TWENTY-SECOND ORDINARY SESSION

In re POUROS

Judgment No. 138

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Takis L. Pouros on 25 September 1968, and brought into conformity with the Rules of Court on 26 October 1968, and the reply of the Organization dated 31 January 1969;

Considering article II, paragraph 5 of the Statute of the Tribunal Staff Regulation 301.033, Staff Rule 302.3144 (vi), and Manual Provisions 371.513 (vi) and 310.212 of the Organization;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

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

A. Mr. Pouros, a national of Cyprus, entered the service of the United Nations Food and Agriculture Organization on 3 December 1961 as an expert under the Expanded Programme of Technical Assistance. He was assigned to a P.5 III post in Iraq as Project Manager of UNDP Project 190 (Institute for Research and Training in Agricultural Co-operatives and Expansion). He holds a fixed-term appointment which will end on 31 December 1970.

B. Mr. Pouros has a wife and two children, a son and a daughter. His wife and daughter, aged 9, joined him in Baghdad, whereas his son, aged 14, remained in Cyprus, his home country. In May 1963 the complainant's wife and daughter went back to Cyprus; they returned to Baghdad from December 196, to June 1964, and again left for Cyprus in June 1964.

C. By a letter dated 22 February 1966 the complainant submitted to the Organization a claim for an education grant for his children for the scholastic year 1964-65, and by a letter of 6 March 1967 he claimed the grant for them for the year 1965-66. He also claimed as part of the grant the travel expenses of one trip for his family to visit him in Baghdad and one trip for himself to visit his family in Cyprus, amounting to around US $420. In support of the claim the complainant has stated that in the whole of Iraq there are no facilities for teaching his children their mother tongue or for instructing them in their own culture, and that in Cyprus there are no boarding schools to which the son or the daughter could be sent. The only way, under the above circumstances, for the complainant to continue the education of his children in their mother tongue was to keep a separate household for them and his wife in Cyprus. He submitted certificates of attendance of his children at schools in Cyprus during the relevant periods. Following the letter of 22 February 1966 there was an exchange of correspondence between the complainant and the officials of the Organization at headquarters culminating in the letter of the Chief of Personnel dated 27 August 1967 rejecting the complainant's claim.

D. The complainant then requested the Director-General, by letter of 6 December 1967, to reconsider the decision of the Chief of Personnel. The Director-General by his letter of 9 October 1967 confirmed the decision of the Chief of Personnel. The complainant lodged an appeal before the FAO Appeals Committee dated 22 November 1967. The Appeals Committee examined the complainant's appeal on 11 June 1968 and recommended that the Director-General maintain his decision. The Appeals Committee felt that the circumstances did not qualify the appellant for education grant under the text of Manual Provision 371.513 (vi), nor was the Committee satisfied that the appellant had incurred, by reason of his expatriation, significant additional expenses for the education of his children. In the opinion of the Committee the fact that Mr. Pouros maintained two households did not constitute additional charges for education covered by Manual Provision 371.513 (vi). The Director-General followed the recommendation of the Appeals Committee and informed the appellant accordingly. This letter, the original of which is undated, was actually handed over to Mr. Pouros on 10 August 1968.

E. Mr. Pouros appealed to the Tribunal on 26 October 1968 against the decision of the Director-General dated 9 October 1967 and against the subsequent decision taken by him on the recommendation of the Appeals Committee of 13 June 1968 and requested the repeal of those decisions and a judgment to pay education grant for his children

in respect of the periods 1964-65 and 1965-66.

F. The Organization prays the Tribunal that the appeal be rejected.

CONSIDERATIONS:

The general provision on education grant for the children of expatriate employees is Staff Regulation 301.033. This Regulation states that subject to maximum amounts as established by the Council the Director-General shall establish terms and conditions under which education grant shall be available to a staff member serving outside his recognised home country whose dependent child is in full-time attendance at a school, university or similar educational institution of a type which will in the opinion of the Director-General facilitate the child's reassimilation in the home country. Staff Rule 302.3144 (vi) states that consonant with the provisions of Staff Regulation 301.033, education grant shall not be payable to a staff member appointed on or after 1 January 1958 whose child is attending a school in the home country and whose spouse does not reside with him at his duty station unless the staff member furnishes acceptable proof at the time of the claim that he has incurred by reason of his expatriation significant additional expenses for the education of the child. Manual Provision 310.212 reflects the above Staff Rule and states that if a staff member following his appointment with the Organization leaves his spouse and child at the home station to enable the child to complete the scholastic year, the grant for the scholastic year concerned may be payable provided that the spouse subsequently joins the staff member at the duty station. However, if the spouse continues to remain in the home country the grant is not payable unless the staff member provides acceptable proof that he has incurred as the result of his expatriation significant additional expenses for the education of the child. Manual Provision 371.513 (vi) provides that education grant shall not be payable to an expert appointed on or after 1 November 1957 who following his appointment with the Organization leaves his spouse and child at the home station to enable the child to complete the scholastic year unless the spouse subsequently joins the expert at the duty station or the expert furnishes acceptable proof that he has incurred by reason of his expatriation significant additional expenses for the education of the child.

The principle of the governing rules on the subject has never been in dispute. The grant represents partial compensation for a clearly identifiable extra expense incurred by the expatriate staff members. This basic object is clear from Staff Regulation 301.033. In the case of an expatriate employee the grant is a partial contribution to the additional expenses to which an expatriate employee is put "by reason of his expatriation" (Staff Rule 302.3144 (vi) and Manual Provision 371.513 (vi)) or "as the result of his expatriation" (Manual Provision 310.212).

This criterion governs all cases where a spouse remains in the home country of an expatriate employee. The word "additional" is to be read in conjunction with "expatriation". In this particular case of the spouse remaining in the home country the burden of proof is on the employee to show that the additional expenses are for the education of his children in the home country and arose because of his expatriation. The staying back of the spouse in the home country could be because of many reasons and could be because of reasons wholly unconnected with the education of his children. It is for the Director-General to be satisfied on the facts and circumstances of each case that the additional expenses were significant and incurred for the education of the expatriate's children and were by reason of the expatriation.

The authority in this case has refused to look into the facts of Mr. Pouros's case because of the self-imposed rule on itself that the maintenance of two households can under no circumstances entitle an expatriate employee to an educational grant. This in the judgment of the Tribunal was an error of law which entailed the non-exercise of a discretion. Whereas, in applying the relevant provisions, the mere fact that an expert sent outside his country of origin maintained a household in that country and acquired a second household in the country where he was assigned cannot entitle the complainant to the aforesaid allowance, on the other hand this same fact does not rule out grant of the allowance on grounds of principle. Circumstances could be envisaged in which significant additional expenses have been incurred solely for the education of the children in the home country when a household is maintained in that country for the school-going children. In international organisations where multicultural and multilingual employees are gathered from various parts of the world the possibility of such a situation should be expected. The Director-General could not therefore dismiss Mr. Pouros's request on principle, but should - if necessary by asking the complainant for the necessary information and justification in support of his claim - taking into account all the circumstances of the case, have exercised his discretion as to whether the facts alleged by the complainant entailed in fact for him "significant additional expenses for the education of his child". Since he did not exercise his discretion in this way, the Director-General's decision should be quashed as being tainted with illegality.

DECISION:

For the above reasons,

1. The decision made by the Director-General on the advice of the Appeals Committee dated 15 June 1968 and received by the complainant on 10 August 1968 is quashed.

2. The case is referred back to the Director-General for a new decision in the exercise of his discretion, taking into account the particular facts and circumstances of this case in the light of this judgment.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself`, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 November 1969.

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy

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