

TWENTY-SEVENTH ORDINARY SESSION

***In re* VARNET**

Judgment No. 179

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by Mr. Marcel Varnet on 28 January 1971, brought into conformity with the Rules of Court on 16 March 1971, the Organization's reply of 19 May 1971, the complainant's rejoinder of 22 June 1971 and the Organization's letter of 29 July 1971 containing its observations on the rejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal and paragraph 1 of the internal rules governing the Joint Personnel Advisory Boards;

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. On 4 September 1969 Mr. Varnet, who held a G.3 post as a projectionist in the information section of the Office of Public Information in the Radio and Visual Information Division at UNESCO headquarters, raised objections to his performance report dated 10 July 1969. His objections were examined on 20 October 1969 by a Joint Personnel Advisory Board (JPAB), and he was unformed in due course by a communication dated 3 December 1969 that his report would not be changed.

B. Shortly afterwards the complainant discovered that one of the four members of the Advisory Board was the husband of a daughter of the wife of one of his supervisors by her first marriage. In a minute of 16 December 1969 to the Director-General he observed that that member should have withdrawn and asked him to quash his decision of 3 December 1969. On 12 February 1970, having been informed that the Director-General confirmed his decision, the complainant lodged with the Appeals Board of UNESCO an appeal in which he asked for a finding that the Joint Personnel Advisory Board had been "improperly constituted in that one of its members had been closely related to one of the appellant's supervisors" and for a "recommendation to the Director-General that he quash the decision of 3 December 1969".

C. The Appeals Board held that neither the Staff Rules nor the internal rules governing the Joint Personnel Advisory Boards provided for exclusion of a member on the grounds of his relationship to the parties concerned and that it was impossible to invoke by analogy, as the complainant contended, the general principles governing incompatibility in respect of members of tribunals, particularly since an advisory board was an internal body with no judicial competence which simply made recommendations. The complainant was informed on 2 November 1970 that the Director-General accepted the Appeals Board's recommendation that his appeal be dismissed.

D. In his complaint Mr. Varnet asks the Tribunal to quash the Director-General's decision of 2 November 1970 and to find that the Advisory Board which examined his performance report was improperly composed.

E. The Organization replies that the complaint is based solely on the grounds of alleged irregularity in the composition of the Advisory Board. According to paragraph 1 of the internal rules of Joint Personnel Advisory Boards, however:

"No member of the department concerned may serve on a personnel advisory board when it has before it a question relating to an appointment or transfer in that department, or the renewal or alteration of an appointment, promotion, extension of the probationary period, objections to performance reports or dismissal of a staff member of that department." (Registry translation)

The Organization points out that these are the only forms of incompatibility mentioned and that general principles of law may not be invoked when the body in question is an advisory board and not a tribunal which makes a binding decision. It points out, moreover, that the person whom the complainant describes as a "supervisor" is in fact merely a member of the same branch who, though admittedly higher in grade, does not supervise the complainant's work, as is evident from the fact that the performance report of 10 July 1969 bears the signature of the Director of the Office of Public Information and the initials of the chief of the administrative unit of the information section and bears neither the signature nor the initials of the person in question. It therefore prays that the complaint be dismissed.

CONSIDERATIONS:

1. It is a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice.

Persons taking part in an advisory capacity in the proceedings of decision-making bodies are equally subject to the above-mentioned rule. It applies also to members of bodies required to make recommendations to decision-making bodies. Although they do not themselves make decisions, both these types of bodies may sometimes exert a crucial influence on the decision to be taken.

Because of its purpose, which is to protect the individual against arbitrary action, this rule applies in international organisations even in default of any specific text. It follows that, failing any explicit provision in the regulations and rules, the officials concerned are bound to withdraw if they have already expressed their views on the issue in such a way as to cast doubt on their impartiality or if for other reasons they may be open to suspicion of partiality.

2. Within the Organization the Joint Personnel Advisory Board considers objections to performance reports on staff members of the same section and makes recommendations in the light of which the competent body takes its decisions. It follows that the members of the Board are subject to the obligation to withdraw as defined above. Although the first paragraph of the rules governing the Joint Personnel Advisory Boards provides for exclusion only when a member of a Board is required to deal with a matter concerning a staff member belonging to the same department as himself, this specific provision does not exclude the application of the general rule set forth above.

In the case at issue the complainant's criticism of the composition of the Advisory Board to which his objections were submitted is unfounded. The mere fact that one member of the Board was the son-in-law of the wife of a staff member serving in the same division as the complainant at a higher grade is not sufficient to constitute a ground for withdrawal. There is no direct relationship either by blood or by marriage between the member and the official concerned, and the latter neither drafted nor signed the complainant's performance report and cannot therefore be regarded as his supervisor in the proper sense of the term. In these circumstances, even if there had been differences between that official and the complainant concerning the installation of furniture and equipment, they were not such as to cast reasonable doubt on the impartiality of the member of the Board nor, consequently, such as to require him to withdraw.

DECISION:

For the above reasons,

The complainant 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 my self, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 November 1971.

(Signed)

M. Letourneur
André Grisel

Devlin

Bernard Spy

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