

TWENTY-THIRD ORDINARY SESSION

***In re* SCHUSTER**

Judgment No. 147

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organization (WMO) drawn up by Mr. Franz Schuster on 1 July 1968 and brought into conformity with the rules of court on 1 August 1968, the reply of the Organization dated 25 October 1968, complainant's rejoinder dated 19 October 1969, and the Organization's reply thereto dated 13 January 1970;

Considering Article II, paragraph 5 of the Statute of the Tribunal and Article 111.3 of the Staff Rules applicable to WMO staff;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed by the Tribunal;

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

A. Mr. Schuster was appointed as hydrologist by the WMO on 18 March 1967 to a post in East Africa financed by the United Nations Special Fund under the project for the "Hydrometeorological Survey of the Catchments of Lakes Victoria, Kioga and Albert". His contract would normally have expired on 17 September 1968. His letter of appointment dated 19 September 1967 specified that his duty station would be Entebbe (Uganda), which was the headquarters of the project, with travel to other parts of the region covered by the project. The Organization claims that this was a mistake, as proved by the fact that in a letter of 14 September 1967 the Secretary-General of the WMO informed Mr. Schuster that he would be posted to Bukoba (Tanzania), some 200 kilometres south of Entebbe. On arriving at Entebbe complainant refused to go to Bukoba. The Organization referred him to the letter of 14 September 1967 and to the interviews he had had at WMO headquarters before his departure for Africa, in the course of which he had been clearly told that he would be posted to Bukoba. The Organization sent him an amended letter of appointment, dated 19 October 1967 and stating that his duty station would be Bukoba.

B. Complainant ultimately agreed to sign the amended letter and left for Bukoba. However, his relations with the project manager, with some of his colleagues and with members of the counterpart staff rapidly became strained, to such an extent that on 13 February 1968 the Secretary-General addressed a letter to him complaining of his failure to co-operate, which was detrimental to the success of the project, and asking him to explain his attitude. The letter further informed him that his contract would be terminated if his conduct did not improve. Complainant replied by contesting the validity of all the accusations made against him. On 26 March 1968 the Chairman of the Intergovernmental Technical Projects Committee wrote to the Secretary-General on behalf of the Committee expressly requesting the immediate withdrawal of Mr. Schuster on the grounds that he was hindering the progress of the project. The Secretary-General accordingly informed complainant that his appointment had been terminated in accordance with Article 9.1 © (termination in the interest of the Organization) of the Staff Regulations and of Staff Rule 209.2(c), by a telegram dated 9 April 1968.

C. Mr. Schuster then asked the Organization for information concerning the procedure available to him to resist the decision of 9 April 1968. He was informed that the relevant provision was Article 111.3 of the Staff Rules of the United Nations and was sent a copy of that provision (in accordance with Administrative Service Note No. 571 of 28 March 1966, this provision of the Staff Rules of the United Nations was at that time applicable *mutatis mutandis* to technical assistance project personnel). This provision lays down that, where an appeal is lodged against an administrative decision, the staff member concerned must first ask the Secretary-General to review his decision, and if the decision is confirmed he must then lodge an appeal with the secretary of the Organization's Joint Appeals Board within two weeks of the date on which he received the Secretary-General's reply. On 4 June 1968 Mr. Schuster asked the Secretary-General to reconsider his decision, and on 19 June 1968 the Secretary-General informed him that he had confirmed it.

1). On 1 July 1968 Mr. Schuster filed a complaint with the Administrative Tribunal asking the Tribunal to quash the Secretary-General's decision of 9 April 1968. The Organization, in its reply, submits that the complaint is not receivable because complainant did not lodge an appeal with the WMO Joint Appeals Board, and therefore had not exhausted all the remedies available to him under the Staff Regulations of the Organization, as required by Article VII(1) of the Statute of the Tribunal.

E. Upon receipt of the Organization's reply Mr. Schuster requested the President of the Tribunal to suspend the proceedings before the Tribunal so that he might lodge his appeal with the Joint Appeals Board. This request having been granted, the case was submitted to the Joint Appeals Board on 17 February 1969. After considering complainant's arguments in justification of the procedural irregularity he had committed the Board found that under Article 111.3(d) of the Staff Rules "an appeal shall not be receivable by the Joint Appeals Board unless the above time-limit has been met, provided that the Board may waive the time-limit in exceptional circumstances", and concluded that this provision was of a mandatory character and that no exceptional circumstances existed in the case at issue. The Board accordingly recommended the Secretary-General to inform complainant that his appeal was not receivable because the time-limit had not been observed. The Secretary-General accepted this recommendation and so informed Mr. Schuster on 26 June 1969.

F. On 29 June 1969 complainant reopened the proceedings before the Tribunal, maintaining his original complaint and in addition resisting the decision of 26 June 1969.

CONSIDERATIONS:

As to the claim against the decision of 19 June 1968 terminating complainant's appointment and against the decision of 19 June 1968 rejecting his protest against the aforesaid decision:

Article VII, paragraph 1, of the Statute of the Tribunal provides that "a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations".

Under Article 111.3(b) of the Staff Rules applicable to the staff of the World Meteorological Organization: an appeal against an administrative decision which has become final shall be submitted in writing to the Secretary of the Joint Appeals Board within two weeks from the date of receipt of the written notification of the decision.

It follows from these two provisions taken together that a staff member of WMO can file a complaint with the Administrative Tribunal only if he has previously submitted his case to the Joint Appeals Board and only against a decision of the Secretary-General of the Organization taken after the Board has made its recommendation.

In the case at issue Mr. Schuster, by a complaint filed on 1 July 1968, referred to the Administrative Tribunal the two decisions of the Secretary-General of WMO dated 9 April and 19 June 1968 without previously having submitted his case to the Joint Appeals Board as required by the provisions cited above.

It follows that the submissions in his complaint in respect of the aforesaid decisions are not receivable.

As to the claim resisting the decision of 26 June 1969:

In the course of the proceedings concerning his complaint Mr. Schuster submitted to the Secretary-General on 12 January 1969 a request that his case be referred to the Joint Appeals Board. On 31 May 1969 the Joint Appeals Board recommended that the appeal should be rejected as time-barred, and on 26 June 1969 the Secretary-General decided to follow this recommendation.

In these circumstances, and having regard to the arguments put forward in complainant's rejoinder, the complaint may be regarded as also resisting the decision of 26 June 1969.

According to Staff Rule 111.3(b), an appeal must be submitted to the Joint Appeals Board within two weeks following notification of the decision resisted. The decision of 19 June 1968, confirming the decision of the preceding 9 April after complainant's protest to the Secretary-General, was notified to Mr. Schuster on 1 July 1968 at the latest, and complainant submitted his appeal to the Joint Appeals Board only on 12 January 1969, i.e. after the expiry of the time-limit specified by Staff Rule 111.3(b).

Although the same rule provides that in exceptional cases the Joint Appeals Board may waive the time-limit, the fact - even if this fact were to be established - that Mr. Schuster, as a result of a mistake committed in good faith, addressed himself directly to the Administrative Tribunal, was not regarded by the Joint Appeals Board as an exceptional circumstance covered by the above-mentioned provision.

Furthermore, Mr. Schuster's allegation that he had been misinformed by the Secretary-General in regard to the procedure for resisting the contested decisions appears from the evidence in the file to be unfounded, and cannot therefore be accepted.

It follows from what has been said above that in following the recommendations of the Joint Appeals Board the Secretary-General lawfully rejected Mr. Schuster's complaint of 12 January 1969 against the decision of 19 June 1968.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 26 May 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy