

**APPLICATION/REQUÊTE N° 10664/83**

David M. BOWEN v/NORWAY

David M. BOWEN c/NORVÈGE

**DECISION** of 12 December 1985 (Striking off the list of cases)

**DÉCISION** du 12 décembre 1985 (Radiation du rôle)

---

**Article 14 of the Convention in conjunction with Article 6, paragraph 1 of the Convention :** *Allegation that Norwegian law does not give foreign sailors the right to bring a request for compensation for unjustified dismissal to the courts (Agreed solution).*

**Article 44, paragraph 1 of the Commission's Rules of Procedure :** *Striking off the list after a private settlement between the parties.*

**Article 14 de la Convention, combiné avec l'article 6, paragraphe 1, de la Convention :** *Allégation selon laquelle la loi norvégienne ne reconnaît pas aux marins étrangers le droit de saisir les tribunaux d'une demande de réparation pour licenciement injustifié (Arrangement hors procédure).*

**Article 44, paragraphe 1, du Règlement intérieur de la Commission :** *Radiation du rôle après arrangement hors procédure entre les parties.*

---

**THE FACTS**

(français : voir p. 162)

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a United Kingdom citizen, born in 1942. He is a seismic observer by profession and resides at Haverfordwest, Dyfed, Wales. Before the Commission the applicant is represented by Mr. Jonas W. Myhre of the law firm Hjørt, Eriksrud, Myhre and Bugge Fougner, Oslo, Norway.

From October 1980 to April 1983 the applicant was employed as a seismic observer by a Norwegian shipping company. He worked on board a company ship and his terms of employment as regards wages, working hours, holidays etc. were determined in accordance with the regulations for Norwegian seamen.

In November 1982 the applicant received a warning letter from the company advising him to resign on the grounds of an unsuitable personality for working on the ship. As he did not follow the advice he received an official notice of dismissal from the company on 13 April 1983.

Convinced that the case was one of unfair dismissal, the applicant contacted his trade union for support. On 3 May 1983 the union, having investigated the case, reached the conclusion that the dismissal in their view was well justified. Therefore the case was not worth supporting.

The applicant thereafter asked a Norwegian lawyer for legal advice on whether to sue the company for unfair dismissal. After investigating the case, the lawyer informed the applicant by letters of 14 September and 12 October 1983 that since no agreement existed between the applicant and the company with regard to termination of contract, these matters would be regulated by the Norwegian Seamen's Act of 30 May 1975.

Sections 14 and 15 of the Norwegian Seamen's Act contain provisions according to which a seaman can be dismissed from his employment on specific grounds such as disease, misbehaviour or inability to carry out his work. Section 17 of the Act provides that a seaman can also be dismissed on other grounds, provided that he shall then be given two months' pay from the date when he leaves his employment. Section 20 of the Act — in its wording before the amendment referred to below — gives protection against unfair dismissal in the sense that it obliges the ship-owner to pay compensation to the dismissed seaman in cases where the dismissal was not justified by objective reasons, but this obligation to pay compensation is only applicable to seamen who are either Norwegian citizens or residents of Norway.

Section 20 of the Seamen's Act reads (in translation):

*"Protection against unjustified dismissal*

The shipowner shall be liable for damages if a seaman who is a Norwegian national or a resident in Norway and who after reaching the age of 21 has at least 18 months' continuous service with the shipping company or on board the same ship, must depart from service because the shipowner terminates the service relationship without there being any objective grounds therefor in the shipowner's or seaman's circumstances

...

Action against the shipowner must be brought within 4 months of the termination of the service relationship."

The lawyer thus advised the applicant not to pursue the case since legal action would be without prospects of success.

## COMPLAINTS

The applicant complained that as a foreign sailor, he could not petition the Norwegian courts with regard to the question of unfair dismissal or at least could not have such a case determined on the same basis as a Norwegian colleague. He did not initially invoke any specific Article of the Convention but subsequently he referred to Article 6 separately and in conjunction with Article 14.

## PROCEEDING BEFORE THE COMMISSION

The application was introduced on 27 October 1983 and registered on 20 November 1983.

The Commission decided on 11 May 1984 to bring the application to the notice of the respondent Government and invite them to submit before 27 July 1984 written observations on the admissibility and merits of the application.

On 9 August 1984 the respondent Government requested and were granted an extension of the time limit until 27 August 1984. The Government's observations were submitted on 3 September 1984.

In their observations the Government argued that under Norwegian law anyone — including the applicant — could in fact petition the courts in order to have the question of unjustified dismissal determined. There was thus no question of an arbitrary removal of the jurisdiction of the civil courts to determine this particular class of civil action. Regarding the possibility of obtaining compensation, the Government found it important to make a clear distinction between the procedural right to go to a court — which was unlimited under the Seamen's Act — and the substantive right to compensation which is not as such guaranteed by the Convention. Any limitation of the right to obtain compensation could not, therefore, lead to a breach of Article 6.

On 4 September the Government's observations were sent to the applicant in order that he could submit his observations in reply. The time limit for submitting these observations was suspended awaiting clarification of the applicant's legal representation under a legal aid grant decided by the Commission on 12 October 1984. The questions concerning legal representation were settled on 12 February 1985 and his representative was asked to submit his observations before 12 April 1985.

On 10 April 1985 the applicant's representative requested and was granted an extension of the time limit until 12 May 1985. The applicant's observations were submitted on 2 May 1985.

In his observations the applicant maintained that he had been deprived of the right to a ruling on the merits with regard to a claim for compensation, solely on account of his nationality. Such a deprivation, in his opinion, constituted a discrimination standing out as a legal distinction without any objective and reasonable justification. The right of an employee to claim compensation was further considered to

be the most important safeguard against ill-founded dismissals. This safeguard, however, had at the outset already been withheld from the applicant, being a foreigner. The access offered to him according to the Norwegian Seamen's Act was, in his opinion, a mere formality without any practical effect.

The Commission decided on 5 July 1985 to invite the parties to a hearing on the admissibility and merits of the application and the date for the hearing was set for 5 December 1985.

On 29 November 1985 the applicant's representative submitted the following letter:

"The Government of Norway and my client, Mr. Bowen, have reached a friendly settlement of the dispute at hand. Based on the fact that the contested clause in Section 20 of the Seamen's Act has now been deleted and that the Government of Norway will pay Mr. Bowen a compensation of NOK 50,000, my client considers that the purpose of his action has been sufficiently fulfilled. Consequently I hereby declare on behalf of Mr. Bowen that he withdraws his application."

By letter of 2 December 1985 the respondent Government submitted the following:

"Referring to Mr. Myhre's letter to you of 29 November 1985 in which the application was withdrawn I would like to confirm that a friendly settlement has been reached between the Government and the applicant.

The Government's decision to pay NOK 50,000 *ex gratia* is based on reasons of procedural economy and the fact that the Seamen's Act has been amended. The decision does not imply any kind of acknowledgement that there has been a violation of the Convention."

## FINDING OF THE COMMISSION

Having regard to the information submitted by the parties on 29 November and 2 December 1985, the Commission notes that the applicant has withdrawn his application since he has achieved his aim through a settlement with the Government. The Commission furthermore considers that there are no reasons of a general character affecting the observance of the Convention which necessitate a further examination of the case.

For these reasons, the Commission

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.