

NINTH ORDINARY SESSION

***In re* VAN DER PLOEG**

Judgment No. 54

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organisation drawn up by Mr. Johannes Van der Ploeg on 22 April 1961 and the Organisation's reply of 15 June 1961;

Considering the special application for the hearing of witnesses filed by complainant, the Organisation's reply to the said application and the order authorising Mr. Ennals to appear as a witness;

Considering Article II of the Statute of the Tribunal, Regulations 4.4 and 8.1 of the Staff Regulations of UNESCO, and Staff Rules 104.1 and 111.1, as well as paragraphs 7 and 8 of the Statutes of the Appeals Board of the Organisation;

Having heard Mr. Georges Perrenoud, Agent for the Organisation, in public sitting on 27 September 1961, complainant having failed to appear or to be represented, though duly summoned, and the witness, Mr. Ennals, having also failed to appear before the Tribunal.

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

A. Complainant entered the service of the Organisation on 8 October 1956; on 31 December 1956 he received an appointment for two years; between 1 January 1960 and 15 July 1960 he received five temporary appointments; and on the latter date, he ceased to be a member of the staff, as his contract was not renewed. On 5 July complainant applied for appointment to a vacant post with the designation "M C Coupon T.09" in the Department of Mass Communication where he had been employed since 12 March. On 21 July the Director-General, on the recommendation of the Junior Personnel Advisory Board, appointed another candidate to the post.

B. On 29 August complainant requested the Director-General to reconsider his decision rejecting his application. On 9 September 1960 the Director-General confirmed his earlier decision. On 23 September 1960 complainant lodged an appeal to the Appeals Board, and requested that he be assigned to post "M C Coupon T.09" for which he had applied or, failing that, to any other post. The Appeals Board dealt with the alternative submissions as being directed against the decision not to grant complainant a new contract and rejected them as irreceivable; and it rejected as unfounded such of the submissions as were directed against the decision not to appoint complainant to post "M C Coupon T.09". On 24 January 1961 the Director-General accepted the recommendation of the Appeals Board. On 24 April 1961 complainant prayed the Tribunal to quash the aforementioned decisions of 9 September 1960 and 24 January 1961, and prayed for an order to assign him to post "M C Coupon T.09" or any other equivalent post or, alternatively, for damages for wrongful dismissal in the amount of nine months' salary.

IN LAW

On the Submissions Relating to Refusal to Renew Complainant's Contract, Which Expired on 15 July 1960:

1. Where, as in the present case, no specific decision is taken, either at the request of the person concerned or by the administration acting on its own initiative, specifying that the temporary employment contract of a UNESCO official is not to be renewed, the period within which the official may appeal against the refusal to renew his contract is reckoned from the day on which the contract expires.

2. The evidence contained in the dossier shows that complainant's contract expired on 15 July 1960. However, complainant for the first time challenged the legality of the non-renewal of his contract in his application to the Appeals Board dated 7 October 1960. Thus, his submissions were not lodged within the time limits specified in paragraphs 7 and 8 of the Statutes of the Appeals Board, to which Staff Rule 111.1 refers. They were, therefore,

not receivable, and were rightly rejected on this ground by the Director-General in his decision of 24 January 1961, endorsing the recommendation of the Appeals Board.

On the Submissions Concerning Refusal to Appoint Complainant to Post "M C Coupon T.09":

On the Receivability of the Aforesaid Submissions:

3. The Organisation has not furnished evidence that the decision to appoint another candidate to the post in question was, as it claims, communicated to complainant on 22 July. The period for appealing against it must, therefore, be reckoned from a date not earlier than 11 August, on which day the complainant accepts that he was notified of the said decision. Complainant challenged this decision in his appeal of 29 August 1960 to the Director-General. He therefore did so in time, and his submissions must be deemed receivable in this respect.

4. Moreover, since complainant had applied for post "M C Coupon T.09" while still an official of UNESCO he is entitled to challenge the decision appointing another candidate to the post. It follows, therefore, that the above-mentioned submissions are receivable.

On the Legality of the Decision Impugned:

5. While the Tribunal is competent to review any decision of the Director-General not to offer an appointment to an official taking part in a competition, in so far as such decision may be tainted by an error in law or is based upon materially incorrect facts, or if essential material elements have been left out of account or, again, if obviously wrong conclusions have been drawn from the evidence on file, the Tribunal will substitute its own opinion for that of the Director-General.

6. Complainant contends that the decision impugned was motivated solely by his activities as Vice-Chairman of the Executive Committee of the Staff Association. An official of UNESCO elected as a member of the Executive Committee of the Staff Association provided for by Regulation 8.1 of the Staff Regulations should, in that capacity, enjoy freedom of action and of expression, on the sole condition that he respect the obligations incumbent upon him as an official of the Organisation and those incumbent upon international officials generally, and that he observe secrecy in respect of deliberations of joint bodies in which he takes part, or confidential information communicated to him by virtue of his trade union position. He should, moreover, be allowed reasonable time for discharging his functions as an officer of the Association, albeit without jeopardising the smooth working of the Organisation. Therefore, any decision affecting an official which does not take these rights into account - and, in particular, any measure motivated solely by his position as an officer of the Association or by any activities carried out by him in that capacity while respecting the obligations enumerated above - would be tainted by an error in law. However, in the present case, complainant has not shown that the decision complained of was taken by the Director-General for improper reasons.

7. The decision in question was taken in accordance with a recommendation made by the Junior Personnel Advisory Board, and the full explanations submitted by the Organisation are pertinent. Moreover, neither the changes in the reports on the complainant's performance, which the latter has invoked, nor the rather vague written statement of Mr. Ennals who left the Organisation eight months after the occurrences which gave rise to the present complaint afford grounds for considering complainant's allegations as true or even plausible. The foregoing submissions must, therefore, be rejected as unfounded.

On the Submissions Relating to the Grant of Compensation:

8. These submissions must be rejected as a consequence of the rejection of the aforementioned submissions.

On the Submissions Concerning the Assignment of Complainant to Post "M C Coupon T.09" or Any Other Equivalent Post:

9. The Administrative Tribunal has no competence with respect to these submissions.

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 6 October 1961 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine

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