

EIGHTY-EIGHTH SESSION

In re Wassef (No. 28)

Judgment 1936

The Administrative Tribunal,

Considering the twenty-eighth complaint filed by Mr Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 30 December 1996 and corrected on 14 February 1997, the FAO's reply of 10 June 1999 and the complainant's letter of 28 June 1999 informing the Registrar of the Tribunal that he did not wish to enter a rejoinder;

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. Details on the complainant's record of employment at the FAO and the illness which he contracted in Chad in 1993 are set out under A in Judgment 1401 on his first and second complaints. Judgments 1486 and 1702 on his eighth and twenty-sixth complaints are also of some relevance. He was separated from the Organization on 7 January 1994.

In letters of 19 June and 25 July 1995 the Secretary of the Advisory Committee on Compensation Claims informed the complainant that his claim for "partial incapacity for work" had been rejected. The complainant protested against the Advisory Committee's findings in two letters of appeal to the Director-General on 1 and 2 August, and a further two on 15 September. In replies of 29 September and 14 November the Assistant Director-General in charge of Administration and Finance rejected all the complainant's claims on the Director-General's behalf. The complainant therefore put the same claims to the Appeals Committee, filing two appeals on 25 October and two on 22 November 1995: they were given the numbers 476, 477, 480 and 481 respectively.

In the first appeal the complainant requested that the Advisory Committee's report relevant to his case be declared "improper ... and inadequate in quality" and that his "permanent partial incapacity" be recognised. He also wanted his contract extended as from 4 January 1994 and his sick leave approved; reappointment at P.4 level; payment of his entitlements relating to extension and reappointment; per diem for the period he was in Rome; thirty days of special leave with full pay; and a total of 4,006,000 United States dollars in damages and costs. If he should have to file a complaint with the Tribunal he requested reimbursement of the cost of publishing any subsequent judgment in a number of newspapers and a further penalty clause against the FAO in the event of late execution of the judgment.

In the second appeal he alleged "wilful wrongdoing" on the part of the Personnel Division and claimed three million dollars in awards of damages and asked for further payments of interest and costs. He also claimed, if he should have to file a complaint with the Tribunal, the costs of publication of any subsequent judgment in several newspapers and magazines and 50 per cent of the total award for every two weeks of delay in payment following the issuing of the judgment.

In the third appeal he asked mainly for a "compensation annuity for life" with interest payable on the sum owed, and he wanted instructions issued to the Social Security Group to "effect payments of all claimed benefits".

In the fourth he challenged the report of the Advisory Committee rejecting his claim for partial incapacity and asked that the Personnel Division and the Secretary of the Committee be instructed to rule on his

incapacity for work. He claimed compensation for "torts and damages", and a further one million dollars if his case should go to the Tribunal.

The Appeals Committee recommended rejecting the appeals. The Director-General endorsed that opinion in four final decisions dated 4 November 1996. The complainant is impugning those decisions.

B. The complainant says that he brought his four appeals against the Director-General's decision of 19 June 1995 and the "wilful misconduct" of the Advisory Committee on Compensation Claims whose recommendations led to that decision. The complainant's main argument is that from the point when his illness was recognised as being service-incurred other rules had to be "brought into play", but instead the Administration "cancelled" all his rights and entitlements. Fundamental facts were overlooked and mistakes of fact and law occurred through the fault of the Personnel Division, Medical Service, Advisory Committee and the FAO Staff Pension Committee.

His sick leave came to an end and he was separated from service with effect from 7 January 1994, after the Medical Service, relying on a certificate from his own doctor, stated that he was fit for work. However, his illness was subsequently recognised as being service-incurred. The Organization had, therefore, terminated his appointment under a false pretext in order to deny him compensation for incapacity under FAO Manual paragraph 342.524. It is clear from the letter of 19 June 1995 that the Advisory Committee based its opinion about his fitness for work as of 7 January 1994 on the erroneous conclusions of the Medical Service. The Committee then refused his claim to be considered partially incapacitated for work. He maintains that the terms of that letter and the decisions stemming from it cannot stand: particularly because the proceedings, which gave rise to the letter, were overruled in Judgment 1486 and three later judgments.

He blames the Administration for not securing "the minimum standards of due process". He asks for the proper determination of his rights and entitlements with regard to recognising his incapacity.

He asks the Tribunal to award him: his "rights and entitlements for unconditional total permanent incapacity as a result of the complex of chronic infirmities due to [his] service-incurred illness"; his other claims are those listed under A above relative to his four internal appeals, including awards for damages with interest added. He also claims costs.

In his summary of the main claims in his four appeals he asks for "a proper award for the torts committed by the Administration and the Advisory Committee" and "a proper award for the psycho-physical, financial, moral and social damages".

C. In its reply the Organization points out that the facts and supporting arguments presented by the complainant considerably overlap with those put forward in earlier complaints. If, as the complainant says, the letter of 19 June 1995 cannot stand because the proceedings which led to its terms have already been overruled by the Tribunal then the issues covered in the letter must be *res judicata*. The complainant's claim to an award for the "torts committed by the Administration and the Advisory Committee" and his claim to a "proper award for the psycho-physical, financial, moral and social damages" are new claims, though linked to earlier ones. They are either time-barred or *res judicata* and therefore irreceivable.

The complainant has provided no evidence of any wrongdoing on the part of the Organization, neither has he shown that the Organization has caused the "total permanent incapacity" he refers to. The complainant's case was dealt with according to the relevant provisions of the Manual.

The FAO argues that the complainant's claim to "unconditional total permanent incapacity" overlaps with his claim to a disability benefit. When the FAO Staff Pension Committee rejected such a claim the complainant appealed to the Standing Committee of the United Nations Joint Staff Pension Board which rejected his claim at a meeting it held on 17 July 1996. Therefore, under the rules of the Pension Fund, any further remedy would have to be sought from the United Nations Administrative Tribunal which alone has jurisdiction to deal with such cases.

CONSIDERATIONS

1. As in the twenty-seven complaints previously examined by the Tribunal at the petition of this former FAO official, the present complaint concerns the consequences of the disease contracted by the complainant when

he was serving in Chad on behalf of the FAO on a project financed by the United Nations Development Programme. The complainant finally succeeded in getting the FAO to give him the "benefit of the doubt" and recognise that his illness should be regarded as being service-incurred, in accordance with the Tribunal's ruling in its judgment of 1 February 1996 (Judgment 1486, *in re* Wassef No. 8). The medical expenses which he incurred were reimbursed to him and he was placed on sick leave with full pay beyond the normal expiry date of his contract and until he was recognised medically fit for work.

These decisions did not satisfy the complainant who, since then, has filed numerous appeals with FAO bodies with a view to obtaining compensation for the damages which he says he suffered and the recognition of his right to a disability benefit. In the present complaint, he is challenging four decisions by the Director-General of the Organization of 4 November 1996 dismissing four appeals which he had filed.

2. The complainant requests the joinder of his various claims, and the defendant agrees. However, as he has filed a single complaint, there is no need to rule on any joinder. The content of the four decisions which he is challenging must nevertheless be examined one after the other.

3. The first decision which is being impugned corresponds to case No. 476 examined by the Appeals Committee. In accordance with the Committee's recommendation, this decision dismissed an internal appeal filed by the complainant against a decision of 29 September 1995 to reject an appeal of 1 August 1995. In this latter appeal, he sought: the reconsideration of the report of the Advisory Committee on Compensation Claims, with which he was not satisfied; the recognition of his permanent partial incapacity; the extension of his contract until the settlement of his claim; his reappointment at grade P.4 with all resulting entitlements; the payment of a *per diem* for his stay in Rome; the granting of thirty days special leave with full pay; as well as various indemnities and the reimbursement of costs. While agreeing that the Organization could have handled the matter more assiduously, the Appeals Committee considered that the claims made in the appeal were totally unfounded, that there was no medical evidence of the complainant's incapacity and that there was no justification for the extension of his contract, which had lawfully come to an end and which had in any case already been the subject of an appeal that had been rejected by the Administration. The Director-General, in the first impugned decision of 4 November 1996, endorsed the Appeals Committee's recommendation in case No. 476.

4. The second impugned decision corresponds to case No. 477 examined by the Appeals Committee, in which it rejected an appeal filed against another decision of 29 September 1995 dismissing an appeal of 2 August 1995. In this latter appeal the complainant took the Administration to task in strong terms for its gross wilful misconduct in dealing with his case. Once again, on the basis of claims which were rejected as being totally unfounded, he claimed considerable sums in compensation for the prejudice suffered.

5. The third decision concerns a case registered under the number 480 by the Appeals Committee. By this decision, the Director-General refused to accede to the claims of the complainant who, on 15 September 1995, had requested that he be granted an annuity for life equivalent to 67 per cent of his last pensionable remuneration as of 7 December 1993, plus interest at 25 per cent per annum, and that instructions be given to the Social Security Group to pay all the benefits which he had claimed on 9 August 1995. These claims were also found to be devoid of merit by both the Appeals Committee and the Director-General of the FAO.

6. By the fourth impugned decision, the Director-General rejected a case filed under the number 481 appealing against a decision of 14 November 1995, which rejected claims made on 15 September 1995 relating to the recognition of his partial incapacity. The complainant challenged the conditions under which his claims had been examined, sought compensation for the injuries suffered and requested that instructions be given to the Advisory Committee on Compensation Claims to rule as rapidly as possible on the recognition of his incapacity for work. All these claims were also rejected.

7. To challenge the validity of the decisions which he is impugning, the complainant comes back to issues which have already been examined by the Tribunal, particularly in relation to the application for execution of Judgment 1486, in which it was recognised that the illness contracted in Chad was assumed to have been due to his professional activity. As the Tribunal ruled in Judgment 1702, of 29 January 1998, the claims relating to the alleged failure of the FAO to execute the judgment are irreceivable. The complainant's pleas on this point concern issues which are *res judicata*. The complainant's arguments challenging the date on which his appointment was terminated and those concerning his difficulties in obtaining legal assistance in

the absence of a panel of counsel also relate to matters which have already been resolved by the Tribunal. The claims which once again seek the Organization's condemnation for its negligence towards him have been made on several occasions and, even though certain failings can indeed be noted in the handling of the case, they are not attributable to any clearly improper ill will on the part of the Organization.

8. For the rest, the FAO emphasises in its reply that the issue of whether the complainant should have been considered definitively unfit for work as a result of his service with the FAO was examined carefully by the Advisory Committee on Compensation Claims and the Appeals Committee and that he has provided no proof challenging the medical findings made at that time. In his complaint the complainant confines himself to asserting that the certificate issued by his own doctor, which was interpreted as finding him medically fit for work as of 4 January 1994, did not have the meaning and significance attributed to it by the FAO. The complainant did not submit a rejoinder and has, therefore, produced no evidence challenging the defendant's argument.

9. Finally, the Tribunal observes that, if the complainant intends to pursue his claims for a disability benefit from the United Nations Joint Staff Pension Fund, he must appeal to the United Nations Administrative Tribunal against the decisions taken in this respect by the Standing Committee of the Board of the Fund, which rejected his claim on 17 July 1996.

10. The complainant's claims are therefore either devoid of merit, or irreceivable because they concern issues that are *res judicata*, or too vague to be taken into consideration or not within the jurisdiction of the Tribunal. They must, therefore, fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet