

EIGHTY-FOURTH SESSION

In re Wassef No. 25

Judgment 1701

The Administrative Tribunal,

Considering the twenty-fifth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 20 January 1996 and corrected on 2 February, the FAO's reply of 15 May, the complainant's rejoinder of 26 June and the Organization's surrejoinder of 5 September 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 case and the pleadings may be summed up as follows:

A. Information on the complainant's career in the FAO and the illness he contracted on duty in Chad is set out under A in Judgments 1401 and 1486 on his first, second and eighth complaints. Further relevant information may be found in Judgments 1531 and 1532 on his ninth and tenth complaints.

By a letter of 19 June 1995 the secretary of the Advisory Committee on Compensation Claims informed him of the Director-General's decision to endorse the Committee's recommendation to reimburse the expenses he had incurred for a stay in hospital in Paris and for treatment of hepatitis B and to grant him sick leave on full pay for the duration of his illness.

In a letter of 27 July 1995 he appealed to the Director-General against "wilful misconduct by the Medical Service" and claimed a total of 2 million United States dollars in damages. In a reply of 21 September 1995 the Assistant Director-General in charge of the Administration and Finance Department informed him that the Director-General had taken a "final" decision, challengeable before the Tribunal, to reject his appeal on the grounds that it did not contain anything that the Appeals Committee had not already considered in the ambit of earlier cases of his or any grievance that had not been satisfied by the recognition of his illness as service-incurred.

By a letter of 9 October 1995 he lodged an appeal with the Appeals Committee against the decision of 21 September. In a letter of 23 October, which he is impugning, the secretary of the Committee told him that appeal against that decision lay only to the Tribunal.

B. The complainant submits that the FAO treated him unlawfully. He dwells on issues he raised in earlier complaints such as the Organization's failure to declare his illness service-incurred, his stay in the hospital in Paris and the costs incurred by his wife to join him there. He alleges in the main that he was a victim of "wilful misconduct" by the FAO's medical service. He pleads breach of rule H.3 of the Administrative Rules of the United Nations Joint Staff Pension Fund, under which the FAO should have asked the staff pension committee to determine whether he should get a disability benefit.

He seeks awards of \$1 million in damages for "this wilful misconduct" and a further million for the resulting loss of earnings. He claims \$6,000 in costs and the imposition of a penalty in the amount of one-half of the aggregate award for every two weeks' delay in executing the judgment after a period of 30 days from the date of delivery. He wants the Tribunal to order publication of the judgment at the Organization's expense in twelve newspapers and magazines, four of them American, four European and four Arabic.

C. In its reply the FAO contends that the complaint is devoid of merit and the claims to damages

"unreasonable". It observes that the complainant has not adduced a shred of evidence to back up his allegations of "misconduct". As for its obligations under rule H.3, it points out that none of the medical reports available to it, including one by his own doctor, suggested that he might be incapacitated within the meaning of the rule. Lastly, it points out that neither "strong" nor "abusive" language can make his allegations believable: they must be supported by evidence.

D. In his rejoinder the complainant takes the Organization to task for its "distortions" of fact and "staff betrayal". In view of its "dilatatory tactics" he presses his claim to the imposition of a penalty clause and charges it with failing to execute "lawfully and properly" Judgment 1486 on his eighth complaint.

E. In its surrejoinder the Organization rejects his "sweeping" attacks. Not only is his allegation of failure to execute Judgment 1486 unfounded, but he has already made it in three earlier complaints.

CONSIDERATIONS

1. This is the twenty-fifth complaint that the complainant has filed against the FAO. By Judgment 1452 of 6 July 1995 the Tribunal dismissed his third complaint, in which he had claimed 2 million United States dollars in damages. In Judgments 1453, 1454 and 1455 of even date it dismissed his fourth, fifth and sixth complaints, in which he had claimed awards of \$8,000,001, \$2,500,000 and \$3 million. Judgment 1485 of 1 February 1996 dismissed his seventh complaint, in which he had sought \$5 million in damages for "inflicted atrocities". There followed five other complaints - his ninth, tenth, thirteenth, fourteenth and twenty-fourth - seeking damages in the amounts of \$1 million, \$3 million, \$8,000,001, \$2 million and \$10 million, all of which the Tribunal dismissed on 11 July 1996, in Judgments 1531 to 1535. On 30 January 1997 the Tribunal dismissed in Judgments 1571 to 1574 six more complaints - the sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first - in which Mr. Wassef claimed a total of \$12.5 million.

2. The unseemly terms in which he often casts his briefs do not befit any litigant. Judgment 1531 spoke of the "intemperate language" of his pleadings and drew attention to the "duty of respect" he owed to "the defendant and to its staff". Judgment 1532 made the same two points. As to his pleadings the Tribunal further commented in Judgment 1533 that:

"Both the want of evidence to support the complainant's allegations and the absurdity of his claims show his complaint to be trifling and an abuse of process."

3. The Tribunal need not compare this complaint with his earlier ones to identify the pleas that are *res judicata*. The nub of his case is that the staff of the FAO's medical service and of other units were guilty of "wilful misconduct" and he is seeking awards of \$1 million in damages on that count and another million in damages for the loss of earnings he attributes to such misconduct.

4. Those two claims are devoid of merit. Someone may get damages for specific injury attributable to an unlawful act committed by an official, but not a further sum in damages for the mere commission of the act. As earlier judgments on the complainant's cases observed, a distinction must be drawn between:

(i) the act itself;

(ii) the injury and any other consequence attributable thereto; and

(iii) the causal link between act and consequence.

A basic precept of law requires a claimant to prove each of the three components. Here the complainant has failed to adduce evidence of any value in law to bear out his allegations, his own notes and letters not amounting to such. For that reason alone his main claims must fail.

5. Since they do, so must his subsidiary claims to \$6,000 in costs, to payment of the costs of publishing this judgment in four American, four European and four Arabic daily newspapers and magazines and to imposition of a penalty for failure to execute the judgment within 30 days of delivery.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot

Julio Barberis

James K. Hugessen

A.B. Gardner