

## EIGHTY-SIXTH SESSION

### *In re Basile*

#### **Judgment 1818**

The Administrative Tribunal,

Considering the complaint filed by Mr. Giorgio Basile against the Food and Agriculture Organization of the United Nations (FAO) on 8 December 1997 and corrected on 26 January 1998, the FAO's reply of 15 April, the complainant's rejoinder of 18 May, the Organization's surrejoinder of 29 June, the further statement of the complainant of 27 July and the comments thereon submitted by the FAO on 10 November 1998;

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. The complainant, an Italian who was born in 1938, joined the staff of the FAO in 1962 as an accounting clerk at grade G.4. He got several promotions, first to G.5 and then to G.6. He later became an accountant in the Professional category at P.1, before moving on to posts of finance officer at P.2. and P.3. In June 1991 he took up the duties of administrative officer at P.4 in the FAO's Regional Office for the Near East, in Cairo.

In March 1995, after a heart specialist had put him on extended sick leave, he wrote to the Administration asking about agreed termination and on 22 March he saw the acting senior personnel officer. The officer told him that the conditions governing such termination did not seem to apply. By a fax of 21 May 1995 to the Director of the Personnel Division the complainant tendered his resignation at 30 June 1995. In a memorandum of 22 May 1995 a senior personnel officer confirmed that the Administration was unwilling to consider agreed termination. By a letter of 25 May a personnel officer gave him notice of separation formalities, which "required [him] to have an exit medical examination within 30 days" of leaving. The letter encouraged him to have the examination at headquarters in Rome, although he might arrange for it elsewhere.

By a fax dated 26 May 1995 the personnel officer told him the Administration had accepted his resignation and that his last day of work would be 30 June 1995. On 4 and 5 July the complainant met FAO officials in Rome to discuss separation formalities but did not undergo a medical examination.

By a letter of 5 April 1996 the complainant appealed to the Director-General alleging that his resignation was invalid because he had been on sick leave on 30 June 1995 and claiming material and moral damages. In a reply of 28 June 1996 the Assistant Director-General in charge of Administration and Finance rejected his appeal on the Director-General's behalf as irreceivable and devoid of merit. By a letter dated 22 August 1996 he appealed to the FAO Appeals Committee. In its report of 24 July 1997 the Committee recommended rejecting his appeal on the merits. By a letter of 9 October 1997, which he is impugning, the Director-General endorsed the Committee's recommendation.

B. The complainant submits that the impugned decision is unlawful. He has two main pleas.

He charges the Organization with negligence insofar as it failed to conduct the end-of-service medical examination which might have afforded grounds for letting him have compensation for service-incurred illness. The poor health that dogged him up to 15 March 1996 was caused by the "unbelievable working conditions and continuous humiliations" at his last duty station. It was "stress" that made him feel that the only way to keep his health was to resign, even against his best interests.

He alleges breach of FAO Manual paragraph 323.512, which says that a staff member on sick leave at separation will have the date "extended until the end of his/her period of certified sick leave". Since the certified sick leave he was on at 30 June 1995 did not end until 15 March 1996, that is the date at which his separation should have taken place.

He is seeking awards of 450,000 United States dollars in material damages and \$200,000 for moral injury. He claims reinstatement "in the FAO payroll" from 1 July 1995 to 15 March 1996.

C. In its reply the FAO observes that the Appeals Committee should have declared his appeal time-barred. It contends that his complaint is unfounded inasmuch as he resigned of his own free will, in full awareness of the consequences and at the date of his own choosing. He acted under no pressure from the Organization, and there was no reason for it to compensate him for having chosen to resign. In any event, he has adduced no evidence to suggest that undue stress at the office damaged his health. Though the FAO invited him in his own interest to have the medical examination it could not force him to do so.

There was no breach of FAO Manual paragraph 323.512, the purpose of which is to protect staff members on sick leave against involuntary separation. The paragraph about voluntary resignation is 314.7131. Since it allows for voluntary resignation during sick leave, it was proper for the Organization to honour his wishes.

D. In his rejoinder the complainant seeks to refute several points in the FAO's reply. He says he gave "full evidence" of his supervisors' ill treatment of him. In the absence of any medical examination, how could the Organization rule out the possibility that his faculties were impaired at the material time? As to duress, he has produced ample proof of the "psychological pressure" he was under. Whenever there is a clash between the rules an organization has a duty to apply the provision most favourable to the staff member.

E. In its surrejoinder the FAO produces records from the medical service showing that the complainant had consultations there in March and April 1995. The FAO deduces from his medical file that his illness might be due to causes that had nothing to do with work.

F. In a further brief the complainant expresses surprise at the FAO's producing those records only with its surrejoinder. He points out that they go back to 1991; that the last check-up he had at the FAO was in that year; and that entries for 1995 are just "notes for the records".

G. In further comment the defendant says that it was the complainant's "continued negation" that prompted it to produce the records. It presses its pleas.

## CONSIDERATIONS

1. The complainant joined the staff of the FAO in September 1962 as an accounting clerk at grade G.4. The Organization granted him several promotions. In June 1991 it transferred him to its Regional Office for the Near East, in Cairo, as an administrative officer at grade P.4.
2. On 17 March 1995, while at headquarters in Rome, he sent a memorandum to the Assistant Director-General in charge of Administration and Finance asking whether he might be granted "agreed termination" of his appointment, but the acting senior personnel officer told him orally on 22 March that the answer was no. In a fax letter of 21 May 1995 he tendered his resignation at headquarters at 30 June 1995 on grounds of health. In that letter he observed that he would be on sick leave until 11 June 1995 and he sought "special approval" of his resignation at 30 June "without any deduction from [his] annual leave to cover the balance of the required notice period". He later sent from Cairo another certificate, dated 6 June 1995, by a doctor prescribing one month's rest and treatment, i.e. up to 6 July.
3. The Organization accepted his resignation by a fax message of 26 May 1995. A personnel officer at headquarters wrote to him the day before about the formalities of "separation" and said, among other things, that he must undergo an "exit medical examination" within thirty days of separation. He travelled to Rome on 30 June and there had interviews with several people about the formalities. But he did not undergo the medical examination.
4. On 5 April 1996 he lodged an appeal with the Director-General alleging that his resignation, separation and removal from the payroll were invalid because he had been on sick leave at 30 June 1995. On 28 June 1996 the Director-General dismissed his appeal as both time-barred and devoid of merit, and he appealed to the Appeals Committee on 22 August 1996. In its report of 24 July 1997 the Committee gave him the benefit of the doubt on the issue of receivability but on the merits found no reason to believe that he had been subject to threats or pressure to force him to resign against his will; in resigning he had, the Committee held, been "fully cognizant of his action". In a letter to him dated 9 October 1997, which is the impugned decision, the Director-General accepted the Committee's recommendation and rejected his appeal.

5. The relief which the complainant is seeking is a total award of 650,000 United States dollars - made up of 450,000 for material injury and 200,000 for moral injury - and reinstatement "in the FAO payroll" from 1 July 1995 to 15 March 1996.

*The validity of the complainant's resignation*

6. He alleges that "unbelievable" conditions and "humiliations" at work in Cairo caused his illness, subjected him to constant stress and cast him into a "very serious state of despair" that led him "erroneously" to believe that "the only way out was to submit [his] resignation". Neither before nor after separation - he says - did any of the FAO's medical officers ever examine him, though his sufferings went on for four years.

7. The first material issue, then, is whether the complainant wrote his letter of resignation of his own free will; if he did, he may not now claim that separation was invalid.

8. In a memorandum dated 25 September 1996 the FAO's chief medical officer listed the following six sick-leave certificates that the complainant had supplied before leaving at the end of June 1995:

one dated 12 February 1995 and issued in Cairo, for three days;

one dated 20 March and issued in Rome, for twenty days;

one of even date issued in Rome by a cardiologist, for an unstated period;

one issued in Rome on 5 April, for sixty days;

one made out on 6 April in Rome by the same cardiologist for sixty days; and

the one issued in Cairo on 6 June 1995 - and mentioned in 2 above - for one month.

The chief medical officer commented:

"The medical certificates from 2 different physicians in Rome and the doctor in Cairo state, as diagnoses: 'hypertensive crisis to be determined; recurrent angina-like episodes to be determined, hypertension, vertigo; hypertensive crisis accompanied by suspected myocardial ischaemia; ischaemic heart disease'."

He said that the complainant had seen him on 21 March 1995 and a colleague on 6 April and he concluded, both from the medical certificates and from those consultations, that the complainant had been "fully conscious and without signs of impaired thought process" and "the condition he suffered from at the time was not at all of a psychiatric nature".

9. To the complainant's assertion that no FAO doctor ever examined him the Organization replies by producing an attendance sheet showing that he consulted the chief medical officer on 21 March 1995 and the colleague on 6 April 1995. The Tribunal is satisfied on that evidence that he did have such consultations.

10. It appears, however, from his rejoinder that the point he is making is that neither doctor actually examined him. He says that his latest laboratory tests and medical examination went back to 24 May 1991, and in support of that statement he cites a form recording a periodic medical examination at that date. But his argument fails: the chief medical officer was entitled, even in the absence of such tests, to found his opinion of the complainant's condition on the medical reports, consultations and his own observation.

11. It is common ground that the complainant was suffering from a heart ailment. The many charges he makes in seeking to explain why he was are irrelevant. The only material issue is whether his letter of resignation was an act of free will. And he has utterly failed to adduce evidence to suggest that his illness so impaired his faculties as to preclude treating his letter of resignation as such.

*The date of separation*

12. Secondly, the complainant cites Manual paragraph 323.512, which reads:

"If a staff member is on certified sick leave on the date of separation the effective date of separation will be extended until the end of his/her period of certified sick leave."

He says that "separating" him while he was on "certified sick leave" was in breach of that paragraph. Since he did not recover from his illness until 15 March 1996, that, and not 30 June 1995, was the date at which separation ought to have taken effect.

13. The material rules are Staff Rule 302.9053, which reads:

"The Director, Personnel Division may accept resignations on shorter notice or waive the requirement completely. If a resignation is submitted without such notice, a deduction is made from accumulated annual leave to cover the remainder of the required notice period."

and Manual paragraph 314.7131, which provides:

"If a staff member resigns during a period of sick leave or of annual leave taken for illness extending beyond his/her sick leave entitlement, the effective date of separation cannot be made retroactive but otherwise is that requested by the staff member concerned, provided (i) that it falls within the period covered by the allowable leave, and (ii) that the staff member submits a medical certificate confirming his or her inability to return to duty before the end of such leave."

14. The Organization submits that, though it may not terminate the appointment of someone on certified sick leave, or let a fixed-term appointment expire until sick-leave entitlements have been exhausted, there is nothing to prevent the staff member from choosing to resign in accordance with 314.7131 and thereby surrendering his right to stay on sick leave.

15. The purpose of Manual paragraph 323.512 is to protect the staff member against termination in the course of sick leave. But 314.7131 contemplates resignation during such leave. Since the Organization was able to meet the complainant's wishes and let him have voluntary separation, paragraph 323.512 does not apply. There are therefore no grounds for allowing his claim to holding the date of separation over to 15 March 1996.

#### DECISION

For the above reason,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner