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

FIFTY-SIXTH ORDINARY SESSION

In re MANRIQUE

Judgment No. 678

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Aida Manrique on 25 September 1984, the FAO's reply of 13 December 1984, the complainant's rejoinder of 20 March 1985 and the FAO's surrejoinder of 10 May 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, FAO Staff Rule 302.40631 and FAO Manual provision 319;

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, a United States citizen, was employed by the FAO from 18 May 1970 to 16 May 1973 in the General Service category of staff and with non-local status. From 1 July to 6 September 1974 she held short-term appointments with local status. From 10 September 1974 to 10 January 1975 she held appointments under special services agreements.(1) At the FAO's suggestion she took a test in shorthand. From 13 January 1975 she held a short-term appointment, later converted into a fixed-term one. From 1 January 1977 she held a continuing appointment.

In September 1977 she wrote to the Personnel Department claiming non-local status. Her claim was turned down on 30 December 1977. She took the matter up again on 8 September 1978, but had her claim rejected on 6 October. She applied to intervene in Mrs. Clegg-Bernardi's complaint (Judgment 505). On 5 July 1982 she wrote to the Director-General asking him to apply to her case the Tribunal's ruling in Judgment 506 (in re Hoefnagels), but this request was rejected on 23 August. On 15 November she submitted an appeal to the Director-General, who rejected it as time-barred. She then appealed to the Appeals Committee, and it is the final rejection of 29 June 1984 that she is impugning.

B. Recounting the history of her career with the FAO, the complainant likens her position to that of Miss Martí, who, like herself, was employed for about three years with non-local status resigned and was reappointed on a short-term appointment with local status. Miss Martí appealed to the Director-General in 1978 and was granted non-local status as from the date of her reappointment. Like all non-Italian staff locally recruited, the complainant expected to get non-local status or at least the conversion of her appointment. As the Appeals Committee unanimously held, she had a serious expectation of non-local status. She should never have been employed under special services agreements, and she was never told that she could no longer look forward to a change in status after 12 months' service.

She seeks non-local status and the incidental benefits as from 1 July 1974, the date of her original appointment, or at the latest as from 1 July 1975, when she completed 12 months' continuous service.

C. The FAO submits in its reply that the complaint is irreceivable. Since the complainant was informed in 1977 and in 1978 that she was not getting non-local status, her appeal of 15 November 1982 was out of time. Although she intervened in Mrs. Clegg-Bernardi's case, her application was dismissed, there was no reason to review her case, and the refusal to do so merely confirmed the earlier rejection of her claims.

As to the merits, the FAO submits that Miss Marti was not in the same position and there was no inequality of treatment. Nor did the complainant qualify under the rule formulated by the Tribunal in Judgment 506. In October 1974 she held an appointment under a special services agreement: in such a position, which gave her no expectation of an appointment as a staff member, she could not possibly have had the slightest prospect of non-

local status should such an appointment one day be offered to her.

D. In her rejoinder the complainant dwells further on the factual background. Citing several rules in support of her contention, she seeks to establish that the post she held and the nature of her duties ought to have secured her a fixed-term appointment. She explains how the FAO sought to evade giving her a fixed-term appointment which would have carried non-local status. She presses her claims and seeks 2,300 United States dollars as costs.

E. In its surrejoinder the FAO observes that the general criticisms levelled by the complainant against the Administration do not go to the substance of her complaint. It believes that the submissions in her rejoinder in no way weaken the force of the arguments in the reply, and it again invites the Tribunal to declare the complaint irreceivable or, subsidiarily, to dismiss it as devoid of merit.

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.

But the staff member may ask the Administration to review a decision either where some new and unforeseeable fact of decisive importance has occurred since the decision was taken or else where the staff member is relying on facts or evidence of decisive importance of which he was not and could not have been aware before the decision was taken. If either condition is fulfilled the Administration is under a duty to review, and even if the time limit was originally not respected, the new decision will set a new one. The staff member who observes the new time limit may in turn submit a complaint to the Tribunal.

2. The complainant holds her present appointment by virtue of a decision to give her a contract without limit of` time as from 1 January 1977, which does not confer the non-local status and benefits she is claiming. It is not in dispute that she failed to challenge that decision in time. She did make a claim for non-local status in September 1977, and again on 8 September 1978, but it was refused on 6 October 1978, and she did not appeal. She therefore failed at the time to exhaust the internal means of redress.

There has, however, been a new and unforeseeable fact of decisive importance since 1 January 1977 on which she may now rely. In Judgments 505 and 506, which it delivered on 3 June 1982, the Tribunal held that the Director-General had adopted a rule in pursuance of decisions taken by the FAO Council in November 1974. The rule draws a distinction between two groups of General Service category staff. Those who held short-term appointments before the end of October 1974 and had or might have been informed of their eligibility for non-local status were to continue to qualify for such status by satisfying certain conditions determined by practice. Those who were appointed later were subject to Staff Rule 302.40631 and were to qualify for non-local status only if they had held it by 31 January 1975 and had since continued in uninterrupted service. Though neither published nor even communicated to the staff as a whole before the Tribunal delivered its judgments, the rule greatly altered the position of staff in the General Service category, and the Tribunal's formulation of it amounted to a new and unforeseeable fact of decisive importance which put the FAO under a duty to entertain a request for review.

After the Tribunal's judgments had come to her knowledge the complainant correctly followed the internal appeal procedure. On 5 July 1982 she submitted a claim, and it was rejected on 23 August. On 15 November she appealed to the Director-General, and her appeal was rejected on 15 February 1983. On 16 March she appealed to the Appeals Committee, and it recommended allowing her claim. On 29 June 1984 the Director-General rejected it. The complainant has therefore exhausted the internal means of redress in the period since 1982, and respected the time limits, and her complaint is receivable.

3. It is immaterial that she was an intervener in the unsuccessful suit filed by Mrs. Clegg-Bernardi. Someone who intervenes in a complaint does so on account of his interest in the outcome: he may rely on the rights of a successful litigant in whose case he intervenes, but he may still file a complaint of his own even if that case should fail.

Merits

4. The complainant joined the FAO in May 1970 on a short-term appointment and held a fixed-term one from 1 October 1970 until 16 May 1973. She was reappointed on 1 July 1974. Up to 6 September she held a short-term appointment; from 10 September until 10 January 1975 an appointment under what was known as a "special services agreement"; from 13 January 1975 a short-term appointment which was converted into a fixed-term one and as from 1 January 1977 a continuing appointment.

She held non-local status during her first period of employment and local status from 1 July 1974.

5. As was said in 2 above, according to the rule stated in Judgments 505 and 506 only staff members who had held short-term appointments in the General Service category before the end of October 1974 and had or might have been informed of their eligibility for non-local status continued to qualify for that status, provided they fulfilled the conditions determined by practice. The FAO argues that since the complainant held an appointment under a special services agreement, and therefore not a short-term one, from 10 September 1974 to 10 January 1975, she may not now benefit under the rule. The plea fails.

The material point is that from 1 July to 6 September 1974 the complainant did hold a short-term appointment and so at that time was in the group of staff who might qualify for non-local status. She had no reason to believe that on appointment under the special services agreement she was forfeiting her previous eligibility for such status, and she is therefore entitled to the benefits of the status provided she satisfies the conditions determined by practice.

In point of fact she is in the same position as Mrs. El Kharboutly, who was employed under a short-term appointment from 1 April 1974, terminated on 21 December 1974, and reappointed on 13 January 1975, and as Miss Martí, who had previously held an appointment with non-local status and had been reappointed on 4 November 1974. In the complainant's case, as in those others, the commitments which were or might have been made up to the end of October 1974 bred expectations of non-local status.

6. The Tribunal concludes that the complainant is entitled to be put on a par with staff members who qualified for non-local status either on completion of 12 months on short-term appointments or on being granted a fixed-term or continuing appointment. The complainant qualified on 13 January 1975, the date as from which she held a fixed-term appointment, and she is entitled to the benefits of non-local status also as from that date.

DECISION:

For the above reasons,

1. The complainant shall be granted non-local status as from 13 January 1975.

2. The FAO shall grant her the benefits of non-local status as from 13 January 1975.

3. It shall pay her 2,000 United States dollars as costs.

4. Her 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 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

1. Manual provision 319.1.11 reads: "The holder of a special services agreement is referred to as a 'subscriber'. A subscriber is in no way considered to be a member of the Organization."

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