

SIXTY-THIRD SESSION

***In re* RENAULT**

Judgment 856

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Suzanne Renault against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 20 June 1986 and corrected on 31 July, UNESCO's reply of 29 October 1986, the complainant's rejoinder of 12 January 1987, UNESCO's surrejoinder of 17 April, the complainant's observations thereon of 30 April and UNESCO's further brief of 26 June 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal, UNESCO Staff Rule 109.2, UNESCO Manual paragraph 2915 and Article 7 of the Statutes of the UNESCO Appeals Board:

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows: A. The complainant, a Frenchwoman born in 1938, joined UNESCO in Paris in 1967. At the material time she held an indeterminate appointment and was a grade G.4 secretary in the Bureau of the Comptroller. Her health was often poor and in 1982 she had a nervous breakdown. She was on sick leave several times, at first on full pay and from 1 April 1984 on half-pay. On 29 May 1984, when just out of hospital, she wrote to the Director of the Bureau of Personnel offering her resignation "on personal grounds". After an exchange of letters spanning some two months UNESCO accepted it as from 7 September 1984. On 14 September her doctor, Dr. Pouillot, certified that she was fit to resume part-time work as from 1 October. She at once began to rue what she had done and on 26 September wrote asking the Director-General to take her back. On 18 October Dr. Pouillot signed another certificate saying that she had resigned in a fit of depression. A letter of 9 January 1985 from the Director of the Bureau of Personnel declared her resignation final but said she might apply for any vacancies if she cared. On 8 March she appealed under Article 7(a) of the Statutes of the Appeals Board. The Director rejected the appeal on 23 April, and she appealed to the Appeals Board under Article 7(c). In its report of 19 February 1986 the Board found that the complainant had known what she was doing and it recommended rejecting the appeal but giving her a suitable job on compassionate grounds. In a letter of 19 March 1986, the impugned decision, the Director-General informed her that he rejected her appeal but was having the possibility of taking her back looked into.

B. The complainant submits that resignation is valid only if the official acts of his own free will. That is the case law and also UNESCO practice as reflected in Manual paragraph 2915. When the complainant offered her resignation, though just out of hospital she was still in a bout of depression which impaired her judgment and free will. Her resignation was therefore invalid. In his certificate of 18 October 1984 Dr. Pouillot set it down to "a temporary nervous condition" and he confirms that in a statement dated 1 July 1986 which she submits to the Tribunal. The Appeals Board gave too much weight to a minute the Organization's medical officer, Dr. Lacourbe, sent to the Director of the Bureau of Personnel on 13 February 1986 and which said that the complainant had been lucid when she resigned. In fact Dr. Lacourbe never saw her and did not ask Dr. Pouillot about her. The Board mistook what her illness was when it observed that her letters at the time were nevertheless coherent. The Board was not competent to draw conclusions about the state of her health. The flaws in its recommendation tainted the Director-General's decision. The Organization was inconsiderate towards someone it knew to have been ill for years. The Director-General was wrong not to seek proper medical advice before turning down her pleas for help.

The complainant sets forth the loss of salary and pension rights the decision has caused her. She invites the Tribunal to quash the decision of 19 March 1986 and order her reinstatement as from 7 September 1984, to order a medical inquiry if need be, and to award her costs.

C. In its reply the Organization discusses the facts of the case. It submits that the complainant's resignation was valid. She had nearly two months, from mid-May to mid-July 1984, to think over her offer and at the time she was

seeing Dr. Pouillot, who raised no objections until 18 October 1984. On 14 September he said she was fit to go back to work; so presumably she was lucid enough in the weeks before 7 September to know what she was doing. The case law and UNESCO Staff Rule 109.2 make it plain that an offer of resignation is of no effect in law until it is accepted, and so the complainant could have withdrawn her offer at any time until then. She acted of her own free will and has failed to show she did not. No mental derangement may be inferred from her letter of 29 May 1984 offering to resign or her letter of 29 June confirming the offer. Both are carefully worded and heed her own interests. She must adduce evidence that dates from the material time to show that her mind was disturbed. All she produces is Dr. Pouillot's certificate of October 1984. In May of that year her health was steadily improving: had she been as unwell as she makes out she would have had to go back to hospital. In the four months before she left there was no apparent decline in her condition. In her dealings with the Bureau of Personnel she was rational and resolved, even rejecting a personnel officer's warnings about the consequences of her decision. Dr. Lacourbe's declarations are in no point inaccurate: having her medical records from 1979, he was quite able to form an opinion of the state of her health in 1984. The Appeals Board made a correct appraisal of the evidence before it and its findings are unflawed. No purpose would be served by a medical inquiry when the issue is the state of the complainant's mind in mid-1984.

D. In her rejoinder the complainant again goes over the history of the dispute. She points out what she sees as mistakes or misrepresentations of fact in the reply. She develops her pleas on the conditions of resignation and on her health and state of mind at the material time. She reaffirms in particular that there is nothing in the reply to weaken her contention that her letter of 29 May 1984 was the direct outcome of serious psychological disorders that so impaired her judgment that her resignation was not an act of free will. The Organization was at fault in taking her offer at face value when it knew how ill she had been. No one in the Administration sought to deter her, as she is willing to testify orally. The Director-General failed to take proper medical advice on the state of her health; was wrong to take account of a minute of 12 October 1984 from the Comptroller saying it was not in UNESCO's interests to keep her on; and abused his authority in that his decision was inspired by extraneous considerations, namely that employing her was inadvisable. She presses her claims.

E. In its surrejoinder the Organization seeks to refute the pleas in the rejoinder and enlarges on its own main arguments. It contends in particular that there was no flaw in the complainant's resignation. In the five months that followed it Dr. Pouillot regarded her as being in full possession of her faculties. Besides, if she had not been, he ought to have protected her. He cannot plead professional secrecy as an excuse for not doing so when he himself broke the obligation of secrecy after the resignation had taken effect. His findings on the state of his patient's health after 7 September 1984 lend no weight to the submission that the resignation was void. The Organization appends in support of its contentions a medical report signed on 7 April 1987 by Dr. Flavigny, professor of psychiatry at the University of Paris.

F. In further observations which the complainant obtained the Tribunal's permission to file she comments on, among other things, the report by Dr. Flavigny. She objects to its being made by someone chosen by the defendant alone and says there should be further inquiry by a doctor with the full medical records at his disposal.

G. The Organization was invited to comment on those further observations and did so, maintaining that the submission of the report by Dr. Flavigny is quite proper.

CONSIDERATIONS:

1. On 29 May 1984 the complainant, a UNESCO official then on prolonged sick leave, addressed an offer of resignation "on personal grounds" to the Director of the Bureau of Personnel. After correspondence about the date on which her resignation would take effect the Organization wrote to her on 16 July 1984 to say that the Bureau would accept her resignation as from 7 September 1984, the date on which her leave ran out.

The complainant got from her doctor a certificate that authorised her to work half-time and several days after that date she sought to withdraw her resignation. She wrote in turn, to no avail, to the Deputy Director of the Bureau of Personnel, to the medical officer, to the Mediator and to the Director-General. She then lodged an internal appeal which went to the Appeals Board. By a decision of 16 March 1986, the one impugned, the Director-General endorsed the Appeals Board's report and rejected her appeal, though he said he was ordering that every possibility of reappointing her to a suitable post should be looked into. Nothing seems to have come of that, at least so far as the Tribunal is aware.

2. According to general principles that apply to the international civil service an official may at any time offer his resignation without explanation. But to protect the organisation's rights as employer the offer takes effect only when accepted. All that UNESCO's rules say on the matter is that the holder of an indeterminate appointment, like the complainant, may resign by giving three months' notice and that the Director-General may, at his discretion, accept resignation at shorter notice.

In this case the principles and the requirement were complied with since three-and-a-half months went by from the date of the offer until the date on which the resignation took effect.

There is nothing else about resignation in the rules save a provision in the Manual, 2915, which safeguards the rights of a staff member held against his will in a foreign country.

3. There are also several general principles that will apply even where there is no express rule, and one of them is that the offer may be withdrawn so long as it has not come into effect through acceptance by the employer.

Conversely, a resignation that has taken effect is final and may not be withdrawn unless the offer was tainted with some flaw that makes it void.

There will ordinarily be such a flaw if the staff member underwent compelling outside pressure. One example is the case covered by Manual provision 2915, but more commonly the pressure will come from the employer.

This is quite a different sort of case in that it was the complainant who handed in her resignation and UNESCO never suggested she leave.

What she says in effect is that because of the state of her health her letter of May 1984 did not constitute a valid offer: a nervous breakdown she was suffering from at the time had so impaired her judgment and intellect as to preclude an act of will that would have effect in law.

There is one general point worth making before taking up her pleas, and that is that the flaw she is relying on was short-lived. UNESCO does not challenge her contention that she is now fully lucid. Matters would be different had she suffered lasting impairment.

4. Though short, the complainant's letter of 29 May 1984 is drafted clearly and actually thanks the Organization for employing her for almost 17 years.

She wrote a second letter on 29 June 1984, when she was still free to retract. It answered a query from the Bureau of Personnel about when her resignation should take effect and went into the financial consequences of any further leave she might get. The Organization fell in with her point of view and so informed her by a letter of 16 July 1984.

The two letters show no loss of clear-mindedness nor even a state of depression, and the complainant does not deny writing them.

5. Some of the medical certificates put in by the parties were made out by the medical officer. They date from 1986, or two years after the complainant offered her resignation. Though they declare that she was fully aware of what she was doing and what it entailed, she observes that the medical officer had seen her own doctor only in January 1984, which was before her offer, and herself on 18 September 1984, which was after. She says - and he denies - that he was not a specialist in her sort of illness.

The Organization appends to its surrejoinder a medical certificate signed by a professor of the University of Paris. The belated disclosure of this text led the Tribunal to reopen the proceedings and seek further comments from the complainant. But since it does no more than comment on the medical records it does not constitute new evidence and will therefore be treated as immaterial.

There are also medical certificates from her own doctor. The first was signed on 14 September 1984 and merely authorised her to go back to work, albeit with part-time therapy, for three months from 1 October 1984. The second one, which is dated 18 October 1984, says that in May 1984 she had been in a state of severe depression requiring brief but intensive treatment with drugs and that it was "evident that the offer of resignation she made at the time was directly attributable to her short-lived condition".

The third certificate is much later and answers the medical officer's one of 15 September 1986. It makes general remarks that it is hard to tell how clear-minded a mentally normal patient is and that "one of the most difficult questions in psychiatry, as in law, is to determine whether behaviour is normal". It suggests examination by a psychiatrist.

What is striking is that none of the certificates states in forthright terms that the complainant was incapable of consent when she wrote her letters in May and June 1984.

It was not until the Appeals Board heard the case that her doctor, in oral evidence, stated his "firm view" that the complainant "was not in full possession of her faculties when she resigned".

6. To have an accepted resignation withdrawn the complainant has to adduce precise, cogent and consistent evidence to show that her consent was lacking. But her letters of May and June 1984 reveal capacity for rational thought, and the medical certificates from the doctor who was caring for her in 1984 do not tend to any different finding. Even her nervous breakdown does not in itself warrant a finding of loss of judgment, the less so since she had several months in which to retract the offer she had made in May 1984.

The evidence before the Tribunal does not bear out her contention.

7. The complainant makes a subsidiary application for a medical examination to determine the state of her health in 1984. She alone had the idea of resigning: she was under no outside constraint and in particular under no pressure from UNESCO's medical service or Administration. The burden therefore lies on her to show that it was unlawful for UNESCO, which was after all merely bowing to her own wishes, to accept her resignation. The evidence she has adduced affords no grounds for entertaining any doubt about the correctness of the impugned decision and the Tribunal will not order an examination. Not only would it serve no purpose but in such cases it is always a delicate matter and the findings are often inconclusive.

8. In support of her claim to annulment of acceptance of her resignation she alleges that the Organization was at fault. It knew that she was seriously ill and had a duty to alert her to the consequences of resignation by seeing her and trying to dissuade her. All that the Bureau of Personnel did was to set the date on which her resignation would take effect. UNESCO retorts that on the facts her plea is mistaken: a personnel officer did seek to impress on her how serious was the step she was taking.

Though international organisations owe their staff some consideration, they have no formal duty in the matter and the Tribunal will review their behaviour only in the most exceptional cases. Accordingly, it will not rule on whether the Organization got in touch with the complainant some time in the summer of 1984. In any event the correspondence between the parties at the time does not suggest that she was in any way ostracised.

The impugned decision, which endorses recommendations by the Appeals Board that show no flaw, actually offers her the prospect of reappointment. In the circumstances the fact that she has got nothing yet need not mean that those are empty words.

9. The Tribunal concludes that the complainant's resignation was of her own free will and therefore shows no flaw. She may have offered it rather lightly, but the decision is none the less lawful for that.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux

Mella Carroll
H. Gros Espiell
A.B. Gardner

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