

EIGHTY-NINTH SESSION

In re White

Judgment No. 1970

The Administrative Tribunal,

Considering the complaint filed by Mr Michael Robert White against the International Fund for Agricultural Development (IFAD) on 30 March 1999 and corrected on 24 April, IFAD's reply of 19 August, the complainant's rejoinder of 25 October and the Fund's surrejoinder of 23 December 1999;

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, a British citizen born in 1937, was employed by IFAD under a short-term contract as a *précis*-writer from 25 to 27 January 1995 at a session of IFAD's Governing Council. The Fund met the cost of his round trip from London to Rome.

His terms of appointment were partly governed by the *Agreement concerning conditions of employment of short-term translators, revisers, editors and précis-writers* concluded between the United Nations' Consultative Committee on Administrative Questions (CCAQ) and the *Association internationale des traducteurs de conférence* (AITC) referred to below as the CCAQ/AITC Agreement. His appointment was also governed by IFAD's Terms and Conditions of Service for short-term translators, a document that was appended to his contract.

In mid-March the complainant sent a fax to IFAD asking to be paid for his January contract. The sum of £757.62 sterling was paid into his bank account on 21 March. He wrote to IFAD on 10 April requesting a breakdown of the payment. On 12 April the Fund sent him a salary payment form showing how it had worked out the amount paid and what exchange rate it had used.

On 15 May he wrote to the Fund contesting: the exchange rate IFAD had applied; the way it had calculated his overtime; and the amounts it had reimbursed him for terminal expenses and a compulsory medical certificate obtained before he left London. On 24 July the Controller's Office informed him that IFAD's figures were correct and that no additional payments were due. The complainant sent a letter to the President of IFAD on 21 August asking for a review of that decision. Having received no reply, he filed an internal appeal on 20 October. He addressed it to the Chairperson of the Joint Appeals Board and sent it via the Director of the Personnel Division.

In a letter of 21 December 1995 the Director of the Division informed the complainant that the Board had considered that the matter should go first to the Personnel Division for review. He added that there were no grounds for altering the exchange rate, but, with regard to the other issues, IFAD would exceptionally agree to pay him the full amount incurred in obtaining his medical certificate, would correct his overtime payment and revise the amount due to him for terminal expenses provided he could produce receipts. In a reply of 27 January 1996 the complainant accepted the Fund's proposal, and accordingly withdrew part of his appeal. However, he maintained the part relating to the exchange rate and terminal expenses.

The complainant did not receive the extra payments from IFAD and is challenging the implied rejection of his appeal of 20 October 1995.

B. The complainant submits that his complaint is receivable. He filed it in the absence of a final decision from the Administration because, in spite of his efforts, there appeared to be no prospect of his obtaining an opinion from the Appeals Board within a reasonable time. He deduces from the letter of 21 December 1995 that the Board had received his appeal, but he doubts whether the matter was taken further. In spite of the partial settlement agreed to

by IFAD he did not receive the additional sums promised. He consequently wrote to the Director of Personnel on 13 May 1996, also enclosing a letter addressed to the Chairperson of the Joint Appeals Board. In that letter to the Board, he said that since he had not received the expected payments from IFAD, the withdrawal of two grounds of his appeal was null and void and that he was maintaining his original appeal in its entirety. He also asked to be informed about the status of his internal appeal. The complainant wishes the Tribunal to regard his appeal as an "integral part" of his complaint.

He states that the Fund failed to observe certain terms of his appointment. He takes issue with the fact that he was paid late - 53 days after the end of his contract - and says that payment for similar contracts in the UN system is normally made at the end of the contract period or soon afterwards. Moreover, he lost out financially as a result of the exchange rate applied by IFAD. It should have applied the rate of exchange which was in force at the time of his contract - £0.64 to the United States dollar - instead of the lower rate of £0.63 to the dollar in force in March when he was paid.

He maintains the claims he made for additional payments in his earlier correspondence with IFAD. It was not specified in his contract that IFAD was applying a ceiling to the payment for his medical certificate and so he is claiming the full amount of £65, equal to 103.17 dollars, instead of the 48.78 dollars the Fund has paid him. His overtime payment was calculated on his base salary only and should have included the post adjustment component. As for his terminal expenses he received 68 dollars instead of the flat rate of 108 dollars applied throughout the United Nations system.

(1) He wants the Tribunal to rule that he should have received:

(a) remuneration (base salary plus post adjustment) converted into pounds sterling at the exchange rate applicable in January 1995;

(b) overtime payment calculated on the basis of salary plus the post adjustment component;

(c) reimbursement of the full cost of obtaining his medical certificate;

(d) terminal expenses calculated at the flat rate paid in the UN common system.

(2) Using, where needed, the United Nations operational exchange rate applicable in January 1995, he wants IFAD to:

(a) recalculate his pay on the basis mentioned above;

(b) recalculate the payment due to him for overtime, on the basis of salary plus post adjustment as stipulated in the CCAQ/AITC Agreement;

(c) calculate the difference between the full cost of the medical certificate and the amount he was actually paid;

(d) calculate the difference between the amount that he was paid in terminal expenses and that which he should have received under existing arrangements applicable in the United Nations common system (i.e. \$108.00).

(3) On the basis of the mode of calculation referred to in 1 (a) to (d) above, he wants IFAD to:

(a) pay him in pounds sterling the extra amounts due, plus interest at 8 per cent a year reckoned from January 1995 to the date of settlement of this claim;

(b) pay him £2,000 in "pecuniary damages";

(c) pay him photocopying, postage and stationery costs.

C. In its reply the defendant organisation contests the receivability of the complaint. Since the filing of the complaint it has endeavoured to settle the matter amicably and made the complainant an offer in good faith, which he refused. As it offered him a sum in excess of the total amount in dispute, IFAD calls into question the complainant's motives in pressing his claims and asserts that the complaint constitutes an abuse of process.

Furthermore, it contends that the complaint is time-barred and the complainant has not exhausted his internal remedies. As IFAD was hoping for an amicable settlement, no panel had been constituted for the Appeals Board. It says it has no record of any effort made by the complainant to press his case before the Board: the last notification it received from him was his letter dated 27 January 1996 maintaining part of his internal appeal. It points out that it does not have any knowledge of the two letters dated 13 May which the complainant claims to have sent to the Director of Personnel and to the Chairperson of the Joint Appeals Board. The letters were never received by the Fund and the complainant has not supplied any proof that they were written or posted.

On the merits, IFAD points out that according to the terms and conditions of service which the complainant agreed to when he signed his contract, the exchange rate applicable to his salary is that "in force on the date payment is made". It processed the payment on 16 February 1995, approximately two weeks after the end of his contract and applied the United Nations operational rate which was in effect from 1 February until 30 April 1995. The delay in processing his payment therefore had no impact on the exchange rate to be applied and is of no relevance.

As for his medical certificate and overtime payment, they are no longer in dispute as IFAD has agreed to pay the amounts claimed by the complainant, although due to an administrative oversight the sums have not yet been paid. Regarding his terminal expenses it observes that, contrary to the complainant's assertions, the CCAQ/AITC Agreement provides that each organisation shall apply its own travel rules to short-term translators, and the terms and conditions annexed to his contract specified that he could claim a maximum of 18 dollars each way. Nevertheless, IFAD had allowed him a higher rate of 68 dollars which was that applied to regular staff. Moreover, although it was prepared to waive that ceiling in the complainant's case he has steadfastly refused to produce the receipts requested by IFAD.

The Fund concludes that the complainant has put forward no grounds for his claim to "pecuniary damages", and that he should not be awarded costs. In view of the frivolous nature of the case it asks for an award of costs against the complainant.

D. In his rejoinder the complainant presses his pleas. He says he cannot be blamed for failing to exhaust the internal means of redress as the Director of Personnel in office at the time in question deliberately chose not to place the letters of 13 May 1996 on file and did not refer the matter to the Appeals Board, with the effect that no panel was constituted to hear his case.

He considers that his complaint is by no means frivolous. Although the sums he sought payment of were small, he believes that the principles at issue are important and that they have not been addressed by offers of additional amounts. IFAD has not admitted that it was in the wrong. Moreover, it has failed to make the expected payments and it is clear that in introducing a lower level of payment for terminal expenses it was breaching the terms of the CCAQ/AITC Agreement.

E. In its surrejoinder the Fund rebuts the complainant's new argument that its former Director of Personnel "engaged in acts of bad faith" or misled him as to the status of his internal appeal. The complainant has adduced no proof to support his allegations. The Fund produces a statement from the official concerned denying the allegations made by the complainant. It also produces two memoranda, one from the Chairperson of the Joint Appeals Board and one from the Secretary of the Board then in office, which show that both officials were aware of the complainant's appeal at the time and had hoped that the matter could be solved by the Personnel Division to avoid litigation. The complainant is bringing late accusations against its former Director of Personnel purely to establish grounds for his claim to "pecuniary damages" by which it assumes the complainant means 'punitive' or 'moral' damages.

The Fund adds that after further investigation it came to light that the complainant had indeed not received his terminal expenses in 1995 at the rate then paid to regular staff and IFAD agrees that he was entitled to 108 dollars, as he claims. It withdraws its pleadings on that issue and reinstates an offer which it made previously to pay him the extra 40 dollars with interest. It also withdraws its plea for costs against the complainant and reinstates its offer to pay him reasonable costs in connection with this case.

CONSIDERATIONS

1. The complainant had a short-term contract as a précis writer from 25 to 27 January 1995 with IFAD and is contesting certain aspects of the payment he received for that contract. He filed his complaint with the Tribunal on

the grounds that no opinion had been obtained from the Joint Appeals Board within a reasonable time.

In a letter to IFAD of 15 May 1995 the complainant had questioned why he was not paid until eight weeks after his contract ended and objected to: (1) the dollar/sterling rate of exchange that the Fund used to calculate his pay, inasmuch as it applied the rate valid in March 1995 instead of the slightly higher rate in force at the end of January; (2) the amount IFAD reimbursed him for the cost of obtaining a medical certificate as it cost him £65 (103.17 dollars) in medical expenses whereas he was only reimbursed 48.78 dollars; (3) the way IFAD calculated his overtime pay as it failed to take the post adjustment element into account; and (4) the amount it reimbursed him for terminal expenses - inasmuch as he was expecting the sum of 108 dollars, but IFAD only paid him 68 dollars.

He is now claiming rectification of payment on those four counts in accordance with his submissions, plus interest at 8 per cent a year together with "pecuniary damages" in the amount of £2,000 and a sum for costs.

2. Citing the case law, the Fund acknowledges that a complainant may go directly to the Tribunal if there is no prospect of obtaining a decision following an internal appeal procedure within a reasonable period (Judgment 408 *in re* García and Márquez) but adds that this is conditional on the complainant doing all that he can to obtain such a decision (Judgment 1243 *in re* Singh No. 2 and Judgment 1433 *in re* McLean).

3. Prior to filing its reply, the Fund contacted the complainant by e-mail on 12 August 1999, apologising for non-payment of the items mentioned in the letter of 21 December 1995 from the previous Director of the Personnel Division: the payment had been authorised but the authorisation never reached the Controller's Office. It offered to pay him: 38.25 dollars as the difference still due to him after recalculating his overtime pay so as to include the post adjustment component; and £34.27 as the difference due for the fees he incurred in obtaining the medical certificate. It also offered him 40 dollars in settlement of his claim for terminal expenses together with 100 dollars to make up for the loss brought about by the exchange rate applied and to cover interest due on the above amounts as well as costs which he may have incurred in bringing his case to the Tribunal.

4. In an e-mail of 13 August 1999 the complainant said that the settlement did not come close to addressing "the points of principle" raised in his complaint and that he would prefer to wait for a ruling from the Tribunal.

5. The Director of the Personnel Division replied by e-mail on 18 August 1999. She said that she could not understand why he had refused a settlement that exceeded the aggregate amount at issue for the four items he was contesting. She added that since IFAD did not dispute his claims relating to overtime and medical fees, it would pay him the amounts it had proposed for those two items with 8 per cent interest per annum from March 1995 to date. The offer of a lump sum of 140 dollars in respect of the other two items was withdrawn.

6. The Fund filed its reply on 19 August 1999 acknowledging that it would settle payment for the two items that were no longer in dispute and that it was awaiting the complainant's banking instructions. As to the remainder, it claims the complaint is irreceivable as he failed to pursue his appeal within a reasonable time.

7. In its surrejoinder the Fund conceded that the complainant was entitled to 108 dollars in terminal expenses and reiterated its offer to pay the extra 40 dollars due plus reasonable interest. It withdrew its counterclaim for costs and offered to pay the complainant reasonable costs.

8. It is apparent that the complainant did not take the necessary steps to get a final decision through the internal appeals process. Although he received no reply to his letter of 13 May 1996 he did not make any further enquiry. If he had done so, it would have become apparent that his letter of 13 May 1996 had not been received by the Board. He did nothing to press his appeal and waited about three years before filing his complaint with the Tribunal on 30 March 1999.

9. A complainant cannot sit back and do nothing when an appeal is lodged. He must pursue the appeal diligently. Only then can he claim that delay is unreasonable. In the present case, the complainant failed to exhaust the means of internal appeal because he did not pursue his appeal diligently; therefore, he does not qualify to bring a direct appeal to the Tribunal.

10. However, since the Fund acknowledges that it will pay the complainant the sum of 38.25 dollars as the difference due after recalculating his overtime rate so as to include the post adjustment component, and £34.25 sterling as the difference due to him in medical fees (with interest at 8 per cent per annum on both those sums from March 1995) and 40 dollars as the difference due to him in terminal expenses (as well as reasonable

interest - which the Tribunal fixes at 8 per cent per annum), the Tribunal will order payment of the above sums with interest, as provided, from 1 March 1995 to date of payment.

11. The Fund has agreed to pay reasonable costs incurred by the complainant which the Tribunal sets at £200 sterling.

12. All other claims must be dismissed.

13. The complainant alleges in his rejoinder that the previous Director of the Personnel Division of the Fund made the letter he had sent him on 13 May 1996 "disappear". The Tribunal deplores that allegation of bad faith, made without any supporting evidence.

DECISION

For the above reasons,

1. The Fund will pay to the complainant the sums set out in paragraph 10.
2. It will pay £200 sterling as costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 May 2000, 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 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet