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

SIXTY-FOURTH SESSION

In re LOROCH (No. 5)

Judgment 898

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Kim Joseph Loroch against the Food and Agriculture Organization of the United Nations (FAO) on 21 August 1987, the FAO's reply of 28 September, the complainant's rejoinder of 23 November and the FAO's letter of 4 December 1987 informing the Registrar that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal, FAO Staff Rule 303.1311 and FAO Manual paragraph 343.74;

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. In Judgment 732 of 17 March 1986 the Tribunal dismissed the complainant's third complaint as irreceivable, because he had failed to exhaust the internal means of redress, and in any event as devoid of merit. That complaint had arisen over the cashing of a cheque the FAO had sent him in payment of the award made to him in Judgment 620. He applied to the DirectorGeneral on 28 April l986 for permission to resume his appeal notwithstanding the time bar. The Director-General refused permission on 18 June 1986, and on 21 June the complainant lodged an internal appeal against that refusal.

The complainant had lodged a fourth complaint claiming the continuance of his membership of the FAO's scheme of sickness insurance. The Tribunal dismissed the complaint in Judgment 733, also of 17 March 1986, again on the grounds that he had failed to exhaust the internal means of redress. He repeated his claim to the Director-General on 30 August 1986, and the Assistant Director-General for Administration and Finance refused it on 29 October; meanwhile, on 6 October, he had filed an internal appeal. In its report of 6 May 1987 the Appeals Committee observed, as to the cheque, that since the Tribunal had held the earlier case to be devoid of merit as well as irreceivable there was no reason to reopen the matter. It observed that the FAO had rejected the claim to medical coverage in 1975; he had not appealed until nearly ten years after the time limit in Staff Rule 301.1311; and he had given no explanation of his failure to act in time. The Committee accordingly recommended rejecting his two appeals, and in a letter of 3 August 1987, the decision impugned, the Deputy Director-General told him that the Director-General did so.

B. The complainant submits that the Tribunal's rulings would be sound only if the FAO's rules on internal appeals were unambiguous and explicit. In fact Staff Rule 303.1311, entitled "Appeal to the Director-General", is not, and it misled him. The Organization knew full well that he had misunderstood, yet failed to point out his mistake until he had actually gone to the Tribunal. It was therefore guilty of bad faith.

He further submits, as to the merits of his claim to insurance coverage, that it was unfair and discriminatory to refuse it under Manual paragraph 343.74 after termination of his service. He describes the material and moral injury he has sustained because of that refusal. Though he benefits under the state medical insurance scheme of the Federal Republic of Germany, his wife may not, for example, consult doctors in the United States. Had he continued to have FAO coverage, his expenses would have been lower and the treatment of him and his wife better. He invites the Tribunal "to make appropriate recommendations in accordance with [its] final interpretation of the pertinent FAO Rules ...".

C. In its reply the FAO submits that the complaint is irreceivable because the complainant does not allege breach of the terms of his appointment within the meaning of Article II(5) of the Statute of the Tribunal but wants a ruling on

the propriety of general rules; because he apparently seeks "recommendations" for the amending of the rules; and because the matters he raises are res judicata: the Tribunal disposed of them, in particular the manner of applying Staff Rule 303.1311, in Judgments 732 and 733. The FAO further explains its reasons for not granting the complainant in 1975 medical insurance coverage after he left its employ: not only was his application many years too late, but the decision was in accordance with the text of Manual paragraph 343.74 in force at the time, under which he did not qualify for participation in the insurance scheme.

D. In his rejoinder the complainant comments on Judgments 297 and 620, invites the Tribunal to accept his interpretation of Staff Rule 303.1311 and Manual paragraph 343.74 and presses his claims.

CONSIDERATIONS:

The purpose of the suit

1. In Judgment 620 of 5 June 1984, ruling on the complainant's second complaint, the Tribunal ordered the FAO to pay the complainant 20,000 United States dollars in damages and $2,000 in costs. In his third complaint he sought $20,000 in damages for the injury he said the FAO's manner of executing Judgment 620 had caused him. Ruling on that complaint in Judgment 732 of 17 March 1986, the Tribunal held that he had failed to exhaust the internal means of redress: he had not appealed to the Appeals Committee against a decision by the Director-General, or the absence of one, and his complaint was irreceivable.

The Tribunal's subsidiary ruling was that his complaint was devoid of merit because no injury was proven and because there was no sufficient causal link between the FAO's act and the alleged injury.

2. The complainant claims continued membership of the FAO's sickness insurance fund after he left the Organization. He made that claim in a letter of 30 January 1975 to the FAO medical service and repeated it in another of 30 October, and the Organization rejected it on 19 December 1975. Not until 11 March 1985 did he lodge an internal appeal with the Director-General, who rejected it on 6 May 1985. In his fourth complaint he appealed. In Judgment 733, also of 17 March 1986, the Tribunal held that he had failed to exhaust the internal means of redress because the decision of 6 May 1985 did not amount to a final one within the meaning of Rule 303.1311: his fourth complaint too was irreceivable.

3. His present complaint arises out of further internal appeal proceedings. On 28 April 1986 he wrote to the Director- General seeking waiver of the time bar for appeal to the Appeals Committee against the decisions he had impugned in his third and fourth complaints. In a letter of 18 June 1986 the Assistant Director-General for Administration and Finance answered that waiver was refused. The complainant then sent a letter to the Director-General, on 30 August 1986, claiming membership of the sickness fund. The Assistant Director- General rejected the claim in a letter of 29 October 1986. But

the complainant had already, on 21 June and 6 October 1986, lodged two new internal appeals with the Appeals Committee, his purpose being to correct the procedural flaws - failure to exhaust the internal means of redress - identified in Judgments 732 and 733. In its report of 6 May 1987 the Committee recommended rejecting both appeals and the Director-General did so by a decision of 3 August 1987, the one now impugned.

Competence and receivability

4. The complainant wants the Tribunal to make "recommendations" and rule on the proper interpretation of Staff Rule 303.1311 and Manual paragraph 343.743.

5. The Organisation's reply is that his claims are irreceivable under Article II(5) of the Statute of the Tribunal because he is asking the Tribunal to rule on the correctness of some of its rules and because such a ruling would have an effect erga omnes and would not be limited to the instant case; he wants the Tribunal to pass judgment on those rules though he is not alleging any breach of the terms of his appointment.

6. Besides stating his claims in vague and general terms the complainant is not seeking the quashing of any decision but mere recommendations in the form of advice to be commended to some unidentified person or authority. The Tribunal may neither give an advisory opinion nor rule on a dispute in which no breach of the terms of appointment or of the staff regulations is alleged. For that reason the claims are irreceivable.

7. They are irreceivable for the further reason that they are a pointless attempt to get review of decisions the Tribunal ruled on in Judgments 732 and 733 of 17 March 1986. The complaint is really just an application for review, at least of Judgment 732, since it again seeks a ruling on the proper interpretation of 301.1311. It is therefore pleading misinterpretation of the text, and that would be a mistake of law, which is not an admissible reason for reviewing a text that carries the authority of res judicata.

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

Updated by PFR. Approved by CC. Last update: 7 July 2000.