

SEVENTY-NINTH SESSION

In re WASSEF (No. 4)

Judgment 1453

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 18 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 Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this case appear, under A, in Judgment 1401 and in Judgment 1452, which is also delivered this day.

By a letter of 30 November 1993 the complainant asked the Director of the Administrative Services Division to put him on a continuing post at grade P.4 at headquarters on the grounds that the Assistant Director of the Division had offered him such a post when they had met on 5 October 1992. By a memorandum of 10 December 1993 the Director acknowledged receipt of his letter.

On 11 January 1994 he appealed to the Director-General pressing his claim to a continuing post at grade P.4. By a letter of 8 March the Director of the Personnel Division told him that the Administration had never offered him any such post.

On 6 April he appealed once more to the Director-General claiming 8,000,001 United States dollars in damages for "libel and defamation" in the letter of 8 March. On 11 May he lodged an appeal with the Appeals Committee.

B. The complainant puts forward again all the arguments he offered in support of his third complaint about the FAO's internal appeal procedure: see Judgment 1452 under B.

He maintains that as early as 1979 the Administration offered him a continuing post at headquarters and confirmed its offer in 1984, 1988 and 1992. He gives an account of his meeting with the Assistant Director of the Administrative Services Division on 5 October 1992 and submits that the Assistant Director then made him a promise.

He invites the Tribunal to award him 8,000,001 dollars in damages, \$2,200 to meet office expenses and "up to" \$14,000 to cover "lawyer's fees, if any".

C. In its reply the FAO contends that his complaint is irreceivable because he is not impugning a final decision. He has failed to observe the requirement in Article VII(1) of the Tribunal's Statute and in FAO Manual section 332.222 that he exhaust the internal means of appeal before going to the Tribunal. Article VII(3) applies only where the Administration has failed to take any decision and so affords no grounds for appeal. Since he has put his case to the Tribunal before the Appeals Committee has reported on his claims his complaint is premature.

D. In his rejoinder the complainant contends that the staff of the FAO are victims of a "monumental swindle". He presses his claim to damages for defamation.

E. In its surrejoinder the Organization presses its pleas.

CONSIDERATIONS:

1. On 7 April 1994 the complainant despatched a letter dated 6 April by registered post to the Director-General of the Organization. The letter claimed payment of \$8,000,001 in damages on the grounds of "libel and defamation" in

a letter which the Director of the Personnel Division had written to him on 8 March 1994.

2. By a letter of 3 May the Assistant Director-General in charge of Administration and Finance replied on the Director-General's behalf rejecting the complainant's allegations of libel and defamation and his claim to damages. He lodged an appeal dated 11 May 1994 against that decision and delivered it to the Appeals Committee by hand on 12 May.

3. The Organization's statement in reply to his internal appeal was lodged with the Appeals Committee on 27 June. By a letter dated 28 June 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.

4. The complainant lodged this complaint on 18 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.

5. The complainant has come to the Tribunal without waiting for the completion of the internal appeal procedure and for the final decision of 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