

SIXTY-NINTH SESSION

In re DESSBERG

Judgment 1035

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Massimo Dessberg against the Food and Agriculture Organization of the United Nations (FAO) on 25 October 1989, the FAO's reply of 12 December 1989, the complainant's rejoinder of 1 February 1990 and the Organization's surrejoinder of 28 March 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 302.901 and .9012, 303.1311 and .1313 and FAO Manual paragraph 314.232;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, an Italian born in 1930, joined the Personnel Branch of the FAO in Rome in 1960 as a personnel clerk at grade G.4. In 1963 he was granted a permanent appointment. He was promoted several times and had reached grade P.4 by 1973. In 1981 he was transferred to a post as a personnel officer in the policy and procedures unit of the Recruitment Service of the Personnel Division. His post was funded out of sums made over to the FAO by the United Nations Development Programme (UNDP) by way of commission for servicing field projects financed by that Programme. Such commission is known as "agency support costs". At the end of 1987 and at the start of 1988 there was a deficit of 13 million United States dollars in the extra-budgetary accounts, and the FAO had to make it good by savings.

By personnel action form 78 of 18 June 1988 the Organization told the complainant that his post was abolished and that with retroactive effect from 1 January 1988 he was put on a temporary post funded under the Organization's regular programme.

Having learned of that decision on his return after five weeks' absence, he wrote on 9 August to a personnel officer asking for an explanation, and there followed correspondence on the matter. By a letter of 14 September 1988 he lodged an appeal with the Director-General under Staff Rule 303.1311 alleging that the decision impaired his security of tenure. In a memorandum of 14 October the Assistant Director-General in charge of Administration and Finance rejected his appeal, and he filed an appeal with the Appeals Committee on 11 November 1988 under Rule 303.1313. In its report of 10 May 1989 the Committee held that there was no direct link between post and tenure, that the change of post had been made for financial reasons in the proper exercise of a management prerogative and that the complainant's tenure was unaffected. It recommended rejecting his appeal. A letter signed on 1 August 1989 on behalf of the Director-General rejected his appeal, and that is the impugned decision.

B. The complainant explains how posts are established and classified in the FAO. He observes that he formerly held, under a continuing appointment, a post that was to last until 4 October 1990 whereas what he now has is just a temporary one that is to lapse at the end of 1989. He has no post description, and duties he had in his former post have been given to someone else in his unit "until further notice". What is to happen to his new post after 1989 he cannot tell; there is no post in the programme for 1990-91 to replace the abolished one, and even if another were established it might not require the same qualifications, and he might face termination under Rule 302.901. He would have been preferred for retention under Rule 302.9012 had he been made redundant at the time of the abolition of his post; but Manual paragraph 314.232 says that that rule does not apply to redundancy due to the expiry of a temporary post.

He asks the Tribunal to set aside the impugned decision and grant him redress.

C. The FAO replies that the abolition of the complainant's post was needed to make good the deficit in 1988. The deficit came about because staff costs account for nearly all agency support costs and in 1986 and 1987 the dollar, the currency in which the UNDP pays the FAO support costs, fell by over two-fifths against the lira, the currency that headquarters staff are paid in. Finding that UNDP funds were not enough to finance all the posts that were

filled, the FAO had to abolish the complainant's and others. But it took steps to place the staff; if it could not put them on posts established under its regular budget it transferred them to "parallel posts" of 12 months' duration "created against existing Regular Programme posts". That was the only solution since creating posts under the regular budget would have required the approval of the FAO Conference. What was more, the measures had to be retroactive to cope with the emergency.

Abolishing the complainant's post was a prudent and proper exercise of management prerogatives. There is no provision in the rules to bar such action to solve financial difficulties, and indeed he alleges breach of no such provision. He suffered no injury since the continuity and the terms of his appointment were unaffected: the nature of the post cannot alter tenure when there is a continuing appointment, and so he has no cause of action. Besides, the amount of funds from the UNDP has gone up again and some of the abolished posts, including his, may be brought back.

There was nothing arbitrary about the decision since it formed part of a set of measures taken after proper review of the funding of posts. Nor was there any breach of procedure; in particular the Administration fully informed the complainant of the reasons for the change in the funding of his post.

He did have a post description: a memorandum of 23 August 1988 informed him that his post description was the same as before and he was given a copy. The transfer of some duties to another official was in the Organization's interests. Rule 302.9012 is immaterial because it applies only in the event of termination, and his reference to Manual paragraph 314.232 is hypothetical. The holder of a continuing appointment will get protection anyway from the general rules on termination.

D. The complainant rejoins that those made redundant were not all treated in the same way. Some were put on established posts and what the FAO calls "parallel" posts; others, like himself, got only "temporary" ones. Being set against established posts parallel ones offer the incumbent greater security of tenure. So he did suffer loss of security.

He answers particular issues raised in the reply and corrects "minor inaccuracies" in the FAO's account of the review of the funding of posts.

He submits that what it says about the post description gives a false impression and, to correct it, he supplies copies of correspondence on the subject. He contends that the purpose of taking duties away from him was to punish him for pressing his case; he would never have lost them had he kept his old post.

E. In its surrejoinder the Organization enlarges on its earlier pleas and seeks to refute the complainant's. It maintains in particular that the complaint discloses no cause of action: the transfer affected neither his status nor the terms of his employment as the holder of a continuing appointment, and has caused him no injury. It develops its explanation of the reasons for the abolition of his post and of the criteria for abolition. It points out that his duties, the nature of which it discusses, were much the same after as before transfer. It denies that the transfer of some of them to another official was punitive.

CONSIDERATIONS:

1. The complainant joined the FAO on 22 February 1960 under an indefinite appointment as a personnel clerk at grade G.4. By 1973 he had reached grade P.4 and in 1981 he was put on a post as a personnel officer in the policy and procedures unit of the Recruitment Service of the Personnel Division. As from 1 January 1988 his post, which was funded out of "agency support costs" met by the United Nations Development Programme (UNDP), was abolished because of a deficit in such funding and he was transferred to a temporary post funded under the FAO's Regular Programme.

2. The complainant seeks a ruling as to whether the abolition of his continuing post and his retroactive assignment to the temporary post for an expected period of two years were in compliance with the FAO's Staff Regulations, Staff Rules and procedures.

As he concedes, all posts, whatever their duration and whatever the source of their funding, may be abolished because of a change of programme. It was the sharp reduction in UNDP support costs that required the transfer of the complainant from the post so funded.

3. The complainant further asks the Tribunal to determine whether the action the FAO took was to the detriment of his conditions of employment or impaired his security of tenure.

When transferring the complainant to the new post the Organization assured him that his post description, status and conditions of service would be the same as before. He does not cite any provision of the Staff Regulations or Staff Rules or any administrative directive which has been violated or a single instance in which the administrative decision he complains of has infringed his contractual rights or otherwise affected him adversely. His complaint is wholly devoid of merit.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, 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
Mella Carroll
William Douglas
A.B. Gardner