

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

FIFTY-SIXTH ORDINARY SESSION

In re CERRETO-ESPOSITO

Judgment No. 677

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs Maria Cerreto-Esposito on 27 November 1984, the FAO's reply of 18 February 1985, the complainant's rejoinder of 25 March and the FAO's surrejoinder of 9 May 1985;

Considering the application to intervene filed by Mrs. Brenda Anne van Eeden-Curina on 16 April 1985 and the FAO's observations thereon of 13 May 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written evidence, 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 FAO on 25 November 1970 under a short-term appointment. This was renewed several times and on 1 November 1971 she was granted a fixed-term appointment which on 1 August 1974 was converted into a continuing one. When she joined the staff she was granted local status on the grounds that she was Italian in origin. On 7 October 1971 she claimed non-local status, but her claim was rejected on 22 October. A further claim which she made in 1974 was also refused. On 29 July 1980 the Non-Local Staff Association took up her case, but to no avail. She was an intervener in Mrs. Clegg-Bernardi's complaint, on which the Tribunal ruled in Judgment 505. On 6 July 1982 she submitted an appeal to the Director-General asking that she benefit under the Tribunal's ruling in Judgment 506 (in re Hoefnagels), but the Director-General rejected the appeal on 23 August. On 2 November she again wrote to the Director-General and appealed to the Appeals Committee on 10 March 1983. Her appeal was rejected on 24 September 1984, and that is the decision she now impugns.

B. The complainant maintains that since the Appeals Committee declared her internal appeal receivable so too is her complaint. She cites other cases in which the FAO went into the merits without questioning their receivability.

Turning to the merits, she observes that at the time of her appointment the criterion of status was nationality. At the time she held Australian citizenship, and she was treated as Italian only so as to facilitate her recruitment. On obtaining a fixed-term appointment in 1971 she ought to have been given non-local status under the Staff Rules and on the strength of her Australian citizenship. She asks that she be put on a par with Miss Hoefnagels and Mrs. El Kharboutly, other staff members who do have non-local status.

The complainant asks that the FAO apply to her the rules in force at the date at which she obtained a fixed-term appointment, viz. 1 November 1971, and that she be granted from that date non-local status and the incidental benefits. She also seeks an award of 2,200 United States dollars to cover costs.

C. The FAO submits in its reply that the complainant failed to follow correctly the internal appeal procedure, as stipulated in Article VII(1) of the Statute of the Tribunal. She filed her internal appeal on 10 March 1983, nearly twelve years after the decision, failed to respect the time limits, and tried to have her case reviewed on the basis of facts which had no bearing on her position in law. In 1971, when her claim was turned down, she failed to make any internal appeal. Subsequent decisions merely confirmed the decision taken in 1971 and set off no new time limit. In the other cases she cites the nationality of the officials was not in question as it is in her own. Furthermore, their legal position and in particular that of Miss Hoefnagels and Mrs. El Kharboutly was different.

The FAO invites the Tribunal to dismiss the complaint as irreceivable and subsidiarily to dismiss it as devoid of merit.

D. In her rejoinder the complainant maintains that her complaint is receivable on the grounds that the Appeals Committee held that her internal appeal was receivable. She enlarges on her submissions on the merits.

E. In its surrejoinder the FAO develops its earlier submissions, in particular its contention that the complaint is irreceivable on the grounds of failure to exhaust the internal means of redress.

CONSIDERATIONS:

Receivability

1. Article VII(1) of the Statute of the Tribunal stipulates that a complaint shall not be receivable unless the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. It is not enough to exhaust the internal means of redress; the internal time limits must be observed. If the staff member failed to lodge his internal appeal in time his complaint to the Tribunal will be irreceivable.

2. The complainant joined the FAO on 25 November 1970 under a short-term appointment. She was given further such appointments and, on 1 November 1971, a fixed-term one. On 1 August 1974 this was converted into a continuing one. From the date of her joining the FAO she was deemed to be Italian in origin and was granted and continued to hold local status.

3. On 7 October 1971 she applied for non-local status on the grounds that she was a citizen, not of Italy, but of Australia. Her claim was refused by a decision of 22 October 1971 which she did not challenge. In 1974 she made her claim again and had it refused. Again, she lodged no internal appeal. In 1980 she had the Non-Local Staff Association take up her case, but to no avail. She was an intervener in Mrs. Clegg-Bernardi's complaint to the Tribunal. On 6 July 1982 she appealed to the Director-General. Her appeal was rejected on 23 August. She wrote to the Director-General again on 2 November 1982 and then appealed to the Appeals Committee. On 24 September 1984 there was a final decision to reject her claims.

The complainant plainly did not observe the time limits in 1971 and 1974 and failed to follow the internal appeal procedure in time. The decision she impugns in her complaint does no more than confirm the previous decisions to grant her local status, and the complaint is irreceivable.

4. There are circumstances in which a staff member may ask the organisation to think again and take a new decision setting off a new time limit. But the conditions for treating the complainant's request for review of her case as receivable are not satisfied. Circumstances have not so altered since the date of her appointment as to warrant such review. In any event she derives no support from Judgment 506 (in re Hoefnagels), which was about the nature of commitments to short-term staff and has no bearing on this case.

5. The complainant observes that the Appeals Committee -- which included two of the Director-General's own nominees -- held her appeal to be receivable. But this is of no consequence: neither the Director-General nor the Tribunal is bound by the opinion of the Appeals Committee on questions of receivability, which turn solely on a reading of the material texts.

6. It is immaterial that the complainant was an intervener in Mrs. Clegg-Bernardi's complaint. Although that does not debar her from submitting her own claims to the Tribunal, it does not relieve her of the consequences of failing to observe the time limits for an internal appeal.

7. Lastly, she contends that the Director-General and the Tribunal have dealt with other cases on the merits without considering their receivability. She is mistaken in alleging breach of the principle of equal treatment since her case differs both in fact and in law from the others she cites.

Merits

8. The complaint being irreceivable, the Tribunal will not go into the merits.

The application to intervene

9. Since the complaint must be dismissed, so too must the application to intervene, and there is no need to rule on its receivability.

DECISION

For the above reasons,

The complaint and the application to intervene 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 signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 19 June 1985.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner