

ELEVENTH ORDINARY SESSION

In re ALBERO

Judgment No. 64

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization drawn up by Mr. Benito Albero on 14 February 1962, the reply of that Organization on 17 April 1962, the complainant's additional observations, dated 2 May 1962, and the additional memorandum by the Organization, dated 17 August 1962;

Considering Rule No. 109.12 of the UNESCO Staff Regulations and Staff Rules;

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

Considering that the pertinent facts at issue are the following:

A. When complainant entered the service of UNESCO on 23 August 1958 he was assigned to work as an expert at Tegucigalpa in Honduras. His appointment was twice renewed and was due to expire on 30 June 1961. By a letter of 27 January 1961, the administration authorised him to return home to Spain by sea. Complainant was asked to have the plane ticket he had been supplied with for his return journey endorsed by Pan-American Airways and to hand it over to whatever shipping line he chose in payment of his sea passage which he was to book himself. It was stated at the same time that complainant would be entitled to 44 1/2 days' leave at 1 January 1961, and that if he took no leave until the end of June he would by then have accumulated 57 days' leave. As the administration desired that complainant should take all his leave before the end of his appointment, it urged him to make the necessary arrangements to leave Tegucigalpa on or about 8 April 1961.

B. Since complainant did not comply with these instructions but asked Pan-American Airways to refund his air ticket, the value of which was transferred to the UNESCO Travel Agency in Paris, the administration in a letter dated 1 March 1961 asked complainant to notify it of the date and boat by which he intended to return home and offered to book his passage for him. As there was no reply to this letter, the administration cabled him on 12 June 1961 reminding him of its letters dated 27 January and 12 March and requested him to inform it by cable of his plans for the return journey. Eventually, complainant sailed from Panama City on 10 July 1961 and reached home on the 29th of that month.

C. Complainant then lodged a claim for payment of his salary from 1 to 29 July 1961, plus an allowance for 24 days' travel. Payment of his salary was refused and the travel allowance was only paid in respect of two days, viz., the time taken by plane, which was the normal form of transport. Complainant then took his case to the Appeals Board, which reported against the salary claim, but in favour of the payment of an allowance for an additional 22 days' travel. The administration accepted this recommendation. In this complaint, Mr. Albero prays for the quashing of the refusal to pay his salary for the period from 1 to 29 July 1961 and the Organisation prays for the dismissal of the complaint.

IN LAW:

1. Staff Rule No. 109.12(b) provides that, upon separation, except in the case of summary dismissal, a staff member whose recognised home is outside the country of his duty stations shall be shown to relinquish his duties in time to enable him to reach his recognised home by an approved route on the effective date of separation from service. Moreover, under Staff Rule No. 109.12(c), when a staff member decides for personal reasons not to exercise his entitlement to repatriation travel until after the effective date of his separation from service, no salary or allowances other than travel per diem shall be paid to him in respect of travel time.

2. In this case the administration complied with the provisions of Staff Rule No. 109.12(b). From 8 April 1961, which was the approximate date on which complainant was to relinquish his duties in accordance with the administration's instructions, until 30 June 1961, which was the effective date of his separation from service, 83 days elapsed. Complainant, therefore, had enough time to take all the leave to which he was entitled (57 days) and to return home by an approved route (24 days) before his separation from service.

He is not justified in blaming the Organization for not having sent him a boat ticket. Under the detailed instructions he had received, which were in no way contrary to the Staff Regulations and Staff Rules, he was himself responsible for arranging his return by sea. Moreover, in its letter of 1 March 1961 the administration had even proposed to instruct a travel agency to obtain and pay for the boat ticket. Far from going back on these arrangements, the Organization confirmed them in its telegram of 12 June 1961. Admittedly, complainant was by then no longer able to return home by boat before the effective date of his separation from service, but he found himself in that position because he had not followed the instructions he received. He therefore bears sole responsibility for his delay in returning to Spain.

Since complainant had been duly allowed to relinquish his duties in time to enable him to reach his recognised home by the effective date of his separation from service, it can only be for personal reasons that he postponed his departure after that date and accordingly under Staff Rule No. 109.12(c), he is not entitled to the additional salary he claims, but only to the per diem travel allowance which was granted to him on the advice of the Appeals Board.

DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 26 October 1962 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine