

## NINETEENTH ORDINARY SESSION

### *In re* WRIGHT

#### Judgment No. 117

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations, drawn up by Mrs. Jean Wright on 17 November 1966, brought into conformity with the Rules of Court on 10 March 1967, and the reply of the defendant organisation of 12 May 1967;

Considering the additional memorandum on legal issues filed by the Organization on 31 August 1967, at the request of the Tribunal, the observations of complainant on the said memorandum, dated 27 October 1967, and the rejoinder of the Organization of 14 December 1967, on which complainant, by letter of 16 January 1968, stated that she did not desire to submit farther written comments;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and Articles 301.111, 301.112 and 301.136 of the FAO Staff Regulations and 303.111 of FAO Staff Rules, together with the Statutes of the body known as "the FAO Credit Union";

Having heard in oral proceedings, on 11 March 1968, Mr. Jacques Mercier, Counsel for complainant, and Mr. G. Saint-Pol, Agent of the Organization;

Considering that the material facts of the case are as follows:

A. Complainant was originally offered, and accepted employment by the "FAO Credit Union", on 4 February 1963. The terms of the contract of 1 August 1965, signed by complainant and by the Treasurer of the Union, on behalf of the Board of Directors of the Union, during the currency of which her employment came to an end, provided that she would be employed by the Credit Union as a clerk-secretary, with a salary equal to the FAO General Service local salary in the grade of G.5 step 10, increased by 5 per cent. as compensation for the absence of certain fringe benefits available to FAO staff. This contract further provided, as regards termination of employment, that "an employee whose confirmed appointment is to be terminated shall be given no less than three months' written notice of such termination".

B. According to Article One, section 1, of the Statutes of the FAO, Credit Union, the Union "is a co-operative thrift and loan association formed, with the approval of the Director-General, by 40 members of the FAO Headquarters staff who subscribed to the original statutes on or before the Organization Meeting held on 26 July 1954", and "the Union operates within the framework of the Food and Agriculture Organization of the United Nations ... as a staff welfare institution". The object of the Union is to encourage thrift among members by providing convenient and profitable means of saving and to provide credit facilities for immediate emergency needs and for the general benefit of members. Membership is open to FAO staff members and staff members of the World Food Programme whose salaries are paid through FAO, employees of the Union and, subject to reciprocal arrangements, to staff members of other United Nations organisations stationed in Rome. The offices of the Union are located at the Headquarters of FAO Under by-law No. 40, the Board of Directors of the Union shall have power to appoint full-time, part-time, or spare-time employees.

C. The relationship between FAO and the Union is further defined in Article five of the Statutes, which reads as follows:

#### ARTICLE FIVE

##### RELATIONSHIP WITH THE FAO

###### Section 1

Subject to the safeguards necessary for the protection of the good name and financial position of FAO, the affairs of the Union shall be conducted independently. The borrowing and investment records of individual members shall

be confidential and shall be available only to officers of the Union.

## Section 2

The Director-General shall designate one member of the Board of Directors and one member of the Supervisory Committee (see Article VI).

## Section 3

These Statutes and any amendments thereto shall take effect only after the approval of the Director-General.

## Section 4

The Director-General shall be informed of the names of all officers elected or appointed and shall be given copies of the Union's Annual Statements of Account (see Article X).

## Section 5

The Director-General may, at his discretion, order an examination of the affairs of the Union at any time.

## Section 6

If, as a result of such examination, the Director-General is of the opinion that the Union is so conducting its affairs as to affect adversely the interests of FAO, he may instruct the Union to correct such condition within a specified period, and in the event of failure to do so to his satisfaction, he may appoint a liquidator to wind up the affairs of the Union.

## Section 7

The FAO shall assume no financial responsibility whatever for the Union.

D. By letter of 4 February 1966, complainant was informed that the Board of Directors of the FAO Credit Union had decided to terminate her employment as of 31 May 1966, that she would receive cash payment in lieu of notice, and that her services would not be required after 4 February 1966.

E. On 17 February 1966, complainant submitted an appeal to the Director-General of FAO, through the President of the Credit Union, who returned the appeal, under cover of a memorandum of 18 February, pointing out that she was not entitled to appeal to the Director-General against the decision of the Board of Directors, whereupon complainant submitted, on 2 March, an appeal to the Chairman of the FAO Appeals Board. The case was considered on 5 July 1966, and the Appeals Board advised the Director-General that it did not consider the complainant to be a staff member of FAO and that accordingly it was not competent to hear her appeal. Complainant was so advised, on 17 August 1966, by the Acting Chairman of the Board of Directors of the Credit Union.

F. While proceedings were pending before the Appeals Board, the Union proposed, on 3 June 1966, to subdue the dispute to arbitration, and this offer was renewed on 17 August and 1 September 1966, but the parties failed to agree on the procedure to be followed and the choice of the law to be applied by the arbitrators. Before the Tribunal, complainant submits that she was an FAO staff member and that decisions to the contrary should be quashed, while the organisation submits that the Tribunal lacks jurisdiction to hear the complaint.

## CONSIDERATIONS:

The competence of the Tribunal is limited to determining complaints against FAO alleging non-observance of the terms of appointment of its staff members. While it is possible to be an employee of FAO without being one of its staff members, no one can be a staff member who is not an employee. The identity of an employer is fixed by the contract of employment. The employer named in the complainant's contract of employment is the FAO Credit Union and the contract is signed by the Treasurer for the Board of Directors of the Credit Union, the Board having authority under by-law 40 of the Statute to appoint employees. It is unnecessary to consider whether the Credit Union has a legal or international personality of its own or whether it enjoys immunity from national process. Even

if "FAO Credit Union" is in the eyes of the law no more than a convenient name for a group of individuals, such individuals are as a group capable of entering into contracts of employment. It is only therefore if it is proved that the signatory to the contract of employment in this case had authority, either in his capacity as an official of the Credit Union or otherwise, from FAO to make contracts of employment on its behalf that the complainant could be held to be employed by FAO. The Tribunal can find no evidence of any such authority. Authority is a clear and precise legal conception and if it cannot be found to exist it is not permissible to take refuge in imprecise expressions, such as that the Credit Union was a body "within the framework of FAO.". Accordingly, the complainant not being employed by FAO, and so not one of its staff members, the Tribunal lacks jurisdiction to determine her complaint. The Tribunal is not called upon to consider what liability, if any, FAO may have under contracts made by the Credit Union which it is unable to fulfil.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 18 March 1968 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Jacques Lemoine, Registrar of the Tribunal.

M. Letourneur  
André Grisel  
Devlin  
Jacques Lemoine