

TWENTY-NINTH ORDINARY SESSION

In re BERGIN

Judgment No. 193

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Patrick Bergin on 22 November 1971, the Organization's reply of 11 February 1972, the complainant's rejoinder of 11 March 1972 and the Organization's surrejoinder of 19 April 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.012, Staff Rules 303.131 and 303.135 and Manual Sections 311.421 and 311.422;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. Mr. Bergin was appointed by the FAO for one year on 5 March 1965 and assigned to the Land and Water Development Division. He was attached to a project in Teheran. On 1 April 1967 he was transferred to the Plant Production and Protection Division and assigned to another project in Iran. His contract was extended to 30 September 1970 and he then resigned from the Agricultural Institute in Dublin, at which he had held a permanent appointment before his entry to the FAO and from which he had been seconded. On 28 December 1968 the Project Manager wrote to Rome requesting the transfer of Mr. Bergin, who in his view, although he possessed all the qualities required for the proposed project, had neither the determination nor the devotion to put it into effect. The FAO asked the Project Manager to justify this request for transfer and on 11 February 1969 he replied stating that the Iranian authorities no longer had faith in the complainant and that he himself shared their views, since Mr. Bergin was interested only in theoretical problems and showed "apathy and ... disinclination to make field visits". He also accused him of having applied for annual leave at the time of the most intensive field work. He therefore recommended that the Organization withdraw Mr. Bergin from the project before the Iranian authorities made a request to that effect. In a handwritten note appended to his letter he stated that he was motivated solely by the Organization's interests and that there was no ill feeling between him and the complainant. Moreover, he said, the complainant knew nothing of the correspondence and recommendation. The allegations by the Project Manager were fully borne out by the Chief of the Operations Office of the Plant Production and Protection Division on his return from a visit to the project during which he spoke to the project managers and the complainant.

B. The Director of the Plant Production and Protection Division wrote on 10 June 1969 informing Mr. Bergin of the complaints and stating his intention to propose withholding his annual increment due on 1 March 1969, and transferring him to a post in another country in which his qualifications and experience could be better used. On 21 September 1969 Mr. Bergin was accordingly transferred to Rome. On 21 November he was appointed to an expert post in Jordan where he remained until the expiry of his appointment in November 1970 (his final contract having been in the meantime extended by two months). On 20 February 1970 he was informed that the annual increment due to him on 1 March 1970 would be withheld. On 26 October 1970 Mr. Bergin appealed to the Director-General. Having received no reply, on 14 November he appealed to the Appeals Committee requesting: (a) that the letter of the Division Director of 10 June 1969 should be withdrawn; (b) that he should receive a letter stating that his services had been satisfactory to the FAO; (c) that the FAO should undertake to re-employ him if he so requested; (d) that his 1969 and 1970 annual increments should be paid in full; and (e) that he should be paid compensation for the other damages inflicted. The Committee held that the complainant's transfer had not been tainted by any irregularity and that the FAO had made proper efforts to find him another assignment. It held, however, that the complainant had not been informed of the steps taken by the Project Manager to obtain his transfer and that it had not been proved that the Project Manager had held several full and frank discussions with him on the subject beforehand, as he had stated in his letter of 11 February 1969. The Committee noted that Mr. Bergin denied the charges against him and that he had had the annual increment due to him on 1 March 1970 withheld without first receiving an appraisal report criticising his work performance. The Committee accordingly recommended that, although the letter of the Division Director dated 10 June 1969 should not be withdrawn, the complainant should

receive a certificate of satisfactory service and that if he should submit any further application for employment, it should be treated on an equal footing with those of other applicants. The increment of 1 March 1970 having in the meantime been granted by the Organization, the Committee recommended that the increment due on 1 March 1969 should also be paid, since there were reasonable grounds for doubting whether the procedural requirements in respect of withholding an increment had been fully complied with. The Committee held, however, that the complainant's further claims, including his claim concerning the education of his children, were ill-founded. As regards the receivability of his claims, some of which the Organization regarded as time barred, the Committee held that they constituted a whole and were therefore receivable. The Director-General informed Mr. Bergin on 15 September 1971 that he accepted these recommendations.

C. It is that decision of 15 September 1971 which Mr. Bergin impugns before the present Tribunal. In his complaint he prays that the Tribunal be pleased "to award me financial compensation to redress to some extent the basic injustice and injury which FAO inflicted on me in 1969 by moving me from Iran on false and secret charges which resulted in loss of my permanent post in Ireland and disruption of my children's education and the continuing mental stress still being suffered by all of us". In support of his claim the complainant maintains that the project managers (the Project Manager, the Iranian Joint Manager, and the Deputy Manager) deliberately endorsed his proposed programme of work and then withheld the necessary staff to carry it out so as to be able to complain later about his apathy. The Project Manager, he alleges, refused to authorise his travel to Gorgan so that he could later accuse him of not having gone there. He adds that he learnt only in May 1969 that his services were not regarded as satisfactory, in other words after the decision to transfer him had been taken. He points out contradictions in the Project Manager's letter of 11 February 1969 which stated, on the one hand, that Mr. Bergin was not aware of the correspondence concerning him or of the recommendation that he be transferred from Iran and, on the other hand, that he had held "full and frank discussions" with him. He alleges that he was not notified of that letter until February 1971 at the time of his transfer. He attributes the deceit from which he claims to have suffered to embarrassment caused to the project managers by his repeated proposals for improved lines of research. He maintains that there was abuse of authority in that "the extent to which these unjust actions lay inside or outside FAO regulations is irrelevant, because they were based in deceit". In addition to compensation the complainant asks for the withdrawal of the Division Director's letter of 10 June 1969 from his file on the grounds that it is based on false and fabricated charges.

