

EIGHTY-SECOND SESSION

In re Wassef (Nos. 15 and 23)

Judgment 1570

The Administrative Tribunal,

Considering the fifteenth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 8 August 1995, the FAO's reply of 28 December, the complainant's rejoinder of 8 February 1996, and the Organization's surrejoinder of 21 March 1996;

Considering his twenty-third complaint against the Organization filed on 10 November 1995 and corrected on 1 December, the FAO's reply of 15 February 1996, the complainant's rejoinder of 22 March and the Organization's surrejoinder of 12 June 1996;

Considering Articles 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 cases and the pleadings may be summed up as follows:

A. The complainant's record of employment at the FAO, which he left in January 1994, is set out under A in Judgment 1401 on his first two complaints. Facts relevant to the present complaints appear under A in Judgment 1485 on his seventh one.

On 7 January 1994 he appealed to the Director-General against "atrocities" which he said the FAO had inflicted on him while in its employ. By a letter of 9 March the Assistant Director-General in charge of the Administration and Finance Department rejected his claims on the Director-General's behalf. On 29 March 1994 he put his case to the Appeals Committee, which recommended rejection in a report of 15 April 1995.

He inferred rejection from the Director-General's failure to take a final decision and that is what he is challenging in his fifteenth complaint.

In a letter to him dated 15 September 1995 the Director-General endorsed the Committee's recommendation. That is the decision impugned in his twenty-third complaint.

B. The complainant's submissions are much the same as those he put forward in his seventh complaint. The Director-General, he says, took too long over the decision of 15 September 1995.

The reason why he has filed his twenty-third complaint is, he explains, "doubt" about the receivability of his seventh and fifteenth ones.

In his fifteenth and twenty-third complaints he asks the Tribunal to:

"1. award [me] the maximum of the compensation claimed of US \$ 5 Millions for the inflicted atrocities, and

2. instruct the Administration of the FAO to raise, within two weeks from the receipt of the judgement subject to the penalty of another US Dollar Two Millions, the following separate payment authorizations ...

2.1 Payment Voucher for 6 days' per diem for briefing in Rome, for my Libyan assignment, from 1 to 7.4.82 amounting to US \$ 348.00 (April 1982 rate 58 X 6),

2.2 Payment Voucher for 15 days' per diem for debriefing in Rome, for my Libyan assignment, from 1 to 16 July 1984 amounting to US \$ 1,110.00 (August 1983 rate \$ 66/day, July 1984 rate estimated by Complainant to be around \$ 74/day),

2.3 Payment Voucher for 15 days' salary for debriefing in Rome, for my Libyan assignment, during July 1984 amounting to US \$ 2,000.00 (indicative lump sum re salary only),

2.4 Payment Voucher for 3 days' per diem for briefing in Rome, for my Saudi assignment, from 17 to 20 December 1987 amounting to US \$

375.00 (December 1987 rate estimated by Complainant to be around \$ 125/day),

2.5 Payment Voucher for 13 days' per diem for debriefing in Rome, for my Saudi assignment, during February 1991 amounting to US \$ 2,470.00 (\$ 190/day X 13)

2.6 Payment Voucher for 13 days' salary for debriefing in Rome, for my Saudi assignment, during February 1991 amounting to US \$ 2,500.00 (indicative lump sum re salary only),

2.7 Payment Voucher for 7 days' per diem in Paris, for accompanying wife during medical evacuation and first cure, from 2 to 9 March 1992 amounting to US \$ 1,491.00 (\$ 213/day X 7),

2.8 Payment Voucher for 5 days' per diem for briefing in Rome, for my Tchad assignment from 26 June to 1 July 1991, amounting to US \$ 980.00 (\$ 196/day X 5),

2.9 Payment Voucher with a detailed calculation for the difference due to me as a result of the recognition of my following entitlements and as a consequence;

a) the credit of my annual leave balance with the 7 days in Paris for accompanying wife during medical evacuation and first cure in March 1992, previously deducted from my annual leave or the payment of an indicative lump sum of \$ 1,500.00,

b) the credit of my annual leave balance with the 9 compensatory days during my Saudi assignment in 1988, 1989 and 1990, or the payment of an indicative lump sum of \$ 1,800.00,

c) the credit of my entitlements with the difference due from the recognition of the period between the Saudi assignment and the Tchad assignment as leave without pay (the recalculation of my terminal emoluments based on the continuity of service which becomes more than five years), or the payment of an indicative lump sum of \$ 35,000.00.

2.10 Payment Voucher for the per diem in Rome, as a continuation of the Travel Authorization raised for my Repatriation Travel combined with medical evacuation in which payment of per diem was ended on 5/10/1993, for the period from 6/10/1993 to 23/12/1994 for the reasons detailed in this Complaint, and amounting to US \$ 74,831.00 details of which are;

a) 15 days with the rate up to 60 days, from 5 to 20.10.1993 i.e. \$ 219/day X 15 = \$ 3285.00

b) from 20.10.1993 until the date I am clinically cured i.e. 24.12.1993 is 65 days X \$ 166/day (reduced rate after 60 days) = \$ 10,790.00

c) from 24.12.1993 to 23.12.1994, a period of 12 months as per the hospital reports for physical inability to travel and for the non assignment of part time work due to ill health; 366 days X \$ 166/day = \$ 60,756.00

3. declare and confirm my continuity status, my right for a continuing status and post from as early as June 1986, and

4. award me the payment of a lump sum of US \$ 6,500.- for photocopies, postage, stationery, secretarial assistance, miscellaneous expenses, etc. [concerning his fifteenth complaint] and \$8,500 for costs [concerning his twenty-third]."

In his third complaint he further asks the Tribunal to:

"5. award me a 25% per year of the total of above awards, salaries and entitlements as cost of money,

6. order the reimbursement by the FAO for the cost of publication of this judgement in 4 American, 4 European, 4 Asian and 4 Arab daily newspapers and magazines,

7. include in this judgement a penalty clause for its execution within 30 days from the date of this judgement equivalent to 50% of the total of awards for every two weeks of delay."

C. In reply to his fifteenth complaint the FAO argues that his claims are irreceivable for failure to exhaust his internal remedies. In any event they are devoid of merit.

In its reply to the twenty-third complaint it restates the arguments, for the plea of premature filing, in its reply to the fifteenth complaint

D. In his rejoinder on his fifteenth complaint he gives his reasons for seeking "review" of Judgment 1485. In the rejoinders on both complaints he presses his claims.

E. In its surrejoinders on his two complaints the Organization submits that he has raised no issues warranting

further comment.

CONSIDERATIONS

1. The complainant has no objection to the Organization's application for the joinder of his fifteenth and twenty-third complaints. The Tribunal therefore joins them to form the subject of a single judgment.
2. The complainant says that he filed his fifteenth complaint, on 8 August 1995, in case the Tribunal eventually ruled that his seventh one, which is identical and which he had lodged on 14 December 1994, was irreceivable. The claims he puts forward in his fifteenth complaint are set out under B above.
3. In Judgment 1485, on his seventh complaint, the Tribunal dismissed claims 1 and 2.1 to 2.10. It held claim 3, to the grant of a continuing appointment, to be premature, but it dismisses that claim too for the reasons set forth in Judgment 1571 also delivered this day, on his sixteenth complaint. Those issues are all *res judicata*.
4. In his twenty-third complaint, which he lodged on 10 November 1995, he states that his claims are the same as those he put forward in his seventh and fifteenth complaints, his explanation again being "doubt that this Tribunal may dismiss [those] two complaints for irreceivability". Those claims, being identical to the earlier ones, fail for the same reasons.
5. Since his principal claims fail, so must claims 4, 5, 6 and 7, which are subsidiary.

DECISION

For the above reasons,

The complaints are dismissed.

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

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner