

## SEVENTIETH SESSION

### *In re DODI*

#### **Judgment 1061**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Gianfranco Vittorio Dodi on 30 October 1989 and corrected on 21 December 1989, the FAO's reply of 19 April 1990, the complainant's rejoinder of 1 July and the FAO's surrejoinder of 14 September 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulations 301.014, 301.015 and 301.017, FAO Staff Rule 302.155 and FAO Manual paragraphs 304.34, 330.24, 330.325 and 361.51;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, an Italian who was born in 1940, joined the FAO as an operator of microfilm equipment at grade G.1 in 1964. He got a permanent appointment in 1971. On 1 August 1976 he was promoted to a post as a G.4 clerk.

In 1980 he stood as candidate of a political party for election as councillor in the township of Formello, in Rome. He was elected then and was re-elected in 1985.

In November 1987 he was elected to the executive committee of the Union of General Service Staff (UGSS) of the Organization. He resigned from the committee in December 1987 and was reinstated in January 1988, and on 5 February 1988 the whole committee resigned.

From 1986 onwards several member States reduced or withheld their contributions to the FAO's budget, and the Organization was in financial straits. The complainant gave an interview on the radio that was broadcast on 4 February 1988 and again on 25 February. Among other comments he said:

"We in the staff are suffering for a crisis that has nothing to do with low staff output. In defending our jobs we are also defending the FAO's aims as an institution. If anything, there should be more of us, because famine is far from being overcome throughout the world."

On 26 January 1988 the UGSS held a general assembly. A journalist from "Il Messaggero" was present, and she wrote an article on the assembly that appeared in the next day's edition of the newspaper.

Believing that it was the complainant who had invited the journalist to attend, the FAO informed him in a memorandum of 19 February 1988 from the Personnel Division that his dismissal was proposed on the grounds of several acts of serious misconduct. The memorandum stated that his unauthorised press and radio contacts were considered to be in breach of Regulations 301.014 and .015 and more particularly of Rule 302.155\*(\*"Staff members shall not, except in the normal course of official duties, or with the prior approval of the Director-General, perform any one of the following acts, if such act relates to the purposes, activities or interests of the Organization: (i) issue statements to the press, radio or other agencies of public information; (ii) accept speaking engagements") and his political activities in breach of Regulation 301.017 ( "Any staff member who becomes a candidate for a public office of a political character shall resign from the Organization") and Manual paragraph 304.34. It gave him five working days in which to reply, in accordance with Manual paragraph 330.325. The complainant replied in a memorandum of 26 February 1988. Pending the decision on his proposed dismissal he gave the press two interviews on 23 and 24 February 1988 in which he commented on the sanction the FAO proposed to apply to him. His reply being found unsatisfactory, the Assistant Director-General in charge of Administration and Finance sent him a memorandum on 1 March 1988 imposing on him the disciplinary measure of dismissal for misconduct under the terms of Manual paragraph 330.24".\*

(\*".24 Dismissal for Misconduct: .241 Definition: Dismissal for misconduct is termination for unsatisfactory conduct as defined below: (i) Dismissal for misconduct is a termination for unsatisfactory conduct that has jeopardized, or would in the future be likely to jeopardize, the reputation of the Organization and its staff; ...")

On 16 May 1988 he appealed against the dismissal to the Director-General. The Assistant Director-General rejected his appeal on 24 June 1988 and he appealed to the FAO Appeals Committee on 19 July. In its report of 25 April 1989 the Committee recommended rejecting his appeal, and by a letter of 4 August 1989, the final decision he is challenging, the Director-General informed him of the rejection of his appeal.

B. The complainant submits that the reasons put forward by the Organization do not warrant dismissing him for misconduct.

As to the radio interview, he contends that what he said was protected by his right to freedom of speech and by his right as a union representative to speak on behalf of the staff and in any event cannot be interpreted as damaging to the Organization's reputation. As to his contacts with the Italian press he denies having invited the journalist to attend the assembly of the UGSS and explains that the other members of its executive committee tacitly approved her presence. That she should be there was the committee's decision and he himself may not properly be taken to task on that account. He rejects the Organization's submission that it had not known of his political activities and maintains that after eight years in office he had every reason to infer its tacit consent. He alleges breach of the principle of equal treatment in that other staff members also gave interviews on the radio yet did not suffer dismissal.

He claims reinstatement and an award of damages.

C. In its reply the FAO submits that the complainant's functions as a Union representative do not relieve him of his duties as a staff member and in particular his obligations "under Regulations 301.014, .015 and .017, Rule 302.155(i) and (ii) and Manual paragraph 361.51, which set restrictions on contacts with the radio and the press.

In answer to his charge of unequal treatment the Organization observes that it has no record of other interviews given by staff members and that even if it did they would not warrant his own serious misconduct. As for the invitation of the journalist, the evidence shows that it was indeed the complainant who invited her to attend the assembly and he thereby acted in contravention of the Staff Regulations and Rules.

The FAO denies knowing of the complainant's political activities until it made an inquiry just before dismissing him and submits that in standing for and taking up the office of town councillor he plainly acted in breach of Regulation 301.017.

There is further evidence of misconduct in the interviews he gave the press on 23 and 24 February 1988, at a time when he was already at risk of dismissal but still on the staff.

D. In his rejoinder the complainant points out that according to Manual paragraph 330.241 misconduct warranting dismissal is "unsatisfactory conduct that has jeopardized, or would in the future be likely to jeopardize, the reputation of the Organization and its staff". He maintains that neither his radio interview nor the article the journalist wrote after attending the assembly nor his political activities fulfil that requirement, and he submits that breach of the Staff Rules does not in itself afford sufficient grounds for dismissal for misconduct. The Organization amended the Manual with effect from 1 September 1988 to introduce a new provision that treats "violation of the Standards of Conduct of the International Civil Service set out in Manual Section 304" as unsatisfactory conduct. A contrario such violation cannot have constituted unsatisfactory conduct up to that date. In any event the Organization has failed to prove that he did invite the journalist to the assembly and he questions its submission that it had records neither of the other interviews nor of his political activities. He presses his claims.

E. In its surrejoinder the Organization seeks to refute the pleas in the complainant's rejoinder. It dwells on several issues of fact of which it rejects his version. It enlarges on its arguments about the three charges on which he was found guilty - the radio interview, the holding of public office and the invitation of a journalist to the Union meeting - and maintains that on those grounds the complainant's dismissal was amply justified under the Staff Regulations and Staff Rules.

CONSIDERATIONS:

1. After twenty-five years' service with the FAO the complainant was dismissed for misconduct on 1 March 1988. His internal appeal was unsuccessful and the decision of 4 August 1989 by the Director-General confirming his dismissal is the one now impugned.

Dismissal for misconduct is defined in Manual paragraph 330.241 as termination for unsatisfactory conduct that has jeopardized, or would in the future be likely to jeopardize, the reputation of the Organization and its staff. The grounds on which the complainant was dismissed were:

- (1) giving an unauthorised radio interview in which he commented on the FAO's financial position;
- (2) holding public office of a political character;
- (3) inviting to a general assembly of the Union of General Service Staff (UGSS) at headquarters an outside journalist who wrote a detailed article that was published in "Il Messaggero".

The radio interview

2. In the interview which the complainant gave on the radio on 4 February 1988 he was critical of the Administration and expressed views about the financial problems of the Organization. Though he did so without permission, he argues that as an officer of the UGSS he was not bound by the rules requiring prior approval of the interview and was protected by his right to freedom of speech. Giving the interview did not constitute misconduct within the meaning of the rules.

3. Freedom of speech must be protected particularly for officers of a staff association, so that they are not hampered in their task of representing the membership when in dispute with the Administration. But there are limits on such freedom. A staff representative's public statements must not impair the dignity of the international civil service: indeed he is under a special obligation not to abuse his rights by using expressions or resorting to behaviour incompatible with the decorum appropriate to his status both as an international civil servant and as an elected staff representative. The Tribunal has so ruled in Judgments 87 (in re Di Guiliomaria) and 911 (in re de Padirac No. 2), and the principle is reflected in several provisions of the Organization's own rules. Thus Regulations 301.014 and .015 require staff to conduct themselves with decorum, reserve and tact as befitting their status and to exercise the utmost discretion in all matters of official business. And Rule 302.155 further stipulates:

"Staff members shall not, except in the normal course of official duties, or with the prior approval of the Director-General, perform any one of the following acts, if such act relates to the purposes, activities or interests of the Organization:

- (i) issue statements to the press, radio or other agencies of public information;
- (ii) accept speaking engagements;"

4. In taking part in the radio interview the complainant was in direct breach of Rule 302.155. Staff representatives are not exempted from observance of the rules by reason of holding office in the Union. The complainant's making the broadcast cannot but be construed as a wilful attempt to bring into the public arena a matter relating to the "interests of the Organization" and to put public pressure on the Administration. Such deliberate airing of staff grievances in public is conduct likely to jeopardize the reputation of the FAO and its staff. A staff association is not prevented from effectively representing its members' interests by keeping its affairs within the confines of the organisation. The conclusion is that the charge under this head is proven and warranted dismissal.

The holding of public office

5. The complainant stood for election in 1980 and 1985 as a candidate of a political party for the office of councillor in the township of Formello and he was elected for two successive five-year terms. In his defence he alleges that the FAO knew of his election because he told its staff relations officer. The Organization denies that. As proof of its bad faith he cites the Organization's brief in reply to his internal appeal and quotes it as saying it "was indeed aware of his candidature". He also submits that being a councillor did not amount to misconduct.

Regulation 301.017 provides:

"Any staff member who becomes a candidate for a public office of a political character shall resign from the Organization."

The reason for the rule is that an international civil servant, though entitled to hold his own political views, must stand aloof from demonstrations of adherence to a political party. Integrity, loyalty to the international civil service, independence and impartiality are the standards required of an international civil servant and they require him to keep clear of involvement in national party politics.

6. The complainant does not substantiate his allegation that the Organization knew of his election and tolerated it. The staff relations officer denies ever being told. He never asked whether he might be relieved of his obligation to resign under Regulation 301.017. He simply misquotes the FAO's reply to his appeal, which in fact says that the Organization was indeed "unaware of his candidature".

7. His holding of elective political office is misconduct as defined by the rules. The charge is again proven and is sufficient reason for dismissal.

The press article

8. There is conflict of evidence about the circumstances under which a journalist from "Il Messaggero" attended the general assembly of the UGSS at FAO headquarters on 26 January 1988. Though inviting her to attend was in breach of the same rules that made the radio interview unacceptable, the complainant denies responsibility for her presence and for what she afterwards wrote.

The Administration relied on two statements by an Italian staff member. First, he affirmed in writing on 12 February 1988 that the complainant had told him to pick up the journalist at the reception desk in Building D on 26 January 1988 and accompany her to the plenary hall before the general assembly began. In a second written statement dated 22 November 1988 he confirmed that in the presence of other Union members the complainant had asked him to go to the premises of Il Messaggero to fetch the reporter and bring her to the Union office; however, at about 4 p.m. she had turned up at reception in Building D and given the Italian staff member's name as a reference for an entry pass; at about 4.30 p.m. everyone had left the Union office together to go to the general assembly.

9. The complainant alleges that the witness was blackmailed because his status was precarious and that the evidence taken from him is unreliable.

The allegation is not proven.

10. He also makes out that the consent of the other members of the executive committee of the Union must be implied.

The Tribunal is satisfied on the evidence that the complainant was implicated in the reporter's attendance and that the Director-General had good reason to find him guilty of a breach of the Staff Regulations and Staff Rules that justified dismissal. Even if other Union members may have been implicated too, that is no excuse for the complainant's own breach of the rules.

11. In the circumstances there is no reason to set aside the impugned decision.

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, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux

Mella Carroll  
William Douglas  
A.B. Gardner

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