

SIXTY-FIRST ORDINARY SESSION

***In re* NESIC (Nos. 5 and 6)**

Judgment 811

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Cedomir Nestic against the International Labour Organisation on 20 November 1986 and his sixth complaint filed on 30 January 1987;

Considering Article II, paragraphs 1 and 6, of the Statute of the Tribunal and Article 8(3) of the Rules of Court;

Having examined the written evidence;

CONSIDERATIONS:

The facts

1. On 21 April 1986 the complainant handed in at the Registry of the Tribunal a brief which he had addressed and wanted to have forwarded to the General Conference of the ILO. The Assistant Registrar wrote on 24 April to inform him that the brief neither constituted a new complaint nor related to any that was already before the Tribunal and that he might therefore recover it at the Registry.

In a letter of 19 May the complainant protested and demanded that the Tribunal rule on what was to become of his brief. On 27 May the Registrar wrote to him returning the papers and reminding him that the Tribunal had refused in Judgment 709 to forward a complaint to the Conference. After consulting the President of the Tribunal the Registrar confirmed the terms of the letter of 27 May in another of 15 August.

In his fifth complaint the complainant asks the Tribunal to have the Registrar forward his brief to the Conference and to award him damages.

In his sixth complaint he objects to the application to his fifth one of Article 8(3) of the Rules of Court and challenges earlier judgments.

Joinder

2. The Tribunal joins the two complaints because the sixth has a direct bearing on the fifth.

Article 8(3) of the Rules of Court

3. In accordance with Article 8(3) the President instructed the Registrar to forward the fifth complaint to the ILO only for information, on the grounds that it was clearly devoid of merit. The purpose of the sixth complaint is to challenge the lawfulness of that instruction, but it is clear from what is said below that the fifth one comes under 8(3) and the rule was therefore properly applied.

Being itself clearly devoid of merit, the sixth complaint has also been forwarded to the Organisation only for information.

The action taken by the Registrar and the Assistant Registrar

4. Article 4(1) of the Rules of Court says that the Tribunal shall have a Registrar and an Assistant Registrar.

Their main function is to take executive measures. The Registrar - or the Assistant Registrar - transmits documents and gives notifications (Article 6(1) of the Rules of Court); he calls upon the complainant to correct his complaint if need be (Article 7(4)); on the President's instructions he puts cases on the list and so informs the parties (Article

9(3); he makes a dossier for each case (Article 10); and at the direction of the Tribunal or its President he gives notice of a complaint to anyone who may be asked to intervene in a case (Article 17(3)).

By way of exception the Registrar - or the Assistant Registrar - may take decisions. By delegation of authority from the Tribunal he may extend the time limit for filing the reply or an additional brief (Articles 8(2) and 9(2)), after consulting the President if need be. But he may not reject a complaint, whatever it may be.

He advises the parties on such matters as the procedural rules that apply.

5. Neither the Registrar nor the Assistant Registrar acted ultra vires in this case. In particular, the Registrar's purpose in sending papers back to the complainant was to do him a service by sparing him foreseeable refusal. The Registrar plainly did not purport to be ruling on the matter. Indeed the complainant's renewal of his claims after further correspondence with the Registry shows that he did not regard them as dismissed.

The forwarding of complaints to the General Conference

6. The Tribunal refers to what it said in Judgment 709. It has no reason to forward any brief to the Conference, something which the complainant may do himself. The reason why he does not may be a notion that if the Tribunal does so instead the Conference may infer that the Tribunal believes it to be incumbent on the supreme ILO body to take up the matter. The Tribunal will not lend credence to any such notion.

All this has no bearing on whether a judicial body that holds that it is not competent to entertain a claim may or must forward it to the body it does believe to be competent.

Review of earlier judgments

7. Insofar as the sixth complaint challenges earlier judgments it may be read as an application for review. As such it fails because it does not contain any admissible plea for review.

DECISION:

For the above reasons,

The complaints are dismissed.

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

Delivered in public sitting in Geneva on 13 March 1987.

(Signed)

André Grisel
Jacques Ducoux
Mohamed Suffian
A.B. Gardner