

FORTY-SIXTH ORDINARY SESSION

In re GABA

Judgment No. 458

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Elias Ayité Mawusé Gaba on 24 November 1980, UNESCO's reply of 31 December 1980 and the complainant's rejoinder of 9 March 1981;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court, UNESCO Staff Rule 111.1 and paragraphs 6 and 7 of the Statutes of the UNESCO Appeals Board;

Having examined the written evidence;

CONSIDERATIONS:

1. According to Article VII, paragraph 1, of the Statute of the Tribunal a complaint shall not be receivable unless the official has exhausted such means of resisting it as are open to him under the applicable staff regulations.

According to UNESCO Staff Rule 111.1 staff members shall have access to an Appeals Board in accordance with the Statutes of that Board. The rule thus affords a means of redress which a staff member must use before filing a complaint with the Tribunal.

2. In this case the complainant filed his complaint with the Tribunal on 24 November 1980 without first appealing to the Appeals Board. The internal means of redress not having been exhausted, the complaint is irreceivable.

3. It is true that according to paragraph 6 of the Statute of the Board "A staff member, in agreement with the Director-General, may waive his right of recourse to the Board and appeal directly to the Administrative Tribunal...", and indeed the complainant observes that on 30 October 1980 he sought from the Director-General the agreement required in that provision; that at the same time he asked for a reply by 15 November 1980; and that, having received no news by that date, he was free to appeal to the Tribunal, the Administration's silence being taken to denote agreement. The complainant accordingly contends that it is immaterial that the Director-General expressly refused his consent on 5 January 1981. For the reasons given below, however, the argument fail.

First, the Director-General was not bound to answer the complainant by the deadline he had arbitrarily set at 15 November 1980, and the complainant was therefore wrong to infer the Director-General's agreement from the absence of a reply. Indeed, he did not ask for the Director-General's agreement until over forty-five days had elapsed after 27 August 1980, the date on which the impugned decision was notified to him, i.e. after the expiry of the time limit set in paragraph 7(c) of the Board's Statutes for addressing an appeal to the Board. He should therefore have expected the Director-General to refuse.

Secondly, the complainant is mistaken in contending that since an appeal is a procedure introduced for the benefit of the staff, the Director-General's failure to reply raised a presumption of agreement. The reason why paragraph 6 of the Board's Statutes requires the Director-General's agreement to waiver is that the procedure touches the interests of the

Organization as well as those of its staff.

4. The complaint is clearly irreceivable and must be summarily dismissed under the procedure set out in Article 8, paragraph 3, of the Rules of Court.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner