

SEVENTIETH SESSION

Judgment 1069

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. A. L. M. against the Food and Agriculture Organization of the United Nations (FAO) on 26 February 1990, the FAO's reply of 24 May, the complainant's rejoinder of 18 June and the Organization's surrejoinder of 4 September 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual paragraph 331.311;

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. An account of the complainant's career and many earlier disputes with the FAO is given in Judgments 824, 1030 and 1031, which dismissed his first three complaints. From 1979 he was employed in the Office of the FAO's Representative in India, in New Delhi, and as from 1 December 1985 he was assistant to the director of a technical co-operation project in the same city.

He was on annual and sick leave, however, from 25 November 1985 and did not take up his new duties until 5 December 1986. By a letter of 21 January 1986 the FAO's Representative told him to return the keys to a locked cupboard and desk he had been allowed to use in his office. He failed to do so, and after consulting headquarters in Rome the Representative had the desk drawer forced on 3 February 1986.

On 5 October 1987 the Assistant Director-General in charge of Administration and Finance sent a telex from headquarters to New Delhi suspending the complainant from duty pending investigation of charges of unsatisfactory performance.

In a memorandum of 27 February 1988 the complainant reserved his right to claim damages for the loss of personal papers and other belongings. By a telegram of 19 August 1988 he filed a claim to damages in the amount of 2 million United States dollars for "serious mental physical and economic injuries to self and consequent physical mental economic social and educational damages to [his] dependants". On 29 August he sent the Assistant Director-General a telex claiming another \$150,000 in "token damages" for the loss of personal belongings. The Organization rejected the claims in two telexes which it sent him on 5 September 1988 and of which it sent him copies on 14 September.

On 24 October he sent the Director-General a telex alleging that he had got no answer to his claims and so was filing an appeal. By a letter of 17 November 1988 the Assistant Director-General, replying on the Director-General's behalf in accordance with FAO Manual paragraph 331.311, rejected both his claims. On 3 February 1989 he lodged an appeal with the Appeals Committee against the Director-General's decision. In its report of 27 September 1989 the Committee recommended rejecting his claims and the Director-General notified such rejection by a letter to him of 21 November 1989, the decision he impugns.

B. The complainant gives a detailed account of the later years of his career in the Representative's Office and with the project. He explains that his claim to the award of \$2 million is for the persecution of him by the Representative and other officials, which has seriously damaged his health and caused grave material and moral injury to him and his family. His claim to the \$150,000 is for the confiscation of valuable papers, a diary, family photographs and other records and bills from the drawer of his desk at a time when he was ill. The FAO Representative failed to keep an oral promise to his wife to make over the contents of the drawer and highhandedly had them destroyed. The Appeals Committee's report on his case was mistaken and prejudiced. He seeks disclosure of various items of evidence including his confidential medical records and a list of the items found in the drawer.

C. The FAO replies that the complainant's claim to damages for material and moral injury is unsubstantiated and based on vague and gratuitous allegations. Besides, the lawfulness of the treatment of him formed the subject of his second and third complaints and any award of compensation he may be entitled to must depend on the outcome of those complaints.

As for his other claim, the office staff needed access to his desk drawer and cupboard which were FAO property. The Representative had no success in trying to get him to appoint someone to pick up any personal belongings or surrender the keys. So his cupboard and desk drawer had to be forced. As four witnesses have certified, in writing, there were no personal belongings of his in the drawer. Some items were kept for him in a sealed envelope and he may still have them. Though he went back to work on 5 December 1986 he made no claim until 29 August 1988. He has failed to show that there were any personal belongings of his in the drawer or that, if there were, their value came to anything like \$150,000.

D. In his rejoinder the complainant presses his pleas. He objects to the Organization's version of the facts, which he submits the evidence largely belies. He maintains that he is entitled to redress for its shabby and indeed unlawful treatment of him, which he describes at length. The injury it caused him was so serious that he had to have psychiatric treatment. His wife handed over the keys to the cupboard and the drawer to an FAO driver, and the driver gave her a letter dated 24 January 1986 from the FAO Representative which promised to make over his personal belongings to him. Not until 27 February 1988 did he hear of the rifling of his desk drawer, and he wrote at once to assert his right to compensation. The Organization is guilty of a grave breach of trust in the matter. The witnesses who said that there were no personal belongings of his in the drawer were either hostile to him or unable to resist the pressure brought to bear on them to endorse the Organization's line. He has no proof of the loss because no records are kept of the property of staff on the premises. Several FAO officials connived at the destruction of his property. The financial loss to him is great.

E. In its surrejoinder the Organization submits that the only new point in the complainant's rejoinder is his reference to its letter of 24 January 1986. That letter merely confirmed the terms of a conversation the FAO Representative had had with the complainant's wife and repeated the demand for the keys. Though the driver was given two keys, neither of them fitted the drawer, which therefore had to be forced, in the presence of four witnesses. There was no breach of trust whatever.

CONSIDERATIONS:

1. In his first complaint the complainant challenged the lawfulness of his transfer, and in Judgment 824, which it delivered on 5 June 1987, the Tribunal ruled that his claim was unfounded both in fact and in law. The subject of his second complaint was the lawfulness of the decision to dismiss him, and in Judgment 1030 of 26 June 1990 the Tribunal upheld that decision. The main issue in his third complaint was again the lawfulness of his transfer and Judgment 1031, also published on 26 June 1990, again dismissed the complaint.

In this complaint, which he filed on 26 February 1990, before publication of Judgments 1030 and 1031, he puts forward two claims: one to an award of 2 million United States dollars in damages for unlawful treatment at the hands of the FAO's Representative in India causing him moral and material injury and adversely affecting his family; and the other to an award of \$150,000 in what he calls "token damages" for loss of personal belongings of his - a diary, family photographs, records, bills and the like - allegedly kept in a desk drawer that was opened while he was absent on sick leave.

The claim to damages for unlawful treatment

2. The Tribunal having upheld the decision to transfer him and his dismissal, there are no grounds for allowing his first claim, which rests on allegations that those measures were unlawful.

The claim to damages for loss of belongings

3. The background to the complainant's second claim is as follows. He was absent from the office on annual and sick leave from 25 November 1985 and did not report for duty until 5 December 1986. In his absence the FAO needed access to the locked cupboard and desk which it had allocated for his use at work, and which were its own property. The Representative sent him a registered letter on 21 January 1986 asking him to send the keys at once and warning that, if he did not, the furniture would be opened in the presence of witnesses and an inventory made. The complainant supplied the key to the cupboard but not the key to the desk drawer. On 3 February the cupboard was opened and the drawer was forced in the presence of four FAO officials, and the contents - stationery, office supplies and the like - were put in an envelope and sealed.

The officials each signed an inventory, which the Organization appends to its reply, and certified that they had

found no personal belongings of the complainant's.

Though he went back to work on 5 December 1986, not until 27 February 1988, or over 14 months after that date, and over 24 months after the opening of the furniture, did he assert a right to damages for the loss of personal papers and other belongings, and not until 29 August 1988 did he make the formal claim.

4. It is implausible that he would have left in the office for nearly a whole year personal property worth \$150,000, and it is astonishing that he would have tarried so long over making his claim had there been property worth even a tenth of that amount.

He offers no explanation on those points.

Moreover, there is no reason to question either the officials' affirmation that there were no personal belongings of his or the Organization's declaration that the articles that it did find are still at his disposal.

On the evidence the Tribunal is satisfied that there were no personal belongings of the complainant's of any value, let alone worth the grossly inflated sum he alleges. His second claim fails too.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner