

1986 October 31

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANOS GEORGHIOU,

*Applicant,*

v.

THE CYPRUS BROADCASTING CORPORATION,  
THROUGH THE ADMINISTRATIVE BOARD,

*Respondent.*

*(Case No. 557/83).*

---

*Public Corporations—Promotions—Procedure laid down by Regulations—Failure to follow it by failing to advertise for vacant promotion posts—Ground of annulment.*

5 *Public Corporations—Promotions—Failure to consider all eligible candidates—Such failure offends against principles of good administration.*

*Collective agreements—Lack the force of law, unless adopted by the Regulations of the Public Body concerned.*

10 *Legitimate interest—Promotions—Advertisement in respect of —Failure to submit application in time—Deprives applicant of his legitimate interest to challenge the promotions to the advertised posts.*

15 The respondent Corporation advertised for the vacant post of Senior Cameraman—a post, which, as stated in the advertisement, was covered by the agreement between the Corporation and the Trade Union of its employees—and invited applications to be submitted by the 21.6.83. The applicant did not submit any such application, but on 20 the 29.7.83 he requested that he be allowed to submit an application for the post on the ground that originally he understood that the vacant posts were only two, whereas

later he found out that they were four. The Corporation turned down applicant's said request. On the 22.9.83 the Board of the Corporation decided to approve two new posts and, thus, the total number of posts of Senior Cameraman became four. The Board, then, proceeded and filled the said four vacancies by promoting four of the eight candidates, who had originally submitted applications in accordance with the said advertisement. As a result the applicant filed the present recourse. 5

The respondent Corporation submitted, inter alia, that though the exact number of the posts referred to in the said advertisement was not specified therein, it was as a maximum a number of six in accordance with the agreement between the Corporation and the Trade Unions of its employees. 10 15

*Held, annulling the sub judice decision:* (1) A collective agreement lacks the force of law, unless adopted as part of the regulations of the public body concerned. The original advertisement was for two posts. The two additional posts could only have come into existence in September, 1983 after their approval by the Board of the Corporation and not as a result of the collective agreement. 20

(2) As the applicant did not apply for promotion to the first two posts, he does not possess a legitimate interest to challenge the promotions made in respect of them. In the circumstances, however, this does not affect the result of this recourse, because as regards the two additional posts, the Corporation failed to follow the procedure prescribed by the Regulations, namely to advertise for them. 25

(3) Even if it is accepted that since the posts were promotion posts there was no need for advertisement, the Corporation acted contrary to the principles of good administration by failing to consider all eligible candidates. 30

*Recourse dismissed.*

*No order as to costs.* 35

Cases referred to:

*Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032;

*Evangelou v. C.B.C.* (1985) 3 C.L.R. 1410;

*Paphitis and Others v The Republic* (1983) 3 C.L.R. 255.

### 5 Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Cameraman in the Resources Department of the Corporation in preference and instead of the applicant.

10 *K. Talarides.* for the applicant.

*P. Polyviou.* for the respondents.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant in this recourse, holds the post of Cameraman in the Resources Department of the Cyprus Broadcasting Corporation seeks a declaration of the Court that the decision of the respondent Corporation to promote Andreas Zembylas, Phoevos Stavrou, Georghios Sfoungaras and Phedias Christodoulou to the post of Senior Cameraman in the Resources Department, which was communicated to the members of the staff of the Corporation by a circular of the Director-General dated 11th October, 1983, is null and void and of no legal effect whatsoever.

On the 6th June, 1983, the respondent Corporation advertised inter alia for the vacant post of Senior Cameraman and invited applications from members of the staff to be submitted by the 21st June, 1983. The said post was, as stated in the relevant advertisement, covered by the agreement with the Trade Unions of the Corporation and therefore the relevant provisions of the agreement were applicable. In fact in the said advertisement it was stated inter alia that "Applications from members of the staff are accepted for the filling of the following posts: Resources Department. 1. Senior Cameraman (promotion post) A. 10. 2. Senior Screen Director (promotion post A.8/9)."

The applicant did not apply for such post because he believed, as he stated, that the said advertisement was in respect of as a maximum two vacant posts and he considered that there were other candidates which were superior to him and he would thus have no chance of being selected. 5

Eight persons applied for those posts and the Advisory Selection Committee met on the 30th June, 1983, considered their applications and decided to invite them to a personal interview on the 4th July, 1983. They were each so invited by letters dated 1st July, 1983. 10

The Advisory Selection Committee met again on the 4th July 1983, it interviewed the eight candidates, considered that they were all suitable for the post and referred them by order of seniority to the Board of the Corporation. 15

After the said interviews but before the meeting of the Board, the applicant wrote to the respondent Corporation on the 29th July, 1983, that originally he understood that the advertisement in question referred to only two vacancies of the post of Senior Cameraman in respect of which he did not apply as he believed that he would not be appointed; since, however he then understood that the posts are more than two, in which case if others are appointed his position would be directly and adversely affected, that he be allowed at this late stage to apply for the post. 20 25

On the 6th August 1983, the respondent Corporation wrote in reply as follows:

"I wish to inform you that the management of the Corporation bears no responsibility for your failure to submit an application for the post which has been advertised between the employees of the Corporation and for which the date for submission of applications has already expired." 30

On the 22nd September, 1984, the Board met to consider the recommendations of the Selection Committee and decided to appoint the four interested parties as from 1st September, 1983 to the post in question. Hence the present recourse. 35

The first ground of law put forward on behalf of the applicant is that the respondent Corporation failed to follow the procedure prescribed by the Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations for filling promotion posts, by advertising for only two of the four vacancies of the post of Senior Cameraman and failing thus to advertise for the other two.

Secondly, the applicant argued, irrespective of whether the posts had been advertised or not, since the post in question is a promotion post, the respondent Corporation had an obligation to consider the applicant as a candidate for promotion without it being necessary for him to apply for the post and relied for this on the case of *Arsalides v. The Republic* (1965) 3 C.L.R. 706.

Finally dealing with a preliminary objection put forward by the respondent Corporation that the applicant does not possess any legitimate interest, counsel for the applicant argued that he does possess legitimate interest in respect of the first two posts, because he applied before the procedure for filling the posts had been completed and in respect of the latter two posts because since these were never advertised, no question of his submitting an application arose.

It may be pertinent at this point to deal with the background to the posts in question and with their creation, so far as relevant.

According to the applicant, at the time the post of Senior Cameraman was advertised there existed only two posts of Senior Cameraman. The number of the vacant posts to be filled remained the same until the 22nd September, 1983, when there is clear evidence that two positions of the post of head of Photography/Production (Υπεύθυνος Φωτογραφίας/Παραγωγής/ΣΕΜΤ) in the Resources Department were abolished and replaced by two new posts of Senior Cameraman by decision of the Board of the 22nd September, 1983, as a result of which the posts of Senior Cameraman became four.

The respondent on the other hand denies that the advertisement of June 1983, referred to only two vacant posts

but submitted that though the exact number had not been specified it was as a maximum a number of six. This was the result of agreements between the respondent Corporation and the two trade unions of its employees, namely EVRIK and SYTYRIK for the restructuring of the service. 5

What was agreed was originally for the creation of two posts of Senior Cameraman with a possibility for the amalgamation of four other posts with that of Senior Cameraman namely two posts of Head of Photography/Production (Υπεύθυνος Φωτογραφίας/Παραγωγής ΣΕΜΤ) and two posts of Director/Cameraman/Production Manager (Σκηνοθέτης/Κινηματογραφιστής/Διευθυντής Παραγωγής) which would thus result in the number of posts of Senior Cameraman being a maximum of six, if the planned amalgamation took place. So, in effect, it was argued at the time the posts were advertised; the respondents had in mind that the number of vacancies would be a maximum of six. 10 15

However, EVRIK did not agree with the abolition of the post of Director-Cameraman Production Manager, the new posts of Senior Cameraman created were only two, being the result of the amalgamation of the two posts of Head of Photography/Production as agreed with SYTYRIK. Thus the total number of posts of Senior Cameraman became only four. 20

These two new posts were approved by the Board on the 22nd September, 1983, at the same meeting when the sub judice promotions were decided. 25

On behalf of the respondent Corporation it was argued that though the post of Senior Cameraman is a promotion post, it is the standing practice of the Corporation to advertise all promotion posts and invite applications in the same way as for first entry and first entry and promotion posts, therefore since the applicant did not apply, he was not entitled to be considered as a candidate. 30

As regards the two latter posts which were approved on the 22nd September, 1983, in effect it was argued that the agreement for the amalgamation of these posts into that of Senior Cameraman was reached long before the 22nd September 1983, and consequently "the availability of more 35

positions at the end of the day was not a material irregularity and as such of no particular effect”.

5 From the above facts it transpires that these additional posts which were approved by the Board in September were never advertised as is the standing practice of the Corporation and as is provided by the regulations; the advertisement in question of June 1983, concerned only the two first posts and not the two additional ones since such were not in existence at the relevant time.

10 Under the circumstances the additional posts could only have come into existence in September after their approval by the Board and not as a result of the agreement between the Trade Unions and the Corporation because the “agreement by itself cannot create, modify or abolish any right, obligation or any other legal relation in the domain of public Law, a fortiori in cases where there are statutory provisions which regulate the internal structure of the service and the relevant powers of a Corporation as in the present case.”.

20 (See *Evangelou v. C.B.C.* (1985) 3 C.L.R. 1410 at p. 1423.)

25 As it has been pronounced by this Court in a number of cases, the provisions of a collective agreement lack the force of Law unless adopted as part of the regulations of a public body and have therefore no application in the domain of Public Law. See *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032; *Evangelou v. C.B.C.* (supra) at p. 1422; *Paphitis and others v. Republic* (1983) 3 C.L.R. 255.

30 In view of the above, I reach the conclusion that the respondent Corporation advertised only in respect of the first two posts of Senior Cameraman, which was in accordance with the relevant regulations and the applicant by failing to apply within the time specified is deprived of any legitimate interest to challenge the promotions made in respect of these promotions. However, this would not change the outcome of the recourse because, as regards the two additional posts, the respondent Corporation failed to follow the procedure prescribed by the Regulations by

failing to advertise for them. Instead they wrongly considered as candidates only persons who had applied for the original two posts and who had been interviewed long time before these latter posts came into existence.

But even if, as argued, since they were promotion posts there was no requirement to advertise, they have acted contrary to the principles of good administration and in abuse of power by failing to consider all eligible candidates in view of which the sub judice promotions would have to be annulled on this ground also.

For all the above reasons the recourse succeeds and the sub judice decision is annulled but in the circumstances there will be no order as to costs.

*Sub judice decision annulled.*

*No order as to costs.*