

SEVENTY-SECOND SESSION

In re CARRETTI

Judgment 1162

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Giuliana Carretti against the Food and Agriculture Organization of the United Nations (FAO) on 6 April 1990 and corrected on 14 July, the FAO's reply of 29 October 1990, the complainant's rejoinder of 12 March 1991, the Organization's surrejoinder of 25 April, the complainant's further brief filed on 6 May and the FAO's observations thereon of 30 July, the complainant's further submissions of 20 September and the FAO's comments thereon of 29 October, and the complainant's final submissions of 11 November and the Organization's reply of 26 November 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rule 302.4102 and FAO Manual paragraphs 311.422 and 314.221;

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. The complainant, an Italian, joined the Organization in 1976 as a bilingual shorthand-typist at grade G.4. The FAO confirmed her appointment in 1977 and promoted her in 1978 to G.5 with the title of secretary. In 1980 she was transferred to the Plant Production and Protection Division (AGP).

In 1981 she let it be known that she wanted another job because she found her working conditions difficult and harmful to her health. In December 1983 or January 1984 she got the first in a series of short-term assignments in the Temporary Secretarial Assistance Programme (TSA). She has since worked in several departments under TSA.

In October 1984 she put in a request for a stable post matching her qualifications. She renewed her request several times and corresponded at length with several personnel officers.

In February 1988 she turned down an offer of assignment on the grounds of health and in the belief that the post on offer did not match her qualifications. By a memorandum of 29 February 1988 the Chief of the Recruitment Planning and Staff Development Service (AFPR) gave her a written warning and referred her to Manual paragraph 314.221, which reads:

"A staff member who holds a confirmed appointment may be separated, following written warning, for failure to perform prescribed duties in a satisfactory manner (e.g. because of lack of fitness, aptitude or suitability for his/her post, or because, after successive transfers, satisfactory service and harmonious working relationships have not resulted). ..."

From 1 April to 1 July 1988 she worked on preparations for "technical consultation", and her supervisors reported on her performance in that period. By a memorandum of 1 July 1988 she objected to the procedure they had followed. The Chief of AFPR found the contents of her memorandum inadmissible and in a memorandum of 8 July 1988 gave her a second warning again citing Manual paragraph 314.221. By a memorandum of 28 October 1988 to the Director-General she explained her position and asked him to put her on a long-term post, withdraw the two written warnings and take a final decision so as to relieve her of going to the Appeals Committee. On 3 March 1989 the Assistant Director-General in charge of the Administration and Finance Department answered that the Director-General had rejected her request for withdrawal of the warnings; that the Director of the Personnel Division (AFP) would not be told to assign her to any division if the chief did not want her; and that there were no grounds for ignoring the ordinary procedure and taking a final decision before the Appeals Committee had reported.

On 31 March 1989 she appealed to the Committee for the grant of a suitable post in keeping with the terms of her appointment and Rule 302.4102(iii) (the rule says that any vacancy for an established post of one year or more from

G.2 to P.5 levels shall be advertised except when "in the judgement of the Director, Personnel Division, a placement problem could be solved by the transfer of a staff member into the vacant post".), and for withdrawal of the two warnings.

In its report of 29 November 1989 the Committee recommended rejecting her application for withdrawal of the warnings. Though acknowledging that some of her demands had made things awkward for the Organization, the Committee suggested making special efforts to find her a stable position and holding a meeting between her and the Personnel Division to talk the matter over.

By a letter of 8 January 1990, the decision she impugns, the Director-General endorsed the Committee's recommendations.

B. The complainant has three objections to the Director-General's refusal to put her on a permanent grade G.5 post as a secretary.

The first is breach of the terms of her appointment and the material rules. None of the posts she has held since January 1984 corresponds to her official title and grade, and that is in breach of Manual paragraph 311.422. Though entitled to a permanent position she has been on a temporary one and had 28 assignments since 1984. The Organization could and should have applied Staff Rule 302.4102(iii).

Secondly, the FAO is in breach of its duty not to cause its staff unnecessary or undue prejudice. Though the Organization's interests may warrant its putting someone on temporary assignments until it finds a suitable long-term position, it is quite wrong to let things drift for over six years. The FAO has never really tried to find her a stable post and has come up with mere pretexts for not meeting her wishes. Her long string of assignments has caused her serious moral injury.

Thirdly, the Organization is in breach of its duty to base its decisions on a fair reporting system. Its procedure for reporting on TSA staff are neither fair nor even above board: short stints afford no basis for reliable appraisal and it is difficult for the staff to exercise their right to reply. Yet the FAO has taken appraisals of the complainant made under that procedure to keep her on a limb for so long.

The two warnings she received are sanctions out of all proportion to the nature of the charges and the threats of termination are unwarrantable.

She invites the Tribunal to set aside the Director-General's decision of 8 January 1990 and to award her one year's salary in moral damages and a sum in costs.

C. In its reply the FAO admits that the complainant's position is unsatisfactory and she has rightful expectations of a permanent one. Though it has done everything it reasonably could to meet her wishes, it has faced great difficulties, some of her own making and some that are not her fault at all. The higher an official's grade the harder it is to place him. The FAO does not have many G.5 posts. Moreover, for reasons of health that are not at issue the complainant cannot use word processors, and so even fewer posts are available. The Personnel Department has also had to contend with the fact that she has not always got on well with other staff.

As for its failure to apply Rule 302.4102(iii) the FAO submits that the Director of Personnel may not force someone on a division against its will. That would impair efficiency and make for more problems than were solved.

The complainant's allegation that the reporting system discriminates against officials on temporary work blurs the distinction between two quite different categories of staff. It is only reasonable that for the sake of efficiency someone who works in more than one division should be appraised when he moves on. In any event staff are free whenever they wish to look at their performance reports and make objections.

The Organization explains how the warnings came about and submits that her behaviour warranted them.

It denies causing her any moral injury and asks the Tribunal to dismiss her complaint.

D. In her rejoinder the complainant objects to several mistakes and misleading statements of fact in the FAO's reply. She submits that the Organization has failed to answer all her pleas, in particular those about breach of the terms of her appointment and the material rules. Far from doing its utmost to find her a stable post at her grade it

has failed miserably to meet its obligations. She rejects its excuses as mere pretexts, the real reason for its failure being the hostility of several personnel officers.

She did nothing to deserve the warnings; they too were prompted by prejudice.

E. In its surrejoinder the Organization rejects the complainant's charges in her rejoinder. It objects to her attempt to "belittle" her misbehaviour. Not only is such misbehaviour inadmissible, but her peculiar character - of which the tone and the content of many documents appended to her rejoinder afford evidence - is one of the main reasons why the Organization finds it so hard to place her.

F. In a further brief allowed by the Tribunal the complainant addresses several issues raised in the Organization's surrejoinder and rejects its observations on her character, which she says are libellous. In its reply to that brief the FAO discusses further the points she raises, says that it had no intention of defaming her and is sorry to have given that impression, and declares that it has created a temporary post for the complainant. In further comments which the Tribunal authorised her to make the complainant explains her reasons for declining that post: the Organization failed to consult her before creating it, it carries no real duties and it does not match her qualifications. In final submissions the Organization retorts it followed the proper procedure for creating the post, which does carry real duties and suits both her grade and qualifications.

CONSIDERATIONS:

1. The claims that the complainant made in her internal appeal to the FAO Appeals Committee were:

"... that the written warnings she has received [in memoranda dated 29 February and 8 July 1988] be withdrawn, along with the explicit threat of termination expressed in them, since reasonable grounds exist to suggest that prejudice has played a part in their original formulation, and that she be permitted, and more actively assisted, to return to the stable and useful work for which she is qualified, and for which the Organization originally assumed [sic] her, namely Secretary G-5 with shorthand and typing in English/French/Spanish/Italian."

In its report of 29 November 1989 the Committee recommended rejecting her claim to the withdrawal of the two warnings but making "a special and last effort" to find her a stable position. It suggested arranging a meeting with her at which she should say what she regarded as a suitable G.5 post and whether she was willing to do clerical work if properly trained.

By a letter of 8 January 1990 the Director-General informed her that he rejected her appeal against the warnings. As to her duties, should she wish to have a meeting with the Personnel Division to discuss the sort of post she would accept if it was available, she might make an appointment with the Chief of AFPR; thereafter, if she maintained "harmonious working relations", the Organization would continue to look for a suitable assignment for her.

That is the decision she impugns.

The warnings

2. The Chief of AFPR gave the complainant both warnings under Manual paragraph 314.221, which reads:

"A staff member who holds a confirmed appointment may be separated, following written warning, for failure to perform prescribed duties in a satisfactory manner (e.g. because of lack of fitness, aptitude or suitability for his/her post, or because, after successive transfers, satisfactory service and harmonious working relationships have not resulted). ..."

The grounds for the first warning, the one of 29 February 1988, were that the complainant had failed to perform her duties satisfactorily because of difficulty in maintaining harmonious working relationships.

The second warning, the one of 8 July 1988, referred to a memorandum she had written on 1 July about a report appraising her performance from 1 April to 1 July. In that memorandum she had criticised an officer-in-charge of a unit identified as ESHW, who had signed the report, on the grounds that he had added handwritten comments. She had used strong language in several passages. She had described the officer as someone with a reputation as "the Professional in ESHW who makes a mess out of everything", and to his remark that that was "a big lie" had

retorted that he was "a big gossip himself" and needed to "join training classes on how to carry out the evaluation exercise".

The warning of 8 July 1988 said:

"The tone and contents of your memorandum of 1 July are simply unacceptable ... The derogatory remarks you make about the Officer-in-Charge ... your fixed ideas about what he should or should not have done, and the accusations you make against him are totally incompatible with the behaviour expected of a staff member of this Organization and the obligation of staff members, in accordance with the Staff Regulations, to conduct themselves at all times in a manner befitting their status as international civil servants."

Her "insubordinate remarks" afforded "further evidence of your inability to maintain harmonious working relationships".

3. The wording of Manual paragraph 314.221 is imprecise as to the sort of conduct that will warrant a warning and later dismissal: it speaks of "failure to perform prescribed duties in a satisfactory manner". To explain how the paragraph is to be applied in practice, however, the paragraph gives in brackets some illustrations of cases of such failure, and one example is that "harmonious working relationships have not resulted".

4. The reason the FAO gives for the impugned warnings is the complainant's failure to maintain "harmonious working relationships". Such a reason affords a sound basis in law for the warnings and is in itself sufficient provided that it rests on true allegations of fact. The complainant is therefore mistaken in her view that there must also have been successive transfers or poor performance. In point of fact the quality of the complainant's work was not at issue. The draughtsman gives in brackets what are no more than examples intended to help in construing the text: they are not cumulative conditions for applying it.

5. Since the only grounds given for the warnings are factually correct and warrant the impugned decisions, the complainant's objections must fail.

Request for assignment to a stable G.5 post

6. The complainant asks the Tribunal to order the Organization to give her a stable post in line with her qualifications as a shorthand-typist able to work in four languages, taking into account the exemption granted by the FAO's medical service in accordance with the material provisions of the terms of her appointment.

7. By a memorandum of 10 July 1991 the Chief of Central Recruitment proposed to the Director of the complainant's division, which is known as GIL, that "in view of your very positive evaluation of the staff member's service during her assignment to your office" a temporary post should be established in GIL "on a trial basis" for an initial period of one year. The Director of GIL agreed in a memorandum of 16 July. In the further brief it filed with the Tribunal on 30 July the Organization said it was taking steps to create a temporary post for her in GIL and gave an assurance that it saw that as just a first step towards solving the problem of placing her.

By a memorandum of 28 August the Director of the Personnel Division informed her at her request that action was being taken to establish the post and he appended a description of her future duties.

In a long memorandum of 13 September to the Director the complainant expressed many reservations about the proposed position. She said that it was neither stable nor in line with her qualifications and grade and that it was being created just to strengthen the FAO's case before the Tribunal. She asked for cancellation of the "administrative procedure".

8. The Tribunal will take her last point first. It sees no objection to the Organization's seeking to settle the case: that is quite normal and reasonable practice while a case is pending.

9. In its further brief of 29 October 1991 the Organization answers the complainant's substantive objections. It observes that it has created the post especially for her, that being one of the last possibilities open to it for solving a difficult problem of placement. It repeats that G.5 posts that do not involve the use of word processors are few and far between and that the complainant's inability to get on with others at work makes things even more difficult. It sees the creation of the post as a first step towards a lasting solution. It explains that for the time being the post must be of limited duration because the procedure for working out any more lasting solution takes months. It

assures the complainant that the limited duration of the post does not impair the complainant's security of employment under her contract: in a memorandum of 23 October 1991 the Director of AFP assured her that she would be assigned to the post without limit of time. The job description, the FAO goes on, is a combination of the duties at present performed by the complainant in GIL and other tasks necessary for the functioning of the Division. It corresponds to grade G.5. To her plea that it does not and that G.5 staff ordinarily work for a grade D.1 official, whereas the holder of the new post will not, the Organization replies that G.5 secretaries do not and need not invariably work for D.1 officials.

The Tribunal is satisfied in the light of the foregoing that the Organization has made a serious effort to give the complainant a more stable position - indeed it has created the post especially for her - and has taken due account of her qualifications, experience and grade. Since she has therefore obtained satisfaction she shows no cause of action, and her claim under this head fails as well.

DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. José Maria Ruda, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Jacques Ducoux
Mella Carroll
José Maria Ruda
A.B. Gardner