

THIRTY-SIXTH ORDINARY SESSION

In re LOPEZ-VALLARINO

Judgment No. 271

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Miss Maria Teresa Lopez-Vallarino on 19 April 1975 and brought into conformity with the Rules of Court on 12 May 1975, the FAO's reply of 21 August 1975, the complainant's rejoinder of 30 September 1975 and the FAO's surrejoinder of 10 December 1975;

Considering the applications to intervene lodged by: Miss Soo Lee, Mrs. Myrtha Poblete-de la Fuente;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.053 and FAO Staff Rules 302.40622(ii) (now paragraph 2(ii) of Appendix A to the Staff Rules), 302.4071 and 302.40743 (since repealed), 302.531, 302.7312, 302.7331 and 303.28;

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. The complainant, who is of Colombian nationality, first joined the staff of the FAO on 18 May 1951 on a temporary appointment. In March 1952 she was given a further temporary appointment which in September 1952 was converted into a permanent one. In March 1952 she resigned. Between October 1959 and June 1963 she was offered several temporary appointments. By letter of 24 June 1963 the Administration offered her an indefinite appointment, which she accepted. The offer was made in accordance with Staff Rule 302.40743, which relates to the non-local recruitment of General Service staff.

B. The Administration's letter stated that according to Staff Rule 302.40743 the complainant would have the right of repatriation to Colombia but no home leave entitlement. On 1 June 1969 several amendments were made in the Staff Rules. Staff Rules 302.4071 and 302.40743 were repealed and a new Staff Rule 302.40622 adopted. The latter provision conferred right to home leave on non-local officials in the General Service category in the following terms: "(ii) travel on home leave and on family visit ... shall be granted only to a point within the general area of the duty station, whatever be the nationality of the staff member". The "general area" of headquarters, the complainant's duty station, consist of Europe, the Near East and North Africa.

C. In a memorandum of 18 October 1971 the complainant asked the Administration for clarification concerning her home leave and repatriation entitlements. On 22 October 1971 she was informed, first, that the adoption of Staff Rule 302.40622(ii), though restrictive in that respect, did not affect her right to repatriation, which had been expressly recognised under the terms of her appointment in 1963; and, secondly, that, so that she could obtain reimbursement of the expenses of her travel on home leave, a point within the general area of headquarters would have to be chosen to determine the FAO's liability. By memorandum of 10 November 1971 she informed the Administration that she wished to have Karachi chosen as the point within the general area of headquarters to determine the FAO's liability for her home leave expenses. On 19 April 1972 the Administration answered that it could not regard Karachi as the point for determining the FAO's liability since Karachi did not lie on the direct route from Rome to the complainant's home country, Colombia. That decision was upheld in a memorandum addressed to her on 18 May 1972.

D. On 29 May 1972, together with five other staff members including the two interveners in the present case, the complainant appealed to the Director-General against the abovementioned decision. The Director-General dismissed the appeal on 12 June 1972 on the grounds that the point to which the FAO would pay home leave travel expenses should lie on the direct route between Rome and the home country. In October 1972 the complainant and the five other staff members in the same position lodged an appeal with the FAO Appeals Committee. A majority of the members of the Committee held that the FAO should bear the full cost of the complainant's travel to her home country, Colombia, and on 28 October 1974 made a recommendation to that effect to the Director-General.

By letter of 23 January 1975 the Director-General informed the complainant that he could not endorse that recommendation. That is the decision which the complainant now impugns. On 23 January 1975 the Director-General took a similar decision concerning the two interveners.

E. The complainant points out that according to Staff Regulation 301.053 "Eligible staff members shall be granted home leave once every two years." She believes that Staff Rule 302.40622(ii) (now paragraph 2(ii) of Appendix A) is at odds with Staff Regulation 301.053 and Staff Rule 302.531 in that it purports to limit the FAO's financial liability for the expenses of non-local General Service staff by reference to "a point within the general area of the duty station, whatever be the nationality of the staff member". In her view such a limitation is contrary to the spirit of the Staff Regulations inasmuch as the whole idea of home leave is that the FAO should bear the full cost of travel to the home country. Staff Rule 302.40622(ii) also makes for unequal treatment of staff members in the same situation, viz. non-local recruits.

F. While maintaining that she is entitled to full reimbursement of her home leave travel expenses, the complainant claims at least compensation for travel expenses to a notional point on the direct route to Colombia as distant from Rome as is Karachi. In her view the only logical meaning of Staff Rule 302.40622(ii) is that with Rome at the centre a circle is drawn of which the radius depends on "a point" chosen by the staff member within the "general area" of the duty station: any other interpretation would lead to absurd results and infringe the rule of equality of treatment. Her choice of Karachi - a city which according to certain FAO documents forms part of the Near East - is to be understood only in terms of distance and in her view is consonant with the letter and spirit of Staff Rule 302.40622(ii).

G the complainant asks the Tribunal to rescind the impugned decision of 23 January 1975, order the FAO to grant her full compensation for her travel expenses up to Cali, Colombia, on home leave as from the first date of entitlement and, consequently repay her the difference between the amount contributed so far by the FAO and the actual amount of her travel expenses; alternatively, order the FAO to contribute to her actual travel expenses on home leave from the first date of entitlement a sum equivalent to the amount of the fare by air (tourist class) between Rome and Karachi and, consequently, repay her the difference between the amount contributed so far by the FAO and the amount of such fare; order the FAO to pay her interest at 8 per cent a year on all sums due to her, such interest to run from 29 May 1972, the date of her appeal; and order the FAO to pay her 2,500 Swiss francs as costs.

H. The FAO points out that: (i) Staff Rule 302.40622(ii) is not incompatible with Staff Regulation 301.053 in that neither the latter nor any other provision stipulates that when a staff member is entitled to home leave the FAO must bear the total cost of his travel to and from the country where he spends his leave; (ii) consequently, when the Director-General adopted Staff Rule 302.40622(ii) in 1969, there was no breach of the terms of the complainant's appointment; (iii) the limitation of the FAO's liability in respect of staff members in the General Service category who are citizens of countries outside the general area of headquarters to repayment of expenses of travel to a point situated within that area is not contrary to the principle of equality of treatment in the complainant's case; and (iv) it appears from the foregoing that the complainant is not entitled to reimbursement of the cost of her travel on home leave to and from Cali in Colombia.

I. The FAO states that in interpreting and applying Staff Rule 302.40622(ii) it must be assumed that the geographical point to be taken into consideration to determine the FAO's financial liability should occur on the direct route between Rome and Colombia. The distance between Rome and Karachi is therefore utterly irrelevant to this case. In any case Karachi cannot be taken into account because it does not fall within the general area of headquarters as defined in Staff Rule 303.28, not being situated in the Near East. The fact that Pakistan is included in the Near East area solely for the purposes of participation in certain conferences or the provision of certain services by the field offices has nothing to do with matters relating to home leave.

J. The FAO accordingly asks the Tribunal to dismiss the claims for relief and the complaint.

K. Lastly, the FAO contends that the rights of the interveners under the Staff Regulations and Staff Rules are identical to those of the complainant and that for the same reasons their claims are unfounded.

CONSIDERATIONS:

1. The applications to intervene by Miss Lee and Mrs. Poblete-de la Fuente, which relate to the quashing of the

impugned decision are receivable.

2. Staff Regulation 301.053 reads: "Eligible staff members shall be granted home leave once in every two years." It is provided by Staff Regulation 301.000 that the Staff Regulations which follow it (e.g. 301.053) "represent the broad principle and personnel policy for the staffing and administration of the Organization" and that the Director-General "shall provide and enforce such Staff Rules consistent with these principles as he considers necessary". It is not disputed that it is within the power of the Director-General to determine by Staff Rules what categories of staff members are eligible under Staff Regulation 301.053. At the time of the complainant's appointment in 1963 the General service category to which she belonged had not been declared eligible. It was so declared in 1969 when Staff Rule 302.40622 provided that all non-local staff should be entitled to certain enumerated benefits which included "home leave and family visit travel". But the grant of this benefit is by this rule made subject to certain conditions, one of which is that the grant should extend "only to a point within the general area of the duty station". The result of this condition is that for staff who live outside the general area the grant covers a part only of the cost of the journey. The first issue between the complainant and the Organization is whether this condition is valid.

3. The words in Regulation 301.053 are "shall be granted home leave". They are not to be read literally; every staff member gets leave and can spend it at home if he likes. They are an abbreviated way of saying that the Organization shall pay the reasonable expenses of the journey to and from the home. This means the reasonable expenses for the whole journey and not just a part of it. The Director-General may settle the details of the way in which the Regulation is to be applied - he may, for example, rule that reasonable expenses do not cover first-class travel or an indirect route - but he may not alter the sense of it.

4. An interpretation of the Regulation which enables the Director-General to rule that only a part of the journey is to be paid for is not only contrary to the language used but is also inconsistent with the principle of the Regulation. It is agreed that the object of the Regulation is not primarily to make a monetary concession to a staff member. It is to the advantage of the Organization as an international body that staff members should maintain their links with their home countries and the principle of home leave has from the earliest times been justified on this ground. If the Organization pays for only a part of the journey, the principle of home leave will depend on the willingness and ability of the staff member to pay for the rest himself. A rule which applies only to the longer journeys may result in links with the more distant countries being lost.

5. Moreover, if the Director-General has power to rule that only a proportion of the cost of the whole journey need be paid, there can be no reason why he should not in all cases fix the proportion at whatever percentage he thinks the Organization can afford. This indeed appears to be the result for which the Organization is expressly arguing. It argues in paragraph 23 of its reply that "there are circumstances in which the benefit to the Organization that may be derived from the continued contact of its staff members with their home countries, may be more than offset by the relatively high cost to the Organization of home leave travel". Again in paragraph 8 of its observations on the rejoinder the Organization argues that "in assessing the benefits that the Organization may derive from enabling its staff to maintain links with their home countries, the cost factor cannot be overlooked". These, however, are questions of policy to be solved before the Regulation is framed so that the solution can be embodied in the Regulation itself. Once framed, the Regulation is conclusive on questions of broad principle and personnel policy. A discretion in the Director-General to apply it only when he is satisfied that the Organization is getting its money's worth cannot be derived from its terms.

6. The Organization argues also that the power to impose conditions is part of the Director-General's power to determine eligibility. This latter power, however, must be exercised with due regard to the object of the Staff Regulation as stated above. Thus it is permissible for the Director-General to determine that staff members whose home is in the country of their duty station are not eligible, since the visit would not then serve the purpose of maintaining international links. But once it is accepted that, as the Tribunal has held, on its proper construction the Regulation provides that eligible members shall be paid the whole cost, it is not permissible for the Director-General to say that in certain circumstances only those members will be eligible who are prepared to pay part of the cost themselves.

7. Finally the Organization relies upon a procedural point. When the complainant first put forward her claim she assumed the validity of the condition in Rule 302.40622. What she challenged was the way in which the Organization interpreted the condition; the relief she claimed was a larger reimbursement of her travelling expenses than the Organization's interpretation permitted. It was the Appeals Committee which itself questioned the validity of the condition and which on 22 October 1974 by a majority recommended to the Director-General that the full

home leave entitlement should be granted to the complainant. On 23 January 1975 the Director-General rejected this recommendation and his decision to do so is the decision impugned.

8. In her complaint and in her statement of claim filed under it the complainant sought first an order for full reimbursement and in the alternative the larger contribution which she had originally claimed. In its reply the Organization dealt in separate sections with each alternative. But later in its observations upon the rejoinder the Organization submitted that the complainant was bound by her original claim and could not rely upon a claim not submitted to the Appeals Committee. This argument is unsound. Since the Appeals Committee took the point itself, it was unnecessary that, as the Organization contends, the point should be formally submitted to it by the complainant. In his decision of 23 January 1975 the Director-General considered the Committee's recommendation and decided that the complainant should be given no further reimbursement either up to the full amount or in part. This is the decision from which the complainant appeals to the Tribunal.

But the complainant is also asking that there should be added to the reimbursement interest from 29 May 1972. Since the question of full reimbursement did not arise for consideration by the Director-General until after the report of the Appeals Committee the Tribunal will order that interest should run only from the day on which that report was rejected.

DECISION:

For the above reasons, the Tribunal:

(i) quashes the decision of the Director-General of 25 January 1975;

(ii) declares that the complainant should be reimbursed in full for the expenses of her journey to and from her home in Colombia in February 1972 and orders the Organization to pay the balance outstanding with interest thereon at 8 per cent per annum to run from 25 January 1975 until the date of payment;

(iii) orders the Organization to pay to the complainant 2,500 Swiss francs for legal expenses; and

(iv) orders that the claims of the interveners be remitted to the Director-General for him to determine what sums, if any, are in the light of this judgment due to them in respect of home leave entitlement, and with liberty to the interveners, if they do not accept such determination, to apply to the Tribunal, giving full particulars of the sums claimed and of the facts relied on in support of the claim.

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 12 April 1976.

M. Letourneur
André Grisel
Devlin

Roland Morellet