

FOURTH ORDINARY SESSION

In re **TRANTER**

Judgment No. 14

THE ADMINISTRATIVE TRIBUNAL,

Having had referred to it a complaint made against the Food and Agriculture Organisation of the United Nations on 18 June 1954 by Miss Mildred Elizabeth Tranter, formerly an official of that Organisation, seeking the rescission of the decision dated 13 May 1954 by which the Director-General of that Organisation confirmed his decision to terminate her appointment with effect from 31 December 1953 on the grounds that the requirements of the service necessitated a reduction in staff;

Considering the memorandum of reply of the defendant Organisation dated 16 July 1954 denying the relief sought by the complainant;

Having had referred to it a statement submitted in his own name on 26 August 1954 by Mr. X. Leutenegger, Chairman of the Staff Association;

Considering the pleadings exchanged by the representatives of the parties during the hearing:

Considering that the complaint is receivable in form:

Considering that the facts of the case are the following:

(1) The complainant, formerly an official of U.N.R.R.A., left that Organisation in 1947 with a favourable testimonial and entered the service of the defendant Organisation on 1 April 1951; this first appointment was for a duration of one year and included a probationary period of three months; on 4 April 1952, the contract of the complainant was converted into a five-year contract expiring on 1 April 1956; at the same time, she received a first increment: towards the end of the year 1952, most of the temporary contracts having been changed to permanent contracts, the appointment of the complainant was converted into a permanent appointment with effect from 1 July 1952, the first year of employment to count as a year of probation; on 1 April 1953, the complainant received a second increment;

(2) On 12 December 1952, the responsible chief of the complainant addressed to the Chief of his Branch a note reading as follows:

"In the course of the past six months Miss Tranter's health and attitude to her work have deteriorated; her work in this section is now unsatisfactory. Miss Tranter knows this. She has applied for a transfer to another part of the Organization and prepares to see the F.A.O. medical officer."

(3) Subsequently, according to the defendant Organisation, the conduct of the complainant changed to such an extent that she refused to carry out a specific task assigned to her, for which she was verbally reprimanded by her responsible chiefs;

(4) On 17 December 1952, the complainant having stated some days previously that she was in a poor state of health as a result of nervous depression, the director of the Division to which she belonged asked the administrative services to have her examined by Dr. Lapponi, the medical officer; Dr. Lapponi, in a report dated 29 January 1953, stated that the state of health of the complainant was "satisfactory, without limitation";

(5) The complainant tried on several occasions to change her post in the Organisation in order to find duties which would, in her opinion, be better suited to her experience and abilities;

(6) In July 1953, the complainant obtained home leave; in virtue of the procedure in force, the director of the Division concerned must certify, when he approves a request for such leave, that it is expected that the services of the person concerned will be required for a period of at least twelve months following the return to duty; this procedure, according to the explanations of the defendant Organisation, is designed mainly to establish that the

suppression of the post within this period is not envisaged and to specify that the Organisation will not be called upon to bear, during those twelve months, both home leave and repatriation expenses; the certification in question was given to the complainant;

(7) Having fallen ill during this leave, the complainant was able to resume her duties only on 3 November 1953, and, as she had exhausted her annual leave and her sick leave before that date, she was granted additional sick leave;

(8) While she was still on leave, she received a letter, dated 13 October 1953, from the Chief of the Personnel Branch informing her that her contract was terminated as the requirements of the service necessitated a reduction in staff; this letter contained the following passage:

"As you may have been aware prior to your departure on home leave the curtailment of funds available for 1954 has necessitated a reduction in staff. The division directors have made a careful survey of all their staff members and, in effecting their reduction in staff, they have retained those who they consider make the greatest contribution to their work programs. Taking all factors into consideration, the Director of the Economics Division has, with regret, decided that it will be necessary to terminate your services on 31 December 1953; this letter, therefore, will serve as official notice of your separation at the end of this year."

(9) Having returned from leave on 3 November 1953, the complainant was assigned to a temporary post at the Seventh Session of the Conference of the Food and Agriculture Organisation of the United Nations which was meeting at that time; but, the Secretary-General of the Conference having indicated that her work was not of the standard required for the Conference, she returned to the Division to which she was previously attached;

(10) On 23 December 1953, after various interventions, the complainant appealed against the termination decision of which she had been notified on 13 October to the Appeals Committee established in accordance with the Staff Regulations; the grievances of the complainant were the following: (a) the post she held had not been abolished and had, in fact, long since been occupied by a new recruit to the staff; (b) there existed concrete proof of her satisfactory services (two annual increments and the certificate given to her at the time of her leave);

(11) By a note dated 31 December 1953, the Director-General informed the complainant that as her appeal had not been submitted within the required time-limit, it was not receivable; subsequently, however, he revoked this decision, and the complainant was advised by a letter dated 12 February 1954 that her complaint would be submitted to the Appeals Committee; this complaint was examined in April 1954;

(12) In the course of the procedure which preceded the adoption of the conclusions of the Appeals Committee, it was clearly established that the reduction in staff given as the reason for separating the complainant was the result of a curtailment of funds for the expanded technical assistance programme of the defendant Organisation; at the end of September 1953, it had become apparent that several posts of stenographer included in this programme had to be abolished;

(13) As a result of this curtailment of funds, one of the stenographers attached to the division to which the complainant belonged had to be separated; although she held a permanent contract and belonged to the regular staff, the Director of the division concerned designated the complainant for this purpose as being the person whose services, in his opinion, contributed the least to the work of the division; this separation was to make it possible to retain in the service of the division an official of equal grade who had until then a temporary post at the headquarters of the Organisation under the expanded technical assistance programme but whose services were considered, for the same work, more useful than those of the complainant;

(14) Having had referred to it the appeal made by the complainant, the Appeals Committee, by a majority decision, arrived at the following recommendation:

"While recognising the importance of the concept that holders of permanent appointments are entitled to a preferential treatment on the occasion of a reduction in force, the majority of the Committee satisfied itself that an exception under the policy in Staff Rule 302.9012 was fairly made in the case of Miss Tranter and that this decision was only reached after a careful review of the performance of all the stenographers of the Economics Division."

(15) A copy of this recommendation was communicated to the complainant by a letter dated 13 May 1954 in which

the Director-General informed her that he had decided to abide by the opinion thus expressed;

(16) In the meantime, in February 1954, when the contract of the complainant was already terminated, the post which she had occupied fell vacant, the official who had been given preference for the post having been called on to occupy a more important post; a competition was opened for the post formerly occupied by the complainant, there being no provision granting a right of preference under the terms of which she could re-occupy that post in her capacity of an ex-official;

IN LAW:

Considering that Article IX (paragraph 301.091) of the Staff Regulations of the defendant Organisation provides that the Director-General may terminate the appointment of a staff member who holds a permanent appointment if the necessities of the service require reduction of staff:

Considering that paragraph 302.9012 of the Staff Rules provides that, when the necessities of the service require reduction of staff, staff members with permanent appointments shall, as a general rule, be retained in preference to those holding other appointments, subject to the availability of suitable posts in which their services can be effectively utilised; that, however, due regard shall be given to relative competence, integrity and length of service of the persons concerned;

Considering that Section 310.54 of the Administrative Manual provides that a staff member may be separated at any time during the period of an appointment of any type if the work programme of the Organisation requires a re-grouping or curtailment of functions resulting in a reduction in force in one or more occupational groups; that the execution of the revised work programme may call for a reduction in force under which a number of staff members are considered for retention in a reduced number of posts; that efforts are made to utilise elsewhere staff members involved in a reduction in force and due consideration is given to efficiency and other pertinent factors in determining which staff members' services are to be considered redundant;

Considering that the defendant Organisation maintains that its personnel - both that of the regular staff and that of the expanded technical assistance programme - forms a whole and that a curtailment of the said programme cannot be considered separately;

Considering that the complainant submits, on the contrary; (a) that by the term "reduction in staff", within the meaning of Article IX of the Staff Regulations, must be understood reduction of the staff covered by the constitutional budgetary provisions of the defendant Organisation and that the regular staff of the said Organisation must not be confused with the technical assistance staff which is governed by distinct rules and paid out of special funds; (b) that the technical assistance funds are moreover outside the budgetary control of the participating organisations and are "exclusively for the expanded technical assistance programme;" (Resolution 222A (IX) of the Economic and Social Council);

Considering however that various provisions peculiar to the defendant Organisation cover the whole of its personnel, both that of the regular staff and that of the expanded technical assistance programme;

That, for example, administrative memorandum No. 5 of the expanded technical assistance programme of the defendant Organisation provides, in paragraph 4, that the general conditions of employment applicable to the regular staff, as set out in the Administrative Manual and administrative memoranda of the Organisation apply to incumbents of headquarters and regional office posts charged to the expanded programme of technical assistance;

Considering that, besides, the complainant, in support of her arguments, has maintained that the Personnel Manual established by the Technical Assistance Board provided, in Article 201, paragraph 3, that personnel appointed to continuing posts on full-term appointments would be governed by the basic conditions of service applied by the participating organisations to their regular staff provided that no seniority or other re-employment rights outside the technical assistance programme should be applied to such personnel; but that the same Article 201 provides, in its first paragraph, that its scope is limited to "project personnel", that is to say to technical assistance personnel on mission under a specific technical assistance project and not to technical assistance staff attached to the headquarters of the Organisation;

Considering therefore that in any case it appears that the reduction in technical assistance staff at the headquarters of the Organisation must legitimately be taken into consideration as affecting the whole staff, as has been done by

the defendant Organisation;

Considering that, if a comparison is drawn between the number of posts identical to that which the defendant occupied (that is to say grade G.4, non-local) on the regular staff and the technical assistance staff, there was in 1954 a net reduction of fifteen posts as compared with 1953, eight new posts having been established on the regular staff and twenty-three having been abolished out of the total number of posts under the expanded technical assistance programme, exclusive of the posts charged to "field expenses" (Budget for the year 1954 approved by the Conference of the Food and Agriculture Organisation of the United Nations at its Seventh Session (November-December 1953), p. 35);

Considering that in consequence the defendant Organisation was justified in invoking reduction of staff (within the meaning of Article IX (paragraph 301.091) of the Staff Regulations;

WHEREON, pronouncing judgment on the substance;

Considering, it is true, that as a general rule, in the event of reduction of staff, officials holding a permanent appointment must be retained, in preference to officials holding other appointments;

That the defendant Organisation has nevertheless considered itself authorised to have recourse, in this case, to the exception to this rule by invoking the lesser competence of a permanent official in relation to that of a temporary official;

Considering that there is no doubt that as regards the comparative evaluation of services to judge this competence, the Director-General of the defendant Organisation has discretionary power;

But

Considering that this discretionary power cannot be used to misuse recourse to the aforementioned exception;

Considering that, as the complainant has pointed out, it would be extremely regrettable to establish, on the occasion of every fluctuation in the budget of the expanded technical assistance programme a competition on merit between permanent officials of the regular staff and temporary officials of the above-mentioned programme;

That this systematic recourse to the statutory exception would be contrary to the spirit of the provisions governing the conditions of service of permanent officials who must in principle be protected against these fluctuations, and would thus lead to rendering the notion of permanency of function void of substance;

That such a procedure would impede good administration and endanger the sound functioning of the international organisations;

That in equity it is undoubtedly permissible to regret that the Director-General of the defendant Organisation - while maintaining that he endeavoured, but in vain, to transfer the complainant to a new post - finally applied to her the statutory exception, more particularly since the complainant's post became vacant a few weeks after the date on which her contract had ended and could have been reoccupied by her if the decisive measures taken in regard to her had been deferred somewhat; that - the Conference having fixed the budget for 1954 in November and there being thereafter no obstacle in the way of providing for appointments to the posts to be established in consequence for that year - the Tribunal judges singularly fragile the argument of the defendant Organisation that, in any event it was not possible to envisage filling the posts provided for under the said budget at the time when the decision to separate the complainant was taken (October 1953): that at the time when the Conference fixed the budget for 1954, the period of notice given to the complainant was still running; that the only circumstance which the defendant Organisation can invoke is that, on balance, there was in effect a reduction in the total number of posts as has been set forth above;

Considering however that it is not demonstrated that there was in effect misuse of the exception;

That cognisance should be taken of the opinion given on this point by the Appeals Committee;

That the Tribunal is not invested with the power to judge the professional reasons which led the Director-General to make an exception to the principle in giving preference to a temporary official rather than to a permanent

official in this circumstance;

Considering that in strict law the complaint cannot be received as it is not sufficiently demonstrated that any statutory provision has been violated;

That the judge is bound to observe strictly the rules of law and can have recourse to equity only in the event of lack of clarity of the text or silence of the regulations;

That, this being so, the judge can only express the hope that the conditions in which recourse may be had to the exception be specified in such a manner that the stability promised to permanent officials cannot become a dead letter in practice;

ON THE GROUNDS AS AFORESAID,

The Tribunal,

Rejecting any wider or contrary conclusions,

Declares the complaint receivable but unfounded;

Declares the Leutenegger statement receivable insofar as it is made in his own name, but unfounded.

In witness of which Judgment, pronounced in public sitting on 3 September 1954 by His Excellency M. Albert Devèze, President, Jonkheer van Rijckevorsel, Acting Vice-President and M. Iasson Stavropoulos, Deputy Judge called upon to sit in view of the inability of a titular judge to attend, the aforementioned have hereunto subscribed their signatures as well as myself, Wolf, Registrar of the Tribunal.

(Signatures)

Albert Devèze
Jonkheer van Rijckevorsel
Iasson Stavropoulos
Francis Wolf