

SIXTY-NINTH SESSION

Judgment 1031

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. A. L. M. against the Food and Agriculture Organization of the United Nations (FAO) on 21 November 1989 and corrected on 30 December 1989, the FAO's reply of 20 February 1990, the complainant's rejoinder of 12 April and the Organization's surrejoinder of 7 May 1990;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal, FAO Staff Regulation 301.091, Staff Rules 303.03 and 303.1314 and Manual paragraph 314.22;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Indian citizen who was born in 1935, joined the staff of the FAO in 1979. He was employed first in the Office of its Representative for India, which is in New Delhi, and in 1986 took up duty under a project for technical co-operation, also in that city. His career and many disputes with the Organization are summed up in Judgments 824 and 1030 under A. Judgment 824, of 5 June 1987, dismissed his first complaint, in which, among other things, he challenged the decision to transfer him to the project and sought reinstatement in his old post in the Representative's Office. Judgment 1030, delivered on this day, dismisses his second complaint, in which he impugns the Director-General's decision to terminate his appointment on the grounds of unsatisfactory conduct under Staff Regulation 301.091 and Manual paragraph 314.22.

In a memorandum of 29 June 1987 the Director of the Agricultural Operations Division (AGO) at FAO headquarters in Rome warned him that his performance was not up to standard. Because of his unsatisfactory performance and on the Director of AGO's recommendation, on 1 October 1987 the Director of Personnel withheld the within-grade step increase due to the complainant on 1 September 1987.

The FAO believed that his behaviour was so impairing work on the project as to amount to misconduct. By a telex of 5 October 1987 the Assistant Director-General in charge of Administration and Finance informed him that he was suspended from duty, with pay, under Staff Rule 303.03 pending investigation of charges of misconduct.

On 18 December 1987 he appealed to the FAO Appeals Committee against his transfer to the project. On 30 December he submitted to the Director-General an appeal against the withholding of his salary increment and his suspension from duty. The Assistant Director-General replied on 25 February 1988 rejecting that appeal and he submitted another appeal to the Appeals Committee on 7 March 1988. The Committee joined that appeal with the one of 18 December 1987 against transfer. In its report of 23 May 1989 the Committee recommended rejecting both appeals, and by a letter of 1 August 1989, the decision impugned, the Director-General informed him that he had endorsed that recommendation.

The complainant states in the complaint form that the Director-General's letter was delivered to him in New Delhi on 16 August 1989. On 7 November he sent a telex to the Registrar of the Tribunal applying for a "two-week extension" of the time limit for filing his complaint. The Registrar answered by telex on the same day that the ninety-day time limit set in Article VII(2) of the Tribunal's Statute for filing a complaint could not be extended. The Registrar also sent him a letter on 8 November explaining that he must post his complaint "without fail not later than ninety days from the date - 16 August - on which you say you got notice of the decision you want to impugn".

The complainant states that he did not get the Registrar's telex of 7 November; he did get the letter of 8 November, but not until 21 November, and that is the date at which he filed his complaint.

B. The complainant explains that while he was preparing the complaint his wife fell ill and he had to seek the two-week extension. The Registrar's telex having gone astray, he did not hear until he got the Registrar's letter on 21 November that the extension was refused, and he filed his complaint at once. His failure to meet the ninety-day time limit - by just a few days - was due to the unforeseen misfortune of his wife's illness, compounded by the

disappearance of the Registrar's telex and his ignorance of the requirements of the Statute. He points out that his second complaint, which he did file in time, is closely bound up with this one. He asks the Tribunal to condone his disregard of the time limit.

He recounts the facts of the case and submits pleas on the merits. He asks the Tribunal to declare unlawful his transfer to the project, his suspension from duty and the withholding of his salary increment.

C. In its reply the FAO submits that the complaint is time-barred and therefore irreceivable under Article VII(2) of the Tribunal's Statute. Since the complainant got the Director-

General's decision on 16 August 1989 the deadline for filing his complaint was 14 November and he missed it by a week. The subjective reasons he puts forward for the waiver of the time limit are immaterial because that time limit is a matter of objective fact. Besides, from his earlier experience of litigation he was, or should have been, fully aware of its mandatory nature.

His challenge to the transfer is irreceivable for the further reason that he failed to exhaust the internal means of redress, not having appealed to the Director-General against it within the time limit set in Staff Rule 303.1314.

The FAO argues the case on the merits, submitting that his objections to his transfer, to the withholding of his increment and to his suspension from duty are groundless.

D. In his rejoinder the complainant observes that if he had got the Registrar's "alleged telex" of 7 November 1989 he would have filed his complaint at once. He presses his arguments in explanation of his failure to meet the time limit and observes that he would have met it had he had the legal aid he needed.

He enlarges on his pleas on the merits and presses his claims.

E. In its surrejoinder the Organization maintains that the complaint is time-barred and that the complainant's explanations should carry no weight. It answers several issues he raises in his rejoinder as to the merits of his claims.

CONSIDERATIONS:

The complainant, who worked in the Office of the FAO's Representative in New Delhi, was on bad terms with successive supervisors and with colleagues. The working atmosphere so deteriorated that it became necessary to transfer him to a technical co-operation project at the same duty station. He refused at first to report for duty and then, when he did, to do any work. The director of the competent division at headquarters recommended withholding his within-grade salary increment and the Director of Personnel approved the recommendation. Meanwhile his behaviour was so jeopardising the work of the project that he was suspended with pay pending investigation of charges of misconduct.

The complainant appealed to the Director-General, first against his transfer, then against the withholding of his increment and his suspension. The Director-General having confirmed all those decisions, the complainant wished to appeal to the Tribunal and did so by a letter in an envelope posted in New Delhi and postmarked 21 November 1989.

2. Article VII(2) of the Statute of the Tribunal provides that to be receivable "a complaint must ... have been filed within ninety days after the complainant was notified of the decision impugned ...".

The Director-General's final decision was contained in a letter dated 1 August 1989 which the complainant acknowledges he received on 16 August. The time limit of ninety days therefore expired on 14 November.

On 7 November the complainant sent a telex to the Registrar of the Tribunal saying that he was going to file a complaint against the decision and asking for a two-week extension. In a telex of the same day the Registrar refused the extension. The following day the Registrar enlarged on his telex in a letter, warned him that "the ninety-day time limit is mandatory: neither the Registrar nor the President nor even the Tribunal itself may extend it" and pointed out that "according to my reckoning the ninety days will run out on 14 November". The letter further referred to Article 6(3) of the Rules of Court and explained that "the date of filing is the 'date of despatch' as shown by the postmark on the envelope in which the complaint is delivered to me". The date at which the

complainant despatched his complaint - 21 November - was seven days late and his complaint is therefore time-barred.

3. He presses his application for extension of the time limit observing that he never got the Registrar's telex of 7 November at all and did not get his letter until 21 November, the day on which he filed. Under the heading "Prayer" he gives various reasons to justify his application.

This being his third complaint, he cannot plead ignorance of the importance of timely action. In a letter of 29 July 1986 to him about an earlier complaint the Registrar said:

"Article VII(2) sets a time limit of 90 days from the date of notification of the decision for challenging it. As I believe you know already, the time limit is mandatory and can on no account be extended."

Judgment No. 955 (in re Pineau) declared, under 4:

"... a time limit is a matter of objective fact and starts when the decision is notified. If that were not so - whatever considerations of equity there might be - there could be no certainty in legal relations between the parties, and such certainty is the whole point and purpose of time limits. An exception might be allowed only if the Organisation had acted in bad faith and misled the official. But in this case the Organisation did not."

There is no question of the Organization's having misled the complainant. Indeed the Director-General's letter of 1 August 1989 actually stated in the final paragraph that if he wished the complainant was entitled to lodge an appeal with the Registrar of the Tribunal "within 90 days of receipt of this letter".

4. The conclusion is that the complaint is irreceivable under Article VII(2) of the Tribunal's Statute.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner