

## TWENTIETH ORDINARY SESSION

### ***In re* DOUWES**

#### **Judgment No. 125**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Mr. Hendrik Douwes on 16 October 1967, and brought into conformity with the Rules of Court on 1 November 1967, and the documents in the dossier, including the reply of the Organization dated 7 December 1967, complainant's rejoinder of 30 January 1968, and the further reply of the Organization dated 5 March 1968;

Considering Article II, paragraph 5 of the Statute of the Administrative Tribunal; Article 303.135 of the FAO Staff Regulations and section 340.23 of the FAO Manual;

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

A. Mr Douwes entered the service of FAO on 14 January 1953 as an Agricultural Officer, Grade P.3. His appointment, originally made for one year, was renewed a number of times until the termination of his service in 1967. Complainant carried out assignments in Iran and the Philippines and was promoted to Grade P.4 in 1961. On 19 March 1963 he was assigned to a Cotton Improvement Project in Central America with his duty station in Guatemala. On 1 May 1963 his fixed-term appointment was converted into a technical assistance programme appointment, in accordance with FAO Manual section 370.333, such appointments being granted to project officers whose service in the field has been satisfactory

B. On 19 July 1963 FAO headquarters was informed by its country representative in Guatemala that complainant had shown inappropriate and even impertinent behaviour towards both his colleagues and national officials. On 26 July 1963 the UNTAB Resident Representative for Central America transmitted to headquarters a complaint about Mr. Douwes from the Minister of Agriculture of Salvador, and on 13 August 1963 the Deputy Regional Representative for Latin America (Northern Zone) suggested that the Organization should reprimand Mr. Douwes for his lack of tact and for his rudeness towards his colleagues and national officials. A letter of reprimand was accordingly addressed to complainant. After a year during which no difficulties arose, further complaints were made on 7 October 1964 by the FAO country representative in Guatemala, this time in regard to the serious friction between complainant and another expert working in the same group. As it did not prove possible to reconcile these differences, the appointment of the other expert was not renewed on its expiry. As for complainant, he was informed on 9 October 1964 that his services would be discontinued as from 31 January 1965, but that it might be possible to offer him a further appointment when a suitable vacancy occurred in some other FAO project.

C. On his return to headquarters Mr. Douwes filed an appeal with the Appeals Committee on 4 January 1965. Subsequently he was offered the choice of a post as agronomist in Uganda, Costa Rica or Peru. He did not, however, feel able to accept any one of these posts, as he considered that they were not compatible with his qualifications, his experience or his physical capabilities. Consequently, he maintained his appeal of 4 January 1965. An amicable settlement was reached, however, Mr. Douwes having accepted a vacancy which arose in Surinam. On his return from this assignment FAO offered him a post in Ghana. In March 1966 Mr. Douwes refused this offer for reasons of health, and as he wished to take up temporary employment with the Royal Institute for the Tropics at Amsterdam he asked that his appointment should be terminated subject to payment of termination indemnities, or alternatively that he should be given a year's special leave without pay. The Organization's Medical Adviser found that complainant was fit to take up the appointment in Ghana. In March 1966, however, the Organization approved Mr. Douwes's request for special leave without pay. Soon after the beginning of this period of leave, on 20 May 1966, complainant wrote to headquarters asking what progress had been made with his appeal against the decision to transfer him from Central America. He pointed out that the appeal was directed not solely against the decision to terminate his appointment, which had been superseded by his assignment in Surinam, but also against the above-mentioned transfer. Several letters were then exchanged between the Organization and complainant with a view to clarifying the subject of the appeal. In the meantime, Mr. Douwes declined an

assignment to Pakistan. On 17 February 1967 the Director-General informed complainant that he considered the complaint to be groundless, since the transfer did not represent a negative determination by the Organization as regards complainant's technical competence or conduct and could not be construed as a stigma on his professional career. Complainant confirmed his appeal to the Appeals Committee on 23 February 1967, and subsequently offered to resign subject to the reservation that his resignation could be withdrawn in the light of the outcome of his appeal; alternatively, he asked that his leave without pay status could be extended. The Organization replied that it was unable to accept such a provisional resignation and agreed to extend his leave without pay up to 31 August 1967. On 26 May 1967 Mr. Douwes addressed a letter of resignation to the Chief of Personnel, stating that he did so in order to comply with the Staff Regulations since his special leave would expire on 31 August and three months' notice of resignation was required. On 9 June his resignation was accepted with effect from 31 August 1967.

D. The Appeals Committee recommended on 3 August 1967 that the Director-General should dismiss the appeal. The Director-General accepted this recommendation and informed Mr. Douwes on 18 August 1967 that his appointment would be terminated on the expiry of his period of leave without pay on 31 August 1967.

E. In his complaint to the Tribunal Mr. Douwes submits that the decision of 9 October 1964 to withdraw him from Central America was unlawful and unjust and that he had been forced to resign through the refusal to extend his period of leave without pay. He prays that the Tribunal may be pleased to grant him relief in the following terms:

"A. Regular pay (salary) on the basis of my assignment in Central America from my forced departure on 27 January 1965 up to my forced resignation on 31 August 1967, including annual increments and pension scheme contributions, and free from Dutch taxes;

B. Adequate compensation for the 1099 of FAO salary during the remainder of my programme assignment contract, for the period of 1 September 1967 until 13 April 1971, the date of my sixtieth birthday, also free from Dutch taxes;

C. Fifty thousand US dollars as compensation for hardship, distress and anxiety during the period of receipt of the letter from Dr. Fagundes, dated 9 October 1964, notifying me of the dismissal, up to now and beyond."

F. The Organization submits that the complaint should be dismissed.

#### CONSIDERATIONS:

1. As to the claim for unlawful and unjust withdrawal from Central America:

Under Article 11 of the Rules of Court, the Tribunal may "order such measures of investigation as it

considers desirable, including personal appearance of the parties before it, the hearing of witnesses on oath, either on the motion of the Tribunal or on application by the parties, expert inquiries, administration of oaths, and so forth".

In support of his complaint Mr. Douwes contends that the Director-General's decision of 31 August 1967 to terminate his services on the expiry of his leave without pay was originally based on letters addressed to headquarters containing allegations of shortcomings on complainant's part in respect of the conduct required of field service officials, on 19 July 1963 by the FAO representative in Guatemala, on 26 July 1963 by the Technical Assistance Board Resident Representative for Central America, on Latin America (Northern Zone), and on 7 October 1964 by the Technical Assistance Board Resident Representative for Central America. In his memorandum dated 16 October 1967, complainant requested the Organization to append copies of these letters to its reply. In its reply the Organization, relying on Manual section 340.23 concerning the confidential documents of the Organization, did not deem it necessary to furnish the full text of the documents requested by complainant, stating that all the pertinent points of the statement of FAO and its appendices, the remainder being irrelevant to the disposal of his complaint. The Organization stated further that Staff Rule 303.135, which provides that a staff member who lodges an appeal shall have access to all pertinent documents in his personnel file and any other documents considered by the Committee, is not intended to render Manual section 340.23 meaningless.

It is unnecessary to consider the exact scope of Staff Rule 303.135 or section 340.23 of the FAO Manual or to resolve any conflict that there may be between them. Since the Organization has in its statement referred to the

letters of 19 July, 26 July, and 13 August 1963, and 7 October 1964, and relied upon their contents as evidence against the complaint, he is entitled to see the letters; and it is not enough that he should be provided with extracts or summaries of such parts of the letters as the Organization considers to be relevant. If there are passages in the letters which relate to some quite different subject matter or which on some other ground, such as confidentiality, ought not in the opinion of the Organization to be disclosed to the complainant, the Organization may omit such passages from the copies produced, stating at the same time what the reasons are for the omission. If the complainant challenges these reasons, the Tribunal will consider whether or not it is necessary, in order that justice should be done in the case, that the omitted passages should be examined. If the Tribunal decides that such an examination is necessary, the complete letters will in the first instance be produced only to the Tribunal itself and will not be shown to the complainant unless the Tribunal decides that the claim for secrecy is without foundation.

2. As to the claim that the complainant's resignation was forced by the refusal to extend his leave without pay:

The Tribunal considers that this claim is without any foundation of fact.

#### DECISION:

For the above reasons,

1. As an interlocutory decision on the first claim, the Organization is directed to produce copies of the letters of 19 July, 26 July and 13 August 1963, and 7 October 1964, in accordance with the terms of this judgment.

2. The second claim is dismissed.

Thus decided at Geneva on 15 October 1968 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

M. Letourneur  
André Grisel  
Devlin  
Bernard Spy