

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

FIFTY-THIRD ORDINARY SESSION

In re POULIN

Judgment No. 621

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Yves Poulin on 12 September 1983 and supplemented on 21 September, the Organization's reply of 14 December, the complainant's rejoinder of 23 March 1984 and the Organization's surrejoinder of 14 May 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal and UNESCO Staff Regulations 4.1 and 9.1 and Rule 104.3;

Having examined the written evidence, the complainant having withdrawn his application for oral proceedings and no such proceedings having been ordered;

Considering that the material facts of the case are as follows:

A. On 3 September 1981 the complainant applied to UNESCO for a post as an expert in computer sciences under a joint project with the United Nations Development Programme (UNDP). On 14 October he received a letter from the head of the division of field staff recruitment and administration to say that his application was successful and that there were several formalities to be completed. It was explained that the letter was not in itself a letter of appointment and that he should take no steps to release himself till further word. By a telegram of 4 February 1982 he was told that his application had been accepted, that he should say how soon he could be free and that the letter of appointment would arrive shortly. By a telegram of 5 February he answered that he was free immediately and that he would sort out the final formalities when he got to Paris. He made several arrangements for his departure (such as getting leave without pay and leasing his house) but, having received no travel instructions, on 15 February he telephoned UNESCO and sent it a telegram and a letter. On 4 March 1982 he received a telegram from the head of the division telling him to do nothing to release himself until he got the letter of appointment. Another telegram, on 11 March, informed him that recruitment was suspended. On 12 March he asked the Director-General to reconsider. On 3 May the Director of the Personnel Office offered him payment of 9,000 United States dollars in settlement, a sum based on a notional abolition of post. He declined on the grounds that the offer did not make him whole and on 26 July 1982 he appealed to the Appeals Board. The Board declared that it was not competent and the Director-General informed him in a letter of 15 June 1983, which is the impugned decision, that he took note of the Board's report.

B. The complainant contends that a contract arose with UNESCO by virtue of the telegrams of 4 and 5 February 1982 and that the letter of 3 May 1982 from the Director of the Personnel

Office constituted unilateral breach of the contract. The Organization's unqualified agreement is clear from the telegram of 4 February. The letter of appointment mentioned in that telegram was just a formality and not essential to the conclusion of a contract. He calculates as follows the damages he claims for breach of contract: salary and other allowances for one year, \$54,030 plus damages for moral injury (inconvenience caused by the leasing of his house, injury to his professional reputation and humiliation on account of his return to his national civil service), \$5,000. Deducting the amount of his salary from his national civil service he seeks net damages of \$42,050. Subsidiarily, should the rules on termination for abolition of post be applied (Staff Regulation 9.1), he objects to UNESCO's offer and claims \$24,640. In sum, he asks the Tribunal (1) to quash the Director-General's decision of 15 July 1983, (2) to order UNESCO to pay him damages amounting to \$42,030 plus interest at 12 per cent a year and (3) to award him \$3,000 as costs.

C. In its reply the Organization observes that the UNDP's financial troubles made for uncertainty in negotiations

with the complainant. He acted hastily in making arrangements for his departure after sending his telegram of 5 February. On 11 February the UNDP asked UNESCO to postpone the appointment and on 1 March informed it that the purchase of the computer for which the post was intended had been held over to 1983. On 9 March UNESCO told the complainant that the project had been suspended. The telegrams of 4 and 5 February 1982 were just stages in the negotiations, and the one of 4 February made only a conditional offer. No agreement was reached on several essential terms of the contract, such as its duration nor on other essential matters prescribed in the Staff Regulations and Staff Rules. Such matters are formally communicated by a letter of appointment to which the future official must give express consent. For reasons beyond its control UNESCO was unable to fulfil the promise in its telegram. The conclusion of the contract was subject to the availability of UNDP funds. Subsidiarily, UNESCO submits that any injury the complainant may have suffered is his own fault since he acted with undue haste. It challenges in detail his calculation of the compensation sought. It submits in particular, as regards moral injury, that he does not show how his professional reputation has suffered nor how he was humiliated by returning to his national civil service.

D. In his rejoinder the complainant presses several points in support of his case. He challenges the Organization's submissions on the length of the contract, the lack of agreement on essential terms, the nature of a letter of appointment and the failure to fulfil the contract because of force majeure. He presses his claims.

E. UNESCO develops its case in its surrejoinder. It observes, among other things, that what turn potential agreement into a contract under international administrative law are acceptance of the Staff Regulations and Staff Rules and appointment by the Director-General. The telegram of 4 February ought not to be read out of context. The complainant rests his claim for compensation on Staff Regulation 9.1; since he never became a staff member he cannot benefit under that regulation, which in any event does not apply to cases of force majeure. UNESCO maintains that the complaint is devoid of merit and should be dismissed.

CONSIDERATIONS:

1. The material issue in this case depends on whether a contractual relationship arose between the complainant and UNESCO from their exchange of telegrams, in particular the one

sent on 4 February 1982 by the chief of the field staff recruitment and administration division and the complainant's of 5 February in reply.

It is immaterial whether, as UNESCO Staff Regulation 4.1 and Staff Rule 104.3 suggest, the letter of appointment amounts to formal and essential confirmation of the contract between Organization and official, or is just a written record of the will of the parties at the time of agreement. Even if it is no more than the latter, no contract can conceivably arise unless there was an unquestioned and unqualified concordance of will on all terms of the relationship.

A contract is concluded only if both parties have shown contractual intent, all the essential terms are worked out and agreed on, and all that may remain is a formality of a kind requiring no further agreement.

Both parties in this case showed contractual intent, and all the essential terms had been agreed on by the time the complainant received UNESCO's telegram of 4 February 1982. Those terms, including the length of the appointment, were set out in the appendix to the letter of 14 October 1981 sent to the complainant by the competent officer of UNESCO.

The telegram of 4 February brought the negotiations to an end, and the complainant's reply in his telegram of 5 February must be treated as acceptance of a firm offer of a contract from the Administration.

The despatch of the letter of appointment was promised in the telegram of 4 February: it was stated not just as a possibility but as a definite and unqualified intention.

2. It is true that at 4 February 1982 UNESCO had not sorted out all its problems with the UNDP, and it was on the UNDP's decision that depended the execution of the project for which the complainant was to be appointed. But that did not prevent the formation of a contract.

The parties were to be UNESCO and the complainant, and when he got the telegram of 4 February he was not required to know that UNESCO was still in difficulty with the UNDP.

3. UNESCO acted hastily in sending the telegram of 4 February and took an unwarranted time -- until 4 March -- to answer the complainant's telegram of 5 February.

But the complainant himself was somewhat imprudent in acting as he did after sending his telegram of 5 February instead of just awaiting travel instructions.

4. On the evidence the Tribunal holds that the complainant is entitled to damages for the direct injury caused by the Administration's behaviour and an award towards costs.

The Tribunal awards him 12,000 United States dollars as damages for direct injury and \$3,000 as costs.

DECISION:

For the above reasons,

1. The Organization shall pay the complainant a total of \$15,000 under the heads set out above.
2. His other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1984.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner