

THIRTIETH ORDINARY SESSION

***In re* SILOW v. IAEA
and FAO (No. 4)**

Judgment No. 204

THE ADMINISTRATIVE TRIBUNAL,

Considering the joint complaint against the International Atomic Energy Agency (IAEA) and the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Ronald Silow on 16 June 1971, the IAEA's reply of 30 September 1971, the FAO's reply of 29 October 1971, the complainant's rejoinder of 25 January 1972 to those replies and the supplement thereto dated 4 February 1972, the IAEA's surrejoinder of 3 March 1972 and the FAO's surrejoinder of 13 March 1972, and the complainant's additional memoranda of 6 June 1972, 6 November 1972, 28 January 1973 and 9 April 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Regulation 301.095;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. While serving as Deputy Director of the Joint FAO/IAEA Division for Atomic Energy in Agriculture, Mr. Silow disagreed with the scientific views of both organisations on that technical subject. He was transferred to another post with the IAEA in January 1966. In spring 1966 the two organisations appointed a group of consultants under the chairmanship of Sir John Cockcroft to review the Joint Division's activities. The group reported on 29 September 1966. On 18 May 1968 Mr. Silow lodged with the Tribunal a complaint against the IAEA claiming the withdrawal of the consultants' report and the quashing of the decision to transfer him. The Tribunal dismissed that complaint by Judgment No. 142 of November 1969.

B. Having reached the IAEA retirement age of 50 on 21 February 1968, Mr. Silow returned to the FAO, in which the retirement age is 62. He contested the arrangements for his reinstatement in a complaint to the Tribunal dated 18 June 1969, which the Tribunal dismissed by Judgment No. 151 of 26 May 1970.

C. According to the form submitted by the complainant to institute the present proceedings and dated 30 September 1972, he is contesting the decision of the Director-General of the FAO dated 19 March 1971 informing him that on the FAO Appeals Committee's recommendation he was confirming his decision that Mr. Silow should retire. The complainant also asks the Tribunal, however, to find the IAEA and the FAO guilty on twenty charges (six against the IAEA and fourteen against the FAO) set out in his memorandum and of having wittingly submitted false information to the Tribunal in the course of the proceedings mentioned above; to order the Director-General of the FAO to send a letter to the President of the Tribunal admitting his errors; to inform the governing bodies of the FAO and the IAEA and the General Assembly of the United Nations of the complainant's charges against the two organisations; and, finally, to order the IAEA to pay him US\$500,000 and the FAO US\$2 million in damages.

D. The complainant accuses the two organisations of having wittingly submitted false evidence in their defence in the proceedings mentioned above. The IAEA gave false evidence, he maintains, regarding the membership, terms of reference and work of the group of consultants; the FAO wrongly stated that he was alone in his scientific views and had not been excluded from atomic energy work on his return to the FAO, but had been employed on work suited to his qualifications. Finally, he alleges that the FAO wrongly denied the existence of an additional letter from the Vice-Chairman of the Appeals Committee which was in his favour. The falseness of that evidence, he maintains, is proved by documents which he has since allegedly obtained from FAO files. The organisations thus misled the Tribunal and caused a denial of justice. He further contends that the measures taken by them have seriously impaired his professional reputation and continue to harm it. As regards the part of his complaint relating

to his retirement, he protests at the Appeals Committee's dilatoriness, deplores the fact that he was not allowed to object to any of its members and accuses it of prejudice. As to the merits, he maintains that his retirement was not only contrary to the FAO's interests by depriving it of the services of an official who could have helped it to reform its atomic energy programme, but also prejudged the decision of the Tribunal, which at the time had before it an earlier complaint, in that the Tribunal might have decided to order his reinstatement in work on that programme.

E. In its reply the IAEA points out that the complainant is not impugning any decision of its Director-General and that in so far as he is demanding review of Judgment No. 142 his claims are irreceivable, as the Tribunal itself held in Judgment No. 171. It accordingly prays that the complaint be declared irreceivable.

F. In its reply the FAO observes that all claims other than those impugning the decision of 19 May 1971 to separate him from service are res judicata and, in any case, time-barred. It falls within the Director-General's discretion under Staff Regulation 301.095 to decide whether to retain the services of an official beyond retirement age. In particular the Organization regards as immaterial the complainant's claim that he should not have been made to retire at a time when he had a complaint against it lodged with the Tribunal.

G. In his rejoinder to these replies the complainant argues that his complaint cannot be regarded as time-barred because he has been pursuing without interruption since 1968 all administrative and legal means of redress. Nor does the res judicata rule apply, since it is inapplicable to a claim, such as the present, that an earlier judgment was based on false evidence. The refusal of the two organisations to produce essential documents, such as their correspondence on the whole case, which proves their collusion, gives rise to a presumption of "abuse of power and irregular motives". The FAO's false denial of the existence of a letter from the Vice-Chairman of the Appeals Committee to the Director-General proves its bad faith. The complainant also cites many cases in which major powers have abandoned programmes for using atomic energy in agriculture and which in his view bear out his scientific criticisms. Such examples account for the embarrassment which he caused the two organisations and which led them to get rid of him at all costs by misapplying their Staff Regulations and Staff Rules.

H. In its rejoinder the FAO maintains that the claims other than the one relating to the complainant's retirement are res judicata and time-barred, and that his retirement was in accordance with the Staff Regulations. It nevertheless produces the additional letter written by the Vice-Chairman of the Appeals Committee on 19 December 1968 and admits that it wrongly denied its existence during the earlier proceedings instituted by Mr. Silow against the FAO. It adds, however, that the letter has no bearing on the present case since its purpose was merely to inform the Director-General that "the working conditions [in the Joint Division] are not of the happiest and might well pose a morale problem".

I. The IAEA repeats its arguments and considers that the complainant has proved neither that he is producing any new evidence not adduced in the complaint dismissed in Judgment No. 142 nor that the IAEA gave false evidence to the Tribunal in the earlier proceedings. It rejects the latter allegation outright. The complainant misinterprets the notion of the independence of the consultants, which he confuses with that of the independence of judges. The IAEA rejects his charges against the eminent members of the group. The complainant's whole attitude, it maintains, arises from his false interpretation of the rejection of his views by fellow-scientists and member States as an insult to his knowledge, experience and judgment. In any case the Director-General is not responsible for the IAEA's scientific policy, which is determined by the General Conference and the Board of Governors.

J. The Tribunal has disregarded the complainant's four additional memoranda of 6 June 1972, 6 November 1972, 28 January 1973 and 9 April 1973, which were addressed to the Registrar of the Tribunal after the complainant had been informed that the proceedings were closed.

CONSIDERATIONS:

In the present complaint to the Administrative Tribunal, filed with the Registrar on 16 June 1971, Mr. Silow impugns the decision of 19 May 1971 by which the Director-General of the FAO, on the recommendation of the Appeals Committee, confirmed his decision of 17 February 1970 that the complainant should retire.

Under FAO Staff Regulation 301.095, the pensionable age for officials is 62. Mr. Silow was born in February 1908, and therefore the Director-General simply complied with the above-mentioned provision in taking his decision of 17 February 1970.

Although Staff Regulation 301.095 empowers the Director-General to retain the services of an official beyond the specified age-limit, this derogation is confined to exceptional cases and lies within the discretion of the head of the Organization, who is responsible for its efficient operation. In refusing to make use of his discretionary power in the present case the Director-General made an appraisal of the facts which is not tainted with any of the irregularities which the Tribunal may correct.

The other arguments put forward by Mr. Silow are not pertinent to the matters raised in his complaint and must therefore be dismissed.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1973.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet