

The Administrative Tribunal,

Considering the second complaint filed by Mr J. B. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 24 March 2006 and the Organization's reply of 10 July 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. The complainant, a United States national born in 1944, joined UNESCO in 1974 at grade P-1. He retired from the Organization on 31 March 2004 at grade P-5. By a note of 26 February 2004 he was informed that, pursuant to Staff Rules 107.9 and 107.10, he was entitled to the transportation of a certain quantity of personal effects and/or household goods at the expense of the Organization within the 12 months following his separation. In an e-mail dated 18 August 2004 the complainant requested the transportation of less than 100 kilograms of personal effects, including his dog, which together with the cage weighed less than 50 kilograms, to Chennai, India, where he would be taking up residence for at least seven months. On 9 September 2004 he received an e-mail informing him that UNESCO would not cover the cost of transporting his dog because a dog did not fall under the definition of personal effects. In a letter to the Director-General dated 12 September 2004 he lodged a protest against this decision arguing that Staff Rule 107.9 gives no indication as to whether personal effects were inanimate or living, and hence the exclusion of "living effects" without the prior adoption of an administrative decision to that effect was arbitrary and unfair. By a note of 29 November 2004 the Director of the Bureau of Human Resources Management informed the complainant that the Director-General had confirmed the decision of 9 September 2004, observing that the relevant rules had been properly applied in his case.

In a notice of appeal, sent to the Secretary of the Appeals Board on 8 January 2005, the complainant communicated his intention to appeal the Director-General's decision. He submitted his detailed appeal on 7 February. In its report of 7 December 2005 the Appeals Board recommended that the Director-General declare the challenged decision to be in conformity with the relevant rules and current practice, that he reject the appeal as unfounded in fact and in law and that he propose an amendment to Staff Rules 107.9 and 107.10 for the purpose of clarifying that "personal effects" and "household goods" do not include animals. In a letter dated 16 January 2006 the Director-General endorsed the Board's recommendations. That is the impugned decision.

B. The complainant submits that Staff Rules 107.9 and 107.10 do not define the term "personal effects". He points to the definitions contained in a number of English dictionaries, according to which the term "personal effects" is synonymous with "personal belongings", "personal (or movable) possessions" and "personal (or movable) property", none of which "explicitly or implicitly excludes living entities in general, or pets in particular". He also contends that in legal doctrine and practice throughout the world domestic animals are generally considered as personal property and are thus personal effects. In support of his contention, he cites two articles on the legal status of pets, which indicate respectively that in the United States "the law categorizes domestic animals as personal property", and that the provisions of the French Civil Code assimilate pets with property.

Referring to the Organization's submissions before the Appeals Board, he contends that UNESCO has not provided any documentary evidence in support of its assertion that there exists a consistent practice of excluding domestic animals from personal effects, and argues that "[i]n the absence of any clearly stated restrictions, [...] Staff Rule 107.9 cannot reasonably be construed as excluding living effects, whether they be vegetal or animal". Furthermore, he rejects the view that the exclusion of animals from personal effects derives from the references in Staff Rule 107.9 to quantities of personal effects or the fact that storage charges are not payable. Similarly, he dismisses as spurious the argument that, had there been an intention to include animals in the notion of personal effects, Rule 107.9 would have contained a clause comparable to that in paragraph (f) of the Rule, which provides explicitly for

the transportation of automobiles.

In his opinion, Rule 107.21(c) of the United Nations Staff Rules (UN Staff Rules), according to which personal effects do not include animals, should be construed in his favour. The insertion of an explicit provision in the UN Staff Rules leads by implication to the conclusion that, in the absence of a similar clause in the UNESCO Staff Rules, personal effects are presumed to include animals. He considers it incorrect and unfair that the argument based on the UN Staff Rules was not presented by the Administration but rather was introduced by the Chairman of the Appeals Board. He feels that the Appeals Board blindly supported the Administration's position and hence failed to conduct the internal proceedings according to the principles of fairness and due process.

The complainant asks the Tribunal to order UNESCO to reimburse him for the cost of the shipment of his dog to Chennai, India, using the standard rates for personal effects as defined in Staff Rule 107.9 and its Annex L, and for the cost of the cage of 169 euros; to pay him interest at a rate of 5 per cent per annum on the above sum starting from 18 August 2004, the date of his initial request, until the date of payment by UNESCO; to reimburse him all photocopy, postage and communication expenses associated with his appeal; and to carry out any recalculations and reimbursements within ninety days from the delivery of the Tribunal's ruling. In addition, he asks the Tribunal to declare that the proceedings of the Appeals Board were not conducted in a correct or fair manner.

C. In its reply the Organization argues that, according to the general rule of interpretation whereby a text must be interpreted in good faith using the ordinary meaning attributed to the terms of the text concerned and in the light of its subject and purpose, "personal effects" within the meaning of Rule 107.9 refers to objects, articles and goods that belong to an individual for his or her personal or private needs. It cites definitions contained in English and French dictionaries and encyclopedias, which, in its opinion, support the conclusion that "the ordinary meaning of the term 'personal effects' covers inanimate objects and in no sense domestic pets".

The Organization also examines the context of Rule 107.9. It submits that the repeated reference in its provisions to "quantities" and the exclusion of storage charges from reimbursement indicate that the said Rule refers to objects and not to animals. In the same vein, it points to paragraph (f) of the same Rule, which makes an explicit reference to automobiles, arguing that, if the intention was that Rule 107.9 should cover domestic pets, an additional clause would have been added to that effect, as was the case with automobiles.

In addition, it draws attention to Judgment 296, in which the Tribunal considered personal effects to be articles, that is, objects belonging to an individual. It does not share the complainant's view that the introduction by the Appeals Board of an argument not raised by the Administration renders the proceedings incorrect and unfair. In this regard, it argues that the Appeals Board is free to have recourse to principles of law, rules or practices in force in the United Nations system for the purpose of formulating its recommendations to the Director-General.

It dismisses the complainant's reference to the French Civil Code as irrelevant to the question at hand, arguing that French law is inapplicable to the United Nations system. It also notes that the rulings of French courts on this specific matter vary considerably.

Lastly, UNESCO reiterates that, according to its own practice and the practice of the United Nations system, domestic animals are not considered as personal effects and hence their transportation cannot be effected at the Organization's expense. It requests the Tribunal to hold that the impugned decision is in conformity with the relevant rules and current practice and to dismiss the complaint as unfounded in fact and in law and as devoid of merit.

CONSIDERATIONS

1. The complainant contends that the Organization was obliged to pay or reimburse him, as part of his post-retirement repatriation costs, the cost of transporting his dog from Paris to Chennai, India. He claims that the dog was part of his personal effects and that he was entitled to be paid for its transportation pursuant to Staff Rule 107.9(a) which relevantly provides:

"A staff member entitled to the payment of his travel expenses [...] may have a certain quantity of personal effects transported at the expense of the Organization as follows:

(i) [...]

(ii) on separation, from the duty station to the staff member's recognized home, or to any other place provided that the cost is not higher."

2. Rule 107.9 contains no definition of "personal effects" and the complainant contends, as he did before the Appeals Board, that the term includes domestic animals which are "generally considered as personal property and thus as personal effects". The Board concluded that "neither the context of the Staff Regulations and Staff Rules nor the practice of UNESCO supports the inclusion of animals within the meaning of 'personal effects'" and recommended, amongst other things, that the appeal be rejected and that consideration be given to amending the Staff Rules in order to "clarify that 'personal effects' and 'household goods' do not include animals". In making its recommendation, the Board referred to UN Staff Rule 107.21(c) which expressly excludes animals from the definition of "personal effects and household goods".

3. The Director-General accepted the Board's recommendation and by a letter dated 16 January 2006 informed the complainant that his appeal was rejected. That decision is the subject of the complaint by which the complainant seeks reimbursement for the cost of transporting his dog and interest thereon, as well as for all the expenses associated with his appeal. He also seeks a declaration that the "Appeals Board session on this case was not conducted correctly or fairly". In this last respect, the complainant contends that the Board should not have had regard to United Nations Staff Rule 107.21(c) or that it should have treated it as an argument in his favour. That argument misunderstands the reasoning of the Appeals Board; Rule 107.21(c) was referred to in support of the Board's recommendation that consideration be given to amending UNESCO Staff Rules 107.9 and 107.10 in order to clarify their meaning, and not in support of its interpretation which was based on context and practice.

4. Staff Rules are to be construed in context and according to the natural and ordinary meaning of the words used. As a matter of ordinary language "personal effects" is not synonymous with "personal property", the latter being an expression used to signify all movable property, in contrast to real estate or immovable property. The expression "personal effects", as a matter of ordinary language, refers to a particular and limited type of personal property, namely, those personal items, such as clothing, jewellery and toiletries that are used by or for the benefit of the individuals who own them or claim them as their own. The term "personal effects" is ordinarily used to distinguish between items of that kind and those items of personal property that are used by or for the benefit of the members of a family or household, those items being commonly referred to as "household goods". That distinction, which is maintained in the UNESCO Staff Rules with separate provision being made in Rule 107.9 for personal effects and in Rule 107.10 for household goods, emphasises that the terms "personal effects" and "household goods" are both to be construed according to their ordinary meaning and that none of them is synonymous with the expression "personal property". That being so, the complainant's argument that domestic animals are personal property does not lead to the conclusion that they are also personal effects.

5. Nor is the complainant's argument that the term "personal effects" includes domestic animals advanced by reference to paragraph (f) of Staff Rule 107.9 which provides that:

"In addition, reimbursement may be authorized up to [a certain amount] of the cost of shipping a staff member's privately owned automobile [...]"

The addition of a special provision for private motor vehicles emphasises that the term "personal effects" is used in its ordinary and narrow meaning and not as synonymous with "personal property" which would ordinarily include motor vehicles.

6. Personal effects are ordinarily inanimate objects, as is reflected by references within Rule 107.9 to "packing, crating, unpacking and uncrating", "weight", "volume", "baggage", "storage" and "goods". There is no need to decide whether personal effects are necessarily inanimate. It is sufficient to state that the term "personal effects" does not as a matter of ordinary usage extend to domestic animals.

7. The consistent practice of UNESCO in not paying the transportation costs of domestic animals is simply recognition that, in its natural and ordinary meaning, the term "personal effects" does not extend to them.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2007, Mr Seydou Ba, Vice-President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Seydou Ba

Mary G. Gaudron

Agustín Gordillo

Catherine Comtet