

ADMINISTRATIVE TRIBUNAL

Judgement No. 387

Case No. 410: MOSTAFA

Against: The Secretary-General of
the International Civil
Aviation Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Luis de Posadas
Montero, Vice-President; Mr. Jerome Ackerman;

Whereas at the request of Osama M. Mostafa, a former staff
member of the International Civil Aviation Organization, hereinafter
referred to as ICAO, the President of the Tribunal with the
agreement of the Respondent, successively extended the time-limit in
which to file an application until 10 June 1986, then until
20 September 1986 and finally until 30 October 1986;

Whereas on 30 October 1986 the Applicant filed an
application, the pleas of which read as follows:

"(a) PRELIMINARY AND PROVISIONAL MEASURES

1. Appellant requests the Tribunal to address the
following questions, in writing, to Mr. C.A.
Everard, C/FAP - TAB - [Chief of the Field
Operations Section (Asia and the Pacific) Technical
Assistance Bureau] ICAO; to ask Mr. Everard to
submit his answers in writing to be documented as
part of the Tribunal procedure, and copied to the
Appellant:

1-1 Did you, during your visit to Karachi on October of
1981, ask Mr. Bryan Johnson, P.C. [Project
Coordinator], PAK/74/034, to convey to Dr. Osama
Mostafa your desire to get together with him (the
Appellant) at Mr. Johnson's house in Karachi on
October 21, 1981?

1-2 Could you have met with the Appellant at the project office in Karachi, instead of Mr. Johnson's house?

1-3 What reason did you have to summon the Appellant, on October 21, 1981, at P.C.'s house in Karachi?

1-4 What, in general, were the subjects you talked about?

What went on, in general, concerning each of the subjects you talked about?

1-5 Do you know, or have you ever heard of a Company in the U.K. [United Kingdom] called 'COMMUNICATIONS ACCESSORIES'?

1-6 Do you invest? and/or have you ever invested? and/or do you know, now or in the past, anybody who did invest or is now investing in a Company called 'Communications Accessories' in the U.K.?

1-7 Did the name, 'Communications Accessories' come up in your summons with Appellant on October 21, 1981 in Mr. Bryan Johnson's house in Karachi, Pakistan at such date?

How many times?
In what context?

2. Appellant requests the Tribunal to make document, in this application file, telex No. 25534 received at ICAO-TAB Headquarters, in Montreal, on January 5, 1982 from the Director General of Civil Aviation in Pakistan. Appellant requests a copy of this particular telex be forwarded to him for his records.

3. Appellant requests the Tribunal to ask the Secretary-General of ICAO, for an explanation, in writing, to the fact that telex No. PAK OM2 ... which represents a vital and essential part of ICAO's appeal No. 80 ... was not part of the appeal's documents in the possession of the Secretary-General of ICAO ... Appellant requests a copy of the ICAO's Secretary-General explanation be forwarded for Appellant's records.

4. Appellant requests the Tribunal, when possible, to solicit in writing, from Mr. Bryan Johnson, P.-C. PAK/74/034, ICAO-TAB, answers to the following questions:

- 4-1 Have you complained to Mr. Everard, to the best of your recollection from Appellant's utilization of project vehicles? When, if any, did this complaint take place?
- 4-2 Have you at one time asked the Appellant whether or not his wife was still in Pakistan?
- 4-3 Were you under the impression, or told by Mr. Everard, that the Appellant's wife would be leaving the Pakistan soon, during Mr. Everard's visit to Pakistan in October of 1982?

The Appellant requests a copy of Mr. Johnson's answers for his records.

5. Appellant requests the Tribunal to solicit, in writing from the ICAO-AJAB [Advisory Joint Appeals Board] ... their reaction to Appellant's claim of the incident briefed below*, and why it was not recorded in the ICAO-AJAB report ... Appellant requests a copy of the outcome.

*Appellant records here, in connection to his request No. 5 above, that Mr. C. A. Everard, C/FAB-TAB-ICAO, stated in the hearing of September 6, 1985 that officials of the Directorate of Civil Aviation [D.C.A.] in Pakistan had complained from Appellant's conduct. Mr. Everard specifically mentioned three names of Pakistani officials: Mr. Hanafy, Mr. Rashid, and Mr. Abu-Nasser, all at the D.C.A. in Pakistan.

When asked by Appellant about a telex from D.C.A. in Pakistan to TAB-ICAO requesting Appellant to be in charge of ICAO project PAK/74/034, Mr. Everard denied any knowledge of such a telex. He also added that if such a telex existed, anybody could have sent it, including the Appellant himself. Appellant at the time, responded by stating that Mr. Everard's implications were disgusting.

The Appellant requests the Tribunal to solicit in writing, an answer from the three officials at Pakistan's D.C.A., Mr. Hanafy, Mr. Rashid, and Mr. Abu-Nasser, to whether or not they had complained to Mr. Everard from the Appellant's conduct during his stay in Pakistan in connection with ICAO's Project PAK/74/034.

Appellant would like a copy of their response for his

records.

(b)The decisions which the Applicant is contesting and whose rescission he is requesting:

Decision of the Secretary-General, International Civil Aviation Organization ... on February 25, 1982, to terminate contract of employment, effective March 16, 1982.

(c)The obligations which the Applicant is invoking and whose specific performance he is requesting:

- 1.An apology for the decision the Applicant is contesting.
- 2.A full payment for the remainder of the contract terminated by the decision contested by Applicant.
- 3.Reinstatement to a similar job with all due advancements.
- 4.A compensation to the amount of \$6,000,000.00 (six million of US Dollars) for financial, professional and physical damages concurred [sic] because of the decision the Applicant is contesting.

(d)The amount of compensation claimed by the Applicant in the event that the Secretary-General decides to pay compensation for the injury sustained:

Six million in US Dollars (\$6,000,000.00)

(e)Investigating charges by Applicant against Mr. A. C. Everard, Chief of the Field Operations Section (Asia and Pacific), Technical Assistance Bureau (C/FAP, TAB), International Civil Aviation Organization (ICAO).

*Freezing all activities of C/FAP, TAB, ICAO until after investigation of charges against him by Applicant are investigated.

Applicant charges that Mr. A. C. Everard, C/FAP, TAB, ICAO, is a liar, a thief, a crook and a disgrace to the International Organization, or any organization for that matter."

Whereas the Respondent filed his answer on 30 December 1986;
Whereas on 27 March 1987, the President of the Tribunal ruled

that no oral proceedings would be held in the case;

Whereas on 2 April 1987, the President of the Tribunal ruled under article 10 of the Rules of the Tribunal, that no additional written statements or documents as requested by the Applicant, were required by the Tribunal to consider the case;

Whereas on 2 May 1987, the Applicant sent a telegram to the Executive Secretary of the Tribunal that reads as follows:

"I ASK THE DISCRETION OF POSTPONING MY CASE NO 410 TO A DIFFERENT SESSION I CONSIDER THE DOCUMENTATION OF MY CASE INSUFFICIENT AND AM NOT CONFIDENT JUSTICE WILL BE SERVED I FIND IT IMPORTANT FOR DOCUMENTS AND/OR STATEMENTS REQUESTED IN MY APPLICATION TO BE PROVIDED I ALSO WISH TO ADD DOCUMENTATION IN LIGHT OF FILES RECEIVED FROM [EXECUTIVE SECRETARY] RECENTLY LETTER FOLLOWS ..."

Whereas on 12 May 1987, the Executive Secretary of the Tribunal replied as follows:

"RE YOUR TELEGRAM OF 2 MAY 1987 RECEIVED HERE 12 MAY 1987. SINCE REQUESTS FOR DOCUMENTS, STATEMENTS, ETC. FORM AN INTEGRAL PART OF YOUR APPLICATION, THE TRIBUNAL WOULD RULE ON THEM IN ITS JUDGEMENT AND NOT SEPARATELY. CASE NO. 410 IS NOW UNDER CONSIDERATION, BUT IF YOUR PROMISED LETTER REACHES ME NO LATER THAN 20 MAY AND CONTAINS RELEVANT NEW MATERIAL, THE PRESIDENT OF THE TRIBUNAL WILL CONSULT RESPONDENT AND DECIDE ..."

Whereas no further communication was received from the Applicant;

Whereas the facts in the case are as follows:

The Applicant was recruited by the ICAO on 6 May 1981. He was assigned to Manila, and was offered a short-term appointment that provided for his services through 11 August 1981, as a Lecturer in Airport Maintenance. His appointment was subsequently extended for a fixed-term period of two years. The letter of appointment, dated 25 August 1981, provided for the Applicant's transfer to the post of Electro-Mechanical Training Adviser in Hyderabad, Pakistan, the conversion of his status from short-term "to intermediate term

status with adjustment of conditions of service as required by the Field Service Staff Rules" and the extension of his services through 10 August 1983.

The Applicant took over his new duties on 11 August 1981. According to the letter of appointment, he was to perform his duties "under the direction of the ICAO Project Coordinator". It appears from reading an exchange of memoranda between the Applicant and the Project Coordinator that their personal and working relations deteriorated during the course of their assignment in Pakistan. The record shows that the Applicant asserted at times that the authorities of the Government of Pakistan sent a telex 25534, presumably in early January 1982, suggesting temporary changes in the supervision of the project on which the Applicant was working.

On 25 January 1982, the Applicant addressed a cable to the Director of the Technical Assistance Bureau, D/TAB at Headquarters, "for the attention of" the Chief of the Field Operations Section, Asia and Pacific, Technical Assistance Bureau, TAB, in which he raised questions concerning the implementation and management of the Project PAK/74/034 in Pakistan. In a reply dated 25 January 1982, the Chief, Field Operations Section, Asia and the Pacific, TAB, cautioned the Applicant against transmitting any further information of that nature by telex since it could become available to others "to the possible detriment and undermining of the project as a whole". In addition, he expressed "shock" and dismay at the Applicant's interpretation of ICAO's actions in Pakistan since he had "no authority or active role" in several of the matters referred to in the cable.

The record of the case shows that subsequently thereafter, the Chief, Field Operations, Asia and the Pacific, TAB, travelled to Pakistan and conducted an investigation on the Applicant's conduct.

According to the report he prepared for the Director, TAB, he met three times with the ICAO personnel stationed in Hyderabad. The Applicant was present at all the meetings. The Applicant expressed his views on a series of matters and at one of the meetings held on

18 February 1982, he apparently stated his intention to resign. The Chief, Field Operations, Asia and the Pacific, TAB, asserts that he "emphasized, however, that the course of action which [the Applicant] chose to adopt was entirely a matter of his own judgement and decision". The Chief, Field Operations, Asia and the Pacific, TAB, stated that when he called on the Applicant later, on the same date, at 6:00 p.m., the Applicant had not prepared his letter of resignation. Although, the Chief, Field Operations, Asia and the Pacific, TAB, then wrote to the Applicant and asked him to confirm "in writing within the next 72 hours, that he would resign from his post", the Applicant did not do so. On 24 February 1982, the Director, TAB at Headquarters recommended to the Secretary-General that the Applicant's appointment be terminated "in the interest of the Organization" under Field Service staff rule 9.4(d). The Acting Secretary-General approved the recommendation on 25 February 1982.

On 27 February 1982, the Project Coordinator informed the Applicant that the Secretary-General had decided to terminate his appointment in accordance with Field Service staff rule 9.4 d) effective 12 March 1982 and to pay him a termination indemnity of three months salary in accordance with Field Service staff rule 9.7.

In a cable dated 8 March 1982, the Applicant requested the Secretary-General to review the administrative decision to terminate his appointment. This cable was treated as a request for review of an administrative decision under staff rule 8.1 and annex VIII of the Field Service Staff Rules. On 16 March 1982 the Secretary-General after reviewing the Applicant's file, "found no reason to change the decision taken by the Acting Secretary-General on 25 February 1982". On 7 May 1985, the Applicant lodged an appeal before the Advisory Joint Appeals Board hereinafter referred to as the AJAB. The AJAB adopted its report on 29 October 1985. Its conclusions and recommendations read as follows:

"CONCLUSIONS AND RECOMMENDATIONS OF THE BOARD:

47. Having considered the merits of the case, the Board unanimously concluded that:

- (a) The available evidence and documentation did not support the Appellant's assertion that the termination of his contract was based on prejudice or some extraneous factor;
- (b) The administrative decision taken by the Secretary-General on 25 February 1982 to terminate the Appellant's contract was a proper exercise of his authority under FSSR 9.4 d);
- (c) In the execution of the decision to terminate the Appellant's contract, the Organization fulfilled its obligations in regard to period of notice and termination indemnity and therefore has no further commitment or liability to the Appellant;
- (d) The Appeal was without foundation and should be rejected."

