

ELEVENTH ORDINARY SESSION

In re DARRICADES

Judgment No. 67

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization, drawn up by Mrs. Vally Darricades on 15 March 1962, and the Organization's reply dated 22 June 1962, together with the parties' replies to the Tribunal's interrogatory;

Considering Article II of the Statute of the Tribunal and provisions 100.2 and 111.1 of the Staff Regulations and Rules of UNESCO;

After examining the documents in the dossier, no oral proceedings having been either requested by the parties or ordered by the Tribunal:

IN FACT:

The material facts of the case, as they appear from complainant's statement of her case and the documents annexed thereto are as follows:

A. On 1 November 1956 complainant was engaged by UNESCO to act in a temporary capacity as secretary of the Journal of the Ninth Session of the General Conference, which was to meet in New Delhi from 5 November to 5 December 1956. The salary to be paid to complainant was at the rate of 70,000 francs per month and was to be paid as from the first working day of the said session. The terms of complainant's engagement were set out and confirmed in a written contract, signed by complainant and by the Chief of Personnel for the said General Conference, and dated 1 December 1956. The said contract provided inter alia that complainant would not be considered as a member of the staff of the Organization and that in consequence she would not be entitled to reimbursement of national income tax, to any paid leave, or to the benefits of the sickness or pension schemes of the Organization; nevertheless, the Articles of Chapter 1 of the Staff Regulations and Rules of the Organization would apply to her with the exception of Rules 101.3 and 101.4. The contract further provided that for its duration complainant would have the benefit of an accident insurance calculated upon the basis of Conference rates.

B. It appears from the statement of complainant and from the letter from Lloyds Paris agent hereafter referred to, that in discharge of the aforesaid contractual obligation to provide for the complainant the said accident insurance, the Organization took out with Lloyds an individual policy, 600/N23344.

C. On 5 December 1956, the complainant, while in the service of the Organization was severely injured in New Delhi, in consequence of which she suffered a partial permanent incapacity.

D. On 31 May 1957, complainant received from Cabinet Parsons, Correspondents of Lloyds in Paris, a letter referring to "Individual Lloyds Policy 600/N 23344 UNESCO" in which they stated that as the result of "the last medical examination performed by our medical adviser, we have to inform you that we are in a position to offer the following settlement, account being taken of the medical position and the terms and conditions of the above-mentioned policy and subject to the final concurrence of the insurers in accordance with usual practices:

- 18% of permanent partial invalidity (degree of invalidity evaluated on the basis of the rates set out in the policy) corresponding to the total insured capital of Fr. 3,000,000, i.e. the sum of : Fr. 540,000.

- together with reimbursement of medical costs up to Fr. 50,000 subject to the production of receipted bills.

We are therefore awaiting your agreement and production of receipted bills. If you are a participant of the French Social Security Scheme we would ask you to send us an account of the amounts reimbursed under the scheme together with copies of the bills for the costs you have incurred so that we may calculate the amount payable to you under the above-mentioned policy." Complainant communicated this offer to UNESCO and was informed that she should appear before the French Social Security Medical Board which alone could validly assess the percentage of

her invalidity and complainant appeared before said board in March 1958.

E. On 28 May 1958, the Caisse régionale de Sécurité sociale de Paris informed complainant by letter that they had assessed permanent disablement resulting from her accident at 22 per cent. adjusted in conformity with the law to 11 per cent. and that she would be paid every three months, calculated from 2 July 1957, 19,880 francs. She received, and continues to receive, the said payment.

F. On 28 June 1958, complainant's attorney wrote to Miss Jalaguier, Social Welfare Officer of the Organization, concerning the indemnity due to complainant under the aforesaid Lloyds policy, and in reply received from the acting Legal Adviser of the Organization a letter, dated 12 August 1958, in which it was stated inter alia that the competent services of the Organization considered that his client had been fully indemnified in accordance with the terms of her contract and that no further indemnity was due to her.

At the date of the aforesaid letter of 12 August 1958, complainant had received during the period of her total incapacity the indemnities provided for under the first two heads of the Lloyds policy but she had not received the consolidated sum of 540,000 francs accepted as payable by Lloyds under the said policy in respect of her permanent partial disability.

On 6 January 1959, complainant wrote to Personnel Service of the Organization recalling the facts of her case and asking that she might be informed of such further action as the Organization would take in the matter.

On 20 March 1959, the Deputy Chief of Personnel for the Organization replied to complainant's letter of 6 January 1959 and stated that he had nothing to add to the letter addressed to her by the Acting Legal Adviser of the Organization on 12 August 1958.

G. On a date which complainant has not specified, one Harper-Smith informed her that she could not at the same time be paid an invalidity pension representing the interest on capital, and a capital sum from Lloyds for the same incapacity.

In the result, complainant has received from the Sécurité sociale française a pension on the basis of 11 per cent. in respect of a proved permanent partial incapacity of 22 per cent. Lloyds through their Paris correspondents have accepted that complainant suffered a permanent partial incapacity of 18 per cent. She has received no part of the sum of 540,000 francs offered by way of indemnity for her permanent partial incapacity under the aforesaid individual accident policy on the basis of 18 per cent., an indemnity claimed to be wholly independent of any indemnity paid to complainant by the Sécurité sociale française.

H. On 27 October 1961, complainant appealed by registered letter to the Chief of Personnel to reconsider the situation, and as this letter remained unanswered, complainant requested on 22 January 1962 that its receipt be acknowledged. On 12 January 1962, the Deputy Chief of Personnel acknowledged the receipt of the two above-mentioned letters and confirmed the terms of the Acting Legal Adviser's letter of 12 August 1958.

I. According to the Organization's reply to the Tribunal's interrogatory, the Organization never submitted to complainant a complete accounting in respect of the sums received from the insurers and the French Social Security and of those paid to complainant.

J. On 15 March 1962, complainant filed a complaint in which she prayed that the Tribunal should order that UNESCO should repay complainant the amount of 540,000 francs offered by the insurance company together with interest and an additional sum corresponding to the loss of purchasing power of the said amount, and award complainant an indemnity for moral injury.

In its reply of 20 June 1962, without submitting any observations on the merits of the case or discussions the facts and arguments submitted by complainant, the Organization raises a preliminary objection on grounds of lack of jurisdiction of the Tribunal and subsidiarily submits that the complaint is not receivable as being time-barred.

IN LAW

1. Under Article II, para. 1 of the Statute of the Administrative Tribunal, "the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case", and

paragraph 5 of the said Article further provides that "the Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure".

Article 111.2 of the Staff Regulations and Rules of UNESCO provides that "staff members shall have the right to appeal against a decision of the Director-General, taken after reference to the Appeals Board under Rule 111.1, to the Administrative Tribunal, in accordance with the provisions of the Statute of that Tribunal".

Article 100.2 of the said Regulations and Rules specifies that "in the Staff Regulations and Rules, unless the contest otherwise indicates, (a) 'staff member' means a person engaged by the Director-General other than ... a person specifically engaged for a conference or meeting..."

2. It must be concluded from the evidence in the dossier that complainant entered the service of UNESCO solely and specifically for the duration of the Ninth Session of the General Conference, to be held in New Delhi from 5 November to 5 December 1956. The contract of appointment specified, in clause 8, that "the undersigned shall not be regarded as a staff member", and provided that only those provisions of the Staff Regulations and Rules pertaining to the general obligations incumbent on any person engaged in any capacity whatsoever by an international organisation would apply to complainant. Hence, having regard both to the nature of complainant's relationship to UNESCO and to the explicit terms of the contract, complainant who was a purely casual employee of the Organization, cannot be regarded as a staff member of the Organization for the purposes of Article 111.2 of the Staff Regulations and Rules. It follows that on the basis of the provisions cited above, UNESCO's submission that the Tribunal lacks jurisdiction to entertain the complaint must be held valid.

3. The Tribunal recognises that as a result of holding that it lacks jurisdiction, complainant is thereby regrettably deprived of any means of judicial redress against the injury sustained as a result of the alleged violations of her contract but the Tribunal, being a Court of limited jurisdiction, is bound to apply the mandatory provisions governing its competence.

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