

Original French 16 February 1994

JUDGEMENT N° 1329 OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION (ILOAT)

Introduction.— As we have already announced briefly, the ILOAT has rejected the appeals deposited by Derek Ball, Vice-President of the Association and Michel Borghini, President of the Association against the decisions concerning salaries for 1992, following the negotiations of the summer 1990. These appeals were supported by more than one thousand applications to intervene. All those concerned were immediately sent a copy of the judgement by the Association. We give here several significant extracts of the considerations of the Tribunal, follows by some of our remarks and some additional information.

Extracts of judgement n° 1329.— “9.— [...] Every year, the Council approves expenditure for the year ahead and thereby determines expenditure on staff according to pay scales that Rule IV 1.01 of the Staff Rules empowers it to determine. By means of general five-yearly reviews and intermediate annual ones it approves each year the adjustments needed. [...]”

“21.— [...] the recommendations by the Finance Committee which the Council adopted in 1979 and which lay down the rules for five-yearly and annual reviews **say that the criteria set for the purpose create no obligation in law. In that respect they differ from the methods that other organisations follow.**¹ CERN's sole obligations are to carry out the prescribed reviews to pay scales each year, to work out the “index” of adjustment by reference to certain factors and to propose the index to the Council, which, after consulting the Finance Committee decides an adjustment for the year in question by reference to the index as a “guide”. It may be a pity that, despite this seemingly strict method, the Organization had to resort to the compromises that the financial straits of its Members demanded; but the Tribunal holds that the Council committed no breach of any legal obligation in setting pay for 1992.”

“13.— [...] On 22 June 1990 it had asked the Administration to start direct negotiations under the auspices of its own chairman with the Staff Association so as to come up with proposals that both staff and Council could accept. But that neither had the purpose, nor in law the effect, of making its decision on the matter subject to the outcome of “negotiations” with the staff or of requiring it to solicit the staff's comments on any decision it was minded to take. There is no evidence to suggest that it broke any promise by refusing to give effect to any earlier agreement, or betrayed the staff's trust, or acted in breach of the good faith an international organisation must show. In fact the purpose of the “negotiations” the Administration launched was to find proposals that both the staff and Council could accept. But the only obligation of the Council has in this area is to determines pay scales from time to time. In doing so it is not bound to agree to scales that would have satisfied the staff.”

¹ emphasised by us

Remarks and additional information.— In short, the negotiations were only “negotiations” and the Council has legal obligations which leaves it complete sovereign rights. In its written submissions that it addressed to the Tribunal, the previous Director General did not hesitate to use any means to further his point of view.

He told us (4 July 1990, at SCC): *“The items in those two classes² should be handled in a document to be put before Council in October so that they could be approved in toto”*.

To the Tribunal, he said that the negotiations were only “negotiations” with which the Council could do as it liked.

He made great play of the fact that negotiations were being carried out under the auspices of the President of Council, who the 29 August 1990, had presided at a meeting where he had arbitrated between the still divergent positions of the Management and the Association.

To the Tribunal he said that *“the President assisted at the meeting only as a moral authority devoid of any mandate to represent the Council and of any power of decision. [... The President of the Council has no executive power. He is President of Council and not President of the Organization”*.³

He told us, in the Main Auditorium on 17 December 1990, presenting and commenting upon the decision of Council the preceding Friday 14 December, *“Well, this is more or less the situation of the negotiations as of today. It is clear that we still have work to do. It is clear that, as each lorry hides another lorry, each meeting of Council hides another and it is clear and evident that we must continue to operate in these conditions. We must see what happens in 1992 and in 1993.”*³ On several occasions and in various official documents, he recalled that the Council in December 1990 had not taken any decision concerning the adjustments negotiated for 1992 and 1993. To the Tribunal, three years later, he said that *“this decision of the Council of 14 December 1990 concluded definitely the 1985-1990 five-yearly salary review.”*³

Etc. Lastly, it is important that you are aware that, to disqualify the appellants in the eyes of the Tribunal, the Director General accused them of dishonesty, without them having the possibility of replying, in stating that they had attached to their appeals documents which they had received confidentially and for their own personal use only.

Whereas in fact these documents had been received during official discussions in the Standing Concertation Committee, one on 9 December 1992, for a meeting at which the Director General was present, the other on 24 March 1993.

The Tribunal has then judged that **“the Council of the Organization”** had not infringed any legal obligation, or betrayed the trust of the staff, or broken any promises, or acted in breach of good faith. We leave you to judge the remaining.

2 1) reference organisations and salary indexation; 2) salaries, pensions, the non-resident allowance and insurance premiums.

3 our translation from the original French.