

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

FIFTY-NINTH ORDINARY SESSION

In re BUX

Judgment No. 750

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Riaz Ahmed Bux against the Food and Agriculture Organization of the United Nations (FAO) on 13 August 1985 and corrected on 17 September, the FAO's reply of 6 December 1985, the complainant's rejoinder of 23 February 1986 and the FAO's surrejoinder of 3 April 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 302.907, 302.3091, 302.7411 and 303.1311 and .1313 and FAO Manual provision 311.451;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of Pakistan, joined the FAO on 1 October 1980 under a fixed-term appointment expiring on 31 December 1981. He was appointed administrative assistant at grade G.6 and assigned to a project in Tripoli, in Libya, known as LIB/011. He had his appointment extended to 31 December 1983. Two other projects were merged with LIB/011. On 1 April 1982 he was promoted to G.7 as senior administrative assistant. The two other projects were completed at the end of 1982, and staff had to be reduced. Also to save money, the project office was transferred from Tripoli to Misurata, and the complainant moved there on 22 January 1983. On 15 October 1983 the office returned to Tripoli, and so did the complainant and his family. His post having been abolished, his appointment was not renewed, and he left the Organization on 31 December 1983. On 12 April 1984 he appealed against non-renewal to the Director-General under Staff Rule 303.1311. He also claimed various entitlements arising out of his transfer to Misurata and return to Tripoli. The Assistant Director-General in charge of Administration and Finance wrote to him on 22 June to say the Director-General rejected his appeal but would review his entitlements on transfer. On 28 June he was told he would be paid installation allowance for his wife and child on transfer to Misurata in May 1983, expenses for himself and his family for travel to Misurata and back to Tripoli and, because his duty station had been Misurata up to the end of his contract, subsistence allowance for himself from 11 November to 31 December 1983, when he was in Tripoli. On 19 August 1984 he lodged an appeal under 303.1313 with the Appeals Committee. On the Committee's recommendation dated 23 April 1985 the Director-General rejected his appeal in a letter of 30 May 1985, the impugned decision.

B. The complainant traces the events that led up to his departure from the FAO. He denies that the reason for the non-renewal was lack of funds, since FAO staff in Libya remained much as before and there was even recruitment after he left. He denies that drastic savings had to be made or posts abolished. To his mind, his claiming the entitlements he eventually got aroused the ire of Mr. Gaddes, the officer in charge of the project, and the decision was actuated by the animosity of senior project staff, who threatened him with dire consequences unless he waived his claims. His entitlements were wrongly reckoned and he is entitled to payment of the subsistence allowance for himself from 22 January to 14 May 1983 because, although he was then at Misurata, his duty station was still Tripoli. He seeks reinstatement, review of his entitlements on transfer, "compensation for the period from the date of my separation" until reinstatement, and costs.

C. The FAO replies that the claims are devoid of merit. The complainant's appointment ended under Rule 302.907, which reads: "A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". The reason for not renewing his appointment was that the office in Misurata had to be closed for lack of funds for project LIB/011, despite several attempts to save money by merging it with other projects and consolidating staff. The complainant and several other staff members whose services were not thought essential had to go. His post was abolished and his main duties taken over by an administrative officer in the Professional category. The Director-General exercised his discretion correctly. In particular, the charges of prejudice on the part of senior project staff are unproven and gratuitous.

His claim to subsistence allowance from 22 January 1983 rests on the mistaken assumption that his duty station was Tripoli up to 14 April. In fact he was transferred to Misurata by virtue of a "personnel action" which is headed "Change of duty station" and gives 22 January 1983 as the effective date. All that happened on 14 April was that a personnel officer signed a form extending his appointment to the end of the year, and besides, the date of signature is not necessarily the effective date. The complainant was entitled to installation allowance under Rule 302.3091 as from 22 January 1983 -- and he got it -- but not to the subsistence allowance, because under 302.7411 it falls due, not on change of duty station, but on official travel. Thus he was entitled to it for the last few weeks of his contract, when he was stationed in Misurata but on official mission in Tripoli.

D. In his rejoinder the complainant discusses the facts in further detail and enlarges on his charges of personal prejudice. He submits that Mr. Gaddes and Mr. Wassef, the administrative officer, were arranging things, such as the move to Misurata, to suit their own interests, without approval from the FAO or the Libyan Government, and to hide their own mismanagement. The post of administrative assistant cannot have been abolished since it was filled again in mid-1984, and it is mistaken to say the FAO could forgo his services. In support of his claim to subsistence allowance in Misurata he cites Manual provision 311.451: "A staff member assigned temporarily to another duty station for a period of less than 12 months is deemed to be in travel status and receives an appropriate daily subsistence allowance..." Not until 14 May 1983 did he hear of the change of his duty station from Tripoli to Misurata, and that, not 22 January, is the material date.

E. In its surrejoinder the FAO submits that the rejoinder puts forward no new material arguments and cites no new relevant facts. It therefore merely answers briefly several points of detail relating to the termination of the complainant's appointment and his various entitlements.

CONSIDERATIONS:

Termination of employment

1. The complainant joined the FAO on 1 October 1980 as an administrative assistant at grade G.6 and was assigned to a project in Libya known as LIB/011. His fixed-term appointment expired on 31 December 1981 but was extended to 31 December 1983. On 1 April 1982 he was promoted to G.7 as senior administrative assistant.

In accordance with Staff Rule 302.907 the Organization refused to renew his contract beyond the end of the period of the extension, 31 December 1983. The Director-General confirmed that refusal on 30 May 1985. Since the decision is a discretionary one the Tribunal may exercise only a limited power of review. It will set the decision aside only if it was tainted with a formal or procedural flaw or based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence.

2. The FAO's contention is that the non-renewal does not show any flaw that would entitle the Tribunal to set it aside and was indeed based on solid and objective grounds. The project in Libya was costing more than the funds allocated; the Libyan Government WdS in arrears with its own contribution; the merger of three projects, LIB/010, 011 and 018, had not made big enough savings; and in the end there was no choice but to let the complainant's appointment and others expire.

3. The material issue is whether, as the complainant alleges, the grounds given by the Organization are mere pretexts intended to conceal the prejudice to which he says he fell victim.

First, he maintains that the FAO increased the number of staff and thereby increased expenditure instead of reducing it. The FAO denies that and says it abolished several posts. The Tribunal cannot resolve the issue on the evidence before it. The burden is on the complainant to establish some fatal flaw and his mere assertion does not suffice.

Secondly, he says that the FAO kept on a driver and a typist whom it had originally decided to get rid of. The argument is irrelevant. Those staff members perform duties different from his and keeping them on did not preclude letting him go.

Though it ended the complainant's appointment it did extend that of an administrative officer, Mr. Wassef, who was performing similar duties. But there can be no valid objection to that. For one thing, there was nothing wrong in giving preferential treatment to Mr. Wassef, who was his superior. For another, the FAO had Mr. Wassef take on

not only the complainant's work under project LIB/011 but also work under project LIB/004, and it therefore made savings by replacing one staff member with another.

Thirdly, the complainant observes that after Mr. Wassef's departure a secretary was appointed administrative assistant and so got the complainant's post. But the Organization says that so far from adding to its expenditure the change actually reduced it. There is no evidence before the Tribunal to disprove that statement.

The Tribunal concludes that there is no evidence to suggest that the non-renewal was due to personal prejudice or in particular to the animosity the complainant alleges that senior staff felt towards him.

The claim to allowances

4. The complainant seeks review of the reckoning of the allowances paid to him. In particular he states in his rejoinder that he was paid no subsistence allowance for the period from 22 January to 14 May 1983. In fact the treatment of him was lawful.

5. On 28 June 1984 the FAO wrote to inform him that after paying him an installation allowance from 22 January 1983 it offered him the following as well: installation allowance for his wife and children from the date of their transfer from Tripoli to Misurata, i.e. from May 1983; his own expenses and those of his family for travel from Tripoli to Misurata and from Misurata back to Tripoli; and subsistence allowance from 11 November to 31 December 1983.

On 26 July 1984 the complainant declared his acceptance of the offer in "full and final settlement" of his claims. He made that declaration after he had left, when he no longer had any reason to give in to pressure, and presumably he made it of his own free will. It is therefore binding on him and he has no right to any further benefits.

6. Besides, his claim to subsistence allowance for the period from 22 January to 14 May 1983 does not square with the rules. Personnel Action No. 13, which was signed on 14 May 1983, changed his duty station from Tripoli to Misurata on 22 January 1983. From that date he was paid installation allowance, and under the rules no official may be paid the subsistence allowance as well.

DECISION:

For the above reasons,

The complaint is 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 12 June 1986.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner