

## SIXTEENTH ORDINARY SESSION

### *In re SAINI*

#### **Judgment No. 93**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations, drawn up by Mr. T.S. Saini on 3 November 1965, and the Organisation's reply of 27 May 1966;

Considering Article VIII of the Statute of the Tribunal, Article 301.136 of the Staff Regulations of FAO and Section 370.831 of the FAO Manual, as well as Staff Rule 303.131;

Having disallowed the hearing of witnesses prayed for by complainant as being unnecessary for the disposition of the present case;

Having heard, in oral proceedings, on 3 and 4 October 1966, Mr. Jacques Mercier, Counsel for the complainant, and Mr. G. Saint-Pol, Agent of the Organisation, as well as Mr. Saini, who was questioned by the Tribunal;

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

A. Complainant entered the service of the Organisation on 6 January 1962 and, after serving in the Sudan and subsequently in Rome, was then given a fixed-term appointment, in the next higher grade, to serve as a forestry expert in Jordan from 1 January 1964 to 5 January 1967.

B. In the course of the year 1964, difficulties arose between complainant and the manager of the project to which Mr. Saini was assigned, which gave rise to an extensive correspondence, visits to Jordan by headquarters officials, and discussions at headquarters with the project manager, and the Organisation states that, in view of the deterioration of the relationship between the complainant and his Chief, it came to the conclusion that one or both officials should be removed from Jordan and reassigned.

C. When complainant visited Rome on 22 and 23 December 1964, on the occasion of his return from home leave, he was informed orally of the decision to reassign him and was instructed to return to Amman for the period necessary to complete his field work and to wind up his personal affairs, whereafter he would return to Rome for analysing the data collected in Jordan and for reassignment. Complainant accepted this arrangement and returned to Amman.

D. After his return to Amman, the Organisation, on the advice of the Resident Representative in Amman, notified complainant that he should return to Rome not later than 25 January 1965. During the same period, complainant pressed his complaints against the project manager, and the Resident Representative urged FAO to call both the project manager and Mr. Saini to Rome, and to give the latter an opportunity to state his case. Both officials proceeded to Rome, where extensive discussions were held.

E. Complainant then expressed dissatisfaction with the manner in which the management of the Jordan Forestry project and his charges against the project manager were being investigated. On 1 February 1965, complainant wrote to the Chief of the headquarters technical unit supervising the project that discussions had not been pursued and that he was proposing to fly back to Amman the following day. On the same day, complainant was notified in writing that he should remain in Rome until further notice and "occupy himself" with assignments to be given to him in that technical unit. The note added that, as complainant had been warned to wind up his affairs in December and had had over a month in Amman to do so, he should have been prepared to remain in Rome. The question of his return to Jordan would be considered once a definite decision had been made concerning his future assignment.

F. On 2 February 1965, complainant saw a cable from the Resident Representative in Amman indicating that Mrs. Saini was unwilling to travel without her husband's authority, and complainant immediately protested, in writing, against this unwarranted interference in his personal affairs. Although it is established that FAO cabled the Resident Representative not to interfere with Mrs. Saini's arrangements, the protest was left unanswered. On 7 February 1965, complainant received a letter from his wife saying she had been visited by the Deputy Resident

Representative who had urged her to fly to Rome, and complainant immediately proceeded to Amman, leaving behind him a note in which, after recalling his grievances, he claimed that the discussions so far held had been fruitless, that he was being detained in Rome while he and now his wife were being subjected to pressure, that he had come to Rome for discussions rather than for the purpose of reassignment, as envisaged in December 1964, and that, as a matter of moral duty, he was returning to Amman.

G. On 9 February 1965, the Resident Representative in Amman cabled FAO, mentioning the return of Mr. Saini and requesting instructions. On 11 February, acting on instructions from FAO, the Resident Representative notified complainant that he had left Rome against orders, that he was directed to return immediately to Rome for further discussions, and that any refusal or delay in returning would constitute a serious breach of discipline. On 13 February 1965, complainant cabled that the work he had been detained in Rome to perform was neither part of his present contract nor of his terms of reference and therefore constituted a breach of contract by FAO, that his return to the duty station provide for in his appointment was no breach of discipline, and that any orders contrary to contractual clauses were in breach of contract. He added that he had already agreed to be reassigned, and was awaiting at his current duty station further details concerning his new assignment. On 19 February 1965, complainant was notified that the Director-General had decided to terminate his services with the Organisation as of 28 February 1965 in the interests of the Organisation in accordance with Manual provision 370.831 clause (vi) and was informed of the financial and administrative arrangements consequent upon this decision.

H. When complainant was informed of the sums to be paid to him upon termination of his appointment, he pointed out that his salary, as calculated, did not include the annual increment which would have been payable in respect of the year 1964 and, in reply to his inquiry, was advised, on 17 March 1965, that having regard to his conduct and to the events which led to the termination of his appointment, no increment could be awarded. Complainant protested and, on 23 April 1965, appealed against the decision to withhold his increment.

I. Following internal appeals and the final confirmation of the decision to terminate his appointment, complainant instituted proceedings before the Tribunal, and claims: (a) that he was denied access to documents essential to the presentation of his case and in particular, to the full text of the report of the FAO Internal Appeals Committee, that the provisions of the Manual on which FAO relied to refuse access to these documents, should be quashed, and that the Tribunal should order the relevant documents to be produced; (b) that the decision to terminate his appointment in the interests of the Organisation be quashed, and that he be reinstated and paid compensation and costs or an indemnity for failure to reinstate him; and (c) that the annual salary increment in respect of the year 1964 was unlawfully withheld and should be restored. The Organisation prays for the dismissal of the complaint under each of these three heads.

## CONSIDERATIONS:

On the termination of complainant's appointment

1. Staff Regulation 301.136 empowers the Director-General to determine the salary rates and the terms and conditions of employment applicable to field project personnel. Having regard to the generality of its terms, this provision must be regarded as applicable to such field project officers who hold fixed-term appointments as well as to those who hold other types of appointments. The Director-General exercised the power thus conferred upon him in promulgating Section 370 of the FAO Manual. Complainant's contract provided that he was appointed as a field project officer. Consequently, the Director-General correctly considered that the provisions of Manual Section 370 and, more particularly, Section 370.831 were applicable and relied on them to terminate complainant's appointment. Section 370.831 provides that "experts may be terminated (i) for abolition of post, no appropriate reassignment being available in the programme; (ii) if for reasons of health he is incapacitated for further service; (iii) if his services prove unsatisfactory; (iv) for misconduct; (v) for reason of unsuitability for a post or assignment, no appropriate reassignment being available in the programme (acceptability to a government is a condition of suitability); and (vi) if, in the opinion of the Director-General, termination would be in the interests of the Organisation". Complainant submits that the Organisation by relying on clause (vi) of the above provision invoked the interests of the Organisation in order to effect the termination of his appointment for disciplinary reasons without making and proving a charge and without following the procedure applicable to such cases; whereas the Organisation pleads that it could legitimately invoke the interests of the Organisation to terminate complainant's appointment notwithstanding that it could also have invoked one or more of the other causes set forth in Section 370.831.

2. It follows that the question before the Tribunal is what is the extent of the power given to the Director-General by clause (vi) of Manual Section 370.831. If the power is read by itself, it is apparently absolute. But it must be considered together with the other provisions of the Section. If clause (vi) is read as granting an absolute power, all the other provisions in the Section are superfluous, since in each of the five preceding cases it would inevitably be in the interests of the Organisation to terminate the appointment. Moreover, if the power is absolute, it could be used to substitute the test of the Director-General's opinion for the test of fact; the Organisation would not have to prove, for example, that misconduct had been committed but only that the Director-General believed that it had.

3. For these reasons, the power in clause (vi) cannot be read as an absolute power exercisable in all cases, but must be read subject to a condition limiting the type of case in which it can be exercised. The condition must be framed in the light of the fact that the power will normally be used in the case of a satisfactory officer, since an unsatisfactory officer can normally be dealt with under the preceding provisions of the Section. Extraordinary circumstances may arise in which the interests of the Organisation are threatened by the retention of even a valued servant, and in such a case the Director-General must have the right to terminate. This in the opinion of the Tribunal is, having regard to the context of clause (vi), the scope of the power.

4. It is for the Organisation to satisfy the Tribunal that such extraordinary circumstances exist. If the Organisation satisfies the Tribunal of this, the power arises. It is then for the Director-General to decide whether in these circumstances the interests of the Organisation require the termination of the officer's appointment and the Tribunal will not interfere with that decision unless, on the one hand it may have been taken by a person without authority, or in an irregular form, or there has been a failure to comply with recognised procedure, or, on the other hand, it is tainted by an error of law or based upon materially incorrect facts, or essential material elements have been left out of account or obviously wrong conclusions have been drawn from the evidence in the dossier.

5. In the present case the Organisation has failed to satisfy the Tribunal that any extraordinary circumstances existed. The facts which are relied on as justifying the termination are the inability of the complainant to get on with his superiors and colleagues and in February 1965 his refusal to obey lawful orders. These facts, if proved, might justify action under Articles (iv) or (v) of the Section, but not under Article (vi). Accordingly, the Tribunal concludes that the Director-General had no power to terminate the complainant's appointment under Article (vi) and finds that, on this count, the complaint is well founded, and that it is therefore unnecessary to the disposition of the case to consider the question of access to documents.

6. Article VIII of the Statute of the Tribunal provides that if the Tribunal is satisfied that the complaint was well founded it shall order the rescinding of the decision impugned or the performance of the obligation relied on. If such rescinding or execution is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him. Having regard to the circumstances of the case, the Tribunal considers the rescinding of the decision impugned to be inadvisable and considers that complainant should be awarded compensation for the injury he has suffered. After an appraisal of all the circumstances of the case, and having regard to the attitude of the Organisation towards complainant prior to ordering his return to Rome and chiefly to the attitude of complainant after being directed to return to Rome, the Tribunal considers that the proper amount to award Mr. Saini as compensation is one thousand United States dollars.

On the withholding of increment

7. The Organisation contends in the first place that the claim is time-barred inasmuch as the complainant was informed by the letter of 17 March 1965 that no increment was to be granted and his appeal was not lodged until 23 April 1965. According to Staff Rule 303.131, such appeals must be lodged within two weeks after the notification of the decision impugned. The complainant asserts that the letter of 17 March 1965 was a reply to an inquiry, and that the decision not to grant an increment was not notified before 13 April, so that his appeal of 23 April was lodged within the prescribed two-weeks time-limit. In the opinion of the Tribunal the terms of the letter of 17 March 1965, even if constituting an explanation rather than a notification, were unambiguous; the complainant was thereby put on notice that the increment was not being granted and put in a position to lodge an appeal. Consequently, his appeal of 23 April is, as the Organisation submits, time-barred and cannot be considered. It follows that his claim under this head must fail.

On costs

8. As complainant was represented by Counsel and as the Tribunal made no order to hear him personally, FAO was

not required to defray his costs of travel. The Tribunal notes that FAO voluntarily paid one-half of complainant's air fare and makes no further award in this respect.

9. As the complaint has partly succeeded, an appropriate proportion of the costs incurred in connection with it should be awarded against the Organisation.

#### DECISION:

For the above reasons,

1. The complaint for wrongful dismissal is well founded.
2. The rescinding of the decision impugned being inadvisable, compensation in the amount of one thousand United States dollars is awarded to Mr. Saini against the Food and Agriculture Organisation of the United Nations, for the injury caused to him.
3. The costs incurred by the complainant in connection with the present complaint, are awarded against the Organisation in the amount and in the proportion to be determined by order of the President of the Tribunal.
4. The remainder of the prayer for relief is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

M. Letourneur  
André Grisel  
Devlin  
Jacques Lemoine