

THIRTY-FIFTH ORDINARY SESSION

In re MOFJELD

Judgment No. 260

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Odd Mofjeld on 16 September 1974 and brought into conformity with the Rules of Court on 15 October 1974, the Organization's reply of 20 January 1975 and the complainant's rejoinder of 14 February 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual provision 370.831(v);

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

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

A. The complainant joined the service of the FAO on 14 February 1971 as a dairy officer at grade P.3 on a fixed-term contract of 48 months' duration. He was assigned to a World Food Programme project in India known as "Operation Flood", part of which was being financed by the United Nations Development Programme (UNDP). The team of experts recruited by the FAO for the project had to work with the Indian Dairy Corporation (IDC) and the National Dairy Development Board (NDDB). The IDC was established by the Government of India to carry out "Operation Flood" and co-operated closely with the NDDB. The two bodies constituted the "project authority" designated by the Indian Government to work with the FAO in executing the project.

B. The complainant was attached to the NDDB at a time when it was engaged in work in the State of Maharashtra under "Operation Flood". According to the Organization, the complainant had difficulty in fitting into the FAO team and his relations with the NDDB gave rise to friction. His probationary period was extended and his annual salary increment withheld for four months. The friction mentioned above arose in particular out of his relations with Mr. Kurien, the Chairman of both the IDC and the NDDB, and Mr. Jhala, the Secretary of the NDDB. On 9 February 1973, Mr. Kurien wrote to Mr. McDiarmid, the UNDP Resident Representative in India, to say that it would be better for the project if the complainant were withdrawn. On the same day Mr. Kurien also wrote to the complainant's chief, Mr. Jasiorowski, the Director of the Animal Production and Health Division, asking for the complainant's early recall from India. On 12 February 1973 Mr. McDiarmid wrote to Mr. Jasiorowski recommending the complainant's recall. After due consideration the Organization decided that the complainant should no longer be assigned to "Operation Flood" and should be recalled. There being no other suitable post vacant, his services were terminated in accordance with Manual provision 370.831(v), which reads as follows:

"Experts may be terminated:

.....

(v) for reasons of unsuitability for a post or assignment, no appropriate reassignment being available in the program (acceptability to a government is a condition of suitability)."

The Organization's decision was cabled to the complainant by the UNDP Deputy Resident Representative and confirmed by a letter of 24 April 1973 from the Director of the Personnel Division. The complainant's separation took effect on 28 April 1973.

C. Meanwhile, on 2 April 1973, the complainant had appealed against the decision to the Director-General. By letter of 25 April 1973 he was informed on the Director-General's behalf that his appeal had been dismissed. He then appealed to the FAO Appeals Committee, which reported to the Director-General on 2 May 1974. The Appeals Committee held that the complainant's recall from India and consequent termination were contrary to Manual provision 370.831(v) in that the representations made by Mr. Kurien, the Chairman of the NDDB, had not constituted an official request by the Indian Government for the complainant's recall. The Appeals Committee accordingly recommended, among other things, paying the complainant full salary and allowances for his entire 48

months' appointment; expunging any mention of suitability for his post from his personal file, and including in any reference supplied by the FAO the statement that his services had been satisfactory. By letter of 11 July 1974 the Director-General informed the complainant that the UNDP Resident Representative in India had established beyond doubt that his assignment was harmful to the project; the Director-General therefore could not endorse the Appeals Committee's recommendations and upheld his original decision; the complainant would, however, receive "ex gratia" payment of a sum equivalent to three months' salary plus allowances. The complainant is now impugning that decision.

D. In his claims for relief the complainant asks the Tribunal to consider the propriety of the Director-General's decision of 11 July 1974 to dismiss all the Appeals Committee's findings and recommendations. He adds that his complaint relates to his future career and good name and not to the three months' salary granted by the Director-General.

E. The FAO contends: (i) suitability for a field post and the need to terminate a field assignment are questions which the FAO is competent to decide in the light of the circumstances of each case and the real interests of the project; (ii) having established a staff member's unsuitability for a field post, the Organization may recall him even if there is no request to that effect by the host government; (iii) in view of the complainant's responsibilities, the request made by Mr. Kurien to Mr. McDiarmid, the UNDP Resident Representative, and to Mr. Jasiorowski, the Director of the complainant's division, should be treated as an official request by the Indian Government for the complainant's recall; (iv) the complainant's relations with his counterparts, particularly Mr. Kurien, the chairman of the bodies set up by the Indian Government to carry out the project, plainly show that his work was unlikely to be effective; and (v) quite apart from the question of his acceptability to the Indian Government, the Organization was fully entitled, in the light of (iv) above, to regard him as unsuitable for his post and recall him in the interests of the efficiency of the project and, no other post being vacant, to terminate his appointment in accordance with Manual provision 370.831(v).

F. The Organization accordingly asks that the complaint be dismissed.

CONSIDERATIONS:

The reason why the complainant was removed from his post was that he had incurred the displeasure of Mr. Kurien, the government official in charge of the project to which the complainant was attached, who requested his removal. It does not appear from the dossier that the complainant was to blame: in paragraph 21 of its reply the Organization states: "In practice, instances of conflict between staff members in the field and members of the counterpart staff of national authorities do inevitably arise. This conflict may sometimes be due to circumstances beyond the control of the staff member concerned."

Under Manual provision 370.831 the Organization was in the circumstances of this case entitled to terminate the complainant's appointment, in particular, if he was unacceptable to the Government of India; or, in general, if on some other ground he was unsuitable for his post. The first condition would be fulfilled by a statement from the Government of India that the person concerned was "persona non grata". It is not in the opinion of the Tribunal fulfilled by a statement made by a government official involved in the project; there is no evidence that in this matter Mr. Kurien had any authority to speak for the Government. As to the second condition, the Organization contends that the complainant's unacceptability to Mr. Kurien made him unsuitable for his post. The Tribunal considers that this gives too wide a meaning to the word "unsuitability", so that the second condition was also unfulfilled.

The Tribunal has therefore concluded that there was no justification for the termination of the complainant's appointment. The complainant does not seek any additional relief, and accordingly the order of the Tribunal is that the Director-General's decision of 11 July 1974 be quashed.

DECISION:

For the above reasons,

The Director-General's decision of 11 July 1974 is quashed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as

myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 27 October 1975.

M. Letourneur
André Grisel
Devlin

Roland Morellet

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