

THIRTY-FIFTH ORDINARY SESSION

In re REMONT (No. 2)

Judgment No. 261

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Jean Rémont on 6 October 1974, the Organization's reply of 21 January 1975, the complainant's rejoinder of 31 March 1975 and the Organization's surrejoinder of 18 June 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and FAO Staff Rules 301.0332, 302.3091, 302.3092, 302.3097, 302.3148, 302.3171, 302.351, 302.712, 302.7121, 302.7533, 302.7534, 302.7551 and 303.131 and FAO Manual provisions 331.421 and 331.422;

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 23 June 1968 as chief of project at grade P.5 and was assigned to Port-de-Paix in Haiti. His original appointment was for two years, but was successively extended to 28 February and to 31 March 1971. He was transferred to Burundi with effect from 12 March 1971 and that assignment was extended to 21 May 1971. On 23 April 1971 he was assigned to Tunisia at grade P.4. His appointment was successively extended to 30 June, 31 August and 31 December 1971, when he left the service of the FAO.

B. The complaint consists of two claims. First, the complainant claims payment by the FAO of \$1,200 as compensation for loss incurred because he left his furniture in 1970 in the safe keeping of the project administration during his leave. In support of his claim he points out that the FAO prevented him from returning to pack his baggage in Haiti and took no steps to protect his property as it owed a duty to him as a staff member to do. Despite the claims he addressed to headquarters the FAO did nothing for two years and in the end told him that it did not regard itself as involved in a dispute about a private matter. The second claim is for payment of 38,000 Belgian francs as compensation for loss incurred owing to the FAO's delay in paying him certain sums due. He admits that he did eventually obtain most of those sums, but only after lengthy correspondence and two journeys to Rome. Finally, he points out that the FAO admits some liability for the loss he suffered, "but merely to a nugatory extent". In calculating the sum of 38,000 Belgian francs he takes account of the delay in paying the sums due, interest, monetary depreciation, the cost of two journeys to Rome and clerical expenses.

C. The two claims - relating to the complainant's furniture in Haiti and to the allegedly late payment of various sums (transportation of excess baggage, installation allowance in Tunis) - were duly submitted to the FAO Appeals Committee, which held that they were unfounded. It nevertheless recommended compensation for the delay in paying the balance of the complainant's salary. The Director-General accepted the Appeals Committee's findings and authorised payment to him of 1,255 Belgian francs in compensation. By letter of 27 June 1974 the Director-General notified that decision to the complainant and told him that he could not accede to his other claims. It is that decision which the complainant now impugns .

D. In his claims for relief the complainant asks the Tribunal:

"to hear the two distinct claims which constitute his complaint and declare them well founded;

accordingly to order the FAO to pay him \$1,200 in compensation for the prejudice suffered by him by reason of the loss or deterioration of property he put in its safe keeping, liability being based on its failure to take the preventive and remedial steps required by denying its Director the opportunity to take such steps on his own responsibility; to order the FAO to pay the complainant 38,000 Belgian francs in compensation for the prejudice suffered by him since 1971 by reason of the FAO's repeated refusals to pay sums corresponding to salary, allowances and reimbursement of incurred expenses; inasmuch as, although the FAO eventually paid those sums, the complainant,

through no fault of his own, continued to suffer prejudice and incur expense and the FAO aggravated its liability by lack of co-operation".

E. The FAO maintains that under Staff Rule 303.131 the claim relating to furniture left in Haiti is time-barred and is irreceivable on the further grounds that it does not relate to the terms of the complainant's appointment but to private arrangements made by him with which the FAO was not officially associated. The payment made for excess personal baggage was a refund over and above normal allowances and the FAO argues that it is therefore not liable for any delay in making the refund. No valid claim may be based on any alleged delay in the exceptional payment of allowances for the installation of the complainant's children in Tunis. The FAO admits delay in paying the balance of his salary amounting to \$500, but points out that he received \$30.02 in compensation. Lastly, it contends that it cannot be held liable for currency fluctuations or travel expenses claimed by the complainants postal charges and the like. It therefore asks the Tribunal to dismiss the complaint.

F. In his rejoinder the complainant reserves the right to increase his claims at a later stage in the proceedings and gives a breakdown of the sums which at 31 March 1975 he asks the Tribunal to order the FAO to pay. The total amount is 187,591 Belgian francs, including 100,000 Belgian francs to cover costs.

G. In its surrejoinder the Organization maintains its original arguments. It contests the complainant's new claim in his rejoinder for payment of 100,000 Belgian francs to cover costs on the grounds that he has not been denied due process and has suffered no prejudice by reason of any procedural delay.

CONSIDERATIONS:

1. As to the claim for \$1,200 for loss on the sale of furniture

The complaint does not relate to any non-observance by the Organization of the complainant's terms of appointment and consequently this claim falls outside the Tribunal's jurisdiction. It is therefore unnecessary to consider whether or not it is time-barred.

2. As to the claim for 38,000 Belgian francs

This sum is claimed as damages for the delay in payment of salary and expenses. An examination of the dossier does not show, except in one case, that the delay was unreasonable; the claims for expenses required consideration and in some cases were in excess of the claimant's entitlements. In the one case of admitted delay, the Organization has paid interest at the rate of 10 per cent. This claim fails on the merits.

3. As to the claim for 13,600 Belgian francs

This is for the cost of two trips made by the complainant from Brussels to Rome. The trips were taken by the complainant partly to attend the proceedings before the Appeals Committee and partly to press his claims. Under the first head, the matter is governed by Manual provisions 331.421 and 331.422 and the claim does not fall within them. Under the second head, the Organization did not agree to pay these expenses, the expenses do not arise out of the claimant's terms of appointment and were not in the opinion of the Tribunal reasonably necessary for the presentation of his claims. This claim therefore fails on the merits.

4. The claim for 100,000 Belgian francs, introduced by the claimant's rejoinder, as compensation for time spent in trying to obtain justice, is without foundation.

DECISION:

For the above reasons,

All the claims are dismissed.

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.