

TWENTIETH ORDINARY SESSION

***In re* GLATZ-CAVIN**

Judgment No. 127

'THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by M. Roger Glatz-Cavin on 25 August 1967, the Organization's reply of 20 October 1967, complainant's rejoinder of 15 November 1967, and the reply of UNESCO thereto dated 20 December 1967;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 9.1 and 11.2 of the Staff Regulations of the Organization, and Article 109.6 of the Staff Rules;

Considering the copies of letters Nos. 1009 and 1010 communicated to the Tribunal by the Organization on 15 May 1968 in reply to a request made to it on 29 March 1968 that the originals of the aforesaid letters should be produced;

Having heard in oral proceedings on 10 October 1968 Messrs. Bolla, Kinany, Bekri and Jolivet, officials of UNESCO, as sworn witnesses, together with M. Glatz-Cavin, complainant, and M. Georges Perrenoud, agent of UNESCO;

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

A. M. Glatz-Cavin, a Swiss national, was appointed by UNESCO on 3 November 1963 as an expert in Grade P.4 and assigned to the joint Special Fund/UNESCO Project for the Teachers' Training College at Rabat, as teacher of mathematics. In 1965 his contract was renewed for a further two years, that is, up to 2 November 1967.

B. On 3 February 1966 complainant submitted to his Project Chief, M. Jolivet, Senior Technical Adviser, a technical report in which he repeated some earlier oral criticisms of the progress of the project. On 6 February 1966 M. Jolivet transmitted the report to M. Kinany, Chief of the Arab States Division at UNESCO headquarters in Paris, commenting that he disagreed entirely with both the form and substance of the report, which he considered went far beyond the functions assigned to M. Glatz-Cavin by the Instruction of October 1966 (sic) concerning Special Fund Reports (page 2, paragraph F).

C. At the end of February 1966 N. Bekri, programme expert in the Education Department of UNESCO, visited Morocco, and in the course of his visit the Chief of Cabinet of the Ministry of National Education, in the presence of M. Jolivet, handed him copies of letters which were supposedly to be despatched shortly by the Minister of National Education to the Resident Representative. These copies, both dated 11 February 1966 and numbered 1009 and 1010 respectively, were taken back to headquarters by M. Bekri. M. Jolivet had helped to draft the documents in question and they had been typed by his secretary. The copy of letter No. 1009 stated that M. Glatz-Cavin's behaviour during a strike of students at the Rabat Teachers' Training College had been most difficult, that he had violently criticised the administration of the College, and that his transfer would accordingly be in the general interests of the College and of complainant himself, whose undoubted competence and qualities in the performance of his duties were freely recognised. The copy of letter No. 1010, dealing with the renewal of the appointment of some of the teachers at the College, proposed that Mr. Nabulsi, a Syrian national, should be appointed to the vacancy created by M. Glatz-Cavin's departure. On 6 February, and again on 2 March 1966, M. Jolivet, allegedly with the agreement of the Moroccan Government, asked that sanctions should be applied to M. Glatz-Cavin. On 10 March 1966 M. Bekri informed M. Jolivet that letter No. 1009, a copy of which had been given to him by M. Jolivet, had not yet been officially received at headquarters. On 18 March 1966 complainant was recalled to headquarters, where he was informed by M. Bolla, in an interview confirmed by letter dated 15 April, that the Moroccan Government had asked UNESCO to abolish complainant's post in order to introduce the teaching of mathematics in Arabic in the College, and that in consequence as from July 1966 he would either be assigned to another post or be dismissed.

D. On March 1966 the Deputy Prime Minister temporarily in charge of development, in a letter to UNESCO headquarters concerning the contracts of its experts acting as teachers at the Teachers' Training College, indicated that the presence of M. Glatz-Cavin was no longer essential and that the Government would like his mission to be terminated, whereas the appointment of Mr. Nabulsi to the post of teacher of mathematics was highly desirable. Another letter from the Under-Secretary of State in the Moroccan Ministry of National Education, dated 4 April 1966, and headed: "Reference: our letters Nos. 1009 and 1010 of 11 February 1966", asked that complainant should be replaced by an Arabic-speaking teacher. The Director of the College confirmed to complainant on 10 May 1966 that his appointment would terminate on the following 30 June. On 21 July, UNESCO offered complainant an appointment as teacher of mathematics at the National Pedagogic Institute at Kinshasa (Democratic Republic of the Congo), which he declined. At the end of August M. Glatz-Cavin was recalled to headquarters where he had several interviews, in particular with M. Bolla, Director of the Bureau of Personnel. The latter interview was confirmed by a letter of 5 September 1966 informing complainant that in accordance with Article 9.1 of the Staff Regulations the Director-General, after consulting the Special Advisory Board, had decided to terminate his appointment as from 15 September 1966 on ground that the necessities of the service required the abolition of his post, and that the appropriate salary and allowances would be paid to him in lieu of notice. These decisions were confirmed by a letter of 27 September in reply to a letter from complainant. Complainant then appealed on 27 October to the UNESCO Appeals Board. On 15 November the United Nations Resident Representative in Morocco, replying to a cable from M. Bolla, stated that he had not received the originals of letters Nos. 1009 and 1010 although he had received copies of them. On 15 December the Secretary of the Appeals Board communicated to complainant M. Jolivet's letter of 6 February 1966 concerning complainant's technical report.

E. The Appeals Board met at the end of May 1967 and recommended that the appeal should be rejected, but expressed the view in a separate document that it would be desirable for the Administration to consider the possibility of offering complainant another post. The Director-General informed M. Glatz-Cavin on 8 June 1967 that he accepted the Appeals Board's recommendation, but specified on 10 July 1967 that his acceptance did not cover the separate document relating to the offer of another post.

F. In his complaint against the Director-General's decision of 8 June 1967 M. Glatz-Cavin challenges the authenticity of the copies of letters Nos. 1009 and 1010. He contends that they were fabricated by M. Jolivet and did not originate with the Moroccan Government. He alleges that M. Jolivet adopted this means of trying to get rid of him because of the criticism contained in his report of 3 February 1966. He considers that the fact that M. Jolivet's views on his criticism were not communicated to him until eight-and-a-half months later; that disciplinary measures against him were requested without his being so informed, and consequently without his having had an opportunity to defend himself, constitute unfair treatment for which he claims compensation. The pretext put forward by UNESCO that his post was to be filled by an Arabic-speaking teacher was not the true reason for his termination, which is to be sought in an intrigue organised against him. He therefore prays the Tribunal to quash the Director-General's decision on the ground of misuse of authority.

G. The Organization submits that complainant's claims should be dismissed.

CONCLUSIONS:

As to the scope of the submissions:

1. At the beginning of his memorandum complainant prays the Tribunal to declare itself competent to consider the various aspects of the case, to award him compensation for the moral and material injury which he and his family are alleged to have suffered, and to censure the acts of oppression to which he claims to have been subjected. At the end of his complaint he further requests the Tribunal to clarify certain facts which are still in doubt, and if necessary to appoint an impartial committee for this purpose, and, if the Tribunal finds that there has been an intrigue, to rule on the integrity of those officials who took part in it. These submissions are of a general nature and have no separate significance. They will be examined in connection with complainant's more specific contentions, in considering the two forms of relief prayed for in his complaint.

As to the competence of the Tribunal:

2. In accordance with Staff Regulation 9.1, "The Director-General may terminate the appointment of a staff member in accordance with its terms, or at any time, if either the necessities of the service require abolition of the post or reduction of the staff, or if the services of the individual concerned cease to be satisfactory, or if he is for

reasons of health incapacitated for further service." The Director-General relied on the above provision in terminating complainant's appointment as from 15 September 1966. In support of this decision he contends that the necessities of the service required the abolition of the post held by complainant as teacher of mathematics at the Teachers' Training College at Rabat. The relevance of the reason given is a matter which falls within the discretion of the Director-General, and in principle the Tribunal is not competent to rule on the expediency of action taken by the Organization in the light of the necessities of the service to fulfil its aims. It follows that the Tribunal may not substitute its own judgment for that of the Director-General in respect of the desirability of continuing complainant's employment, having regard to the necessities of the service. The Tribunal will confine itself to considering whether, as complainant contends, the Director-General's decision is tainted by procedural irregularities or by illegality, or whether he failed to take account of essential facts, or drew conclusions which are clearly false from the documents in the dossier.

As to the alleged procedural irregularities:

3. Complainant complains that the appeal which he addressed to the Appeals Board on 27 October 1966 was considered by the Board only on 22 May 1967. He complains further that the President of the Appeals Board had a private interview with the witness Jolivet at the end of a sitting, and that the Director of the Personnel Office forbade witness Mahmalgi, after his testimony, to re-enter the premises of the Organization without permission.

The first complaint is clearly ill-founded, since the Appeals Board was not able to meet until its former President, who died on 18 November 1966, had been replaced by the present President, appointed by the Organization's Executive Council on 15 March 1967. As to the other objections, they must also be dismissed; there is no evidence that the behaviour of the President of the Appeals Board or that of the Director of the Personnel Office was blameworthy, and it has in any case not been established that the disposal of the appeal was affected thereby.

As to the alleged illegality:

4. On 5 September 1966, instead of giving complainant the three months' notice stipulated under Article 109.6(a) of the Staff Rules, the Director-General, relying on subparagraph (d) of the same Rule, directed that salary and allowances for the same period should be paid in lieu of notice. Complainant has no ground for challenging this decision, which is in conformity with the relevant rules. Neither has he any ground for complaining of the letter of 17 June 1966 in which the Director-General asked him to remain in Rabat until the end of the academic year and to leave Morocco at the date fixed by the Director of the Teachers' Training College after consulting the Senior Adviser. Complainant himself admits that he did not comply with these instructions, which clearly did not cause him any prejudice. Similarly, it has not been established that the action taken to repatriate him and to settle the payments to which he was entitled was in any way prejudicial to his interests.

As to the claim for unlawful termination and for damages:

5. Complainant attributes the abolition of his post to an intrigue. He claims to have been slandered to the Moroccan authorities by the Senior Adviser and considers that the request made to the Organization for his replacement by an Arabic-speaking teacher was a mere pretext. He alleges that neither the Director-General nor the Appeals Board investigated the facts which would have proved that he had been the victim of a plot. He therefore asks that the Tribunal should fill in the gaps in the procedure.

According to the terms of the copy of letter No. 1009 of 11 February 1966, the Moroccan Minister of National Education requested complainant's transfer because of his behaviour, specifically at the time of the students' strike. The copy of letter No. 1010, which bears the same date, contains a proposal to appoint a Syrian teacher to complainant's post. Although these documents are stamped with the Minister's name, they bear no signature. As the originals have not been produced, it is not established that they were ever actually signed. In these circumstances the Tribunal considers that the Organization cannot rely on the copies of letters Nos. 1009 and 1010. On the other hand, two subsequent letters whose authenticity is not in doubt, even though one of them refers to the above-mentioned copies, clearly express the wishes of the Moroccan authorities. On 24 March 1965 the Deputy Prime Minister of Morocco wrote to the United Nations Resident Representative as follows: "The mission of M. Fadl Mahmalgi, like that of M. Roger Glatz-Cavin, being no longer essential, the Government of Morocco would like their mission to be terminated". In addition, on 4 April 1966 the Under-Secretary of State in the Moroccan Ministry of National Education expressly asked the Organization to replace complainant by an Arabic-speaking teacher. Faced with these letters the Organization could not ignore the intentions so clearly set out in them.

The fact remains, however, that the Organization did not take into account the essential fact, of which the Director-General was no doubt unaware when he took the decision impugned, but which has come to light during the examination of the case. While it is true that the Moroccan authorities were trying to secure the replacement of the French-speaking teachers by Arabic-speaking teachers, it has not been established that their policy of introducing teaching in Arabic was a sufficient ground for their request for complainant's withdrawal before the expiry of his appointment. On the contrary, it appears from the evidence produced that complainant's services were highly appreciated not only by the Moroccan Government and the Organization, which had asked the Swiss authorities to extend his leave of absence so that his mission in Morocco could continue, but also by the Resident Representative, who had praised complainant's conduct during the students' strike, by the Dean of the Faculty of Science, who had proposed to complainant that he should continue teaching there, and by the Rector of the University, who testified in complainant's favour before the Appeals Board. The fact that differences appear to have arisen at a certain stage between complainant and the Director of the Teachers' Training College, M. Bekkari, does not alter the impression which emerges from all the other evidence in the case; its significance is further diminished inasmuch as in March 1966 the Moroccan Government transferred the Director to another post. It follows that the requests made by the Moroccan authorities to the Organization can be explained only by some other circumstance.

This circumstance can only be the intervention of the Senior Technical Adviser of the Teachers' Training College. While it was the duty of this officer to maintain regular relations with the Moroccan authorities and to discuss the progress of the College with them, including the qualifications of the teaching staff, it appears from the dossier and from the oral proceedings that the views he expressed concerning complainant in the presence of Moroccan officials were, to say the least, lacking in impartiality. In particular, by recognising that he helped to draft the text of copies Nos. 1009 and 1010, which contain criticisms of complainant in contradiction with the opinions of him noted above, and that he had asked for sanctions to be taken against complainant on no other ground but that of a difference of opinion on problems connected with the College, the Senior Technical Adviser implicitly admits that he induced the Moroccan authorities, without good reason, to take certain steps which led to complainant's dismissal before the normal termination of his contract. Although no blame can be attached to the Organization for having been unaware of these circumstances, they nevertheless represent an essential fact which it did not take into account.

6. Whatever influence the Senior Adviser may have had on the decision of the Moroccan authorities, the Organization rightly based its action on their wishes as expressed in the letters of 24 March and 4 April 1966 in terminating complainant's appointment before the normal date of its expiry. The Teachers' Training College at Rabat was set up by the Government of Morocco with the assistance of the United Nations Special Fund for the purpose of training secondary school staff. The success of the scheme depends on close collaboration between the national authorities and the international officials concerned. In the matter of deciding the language in which a subject should be taught the Organization has no reason to differ from the views expressed by the authorities of Morocco, since the country's secondary school teaching staff will be composed of the students trained by the College. In the light of the letters of 24 March and 4 April 1966, therefore, the Director-General cannot be said to have drawn wrong conclusions from the documents in the dossier in abolishing complainant's post in order to replace him by an Arabic-speaking teacher.

7. However, while that decision is justified in itself and must be confirmed, the Organization has an obligation to complainant because of the fact which was not taken into account, namely the intervention with the Moroccan authorities by the Senior Technical Adviser, without good reason, in the exercise of his official duties. As a result, complainant has suffered both material and moral injury. On the one hand, he was greatly distressed by a measure which he was justified in regarding as arising out of an intrigue. On the other hand, he was deprived as from 15 December 1966 of the salary and allowances which he would have received up to 2 November 1967 if his contract had not been terminated before the normal date of its expiry; although he was not obliged to wait until autumn 1967 before resuming teaching work in Switzerland, he is entitled at least to partial compensation for the loss of earnings he claims. Taking account of all the circumstances, and in particular of the fact that the Organization was in ignorance through no fault of its own, the Organization should pay complainant compensation in the amount of 10,000 Swiss francs.

As to the remainder of the claims:

8. As regards complainant's request for an opportunity to give a lecture before the students of the Faculty of Science of Rabat (first alternative under B) and for further employment by the Organization in a developing country (first alternative under C), these claims are not related to any provision in the Staff Regulations and Rules.

The Tribunal is therefore not competent to consider them.

DECISION:

For the above reasons,

1. The Organization shall pay complainant a sum of ten thousand Swiss francs.
2. The remainder of the complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 15 October 1968 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy