

## TWENTY-THIRD ORDINARY SESSION

### *In re LIOTTI*

#### **Judgment No. 149**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations (FAO) drawn up by Miss Bianca Liotti on 28 May 1969, brought into conformity with the Rules of Court on 24 June 1969, the Organization's reply of 25 July 1969, complainant's rejoinder of 10 September 1969, the reply of FAO thereto dated 14 November 1969, complainant's further statement of 18 December 1969, and the FAO's reply dated 10 February 1970;

Considering Article II, paragraph 5, and Article VII, paragraph 3, of the Statute of the Tribunal, Article VIII of the FAO Constitution, Article XXXVI of the General Rules of the Organization, FAO Staff Rules 301.021, 302.231, 302.232 and 303.112, and FAO Manual section 280;

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. Complainant, an Italian national, joined the Division of Finance (Accounting Section) of the FAO on 14 October 1963 as a clerk at grade G.2, and after three fixed-term appointments the post became established and following the rules she applied for it and received an indefinite appointment on 1 June 1964. On 1 August 1966 she was transferred at her own request to another division, but on 1 November 1966, again at her own request, was transferred back to the Treasury Branch, Finance Division. On her return she accepted a temporary G.3 Clerk-Typist post for three months which was offered to her on 2 November 1966 - and on which she commenced working on 7 November 1966. In February 1967 this post became established and she applied for it and was selected for it but her promotion to G.3 grade was not ordered because it was subject to the condition that she passed the Organization's typing test. She eventually passed the test on 2 April 1968 and was promoted to G.3 as a 'clerk-typist' with effect from 1 April 1968.

B. On 7 and 13 December 1967, however, she had written to the Personnel Office and to an Assistant Director-General of the Organization respectively complaining that after four years' service she still held only a G.2 post and claiming that she was in fact performing functions proper to a higher grade. At the end of January 1968 the Finance Division asked the Establishment Section to review complainant's post description and the duties it entailed. In April 1968, having carried out a "desk audit" of the post, the Establishment Section recommended changing its title and reclassifying it G.4. According to complainant, she learned of the recommendation to upgrade her post only orally on 7 May 1968 from the assistant to the Director of the Finance Division; the Organization, on the other hand, claims that she was informed of it immediately, as was shown by her own reference to it in a confidential memorandum which she herself addressed to the assistant Director of the Division on 18 April 1968. In reply to a request from complainant dated 9 May 1968 for clarification of her position, the assistant Director of the Division explained in a memorandum of 27 May 1968 that, in the Division's view, submission of the recommendation to the Establishment Committee must be deferred, since complainant's upgrading was not warranted: while her work performance had been satisfactory, her branch chief considered her to lack the calm temperament and ability to get on with colleagues required by the duties of the upgraded post.

C. In the meantime complainant had applied unsuccessfully for other posts in the Organization, including a G.4 post for an Accounting Clerk in the Travel Unit of the Finance Division.

D. On 5 June 1968, in accordance with Staff Rule 303.131, complainant wrote to the Director-General announcing her intention to appeal against the decision not to appoint her to the post in the Travel Unit and asking again whether she could not be upgraded in her present post. Because of delay in receiving an answer - which she alleges should have been given within the prescribed time limit of three working days - on 1 July 1968 she appealed to the Appeals Committee. On 3 July 1968 she was informed that the Director-General would decide on her complaints within ten days. On 12 July 1968 the Director-General informed her: (1) that he had no reason to disagree with the

selection of another candidate for the post in the Travel Unit; and (2) that, since her present post was financed by World Food Programme funds and no budgetary provision had been made for upgrading it in the 1968-69 biennium, the upgrading, though Justified, would have to be postponed until funds became available.

E. On 17 July 1968 complainant accordingly submitted a further appeal to the Appeals Committee, stating that, while accepting the Director-General's decision of 12 July 1968 not to upgrade her post, she considered that, having assumed for substantial periods of time greater responsibilities than her present grade warranted, she was entitled to a special post allowance under Staff Rule 302.307. She pointed out that the reasons for refusal to upgrade given by the Director-General differed from those set out by the assistant Director of the Finance Division in his memorandum of 27 May 1968. She further accused her branch chief of treating her in an unfair and discriminatory way and of blaming her unduly for certain minor errors she had committed in her work.

F. Complainant's next annual salary increment fell due on 1 November 1968, subject to a report by her chief of satisfactory performance. On 29 October 1968, however, he informed her of his decision to defer the increment for three months because of "misgivings" about her approach to her work and relations with colleagues. After protesting to her chief, complainant also submitted an appeal against this decision to the Appeals Committee. On 1 February 1969, the increment was in fact granted on the grounds that her work had sufficiently improved.

G. The Appeals Committee reported on 27 January 1969. With one dissenting opinion it recommended: (1) that complainant should receive her salary increment with effect from 1 November 1968 since there had been no valid reason for withholding it; and (2) that a request should be made to the World Food Programme for the upgrading of her post and that she should be kept in the post. It dismissed her appeal against her rejection for the G.4 post in the Travel Unit and her request for a special post allowance under Staff Rule 302.307. By letter of 5 March 1969 the Director-General informed complainant that he accepted the second recommendation, but not the first, since questions of efficiency fell outside the Committee's competence. In her reply to the Director-General dated 19 March 1969 complainant pointed out certain factual errors in the Committee's report; maintained that her chief's decision to withhold the increment had been motivated not by her inefficiency but by personal prejudice and therefore quite unjustified; and announced her intention to appeal to the ILO Administrative Tribunal. On 24 March 1969 the Personnel Division replied that the Director-General's decision of 5 March 1969 was final.

H. At a meeting held on 21 March 1969, the Establishment Committee endorsed the proposal of the Finance Division of October 1968 to reclassify and upgrade complainant's post and decided to recommend the upgrading of complainant's post. This recommendation was accepted by the Organization and accordingly with effect from 1 April 1969 she was promoted from Clerk-Typist G.3 to Book-keeping Machine Operator G.4.

I. In December 1968 complainant had consulted a Rome lawyer concerning her appeal. At the end of April 1969 he withdrew from the case and in May complainant paid him a fee of 300,000 lire.

J. In her complaint against the Director-General's decision of 5 March 1969 complainant contends:

(1) that she should be upgraded retroactively from 7 November 1966, the date from which she alleges to have performed the duties of a higher grade, or at least from 20 February 1968, the date of the desk audit;

(2) that the withholding of her annual increment for three months was unfair, especially since according to the desk audit she was already performing G.4 duties;

(3) that the delays in dealing with her appeal and the withholding of her increment were an unwarranted penalty imposed upon her for submitting just claims; and

(4) that she should be reimbursed the expenses paid to her counsel, which she had incurred only because of the delay in dealing with her case.

K. In its reply, the Organization points out:

(1) that complainant specifies no staff rules or regulations which the Organization has infringed;

(2) that the reclassification procedure does not provide for the up grading of posts and the promotion of officials with retroactive effect;

(3) that the withholding of the annual increment was quite legitimate and justified;

(4) that the Staff Rules make no provision for reimbursement of lawyers' fees to officials appealing against the decisions of the Director-General. It therefore invites the Tribunal to dismiss the complaint.

#### CONSIDERATIONS:

1. As to Miss Liotti's claim to be upgraded retroactively from:

(1) 7 November 1966 when she first began to discharge the duties of a higher grade; or

(2) 20 February 1968 when following the desk audit, the Establishment Section decided that its duties and responsibilities warranted reclassification of the post at grade G.4.

While the Tribunal is conscious that it is important to the efficiency of the Organization to respect the principles set forth in Manual section 280.211 (equitable classification of posts facilitates equitable treatment for staff members in comparable circumstances) and in Staff Rule 301.021 (classification of posts and staff should be according to the nature of the duties and responsibilities required), the Tribunal must observe that the Constitution of the FAO in the opening provisions of Article VIII states that the staff of the Organization shall, subject to the rules made by the Conference, be appointed by the Director-General and responsible to him. Moreover, Article XXXVI, paragraph 4, of the General Rules of the Organization states that "... the Director-General shall act in his unfettered judgment in appointing, assigning and promoting staff personnel and shall not be bound to accept advice or request from any other source".

A staff member may request reconsideration of decisions taken with respect to allocation of his post (FAO Staff Rule 302.232) but any request for reclassification of a post has to originate from the department head or division director (Staff Rule 302.231, FAO Manual section 280.411). Specifically, as section 280.442 of the Manual carefully lays down, a staff member wishing reclassification of his post should discuss the matter first with the supervisor or branch chief and with the divisional administrative officer. The request for reclassification is to be submitted to the division director. The division director, if he deems a review of the post to be justified, will request the Administrative Planning Branch to review it. In requesting such review the division director may submit any additional comments or background information he may consider pertinent (section 280.443). Manual sections 280.412, 413 and 42 set out an elaborate procedure for reclassification. In the present case it appears that as early as 19 December 1967, five days after the written request of the complainant, the chief of her branch wrote to the assistant Director of the Finance Division about the need for reclassifying her post. The Division asked the Establishment Section to carry out a desk audit. In February 1968 this was done, and in April 1968 her post was declared eligible to be reclassified G.4. However in May the branch chief and the assistant Director of the Division felt certain misgivings about her suitability for the post and on 19 and 21 June 1968 certain errors in her work were communicated to her. This explains the inaction of the division from March to October in the matter of processing her upgrading. But by October her approach to her work and her relations with her colleagues had markedly improved according to her branch chief. This enabled the Finance Division in October 1968, pending her appeal before the Appeals Committee, to submit the proposal to upgrade the complainant's post to G.4 to the Establishment Committee. In accordance with the normal administrative procedure this proposal came up before the Establishment Sub-committee on 21 March 1969. It endorsed the proposal and recommended the upgrading of the post. This recommendation was accepted and she was promoted from Clerk-Typist Grade G.3 to Book-keeping Machine Operator Grade G.4. The above considerations account for the delay from December 1967 to April 1969. The Tribunal is satisfied that no staff regulation or rule has been violated in form or substance in the present case.

2. As to Miss Liotti's claim regarding refusal of her regular "within-grade salary increase" for a period of three months:

The complainant pleads that the Chief of the Treasury Branch acted unfairly and in bad faith in stopping her regular increment, as she was informed by a letter of 29 October 1968, for three months.

It appears from the written evidence that for many months complainant performed functions at a level high enough to warrant the later reclassification of her post at a higher grade. The reason given by her chief on 29 October 1968 for withholding her salary increase was that he felt misgivings about complainant's approach to work and her relations with colleagues. The Appeals Committee of the FAO, which heard the persons closely concerned with her

appeal, including the chief of her branch and the assistant Director of the Division, found, with only one dissenting opinion, that the increase had been withheld because of personal prejudice. Although, under Staff Rule 303.112 the Appeals Committee was not competent to consider complainant's efficiency - and in fact it did not do so - it was nevertheless competent under the same provision to find the existence of prejudice. The Director-General therefore committed an error of law in stating in his letter of 5 March 1969 to complainant that he could not endorse the recommendation of the Appeals Committee on this point simply on the ground that the Committee was not competent to make such a recommendation. No document in the dossier enables the Tribunal to draw a conclusion different from that reached by the Appeals Committee on this question and the decision to withhold the salary increase should therefore be quashed.

3. Regarding the complaint of delays and silences on the part of the Organization as evidence of motive to penalise complainant for addressing the Assistant Director-General (Administration and Finance):

The complainant's allegation that the delay in forwarding her appeal to the Director-General in accordance with Manual section 331.311, and the Director-General's delay in reply to that appeal, show prejudice is unfounded. The sanction for the violation of Staff Rule 301.131 is contained in that rule itself: an official who receives no reply to his complaint before the prescribed deadline is entitled to appeal to the Appeals Committee. Complainant exercised that right and therefore suffered no injury.

4. Costs:

Complainant's claim for payment of the costs of engaging a lawyer to prepare her case before the FAO Appeals Committee cannot be granted. Staff Rule 303.136 is specific that a staff member can only designate another staff member to represent him before the Committee. It follows that any advice sought from some outside source must be paid for by the staff member himself.

DECISION:

For the above reasons,

1. The Director-General's decision of 5 March 1970 is quashed in so far as it relates to the withholding of the regular salary increase for a period of three months from 1 November 1968.
2. Miss Liotti is entitled to the salary increase from 1 November 1968 to 31 January 1969.
3. The remainder of complainant's claims are 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 26 May 1970.

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