

EIGHTY-SECOND SESSION

In re Freeman (No. 4)

Judgment 1578

The Administrative Tribunal,

Considering the fourth complaint filed by Mr. Edward James Freeman against the Food and Agriculture Organization of the United Nations (FAO) on 28 December 1995 and corrected on 31 January 1996, the FAO's reply of 24 May, the complainant's rejoinder of 16 July and the Organization's surrejoinder of 14 October 1996;

Considering Article II, paragraph 5, 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. The complainant, a citizen of the United States born in 1932, served on the staff of the FAO from 1969 until 31 December 1994, when he retired at grade P.5. In November 1993 the Conference of the Organization empowered the Director-General to review its programmes, structures and policies "with all necessary speed". The Director-General having mooted reform with staff representatives, the Council of the FAO approved in June 1994 a plan to change the Organization's structure and in particular to shift some of the work done at headquarters to field offices.

The last stage of the plan, known as phase IV, entailed the review of posts and the redeployment of some staff. At a meeting of the Programme and Policy Advisory Board on 22 June 1994 the Director-General promised to consult staff representatives on the "modalities" of that phase once the first three were over, namely revising the "organizational chart" (phase I), matching skills with post descriptions (phase II) and reviewing the functions of the Organization's "components" (phase III).

In a memorandum of 26 July 1994 the complainant informed the Assistant Director-General in charge of the Administration and Finance Department that the staff thought it high time "true consultation" began. By a letter of 12 August the Assistant Director-General replied that the Director-General would indeed be consulting the staff once phase IV was under way. On 21 September 1994 the complainant appealed to the Director-General under Staff Rule 303.1311 against what he saw as the refusal to "consult and negotiate" conveyed in the Assistant Director-General's letter of 12 August. In a letter of 21 October 1994 the Assistant Director-General rejected his appeal on the Director-General's behalf. He went to the Appeals Committee on 24 October. In a report dated 9 June 1995 the Committee held his appeal to have been "founded at the time of its submission" and recommended "more regular" contact between Administration and staff. But by a letter of 6 October 1995, which he is impugning, the Director-General rejected his appeal.

B. The complainant submits that the Organization infringed his freedom of association. Its acknowledged refusal to consult staff representatives and to negotiate in the first three phases was in breach of the Staff Regulations and Rules and of the recognition agreement it had concluded with the staff association he belonged to. It was not free to decide on its own about conditions of employment and matters of staff welfare. It gave the Council "inaccurate and misleading" information and acted unilaterally in suspending its policy of converting fixed-term contracts to continuing ones.

The complainant wants the Tribunal to quash the impugned decision and order the FAO to "consult and negotiate with the staff representative bodies" in keeping with the rules or else pay him 200,000 United States dollars in damages. He also claims \$15,000 in costs and any other redress the Tribunal thinks fit.

C. In its reply the FAO contends that the complaint is devoid of merit. It denies breach of the rules, of the recognition agreement and of any moral duty it owes its staff. It neither suspended nor thought of suspending the conversion of appointments. Since the restructuring has led to the transfer of no more than 45 staff, things are far less "dramatic" than the complainant makes out.

D. In his rejoinder the complainant presses his claims and insists that the proper time to sound out staff

representatives is while policy is still moot. In any event the Organization made "true dialogue" with his association impossible.

E. In its surrejoinder the FAO rebuts arguments in the rejoinder, maintaining that in any event consultation need not stretch to negotiation.

CONSIDERATIONS

1. The complainant joined the Organization in 1969 and before retiring at the end of 1994 was chief of the Management Support Unit in the Department of General Affairs and Information. He was also general secretary of the Association of Professional Staff (APS) of the FAO and the World Food Programme. He has brought this case in his own name on the grounds that the Organization committed a breach of his freedom of association as a staff member.
2. At its 27th Session (November 1993) the FAO Conference adopted a resolution, No. 10/93, asking the Director-General to "undertake with all necessary speed a review of the programmes, structures and policies of the Organization". The resolution suggested giving the Director-General's successor-to-be the opportunity of reviewing the Organization's programme of work and, in consultation with member countries, making his own proposals on structures and policies so far as funds allowed.
3. The new Director-General took office on 1 January 1994. On 18 February he put a new "organizational chart" to the Programme and Policy Advisory Board. There were to be, among other things, a new unit for "co-ordination" and a department for "sustainable development" bringing together "research, extension and education" services which had till then been in separate departments. That was the first phase of the restructuring, the aim being to work out "the optimum organizational chart for carrying out the main functions" of the FAO. The second phase consisted of "defining the best combination of talents/post descriptions for carrying out in the most effective way the functions of each new component of the organizational chart". The third phase was a study to be done by heads of department and directors of division of "the functional relationship between the various components of the Organization". The fourth phase would consist of "filling the posts so that each unit, both at [headquarters] and in the decentralized structure, has the optimum staffing".
4. A comprehensive review by the Director-General of programmes, structures and policies went to the Council at its 106th Session (30 May to 1 June 1994). The review spoke of "the reduced margin of manoeuvre inherent in a no-growth budget coupled with restraints of staff in place" who had already had their contracts renewed. It proposed the decentralisation of technical work to regional, sub-regional and country levels.
5. The Director-General saw staff representatives in April, before the Council had met, and again in June and August 1994. The Organization also invited staff representatives to attend as observers meetings that the Programme and Policy Advisory Board held in February and in June 1994.
6. In February 1994 the Organization had sent the APS the draft of an administrative circular on interim changes. It dealt with the suspension of recruitment and the policy of not extending contracts beyond 31 July 1994. The Association protested about that policy. It protested further in July 1994 on seeing another draft circular on the assignment of staff after the review of programmes: it took the view that it should have been consulted beforehand.
7. On 19 September 1994 the Director-General issued a text headed "Guidelines on consultations with staff representative bodies on restructuring". The objectives were (1) to make the process "transparent"; (2) to follow established regulations and procedures; (3) to ensure "objectivity" in "meeting the paramount interests" of the Organization; and (4) to provide an "equitable mechanism" for dealing with cases in which staff felt that their "concerns" had not been "adequately taken into account". "The accomplishment of these objectives would", said the text, "help boost staff morale". It went on to declare that the "determination and establishment of posts" were "a matter of management"; and so was the "transfer of incumbents on posts shifted from one unit to another at headquarters". As to the redeployment required by structural reform, "regular contacts and briefings with the staff representatives" would be "organized on general or individual cases".
8. On 21 September 1994 the complainant appealed against what he saw as the Director-General's refusal to consult and negotiate with the recognised staff bodies during the process of restructuring about the terms of employment and general welfare of staff. A letter of 21 October 1994 from the Assistant Director-General in

charge of the Administration and Finance Department rejected his appeal on the Director-General's behalf and on 24 October 1994 he went to the Appeals Committee. In its report of 9 June 1995 the Committee held that phases I and III did not affect the terms of employment of individual staff but did have broader implications; management should have kept in closer touch with the staff in those phases; and phase IV required consultation with the representative bodies. The Committee recommended more regular consultation. In his decision dated 6 October 1995 -- the one impugned -- the Director-General declared that phases I to III, being restricted to matters of management, had not affected terms of employment and that the Organization had provided the staff with full relevant information anyway. Being of the view that the Organization had acted properly, he dismissed the appeal. The complainant filed his complaint on 28 December 1995.

9. Staff Regulation 301.081 provides:

"In accordance with the principle that the staff has the right to organize for the purpose of safeguarding and promoting its interests, one or more representative staff bodies recognized by the Director-General shall maintain continuous contact and negotiate with the Director-General with respect to the terms and conditions of employment of the staff and general staff welfare."

Regulation 301.0811 reads:

"Negotiations between recognized staff representative bodies and the Director-General shall be subject to the understanding that the Director-General will retain under the provisions governing his constitutional responsibility, the right of final determination in matters within his authority."

Staff Rule 302.82 states:

"Consultation and negotiation between the Director-General and recognized staff representative bodies shall be carried out in accordance with Staff Regulations 301.081 to 301.0813 and the recognition agreements in force with the body or bodies concerned."

10. The Director-General and the APS concluded a recognition agreement on 28 July 1976. Clause 2.2 provides:

"The Organization confirms the right of the Association to consult, be consulted and, where appropriate, negotiate on terms and conditions of employment and on any other matter which it is agreed directly affects the general welfare of the membership of the Association. ..."

and clause 3.1:

"The Association acknowledges that the granting of recognition in no way detracts from the Director-General's 'power and authority to direct the work of the Organization' (Article VII 4 of the Constitution)."

11. The complainant contends that, whatever contacts the Organization may have had with the APS over the restructuring, they may not be considered to have met the requirements of consultation and negotiation laid down in the legal provisions. He argues that the Director-General's decisions on restructuring, even if within the ambit of his constitutional authority, did not follow proper consultation or negotiation with the bodies representing the staff.

12. The FAO replies that a fundamental balance must be struck between the powers of its governing bodies to set policy, the Director-General's authority to carry it out and direct the Organization's work, and the staff's right to be consulted on matters that affect their welfare. The Organization submits that policy is a matter for the Administration alone and that only at the later stages of implementation, when the careers and welfare of individual staff members may be directly affected, are consultation and, where appropriate, negotiation required.

13. In Judgment 380 (*in re* Bénard and Coffino) the Tribunal held that although consultation and negotiation might often overlap there was a clear distinction between them. Where the outcome of discussion was a unilateral decision, the right term was "consultation"; when it was bilateral agreement then the term was "negotiation".

14. The complainant's principal plea is that all four phases of the restructuring exercise fell within the scope of the Organization's legal obligation to consult and negotiate. Yet the first three raised no issue concerning actual terms of employment or staff welfare but were about structures at headquarters and decentralisation to regional and sub-regional offices. The rights that Regulation 301.081 confers on staff are to continuous contact and negotiation on their terms of service and general welfare. The plea therefore fails insofar as it relates to phases I to III of the exercise.

15. As for phase IV, events have overtaken the complainant's plea. There have been consultations on the

reassignment of staff to regional and sub-regional offices. A task force was set up for the redeployment of headquarters and field staff, and it consisted of three representatives of the Administration, three from the APS and two from the Field Staff Association. Its terms of reference included the reassignment of staff on abolished posts or on posts of altered content which the incumbent's background and experience no longer fitted. Those terms of reference were amended at the APS's insistence. The task force held 35 meetings in all from March to December 1995. The upshot was that 45 staff were reassigned. In only one case was there appeal against a proposed transfer, and it was amicably settled. In the circumstances the complaint is premature insofar as it relates to phase IV.

16. The complainant's pleas not being supported by the evidence, his complaint must fail.

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 30 January 1997.

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner