

THIRTY-SIXTH ORDINARY SESSION

***In re* GRACIA de MUNIZ**

Judgment No. 269

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Maria Teresa Gracia de Muñiz on 18 April 1975 and the FAO's reply of 14 July 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Manual provisions 301.0911, 301.012 and 301.152 and FAO Staff Rules 301.111, 302.521 and 303.131;

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 staff of the FAO on 9 June 1968 as an editor on a short-term appointment. She was later appointed editor at grade P.3 and on 15 November 1970 was granted a permanent appointment. She was responsible for the Spanish edition of the FAO magazine known as CERES. In June 1973 the Director of her division told her that she was to be transferred and that her post as Spanish editor of CERES, like those of the French and English editors and the art Director, had been abolished. The complainant appealed to the Director-General on 12 June 1973 against her transfer and on 25 June 1973 against the abolition of her post with CERES. By letters of 26 June and 11 July 1973 respectively the Director-General dismissed both appeals. On 18 July 1973 the complainant lodged her claims with the Appeals Committee of the FAO alleging "illegal abolition of post, attempted bribery, arbitrary re-assignment of duties and indirect termination". On 26 November 1974 the Appeals Committee reported to the Director-General recommending that the FAO should make every effort to ensure that she was suitably employed either at headquarters or in the field in keeping with her professional abilities. It also recommended that should she seek employment with any other international organisation the FAO should afford her every possible assistance. By letter of 31 January 1975 the Director-General informed the complainant that he endorsed the Appeals Committee's recommendations but could not accept her claims regarding "illegal abolition of post, attempted bribery, arbitrary re-assignment of duties and indirect termination". The complainant is now impugning the Director-General's final decision in that letter of 31 January 1975.

B. The complainant contends that the abolition of her post is not genuine. She and the French and English editors have been replaced by three free-lance editors who have been given new appointments for each issue of CERES. They are performing the same duties and working on the same premises as the former editorial staff, the only difference being that they have no holiday, social security, sickness insurance or pension entitlements. The FAO has thus had recourse to "scab labour". The purely fictitious abolition of her post was based on an error of fact and is therefore unlawful. Recourse to "scab labour" is also contrary to the most basic rules of ethics and affords yet more proof of the unlawfulness of the abolition of her post. Finally, by abolishing her post the Administration has committed a breach of its contract with her: "It is only common sense that the contract the complainant signed did not contain my express or implicit clause whereby she should lose her post if someone else were found willing to do her work for lower pay than she...".

C. The complainant then states that in February 1973 she received from Mr. Piat, then Director of Personnel, an offer by the Administration of amicable termination of her appointment in return for, first, an increase of 50 per cent in the normal amount of dismissal compensation and, secondly, one year's salary payable in advance in the form of a scholarship which the complainant should apply for to carry out research of interest to the FAO and write a study for the FAO. She alleges, however, that Mr. Piat made it clear that the work in question would not have to be done, and she refused the offer in the belief that it was tantamount to attempted bribery or at least a ruse at the FAO's own expense. She maintains that her refusal has led to reprisals on the FAO's part which have, for example, taken the form of keeping her completely idle for two years.

D. The complainant considers that in fact she has suffered indirect termination of employment. "I have now been kept completely idle against my will for two years. That alone constitutes unilateral breach of my appointment by the Administration. Employment consists of two inseparable components: work and remuneration. If one is missing the contract of employment between the two parties is meaningless. Work cannot be demanded if it is not remunerated; nor may remuneration be paid unless work is done - otherwise it would merely be unearned income. That is just common sense. My contract is valid only on paper: in practice it has been infringed."

E. The complainant asks the Tribunal to quash the decision to abolish her post on the grounds that it was tainted with an error of law and based on an error of fact and led to her downgrading, and to order her reinstatement in her post as Spanish editor of CERES.

F. In its reply the FAO states that the abolition of the complainant's post and of those of the French and English editors forms part of the economy measures taken in accordance with express instructions adopted by the FAO Conference at its Sixteenth Session in 1971. In accordance with those instructions the FAO authorities abolished those posts, engaged free-lance editors and so cut expenditure on CERES for the 1972-1973 financial period from \$677,000 to \$622,000. The abolition of the complainant's post was approved by the competent bodies, the decision was taken for objective reasons, and in any case the complainant did not lose her employment since she was transferred to another post at the same grade.

G. The FAO states that the complainant is mistaken in regarding as attempted bribery the offer of amicable termination of her appointment. The offer was made in accordance with Staff Regulations 301.0911 and 301.152 and Staff Rule 302.521, which read as follows:

"301.0911 The Director-General may also in exceptional circumstances terminate the appointment of a staff member who holds a confirmed permanent or indefinite appointment, if such action would be in the interests of the good administration of the Organization and in accordance with the standards of the FAO Constitution, provided that the action is not contested by the staff member concerned."

"301.152 The Director-General may, where the circumstances warrant and he considers it justified, pay to a staff member terminated under Staff Regulation 301.0911 a termination indemnity payment not more than 50 per cent higher than that which would otherwise be payable under the existing Staff Regulations."

