

SEVENTH ORDINARY SESSION

***In re* RAVAGE**

Judgment No. 35

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organisation drawn up by Mrs. Denise Ravage on 9 November 1957, received and registered in the Registry on 14 November 1957 under No. 57.29;

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 paragraphs 7 and 8 of Annex E to the Staff Rules;

Considering that the organisation has raised a plea of irreceivability against the complaint seeking the annulment of a decision notified by letter dated 24 January 1957 and received on 7 February 1957, on the grounds that this decision, which was the final decision leading to complainant's separation from service, was only challenged on 14 March 1957, that is to say, after the expiry of the period of 15 working days laid down under paragraph 7 of Annex E to the Staff Rules;

Considering however that complainant contends that in the course of an interview between her and Doctor Luther H. Evans, Director-General of the organisation, on 14 February 1957, the latter expressed the opinion that the suppression of her post had perhaps been a mistake, that if she so desired she could be heard by the Establishment Committee and that in case the Committee recommended her for a permanent appointment he would give it his most serious consideration, so that as a result of the interview complainant did not contest a decision which was to have been reconsidered;

Considering that the organisation contends that, on the contrary, the statements which complainant contributes to the Director-General in no way concerned the decision complained against and therefore could in no manner whatsoever have resulted in the suspension of the time limits for submitting an appeal;

On the hearing of witnesses:

Considering that complainant applied for the hearing of Mr. Pierre Henquet and Mr. Harry Wilmot as witnesses;

Considering that Mr. Pierre Henquet was present at an interview at the Director-General's residence on 25 July 1957 in the course of which complainant discussed with the Director-General the substance of his statements of 14 February 1957, asked him to confirm the summary of these statements which she had drawn up and requested him to authorise her to give them in evidence before the Appeals Board in order to establish the receivability of the complaint submitted to that body;

Considering that Mr. Pierre Henquet and Mr. Harry Wilmot were present at a second interview which took place on 25 July 1957 in the Director-General's office, in the course of which the requests which complainant had made during the first interview were the subject of further discussions;

Considering that the Tribunal considered that the hearing of the witnesses as applied for by complainant would be

pertinent in the case and that the testimony on oath of Mr. Henquet and Mr. Wilmot was received in public sitting on 12 September 1958;

On 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, the holder of an indeterminate appointment, 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 plea of receivability:

Considering that the witnesses who gave evidence at the hearing were not in agreement on the signification of the statements attributed to the Director-General; that the witness Henquet testified that complainant understood these statements as meaning that the decision of the Director-General would be reconsidered so that a recourse to the Appeals Board would become inopportune and unjustified until such time as a final decision was taken; that he also testified that this understanding was recalled by complainant in the presence of the Director-General himself, and was not challenged by him; the witness Wilmot testified on the contrary that no statements of the Director-General referred to the decision which is at issue, his statements referred to the possibility of finding some other permanent post which could be offered to complainant;

Considering that this essential inconsistency in the testimony necessitates recourse to further proof confirming or setting aside the incomplete evidence so far given in the course of the hearing; that this proof can only be found in an affidavit by the Director-General himself, testifying to the truth of the essential facts in the case upon which his personal position in the matter is crucial; that it would be appropriate to give respect to the authority and fairmindedness of this senior official;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Before proceeding to judgement,

Administers to Doctor Luther H. Evans, Director-General of the organisation, the following oath:

"I declare that in the course of the interview between myself and the complainant, on 14 February 1957, I neither admitted nor reasonably caused it to be believed that I admitted that the decision taken in her regard would be the subject of reconsideration by me and that it would therefore be provisionally held in abeyance".

Appoints Judge Stavropoulos, assisted by Mr. Lussier, acting as ad hoc Registrar, to receive the said oath at such place where he may meet the Director-General, or alternatively to evidence a refusal to swear the oath, by drawing up a minute so that after the deposit of this minute with the Registrar of the Tribunal and its communication to the parties, the case may be reopened by either party in order that it may be pronounced thereon, costs being reserved.

In witness of this decision, 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

Updated by SD. Approved by CC. Last update: 30 May 2008.