

## NINETIETH SESSION

*In re Fattah (No. 2)*

**Judgment No. 2041**

The Administrative Tribunal,

Considering the second complaint filed by Mr Nasser Dahab Abdel Fattah against the Food and Agriculture Organization of the United Nations (FAO) on 15 December 1999 and corrected on 9 March 2000, the FAO's reply of 26 June, the complainant's rejoinder of 13 July and the Organization's surrejoinder of 25 August 2000;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is a former official of the FAO who worked as a driver at the FAO's Regional Office for the Near East in Cairo (Egypt). His employment ended in the circumstances recounted in Judgment 1900 on his first complaint. As mentioned in that judgment his contract, which was due to expire on 31 March 1997, was extended for a period of six months and he was separated on 30 September 1997.

On 7 September 1997, after five days of annual leave, the complainant applied for one month's "certified sick leave" and submitted a medical certificate that was issued in Aswan. The FAO Medical Service wanted the complainant to be examined in Cairo before it took a decision on the matter. On 29 September a staff member from the Regional Office went to the complainant's home in Cairo to ask his family to pass on that information to him in Aswan. The complainant sent in another medical certificate and request for sick leave on 1 October. The Chief of the Management Support Unit at the Regional Office wrote to him on 26 October and told him that his application for sick leave could not be considered unless he returned to the duty station to be examined by a doctor chosen by the FAO. He asked him to make an appointment within five days with the United Nations designated physician in Cairo named in the letter.

On 27 November 1997 the complainant appealed to the Director-General against the decision to separate him from service while he was on sick leave: he requested payment of salary until his recovery. He cited Manual paragraph 323.512 which specifies that if on the date of separation a staff member is on certified sick leave "the effective date of separation will be extended until the end of his/her period of certified sick leave". He indicated that he had been hospitalised in Aswan and had not been fit enough to travel to Cairo, but would undergo the examination when his doctor considered him well enough to make the journey.

The complainant had meanwhile submitted further medical certificates. In a letter of 9 December 1997 the Personnel Officer at the Regional Office told him that the Medical Service would not be able to take the certificates into consideration unless he underwent the medical examination in Cairo. On 16 January 1998 the Officer-in-Charge of the Personnel Division wrote to the complainant informing him that the Medical Service had not approved his application dated 7 September 1997; that his appointment had expired on 30 September 1997; and that, since his absence from 8 to 30 September constituted unauthorised leave, that period would be charged to his accrued annual leave.

In a letter of 26 January 1998, the Assistant Director-General in charge of Administration and Finance informed the complainant that the Director-General had dismissed his appeal of 27 November 1997. On 3 March the complainant travelled to Cairo. He was examined, as required, by the United Nations designated doctor; the Organization also regarded it as his exit medical examination. He appealed to the Appeals Committee on 4 March against the Director-General's decision. In his appeal he objected to the fact that the Organization wanted to treat the medical examination as being for exit purposes and said it should be held merely to confirm whether he could be granted sick leave from 7 September. He claimed payment of salary until his recovery. In its report of 6 July

1999 the Appeals Committee recommended that the complainant's "exact medical status ... be determined" and depending on his "potential entitlements to sick leave" his contractual status with the FAO should be clarified. In a letter of 4 October 1999, received by the complainant on 13 October, the Director-General rejected his appeal. That is the decision which the complainant impugns.

B. The complainant takes issue with the fact that his sick leave was not recognised. He submits that there was delay both in hearing his appeal and in communicating the Committee's report to him. He also blames the FAO for denying him his "financial rights", i.e. his salary for the period "from 7 September 1997 [to] 19 August 1998", and for paying no heed to the recommendations of the Appeals Committee. There was, he says, no "continuous cooperation and follow-up" between the Regional Office and FAO headquarters and the impugned decision constitutes evidence of the Organization's "bad" attitude towards him.

He is claiming an award of 5 million United States dollars in compensation for: (1) the "psychological and financial" harm he suffered as a result of the Director-General's final decision; (2) the FAO's hindrance to his efforts to find a new job; (3) an accident of 13 March 1997; (4) the fact that he was "injured from work" as found in the doctor's report of March 1998; (5) the fact that subsequent to that accident the Organization failed to take account of Manual paragraph 323.221 regarding payments to the Group Life, Accident and Disability Insurance plan (GLADI); (6) medical expenses for treatment from 7 September 1997 to 19 August 1998 as well as the cost of travelling to and from hospital three times a week for one year; and (7) postage, fax, translation and typing costs.

C. In its reply the Organization contends that the complainant failed to comply with the Chief Medical Officer's request to undergo the required examination and was therefore not on recognised sick leave. He was therefore lawfully separated from service.

The FAO points out that, under Staff Rule 302.6216, it is the Chief Medical Officer who recommends, on the basis of the medical certificates submitted, whether sick leave should be granted. Moreover, according to Rule 302.6217 a staff member who is sick "may be required at any time ... to undergo examination by a medical practitioner named by the Director, Personnel Division". Its request that the complainant should be examined by a designated practitioner was therefore in line with the provisions of the Manual and established practice. By failing to provide evidence that he was medically unfit to travel the complainant forfeited any sick leave entitlements that he might otherwise have had. There was no indication on the medical certificate issued in Aswan on 7 September 1997 that the complainant was hospitalised or unfit to travel and none of the medical certificates that he subsequently submitted indicated that he was unable to undergo the examination for medical reasons.

The Organization adds that it made every reasonable effort to inform the complainant that it was necessary for him to be examined in Cairo. It explains that full separation procedures were still pending when the complainant's employment ended in September 1997, which is the reason why the examination in Cairo in March 1998 was treated as an exit medical examination.

The FAO says that although the complainant believes that his illness is service-incurred he has never submitted such a claim to the Organization and there is, therefore, no administrative decision to be reviewed. His claim on that score is therefore irreceivable.

D. In his rejoinder the complainant asks for a review of the date of his separation. He contends that it was not lawful for his employment to have ended on 30 September 1997. The six-month extension that he was granted should not have been calculated from 31 March 1997 because at that date he was also on sick leave. It should have run from 17 June 1997 - the day after that period of sick leave had ended - in line with Manual paragraph 323.512.

E. In its surrejoinder the FAO points out that its rules do not provide for further extension of a contract because sick leave has been taken during an extension period. Manual paragraph 323.512 provides for postponement of separation if a staff member is on "certified sick leave" on the actual date of separation. The complainant was not on sick leave then and was therefore not entitled to further extension. It points out that the six-month extension of his contract was granted, at the complainant's request, as a goodwill gesture on the part of the Organization.

## CONSIDERATIONS

1. The complainant was recruited as a driver at grade G.3 on 1 January 1992 at the FAO's Regional Office for the

Near East in Cairo. His one-year fixed-term appointment was renewed annually up to 31 December 1996 and was later extended to 31 March 1997, and then to 30 September 1997. The non-renewal of his contract was the subject matter of Judgment 1900.

2. On 28 August 1997 the complainant applied for and was granted five days' annual leave. On 7 September, while in Aswan, he submitted an application for sick leave from 7 September to 6 October 1997 together with a medical certificate issued in Aswan indicating that he should have thirty days' rest and then return for a check-up after one month. No residential address was given and there was no indication that he was unable to travel or that he was hospitalised.

3. By an e-mail of 22 September 1997 a medical officer at headquarters advised the Finance/Administration Officer at the Regional Office that the complainant should be requested to return to Cairo as soon as possible and that he would arrange an examination for him. On 29 September 1997 a member of staff went to the complainant's address in Cairo to ask his family to inform him of the medical officer's request. No response was received to this message.

4. On 1 October the complainant submitted another request for sick leave until 5 November 1997.

5. The Chief of the Management Support Unit wrote to the complainant on 26 October 1997 saying that sick leave from 7 September to 5 November 1997 could not be considered unless he returned to his duty station in Cairo to be examined by a United Nations doctor of the FAO's choice. He was requested to attend a full medical examination by the doctor named in the letter and to make an appointment with him within the next five days. The letter was handed to the complainant's wife on 27 October. The complainant did not respond, although on 29 October 1997 his doctor in Aswan wrote to the Organization acknowledging that he had no objection to cooperating with the Organization's doctor.

6. The complainant sent a succession of medical certificates covering the period up to 4 March 1998 each prescribing thirty days' rest. Some stated that he was to return for a check-up after one month. A report from the complainant's doctor, received by the Regional Office on 23 November 1997, said that the complainant was suffering from depression.

7. A personnel officer at the Regional Office wrote to the complainant on 9 December 1997 informing him that his medical certificates could not be taken into consideration unless he had a medical examination in Cairo. Several unsuccessful attempts were made to deliver the letter. On 28 December 1997 his family confirmed that the complainant had told them not to take delivery of anything from the FAO.

8. On 14 March 1998 he was finally examined in Cairo by a United Nations designated doctor. This examination was also treated as an exit medical examination under Manual paragraph 314.74. The designated doctor found him fit for work but not as a driver. He said he could have performed "any other office work not requiring special alertness".

9. Meanwhile the complainant started an internal appeal procedure by writing to the Director-General on 27 November 1997 to complain about the non-payment of his salary for October and November. The Director-General refused his appeal in a letter of 26 January 1998 and the complainant then appealed to the Appeals Committee.

10. In the context of this appeal the complainant submitted a further certificate dated 14 March 1998 stating that he had been hospitalised in Aswan and had not been medically fit to travel between 7 September 1997 and 3 March 1998.

11. In its report dated 6 July 1999 the Appeals Committee queried why the examination had not been conducted earlier in either Aswan or Cairo: indeed it felt that the complainant's medical status should have been verified in Aswan. It recommended that the exact medical status of the complainant should be determined as soon as possible and his "contractual status ... clarified".

12. By a letter dated 4 October 1999 the Director-General did not accept the recommendation and rejected the appeal. This is the decision impugned.

13. The complainant seeks 5 million United States dollars in compensation.

14. Manual paragraph 323.512 provides:

"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."

15. Staff Rule 302.6217 provides:

"Staff members may be required at any time to submit medical certificates as to their condition, or to undergo examination by a medical practitioner ..."

16. At the material time Manual paragraph 323.331 provided:

"Certified sick leave shall be granted subject to the approval of the Chief, AFPM (Medical Service), on the basis of the medical certificate."

17. It is clear that the complainant was never on certified sick leave because the Chief Medical Officer never approved it.

18. The onus is on a staff member who wishes to benefit from certified sick leave to ensure that any requirements of the Organization are complied with. It is not enough merely to send in an application with a medical certificate. Contact with the Organization must also be maintained. The complainant achieved nothing by remaining uncontactable (as far as the Organization was concerned) in Aswan.

19. The FAO was entitled to view with suspicion the certificate dated 14 March 1998, issued at appeal stage, to say that he had been hospitalised in Aswan and unable to travel between 7 September 1997 and 3 March 1998. If he was hospitalised and unable to travel those facts should have been communicated at the very beginning so that they could have been verified at the time.

20. Since the complainant was not on certified sick leave on the date of separation, Manual Paragraph 323.512 does not apply and accordingly there was no need to defer the separation.

21. The complaint therefore fails.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

Michel Gentot

Mella Carroll

Hildegard Rondón de Sansó

Catherine Comtet

