

SEVENTH ORDINARY SESSION

***In re* GODCHOT**

Judgment No. 33

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organisation drawn up by Mr. Jacques Godchot on 23 October 1957, received and registered in the Registry on 24 October 1957 under No. 57.28;

Considering the reply drawn up by the respondent organisation;

Considering the special application for the hearing of witnesses deposited by complainant and the remarks of the organisation regarding the said application;

Considering the application to intervene made by Mr. Martin Ennals, Chairman of the U.N.E.S.C.O. Staff Association, dated 3 March 1958 and the remarks of the organisation regarding the said application;

Considering the Statute of the Tribunal, the Staff Regulations and Staff Rules of the organisation and in particular Staff Regulation 4.5.1 and Staff Rules 104.1, 104.6(c) and 109.3 of 1 September 1956 as well as Staff Rules 104.1 and 104.15 of 1 November 1954;

Having heard Maître Mercier, counsel for complainant and Mr. Saba, agent of the organisation in public sitting on 9 September 1958;

Considering that the facts of the case are the following:

1. Complainant who entered the service of the defendant organisation on 19 July 1948 occupied a post in the Department of Social Sciences until 10 April 1951 during which period he held appointments of a temporary character.
2. On 10 April 1951, complainant was transferred to the U.N.E.S.C.O. Scientific and Cultural Co-operation Centre in Cairo where he occupied post SS 10 until 31 June 1955. During this period the complainant held fixed-term appointments which were regularly renewed together with the granting of annual increments until 31 December 1955. During the whole period of complainant's service, his abilities continued to be the subject of most favourable appreciations by his supervisors.
3. On 8 February 1955, complainant was notified of his transfer to the headquarters of the organisation in Paris with effect from 1 July 1955. In a letter of 14 April 1955 the Director of the Department of Social Sciences informed complainant that as a result of this transfer the terms of his appointment would not be altered and that he would be temporarily assigned to the Department of Social Sciences to assume the duties of an official who had been transferred to another post. The post formerly occupied by this latter official would not be open to recruitment before the expiration of complainant's appointment, but from 1 January 1956 this post would probably be open to recruitment although the job description would have to be considerably changed.
4. On his return to the headquarters of the organisation complainant took up the duties described by the Director of the Department of Social Sciences.
5. On 11 October 1955 the Chief of the Bureau of Personnel reminded complainant that his appointment would come to an end as foreseen on 31 December 1955 but that he would be entitled to present himself as a candidate for any vacant post for which he possessed the necessary qualifications.
6. On 31 October 1955 complainant applied for the permanent post numbered SS 19 in the Department of Social

Sciences, pointing out that he had temporarily occupied an identical post from 1 July 1955 and likewise fulfilled the duties of the post from 1948 to 1951.

7. On 1 January 1956, complainant's fixed-term appointment having come to an end, he was temporarily appointed for two successive periods of three months to post SS 19 which was open to recruitment. On 11 June 1956 the complainant was informed that the Director-General had decided that his appointment in the post which he was occupying would be extended to 31 December 1956 and retrospectively converted into fixed-term appointment. The complainant was also informed that careful consideration would be given to his continuing employment in the Department of Social Sciences and to his candidature for other posts in the Secretariat but that no assurance of employment could be given to him beyond 31 December 1956.

8. The Selection Committee whose establishment is provided for in Staff Rule 104.1(c) of 1 November 1954, as maintained in force, met on 25 October 1956, examined the candidatures which were submitted to it including that of complainant and recommended to the Director-General that a candidate other than complainant and who was also an official of the organisation should be appointed.

9. After being informed by letter of 14 November 1956 that his candidature for post SS 19 was not successful complainant sent a letter on 7 December 1956 to the Chief of the Bureau of Personnel in which he expressed the desire to be notified of any decision the Director-General might take concerning his appointment to another office and requested the immediate convening of the Establishment Committee in order that it be seized of the question of the renewal of his appointment.

10. On 11 December 1956 the Director-General informed complainant that there appeared to be no suitable vacant post available and that under these conditions there was no other possibility than to separate complainant at the expiration of his appointment on 31 December 1956 and that for the same reasons he did not see any object in convening an Establishment Committee.

11. On 20 December 1956 complainant requested the Director-General to reconsider his administrative position and to grant him another post. In the event that no reply should be given to this request complainant made known his intention to appeal against the decision taken in the letter of 11 December 1956.

12. On 31 December 1956 complainant's fixed-term appointment came to an end and complainant left the service of the organisation.

13. On 4 January 1957 complainant was informed that the decision which had been notified to him by letter of 11 December 1956 was confirmed.

14. On 31 January 1957 complainant appealed to the Appeals Board against the Director-General's decision.

15. On 21 May 1957 the Appeals Board recommended that the decision of 11 December 1956 should be annulled as a consequence of the irregularities of which the Appeals Board had taken cognizance which had occurred in the course of the procedure following which complainant had ceased to be a member of the Secretariat of the organisation and that for the period from 1 January 1957 until the date of such new decision as the Director-General would take with respect to the complainant, following a proper procedure, complainant should receive by way of compensation a sum equivalent to the salary together with allowances that he would have received had he remained in the service of the organisation under his former appointment.

16. On 24 July 1957 the Director-General notified to complainant his decision regarding the recommendation of the Appeals Board. Since the Appeals Board had considered that complainant should be awarded compensation for the moral and material prejudice which he might have suffered as a result of the procedure followed the Director-General accepted the recommendation of the Appeals Board on this point. However, considering that complainant had ceased to be in the employment of the Secretariat of the organisation after 31 December 1956 the Director-General considered that he could not be subject to the provisions of the Staff Regulations and Rules nor be the subject of administrative decision on the basis of the said Regulations and Rules after that date. For these reasons the Director-General considered that he could not follow to the letter the recommendation of the Board but in order to take account of the spirit of this recommendation offered to pay to complainant by way of compensation a lump sum equivalent to the amount of the salary together with allowances which he had received during his last six months with the organisation.

17. On 23 October 1957 complainant submitted a complaint to the Tribunal requesting that the contested decision of 11 December 1956 and which had been confirmed by the Director-General on 24 July 1957 be annulled, that he be granted by way of compensation as from 1 January 1957 a sum equal to the amount of the salary together with allowances that he would have received had he remained in the service of the organisation until the re-establishment of a proper procedure, that if the organisation should not set up for the benefit of complainant a proper procedure he be further granted compensation equivalent to two years' salary and that besides he be granted costs.

As regards the hearing of witnesses:

Considering that since the evidence to be given by the witnesses whose hearing has been requested by complainant would have related to the professional competence of complainant, which is not in issue before the Tribunal, the hearing of these witnesses should be rejected as not being relevant to the cause.

As regards the intervention by Mr. Martin Ennals:

Considering that the Tribunal has put it that an intervention by Mr. Martin Ennals was not receivable in so far as it would have been exercised by the person of the Chairman of the U.N.E.S.C.O. Staff Association who did not have this right;

Considering that the Tribunal has further put it that an intervention by Mr. Martin Ennals was moreover not receivable if made in a personal capacity since the intervenor did not possess any right liable to be affected by a judgement upon a complaint of a holder of a fixed-term appointment;

Considering that when invited to reply to these points counsel for the U.N.E.S.C.O. Staff Association withdrew the claim to intervene and the Tribunal has taken notice thereof;

On the substance

Considering that under the provisions of Staff Rules 104.6(c) and 109.3 of 1 September 1956 complainant's fixed-term appointment expired upon its completion on 31 December 1956, without notice or indemnity, that the separation from service resulting from the expiration of a fixed-term appointment is not deemed to be a termination within the meaning of the Staff Regulations and Rules and that therefore there is no recourse against complainant's separation from service on that date;

Considering that it is not contested that complainant was transferred from the post he held in Cairo to a post in the Department of Social Sciences at the headquarters of the organisation in a regular manner; that as a result of this transfer complainant held on a temporary basis a post which was to be filled by recruitment, and that his chances of holding this post and being granted an indeterminate appointment were henceforth dependent upon his success in the competition in which he had been invited to take part and in fact did take part without raising any objections;

Considering that complainant has failed to prove any irregularity of procedure in connection with this competition and that while the terms of Article 4.4 of the Staff Regulations entitled him to a priority as far as the consideration of his candidature is concerned, the appointment to the vacant post of another official in the same situation as himself and entitled to the same priority did not deprive complainant of that right;

Considering therefore that while the recommendation of the Selection Committee had not been submitted to the Establishment Committee before the Appointment by the Director-General of the candidate proposed by the Committee this irregularity did not in itself prejudice complainant since the regularity of the proposal which should have been considered by the Establishment Committee can not be contested;

Considering that the temporary appointment held by complainant was not liable to renewal within the meaning of Article 4.5.1 of the Staff Regulations and that in the absence of a proposal to assign complainant to another post there was no point, as far as the present case is concerned, in consulting the Establishment Committee for any other purpose than that of examining the conditions in which the Selection Committee's recommendation had been made;

Considering that while it has not been proved that performance reports should have been drawn up in connection with complainant's participation in a competition, such performance reports should have been drawn up in any case once in each calendar year, and that the absence of performance reports for the year 1956 is a breach of Staff Rule

104.12 and may have been prejudicial to complainant;

Considering that it would thus appear that, having taken cognizance of the recommendation of the Appeals Board, the Director-General had agreed that complainant should be compensated for the moral and material prejudice which he may have suffered as a result of the procedure followed in this case, and that the offer to pay complainant a lump sum equivalent to the salary together with allowances which he received during his last six months of service in the organisation has been maintained before the Tribunal;

Considering, finally, that the fact that the Director-General admitted the principle of granting compensation to complainant in respect of the prejudice caused to him was such as to lead complainant to file his complaint; that taking into account the particular circumstances of the case it appears justified that, as an exceptional measure, complainant be granted compensation by way of participation in his costs;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares that the payment to complainant of a lump sum equivalent to the amount of salary including allowances received by him during the last six months which he spent in the service of the organisation constitutes an equitable compensation for the prejudice caused to him, orders the organisation, in so far as may be necessary, to give effect to its offer of such a payment to complainant and dismisses the complaint;

Orders that the respondent organisation contribute to complainant's costs up to the amount of one hundred and fifty United States dollars.

In witness of this judgment, delivered in public sitting on 23 September 1958 by His Excellency Albert Devèze, President, Sir John Forster, K.B.E., Q.C., Vice-President and Mr. Jason Stavropoulos, Deputy Judge acting as Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze
John Forster
Jason Stavropoulos
Jacques Lemoine