Registry's translation, the French text alone being authoritative.

EIGHTY-FIFTH SESSION

In re Awoyemi

Judgment 1756

The Administrative Tribunal,

Considering the complaint filed by Mr. Saliu Yinka Awoyemi against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 6 June 1997 and corrected on 12 September, UNESCO's reply of 20 October, the complainant's rejoinder of 23 January 1998 and the Organization's surrejoinder of 27 February 1998;

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 Nigerian, joined the staff of UNESCO in 1975. It employs him as a clerk and typist at grade G.4 in its Bureau for External Relations (BRX) at headquarters in Paris. It employs his wife too.

Members of the drugs squad of the French criminal investigation department carried out a search of the premises, went to their home address in Paris in the morning of 3 November 1995 then questioned them at police headquarters until about 5 p.m. The complainant alleges that the police interrogated him about his relations with two of his supervisors in the Bureau: Mr. C., who at the time was chief of the Participation Programme and Emergency Assistance Coordination Unit, and Mr. L., the Assistant Director-General in charge of the Bureau. Mr. L., he was allegedly told, had received a threatening letter and the Director-General had asked the police to investigate. He says the police showed him a letter to that effect which the Director-General appeared to have signed.

On 7 November the complainant and his wife sent the Director of the Bureau of Personnel a minute setting out the above facts. They asked the Organization to protect them and intercede on their behalf with the French Government to clear the matter up. They demanded the opening of an inquiry by the Inspector-General to see who was to blame for what they had been put through. They wanted UNESCO to take account of the physical and moral injury they had sustained. On 13 December the complainant asked the Director to acknowledge receipt of the letter of 7 November, but he got no reply.

On 4 January 1996 he protested to the Director-General against the implied rejection of his claims. Having still had no answer, on 5 March he gave the Appeals Board notice of appeal against the implied rejection of his protest and on 7 May lodged his appeal. In its report of 27 November 1996 the Board declared his appeal receivable and recommended letting him see the findings of the Inspector-General's investigation and ensuring that no staff member should be without protection.

By a letter of 11 March 1997, the challenged decision, the Director-General rejected his appeal as irreceivable and devoid of merit.

B. The complainant submits that, contrary to what the Administration argued in the internal proceedings, the Board was competent to entertain his appeal and that both it and his complaint are receivable *ratione materiae* and *ratione temporis*.

He says that the impugned decision is unlawful on several counts. There was breach of the Organization's duty to keep him informed. The Director-General drew plainly wrong conclusions from the evidence. If the Inspector-General did make an investigation UNESCO never let him see the findings. It was the Organization that had the police question him and his wife.

He pleads breach of the duty of protection UNESCO owes its staff. It was because of an alleged threat to a senior officer of the Organization that he was questioned and detained. So it was his own status as a UNESCO official that prompted the police to approach him.

The Organization has harmed his dignity and good name and caused him unnecessary and undue injury. By refusing to let him see the Inspector-General's findings it has made it impossible for him to clear himself in the eyes of the French police. Calling them in over an internal matter suggests an intent to humiliate and intimidate him.

He suffered breach of his basic rights and grave moral injury.

He asks the Tribunal to set aside the decision of 11 March 1997; to order UNESCO to disclose the texts of the decisions that prompted the police to treat him as they did and of the Inspector-General's findings; to award him moral damages and costs.

C. In its reply UNESCO contends his complaint is irreceivable *ratione materiae*: it had no duty under the Staff Regulations and Rules or under any clause of his contract of employment to ask the French Government on his behalf for an explanation of the criminal investigation. His complaint is irreceivable too because there was no challengeable administrative decision until the Director-General took the one of 11 March 1997. His request of 7 November 1995 left the Administration free to see whether to intercede. Though its silence was tantamount to refusal, that was not an administrative decision he might challenge.

On the merits the defendant points out that the Inspector-General had no access to the records of a case under investigation by the French authorities. So it is groundless for him to accuse it of failing to give him the reasons for what he had gone through.

He acted on the wrong assumption that it was UNESCO that was to blame. Besides, it cannot protect staff in private life in a country that is neither at war nor in crisis.

As to the plea of breach of his basic rights and injury to his dignity and reputation, there was nothing unlawful about a house search or questioning or detention by police on the instructions of an investigating magistrate, provided that there was no misuse of authority. So there can be no presumption of any breach of human rights. Besides, since the incident was not of UNESCO's making it cannot be held liable for any injury to his dignity or good name.

D. In his rejoinder the complainant observes that the Organization has failed to disclose the findings of the inquiry and infers that there never was one.

In his submission the "inquiry" was a sham, and what he went through was due to the intense dislike Mr. C. felt for him.

His claim to damages for the ill treatment he received at the hands or the prompting of UNESCO and for injury to his dignity and good name is receivable *ratione materiae* because it arises out of breach of the terms of his employment. He did have a challengeable decision: discretion does not relieve an international organisation of its duty to answer a staff member's claims properly.

E. In its surrejoinder UNESCO retorts, in answer to the complainant's point about the findings of the inquiry, that the Inspector-General was satisfied that neither the Director-General nor Mr. L. nor Mr. C. had asked the French police to make a search; so he saw no need to write a report saying as much.

On the other issues UNESCO presses the pleas in its reply.

CONSIDERATIONS

1. The complainant has been with UNESCO since 15 December 1975. He is now employed as a clerk and typist at grade G.4, step 3, in the Bureau for External Relations (BRX). At the material time Mr. L. was the Assistant Director-General in charge of the Bureau, and the complainant's first-level supervisor was Mr. C. His wife was employed in the Bureau of Personnel at grade G.3.

At 6.45 a.m. on 3 November 1995 members of the drugs squad of the French police went to the couple's address, questioned them and made a search of the premises. At about 8 a.m. they were taken to the headquarters of the French criminal investigation department at 36, quai des Orfèvres, in Paris, and held in detention, he until 4.50 p.m. and she until 5 p.m. They say that the police had a letter, apparently signed by the Director-General. The police said that Mr. L. had been the victim of anonymous threats, and they wanted to find out whether Mr. and Mrs. Awoyemi were the culprits.

2. Mr. and Mrs. Awoyemi reported the incident to the Organization. On 7 November 1995 they put a claim to the Administration. The gist of it was that UNESCO should represent or help them in dealing with the French criminal police, carry out an inquiry to find out who had prompted the police to act, and pay them compensation for physical and moral injury.

On 14 November 1995 the Director of the Bureau of Personnel asked for an inquiry by the Inspector-General. The defendant says that because the matter was under police investigation the Inspector-General made no report.

Having got no answer to that claim, the complainant protested to the Director-General on 4 January 1996 against the implied rejection. The Appeals Board recommended allowing his appeal, but the Director-General rejected it by a decision which he is impugning. In sum, he seeks the quashing of that decision, the disclosure to him of the findings of the inquiry and awards of moral damages and costs. UNESCO invites the Tribunal to dismiss the complaint. The material pleas are taken up below.

Receivability

3. UNESCO submits that the Tribunal is *ratione materiae* not com-petent to entertain someone's claims to have it represent him in dealings with the police or to obtain information or be granted compensation for his treatment by the police.

Articles II(1) and II(5) of the Tribunal's Statute vest in it competence to hear cases of alleged breach of terms of appointment or of the staff regulations. A firm line of precedent says that rights under a contract of employment may be express or implied, and include any that flow from general principles of the international civil service or human rights: see, for example, Judgment 1333 (*in re* Franks No. 2 and Vollering No. 2) under 5. Whether a right exists goes to the merits. Since the Tribunal will not be competent unless the right does exist, the issue of competence will turn on its conclusion on the merits.

4. UNESCO further pleads that the implied rejection of his claims was not a decision that caused him any injury: he was not relying on any right but seeking its help.

The plea fails. Granting or refusing what a staff member wants has a direct bearing on his position in law. So whether the organisation's response is express or implied it does amount to a decision: see Judgments 1615 (*in re* Boland No. 9 and others) and 1674 (*in re* Gosselin) under 6, and the precedents cited therein. Whether what he wants is a right or at the organisation's discretion also goes to the merits, and that too is in this case an issue the Tribunal will come back to.

5. To be receivable a complaint must disclose a cause of action.

In the internal proceedings the complainant and his wife asked UNESCO to "open" an inquiry, intercede for them with the French police, grant them compensation, take disciplinary action and see that such an incident never happened again. The complainant seeks the quashing of the impugned decision, the disclosure of "the texts of UNESCO's decisions that prompted the police to treat him as they did" and of the findings of the inquiry that the Director of Personnel ordered on 14 November 1995, and moral damages. The complaint purports to challenge the decision as a whole, although the complainant has not made that very clear.

Their claim to the opening of an inquiry must mean, on any reasonable interpretation, that he wanted the Organization to press such inquiry to the conclusion that he had in mind and let him see the findings. So the mere opening of the inquiry on the orders of the Director of Personnel does not remove the cause of action under this head.

Whatever disciplinary sanction UNESCO might have imposed on others can have no effect on the complainant's position in law. So its decision on that score affords him no cause of action. Nor has he any present interest in

claiming the imposition of such sanctions to deter similar treatment of him in future.

The merits

6. On the evidence before it the Tribunal cannot say whether, or how far, the Organization was to blame for the search, questioning and detention that the complainant and his wife have objected to.

The facts reported were serious enough for the Director of Personnel to order an inquiry by the Inspector-General; indeed she described the matter as "exceedingly serious". But the Inspector-General himself appears to have thought no written report necessary, the matter being a private one that criminal proceedings would later shed light on. Although he did not commit the findings of his inquiry to writing, the Inspector-General must surely have told the Administration what matters he had actually been looking into and what his findings were. In its reply to the Appeals Board the Administration said that the findings were wholly confidential and that in the light of them it would itself be taking any action that might be required.

The complainant says that he saw in the hands of the police a letter which he was not allowed to read but which appeared to bear the Director-General's signature. It emerged from the questioning that Mr. L. had been the victim of anonymous threats and the police were trying to find out whether the complainant and his wife had sent them. UNESCO has never stated whether because of the threats or for any other reason it did write seeking help from the French police: it has merely said it never asked for a search or for the questioning of the complainant and his wife and that it filed no charges against them. But it is not known whether any suspicions may have been expressed by anyone orally or in writing about who was to blame for the making of threats.

The conclusion is that there is no telling on the evidence whether, before the police acted, the Organization was in breach of its obligations towards the complainant in that regard.

7. UNESCO submits that the police action was an incident in the complainant's private life; that it was one for which it cannot be held liable and which can confer no right on him as against his employer; and that that would hold good even if UNESCO officials had treated him unlawfully.

8. Although the incident occurred outside UNESCO's premises - at the complainant's home address and later at police headquarters - that does not suffice to relieve the defendant of liability: it might still have to answer a charge of breach of its duty not to cause its staff undue injury. And that duty covers sparing them such injury in private life.

In the internal proceedings the complainant and his wife asked the Organization "to intercede on their behalf with the host country to have light shed on the whole business". The defendant says that what he went through had nothing to do with the performance of his duties; so he did not enjoy diplomatic immunity, his rights and obligations towards the host country were those of any private citizen, and the Organization had no need to afford him protection. He himself does not explain why he is making the claim or just what he has in mind.

Since he was not at the time performing his official duties, the Organization had no reason to "intercede" with the host country. Nor was there any need for it to help him since it was not his status as its employee that had prompted the incident; he had been released from detention and the case was laid to rest. So UNESCO did not abuse its discretion in refusing him such help: see for example Judgment 1623 (*in re* Alders-Meewis No. 2 and van der Peet No. 20) under 5. Besides, the claim was a rather odd one for him to put to the very Organization he held to blame.

In any event his claim is devoid of merit.

9. He seeks moral damages in an unstated amount. A ruling on the claim would be premature, though the claim is an understandable corollary of his claim to an inquiry to determine whether the Organization was to blame for the incident.

10. The material issue now before the Tribunal is whether he was entitled to ask UNESCO whether it or one of its officers had prompted the police to act and, if so, how. And on that score he cites, very properly, two precepts of the law of the international civil service that the case law has affirmed and indeed refined.

(a) One is that an organisation, bound as it is, like its own employees, to show good faith, must avoid causing them undue injury. Precedents which declare the duty of care and consideration over its staff are to be found in, for

example, Judgments 361 (*in re* Schofield) under 9; 367 (*in re* Sita Ram) under 4; 396 (*in re* Guisset) under 6; 435 (*in re* Zihler) under 5; 447 (*in re* Quiñones) under 4; 873 (*in re* Da) under 5 and 7; and 942 (*in re* Leprince) under 4.

(b) Secondly, and also in keeping with good faith, an organisation must tell its employee of any action that may imperil his rights or rightful interests: the precedents are, for example, Judgments 323 (*in re* Connolly-Battisti) under 12; 364 (*in re* Fournier d'Albe) under 12; 869 (*in re* Hill) under 19; 946 (*in* re Fernandez-Caballero) under 6 and 7; 1245 (*in re* Müller) under 16; 1479 (*in re* Gill No. 2) under 12; and 1526 (*in re* Baigrie) under 2. The case law defines the term "action" quite broadly, especially in the light of recent trends as to the confidentiality of data. An organisation may not deny an employee access to any significant information which it has about him and which is or may later be put in his personal file. For one thing, such information may be helpful or harmful to him; for another, he must have the opportunity of challenging or adding to it. That is why in recent cases the Tribunal has ordered one organisation to disclose a medical report (Judgment 1684: *in re* Forté), rebuked another for failing to be "more open and frank in its dealings" with a complainant (Judgment 1732: *in re* Stjernswärd, under 18) and held that no reliance may be put on wrong information in a personal file (Judgment 1716: *in re* Geyer No. 3, under 19 to 22).

Yet the employee's right to information goes only so far. It does not run to trifles of no consequence to him. And there may be special cases in which higher dictates preclude disclosure, at least for the time being. Reasons of state or, as here, criminal proceedings may warrant withholding information. So may the opening of an official enquiry within the organisation. But material information may not be withheld merely to strengthen the position of the Administration or one of its officers in a dispute with an employee.

11. Here the complainant had a proper cause of action: he wanted to know whether UNESCO or one of its officers had prompted the police to act. The answer was potentially important for someone who might wish to file suit against the Organization or the host country.

But there is no telling whether UNESCO had valid grounds for making an exceptional derogation to the principle and refusing his claim, such as refusal on account of, and for the duration of, the criminal investigation. Nor has UNESCO offered any evidence to suggest that that is the explanation of its implied rejection of his claim.

12. The conclusion is that the complaint must in essence succeed. The Director-General must take a new decision on disclosure of the information, including the report of the inquiry, if it exists, or of a new inquiry, if need be. He will also answer the complainant's claim to moral damages, on which the Tribunal will not now rule, his claim under that head being premature, as was stated in 9 above.

Since his complaint is allowed in part he is entitled to costs.

DECISION

For the above reasons,

1. The impugned decision is set aside in part.

2. The Director-General shall take a new decision as explained under 12.

3. UNESCO shall pay the complainant 15,000 French francs towards costs.

4. His other claims are dismissed.

In witness of this judgment, adopted on 15 May 1998, 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 9 July 1998.

(Signed)

Michel Gentot
Jean-François Egli

Seydou Ba

A.B. Gardner

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