

SIXTY-NINTH SESSION

In re COLAGROSSI

Judgment 1044

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Paola Colagrossi against the Food and Agriculture Organization of the United Nations (FAO) on 13 October 1989 and corrected on 20 November, the FAO's reply of 4 January 1990, the complainant's rejoinder of 22 February and the Organization's surrejoinder of 4 April 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 302.907, 303.1311 and 303.1313 and FAO Manual paragraph 305.5123;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. In 1983 the FAO advertised in the Italian press a grade G.5 post for a chief telephone operator at its headquarters in Rome. The complainant, an Italian citizen who was born in 1946, was the successful candidate and took up duty on 1 February 1984 under a three-year appointment. She had her appointment extended to 31 January 1988 and then to 30 June 1988. By a letter of 25 February 1988 a personnel officer informed her that for lack of funds the Organization could offer her no extension. The Director of the Personnel Division confirmed that decision in a memorandum of 25 May 1988 which said that her post had been abolished not only because of financial difficulties but also because, having been modernised, the telephone exchange no longer needed a chief operator.

By memoranda of 28 June and 11 and 14 July the complainant appealed to the Director-General under FAO Staff Rule 303.1311, but by a letter of 29 July the Assistant Director-General in charge of Administration and Finance confirmed the decision, and on 29 August 1988 she lodged an appeal with the Appeals Committee under Rule 303.1313. In its report of 23 May 1989 the Committee recommended rejecting her appeal, and by a letter of 24 July 1989, the decision she impugns, the Director-General told her that he had endorsed that recommendation.

B. The complainant alleges that when interviewing her before recruitment the Chief of the Building Management and Services Branch told her that it was not the FAO's practice to grant a permanent appointment at the start but if she turned out well she would get one in time. Only on the strength of that and other oral assurances did she accept the offer of a fixed-term appointment and give up the security of the job she had had before. Though she had kept her right to go back she relinquished it in 1985 on the confirmation of her appointment at the end of probation.

Though she got on well with her supervisors at first the official who took over the Branch in 1985 disliked her and became openly hostile. It was his fault that she was not granted a continuing appointment.

Through no fault of her own she now has no job. At a time of high unemployment in Italy there are few vacancies for telephone operators and she is too old to train for other work. She gets no unemployment benefit in Italy. She seeks an award of damages plus interest at the rate of 9 per cent a year and 2,000 United States dollars in costs.

C. In its reply the FAO points out that the complainant's fixed-term appointment expired at the due date and she was given four months' notice of the decision not to renew it.

That decision was taken on grounds that she does not even challenge. It was in accordance with Rule 302.907, which states that "A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment", and with Manual paragraph 305.5123, which provides that "Fixed-term appointments do not carry any expectancy of, or imply any right to, extension or conversion to any other type of appointment ...". She had no legitimate expectation of renewal. The announcement of the vacancy said that the initial appointment would be for three years, "with subsequent possibility of extension or conversion into a continuing appointment, as appropriate". Her allegation that she was promised a continuing appointment is not

proven and is mistaken anyway. The Chief of the Branch was not competent to make such a promise. She offers no written evidence to suggest that he or anyone else did, or that she was worried before recruitment about the length of her appointment.

That she gave up her entitlement to reinstatement in her old job is immaterial: passing the period of probation meant merely that her appointment would run to 31 January 1987.

Her claims are devoid of merit.

D. The complainant rejoins that her post had belonged to a permanent unit for many years, that no-one suitable had been found inside the Organization to fill it and that, the telephone exchange having been modernised by 1984, her post ought to have been done away with earlier if that made it redundant. The FAO's clear intent was to fill the post for good, and she had no reason to fear non-renewal. The terms of the advertisement encouraged expectations of a continuing appointment. At recruitment she was led to believe that she would get one in time. She could not then know that the Chief of the Branch was not competent to promise one, and she relied in good faith on what he said. She cannot prove that he made a promise; but it stands to reason that she would not otherwise have surrendered the sure means of livelihood she had before. The FAO misconstrues the rules, which she was not duly made aware of at the time of recruitment.

E. In its surrejoinder the FAO develops its contentions that the complainant held a fixed-term appointment which duly expired; that she got ample notice of non-renewal and was fully informed, in the Personnel Officer's letter of 25 February 1988, of the financial and other reasons for the decision; that she had no legitimate expectation of any renewal; and that her separation was strictly in keeping with the rules and with the principles laid down in the Tribunal's case law. Although, as she says, the telephone exchange had been modernised by the time she was recruited, the financial crisis made the Organization reassess its priorities and reconsider the staffing of all its services. It accordingly came to the view that the complainant's post and two others in the same unit should be done away with.

CONSIDERATIONS:

1. The complainant joined the FAO on 1 February 1984 as a chief telephone operator under a fixed-term appointment for three years that was subject to the Staff Regulations and Staff Rules and to probation. Her contract was extended from 1 February 1987 until 31 January 1988 and then until 30 June 1988. Notice of the last extension was conveyed to her in a letter dated 25 February 1988 which stated that because of the Organization's financial difficulties it would not be able to extend her appointment further.

The complainant lodged an internal appeal. The FAO Appeals Committee recommended rejecting it, by a letter dated 24 July 1989 the Director-General rejected it, and that is the decision she impugns.

2. Her case is that she accepted employment with the Organization on the strength of an assurance by the officer who interviewed her, the Chief of the Building Management and Services Branch, that subject to the satisfactory completion of probation her fixed-term appointment would on expiry be converted into a "continuing" one. She argues that she would never have given up the secure employment she had before unless she had had such an assurance.

There is no independent evidence either to suggest that she was given any such assurance or to support the conclusion that the Chief of the Building Management and Services Branch was clothed with ostensible authority to give it.

3. In any event by signing the terms of her appointment she acknowledged that her contract was subject to Staff Rule 302.907, which reads:

"A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment. Separation as a result of the expiration of any such appointment shall not be regarded as a termination of appointment within the meaning of the Staff Regulations and Staff Rules".

As is plain from the case law, whether to renew a fixed-term appointment is a discretionary decision, and the Tribunal may not set it aside unless it was taken without authority, or in breach of a rule of form or of procedure, or unless it was based on a mistake of fact or of law, or some essential fact was overlooked, or there was abuse of

authority, or unless some clearly mistaken conclusion was drawn from the facts.

The complainant does not seek to deny that the Organization was in financial difficulty, the grounds it stated in its letter of 25 February 1988 for not extending her appointment. That was a fact which the Organization properly made the basis of its decision not to give her another extension. Since she has failed to show any of the flaws set out above there is no reason to set aside the decision the Organization thus took in the exercise of its discretion.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, 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
Mella Carroll
William Douglas
A.B. Gardner