

SEVENTY-THIRD SESSION

In re CONNOLLY-BATTISTI (No. 9)

Judgment 1187

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mrs. Norah Connolly-Battisti against the Food and Agriculture Organization of the United Nations (FAO) on 13 September 1991 and corrected on 5 October 1991, the FAO's reply of 15 January 1992, the complainant's rejoinder of 14 February and the Organization's surrejoinder of 19 March 1992;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and FAO Staff Regulations 301.062 and 301.121, FAO Staff Rule 303.1311 and FAO Manual sections 331 and 343;

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. FAO Staff Regulation 301.062 requires the Director-General to "establish a scheme of social security for the staff, including provisions for health protection ...". Regulation 301.121 provides for the Staff Regulations to "be supplemented or amended by the Conference or Council, without prejudice to the acquired rights of staff members. Such modifications, as well as any Rules issued by the Director-General within the framework of the foregoing Regulations, shall apply to all staff members".

The complainant, an Irish citizen who was born in 1919, served the FAO from August 1954 until, having reached grade G.6, she retired on 1 June 1981. The Organization enrolled her in its health scheme in 1958. As from 1 January 1972 it made changes in the scheme and it announced them in a circular of 15 November 1971. They included the introduction for eligible staff members and their dependants of "free coverage for the duration of the contract with [the insurance broking firm] van Breda". By the date of retirement she had been contributing to the FAO's Major Medical Benefits Plan (MMBP) for 23 years, to its Basic Medical Insurance Plan (BMIP) for 3 years and to a plan based on an agreement with the Italian National Insurance Organization for Employees of Public Non-Governmental Administrations (ENPDEP) for 20 years. A personnel officer informed her by a memorandum of 28 April 1981 that she and her husband were eligible under Manual Section 343, Part VII, for "free after-service coverage in BMIP and MMBP". On 28 May 1981 she applied to the Establishments and Entitlements Service for free coverage; her application was approved and she got back a copy bearing the personnel officer's signature.

On 19 June 1989 she got a letter from the Director of the Personnel Division to pensioners dated 1 June explaining that a fall in the number of active officials and the mounting cost of claims from retired officials made it necessary to revise the Organization's Group After-Service Medical Insurance Scheme. The letter said that after an appropriate "grace period" retired staff who still wished to take part in the scheme would have to contribute at the same rate as active staff members, but subject to a maximum of 4 per cent of their full pension from the United Nations Joint Staff Pension Fund. The letter invited pensioners to fill in and submit a form appended thereto by 20 September 1989 stating whether they wished to stay in the scheme as contributing members and to authorise deductions of their premiums by the Fund from their pension. A senior personnel officer reminded her by a letter of 8 September that she had until 20 September to make up her mind.

By a letter of 14 September 1989 she told the Director of the Personnel Division that she intended to exercise her "acquired right to free after-service coverage". She described the choice he put to pensioners between paid coverage and withdrawal from the scheme as "a trick" to get them to waive their rights. In a further reminder of 27 September the Administration gave her until 31 October 1989 to decide and drew attention to her right to appeal under Manual Section 331. By a letter to pensioners dated 4 January 1990, of which she obtained a copy on 6 February, the senior personnel officer said that the new provisions for after-service coverage announced in the letter of 1 June 1989 had come into effect on 1 November 1989. She appealed on 15 March 1990 to the Director-General against that decision through the Assistant Director-General in charge of Administration and Finance. By a letter of 14 May the Assistant Director-General rejected her appeal as time-barred but said that the results of

appeals other pensioners had lodged would apply to all those in an "analogous situation".

The senior personnel officer told the complainant by a letter of 15 May 1990 that the Organization would pay her contributions in full for a grace period of nine months from 1 November 1989. He also said that her failure to authorise the Fund by return of post to subtract the amount of her premiums from her pension payments would entail her "withdrawal" from the health scheme. In her reply of 1 June she told him that she did not intend to "prejudice" her acquired right or her appeal by authorising the Fund to subtract contributions. On 9 July 1990 she put her case to the Appeals Committee. Van Breda informed her by a letter of 24 December that it refused her claims dated 16 November 1990 because the FAO had ended her coverage before she had incurred the expense.

In a report of 2 May 1991 the Appeals Committee recommended rejecting her appeal as time-barred. The Director-General endorsed the Committee's recommendation in a letter of 27 June 1991, the decision she impugns.

B. The complainant objects to the Appeals Committee's finding that her internal appeal was out of time because, she maintains, the circular letter sent to pensioners on 1 June 1989 was no final decision. The outcome depended on each pensioner's reply and on the Fund's agreeing to subtract insurance premiums from pension payments. The decision she challenged in her internal appeal was the letter of 4 January 1990 - which she did not get a copy of until 6 February - telling her that her "free after-service coverage ended on 31 October 1989", and so she lodged that appeal well within the 90-day time limit in Rule 303.1311.

She submits that the FAO's decision to deny her and her husband free after-service medical coverage was in breach of her acquired rights, which the case law has described as "rights of substance, whose impairment would result in injury, financial or otherwise". She qualified for free coverage under Manual paragraphs 343.7, 343.721, 343.722, 343.75 and 343.77 in force at the time of retirement and the signed form she got back from the Establishments and Entitlements Service stated that she and her husband were eligible for "after-service participation in BMIP and MMBP free of charge".

Amendments to the rules under Regulation 301.121 apply only to staff members who are in service when new provisions come into effect. Pensioners remain subject to the rules in force at the time of separation. When the Personnel Division persuaded her to change from ENPDEP to BMIP it gave her to understand that her contributions would entitle her and her dependants to free after-service medical coverage. If costs have risen beyond expectation the burden ought to be shared between serving staff and the Organization.

By applying the amended Staff Rules to her with retroactive effect the FAO has caused her serious "economic and moral damage".

She asks the Tribunal to order the FAO to grant her and her husband free medical coverage and to pay for any contributions that may be due to van Breda to ensure that their "free coverage continues". She also seeks an award of costs in the amount of 2,500 United States dollars.

C. In its reply the FAO submits that the complaint is irreceivable. Its letter of 1 June 1989, which the complainant received on 19 June, informed her that the health insurance scheme was amended and that free medical coverage after retirement would end. Under Rule 303.1311 she had 90 days from 19 June in which to appeal to the Director-General. She did not do so until 15 March 1990. The letter of 4 January 1990 merely confirmed a decision already taken and referred to the "administrative and procedural aspects" of implementation. Since it contained no decision on the changes in after-service coverage it set off no new time limit. In any event the senior personnel officer indicated in his letter of 27 September 1989 that if she wanted to appeal the decision she should impugn was the one in the letter of 1 June 1989. She has therefore failed to exhaust the internal means of redress.

For its subsidiary comments on the merits the Organization refers the Tribunal to its reply to the complaints lodged by Mr. Georgiadis and others (see Judgment 1186, delivered this day, under C). It reaffirms its willingness to apply the Tribunal's ruling on those complaints to anyone in like case, including the present complainant.

D. In her rejoinder the complainant seeks to refute the arguments in the Organization's reply. It was not the circular letter of 1 June 1989, but the one of 4 January 1990 telling her that her "free after-service coverage ended on 31 October 1989", that afforded the proper basis for such appeal. The FAO may not contend that appeal lay against the letter of 1 June 1989 when it first referred to her right to appeal on 27 September 1989, 101 days after the date she had received that letter.

She says that her complaint is not the same as that of Mr. Georgiadis and points out several differences such as the fact that he authorised the Pension Fund to subtract contributions from pension payments whereas she did not. Without her signed consent the FAO could not lawfully go back on its promise of free coverage. She enlarges on her other pleas and presses her claims.

E. In its surrejoinder the FAO maintains its plea of irreceivability and answers some of the arguments in the rejoinder. Though it issued the letter of 1 June 1989 as a circular, what matters is that the decision affected her personally: according to the case law the fact that a circular is a general decision is not enough in itself to make the complaint irreceivable.

As to the merits, no issue she cites makes her complaint any different in substance from that of Mr. Georgiadis.

CONSIDERATIONS:

1. While she was an employee of the FAO the complainant was a contributing member of the Organization's health insurance scheme which provided medical benefits for her and her husband. On her retirement from the staff on 1 June 1981 she ceased to contribute, but she and her husband continued to have coverage under the scheme.

On 1 June 1989 the Director of the Personnel Division sent her and other retired officials a letter explaining that because of a fall in the number of serving officials and the rising cost of health insurance claims from retired officials reforms had to be made in the financing of the scheme; so retired officials who wanted to keep their coverage would in future have to pay contributions.

2. By a letter of 4 January 1990 a senior personnel officer informed the complainant that the new arrangements for medical coverage after retirement had come into force at 1 November 1989. On 15 March the complainant appealed to the Director-General against the terms of that letter. Her appeal having been rejected, she went to the Appeals Committee on 9 July. In its report of 2 May 1991 the Committee recommended rejecting her appeal on the grounds that the appeal to the Director-General had been time-barred, and by a letter of 27 June 1991, the impugned decision, the Director-General endorsed that recommendation.

3. The Tribunal is satisfied that it was the letter of 1 June 1989 from the Director of the Personnel Division that constituted the decision to be challenged by the complainant. For one thing, it was sent by registered post with a certificate of receipt to every retired official. The complainant got it on 19 June. Moreover, it was a decision that affected her adversely and she was allowed under Rule 303.1311 90 days from 19 June in which to state her case in a letter to the Director-General. Not until 15 March 1990 did she do so, and by then she was out of time.

4. True, the senior personnel officer wrote the letter on 4 January 1990 to her and to other retired officials to announce that the new provisions for after-service coverage had come into effect. But that letter was mere confirmation of the decision that had already been taken to make pensioners pay if they wished to continue to benefit from the scheme. It therefore gave rise to no new time limit for filing an internal appeal against that decision. Indeed in his letter of 27 September 1989 the senior personnel officer referred to "the 1 June 1989 letter" from the Director of the Personnel Division and urged her to protect her "right to continue health coverage" by filling up and submitting the form that had been appended to that letter. He then said that if she wished to appeal she might do so and he referred to the material provisions of the FAO Manual. The fact that the time limit for her exercising her right of appeal under those provisions had already expired is irrelevant. The senior personnel officer was under no duty to speculate in his letter about whether she would be in time to file an appeal: he quite properly cited the material rules and was not required to go further.

5. The conclusion is that since the complainant failed to lodge a timely appeal under Rule 303.1311 she did not follow the internal appeal procedure correctly. Her complaint is therefore irreceivable under Article VII(1) of the Tribunal's Statute because she has failed to exhaust the internal means of redress.

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 15 July 1992.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.