

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEOPATRA CLEANTHOUS,

Applicant,

and

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

CLEOPATRA
CLEANTHOS
v:
CYPRUS
TELE-
COMMUNICATIONS
AUTHORITY

(Case No. 21/71).

Cyprus Telecommunications Authority—Officers of—Disciplinary offences by and charges against—Action by the Authority under Section E of its Internal Rules—Followed by disciplinary conviction and punishment by the Board of the Authority—Competent organ to deal with the matter not the Board, but the General Manager—Rule 5 of section E of the said Rules—Decision of the Board annulled because of lack of competence of the organ which took it.

Administrative Law—Administrative Organ—Competence—Lack of competence—Annulment of decision because of lack of Competence of the Organ which took it—See, also, under “Cyprus Telecommunications Authority”.

After a colleague of the applicant complained in writing to the General Manager of the respondent that the applicant had been making false accusations against her, the applicant was suspended from duty and a Board of Investigation—(not to be confused with the Board of the Respondent)—composed of three senior officers, of the respondent, was requested to enquire into the case and to report as soon as possible to the General Manager of the respondent. This action was taken under section E of the Internal Rules of the respondent (quoted in full in the judgment *post*). The rule, most relevant, in this section is rule 5 which reads as follows:

“ 5. Judgment

- (a) The General Manager after studying the proceedings of the Board and interviewing the accused person will decide:

Whether to dismiss the charge or whether the charge is proved.

(c) Where the case is proved, the General Manager will recommend which of the following punishments will be inflicted:

.....”

The Board of Investigation having enquired into the case, by hearing oral testimony, reported to the General Manager, *inter alia*, that, on the basis of the evidence, there appeared to exist a very serious case jeopardizing the good name of the respondent, as well as the honour and good character of employees of the respondent.

The matter was then referred to the Board of the respondent which, after hearing again relevant evidence, reached its *sub judice* decision on the 5th November, 1970 and proceeded to punish the applicant by depriving her, by way of a fine, of half of her salary in respect of the period, when she was suspended from duty. Hence the present recourse.

The issue has been raised that the competent organ to deal with this disciplinary matter was not the Board of the respondent, but its General Manager. In this respect the Court referred to the Public Authorities (Regulation of Personnel Matters) Law, 1970 (Law 61/70) which applies, *inter alia*, to the respondent and quoted in full s. 3: (Vide pp. 467-468 in the judgment *post*).

Held, (1) Even after the enactment of Law 61/70 the Rules, of which section E forms a part, continued to be in force and in view of the express provisions of rule 5, I have reached the conclusion that the Board of the respondent was not competent to deal with the issue of the guilt or innocence of the applicant regarding the disciplinary charges against her and, therefore, the decision challenged by this recourse has to be declared to be *null and void* and of no effect whatsoever, because of lack of competence of the organ which took it, namely the Board of the respondent. (See, also, rule 6 of the Rules).

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondent to punish the applicant by depriving her, by way of a fine, of half of her

salary in respect of the period, when she was suspended from duty, after she had been found guilty of various disciplinary offences.

M. Christophides, for the applicant.

A. HadjiIoannou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLIDIS, P.: By this recourse the applicant, an Assistant Supervisor in the service of the respondent, challenges the validity of a decision of the Board of the respondent, taken on the 5th November and communicated to her on the 13th November, 1970; by means of such decision she was found guilty of the following disciplinary offences:

- (1) Quarrelsome behaviour disturbing the peaceful functioning of the respondent.
- (2) Making false accusations undermining the authority and dignity of her colleagues and/or of superior officers of the respondent.
- (3) Misconduct, namely conduct contrary to the regulations in force or incompatible with the dignity and the good name of the respondent and of its personnel.

As a result, the applicant was punished by being deprived, by way of a fine, of half of her salary in respect of the period when she was suspended from duty, namely from the 8th August, 1970, until the 8th November, 1970. Also, it was decided that the matter would be recorded in her personal file for future reference and that her work would be under continuous observation; in case of relapse or of any other serious infringement of the regulations she was to be interdicted forthwith and there would be examined the possibility of her dismissal from the service of the respondent.

