

Broadbent v. Organization of American States

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

628 Fed.Rptr.2d 27 (1980)

Author's Note: Plaintiff Broadbent and some co-workers lost their jobs at the General Secretariat of the Organization of American States (OAS). The plaintiffs included US citizens and foreign nationals residing in the US who were employed at the OAS's permanent headquarters in Washington, D.C. They believed that they were wrongfully terminated.

They first filed a complaint with an OAS administrative tribunal set up to resolve personnel disputes. That OAS tribunal decided that these employees should be reinstated, awarding a small amount of money damages in the event that the OAS Secretary-General ultimately denied the reinstatement recommendation of the administrative panel. Plaintiffs then sued for \$3 million in a federal court of the US—also located in Washington, D.C. They alleged that the OAS had improperly breached their employment contracts.

The defendant OAS responded by seeking dismissal of their suit. The federal trial court did just that, holding that the OAS was “absolutely” immune—under any circumstances—from such suits. The federal appellate court agreed that the OAS was entitled to organizational immunity. The appellate court's decision, however, was that “restrictive” immunity was the applicable standard to apply to an international organization, rather than the lower court's reliance on an absolute standard for gauging whether the organization was immune from suit.

Both the trial and appellate courts achieved the same result. They dismissed the case against the OAS. Their respective legal yardsticks differed in terms of which standard was applicable—absolute or restrictive immunity.

The restrictive standard would authorize prosecution of future suits against an international organization in US courts if, like State immunity, the organization's activities were sufficiently “commercial.” The appellate court applied the Foreign Sovereign Immunities Act (FSIA) to the OAS, just as if it were a “State” within the meaning of the FSIA. If a foreign State would be entitled to immunity under the Act, so would an international organization like the OAS. The OAS was immune from suit if it was not conducting a “business” as if it were a private trader—when hiring and firing employees at the organization's Washington, D.C. headquarters.

Court's Opinion: Section 1605 of the FSIA provides that foreign states shall not be immune from the jurisdiction of American courts in any case based upon their commercial activity in the United States, with the commercial character of an activity determined by reference to its “nature” rather than to its “purpose.” The conceptual difficulties involved in differentiating *jure gestionis* [acts by a private trader] from *jure imperii* [acts by a State] have led some commentators to declare the distinction unworkable. The restrictive immunity doctrine is designed to accommodate the legal interests of citizens doing business with foreign governments on the one hand, with the interests of foreign states in avoiding the embarrassment of defending the propriety of

political acts before a foreign court.

In our view [the appellate court], the employment by a foreign state or international organization of internal administrative personnel—civil servants—is not properly characterized as “doing business.” That view is supported by the legislative history of the FSIA, and the definition of “commercial activity” in §1603. The House [of Representatives] Report commented:

Commercial activity.—Paragraph (c) of section 1603 defines the term “commercial activity” as including a broad spectrum of endeavor, from an individual commercial transaction or act to a regular course of commercial conduct. A “regular course of commercial conduct” includes the carrying on of a commercial enterprise such as a mineral extraction company, an airline or a state trading corporation. Certainly, if an activity is customarily carried on for profit, its commercial nature could readily be assumed. At the other end of the spectrum, a single contract, if of the same character as a contract which might be made by a private person, could constitute a “particular transaction or act.” . . . By contrast, . . . an activity whose essential nature is public or governmental . . . would not itself constitute a commercial activity. . . . Also public or governmental and not commercial in nature would be the employment of diplomatic, civil service, or military personnel, but not the employment of American citizens or third country nationals by the foreign state in the United States.

This report clearly marks employment of civil servants as noncommercial for purposes of restrictive immunity. The Committee Reports establish an exception from the general rule in the case of employment of American citizens or third country nationals by foreign states. The exception leaves foreign states free to conduct “governmental” matters through their own citizens. A comparable exception is not applicable to international organizations, because their civil servants are inevitably drawn from either American citizens or “third” country nations. In the case of international organizations, such an exception would swallow up the rule of immunity for civil service employment disputes.

The United States has accepted without qualification the principles that international organizations must be free to perform their functions and that no member state may take action to hinder the organization. The unique nature of the international civil service is relevant. International officials should be as free as possible, within the mandate granted by the member states, to perform their duties free from the peculiarities of national politics. The OAS charter, for example, imposes constraints on the organization’s employment practices. Such constraints may not coincide with the employment policies pursued by its various member states. . . . An attempt by the courts of one nation to adjudicate the personnel claims of international civil servants would entangle those courts in the internal administration of those organizations. Denial of immunity opens the door to divided decisions of the courts of different member states passing judgment on the rules, regulations, and decisions of the international bodies. Undercutting uniformity in the application of staff rules or regulations would undermine the ability of the organization to function effectively.

We hold that the relationship of an international organization with its internal

administrative staff is noncommercial, and, absent waiver, activities defining or arising out of that relationship may not be the basis of an action against [the organization] regardless of whether international organizations enjoy absolute or restrictive immunity.

The appellants were staff members of the General Secretariat of the OAS. Their appointments, terms of employment, salaries and allowances, and the termination of employment were governed by detailed "Staff Rules of the General Secretariat" promulgated by the OAS. The Staff Rules further establish an elaborate grievance procedure within the OAS, with ultimate appeal to the Administrative Tribunal of the OAS.

The Tribunal is competent to determine the lawfulness of an employee's termination of employment. If an employee has been wrongfully discharged, the Tribunal may order reinstatement. If reinstatement is ordered, the Tribunal may also establish an indemnity to be paid to the employee in the event the Secretary General exercises his authority to indemnify the employee rather than effect the reinstatement.

The employment disputes between the appellants and OAS were disputes concerning the internal administrative staff of the Organization. The internal administration of the OAS is a non-commercial activity shielded by the doctrine of immunity. There was no waiver, and accordingly the appellants' action had to be dismissed.