

## THIRTIETH ORDINARY SESSION

### ***In re* PANNIER (No. 2)**

#### **Judgment No. 200**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by Mr. Jacques Pannier on 30 December 1971, brought into conformity with the Rules of Court on 24 January 1972, and the Organization's reply of 20 April 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal UNESCO Staff Regulation 1.2, paragraph 5(a) of the Statutes of the Appeals Board and UNESCO Staff Rule 103.4;

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. Mr. Pannier was appointed to UNESCO in August 1951 and from 1953 to December 1969 worked in the library of the Office of Statistics. On 17 December 1969 he was transferred to another post in that Office. He protested at his transfer, but it was confirmed on 3 February 1970 and he did not appeal to the Appeals Board.

B. On 7 December 1970 the Director of the Office stated that Mr. Pannier's services had not been fully satisfactory during that year and recommended deferring his salary increment. He explained that throughout the year the complainant's immediate supervisor and other high-ranking officials in the Office had pointed out to the complainant deficiencies in the quality of his work, his accuracy, judgment, punctuality and application. In his comments on that assessment Mr. Pannier contested the charges of unpunctuality and lack of application and stated that he had found it difficult to settle down in his new work because of poor health during the year and his absence from 14 September to 5 December 1970 due to a serious operation. In its report of 26 January 1971 the Junior Personnel Advisory Board nevertheless held that the decision to withhold his salary increment was not unduly severe. On 4 February 1971 the complainant was told of the confirmation of the decision. He then lodged two appeals with the Appeals Board, one against the decision of 17 December 1969 to transfer him and the other against the decision of 4 February 1971 to defer his salary increment. The Appeals Board held that the former was time-barred and therefore irreceivable and that the latter should be dismissed as unfounded; the proper procedure had been followed and no prejudice against the complainant had been established. On 1 October 1971 the Director-General informed the complainant that he accepted that view.

C. In his complaint Mr. Pannier prays that the Tribunal order the rescission of the decisions of 17 December 1969 (transfer) and of 4 February 1971 (deferment of salary increment), the deletion of the contested comments in his performance report and payment of his salary increment with effect from 1 January 1971. He maintains that his first appeal is not time-barred inasmuch as an administrative decision may be impugned only from the time at which it begins to cause prejudice. In the present case his transfer caused him prejudice only from the date of the decision to defer his salary increment. As to the substance, he contends that the decision to transfer him was made against his will, was obnoxious, and ran counter to the interests of the Organization. He questions the objectivity of the performance report which led to the deferment of his salary increment and maintains that the Advisory Board's failure to respect his right to a hearing tainted its recommendation to the Director-General, who therefore drew false conclusions from an incomplete statement of the facts.

D. In its reply the Organization argues that the impugned decisions are quite separate from each other and that there is no legal link between them. If the complainant's argument regarding the receivability of his appeal against his transfer were accepted, the date at which an administrative decision could no longer be impugned could never be determined and the time limit for lodging an appeal with the Appeals Board would have no meaning. It accordingly maintains that the appeal against the decision of 17 December 1969 is time-barred and therefore irreceivable. The

appeal against the deferment of the salary increment is, in its view, unfounded in that, first, it is established that the complainant was as well qualified for his new post as for his previous one and, secondly, the reason for deferring his salary increment was not the inadequacy of his skills and qualifications but his unsatisfactory performance. Even before his transfer his report for 1969 contains serious criticisms of his performance. The Organization therefore denies that the decision of 4 February 1971 was due to prejudice or any extraneous factor - which, moreover, the complainant has failed to prove. Finally, it points out that the Appeals Board found the impugned decision to have been made in accordance with the proper procedure.

#### CONSIDERATIONS:

Mr. Pannier appeals to the Tribunal against the decision of 31 December 1969 of the Director-General, who simply adopted the Appeals Board's recommendation of 20 September 1971 and dismissed the complainant's appeal as time-barred and therefore irreceivable in so far as it related to the decision of 17 December 1969 and as unfounded insofar as it related to the decision of 4 February 1971.

As to the appeal against the decision of 3 February 1970:

Mr. Pannier did not appeal in time against the Director-General's decision of 3 February 1970 to confirm his transfer on 17 December 1969. That decision has thus become final.

The fact that the complainant impugned in time the decision of 4 February 1971 to defer the grant of a salary increment within his grade - a decision which had no connection with that of 3 February 1970 - cannot have the effect of extending the period within which an appeal may be lodged against the latter decision.

It follows from the foregoing that the Director-General acted properly in dismissing the appeal as irreceivable in so far as it related to the decision of 3 February 1970.

As to the appeal against the decision of 4 February 1971:

First, it appears from the minutes of the Advisory Board's meeting that, contrary to what the complainant alleges, he was given a hearing by the Board, and that in any case he was able to submit full written and oral observations to the Appeals Board, whose recommendation the Director-General accepted.

Secondly, according to Staff Rule 103.4, "the granting of an increment may be deferred or withheld if service is not satisfactory." It was by virtue of that provision that the Director-General took the impugned decision, on the recommendation of the chief of Mr. Pannier's branch and of the competent advisory board.

It appears from the documents in the dossier that the decision was taken solely on the grounds of the complainant's unsatisfactory service and that it is not tainted with any of the irregularities which enable the Tribunal to interfere with such decisions and that, in particular, it is not tainted with misuse of authority. Moreover, no provision of the relevant texts and no general rule of law deprived the Director-General of the power to apply Staff Rule 103.4 during the year following the complainant's transfer.

It follows that the Director-General acted correctly in dismissing the appeal against the decision of 4 February 1971 as unfounded.

#### 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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1973.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet

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