

**EIGHTY-FIRST SESSION**

***In re* WASSEF (No.9)**

**Judgment 1531**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 23 March 1995 and corrected on 6 April, the FAO's reply of 3 July, the complainant's rejoinder of 22 July and the Organization's surrejoinder of 18 December 1995;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A.Information on the complainant's career at the FAO and on the illness which he contracted on mission in Chad appears, under A, in Judgments 1401 and 1486 on his first, second and eighth complaints. His own doctor having declared him "clinically cured" on 4 January 1994, he was separated from service on 7 January 1994.

On 15 March 1994 he lodged an internal appeal, No. 447, with the Appeals Committee seeking reversal of the decision to separate him from the Organization and an award of one million United States dollars in damages.

On 22 March 1994 he filed another appeal, No. 448, with the Committee making other claims.

By a letter of 1 February 1995, which he impugns, the Director-General endorsed the Committee's recommendations on both appeals.

B.The complainant submits that the FAO acted unlawfully by separating him while he was ill but before his entitlement to sick leave had run out. He also alleges that the decision of 23 February 1994 giving him notice of separation was "based on" improperly disclosed confidential information, deliberate distortions of fact, "false citation", misuse of authority, swindling, "deprivations of rights and entitlements" and harassment.

In any event the impugned decision was, he says, "irreceivable" because the Director-General failed to act within sixty days of getting the Appeals Committee's report.

He asks the Tribunal to declare:

"1.1the invalidity, illegality and the irreceivability of the Director-General's Reply dated 1 February 1995 and despatched on 2 February 1995 since it should have been made not later than 8 January 1995,

1.2its condemnation to the Administration's disrespect for this Tribunal's Rules governing the time limit for above Reply (otherwise this Reply should have not been made after 8 January 1995),

1.3the receivability of this complaint because;

-it is submitted to this Tribunal within the time limits of 150 days from the date of the Report of the Appeals Committee calculated on the basis of 60 days time limit for the Director-General's Reply from the date of the Report (i.e. time limit expires on 8 January 1995), plus 90 days time limit for submission of my complaint from the date of the expiry of the Time limit for the Reply of the Director-General,

or because;

-it is submitted to this Tribunal within ninety days time limit from the receipt of the Report of the Appeals

Committee which was enclosed with the irreceivable Reply of the Director-General despatched on 2 February 1995,

1.4the merit of each of the following wrongdoings having only in view the "Basic Considerations" and the "Requirements of Integrity, Honesty and Impartiality" clearly highlighted in the "Standards of Conduct in the international civil service" and away from any complimentary considerations to the FAO Administration whatever political and/or diplomatic pressures FAO may exert;

- divulge and publication of personal medical confidential information,
- deliberate distortions of facts and of medical reports and false citation,
- use and abuse of distortions and false citation,
- abuse of power and authority - swindling
- deprivations of rights and entitlements - harassment

2.... that a separate discussion and a separate judgment be made for each of my complaints based on the merits of each of them, and respectfully submit my objection for any judgment which covers more than one case at a time,

3... the quashing of the separation decision,

4... the express [sic] of the invalidity of this retroactive separation decision,

5... that this tribunal recognises and holds the FAO responsibility and liabilities for the irreparable damages caused to the contributions to my pension funds and caused to my pension entitlements,

6... that my sick leave be approved from 23 August 1993 until the expire [sic] of the 9 months sick leave with full-pay and the other 9 months sick leave with half-pay with the supplementation for this half- pay salary (for the second period of nine months),

7... the payment of my due salaries under point (6) above plus my normal full-pay salary until the judgment of this case is announced in public,

8... the recall of all copies of the Memorandum/Letter of my Personnel Officer dated 23 February 1994,

9... the award of US \$ 1 Million (US Dollars One Million) as a compensation for the moral and financial damages and injuries resulting from the divulge and the publication of personal confidential medical information, from the deliberate distortions of facts and of medical reports and false citation from the use and abuse of distortions and of false citation and deprivations of rights and entitlements, from the abuse of Power, of Authority and swindling,

10.... the payment of a lump sum of US \$ 7,500.00 for photocopies, secretarial assistance, postage, stationery, etc...

11.... the reimbursement by the FAO for the cost of publication of this judgment in 4 American, 4 European and 4 Arab daily newspapers and magazines and the Tribunal's non-objection for the discussion of this corruption in public.

12.... that this judgment contains a penalty clause for its execution within 30 days from the date of this judgment equivalent to 50% of the total of all salaries, entitlements and awards for every two weeks of delay by the FAO Administration."

C.In its reply the FAO points out that since its rules set no time limit for a decision by the Director-General the challenged decision cannot be out of time. At all events most of the complainant's claims, since he did not put them to the Appeals Committee, are irreceivable: namely, his claims to more sick leave, to pay during litigation, to the costs of photocopying and publication, to a penalty clause for delay in execution and to damages for loss of pension entitlements.

His other claims are unsound. The Administration has not disclosed any confidential medical information, he

himself having identified his illness in correspondence with the Administration. Nor is he entitled to another appointment, his last one having expired lawfully after a three-month extension for medical reasons.

D. In his rejoinder the complainant points out that he is challenging the rejection of his appeal of 15 March 1994, not of the one of 22 March. He answers the FAO's pleas on receivability and presses his claims.

E. In its surrejoinder the FAO withdraws its challenge to receivability and submits that the complaint is devoid of merit. The Organization was under no duty to keep him on sick leave until "all possible traces" of his illness disappeared: his entitlement to such leave ended when the medical officer found him fit for work.

#### CONSIDERATIONS:

1. The complainant's career at the FAO, which he left on 7 January 1994, and facts relevant to the present dispute are set out under A in Judgments 1401, on his first and second complaints, and 1486, on his eighth. Having caught hepatitis B while on duty in Chad in 1993, he saw fit to lodge many appeals with the Organization, some of them obscure in purpose. Although the Tribunal has dismissed several of his complaints, Judgment 1486 declared his illness to be service-incurred within the meaning of Manual paragraph 342.213.

2. On 3 March 1994 he appealed to the Director-General against a memorandum of 23 February in which a personnel officer told him that the date of his separation from the Organization was 7 January 1994. He asked for the reversal of the decision to separate him from the FAO, withdrawal of all copies of the memorandum and payment to him of one million United States dollars in damages for harassment, disclosure of privileged medical information and "injustice", and for any other injury he had sustained. By a letter of 9 March the Assistant Director-General in charge of the Administration and Finance Department rejected his claims on the Director-General's behalf. On 15 March he submitted to the Appeals Committee an appeal, No. 447, against that rejection. In a letter of 1 February 1995 the Director-General rejected it, as indeed the Committee had recommended. That is the decision he is impugning. His twelve heads of claim are set out under B above.

3. "Claim" 1 consists merely of pleas or applications for rulings on matters of procedure. In any event the complainant has failed to draft them plainly or coherently enough for the Tribunal to determine what it is he wants. So it will deliver no formal ruling on them.

4. The complainant's claim 2 - his objection to joinder - succeeds: since his complaints arise out of different causes of action they are not joined.

5. In support of his claims under 3 and 4 about the quashing of the decision to separate him he submits that the memorandum of 23 February 1994, to which the Tribunal refers in 2 above, contains a decision that is unlawful because it was taken when he was still on sick leave.

6. The plea is devoid of merit. The memorandum did not terminate an appointment that had yet to expire. His appointment at the FAO was for a fixed term, and under Staff Rule 302.907 such appointments expire, without notice, at the scheduled date. The complainant's appointment expired at 30 September 1993, and the extension the FAO granted him was for medical reasons. So the memorandum merely referred to the date at which his sick leave ended and thereby gave the date of separation. The complainant's doctor having certified on 4 January 1994 that he was fit to go back to duty as long as he did not overwork, the FAO accordingly decided he should leave at 7 January, three days after his sick leave had ended, to allow time for final "debriefing".

7. He maintains that on 7 January 1994 he was still on sick leave. But sick leave ends when the competent medical officer declares the official fit to go back to work. That is why the Organization made the date on the medical certificate the last day of the complainant's sick leave. It was under no duty to grant him special leave on partial pay while he was convalescing because Manual paragraph 302.625 lays no such duty on it. Nor is there any provision under which it must extend a fixed-term appointment to cover convalescence, let alone until all trace of illness has gone. The conclusion is that the decision to set the date of separation at 7 January 1994 was lawful.

8. Yet, though it was lawful for the memorandum of 23 February 1994 to set that date, not until 25 February did the complainant get notice of it. According to a general principle no decision unfavourable to an official may take effect before the date at which he gets notice of it. So the earliest date at which the complainant's separation from service might take effect was 26 February 1994, the day after he had notice of it, and he is entitled to an award of damages on that count.

9. With that sole exception claims 3 and 4 fail, as does claim 5, which hinges thereon.

10. Claim 6 is to extension of the complainant's sick leave and to payments due on that account. But he failed to make the claim in his internal appeal which has culminated in the final decision impugned in this case, and before the Tribunal the claim is a new one. Under Article VII of the Tribunal's Statute a complaint is receivable only if the impugned decision is a final one and the complainant has exhausted all the remedies open to him under the Staff Regulations. The Tribunal has often held, as in Judgment 1443 (in re Vollerling No. 6), that a complainant may not broaden the scope of the claims he made in the internal proceedings when he comes to the Tribunal. So the claim about sick leave is irreceivable.

11. Since claim 6 fails so too does the dependent claim 7.

12. On claim 8 he submits that the FAO divulged privileged medical information and that its employees' indiscretion made his illness known to others. The Organization replies that the only people who had access to the information were the officials who needed it for the performance of duty and they always treated it in strict confidence.

13. It is the complainant himself, through his many memoranda, protests, appeals and complaints, who has done much to spread the information he now wants to keep secret. His memorandum of 13 September 1993, for example, spoke of his illness, and he himself sent it to the medical service and copies to other officials. Besides, the Tribunal's widely published judgments on his complaints necessarily mention his illness, not least Judgment 1486, which declared it to be service-incurred. Under the circumstances the mere "withdrawal" of the memorandum would not in any way safeguard the confidentiality of his medical records. Inasmuch as claim 8 shows no cause of action it too fails.

14. Claim 9 seeks damages for injury the complainant attributes to the disclosure of privileged medical information and other offences with which he charges the Organization. As for the disclosure of material information not only is he himself largely to blame, as was said in 12 above, but he offers not a shred of evidence to suggest that it did him any harm. As for the various other offences he alleges, the Tribunal dismissed a claim of his, in Judgment 1485, to payment of 5 million dollars by way of damages for "inflicted atrocities" on the grounds that the claim was too vague and rested on no unlawful act he imputed to the Organization. Claim 9 fails for the same reasons: for it to succeed he should first have exhausted the internal remedies open to him and identified the final decisions he meant to challenge.

15. As to his claim 10, which is to costs, the Tribunal observes, in view of the intemperate language of his submissions, that he owes a duty of respect to the defendant and to its staff. Though his complaint succeeds in part, his claim to costs is disallowed because he has not fulfilled that duty.

16. Lastly, his claims 11 and 12 are unwarranted: indeed he himself does not even offer reasons why they should succeed.

#### DECISION:

For the above reasons,

1. The memorandum of 23 February 1994 setting the date of the complainant's separation from service takes effect only as from 26 February 1994.

2. His other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas

Mella Carroll  
Julio Barberis  
A.B. Gardner

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