

SEVENTH ORDINARY SESSION

***In re* CAMPANELLA**

Judgment No. 34

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organisation drawn up by Mr. Antonio Campanella on 23 August 1957, received and registered in the Registry on 23 August 1957 under No. 57.27;

Considering the reply drawn up by the respondent organisation;

Considering the further statement by complainant dated 24 April 1958 and the observations of the organisation with regard to this further statement;

Considering the Statute of the Tribunal, the Staff Regulations and Staff Rules of the organisation, particularly Staff Rules 111.1 and 111.2, paragraphs 7 and 8 of the Statutes of the Appeals Board which constitute Annex E to those Rules and the provisions of Annex J to the same Rules, dated 29 July 1955, which constitutes a body of special rules applicable to experts engaged by the Director-General under the Programme of Aid to Member States subsequently known as the Programme of Participation in the Activities of Member States;

Having heard Mr. Samson, representative of complainant, and Mr. Saba, agent of the organisation, in public sitting on 11 September 1958;

Considering that the facts of the case are the following:

1. Complainant was engaged by the organisation as an expert in social sciences to be made available to the Government of Guatemala under the Programme of Participation in the Activities of Member States, for a period of 18 months as from 15 February 1956.
2. In a telegram dated 24 August 1956 the Minister of Foreign Affairs of Guatemala requested the organisation to terminate complainant's mission.
3. In a telegram dated 29 August 1956 the Deputy Director of the Department of Social Sciences informed complainant that his mission to Guatemala would terminate on 31 August, and instructed him as to the necessary arrangements for his return to the headquarters of the organisation.
4. On his return complainant was informed by letter dated 4 September 1956 and signed by the Director of the Department of Social Sciences that his engagement was terminated as from 9 October 1956, that under the Staff Regulations and Rules he was entitled to an indemnity equivalent to five days' salary for each month of service still to run, i.e. 50 days, and that the Bureau of Personnel would write to him further on the subject.
5. On 13 September 1956 the Bureau of Personnel began to carry out the formalities connected with complainant's separation from service. Final settlement of the indemnities and other sums due to complainant was made on 5 February 1957, complainant having failed to supply the information requested of him until 28 January 1957.
6. By letter dated 27 September 1956 complainant asked the Director of the Department of Social Sciences to reconsider his status and to forward to him an official appreciation of his work. By letter dated 3 November complainant renewed his request for a letter of reference concerning his work.
7. On 20 November 1956 the Acting Director of the Technical Assistance Department sent to complainant a certificate of service which stated that complainant had been appointed by the organisation to the post of expert in Guatemala for the development of a social science institute at the University of Guatemala and to lecture on

sociology; that complainant had prepared a plan for the creation of such an institute and had given lectures at the University of San Carlos; and that his appointment had terminated on 9 October 1956.

8. On 24 November 1956 complainant sent the Director-General a letter asking him to intercede in the termination of his appointment and stating that complainant was not satisfied with the certificate of service issued to him.

9. On 22 January 1957 the Director-General replied to complainant that any appraisal of his work would have to take account of the opinions of the University and Government officials who had come to regard his services as unsatisfactory and to request the discontinuance of his mission; that in these circumstances the Director-General did not believe that complainant would wish these facts to be placed on record; that when it had been decided that it was necessary to withdraw him from his mission every effort had been made to discover a suitable alternative post for him; that when this had proved impossible his appointment had been terminated in accordance with its terms; and that he had received the maximum compensation provided under the rules by which it was governed.

10. On 26 March 1957 complainant filed an appeal with the Appeals Board against the decision notified to him by letter dated 4 September 1956 to terminate his engagement as from 9 October 1956, and asked the Board to recommend that his appointment should be maintained until its expiry and that in any case he should be given an impartial evaluation of the quality of his services.

11. On 28 May 1957 the Appeals Board, noting that complainant's request for a hearing had not been made within the time limit laid down by paragraph 8 of the Statutes of the Appeals Board, declared that the request was not receivable and concluded that it should be rejected.

12. On 13 June 1957 the Director-General informed complainant that his request had been declared not receivable and that the report of the Appeals Board in his case did not call for any decision on the Director-General's part.

13. On 23 August 1957 complainant submitted a complaint requesting the Tribunal to annul the implicit decision of 13 June 1957 by which the Director-General confirmed his decision of 22 January 1957, and, in so far as necessary, to annul the decision of 22 January 1957; and to order the Administration to issue to complainant a certificate containing an appreciation of the quality of his services.

Considering that complainant has submitted to the Tribunal that the decision to terminate his appointment, as notified to him in the letter dated 4 September 1956 from the Director of the Department of Social Sciences, was null and void in that it issued from a person not having the authority to take such a decision and that therefore complainant was justified in relying on this nullity at all stages of the procedure, notwithstanding that the time limits for submitting an appeal had expired and despite the fact that he only challenged the validity of the decision after the introduction of proceedings based on different grounds;

Considering that complainant submits to the Tribunal that if the decision of 4 September 1956 were found to be null and void the whole of the procedure which followed this decision should equally be considered as void, and that complainant should be repossessed of the rights which he would have enjoyed under an appointment which had not properly terminated before its expiration date;

Considering however that it is proven that complainant's mission was terminated under a decision of the Director-General himself; that the letter of 4 September 1956, which was signed by the official who for administrative purposes normally corresponded with complainant, had as its sole object to inform complainant in writing, in accordance with Rule 209.3 of Annex J to the Staff Rules, of the decision of the Director-General to terminate his appointment following the actual abolition of his mission; that this decision was properly taken under the provisions of Staff Regulation 9.1 and implemented in accordance with the instructions of the Director-General by the Director of the Department of Social Sciences in agreement with the Chief of the Bureau of Personnel;

Considering therefore that this submission is not well founded and that the terminus a quo for the calculation of time limits for an appeal against the decision to terminate complainant's appointment ran from 4 September 1956;

Considering that thereafter complainant must be considered as having failed to introduce any internal means of recourse before the Director-General and the Appeals Board within the time limits provided under paragraphs 7 and 8 of the Statutes of the Appeals Board, and that the tardy submission of an appeal did not therefore open new time limits;

Considering moreover that complainant did not submit his complaint to the Tribunal within the period of 90 days from the date of the decision complained against;

Considering therefore that the complaint is not receivable;

Considering that under the provisions of Staff Rule 109.11 any staff member who so requests shall be given by the Bureau of Personnel a certificate specifying the nature of his duties and the length of his services as well as, on the written request of the staff member concerned, an appraisal of his work and behaviour; that complainant contests the contents of the certificate drawn up at his request;

Considering that even if complainant's submission under this head were receivable in form the Tribunal has no authority to supervise or to state the terms of a certificate containing any evaluation whatsoever of the services of the person concerned, this being a prerogative of the Director-General, while in any event the certificate in question contains the precise information referred to in Staff Rule 109.11;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares the complaint to be not receivable.

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