

**SIXTH ORDINARY SESSION**

**(Arbitral competence)**

***In re* WAGHORN**

**Judgment No. 28**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. John Albert Waghorn on 4 May 1956, received and registered in the Registry, after correction, on 6 June 1956, under No. 5601; and the reply of the defendant organisation dated 2 July 1956, received by the Registry and registered under No. 5604 on 6 July 1956;

Considering the complainant's contract of employment and the Personnel Manual of the Technical Assistance Board (T.A.B.), and in particular Articles 242 and 247 thereof;

Considering the preliminary judgment of the Tribunal dated 3 July 1957, concerning competence and receivability;

Having heard the parties in the course of public hearings held on 3 and 4 July 1957;

Considering that the facts of the case are the following:

On 25 February 1955 the complainant accepted an engagement offered to him by the Organisation in a letter dated 22 February 1955. This engagement, covering a period of 12 months, was for the purposes of the Technical Assistance programme, and the complainant's post was that of instructor at the vocational training centre established by the Organisation at Bandung, Indonesia. The complainant left London on 20 March 1955 to take up his duties at Bandung, and on his way he stopped in Geneva and Bangalore for necessary instructions. On 6 July 1955 an established official of the International Labour Office, Mr. R.G. Walker, then interim Director of the I.L.O. Asian Field Office, while on an inspection tour, visited the vocational training centre at Bandung. He found that the centre was operating satisfactorily in spite of some lack of equipment, to which the complainant drew attention. The latter claimed that the Indonesian Government had the necessary equipment at its disposal and that it would be desirable for him to go to Djakarta to take delivery of it. The chief of the vocational training centre, Mr. W.G. Kilby, contradicted some of the statements made by the complainant and at Mr. Walker's request undertook to examine the position with the competent authorities. At the same time the complainant, who had taken a rebellious attitude in the presence of third persons, was instructed to remain at Bandung. Contrary to this instruction, however, the complainant went to Djakarta on the following day and informed Mr. Walker, who was there himself with Mr. Kilby, of his presence. In the course of conversations with the Indonesian authorities, the latter expressed certain apprehensions concerning a lack of team spirit at the centre, which threatened the success of the project. Mr. Walker called a conference which was attended by Mr. Sutomo, an official of the Indonesian Ministry of Labour, Mr. Ansgar Rosenborg, Resident Representative of the Technical Assistance Board in Indonesia, who exercised control over the technical assistance activities pursued in that country by the United Nations and its specialised agencies, and Mr. Slamet, an Indonesian official entrusted with the administration of the vocational training centre. The latter severely criticised the professional competence of the complainant, the manner in which he discharged his duties and his unpleasant attitude towards his colleagues, as a result of which the efficiency of the training centre suffered. Mr. Walker then called together, in the presence of the T.A.B. Resident Representative, Mr. Kilby and the complainant, whom he reprimanded for his insubordination, asking him henceforth to obey the instructions of his chief and to display greater team spirit. On 19 July 1955 the Resident Representative reported to Mr. Walker that in spite of his previous admonishments the complainant persistently refused to co-operate with his colleagues, was insubordinate towards his chief, and acted in such a manner as to hinder the operation of the centre. His presence had become undesirable, and the discontinuation of his teaching would be a lesser evil than his maintenance at his post. At the request of Mr. Walker and Mr. Rosenborg, Mr. Kilby, on 1 August 1955, drew up a report mentioning the professional incompetence of the complainant, his insubordination and his refusal to co-operate in any joint effort. On 10 August 1955 Mr. Rosenborg addressed a

communication to Mr. Walker in which he confirmed the statements of Mr. Kilby and requested, as a matter of urgency, the departure of the complainant, whose attitude gravely prejudiced the operation of the centre and was detrimental to the prestige of international organisations. On 17 August 1955 Mr. Walker transmitted the entire file to I.L.O. Headquarters and recommended termination of the complainant's contract, on the grounds both of his professional incompetence and of the grave misconduct which his reiterated and public acts of indiscipline constituted. By a cable dated 10 September 1955, Headquarters instructed Mr. Kilby to terminate the complainant's employment. Under this instruction the complainant was to receive one month's notice and an indemnity of six weeks' salary, to cease his duties immediately and to return to London at the date fixed by the chief of the training centre, without going through Geneva. By a letter dated 10 September 1955 Mr. Kilby notified the complainant of the termination of his employment, in accordance with the instructions from Headquarters, and informed him that the Resident Representative had made the necessary arrangements for his immediate return to London, leaving on 14 September 1955. On that same day the Resident Representative informed Headquarters by cable that the chief of the employment and vocational training service in the Indonesian Ministry of Labour had asked him to endeavour to obtain a postponement of the complainant's departure until such time as his successor could be designated. Meanwhile, the Indonesian Ministry of Labour had made a similar request to Headquarters by a cable sent on the same date. By a cable dated 16 September 1955 Headquarters informed the Resident Representative that it stood by its decision and requested him to advise the Indonesian Government accordingly. Having made his own arrangements, the complainant left Indonesia on 30 September 1955 and, after a two-day stopover in Singapore, arrived in Geneva on 4 October 1955. Here, on 6 October 1955, he had a conversation with the competent official of the Personnel Office, Mr. Sobels, in the presence of the chief of the Manpower Division, Mr. F. Blanchard, the Headquarters official responsible for the technical operation of the Bandung centre. In view of what had occurred, the notification of 10 September concerning the termination of the complainant's employment was cancelled by a letter of 7 October 1955 and replaced by a new notice of termination taking effect as from 30 September, the date on which the complainant had actually left Indonesia. By a letter of 8 October the complainant pointed out that the notice of termination did not specify the reason for the decision. In reply he was informed by a letter dated 10 October that the reason for termination had been deliberately omitted in his own interest, although it had been mentioned to him verbally in the course of previous conversations; however, in view of his request, he was advised that the termination was based on unsatisfactory services. The complainant then undertook a campaign to discredit the International Labour Office and alleged that he had no means of appealing the decision to terminate his employment. Meanwhile, however, his lawyers were asking for the rescinding of the decision to terminate his employment, and on 19 April 1956 the Organisation stated that it was not in a position to reconsider a decision which was final and, moreover, amply justified; however, it offered to set up an ad hoc joint committee of appeal which would consider the complaint, since neither the I.L.O. Staff Regulations nor the T.A.B. Manual contained provisions for appeals by technical assistance experts. This offer remained without reply and the complainant submitted the present complaint on 4 May 1956;

Considering that the complainant requests the rescinding of the decision to terminate his employment, payment of his salary from the date of termination to the date of expiry of his contract, payment of an indemnity for damage to his professional reputation, reimbursement of various expenses which he claims to have incurred in the performance of his duties, and an indemnity in compensation for permanent partial disability as the result of an accident having arisen out of and in the course of his employment;

Considering that the complainant bases his claim on the following arguments:

The law applicable is English law, owing to the fact that the contract was drawn up in English, that it was concluded by correspondence in England and that the complainant is domiciled in England;

The termination of the complainant's employment as from 30 September 1955 is null and void owing to the fact that it was notified on 7 October 1955 with retrospective effect and is hence contrary to English law;

The termination of the complainant's employment is null and void owing to the fact that the allegation of unsatisfactory service is unjustified and hence has no legal basis; that it is for the Organisation to supply proof of the unsatisfactory nature of the services rendered by the complainant and that, far from supplying such proof, the Organisation allowed itself to be deceived by the false and mendacious reports of the chief of the vocational training centre and ignored the favourable opinion of the Indonesian Government concerning the work of the complainant; and that this unwarranted dismissal is damaging to the professional reputation of the complainant;

The complainant, when in Singapore during his return journey, suffered an accident which resulted in permanent

partial disability, and since this accident rose out of and in the course of the complainant's employment, he is entitled to compensation from the Organisation;

Considering that the Organisation requests that the complainant be dismissed and submits the following arguments:

The law applicable is not English law but the T.A.B. Manual, Article 242 of which makes explicit provision for the termination of contracts of employment in the case of unsatisfactory services, subject to one month's advance notice and the payment of an indemnity of six weeks' salary. This provision was applied in the present case.

Although the complainant's professional incompetence was demonstrated and although his insubordination alone was such as to warrant his dismissal, the evaluation of the services of I.L.O. officials and employees falls within the discretionary powers of the Director-General and the complainant's arguments in this connection do not therefore call for examination;

The termination of the contract with effect from 30 September 1955 is valid inasmuch as English law does not apply and as the decision of 7 October merely confirmed a valid decision of 10 September 1955, while retarding its effective date;

The complainant's request for an indemnity for damage to his professional reputation is unjustified owing to the fact that his contract was terminated in conformity with the rules applicable and cannot therefore give rise to the payment of an indemnity, that the Organisation endeavoured, in terminating the contract, to avoid damage to the complainant's reputation, and that it was solely on the complainant's insistence that it stated in writing that the reason for termination was unsatisfactory service after having previously given this information to the complainant orally. The relevant correspondence would have remained confidential had it not been voluntarily disclosed and publicised by the complainant and had he not submitted the present complaint, the risks of which he must now assume;

The claim for reimbursement of various expenses is devoid of substance as most of it has been met, with any delay in the matter being due exclusively to failure on the part of the complainant to produce the necessary vouchers and explanations, while the remainder had to be rejected owing to the fact that the reimbursements claimed related to expenses which had not been authorised and were unjustified;

The claim for compensation in respect of an accident having arisen out of and in the course of employment in Singapore is unjustified both because the complainant was in Singapore in a private capacity and without authorisation from the Organisation, and because although the injury was reported to the medical service at the time of the complainant's passage through Geneva in 1955, no claim was presented to the competent administrative service until a year after the accident; moreover, this injury did not result in any incapacity for work and was completely cured shortly after the complainant's return to London; if the cure required some time, it was only because the complainant did not follow the instructions of the physician who examined him at the request of the I.L.O.;

A. As regards the regularity of the termination of employment:

Considering that the complainant wrongly alleges that English law is applicable as his national law, whereas the Tribunal is bound exclusively by the internal law of the Organisation and in particular by the provisions of the T.A.B. administrative manual as well as by general principles of law;

Considering that the Director-General had the right to terminate the complainant's employment on the ground of unsatisfactory services, the evaluation of such services falling within his discretionary powers, subject to review in the event of an abuse of power, and that this principle has been consistently reaffirmed in past decisions, such as Judgments Nos. 2 and 4 of the League of Nations Administrative Tribunal, Judgment No. 17 (McIntire) of the present Tribunal, Judgments Nos. 14 (Van Hove) and 52 (Zimmert) of the United Nations Administrative Tribunal and the decision of the Court of Justice of the European Coal and Steel Community in Kergall's case;

Considering that the unanimous consensus reflected in the reports received by the Headquarters administration from Mr. Kilby, Mr. Walker and Mr. Rosenberg excludes any possibility that the Director-General may have been insufficiently informed, as well as any possibility of concerted prejudice towards the complainant, whose oral insinuations are totally unsubstantiated;

Considering that it is for the complainant to supply evidence of his allegations concerning the false and fraudulent character of these reports; that in the absence of such evidence, all such allegations should be rejected;

Considering that, on the contrary, the Organisation has continuously given proof of its fairness and generosity;

That the complainant was offered a possibility of appeal before an ad hoc joint committee and that this offer remained without reply until the Tribunal had before it the complaint and the reply of the Organisation, at which time it was too late to accept the offer;

Considering that the faults attributed to the complainant might have justified more summary and severe sanctions, under Article 206 of the T.A.B. manual, than the procedure by way of "honourable dismissal" which was in fact applied;

Considering that the Administration gave a further proof of leniency when it accepted the accomplished fact and delayed the official cessation of the complainant's duties until the date on which he had actually left Indonesia, contrary to the instructions received and with a view to his private convenience, and when it extended his salary for one month beyond the said date; that the decision of 7 October 1955 confirming the said acceptance was not rendered irregular by its retrospective character, since it merely postponed until 30 September 1955 the effective date of a valid decision, dated 10 September 1955, to terminate the complainant's appointment;

That still further proof of generosity on the part of the Organisation lies in its recognition of the competence of the Tribunal and in its acceptance, as the point of departure of the case, of an alleged decision of 19 November 1956, notwithstanding that no actual decision can be said to have been taken on that date;

Considering finally that the complainant, by accepting on several occasions and without reservation the payments made to him by the Organisation, in sizable and generous amounts, may be considered under general principles of law as having acquiesced in the actual offers which were made to him and as having relinquished the remainder of his claims;

Considering that it results from the foregoing that the decision to terminate the complainant's employment did not violate any provision of his contract of employment or of the statutes and was in no way irregular;

#### B. As regards the financial claims:

Considering, as regards the financial claims put forth by the complainant - apart from the three-and-a-half months during which he claims that he was entitled to the continuation of his contract - that they are of such proportions and of such a nature that their lucrative purpose is obvious;

That this is also true of the sum of U.S. \$6,000 which the complainant claims as compensation for prejudice to his professional reputation, notwithstanding that the procedure followed by the Organisation was particularly discreet and that it was the complainant himself who, for the avowed purpose of undermining the prestige of the International Labour Organisation, endeavoured during many months to discredit it in the eyes of its staff and of world opinion, and contemplated using the press for this purpose; that, finally, at the time of the International Labour Conference he approached the Chairman of the Governing Body of the I.L.O. and the President and members of the Conference itself with the same objectives in mind;

Considering that it is immaterial that the complainant mentions the steps taken by the Ministry of Labour of Indonesia to request, not the rescinding of the decision to terminate his employment, but merely his temporary maintenance pending the arrival of a replacement; that it is further immaterial that he refers to the petition made by his pupils for a similar purpose; and that neither of these interventions may be placed in opposition with the opinions expressed by his competent chiefs;

Considering, as regards the claim for U.S. \$4,500 as compensation for an employment accident in respect of which the liability of the Organisation is allegedly incurred, that the said accident is reported to have taken place during a side trip which the complainant voluntarily made to Singapore in violation of his instructions, and that in the absence of any evidence of the official nature of the complainant's travel to Singapore, it is not established that the accident arose out of and in the course of his employment;

Considering, moreover, that the application for compensation in respect of permanent partial disability was only

submitted to the competent authority one year after the accident; that it was thus not possible to ascertain the circumstances in which the accident occurred; that it is not established that the alleged disability subsisted either in whole or in part; that the onus of proof unquestionably lay on the complainant and that such proof has not been furnished;

Considering, as regards a series of detailed claims in a total amount of U.S. \$712.25, of which \$584.12 were already paid to the complainant and accepted by him, that it is not proved that the remainder of the expenses for which he claims reimbursement had been the subject of a prior authorisation;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Rejects the claims of the complainant and orders him to return the laissez-passer which was delivered to him only for the duration of his employment and which he was bound to return on expiry of the latter.

In witness of which judgment, delivered in public sitting on 12 July 1957 by His Excellency Albert Devèze, President, Professor Georges Scelle, Vice-President, and Sir John Forster, K.B.E., Q.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze  
Georges Scelle  
John Forster  
Jacques Lemoine