

## SIXTIETH ORDINARY SESSION

In re BOLNER GARAMPI

Judgment No. 793

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Maurizio Bolner Garampi against the Food and Agriculture Organization of the United Nations (FAO) on 27 March 1986 and corrected on 4 June the FAO's reply of 29 July, the complainant's rejoinder of 22 August and the FAO's surrejoinder of 26 September 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulations 301.0323 and 301.034, FAO Staff Rule 302.3136 and FAO Manual provision 318.231;

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. FAO Staff Regulation 301.0323 reads: "Staff members in the General service category shall be entitled to receive dependency allowances at rates and under conditions established by the Director-General, due regard being given to the circumstances in the locality in which the office is located". Staff Rule 302.3136 says: "When there is no dependent spouse, dependency allowance shall be payable for one secondary dependant who is either the father or mother or a brother or sister of the staff member... In duty stations where the Director-General finds that under prevailing local practice conditions other than the foregoing apply, the payment may be authorized to staff members in the General Service category under such other conditions." And Manual provision 318.231 provides that "'secondary dependant' means the staff member's father, mother brother or sister satisfying the conditions of Staff Rule 302.3136".

The complainant, an Italian, is an accounting assistant at grade G.6 at FAO headquarters in Rome. On 2 January 1984 he claimed the payment of dependency allowance for his stepfather. In a minute of 25 October 1984 the FAO refused it. He repeated his claim on 5 December. The Assistant Director-General in charge of Administration and Finance confirmed the refusal in a minute of 4 January 1985, and he lodged an appeal with the Appeals Committee on 4 February. In its report of 11 July the Committee, while recognising that the decision was in accordance with the rules, recommended considering payment of the allowance to step-parent. By a letter of 7 January 1986, the final decision impugned, the Assistant Director-General informed the complainant that the Director-General rejected his appeal and that the Committee's recommendation would be considered "in due course".

B. The complainant submits that the method of determining salaries and allowances is based on the best prevailing local conditions. Special conditions obtain at Rome for the payment of dependency allowances for the secondary dependants of General Service category staff. Italian law -- in particular section 8 of Act No. 797 of 30 May 1955 on dependency allowances -- prescribes payment for a stepfather. The FAO should follow that practice. Besides, there is no moral justification for granting the allowance for a step child, as the FAO does, and not for a step-parent. The complainant claims payment of the allowance for his stepfather as from the "date of eligibility".

C. The FAO replies that the complaint is devoid of merit. It observes first, that it rightly refused the claim because quite plainly the Staff Regulations, Rules and Manual, which do not mention the stepfather, did not authorise meeting it. The degree of kinship is not the same for a step-parent as for a parent. Secondly, though Staff Rule 302.3136 empowers the Director-General to authorise payment under the conditions applicable under prevailing local practice, he does so at discretion. If it were an obligation the Organization might incur unforeseen expense because of amendments to local law. Thirdly, as has been agreed in the United Nations Consultative Committee on Administrative Questions, it is the rates of dependency allowances that take account of local practice, not the conditions governing their payment. What the complainant wants is a change in the rules to enlarge the class of secondary dependants and he must seek it through other channels.

D. In his rejoinder the complainant presses his claim and develops his case. He argues that the difference in degree of kinship is irrelevant because no account is taken of the difference between child and stepchild. Payment of the

allowance for a stepfather is justified under the existing rules. He is not seeking to enlarge the class of secondary dependants but, as an individual staff member, making a claim based on his own circumstances. The Director-General's exercise of his discretion in the matter was unfair and wrong. The FAO's reference to what was agreed in the Consultative Committee is immaterial.

E. In its surrejoinder the FAO enlarges on the pleas in its reply. It observes that the rules make no provision for payment for a stepfather; that the Director-General has a prerogative not to extend the class of beneficiaries; that the analogy with stepchildren is mistaken because they are not secondary but primary dependants under the rules; that the complainant fails to show any flaw in the exercise of the Director-General's discretion; and that in other United Nations agencies in Europe the payment of secondary dependency allowance for a step-parent is the exception and not the rule. The FAO's practice is therefore in line with others'.

#### CONSIDERATIONS:

1. The complainant, an Italian national, holds the post of accounting assistant at grade G.6 in the Financial Services Division at FAO headquarters. He has no wife and no children. On 2 January 1984 he applied for a secondary dependency allowance in respect of his stepfather. The FAO rejected his application on the grounds that the Staff Regulations and Rules did not permit it. He was so informed on 25 October 1984; on 5 December he appealed; his case was referred to the Appeals Committee; and the Assistant Director-General informed him on 7 January 1986 that the Director-General confirmed the rejection.

2. The only allowances the complainant is entitled to are those that come within the following provisions:

Staff Regulation 301.0323:

"Staff members in the General Service category shall be entitled to receive dependency allowances at rates and under conditions established by the Director-General, due regard being given to the circumstances in the locality in which the office is located."

Staff Rule 302.3136:

"When there is no dependent spouse, dependency allowance shall be payable for one secondary dependant who is either the father or mother, or a brother or sister of the staff member and for whom the staff member provides more than half of the dependant's total income, in cash and in kind, and at least twice the amount of the allowance claimed... In duty stations where the Director-General finds that under prevailing local practice conditions other than the foregoing apply, the payment may be authorized to staff members in the General Service category under such other conditions."

Manual provision 318.231:

"Definition. For the purpose of this Manual Section, 'secondary dependant' means the staff member's father, mother, brother or sister satisfying the provisions of Staff Rule 302.3136."

The Manual provision specifically mentions the father but not the stepfather. In contrast Staff Regulation 301.034 provides for the payment of an allowance in respect of a stepchild: "The Director-General may decide in each case whether the dependency allowance or the education grant shall extend to adopted children or step-children."

In contrast, too, section 8 of the Italian Act on dependency allowances, No. 797 of 1955, states that "family allowances due for parents are also payable for (a) a stepfather...".

3. The Director-General was right to decide that the complainant is not entitled to a secondary dependency allowance for his stepfather. As the Appeals Committee said in its report of 11 July 1985, the decision was "in accordance with the relevant Manual provisions".

4. The complainant quotes Appendix A to Manual Section 318, entitled Dependency Allowances, which opens with the words:

"In accordance with prevailing local practice in Italy, dependency allowance is payable to General Service staff at Headquarters...".

He also draws attention to the words "due regard being given to the circumstances in the locality in which the office is located" in Regulation 301.0323. He submits that these two provisions mean that, if Italian law entitles an employee to a secondary dependency allowance for a stepfather, the FAO has no choice but to grant its employees in Italy the same rights.

5. The Tribunal observes that, while Appendix A authorises the payment in certain circumstances of an allowance to the father of an employee, it does not cover a stepfather, a relative it makes no mention of.

The FAO does of course have the power to authorise payment of a stepfather's allowance by making express provision to that effect in its Staff Regulations and Rules. But the Tribunal is satisfied that the Regulations and Rules do not order or authorise the Director-General to pay an allowance for a stepfather.

Moreover, it is perfectly reasonable for an international Organisation not to commit itself to following automatically national law on compensation, thereby losing control over its own budget.

The powers of the Director-General are limited by the Staff Regulations and Staff Rules. All they do it to give him discretion if the Regulations prescribe payment of an allowance, to determine the rates and the conditions under which it may be paid. The Director-General has not exercised that discretion.

6. The practice of the FAO is indeed in keeping with what the Consultative Committee on Administrative Questions agreed at its 24th Session: what should be determined on the basis of local conditions at each duty station is the rate of the allowance for the General Service category, not who belongs to the class of secondary dependants.

7. There has been no breach in substance or in form by the Director-General of the terms of the complainant's employment or of any provisions of the Staff Regulations and Rules applicable to him. His complaint is in reality a request that the Tribunal order a change in the rules so that a dependency allowance may be drawn for a stepfather. He has come to the wrong place. He should have taken and may still take the matter up through the staff consultation machinery provided for in Article VIII of the Staff Regulations.

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.

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner