THIRTY-NINTH ORDINARY SESSION

***In re* SMARGIASSI-STEINMAN**

Judgment No. 319

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Francesca Smargiassi-Steinman on 27 July 1976, the FAO's reply of 24 September, the complainant's rejoinder of 3 December and the FAO's surrejoinder of 12 January 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 301.012, 301.043, 302.4041, 302.40611(i), 302.40621, 302.4063 (which came into force in 1972), 302.4073 (in free in 1965), 302.4081 and 302.4082 and FAO Manual section 311, particularly sections 311.112, 311.113 and 311.62;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant joined the staff of the FAO as a stenographer at grade G.3, step VI, on 16 July 1962. At the time she was unmarried and, being an Italian citizen, was given the status of a "local" staff member. In 1966 she married a United States citizen and by the marriage she has two children, both of whom have United States nationality. On 25 June 1974 she herself became a United States citizen, not by marriage, but by naturalisation. Having thereby lost her Italian nationality, she now has only one nationality, that of the United States.

B. By a minute of 2 October 1974 she told Mr. Thomasson, the Director of the Personnel Division, that on becoming a United States citizen she had informed the Personnel Division of the fact but had received no reply. She therefore formally applied for a change in her status from "local" to "non-local". On 22 January 1975 she was told that under Staff Rule 302.40611(i) she had been given local status on appointment and her later change of nationality made no difference. She challenged that view in a minute of 29 January to the Director of the Personnel Division. On 28 February Mr. Ilomechina, a personnel officer, confirmed that she was not entitled to have her status changed from local to non-local. By minute of 6 March she appealed to the Director-General and on 15 April he replied that there were no grounds for reviewing the decision notified to her by the Personnel Division.

C. The complainant appealed to the FAO Appeals Committee on 21 April 1975. In its report of 20 February 1976 the Committee observed that the FAO had taken a purely legalistic and restrictive approach and ought to have resolved in her favour any doubt as to whether her status should be changed. The Committee nevertheless found no misapplication of the rules in force and recommended dismissing her appeal. By letter of 24 May the Director-General told her that he disallowed her appeal, and that is the decision she impugns.

D. The complainant asks the Tribunal to quash the Director-General's decision and to rule that the FAO should recognise her as a United States citizen inasmuch as that is her sole nationality; that her status should be changed from local to non-local from 25 June 1974 because her nationality is not that of the country of her duty station; and that she should be granted all the benefits (home leave, education grant, non-resident's allowance and so on) enjoyed by non-local staff.

E. The FAO contends that the complainant is not entitled to have her status changed from local to non-local. The decision to give her local status on appointment was correct and she fell within the definition of local staff in Staff Rule 302.40611(i) even after the change in her nationality because her status was still governed by the determination made on appointment. There is no rule in the FAO providing for a change from local to non-local status on a change of nationality. The FAO fully realised that staff members with local status might voluntarily or involuntarily acquire some other nationality in the course of service, and so the absence of any provision for a change from local to non-local status was a deliberate omission and not a lacuna. According to Staff Rule 302.4063 voluntary acquisition of the nationality of the country of the duty station entails a change from non-local to local status, but that rule lays no legal duty on the Organization to change from local to non-local the status of a staff member who surrenders the nationality of the country of the duty station and acquires another. Under Manual

section 311.112 a change of nationality or other facts may give rise to a change of status, but that provision is "informative" rather than "normative" and, in the light of Manual section 311.62, cannot be construed as entitling the complainant to non-local status. Neither in the light of the way in which the rules are applied to other staff members nor on grounds of sex is the refusal to change her local status discriminatory. For the foregoing reasons the FAO asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

1. The complainant joined the Organization in 1962 as a stenographer in the General Service category. She was then an Italian national and her duty station was in Rome. Accordingly she was classed as a "local staff member" under Staff Rule 302.40611, being "on the effective day of appointment a national of the country of the duty station". On 25 June 1974 she became a citizen of the United States and thereafter requested a change of status from local to non-local. This was refused on the ground that under the rule it was her nationality "on the effective date of appointment" that determined her status. This is undoubtedly correct unless, as the complainant contends, the rule is modified or rendered inapplicable by other conflicting rules.

2. The complainant relies in the first place on Staff Rule 302.4081, which says that the Organization shall not recognise more than one nationality for each staff member. This rule, as is shown by its context, is concerned with the problem of dual nationality. It means that a member shall be treated as having one nationality only at any given time. It does not mean that she may not be treated as having had a different nationality at some other time. The fact that the complainant must be recognized as a United States citizen in 1974 does not mean that she must be deemed to have been one in 1962.

3. The complainant cites in the second place Manual section 311.112 and contends that Staff Rule 302.4081 should be "interpreted" or "reconsidered" in the light of it. Section 311 is the section dealing with "change in status". It begins with an "Introduction" and 311.112 is the second of three "general" paragraphs. It says that a staff member's status, as established at the time of appointment, may be subsequently changed. In its context it is an introductory provision or recital to be distinguished from an operative rule; it is informative and not normative. This is shown also by its language. It neither itself requires anything to be done nor confers a power of command on any person. It is merely pointing out by way of introduction to the subject that a change of status may be caused by a number of factors which it specifics and of which a change of nationality is one. It does not mean that every rule dealing with a change of nationality has to be interpreted, even if contrary to its express words, to effect a change of status.

4. The complainant cites in the third place Staff Rule 302.4063, which provides that the status of a staff member in the General Service category will not be changed from non-local to local, "except if he voluntarily acquires the nationality of the duty station". Putting this side by side with Staff Rule 302.40611 the complainant points out that, while change of nationality is made effective to bring a staff member into the local status, it is not effective to take a member out of it. She submits that this is discriminatory.

In the opinion of the Tribunal the two rules are not at variance but have a common purpose. Non-local or international status carries with it certain benefits appropriate to the fact that the member has left his own country to live, presumably temporarily, in another. Such benefits are non-resident's allowance, education grants, home leave and travel allowances, etc. The object of the two rules is the same, namely, to exclude from the benefits two separate categories of members who are for different reasons thought not to be truly entitled to them. One category consists of the non-locals who adopt the nationality of the duty station, thereby, as it were, turning themselves into locals; these officials may in general be regarded as having broken their links with their country of former nationality and changed their way of living, and so as being no longer in need of the special benefits. The other category consists of locals who give up the nationality of the duty station; they do not thereby change their way of living and so are not thought to qualify for benefits framed for those who are moving from one country to another.

5. Accordingly there is not in the opinion of the Tribunal any conflict between Staff Rule 302.40611 and any other rule and therefore no reason for not giving effect to the clear words in 302.40611.

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 21 November 1977.

M. Letourneur
André Grisel
Devlin

Roland Morellet

Updated by PFR. Approved by CC. Last update: 7 July 2000.