Registry's translation, the French text alone being authoritative.

FIFTY-THIRD ORDINARY SESSION

In re LOROCH (No. 2)

Judgment No. 620

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Kim Joseph Loroch on 4 July 1983, the FAO's reply of 29 September, the complainant's rejoinder of 19 December 1983 and the FAO's surrejoinder of 30 January 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 302.907 and 303.131 and FAO Manual provisions 342.213, 342.71 and 72, and 343.121;

Having examined the written evidence and considering the oral proceedings suggested by the complainant to be unnecessary;

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

A. The complainant, a United States citizen, served in the FAO as Chief of the Transport Branch of the World Food Programme at grade P.5 from 1969 to 1974. He appealed against the termination of hits appointment in a complaint which the Tribunal dismissed in Judgment No. 297. On 30 September 1974 he wrote saying he had contracted angina pectoris because of stress at work and claiming compensation for service-incurred illness. On 8 September 1976 the Secretary of the Advisory Committee on Compensation Claims, to which his case had been referred, informed him that the Director-General rejected his claim. On 1 October 1976 he asked that a medical board be convened to examine the medical aspects of his claim under Manual provision 342.72 and asked for a copy of the Committee's report. Eventually the board was set up in 1980: it consisted of three New York doctors. On the strength of the board's report the Advisory Committee, on 25 February 1981, recommended upholding the original decision. The Director-General did so. On 28 September 1981 the complainant lodged an appeal with the Director-General, which was also rejected, on 16 November. In an appeal to the Appeals Committee he again raised the matter of his termination in 1974 and challenged the Director-General's decision on his medical claim. In its undated report the Committee recommended rejecting the claims, and the Director-General did so in a letter of 8 April 1983 to the complainant, the impugned decision.

B. The complainant alleges breach of Manual provision 343.121, which he interprets as requiring the Medical Service to hold regular medical examinations of staff members. The FAO gave him only two, one on appointment and one on termination; more frequent cheek-ups would have made for earlier detection of his illness. He alleges breach of due process in the medical board proceedings: the board did not even meet to discuss his case. It did not see him. Its findings are therefore invalid. Besides, they are unfounded: emotional

stress such as he suffered at work in the FAO is a common factor or even the prime cause of heart ailments, and proper inquiry would have confirmed it in his case. The consideration of his ease by the Advisory Committee on Compensation Claims was skimped and ill-informed. He received its 1981 report, but not its 1976 one, of which he demands again the disclosure. The FAO was to blame for shameful and inhuman tactics. The Director-General's decision of 16 November 1981 on his appeal of 28 September came after more than the thirty days prescribed in Staff Rule 303.131. The whole procedure and its outcome were a travesty of justice. He discusses matters arising out of his first complaint, expresses disagreement with Judgment No. 297 and seeks review on various grounds. He has been the victim, he alleges, of the animosity of a dictatorial supervisor. To bear this out he seeks disclosure of his supervisor's reply to a minute of 11 July 1974 from Personnel inquiring about his reassignment. He asks the Tribunal to allow his medical claim and either review Judgment No. 297 or support his "pending approach to the FAO Council" to seek an advisory opinion from the International Court of Justice.

C. In its reply the FAO invites the Tribunal to reject the complaint in its entirety. It observes that none of the

complainant's allegations affords grounds for review of Judgment No. 297 and that his application for review should be rejected under the doctrine of res judicata. His request for the Tribunal's support in having his case referred to the International Court is irreceivable: according to the Statute of the Tribunal this is a matter entirely within the discretion of the FAO Council. His medical claim is devoid of merit. He has failed to produce evidence of any causal link between his illness and his service with the FAO which would satisfy the criteria in Manual provision 342.213[(1)] . He was himself partly to blame for the delay since he gave a wrong address for his nominee on the medical board. The board considered his case carefully and objectively and there was no irregularity in its proceedings. There are no specific rules in Manual provisions 342.71 and 72 for such a board to abide by, and in particular none requiring its members to meet or to examine the claimant. They consulted each other by telephone, as is customary in New York. They had complete records of his case history and agreed that, the medical diagnosis being clear, his attendance was unnecessary. One of them -- the member appointed by the FAO's nominee and the complainant's -- is an authority on heart diseases and declared that stress in the office was a part of life and as such gave no grounds for compensation. Nor has the complainant produced any new evidence to warrant reviewing the medical aspects of his case. The periodic check-ups provided for in 343.121 are, as the wording makes plain, not an obligation on the Organization, and in any event whether they should have been carried out has no bearing on the nature of the complainant's illness.

D. In his rejoinder the complainant develops his submissions about the need for review of the Tribunal's earlier judgment and referral to the International Court, and about the delays in hearing his medical claim which were, in his view, wholly the FAO's fault and needlessly subjected him to years of anxiety. The obvious intention of 343.121 is that regular check-ups should be compulsory. As required by 342.213, his illness was "directly due to [his] presence ... in an area involving special hazards to his health", on account of stress at work. The records submitted to the medical board were incomplete and since the members merely consulted each other by telephone they cannot have given his case proper study. It is widely accepted by up-to-date medical opinion that stress of the kind he suffered does cause heart disease.

E. In its surrejoinder the FAO submits that the rejoinder either merely repeats arguments in the complaint, or fails to answer arguments in the reply, or else misses the point altogether. It enlarges on some of its pleas and again invites the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The state of the complainant's health

1. The complainant was employed by the FAO from 11 October 1969 to 10 October 1974 as Chief of the Transport Branch of the World Food Programme. He had a heart attack in March 1974 and has since suffered from angina pectoris. He blames the state of his health on his conditions of work at the FAO and seeks compensation.

2. According to Manual provision 343.121 FAO officials are subject to regular medical examination, under the age of 45 every other year, at or over that age every year. At or over the age of 55 they may ask for an examination every six months.

The complainant was over 45 when he joined the FAO but he had only two examinations during his appointment, one at the beginning and one at the end. He submits that had he been examined every year as 343.121 requires the risk of a heart attack might have been detected and avoided. The FAO replies that 343.121 is merely informative and lays no obligation on it; if he wanted an examination he need only have asked for one.

The FAO's construction of the provision is wrong. As a rule every provision of the Staff Regulations, Staff Rules and Manual is intended to be put into effect and is binding on the Organization. The only exception is a provision which either is stated not to be binding or by implication is not. There is no reason to suppose that the FAO was free to disregard 343.121. In fact, in giving officials of the age of 55 or more a right to an examination every six months the rule implies that the FAO is under a duty to have staff in other age groups examined. Such indeed was the meaning given to the provision shortly after the complainant left the Organization.

It is not of course proven that had the complainant been examined regularly between 1969 and 1974 his illness would have been prevented: there is no proof of any causal link between the breach of 343.121 and the state of his health. Moreover with the lapse of time it is unlikely that expert inquiry could resolve the matter one way or the other now. But that does not mean the complainant's claim must be dismissed entirely. Had the FAO complied with

343.121 he would have had an opportunity to take precautions against an illness which has impaired his work capacity, if not prevented him from working altogether. The Organization's breach of its duty has deprived him of that opportunity and he is therefore entitled to damages. The award cannot be the full amount which would have been due had the angina pectoris been attributable beyond peradventure to the performance of official duties. But the FAO is liable in damages for injury the complainant may have suffered.

3. The internal proceedings began on 30 September 1974, the date on which the complainant informed the FAO of his illness, and ended on 8 April 1983, the date of the impugned decision. The Director-General's original decision was not taken until 8 September 1976. Two years passed before the medical experts delivered their findings. And again time passed before the Advisory Committee on Compensation Claims and the Appeals Committee made recommendations.

This is no ordinary lapse of time. The Organization pleads in excuse what it regards as shortcomings on the complainant's side: the giving of a wrong address, the replacement of one expert by another, and so on. But even if misunderstandings did occur, they accounted for only a few weeks' or at most a few months' delay. The delay was largely the FAO's own fault.

That is not, however, a decisive point since there is no evidence to suggest that the medical experts' findings would, if delivered earlier, have been any different. The FAO's dilatoriness therefore in no way strengthens the complainant's case.

4. The Tribunal may not substitute its own views for those of the experts. It will not entertain the complainant's plea that their findings were superficial, illogical or at variance with up-to-date medical opinion. The material issue is whether correct procedure was observed in consulting them.

The complainant objects that the experts neither saw him nor sought his comments. The objection fails. In the particular circumstances of his case their approach was understandable. First, to examine him in person would have given them no information beyond what they could infer from the evidence already at their disposal, including eight electrocardiograms. Secondly, they were aware of the complainant's grievances about his working conditions. Thirdly, his own nominee thought it unnecessary for him to appear in person.

The complainant submits that the experts ought to have consulted each other, not just in writing and by telephone, but by meeting together. The argument is a sound one. The arrangements they made were indeed open to criticism. Whatever the FAO may say, traffic congestion in New York was not a valid reason for their not meeting to discuss a case which deserved more respectful consideration than they gave it. There is no certainty that their views would have been any different had they held a meeting. But it is possible that they would, and the complainant is right to advance the plea in support of his claim for damages.

5. In the light of the foregoing the Tribunal sets ex aequo et bono at 20,000 United States dollars the amount of damages to be paid to the complainant.

Judgment No. 297

6. By Judgment No. 297, delivered on 6 June 1977, the Tribunal dismissed a complaint in which the complainant sought, among other things, the quashing of a decision not to extend his appointment beyond 10 October 1974.

7. The complainant now applies for review of Judgment No. 297. He states the claim as an alternative, presumably in case his claims relating to the state of his health should fail. Since they are in part allowed, the Tribunal perhaps need not rule on the application, but in any event it is clearly devoid of merit.

The Tribunal's judgments have the force of res judicata and may not ordinarily be challenged. But in exceptional cases they are subject to review on such grounds as failure to take account of essential facts, a material error involving no value judgment, failure to rule on a claim, or the discovery of an essential fact the parties were unable to rely on in the original proceedings.

The complainant contends that the proceedings should have been suspended because his counsel died one month before Judgment No. 297 was delivered. He submits that the Tribunal misconstrued a provision of the FAO Manual, omitted to take account of a recommendation by the Appeals Committee, misappraised evidence, and so on. Whether such submissions are well-founded is immaterial: they fail because they are not admissible pleas for

review.

8. Subsidiarily, the complainant invites the Tribunal to support his request to the FAO Council for an advisory opinion from the International Court of Justice. According to Article II of its Statute the Tribunal may hear complaints alleging non-observance of the official's terms of appointment or of the Staff Regulations. Having only such competence as is conferred upon it, it may not entertain matters out with the ambit of that article. It is therefore not competent to invite the FAO Council to address the International Court of Justice.

Disclosure of evidence

9. On several occasions the complainant has applied for disclosure of the first report of the Advisory Committee on Compensation Claims and of a minute by his former first-level supervisor. The items do not constitute evidence of a kind which will support the claims in his complaint or prove any causal link between the performance of his duties and the state of his health. The application is dismissed.

DECISION

For the above reasons,

1. The FAO shall pay the complainant damages amounting to 20,000 United States dollars.

2. It shall pay him $2,000 in costs.

3. The other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1984.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

1. "illness of a staff member is attributable to the performance of official duties when it: (1) resulted as a natural incident of performing official duties; or (ii) was directly due to the presence of the staff member, in accordance with an assignment by the Organization, in an area involving special hazards to his health ... and occurred as a result of such hazards".

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