

EIGHTY-FOURTH SESSION

***In re* Leprince (No. 4)**

Judgment 1693

The Administrative Tribunal,

Considering the fourth complaint filed by Mrs. Georgette Leprince against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 23 December 1996, UNESCO's reply of 5 February 1997, the complainant's rejoinder of 21 February and the Organization's surrejoinder of 19 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. As Judgment 876 explains, under A, the complainant, a Frenchwoman who was born in 1943, joined the staff of UNESCO in 1969 as a secretary at grade G.2. As from 15 March 1988 she was assigned to the office of the Assistant Director-General for External Relations. She was promoted in January 1991 to secretarial assistant at grade G.6.

In March 1994 the Director-General reformed the Bureau for External Relations. The Assistant Director-General for Culture (ADG/CLT) was appointed Assistant Director-General for External Relations. Since he wanted to keep his former secretarial assistant, whose grade was also G.6, the Organization switched the two secretaries, transferring the complainant as from 20 June 1994 to the office of the new Assistant Director-General for Culture.

She filed a complaint against the transfer but Judgment 1556 dismissed it. Judgment 1648 dismissed her application for review of that judgment.

By a memorandum of Friday 25 August 1995 the Assistant Director-General for Culture told her that "In view of the new structure ... being set up for the 28th session of the General Conference", to be held from 25 October to 16 November 1995, she was to be transferred as from Monday 28 August to the office of the Coordinator of the World Decade for Cultural Development. But she took leave from 28 August to 17 September and thereafter produced a medical certificate in support of the grant of sick leave until 26 November. She was absent from 29 November to 18 December owing to a public transport strike and from 19 to 31 December 1995, again on sick leave.

On 8 November she filed an internal appeal against the decision of 25 August 1995. In its report of 5 July 1996 the Appeals Board concluded that there were no grounds for transferring her at such short notice. It observed that after the original decision the Organization ordered three further transfers of her over three months. The Board recommended granting her an extra month's pay "to compensate for the harassment and humiliation" and putting her, "on a priority basis", on a post which afforded prospects of promotion to P.3.

By a letter of 4 October 1996 the Director-General dismissed her appeal "as being without merit and lacking a cause of action". That is the decision she is impugning.

B. The complainant submits that the Organization is trying to deny her right of defence by repeatedly transferring her so as to take away any cause of action.

The reason given for the impugned decision was invalid: the "new structure" which prompted the decision

never came about and she never got a description of her new duties.

Coming as it did, the impugned decision was an affront to her dignity. It has meant lesser responsibility and robbed her of any chance of promotion. So it may be seen as a disciplinary sanction, and as such tainted with abuse of process.

Citing the case law, the complainant maintains that the Organization acted in bad faith by failing to give her due notice of transfer. The decision shows bias: the Organization wanted to settle a score for her refusing the transfer to the Culture Sector. The Director-General may have discretion in assigning staff, but he must not act arbitrarily.

She asks the Tribunal to "declare unlawful" the Director-General's decision of 4 October 1996; to order the Organization to reassign her to the office of the Assistant Director-General for Culture; to award her one year's earnings in moral damages and 15,000 French francs in costs.

C. The Organization replies that the complainant has no cause of action. Because she was on sick leave the impugned decision had no effect, and it was superseded with another. Her constant objections to transfer raise doubts about her fitness for the international civil service.

The grounds for the decision were valid since the Culture Sector did undergo reform. There was "no need" for a description of her duties because she never performed them anyway. Besides, her work would not have changed much: "the duties of an assistant secretary are standard". So there was no actual relegation, particularly as she would have kept grade, title and salary and stayed in the same Sector. Her charge of loss of promotion is unfounded. Promotion being a "future and uncertain event", she suffered no injury on that score.

Citing Judgment 282 (*in re Pessus*), UNESCO contends that it was under no obligation to consult her beforehand; so it was not in breach of good faith. It rejects her charge of bias.

D. The complainant presses her pleas. She maintains that "the Organization keeps masking the unlawfulness of the impugned decision by saying it never went into effect". It did commit a breach of procedure since, as is plain from its reply, the real reason for the transfer was that her performance was supposedly below par, though it had never been before.

E. In its surrejoinder the Organization denies the complainant's allegations and presses its pleas.

CONSIDERATIONS

1. The complainant joined UNESCO on 21 July 1969 under a fixed-term appointment for one year. She later had it converted into a permanent one. She got several promotions, the last of them in January 1991 to the post of secretarial assistant at grade G.6. Her first assignment was in the Director-General's office. She later went to the office of the Assistant Director-General for Social and Human Sciences and, as from March 1988 to the office of the Assistant Director-General for External Relations.

2. In March 1994 UNESCO had her switch posts with another secretary and assigned her to the office of the new Assistant Director-General for Culture. Judgment 1556 dismissed her complaint against that transfer.

3. On 25 August 1995 she was transferred to the office of the Coordinator of the World Decade for Cultural Development. She lodged an internal appeal against that decision, but there then came a decision to assign her to the office of the Principal Director of the Culture Sector. The text of the decision was sent to her by post on 27 September 1995 to give her official notice of it. In a report of 5 July 1996 the Appeals Board recommended paying her one month's earnings in damages and putting her on a post which would afford her an opportunity for promotion to grade P.3. On 4 October 1996 the Director-General rejected her appeal as being without merit and lacking a cause of action. That is the final decision she is now impugning.

4. The Organization submits that since the decision of 25 August 1995 to transfer her to the Coordinator's office was superseded her appeal against it disclosed no cause of action.

5. In her rejoinder the complainant does not deny that the decision she was challenging was superseded. But

she asks the Tribunal, on the strength of the Appeals Board's recommendation, to bear in mind the whole run of measures the Organization has taken against her, simply because she dared challenge the original transfer. She adds that in any event she does have a cause of action: the impugned decision is unlawful since it caused her injury for which she seeks redress.

6. The Tribunal will not take account of the later transfers. She has not challenged them in this complaint; indeed she herself states that she is not asking the Tribunal to quash them, but only the decision of 25 August 1995.

7. She contends that "the transfer of 25 August 1995 was the first of several, ordered over a short time, which had the effect of diminishing the responsibilities of her superior or her own as a secretarial assistant, or both". As a result she has "lost any chance of promotion" to grade G.7.

8. An administrative authority may review, change or reverse any decision unless it is expressly forbidden to do so and provided that the acquired rights of staff are safeguarded: see Judgment 618 (*in re* Timmermans). The complainant had no such right under the decision of 25 August 1995. Indeed she challenged it. Before giving any effect to it UNESCO replaced it with a new one that was taken lawfully and before this complaint was filed. So her challenge to the impugned decision discloses no cause of action. Being unsound, her complaint cannot succeed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

A.B. Gardner