

EIGHTIETH SESSION

In re LOUIS (No. 5)

Judgment 1476

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Frantz Marceau Louis against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 20 February 1995 and corrected on 2 May, UNESCO's reply of 27 June, the complainant's rejoinder of 18 August and the Organization's surrejoinder of 17 October 1995;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant's career and some facts to do with this dispute are recounted in Judgment 1131 of 3 July 1991 under A. In that judgment the Tribunal quashed on the grounds of procedural flaws UNESCO's decision not to renew the complainant's appointment and awarded him one year's full pay in material damages. He made an application for interpretation of "full pay", and in Judgment 1173 of 15 July 1992 the Tribunal ordered the Organization to pay him interest on some of the amounts awarded in Judgment 1131. In a third complaint he sought, among other things, payment of certain amounts in redress for separation from the Organization. The Tribunal dismissed that complaint in Judgment 1263 of 14 July 1993. Judgment 1353 of 13 July 1994 dismissed his application for review of Judgment 1263.

By a letter of 25 October 1994 the complainant sent a protest to the Director-General seeking explanations of: (1) the failure to give effect to his decision of 16 August 1988, whereby the conditions and criteria applying to the bonuses and indemnities to be paid following the separations then being examined were to be the ones set out in the Staff Regulations and Rules and in administrative circular 1474(II) of 22 November 1985; (2) the failure to publish and to observe in 1988 the stipulations of that circular; (3) the failure since 1988 to pay the three months' salary in lieu of notice due under the Staff Regulations; and (4) the failure to pay the complainant's outstanding entitlements in the amount of 379.70 United States dollars for medical and telephone bills.

By a letter of 21 November 1994 the Director of the Bureau of Personnel replied that the matter of non-renewal was "closed", having been ruled on by the Tribunal in four judgments. And since he had secured for himself an advance of \$200 it would pay him the balance of \$179.70. That is the decision he is impugning.

B. The complainant asserts that his complaint is receivable because the decision of 16 August 1988 was never notified to him. Furthermore, it is about matters that arose before he left UNESCO.

The rejection of his protest of 25 October 1994 was in breach of the terms of his appointment, of circular 1474(II) and of circular 1483(II) of 13 January 1986. The Director-General promised to put staff terminated in 1988 on a par with those who had gone in 1986, and the failure to keep the promise was in breach of equal treatment.

The decision of 16 August 1988 expressly acknowledged his right to coverage by circular 1474(II); it was an abuse of authority not to tell him what the circular said; and it was a breach of his acquired rights not to grant him the benefits it conferred on him.

He asks the Tribunal (1) to quash the decision of 21 November 1994 by the Director of the Bureau of Personnel; (2) to order UNESCO to produce a memorandum stating its policy from 1986 to 1988 on termination under Regulation 9.1.2 and Rule 109.7 and explaining how it applied circulars 1474(II) and 1483(II); (3) to consider some of his "acquired rights" under the circulars and in particular restore his entitlements: (a) to payment of a deferred pension from the United Nations Joint Staff Pension Fund or, failing that, payment by UNESCO of the

wherewithal to buy a life annuity worth what the pension would have been, or else of the equivalent of three years' full remuneration, plus interest; (b) to payment of an amount equivalent to three months' remuneration in lieu of notice; (c) to the complainant's and his family's participation in the Medical Benefits Fund of UNESCO; (d) to continued membership of the UNESCO Savings and Loan Service and maintenance of his account with that Service; (e) to an increase in the capital value of his life insurance or, failing that, to payment of two years' remuneration in damages for the loss of his right to such increase, plus interest; and (4) to order UNESCO to pay him \$75,000 in damages for its "arbitrary, capricious, discriminatory and biased" attitude and failure to inform him in time of his entitlements under circulars 1474(II) and 1483(II). He seeks \$5,000 in costs.

C. In its reply UNESCO submits that the complaint as a whole is irreceivable because the complainant failed to appeal against the decision of 21 November 1994 by the Director of the Bureau of Personnel and so to exhaust the internal means of redress. Taking up his main claims in turn, the Organization says that his claims to participation in the Medical Benefits Fund, to an increase in life insurance and to payment of \$379.70 are also irreceivable for failure to exhaust internal remedies. And all his other claims are irreceivable under the res judicata rule in that what he is indirectly seeking is review of Judgments 1131, 1263 and 1353.

UNESCO observes on the merits that the text relevant to the reduction of staff in 1988 was circular 1583 of 23 February 1988; so circular 1474(II), which the complainant cites, is immaterial. It gave him four months' notice, and that was reasonable. As for his claim to \$379.70, it cites its letter of 21 November 1994, which told him that the balance due was \$179.70 because he had taken an advance of \$200.

D. In his rejoinder the complainant presses his pleas and claims. Citing the case law, he argues that for res judicata to apply the parties, the claims and the cause of action must remain the same, whereas here only the first condition is met. He denies getting four months' notice.

E. UNESCO reaffirms in its surrejoinder that his main claims are irreceivable either under the res judicata rule or for failure to exhaust the internal means of redress. It maintains that the complaint is devoid of merit.

CONSIDERATIONS:

1. This is the fifth complaint by Mr. Louis against UNESCO. Ruling on his first in Judgment 1131 of 3 July 1991, the Tribunal allowed his claim to damages for wrongful dismissal. Having made an application for interpretation, he was awarded in Judgment 1173 of 15 July 1992 the payment of interest on some of the monies that UNESCO had wrongfully withheld. In Judgment 1263 of 14 July 1993 the Tribunal dismissed his third complaint, in which he claimed pay in lieu of the notice he believed he had been entitled to; the quashing of his dismissal; the disclosure of a memorandum about UNESCO's policy on termination; and damages under various heads. Lastly, the Tribunal dismissed in Judgment 1353 of 13 July 1994 an application he had made for the review of Judgment 1263.

2. On 25 October 1994 he put a new appeal to the Director-General objecting to mistakes and to unlawful acts he imputed to the Organization. In his reply of 21 November 1994 the Director of the Bureau of Personnel merely said that "the matter of non-renewal is closed, having been disposed of in four complaints to the Tribunal" and that a sum of \$179.70 "still at issue" would be paid to him forthwith. Being dissatisfied with that decision, which he finds cavalier and unacceptable, he has lodged this complaint asking the Tribunal to quash it and grant him many forms of relief that may be summed up as follows. He seeks the disclosure of a memorandum about dismissals at UNESCO. On the strength of various provisions he cites he claims the continuance of his employment, the grant of a pension, and the employment benefits he had enjoyed. He believes UNESCO's unlawful treatment of him warrants the award of damages on several counts, including payment of three months' remuneration in lieu of notice.

3. Most of his claims fail under the res judicata rule: his claim to disclosure of a UNESCO memorandum, which the Tribunal expressly disallowed in Judgment 1263; his claims to a pension, which are the same as claims that were dismissed in Judgments 1131 and 1263; his claim to three months' pay in lieu of notice, which in Judgment 1263 the Tribunal held to be irreceivable on account of his failure to exhaust his internal remedies and which is still irreceivable; and his claim, which has already been disallowed by Judgment 1263 as well, to an award of damages for what he sees as UNESCO's unlawful failure to alert him to his possible entitlements.

4. Other claims of his are admittedly new and res judicata is no obstacle: his claims to reinstatement in the Medical

Benefits Fund, to membership of the UNESCO Savings and Loan Service and to the award of compensation for loss of an increase in his coverage under optional life insurance. But he has failed to put those claims to the internal Appeals Board and so, as the Organization asks, the Tribunal will reject them because of his failure to exhaust the internal means of redress.

5. Lastly, though he alleges that UNESCO owes him \$379.70, he acknowledges that he got the \$179.70 it promised in its letter of 21 November 1994. And though he says it still owes him \$200, he offers no evidence to cast doubt on its contention that he got that amount in the form of an advance. He merely says in his rejoinder that he will let UNESCO have evidence of its debt: the burden is on him to prove the debt, and he has not discharged it.

6. In sum the Tribunal will not entertain his many claims to the quashing of decisions, to the issuance of orders and to the award of damages because in making them he seeks directly or indirectly to question the non-renewal of his appointment. The Tribunal gave its final ruling on that issue in Judgment 1131. So his complaint must fail.

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. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

(Signed)

William Douglas
Michel Gentot
Julio Barberis
A.B. Gardner