

SEVENTY-FIFTH SESSION

In re CARRETTI (No. 4)

(Application for review)

Judgment 1295

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1163 filed by Miss Giuliana Carretti on 22 June 1992, the reply of 13 August from the Food and Agriculture Organization of the United Nations (FAO), the complainant's rejoinder of 25 November 1992 and the FAO's surrejoinder of 10 February 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. In Judgment 1163 the Tribunal ruled on the applicant's second complaint against the FAO. The facts of the dispute are set out in that judgment and need not be repeated here. The Tribunal quashed a decision of 16 May 1990 by the Director-General of the FAO and ordered the Organization to "pay the complainant the within-grade salary increment due to her at step XII in grade G.5 as from 1 June 1989, plus interest reckoned at the rate of 10 per cent a year". The Tribunal also ordered the Organization to pay her 2,000 Swiss francs in costs but dismissed her claim to damages for moral injury.

2. In her second complaint she had asked the Tribunal to:

- (1) "quash the Director-General's decision of 16 May 1990 ...";
- (2) "award her as from 1 June 1989 step XII in grade G.5 on the basis of services rendered from 1 June 1987 to 31 May 1989 plus interest at 12 per cent a year from the date at which those amounts ought to have been paid and taking account of any salary increases since 1 June 1989";
- (3) "award her moral damages in an amount she leaves to the Tribunal's discretion";
- (4) "order the FAO to remove from her personal file all correspondence relating to the impugned decision";
- (5) "grant her ... 21,000 French francs in costs ...".

She later increased the amounts she claimed in costs to 41,190 French francs and 1,150,000 lire.

3. In her present application for review of Judgment 1163 the complainant makes eight claims. She wants the Tribunal to:

- (1) "review its decision in Judgment 1163 so as to grant in full the claims which she stated in her complaint of 10 August 1990, as corrected on 7 January 1991, and which she supplements as follows":
- (2) "rule on the iniquitous system of reporting in the TSA Programme to which the Organization resorted 11 times over 21 working months, obliging her to take up 11 assignments under 48 supervisors when she should have had a permanent position under the immediate supervision of an official with the rank of director and her performance should have been evaluated no more than once a year from 1 November 1988 or for periods of not less than six months as stipulated in the memorandum of 28 September 1988 from the Director of Personnel to the Secretary-General of the UGSS Union for General Service staff";
- (3) "rule on the four flawed performance reports (AGAH, ESHW and DDCI) which led to the withholding of her step and order the FAO to invalidate them in view of the favourable work certificates her first-level supervisors provided for the same temporary assignments in AGAH, ESHW and DDCI";

(4) "order the FAO to remove the memorandum of 25 April 1989 from her personal file along with all other correspondence relating to the withholding of her within-grade salary increment";

(5) "review the matter of the moral injury the Organization's improper treatment caused her, be it through the unlawful decision it took or its unfair, unwarranted and insulting accusations against her, her work, her relations with others at work and her conduct, which have always been beyond reproach, as the 11 work certificates from her first-level supervisors show, and order the Organization to make her an apology and pay her moral damages in an amount she leaves to the Tribunal's discretion";

(6) "review impartially the matter of the portion of costs awarded to her with due regard to other awards it has made and the total of 10,567,191 lire she spent on the case that Judgment 1163 ruled on, and order the FAO to pay her a fair amount in compensation";

(7) "order the Organization to produce revised payslips as from 1 June 1989, including salary increments corresponding to step XII in grade G.5 and official monthly statements showing the reckoning of her pay and interest at the rate of 10 per cent a year, or, failing production of the payslips, the official monthly statements alone showing the reckoning of her pay and interest, in accordance with the ruling in Judgment 1163";

(8) "order the Organization to pay her for the present application 99 hours' overtime for work done in the office after normal working hours and three months' salary for work done outside the office, to cover both costs and compensation for the injury caused by the present application".

4. The complainant is asking the Tribunal to review a judgment which allowed her main claims - set out in 2 above - to the quashing of the Director-General's decision of 16 May 1990, and to payment of the salary increment due to her, plus interest. She does not of course want the Tribunal to reverse its main ruling, though that is ordinarily the purpose of an application for review. In claim (1) of the present application - set out in 3 above - she asks for the review of Judgment 1163 insofar as it did not allow her claims in full. She adds several claims which did not form part of her original complaint, though they do show some connection with the issues she raised in that complaint. She herself describes the new redress she is seeking as "supplementing" her original claims.

5. The admissible and inadmissible grounds for review of a ruling by the Tribunal are set out in Judgment 1294 (in re Carretti No. 3), also delivered this day, under 2.

6. What is more, an application for review of a judgment obviously may not afford an opportunity for making new claims. The Tribunal therefore declines to entertain claims (2), (3) and (7) of the present application because they are new.

7. Claim (5) is to an apology from the Organization for its treatment of her and to review of the Tribunal's refusal of an award of damages for moral injury.

The claim to an apology is a new one and, again for the reasons stated in 6 above, may not be entertained.

The claim to an award of moral damages is *res judicata*: the Tribunal stated in Judgment 1163, under 9, that "even though the decision was unlawful, the injury was not serious enough to warrant any award under that head". The complainant offers no valid reason for review of that ruling, and it must stand.

8. As to claim (4), it is true that Judgment 1163 did not specifically rule on the complainant's original claim to withdrawal from her personal file of all correspondence relating to the impugned decision (also claim (4) of the original complaint: see 2 above). It is also true that failure to rule on a claim does constitute admissible grounds for review provided that it is material to the ruling on the case. In this case, however, it is plain that when the Tribunal dismissed the complainant's claim to moral damages on the grounds that "the injury was not serious enough to warrant any award under this head" it was thereby also dismissing her claim to withdrawal of the correspondence. The inference to be drawn from the conclusion that she had sustained no moral injury was that the correspondence had caused her none and there was therefore no call to withdraw it.

9. In claim (6) she seeks review of the amount awarded her in costs on the grounds that the costs she had actually incurred amounted to 10,567,191 lire.

In Judgment 262 (in re Lamadie) the Tribunal said:

"... costs are payable only to the extent warranted by the circumstances of the case, that is to say its nature, importance and complexity and the actual contribution made by the complainant or his counsel to the proceedings."

In keeping with that precedent, and on account of the nature and degree of complexity of the original complaint, the Tribunal determined that the Organization should pay the complainant no more than 2,000 Swiss francs towards costs. That ruling is *res judicata*, and again the complainant offers no sound reason for review in her present application. Comparison with awards of costs in other cases is neither here nor there: each case is to be judged on its own for the purpose of determining the right award.

10. Since her application fails, so too does her claim, in (8), for a further award of costs on account of the application.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
Mella Carroll
Michel Gentot
A.B. Gardner