

SIXTY-FOURTH SESSION

***In re* PETRUC (No. 5)**

Judgment 894

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Théodore Claude Petruc against the Food and Agriculture Organization of the United Nations (FAO) on 21 October 1987 and corrected on 9 November 1987, the FAO's reply of 22 January 1988, the complainant's rejoinder of 21 March and the FAO's surrejoinder of 16 May 1988;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, FAO Staff Rules 302.907 and .913 and FAO Manual paragraphs 303.1311, 314.743 and 343.122;

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. Accounts of the complainant's first four complaints, the facts of which are in part relevant to this one, appear in Judgments 501, 502, 778 and 779, under A.

While with the FAO in Senegal the complainant contracted spasmodic colitis in 1973 and suffered a heart attack in January 1975. On 9 June 1975 the Organization's medical officer declared him fit, but the Resident Representative of the United Nations Development Programme in Senegal felt he was not and recommended extending his assignment only to 31 January 1976. He went to Rome at the end of January. The FAO found no suitable vacancy and put him on leave without pay from 1 February until 31 October 1976, when he left. There ensued the correspondence and disputes which led to his earlier complaints.

One of his contentions in the appeal he made to the Director-General on 20 February 1984 in accordance with FAO Manual paragraph 303.1311 was that he was still a staff member: in his view the rules required a complete medical check-up on termination and because he had never had one his appointment had not been duly terminated on 31 October 1976. The Assistant Director-General for Administration and Finance rejected the contention in a reply of 21 March 1984. He repeated it in his internal appeal of 19 April 1984, but he did not press it in the later pleadings and it was not expressly taken up in the Committee's report or in the letter of 21 February 1986 rejecting his appeal. It did form part of his third complaint, which he lodged on 5 December 1985, but the Tribunal held on 12 December 1986, in paragraph 1 of Judgment 778, that it was irreceivable because he had not exhausted the internal means of redress. On 31 January 1987 he wrote to the chairman of the Appeals Committee citing his appeal of 19 April 1984 and asking that the Committee address his claim. Having been invited to lodge a new appeal, he did so on 23 March 1987. In its reply of 15 May the FAO contended that the appeal was time-barred and by a letter of 23 June to the chairman the complainant withdrew it, while confirming the terms of his letter of 31 January 1987. He also wrote to the Director-General asking him to have the Committee make a recommendation on the claim, which had formed part of his appeal of 19 April 1984, and to take a final decision. In a letter of 28 July 1987, which he now impugns, the Assistant Director-General for Administration and Finance observed that the Director-General had taken the decision conveyed in the letter of 21 March 1984 on his contention that he was still a staff member; since he had withdrawn his appeal of 23 March 1987 the Director-General need take no further decision.

B. The complainant recounts in detail the facts of the dispute. He submits that he was not given the complete medical check-up that FAO rules required he should have on termination. Though the FAO knew he had twice been ill, he was given a superficial examination in January 1976 which did not properly establish the state of his health. He asks that the FAO submit the full medical records to the Tribunal and accuses it of dishonest attempts to fabricate evidence of a proper check-up.

In his submission an appointment cannot terminate until the FAO has fulfilled its obligations and since it did not

do so in his case his appointment has never terminated. His claim formed part of his internal appeal of 19 April 1984 and he did all he could to get a final decision on it. He should not have had to file another internal appeal, the FAO's retort that it was time-barred was inadmissible, and he saw no point in pursuing the appeal: indeed it is plain from the impugned letter of 28 July 1987 that he has exhausted the internal means of redress.

He asks the Tribunal to declare that he is still on the staff and order the FAO to pay him in full as from 1 February 1976 until he is given a proper check-up. He seeks 5,000 United States dollars in costs.

C. In its reply the FAO submits that the complaint is clearly irreceivable. First, there is no final decision. The letter of 21 March 1984 rejected the complainant's contention that he was still a staff member and since he did not pursue the matter neither the Committee's report on his appeal of 19 April 1984 nor the Director-General's decision on the claims therein addressed it. That is why Judgment 778 declared the claims irreceivable. By withdrawing his further internal appeal he prevented the Appeals Committee from expressing its opinion on receivability. Secondly, he is time-barred. Having left the Organization on 31 October 1976 he should have lodged an appeal against termination within the time limit of 90 days in Manual paragraph 303.1311. Yet he did not raise the matter until 20 February 1984.

Besides, his claim is devoid of merit. He did undergo medical examinations on 29 and 30 January 1976 and on 21 March 1977 in accordance with Manual paragraph 343.122 and they were tantamount to the medical check-up required by Staff Rule 302.913. In any event the lack of a terminal check-up cannot have the effect of extending an appointment.

D. The complainant rejoins that the FAO's arguments are sophistry and evade the material issues. He enlarges on the submissions in his complaint. He believes he has strictly complied with the procedural requirements in the rules and should not suffer for the FAO's outrageous failure to do so and constant bad faith. His claims formed part of the internal appeal he submitted to the Appeals Committee in 1982 and he has been diligently pressing them in letters, appeals and complaints to the Tribunal for years. He discusses the nature of the examinations he underwent and reaffirms that they were inadequate.

E. In its surrejoinder the FAO observes that the complainant has failed to understand, let alone answer, its objections to the receivability of his claims, much of his rejoinder being irrelevant or repetitive. It seeks to correct some of his assertions of fact and develops its earlier submissions, again inviting the Tribunal to dismiss the complaint as irreceivable or, failing that, as devoid of merit.

CONSIDERATIONS:

Receivability

1. The FAO is objecting to the receivability of the complaint on two grounds. One is the absence of a final decision within the meaning of Article VII(1) of the Statute of the Tribunal, the complainant having failed to exhaust the internal means of redress. The other is a time bar.

Not until he lodged his internal appeal of 20 February 1984 did the complainant contend that he was still an FAO official and entitled to his remuneration as such up to the date on which he had had the complete medical check-up prescribed in the rules and so had his appointment duly terminated. The Director-General rejected that contention on 21 March 1984 on the grounds that his appointment had ended on 31 October 1976 and he was no longer on the staff.

After successive decisions by FAO authorities rejecting his claims he lodged his third complaint with the Tribunal. Judgment 778 of 12 December 1986 declared irreceivable the contention in his appeal of 20 February 1984 because the Appeals Committee had not addressed it.

The purpose of this complaint is to remedy the earlier procedural errors. On 31 January 1987 he wrote to the chairman of the Appeals Committee, who invited him to appeal, and he did so on 23 March 1987. But the Director-General rejected his appeal on 28 July 1987 as irreceivable on the grounds that by withdrawing it on 23 June he had put an end to the appeal proceedings.

2. That view was mistaken.

Judgment 778 did declare the third complaint irreceivable insofar as it sought a declaration that the complainant was still on the staff: it ruled that the claim had not been duly put to the Appeals Committee. But the whole point of the internal appeal of 23 March 1987 was to make good the omission, and although he withdrew it on 23 June 1987 he made an exception of that claim, which he maintained in full. So the FAO is wrong in saying he ended the internal proceedings; indeed in a letter he wrote also on 23 June 1987 he asked the Director-General to tell him in good time of the Appeals Committee's findings and recommendations and of the final decision. All the Committee said was that the proceedings had closed with the withdrawal of the appeal on 23 June 1987 and that it had already reported on 18 February 1985. It plainly failed to rule on a precise claim the complainant had not withdrawn and the decision the Director-General took, again on the assumption that the claim had been withdrawn, was also flawed.³ The reason why the complaint fails is that it is clear from his various internal appeals that, as the FAO argues, his claims to status as an official and to payment as such were lodged out of time.

His fixed-term appointment was extended to 31 January 1976. Then he was told that at his request he was put on leave without pay until 31 October 1976 and, as was stated in Judgment 502 on his second complaint, under A, that was the date on which he actually left the Organization. Though he then lodged several claims about the illness he said he had incurred in service, not until he lodged his internal appeal of 20 February 1984 did he plead that he was still on the staff. So what he was challenging was the decisions to extend his appointment up to 31 January 1976 and to give him the final extension to 31 October 1976, when his unpaid leave expired. But by 20 February 1984 those decisions were beyond challenge, especially since a telex from the FAO had warned him as early as 14 August 1975 that his appointment was extended to 31 January 1976. His "terminal medical statement" of 21 March 1977 also shows that he knew by then that his contract had ended.

If he wanted to object to the extension he was required to appeal to the Director-General within the time limit in Manual paragraph 303.1311. By the time he did so - 20 February 1984 - the time limit had long since expired. The FAO's plea of a time bar succeeds and for that reason the complaint is irreceivable.

Merits

4. In any event it is devoid of merit. It is mistaken to contend that an appointment cannot be terminated until there has been a proper medical check-up as prescribed by the rules.

Under Rule 302.907 a fixed-term appointment ends automatically and without notice on the date specified in the letter of appointment and the terminal medical examination required in 302.913 is not a condition of the validity of non-renewal; in fact it is the consequence of termination. That is so because, as Manual provision 314.743 makes plain, it is required solely in the interests of the official who is leaving.

5. The complainant's plea that his appointment may not end before he has had a medical examination is quite unsound. Since his complaint fails, so does his claim to costs.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner

