

Registry's translation, the French text alone being authoritative.

## FIFTY-FIRST ORDINARY SESSION

In re PILLEBOUE-DEPIERRES (No. 2)

Judgment No 587

### THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Marcel Amédée Pilleboue-Depierres on 7 September 1982 and brought into conformity with the Rules of Court on 19 October, and UNESCO's reply of 20 January 1983;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, paragraphs 6 and 7 of the Statutes of the UNESCO Appeals Board and Articles 17.4 and 25.2 of the Rules of the Medical Benefits Fund of UNESCO;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, a French citizen, retired from UNESCO in 1972. As an associate participant in the Medical Benefits Fund he did not then have to pay contributions. In November and December 1976 he ran up hospital bills amounting to 4,590 French Francs. The Fund paid direct, but he was required to pay back 782 francs as the share due from the insured. In 1976 the General Conference of UNESCO introduced contributions from associate participants with effect from 1 January 1977. The complainant paid 257 francs for 1977, but he failed, despite several reminders, to pay the 405 francs due for 1978. Nor had he yet paid the 782 francs due since 1976. On 21 April 1978 the Board of Management of the Fund, applying Article 25.2 of the Fund rules, informed him of his removal from the rolls of participants with effect from 31 December 1977. On 1 June 1982 an operation was performed on a detached retina in his right eye and he spent a fortnight in hospital. On 9 June he applied to the Fund for reinstatement. In his reply of 11 June the Secretary of the Board of Management refused. On 25 June the complainant wrote two letters, one to the Director-General lodging a formal appeal against the refusal and the other to the UNESCO Ombudsman containing an informal appeal in similar terms. On 7 September he filed his complaint challenging the letter of 11 June. The Ombudsman referred his informal appeal to the Board, and on 29 December it decided to reinstate him, except that he would receive no benefits until he had paid the sums due and might be removed again if he did not pay within three months.

B. In his brief, filed before the Board reinstated him, the complainant contends that he was never properly informed of his removal from the rolls and was given no chance to state his case. He has no internal means of redress. He explains his financial difficulties. He invites the Tribunal to set aside the decision of 11 June 1982, his removal from the rolls of Fund participants and the decision to require him to pay contributions, and to award him 5,000 United States dollars as damages, or, subsidiarily, failing reinstatement, to award him \$30,000 as damages.

C. UNESCO replies that the complainant, being reinstated, has no cause of action. Subsidiarily, it submits that the complaint is irreceivable, the internal means of redress not being exhausted. The complainant began the appeal procedure in paragraph 7 of the Statutes of the UNESCO Appeals Board on 23 June 1982, when he wrote to the Director-General. He was required to pursue the procedure, not having obtained, as paragraph 6 of the Statutes requires, waiver of his right of appeal to the Board. Failing a reply from the Director-General he was free to appeal to the Board under paragraph 7(c), and he did not do so.

### CONSIDERATIONS:

1. The complainant is impugning a decision taken on 11 June 1982 by the Secretary of the Board of Management of the UNESCO Medical Benefits Fund and rejecting his application for payment of hospital expenses he incurred in May and June 1982. The reason given for the decision was that he had been removed from the Fund rolls with retroactive effect from 31 December 1977 for failure to pay his contributions. The letter of 11 June 1982 also said

that the rules left the Fund no choice in the matter and that no appeal would lie against the decision. On 23 June 1982 the complainant submitted two appeals, one to the Director-General of UNESCO and one to the Ombudsman, asking that the decision to remove him from the rolls be set aside and that the Fund admit him as a full participant.

2. The complainant invites the Tribunal to hold that there is no internal means of redress at his disposal, to declare that his informal appeal has proved to be in vain, to set aside the impugned decision, to order the Fund to pay his hospital expenses for May and June 1982, to cancel his removal from the Funds rolls, and to award him \$5,000 as damages or, subsidiarily, failing reinstatement, \$30,000.

3. By a letter of 20 January 1983 the Assistant Director-General for Administration informed the complainant that the Ombudsman had got in touch with the Fund and it had agreed to cancel its decision of 21 April 1978 to remove him from the rolls. The letter added, however, that he would be paid no benefit until he had paid his contributions for 1978-82.

4. The general rule is that an administration which has taken a decision may later revoke it provided that it has vested non right. In his instance the Organization was therefore quite free to revoke the decision cancelling the complainant's right to benefit as a Fund participant. Since he is thereby reinstated in the rolls there is no substance to his claim for the quashing of the decision to remove him, nor to his related claims, nor to his claim for an award of damages should he be refused reinstatement. These are matters on which the Tribunal need not rule.

5. There is still, however, the matter of payment of the contributions due to the Fund, and the claim for the quashing of the demand for such payment and the claim to damages for injury caused by the impugned decision hold good. The Organization puts forward a subsidiary plea objecting to receivability on the grounds that the internal means to redress have not been exhausted. The plea succeeds. Contrary to what the complainant submits, he was required by the Statutes of the UNESCO Appeals Board to protest to the Director-General against the decision to remove him from the rolls (paragraph 7(a)) and, if the protest was rejected either expressly or -- after the expiry of a one-month time limit -- by implication, to appeal to the Board (7(c)). Under paragraph 6 he might have waived his right of recourse to the Board and appealed directly to the Tribunal but for that he required the Director-General's agreement. It is quite plain that the proper procedure was not followed. The Director-General's failure to reply within a month of receiving the protest implied rejection of it, but instead of appealing to the Board the complainant, directly and without the Director-General's agreement, appealed to the Tribunal on 7 September 1982 against the decision of 11 June 1982. This obvious disregard of his obligation to exhaust the internal means of redress provided in the Statutes of the UNESCO Appeals Board makes the complaint irreceivable by virtue of Article VII of the Tribunal's Statute. Accordingly in their entirety the claims are in any event irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable Lord Devlin, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

(Signed)

André Grisel

Devlin

E. Razafindralambo

A.B. Gardner

