

THIRTY-THIRD ORDINARY SESSION

In re ZOGANAS

Judgment No. 238

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Athanase Zoganas on 21 November 1973, the Organisation's reply of 15 February 1974, the complainant's rejoinder of 17 April 1974 and the Organisation's surrejoinder of 16 May 1974;

Considering Article II, paragraph 1, of the Statute of the Tribunal, International Labour office Staff Regulations 4.1, 4.2(a), 4.2(f), 4.12, 10.2(b) and 13.2 and paragraphs 4, 8, 9, 12, 13, 14, 16, 17, 19 and 20 of Annex I to those Staff Regulations;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant was given an appointment to the Staff of the International Labour Office as a messenger at grade G.1 from 1 to 23 June 1955. He then received several short-term appointments, with several breaks, until 1 April 1959. On that date he received a fixed-term appointment which expired on 31 March 1960 and was extended for another year. Before its expiry, on 1 February 1961 he was given a permanent appointment, still at grade G.1 and with the same duties. On 1 August 1961 he was promoted to grade G.2 and transferred to the Personnel Office. After winning an internal competition he was promoted to grade G.3 on 1 April 1963. On his request he was given study leave without pay and so was able to obtain a law degree at the University of Lausanne. In 1967 he was a candidate in an internal competition for a G.5 post in the Registry. On the recommendation of the Board of Examiners and after consulting the Administrative Committee the Director-General decided to promote the complainant to the G.5 post from 1 July 1967. On 1 January 1970 he was promoted in the Registry to his present grade, G.6.

B. An internal competition was announced in November 1971 to fill one and possibly two vacancies in the Application of Standards Branch. The notice of vacancy gave a description of the duties of the post and of the qualifications required, namely a university degree in law and proficiency in certain languages, and stated that candidates might be required to take a written examination. There were thirteen candidates, including the complainant. Eleven of them were thought to possess the qualifications required. After comparison of their other qualifications the Board of Examiners eliminated five candidates, including the complainant, for lack of professional experience of legal practice. Four others were eliminated because they had less professional experience than the remaining six. After further eliminations based on professional qualifications the Board chose one candidate, who was appointed.

C. At the end of 1971 an external competition was announced in terms similar to those of the internal competition mentioned in paragraph B above. The notice of vacancy stated that the candidates chosen by the Selection Board would be required to undergo a written examination. There were 279 candidates, including the complainant. After a preliminary selection 51 candidates, including the complainant, were invited to undergo a written examination each with a code number. After marking the examination papers the Board selected twelve candidates, including the complainant. The identity of these candidates was then revealed to the Board, which put them in order of merit after further examination of their papers and taking account of their professional experience and other qualifications. The Board held that eight of the twelve candidates were more highly qualified than the other four, who included the complainant. On the basis of this assessment six of the eight chosen by the Board were given appointments.

D. The complainant then lodged with the Director-General two complaints under Staff Regulation 13.2 concerning

the results of the two competitions. After examining the complaints the Director-General took the view that it was unnecessary to submit them to the Joint Committee for comments and report and accordingly, by decisions of 94 August 1973, he dismissed them. Those are the decisions which the complainant is now impugning.

E. In the complainant's view the two competitions were tainted by procedural flaws. He also maintains that the selection procedure whereby he was eliminated was arbitrary.

F. The complainant notes that the notice of vacancy for the internal competition required only a university degree in law and proficiency in certain languages. He concludes that candidates were supposed to be assessed by those criteria alone and not also by that of practical experience, which was in fact taken into account. He argues that the candidates who met the conditions specified in the notice of vacancy should have been further assessed by a written examination, the possibility of which had in any case been envisaged. By assessing those candidates by the sole criterion of professional experience the Board of Examiners failed to observe the procedure specified in the notice and so infringed paragraph 14 of Annex I to the Staff Regulations. The complainant further points out that the notice envisaged the possibility of filling two vacancies and that eleven candidates met the conditions specified in the notice. Yet only one post was filled. In the complainant's view, in failing to award the second post to one of the remaining ten candidates, the Administration infringed the procedural rules laid down in its own notice of vacancy. The qualifications stipulated in the notice for the external competition, as in that for the internal competition, were no more than a university education and proficiency in languages. Since a written examination was held the results of that examination were the only criterion, over and above the qualifications stipulated in the notice of vacancy, by which candidates should have been assessed. Yet in fact they were assessed, contrary to the terms of the notice of vacancy and paragraph 16 of annex I to the Staff Regulations, by the criterion of professional experience. The complainant also objects that he was sent to the wrong room for the written examination. Although by chance he found the right room and took the examination, he implies that the Administration's alleged mistake was deliberate. Finally, no doubts whether the identity of candidates was properly concealed by the code numbers; if it was not, that was yet another irregularity.

G. The complainant alleges that the competition procedures and the decisions taken were tainted with arbitrariness. In general he believes that his continuing failure to obtain the kind of post to which he might reasonably have aspired is due to reasons other than his professional qualifications, and in particular to his trade union activities and political opinions. He maintains that he came to hear of the existence of a secret personnel file of which, contrary to Staff Regulation 4.12, he had not been informed. He invokes the principles of equal treatment and protection from the arbitrary or wrongful use of authority and maintains that the sole purpose of the internal competition procedure, which involved no examination and culminated in the appointment of only one candidate, was to secure appointment of a particular person "who happens to be the niece of a senior ILO official, as is clear from, among other things, the fact that she was performing the duties of the post on a temporary appointment even before the competition". The procedure was a mere formality intended to confirm her appointment. That, he maintains, is borne out by the fact that the final choice took no account whatever of the report of the Board of Examiners, which had found three candidates to be clearly superior, but had not put them in any order of merit. The choice as therefore arbitrary, as was the decision to fill the second post by the external competition.

H. As to the external competition, the complainant points out that some candidates were given appointments before the procedure had even been completed and before the Director-General had decided on the results. Hence the choice of candidates seems to have been based on considerations other than the qualifications revealed by the examination and the assessment of candidates on the basis of the written examination was arbitrary. The candidates were denied an equal chance for appointment.

I. The complainant accordingly asks the Tribunal preliminarily: (1) to order the production of the report of the Board of Examiners for the internal competition, the report of the Selection Board for the external competition, the reports of the Administrative Committee and the "notifications of the Director-General's decisions" (2) to order the production of the classification of coded candidates in the external competition (3) to submit the complainant's examination papers and those of six selected candidates to one or more independent experts for confirmation or rejection of the classification made by the Selection Board; (4) to give the complainant a personal hearing; and (5) to order the hearing of witnesses to testify to certain facts of which the complainant has not furnished written proof. Principally: (1) to quash the Director-General's decisions relating to the results of the internal and external competitions and the decision to fill only one post on the basis of the internal competition; (2) to order that a new and valid competition be held to fill the P.2/P.3 posts in the Application of Standards Branch awarded as a result of the two contested competitions; and (3) to award costs against the Administration. Alternatively: (1) to declare that

the complainant was wrongfully denied a post for which he had the required qualifications; and (2) to order accordingly that he be immediately appointed to that post or be entitled to automatic appointment as soon as a P.2/P.3 vacancy occurs in the Application of Standards Branch.

J. In its reply the Organisation points out that according to the Tribunal's case law "it is a rule generally recognised by the courts that a complainant is not entitled to refer to the courts in a single complaint two or more different decisions having no connection with each other. In such a case, the court can examine the complaint only in respect of the first decision specified therein". In the present case the complainant refers to the Tribunal two decisions relating to two different competitions. The question before the Tribunal relates, not to the complainant's career, but to the lawfulness of two competitions, and the Organisation does not find a close enough connection between the two complaints for them to be combined in one. It therefore believes that in so far as the complaint relates to the external competition - a matter dealt with in the second section of the complainant's submissions - it is irreceivable.

K. The Organization then seeks to establish that the two complaints are in any case unfounded. It gives a detailed description of the procedures for recruitment and appointment in the International Labour Office. It then states that the Board of Examiners for the internal competition examined the candidates and submitted a report to the Administrative Committee, which unanimously recommended the Director-General to endorse the Board's choice. The Director-General did so and filled the post in question by appointing the candidate placed first by the Board of Examiners. The Selection Board for the external competition unanimously recommended eight candidates as superior. The Administrative Committee recommended the Director-General to appoint four out of the eight candidates on the understanding that two others might also be appointed. The Director-General decided to fill posts by appointing six of the eight candidates recommended by the Selection Board. Those decisions were therefore not taken by an incompetent body. The Organisation then maintains that there were no procedural irregularities since the results of the internal competition were published on the notice board in the Office and the results of the external competition were notified to the candidates in writing. In both competitions the procedure was properly followed. The Board of Examiners and the Selection Board were set up in accordance with the Staff Regulations. They both submitted reports to the Administrative Committee, which made recommendations to the Director-General. As to the internal competition, the Organisation observes that it was under no duty to hold a written examination, which the notice of vacancy mentioned only as a possibility. As to the external competition, the fifty-one examination papers bore only a code number. Only when the number of candidates had been reduced to twelve were their names revealed to the Selection Board. There was no procedural flaw in that. The Organisation admits that an administrative mistake led to confusion about the examination room; but that mistake did not prevent the complainant from taking the examination. In reply to the complainant's allegations the Organisation says that "it borders on the absurd to imagine that the Office would have tried to eliminate the complainant in such an obviously ingenuous way". In answer to his allegations that the procedures were tainted with prejudice due to his trade union activities and political opinions, the Organisation points out that half the members of boards of examiners and selection boards are chosen by the staff representatives (i.e. by the Staff Union Committee) and that the political opinions of the members of those bodies are naturally extremely varied. The Organisation cannot therefore agree that the internal and external competition procedures were tainted with any flaw.

L. The Organisation notes that the complainant bases his allegations of errors of law or of fact mainly on five arguments: prejudice on the grounds of his trade union activities and political opinions; the existence of a personal file of which he was unaware; the adoption of criteria other than proficiency in languages and legal education; and - as to the internal competition - the nepotism appointment of only one candidate.

M. As to the complainant's trade union activities and political opinions, the Organisation does not see how the Board of Examiners or Selection Board took account or could conceivably have taken account of such matters in classifying the candidates. As to the alleged existence of a secret file, the Organisation observes that every administration keeps files (which may, for instance, concern the higher interests of the State or institution, or contain documents referring to third parties) which are not communicated to officials. In the present case no item of that kind was taken into account by the Board of examiners or Selection Board. In reply to the allegation that account was taken of criteria other than linguistic and legal qualifications, the Organisation states that in both competitions several candidates were found to meet the basic conditions for appointment. Hence, as is expressly provided in paragraph 14 of Annex I to the Staff Regulations, the Board of Examiners and Selection Board were bound to take account of other objective criteria in classifying the candidates. As to the fact that only one vacancy was filled by the internal competition, the Organisation points out that the notice of vacancy for the internal competition merely envisaged the possibility of filling a second vacancy and that the Office was therefore under no

obligation to fill both vacancies, and could even decide to fill neither. Even if both vacancies had been filled the complainant was not one of the six best candidates. Finally, the Organisation notes the complainant's allegation that the procedure was purely formal and intended to secure the permanent appointment of the "niece of a senior ILO official" who was already performing, albeit on a short-term contract, the duties specified in the notice of vacancy. The Office's primary aim is to recruit the best possible staff and not to practice favouritism. The "senior official" in question is a P.4 official and it is doubtful whether the Board was even aware of a relationship which the surnames do not suggest. For the foregoing reasons the Organisation concludes that in neither case were the proceedings tainted with any of the irregularities which entitle the Tribunal to interfere.

N. The Organisation cannot agree to the complainant's request for production of the reports of the Board of Examiners and Selection Board. According to paragraph 17 of Annex I to the Staff Regulations the composition, deliberations and reports of the Boards shall be strictly confidential. The grounds underlying that rule are plain: to avoid pressure on the members of a Board of Examiners or a Selection Board before, during and after the proceedings and to prevent the divulging of the reasons for the elimination of candidates. The Organisation states, however, that it would be prepared to communicate the reports to the Tribunal if it so ordered.

O. The Organisation prays that the Tribunal declare the complaint irreceivable insofar as it relates to the external competition and in any case to dismiss the complaint in its entirety.

CONSIDERATIONS:

As to the receivability of the complaint:

Although the decisions impugned by the complainant relate to two different competitions and are impugned on different grounds, each of them affects the complainant's career in a very similar way. The complainant may therefore refer them to the Tribunal in one and the same complaint.

