

SIXTY-FIFTH SESSION

***In re* LEPRINCE**

Judgment 942

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Georgette Leprince against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 29 December 1986;

Considering Judgment 876 of 10 December 1987 ordering further submissions;

Considering the papers produced by UNESCO on 16 February 1988, the complainant's observations of 20 April and UNESCO's comments thereon of 27 June 1988;

Considering Articles II, paragraph 5, VII and VIII of the Statute of the Tribunal and Article 12 of the Rules of Court;

Having examined the written evidence;

A. The material facts of the case are summed up in Judgment 876, under A.

B. At the Tribunal's order UNESCO produced papers relating to the compensation of the complainant for the injury suffered on account of the incident of 6 May 1985, including a report of 3 February 1986 by the Advisory Committee on Compensation and a minute of 1 February 1988 from the Committee's secretary informing her that the Director-General had finally accepted its recommendations, and other papers about the incident.

C. The complainant comments on the papers disclosed by UNESCO. She discusses the Advisory Committee's report and infers therefrom that since the Committee recognised the injuries she had suffered in the incident as "service-incurred" it admitted that she was not to blame. That is a conclusion which according to the minute of 1 February 1988 the Director-General by implication endorsed.

As to the other papers, she observes that most of them were already before the Tribunal and that she commented on them in her complaint and rejoinder. She submits that the Organization has failed to produce any evidence whatever of a full and impartial inquiry. Although it has supplied a few items of written testimony, nobody took the trouble of finding out just what had happened and the Administration never sought her views on the records.

She presses her claims and wants passages she regards as offensive to be struck from the surrejoinder. She asks the Tribunal to take account of the aggravated injury she has suffered because of the dilatoriness of the proceedings and of the consequent increase in her costs.

D. In its final comments UNESCO challenges the inference the complainant draws from the Advisory Committee's report. The Committee's sole purpose was to determine whether there was any connection between the performance of her duties and the bodily injury she had suffered, not to comment on the degree of her liability. The Director-General's decision notified in the minute of 1 February 1988 does not constitute recognition that she was not liable.

As for the papers about the incident, the Organization observes that, despite the uncertainty that remains on some points, it is beyond doubt that the complainant and the other staff member, Mrs. Diarra, lost their tempers and came to blows. Transferring them both was necessary to prevent the recurrence of such incidents in the Director-General's office. The complainant has not shown any moral injury.

CONSIDERATIONS:

The records disclosed by the Organization

1. In Judgment 876, under 4(a), the Tribunal ordered UNESCO to disclose certain texts. Although, as the complainant suggests, the texts may not all be in the records the Organization has produced, the Tribunal does have a sufficient basis for ruling on the case. It will therefore not order the further disclosure.

Oral proceedings

2. The complainant has filed comments on the further papers produced and UNESCO has put in a further brief. The Tribunal finds no need for oral proceedings and in accordance with Article 12 of the Rules of Court disallows the complainant's application for such proceedings.

The merits

3. By a minute of 1 February 1988 the Secretary to the Advisory Committee on Compensation informed the complainant that the Director-General had recognised as service-incurred the injuries she had sustained in the incident of 6 May 1985 - described in Judgment 876, under A - that the sickness insurance fund would refund in full her medical expenses, and that her absences from duty would be covered by special leave.

4. The complainant is impugning the Director-General's final decision of 1 October 1986 to confirm the complainant's transfer of 24 June 1985. It is plain from the evidence now before the Tribunal that the transfer was flawed: first, no objective and impartial inquiry, such as the complainant had been asking for all along, had been carried out beforehand; and, secondly, there was breach of the duty any international organisation owes its staff to treat them with respect for their dignity and good name. The impugned decision must therefore be set aside.

5. The complainant was transferred to a G.5 post as senior secretary to the Assistant Director-General for Social and Human Sciences. Although she thus kept her grade, she lost her position as senior secretary to the director of the Director-General's Office. But three-and-a-half years have gone by since the incident that prompted her transfer and, though the decision cannot stand, reinstatement in her old post cannot now be contemplated. Instead the Tribunal will make an award of damages under Article VIII of its Statute and, taking into account all the material circumstances, it sets the amount at 10,000 French francs.

6. Because of the complexity and length of the proceedings and the protracted correspondence that had to be conducted with the Organization, the Tribunal awards 10,000 French francs in costs.

7. The complainant's application for the deletion of passages from the Organization's submissions is disallowed.

DECISION:

For the above reasons,

1. The Director-General's decision of 1 October 1986 is set aside.

2. The Organization shall pay the complainant the sum of 10,000 French francs in damages in accordance with Article VIII of the Statute of the Tribunal.

3. It shall pay her 10,000 French francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Mr. Héctor Gros Espiell, Deputy Judge, and Mr. Pierre Pescatore, Deputy Judge, the afore- mentioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 8 December 1988.

(Signed)

Jacques Ducoux
H. Gros Espiell
P. Pescatore
A.B. Gardner