The history of the disciplinary proceedings against the applicant is, briefly, as follows:-

On the 7th August, 1970, a colleague of applicant, a certain Mrs. Tanta, who had just been promoted to the post of Supervisor (and against whose promotion the applicant and others had filed a recourse), complained in writing to the General Manager

1974
Nov. 13

CLEOPATRA
CLEANTHOUS
v.

CYPRUS
TELE-

COMMUNICATIONS
AUTHORITY

1974
Nov. 13

CLEOPATRA
CLEANTHOS
v.
CYPRUS
TELE-
COMMUNICATIONS
AUTHORITY

of the respondent that the applicant had been making false accusations against her.

As a result the applicant was suspended from duty on the 8th August, 1970, and a Board of Investigation—(not to be confused with the Board of the respondent)—composed of three senior officers of the respondent, was requested to enquire into the case and to report as soon as possible to the General Manager of the respondent.

It is not in dispute that this action was taken under section E of the Internal Rules of the respondent.

It is convenient to quote in full, at this stage, the text of the said Section E:—

“ SECTION ‘E’—OFFENCES AND PUNISHMENTS

1. *Procedure*

- (a) It is the responsibility of the Head of Department to classify any act or omission as

A minor/major irregularity or lesser offence or
A serious irregularity or offence.

- (b) The head of Department having classified the offence will deal with it himself as laid down in Section ‘D’ in the case of Minor/Major Irregularities and Lesser Offences. In the case of Serious Irregularities and Offences the papers will be passed to the General Manager who will decide whether the case shall proceed as a Serious Irregularity or Offence or be returned to Head of Department to be dealt with as a Minor/Major Irregularity or Lesser Offence. If the General Manager decides that the case shall proceed as a serious irregularity or offence he will appoint a Board of Investigation.

2. *Board of Investigation*

- (a) The Board of Investigation will be composed of at least two of the more Senior Officers of the Authority who in the opinion of the General Manager are most suited for enquiring into the particular offence. The Head of Department con-

cerned will not be a member of the Board. One of the members of the Board will be appointed Chairman. The person accused will be given an opportunity to object to any particular member of the Board, except the Chairman. The Chairman will decide whether such objection is justified or not. In the event that the objection is upheld the Chairman will discharge the member objected to, who will take no further part in the proceedings. The place of the discharged member need not be filled unless the discharge has resulted in the members of the Board falling below two, in which case the Chairman will seek the General Manager's directive as to reconstituting the Board.

- (b) As a general guide a person accused of an offence may object to a member of the Board on the following grounds:-
- (i) That the member bears the accused person a personal grudge.
 - (ii) That the member has some personal interest in the case beyond his normal interest as an official of the Authority.
 - (iii) That the member is a close relative of the accused person.
- (c) The accused person must be able to substantiate any objection made to the satisfaction of the Chairman.
- (d) In all cases where objection is made, the fact must be recorded by the Chairman in the proceedings, and also his decision on the objection.

3. *Suspension from Duty*

- (a) If the General Manager decides that it is in the interests of the Authority or in the interest of a proper investigation of the case, he may recommend the suspension from duty of the accused person at any time after the case is reported to him, and, if necessary, until such time as the case is decided.

- (b) In all cases where suspension has occurred, the final decision in the case will include a direction as to whether or not any reimbursement is to be made for emolument lost as a result of suspension.

4. *Proceedings of the Board.*

The Board will inquire into the case by calling for such witnesses and papers as in their opinion are necessary to investigate the facts of the case. The accused person may also call such witnesses and other evidence as he may wish. The proceedings will be recorded in writing and the Board will forward these with their finding to the General Manager.

5. *Judgment*

- (a) The General Manager after studying the proceedings of the Board and interviewing the accused person will decide:-

Whether to dismiss the charge or
Whether the charge is proved.

- (b) Where the case is dismissed, the General Manager will ensure that all papers in connection therewith are destroyed.
- (c) Where the case is proved, the General Manager will recommend which of the following punishments will be inflicted:-
- (i) Dismissal from the Authority
 - (ii) Reduction in Grade
 - (iii) A Fine
 - (iv) Loss of Increment
 - (v) Reprimand.
- (d) The General Manager will inform the accused person accordingly, and will hand him a letter containing brief details of the offence.
- (e) A Fine will normally be inflicted where the offence has resulted in some form of damage to the property of the Authority, or where the Authority has suffered some financial loss that can be determined.

- (f) The payment of such a fine may be arranged over a given period, if the amount warrants such treatment.

6. *Appeals*

Any employee retains of course the right to make an appeal".

The Board of Investigation enquired into the case; in the course of its enquiry it heard oral testimony; and it, eventually, reported to the General Manager that, on the basis of the evidence, there appeared to exist a very serious case jeopardizing the good name of the respondent, the integrity, character and dignity of senior officers, as well as the honour and good character of employees of the respondent. Furthermore, that the false accusations concerned, and especially the way in which they were made, did not appear to be compatible with the status of an employee of the respondent and that if no due disciplinary measures were taken it would result, *inter alia*, in rendering problematical the smooth functioning of the respondent.

The matter was referred then to the Board of the respondent which, after hearing again relevant evidence, reached its *sub judice* decision on the 5th November, 1970, and proceeded to punish the applicant as aforementioned.

There has been raised, during the proceedings before me, the issue that the competent organ to deal with this disciplinary matter was not the Board of the respondent but its General Manager.

Reference has to be made, in this respect, to the Public Authorities (Regulation of Personnel Matters) Law, 1970, (Law 61/70) which applies, *inter alia*, to the respondent; section 3 of this Law reads as follows:-

"3.(1) Τηρουμένων τῶν διατάξεων τοῦ οἰκείου νόμου ὑπάγεται εἰς τὴν ἀρμοδιότητα ἐκάστου Ὄργανισμοῦ ὁ διορισμός, ἡ ἐπικύρωση διορισμοῦ, ἡ ἔνταξις εἰς τὸ μόνιμον προσωπικόν, ἡ προαγωγή, ἡ μετάθεσις, ἡ ἀπόσπασις καὶ ἡ ἀφυπηρέτησις τοῦ προσωπικοῦ τοῦ Ὄργανισμοῦ ὡς καὶ ἡ ἐπ' αὐτοῦ ἄσκησις πειθαρχικοῦ ἐλέγχου, περιλαμβανομένων τῆς ἀπολύσεως ἢ τῆς ἀπαλλαγῆς ἀπὸ τῶν καθηκόντων μελῶν τοῦ προσωπικοῦ.

(2) Τηρουμένων τῶν διατάξεων τοῦ ἔδαφιου (3), οἰαδήποτε τῶν ἐν τῷ ἔδαφιῳ (1) ἀναφερομένων ἀρμοδιοτήτων ἀσκεῖται ὑφ' ἐκάστου Ὁργανισμοῦ συμφώνως πρὸς τὰς διατάξεις τοῦ οἰκείου νόμου ἢ οἰωνδήποτε δυνάμει αὐτοῦ ἐκδοθέντων ἢ ἐκδοθησομένων κανονισμῶν ἢ κανόνων, τὰς ρυθμιζούσας τὸ θέμα ἐν σχέσει πρὸς τὸ ὁποῖον ἀσκεῖται ἡ ἀρμοδιότης.

(3) Ὁσάκις ὁ οἰκείος νόμος δὲν περιλαμβάνη διάταξιν ρυθμίζουσαν ἢ χορηγοῦσαν εἰς τὸν Ὁργανισμὸν ἐξουσίαν πρὸς ἔκδοσιν κανονισμῶν ἢ κανόνων ρυθμιζόντων οἰουδήποτε τῶν θεμάτων ἐν σχέσει πρὸς τὰ ὁποῖα δύναται νὰ ἐσκηθῇ ὑπὸ τοῦ Ὁργανισμοῦ ἀρμοδιότης δυνάμει τοῦ ἔδαφιου (1), ὁ οἰκείος νόμος θὰ ἐρμηνεύηται καὶ ἐφαρμόζηται ὡς ἐὰν περιλαμβάνετο ἐν αὐτῷ διάταξις χορηγοῦσα εἰς τὸν Ὁργανισμὸν ἐξουσίαν πρὸς ἔκδοσιν κανονισμῶν ἢ κανόνων ρυθμιζόντων τὸ θέμα τοῦτο”.

(“3. (1) Subject to the provisions of the relevant specific Law there shall be within the competence of each Authority the appointment, confirmation of appointment, emplacement in the permanent establishment, promotion, transfer, secondment and retirement of the personnel of such Authority, as well as the exercise of disciplinary control, including dismissal or termination of the duties of members of the personnel.

(2) Subject to the provisions of sub-section (3), any of the competences mentioned in sub-section (1) is exercised by each Authority in accordance with the provisions of the relevant specific Law or in accordance with any regulations or rules made or to be made under such Law, regulating the matter in connection with which competence is exercised.

(3) Whenever the relevant specific Law does not contain a provision ordaining or granting to an Authority the competence to make regulations or rules regulating any of the matters in respect of which competence may be exercised by such Authority in accordance with sub-section (1), the said Law will be interpreted and applied as if there was included therein a provision granting to the Authority competence for the making of regulations or rules regulating that matter”).

Therefore, in my opinion, even after the enactment of Law 61/70 the Rules, of which section E—quoted above—forms a part, continued to be in force; and in view of the express provisions of rule 5, I have reached the conclusion that the Board of the respondent was not competent to deal with the issue of the guilt or innocence of the applicant regarding the disciplinary charges against her and, therefore, the decision challenged by this recourse has to be declared to be *null and void* and of no effect whatsoever, because of lack of competence of the organ which took it, namely the Board of the respondent.

The above view of mine is strengthened by the provision in rule 6 about the right of appeal, which undoubtedly means that there is a right of appeal to the Board after a decision has been reached by the General Manager of the respondent; and in the present instance it is quite clear that the Board did not deal with the case of the applicant by way of appeal; thus, the applicant was tried by a disciplinary organ which did not possess competence to deal with her case; and at the same time she was deprived of her right of appeal under the Rules.

I have not lost sight of the fact that in the complaints made against the applicant there is a reference to the General Manager in such a manner as not to exclude the possibility that it might be objected that, in the circumstances, he should be considered as being disqualified to deal with the disciplinary matter in question. In my view this possibility did not and could not result in automatically vesting the relevant disciplinary competence in the Board of the respondent; what should have been done—and there is nothing to show, by means of any record or otherwise, that this was what has happened in this case—was that the General Manager, if there had arisen any question of his being disqualified, should have sought the instructions of the Board and the Board could have decided who would carry out the duties of the General Manager under section E of the Rules in relation to the specific disciplinary matter.

It is correct that in paragraph (c) of Rule 5 of section E there is to be found the expression “the General Manager will recommend which of the following punishments will be inflicted”, but in my opinion this does not involve any competence of the Board of the respondent other than as regards a final decision as to the punishment to be imposed, and, in any case, it does not confer upon the Board any competence to decide as to the guilt of the officer concerned; such decision has to be

1974
Nov. 13

—
CLEOPATRA
· CLEANTHOUS
v.
CYPRUS
TELE-
COMMUNICATIONS
AUTHORITY

reached by the General Manager under paragraph (a) of Rule 5 and then an appeal may be made to the Board.

Having found that the matter in question was dealt without competence I think that I should not deal with any other aspect of this case as it is possible—though not imperative—that the respondent may decide to reinstitute disciplinary proceedings against the applicant in respect of the matter in question. In the result, the *sub judice* decision of the Board of the respondent is declared to be *null* and *void* and of no effect whatsoever.

Taking into account all the circumstances of this case I am not prepared to order the payment of any costs to applicant by the respondent.

Sub judicè decision annulled.
No order as to costs.