

SEVENTY-FIRST SESSION

In re WILLIAMS

Judgment 1128

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. James Williams against the Food and Agriculture Organization of the United Nations (FAO) on 28 September 1990 and corrected on 8 October 1990, the FAO's reply of 25 January 1991, the complainant's rejoinder of 15 March, the complainant's letter of 15 March and the Organization's surrejoinder of 6 May 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.014, FAO Staff Rules 302.4112 and 302.907 and FAO Manual paragraph 305.5123;

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, a citizen of the United States, joined the FAO in January 1975 under a fixed-term appointment as a P.3 programme officer stationed in Addis Ababa. On 1 January 1976 he got promotion to P.4 and the first in a series of contract extensions. In 1977 he was transferred to headquarters, where he was appointed a field programme officer in January 1980. He was transferred from Rome to Addis Ababa in September 1980 as an adviser with the World Food Programme (WFP) at grade P.4. He kept the same grade on transfer to Jakarta on 1 September 1983; to Quetta, in Pakistan, on 3 July 1987 and to Islamabad on 10 December 1987. His fixed-term contract expired on 31 December 1988.

His performance reports were consistently favourable until 1983, when headquarters questioned his effectiveness in Ethiopia. An inquiry was made, and he had his supervisory responsibilities in Ethiopia withdrawn and two successive within-grade salary increments withheld. In a letter to him of 2 April 1985 the Executive Director of the Programme described his explanations as satisfactory "on balance", and decided to drop the matter and restore his increments.

In a letter of 4 February 1987 the Programme's Director of Personnel asked him to explain his "apparent departure from the established Rules" on home leave. In his reply of 10 March 1987 he explained how he had come to change his travel plans and expressed regret at giving the "unwarranted impression" that his attitude towards the rules was lax.

In a telephone conversation of 3 December 1987 the Director of Personnel instructed the complainant to leave Quetta at once and go to the WFP's office in Islamabad. In ensuing correspondence with the Director he sought an explanation for his sudden removal from the sub-office in Quetta, which he had been running for barely five months. In a letter of 7 October 1988 the Director referred to an official complaint from the Indonesian authorities about his "off-duty activities involving relationships with Indonesian nationals, and others", which the authorities deemed offensive, and to a report from the state security services in Quetta on his "association with certain people which they deemed unsuitable". The Director informed him that because of his "unsatisfactory behaviour" in the two countries and his uneven work performance his appointment would not be renewed.

He left on 31 December 1988 on the expiry of his fixed-term appointment and appealed on 4 January 1989 to the Director-General against the non-renewal. An Assistant Director-General rejected his appeal on 9 March 1989 on the Director-General's behalf and on 2 June 1989 he went to the Appeals Committee. In its report of 20 February 1990 the Committee described as "negligent and inappropriate" the Administration's behaviour both in the matter of the Indonesian police report and in transferring him from Quetta to Islamabad but recommended rejecting his appeal. By a letter of 27 June 1990, the decision impugned, the Director-General accepted the Committee's recommendation.

B. The complainant submits that the non-renewal of his appointment after 13 years' service constitutes a misuse of authority. Some of the reasons the Organization gave were exaggerated, others mistaken or unsubstantiated.

Members of the Administration seem to have made him, "an Afro-American", the victim of racial prejudice. Though discretionary, a decision not to renew an appointment may not be arbitrary.

The Director of Personnel's letter of 7 October 1988 based non-renewal on unsatisfactory behaviour in two countries and uneven work performance. The charges of unsatisfactory behaviour rest on two police reports, the Jakarta one in 1987 and the Quetta one in early 1988. Although the former was decisive in his transfer from Quetta to Islamabad and both appeared to weigh heavily against renewal of his appointment, he did not hear of them until he got the letter of 7 October 1988 announcing the non-renewal.

For nine months after his sudden transfer from Quetta he was neither told the reasons for the move nor given any means of clearing his name. Indeed the Administration still refuses to give him copies of the police reports, though it did let him look at them in a WFP office in Rome six months after his appointment had ended.

The Indonesian report, which rests on mere hearsay, alleges that he was procuring, consorting with undesirable people, disparaging the religious beliefs of Indonesians, and so forth. Yet the Administration neither looked into the charges nor invited him to answer them. Indeed it kept them from him long after he had gone, and that was in gross breach of his right to a hearing. He demands review of the truth of the charges and an opportunity to answer.

As to his work performance, the FAO overlooked his formal performance reports, which generally rated him highly. It singled out a sentence from the 1986 one and made much of remarks in the 1983 one by a senior headquarters official who was unfamiliar with his performance and whose opinion was at odds with that of his supervisors in the field. There were no reports at all on his performance on his six months in Indonesia and eighteen in Pakistan; nor, as the Appeals Committee observed, has the WFP properly explained why it stopped reporting on him.

There is further evidence of malice in the FAO's reviv-

ing criticism of his performance in Addis Ababa in 1983: he answered at the time to the satisfaction of the Executive Director, who decided to treat the matter as closed.

As for his home leave in 1986, he abided by all the rules and only by gross distortion may lack of dedication to the Programme be seen in what he did.

The Organization has throughout sought to bring him into disrepute.

He invites the Tribunal to set aside the impugned decision, order his reinstatement and award him damages for loss of income and pension rights. He claims 10,000 United States dollars in damages for moral injury.

C. The FAO replies that the decision not to renew the complainant's appointment was based not on any one fact but on comprehensive assessment of his career. While he was in Ethiopia supervisory duties had to be taken away from him before the trouble could be sorted out. While stationed in Jakarta he returned from home leave nine days late; though "closed", the incident showed "very questionable conduct". His supervisor in Quetta sent him two minutes taking him to task for poor time-keeping and for seldom going to refugee camps.

Though many incidents would not ordinarily have been brought up again, the official reports from the authorities in Indonesia and Pakistan, sent through diplomatic channels, called for reappraisal. The Indonesian police report spoke of his "adultery with a woman employed by WFP in Jakarta, which led to her divorce" and accused him of leading a "religious group" given to "free sex". According to the Quetta police report he was often seen in working hours on the premises of the University of Baluchistan in the company of members of a "dissident movement". The criticisms of his conduct by two host governments afford "prima facie evidence" of something seriously amiss, and the Organization had to take them at face value.

As the Tribunal has held, a long period of continuous service under fixed-term appointments may raise legitimate expectations of renewal despite the provisions of Staff Rule 302.4112 and Manual paragraph 305.5123. But, taken together, the many instances of questionable behaviour throughout the complainant's career show contempt for FAO Regulations and Rules that is at odds with such expectations.

His allegations of racial discrimination are not supported by a shred of evidence and are improper anyway.

The FAO gave him adequate notice of non-renewal, stated the reasons for it and abided by due process.

D. In his rejoinder the complainant points out inaccuracies and inconsistencies in the FAO's reply and enlarges on his allegations of misuse of authority, breach of his right to a hearing and disregard of essential facts. He submits that the termination of Professional category appointments requires three months' notice: he got less.

Although the Organization says the police reports must be taken at face value the WFP's representative in Jakarta who forwarded the Indonesian report to headquarters rejected the charge that the complainant had taken over a prostitution racket from a former official of the United Nations Development Programme.

As for the Quetta report, he flatly denies ever visiting the campus of the University of Baluchistan or knowingly consorting with political dissidents. His work drew praise from senior WFP officers in the field; the Programme's representative in Pakistan wrote in 1988 that he was "enormously impressed with Williams' performance", that he got on well with other staff and that senior government officers in Baluchistan "speak highly" of him. Was that why the Organization failed to report on his performance in 1987 and 1988?

He presses his claims.

E. In its surrejoinder the Organization submits that it has already treated the substance of the matter in full: its decision not to renew his fixed-term contract was warranted by his unacceptable conduct in the light of the "overwhelming presumption of improper behaviour" in the two police reports, whatever their inaccuracies. It rebuts his allegations of inconsistencies and dwells on two procedural questions: when it should have given him access to the reports and whether it should have checked the reports. The Organization invited him to consult the reports during the internal appeals proceedings and thereby respected his right to a hearing. It has no authority to carry out investigations within a host country; its obligation and that of its staff is to show the utmost discretion.

CONSIDERATIONS:

1. As is recounted above, under A, the complainant joined the FAO in 1975 on a fixed-term appointment as a grade P.3 officer in Addis Ababa. In 1976 he was promoted to P.4 and got the first of several extensions of appointment. After a stint at headquarters from 1977 to 1980 he was transferred in September 1980 back to Addis Ababa as an adviser with the World Food Programme (WFP), in September 1983 to Jakarta, in July 1987 to Quetta, in Pakistan, where he took over the WFP sub-office, and in December 1987 to Islamabad.

By a letter of 7 October 1988 the Director of the Office of Personnel and Administrative Services of the WFP informed him that his appointment would not be renewed. He accordingly left the Organization on the expiry of his appointment, on 31 December 1988. He thereupon followed the internal appeal procedure, but the outcome was the decision of 27 June 1990 which he is now challenging, and by which the Director-General rejected his appeal to the FAO Appeals Committee against the non-renewal of his appointment.

The issue is whether that non-renewal was lawful.

The Tribunal's power of review

2. The Organization did not dismiss the complainant on the grounds of misconduct or unsatisfactory service or indeed for any other reason. It allowed his appointment to expire under Staff Rule 302.907 and Manual paragraph 305.5123. Rule 302.907 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."

And Manual paragraph 305.5123 confirms that rule:

"Fixed-term appointments do not carry any expectation of, or imply any right to, extension or conversion to any other type of appointment; such appointments expire according to their terms, without notice or indemnity."

Yet, as was held for example in Judgment 675 (in re Pérez del Castillo), an international organisation is under an obligation to consider whether or not it is in its interests to renew a contract and to make a decision accordingly:

though such a decision is discretionary, it may not "be arbitrary or irrational"; there "must be a good reason for it and the reason must be given."

The reasons stated for the non-renewal

3. The Director of Personnel's letter of 7 October 1988 gave the complainant reasons for the decision not to renew his fixed-term appointment by concluding a synopsis of his career with a reference to, among other things, his "unsatisfactory behaviour in two separate countries", viz. Indonesia and Pakistan.

4. The gist of what had happened is as follows.

A fortnight after the complainant's transfer from Jakarta in early July 1987 the Indonesian Ministry of Foreign Affairs summoned the WFP officer-in-charge and told him that a confidential police report had objected to aspects of the complainant's private life and that the WFP's international staff ought to be chosen more carefully in future and made to respect the culture, religious sentiments and traditions of the country's people.

The WFP officer-in charge passed on what he had been told to his superior, the WFP's Representative in Indonesia, and it was eventually decided to transfer the complainant on 10 December 1987 from Quetta to Islamabad pending possible action on the allegations.

The Representative asked for a copy of the Indonesian police report from the Ministry of Foreign Affairs and he finally got one in January 1988. It had been drawn up by the intelligence and security department of the state police and bore out what the Ministry had told the officer-in-charge some six months earlier. It accused the complainant, among other things, of being the ring-leader of a group in Jakarta which practised so-called "religious activities" based on "free sex" and repugnant to the religious and cultural traditions of the country's people.

Meanwhile, in December 1987, just after he had taken up duty in Islamabad, the FAO had received a copy of a written report about him about him from the deputy inspector-general of police of Quetta to the deputy chief secretary for home affairs of Pakistan. This report, too, accused him of improper conduct, the main charge being that he had often been seen on the premises of Baluchistan University in the afternoons associating with adherents of a dissident political movement.

5. It seems plain on the evidence that, but for the charges in the two police reports, no single allegation about the complainant's shortcomings would have prompted a decision not to renew his appointment. Though the Director of Personnel's letter of 7 October 1988 also referred to his "uneven performance and work-related conduct in three locations", it was the police reports that carried the greatest weight in that decision, the Organization being anxious to safeguard its reputation.

That is clear from, for example, a letter which the WFP's Representative in Indonesia wrote to the Executive Director in Rome on 19 January 1988, just after getting a copy of the Indonesian police report. Though he found some "inaccuracies and inconsistencies" in the report he concluded by saying:

"... the activities and behaviour of the staff member which prompted the [Indonesian] Government to carry [out] such investigation are deplorable and have brought prejudice to the UN image in Indonesia ... I also trust that you may consider such action as you deem appropriate under the circumstances to maintain the high standard of behaviour required from WFP international staff working abroad."

6. The two reports show that at the very least the complainant had earned the disapproval of the local authorities in two countries, Indonesia and Pakistan. The Indonesian report created and, soon after, the Quetta one fostered doubts in the FAO's mind about his ability to adapt to the communities he was living in.

FAO Staff Regulation 301.014 reads:

"Staff members shall conduct themselves at all times in a manner befitting their status as international civil servants ... they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status."

On the evidence the Tribunal is satisfied not only that the Organization's doubts about the complainant were legitimate but also that it was free to conclude that he was unsuitable for future assignments and, more particularly,

to fear that, if granted any further assignment, he might not, as was his duty under 301.014, behave "in a manner befitting [his] status" as an international civil servant and with proper "reserve and tact".

It is at the discretion of an international organisation to discontinue employment if it has lost confidence in the staff member and no longer believes that he will show due respect for its good name, and the Tribunal will not interfere with the decision the organisation takes in the exercise of that discretion unless it finds one of the fatal flaws that warrant setting the decision aside. Such flaws include procedural defects, failure to take account of some essential fact and misuse of authority.

The complainant alleges each of those flaws and his pleas are taken up below.

Breach of due process

7. Of the complainant's two pleas of breach of due process one is that the FAO should have looked into the allegations against him in the police reports.

That is not something that it would have been at all realistic to demand of the Organization in the circumstances. The FAO has neither the means nor the authority to carry out in the countries in which it has offices the sort of investigation that the charges levelled against the complainant would have called for. For one thing, the police will presumably not allow an international organisation access to their own files; for another, such an organisation may not encroach on the jurisdiction of police and other competent national authorities.

8. The complainant's other procedural objection is that the police reports were not brought to his notice until he got the letter of 7 October 1988 from the Director of Personnel notifying the decision not to renew his appointment, and that there was therefore breach of his right to a hearing.

Since, as was said in 2 above, the case is not one of dismissal, the FAO was under no duty either to frame formal charges against the complainant or to ask him to answer them. The case law is clear and consistent on that score. It is immaterial that the Organization failed to let the complainant know in detail the substance of the charges as set out in the police reports when informing him of the non-renewal. It was required only to state the reasons for the non-renewal, and it did so in its letter of 7 October 1988. Suffice it to add that it let him and his representative consult the police reports in the course of the internal appeal proceedings and he was therefore under no disability in pleading his case before the Appeals Committee.

The conclusion is that there was no breach of due process.

Disregard of essential facts

9. The complainant further accuses the Organization of failure to take account of essential facts. He says that it consistently ignored or belittled evidence that cast him in a good light and that bore out his competence, diligence, honesty and dedication. He cites praise of his performance and objects to the failure to write any reports at all on his performance in 1987 and 1988.

It is true that in the original notification of non-renewal the Director of Personnel referred, as is said in 5 above, to the complainant's "uneven performance and work-related conduct" as one reason for the decision. But the Organization does not press the criticism in its pleadings and indeed in its surrejoinder even acknowledges that "his professional ability was excellent". In any event the point is immaterial since its loss of confidence in his ability to behave properly is a sufficient reason for the impugned decision.

Since the question of the quality of his performance does not arise, the absence of appraisal reports in 1987 and 1988 is of no consequence in determining whether that decision is lawful.

Misuse of authority

10. Lastly, the complainant pleads misuse of authority on the grounds that there was racial prejudice against him as an "Afro-American".

The plea cannot be sustained. Not only does he fail to offer a shred of evidence in support of the allegation, which he has the burden of proving, but, as is held above, there were sound reasons for the decision he is impugning.

The Tribunal's ruling

11. The conclusion is that there is no flaw that warrants setting aside the FAO's decision that it would not be serving its own best interests if it kept the complainant in its employ. The decision must therefore be upheld.DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner