

TWENTY-FIFTH ORDINARY SESSION

***In re* NAIR**

Judgment No. 170

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. P.N. Karunakan Nair on 15 September 1969, the Organization's reply dated 30 December 1969, the complainant's rejoinder dated 4 April 1970 and the Organization's reply thereto dated 25 June 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.102, Staff Rule 303.03 and Manual provisions 330.14(iii), 330.15, 330.24 and 331.4;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant, who is of Indian nationality, was appointed by the Organization to its New Delhi office in November 1965 as an assistant to the manager of a project relating to a pre-investment survey of forest resources. On 1 March 1966 he received a fixed-term appointment, to expire on 31 December 1966, as an administrative clerk assigned to the project at grade G.5. His appointment was later extended from 1 January 1967 to 31 October 1968. According to his job description, his tasks included the making of petty cash payments, the maintenance of the imprest account, the settlement of bills, the preparation of imprest account statements, and the making of travel arrangements for project staff.

B. In February 1967 the project manager asked the Regional Administrative Officer to carry out a check of the project accounts in order to determine whether the complainant was discharging his duties satisfactorily. The Regional Administrative Officer reported several irregularities in the complainant's handling of the cash account and a deficit of over 1,300 rupees. The complainant alleged that he had used that sum in an emergency for his own purposes and in fact paid it back into the account on 27 February 1967. It was decided not to take disciplinary action against him, but by letter of 10 March 1967 the Regional Administrative Officer warned him of the consequences of any future irregularities.

C. Later in 1967 headquarters instructed the project manager to take steps to obtain reimbursement of certain project expenses which had been covered out of the imprest account and which were properly chargeable to the Indian Government. The project manager accordingly asked the complainant to give full explanations about his handling of the account and, having received no satisfaction, finally instructed him by letter of 27 November 1967 to supply in writing by 1 December a detailed account of certain expenditures charged to the account in respect of postage, stationery, transportation and handling of project equipment, repairs to equipment and travel. In a detailed memorandum of 30 November the complainant gave his explanations of these expenditures and protested at any suggestion of mishandling of the account. By letter of 8 December the project manager forwarded to the Regional Administrative Officer the complainant's memorandum and his own comments, which he based on a factual check carried out by his secretarial assistants and in which he cast doubt on the complainant's explanations. By letter of 11 December 1967 to the project manager the Regional Administrative Officer observed that all the points raised by the complainant were weak excuses for the mishandling of the cash fund entrusted to him and that the project manager's comments clearly revealed his misconduct. By letter of the same date to the Chief of Personnel in Rome the project manager alleged that the complainant had mishandled the project account, referred to the irregularities already detected in February 1967, and asked what decision should be taken.

D. The Internal Audit Services of the Organization thereupon carried out a detailed audit of the project imprest account and for the purpose requested and obtained further information through the Regional Administrative Officer. In a memorandum submitted to the Administration dated 19 January 1968 the Chief of the Internal Audit

and Inspection Office reported misappropriations from the account and certain other irregularities. By telegram dated 22 January 1968 the Chief of Personnel informed the project manager that the preliminary investigation had revealed misappropriations of amounts equivalent to US\$740 from the project funds and the possibility of further misappropriations of amounts equivalent to US\$590; considering that the complainant had responsibility for the financial transactions of the project, the Director-General, it was stated, had decided to suspend him from duty without pay pending further investigation in accordance with Staff Rule 303.03. Pursuing its investigations, on 26 January 1968 headquarters asked the FAO Deputy Regional Representative for Asia and the Far East to obtain from the complainant signed and dated explanations of the many discrepancies in the project imprest account. In a memorandum addressed to the complainant on 1 February the project manager set out all these discrepancies; asked for his explanations by 7 February; and informed him that his suspension had taken effect from 30 January, the date when he had actually received the report of personnel action suspending him from duty. The date of suspension was confirmed in a further report of personnel action dated 6 February 1968.

E. In his reply dated 7 February 1968 to this memorandum the complainant stated that all disbursements from the account had been made with the project manager's knowledge and approval, as the vouchers and invoices showed, and that he was therefore unable to supply any clarifications. In a letter to headquarters of 13 February the project manager dismissed the complainant's contention as absurd. The Chief of the Internal Audit and Inspection Office thereupon stated in a letter of 15 February to the Deputy Regional Representative for Asia and the Far East that although the project manager's denial of the complainant's contention seemed credible further investigation was necessary to clear up many specific points, and he suggested setting up an ad hoc committee consisting of the Deputy Regional Representative as chairman and two senior professional officers. Such a committee was duly set up, the two senior professional officers being the administrative officer of the UNDP office in New Delhi and the Regional Administrative Officer. By letter of 21 February the Regional Administrative Officer again invited the complainant to answer the questions already raised in the project manager's memorandum of 1 February; but the complainant refused even to accept delivery of the letter. The ad hoc committee submitted to headquarters a report in the form of written evidence and the minutes of interviews with several members of the project staff, including the complainant himself (although the complainant refused to sign the minutes of his interview). In the light of the report the Organization concluded that the complainant was guilty beyond all reasonable doubt of misappropriation. In accordance with Manual provision 330.14(iii) and by letter of 29 April 1968 the Director of the Forestry Division informed him that he had been found guilty of misconduct according to the terms of Manual provision 330.15 in that he had been solely responsible for misappropriation of a total of over 9,000 rupees from the project imprest account and that he was dismissed under Manual provision 330.24 with effect from the date on which he received the letter (2 May). He would receive his terminal emoluments, less the sums misappropriated by him. In his reply of 6 May the complainant stated that he agreed with the internal auditors' finding of misappropriations, but that the project manager, who signed all vouchers and all cheques drawn on the account, and other experts were responsible, had conspired to incriminate him and were being protected by the Division Director as his appointees. The project manager, he contended, had ordered him to prepare false vouchers to conceal his own misappropriations. Moreover, the ad hoc committee had been prejudiced against him. In a further letter of 15 May the Division Director confirmed the decision of dismissal; by letter of 27 May the complainant appealed against this decision to the Director-General; and by letter of 1 July the Director-General informed the complainant that he confirmed it.

F. The complainant appealed to the FAO Appeals Committee on 15 July 1968. Having examined, at meetings held on 16 December 1968 and 28 January 1969, the detailed statements and the large body of written evidence relating to the project imprest account submitted by the complainant and the Organization, the Appeals Committee reported to the Director-General on 12 June 1969. It held that the complainant was responsible for the misappropriations; that he had failed to produce any valid evidence to show that he had acted at the behest of or under pressure from the project manager; and that the ad hoc committee had been in no way prejudiced against him. It could not recommend the Director-General to reconsider his decision. By letter of 23 June 1969, which the complainant received on 14 August and which contains the decision impugned, the Director-General informed him that the decision to dismiss him was maintained.

G. In his complaint to the Tribunal the complainant largely repeats the arguments which he submitted to the Appeals Committee and makes further detailed submissions in support of his complaint. He does not contest that funds were misappropriated. He maintains, however, that the project manager falsely incriminated him in order to protect himself and other project staff from charges of misappropriation and appends to his memoranda a copy of a letter which he allegedly addressed to the project manager on 14 March 1967 and in which he accused him of misappropriating project funds. He further maintains that his dismissal, being based on allegations by the project

manager, was motivated by prejudice; that the ad hoc committee set up to investigate the charges against him was also inspired by prejudice; and that the minutes of its interview with him misrepresented his answers to those charges, were not shown to him and were not signed by him. He had no financial responsibility, he maintains, for the maintenance of the account. He considers that no weight should be given to the allegations of the experts, which he describes as biased and malicious, since they were subordinate to the project manager and unwilling to inculcate him. He repeats his accusations against the project manager of mismanagement of project funds, misappropriations and other reprehensible activities and observes that the Organization has not yet carried out an impartial investigation of those accusations. He requests oral proceedings so that he can call as witness a member of the project staff who also questioned the handling of the project account, who would testify to the truth of his allegations and whom the ad hoc committee refused to hear. He prays that the Tribunal absolve him of all charges, order his reinstatement with payment of salary and other entitlements from the date of his suspension, 30 January 1968, and of minor expenses, and award him damages amounting to 50,000 rupees for moral and material injury.

H. In its replies the Organization contends that it had valid grounds for believing that the complainant misappropriated funds and that his misconduct justified dismissal. It draws attention to the appendix to its statement to the Appeals Committee containing a detailed account of the misappropriations and a description of the method which it believes the complainant used. It observes that it satisfied itself through lengthy investigations that his accusations of misappropriations against the project manager and others were groundless and conceived solely in an attempt to discredit them. Contrary to what the complainant states, he did have financial responsibility for the account, as the terms of his job description show. Besides, in his interview with the ad hoc committee he admitted handling cash. He prepared the cheques and vouchers for the project manager's signature on his own initiative and the project manager signed them in good faith because he trusted the complainant. The latter's post had indeed been established precisely in order to save the project manager the trouble of dealing with complicated but routine administrative matters. Simply because it was impossible for the project manager to keep track of all items of expenditure the complainant was allowed considerable freedom of action. Only the complainant possessed the information required to prepare the vouchers and cheques for signature. Even assuming the truth of the complainant's totally unsubstantiated accusations, the project manager would never have instructed him to prepare false vouchers since that would have revealed his own misconduct. The Organization also rejects the complainant's contention that the experts who gave evidence before it were prejudiced against him: he has not demonstrated any impropriety on the Committee's part. In its view, the further submissions made by the complainant concerning various other questions of detail are also without substance. It accordingly maintains that its evaluation of the evidence was entirely justified and prays the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

1. Far from disputing the irregularities in the keeping of the accounts for which he was responsible, the complainant has admitted them, as appears from his letter of 6 May 1968 to the Director of the Forestry and Forest Industries Division. In the course of the procedure he has merely contended that it was not he who was really responsible for the misappropriations that were discovered. It is therefore necessary to consider whether the impugned decision is based on facts which came to light after thorough investigations and the truth of which is not open to any reasonable doubt.
2. On 11 December 1967 the project manager informed the Chief of Personnel that he entertained suspicions of the complainant which preliminary investigations had failed to dispel. The Internal Audit Services then had a further audit carried out which confirmed the results of the earlier one. The complainant having accused the project manager of ordering and approving the improper dealings in question, a committee was set up to carry out further investigations, consisting of three senior officials. The Committee performed its duties conscientiously. Not only did it carry out a detailed questioning of the complainant; it also heard other officials and received written evidence. Accordingly, it can properly be accepted that the Organization made every effort that it could be expected to make to dispel the misgivings aroused by the contradictory allegations of the complainant and the project manager. The members of the Committee did not belong to the service of the project manager and there are no grounds for doubting their impartiality. Their appointment is to be attributed to their familiarity with the circumstances in which the complainant performed his duties. The detailed questions put by them are an indication of the conscientiousness with which they carried out their responsibilities. Moreover, their findings are corroborated by those of the Joint Appeals Committee.
3. Whereas the Organization finds the complainant guilty of the irregularities committed, the complainant holds the project manager to be responsible for them.

Although the project manager initialled the documents which were intended to conceal the misappropriations, that does not mean that he was aware of the real nature of his acts or that he benefited from them. Being taken up with the management of the project he was unable to check the propriety of all the dealings entrusted to the complainant, most of which related to fairly small travel expenses. It can therefore readily be understood that despite the frequent and meticulous checking which, in a letter of 1 March 1968, he claims to have carried out, he failed for some time to notice the complainant's dishonesty. Moreover, since the misappropriations amounted to only a few thousand rupees, it is highly unlikely that an official in his position would have resorted to improper dealings and so risked losing his employment for such a modest sum. It would be still more astonishing if he had chosen as an accomplice a subordinate whose lack of discretion he had reason to fear. Finally, if he had misappropriated FAO funds with the collusion of the complainant he would surely have paid him some reward; yet no such allegation has ever been made. Accordingly, in fully exonerating the project manager, the various investigating officers, the Joint Appeals Committee and the Director-General put a fair interpretation on the facts brought to their attention.

Even assuming that the project manager was at fault, the complainant's guilt is not thereby ruled out. Being free from close supervision, the complainant had every opportunity to conceal his misappropriations by means of the vouchers which he prepared himself. In February 1967, several months before discovery of the misconduct which led to his dismissal, he had received a warning from his superiors following earlier irregularities. There is every reason to suppose that he committed further improprieties in order to obtain the money which he needed to pay off the remainder of debts which he had incurred. He appends to his rejoinder a copy of a letter which he claims to have addressed to the project manager as early as 14 March 1967 in which he made accusations and threats against him. It may be assumed, however, that had that letter really been sent, it would not have remained unanswered and would have been mentioned before the termination of the proceedings. In fact, it casts suspicion on the complainant's good faith, rather than confirms it. In short, all the circumstances of the case suggest that the complainant's guilt should be regarded as established with a probability approaching certainty.

4. Since they constitute serious misconduct within the meaning of Staff Regulation 301.102, the misappropriations attributed to the complainant justify his dismissal in accordance with that provision. Consequently the complainant's claims for exoneration, reinstatement and payment of monetary compensation must be dismissed in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 17 November 1970.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy