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

EIGHTY-FIRST SESSION

In re LOPEZ LAHESA (Nos. 1 and 2), MARTIN (Nos. 1 and 2), SHACKLEFORD (Nos. 1 and 2) and TEDJINI (Nos. 3 and 4)

Judgment 1520

THE ADMINISTRATIVE TRIBUNAL,

Considering the common complaint filed by Mrs. María del Carmen López Lahesa, Mrs. Marie-José Martin, Mr. Peter Shackleford and Mr. Patrice Claude Tedjini - his third - against the World Tourism Organization (WTO) on 5 July 1994 and corrected on 14 February 1995;

Considering the second common complaint against the WTO filed by Mrs. López Lahesa, Mrs. Martin, Mr. Shackleford and Mr. Tedjini - his fourth - against the World Tourism Organization (WTO) on 5 July 1994 and corrected on 14 February 1995;

Considering the letter of 25 July 1995 from the Organization's counsel asking the President of the Tribunal to stay the proceedings on the grounds that the WTO intended to reverse the impugned decisions at a session its general assembly was to hold in October 1995 and the Registrar's reply of 17 November that under Article 14 of the Tribunal's Rules the President granted the Organization until 15 December to reply;

Considering the WTO's replies of 15 December 1995, the complainants' rejoinders of 21 February 1996 and the Organization's surrejoinders of 26 March 1996;

Considering the applications to intervene filed by:

A. Abdel Ghaffar

C. Antón

D. Bernardet

A. Boncy

S. Bouche

J.M. Carballo

F. Casado

A. Corbin

I. Degioanni

R. Deming

M. Diotallevi

J.A. García Blázquez

C. Gayo

V. Giusti

H. Handszuh

A. Huescar

B. Hurley

E. Maccoll

N. di Mambro

I. Medrano

E. Melguizo

O. N'Diaye

L.A. Ontiveros

P. Ortiz

E. Paci

F. Peláez

J. Rodriguez

M. Rodriguez

J. Romero

M. Schwaar

R. Songel

J. Soto

J. Thébaud

M. de la Torre

Considering Articles II, paragraph 5, and VII of the Statute and Article 14 of the Rules of the Tribunal;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

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

A.By circular NS/403 of 29 December 1993 the Deputy Secretary-General of the WTO informed the staff that new Staff Regulations and Rules would take effect at 1 January 1994.

On 28 January 1994 the complainants sent two letters to the Secretary-General. The first protested against the circular on the grounds that the new rules either did away with or cut their entitlements. They claimed under paragraph 7 of the Rules of the Joint Appeals Committee the withdrawal or amendment of the circular to safeguard their entitlements under the Staff Regulations and Rules in force as at 31 December 1993.

In their other letter they asked the Secretary-General, in accordance with their contracts as at 31 December 1993, to preserve their entitlements under the Regulations and Rules in force at that date.

In his reply of 28 February 1994 the Secretary-General said that their acquired rights would be "maintained and protected by the new Staff Regulations (Regulation 33) and Rules (Rule 32.1)". He described their claims as "at odds with the basic principle of the law of the international civil service that appeal does not lie against general decisions as such".

On 25 March they protested to the Secretary-General under Staff Rule 31.1 and paragraph 10 of the Rules of the Joint Appeals Committee against that rejection of their claims. They applied for leave, if he rejected their claims, to go to the Tribunal without prior appeal to the Committee.

By letters of 19 April 1994 the Secretary-General granted their application for waiver of the internal proceedings. Their counsel asked the Deputy Secretary-General whether the waiver also applied to their protest of 25 March 1994. The Deputy Secretary-General answered in a letter of 16 May 1994 that the waiver held good "whatever form their claims may take".

B.The complainants have only one plea: breach of acquired rights.

They contend that on many fundamental and other points the new Staff Regulations and Rules are much or rather less favourable than the old ones because they remove or reduce several rights: the right to legal status in line with the common system of the United Nations; the right to end-of-service entitlements in amounts that are again in line with that system; coverage by the United Nations Joint Staff Pension Fund against old age and invalidity; and the right of an established official to six months' notice of dismissal.

Those changes in the terms of appointment are fundamental and essential by the criteria in the case law: their nature, cause and effects.

The first complaint seeks the quashing of the Secretary-General's decision of 19 April 1994 and the grant of full redress in consequence, including the withdrawal or amendment of circular NS/403. The complainants claim costs.

In their other complaint they ask the Tribunal to set aside the decision of 19 April 1994 as interpreted in the Deputy Secretary-General's letter of 16 May to their counsel, and again to grant them full redress and costs.

C.In its replies the Organization expresses surprise at the processing of the complaints. It wonders whether the Tribunal was right or fair in making rulings that overlooked how small it is or that were in breach of adversarial procedure.

Citing the case law, it submits that the complaints are irreceivable and that the Tribunal is not competent to entertain them. The complainants are but a "front" for the Staff Association, which does not as such have access to the Tribunal. And since what they are challenging is a change in the rules, the Tribunal may not entertain their claims anyway. The criteria for receivability in Article VII(1) of the Tribunal's Statute are not met. There is no actual dispute between the Organization and any one of the complainants. The circular merely tells the staff of new provisions in the Staff Regulations and Rules. None of the complainants is challenging any single decision giving effect to the changes in the Rules, though only individual decisions taken thereunder are challengeable.

In subsidiary argument on the merits the WTO says that the complainants have won satisfaction on almost all the points they raise in their complaints. Their legal status is in line with the common system, and the amounts of their end-of-service entitlements are and will continue to be what that system affords. Their old-age and invalidity coverage under the Pension Fund holds good. So in all those respects there is no breach of their "acquired rights".

It was because it knew that that outcome was under study that the Organization applied for a stay of proceedings. The complainants knew that too and probably that is why they did not demur. So the Organization fails to see why the President of the Tribunal ordered the resumption of proceedings that no longer served any purpose.

Perhaps the complainants wanted resumption because one change they object to in the Staff Rules holds good. It is about the former right of an established official to six months' notice of dismissal instead of the three now prescribed in Rule 24.6(a). But the change was just a matter of ensuring consistency and impaired no acquired right.

The WTO asks the Tribunal to disclose any evidence or documents that may shed light on the reasons why the President ordered resumption of the proceedings; to join the complaints; and to declare them irreceivable or, failing

that, devoid of merit.

D.The complainants point out in rejoinder that the WTO's case is tantamount to denying the existence of individual decisions. It is mistaken; the WTO did take "individual decisions by its implied final rejection of the claims of each of them to the safeguarding of his or her acquired rights". Consistent precedent refutes its plea that the complaints are irreceivable on the grounds that they had suffered no actual injury by the date of filing their complaints.

They are sorry to see that the Organization has not replied on the merits but just avers that "most of the provisions they were objecting to have been amended as they had wished without ever having been applied". The statement is plainly untrue.

The complainants acknowledge that the issue of participation in the Pension Fund is settled. But the Organization cannot properly say that that was all their case amounted toand that because the issue has disappeared there is no case left to answer.

Terms of employment at the WTO are now in line with the common system. Yet the staff will not necessarily always be entitled to a legal status in line with that system, which is what they had under former Staff Regulation 33: "the amendments are compatible with the common system of salaries, allowances and other conditions of service of the United Nations Organisation and its specialised agencies". Their loss of so essential a safeguard of pay amounts to breach of an acquired right.

As for the rights of an official on dismissal, the WTO says nothing of end-of-service entitlements, and cutting the period of notice from six to three months is anything but a matter of simplification.

E.In its surrejoinders the WTO maintains on the merits that it has not infringed any acquired right. In answer to the complainants' pleas that their legal status is no longer in line with the common system it points out that under Article 3(b) of the Regulations of the Pension Fund compliance with the common system is a sine qua non of an organisation's membership of the Fund. By joining the Fund the WTO agreed to align conditions of service with those that apply in the system. That is, moreover, the obvious thrust of its agreement with the Fund, the General Assembly of the United Nations having adopted a resolution allowing it to join.

As for the amounts of end-of-service entitlements, the WTO follows the rules of the common system.

Lastly, the lowering of notice of dismissal from six to three months is a straightforward matter of standardisation, three months being the norm in nearly every organisation in the common system.

Enlarging on its pleas in the reply, the WTO maintains that the complaints are irreceivable.

CONSIDERATIONS:

1.The four complainants, who are officials of the World Tourism Organization, seek the quashing of a decision of 19 April 1994 by its Secretary-General upholding an earlier decision not to amend or withdraw a circular of 29 December 1993. The circular told the staff that the Organization's General Assembly and Executive Council had adopted new Staff Regulations and Rules which would take effect at 1 January 1994. There are two sets of complaints. One challenges the lawfulness of the new rules and seeks amendment or withdrawal of the circular; the other seeks the preservation of the rights the complainants enjoyed under the rules in force as at 31 December 1993.

2.Since the issues the complaints raise are the same they are joined.

3.The Tribunal will first take up the WTO's application for disclosure of "any evidence or documents that may shed light on the reasons why the President ordered a resumption of the proceedings". All that need be said is that the President was acting by virtue of the authority vested in him by Article 14 of its Rules in setting at 15 December 1995 the time limit for filing the Organization's submissions in reply. The complainants were quite properly granted extensions of the time limit for correction of their complaints as filed. So too was the defendant allowed extensions of the time limit for reply, which was originally 30 March 1995 and finally set at 15 December 1995. Contrary to what the defendant seems to be arguing, there were no grounds for not having the proceedings go ahead. The President did no more than exercise his authority in setting the final deadline.

4.The Organization objects that the first set of complaints is irreceivable on two counts. One is that the complainants are just acting as a front for the Staff Association and fall foul of the precedents that declare complaints by such associations to be irreceivable: see for example Judgment 911 (in re de Padirac No. 2). The complainants have filed complaints in their own name and are quite free to claim rights as officials of the WTO by the means at their disposal.

5.More telling is the Organization's other objection, which it founds on a long line of precedent. It cites Judgment 625 (in re Desmont and Gagliardi), which says:

"the Tribunal will declare irreceivable a complaint impugning a general decision against which there can be no direct internal appeal, but which must ordinarily be followed by individual decisions against which such appeal does lie."

The rule has been reaffirmed several times, for example in Judgment 1329 (in re Ball and Borghini). But it is to be taken together with what the Tribunal said in Judgment 1000 (in re Clements, Patak and Rödl): an international civil servant may question the lawfulness of any general measure which affords the basis in law for the impugned decision that directly affects him.

6.The general decisions which the Assembly and Executive Council of the WTO took and which came into effect as announced in the circular affect the complainants' right to legal status in line with the common system, particularly as to the amounts of end-of-service entitlements, notice of dismissal and the general rules on retirement pensions. None of those provisions - some of which have indeed been dropped - directly infringes any of the rights that the complainants are asserting. They may, if they so wish, properly challenge any individual decision that applies to the provisions. Insofar as they are challenging the circular their complaints are therefore irreceivable.

7.So is their challenge to the decision refusing their claim to a promise from the Organization to preserve the rights they had under the old Staff Regulations and Rules. Any decisions that may be taken to give effect to the general rules will be challengeable provided that there is some actual dispute for the Tribunal to rule on. Here there is none. The complainants cite no individual decision that causes them injury. They may not contrive such dispute by seeking promises from the Organization. In any such decision they show no cause of action and their complaints are for that reason irreceivable and must fail.

DECISION:

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas
Michel Gentot
Egli
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.