As to the complainant's claim for production of the report of the Board of Examiners for the internal competition, the Report of the Selection Board for the external competition the various reports of Committee and the "Notifications of the Director-General's decisions":

The Tribunal believes that the dossier before it contains all the documents required for reaching a decision and that it is therefore needless to order production of the above-mentioned documents.

As to the lawfulness of the Director-General's decision concerning internal competition V/APPL/13/71:

On 16 November 1971 a notice of vacancy was published announcing an internal competition, limited to established and fixed-term officials, to fill one or possibly two vacancies in the Application of Standards Branch. The notice gave a description of the duties attaching to the posts, set forth the qualifications required of applicants namely a university degree in law and a proficiency in languages, and stated that the candidates selected by the Board of Examiners might be required to take a written examination.

In support of his contention that the competition was tainted with irregularities the complainant alleges, first, that the Director-General had a duty to hold a prior meeting of the Joint Committee. But no provision of the Staff Regulations required that such a meeting should be held.

Secondly, the complainant objects that in selecting the candidates the Board of Examiners took account not only of their university education and proficiency in languages, the sole qualifications set forth in the notice of vacancy, but also of their professional experience, a criterion not mentioned in the notice.

An internal competition, of which the main purpose is to promote existing staff members, normally entails taking into consideration all the information available to the Organisation concerning them, and in particular information which allows of appraising the professional experience of the candidates. In taking previous performance as one of its criteria for the classification of candidates the Board of Examiners therefore did not exceed its proper authority to make a general assessment of them and make a choice.

Thirdly, contrary to what the complainant alleges, the Board of Examiners had a duty to determine whether or not the candidates should take a written examination. According to the notice of vacancy itself, the Board was not obliged to hold such an examination. It was also free to decide, in the light of its inquiries, to choose only one

candidate, even though provision had been made for filling two vacancies, since the notice referred to the mere possibility of filling a second vacancy.

Fourthly, the complainant has not produced a shred of real proof in support of his allegation that the impugned decision was not taken in the interests of the Organisation.

It appears from the foregoing that in endorsing the Board's recommendations the Director-General did not take a decision tainted with any illegality.

As to the lawfulness of the Director-General's decision concerning external competition SB/APPL/71/4:

The complainant first contends that the Organisation tried to exclude him from the selection procedure by summoning him to undergo the prescribed written examination in a room other than that in which the examination actually took place.

It appears from the documents in the dossier, however, that the mistake made in the notice sent to the complainant about the examination room was quite involuntary, that in any case he discovered in time the room where the examination was being held, and that he took the examination in the same conditions as the other candidates. However regrettable the mistake may have been, therefore, it did not affect the regularity of the proceedings.

Secondly, the complainant contends that the rules of impartiality which should apply to any competition were not respected in the external competition and that, among other things, the names of the candidates were known to the Selection Board when it came to classify them.

It appears from the dossier that the notice of vacancy announcing external competition SB/APPL/71/4 required that the applicants should not only possess certain qualifications - a university education and proficiency in languages - but should also take a written examination.

Thus, according to the notice, the vacancy was to be filled, not by a competition in the strict sense of the term, but by selection. The process of selection of civil servants should by its very nature be based not just on the results of an examination but on any other useful criteria. Account should be taken, not only of the candidates' possession of the expressly stipulated qualifications, but of their degrees and of their professional experience, which in itself constitutes a criterion for selection and one of particular relevance in recruiting civil servants.

In the present case the Selection Board had to select the best candidates by various criteria, of which the examination results were only one. It was therefore entitled, after marking the written papers, to ask the Organisation to reveal the names of the candidates so that it could fulfil its task by assessing the general suitability of each of them for employment in the international civil service.

Thirdly, the complainant has not produced a shred of proof in support of his allegations that he was eliminated because of his political opinions or trade union activities and that the Organisation failed to apply the principle of equality to his case. In the light of all the documents in the dossier such allegations appear most unlikely to be true.

Fourthly, the complainant takes exception to the appointment of two officials to vacancies in the Organisation; but those appointments have no bearing on the selection procedure, and the propriety of that procedure is the only matter which the Tribunal has to decide.

It appears from the foregoing that none of the arguments in the complaint is well founded and that the complaint should be dismissed without any award of costs to the complainant.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 October 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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