

FORTY-THIRD ORDINARY SESSION

***In re* GUISSET**

Judgment No. 396

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mr. Jean-Claude Guisset on 12 February 1979, the FAO's reply of 21 March, the complainant's rejoinder of 8 June, the FAO's surrejoinder of 3 August 1979, the complainant's additional statement of 12 September and the FAO's observations of 5 October 1979.

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Regulations 301.012, 301.0913, 301.102 and 301.103;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

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

A. The Director-General of the FAO, soon after being appointed, had the complainant seconded from the French diplomatic service on 18 January 1976 to a grade D-2 post as his own special assistant, answerable solely and directly to himself. The appointment was for five years, including one year's probation. In July 1976 the Director-General saw the complainant and told him that his appointment would not be confirmed at the end of the probation period, that in the meantime his main duties would be taken over by other senior officials and that he would cease to be responsible to the Director-General himself, and would be transferred to the Office of the Director-General. The decision was confirmed in writing on 22 July 1976. The complainant asked for a written statement of the cause of the decision in accordance with Staff Regulation 301.103. On 30 July he was told that the Regulation, though it did recognise an official's right to explanations, applied only to disciplinary measures. The decision had been taken under Staff Regulation 301.0913, which states that the Director-General may at any time terminate the appointment of a staff member serving a probationary period if, in his opinion, such action would be in the Organization's interests. The complainant was transferred to the Office of the Director-General under Staff Regulation 301.012, which authorises the Director-General to assign staff members to "any of the activities or offices of the Organization". Also on 30 July, however, the decision not to confirm the complainant's appointment was converted into a decision to dismiss him with effect from 3 August and pay him compensation in lieu of one month's notice. On 2 August he appealed to the Appeals Committee. In a unanimous report dated 26 October 1978 the Appeals Committee held that both decisions were lawful and that the appeal should be dismissed. On 16 November 1978 the Director-General informed the complainant that his appeal had been dismissed.

B. The complainant contends that he was the victim of plotting by the head of the Office of the Director-General, who wanted to get rid of him by undermining by means of petty incidents the Director-General's personal confidence in him. In law the decision was tainted with abuse of authority: he suffered a disciplinary sanction, but the procedure for imposing it had not been followed. He asks the Tribunal to declare unlawful the decision of 22 July 1976 not to confirm his appointment and that of 30 July 1976 to dismiss him and to order the FAO to pay him 20,000 Swiss francs as damages for the moral prejudice he has suffered and 10,000 Swiss francs as costs.

C. The FAO rejects the complainant's account of the facts. It explains that the Director-General was dissatisfied with the complainant's performance and, in particular, with the speeches the complainant was drafting for him. The purpose of the decision of 22 July 1976 was to give the complainant the earliest possible warning that the Director-General could not keep him on as special assistant and so let him have ample time to make other arrangements. Unfortunately the complainant refused the temporary change in his position, though it was in his own interest, and so the Director-General had to terminate his appointment forthwith. In doing so he correctly applied Staff Regulation 301.0915 - relating to dismissal during probation - and his decision was in no way disciplinary. The complainant has therefore suffered neither moral nor material prejudice and his complaint should be dismissed.

D. In his rejoinder the complainant points out that from 22 January to 5 July 1976 the Director-General delivered eleven speeches which he had drafted. The reason given by the FAO to justify its action, namely the complainant's professional shortcomings, therefore makes no sense and is pure invention. In the first few months the Director-General often complimented the complainant on his work. His sudden hostility towards the complainant was provoked by the plotting of the head of his Office. The complainant believes that he has suffered persecution of the kind which the Tribunal censured in Judgments Nos. 367 (in re Sita Ram) and 361 (in re Schofield (No. 1)), in which it affirmed the principle that an organisation is under a duty to respect the dignity and reputation of its employees.

E. In its surrejoinder the FAO says that it has not imputed the impugned decision to the Director-General's dissatisfaction with the complainant's performance. The real reason for the decision was that, despite the bonds of friendship between the complainant and the Director-General, they could no longer work together. It points out, however, that one important speech drafted by the complainant could not be used by the Director-General and a new speech, delivered on 12 July 1979, had to be hastily prepared. The FAO dismisses as utterly unfounded the complainant's allegations that he was the victim of plotting: the Director-General was quite capable of making sure that he was not being misled. Moreover, after an impartial inquiry into the case the Appeals Committee came to the same conclusion. According to the case law to which the complainant refers, the Tribunal will award damages for moral prejudice only in exceptional cases in which the staff member has suffered serious wrong damaging to his career. The complainant was on probation, has since been fully reinstated as a public servant, and is therefore in a quite different position.

F. In a further memorandum the complainant points out that the important speech mentioned in the FAO's surrejoinder was drafted in English and therefore not by him. By omitting to answer his allegations of scheming by the head of the Director-General's office the FAO has conceded that they are true. Moreover, the Director-General interfered with the composition of the Appeals Committee so as to get from it the recommendation he wanted. In its observations in reply the FAO admits that the speech was drafted by someone else, but says that that goes to show that the Director-General had lost faith in the complainant: why else should he have taken away from the complainant such an important task and one which formed part of his duties? The FAO observes that in its reply it has already refuted the allegations of "scheming", which are "a pure figment of the complainant's imagination and pen". It provides evidence to refute his allegations about the composition of the Appeals Committee and observes that, being unable to continue to work with the complainant, the Director-General made proper use of his authority in ending the complainant's appointment during the probationary period.

CONSIDERATIONS:

As to the termination of the complainants appointment:

1. The complainant joined the staff of the FAO on 18 January 1976 as the Director-General's special assistant at grade D-2-II. His appointment was for five years, the first year being a probation period which was to expire on 17 January 1977.

The impugned decision to terminate the complainant's appointment on 3 August 1976, i.e. during the probation period, was based on Staff Regulation 301.0913, which reads: "In the case of staff members serving a probationary period or holding any other type of appointment not referred to in Staff Regulations 301.091 and 301.0912, the Director-General may at any time terminate the appointment if, in his opinion, such action would be in the interests of the Organization." It is the Director-General who defines the interests of the Organization, referred to in the Regulation, and so he enjoys discretionary authority. Hence the Tribunal may quash a decision taken under the Regulation only if it was taken without authority, or violated a rule of form or of procedure, or was based on a mistake of fact or of law, or left essential facts out of account, or was tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

2. The complainant alleges that the decision to terminate his appointment was a covert disciplinary measure and takes the Director-General to task for not following the procedure prescribed by the Staff Regulations for imposing such a sanction. In other words, he is alleging abuse of authority and a consequent procedural irregularity.

Those arguments will succeed only if the Director-General, while purporting to apply Staff Regulation 301.0913, took account of unsatisfactory conduct or serious misconduct by the complainant which affords grounds for imposing a disciplinary measure under Staff Regulation 301.102. In fact he did not. There is no document in the

dossier which makes or even implies any charge of unsatisfactory conduct. It is true that in its memoranda the FAO expresses disapproval of the draft speeches which the complainant had to prepare. It also appears from those memoranda that the complainant, fairly or unfairly, had aroused other criticisms. But the shortcomings imputed to him clearly bear no taint of misconduct such as would have warranted disciplinary action.

3. The question which accordingly arises is whether the Director-General correctly applied Staff Regulation 301.0913, from which he derives his authority to terminate the appointment of a probationer at any time in the Organization's interests.

The FAO states that the impugned decision was taken mainly, if not solely, because of incompatibility of temperament between the complainant and the Director-General. It is true that misunderstandings between a probationer and his supervisor do not necessarily justify instant dismissal. As a rule, before a staff member is dismissed thought should be given to transferring him to some other post on trial, especially if he is junior in rank. In the present case, however, there was no question of transferring the complainant. He had been appointed as the Director-General's special assistant because of the long friendship between them. There was no reason to keep him on the staff except in the post to which he had been appointed. Moreover, he was able to perform his duties and serve the Organization's interests only as long as he was on good terms with the Director-General. It appears from the dossier, however, that whereas the complainant and the Director-General had formerly had confidence in each other, after working together for several months the Director-General came to distrust his subordinate. Thus the complainant was no longer able to give the FAO the service it expected of him. Exercising its limited power of review, therefore, the Tribunal will conclude that in terminating the complainant's appointment the Director-General acted in the Organization's interests and committed no breach of the provision on which he based his decision.

4. There is no need to consider whether the Director-General was wholly responsible for the incompatibility to which the FAO alludes. The dossier reveals very little about the reasons for the misunderstanding and the Tribunal does not believe that oral proceedings would shed any more light on the matter. The complainant does say that the Director-General was influenced by the head of his Office and indulged a desire for revenge. In all likelihood, however, the Director-General formed his own opinion of the complainant, who was one of his closest subordinates, and did not let himself be influenced by anyone else. As for the complainant's allegation that the Director-General was hostile, the Director-General may just as well have merely felt disappointed. Although most of the criticisms which the complainant says were levelled at him arose out of minor incidents, others do appear more serious and cannot be safely dismissed out of hand. In any event, on the strength of the evidence before it the Tribunal cannot hold the Director-General alone responsible for the strained feelings between him and the complainant. Even if the allegation of an attempt by the Director-General to have the complaint withdrawn were established and there were grounds for criticism, it would still not be proved in casu that the Director-General was alone responsible for the strained feelings.

As to the claim for damages:

5. Under any contract of appointment the Organization, even in the absence of express provision, is bound to respect an official's dignity and reputation - in other words to beware or putting him needlessly in a difficult personal position. If the Organization fails in that duty it may be ordered to pay compensation even if there is no decision to be set aside. Compensation will be awarded, however, only for serious wrong likely to prove damaging to a staff member's career.

6. The circumstances in which the complainant's appointment was terminated do not warrant payment of the damages which he claims. There is no need to consider whether the decision was damaging to his dignity or reputation, although it is not quite certain that it was not. All that need be said is that it did not damage his professional position.

It is true that in his rejoinder the complainant alleges that his career has been "seriously retarded". Obviously he is not referring to his career in the FAO, in which he was to hold a special post for a limited period. He can therefore be referring only to his career in the diplomatic service of his own country. Even in that sense, however, his allegation is not borne out. For one thing, he admits that after he left the FAO he was reinstated in the French Ministry of Foreign Affairs. For another, he himself says that had he not joined the staff of the FAO he would have been appointed First Counsellor in the French Embassy in Poland on 11 January 1976. Had he been so appointed, it is highly unlikely that he would have been promoted to Ambassador much earlier than the date on which he

actually was, just over a year after 3 August 1976.

As to costs:

7. Since the complainant's main claims are dismissed, he is not entitled to award of the costs which he claims.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy