

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

## SIXTIETH ORDINARY SESSION

In re PLIER

Judgment No. 776

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Andrée Plier against the Food and Agriculture Organization of the United Nations (FAO) on 26 February 1986, the FAO's reply of 25 April, the complainant's further submissions of 12 May as supplemented on 30 May, and the FAO's letter of 23 June 1986 informing the Registrar that it did not wish to file any additional brief;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Chapter XI of the FAO Staff Rules;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a French citizen born in 1940, joined the FAO in Rome on 30 December 1968 as a shorthand-typist at grade G.3. She obtained a permanent appointment in 1974. In response to her inquiries a personnel officer wrote her a letter on 12 October 1981 explaining what would be the financial consequences of termination of her appointment on grounds of health. Her appointment was terminated on 13 February 1982 in accordance with Staff Rule 302.9021: "The appointment of staff members who ... have [not] attained the mandatory age of retirement ... but whose physical or mental condition or extended illness render them incapacitated for further service, may be terminated after exhaustion of any sick leave entitlement". The complainant was awarded and has since been paid a disability benefit under Article 33 of the Regulations and Rules of the United Nations Joint Staff Pension Fund. The amount at the time was some 12,000 United States dollars a year. She also receives free medical insurance. She wrote a letter to the Director-General on 22 April 1982 raising several matters and received a reply dated 5 May. By a letter of 6 June 1984 the Secretary of the FAO Staff Pension Committee informed her that the Committee had decided she should be awarded the benefit for another three years, her case would come up for review in March 1987.

B. The complainant, who lives in Rome, is seeking an increase in the amount of the benefit which she finds too low. She objects to its being stated in dollars and therefore unstable in terms of the lira. She claims damages for humiliating treatment she alleges she has suffered and which she seeks to describe. She objects to "documents of the Credit Union" as incorrect.

C. The FAO replies that the complaint is irreceivable under Article VII(1) of the statute of the Tribunal. The complainant has failed to exhaust the internal means of redress because she

has not followed the internal appeals procedure provided for in Chapter XI of the Staff Rules. Besides, it is not clear what final or other decision she believes to be in breach of any rule or of the terms of her appointment. She has never before sought damages for humiliating treatment. Nor are her objections to "documents of the Credit Union" receivable: she was simply sent a letter misinforming her that she had credit amounting to some \$24,000 when in fact she had nothing, and that does not amount to a challengeable decision. Any objections to the amount of the benefit should be submitted first to the FAO Pension Committee and in the last resort to the United Nations Administrative Tribunal: the ILO Tribunal is not competent.

As to the merits, the Organization submits that there is no breach of the Staff Regulations or Staff Rules or the terms of the complainant's appointment. She has been granted every benefit she is entitled to. The amount of her disability benefit has been correctly reckoned according to the Pension Fund rules. Her allegations of humiliating treatment are unfounded: she was terminated because she was no longer fit for work.

D. In further submissions the complainant enlarges on her grievances and presses her claims.

#### CONSIDERATIONS:

1. Article VII of the Statute of the Tribunal says that a complaint shall not be receivable unless the decision impugned is a final one and such other means of resisting it as are available under the applicable Staff Regulations have been exhausted.

The complainant takes exception to a letter which a personnel officer of the FAO wrote her on 12 October 1981 to explain "the financial consequences of a termination of appointment on grounds of health including, subject to approval by the FAO Staff Pension Committee, a disability benefit". She was sent the letter some time before she left the Organisation, on 13 February 1982.

Several weeks later, on 22 April 1982, she wrote to the Director-General about a mistake over length of service, about the amount of her termination indemnity and about the attitude of the Credit Union, adding that she was in sore financial straits. The director of the competent division wrote her a letter on 5 May answering the three points.

Even if the letters of 12 October 1981 and 5 May 1982 are treated as challengeable decisions and not just as answers to her inquiries, she plainly failed to lodge any internal appeal under FAO Staff Rule 303.1313 at any date before 26 February 1986, the date of filing of her complaint. As to the matters raised in the two letters her claims are therefore irreceivable.

2. She is also seeking an award of damages for "humiliating" treatment she says she has suffered. The facts she recounts reveal nothing reprehensible in the behaviour of FAO staff and the Organization cannot be held liable.

#### 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 Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner