

## SEVENTY-NINTH SESSION

### *In re* WASSEF (No. 3)

#### Judgment 1452

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 10 August 1994, the FAO's reply of 29 September, the complainant's rejoinder of 26 October and the Organization's surrejoinder of 2 December 1994;

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

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out, under A, in Judgment 1401. The FAO employed the complainant under several fixed-term appointments. In 1991 it sent him out to N'Djamena, in Chad, as an administrative officer at grade P.3. Since he had hepatitis B the Organization had him removed on 23 August 1993 to Paris, where he was treated until September 1993. On account of his illness the Organization extended his contract, which was to expire on 30 September 1993, until 7 January 1994, but did not renew it thereafter.

On 7 January and 15 February 1994 he submitted two appeals to the Director-General alleging that his illness was service- incurred; on 3 March he lodged a third appeal, against the decision not to renew his contract.

In a fax dated 21 February he had asked the Director of the Personnel Division to give him the names of officials on the "Panel of Counsel" who might, in keeping with section 331 of the FAO Manual, act for staff in appeal proceedings.

By a fax of 3 March the Director answered that there was no list yet of staff members available for the Panel but he could have any staff member put his case to the Appeals Committee.

By a letter of 14 March he appealed to the Director- General claiming 2 million United States dollars in damages for injury he imputed to the fax of 3 March. On 16 April he lodged an appeal with the Appeals Committee.

On 3 May 1994 the Assistant Director-General in charge of Administration and Finance wrote to him on the Director- General's behalf rejecting, among other things, the claim in his letter of 14 March to damages.

B. The complainant submits that the internal remedies open to an FAO official are unsatisfactory because the Appeals Committee never finds in the official's favour, at least not formally, and cannot enforce its recommendations.

Referring to Annex B to section 331 of the FAO Manual, he says that the Panel of Counsel is an important feature of the internal appeal procedure. By refusing to provide it the FAO impaired his right to due process.

It also infringed its own rules and Article VII of the Tribunal's Statute by failing to reply to his claim of 14 March within the 30-day time limit in Manual section 303.1312.

He asks the Tribunal to declare the Director-General's reply of 3 May 1994 "irreceivable and non-existent" and to award him \$2 million in damages, \$1,500 to meet office expenses and "up to" \$12,000 to cover "lawyer's fees, if any".

C. In its reply the FAO argues that the complainant is not challenging a final decision. He has failed to exhaust the available internal means of appeal, as he must under Manual section 332.222 and Article VII(1) of the Tribunal's Statute. He may not rely on VII(3), which applies only when the Administration fails to take a decision. Since he has put his case to the Tribunal before the Appeals Committee has reported on his claims his complaint is

premature.

D. The complainant rejoins that internal remedies in the FAO are "null and void".

E. In its surrejoinder the Organization presses its pleas.

#### CONSIDERATIONS:

1. On 14 March 1994 the complainant despatched a letter by registered post to the Director-General of the FAO. The letter objected to the Organization's failure to comply with provisions in its Manual about setting up a Panel of Counsel and to denial of his rights, and he claimed payment of 2 million dollars in damages.
2. Having received no reply to his letter, he drew up an internal appeal dated 16 April 1994 raising the same objections and seeking the same relief. He was free to do so under Staff Rule 303.1313, the Director-General having failed to reply to his claim within the time limit in Rule 303.1312, which was "30 days from the date on which the letter ... was despatched". He posted his appeal to the Appeals Committee on 26 April 1994.
3. It was by a letter dated 3 May that the Assistant Director-General in charge of Administration and Finance replied on the Director-General's behalf rejecting the claim in the complainant's letter of 14 March.
4. The Organization's statement in reply to his internal appeal was lodged with the Appeals Committee on 4 July. By a letter dated 5 July the secretary of the Committee forwarded to him a copy of that statement. The letter said that since he had already said he would not be submitting any counter-statement the date for hearing his appeal would be "established as soon as possible". The Appeals Committee was in recess from 22 July to 15 August.
5. The complainant lodged this complaint on 10 August 1994, and the decision he identifies as the one he is impugning is the rejection of his claims that he says he infers under Article VII(3) of the Tribunal's Statute.
6. The complainant has come to the Tribunal without waiting for the completion of the internal appeal procedure and for the final decision by the Director-General that will result therefrom. He has therefore failed to exhaust the means of internal appeal and there is no final decision yet for him to impugn. Article VII(3) does not apply. His complaint fails because it is irreceivable.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Miss. Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas  
Michel Gentot  
Mella Carroll  
A.B. Gardner