

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

FIFTY-SIXTH ORDINARY SESSION

In re NESIC

Judgment No. 661

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Cedomir Nestic on 25 September 1984 and corrected on 10 October, the ILO's reply of 6 December 1984, the complainant's rejoinder of 17 January 1985 and the ILO's letter of 7 February stating that it did not wish to file a surrejoinder;

Considering Article II, paragraphs 1 and 6, of the Statute of the Tribunal;

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

A. The complainant, a citizen of Yugoslavia born in 1921, was employed by the ILO as an expert from 1966 to 1970. By a telegram of 31 January 1983 he lodged with the Governing Body of the International Labour Office his candidacy for Director-General. The Chairman of the Governing Body sent him a letter on 14 February saying that his candidacy was not receivable because it failed to satisfy one of the conditions set by the Governing Body, namely that it be supported by a member of the Governing Body or the government of a member State. On 18 February the complainant wrote to the Governing Body protesting that his candidacy was receivable. He wrote another letter in similar vein on 3 March. His comments were acknowledged. On 1 June 1983 he submitted to the General Conference of the ILO, at its 69th Session, what he described as a "complaint about the Governing Body's attitude towards my candidacy": he repeated his earlier comments and demanded that the Governing Body's re-election of Mr. Francis Blanchard as Director-General be set aside. On 15 May 1984 he submitted a similar document to the Conference at its 70th Session repeating his complaint of the year before, rejecting views expressed by the Tribunal in Judgment 580 and stating grievances against the Director-General and Secretary-General of the Conference and the officers of the Governing Body. This document was not communicated to the Conference. The complainant filed the present complaint on 25 September 1984 challenging the implied rejection of the claims he had advanced on 15 May.

B. The complainant contends that the ILO Conference was the body competent to hear his complaints of breach of the ILO's own rules, but that the Administration and particularly the Director-General wilfully prevented their being brought before the Conference, for reasons alien to the Organisation's interests, and the complainant has thereby suffered grave prejudice. He contends that the age of retirement applies to the Director-General and that the Governing Body broke the rules in re-electing Mr. Blanchard. He invites the Tribunal to order (1) that his claims be submitted to the competent authority, viz. the Conference, (2) that the election of the Director-General be set aside and a new election held; and (3) that he be awarded damages for wrongful rejection of his candidacy and the failure to hear his claims.

C. In its reply the ILO observes that, although under Article 11(6) of its Statute the Tribunal is open to "an official, even if his employment has ceased", the Tribunal will be competent, under Article II(1), only if the complainant alleges non-observance of the terms of his appointment or of the applicable rules. The decisions challenged by the complainant were taken over 12 years after he left the ILO, and he is not relying on rights arising under his former contract. Nor is there any link between claim (1) and the complainant's former contract or the Staff Regulations. The Tribunal is therefore not competent to hear the case. In particular it may not hear the pleas regarding the setting of conditions for candidacies for Director-General, and the Governing Body's decision to disallow his candidacy. Besides the complaint is irreceivable: the decisions the complainant is challenging were taken in February and March 1983, and he filed his complaint after expiry of the time limit in Article VII(1) of the Statute. The ILO argues that in any event the complaint is devoid of merit.

D. In his rejoinder the complainant enlarges in great detail on the contentions in his original brief and presses his claims.

CONSIDERATIONS:

Receivability

1. Article II(6) of the Statute of the Tribunal reads:

"The Tribunal shall be open --

(a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death;

(b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely."

Thus the Tribunal is open to four categories of complainant: (1) present officials, (2) former officials, (3) the successors of a deceased official and (4) those who have some right under the terms of appointment of a deceased official or under some provision of the Staff Regulations on which he could rely.

2. The intent of Article II(6) is plain from the wording. The right of appeal to the Tribunal does not belong to everyone but only to those who have sufficiently close links with the organisation. Those in categories (1), (3) and (4) obviously do, namely present staff, the successors of a deceased staff member, and anyone who has some right under the contract of a deceased official or under a provision of the Staff Regulations on which he could rely. It follows that account should be taken of the delimitation of categories (1), (3) and (4) in determining the scope of category (2). Not every former official may lodge a complaint, but only one who is alleging some right arising under the terms of his appointment.

3. The present complainant was employed by the ILO from 20 August 1966 until 31 December 1970. For reasons which are not material the ILO did not give him further employment. He does not belong to category (1), (3) or (4). To bring himself within category (2) he would have to be alleging some right arising under his former appointment. Since he does not do so, his complaint is irreceivable.

Merits

4. Since the complaint is irreceivable, the Tribunal need not rule on the complainant's pleas on the merits.

Application for oral proceedings

5. The only issue in this case is that of receivability and a ruling can be made on the written evidence. There is therefore no call for oral proceedings.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable the Lord Devlin, Judge, and Mr. Héctor Gros Espiell, Deputy 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

Devlin

H. Gros Espiell

A.B. Gardner

