EIGHTY-FIFTH SESSION

***In re* Lee (No. 2)**(Application for execution)

Judgment 1783

The Administrative Tribunal,

Considering the application filed by Mr. Tommy Lee on 21 June 1997 for the execution of Judgment 1548, the reply of 29 September 1997 from the Food and Agriculture Organization of the United Nations (FAO) and the complainant's letter of 21 October 1997 informing the Registrar of the Tribunal that he did not wish to enter a rejoinder;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. This is an application by Mr. Lee for the execution of Judgment 1548 of 11 July 1996, which sets out the facts of his first complaint. He held a fixed-term appointment which the FAO decided not to renew and which accordingly expired on 28 February 1994. He appealed on 14 August 1994 but the Director-General upheld the decision on 6 July 1995. Judgment 1548 quashed that final decision on the grounds that it was tainted with procedural errors, breach of due process and disregard of material facts. It awarded the complainant damages "in lieu of reinstatement ... in a sum equivalent to two years' salary and allowances at the rates prevailing in February 1994", and costs in a sum of 1,000 United States dollars.

2. On 4 September 1996 the FAO paid the complainant the award of costs and a sum of $155,112.48. That sum consisted of "net base salary" for two years, which came to $79,722, and post adjustment, child and hardship/mobility allowances for the same period, which totalled $75,390.48.

3. The complainant's first contention is that by quashing the Director-General's decision not to renew his appointment the Tribunal was "implicitly ordering the Organization to resume the process of consideration of the renewal of his appointment". He argues that, although the quashing neither resurrected his old contract, which had expired automatically, nor brought a new one into existence, Judgment 1548 obliged the FAO "to begin again and do so properly": in other words, to "carry out a total and genuine reconsideration" of the question of renewing his appointment.

4. When the Tribunal quashes a flawed decision not to renew a fixed-term appointment it has discretion as to the relief it grants. It may send the case back for a new decision by the organisation on renewal, as indeed it did, for example, in Judgments 1151 (*in re* Girod and Peyret), 1184 (*in re* Mangeot) and 1525 (*in re* Bardi Cevallos). But if it considers that renewal would be only fair, it will, instead of ordering a new decision, actually order reinstatement under a new contract for an appropriate term. That is what it did in, for example, Judgments 1298 (*in re* Ahmad No. 2) and 1633 (*in re* Carballo). But if it considers neither a new decision nor reinstatement to be possible or advisable, it may, as authorised by Article VIII of its Statute, award the complainant compensation. That is what it did in Judgment 1548. That being so, the FAO was required only to pay the complainant the award of damages, not to reconsider the question of renewing his appointment.

5. The complainant's second contention is that, although the FAO paid him the sums set out in 2 above, there are still due to him sums of $38,500.08 in salary and of $4,263.84 in rental subsidy.

6. The parties have not explained how the dispute over the reckoning of his salary has arisen. But his "payroll status report" for February 1994 shows that his gross monthly salary was $4,925.92, subject to staff assessment of $1,604.17. What he is claiming is gross salary for two years, whereas the FAO has paid him net salary after deduction of staff assessment, which, for 24 months, amounts to $38,500.08. The Tribunal holds that the FAO was entitled to deduct that amount from the gross figure.

7. The FAO submits that the rental subsidy is not part of a staff member's "salary and allowances". Inherent in the concept of salaries and allowances - it argues - there is an element of stability, predictability and continuity of payment. According to paragraph A.1 of appendix H to section 308 of the FAO Manual, "a rental subsidy is not an automatic entitlement, but is subject to an individual decision on the basis of the relevant elements of each case". The subsidy is intended to reimburse part of actual expenditure on rent, and accordingly it is a precondition that a staff member must submit a copy of the lease for the relevant period. The FAO also says, and the complainant does not deny, that he did not submit a copy of any lease for the period from 18 October to 31 December 1993. The conclusion is that he is not entitled to the rental subsidy for that period.

8. His third contention is that a sum of $355.32 is due to him in rental subsidy for January and February 1994. The FAO replies that it has refused to pay the amount because he has not submitted a copy of a lease covering those two months. Again he has not denied that contention. His claim is therefore without merit.

9. His last claim arises out of the payment to him of $10,074.63 in education grant for the school year 1993-94. His appointment expired on 28 February 1994, before the end of that school year, and the FAO deducted from his terminal payments the sum of $3,554.59, the portion of the grant that related to the remainder of the year. In doing so it relied on Staff Rule 302.3142:

"for any period of entitlement of less than a full scholastic year ... the amount of the grant shall be reduced to that proportion of the annual grant which the period of attendance or entitlement bears to the full scholastic year."

The complainant contends that the Tribunal ruled that the decision not to renew his appointment was invalid and in awarding him damages intended to make him whole; and that the FAO should therefore reimburse the $3,554.59.

10. His appointment came to an end on 28 February 1994 and the Tribunal did not order his reinstatement. Consequently, both his appointment and his entitlement to the education grant ceased on 28 February 1994, and the FAO was entitled to recover the excess.

11. Since his principal claims fail so do his subsidiary claims to awards of damages and costs.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 May 1998, Miss Mella Carroll, Vice-President, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

Mella Carroll
Mark Fernando
James K. Hugessen

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.