

TWENTY-EIGHTH ORDINARY SESSION

***In re* DUTREILLY**

Judgment No. 188

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by Mrs. Hendrika Dutreilly on 24 May 1971, the Organisation's reply of 6 August 1971, the complainant's rejoinder of 7 October 1971 and the Organisation's surrejoinder of 15 December 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Staff Rules 103.4, 104.1(d)(ii) and 104.11(d), and paragraph 5(b) of the Statutes of the UNESCO Appeals Board;

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. Mrs. Dutreilly joined the staff of UNESCO in 1946. In 1969 she was a chief clerk at grade G.4, step 11, in charge of an administrative unit comprising two subordinate officials which sorted incoming mail. She was responsible successively to the Chief of the Mail Section, the Chief of the Mail and Filing Division and the Director of the Bureau of General Services. Her performance reports, visaed by her three supervisors, had always been excellent and, again in 1967, they were unanimous in praising her performance, competence and dedication and in finding her "understanding and adaptable in her relations with staff members".

B. One of the two clerks in the Unit left and was replaced, on 1 July 1966, by a Mr. Lauria, whose appointment the complainant had opposed in a written communication to the Chief of the Division, expressing the view that he had neither the qualifications nor the personal qualities required for the post. She did not change her view after seeing him at work. He nevertheless received a good performance report from the Chief of Division and was promoted to grade G.3 in 1968. The complainant protests that she was not duly consulted on his report in accordance with Administrative Manual provision 2440.D.2. In the ensuing months relations between the two became so strained that they were no longer on speaking terms, and in 1969 Mrs. Dutreilly wrote several minutes to the Chief of Division accusing her clerk of laziness and insubordination.

C. On 27 June 1969 the Chief of Division and the Director of the General Services Department each wrote a minute to the Personnel Office on Mrs. Dutreilly's behaviour. The Chief of Division stated that she refused to give her subordinate work, that on several occasions he had himself had to give instructions for a change to be made in the distribution of work in order to ensure that Mr. Lauria was given something to do, and that "through the fault of the Chief of Unit" Mr. Lauria was working in very difficult circumstances. The Director of the General Services Department accused the complainant of "subordinating the requirements of the work to her personal dislike" and recommended six months' postponement of the salary increment to which she would normally have been entitled. This recommendation and the two minutes were notified to her on 12 August 1969. She immediately protested in writing and the papers were submitted on 27 September 1969 to the Junior Personnel Advisory Board. At the parties' request the Board interviewed the Chief of Division and the other clerk, the one who was not involved. It held that in view of the complainant's work performance six months' postponement of her salary increment would be too severe a measure, and it recommended (a) that she should be granted the additional step on the normal date, i.e. on 1 July 1969, but (b) that at the same time the minutes of 27 June and the complainant's comments thereon should be placed in her file. By a minute of 24 October 1969 the Chief of Personnel informed the complainant that the Director-General accepted recommendation (b) but not recommendation (a) and that her salary increment would accordingly be postponed for six months.

D. On 11 September 1969 the complainant's performance report for the period from August 1967 to August 1969 was prepared and visaed by the Chief of the Mail Section, the Chief of the Mail and Filing Division and the

Director of the Bureau of General Services. While her supervisors acknowledged that she was competent, intelligent, careful and hard-working, it was also noted that "her attitude towards one of her subordinates is incompatible with the proper conduct of a chief of unit and is adversely affecting the smooth running of the Unit". She was asked to mend her ways in future. Having come to hear of this decision before it was officially communicated to her, Mrs. Dutreilly, by a minute of 15 October 1969, asked for it to be reconsidered. Her request was examined on 19 February 1970 by the Junior Personnel Advisory Board. After interviewing the Director of the Bureau of General Services and the complainant's immediate supervisor, Mr. Ripley, the Chief of the Mail Section, the Committee recommended that her performance report should remain unchanged, that her protest of 15 October 1969 should also be included in her file, and that her attention should be drawn to the need to take account of her supervisors' request that she should mend her ways. On 3 April 1970 she was informed that the Director-General endorsed these three recommendations.

E. The complainant submitted to the Appeals Board two appeals against the decisions of 24 October 1969 and 3 April 1970 respectively. The Board received evidence from the Director of the Bureau of General Services, the Chief of the Mail and Filing Division, the Chief of the Mail Section and the other clerk of the Unit. As to the first appeal, it held, among other things, that the decision impugned by the complainant fell within the Director-General's discretion and that in any case he had based it on recommendations made in good faith by the complainant's supervisors. The Board also held, however, that progress up the salary scale was mainly related to an official's career as a whole and the quality of his work, whereas the performance report might refer to isolated periods; in the present case the penalty of six months' postponement of the grant of an increment was unwarranted. As regards the second appeal, the Board held, in particular, that under paragraph 5 of its Statutes it was not competent to form an opinion on the substance of a complaint relating exclusively to the quality of the complainant's services, that it was competent merely to consider whether the decision was due to prejudice or to any other extraneous factor, and that at the oral hearings the complainant had not adduced any proof of the existence of such prejudice. The Board did not uphold any of the complainant's allegations of procedural irregularity. It recommended the Director-General to grant her claim to receive the salary increment from 1 July 1969 and dismissed her other claims. On 17 March 1971 Mrs. Dutreilly was informed that the Director-General accepted these recommendations, except for the recommendation for grant of the increment from 1 July 1969.

F. In her complaint Mrs. Dutreilly asks the Tribunal:

"to quash the decision of the Director-General of the Organisation in Paris:

- in so far as it upheld those parts of the complainant's performance report of 27 June 1969 which were incorrect and prejudicial to her;

- in so far as it upheld the withholding of the salary increment to which she was entitled on 1 July 1969 and accordingly to restore to her all her rights with effect from 1 July 1969."

In support of her claims she maintains that the efficiency of her Unit was never affected by her disagreement with one of her subordinates, who had been imposed upon her despite her written objections to his professional inadequacy. Confident of enjoying some impunity, her subordinate had adopted a most casual attitude both towards his work and towards her. Proper administration and the Organisation's interests would have required her superiors - who had more- Over at no time visited the office where she worked in order to see the state of affairs for themselves - instead of penalising her so unfairly, to take the side of someone with such a long and excellent record of service and to transfer her subordinate from the Mail Unit. They had failed to do so because they were prejudiced against her.

G. In its reply the Organisation observes that the complainant impugns merely the decision of 24 October 1969 and not that of 3 April 1970 concerning her performance report, which the Appeals Board recommended should be put in her file. In refraining from appealing against the latter decision she has implicitly accepted her performance report and its contents must be regarded as no longer open to question. Appraising an official's work is a function falling within the Director-General's discretion, except in the event of prejudice, which has not been proved in the present case. In the Organisation's view, the Appeals Board was wrong to recommend that the decision to postpone the salary increment for six months should be quashed. Assuming the correctness of the Board's interpretation, Staff Rule 103.4 ("The granting of an increment may be deferred or withheld if service is not satisfactory") could never be applied in cases where the official's services, though highly satisfactory before, had ceased to be so during the period under review. Moreover, as the Tribunal stated in Judgment No. 65 (in re Ronald Stanley Morse), the

Director-General must base his decision on the appraisal of service during the period under review, that is, in the present case the period from 1 July 1968 to 30 June 1969, and not take account of earlier occurrences, whether favourable or not to the official.

E. In her rejoinder the complainant states that the impugned decision, as stated in her complaint, is the decision of the Director-General communicated to her on 17 March 1971 informing her of the effect he intended to give to the appeals Board's recommendations concerning her two appeals against the decisions of 24 October 1969 and 3 April 1970 respectively. The Organisation cannot therefore properly maintain that she is not impugning the decision of 3 April 1970. As to the substance, she contends that it is not enough to say that the Advisory Board and the Appeals Board examined the case thoroughly and that the Director-General took his decision with full knowledge of the facts and within his discretionary authority. The Organisation has utterly failed to reply in its memorandum to her grievances against the Chief of Division. On 29 September 1969 the Advisory Board failed to hear her immediate supervisor, the Chief of the Mail Section, Mr. Ripley, and on 19 February 1970 it saw him for only a few minutes and cut his evidence short. The evidence adduced and the witnesses heard by those bodies have not established the legitimacy of the decisions. The complainant should be presumed to be telling the truth because of her earlier performance reports, which show that the difficulty had arisen, after she had given years of excellent service, merely from a clash of personalities deliberately created and maintained in the Unit by the Chief of Division. Finally, the complainant repeats her allegation that the Organisation has failed to observe certain provisions of the Staff Regulations and Staff Rules (among other things, the report on her own performance dated 27 June 1969, and her subordinate's performance report were communicated neither to her nor to the Appeals Board). It is pointless to invoke the Director-General's discretionary authority, since he was not sufficiently informed or was wrongly informed of the difficulties deliberately created in her Unit.

I. In its surrejoinder the Organisation contests all the arguments and allegations in the complainant's rejoinder. It contends that she is impugning merely the decision of 24 October 1969. Nevertheless it rejects the complainant's arguments concerning the decision of 3 April 1970 and points out that the Advisory Board and the Appeals Board went thoroughly into the matter of the performance report and heard all those concerned under a procedure which was not tainted with any irregularity. Both bodies recommended that her performance report should remain unchanged. The Director-General was therefore fully and correctly informed before taking his decision on the matter. The Organisation accordingly maintains the arguments put forward in its reply.

CONSIDERATIONS:

1. As to the extent of the relief sought

The relief sought by the complainant as stated on the form instituting her complaint is that the decision notified to her on 17 March 1971 should be quashed: in the first place, in respect of the performance report of 27 June 1969 in so far as it is incorrect and prejudicial to her; and secondly, in respect of the withholding of her salary increment as from 1 July 1969. The memorandum attached to the form puts forward a claim for the withdrawal of the performance report of August 1969 in so far as it complains of the inadequacy of her services, and the granting of the salary increment from the specified date. These two documents were filed at the same time and form a whole, in the sense that the claims set out in them are complementary. A decision is therefore required both on the performance reports of August 1969 and 27 June 1969 and on the question of the salary increment.

2. As to the Tribunal's power of review

The Director-General's decision to maintain the complainant's performance reports and temporarily to withhold her salary increment lies within his discretion. It follows that the decision cannot be reviewed by the Tribunal unless it was taken without authority, is irregular in form or tainted by procedural irregularities or by illegality, or is based on incorrect facts, or essential facts have not been taken into consideration, or there has been misuse of authority or, finally, conclusions which are clearly false have been drawn from the documents in the dossier. In the case at issue the complainant's grievances relate to questions of procedure, to the accuracy of the facts, to a point of law, and to the conclusions drawn from the documents in the dossier.

3. As to the alleged irregularities of procedure

The complainant claims that her immediate supervisor, Mr. Ripley, was not properly heard by the Junior Personnel Advisory Board; that her supervisors stated that they had never gone into her office; that the Appeals Board did not

see the performance reports on Mr. Lauria; and that, finally, she was not given an opportunity of discussing her performance reports with her supervisors as required by Staff Rule 104.11. None of these pleas can be accepted. In the first place, the complainant has not specified the points on which Mr. Ripley was allegedly unable to give his opinion, and therefore cannot properly complain of the way in which he was questioned. Secondly, even though all Mrs. Dutreilly's supervisors may not have gone into the office where she worked, Mr. Ripley personally took note of certain facts there, as the complainant herself states in her memorandum to the Appeals Board. Moreover, whether favourable or not, Mr. Lauria's performance reports do not have such a close bearing on the complainant's position as to make their communication to the Appeals Board essential. Finally, although the complainant does not in fact appear to have had an opportunity of discussing her performance reports with her supervisors, the fact remains that she challenged those reports before the appropriate bodies, and thus had every opportunity to defend her rights.

4. As to the alleged inaccuracy of the facts

The complainant considers that her performance reports were inaccurate in some respects and claims to have suffered from the prejudice of one of her supervisors, whom she accuses of partiality in favour of Mr. Lauria. The Appeals Board dismissed the charge of prejudice, however, and the Advisory Board recommended upholding the performance reports complained of. In these circumstances there are no grounds for holding that the Director-General's decision taken in the light of the reports in question was based on incorrect facts.

5. As to the alleged illegality

The complainant protests at the Director-General's decision to withhold her salary increment as from 1 July 1969 without taking account of her long record of service to the Organisation which had always been favourably reported on until Mr. Lauria joined her Unit. In other words, she implies that in accordance with a civil service principle a staff member's performance must be assessed as a whole and consequently that any measures taken against him must be based on this general assessment. In the present case it is not necessary to decide whether such a principle exists, and if so, how far it extends and in particular whether it applies to salary increments. In any event the fact that after a series of favourable performance reports from 1959 to 1967 the complainant had her salary increment withheld as a result of critical comments on her performance from 1967 to 1969 does not in itself imply that a general assessment has not been made of her performance and that a rule of law has been ignored.

6. As to the conclusions drawn from the evidence in the dossier

In the light of the facts which emerge from the evidence in the dossier, the Director-General was justified in ordering that the performance reports made on the complainant on 27 June and in August 1969 should be maintained. Similarly, he did not exceed his discretion in considering that, repeated admonitions by Mrs. Dutreilly's supervisors having been disregarded, the temporary withholding of a salary increment was warranted in the circumstances in spite of the complainant's favourable record of service.

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, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 15 May 1972.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy

