

EIGHTY-THIRD SESSION

In re Limage

Judgment 1639

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Leslie Limage against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 4 November 1996 and corrected on 12 November, UNESCO's reply of 18 December 1996, the complainant's rejoinder of 29 January 1997 and the Organization's surrejoinder of 7 March 1997;

Considering Article II, paragraph 5, 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, a citizen of the United States and Belgium who was born in 1946, joined the staff of UNESCO on 18 June 1983 as a programme specialist at grade P.3. At the material time she was working in the Division for the Renovation of Educational Curricula and Structures (ED/ECS) at grade P.4 and held a fixed-term appointment until 31 May 1996.

She took part in drafting a "manifesto" entitled "Towards a gender-inclusive culture through education" in cooperation with the Committee on the Elimination of Discrimination Against Women (CEDAW). On 27 April 1995 the Assistant Director-General for Education, Mr. Power, stopped the translation and processing of the document on the grounds that it contained mistakes. On 17 May 1995 the complainant learnt that work on the manifesto, which had resumed on the same day with leave from Mr. Power, had again been stopped by Mr. Rissom, a German staff member who was Mr. Power's executive assistant. She went to Mr. Rissom's office and in the ensuing quarrel accused him of having "a fascist approach to management" and gave him a Nazi salute. There were two witnesses: Mr. Power and Mr. Rissom's secretary. When the complainant got home that evening she telephoned Mr. Rissom to say that she was sorry. She said so again when she saw him the next day. On 19 May he told her in writing that he accepted her apology and would therefore not tell the Director-General or recommend disciplinary action but that, since he could not go on working with her as if nothing had happened, he had asked to be relieved of the file relating to cooperation with CEDAW. But Mr. Power told the Director-General of the incident, at first orally through the Director of the Director-General's Executive Office, and then in a memorandum of 12 June 1995.

In a memorandum of 4 July the Director of the Bureau of Personnel told the complainant that because of her behaviour towards Mr. Rissom and the fact that she had "caused problems" over cooperation with CEDAW in writing the manifesto the Director-General had decided to dismiss her summarily in accordance with Staff Regulation 10.2 as from 7 July 1995. By a memorandum of 13 July the complainant asked the Director-General to reverse his decision. On 14 September she lodged an appeal with the Appeals Board against the implied rejection of her request. On 13 November the Director of the Bureau of Personnel told her that the Director-General upheld his decision.

The Appeals Board reported on 5 July 1996. It dismissed the charge that the complainant had "caused problems" over cooperation with CEDAW. As for her behaviour towards Mr. Rissom, account should be taken of the apology she had offered him and his acceptance of it. Its conclusion was to recommend that the Director-General review the whole case and consider a lighter penalty.

By a letter of 4 October 1996 the Director-General informed the complainant that after full review he was withdrawing the charge about cooperation with CEDAW but confirming the summary dismissal on the sole grounds of her behaviour towards Mr. Rissom. That is the decision under challenge.

B. The complainant submits that UNESCO acted in gross breach of due process by not giving her any

opportunity of answering the charges against her. It did not warn her of the threat of dismissal, tell her of the charges or let her put her case before the decision went through. The letter that the Assistant Director-General for Education wrote to her on 12 June 1995 states the sole grounds for the dismissal. Yet, as the Appeals Board pointed out, it contained wrong information and was not sent to her until 21 July 1995. Her learning some of the facts *ex post facto* does not purge the breach of due process.

Her subsidiary plea is that the penalty was disproportionate because the single incident involving Mr. Rissom did not amount to serious misconduct warranting summary dismissal, the less so since she tendered a prompt apology and he accepted it.

She asks the Tribunal to quash the decision of 4 July 1995 upheld on 4 October 1996; reinstate her in an equivalent post as from the date of dismissal; award the payment of the salary, allowances and benefits she would have been entitled to from the date of dismissal and up to the date of reinstatement; order the recalculation of her pension entitlements; and award her damages and costs.

C. In its reply the Organization tells of earlier incidents which in its view show that the complainant had already had many brushes with authority. She did have her say. Precedent says that the grounds for a decision do not have to be spelled out when it is first notified to the staff member. The Appeals Board took the view that since the complainant acknowledged her guilt there was no need to let her answer.

As for the proportionality of the penalty to the offence the accusations she made against a fellow staff member before witnesses were serious. It was not the first time she had made improper allusions to Nazism. Her behaviour had a direct consequence for the functioning of the unit since Mr. Rissom had to be relieved of cooperation with CEDAW.

D. In her rejoinder the complainant submits that the earlier incidents recounted by the defendant are immaterial because they did not afford grounds for her dismissal. One of the two reasons for the dismissal proved groundless. The precedents UNESCO cites are irrelevant. It has discriminated against her.

E. In its surrejoinder the Organization maintains that, though the scene with Mr. Rissom was on its own serious enough to warrant summary dismissal, the earlier incidents are relevant because they afford further justification. They show that the Organization was not prejudiced against the complainant but forbearing and lenient, and that her allegations are implausible. Citing written evidence it supplies, it submits that Mr. Power gave the complainant an opportunity to have her say at the time of the incident and she has had many a chance to do so since. The penalty was not disproportionate because her sort of behaviour is utterly inadmissible in an international organisation.

CONSIDERATIONS

1. UNESCO appointed the complainant to its staff in 1983 at grade P.3 and promoted her to P.4 at the end of 1989. When she left she held a fixed-term appointment that was to expire at 31 May 1996 as a programme specialist in the Division for the Renovation of Educational Curricula and Structures. That Division came under Mr. Power, the Assistant Director-General for Education, whose executive assistant was Mr. Rissom, a staff member of German nationality. Her duties included the writing of a manifesto entitled "Towards a gender-inclusive culture through education", a task that was being carried out in cooperation with the Committee for the Elimination of Discrimination Against Women (CEDAW).

2. On 17 May 1995 she had an argument with Mr. Rissom at UNESCO about an office matter. On her own admission she accused him of having "a fascist approach to management" and gave him a Nazi salute. At home that evening, realising she had, as she says, "lost her temper", she telephoned him to offer an apology, and she repeated it to him the next day at the office.

3. On 4 July 1995 UNESCO dismissed her summarily and without warning. In a memorandum of that date the Director of the Bureau of Personnel told her:

"After having learned that you verbally abused and insulted Mr. Rissom, demonstrated behaviour of extreme intolerance towards him, and caused problems with the Committee on the Elimination of Discrimination Against Women concerning the 'Manifesto', the Director-General considers that you have committed serious faults and has decided to summarily dismiss you, in accordance with Staff Regulation 10.2 and Staff Rule 110.1(a).

Consequently, you shall be separated from the Organization with effect from 07 July 1995."

When she orally asked the Assistant Director-General and the director of her own division for an explanation they told her that they were acting on the Director-General's instructions and could offer her neither information nor help.

4. On 5 July she wrote memoranda to the Director-General and to the Director of the Bureau of Personnel saying that the allegations against her were so unclear that she could not tell for what reason she was being dismissed. By a memorandum dated 13 July 1995 she asked the Director-General to reverse the summary dismissal on the grounds that she had been given neither prior notice of the charges against her nor any opportunity of putting her case and that in any event the disciplinary sanction imposed on her was out of proportion to the circumstances.

5. In a letter to her of 20 July the acting Director of the Bureau of Personnel offered to change the decision to "agreed termination", but she found the offer unacceptable.

6. Under cover of a letter dated 21 July the acting Director sent her, at her request, copies of two documents. The first was a memorandum of 12 June 1995 from the Assistant Director-General to the Director-General reporting that she had "verbally abused and insulted" Mr. Rissom for having consulted the Assistant Director-General about an "already signed memo" before sending it off. The Assistant Director-General added:

"As I became a witness at the end of the incident, I should like to confirm that Ms. Limage's behaviour of extreme intolerance was personally offensive to one of my closest collaborators and even to one of our Member States, even though she has been repeatedly warned about her unacceptable behaviour.

... the problems we have had with the 'Manifesto' have been created because Ms. Limage has sought to use CEDAW to push her own agenda (i.e. to install herself as the Coordinator for Women in the Sector) while I have insisted that we listen to CEDAW and address their priority needs.

Regarding women's coordination and the problems in education alluded to in the evaluation report [on the complainant's performance], again most of the difficulties stem from the same source."

The second document forwarded to the complainant was a memorandum that the Director of the Executive Office had sent to the Director of Personnel on 27 June 1995. It said that the Director-General had "decided to proceed with a summary dismissal" of the complainant "for serious misconduct in accordance with the provisions of Staff Regulation 10.2". It instructed the Director of Personnel to tell her of the decision "immediately" and to "proceed with her separation without delay". It concluded: "The Director-General does not expect to receive advice or comments on this decision".

7. Having received no reply to her memorandum of 13 July 1995, the complainant gave notice on 14 September of appeal to the Appeals Board. On 13 November the Director of Personnel sent her a letter about the incident of 17 May 1995 confirming the Director-General's decision and making further allegations. The Board reported to the Director-General on 5 July 1996, a year and a day after the memorandum notifying dismissal.

8. The Board investigated the charge that the complainant had "caused problems" with CEDAW or with the Organization. It held that that charge was quite baseless and it advised the Director-General to "rescind his decision of summary dismissal" on that ground. It then took up the charge that she had "verbally abused and insulted Mr. Rissom". It observed that in support of that charge the Organization had cited "a number of previous unsavoury instances between the appellant and her colleagues". It discounted them, however, on the grounds that none of them had been "acted upon", the "memo of dismissal" did not even refer to them, and the Administration therefore might not rely on them as "justification for the summary dismissal". As to the incident of 17 May 1995 it observed:

"... this ground has not at all been contested by the appellant at any time and even before the Appeals Board. The appellant has admitted her fault and apologized to Mr. Rissom. Mr. Rissom accepted the apology and did not wish to proceed against the appellant. The Appeals Board is of the opinion that since the misconduct has been admitted there was no need to give any opportunity to the appellant to defend herself. Such an opportunity would have been futile since the misconduct is admitted."

The Board recommended:

"... in view of [the] non-existence of one of the grounds and due tendering of the apology and its acceptance, the Director-General should reconsider the whole matter, including the imposition of a lesser penalty on the appellant."

9. The Director-General gave the complainant his final decision in a letter of 4 October 1996. He said that he had, on the Board's recommendation, reconsidered her case. He had decided to "drop [the] charge" of misconduct relating to the CEDAW. As to the charge arising out of the incident of 17 May 1995, however, he had "again come to the conclusion that [her] conduct in this regard constituted extremely serious misconduct". He quoted the Board's comment that since she had admitted the misconduct there was no need to give her any opportunity of defending herself. "Such an opportunity", he said, "would have been futile since the misconduct is admitted". He maintained her summary dismissal on account of the incident. That is the decision she is impugning, and she has the same pleas as those she put forward in her internal appeal, namely breach of due process and lack of proportionality.

10. The Organization says in answer to her plea of breach of due process that she had opportunities of putting her own case both before the decision of summary dismissal was notified to her, and again later, before the Director-General took the final decision confirming it.

11. The defendant's argument is mistaken. Before it notified to her the decision of summary dismissal it had brought no charges against her, and she therefore had no case to answer. And once it had made the decision to dismiss her without giving her a prior hearing, it had already acted in breach of due process. It has long been firmly established by precedent that an international organisation must inform the staff member of any charges it is levelling against him and give him the opportunity of answering before it takes any disciplinary action: *audi alteram partem* is a requirement it must observe in all circumstances. The Appeals Board was mistaken in saying that there was no need to give the complainant any opportunity of defending herself. Even though she had admitted to the incident, she did not on that account forfeit her right to be heard, be it to make a plea in mitigation or to give her own version of the facts or to raise any other issue she wished in her own defence. Since the Organization failed to respect that right, the impugned decision cannot stand.

12. Since the complainant succeeds on those grounds, there is no need to entertain her subsidiary plea that the summary dismissal was a disproportionately heavy penalty.

13. The impugned decision being set aside, the case is sent back for the Director-General to take a new decision in accordance with due process. The complainant is entitled to an award of damages equivalent to the total amounts of the salary, allowances and other benefits pertaining to her grade and step as from 7 July 1995, the effective date of the summary dismissal, up to the date at which the Director-General takes the new decision, less any sums received by her from the Organization or in occupational earnings from other sources since 7 July 1995.

14. The Tribunal further awards her the sum of 5,000 United States dollars in damages for the moral injury she has sustained and the sum of 4,000 dollars in costs.

DECISION

1. The impugned decision is set aside.

2. The Organization shall pay the complainant the total of salary, allowances and other benefits pertaining to her grade and step as from 7 July 1995 up to the date at which the Director-General takes a new decision on her case in accordance with due process, less any sums received by her from the Organization or in occupational earnings from other sources since 7 July 1995.

3. The Organization shall pay her 5,000 United States dollars in moral damages.

4. It shall pay her \$4,000 in costs.

5. All her other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-

President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

**William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner**

Updated by PFR. Approved by CC. Last update: 7 July 2000.