

EIGHTY-SEVENTH SESSION

In re Limage (No. 3)

Judgment 1878

The Administrative Tribunal,

Considering the third complaint filed by Mrs Leslie Limage against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 18 August 1998, UNESCO's reply of 8 October, the complainant's rejoinder of 23 November 1998 and the Organization's surrejoinder of 29 January 1999;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The background to this case is set out in Judgment 1639 of 10 July 1997 on Mrs Limage's first complaint.

In that judgment the Tribunal set aside a decision of the Director-General of 4 October 1996 confirming her summary dismissal on the grounds of her behaviour towards another staff member, Mr Rissom, on 17 May 1995. Thereafter the Director of the Bureau of Personnel wrote to the complainant on 4 August 1997, asking her, within seven days, to "show cause" why under the Staff Regulations and Rules "an appropriate disciplinary measure" should not be taken against her on account of her serious misconduct towards the staff member in 1995, as reflected in a "note for the record" produced by him, and which was appended to the letter. The Director also informed her that the Director-General would take an appropriate decision as soon as the complainant's reply was received, or, if no reply was received, within seven days, and would communicate it to her.

The complainant replied by a letter of 11 August 1997, within the time allowed, and gave her comments on the incident of 17 May 1995. By a letter of 9 September 1997 the Director of Personnel wrote to the complainant on the Director-General's behalf, briefly recapitulating the incident and summarily dismissing her, for a second time, with effect from 15 September or the date on which she received the letter, whichever was the earliest. She says she received the letter on 10 September.

On 11 September the complainant sent a letter of protest against that decision to the Director-General. By a further letter to him of 8 October, she asked for permission to appeal directly to the Tribunal, as her first and second summary dismissals were "virtually identical" and the Appeals Board had already issued an opinion "on the substance". She received no response to either letter.

The complainant lodged an internal appeal with the Appeals Board on 20 November 1997. The Board heard her case on 31 March 1998 and reported on 23 June, unanimously recommending to the Director-General that he should "reconsider his decision of the summary dismissal" and "impose on [the complainant] a lesser penalty".

The Director-General told the complainant in a letter of 12 August 1998 that he was upholding the decision to summarily dismiss her communicated to her on 9 September 1997. That is the decision under challenge.

B. The complainant's first plea is that UNESCO acted in breach of due process, and the decision to summarily dismiss her was flawed. The letter of 4 August 1997 from the Director of Personnel did not specify the charges against her. It betrayed the intention of the Director-General to dismiss her even if she did not reply within the seven-day time limit imposed. Her guilt was assumed in advance as the letter invited her to "show cause" why a disciplinary action should not be taken against her. The sole document attached was a note written for his personal records by Mr Rissom. A document cited as further corroboration from another witness, the official's secretary, was not enclosed with the letter and in any case was drafted and signed one year after the event. Citing the case law she observes that even in the absence of a statutory text to that effect a staff member has the right to the due process of law. Her right to defend her case was denied and she did not have an opportunity to participate in the examination of the evidence.

The letter of 9 September 1997 informing her she was summarily dismissed contained new allegations. It stated that the altercation with Mr Rissom on 17 May 1995 took place in public, whereas it occurred in the privacy of an office. The letter wrongly says she called him a "Nazi". He has never claimed that she did, and that new allegation should have been entered on a "charge sheet" and communicated to her.

Secondly, she pleads that there was breach of the principle of proportionality. Summary dismissal was a sanction disproportionate to the nature of the incident: particularly so, as her first summary dismissal had been quashed by the Tribunal in Judgment 1639. No grounds were given for qualifying her behaviour as "serious misconduct".

Subsidiarily, she points to procedural irregularities in the internal appeal process and delays caused by staff changes in the secretariat of the Appeals Board. The geographical distribution requirements in the composition of the Board were not respected. Furthermore, although the Board met on 31 March 1998 it produced its report only on 23 June. To avoid "harsh treatment and delay" she should have been allowed to bring her case directly to the Tribunal.

She asks the Tribunal to quash the decision of 12 August 1998; reinstate her in her former post or an equivalent one from the date of dismissal; award payment of the salary, allowances and benefits she would have been entitled to from the date of dismissal until the date of reinstatement, "including interest which would have accrued during the period and leave entitlements"; order the recalculation of her pension entitlements; award her 400,000 United States dollars in damages for material and moral injury and 4,000 dollars in costs.

C. In its reply the Organization gives examples of earlier incidents which in its view are evidence of the complainant's inappropriate behaviour. It asserts that the complainant knew full well the charges against her. At no time did she contest any part of Mr Rissom's "note for the record" appended to the letter of 4 August 1997. The complainant had previously had knowledge of his secretary's corroborative testimony: it had been communicated to her at the time of her internal appeal.

There was no foregone conclusion of guilt. In the letter of 4 August to her from the Director of Personnel, the Director-General provided the complainant with an opportunity to present her case before he took a decision on the matter. *Prima facie* there was evidence of serious misconduct: it was up to the complainant to "present her case in complete defence or in mitigation". She did not deny that the incident had occurred as described by the staff member.

The Organization quotes Staff Rule 110.2(a) which reads:

"No disciplinary measure, other than summary dismissal or written censure under Regulation 10.2 or termination under Regulation 9.1.1, shall be imposed on a staff member until the case has been referred by the Director-General to a Joint Disciplinary Committee for advice and until he has considered its advice. ..."

The complainant's right to present her case did not mean she should be heard by a Joint Disciplinary Committee, as under the Staff Rules referral to the Committee is not necessary in a case of summary dismissal. The Director-General "had the right to take a decision on her case" whether or not she chose to put forward any arguments in her defence, and so he imposed a seven-day time limit for her reply.

The proportionality of the disciplinary measure to the offence is a matter falling within the discretionary authority of the Director-General. He considered her conduct warranted summary dismissal. The decision of 9 September 1997 to dismiss her was taken "within the framework of his discretionary authority".

Her accusation against the staff member was all the more serious as, by virtue of Staff Regulation 4.2.1, the Director-General is under a legal obligation to make sure that "persons with a fascist or Nazi past" are not appointed to the secretariat or maintained in service after any such involvement is discovered. She does not dispute calling Mr Rissom "a fascist" which, says the Organization, is tantamount to calling him a "Nazi".

The complainant's argument that the verbal attack on Mr Rissom occurred in private is without merit: it took place on UNESCO premises and was witnessed by others, in offices to which the public had access.

The UNESCO Appeals Board operates independently of the Administration. The complainant cannot ascribe to the Administration any delay on the part of the Board, or the manner in which it deliberates. Besides which, she has not shown that she suffered any prejudice as a result of the delay: in fact she benefited as her case was heard on 31 March 1998 instead of later on in the summer. There was a correct balance in the geographical distribution of the

Board.

D. The complainant reiterates her pleas in her rejoinder and maintains her claims.

She reproaches the Organization for "character assassination" and "misinformation" in its reply: the earlier incidents it cites involving the complainant can have no bearing on her second dismissal, as the letter of 9 September 1997 by which she was dismissed does not refer to them.

UNESCO relies solely on the note for the record written by Mr Rissom to justify her second summary dismissal. That document was, however, discredited in the first internal appeal process.

She reiterates her view that she should have been allowed to come directly to the Tribunal.

E. In its surrejoinder the defendant contends that summary dismissal was a justified measure. It did respect the complainant's right to due process: after receiving Judgment 1639 the Director-General started a new decision-making process and re-examined the facts surrounding the complainant's attack on Mr Rissom. The complainant was given a reasonable time in which to defend herself. It is untrue that Mr Rissom's note was "discredited two years earlier". His secretary's testimony was asked for a year after the event because it was only at the time of her first internal appeal that the complainant had queried Mr Rissom's memory of the incident at issue.

The refusal to waive the Appeals Board's jurisdiction in order to allow the complainant to go directly to the Tribunal was not arbitrary. There was not complete agreement on the exactness of the material facts and so one of the conditions for waiver was not met. The Board which heard her second internal appeal was correctly constituted.

CONSIDERATIONS

1. By Judgment 1639 of 10 July 1997 the Tribunal set aside the decision of the Director-General of 4 October 1996 summarily dismissing the complainant and the matter was remitted to the Director-General for a new decision in accordance with due process. The facts leading to the impugned decision are set out in that judgment. There was also a further judgment, No. 1748, concerning the execution of Judgment 1639.

2. On 4 August 1997 the Director of the Bureau of Personnel wrote to the complainant asking her to "show cause" within seven days of receipt why an appropriate disciplinary measure should not be taken against her following her serious misconduct towards Mr Rissom, as reflected in his "note for the record" of 19 May 1995, a copy of which was annexed. The Director said that Mr Rissom's note had been "corroborated in its essential particulars" by his secretary. He added that the Director-General would take an appropriate decision upon receipt of her reply or, if none was received, within seven days. Mr Rissom's note gives an account of events starting on 27 April 1995, with particular emphasis on an incident on 17 May 1995 and a phoned apology that evening.

3. The complainant replied on 11 August 1997 saying that due process entitled her to know the charges against her, to examine and evaluate the evidence, to provide evidence and receive an impartial hearing. She complained that since the note of 19 May replaced a proper "charge sheet" and the secretary's evidence had not been communicated to her, she was entitled to consider the case as being based solely on Mr Rissom's note. She claimed she was emotionally disturbed following a ceremony commemorating the 50th anniversary of the Holocaust. Her undenied loss of self control was a result of her emotional state and she had not intended to insult Mr Rissom or hurt his feelings. She offered her apologies by telephone that evening and again next morning. He accepted them in a note of 19 May 1995 and said he would seek no sanction against her. The complainant pointed out that neither the Organization's Staff Regulations and Rules nor the Tribunal's jurisprudence provided a definition of serious misconduct.

4. By a letter dated 9 September 1997 the Director of Personnel informed the complainant that the Director-General had taken into consideration her reply of 11 August 1997. The Director noted that she did not deny having insulted Mr Rissom and said the Director-General had concluded that her conduct constituted extremely serious misconduct. She had unjustifiably accused Mr Rissom repeatedly of being a fascist and a Nazi while giving the Nazi salute and shouting "Heil Hitler, Mr Rissom". She quoted Staff Regulation 1.4 which says that staff members are required to "conduct themselves at all times in a manner befitting their status as international civil servants" and in particular "they shall at all times bear in mind the reserve and tact incumbent on them by reason of their international status". She said her wanton attack reflected very adversely on her status as an international civil servant. She referred to Staff Regulation 4.2.1 which required the Director-General to ensure that no person with a

fascist or Nazi past was appointed or maintained in service if such a past was discovered after recruitment. Consequently, for her to accuse a colleague of being a fascist and a Nazi and then to repeat the allegation without a shred of evidence constituted extremely serious misconduct which disqualified her from remaining a staff member. She was dismissed summarily with effect from 15 September 1997 or the date of receipt of the letter, whichever was earlier.

5. On 11 September 1997 the complainant lodged a protest with the Director-General under paragraph 7(a) of the Statutes of the Appeals Board. On 8 October 1997 she asked for permission to appeal directly to the Tribunal under Staff Rule 111.2. Having received no reply to either of her letters, she appealed against the decision of 9 September 1997 to the Appeals Board on 20 November 1997. Her detailed submissions were not transmitted to the Office of International Standards and Legal Affairs until 10 December. A copy of the Organization's detailed reply dated 31 December 1997 was not sent to the complainant until 5 March 1998. The appeal was heard on 31 March. After the hearing the chairperson left the UNESCO headquarters without agreeing to a draft report. The report of the Appeals Board was completed only on 23 June 1998 and was received by the complainant on 29 June.

6. The Appeals Board was unable to reach a unanimous opinion on the question of due process. The chairperson was of the opinion that the complainant should have been allowed to appeal directly to the Tribunal. He said Regulation 10.2 did not vest uncontrolled power in the Director-General without recourse to the disciplinary procedure. Therefore, summary dismissal was a violation of due process. Reliance on Staff Regulation 4.2.1 was irrelevant and misplaced and was not even mentioned in the Director of Personnel's letter of 4 August 1997 or in the earlier proceedings.

7. Two members were of the opinion that the wording of the letter of 4 August constituted a denial of due process as it implied that a decision had already been taken. One of those two members recommended that a Joint Disciplinary Committee be set up.

8. Two other members considered that the letter of 4 August, together with Mr Rissom's note, fulfilled the requirement of due process and recommended that "administrative machinery" be set up to deal with future cases. One of those members felt the conflict was not an isolated incident since the complainant had previously been given a warning and she was the cause of tension. On 17 May 1995 she had entered Mr Rissom's office without invitation and insulted and railed at him. That warranted disciplinary action but not summary dismissal and the member recommended termination of appointment under Chapter IX of the Staff Regulations and Rules entitled Separation from service.

9. The Board considered her behaviour to be in breach of the obligation in Regulation 1.4 of staff members to "conduct themselves at all times in a manner befitting their status", but the Director-General had not taken into consideration that she had apologised twice and her apologies had been accepted. The extreme penalty of summary dismissal was a disproportionately heavy one. The Board unanimously recommended that the Director-General reconsider his decision and, taking into account the mitigating circumstances, impose a lesser penalty.

10. By a letter of 12 August 1998 the Director-General informed the complainant that, after examining the report of the Appeals Board and the dossier concerning the appeal, he had decided to maintain the decision for the reasons already given in the letter of 9 September 1997 and in the Administration's detailed reply of 31 December 1997 to her appeal. That is the decision impugned.

11. The reply of the Administration is not included as part of the pleadings. The Tribunal has taken the summary in the report of the Appeals Board to be accurate.

12. The complainant seeks the quashing of the impugned decision, reinstatement, salary and allowances and other benefits, together with interest on those amounts, leave entitlements and restoration of pension rights, damages for moral and material injury, and costs.

13. She argues that the letter of 4 August 1997 contained no charge sheet, and showed that the Director-General intended to take a new decision after seven days on unspecified charges with or without her reply. No explanation was given in the letter as to why her behaviour was already qualified as "serious misconduct". The testimony of Mr Rissom's secretary was not included. The Administration attempted to justify dismissal by referring to other irrelevant matters and to show that there was a history of difficulties, but none of these matters was raised in the dismissal letter or led to any previous disciplinary action.

14. She says that the actual letter of summary dismissal of 9 September 1997 contained new allegations not mentioned in the letter of 4 August 1997 or in Mr Rissom's note. It asserts the disagreement took place in public, to which the complainant replies that a discussion within the confines of an office cannot be construed as public. The reference to Staff Regulation 4.2.1 relating to persons with a fascist or Nazi past is irrelevant to a disagreement arising from Mr Rissom's decision to halt the publication of a document on which the complainant had worked, and which already had the approval of the Director-General. She had not called Mr Rissom a Nazi. For these reasons the complainant submits that the decision is flawed by breach of due process.

15. The complainant further submits that lack of proportionality is an error of law: see Judgments 203 (*in re Ferrecchia*), 1070 (*in re Couton*) and 1271 (*in re Sánchez Peral*). According to the Tribunal's jurisprudence, a sanction out of proportion to the subjective and objective nature of the offence is a mistake of law and since the decision is flawed it must be quashed. The complainant refers to cases where the material or moral interests of an international organisation were jeopardised and the Tribunal confirmed decisions of summary dismissal for serious misconduct: see Judgments 63 (*in re Andreski*), 159 (*in re Bhandari*) and 969 (*in re Navarro*). Insulting a colleague in the privacy of his office and then offering apologies that evening and the next morning, which were accepted in writing, does not constitute serious misconduct. Her actions did not jeopardise the material or moral interests of the Organization.

16. The complainant raises the question of irregularity in the appeal process which also tainted the decision.

17. Her detailed appeal filed on 20 November 1997 did not reach the Director of Legal Affairs until 10 December, contrary to paragraph 11 of the Statutes of the Appeals Board which requires it to be forwarded immediately. The reply of the Organization was dated 31 December 1997 and was not sent to the complainant until 5 March 1998, contrary to paragraph 12 which stipulates immediate forwarding to the applicant. The composition of the Appeals Board did not respect the principle of equitable geographical distribution because a member of the Board from Africa was replaced by another from Europe, a Russian. During the proceedings neither the complainant's nor the Director-General's representative was able to present his case owing to continuous interruptions. The Board met on 31 March 1998, the report was dated 23 June and received by the complainant on the 29th. Paragraph 17 of the Board's Statutes requires the adoption of a majority vote promptly after the hearing. The chairperson went back to India the next day and contact was thereafter sporadic. The complainant submits that these irregularities vitiated the appeal process.

18. The Organization claims that the complainant, by writing in her letter of 11 August 1997: "Mr Rissom's 'note for the record' dated 19 May 1995, attached to your letter (which I understand replaces a proper charge sheet ...)", showed that she understood full well the charges against her, and that she had, moreover, received the written testimony of Mr Rissom's secretary several months previously. It claims that the wording of the letter asking her: "to show cause why ... appropriate disciplinary measures should not be taken against [her] on account of her serious misconduct", indicated the Director-General was providing the complainant with an opportunity to present her case. The matter did not have to be referred to the Joint Disciplinary Committee because it was about summary dismissal under Staff Regulation 10.2. The Director-General was entitled to impose a time limit for her reply, failing which he would take a decision, and this did not mean that the case had been prejudged. The Organization submits that the complainant raises irrelevant matters concerning her first appeal in 1995 and that, while she says the letter of 9 September 1997 contains further accusations, she does not state what they are.

19. The proportionality of the disciplinary measure to the offence is within the discretionary authority of the Director-General. The Tribunal may only interfere with it if it was taken without authority, violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with misuse of authority, or if a clearly mistaken conclusion has been drawn from the facts. The Organization says the Director-General took into account the complainant's previous bad behaviour, and an earlier warning from the Assistant Director-General in charge of the Education Sector, when resorting to so serious a measure. While the complainant denied accusing her German colleague of being a Nazi, clearly, by calling out "Heil Hitler Mr Rissom", that was what she was doing. Nazis were by definition German fascists, and the Director-General is under a legal obligation to ensure that no one with a fascist or Nazi past is appointed to work in the Organization. Allegations suggesting such a past must consequently be taken seriously.

20. The Organization quotes from a report on the standards of conduct in the international civil service and says the complainant's behaviour was not consistent with those standards. She cannot exculpate herself by asserting that the incident occurred "in a private place" because her attack on Mr Rissom was inherently reprehensible. In any case

there were witnesses to the incident. UNESCO does not have "to prove that the conduct of the staff member has actually brought the Organization into public discredit": see Judgment 513 (*in re* Karakalos). Citing Judgments 237 (*in re* George) and 475 (*in re* Lakey) UNESCO says her conduct was reckless, irresponsible and improper.

21. The Organization replies to the question of irregularity of procedure in the internal appeals process as though the Administration and not the Organization was the defendant. It says the "Administration" disclaims responsibility for the Appeals Board which operates independently. The chairperson is appointed from outside the secretariat by UNESCO's Executive Board, and the secretary has independent status. The Administration is not to blame for the delay in forwarding the complainant's detailed submissions to the Office of Legal Affairs or the delay in forwarding its reply to her. The complainant has suffered no prejudice as her case was heard ahead of schedule on 31 March 1998. In any case the composition of the Board did respect the principle of geographical distribution as there are five groups and, for example, the Russian Federation is in group 2 and Greece is in group 1. The irregularity in the conduct of the appeal procedure and delay in producing the report was outside the control of the Administration.

22. In the Tribunal's opinion the Organization once again has denied due process. The letter of 4 August 1997 refers to her "serious misconduct" towards Mr Rissom as reflected in his note and corroborated by his secretary. It is not acceptable that a staff member accused of serious misconduct has to abstract from a narrative account the essence of the allegations against him or her. In quoting the complainant's letter of 11 August 1997 as proof that she understood the charges ("which I understand replaces a proper charge sheet ...") the Organization failed to quote the phrase in full which read "which I understand replaces a proper charge sheet which the Organization should have presented to me". That is a far cry from accepting that she understood the charges. The necessity of having precise "charges" is illustrated by the opinion of one of the members of the Appeals Board who refers to the fact that the complainant had been given a warning and was the cause of tension, yet these were not the charges laid against her.

23. The essence of the accusation is that the complainant conducted herself towards Mr Rissom in the incident on 17 May 1995 as described in Mr Rissom's note and that this amounted to serious misconduct warranting summary dismissal under Staff Regulation 10.2. The Director-General cannot impose disciplinary measures other than censure or summary dismissal without referring the case to a Joint Disciplinary Committee. Therefore, whether the alleged conduct amounted to serious misconduct as opposed to unsatisfactory conduct under Staff Regulation 110.1 was very much an issue to be decided. It appears from the letter of 4 August 1997 that, if the facts in Mr Rissom's note were true, the question of serious misconduct was already established in the opinion of the Director-General.

24. The complainant is correct in her submission that the only evidence she had to confront was Mr Rissom's note. The secretary's account was not provided in the second proceedings and it is immaterial that she received a copy with the first proceedings. That is particularly important in view of all the extraneous matters which have been invoked subsequently to justify the Director-General's decision.

25. The Director-General was entitled to put a reasonable time limit on the complainant's reply, after which he would have the right to make a decision in default. But no point arises here as the complainant did not ask for an extension and replied within the time limit.

26. In treating the incident as calling into play his legal obligation to ensure that someone with the political leanings mentioned in Staff Regulation 4.2.1 is not maintained in office, the Director-General is indulging in serious exaggeration. The complainant's outburst was caused by her annoyance at Mr Rissom's withholding publication of a document she had helped prepare, and was not a serious accusation. Reference to Staff Regulation 4.2.1 is therefore quite irrelevant.

27. The letter of 9 September 1997 also states that the disagreement took place in public, yet that is not an element which appears from Mr Rissom's statement. If the Organization considered the public nature of the incident relevant, it should have formed part of the accusation. The complainant contends that the events which took place in Mr Rissom's office could not be described as being in public. The Organization has directed its arguments towards whether it was a public place. The terms "in public" and "in a public place" are not synonymous. The Organization argues that if it was a private place as asserted by the complainant, she was guilty of trespass, which is a criminal offence in many jurisdictions. That is an example of the exaggerated tenor of the Organization's arguments.

28. The impugned decision of 12 August 1998 maintaining the complainant's summary dismissal refers to the reasons already set out in the letter of 9 September 1997 and in the Administration's detailed reply to the complainant's appeal of 31 December 1997. That reply, which is summarised in the report of the Appeals Board, refers to previous incidents involving the complainant and said it was not the first time she had behaved in such a manner: she had already been given a warning. However since her past behaviour was not mentioned in the letter of 4 August 1997, it cannot be considered as partly justifying her dismissal. That is a serious error and the Organization compounds it by giving an account in the reply to the present complaint of its perception of the complainant's behaviour since 1991, which did not lead to disciplinary action.

29. The question of proportionality arises where the sanction is out of proportion to the subjective and objective nature of the offence. Staff Regulations 10.1 and 10.2 read:

"10.1 The Director-General shall establish administrative machinery with staff participation to advise him in disciplinary cases.

10.2 The Director-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. Notwithstanding the provisions of Regulation 10.1, the Director-General may summarily dismiss a member of the staff for serious misconduct."

30. According to Regulation 10.2 only serious misconduct can give rise to summary dismissal. In the Tribunal's view while the complainant's conduct was not such as to be expected from an international civil servant, nevertheless it was not so serious as to warrant summary dismissal. Her words were intemperate, spoken in the heat of the moment to a superior. That is unacceptable. There was an insulting gesture used twice which was particularly hurtful to Mr Rissom, a German. Again, that is unacceptable. But on the other hand an apology was offered the same evening and again the next morning and a written acceptance was generously given by Mr Rissom. In the opinion of the Tribunal qualifying the incident as serious misconduct justifying summary dismissal would be a clearly mistaken conclusion to draw from the facts. Therefore, the disciplinary measure imposed was so disproportionate as to amount to a mistake of law.

31. It is not acceptable that the Organization, in defending this complaint, disclaims all responsibility for any alleged shortcomings of the Appeals Board. The Director-General is obliged under Regulation 11.1 to "maintain an Appeals Board to advise him". Time limits are laid down for filing and forwarding pleadings, and these can be extended by the chairperson with the agreement of the Director-General. If the machinery is not working smoothly a staff member's right to have an appeal dealt with in accordance with the Staff Regulations and Rules is affected.

32. The complainant makes serious accusations about the conduct of the appeal procedure. These could only be dealt with by inviting a response from the Board. Rather than delay matters by postponing this judgment to enable that to happen, the Tribunal has decided, in the complainant's interests, to give her immediate satisfaction on the following grounds: she was denied due process and there was lack of proportionality in considering the incident as serious misconduct. It makes no ruling in respect of the alleged inequities relating to the Appeals Board.

33. The complainant is entitled to have the impugned decision set aside, and consequentially the Organization shall:

- (i) reinstate her in her former post or another post corresponding to her grade, experience and qualifications, with retroactive effect to the date of separation from service;
- (ii) pay her the salary, allowances and other benefits to which she would have been entitled between the date of her separation and her reinstatement;
- (iii) take all necessary steps to restore the complainant's pension rights which would have accrued during this period.

In calculating the amount due, account shall be taken of the net occupational earnings of the complainant since her second summary dismissal.

34. The Tribunal further awards her the sum of 10,000 United States dollars in damages for the moral injury she has sustained and 4,000 dollars in costs.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The Organization shall provide the relief set out in 33 above.
3. The Organization shall pay her 10,000 United States dollars in damages for moral injury.
4. It shall pay her 4,000 dollars in costs.
5. All her other claims are dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet