars; in regard to the competence and efficiency of Mr. Jurado the full certificate summarises the documents in the dossier, and in particular the annual reports on complainant's work, correctly and without misrepresentation; in regard to his conduct, if the Director-General omitted certain facts which might have been recorded against complainant, he plainly did so as a favour to Mr. Jurado, who has no cause for complaint.

On the submissions concerning compensation:

4. As regards submission No. 1, the issue of 20 December 1966 of a certificate containing a purely material error, and replaced on 6 April 1967 by two regular certificates did not in any way prejudice complainant's interests and therefore cannot give him any right to compensation.

With regard to submission No. 3, the request is based on a fact which, as stated above, does not fall within the Tribunal's power of review.

With regard to the submissions under No. 4, these are based on gratuitous and insulting accusations and are manifestly ill-founded.

With regard to submission No. 5, no compensation can be awarded for the work personally carried out by a complainant for the purpose of defending his own interests; furthermore, dismissal of the complaint entails dismissal of any claim for reimbursement of the costs involved.

DECISION:

For the above reasons,

1. Mr. Jurado's submissions praying that the Tribunal should quash the Director-General's decision refusing to submit to the Governing Body the question of the "legal validity" of Judgment No. 96 of the Administrative Tribunal are dismissed as being outside the competence of the Tribunal.
2. No ruling is necessary on Mr. Jurado's submissions concerning the Director-General's decision refusing to amend the certificate of service issued on 20 December 1966.
3. The remaining submissions of the complaint are dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 18 March 1968 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