

SEVENTY-NINTH SESSION

***In re* SOCK**

Judgment 1441

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Tabaski Sock against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 6 June 1994 and corrected on 26 August, the Organization's reply of 20 October 1994, the complainant's rejoinder of 7 January 1995 and UNESCO's surrejoinder of 31 March 1995;

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

Having examined the written submissions and decided not to allow his application for the hearing of fifteen witnesses, which on the strength of the evidence before the Tribunal is unnecessary;

Considering that this case arises out of the dismissal of the complainant on the grounds of serious misconduct while he was under a permanent contract with the Organization and that the parties' claims are as follows:

The complainant:

1. The quashing of the Director-General's decision to dismiss him;
2. his reinstatement and the award of arrears of pay as from 28 April 1989, when he was suspended from duty;
3. an award of 2 million French francs in damages, even if he is reinstated;
4. an award of 100,000 francs in costs.

The defendant

The dismissal of the complaint.

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

A. The complainant, who is from Senegal, joined the staff of UNESCO on 1 February 1979 as an administrative assistant. As from 1 August 1981 he held a post at grade L.6 in the Organization's Regional Office for Education in Africa at Dakar under a fixed-term appointment which was regularly extended and was to expire on 31 July 1990. After an investigation in the Regional Office by the Inspectorate-General between 19 and 28 April 1989 he was charged with the embezzlement of funds for a seminar which UNESCO had held at Lagos from 20 to 31 March 1989. On 28 April he was summarily suspended from duty. In August the Administration put his case to the Joint Disciplinary Committee. On 12 October it gave him notice of further charges, namely that he had received undue payment at a seminar at Conakry in November 1988. On 19 January 1990 it summarily dismissed him on grounds of serious misconduct and confirmed the decision on 30 January. He appealed to the Appeals Board on 12 July 1990 and submitted a brief to it on 1 October. In its report of 14 January 1994 the Board recommended reversing the decision, but by a letter of 7 March 1994 the Director-General told the complainant that he was upholding it. That is the decision under challenge.

B. The complainant alleges that the membership of the Joint Disciplinary Committee was against the rules: for one thing, only officials from his own duty station should have been chosen. The Administration impaired his right to a hearing in the disciplinary proceedings. UNESCO gave no reasons for the summary dismissal of 19 January 1990, nor for the decision of 30 January 1990 confirming it, nor even for the one of 7 March 1994 rejecting the Board's recommendation. He denies the charges.

C. UNESCO replies that there was nothing wrong with the membership of the Disciplinary Committee. The

complainant had his say at every stage of the proceedings. The reason for summary dismissal was obviously the proven acts of embezzlement he committed.

D. In his rejoinder the complainant enlarges on his pleas and points out that he was just a subordinate in the administrative unit of the Regional Office.

E. In its surrejoinder the Organization maintains that the complainant's pleas are devoid of merit, presses its own case and contends that he was in gross breach of duty.

CONSIDERATIONS:

