

THIRTY-SECOND ORDINARY SESSION

In re LACHS

Judgment No. 225

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by Mrs. Hélène Lachs on 26 February 1973 and brought into conformity with the Rules of Court on 23 March 1973, the Organization's reply of 30 April 1973, the complainant's undated rejoinder received by the Registrar on 20 June 1973 and the Organization's surrejoinder of 24 July 1973;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and UNESCO Staff Rules 103.19(g), 103.24, 111.1 and 111.2;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. From 1 June 1960 to 6 October 1972 the complainant was employed in the UNESCO staff shop (ECU). Her employment was governed by a contract of appointment, the rules of the undertaking and, subsidiarily, French law. Her contract of appointment provided that UNESCO Staff Regulations and Staff Rules should not apply. As a result of reforms in the working methods of the ECU the complainant was dismissed. In lieu of three months' notice of dismissal she was paid her salary and allowances for the full period of notice (5,350.35 French francs, plus 640.21 francs as compensation for paid leave during the three months' period of notice), plus a dismissal benefit equivalent to six months' salary calculated on the basis of her salary over the last five years (8,943.18 francs), or a total of 14,933.74 francs. On 13 November 1972 she was appointed to the staff of UNESCO on a one-year contract at grade G.1, step 2, her employment being governed by the Staff Regulations and Staff Rules.

B. On her appointment to the staff of UNESCO she was orally informed that since less than six weeks of the period of notice of dismissal by the ECU had elapsed she could not keep the whole sum corresponding to that period; otherwise she would be paid twice over. By a letter of 14 November 1972 she was told she must pay back 2,928.93 francs to the Organization. The Organization took the view that the dismissal benefit amounting to 8,943.18 francs had fully accrued to her and did not ask her to refund it. By a letter of 29 November 1972 she received confirmation that she must refund that sum and was told that if she did not do so UNESCO would deduct it from her salary and repay it to ECU. That decision of 29 November 1972 was carried out, and the complainant is now impugning it.

C. The complainant contests the lawfulness of withdrawing the amount paid in lieu of notice "through a unilateral deduction by UNESCO". In her claims for relief she asks the Tribunal to quash the impugned decision and compensate her for the unlawful deduction by UNESCO of the sum of 2,928.93 French francs.

D. In a minute of 23 February 1973 the complainant asked the Director-General to waive the jurisdiction of the Appeals Board in accordance with Staff Rule 111.2(b). On behalf of the Director-General the Director of Personnel informed her in a minute of 6 March 1973 that the Director-General could not "agree to waive the jurisdiction of the Appeals Board and allow direct appeal to the Administrative Tribunal against the decision of 29 November 1972 to make deductions" from her salary. In her statement of facts and arguments the complainant asks the Tribunal to hear her complaint "because of the special circumstances of the case, which call for waiver of the requirements of prior recourse to the Appeals Board", and expresses the hope "that no procedural formality will prevent the Administrative Tribunal of the IDO from discharging its high responsibilities and handing down the judgment [she] requests".

E. The defendant Organization maintains that the complaint is irreceivable under Article VII, paragraph 1, of the

Statute of the Tribunal because of the complainant's failure to exhaust internal means of redress. "The irreceivability of the complaint", argues the Organization, "is all the more free from doubt in that it is clear that she deliberately decided not to have recourse to the internal appeals body, even though she acknowledged its competence just as she admits to not having secured the Director-General's consent to her appealing directly to the Tribunal." The Organization therefore asks the Tribunal to declare the complaint irreceivable.

CONSIDERATIONS:

1. Article VII, paragraph 1, of the Statute of the Tribunal provides that a complaint shall not be receivable unless the complainant has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.

Chapter XI of UNESCO Staff Regulations and Staff Rules, which relates to appeals, provides that before lodging an appeal with the Administrative Tribunal staff members must appeal to the Appeals Board of the Organization.

Mrs. Lachs did not lodge such an appeal before filing her complaint with the Administrative Tribunal on 26 February 1973. She had therefore failed to exhaust the available internal means of redress before appealing to the Tribunal.

2. Although Staff Rule 111.2(b) provides that any staff member may with the consent of the Director-General waive the jurisdiction of the Appeals Board and appeal directly to the Administrative Tribunal, the Director-General's authorisation of such waiver is a derogation from the normal procedure prescribed by the Staff Regulations and can properly be allowed only in exceptional cases which the Director-General himself shall determine.

3. The Administrative Tribunal is not competent to waive the requirement that the complainant should first appeal to the Appeals Board.

It appears from the foregoing that the complaint should be dismissed.

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 6 May 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet