

## THIRTEENTH ORDINARY SESSION

### *In re* GIANNINI

#### Judgment No. 79

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mr. Fernando Giannini on 2 January 1964, brought into conformity with the Rules of Court on 8 February 1964, and the Organisation's reply dated 6 April 1966;

Considering articles II and VII of the Statute of the Administrative Tribunal and article 10 of the Staff Regulations of FAO;

Having examined the documents in the dossier, oral proceedings and the hearing of witnesses requested by the complainant having been disallowed;

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

A. The complainant entered the service of the Organisation in April 1951. He performed duties in the financial services which entailed growing responsibilities and in 1955 was promoted to accountant, grade P.1. As such he was responsible for handling certain funds of the Organisation, including cash. In October 1961 certain members of the staff filed claims with the Administration that funds entrusted to Mr. Giannini had been embezzled by him or that money lent to him had not been repaid. On being summoned by the Administration to account for his financial position, Mr. Giannini admitted that he was in debt for a total amount of roughly 50 million liras.

B. By letter of 4 November 1961 the complainant was informed of the Director-General's decision that he was summarily dismissed for serious misconduct on the grounds that he had received from a colleague the sums of 1 million liras and \$644 for the purpose of transferring them abroad and had failed to do so; that he had received from another colleague 100,000 liras for the purpose of converting them into dollars and had neither effected that conversion nor reimbursed the sum entrusted to him; that he had misappropriated petrol coupons; that he had induced a colleague to lend him a considerable sum without disclosing his true financial situation or the fact that the debt contracted exceeded his possibilities to repay it within the promised time; and that, by his own admission, he had managed his personal affairs in a manner unworthy of an international civil servant. As a result of this decision the complainant lost entitlement to any severance pay or allowances, with the exception of payment of salary due for leave not taken and reimbursement of the contributions paid by him to the United Nations Joint Staff Pension Fund.

C. Following unofficial action taken at the Organisation in March 1962 by the counsel for the complainant, who argued that, when he had been notified of his summary dismissal, Mr. Giannini, then being treated for mental disorders, had not been either physically or mentally fit to grasp its significance, the Organisation, by letter dated 25 April 1962, requested the complainant to supply directly such medical certificates as would facilitate an examination of the situation. After being sent a reminder, dated 7 June 1962, complainant produced on 24 July 1962 various medical certificates concerning his hospitalisation which, in the opinion of the medical adviser of the Organisation, failed to establish that the complainant had, during the period of hospitalisation, been unfit to look after his interests. The complainant was notified accordingly by letter of 27 December 1962, which stated that with respect to the information supplied concerning his state of health new representations relating to his dismissal could not be entertained. On 31 July 1963 Mr. Giannini wrote again to the Director-General protesting against the measures taken against him and appended additional medical certificates. The Director-General's reply, dated 25 October 1963, confined itself to confirming the terms of the letter of 27 December 1962 and to drawing Mr. Giannini's attention to provision 303.131 of the Staff Regulations which allows a maximum period of a fortnight in which appeals against administrative decisions must be made.

D. The complainant alleges that his dismissal is illegal on the ground that, since he could not be blamed for any

misconduct in the performance of his duties, it was based on actions in his private life, moreover without regard to the fact that these actions were to be ascribed to his mental condition, and argues that summary dismissal was unjustified since he had neither caused injury to the Organisation nor had abused his position as an official and that in any case summary dismissal could not be notified during sick leave. In form, the complaint refers to the decision of 25 October 1963, which confirms the decision of 27 December 1962, refusing to reopen examination of his case in the absence of evidence of a mental condition preventing the complainant from making his appeal within the prescribed time limit, whereas the conclusions submit not only that the complaint should be declared receivable in view of the complainant's state of health during the period of time allowed for appeal but also that the dismissal should be quashed and the complainant reinstated, or else that he should be discharged and receive severance pay and, as from the end of the period of illness, both back salary and compensation for injury sustained. The Organisation submits that the complaint is not receivable on the grounds that, in so far as it refers to the decision of 27 December 1962, it was not filed within the stipulated period of time and that, in so far as it refers to the communication of 25 October 1963, assuming that this was of the nature of a decision, internal appeals were not first exhausted. The Organisation's reply, moreover, brings out the legal arguments in support of the legal nature of the decision to effect summary dismissal.

#### IN LAW:

Without the need arising to examine whether the complaint is receivable:

Under article 10, paragraph 2, of the Staff Regulations the acts criticised in the Director-General's letter of 4 November 1961, the factual accuracy of which has not been called into question and which have not been proved ascribable to the complainant's state of health, show that the complainant was guilty of serious misconduct; moreover, even if they had concerned only his private life - which is not the case - these acts were of a nature to compromise the Organisation's reputation and thus legally to warrant summary dismissal of the complainant under the terms laid down in the above-mentioned article. The fact that Mr. Giannini was ill at the time and that special sick leave for officials is normally provided for by the Regulations constitutes no obstacle to the enforcement of the said provision by the Director-General.

Hence, the complaint must fail.

#### DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting at Geneva on 1 December 1964 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signed:

M. Letourneur  
André Grisel  
H. Armbruster  
Jacques Lemoine