

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHR. AGAPIOU,

Applicant,

and

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

ANDREAS CHR.
AGAPIOU
v.
CYPRUS
TELECOMMUNICA-
TIONS AUTHORITY

(Case No. 252/68).

Officers of Public Authorities—CYTA—Acting Appointment—Offer for an acting appointment made as a result of a decision taken by the Board of the Respondent—Withdrawal of such offer by the Personnel Officer of the Respondent—Applicant's—offeree's conduct clearly amounted to a non-acceptance of the said offer—Withdrawal, therefore, fully warranted—No need to put matter before the Board of Respondent before cancelling or withdrawing offer, in view of the explicit terms of the relevant decision of the Board and which terms were embodied in the said offer.

In this case the Applicant complains against the act of the Personnel Officer of the Respondent Authority (The Cyprus Telecommunications Authority alias CYTA) whereby he informed him by letter dated May 13, 1969, that the offer for an acting appointment as Technical Assistant I (made to him by letter dated April 27, 1968), should be treated as not having been made.

After reviewing the facts, the Court dismissed this recourse on the main ground that the aforesaid offer was rightly withdrawn because the Applicant's conduct clearly amounted to a non-acceptance of such offer.

Recourse.

Recourse against the decision of the Personnel Officer of the Respondent Authority to the effect that an offer to Applicant, for an acting appointment as Technical Assistant I, should be treated as not having been made.

1969
Oct. 31

—
ANDREAS CHR.
AGAPIOU
v.
CYPRUS
TELECOMMUNICA-
TIONS AUTHORITY

L. Papaphilippou, for the Applicant.

A. Hadjioannou, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

TRIANAFYLLIDES, J.: In this case the Applicant complains against the fact that the Personnel Officer of the Respondent Authority, Mr. N. Markides, informed him, by letter dated the 13th May, 1968 (*exhibit 1*), that an offer for an acting appointment as Technical Assistant I, should be treated as not having been made.

A further claim of the Applicant for the annulment of a decision of the Respondent to insist on conditions 5, 6 and 7 in the said offer has been abandoned, in the course of the hearing of the case, and need not be dealt with herein.

The Applicant, at the material time, was a Technical Assistant II, in the service of Respondent.

The offer for an acting appointment as Technical Assistant I was made to him by means of a letter of Mr. Markides, dated the 27th April, 1968 (see *exhibits 2 and 2A*).

This offer was made to the Applicant as a result of a decision taken by the Board of Respondent on the 29th March, 1968; it is quite clear from the relevant minutes of the Board (*exhibit 8*) that as the Applicant did not possess the qualifications necessary for substantive promotion to Technical Assistant I, it was decided to make to him an offer for an acting appointment only, in accordance with the policy laid down by an agreement concluded between the Respondent and its trade unionists employees on the 21st December, 1967, and known as agreement 4/67 (the effect of which is reproduced in the minutes, *exhibit 8*).

That the offer in question was made to the Applicant on the basis of such agreement is quite obvious from the fact that the reference "4/67" appears against the name of the Applicant in the said minutes of the Board.

It was expressly decided by the Board on the 29th March, 1968, that those to whom offers for various acting appointments would be made—such as the one made to the Applicant—

should be required, on accepting the offers, to sign that they agreed to certain conditions on the basis of which they were made, the main of these being that they would have to acquire the necessary—under the relevant schemes of service—qualifications within specified periods of time, or otherwise their acting appointments would be terminated; the said conditions in the case of the Applicant were conditions 5, 6 and 7 in the letter offering him an acting appointment to the post of Technical Assistant I.

1969
Oct. 31
—
ANDREAS CHR.
AGAPIOU
v.
CYPRUS
TELECOMMUNICA-
TIONS AUTHORITY

The Applicant on the 4th May, 1968, replied to Mr. Markides (*exhibit 4*) stating that he accepted the post offered to him but that he reserved his rights regarding conditions 5, 6 and 7, on the ground that not only he possessed the “necessary” qualifications, but he possessed even higher qualifications; therefore, he requested Mr. Markides to write back to him informing that in his case such conditions had been waived. The Applicant, also, signed and returned the letter of the 27th April, 1968—containing the offer made to him (*exhibit 2A*)—but he made on it an endorsement to the effect that it should be read together with his letter of the 4th May, 1968 (*exhibit 4*).

There then followed a meeting with Mr. Markides at which the Applicant explained orally the stand which he was taking in the matter. Both the Applicant and Mr. Markides have given evidence as to what took place at that meeting.

Whenever there appears to be any conflict between their versions, I would, unhesitatingly, prefer the evidence of Mr. Markides; Mr. Markides impressed me as a person who was testifying without having any personal interest in the matter; on the other hand the Applicant seemed to be trying to shape his version in such a way as to suit his interests in these proceedings.

In any case there is not, really, much substantial difference between their two versions, and when one peruses, too, a memorandum (*exhibit 7*) prepared by Mr. Markides immediately after his meeting with the Applicant, it is quite clear that the Applicant refused to sign that he accepted the offer *as made to him*, viz. with all the conditions therein, because he would be thus making an admission that he did not possess the required qualifications.

1969

Oct. 31

—
ANDREAS CHR.
AGAPIOU

v.

CYPRUS

TELECOMMUNICA-
TIONS AUTHORITY

Mr. Markides placed the matter before the General Manager of the Respondent who took the view that there was no need for the matter to be referred again to the Board of Respondent and that, in the circumstances, the offer made had to be withdrawn; and, as a result, *exhibit 1* was written by Mr. Markides to the Applicant, cancelling such offer.

Learned counsel for the Applicant has submitted that the action taken by means of *exhibit 1* was based on a misconception as to the legal effect of the stand taken by the Applicant in the matter; he argued that by means of his letter *exhibit 4* and the endorsement on *exhibit 2A* the Applicant had in fact accepted the offer made to him and the objections which he had raised regarding the conditions relevant to his acquiring in future certain qualifications did not amount to a refusal of such offer, or, at any rate, did not give rise to the right to withdraw the offer.

I cannot agree with this line of argument: The Applicant was made an offer and he had refused to sign that he accepted basic conditions of such offer, relating to qualifications necessary for the post which was offered to him. In my opinion, his conduct amounted, in effect, to a non-acceptance of the said offer and, in the circumstances, its withdrawal was warranted.

The next submission of counsel for Applicant was that it was only the Board of the Respondent that could have decided on the withdrawal of the offer, after considering the contents of the letter of the Applicant, *exhibit 4*, which he wrote in answer to the offer made to him.

In view of the explicit terms of the relevant decision of the Board of the Respondent (*exhibit 8*) to the effect that those to whom the offers for acting appointments would be made—one of them being the Applicant—would have to sign that they accepted all conditions contained in such offers there was, indeed, no need, in my view, to put the matter before the Board of the Respondent, before cancelling the offer which the Applicant had failed to accept, as made to him.

It may be pointed out, in this connection, that from the material on record it emerges that the Board, before deciding to make to the Applicant the offer in question, must have considered whether or not the Applicant's qualifications entitled him to a substantive appointment, or only to an acting

appointment on the conditions about which he complained; this is clear from the fact that prior to the relevant meeting of the Board there met the Committee of Selection and Promotions—a staff Committee—and such Committee took the view that as the Applicant did not possess the qualifications required by the scheme of service there should be offered to him only an acting appointment, unless the Board would find that the qualifications possessed by the Applicant were equivalent to those required, in which case he could be promoted in the normal way; and the minutes of this Committee (*exhibit 9*) were before the Board when it decided, eventually, to offer to the Applicant only an acting appointment.

For all the above reasons I find that the recourse cannot succeed and it is dismissed accordingly.

Regarding costs I have decided to make no order as to costs.

Application dismissed.

No order as to costs.

1969

Oct. 31

—

ANDREAS CHR.

AGAPIOU

v.

CYPRUS

TELECOMMUNICA-

TIONS AUTHORITY