On 8 November 1985, the Secretary of the Advisory Joint Appeals Board transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the unanimous conclusions and recommendations of the Board contained in paragraph 47 of the Opinion.

On 30 October 1986, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Secretary-General's decision to terminate the Applicant's appointment was based on misinterpretation of facts and was motivated by prejudice, abuse of power and improper motives.
2. The Secretary-General of ICAO refused to investigate lies fabricated by the Chief, Field Operations Section, Asia and the Pacific, TAB and the charges made against him by the Applicant.
3. The Advisory Joint Appeals Board refused to investigate any of the allegations made by the Applicant against the Chief, Field Operations Section, Asia and the Pacific, TAB, and relied instead on his lies. This course of action led to a negative recommendation against the Applicant.

Whereas the Respondent's principal contentions are:

1. The administrative decision to terminate the Applicant's appointment was a proper exercise of the Respondent's decision under ICAO Field Service staff rule 9.4 d).

2. Any decision taken by the Respondent under Field Service staff rule 9.4 does not come under the Tribunal's power of review unless it is taken without authority, is in irregular form or tainted by illegality or procedural irregularities. Accordingly, the Tribunal may not substitute its own judgement for the judgement of the Respondent with respect to the Applicant's work or conduct or his suitability for international civil service.

3. Documents contained in the Applicant's personnel and confidential files and proceedings of the Advisory Joint Appeals Board demonstrate that the Applicant's attitude while employed by the Organization was detrimental to the project and to the image of ICAO vis-à-vis the Government of Pakistan.

The Tribunal, having deliberated from 7 May 1987 to 4 June 1987, now pronounces the following judgement.

I. The Applicant's pleas contain long lists of questions he wishes Mr. Everard, the Chief, Field Operation Section, Asia and the Pacific, TAB, Mr. Johnson, the Project Coordinator, and the Secretary-General to answer, in writing, and mainly for the Applicant's record. These questions are mostly in the nature of cross-examination of the Respondent. The Applicant had sufficient opportunities to undertake such cross-examination at the AJAB proceedings; these clearly show that all the relevant issues were examined. In the circumstances, the Tribunal sees no justification for acceding to the Applicant's request for eliciting further information or comments from Mr. Everard, Mr. Johnson, the Secretary-General of ICAO, or from officials of the Government of Pakistan.

The Applicant proceeds further and asks that the Tribunal

should question the AJAB why it did not include in its report this or that part of the discussion which the Applicant considers may be helpful to him. This request is rejected inasmuch as the AJAB is within its rights to write its report in what it considers the most effective manner, and it is open to the Tribunal to consider, for example, whether the AJAB's alleged omission to discuss in detail the question of the telex 25534 received in ICAO in Montreal from the authorities of the Government of Pakistan vitiated the AJAB's principal conclusions.

The Applicant pleads that the telex 25534 should be "kept in the record of this appeal and a copy sent to the Appellant"; the Tribunal takes the view that he could obtain a copy of it (i.e. at the AJAB Session, from the Respondent or from the authorities of the Government of Pakistan), and in any event it is outside the scope of this case and not relevant. Besides, this telex was a matter of much discussion in the AJAB and all concerned had full knowledge of it. The request for a copy of this telex is therefore rejected.

II. Having disposed of these preliminaries, the Tribunal considered the essential facts to decide if the Applicant's separation from ICAO under Field Service Staff Rule (FSSR) 9.4(d) was open to objection because of prejudice or other improper motives, extraneous factors or lack of due process which might reasonably be considered to have brought into question the right of the Respondent to separate the Applicant "in the interest of the Organization".

The Applicant has not seriously questioned that due process was observed. He was repeatedly told that the letters he wrote and the messages he sent were often in an unauthorized manner, that the subjects discussed in them were beyond his official competence and their tone and language intemperate and at times offensive. The Tribunal finds these admonitions had little effect on the Applicant.

His attitude towards his senior colleague at Karachi (Mr. Johnson) and to the officers at ICAO Headquarters at Montreal became more

cross-grained, undisciplined and provocative. Meanwhile his work at Hyderabad was not making much headway. His relationship with Mr. Johnson and others (according to Mr. Everard) had suffered many setbacks, and his grievances, justified or not (such as his wife's illness, house loan advance, advance of daily subsistence allowance, interdiction on his driving official vehicles, to cite only a few), multiplied.

III. The record shows that the Applicant's reaction and remedy for these real or imagined grievances was to adopt a more pronouncedly hostile attitude towards Mr. Johnson and more especially and emphatically against Mr. Everard, whom he considered principally responsible for his final separation from the Service of ICAO.

IV. All his complaints were carefully considered and explanations given for the decisions taken by the Respondent. If the Applicant did not accept the explanations or the reasoning leading to them, it was fundamentally because, in the Tribunal's view, he had come to resent Mr. Johnson as the Project Co-ordinator and Mr. Everard as favouring Mr. Johnson in preference to the Applicant. These explanations appear to the Applicant as tainted with discrimination, prejudice and a strong desire to persecute him, but there are no known or established facts supporting the Applicant's belief in this regard.

The AJAB examined the various allegations comprehensively and carefully, and concluded that the Respondent's action in separating the Applicant was a proper exercise of his power and was not open to the criticism that it was influenced, far less determined, by any prejudice, improper motive, lack of due process, or extraneous factors. The Tribunal concurs with this view and finds no evidence to justify the Applicant's allegations.

V. Moreover, the Tribunal notes that the Applicant was accommodated for 14 weeks in Manila when the job in Pakistan was not

readily available as expected, and that during the months following his arrival in Karachi there were no complaints. The Tribunal holds therefore that, apart from the lack of evidence of prejudice and other improprieties, the Respondent gave the Applicant a helping hand and it was only when the Applicant began to act in a manner far in excess of his authority and station in the Organization and showed a determination not to correct his ways and work in a spirit of co-operation that the Respondent became exasperated.

Thus, when the Applicant sent, presumably at the end of 1981, his telex suggesting that ICAO's reputation was going downhill, that Mr. Johnson should be given other responsibilities and that many other measures ought to be taken, the Respondent reacted sharply and asked him to adhere to his own sphere of work and show a greater degree of discipline. The Applicant's response was that he had done nothing secretive and that the officials of the Government of Pakistan, as well as Mr. Johnson knew about this telex; in the eyes of the Respondent such an explanation would, in principle, aggravate rather than extenuate the Applicant's wrongdoing. Even so, Mr. Everard, whom the Respondent regards as a "long-standing official of ICAO whose merits and professional and moral integrity are beyond reproach" conducted a full investigation prior to the Applicant's separation from ICAO, and all the points raised by the Applicant were examined by Mr. Everard; whereupon not only did the Acting Secretary-General decide to act in accordance with FSSR 9.4(d), but his decision was further confirmed by the Secretary-General himself. The Applicant's invectives against and dissatisfaction with Mr. Everard, cannot efface the fact that the AJAB conducted an enquiry to the best of its capacity and concluded that the Secretary-General exercised his powers legitimately and correctly. The Tribunal finds no grounds for differing from the conclusion reached by the AJAB.

VI. The Tribunal notes that the records inevitably contain minor contradictions and inconsistencies but holds that these cannot be

allowed to assume an importance they do not deserve. For instance, even assuming that Mr. Everard did discuss with the Applicant in some context or other a firm from which some equipment could be purchased, a point which the Applicant saw fit to address only after his termination, although the event allegedly occurred in October 1981, it cannot be construed, as the Applicant suggests, as an attempt on Mr. Everard's part "to embezzle, through the Appellant, the project resources". Similarly, the recriminations about what was said or not said about the health of the Applicant's wife cannot be viewed as a major factor in deteriorating relations between the Applicant and the other officials he was dealing with. There is also some confusion and contradiction about the circumstances in which the Applicant indicated his wish to resign; in any case, he did not do so in the end. But these and other similar matters can be considered only as incidental and do not detract from the principal conclusion that the Applicant by his action and attitude made the Respondent decide that his separation from ICAO was in the "interest of the Organization".

VII. Finally, the Tribunal should state that it is not required to decide on the allegations against Mr. Everard hurled recklessly by the Applicant, but simply to decide if the Applicant himself has been a victim of any prejudice and malpractices. To that, the answer given by the Advisory Joint Appeals Board is a unanimous no and the Tribunal confirms this finding.

VIII. In view of the foregoing, the Tribunal rejects the application.

(Signatures)

Samar SEN
President

Luis de Posadas Montero
Vice-President

Jerome Ackerman
Member

Geneva, 4 June 1987

R. Maria VICIEN-MILBURN
Executive Secretary