D. In its reply the Organization maintains that the criticisms made of Mr. Bergin were justified. As proof it points out that the Director of the Division at headquarters acted cautiously and only after objective appraisal of the facts as reported to him by his Deputy on return from his mission to Iran, where he had spoken to all the parties concerned, including the complainant. The Organization maintains that in particular it was established that the Iranian authorities themselves intended to request the complainant's transfer. It refers to its efforts to find another appointment satisfactory to the complainant in Jordan, which he duly accepted. The Division Director's letter concerning the transfer and the withholding of the increment is dated 10 June 1969. Yet the complainant did not appeal to the Director-General until 26 October 1970 and to the Appeals Committee until 14 November 1970. In accordance with Staff Rule 303.131 that letter ought to have been addressed within two weeks of the decision concerning transfer and withholding of increment. Since the complainant's claims related to these two matters they were consequently irreceivable by the Appeals Committee and are also irreceivable by the Tribunal. At all events, the transfer was carried out in strict conformity with Staff Regulation 301.012 and Manual Sections 311.421 and 311.422 and was entirely motivated by considerations relating to the interests of the Organization, since it felt convinced that the Iranian authorities were not satisfied with Mr. Bergin. As regards Mr. Bergin's loss of permanent employment in Ireland, it claims to be in no way responsible: it had given the complainant no guarantee of continuity in his employment with the FAO, and he had himself chosen to resign from his job in Ireland. The disruption of his children's education caused by his transfers was not uncommon in the case of field experts and had been largely due to the complainant's own decisions. The Organization also refuses any liability in respect of the distress allegedly suffered by the complainant. It points out that he accepted the transfer, that every effort was made to find him another assignment satisfactory to him and that he was found to be in perfect physical condition on being medically examined at the end of his appointment. It therefore prays that the complainant's claims be dismissed in their entirety.

E. In his rejoinder Mr. Bergin states that had it not been for the intrigues of which he had been the victim he would still be working with the FAO and that he had resigned from his post in Ireland only because he was almost certain that his employment with the FAO would continue. He had not appealed until October 1970 because of the decision to withhold his increment due on 1 March 1970, which had caused him to believe that the ill feeling towards him continued. He repeats his version of the facts and adds that he found himself in an anomalous

administrative position on account of his being moved from the Land and Water Development Division to the Plant Production and Protection Division, where he was regarded as an intruder. His transfer to Jordan was tainted with several irregularities and no credence can be given to the report made by the headquarters official who visited Iran because he was friendly with the project managers. He again points out that he was not notified of the letters addressed by the Project Manager to headquarters until long after the decision to transfer him. He further states that, in view of the difference between his current salary and the salary which he would have received from the FAO, he assesses at £25,000 sterling the damage he has suffered.

F. In its surrejoinder the Organization refers again to the arguments set out in its reply and states merely that in accordance with Staff Rule 303.135 a staff member who lodges an appeal shall have access to all pertinent documents in his personnel file and any other documents considered by the Committee. Moreover, Manual Section 340.32 states that a staff member does not ordinarily have access to his confidential personnel file. However, he is allowed access to inspect certain papers if they are not classified as confidential. In the present case the complainant was granted full access to the correspondence concerning him in accordance with this provision when he submitted his appeal.

CONSIDERATIONS:

1. In the decision complained of the Director-General, acting in accordance with all the recommendations of the Appeals Committee, rejected the fifth of the complainant's claims, which was for "compensation for the other damages inflicted". In his appeal to the Tribunal the complainant claims such damages under three heads, namely,

(1) loss of a permanent post in the Agricultural Institute in Ireland which the complainant gave up in 1967 when he accepted the appointment in Iran;

(2) disruption of his children's education; and

(3) mental distress which resulted in a loss on his investments which he was too worried and distressed to look after properly.

2. None of these claims is sustainable except as an element of damage flowing from some unlawful decision by the Director-General. The only unlawful decision alleged is the decision of the Director of the Plant Production and Protection Division on 10 June 1969 to transfer the complainant from Iran to Rome. It is true that in the processes which led up to this decision there were certain irregularities which the Director-General has remedied by accepting the first four recommendations made by the Appeals Committee. But these irregularities do not invalidate the decision to transfer. The Director did not take the decision until after the views of the officials in Iran had been inquired into and confirmed by the Chief of the Operations Office of the Division who heard also what the complainant had to say. The Tribunal is satisfied that this inquiry was regularly conducted and, in particular, the decision resulting from it cannot be impugned. The Tribunal has found no evidence of deceit as alleged. Moreover, the complainant made no complaint of the decision to transfer him at the time it was made and also accepted his subsequent transfer to Jordan on 21 November 1969.

3. It is unnecessary for the Tribunal to consider whether, if the decision to transfer had been held unlawful, any of the three heads of damage itemised above would have been admissible as a consequence thereof.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. 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 13 November 1972.

M. Letourneur
André Grisel

Devlin

Bernard Spy

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