

SIXTY-EIGHTH SESSION

In re ZAYED (Nos. 4 and 5)

Judgment 1013

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Ezzat Fayez Zayed against the Universal Postal Union (UPU) on 23 May 1989, the Union's reply of 30 June, the complainant's rejoinder of 17 July and the Union's surrejoinder of 24 August 1989;

Considering the fifth complaint filed by Mr. Zayed against the Union on 4 July 1989, the Union's reply of 21 August, the complainant's rejoinder of 10 October and the Union's surrejoinder of 8 November 1989;

Considering Articles II, paragraph 5, VII, paragraph 3, and XII of the Statute of the Tribunal;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the cases and the pleadings may be summed up as follows:

A. In Judgment 868 of 10 December 1987 the Tribunal set aside a decision which the Director-General of the International Bureau of the Universal Postal Union had taken on 15 October 1986 to dismiss the complainant on the grounds of unsatisfactory performance and it sent the case back to the Union for a new decision.

By a decision of 17 February 1988 the spokesman of the Arab Language Group refused to reinstate the complainant.

In Judgment 922 of 8 December 1988 the Tribunal (1) set aside that new decision and (2) awarded the complainant damages equivalent to the sums he would have been paid had he remained on the staff from the date of his dismissal up to the date of the judgment.

By a letter of 7 January 1989 the spokesman of the Arab Language Group informed the Director-General of the International Bureau that the Group would take no account of any ruling of the Tribunal's as from 9 December 1988.

On 20 January 1989 the Chief of Personnel of the Union informed the complainant on the Director-General's behalf of the amount of the award to be paid to him under Judgment 922. The complainant wrote to the Director-General on 9 February objecting to the reckoning on the grounds that it discounted a yearly salary increment. In a letter of 8 March the Assistant Director-General informed him that the spokesman of the Arab Language Group rejected his claim and on 16 March he lodged an internal appeal against that decision.

He filed his fourth complaint on 23 May and his fifth on 4 July.

On 31 August 1989 the Director-General informed him of the final rejection of his internal appeal.

B. In his fourth complaint the complainant contends that the spokesman's denunciation of the Tribunal's jurisdiction as from 9 December 1988 is invalid in law. He asks the Tribunal to order the Union (1) to give effect to the first paragraph of the decision in Judgment 922 and pay him the amount of his salary from 9 December 1988 up to 23 February 1989 (the date at which he had notice of a new decision to dismiss him); (2) to pay him interest thereon at the rate of 8 per cent a year as from the date at which he filed the complaint; and (3) to pay his costs.

C. In its reply to the fourth complaint the Union observes that the spokesman's stand is sound because the Executive Committee of the Union allows the language groups full autonomy in staff management. The Union

would therefore be unable to execute any decision by the Tribunal on the case and is not competent to compel the Arab Language Group to comply with the Tribunal's rulings.

D. The complainant rejoins that the Tribunal does have jurisdiction and that the purported denunciation, which the spokesman declared without prior permission from the members of the Group and which seeks to prevent justice, is null and void.

E. The Union restates its case in its surrejoinder.

F. In his fifth complaint the complainant submits that since he has had no final decision on his appeal of 16 March 1989 he is impugning a decision implied under Article VII(3) of the Tribunal's Statute to reject it.

He asks the Tribunal to declare his complaint receivable and to quash the spokesman's decision as notified in the letters of 20 January and 8 March 1989 insofar as it discounts his yearly salary increment, and to award him costs.

G. In its reply the Union again submits that the language groups are autonomous in staff matters and that it cannot compel the Arab Language Group to comply with a ruling by the Tribunal.

It doubts whether the complaint is receivable.

H. In his rejoinder the complainant enlarges on his pleas about the Tribunal's competence and presses his claims on the merits.

I. In a letter of 8 November 1989 to the Registrar of the Tribunal which constitutes its surrejoinder the Union states that by a telex dated 2 November 1989 the spokesman of the Arab Language Group informed it that he held to the same position as before about the case. On 7 November 1989 the International Bureau got a letter from the spokesman informing it that the Arab Postal Union's functions would henceforth be carried out by a technical secretariat within the general secretariat of the League of Arab States.

CONSIDERATIONS:

1. The complainant used to be employed in the Arabic translation service of the International Bureau of the Universal Postal Union. Having been dismissed on 15 October 1986, he appealed to the Tribunal. Judgment 868 of 10 December 1987 set aside the dismissal and sent his case back to the Union for review.

The spokesman of the Arab Language Group upheld his dismissal by a decision of 17 February 1988 that was notified to him on 24 February and that the Director-General of the International Bureau confirmed on 31 May 1988. He appealed to the Tribunal again. In Judgment 922 of 8 December 1988 the Tribunal (1) set aside the decisions of 17 February and 31 May 1988; (2) ordered the Union to pay the complainant damages equivalent to the sums he would have been paid had he remained on the staff from the date of his dismissal up to the date of the judgment; and (3) awarded costs against the Union.

2. The Chief of Personnel of the UPU wrote to the complainant on 20 January 1989 sending him a reckoning of the amounts due under (2) and (3), which related to the period up to 8 December 1988.

He has filed two complaints, which the Tribunal joins. One of them - No. 4 - is about his entitlement to pay for the period from 9 December 1988 to 23 February 1989, the date at which he was again dismissed. The other - No. 5 - is about the total in the statement he was sent on 20 January 1989.

3. In its replies to the complaints the Union addresses mainly the issue of the Tribunal's competence. There was a ruling on that issue in Judgment 868, under 1, where the Tribunal said:

"In accordance with Article II(5) of the Statute the Universal Postal Union has recognised the Tribunal's jurisdiction, which holds good for the Arab and other language groups of the Union as well.

Although the Union alone has personality in law and may defend a case before the Tribunal, the Director-General of the International Bureau does no more than to pass on to the staff member a decision taken by the spokesman of the Arab Language Group. Thus the decision impugned is a letter of 15 October 1986 from the Director-General which notifies to the complainant the decision taken by the spokesman of the Group to dismiss him."

That passage followed the precedent in Judgment 122 of 15 October 1968 (in re Chadsey) on the case of an employee of the English Language Group of the Union.

The Tribunal's competence to entertain a complaint from a serving or former employee of the Arab Language Group is therefore beyond question.

4. But two things have happened since the publication of Judgment 922.

First, in a letter of 7 January 1989 to the Director-

General the spokesman of the Arab Language Group said that the Group would take no account of any ruling of the Tribunal's as from 9 December 1988.

Secondly, in a letter of 8 November 1989 the Assistant Director-General of the Union conveyed to the Tribunal the following information it had received the day before from the Secretary-General of the Arab Postal Union:

"The legislative authorities of the League of Arab States have just taken a final decision to transfer the functions of the Arab Postal Union to a technical secretariat in the General Secretariat of the League.

That decision took effect immediately.

All matters relating to any Arab postal administration as a geographical or linguistic group and to the Arabic Translation Service shall henceforth be addressed directly to the General Secretariat of the League in Tunis, which now acts as the spokesman of the Arab Language Group."

The Assistant Director-General adds no comment so it is solely on the strength of the letter of 7 January 1989 that the Director-General contends that the Union can neither execute any ruling the Tribunal may make on Mr. Zayed's case nor force the Arab Language Group to accept the rulings of a body whose jurisdiction it no longer recognises.

To justify the stand of the Group's spokesman the Director-General cites the first sentence of clause 11 of a decision which the Executive Committee of the Union took in 1966, and which says that "the fixing of the status and conditions of service of the staff of the translation services set up at the International Bureau was a matter solely for the language groups financially responsible for those services".

For the sake of completeness the second sentence also bears quoting: "Those language groups had expressed the desire that their employees should have the same status as international civil servants and the same conditions of service as the staff of the International Bureau, at the expense of the respective groups".

5. The Universal Postal Union made in 1965 a declaration recognising the Tribunal's jurisdiction, and at its 163rd Session the Governing Body of the International Labour Office approved the declaration as from 1 January 1966.

Although the language groups of the Union do have some autonomy, they lack legal personality of their own and, as the Tribunal held in Judgment 122, the recognition of the Tribunal's jurisdiction applies to the groups as well.

The Union may always denounce its recognition of the Tribunal's jurisdiction, though in keeping with the rule that similar acts require similar procedures the same authority must denounce the recognition, and by the same process, as originally declared it.

The language groups of the Union, over which the Tribunal has jurisdiction by virtue of the ILO Governing Body's acceptance of the declaration by the competent UPU authority, may not unilaterally revoke that declaration. Although clause 11 of the Executive Committee's decision of 1966 quoted in 4 above does allow them some freedom to act, they may not act in breach of the Constitution of the organisation they form part of. Besides, the second sentence of clause 11 says that they are not just willing, but "desire" to extend the status of an official of the International Bureau to their own employees.

There is no evidence before the Tribunal of any decision by the competent UPU authority informing the ILO Governing Body of its wish to denounce recognition of the Tribunal's jurisdiction over the Union. At any rate the Tribunal has had no notice of any referral of the matter to the Governing Body.

The letter of 7 January 1989 from the spokesman of the Arab Language Group to the Director-General is merely an internal paper of the Union and of no concern to the Tribunal, which, subject only to Article XII of its Statute, delivers judgments that are binding. Should some component of an international organisation refuse to comply with a judgment the organisation has the duty to ensure compliance.

The Assistant Director-General's letter of 8 November 1989 seems to announce the abolition of the Arab Language Group as part of the Union. Even supposing that that broad interpretation is the correct one there cannot be retroactive termination of relations that existed before the Group was abolished. The complainant was an official of the Union at the date of dismissal, and the Tribunal is competent to review the consequences of setting aside the dismissal.

Whether or not partial denunciation of the UPU's recognition of its jurisdiction would be valid - a matter on which it need not rule here - and whatever interpretation is to be put on the letter of 8 November 1989, the Tribunal is competent to entertain the two complaints before it.

6. The Tribunal will not now take up the issues of receivability and substance which the complaints raise: further submissions are required, and the Tribunal will order the parties to make them.

DECISION:

For the above reasons,

1. The Tribunal is competent to rule on the two complaints.
2. It orders the resumption of the adversarial proceedings in which each of the parties may file further submissions.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, 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 23 January 1990.

(Signed)

Jacques Ducoux
Mohamed Suffian
H. Gros Espiell
A.B. Gardner