"302.521 Special leave, with full or partial pay or without pay, may be granted for advanced study or research in the interest of the Organization, in cases of extended illness or for other important reasons for such periods as the Director-General may determine for staff members with confirmed appointments."

H. The FAO then states that the complainant's transfer was not arbitrary and is in keeping with her qualifications and experience. It is in no way a disciplinary measure and the Organization has merely applied Staff Regulation 301.012: "Staff members are subject to the authority of the Director-General, and to assignments by him to any of the activities or offices of the Organization. They are responsible to him in the exercise of their functions."

I. The FAO concludes that the abolition of the post of P.3 editor of CERES was lawful, carried out in good faith, tainted with no flaw and not based on any error of fact; that the complainant's allegations of attempted bribery and indirect termination of employment are unfounded; and that her transfer is quite lawful and infringes neither the terms of her appointment nor any provision of the Staff Regulations or the Staff Rules. It therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

As to the production of documents:

1. The complainant asks the Tribunal to admit as written evidence the text of a motion voted by the Plenary Staff Assembly and a letter addressed to the Director-General by the Staff Committee. There is no objection to the inclusion of these documents in the dossier, as the FAO itself admits.

As to the abolition of the complainant's post and her reinstatement:

2. The complainant's principal claims are, first, the quashing of the decision to abolish the post which she held as

Spanish editor of the magazine known as CERES and, secondly, her reinstatement in that post. In determining the validity of those claims the Tribunal must consider whether and in what circumstances the abolition of a post is compatible with the rules of the international civil service.

Far from being determined once and for all, the purposes and structure of an organisation must move with the times and no institution is immune to change. According to circumstances such change in an organisation may entail the abolition of posts. Even if there is no express provision in the Staff Regulations or Staff Rules for such a measure, it is implicit in the principle that no organisation is bound to adhere to the purposes and policies which it adopted at any particular time. The complainant is mistaken in contending that abolition of a post is warranted only if the FAO ceases to perform some form of function. The theory is that for a post to exist two conditions must be met: an impersonal one, namely the definition of the functions to be performed, and a personal one, namely the assignment of those functions to a staff member in a particular category. Hence an organisation may properly decide to abolish a post in one or the other of two contingencies - either when it ceases to perform certain functions or when it relieves the responsible staff member of those functions and assigns them to one or more other staff members.

Although the Director-General enjoys discretionary authority in taking measures which entail abolishing a post, his decision is not wholly free from review by the Tribunal. It may be quashed if it violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts. In particular the Tribunal will find that there has been abuse of authority where the abolition of a post is motivated, not by relevant and objective considerations, but by a desire to remove a staff member for whose dismissal there are no lawful grounds.

Moreover, there is a general principle whereby an organisation may not terminate the appointment of a staff member whose post has been abolished, at least if he holds an appointment of indeterminate duration, without first taking suitable steps to find him alternative employment.

3. The complainant was replaced in her former post by a staff member who does not hold a permanent appointment, does not enjoy the same benefits and in particular is paid at a lower rate. In other words her functions are still being performed, but by someone else. As appears from the foregoing, however, that is not enough to establish the irregularity of the abolition of her post. On the contrary, the question at stake is whether on account of the reasons underlying it the abolition of her post is tainted with any flaw which entitles the Tribunal to interfere. The Tribunal finds that it is not so tainted.

First, the impugned decision meets the wishes expressed on several occasions by the higher authorities of the FAO. In November 1973, at its Sixteenth Session, the Conference of the FAO recommended reducing editorial expenditure on CERES without detriment to the aims of the magazine. At its Fifty-ninth Session the Board of the FAO noted that the Director-General's proposals for reducing expenditure on CERES were expected to lead to savings of \$55,000 in 1972-1973. The Board expressed the hope that further savings would be made, for example by engaging free-lance staff under contract. And at its Twenty-third Session (26 March-6 April 1973) the Programme Committee called for reductions in proposed expenditure which the Joint Programme and Finance Committees had approved on 4 April 1973. Thus in abolishing the complainant's post and assigning her functions to someone engaged under contract the Director-General was giving effect to FAO policy. It is not for the Tribunal to review such policy, whether it relates to the scope of the FAO's activities or to its methods of work. The complainant cannot therefore validly maintain that it is improper to replace the incumbent of an established post with someone engaged under contract.

Secondly, the abolition of post was not directed personally at the complainant. On the contrary, two other CERES editors and the art Director lost their posts at about the same time. There is therefore no question of abuse of authority.

As to the alleged attempt to bribe the complainant:

4. Being bound by the scope of the complainant's claims for relief the Tribunal is not required to consider the complainant's allegation of an attempt at bribery. If that allegation were proved the attempt at bribery would be subsequent to the abolition of post and merely a consequence thereof. Hence it cannot properly be relied upon to justify the quashing of the impugned decision and the complainant's reinstatement, the only claims for relief which

she has made.

As to the assignment of the complainant to a new post:

5. The complainant further objects that she has been assigned to an unsuitable new post and in practice been reduced to idleness. There is no need to consider these matters, which have no bearing on the claims for relief and would be germane only if the complainant had asked for assignment to a particular post or claimed compensation for material or moral damage. That she has not done.

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 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 12 April 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet