FORTY-FOURTH ORDINARY SESSION

In re FOURNIER d'ALBE (No. 2)

Judgment No. 417

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Edward Michael Fournier d'Albe on 14 September 1979, UNESCO's reply of 23 November, the complainant's rejoinder of 26 December and UNESCO's surrejoinder of 8 February 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 6.1 of the UNESCO Staff Regulations and provision 100.1 of the UNESCO Staff Rules;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant was appointed by UNESCO as a field expert in 1951. On 23 April of that year he signed a "notice of personnel action". Opposite the heading "Provident Fund Pension Scheme" was the entry "Not applicable". In the notice renewing his contract in 1952 for one year the space opposite the heading "Pension Fund" was left blank. In December 1952 the General Assembly of the United Nations adopted resolution 680(VII) which amended Articles II and III of the Regulations of the United Nations Joint Staff Pension Fund so as to provide that in future every full-time member of the staff should become a participant in the Fund and might have any prior period of service validated. The complainant's contract was renewed in 1953, but the subject of his participation in the Fund was mentioned neither in a letter he received from his supervisor, the acting Director of the Technical Assistance Department, nor in his new contract, nor in the notice of personnel action. His appointment was renewed several times. Then by resolutions 1073(XI) of 1956 and 1201(XII) of 1957 the United Nations General Assembly amended Articles II and III of the Fund Regulations so as to allow the participation of technical assistance experts and, under certain conditions, the validation of prior periods of service. On 15 October 1957 all UNESCO experts were informed that they might join the Fund, but without validation of prior service. On 10 April 1958 Mrs. Bénard, the Secretary of the UNESCO Staff Pension Committee, wrote to the complainant confirming his admission to the Fund as a participant but explaining that his prior service as an expert of the Technical Assistance Programme would not count, having been "specifically excluded from participation in the Fund". In June 1974 the United Nations Joint Staff Pension Board authorised the agencies to validate prior service by paying the actuarial costs. The Director-General of UNESCO then submitted a full report on the subject to the General Conference of UNESCO at its l9th Session (October-November 1976) and the Conference took note of his statement in that report that he did not intend to take the opportunity of validating any prior service by experts. On 27 October 1976, just before the Conference session, the complainant had written to the Director-General to express his view that it was unlawful for UNESCO to refuse to validate prior service. In a letter dated 1 December 1976 the Director-General said that the Conference had just taken a decision of general policy not to reconsider the matter of certain pension rights and that there was therefore no question of reviewing individual cases.

B. The complainant appealed to the Appeals Board of UNESCO. In its report dated 23 June 1977 the Board held the appeal to be irreceivable on the grounds that he ought to have acted within the time limits which had started in 1951 and then in 1958. By a letter dated 26 July 1977 the Director-General informed the complainant that he endorsed the Board's view that the appeal was irreceivable. On 14 October 1977 the complainant filed with the Tribunal his first complaint, which formed the subject of Judgment No. 364 (13 November 1978). The Tribunal held that the communications addressed to the complainant, namely the notices of personnel action and Mrs. Bénard's letter, did not constitute decisions in the proper sense and so there had been no time limits for appeal, and it therefore quashed the decision of 26 July 1977 declaring his appeal irreceivable. On 30 November 1978 the complainant asked the Director-General to give a decision on the merits of his case and to validate his period of service from 23 April 1951 to 31 December 1957 by payment into the Fund of UNESCO's share of the actuarial costs. On 19 January 1979 the Director-General dismissed his appeal. He appealed once again to the Appeals Board. In its report dated 27 June the Board recommended the Director-General to reject the appeal in so far as it

alleged failure by UNESCO to discharge any obligation towards the complainant. On 6 July the Director-General endorsed that recommendation, and that is the decision impugned.

C. The complainant observes that perhaps provision 100.1 of the Staff Rules did exclude technical assistance experts from the application of the Staff Regulations and Staff Rules up to 1 October 1959, but that the matter is doubtful: notice of personnel action No. 666 dated 23 March 1953 included the sentence: "Your conditions of employment are hereby established or amended as specified below, subject to UNESCO Staff Regulations, Rules and Procedures". Be that as it may, he ought to have been admitted to participation in the Pension Fund when the Fund Regulations were amended to admit "every full-time member of the staff". In his view, the words "Not applicable" and the blank spaces in the notices of personnel action, especially the one issued after the amendment of the Regulations, cannot be construed as expressly excluding him. At the time he was stationed in a remote area of Pakistan and since the Organization failed to inform him of the amendment he was left in total ignorance of the breaches of his rights. Again, in 1958, after the Regulations had been amended a second time, the Organization misled him by informing him that he could not avail himself of Article III of the Regulations to have his prior service validated. Lastly, in 1976 the Director-General took it on himself to decide - and merely to inform the Conference - that UNESCO would not ask for the validation of prior service. That was an error of judgment, none the less serious for perpetuating the unlawful acts committed in 1953 and 1958. The complainant estimates at some $9,000 a year the value of the pension rights he has lost because of the refusal to validate his service prior to 1958, the lump-sum actuarial equivalent being about $130,000. He asks the Tribunal to quash the decision of 6 July 1979 or award him compensation corresponding to the actuarial equivalent of the difference between the pension payable to him since his retirement on 30 September 1979 and the pension to which he would have been entitled had his prior service been validated.

D. In its reply UNESCO contends first that the only material decision is the Director-General's rejection of the complainant's claim in his letter dated 30 November 1978 for validation of his service prior to 1958. That is the decision which formed the subject of his internal appeals and his first complaint to the Tribunal. UNESCO takes the view that the Tribunal is not competent to hear such a claim because, though authorised to validate prior service, UNESCO was not bound to do so. The Tribunal is not competent to order UNESCO to take action which it is under no duty to take. Indeed that is the view expressed in article 1 of the Tribunal's decision in Judgment No. 364. Even on the mistaken assumption that what is challenged is Mrs. Bénard's allegedly false statement to the complainant on 10 April 1958, the complaint would be a claim for damages for a wrong. No provision for such damages is made in Article II, paragraph 5, of the Statute of the Tribunal, which restricts the Tribunal's competence to complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations. UNESCO's second plea is that, since there is a rule that the internal means of redress shall have been exhausted, any appeal to an internal body and any complaint to the Tribunal should be identical to the original claim submitted to the Director-General. Accordingly the only claim which the Appeals Board was competent and the Tribunal would be competent to hear is the one dated 30 November 1978. Any other claim is irreceivable. Having resigned on 30 September 1979, the complainant is no longer a UNESCO official and the claim made, a year earlier, in his letter of 30 November 1978, is now meaningless. As to the merits, UNESCO states: (1) it was under no duty to validate the complainant's prior service; (2) Mrs. Bénard's letter reflected general opinion at the time and in holding such opinion UNESCO did not fail in its duty of care towards its officials. In any event, had the complainant wanted to challenge what was said in the letter, he might in 1958 have made a formal application to the UNESCO Staff Pension Committee for validation of his prior service. He did not do so, and volenti non fit injuria; (3) what the complainant would have to show is not that Mrs. Bénard's letter gave mistaken reasons for not validating his prior service, but that validation was possible. The decision was correct because the notices of personnel action, which formed part of his contract, specifically excluded him from the pension scheme with the entry "Not applicable". Those words are quite clear and he fully understood them when he signed the notice. Article III(4) of the Fund Regulations made it clear that there could be no validation for those whose contract expressly excluded them from the Fund. The decision not to validate his prior service was therefore right, and so were the grounds given by Mrs. Bénard. Moreover, the Staff Regulations and Staff Rules did not apply to the complainant, since he was an expert. That is borne out, for example, by the fact that they were not communicated to him until 1960, when he joined the staff. On 12 February 1960 he sent UNESCO a note stating that he had "taken cognizance" of the Regulations and "accepted" their provisions. Further proof lies in the fact that when he ceased to be an expert he had to serve nine months on probation before becoming a member of the staff. Lastly, in support of a claim for damages for Mrs. Bénard's letter the complainant would have to show: (a) that but for that letter he would have applied for validation of his prior service; (b) that such an application would have been successful. Moreover, in her letter Mrs. Bénard added that she would be glad to give him "any further information which you would like to have in connection with your pension rights". The complainant did not act on

that invitation and thereby committed "wilful omission". But even if he had then applied for validation he would certainly not have been successful since he had no right to it. UNESCO therefore asks the Tribunal to hold that it is not competent to hear the complaint and, subsidiarily, to declare it irreceivable or to dismiss it as unfounded.

E. In his rejoinder the complainant disagrees that the one and only claim he submitted to the Director-General was the one for validation of his prior service. In his letter dated 30 November 1978 and later in his submissions to the Appeals Board he made it plain that if refused validation he would seek compensation. Moreover, what he is impugning is not the Director-General's response to the Pension Board's decision in 1974, but UNESCO's failure to give him in due time correct information about his rights of participation in the Fund. That he retired early is irrelevant since the material facts date back to a previous period. UNESCO twice failed to give him the right information: in 1953 it failed to communicate resolution 680(VII) to him, and in 1958 he was misled by Mrs. Bénard's letter. In both instances the information was incorrect. In 1953 he was indeed "a full-time member of the staff" - the only condition of validation - as is clear from the declaration of loyalty which he signed on 28 February 1951 and in which he undertook to serve as "a member of the staff of UNESCO". Again, in 1958, he was not specifically "excluded" from the pension scheme since it was materially impossible for him to construe the mere words "not applicable" to that effect.

F. In its surrejoinder UNESCO maintains that the only claim which can give the complainant cause for appeal is the one for validation. In a memorandum addressed to the Director- General on 8 February 1979 he stated that he was protesting against the decision not to meet the "request contained in the second paragraph" of his letter dated 30 November 1978 "concerning the validation of my pension rights". The last paragraph of that letter, which related to financial compensation, was a simple statement of intent, not a claim requiring any decision. Since no decision was taken on the claim for compensation the Tribunal is not competent to hear it. As for Mrs. Bénard's letter, the burden of proof is not on UNESCO to show that what she said was right but on the complainant to show that it was wrong. He has failed to do so. Moreover, UNESCO is under no duty to communicate United Nations resolutions to its staff: it is they who must be vigilant in procuring such texts, which are matters of public knowledge.

CONSIDERATIONS:

Jurisdiction and receivability

1. The decision impugned is the decision of the Director-General of 6 July 1979 in which he accepted (with reservations noted in paragraph 3 below) the recommendations of the Appeals Board in their report dated 27 June 1979. In this report the Board recommended the rejection

(a) of the complainant's request that the Director-General should be required to take immediate action towards the validation as pensionable of the complainant's pre-1958 service, such recommendation being on the ground that the Board had no jurisdiction; and

(b) of the complainant's request that he should be compensated for the loss of his pre-1958 pension rights.

The complainant complains to the Tribunal of the rejection under both heads.

2. The Organization objects to the complaint on the first head on the ground that the Tribunal itself so decided in Judgment No. 364 given on 13 November 1978. In paragraph 6 of that Judgment the Tribunal decided that the contention that the Director-General was obliged to act in accordance with an authorisation given to him by UNESCO's General Conference in July 1974 was clearly outside the competence of the Tribunal. While reiterating in the present complaint the request that the Director-General should take immediate action, the complainant does not put it solely on the same ground. In paragraphs 21 to 24 of his Statement he appears to be treating the obligation to act as based either on the Staff Regulations or as a contractual obligation to all staff members; and in paragraphs 33 to 35 of the Reply the Organization puts an opposing contention. In this setting the question of jurisdiction depends on whether or not the complainant can establish a contractual obligation on the Director-General to act as requested. This is not a question which can conveniently be determined as a preliminary objection.

3. The Organization objects to the complaint on the second head as irreceivable. This involves a tortuous argument. The complainant started (or resumed; see paragraph 5 below) the proceedings before the Appeals Board with an ineptly worded letter dated 30 November 1978 which the Director-General treated as requiring a decision only on

the first head; and he, so the Organization contends, restricted his reply to that. Both letters lend themselves to a variety of interpretations which the Tribunal does not propose to discuss. There never was the slightest doubt that if the Director-General had dealt with the claim for compensation, he would have refused it: indeed he had already done so; see paragraph 5 below. However, before the Board the Organization contended that the complainant had not exhausted his internal remedies in that he had not asked the Director-General for a decision on his compensation claim: the Organization now makes the same point before the Tribunal. The Board took a broad and sensible view of the matter, holding that it had jurisdiction to hear the appeal "to the extent that the appeal alleges that the Organization failed to comply with UNESCO's Staff Regulations and Rules", but recommended that the appeal should be rejected on the ground that the complainant had not established "a failure by the Organization to discharge any obligation towards the appellant". By the decision impugned the Director-General accepted this recommendation while reserving his position on the Board's opinion that they had jurisdiction.

4. The objection on receivability fails for two reasons. The first is that the complainant has obtained a decision from the Director-General and thereby exhausted his internal remedies. It is quite immaterial whether the recommendations on which the decision is based are right or wrong in whole or in part: the fact that the Director-General may disagree with some of the reasoning that led to the recommendation or reserve his opinion about it does not prevent the result being decisive. If the Director-General had wished to make procedural difficulties, which surely he did not, he would have had, instead of accepting the recommendation, to have rejected it on the ground that the Board had no jurisdiction to make it.

5. The second reason is that the letter of 30 November 1978 was not merely ineptly worded but was also quite unnecessary. There was already before the Board a decision by the Director-General (see Judgment No. 364, paragraph 5) rejecting the claim for compensation and there was no need for a fresh one. The Appeals Board had, without going into the merits, held the claim for compensation to be irreceivable. In Judgment No. 364 the Tribunal ruled that it was receivable. Accordingly, all that was necessary was for the board to resume the hearing and make a recommendation on the merits.

The merits

6. The United Nations Joint Staff Pension Fund (hereinafter called the Fund) was created in 1948 and by Article II of its regulations provided for the participation of every full-time member of the staff "if he enters employment under a contract for one year or more, or when he has completed one year of employment, provided that he is under 60 years of age at the time of entering such employment and that his participation is not excluded by his contract of employment".

The management of the Fund was in the hands of a Joint Staff Pension Board which could delegate to Staff Pension Committees its powers relating to the admission of participants and granting of benefits. Each member organisation had a Staff Pension Committee of its own composed of members of the staff selected by methods which it is unnecessary to particularise.

7. Until 1 January 1951 UNESCO had had its own Provident Fund. On that date it became a member organisation of the Fund. Article II provides that each member organisation may determine the conditions under which its staff members become participants. It appears to be assumed in the dossier, and the Tribunal assumes likewise, that the condition applicable to the staff of UNESCO was the same as that quoted above.

8. On 27 February 1951 the complainant joined the staff of the Organization as a technical assistant under a written contract for a duration of one year. The appointment was thereafter renewed each year until it was converted into an indeterminate appointment on 1 October 1972. The contract made no mention of pension rights. On 17 April 1951 the complainant was presented by the Bureau of Personnel with a form headed "Notice of Personnel Action", which was obviously intended to summarise for the benefit of the Bureau the features of the contract in which they were interested. Most of the form consisted of spaces wherein allowances and deductions could be shown. In a space headed "Provident Fund Pension Scheme" the words "Not applicable" are typed. The form requested the complainant to sign it as accepted, which he did on 23 April.

9. The question is whether under Article II of the Fund Regulations the complainant's participation is "excluded by his contract of employment". The complainant contends that it is not excluded, first, on the ground that this is not the effect of the words "not applicable" and, secondly, on the ground that those words did not form part of his contract of employment.

10. On the first ground the complainant takes the point that what the form labels as "not applicable" is not the Fund but a "Provident Fund Pension Scheme". Although UNESCO did not become a member organisation of the Fund until 1 January 1951, the negotiations which led to its entry were in fact concluded on 7 March 1950; the form was devised to cover a period during which, depending on the date on which the form was used, the relevant body would have been either the Fund or its predecessor, i.e. UNESCO's own Provident Fund. In the opinion of the Tribunal in a form signed in April 1951 it must be read as meaning the Fund.

11. The other and more substantial point which the complainant takes on the first ground is that the words "not applicable" are not words of exclusion: not to belong to a body is not the same thing as to be excluded from it. In the opinion of the Tribunal the words are ambiguous and must be interpreted according to the circumstances. Since the complainant was entering the employment of UNESCO under a contract for one year, prima facie he qualified as a participant under Article II. Had his contract been for six months, he would not have qualified at all; then "not applicable" could be read simply as a statement of the fact that the complainant was not a participant in the Fund. But since he did qualify in every other respect, the only justification for the statement that the Fund was not applicable could be the fact that it was excluded by his contract, and the phrase "not applicable" must, to be given any effect at all, be interpreted in that sense.

12. As to the second ground, it is not necessary to decide that in all circumstances and for all purposes a Notice of Personnel Action is part of the contract of employment. On the face of it it is a summary in a convenient form of what a concluded contract contains. If the form contains provisions that are not in the concluded contract, the staff member could refuse to sign it as acceptable. If he signs it as acceptable, it must depend on the circumstances whether or not any new matter is to be treated as supplementing the existing contract and thus becoming part of it. In the circumstances of this case the form was not doing more than clarifying the existing contract. The contract was silent about pension rights; but if it had been the intention to include the complainant in the Fund, the contract would have had to have said something; otherwise the Organization would have been obliged under clause 4 to pay the complainant's salary in full without the deduction of his contribution to the Fund. In the opinion of the Tribunal the words "not applicable" are only making explicit what is implied in the contract already executed. Consequently, the Tribunal holds that the complainant's participation in the Fund was "excluded by his contract of employment".

13. It would not in any event be right to decide this point solely on a minute analysis of forms executed 29 years ago. It is doubtless now impossible for the complainant to recall his state of mind at that time. But it is also impossible to suppose that he was not then alive to the question of pension rights and aware that he was not getting any. Participation in the Fund was equivalent to an increase in salary of at least 14 per cent, this being the Organization's minimum contribution. At the same time it meant 7 per cent less cash to live on, that being the employee's contribution. No one in the least interested in the financial side of his contract could have been indifferent to such considerations and so would probably have become aware when he was negotiating the terms of his employment that it was the general policy of UNESCO and other international organisations not to grant pension rights to technical assistants. This was the atmosphere in which the contract was made and in relation to which it now has to be interpreted.

14. On 1 January 1953 the Regulations of the Fund were amended by the introduction of a new Article III which permitted a participant to elect to have his service with the Organization before the commencement of his participation validated for pension purposes. Since the complainant was not a participant his rights were unaffected by this amendment.

15. In 1957 UNESCO and other organisations decided to reverse the policy under which technical assistants were excluded from the Fund. At the same time Articles II and III of the Fund Regulations were amended. These amendments took effect on 1 January 1958 and it is convenient to have in mind what they were before giving consideration to the change of policy which admitted technical assistants.

Article II

Participation

1. Every full-time member of the staff of each member organization shall become a participant in the United Nations Joint Staff Pension Fund:

(a) If he enters employment under a contract without a time-limit; or

(b) If he enters employment under a fixed-term contract for five years or more; or

(c) If he has completed five years of employment and remains on a contract providing for further service of at least one year, or remains in employment for more than one year thereafter; or

(d) If the member organization certifies that the particular fixed-term contract is considered to cover a probationary period and is designed to lead to employment for an indefinite period, provided that he is under sixty years of age at the time of entry into the Fund and that his participation is not excluded by his contract of employment.

Article III

Validation of non-pensionable service

1. A participant who has been in the employment of a member organization as a full-time staff member and whose participation in the Pension Fund was at that time excluded by Article II of these regulations because he entered employment under a contract for less than one year, or had completed less than one year of service, may, subject to paragraph 4 of this regulation, elect within one year of the commencement of his participation to have the period of such prior employment included in his contributory service...

4. Notwithstanding the provisions of paragraph 1 of this article, a participant may not make pensionable a period during which he was employed under a contract of employment which specifically excluded his participation in the Pension Fund.

16. It will be seen that the new Article II raised the basic qualification for participation from one year's service to five. But by this time the complainant had given more than six years' service so that the higher qualification was no hindrance to him. He was however still in the position that his participation was excluded by his contract of service; it will be seen in the next paragraph how this difficulty was overcome. Once a participant he would want to validate his previous service from February 1951 by making the election provided for in Article III. sut there are in the terms of Article III two possible obstacles to his making the election. The first is under paragraph 1: his earlier participation had been excluded not "because he entered employment under a contract for less than a year" but because of the term in his contract of employment. The second is under paragraph 4 and must depend on whether his earlier participation was not merely excluded but "specifically" excluded by his contract of employment.

17. On 15 October 1957 the Organization issued a circular to all technical assistants alerting them to "the possibility of full participation under the Pension Fund". The letter set out the conditions as to length of service, being those eventually embodied in the new Article II, but said nothing about the proviso in that article which continued to bar those excluded by their contracts. The letter said that each expert would be advised individually in due course. It said that participation would date from 1 January 1958 and that "service prior to this date would not count towards any future action or entitlement under the Pension Fund".

18. On 1 April 1958 the Bureau of Personnel wrote to the complainant as follows:

"The purpose of this letter is to inform you that under the present interpretation of Article II of the Fund Regulations it has been decided that a staff member who had completed five (or more) years of employment with one of the Member Organizations at some time in 1957, and had been granted a further contract for one year prior to 1 January 1958, should be admitted as a full participant on 1 January 1958."

The letter then said that a 7 per cent deduction would be made in the April payroll retroactively from 1 January and that the Secretariat of the UNESCO Staff Pension Committee would be sending the relevant documents and that correspondence should be addressed to it.

19. Nothing in the dossier sheds any light on what is meant in the above letter by "the present interpretation of Article II". It seems impossible to interpret the article in a way which would simply eliminate the requirement that participation should not be excluded by the contract of employment. What was essential to participation was an alteration in the contract of employment which could only be made by mutual consent. The only way of making legal sense out of the letter of 1 April is to treat it as an offer, which the Organization was rightly confident would be accepted, to remove the exclusion clause. It is not however necessary to suppose that the removal was to take effect before 1 January 1958, so that the clause, if it was "specific", would still constitute a barrier to the validation

of previous service.

20. On 10 April 1958 Mrs. Bénard, the Secretary of the Staff Pension Committee, wrote to the complainant referring to the letter of 1 April telling him that he had been admitted as a full participant as from 1 January. She sent him a copy of the Fund Regulations. She added:

"3. Please note that you are not allowed to avail yourself of the provisions contained under article III of the Regulations, as the services which you have completed prior to 1 January 1958 as an expert of the Technical Assistance Programme were specifically excluded from participation in the Fund."

21. in the passage quoted above the Staff Pension Committee was not giving advice or information. The letter as a whole constituted a decision to admit the complainant to participation in the Fund. The passage quoted was part of that decision. Both in substance and in form it is a decision by the Committee, presumably under the powers delegated to it by the Joint Staff Pension Board, that the complainant had no right to make an election under paragraph 1 of Article III. It was in effect a decision that in the complainant's case a claim for validation would be barred by one or other of the obstacles (the letter mentioned only the second) mentioned in paragraph 16 above; as such the Tribunal has no reason to believe it to be incorrect. But the Tribunal is not concerned with the correctness of the decision. If it was thought to be incorrect the complainant could have appealed against it.

22. It is within the jurisdiction of this Tribunal to interpret the complainant's contract of employment. The complaint to this Tribunal must stand or fall by the answer to the question posed in paragraph 9 above. The Tribunal has answered it by saying that until 1 January 1958 the complainant's contract excluded him from participation in the Fund. If it had been answered differently, a number of further questions would have arisen, many of which are discussed in the dossier. But with the answer as it stands the complainant can make no progress with his various claims for relief. The Tribunal will deal with them briefly below.

23. The main claim is that the Director-General should have taken "the required action" to admit the complainant to participation in the Fund in 1953 and to allow him to validate his previous service. The "required action" is not specified and no text is cited conferring any power on the Director-General to admit or enrol a staff member in the Fund or to affiliate him to it or, as the complainant puts it, to "make him contributory". Article II of the Fund Regulations states that a staff member with the requisite qualifications "shall become a participant", and one of the qualifications is that there should be an absence of exclusion by contract. It is of course within the power of the Director-General to consent to the removal of the exclusion and thus - in a practical, though loose sense of the word - to "admit" to the Fund any staff member who is otherwise qualified. But any complaint of "failure to admit" made against the Director-General must be based on the legal realities. To lay the necessary foundation for it the staff member would have to propose an amendment to the contract. It is unnecessary to consider whether a decision by the Director-General to refuse his consent to such an amendment could be reviewed by this Tribunal. No such proposal was ever made. Nothing the Director-General can now do could alter the fact that until 1 January 1958 the complainant was under the Fund Regulations disqualified from participation in it.

24. Likewise it is arguable that the Organization owes a duty to staff members in the field to see that they get information affecting their rights. The complainant contends that since he was on duty in Pakistan in 1953 he ought to have been informed of the new Article III that was then introduced into the Fund Regulations. The Tribunal need not express any opinion on this. The new article did not affect the complainant's rights: that is the end of this point.

25. As to the claim for validation in 1958, the argument in the dossier proceeds on the supposition that Mrs. Bénard's letter of 10 April 1958 contains information and advice for which, if negligently given, the Director-General would be responsible. It is unnecessary to consider whether and to what extent, if at all, the Director-General could be made responsible for the acts or omissions of the Staff Pension Committee. What is quite clear is that he can have only a limited responsibility for its decisions. Let us consider again the two obstacles mentioned in paragraph 16 above. It was the second obstacle which the Pension Committee considered to be conclusive, i.e. they treated participation as having been "specifically excluded" under Article III, paragraph 4. If this was wrong, was it a wrong interpretation of the article or of the contract? If of the article a complaint against the interpretation should have been addressed to the Fund, where it would have been dealt with under the machinery provided for questioning decisions of the Pension Committee: if of the contract, the complaint would have to be made to the Director-General. If it became necessary to consider the first obstacle the question would relate to the application of the Fund's Regulations and so the complaint would lie against the Fund. It is unnecessary to consider these complications since there was no complaint at all.

26. The complainant relies also on the statement about prior service quoted in paragraph 17 above and contends that it was a statement made by or on behalf of the Organization and that it deterred the complainant from requesting the validation of his previous period of service. The statement must be read as a forecast of what the attitude of the Pensions Committee was going to be. As such the forecast was correct and had no doubt been verified beforehand with the Pensions Committee. There is no reason why it should have deterred the complainant from pursuing his rights if he thought that the decision of the Pensions Committee was wrong. He had a year in which to consider the matter. He had been sent a copy of the Fund Regulations and he was told by Mrs. Bénard in the letter of 10 April 1958 that if he wanted any further information in connection with his pension rights, she would be glad to supply it.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-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, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

André Grisel
Devlin
H Armbruster

Bernard Spy

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