

TWENTY-SECOND ORDINARY SESSION

SILOW v. IAEA

Judgment No. 142

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Atomic Energy Agency drawn up by Mr. Ronald Silow on 18 May 1968, the reply of the Agency dated 24 July 1968, complainant's rejoinder of 25 April 1969 and the further reply of the Agency dated 5 August 1969;

Considering article II, paragraph 5 of the Statute of the Tribunal, Staff Regulation 1.02 of the Agency, and Staff Rules 12.01.1(D)(1) and 12.02.1(B);

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

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

A. The complainant, who is of British nationality, has a lifetime's experience in agricultural science, particularly in nuclear techniques, gained from employment in many parts of the world and in international organisations. For fourteen years he served as an FAO official and from 1959 to 1964 was Chief of the Atomic Energy Branch in its Technical Department. On 1 October 1964 this Branch and the Unit of Agriculture of the International Atomic Energy Agency, the defendant organisation, were combined to form a Joint FAO/IAEA Division for Atomic Energy in Agriculture (the "Joint Division") within the Agency. The complainant was appointed its Deputy Director. Its purpose was to pool the technical and financial resources of the two organisations "for the common objective of the development of agriculture through the application of atomic energy techniques".

B. Serious differences of opinion soon arose between the complainant and his superiors in the Agency over the Joint Division's programme, and relations between him and its Director became strained. In internal memoranda and discussions he repeatedly objected to the Agency's failure to give the developing countries objective advice on the comparative value of nuclear techniques in agriculture. In his view the Agency was inducing them to incur undue expenditure on applying such techniques for purposes which could be much more cheaply and easily achieved by traditional methods. Finally, on 20 January 1966, without the clearance of the Director of the Joint Division, the complainant sent to the Directors-General of the defendant organisation and of FAO and to top officials in both organisations a memorandum in which he set out in full, and supported with much scientific evidence, his criticisms of the Joint Division's activities. He concluded that those activities were in the main costly, unproductive, and premature in the current state of knowledge and experience. Further, in a letter of 27 January 1966 to the Director-General of the Agency he complained that from the outset he had been almost totally excluded from scientific and policy decisions in the Joint Division and even from decisions on staff appointments, prevented from using his long and varied experience for the service of the Agency, and subjected to professional and personal humiliation. By a letter of 31 January 1966, the Director-General pointed out that the way in which the complainant had distributed the memorandum was in breach of the Agency's administrative procedures and informed him that, since collaboration between him and his superiors had clearly broken down, he was relieved of his duties as Deputy Director. From 31 January 1966 the complainant was appointed "Director with Special Assignment" in the Department of Research and Isotopes with the duty of writing a book on the history and development of the use of nuclear and related techniques in food and agriculture. According to the complainant, after vigorously protesting against the transfer, he agreed to it subject to an oral understanding with the Director-General that it was only a temporary measure intended to give the Director-General time to "correct the situation quietly" and should have no adverse effect on his career or professional reputation.

C. In spring 1966 the Directors-General of the Agency and of FAO jointly appointed a group of consultants to review the Joint Division's activities. The consultants' report, published on 29 September 1966, contained a paragraph which said that they had reviewed "criticisms of the Joint Division's programme made by a senior

member of the IAEA staff" and considered them unjustified. In a letter of 5 October 1966 to the Director-General, the complainant found fault with the consultants' qualifications; alleged that their conclusions were at variance with scientific evidence published by internationally recognised experts; and objected that, though their task had been to examine his criticisms, they had neither discussed those criticisms with him nor substantiated their conclusion. He therefore requested the Directors-General of the two organisations either to withdraw the report from publication or at least to append documents setting out his views, including his memorandum of 20 January 1966. No effect was given to this request. The report was submitted by the defendant organisation to its Board of Governors for information on 1 February 1967 and published by FAO on 20 November 1967.

D. On 24 March 1967 the complainant wrote at length to the Directors-General of both organisations, again protesting that since joining the Agency he had found it impossible to have his views considered, that the attitude of Agency officials towards him was vindictive, and that his professional reputation was being eroded through distribution of the report and in other ways. He considered such distribution a breach of his alleged oral understanding with the Director-General that his transfer should in no way reflect upon his professional reputation. He again requested the Directors-General to withdraw the report, and to state explicitly, in a notice given the same circulation, that their reason for doing so was that they could not accept the consultants' rejection of his criticisms. As required by Staff Rule 12.02.1(B) of the Agency, he also requested the Director-General's consent to waive the jurisdiction of the Agency's Joint Appeals Committee and allow him to appeal directly to the Administrative Tribunal. By letter of 11 April 1967 the Director-General asked the complainant to specify the administrative decision or disciplinary action against which he wished to appeal as a breach of the terms of his appointment. In ensuing correspondence the complainant continued to seek waiver by the Director-General of the jurisdiction of the Joint Appeals Committee, and the Director-General asked him to explain how he believed his case met the requirements of the staff Regulations and Rules relating to appeals. Finally, in a letter addressed to the complainant on 5 October 1967 the Director-General reasserted that the complainant had failed to specify any administrative action against which an appeal could lie.

E. On 19 October 1967 the complainant accordingly appealed to the Joint Appeals Committee against what he took to be the Director-General's final decision, the letter of 5 October 1967. He asked the Committee to find good reason for withdrawal of the consultants' report and to recommend his reappointment as Deputy Director of the Joint Division. He maintained that, though the Director-General had the right to transfer an official, the condition on which he had agreed to his transfer of 31 January 1966 - namely that it should not reflect on his professional reputation - had been infringed by distribution of the consultants' report. The Director-General, though entitled to appoint the consultants and publish their views, had been wrong to accept their unsupported rejection of his criticisms.

F. The Joint Appeals Committee reported on 30 November 1967. It held that the appeal was not directed against any administrative decision constituting non-observance of the terms of the appellant's appointment. There was, in its view, no call for his reappointment as Deputy Director; his transfer had been agreed to, and the Director-General had neither disregarded the terms of his appointment nor taken disciplinary action against him.

G. The complainant, who had received a copy of the Committee's report from the Department of Administration, wrote to the Director-General on 19 January 1968 asking him for his final decision. By a letter of 26 January 1968, which constitutes the decision contested by the complainant, the Director-General informed him that the Committee had made no recommendation calling for any decision on his part and that he had nothing to add to its conclusions.

H. The complainant reached the retirement age of 60 on 21 February 1968 and returned to FAO, where the retirement age is 62, as had been arranged on his transfer in 1964.

I. In his complaint to the Tribunal the complainant alleges:

- (1) that he was wrongfully eliminated from effective participation in the joint FAO/IAEA programme by his transfer on 31 January 1966 and that the Director-General failed to examine his criticisms of it impartially;
- (2) that he agreed to the transfer only on an oral understanding with the Director-General that it was temporary and should not reflect on his professional reputation;
- (3) that the Director-General acted in breach of that understanding in allowing extensive distribution of the report

of the consultants, who, in disregard of widely held scientific opinion and without even hearing the complainant, had dismissed his criticisms out of hand;

(4) that all these actions were motivated by prejudice and other improper motives and so contrary to the agreement concluded between the Agency and FAO in 1959;

(5) that they constitute non-observance of the terms of his appointment and have been detrimental to his professional standing as an agricultural scientist and to his career as an international civil servant the normal continuance of which has been virtually terminated.

He accordingly prays the Tribunal:

(a) to order withdrawal of the consultants' report;

(b) to compensate him in a sum equivalent to three years' gross salary for the professional damage he has suffered through its distribution;

© to compensate him in a further sum equivalent to three years' gross salary for the Director-General's breach of the agreement made with him at the time of his transfer, since he has retired from the defendant organisation and cannot therefore be reappointed Deputy Director of the Joint Division;

(d) to quash the Director-General's decision communicated to him by letter of 26 January 1968 and to compensate him in the sum of six years' gross salary.

J. In its reply the defendant organisation urges rejection of the complaint. It argues:

(1) that the complainant's plea for withdrawal of the report falls outside the Tribunal's competence as set forth in article II, paragraph 5 of its Statute since publication of the report cannot constitute "non-observance, in substance or in form, of the terms of [his] appointment... and of provisions of the Staff Regulations...";

(2) that his appeal against the transfer of 31 January 1966 is irreceivable since he failed within thirty days to request review of the decision as required by Rule 12.01.1(D)(1) of the Staff Regulations and Rules and so to exhaust the internal remedies available, as required under article VII, paragraph 1 of the Statute of the Tribunal;

(3) as to the substance of the complaint, that the group of consultants was an independent body whose report no more reflected on the complainant than any report which rejects criticisms without naming the critic. Besides at the time of its publication the complainant was no longer responsible for the Joint Division's activities;

(4) that the complainant's action in distributing his criticisms of the Joint Division's activities without the Director's clearance was ample justification for his transfer, which, besides, caused him no prejudice. Even if the transfer was subject to an oral understanding as alleged, distribution of the report was no breach of that understanding.

K. In his rejoinder the complainant maintains that the transfer, though not originally prejudicial to his reputation, became so retroactively with the distribution of the report and that grounds for appeal arose with the Director-General's final refusal to withdraw it. The distribution was an act in breach of the oral understanding reached at the time of his transfer and hence of the terms of his appointment. The prejudice to his professional reputation is not diminished by his having ceased to be Deputy Director of the Joint Division at the time of distribution.

L. The defendant organisation prays that the Tribunal may be pleased to hold the complaint irreceivable, and, subsidiarily, to dismiss it as unfounded.

CONSIDERATIONS:

As to the plea for withdrawal of the consultants' report dated 29 September 1966:

As to the Tribunal's competence:

According to article II, paragraph 9 of the Statute of the Tribunal:

"The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure."

The complainant alleges that the publication by the defendant organisation of the above-mentioned report has damaged his career and professional reputation.

He also complains of infringement of his rights under his contract of service and the Staff Regulations. The Tribunal is therefore competent to take cognisance of the plea set forth above.

As to the legality of the refusal by the Director-General of IAEA to withdraw the report:

The Director-General of the International Atomic Energy Agency and of FAO have merely exercised the general powers conferred upon them as heads of their respective organisations in deciding to obtain the advice of consultants on the programme to be followed in a field of common activity and to distribute the consultants' report within the two organisations.

Contrary to the complainant's allegations, the consultants were not called upon to appraise or criticise his work, viewpoint or opinions, but merely, as has been said, to advise on the programme and activities of the Joint FAO/IAEA Division of Atomic Energy in Agriculture. They were therefore under no obligation to interview the complainant in the course of their proceedings. Finally, the statement in their report, that the criticisms of the Division's programme made by a senior IAEA official were unjustified, did not even name the complainant and so could not cast any slur on his professional reputation. Nor, as the evidence shows, did it in fact have any adverse effect on his career.

Accordingly, the decisions of the Director-General to publish the consultants' report and to refuse to withdraw it are not tainted with illegality, caused no prejudice to the complainant, and therefore cannot be quashed. The complainant is not entitled to any indemnity because of those decisions.

As to the appeal against the Director-General's decision of 31 January 1966 to relieve complainant of his duties as Deputy Director of the Joint Division and to transfer him:

Examination of the question of irreceivability raised by the defendant organisation being unnecessary -

In deciding to transfer the complainant the Director-General of the IAEA exercised the authority conferred upon him by Staff Regulation 1.02, under which staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices of the Agency, are responsible to him in the performance of their duty and shall undertake their duties at his direction.

The evidence shows that this decision was motivated by differences of opinion between the complainant and his superiors and by his circulation within the two organisations of his criticisms of their activities.

This motive, whose falsity is not proved, was such as to furnish legal grounds for the decision made under Staff Regulation 1.02.

Accordingly, apart from the question whether and on what conditions the complainant agreed to his transfer - which is relevant only to the question of receivability - he is not entitled to request that the contested decision be quashed or to receive damages for his transfer.

DECISION:

For the above reasons,

The complaint is dismissed.

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.

(Signed)

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

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