

SIXTY-NINTH SESSION

In re HALL

Judgment 1017

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Hollie Ann Hall against the International Fund for Agricultural Development (IFAD) on 5 August 1989, IFAD's reply of 11 October, the complainant's rejoinder of 17 November 1990 and the Fund's surrejoinder of 7 February 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 6, section 8(d), of the Agreement establishing the Fund, adopted on 13 June 1976, sections 2.2.1, 3.1.3, 3.9.2, 3.11.1, 4.8 and 4.10 of the Personnel Policies Manual of the Fund and the administrative instruction issued on 31 July 1984 on probation under fixed-term appointments;

Having examined the written evidence;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is a United States citizen and was born in 1956. After holding short-term contracts with IFAD, in Rome, she took up duty on 1 August 1988 under a two-year contract as a documents clerk and typist at grade G.4 in the Inter-Agency Documents Centre (IDC) of the External Relations Division (GX) of the General Affairs Department (GD). In accordance with Section 3.1.3 of the Personnel Policies Manual ("for a period of time determined by the President, but not exceeding 18 months, new staff members shall be on probation. During this period their progress and performance will be regularly reviewed in accordance with the provisions of Section 4.8") she was put on probation for six months and in that period either side might end the contract by giving one month's notice.

In an evaluation of her performance which he made on 25 November 1988 the complainant's supervisor, the Chief of GX, said he needed another three months to make up his mind about her, and her probation was extended to 30 April 1989. In a further evaluation that bears the date of 31 March 1989 he gave her "overall rating" as "marginal" and commented: "In spite of the chances given the Staff Member to improve her performance and above all bring her behaviour up to UN standards, I am convinced that her general attitude doubled with a deep-seated lack of flexibility and spirit of cooperation prevents her from working harmoniously with colleagues".

In a memorandum of 24 April to the President of IFAD the Chief of the Personnel Division (VE) recommended termination. She had her probation extended to 31 May. She was on sick leave from 2 to 9 May. On 10 May the Assistant President in charge of GD told her orally that her appointment would be terminated. The same day she wrote a memorandum to the President asking him to review the decision. A memorandum of 11 May from the Chief of VE, which she got the same day, gave her one month's notice of termination and extended her probation for the last time to 11 June.

In an undated note handwritten at the foot of her memorandum of 10 May the President refused to reconsider the decision though he suggested "temporary trial" in some other department "without any commitment". On 12 June the Chief of VE accordingly offered her a short-term appointment from 13 June to 12 September 1989 as an accounts clerk at grade G.4 but she replied the same day refusing the offer.

She is impugning the decision notified to her in the memorandum of 11 May 1989 from the Chief of VE.

B. The complainant gives a detailed account of the facts that led up to the termination of her appointment.

She alleges the breach of many provisions of the Personnel Policies Manual (3.1.3, 3.9.2(a), (b) and (c), 3.11.1, 4.8.1(a) and (b), 4.8.2, 4.10.1(c) and 4.10.2(b)) and of the administrative instruction issued by the Personnel Division on 31 July 1984 about "probation periods related to fixed-term contracts". She maintains that the probation procedure was not properly followed. Her supervisor neither discussed her performance with her before evaluating it on 25 November 1988 nor told her how to improve it. Nor was there discussion with her before or

after the second evaluation. Though that evaluation was made on a form issued on 3 April 1989 the date of the supervisor's signature is 31 March; so the validity of the form is in doubt and she suspects that it was not her supervisor but the Assistant President in charge of GD who filled it up. She did not hear of the recommendation before the President took his decision, or of the decision until two weeks after he had signed it. Since she did not get it before 30 April 1989 her appointment was presumably confirmed.

As to the merits she contends that, as the chairman of the Staff Association said in a memorandum of 1 June 1989 to the President, her supervisor was fully satisfied with her. She was never told that her behaviour was anything but exemplary. Offering her a new short-term contract - which she rejected because she had already made other arrangements - suggests that IFAD was in two minds about her. The true reasons for the decision are obscure, and she believes that they were personal. Another secretary disliked her and was anxious to get rid of her. She suggests that the Tribunal hear evidence to cast light on the matter.

She claims 23,193 United States dollars as compensation for the loss of 13 1/2 months' pay, plus interest reckoned as from 11 June 1989; reinstatement in a comparable post outside IFAD but in the United Nations system, or else an award of \$100,000, as compensation for loss of pension entitlements; two years' pay (\$41,232) for loss of career prospects; another two years' pay for injury to reputation and standing; three years' pay (\$61,848) for "loss of three years' work history and work experience along with a favourable IFAD reference to a potential employer"; one year's pay (\$20,616) in compensation for "anticipated difficulties in securing worthwhile employment"; \$500 for loss of health insurance coverage; \$1,500 for travel and "relocation" expenses; \$500 in costs; and \$50,000 in smart-money; or a total of \$317,428.

C. In its reply the Fund gives its own account of the facts and discusses the rules and procedure governing probation and the case law it regards as material.

In its submission the complainant's claims are devoid of merit. The President's decision was a discretionary one and shows no fatal flaw. The sole reason for terminating her appointment was that her supervisors had found her below par. The decision was not taken on disciplinary grounds. Such criteria as co-operativeness and performance are relevant in determining whether a probationer passes muster, and by those criteria the complainant was found wanting.

Though her probation came to over ten months that was within the maximum allowed under Section 3.1.3 of the Personnel Policies Manual. The purpose of the three-month extension was to see whether she could come up to requirements. At no point was any mistake of fact made in appraising her performance. She fails to show that the Chief of GX or the Assistant President in charge of GD acted from any improper motive. What is more, she had safeguards of objective treatment in that the Chief of VE and the Vice-President of the Fund cleared the recommendation for termination before it went to the President. The President acted in good faith on the strength of her supervisors' evaluation, of the material facts and of his own assessment of IFAD's interests.

Though she got no warning that her termination was being considered, the procedural flaw did not result in unfair treatment of her: by the time the recommendation was approved IFAD had fully complied with the requirements of the administrative instruction on probation. Had she not been on sick leave at the time she would have had notice as soon as the President had taken his decision.

D. In her rejoinder the complainant goes over many issues of fact the Fund raises in its reply. She enlarges on her pleas and seeks to rebut those put forward by IFAD, of which she submits many are just gratuitous assertions. She maintains that since her performance was satisfactory it is in bad faith for her supervisors to go back on their approval of her. In the evaluation of 25 November 1988 her supervisor gave her "satisfactory" ratings for knowledge and competence, quality and quality of work, professional responsibility and ability to work in English and described her ability to work with others as "fully satisfactory": she cannot have changed so much for the worse over the next few months. For reasons unknown the Assistant President in charge of GD wanted the Chief of GX to condemn her. She again accuses IFAD of procedural errors, breaches of the rules on probation and on disciplinary sanctions, misrepresentations of fact, abuse of authority, bad faith and conspiracy. She discusses the case law cited in the reply. She believes that only oral evidence will shed light on what really happened.

E. In its surrejoinder IFAD develops its reply. It sees some of the issues of fact the complainant discusses as irrelevant and others as misrepresented in her version, and it seeks to rebut the arguments in her rejoinder. It rejects her charges of bad faith and conspiracy, which it dismisses as mere after-thoughts and unsupported by evidence. In

its submission the rules on disciplinary sanctions are irrelevant. She was not up to standard: the evaluation of 25 November 1988 was not satisfactory, else her supervisor would not have wanted to extend her probation. The Fund rejects the complainant's specific charges of breach of the rules and abuse of authority and her "regrettable personal allegations", which she has failed to discharge the burden of proving.

It again invites the Tribunal to disallow her application for oral proceedings as pointless and her claims as devoid of merit.

CONSIDERATIONS:

1. The International Fund for Agricultural Development employed the complainant under temporary contracts in the accounts branch for varying periods between July 1986 and July 1988, and her performance was rated, according to the nature of her duties, from good to outstanding.

The Fund engaged her again as a documents clerk and typist at grade G.4 in the Inter-Agency Documents Centre (IDC) under a fixed-term appointment for two years from 1 August 1988 to 31 July 1990, subject to six months' probation. In the IDC she was responsible to the Chief of the External Relations Division (GX) of the General Affairs Department (GD). Her main task was to maintain a documents service and to record and file papers from the United Nations and its specialised agencies and from other international, regional and governmental organisations. She also did secretarial and clerical work for GX.

2. She contends that the termination of her appointment was motivated by prejudice on the part of the Assistant President who was the head of GD. The Fund maintains that her performance was less than satisfactory.

Her first performance evaluation report, which was dated 25 November 1988, rated her "ability to work with others" as "fully satisfactory", the quality and quantity of her work as "satisfactory" and her "ability to meet deadlines" and her "initiative" as "marginal". She was said to need close supervision. Her supervisor, the chief of GX, added the following remark:

"Although I am satisfied that Ms. Hall is exerting the necessary efforts to re-organize the IDC and to render it more functional as per my directives, I wish to further observe her performance for another 3 months ...".

By a decision of 7 December 1988 she accordingly had her probation extended to 30 April 1989.

Her second report, dated 31 March 1989, gave her "overall rating" as "marginal", and this time her supervisor said:

"In spite of the chances given the Staff Member to improve her performance and above all bring her behaviour up to UN standards, I am convinced that her general attitude doubled with a deep-seated lack of flexibility and spirit of cooperation prevents her from working harmoniously with colleagues."

On 24 April 1989 she had her probation extended again, to 31 May. By an office memorandum dated 11 May the Chief of the Personnel Division informed her that her probation period was extended for the last time to 11 June and he gave her one month's formal notice of termination of her contract, which was to end on that day.

The substance of the Fund's objections to her performance and conduct are summed up in a confidential note dated 31 August 1989, which the Fund appends to its reply to the complaint and in which the Assistant President in charge of GD states that she proved unable to provide his office with copies of documents in time and that her attitude was unco-operative and her manner disrespectful; not only did she "frequently engage in idle conversation in the corridor but listened to music on the radio and smoked heavily in the office, severely disturbing the work of her colleagues ...".

The material rules

3. Article 6, section 8(d), of the Agreement of 1976 establishing the Fund states that the President "shall organize the staff and shall appoint and dismiss members of the staff in accordance with regulations adopted by the Executive Board". The regulations are set out in a Personnel Policies Manual which sets forth "the broad principles in accordance with which the President shall organize and manage" the staff. According to section 2.2.1 of the Manual the President may supplement it by issuing administrative instructions.

According to section 3.1.3 of the Manual new staff members shall be on probation for "a period of time determined by the President, but not exceeding 18 months".

Section 4.10.2, which is headed "Representation", reads:

"(a) The President shall institute and maintain a simple procedure whereby the views of employees, individually or collectively, may be represented to him on any matter arising from or in connection with the conditions and terms of their employment.

Such representation shall be subject to the understanding that the President will retain, under the provisions governing his constitutional responsibility as expressed in the Agreement and in these policies, the right of final determination of matters within his authority.

(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee may refer the matter for final determination to the International Labour Organisation Administrative Tribunal (

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On 31 July 1984 the Personnel Division published an administrative instruction on probation under fixed-term appointments, and paragraph 3(v) reads:

"Where it is deemed by the Head of Department that the staff member's performance is less than satisfactory, he/she will be immediately informed by the Head of Department that a decision from the President will be sought to terminate his/her services by letting the period of probation lapse."

The application of the rules to this case

4. The Fund does not deny that it failed to comply with the requirement in paragraph 3(v) of the administrative instruction. As early as 2 February 1989, even before the second evaluation report had been drawn up, the Assistant President in charge of GD was writing her supervisor a memorandum which said: "... please ensure that the contract of Ms. Hollie Hall is not extended beyond the present probationary period". Yet she was not so informed. On 5 April the Vice-President of the Fund wrote a confidential and urgent memorandum to the Chief of the Personnel Division pointing out that "there is no firm indication that the employee was properly informed as to what was needed to overcome deficiencies", nor that she had been warned of the intention to terminate her appointment at the end of the extended period of probation.

On 24 April 1989 the Chief of the Personnel Division wrote a memorandum to the President of the Fund suggesting termination of the complainant's contract. The President approved the suggestion. But not until 10 May did the Assistant President of GD tell her orally that she was to go and not until 11 May did she get written notice.

The Fund contends that that was a just minor procedural oversight and did not matter since in any case the President gave her a proper hearing: she wrote a memorandum to the President on 10 May seeking review of the decision and the President, though he refused review on the grounds that with his approval she had already been given notice, added at the foot of her memorandum a handwritten note telling the Chief of the Personnel Division to see whether, "to be humane", she might be given some temporary assignment in another department.

5. The Tribunal rejects the Fund's contention that the oversight was minor. The Personnel Policies Manual does not prescribe any real internal appeal procedure whereby a staff member may challenge a decision: all he may do is make a "representation" to the President under section 4.10.2. The clear intent of that section is that the staff member should have an opportunity to state his case before the President actually makes his decision. Indeed that is the only protection the Manual affords against an arbitrary or otherwise unlawful decision.

Besides, the President's instruction, after review of the complainant's case, that she be offered a temporary post in another department casts doubt on the gravity of the cause for dissatisfaction with her.

6. According to the case law the Tribunal will set aside a discretionary decision of the kind the President took in this case if it was taken without authority, or violated a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken

conclusions were drawn from the facts.

The President's decision is flawed in that it disregarded the requirement in paragraph 3(v) of the administrative instruction and it must be quashed because of that breach of the procedural rule.

The complainant's application for oral proceedings

7. In the light of the foregoing there is no need to grant the complainant's application for oral proceedings.

Relief

8. The complainant does not seek reinstatement in IFAD, and her claim to appointment in a comparable post in the United Nations system fails because the Tribunal may not order redress of that kind. Though her claims to monetary compensation under several heads are inflated, she is entitled to substantial compensation for the improper termination of her contract, to moral damages and to an award of costs.

DECISION:

For the above reasons,

1. The Fund shall pay the complainant damages equivalent to the salary and allowances she would have earned had she been employed up to the date of expiry of her fixed-term appointment.
2. It shall pay her 10,000 United States dollars in moral damages.
3. It shall pay her \$500 in costs.
4. Her other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, the Right Honourable Sir William Douglas, Deputy Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
William Douglas
P. Pescatore
A.B. Gardner