1. The complainant, a citizen of Senegal, used to work for UNESCO as an accountant at grade L.6. He held the title of administrative assistant in the Regional Office for Education in Africa at Dakar. He seeks the quashing of the Director-General's decision to dismiss him at 19 January 1990 for serious misconduct.
2. The Regional Office recruited him in 1979. At first he held short-term appointments and then, from 1 August 1981, fixed-term ones that it regularly extended. At the material time he held his fifth such appointment, and it was to run from 1 August 1988 to 31 July 1990.
3. UNESCO sent out to Dakar two members of its Inspectorate-General at headquarters, Mr. Dan Spiers and Mr. Martin Shio, and from 19 to 28 April they carried out a general audit of administrative and financial management in the Regional Office. Their suspicions were aroused by the accounts of a seminar on education in demography which UNESCO had held in Lagos from 20 to 31 March 1989. The complainant had managed the financing of the seminar. The inspectors saw him in the presence of his supervisor and made an audit. Their conclusion was that he had forged signatures in the accounts and had cheated the participants of sums due by way of daily subsistence allowance by tampering with the prices of hotel rooms.
4. On 28 April 1989, before they left Dakar, the inspectors told the Director of the Regional Office of their findings, which concerned two officials implicated in fraud: Mr. Sock over the seminar at Lagos and Mr. Kwame Amoako-Tuffuor over one that the Organization had held at Conakry in November 1988. Whereas they needed further inquiry into the case against Mr. Tuffuor, the inspectors asked the Director to suspend the complainant from duty forthwith since in any event his performance was not good enough to warrant keeping him on. The Director's comment was that this was not the first time that the complainant had come under suspicion for financial misdemeanour; indeed some time earlier he had been relieved of the handling of petty cash.
5. By a decision of even date, 28 April 1989, the Director suspended the complainant from duty, albeit on full pay.
6. Once the inquiry was over the Organization decided to convene the Joint Disciplinary Committee at headquarters. The complainant was summoned before the Committee in Paris in October 1989. On 10 August, before he left Dakar, he was given a document dated 4 August setting out the charges against him over the seminar at Lagos. On 12 October, in Paris, he was given the text of the charges over the one at Conakry.
7. The Committee heard him on 16 October 1989. The inspectors who had gone to Dakar on mission were present. The Committee concluded that in the "lax administrative environment" of the Dakar office "the evidence as it now stands does point to the defendant's responsibility for the charges made against him". But the Committee added that it did "not wish to draw clear-cut conclusions as regards the extent of such responsibilities". So pending further inquiry it would make no recommendation.
8. Having got the Committee's report, the Director-General decided to dismiss the complainant. His decision was notified to the complainant in a telex of 19 January 1990 and confirmed in a letter dated 30 January from the Director of the Bureau of Personnel. The letter said that the Director-General had dismissed him under Staff Regulation 10.2 and Rule 110.1(a) and ordered him to pay back the amount which he had embezzled over the seminar at Lagos and which came to 941 United States dollars.
9. He submitted a brief on 1 October 1990 to the Appeals Board. UNESCO entered a reply on 14 December 1990. The complainant failed to attend hearings at the date originally set, 24 November 1992, and the Board summoned him again to hearings on 23 August 1993. This time he turned up, and he put his own case. The Board's report of 14 January 1994 goes in great detail into the charges and his replies. Though the Board did not question the Disciplinary Committee's finding of "obvious" financial mismanagement it made no unanimous recommendation: a

majority of three members were not satisfied that the charges of embezzlement were proven beyond any doubt and recommended reversing the dismissal on the grounds of "presumption of innocence".

10. The chairman and another member of the Board were in the minority and explained their views at length in a dissenting opinion. They believed that the accounts the Board had seen were not up to the rudimentary standards of clarity and openness that book-keeping should meet. The minority thought it proved beyond peradventure that signatures had been forged, that some of the documents had been erased and rewritten and that the complainant had made out more than one original for a single operation and then tampered with them. Even though it was in doubt whether he had made any gain for himself, the attempt at defrauding the participants in the Lagos seminar was proven. Moreover - said the minority - the complainant's mishandling of the accounts had caused the Organization moral injury, and that alone was misconduct serious enough to warrant dismissing him. Lastly, the minority took the view that papers found in his office after his suspension from duty showed collusion in similar acts with Mr. Tuffuor over the Conakry seminar.

11. The complainant asked the Director-General to reverse the dismissal in the light of the Board's report and to grant him damages. But the Director-General answered in a letter of 7 March 1994 that after careful reading of the report his final decision was to reject the appeal. That decision and those of 28 April 1989 and 30 January 1990, are at issue in this case.

12. The complainant lodged his complaint on 6 June 1994. He has two sets of pleas:

(a) pleas on issues of form, in which he objects to the membership of the Joint Disciplinary Committee and says that he was denied his right to reply and that UNESCO failed to state reasons for the suspension from duty and the dismissal;

(b) pleas on the merits for which he draws support from the Appeals Board's report: he denies the charges against him and asks the Tribunal to hear witnesses.

13. The Organization observes that it dismissed him for "serious misconduct" under Staff Regulation 10.2 and Staff Rule 110.1(a). It submits that, though those provisions would have allowed it to dismiss him without further ado, it carried out a proper inquiry in strictest observance throughout of his right of defence. In its submission the facts warranting the decision were proven and the lawfulness of it is unimpeachable.

The issues of form

14. The Appeals Board went thoroughly into the complainant's pleas on issues of form and rejected them. Since he is not objecting to the Board's proceedings as such there is no need to say more than what follows.

15. The Tribunal is satisfied on the evidence that the complainant's right to a hearing was scrupulously observed throughout the disciplinary proceedings. As soon as the books were found wanting the inspectors from headquarters questioned Mr. Sock about the written evidence in his supervisor's presence. He was given notice of the charges in writing before he was to attend the Joint Disciplinary Committee's hearings. He had enough time to prepare his case, including his answers to the allegations about the seminar at Conakry. Though he saw the inspectors at the disciplinary hearings and had to answer their questioning, they were not members of the Committee as, from a misunderstanding of the procedure, he makes out. Though evasive on the merits, the Committee is quite explicit that his rights as defendant were observed. And the appeals procedure afforded him yet another opportunity of defending himself at a point in the proceedings by which everyone concerned knew well what the case was about.

16. Quite apart from that issue the complainant objects to the very membership of the Committee. He observes that it was set up at headquarters, and that was in breach of Staff Rule 110.2(d), which required - since this was the case of a field official - that it be made up of staff from the Regional Office. The answer to the objection is that, though committed to writing for the sake of sound administration, the rule is not binding. It leaves the Administration free to set up a disciplinary committee at headquarters whenever it sees good reason to do so. In this case the Regional Office felt that the misconduct the complainant was charged with could not have taken place without inside connivance. So the Organization had every reason to hold the disciplinary proceedings at headquarters. In any event the complainant has failed to show how the membership of the Committee might have proved prejudicial to the proper and independent consideration of his case.

17. Next comes his plea that UNESCO gave no reasons. Although an explanation of the reasons for an administrative decision affords an essential safeguard of the staff member's rights, consistent precedent has it that the form the explanation takes will depend on the nature of the decision and the context in which it is taken. Here UNESCO is right in stating that each successive decision, from the provisional suspension from duty to the final act of dismissal, was taken in a context that the complainant was quite well aware of. The suspension came after the questioning of him by the inspectors; the dismissal after the report by the Disciplinary Committee; and the final confirmation of dismissal after the Appeals Board hearings. The text of each decision so explicitly cites the material background that he may not properly contend he was caught unawares or profess ignorance of the reasons for each decision and what it meant.

The merits

18. What then was the justification of the dismissal on the merits? One preliminary point is that the complainant held a fixed-term appointment. His proven shortcomings and misconduct were undoubtedly such that the Organization might have refused without further ado to extend his appointment. As the Tribunal has always acknowledged, an organisation has discretion in the matter and, as many rulings bear out, it may refuse renewal on grounds of unsatisfactory performance or misconduct: for a recent example see Judgment 1405 (in re Moore).

19. Here UNESCO resorted to formal disciplinary proceedings because it wanted to bring an end forthwith to its contract with the complainant on account of behaviour it saw as incompatible with efficient administration and as harmful to its good name. The upshot was that it was able to end his appointment six months before expiry: it says in its surrejoinder that it kept him on the payroll until January 1990 whereas his contract was to run until 31 July of that year. So that is all that is at stake in this case.

20. The Tribunal does not agree with the majority of the Appeals Board. It is satisfied that the Director-General's decision was fully warranted by the facts that came to light at the various stages of the disciplinary proceedings. Even though doubts lingered as to whether the complainant gained at the expense of participants in the Lagos seminar and even though Judgment 1251, on Mr. Tuffuor's complaint, put into perspective the facts relating to the Conakry seminar, the way he kept the books was still inadmissible and can only have been intended to cover up actual fraud. In view of the complainant's earlier record, which was mentioned above, and his poor performance, to which the inspectors and the Disciplinary Committee alluded, his handling of the Lagos seminar showed a lack of conscientiousness and failure to come up to the ethical standards of public service. Moreover, since the meeting was attended by people from many African countries, his behaviour severely damaged the image of the Organization, which he was not just working for but representing.

21. The conclusion is that UNESCO was right to suspend him from duty as soon as it learned of his inadmissible behaviour over the Lagos seminar and to dismiss him after a disciplinary enquiry which was beyond reproach, despite the shortcomings of the Disciplinary Committee's report. The Appeals Board's conscientious handling of the case made good those shortcomings. As for the Board's recommendation, the final decision was up to the Director-General, who was free to endorse the view of the minority. The Tribunal is satisfied that his was the sounder view.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

(Signed)

William Douglas
Michel Gentot
P. Pescatore
A.B. Gardner

